

WP(C) No. 770 of 2017

BEFORE
HON'BLE THE ACTING CHIEF JUSTICE MR. N. KOTISWAR SINGH
(ORAL)

28.02.2018

Heard Ms. Geetarani Waikhom, learned counsel for the petitioner.
Heard also Mr. Samarjit H., learned GA for the State respondents.

[2] In the present petition, the petitioner has sought for payment of ex-gratia of Rs. 5,00,000/- (Rupees five lakhs) only on account of brutal murder of the husband of the petitioner namely, Haobijam Manisana Singh by unidentified gunmen on 13.11.2013 at about 9.30 a.m. at Changangei Ucheckon near the residential plot of one Sapam Rishikanta Singh, Proprietor of Sangai Express, Imphal, Manipur within the jurisdiction of Lamphel Police Station, Imphal West District, Manipur.

[3] The fact that the petitioner's husband has been killed by unidentified gunmen/extremists has not been controverted by the State respondents. Though FIR has been registered, neither the petitioner nor the respondents are able to submit the stage of the investigation.

[4] Be that as it may, the Government of Manipur had framed a beneficiary scheme for providing ex-gratia payment to the next of kins of the deceased/injured persons which has been revised from time to time. The latest such revised scheme was issued on 30th August, 2014 by which it has been stated that in supersession of all previous orders issued in this regard, the State Government revised the amount of Ex-gratia/Financial assistance to the Government Servants, Civilians and State Police Personnel etc., in the event of death or grievous injury due to unjustified Police/Security Force action/Extremist action/Communal violence to the extent of i) Rs. 5,00,000/- for death cases, ii) Rs. 2,00,000/- for permanent disability, iii) Rs. 1,00,000/- for grievous injury and iv) Rs. 20,000/- for simple injury.

Accordingly, Ms. Geetarani has prayed for payment of ex-gratia amount of Rs. 5 lakhs to the petitioner.

[5] Mr. Samarjit H., learned GA however, submits that the death of the petitioner's husband occurred on 13.11.2013 which is prior to the issuance

of the order dated 30th August, 2014, and the rate of Ex-gratia/Financial assistance as applicable when the earlier scheme was in operation was only Rs. 3,00,000/-. Mr. Samarjit, learned GA further submits that the order dated 30th August, 2014 specifically mentions that the revised rate of Ex-gratia/Financial assistance shall be effective from the date of issue of this order. Accordingly, it has been submitted that the petitioner would be entitled to the sum of Rs. 3,00,000/- only on the basis of the earlier scheme.

[6] On the other hand, Ms. Geetarani, learned counsel for the petitioner has submitted that it has been held by the Courts that when it relates to beneficiary scheme, the Ex-gratia payment if in process and not finalised, can be granted under the more beneficial revised scheme. In this connection, Ms. Geetarani has referred to the decision of the Gauhati High Court rendered in WP(C) No. 517 of 2010 and other petitions which were disposed of on 30.08.2010, wherein the Gauhati High Court while dealing with the same, observed as follows :

"[8] The Apex Court held that in case when payment of ex-gratia was processing and not finalized, if the subsequent circular comes into force, in that case, ex-gratia amount should be decided on the basis of the circular in force. In the present case in hand when the said order of Government of Manipur dated 26.10.2006 was issued for sanctioning ex-gratia, the subsequent order dated 06.08.1998 for enhancement of ex-gratia amount of Rs. 50,000/- to Rs. 1.00 lakh was already in force.

The Apex Court in **Shashiklalabal (Smt) Vs State of Maharashtra & Anr : (1998) 5 SCC 332** held in para 2 of the SCC that 'In respect of the fatal accident of the appellant's husband who came in contact with a live electric wire and died of Shock, the High Court has given compensation of Rs.30,000/- on the basis of the circular of the Maharashtra State Electricity Board, Respondent No.2 herein, dated 5.4.1979. Death occurred on 18.3.1991. However, there was correspondence between the appellant and the respondents from 1991 to 1994 and the actual formal application was made on 14.2.1994, by which time the new circular of 28.1.1993, had come into force. Under the new circular of 28.1.1993, the compensation amount has been increased from Rs. 30,000 to Rs. 60,000. The circular also states that it shall come into force with immediate effect and the compensation cases already closed shall not be reopened. Since the present case was not closed on the date of the circular coming into effect, the appellant should have been granted the benefit of the new circular."

[9] The relevant portions of the judgment and order of this Court dated 18.11.2005 passed in WP(C) No. 616 of 2005 are quoted hereunder:

"3. The State of Manipur, with a view to provide solace to the next kin and family members of such victims at the hands of Militants/Extremists, provided full power to the Deputy Commissioners of concerned district for payment of ex-gratia to the victims of communal riots/ethnic clash and violence by amending Schedule-III of the Delegation of Financial Power, 1978 vide Notification No.1/5/92-FD (Exp) Pt dated 21.04.1994 issued in the name of the Governor of Manipur by the Secretary (Finance), Government of Manipur and published in the Manipurn Gazette, Extra Ordinary dated 29.11.1994. By another Notifications No.1(1)26/67-H-99 Pt.II dated 06.08.1998 issue in partial modification of the earlier orders dated 15.07.96 and 02.05.97 the ex-gratia to the civilian in the event of death due to unjustified Police/Security Force action or Extremist action was enhanced to the extent of Rs.1,00,000/- and clause 2A was inserted in the original order specifying the amount of such ex gratia payment, which is quoted herein below:

" 2A Notwithstanding anything contained in these orders, an ex-gratia of Rs.1.00 Lakh only shall be paid, on the recommendation of the Screening-cum-Co ordination Committee constituted by the State Government in this behalf, to the next of kin of any person, found missing or lost his life in fire due to burning down of house in an ethnic/communal clash in the State"

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7. An Affidavit-in-opposition has been filed on behalf of the Respondents denying the fact of kidnapping of the husband of the petitioner by Kuki Militants while on the other hand it has been stated that the amount of ex-gratia having been raised from Rs.50,000/- to Rs.1,00,000/- making it enforceable with effect from 01.05.1998, the petitioner is not entitled to the enhanced rate of ex gratia of Rs.1,00,000/- inasmuch as, the occurrence took place on 24.10.1997.

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14. In view of the aforesaid discussion, I hold that the respondents are liable to pay ex gratia amount of Rs. 1,00,000/ to the next of kin of the victim in view of the kidnapping of the victim by the armed Kuki Militants, whose whereabouts is still not known and is strongly suspected to have been killed by such Militants. Accordingly, the State Respondents more particularly the Secretary (Home) Government of

Manipur is directed to refer the matter to the Screening Committee which shall consider the case of the petitioner in the light of the FIR and Report of investigation dated 15.12.2000 and other facts and circumstances of the case and make necessary recommendation to the Government for payment of ex gratia in favour of legal representatives/heir of the victim."

[7] Ms. Geetarani also submits that in the aforesaid case, the Ex-gratia amount which was earlier fixed at Rs. 50,000/-, was revised to Rs. 1,00,000/- and the Gauhati High Court held that the claimant would be entitled to the revised amount of Rs. 1,00,000/- even if death was occurred prior to the revision of the Scheme.

[8] This Court, after hearing the parties and a perusal of the record, is of the view that similar principle may be adopted in the present case also. In the present case, the fact remains that though the petitioner's husband died on 13.11.2013 no such payment has been made till date because of which the petitioner has been compelled her to approach this Court, and in the meantime, the State Government has revised the rate of Ex-gratia w.e.f. 30th August, 2014. Accordingly, since no payment of Ex-gratia has been made under the earlier scheme, this Court is of the view that the petitioner would be entitled to the enhanced rate of Rs. 5,00,000/- (Rupees Five Lakhs) only in terms of the revised scheme notified on 30th August, 2014.

Accordingly, the present petition is allowed with the direction to the respondents authority to release a sum of Rs. 5,00,000/- (Rupees Five Lakhs) only in favour of the petitioner within a period of 3 (three) months from today, failing which an interest @ Rs. 10% per annum on the aforesaid amount will be levied.

ACTING CHIEF JUSTICE

Sushil
(Home/Ex-gratia payment)