

GAHC010131122017



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

Case No. : **W.P.(C) NO. 3403/2017**

Manjuwara Khatun @ Monjura Begum,
W/o Hafij Ali,
D/o Lal Miah,
Village – Sonai Bera [Paschim Khanda],
P.O.- Sonai Bera, P.S. -Juria
District - Nagaon, Assam.
Presently Residing At Barshapara,
Rolling Mill, P.O.– Lalganesh,
P.S.- Fatasil Ambari, Guwahati,
District – Kamrup [Metro], Assam.

..... Petitioner

-Versus-

1. The State of Assam
Represented by the Secretary
To The Government of Assam,
Power Department, Dispur, Guwahati - 781006.

2. The Assam Power Distribution Company Ltd. [APDCL],
Represented by its Chairman,
Bijulee Bhawan, Paltan Bazar,
Guwahati - 781001.

3. The Chief Electrical Inspector-Cum-Adviser,
Government of Assam, 1st Floor,
West End Block, HOUSEFED Complex,
Basistha Road,
Dispur, Guwahati - 781006.

4. The Sub-Divisional Engineer,
Assam Power Distribution Company Ltd.,
Kalapahar Electrical Sub-Division,
Kahilipara, Gauhati - 781019.

5. The Durga Puja Committee/
Sarbjananin Kali Mandir Committee
Represented By Its Secretary,
Behind the Bajrang Rolling Mill,
Barsapara,
P.O. - Lalganesh, P.S. – Fatasil Ambari,
Guwahati, District - Kamrup [Metro],
Assam, PIN - 781034.

.....Respondents

Advocates :

Petitioner	: Mr. A. Roshid, Advocate
Respondent nos. 1 & 3	: Mr. M. Chetia, Junior Government Advocate, Assam
Respondent no. 2 & 4	: Mr. S. Banik, Standing Counsel, Assam Power Distribution Company Limited
Respondent nos. 5	: Ms. M. Sahu, Advocate
Date of Hearing and Judgment & Order	: 27.01.2023

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
JUDGMENT

Heard Mr. A. Roshid, learned counsel for the petitioner; Mr. M. Chetia, learned Junior Government Advocate, Assam for the respondent nos. 1 and 3; Mr. S. Banik, learned Standing Counsel, Assam Power Distribution Limited [APDCL] for the respondent nos. 2 & 4; and Ms. M. Sahu, learned counsel for the respondent no. 5.

2. The petitioner has instituted the writ petition under Article 226 of the Constitution of India seeking **inter alia** a direction to the respondent APDCL authorities to release adequate compensation to the petitioner for the death caused to the daughter of the petitioner on 19.10.2015 due to electrocution.

3. The factual matrix narrated in the writ petition is to the following effect :- The daughter of the petitioner viz. *Ruksana Begum*, who was aged about 18 years, got electrocuted at around 08-30 p.m. on 19.10.2015 outside a *Durga Puja Mandap* erected at Lalganesh Rolling Mill area of Guwahati City by the respondent no. 5. The victim came into contact with a live wire carrying electricity and met instantaneous death. Though she was immediately taken to *Hayat Hospital*, Guwahati for treatment but the Doctors there, declared the victim dead. The victim's younger brother had also received electrical shock in the incident. In connection with the incident, one *Raju Khan*, son of *Hafijuddin Ahmed* lodged one First Information Report [FIR] before the Officer In-Charge, Fatasil Ambari Police Station and the said FIR was registered as Fatasil Ambari Police Station Case no. 693/2015 under Sections 336/338/304A, Indian Penal

Code [IPC] r/w Section 100[C], Police Act. After the death of the deceased, Inquest was performed on her dead body and thereafter, Post-Mortem Examination [PME] was performed on the dead body at the Guwahati Medical College & Hospital [GMCH], Guwahati. After autopsy, the dead body of the victim was handed over to her family and the dead body was buried on 20.10.2015. As per the PME Report, the death was due to *syncope* as a result of ante-mortem electrocution. On the aforesaid premises, the petitioner has instituted the instant writ petition.

4. From the materials on record, it has emerged that the incident of death had occurred within the jurisdiction of the respondent no. 4. The incident was accordingly reported by the office of the respondent no. 4 to the Chief Electrical Inspector-cum-Advisor, Guwahati, Assam [the respondent no. 3] on 26.10.2015. 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 05.06.2017.

5. From the contents of the Electrical Accident Enquiry Report and the counter affidavits filed by the respondents, it has emerged that the respondent no. 5 erected a *Durga Puja Mandap* in a place near *Bajarang Rolling Mill*, Barsapara. On an application being made by the Secretary of *Sarbajanin Kali Mandir* Committee, Industrial Road, Rolling Mill, Barsapara, Guwahati – 781034 on 17.10.2015, the respondent no. 4 had released a load of 7 KW under temporary category in the name of the *Durga Puja Committee* from 19.10.2015

to 23.10.2015 for performing *Durga Puja* and related ceremonies. It has been reported that the temporary connection to the said *Durga Puja Committee* was released after adhering to all necessary formalities and safety provisions as per the extant notification issued by the respondent APDCL about release of such electrical connection under the temporary category. The Electrical Accident Enquiry Report has further reported that an electrician was engaged by the *Durga Puja Committee* to light up the decorative lamps on the road side, few meters away from the *Durga Puja Mandap* by means of unauthorized hooking. The electrician also used Galvanized Iron [GI] wire for decorating the decorative lamps and connected the same to LT overhead bare conductor. One end of the hooked live wire connecting decorative lamps got snapped along with the GI wire and fell down on the on-lookers who were at the spot at that time. Among the on-lookers, the victim *Ruksana Begum* was at the spot along with her younger brother. The snapped wire fell on them and as a result, the victim, *Ruksana Begum* got electrocuted. The victim's younger brother who was holding the victim's hand, also received electric shock. It has, thus, reported that the contact of the snapped live wire with the body parts of the victim caused the accident and had appropriate, safe and proper preventive measures been taken for fitting/fixing the lights and had the line been properly drawn by the electrician, the accident resulting into the death of the victim would not have taken place and could have been avoided. The Report has further indicated that from the facts and circumstances leading to the accident, contravention of Regulation 12[1] & 13[4] of **the Central Electricity Authority [Measures Relating to Safety and Electric Supply] Regulations, 2010** and Section 135 of **Electricity Act, 2003** on the part of the organizer of the *Durga Puja Committee* are reported. The Electrical Accident Enquiry Report has been

brought on record through the counter-affidavit of the respondent no. 3, filed on 19.12.2018, by serving a copy of the same upon the learned counsel for the petitioner. The Report has not attributed any fault on the part of the licensee i.e. the APDCL.

6. 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 empowered 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.

6.1. 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.

7. The findings in the Electrical Accident Enquiry Report submitted in the case in hand by the respondent no. 3 are not against the licensee, the respondent APDCL authorities. Despite being aware of the contents of the Electrical Accident Enquiry Report, the petitioner has not preferred any appeal availing the remedy provided under Section 162[2] of the Electricity Act, 2003 to challenge the findings recorded therein. Thus, it does not lie on the part of the petitioner, on the basis of the materials on record, to simply assert that the electrical accident was caused due to fault/or negligence 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 19.10.2015 has been made attributable to the alleged act committed by an electrician engaged by the respondent no. 5, *Durga Puja Committee*.

8. Article 226 of the Constitution of India, which deals with powers of the High Courts to issue certain writs, **inter alia**, prescribes that every High Court has the power to issue directions, orders or writs to any person or authority, including, in appropriate cases, any Government, for enforcement of any of the rights conferred by Part III of the Constitution of India and for any other purpose. If any authority/body is 'State' within the meaning of Article 12 of the Constitution of India, a writ petition under Article 226 of the Constitution of India is maintainable against such an authority/body for the afore-said purposes. If an authority/body covered by Article 12 of the Constitution of India

violates the fundamental rights of any person or citizen, a writ petition can be filed under Article 226 of the Constitution of India invoking the extra-ordinary jurisdiction of the High Court seeking appropriate direction, order or writ. It is a settled proposition of law that a writ petition is a public law remedy which can be filed by any person but the main respondent should be either the State or instrumentalities/agencies of the State within the meaning of Article 12. A private entity cannot be equated with the State or instrumentalities/agencies of the State. The extra-ordinary jurisdiction of the High Court under Article 226 of the Constitution of India also, however, takes within its ambit 'any person or authority' other than the ones under Article 12 of the Constitution of India. 'Any person or authority' may cover any other person or authority/body performing public duty and it is the nature of duty imposed on the person or the authority/body, which is relevant. The paramount factor is the nature of duty imposed on such a person or authority/body, that is, public duty to make it bring under the ambit of Article 226 of the Constitution of India. In other words, even if a person or an authority/body does not fall within the ambit and scope of Article 12 of the Constitution of India but is performing a public duty, a writ petition is maintainable and a writ of mandamus or appropriate writ can be issued. But such a private body should either run substantially on State funding or should discharge public duty or positive obligation of public nature or is under liability to discharge any function under any statute, to compel it to function such statutory function. A private body can be made a respondent in a writ petition and a direction can be issued against it only in the event such private respondent is found acting in collusion with the State or instrumentalities/agencies of the State.

9. Though it has been agitated on behalf of the petitioner that there might be fault or negligence on the part of the respondent APDCL, admittedly an instrumentality of the State under Article 12 of the Constitution of India, in collusion with the private body, that is, *Durga Puja Committee* [the respondent no. 5], the findings recorded in the Electrical Accident Enquiry Report **prima facie** suggest to the contrary. The respondent no. 5 who has filed its counter affidavit, has, on the other hand, contended that the incident took place due to negligence on the part of the respondent APDCL authorities. The respondent no. 5 has further contended that the Electrical Accident Enquiry Report is not based upon actual evidence but based upon documents provided by the respondent APDCL authorities and it has been contended that it would not be proper to act on the basis of the findings recorded in the Electrical Accident Enquiry Report. The respondent APDCL authorities in their counter affidavits have contended that the Electrician engaged by the respondent no. 5 resorted to unauthorized hooking within few hours of release of the temporary electrician. Stating those facts, the respondent no. 4 stated to have filed a First Information Report [FIR] before the Fatasil Ambari Police Station on 19.10.2015.

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 respondent no. 5 or jointly attributable to the respondent APDCL authorities and the respondent no. 5 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 by the parties. 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 dispute 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 proceedings 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. Thus, the relief[s] sought for in the writ petition cannot be granted. 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