

GAHC010070712021



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

Case No. : I.A.(Civil)/938/2021

NISHAN ALI
S/O. LATE ASMAT ALI, VILL. KAZAIKATA PT.I, P.O. AND P.S. BILASIPARA
DIST. DHUBRI, ASSAM, PIN - 783348

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE CHIEF SECY. TO THE GOVT. OF ASSAM, DISPUR,GHY- 6

2:THE ASSAM POWER AND DISTRIBUTION COMPANY LTD.
REP. BY THE CHAIRMAN ELECTRICITY BOARD

BIJULI BHAWAN

PALTAN BAZAR
GUWAHATI -8.

3:THE CHIEF ENGINEER (DISTRIBUTION)

BIJULI BHAWAN

PALTAN BAZAR
GUWAHATI-8.

4:THE SUPERINTENDENT ENGINEER

APDCL
DHUBRI DISTRICT
DHUBRI
ASSAM
PIN - 783301.

5:THE SUB-DIVISIONAL ENGINEER

BILASIPARA ELECTRICITY SUB-DIVISION
APDCL
DIST. DHBURI
ASSAM
PIN - 783348.

6:THE CHIEF ELECTRICAL INSPECTOR

GOVT.OF ASSAM
MAHAVAIRAB BUILDING CHANDMARI
SOUTH SARANIA
GUWAHATI-3

Advocate for the Petitioner : MR. M HUSSAIN

Advocate for the Respondent : SC, APDCL

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 29-03-2023

Heard Mr. M. Hussain, learned counsel for the applicant; Mr. M. Chetia, learned Junior Government Advocate, Assam for the opposite party nos. 1 & 6; and Mr. K.P. Pathak, learned Standing Counsel, APDCL for the opposite party nos. 2 – 5.

2. The instant interlocutory application has been filed by the applicant who has preferred the connected writ petition, W.P.[C] no. 2481/2018 as the writ petitioner, seeking impleadment of two persons viz. [i] Md. Sirajul Hoque and [ii] Md. Altam Hussain as party-respondent no. 7 and party-respondent no. 8 respectively in the connected writ petition.

3. The applicant-writ petitioner has preferred the writ petition, W.P.[C] no.

2481/2018 under Article 226 of the Constitution of India seeking inter alia compensation from the respondent authorities in the APDCL on the premise that the wife of the applicant-petitioner, Asaton Bibi died on 01.07.2017 allegedly due to electrocution with fault/negligence attributable to the respondent APDCL authorities. The applicant-writ petitioner has, thus, sought to invoke the public law remedy.

4. The opposite party-respondent no. 6 being statutorily empowered under Section 161, Electricity Act, 2003 had caused an enquiry as regards the death of the victim on 01.07.2017 due to alleged electrocution and had submitted an Electrical Accident Enquiry Report after completion of enquiry on 05.10.2018. The Electrical Accident Enquiry Report had been returned with a finding that the victim got electrical shock while attempting to switch on the fan inside her own house. The Electrical Accident Enquiry Report has reported that during the course of enquiry, the opposite party-respondent no. 6 had recorded statements of a number of witnesses including the afore-mentioned two persons sought to be impleaded as party-respondents.

5. Subsequent to the death of the wife of the petitioner, a case of unnatural death, Bilasipara Police Station U.D. Case no. 10/2017 came to be registered on 01.07.2017. The First Information Report [FIR] in connection with Bilasipara Police Station U.D. Case no. 10/2017 was lodged with the allegation that the victim died due to snapping of an electric wire. The investigation of Bilasipara Police Station U.D. Case no. 10/2017 had resulted in a Final Report dated 31.08.2017 stating inter alia that the statements of the witnesses examined, corroborate the contents of the FIR.

6. As the findings in the two reports i.e. the Final Report in Bilasipara Police

Station U.D. Case no. 10/2017 and the Electrical Accident Enquiry Report dated 05.10.2018 are contradictory to each other and the two persons, mentioned above, were parts purportedly of both the enquiry and the police investigation, the applicant-petitioner has sought their presence as party-respondents in the connected writ petition. By the connected writ petition, the applicant-petitioner has sought to invoke the extra ordinary and discretionary jurisdiction under Article 226 of the Constitution of India seeking adequate compensation under the public law remedy.

7. The Electrical Accident Enquiry Report was submitted by the opposite party-respondent no. 6 as he is empowered under Section 161, Electricity Act, 2003 to cause such enquiry and also to submit an Electrical Accident Enquiry Report. Sub-section [2] of Section 162 of the Electricity Act, 2003 has provided for an appeal. As per Section 162[2] of the Electricity Act, 2003, an appeal shall lie from the decision of a Chief Electrical Inspector or an Electrical Inspector to the Appropriate Government or if the Appropriate Government, by general or special order so directs, to an Appropriate Commission.

8. Learned Standing Counsel, APDCL has submitted that an appeal against the decision of the Chief Electrical Inspector with regard to the accident in question, contained in an Electrical Accident Enquiry Report, lies before the Commissioner & Secretary to the Government of Assam, Power Department.

9. If the applicant-petitioner is not satisfied with the findings given by the opposite party-respondent no. 6 in the Electrical Accident Enquiry Report dated 05.10.2018 and wants to assail such findings on the basis of the Final Report submitted in connection with Bilasipara Police Station U.D. Case no. 10/2017 and on the basis of the statements of the afore-mentioned two persons, who

according to the applicant-petitioner, were part of both the enquiry and the investigation, then it is the appellate forum which is vested with the power to analyse and re-appreciate the materials before it. This Court in the writ jurisdiction does not ordinarily, exercise the power of judicial review for determination of disputed question of facts.

10. The application for impleadment for a person as a party-respondent in a writ petition is allowed if such person is a necessary party for adjudication of the issues involved in the writ petition.

11. Having regard to the materials on record, this Court is of the considered view that the two persons sought to be impleaded by the instant interlocutory application are not necessary parties for adjudication of the connected writ petition. In such view of the matter, the instant interlocutory application for impleadment lacks merit and deserves to be not entertained. It is accordingly not entertained. If the applicant-petitioner wants to assail the findings in the Electrical Accident Enquiry Report, it is open for the applicant-petitioner to avail the statutory remedy in accordance with law.

JUDGE

Comparing Assistant