

GAHC010299382019



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

Case No. : WP(C)/9221/2019

ALEYA KHATUN

D/O- SONTESH ALI, W/O- LT. SOFIAR RAHMAN, R/O- VILL- TARANGAPUR
PT.I., P.O. AND P.S. CHAPAR, DIST.- DHUBRI, ASSAM, PIN- 783371

VERSUS

THE STATE OF ASSAM AND 6 ORS.

REP. BY THE CHIEF SECY. TO THE GOVT. OF ASSAM, DISPUR, GHY-06

2:THE COMM. AND SECY. TO THE GOVT. OF ASSAM
POWER DEPTT.
GOVT. OF ASSAM
DISPUR
GHY-06

3:THE PRINCIPAL SECY.
POWER DEPTT.
DISPUR
GHY-06

4:THE CHAIRMAN
APDCL
ASSAM
BIJULEE BHAWAN
PALTAN BAZAR
GHY-01

5:THE DY. COMMISSIONER
DHUBRI
ASSAM
PIN- 783301

6:THE CHIEF ELECTRICAL OFFICER
ASSAM
DISPUR
GHY-06

7:THE SDO
ELECTRICAL
CHAPAR DIVISION
DIST.- DHUBRI
ASSAM

8:THE ASSAM POWER DISTRIBUTION
COMPANY LIMITED REPREHEND BY THE CHAIRMAN
BIJULI BHAWAN
PALTANBAZAR
GHY-0

Advocate for the Petitioner : MR. M U MONDAL

Advocate for the Respondent : MR. N. GOSWAMI
: MR. S. BANIK

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 25-05-2023

Heard Mr. M. U. Mondal, the learned counsel appearing on behalf of the petitioner and Mr. N. Goswami, the learned Standing counsel appearing on behalf of the respondent Nos. 1, 2, 3, 5 and 6. I have also heard Mr. S. Banik, the learned Standing counsel appearing on behalf of the respondent Nos. 4, 7 and 8.

2. The instant writ petition has been listed before this Court at the stage of admission. Taking into account that the pleadings are duly completed, the instant writ petition is taken up for disposal at this stage.

3. The facts involved herein is that the husband of the petitioner namely Sofiar Rahman (since deceased) died on 20.08.2018 due to electrocution for the negligence of the Electricity Department. On 21.08.2018, a complaint was lodged by the brother of the deceased. It further transpires that a GD Entry No.470/2018 was registered in Chapar Police Station and the post-mortem was conducted on 20.08.2018 in the Civil Hospital, Dhubri wherein the cause of death was shown due to shock as a result of electrocution sustained by the deceased. Subsequent thereto, the petitioner herein who is the wife of the deceased submitted a representation on 20.09.2018 before the Chairman, APDCL praying for compensation of Rs.15,00,000/- for rehabilitation of the deceased family but respondent APDCL did not grant the compensation for which the petitioner has approached this Court seeking direction upon the respondent authorities to pay the compensation of Rs.15,00,000/- and in the interim to pay an amount of Rs.5,00,000/-.

4. The instant writ petition was filed on 03.12.2019. This Court vide an order dated 03.01.2020 issued notice making it returnable on 10.02.2020.

5. It appears on record that the respondent No. 4 and 7 i.e. the APDCL and its officials had filed an affidavit-in-opposition on 24.02.2021. In paragraph No.5 of the said affidavit-in-opposition, it was mentioned that as could be learnt from the local public due to high wind, thunderstorm and heavy rain on the previous night of 20.08.2018, one Low Tension (LT) Conductor of Tarangapur Part-I snapped. In the morning of 20.08.2018, the victim tried to lift the snapped conductor himself for keeping in a different place, which resulted in the electrical accident. It was further mentioned that the snapping of the Low Tension line due to high wind, thunderstorm and rain was an "Act of God" and

APDCL had no control over it nor any amount of vigil could have prevented for which the APDCL is nowhere responsible for snapping of the subject Low Tension line and the consequent electrical accident. It was further alleged that the victim himself was responsible for his fate as he tried to remove the snapped line all by himself without informing the APDCL authorities. Further to that, it was mentioned that the APDCL reported the matter to the Officer-in-Charge, Chapar Police Station, Chapar vide SDE/CESD/APDCL/T-35/2017-18/367 dated 20.08.2018. In addition to that the APDCL also informed the Chief Electrical Inspector cum Advisor, Government of Assam about the accident vide a communication dated 20.08.2018. It was therefore the specific stand of the APDCL that as the questions involved in the writ petition were disputed questions of facts and as such it is the Civil Court who would be the appropriate forum for redressal of the grievances rather than the proceedings under Article 226 of the Constitution.

6. It further appears that on 27.10.2021, an affidavit-in-reply was filed by the petitioner against the affidavit-in-opposition filed by the respondent Nos. 4 and 7. To that said affidavit-in-reply, the Assam Electricity Regulatory Commission Notification dated 08.03.2019 was enclosed. Clause-1 of Schedule-B to the said Regulation categorically mentions that the compensation payable for loss of human life as a result of electrical accident was Rs.4,00,000/- per person. Further to that to the affidavit-in-reply, the Electrical Accident Enquiry Report given by the Deputy Chief Electrical Inspector, Government of Assam was enclosed as Annexure-B.

7. In the said Electrical Accident Enquiry Report, it reveals that the victim received the fatal electrical shock while the victim unauthorizedly tried to lift and

displace the so snapped conductor lying on the road side with the help of a bamboo for clearing their place of jute washing. It was further mentioned that there are more than one conductor joints in a span of the overhead electric line involved in the accident in issue and the said electrical line was drawn without any protective device right from the sub-station point to the utilization point. Further to that, it was observed that the low voltage distribution line emanating from the pole mounted distribution substation of the aforesaid village are without statutory electrical protective and isolating devices and are not being maintained in appropriate manner to ensure safety of personnel and property. It also appears that the Deputy Chief Electrical Inspector had noted in his report that the overall condition of the electric supply installations including overhead lines in that area were unsafe and there is every possibility of occurrence of similar type of electrical accident any time unless total and suitable corrective measures are not initiated immediately for public safety. In the report, various contraventions which had led to the accident were also mentioned. The said report was dated 19.01.2021 and the affidavit-in-opposition filed by the respondent Nos. 4 and 7 was on 24.02.2021. There was no mention whatsoever in the affidavit-in-opposition so filed by the respondent Nos. 4 and 7 that there was any proposal for the purpose of filing an appeal against the report so submitted by the Deputy Chief Electrical Inspector.

8. Be that as it may, the fact that the husband of the petitioner had expired due to an electrical accident which had taken place, this Court is of the opinion that the petitioner herein would be at least entitled to compensation.

9. Mr. S. Banik, the learned Standing counsel for the respondent Nos. 4, 7 and 8 submitted that at that relevant point of time, the Office Memorandum dated

18.12.2013 was holding the field and the AERC (Compensation to Victims of Electrical Accidents) Regulations, 2019 came into effect only subsequent to the incident which had taken place and as such the compensation, if so, has to be in terms with the Office Memorandum dated 18.12.2013.

10. Upon perusal of the documents on record and taking into account that in spite of the fact that the husband of the petitioner had expired, there was no attempt on the part of the APDCL to pay the compensation in terms with the Office Memorandum dated 18.12.2013 and the Electrical Accident Enquiry Report was awaited by the respondent APDCL which was rendered only in the year 2021. This Court is of the opinion that the petitioner herein would be at least entitled to the compensation in terms with AERC (Compensation to Victims of Electrical Accidents) Regulations, 2019 wherein it has been categorically mentioned in Clause-1 of Schedule-B that the compensation payable on account of loss of human life as a result of electrical accident would be Rs.4,00,000/-.

11. Accordingly, this Court therefore disposes of this instant writ petition thereby directing the respondent APDCL to pay the amount of Rs.4,00,000/- to the petitioner within a period of 30 days from the date of submission of the certified copy of the instant order to the Respondent No.4.

JUDGE

Comparing Assistant