

GAHC010269882023



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

Case No. : WP(C)/6956/2023

HEMEN HAZOWARY
S/O- SRI KARUNA KANTA HAZOWARY, R/O- VILL.- HAIDABARI, P.O.
KUNWARI, BISWANATH CHARIALI, ASSAM, PIN- 784176.

VERSUS

THE ASSAM POWER DISTRIBUTION COMPANY LIMITED AND 5 ORS
REPRESENTED BY ITS CHAIRMAN, BIJULI BHAWAN, GUWAHATI, ASSAM-
781008.

2:THE MANAGING DIRECTOR
ASSAM POWER DISTRIBUTION CORPORATION LIMITED
BIJULEE BHAWAN
PALTAN BAZAR
GUWAHATI-781001.

3:THE DEPUTY GENERAL MANAGER (LAW)
ASSAM POWER DISTRIBUTION CORPORATION LIMITED
BIJULEE BHAWAN
PALTAN BAZAR
GUWAHATI-781001.

4:THE CHIEF EXECUTIVE OFFICER
TEZPUR ELECTRICAL CIRCLE
APDCL
CAR
TEZPUR
ASSAM

5:THE SUB DIVISIONAL ENGINEER
CHARIALI ESD
APDCL
CAR
BISWANATH CHARIALI

DIST. BISWANATH
ASSAM

6:THE MEDICAL AUTHORITY
BISWANATH
DEPARTMENT OF SOCIAL JUSTICE AND EMPOWERMENT DEPARTMENT
BISWANATH
ASSAM-784176

Advocate for the Petitioner : MR A DAS

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 06-12-2023

Heard Mr. A. Das, learned counsel for the petitioner; Mr. B. Choudhury, learned Standing Counsel, APDCL for the respondent nos. 1, 2, 3, 4 & 5; and Ms. R.M. Deka, learned counsel representing Mr. R.M. Das, learned Standing counsel, Social Justice and Empowerment Department.

2. The petitioner has asserted that he was electrocuted in an incident occurred on 04.06.2022 when he was on his way to a paddy field. The umbrella he was then holding, came in contact with a 11 KV high tension wire which was hanging loosely. Due to the electrical accident, the petitioner suffered severe electric burns over face, left upper limb, chest and both legs. The petitioner had initially undergone treatment at the Tezpur Medical College & Hospital. Due to his critical condition, the petitioner had to be admitted in M/s Nemcare Hospital, Guwahati. On 06.06.2022, the petitioner underwent excision and split thickness skin graft [SSG] surgery and he was discharged from M/s Nemcare Hospital on 16.06.2022. Even after discharge, the petitioner has been visiting the hospital

for checkup regularly. The petitioner had also suffered from radiational cataract in both his eyes and had to undergo cataract surgery on 25.02.2023 & 28.10.2023 at Sri Sandardeva Nethralaya, Guwahati. It is the case of the petitioner that till date, the family of the petitioner has incurred in excess of 4,00,000/- on surgical and medical bills. As per the Disability Certificate issued by the competent authority on 19.01.2023, the petitioner has suffered 20% permanent disability in relation to his both upper limbs and lower limbs. The further case of the petitioner is that when the petitioner approached the respondent APDCL authorities by way of representation for providing adequate compensation in terms of the Assam Electrical Regulations Commission [Compensation to Victims of Electrical Accidents] Regulations, 2019 read with Schedule A and Schedule B thereof, the respondent APDCL authorities through the respondent no. 3 had only provided a compensation amount of Rs. 50,000/- on 14.09.2023 stating that the petitioner's case did not fall under the category of Locomotor Disability and within the category of injuries of Permanent Total Disablement or Permanent Partial Disablement. The case of the petitioner has, thus, been treated as a case under Temporary Partial Disablement. Aggrieved thereby, the petitioner has preferred the instant writ petition under Article 226 of the Constitution of India.

3. As the petitioner has contended that he has incurred expenditure in excess of Rs. 4,00,000/- till date and he has suffered permanent partial disablement as per the provisions of the Rights of Persons with Disability [RPWD] Act, 2016, and the guidelines for the purpose of assessing the extent of specified disability in a person included under Right of Persons with Disabilities Act, 2016, the compensation awarded by the respondent authorities is meager one and not in conformity with the Regulations, 2019. By instituting the writ petition, the

petitioner has *inter alia* sought for directions to pay adequate compensation for the electrocution and to reimburse the medical expenses borne by the petitioner's and his family for the electrical accident.

4. The AERC [Compensation to Victims of Electrical Accident] Regulations, 2019 [‘the Regulations, 2019’, for short] have been made in exercise of powers conferred by Section 181[1] read with Section 57[2] and Section 57[3] of the Electricity Act, 2003 and all other powers enabling on that behalf and the same was notified in the Official Gazette on 09.08.2019. Chapter III of the Regulations, 2019 has provided for compensation including assessment of compensation and Chapter IV has provided for the manner of enquiry. Regulation 21 of Chapter IV of the Regulations, 2019 reads as under :-

“21. Disputes about entitlement/ quantum of compensation:

(i) Any dispute or difference regarding the entitlement to compensation on death of a human being in an electrical accident or the ownership of an animal involved in an electrical accident, or any person aggrieved by the orders of the Managing Director/ Chief Executive of the Licensee/ Generating Company/ CPP concerned on the quantum or entitlement shall be deemed to be a grievance in accordance with the Assam Electricity Regulatory Commission (Redressal of Consumer Grievances) Regulations, 2016 and its subsequent amendments. The disputants shall be entitled to make a complaint before the Electricity Ombudsman.

(ii) Notwithstanding the above, the aggrieved person may approach a civil court.”

5. From the very nature of the projections made and the reliefs sought for, it is evident that the claim of the petitioner regarding the nature and extent of disability and the expenses incurred in the course of medical treatment are to be decided on the basis of the documents to be produced and the genuineness thereof. A number of disputed questions of fact are likely to fall for determination and for determination thereof, a fact finding enquiry would be

necessitated. This Court in writ proceedings, does not embark on an exercise of fact finding on the basis of documents, etc., annexed to the writ petition.

6. In the above view of the matter, this Court is of the considered view that Regulation 21 of the Regulations, 2019 has provided for an adequate and efficacious remedy for redressal of the grievances of the petitioner. As a number of disputed questions of fact as regards the claim of the petitioner for any higher amount of compensation and reimbursement of medical expenditure incurred are likely to fall for consideration, this Court, at this stage, deems it proper not to entertain this writ petition, thereby, reserving the liberty to the petitioner to approach the forum, that is, the Ombudsman appointed under Regulation 21 of the Regulations, 2019 wherein it shall be open for the petitioner to agitate all the grounds regarding his claim for enhancement of the compensation amount as well as reimbursement of the expenditure incurred during the medical treatment. It is further observed that in the event the petitioner approaches the said forum, that is, the Ombudsman, the same should be considered in accordance with law and on its own merits, by affording all the reasonable opportunities of being heard to all the stakeholders including the petitioner. It is further observed that if the petitioner finds himself aggrieved by any decision after approaching the said forum, that is, the Ombudsman, it would be open for the petitioner to seek appropriate remedy under the law.

JUDGE

Comparing Assistant