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* IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 767/2013

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Judgment dated 07.03.2013

MOHD. PARVEZ

..... Petitioner

Through : Mr.Pawan Sharma, Mr.Praveen K.
Singh and Mr.Dinesh Kumar, Advs.

versus

SONU AND ORS

..... Respondent

Through : Mr.Surjit Kumar Singh, Adv. for
respondent no.5.
Mr.Laliet Kumar, Adv. for respondent
no.6.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. By the present writ petition, filed under Article 226 of the Constitution of India, the petitioner seeks a writ of mandamus directing the respondents to compensate him for the injuries suffered on account of the reasons attributable to the respondents.
2. It may be noticed that respondents no.1 to 4 are private respondents. Learned counsel for respondents no.5 and 6 (North Delhi Power Limited and North Municipal Corporation of Delhi, respectively) have entered appearance on an advance copy and have raised a preliminary objection with regard to the maintainability of this writ petition primarily on the ground that the petition raises disputed questions of fact, which cannot be decided in the proceedings under Article 226 of the Constitution of India.

3. The necessary facts of this case, as per the petition, are that respondent

no.1 is the owner of respondent no.3, Naya Vishwas Nasha Mukti and Purnwas Samiti, which is a registered society. Respondent no.2 is the Councilor of respondent no.3, which is monitored by respondents no.1 and 2 respectively. As per the petition, petitioner, was a drug addict and was admitted with respondent no.3 for his treatment. Respondent no.4 is stated to be the landlord of the premises where respondent no.3 Samiti is carrying on its activities. Respondent no.1 had given the said premises to respondents no.1 and 2 on rent.

4. It is the case of the petitioner that the building, where respondent no.3 is situated, was not constructed as per the building bye-laws. The front portion of the house was constructed illegally due to which the vertical and horizontal distance between the II-T line and porch reduces to about 1-½ meter. It is further the case of the petitioner that respondents no.5 and 6 did not take appropriate action against the illegal construction due to which the petitioner suffered injuries on 24.9.2010.
5. As per the petition, on 24.9.2010 a party of one, Sh.Vijay, was to be organized and respondents no.1 to 3 directed the petitioner and one, Sh.Surender Dahiya, for decorating the front portion of the said building by sticking balloons. The petitioner had informed respondents no.1 and 2 that the front portion of the premises is very dangerous as a high tension electric wire is passing through the front portion of the premises. Respondents no.1 and 2 did not pay any heed to the words of the petitioner and forced the petitioner to decorate the front portion of the building by sticking balloons. Another person, namely, Sh.Surender Dahiya, was also helping the petitioner. In order to decorate the front portion of the premises, the petitioner and Sh.Surender Dahiya were standing on a wooden ladder, when Sh.Surender Dahiya lost his balance, due to which the wet wooden ladder fell on the high tension wire and the

petitioner and Sh.Surender Dahiya suffered fatal injuries. Sh.Surender Dahiya was declared dead when he was brought to the hospital and the left arm of the petitioner was amputated. Thereafter an FIR bearing No.212/2010 under Sections 338/304A/34 IPC was registered against respondents no.1 to 4 at Police Station Mahendra Park.

6. Learned counsel for the petitioner submits that thereafter the petitioner and his family members approached respondents no.1 to 4 for compensation, however, only false assurances were given to them. Thereafter on 17.9.2012 the petitioner also sent a legal notice to the respondents for damages, however, neither the said notice was replied to nor payments were made to the petitioner, which forced the petitioner to file the present writ petition for compensation from the four private respondents and also from respondents no.5 and 6.
7. Learned counsel for the petitioner has placed reliance on the case of *Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy*, reported at AIR 2012 SC 100, more particularly paras 32, 47 and 61, which read as under:

“32. It is evident from the decision of this Court as also the decisions of the English and Canadian Courts that it is not proper to award damages against public authorities merely because there has been some inaction in the performance of their statutory duties or because the action taken by them is ultimately found to be without authority of law. In regard to performance of statutory functions and duties, the courts will not award damages unless there is malice or conscious abuse. The cases where damages have been awarded for direct negligence on the part of the statutory authority or cases involving doctrine of strict liability cannot be relied upon in this case to fasten liability against MCD or the Licensing Authority. The position of DVB is different, as direct negligence on its part was established and it was a proximate cause for the injuries to and death of victims. It can be said that in so far as the licensee and

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DVB are concerned, there was contributory negligence. The position of licensing authority and MCD is different. They were not the owners of the cinema theatre. The cause of the fire was not attributable to them or anything done by them. Their actions/omissions were not the proximate cause for the deaths and injuries. The Licensing Authority and MCD were merely discharging their statutory functions (that is granting licence in the case of licensing authority and submitting an inspection report or issuing a NOC by the MCD). In such circumstances, merely on the ground that the Licensing Authority and MCD could have performed their duties better or more efficiently, they cannot be made liable to pay compensation to the victims of the tragedy. There is no close or direct proximity to the acts of the Licensing Authority and MCD on the one hand and the fire accident and the death/injuries of the victims. But there was close and direct proximity between the acts of the Licensee and DVB on the one hand and the fire accident resultant deaths/injuries of victims. In view of the well settled principles in regard to public law liability, in regard to discharge of statutory duties by public authorities, which do not involve malafides or abuse, the High Court committed a serious error in making the licensing authority and the MCD liable to pay compensation to the victims jointly and severally with the Licensee and DVB.

K.S. RADHAKRISHNAN, J. : 47.

I fully endorse the reasoning as well as the conclusions reached by my esteemed brother. All the same, I would like to add a few thoughts which occurred to my mind on certain issues which arose for consideration in these matters.

61. Law is well settled that a Constitutional Court can award monetary compensation against State and its officials for its failure to safeguard fundamental rights of citizens but there is no system or method to measure the damages caused in such situations. Quite often the courts have a difficult task in determining damages in various fact situations. The yardsticks normally adopted for determining the compensation payable in a private tort claims are not as such applicable when a constitutional court determines the compensation in cases where there is violation of fundamental

rights guaranteed to its citizens. In *D.K. Basu vs. Union of India* (1997) 1 SCC 416, a Constitution Bench of this Court held that there is no strait jacket formula for computation of damages and we find that there is no uniformity or yardstick followed in awarding damages for violation of fundamental rights. In *Rudal Shah's case* (supra) this Court used the terminology & "Palliative"; for measuring the damages and The formula of "Ad hoc" was applied in *Sebastian Hongary's case* (supra) the expression used by this Court for determining the monetary compensation was "Exemplary" cost and the formula adopted was "Punitive". In *Bhim Singh's case*, the expression used by the Court was "Compensation" and method adopted was "Tortious formula". In *D.K. Basu v. Union of India* (supra) the expression used by this Court for determining the compensation was "Monetary Compensation". The formula adopted was "Cost to Cost" method. Courts have not, therefore, adopted a uniform criteria since no statutory formula has been laid down."

8. Learned counsel for the petitioner submits that the present writ petition does not raise any disputed questions of fact as the existence of the high tension wires is not in dispute. Counsel further submits that the MCD and NDPL are responsible, as the MCD has failed to check the unauthorized construction in the premises in question and the NDPL did not take any preventive measure to ensure that the high tension wire should not run so close to the building where the petitioner was being treated. Counsel also submits that the Apex Court has held that the Court can award damages in appropriate cases and the method and yardstick for determining and awarding damages has also been observed in the said judgment.
9. Learned counsel appearing on behalf of respondents no.4 and 5 submit that the present petition raises disputed questions of fact as a court sitting in the writ jurisdiction would be unable to decide, in the absence of any evidence, as to whether there was any unauthorized construction or not and as to whether the power company did not take any preventive measure to remove the high tension wires. It is also contended by counsel

for respondents no.5 and 6 that there is no material placed on record which suggests that the ladder, which was used for sticking balloons, was wet and under what circumstances the petitioner and Sh.Surender Dahiya had suffered the fatal consequences. It is further contended that petitioner is a drug addict and was admitted to respondent no.1 for treatment and, thus, it cannot be determined in these proceedings in what circumstances the petitioner and Sh.Surender Dahiya fell on the high tension wire.

10. Learned counsel for respondents no.5 and 6 have relied upon *Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) and Others v. Sukamani Das (Smt.) and Another*, reported at (1997) 7 SCC 298, more particularly para 6; *SDO, Grid Corporation of Orissa Ltd. and Others v. Timudu Oram*, reported at (2005) 6 SCC 156, more particularly paras 6 and 9; and *Abdul Haque & Ors. v. BSES Yamuna Power Ltd. & Ors.*, 142 (2007) DLT 526, more particularly para 24, in support of their submissions that the disputed questions of fact cannot be decided in the proceedings initiated under Article 226 of the Constitution of India.
11. Para 6 of *Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) and Others* (supra) read as under:

6. In our opinion, the High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Article 226 of the Constitution. The High Court went wrong in proceeding on the basis that as the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission lines of the appellants, that "admittedly prima facie amounted to negligence on the part of the appellants". The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. Mere fact that the wire of the electric transmission line belonging to the appellant No. 1 had snapped and the deceased had come into contact with it and had died was not by itself sufficient for awarding compensation. It also

required to be examined whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had come into contact with the wire. In view of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their control or unauthorised intervention of third parties or that the deceased had not died in the manner stated by the petitioner. These questions could not have been decided properly on the basis of affidavits only. It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy. The High Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High Court should have directed the writ petitioners to approach the Civil Court as it was done in OJC No. 5229 of 1995.

12. Paras 6 and 9 of *SDO, Grid Corporation of Orissa Ltd. and Others* (supra) read as under:

"6. In Chairman, Grid Corporation of Orissa Ltd. (Gridco) and others (supra) with which case these appeals were listed for hearing but could not be heard for want of service this Court took the view that the High Court committed an error in entertaining the writ petitions under Article 226 of the Constitution of India and were not fit cases for exercising the jurisdiction under Article 226 of the Constitution of India. It was held that actions in tort and negligence were required to be established initially by the claimants. The mere fact that the wire of electric transmission line belonging to the appellant had snapped and the deceased had come into contact with it and died by itself was not sufficient for awarding compensation. The Court was required to examine as to whether the wire had snapped as a result of any negligence on the part of the appellants, as a result of which the deceased had come in contact with the wire. In view of the defence raised and the denial by the appellants in each of the cases, the appellants deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission line and yet the wires had snapped because of the

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circumstances beyond their control or unauthorised intervention of third parties. Such disputed questions of fact could not be decided in exercise of jurisdiction under Article 226 of the Constitution of India. That the High Court could not come to the conclusion that the defence raised by the appellants had been raised only for the sake of it and there was no substance in it.

9. In the present case, the appellants had disputed the negligence attributed to it and no finding has been recorded by the High Court that the GRIDCO was in any way negligent in the performance of its duty. The present case is squarely covered by the decision of this Court in Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) and Ors. (supra). The High Court has also erred in awarding compensation in Civil Appeal No.... of 2005 (@ SLP(C) No. 9788 of 1998). The subsequent suit or writ petition would not be maintainable in view of the dismissal of the suit. The writ petition was filed after a lapse of 10 years. No reasons have been given for such an inordinate delay. The High Court erred in entertaining the writ petition after a lapse of 10 years. In such a case, awarding of compensation in exercise of its jurisdiction under Article 226 cannot be justified.

13. It would also be useful to refer to Para 24 of *Abdul Haque & Ors.* (supra), which reads as under:

"24. The approach of the Hon'ble Supreme Court in certain other cases where writ petitions have been filed claiming compensation for constitutional wrongs, involving death or injuries not due to electrocution, has been different. The most prominent among these decisions are Rudul Sah v. State of Bihar, (1983) 3 SCR 508; Nilabati Behera (supra); D.K. Basu v. State of West Bengal, 1 (1997) ccr (sc)=(1997) 1 SCC 416; and Chairman, Railway Board v. Chandrima Das (supra). Significantly, some of these judgments have been noticed in Tamil Nadu Electricity Board v. Sumathi (supra) and it has nevertheless been held that in cases of electrocution involving disputed questions of fact a writ petition under Article 226 is not maintainable. It is in the electrocution cases as can be seen from the discussion hereinabove, that the approach has been different. In Ram Nath, the Hon'ble Supreme Court upheld the award of compensation by distinguishing

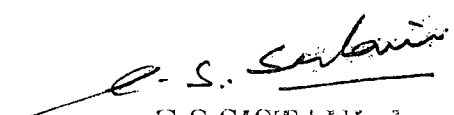
Sukamani Das. Later, in Timudu Oram, after noticing and distinguishing Ram Nath the Hon'ble Supreme Court reiterated and followed the decision Sukamani Das holding that a writ petition under Article 226 was not maintainable. The decision in Sumathi is also to the same effect. All these decisions are of two- Judge benches. Timudu Oram, being the most recent decision, and consistent with Sukamani Das and Sumathi must be held to express the present status of the law and is binding.

14. I have heard learned counsel for the parties, considered their rival submissions and also perused the documents placed on record. As per the petition, the petitioner was a drug addict and he was admitted to respondent no.3 for de-addiction, for which he had paid the entire fee. The petitioner has placed on record a copy of his admission slip. As per the petitioner, the building, which was taken on rent by respondents no.1-3, was not constructed as per the building bye-laws, due to which the vertical and horizontal distance between the H-T line and the porch was reduced to 1-½ meters. There is nothing on record to substantiate this submission, made by counsel for the petitioner. Further there is nothing on record to suggest that the petitioner suffered injuries on account of the illegal construction carried out by the owner of the premises. There is also nothing on record to suggest as to whether the H-T lines were installed prior to the unauthorized construction or thereafter in order to fasten the liability on the North Delhi Power Limited. Having regard to the disputed questions, which have been raised by the petitioner in this writ petition; the submissions made by counsel for the parties; and the law laid down by the Apex Court, I am satisfied that this petition raises disputed questions of fact, which cannot be decided in the proceedings under Article 226 of the Constitution of India. The judgments, sought to be relied upon, by the counsel for the petitioner, in my view, are not applicable to the facts of the

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present case as the present case pertains to an incident of electrocution whereas the judgment relied upon by counsel for the petitioner is primarily on the facts urged in the said matter pertaining to inaction and non-performance of statutory duties and in fact in paras 32 and 47 of the ***Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy*** (supra) the Apex Court has held that the damages against public authorities are not to be granted merely on account of some inaction of performance of statutory duty or because action taken were found to be wrong.

15. A Single Judge of this Court in the case of ***Abdul Haque & ors.*** (supra) more particularly in para 24 has rightly drawn the distinction between two separate sets of cases pertaining to claims with regard to compensation. The Apex Court has taken a different view with regard to cases claiming compensation for constitutional wrongs, involving death or injuries caused not due to electrocution.
16. In view of the law laid down by the Apex Court the present writ petition cannot be entertained and the same is accordingly dismissed *in limine* on the preliminary objections raised by the respondents no.5 and 6 with regard to maintainability of the writ petition.
17. At this stage, learned counsel for the petitioner seeks liberty to take such remedies which may be available to the petitioner in accordance with law. Liberty, as prayed for, is granted.


G.S.SISTANI, J

MARCH 07, 2013
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