

GAHC010057512018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : **W.P.(C) NO. 1777/2018**

Md. Sahabuddin Ahmed
S/o Lt. Bikkiudding Ahmed
Vill & P.O. Sissi Borgaon,
P.S.- Silapathar,
District - Dhemaji, Assam, PIN - 787057.

..... Petitioner

-Versus-

1. Assam Power Distribution Company Ltd. [APDCL],
Represented by the Chief General Manager,
Bijuli Bhawan, Paltan Bazar, Guwahati - 01.

2. The Chief Executive Officer/Engineer,
Assam Power Distribution Company Ltd.,
North Lakhimpur Electrical Circle, Lakhimpur,
Assam, Pin - 787001.

3. The Assistant General Manager,
Assam Power Distribution Company Ltd.,
Dhemaji Electrical Division, Dhemaji,
District – Dhemaji, Assam, PIN - 787057.

4. The Chief Electrical Inspector,
Housefed Complex, Guwahati – 6,
Government of Assam.

5. The Sub-Divisional Engineer,
Ghilamara Electrical Sub-Division,
APDCL, Dhemaji, PIN -787052.

.....Respondents

Advocates :

Petitioner : Mr. K.R. Patgiri, Advocate

Respondent nos. 1, 2, 3 & 5 : Mr. D. Gogoi, Standing Counsel,
Assam Power Distribution Company Ltd.

Respondent no. 4 : Mr. R. Talukdar, Junior Government Advocate

Date of Hearing and Judgment & Order : 27.01.2023

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
JUDGMENT

Heard Mr. K.R. Patgiri, learned counsel for the petitioner; Mr. D. Gogoi, learned Standing Counsel, APDCL for the respondent nos. 1, 2, 3 & 5; and Mr. R. Talukdar, learned Junior Government Advocate, Assam for the respondent no. 4.

2. The petitioner has instituted the writ petition under Article 226 of the

Constitution of India seeking **inter alia** a direction to the respondent authorities for disbursal of adequate compensation to the petitioner for the death caused to the son of the petitioner, Late Bikiudin Ahmed @ Bikkiuddin Ahmed @ Bicky Uddin Ahmed [hereinafter referred to as 'the victim', for brevity] on 06.04.2015 due to electrocution.

3. The factual matrix narrated in the writ petition is to the following effect :- The victim was serving as a Constable at 22 India Reserve [IR] Assam Police Battalion and he was attached at Ghilamara Police Station since 2013. The victim received electrical injuries in an accident occurred on 06.04.2015 inside the campus of Ghilamara Police Station. Immediately after occurrence of the accident, the Police personnel of Ghilamara Police Station took the victim to the nearby health facility, Ghilamara Hospital and thereafter, to the North Lakhimpur Civil Hospital. As the victim had died in the meantime, the Post-Mortem Examination [PME] of the deceased was performed on 06.04.2015 at the North Lakhimpur Civil Hospital. As per the PME Report, the cause of death of the deceased victim was due to neurogenic as well as shock as a result of electrical burn. In connection with the accident, one First Information Report [FIR] was lodged by the respondent no. 5 i.e. the Sub-Divisional Engineer, Ghilamara Electrical Sub-Division, APDCL, Dhemaji within whose territorial jurisdiction the alleged electrical accident had occurred and on the basis of the said FIR, a case being Ghilamara Police Station Case no. 25/2015, came to be registered on 06.04.2015 for the offence under Section 304A, Indian Penal Code [IPC]. The Registrar of Birth and Death, Sissi Borgaon P.H.C., District – Dhemaji had also issued a Death Certificate recording the death of the deceased victim on 06.04.2015. The matter of electrical accident which occurred at/near Ghilamara Police Station campus on 06.04.2015, was also reported to the respondent no. 4

by the respondent no. 5 on 07.04.2015 accompanied by a duly filled up form for reporting electrical accident.

4. In the counter-affidavit filed on behalf of the respondent nos. 1, 2, 3 & 5, the respondent authorities in the APDCL have taken stands to the effect that there was a 11 KV line running parallel to the street adjoining Ghilamara Police Station Campus. The 11 KV line was running by keeping enough clearance from the ground as well as from the adjoining buildings and nearby trees. On the fateful day, the victim on his own tried to cut a branch of a tree standing nearby the boundary wall of the Police Station campus without informing the Sub-Station operator/officials of the APDCL i.e. the licensee. According to the respondent APDCL authorities, the victim did not take requisite care and caution despite knowing the fact that the electric line was charged and dangers were associated with it. As the victim was cutting the tree branches, one branch of the tree fell on the charged line as well as on his body at the same time and as a result, the victim received heavy electrical shock and injury and became unconscious. According to the respondent APDCL authorities, the victim died due to his own negligence while dealing with electricity/electrical lines. Moreover, the victim indulged himself in the activity of cutting the tree unauthorizedly and without any supervision either from his own Station Officer or the respondent APDCL authorities. As such, the APDCL authorities cannot be held responsible for the occurrence of the electrical accident leading to the death of the deceased victim on 06.04.2015.

5. The incident of death had occurred within the jurisdiction of the respondent no. 4. On being reported, an enquiry was conducted by the Chief Electrical Inspector-cum-Advisor, Government of Assam with the assistance of the Senior

Electrical Inspector. After causing the enquiry, the said authority, who is empowered under Section 161, Electricity Act, 2003, submitted an Electrical Accident Enquiry Report on 12.06.2018.

6. The Electrical Accident Enquiry Report is stated to have been submitted after causing necessary enquiry as regards the electrical accident occurred on 06.04.2015. It has reported that a live 11 KV wire line was running parallel to the street adjoining Ghilamara Police Station campus, keeping enough clearance from the ground as well as from the adjoining buildings and nearby trees. It has been reported that the victim, who was a Constable in duty attached at Ghilamara Police Station, started cutting a branch of a tree standing nearby the Police Station campus boundary single handedly without using any pull, rope, etc. and without any prior intimation of his intention to the concerned supplier i.e. APDCL and the branch ultimately fell down towards the said nearby 11 KV line and touched the charged line while the victim was still physically holding the branch. The same caused flow of very high level of electricity and as a result, the victim got fatal electric shock. As regards the cause leading to the accident, it has been reported that lack of adequate safety measures taken to control the direction of falling of the branch of the tree and thus, coming into dangerous proximity of the live 11 KV line caused the accident. In the Report, contravention of Regulation 64 of the Central Electricity Authority [Measures Relating to Safety and Electric Supply] Regulations, 2010 on the part of the owner of the tree as well as on the part of the victim has been reported. The Electrical Accident Enquiry Report has been brought on record in the affidavit-in-opposition of the respondent no. 3, filed on 26.06.2018, by serving a copy of the same upon the petitioner. The Report has not attributed any direct fault on the part of the licensee i.e. the APDCL.

7. Section 161 of the Electricity Act, 2003 has provided for notice of accidents and injuries. As per sub-section [1] of Section 161 has prescribed that if any accident occurs in connection with the generation, transmission, distribution, supply or use of electricity in or in connection with, any part of the electric lines or electrical plant of any person and the accident results or is likely to have resulted in loss of human or animal life or in any injury to a human being or an animal, such person shall give notice of occurrence and of any loss or injury actually caused by the accident, in such form and within such time as may be prescribed, to the Electrical Inspector or such other person as aforesaid and to such other authorities as the Appropriate Government may by general or special order, direct. The Electrical Inspector is to inquire the cause of the accident affecting the safety of the public, which may have occasioned by or in connection with, the generation, transmission, distribution, supply or use of electricity. As per sub-section [3] of Section 161, every Electrical Inspector or other person holding an inquiry under sub-section [2] shall have all the powers of a civil court under the Code of Civil Procedure, 1908 for the purpose of enforcing the attendance of witnesses and compelling the production of documents and material objects, and every person required by an Electrical Inspector is legally bound to do so. Sub-section [2] of Section 162 of the Electricity Act, 2003 has provided for an appeal from the decision of a Chief Electrical Inspector or an Electrical Inspector to the Appropriate Government or to an Appropriate Commission as the case may be.

8. Though Mr. Patgiri, learned counsel for the petitioner has submitted that the electrical accident which occurred on 06.04.2015, was partly due to faults attributable to the respondent authorities in the APDCL, there is not enough materials which are suggestive of such negligence, even partly. The contention

of the respondent authorities, as asserted in the counter affidavit, that the death of the victim was caused due to negligence and lack of care on the part of the victim himself has not been traversed in any manner by the petitioner by filing any affidavit-in-reply.

9. Despite being aware of the contents of the Electrical Accident Enquiry Report as far back as on 06.04.2015, the petitioner has not preferred any appeal availing the remedy provided under Section 162[2] of the Electricity Act, 2003. Thus, it does not lie on the part of the petitioner, on the basis of the materials on record, to assert that the electrical accident was caused due to faults solely attributable to the respondent authorities in the APDCL. As per the Electrical Accident Enquiry Report, the cause of electrical accident resulting into the death of the victim on 06.04.2015 has been made attributable to the alleged act committed by the victim.

10. From the respective contentions agitated by the contesting parties, there arise a number of disputed questions of fact. Whether the incident had occurred due to fault or negligence solely attributable to the victim and the owner of the tree or jointly attributable to the respondent APDCL authorities and the victim or solely attributable to the respondent APDCL authorities is/are disputed questions of fact. It has been settled by a long line of decisions that the jurisdiction of the High Court under Article 226 of the Constitution of India is discretionary and extra-ordinary and it is not to be exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will be exercised subject to certain self imposed limitations. It is also settled that the High Court is not deprived of its jurisdiction to entertain a writ petition under Article 226 of the Constitution of India merely because in order to consider the right of the

petitioner to be granted the relief sought for questions of fact have arisen for determination. In a writ petition under Article 226 of the Constitution of India, the High Court has jurisdiction to try issues both of facts and law. In the process, the Court has to consider as to what facts are in dispute and what facts are not in dispute and such a stage comes after the exchange of pleadings in the form of affidavits amongst the parties is complete since a writ petition is ordinarily decided on the basis of affidavits. When a writ petition raises disputed questions of fact requiring appreciation of evidence, both oral and documentary, and for determination of such disputed questions of fact, examination of witnesses would be necessary then it may not be convenient to decide such disputes in a proceeding under Article 226 of the Constitution of India and then in such a case, the Court may decline to entertain a writ petition. It is also settled by a long line of decisions that the High Court in its jurisdiction under Article 226 of the Constitution does not generally enter upon determination of questions of fact which require an elaborate examination of evidence to establish the right to enforce which the writ is claimed.

11. After taking into consideration of the facts and circumstances of the case in hand; the rival contentions of the parties; and the scope and ambit of the power of judicial review in a case involving disputed questions of facts, this Court is of the considered view that the present one is such a case which require determination of several disputed questions of fact through both oral and documentary evidence with examination of witnesses from the parties in a trial and the present writ proceeding is found to be not the proper and appropriate proceeding for determine of such kind of disputed questions of fact. Consequently, this Court is of the considered view that the writ petition is not to be entertained. Therefore, it is accordingly held. It is, however, observed that

non-entertainment of the writ petition may not preclude the petitioner to resort to any other remedy as may be permitted under the law. There shall be no order as to cost.

JUDGE

Comparing Assistant