
(2015) 04 AHC CK 0096
In the Allahabad High Court
Case No : Writ Petition No. 5219 (MB) of 2011

Lakshmi Devi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-04-2015

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2015) 4 ADJ 277 : (2015) 6 ALJ 296 : (2015) 111 ALR 278

Hon'ble Judges : Rajiv Sharma, J; Rakesh Srivastava, J

Bench : Division Bench

Advocate : Sharwan Kumar Pandey and Rajiv Kumar Tripathi, for the Appellant;
Neeraj Kumar Tiwari, Advocates for the Respondent

Final Decision : Disposed off

Judgement

1. Petitioner's husband, namely, Ashok Kumar (deceased) died unnatural death on 18.4.2011 on account of natural calamity (lightening) while harvesting the wheat crops. According to petitioner, a "panchnama" was prepared in presence of Village Pradhan, Area Lekhpal and Naib-Tahsildar on the spot itself. In the report, cause of death of the petitioner's husband has been indicated due to "lightening" in clear words. As there is a Circular/Government Order providing for compensation to the family of the deceased under the National Calamities Emergency Fund, the petitioner preferred an application to the competent authority for ex-gra-Ha payment of compensation and completed the necessary formalities. The said claim of the petitioner has been rejected by the impugned order dated 12.8.2011. Aggrieved by the order so passed by the Assistant Collector, Bhinga, District Bahrajch, the petitioner is before us in this petition.
2. We have heard the learned Counsel for the parties to the lis and also carefully perused the documents on record.
3. The grievance of the petitioner is that the petitioner is being denied her legitimate claim by the opposite party Nos. 3 and 4 on the ground that the

petitioner has failed to furnish the copy of postmortem report. It has been averred that the act and conduct of opposite party No. 4, while passing the impugned order dated 12.8.2011 is against the very aim and object of the National Calamities Emergency Relief Fund and the guidelines framed for its disbursement.

4. It has been contended by the learned counsel for the petitioner that the impugned order dated 12.8.2011 refusing compensation is not only against the Government Order dated 24.1.2005 but shows the colourable exercise of the power of the administrative authorities.

5. The claim of the petitioner has been resisted by the respondents and a counter-affidavit has been filed on behalf of opposite party Nos. 2 and 3 by Sub-Divisional Magistrate, Bhinga in which it has been indicated that no post-mortem report of the deceased was furnished to establish that the death had occurred by natural calamity. It has been further averred in the counter-affidavit that the body of the deceased Ashok Kumar was found burnt at the spot but in order to confirm that the body has been burnt due to sky lightening, [thunder] it was necessary that postmortem of the dead body ought to have been done but in the instant case, the members of the family of the deceased have failed to get conducted the postmortem of the deceased Ashok Kumar. Therefore, the claim of the petitioner for grant of compensation has been rejected.

6. Having examined the material on record minutely, we are of the view that ex-gratia payment is made with the sole object to rehabilitate the family who has lost their beloved one all of a sudden due to natural calamity or an Act of God.

7. First of all, it would be apt to understand the meaning of "Act of God", "Natural Calamity" and "ex-gratia payment".

"Act of God" (natural events) means, a direct, violent, sudden and irresistible act of nature which could not, by any reasonable care, have been foreseen or resisted. To put it differently, one cannot predict the events of nature that is why they are called "Acts of God".

"Act of God" - Vis Major has been defined in the Law Lexicon, 2nd Edition, 1997, as under: Act of God Vis Major may be defined to be any accident, due directly and exclusively to natural causes without human intervention, which by no amount of foresight, pains or care, reasonably to have been expected, could have been prevented. The general characteristics of such perils are very intelligible. LR 1 CPD 423: Province (State) of Madras Vs. I.S. and C. Machado, a registered firm of General Merchants and Commission agents, Tuticorin, AIR 1955 Mad 519 : (1956) ILR (Mad) 85 : (1956) 69 LW 1042 .

8. An act of God is an unforeseeable natural phenomenon as explained by Lord Hobhouse in Transco plc v. Stockport Metropolitan Borough Council as describing events;

(i) which involve no human agency

(ii) which is not realistically possible to guard against

(iii) which is due directly and exclusively to natural causes and

(iv) which could not have been prevented by any amount of foresight, plans, and care.

9. Natural calamity means an event that brings terrible loss, lasting distress, or severe affliction; a disaster. The natural calamities may strike at any person, at any time and keeping this in mind, the Government has created a fund with the sole object to provide immediate relief to those victims who died due to natural calamity.

"Thunder" or "Sky lightening" is a natural happening and is termed as an "Act of God" When the thunder strikes a person, death is a natural consequence."

10. Further, the word "ex-gratia payment" means payment which is voluntarily and charitable in nature and therefore, hyper-technicalities should be ignored and equitable consideration should be kept in mind while deciding the matter. Such claim"s are paid to mitigate hardship to the claimants by way of equitable relief.

11. It is the duty of the Government to safeguard the life and liberty of the people as guaranteed under Article 21 of the Constitution of India. If death occurs to a citizen due to a natural calamity, the Government whether it is State or Central Government, is expected to come forward to "CONSOLE-COMFORT-COMPENSATE" the members of family of the victim and the Government should avoid shirking its responsibility based on arbitrary and imaginary reasons.

12. In the instant case, the stand of the opposite parties is contrary to the Government Order dated 24.1.2005. A perusal of the Government Order dated 24.1.2005 would indicate that there is no mandatory requirement for furnishing post-mortem report to get ex-gratia payment, which can be granted on the basis of inquiry conducted by the Revenue Authorities and the Area Lekhpal. It would be relevant to point out that the opposite parties have failed to establish that the Government Order dated 24.1.2005 has been rescinded/annulled or superseded by the State Government.

13. Furthermore, no material has been brought on record by the respondents to show that the cause of death of the petitioner"s husband was not due to lightening but due to any other reason. Therefore, it is clear that the impugned order has been passed without application of mind and considering all aspects of matter. Even otherwise, for grant of relief provisions should be interpreted very liberally to cover every victim of natural disaster.

14. For the reasons aforesaid, the impugned order dated 12.8.2011 is hereby quashed. Taking the holistic view of the matter, we direct the District Magistrate, Shrawasti, to pass fresh order for grant of ex-gratia payment in light of the aforesaid observation and the Government Order dated 24.1.2005 within a

maximum period of two months from the date of receipt of a certified copy of this order. Subject to the aforesaid observations and directions, this writ petition is disposed of finally in above terms.