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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 14139/2006

MADAN & ORS.

..... Petitioners

Through: Ms. Aruna Mehta, Advocate.

versus

NDPL & ORS.

..... Respondents

Through: Mr. Anupam Varma, Advocate with
Mr. Nikhil Sharma and Mr. Jibran Tak,
Advocates for respondent No.1/NDPL.
SI Premvir Singh, PS Sultanpur, Delhi.

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Date of Decision: 11th September, 2013.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed seeking a direction to respondents No.1 and 2 to pay to the petitioners Rs.16,00,000/- on account of death of deceased No.1 and Rs.22,00,000/- on account of death of deceased No.2 along with interest @ 12% per annum from the date of the petition till its realisation.

2. In the petition, it is alleged that the two deceased, namely, wife and son were electrocuted on 03rd June, 2006 due to coming in contact with a bare electrical wire which fell down from a wooden plank negligently maintained by respondent No.1.

3. Respondent No.1 in its short counter affidavit has stated that it had no role to play in the alleged death of either of the deceased and there was no negligence on its part. The relevant portion of the counter-affidavit is reproduced hereinbelow:-

“4.....

(ii) It is submitted that the Answering Respondent has no role to play in the alleged death of the Deceased and is not liable to pay any compensation to the Petitioners.

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11. It is denied that there is glaring negligence on the part of Answering Respondent. It is denied that the Answering Respondent did not follow safety norms and as a result this incident occurred.

12. In reply to the contents of the paragraph, it is submitted that the principles of strict liability and absolute liability do not apply in the present case as there was no negligence on the part of Answering Respondent.....

13. However, it is once again clarified that the responsibility of the Answering Respondent for maintaining such supply poles is limited only within electrified areas and the same does not extend to areas which are not electrified. It is pertinent to point out that the area in question was not electrified and therefore the Answering Respondent is not liable for maintaining the electricity supply poles. The remaining contents of paragraphs are wrong and incorrect and are hereby vehemently denied. In reply to the contents of the paragraph, the Answering Respondent submits that the naked live wire which allegedly caused the death of deceased did not belong to the Answering Respondent. It is submitted that principle of absolute liability has no application to the present case as there was no obligation upon the Answering Respondent to maintain the wires and keep them in proper

and safe condition in the unelectrified area.

(emphasis supplied)

4. Since after filing of the counter affidavit, petitioners filed affidavits of some residents stating that the area was electrified in the year 2000 by erstwhile DESU, respondent No.1 filed two supplementary affidavits dated 04th September, 2010 and 01st March, 2011. In the first supplementary affidavit dated 04th September, 2010, respondent No.1 stated as under:-

“2. Without prejudice to its contentions that the Writ Petition filed by the Petitioner seeking compensation is not maintainable, NDPL reiterates its stand that on the date of the alleged incident, i.e. 03.06.2006, the locality/area of D-Block, Rajeev Nagar was an un-electrified area. It is also a disputed question of fact as to the ownership of the offending wires, which may have caused the death of the deceased by electrocution.

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5. The existence of some electricity connections apparently prior to the date of the alleged incident in the vicinity of the place of occurrence may have been on account of the prevalence of electricity connections on an ‘as is where is’ basis granted by the erstwhile DVB, wherein the consumer was entitled to draw electricity from the nearest L V Mains/Pole in terms of the policy of the erstwhile DVB, and the consumer paid a fixed charge for electricity on a pro rata basis depending on the size of the plot or dwelling unit.

5. It is noteworthy that the Scheme of the ‘as is where is’ basis, the electricity lines and wires emanating from the nearest LV Mains/Poles were the property and responsibility of the persons/consumers who availed of the facility and of no concern of the licensee. Hence any incident involving such wires were not the concern of NDPL.”

(emphasis supplied)

6. In the second supplementary affidavit dated 01st March, 2011, respondent No.1 stated that as a pre-condition for obtaining the supply of electricity under the 'as is where is' Scheme, the consumers were required to execute an agreement where under they undertook to maintain their line till installation of service lines/ L.V. Mains by DVB. A copy of the specimen Agreement alleged to have been executed between the DESU and its consumers has been annexed along with the affidavit. The relevant clause of the specimen Agreement reads as under:-

“7. I undertake to maintain my own line till service lines/L.V. Mains are installed by DVB. I also understand DVB will not be responsible for any loss/damage to man/material from the line maintained by me/us.”

(emphasis supplied)

7. Ms. Aruna Mehta, learned counsel for petitioners submits that the alleged Agreement relied upon by the respondent No.1 is void as it is opposed to public policy. In this connection, she relies upon Sections 42 and 135 of the Electricity Act, 2003 as well as Rules 18, 29, 44A, 61A, 90 and 91 the Indian Electricity Rules, 1956. Ms. Aruna Mehta draws this Court's attention to the affidavits filed by eye-witnesses to the alleged incident. She points out that the said eye-witnesses have given identical statements to the police under Section 161 Cr.P.C.

8. On the other hand, Mr. Anupam Varma, learned counsel for respondent No.1 submits that in electrocution cases writ petitions seeking compensation are not maintainable. In this connection, he relies upon the judgment of the Apex Court in ***Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) and Others vs. Sukamani Das (Smt) and Another, (1999) 7***

SCC 298 wherein it has been held 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. The mere fact that the wire of the electric transmission line belonging to Appellant 1 had snapped and the deceased had come in 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 in 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 petitioners. 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.”

9. Learned counsel for petitioners controverts the submission that in electrocution cases, no compensation can be awarded by a writ Court. In

support of her submission, she relies upon the judgment of the Supreme Court in ***H.S.E.B. and Others vs. Ram Nath and Others, (2004) 5 SCC 793*** wherein it has been held as under:-

“4. In the written statement there is no denial to these averments. All that is claimed is that the entire colony was an unauthorised colony and that unauthorisedly the height of the houses had been raised. It is claimed that the wires were at the prescribed height of 20 feet from the ground level and that the height of the wire was as per the standard prescribed under the Rules.

5. It is submitted that these averments would show that there was a disputed question of fact as to whether or not the wires were touching the roof. We are unable to accept this submission. To the categoric averments set out hereinabove that the wires had become loose and were drooping and touching the roof of the houses, there is no denial. To the categoric averments that complaints had been made, both in writing and orally, requesting that the wires had to be tightened, there is no denial. A mere vague statement to the effect that the height was as per the prescribed limit does not detract from the fact that there is a deemed admission that the wires were drooping and touching the roofs.”

10. Having heard learned counsel for parties, this Court is of the view that in electrocution cases where disputed questions of fact are involved, writ petition is not the appropriate remedy.

11. The Supreme Court in ***SDO, Grid Corporation of Orissa Ltd. and Others vs. Timudu Oram, (2005) 6 SCC 156*** has itself pointed out the distinguishing features of its judgment in ***H.S.E.B. vs. Ram Nath*** (supra). The relevant portion of the Supreme Court’s judgment in ***SDO, Grid Corporation of Orissa Ltd. vs. Timudu Oram*** (supra) is reproduced hereinbelow:-

“ 8. Counsel for the appellants also cited a judgment in *H.S.E.B. v. Ram Nath* in which a similar view was taken. In the said case it was observed by the Bench that where disputed questions of fact were involved writ petition would not be the proper remedy but since there was no denial in the written statement that wires were loose and drooping and the claimant had asked the Board to tighten the wires, the Board was held liable to pay the compensation. This finding was recorded because the supplier of electricity did not controvert the facts alleged by the respondent writ petitioner. Disputed questions of facts were not involved and as a result of which the finding recorded by the High Court was upheld.”

12. A Coordinate Bench of this Court in ***Abdul Haque & Ors. vs. BSES Yamuna Power Ltd. & Ors.***, 142 (2007) DLT 526, after analysing the entire law has held as under:-

“25. The net result is that in cases involving claim for compensation on account of death due to electrocution, where the facts are disputed, the Hon’ble Supreme Court has held that a writ petition for payment of compensation is not maintainable under Article 226 of the Constitution. The remedy in such cases will obviously be only before the Civil Court.”

13. Keeping in view the aforesaid mandate of law as well as the averments in the counter affidavit and the two supplementary affidavits filed by respondent No.1, this Court is of the opinion that disputed questions of facts arise for consideration in the present proceedings. In any event, the petitioner would have to first seek a declaration that the alleged agreement executed by the deceased was void.

14. This Court is conscious of the fact that relegating the petitioners who belong to economically weaker sections of society to the civil Court may delay the resolutions of their claims, but in view of the decision of Supreme

Court in *Sukamani Das* (supra) and *Timudu Oram* (supra), this Court cannot allow the writ petition and grant compensation by applying the principle of strict liability or *res ipsa loquitur*. Accordingly, the present writ petition is held not maintainable under Article 226 of the Constitution.

15. Consequently, present writ petition and pending applications are dismissed. However, petitioners are given liberty to file appropriate proceedings in accordance with law to seek redressal of their grievances. In the interest of justice, it is directed that the time spent in prosecuting the present petition would not be taken into account while calculating the period of limitation for the new proceedings to be filed by the petitioners.

MANMOHAN, J

SEPTEMBER 11, 2013

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