
(2002) 03 GAU CK 0017
In the Gauhati High Court
Case No : Writ Petition (C) No. 35 (AP) of 2001

Yagar Muang

APPELLANT

Vs

State of Arunachal Pradesh and Another

RESPONDENT

Date of Decision : 01-03-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 03 GAU CK 0017

Hon'ble Judges : N.S. Singh, J

Bench : Single Bench

Advocate : M. Pertin, for the Appellant; G. Deka, for the Respondent

Final Decision : Partly Allowed

Judgement

N.S. Singh, J.—In this writ petition, the petitioner Smt. Yagar Muang, a widow made a prayer for a direction to the respondents/authorities concerned to pay Rs. 5,00,000 to her on account of death of her husband late Tajom Muang who was killed by the extremists while he was on duty on 7.6.1997. According to the petitioner, her late husband Tajom Muang, the then Assistant Engineer, PWD, Longding, Tirap district was brutally murdered by NSCN extremists on 7.6.1997 while performing his official duty namely, while making labour payments at the relevant time. The petitioner herein had claimed ex-gratia lump-sum compensation and payment of it to the legal heirs of the deceased employee through the petitioner and, her claim was considered by the Chief Engineer (E2), PWD, Arunachal Pradesh, Itanagar and the said Chief Engineer had recommended rather, urged the Government to accord the sanction of an amount of Rs. 2,00,000 as ex-gratia payment to the bereaved family of late Tajom Muang vide, office letter dated 30.7.1999 as in Annexure-A to the writ petitioner but, by virtue of a related order dated 12.1.2000, the Commissioner, PWD, Govt. of Arunachal Pradesh accorded sanction of a meagre amount not exceeding Rs. 3,000 (Rupee three thousand) only being ex-gratia payment to the petitioner-widow by invoking the alleged Ex-gratia Payment Act, 1987 of Arunachal Pradesh

as seen in the document marked as Annexure-B to the writ petition. Being dissatisfied with such meagre amount, the petitioner further urged the Commissioner and Secretary to the Govt. of Arunachal Pradesh, PWD, Itanagar, the respondent No. 1 herein to review the said order dated 12.1.2000 which was communicated on 13.1.2000 by the latter and, apart from that, the petitioner also approached the Hon'ble Minister, PWD concerned for grant of atleast Rs. 5,00,000 (Rupees five lakhs) as ex-gratia lump-sum compensation by filing representation dated 17.1.2000 as in Annexure-D to the writ petition but, all are in vain and having no alternative, the petitioner approached this Court with this writ petition.

2. At the hearing, Mr. M. Pertin, learned counsel appearing for the petitioner contended that the respondents authorities had almost admitted the case of the petitioner and in terms of the related Govt. of India circular, the petitioner is entitled the compensation to the tune of Rs. 5,00,000 as her husband was killed by the NSCN terrorist while he was on duty. Supporting his submission, Mr. Pertin, learned counsel has drawn my attention to the related circular pertaining to ex-gratia lump-sum compensation to families of Central Government Civilian employees who die in harness available in the Swamy's -Pension Compilation (Table of Benefits - 2000). I have perused it. It is also argued by Mr. Pertin, learned counsel that the sanction amount of Rs. 3,000 only as ex-gratia payment is too meagre and this does not honour the human rights and it is an insult to the soul of a dedicated and energetic Engineer like, the petitioner's husband who, lost his life at the hand of extremist/terrorist and also an insult to herself, i.e., the petitioner herein.

3. The case of the petitioner is resisted by the respondents by filing affidavit-in-opposition. Ms. G. Deka, learned Govt. Advocate appearing for the State respondents submitted that such circular which is made available in the Swamy's - Pension Compilation is not adopted by the State of Arunachal Pradesh and the same is not applicable in the instant case as there is specific circular on the issue/ matter adopted and published by the State of Arunachal Pradesh which is marked as Annexure-I to the counter affidavit and by virtue of the said circular, the Ex-gratia Payment Rules, 1987 of the Government of Arunachal Pradesh, the petitioner is entitled only Rs. 3,000. Supporting her submission, Ms. Deka, learned Govt. Advocate has drawn my attention to the document marked as Annexure IA to the affidavit-in-opposition. I have perused it. The Govt. Advocate further submitted that the petitioner at the most is entitled to the tune of Rs. 3,000 only as ex-gratia compensation in terms of the said rules and, as such, she cannot claim more than Rs. 3,000.

4. Now this Court is to see and examine as to whether the petitioner-widow has legitimate right in the instant case or not; and whether the relief as sought for by the petitioner can be granted or not.

5. At the hearing, this Court requires the State respondents to produce the Ex-gratia Payment Act, 1987 of Arunachal Pradesh but, the State-respondents could

not produce it at the time of hearing of the case. Mr. M. Pertin, learned counsel for the petitioner vehemently argued that there is no such Act called Ex-gratia Payment Act, 1987 but, there is a rule called "Ex-gratia Payment Rules, 1987" of the Government of Arunachal Pradesh which does not cover up the case of the petitioner. I have perused the circular/rules namely, Ex-gratia Payment Rules, 1987 hereinafter referred to as Rules of 1987 which does not speak about the grant or payment of ex-gratia compensation to the family members of a government employee whose death occurred in the course of performance of official duty attributable to acts of violence by terrorist, extremist, anti-social elements etc. but, it relates to the benefits for the rehabilitation of a poor family affected by accidental death of its earning member who is not covered for compensation under any insurance scheme or any law/statute. For better appreciation in the matter, the relevant portion of the said Rules of 1987 is quoted below :

"Ex-gratia Payment Rules, 1987 of the Government of Arunachal Pradesh

No. SCA-110/84

I. Objectives:

To provide a survivor benefit cushion for the rehabilitation of a poor family affected by accidental death of its earning member who is not covered for compensation under any insurance scheme or any law/statute.

II. Salient features :

The salient features of the scheme are :

(i) Eligibility : All person in the age group of 18 to 55 who are earning members of poor families and meet with fatal accidents occurring In Arunachal Pradesh.

Note: The scheme will cover deaths due to accidents occurring in all districts except those covered by the personal Accident Insurance Scheme of the Central Government.

"Poor Families" for the purpose of the scheme include households whose total annual family Income from all sources does not exceed Rs. 5,000. The income limit of Rs. 5,000 will be computed in respect of the income of the family consisting of wife, husband and dependent children. However, if more than one family are living together, the limit of Rs. 5,000 will be taken into account only in respect of the Individual family and not of the joint family.

(ii) Circumstances of accidental death and financial benefits payable :

Circumstances

Accidental death within six months of the accident caused by outward violent and visible means Rs. 3,000."

6. In the said Rules of 1987 as seen above, the financial benefits payable in the

circumstances of accidental death by outward violent and visible means is to the tune of Rs. 3,000 but the said Rules of 1987 does not speak about the ex-gretia payment or compensation for the death of the government employee occurred in the course of performance of duty attributable to the acts of violence by terrorist, antisocial elements etc. etc. and that being the position, the said Rules of 1987 shall not be applicable in the instant case as the petitioner's husband while he was on duty as Assistant Engineer was shot down by underground elements at Longding, Tirap District while on government duty and this fact is admitted by the respondents-Government under its office letter dated 16.3.2000 as in Annexure-II to the affidavit-in-opposition. In the said Government office letter dated 16.3.2000, the respondents authorities namely, the Joint Secretary (PWD), Govt. of Arunachal Pradesh state that late T. Muang, the then Asstt. Engineer (PWD) was shot dead by the underground elements at" Longding, Tirap District during June, 1997 while on Govt. dutly. It is also a fact that the Director of Accounts & Treasuries & Ex-Officio Deputy Secretary (Finance), Govt. of Arunachal Pradesh, Naharlagun urged the State respondents that the proposal for grant of ex-gratia payment to families who die in harness was submitted to the Government for approval but the same is yet to be approved by the Government for implementation as seen in the related office order dated 4.4.2000 as in Annexure-III to the affidavit-in-opposition.

7. The sanction of Rs. 3,000 being ex-gratia payment to the writ petitioner by the State respondents/competent authorities was made by invoking the Ex-gratia Payment Act, 1987 (emphasis given) which is non-existent/nonest as there is no such Act called Ex-gratia Payment Act, 1987 in the Staet of Arunachal Pradesh and, as such, it is a clear case of non-application of mind of the authorities concerned while issuing the said order dated 12.1.2000 sanctioning Rs. 3,000 as ex-gratia payment to the writ petitioner which is arbitrary and the same is violative of Article 14 of the Constitution of India. At this stage, a reference can be made to a decision rendered in Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, wherein the Apex Court held thus :

"What Article 14 strikes at is arbitrariness because an action that is arbitrary, must necessarily involve negation of equality. The doctrine of classification which is involved by the courts is not paraphrase of Article 14 nor is it the objective and end of that Article. It is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions referred to above, the impugned legislative or executive action would plainly be arbitrary and the guarantee of equality under Article 14 would be breached. Whereever therefore, there is arbitrariness in State action, whether it be of the legislature or of the executive or of an "authority" under Article 12, Article 14 immediately springs into action and strikes down such State action."

8. In view of the above principles of law laid down by the Apex Court in Ajay Hasia and Ors. v. Khalid Mujib Sehravardi and Ors. (supra), this Court has no

alternative but, to strike down, in other words, quash the said sanction order of Rs. 3,000 to the writ petitioner and, accordingly, it is quashed.

9. Now another question arises as to whether the Central Government circular pertaining to the Ex-gratia lump-sum compensation to families of Central Government Civilian employees who die in harness shall be applicable in the instant case or not. The relevant office circular which finds its place in Swamy's - Pension Compilation which is quoted below:

"6. Ex-gratia lump-sum compensation to families of Central Government Civilian employee who die in harness (Swamy's -Pension Compilation)

The families of Central Government Civilian employees who die in harness in the performance of their bona fide official duties under various circumstances shall be paid the following ex-gratia lump-sum compensation.

(a) Death occurring due to accidents in the course of Rs. 5 lakhs performance of duties.

(b) Death occurring in the course of performance of Rs. 5 lakhs duties attributable to acts of violence by terrorists, antisocial elements etc."

10. In my considered view, as this circular is not adopted by the State of Arunachal Pradesh, the said circular does not cover up the case of the present petitioner. If that be the case, the Court is to determine the quantum of compensation or ex-gratia payment in the absence of any acts or appropriate rules as there is no obstacle on the way of the Writ Court to determine proper compensation/ex-gratia payment in the instant case. It is pertinent to mention here that in the States like Assam, the Government of Assam framed scheme for granting ex-gratia compensation to the next kins of person/employee killed in extremists violence. In the instant case, the petitioner's husband was serving as Assistant Engineer and he was killed by the terrorists/extremists NSCN while he was on official duty and, the appropriate authority namely, the Chief Engineer concerned had urged the Government machinery to accord sanction of an amount of Rs. 2 lakhs to the bereaved family of late Tajom Muang as discussed above and, apart from that, the Joint Secretary, PWD also urged the Director of Accounts and Treasuries & Ex-officio Deputy Secretary (Finance), Govt. of Arunachal Pradesh for comments its views for such ex-gratia payment to the writ petitioner who is the widow of the deceased employee as per rules in force and, thereafter, the Director of Account & Treasuries concerned under its office letter dated 4.4.2000, i.e., after passing the related order dated 12.1.2000 according sanction to the tune of Rs. 3,000 urged the Government authority that the proposal for grant of ex-gratia payment was submitted to the Government for its approval as seen in the document marked as Annexure-II and III to the affidavit-in-opposition. After proper application of my mind in this matter, I am of the view that it would be just and proper on the part of the State respondents to afford a sum of Rs. 2,00,000 (Rupees two lakhs) to the bereaved family of late Tajom Muang, Ex-Assitant Engineer as ex-gratia payment/compensation and,

accordingly, this Court hereby determined to afford ex-gratia compensation/ payment to the tune of Rs. 2 lakhs payable by the respondents/authorities concerned to the bereaved family of late Tajom Muang, the then Assistant Engineer as financial help to secure the ends of justice not Rs. 5 lakhs as claimed by the petitioner herein. Accordingly, I direct the respondents concerned to make payment of ex-gratia compensation to the tune of Rs. 2,00,000 (Rupees two lakhs) to the writ petitioner-widow of late Tajom Muang, Ex-Assistant Engineer, PWD, Arunachal Pradesh within a period of 1 (one) month from the date of receipt of this judgment and order.

For the reasons, observations and direction made above, this writ petition is partly allowed and the same is finally disposed of but, no order as to costs.