

GAHC010056822024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1576/2024

KULSUM BIBI

W/O- LT. SONA UDDIN @ SONA UDDIN SHEIKH, VILL- BANIAMARI PART-V,
P.O. MAKRIJHORA, P.S. GAURIPUR, DIST- DHUBRI, ASSAM, PIN- 783349

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, HOME AND POLITICAL DEPARTMENT, DISPUR, GUWAHATI-06

2: THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-06

3: THE ASSAM STATE LEGAL SERVICES AUTHORITY
REPRESENTED BY ITS MEMBER SECRETARY
GHY-01

4: THE CHAIRMAN
DISTRICT LEGAL SERVICES AUTHORITY
DHUBRI
ASSAM
PIN- 783301

5: THE DISTRICT LEGAL SERVICES AUTHORITY
DHUBRI
ASSAM
REPRESENTED BY ITS SECRETARY
P.O. AND P.S. AND DIST.- DHUBRI
ASSAM
PIN- 78330

Advocate for the Petitioner : MR. M HUSSAIN

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 03.05.2024

Heard Mr. M. Hussain, learned counsel for the petitioner. Also heard Ms. M. Barman, learned Govt. Advocate appearing for respondent Nos. 1, 4 and 5, Mr. P. Nayak, learned standing counsel for respondent no.2, Ms. A. Choppy, learned counsel appearing on behalf of Mr. R.S. Choudhury, learned standing counsel for respondent No. 3.

2. The case of the petitioner is that her husband, namely, Sona Uddin@ Sona Uddin Sheikh was murdered on 26.10.2004, allegedly by the FIR name accused persons, in respect of which Bagribari P.S case no. 143/2004 was instituted. By judgment and order dated 07.09.2018 passed by the learned Additional Sessions Judge, Bilasipara in Sessions Case No. 65 of 2007, one of the accused persons, namely, Rahij Uddin SK was convicted under Section 302/323 IPC. Thereafter, the petitioner had submitted a representation dated 12.11.2018 before the Member Secretary, Assam State Legal Services Authority, for providing her victim compensation. As compensation was not received, the petitioner had approach this Court by filing a writ petition and this Court by order dated 30.04.2019 passed in WP(C) 1563/2019, directed the District Legal Services Authority, Dhubri to take up the claim of the petitioner for victim compensation under Section 357A Cr.P.C and after due enquiry, decide the quantum of compensation to be awarded in terms of the Govt. notification dated 01.02.2019 within a period of 2(two) months from the date of receipt of the said order. Accordingly, the petitioner moved the Secretary District Legal

Services Authority, Dhubri on 10.05.2019 along with all requisite documents. Thereafter, the Secretary, District Legal Service Authority, Dhubri took up the matter and by an order dated 13.03.2020, passed in the proceedings of Victim Compensation Application No. 13/2019, awarded a compensation of Rs.1,00,000/- to the victim under the Assam Victim Compensation Scheme, 2012.

3. The aggrieved petitioner had moved this Court again by filing a writ petition. This Court by order dated 28.02.2020 passed in WP(C) 1462/2020, disposed of the said writ petition by allowing the petitioner to file an appropriate application before the Secretary, District Legal Services Authority, Dhubri for reconsideration of the case of the petitioner in the light of the order dated 30.04.2019 passed in WP(C) 1563/2019 with a direction to dispose of the said application within a period of 30(thirty) days from the date of receipt of the said order. The said order of the Court was forwarded by the petitioner to the Member Secretary, Assam State Legal Services Authority vide letter dated 11.03.2020 with a copy to the Secretary, DLSA, Dhubri. However, the Secretary, District Legal Services Authority, by an order dated 13.03.2020 had maintained the award at Rs.1,00,000/-. After due inquiry and verification, approval amount of cheque of Rs.1,00,000/- was delivered to the victim on 20.01.2020. The said authority had expressed its opinion that this Court had not specifically directed to award compensation of Rs.5,00,000/- to the petitioner, but the authority was directed to take up the claim. Accordingly, the prayer for further compensation was rejected.

4. Aggrieved by the said order, the petitioner has approach this Court once again with a prayer to set aside the impugned order dated 13.03.2020 in the proceedings of Victim Compensation Application No. 13/2019 passed by the Secretary, District Legal Services Authority, Dhubri.

5. Having heard the learned counsel for the petitioner as well as the learned State and Departmental counsel for the respondents, the Court takes notice of the fact that not only in the order dated 30.04.2019, passed by this Court in WP(C) 1563/2019, but also in the order dated 28.02.2020, passed by this Court in WP(C)

1462/2020, a specific direction was issued to the Secretary, District Legal Services Authority, Dhubri to reconsider the case of the petitioner by specifically referring to the Govt. notification dated 01.02.2019. As per entry made in serial no. 6 of the schedule contained in the said Govt. notification no. PLA 524/2015/Pt/190(ECF-38361) dated 01.02.2019, the compensation payable under the Assam Victim Compensation Scheme, 2012, in case of death is maintained at Rs.5,00,000/-, which is both the minimum and maximum quantum of compensation. Therefore, when this Court had passed two consecutive orders in WP(C) 1563/2019 and WP(C) 1462/2020 to consider the compensation as notified under the Govt. notification dated 01.02.2019, it is imperative that the quantum prescribed in the schedule to the said notification has to be adhered to. The orders passed in those two writ petitions had attained finally.

6. The Secretary, District Legal Services Authority, Dhubri is a Judicial Officer. Therefore, while passing the impugned order dated 13.03.2020 in Victim Compensation Application No. 13/2019, he is expected to apply his judicial mind and appreciate the contents of the notification. It would not be open to the Secretary, District Level Services Authority, Dhubri to make its own interpretation of the contents of the Govt. notification. We find the said approach of the Secretary, District Legal Services Authority, Dhubri contemptuous. Therefore, this is a fit case to have this matter referred to the Registry of this Court placing it before the Hon'ble Portfolio Judge for examination on the administrative side.

7. The Court is of the considered opinion that as one of the duty of the District Legal Services Authority, Dhubri, is to pass an appropriate order on application for compensation under Section 357A Cr.P.C., this Court on two occasions had referred the matter to the said authority for passing an appropriate order. However, the said authority did not take note of the contents of the Govt. notification dated 01.02.2019, especially the entries made at sl. No. 6 of the schedule of the said notification regarding quantum of compensation allowable in the case of death. Therefore, the impugned order dated 13.03.2020, passed by the Secretary, District Legal Services

Authority, Dhubri in connection with Victim Compensation Application No. 13/2019 cannot stand the scrutiny of law. Therefore, the said order is hereby set aside and quashed.

8. Accordingly, having noted that the Secretary, District Legal Services Authority, Dhubri has limited the quantification of compensation to Rs.1,00,000/- whereas the notification gives a minimum and maximum quantity compensation at Rs.5,00,000/-, the Court is hereby inclined to direct the Secretary, District Legal Services Authority, Dhubri to pass an appropriate order pursuant to this order of the Court, allowing a total compensation of Rs.5,00,000/- to the petitioner on account of homicidal death of her husband, which is the subject matter of judgment dated 07.09.2018, passed by the learned Addl. Sessions Judge, Bilasipara in Sessions Case No. 65/2007 arising out of Bagribari P.S. Case No. 143/2004. The compensation shall be released on adjustment of Rs.1,00,000/- (Rupees One Lakh only) already released, the quantum of compensation would be only for the balance amount which is Rs.4,00,000/- (Rupees Four Lakhs only). The exercise of passing an order and communicating it to the competent Authorities for release of fund shall be made within an outer period of 1(one) month from the date of receipt of the certified copy of this order, if funds are available.

9. We hope and trust that the competent authority in the Finance Department shall place sufficient fund to the disposal of the Secretary, District Legal Services Authority, Dhubri to enable the balance payment to be released to the petitioners as beneficiary under Victim Compensation Scheme, 2012 in terms of Govt. notification dated 01.02.2019.

10. Accordingly, this writ petition stands allowed to the extent as indicated above.

JUDGE

Comparing Assistant