

Neutral Citation No. - 2023:AHC:225743-DB

Order reserved on 21.11.2023

Order delivered on 30.11.2023

Court No. - 40

Case :- WRIT - C No. - 18874 of 2023

Petitioner :- Sarika Saini and another

Respondent :- State Of U.P. and 3 Others

Counsel for Petitioner :- Manoj Kumar, Sudhakar Yadav

Counsel for Respondent :- C.S.C., Pranjali Mehrotra

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Prashant Kumar, J.

1. Heard Sri Manoj Kumar and Sri Sudhakar Yadav, learned counsel for the petitioners; Sri Devesh Vikram, learned Additional Chief Standing Counsel for the State-respondent no.1 and Sri Pranjali Mehrotra, learned counsel for the contesting-respondent nos. 2 to 4/Electricity Department.

2. By means of this petition, the petitioners have sought following reliefs:-

I. A writ, order or direction in the nature of certiorari quashing the impugned inquiry report dated 15.11.2022 prepared by respondent no.4 and order dated 02.03.2023 passed by respondent no.3.

II. A writ, order or direction in the nature of mandamus directing the respondent no.3 to provide appropriate compensation to the petitioners for death of husband of petitioner no.1 and father of petitioner no.2, through electrocution.

III. Some other/further writ, order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

IV. To award the cost of the petition in favour of the petitioners."

3. The facts and circumstances giving rise to this case, as stated by the petitioners, are that the husband of the first petitioner and father of the second petitioner namely late Kaushal Kumar was working as Assistant Teacher in Primary School Mirapur, Block Noorpur, District Bijnor. On 10.09.2022 he had gone to the school for teaching purpose and at 1.00 p.m., the husband of the petitioner, while going to the bathroom, came in contact with live 11000 KV electricity line, which

was lying snapped on the ground. As a result of electrocution, the husband of the petitioner died on the spot, whereas two other persons namely Jony Kumar, Assistant Teacher and Sumer Chandra, Part Time Sweeper sustained injuries. The first petitioner had reported to the police station regarding the said incident on 10.09.2022, which was registered as Case Crime No.642 of 2022 under Sections 304-A, 338 IPC, Police Station Chandpur, District Bijnor. After her information, panchnama was got conducted and the dead body was sent for postmortem. Thereafter the postmortem was conducted and the postmortem report revealed that the husband of the petitioner died because of electrocution. After investigation, the investigating officer had filed report under Section 173 Cr.P.C. on 07.11.2022 with the conclusion that the husband of the petitioner died due to electrocution. In this backdrop, the petitioner claimed payment of compensation which was turned down by the third respondent i.e. Executive Engineer, Electricity Distribution, Khand-I, Paschimanchal Vidyut Vitran Nigam Chandpur, Bijnor vide impugned order dated 02.03.2023 stating that the petitioners are not entitled for compensation.

4. On the complaint of the first petitioner, an inquiry was conducted by the Deputy Director of Electricity, Security, U.P. Government, Moradabad Region, Moradabad (fourth respondent), who had submitted the impugned report on 15.11.2022 in which he had recommended for payment of compensation to the injured persons but denied the claim of the petitioners. Finally, the claim of the petitioners has been rejected by the third respondent on 02.03.2023.

5. Learned counsel for the petitioners had vehemently submitted that the said incident was occurred due to lapse on the part of U.P. Power Corporation Ltd., which is entrusted to maintain its electricity line and as such, the petitioners are entitled for payment of compensation under the provisions contained in Rule 29, 30(4), 50(1) and 77(3) of Indian Electricity Rules, 1956. In support of his submission, learned counsel for the petitioners placed reliance on the judgments passed by this Court in **Kaneez Fatima vs. State of U.P.**

and 3 others 2002 0 Supreme (All) 1225; **Neetu Devi Vs. State of U.P. & others**, reported in 2014 All. C.J. 2459 and **Yash Pal Singh (Minor) and another vs. State of UP and others** 2017 0 Supreme (All) 423 and as such, it is prayed that suitable directive may be issued to the respondents to consider the claim of the petitioner in the light of the judgments passed in the aforesaid cases.

6. Per contra, Sri Devesh Vikram, learned Additional Chief Standing Counsel appearing for the State respondent submitted that in the present matter, the enquiry officer conducted spot enquiry and submitted its report on 15.11.2022, wherein it was mentioned that the incident occurred on account of negligence of the deceased himself. The post-mortem report indicates that the husband of the petitioner died due to electrocution and the said incident took place on account of negligence of the deceased.

7. Sri Pranjal Mehrotra, learned counsel for the contesting respondents contested the petition on the ground that it raises disputed facts as due to whose negligence, the husband of the petitioner was electrocuted. It was denied that the husband of the petitioner was electrocuted on account of wrongful and negligent acts on the part of the officials of the respondent Corporation. It was also pleaded that on investigation by the police authorities, no fault was found and no action was initiated against respondent Corporation. At no point of time, there was any negligence on the part of the U.P. Power Corporation Ltd. in maintenance of power connection and no liability can be fastened over the U.P. Power Corporation Ltd. and as such, the entire claim set up by the petitioner is unsustainable in law and liable to be rejected. The order impugned has rightly been passed under the present facts and circumstances and no indulgence is required in the matter. He further submitted that this court does not have jurisdiction to decide the questions raised in the writ petition and the petitioner should approach the appropriate civil court.

8. In order to appreciate the issue raised in the writ petition as regards the liability of compensation it is essential to note as to how the death of the deceased has been caused. The death of the deceased has admittedly been caused because of electrocution through 11000 KV Electric Supply Line of the area. On the basis of the report of the first petitioner, a case was registered and the Investigating Officer immediately proceeded to the place of occurrence, prepared panchnama and site plan. The postmortem was conducted by the Medical Officer and according to the postmortem report the cause of death of the deceased was due to electrocution. After completing investigation a charge sheet was filed to the competent Court. It was averred in the writ petition that the electric wire had snapped because of the negligence of the U.P. Power Corporation Ltd and its officers in not properly maintaining the electricity transmission line and, therefore, they were liable to pay damages for their negligent act. It was further stated that even though she had made representations to the respondent Corporation for payment of compensation, it had disputed its liability and refused to pay any compensation. The respondents have stated in their reply that the negligence in the incident in question is attributable to the deceased. The death occurred was due to the negligence of the deceased himself and, therefore, the respondents were not liable to pay any compensation.

9. Before proceeding to consider the rival submissions, it would be appropriate to re-produce Rule 29, 30, 50 and 77 of Indian Electricity Rules, 1956 as under:-

"29. Construction, installation, protection, operation and maintenance of electric supply lines and apparatus-- (1) All electric supply lines and apparatus shall be of sufficient ratings for power, insulation and estimated fault current and of sufficient mechanical strength, for the duty which they may be required to perform under the environmental conditions of installation, and shall be constructed, installed, protected, worked and maintained in such a manner as to ensure safety of [human beings, animals and property.

(2) Save as otherwise provided in these rules, the relevant code of practice of the 3 [Bureau of Indian Standards] 4[including National Electrical Code] if any may be followed to carry out the purposes of this rule and in the event of any inconsistency, the provision of these rules shall prevail.

(3) The material and apparatus used shall conform to the relevant specifications of the [Bureau of Indian Standards] where such specifications have already been laid down.

30. Service lines and apparatus on consumer's premises-- (1) The supplier shall ensure that all electric supply lines, wires, fittings and apparatus belonging to him or under his control, which are on a consumer's premises, are in a safe condition and in all respects fit for supplying energy and the supplier shall take due precautions to avoid danger arising on such premises from such supply lines, wires, fittings and apparatus.

(2) Service-lines placed by the supplier on the premises of a consumer which are underground or which are accessible shall be so insulated and protected by the supplier as to be secured under all ordinary conditions against electrical, mechanical, chemical or other injury to the insulation.

(3) The consumer shall, as far as circumstances permit, take precautions for the safe custody of the equipment on his premises belonging to the supplier.

(4) The consumer shall also ensure that the installation under his control is maintained in a safe condition.

50. Supply and use of energy-- (1) The energy shall not be supplied, transformed, converted or used or continued to be supplied, transformed, converted or used unless provisions as set out below are observed:-

(a) The following controls of requisite capacity to carry and break the current 2[are placed] after the point of commencement of supply as defined in rule 58 so as to be readily accessible and capable of being easily operated to completely isolate the supply to the installation such equipment being in addition to any equipment installed for controlling individual circuits or apparatus:-

(i) a linked switch with fuse(s) or a circuit breaker by low and medium voltage consumers.

(ii) a linked switch with fuse(s) or a circuit breaker by HV consumers having aggregate installed transformer/apparatus capacity up to 1000 KVA to be supplied at voltage upto 11 KV and 2500 KVA at higher-voltages (above 11 KV and not exceeding 33 KV).

(iii) a circuit breaker by HV consumers having an aggregate installed transformer/apparatus capacity above 1000 KVA and supplied at 11 KV and above 2500 KVA supplied at higher voltages (above 11 KV and not exceeding 33 KV).

(iv) a circuit breaker by EHV consumer;

Provided that where the point of commencement of supply and the consumer apparatus are near each other one linked switch with fuse(s) or circuit breaker near the point of commencement of supply as required by this clause shall be considered sufficient for the purpose of this rule;

(b) In case of every transformer the following shall be provided: -

(i) On primary side for transformers a linked switch with fuse(s) or circuit breaker of adequate capacity:

Provided that the linked switch on the primary side of the transformer may be of such capacity as to carry the full load current and to break only the magnetising current of the transformer:

[Provided further that for transformers--

(A) having a capacity of 5000 KVA and above and installed before the commencement of the Indian Electricity (Amendment-1) Rules, 2000 and
(B) having a capacity of 1000 KVA and above and installed on or after the commencement of the Indian Electricity (Amendment-1) Rules, 2000 a circuit breaker shall be provided.]

Provided further that the provision of linked switch on the primary side of the transformer shall not apply to the unit auxiliary transformer of the generator.

(ii) In respect of all transformers installed on or after the commencement of the Indian Electricity (Amendment-1) Rules, 2000, on the secondary side of all transformers transforming HV to EHV, MV or LV a circuit breaker of adequate rating shall be installed:

Provided that for supplier's transformers of capacity upto 630 KVA, a linked switch with fuse or circuit breaker of adequate rating shall be installed on secondary side.]

(c) Except in the case of composite control gear designed as a unit distinct circuit is protected against excess energy by means of suitable cut-out or a circuit breaker of adequate breaking capacity suitably located and, so constructed as to prevent danger from overheating, arcing or scattering of hot metal when it comes into operation and to permit for ready renewal of the fusible metal of the cut-out without danger;

(d) The supply of energy of each motor or a group of motors or other apparatus meant for operating one particular machine is controlled by a suitable linked switch or a circuit breaker or an emergency tripping device with manual reset of requisite capacity placed in such a position as to be adjacent to the motor or a group of motors or other apparatus readily accessible to and easily operated by the person incharge and so connected in the circuit that by its means all supply of energy can be cut off from the motor or group of motors or apparatus from any regulating switch, resistance of other device associated therewith;

(e) All insulating materials are chosen with special regard to the circumstances of its proposed use and their mechanical strength is sufficient for its purpose and so far as is practicable of such a character or so protected as to maintain adequately its insulating property under all working conditions in respect of Temperature and moisture; and

(f) Adequate precautions shall be taken to ensure that no live parts are so exposed as to cause danger."

(2) Where energy is being supplied, transformed, converted or used the [consumer, supplier or the owner] of the concerned installation shall be responsible for the continuous observance of the provisions of sub-rule (1) in respect of his installations.

(3) Every consumer shall use all reasonable mean to ensure that where energy is supplied by a supplier no person other than the supplier shall interfere with the service lines and apparatus placed by the supplier on the premises of the consumer.]"

77. Clearance above ground of the lowest conductor- (1) No conductor of an overhead line, including service lines, erected across a street shall at any part thereof be at a height of less than--

(a) For low and medium voltage lines 5.8 metres

(b) For high voltage lines 6.1 metres

(2) No conductor of an overhead line, including service lines, erected along any street shall at any part thereof be at a height less than--

(a) For low and medium voltage lines 5.5 metres

(b) For high voltage lines 5.8 metres

(3) No conductor of in overhead line including service lines, erected elsewhere than along or across any street shall be at a height less than--

(a) For low, medium and high voltages lines upto and including 11,000 volts, if bare 4.6 metres

(b) For low, medium and high voltage lines upto and including 11,000 volts, if insulated 4.0 metres

(c) For high voltage lines above 11,000 volts 5.2 metres

(4) For extra-high voltage lines the clearance above ground shall not be less than 5.2 metres plus 0.3 metre for every 33,000 volts or part thereof by which the voltage of the line exceeds 33,000 volts.

Provided that the minimum clearance along or across any street shall not be less than 6.1 metres."

10. Chapter IV of the Indian Electricity Rules, 1956 deals with general safety requirements. Rule 29 provides that all electric supply lines and apparatus shall be of sufficient ratings for power, insulation and estimated fault current and of sufficient mechanical strength, for the duty which they may be required to perform under the environmental conditions of installation, and shall be constructed, installed, protected, worked and maintained in such a manner as to ensure safety of human beings, animals and property. According to sub-rule (2) of Rule 29, the relevant code of practice of the Bureau of Indian Standards including National Electrical Code, if any, may be followed to carry out the purposes of this rule and in the event of any inconsistency, the provision of these rules would prevail. As per sub-rule (3) of Rule 29, the material and apparatus used shall conform to the relevant specifications of the Bureau of Indian Standards, where such specifications have already been laid down. Rule 29 makes it mandatory to maintain electricity supply line and its insulation with sufficient mechanical strength.

11. We have occasion to peruse the record and the judgments so cited by learned counsel for the petitioners in the aforesaid cases, wherein the Division Bench of this Court had proceeded to consider the statutory provisions contained in Indian Electricity Rules, 1956 and also considered the Circular dated 19.06.2008 issued by the U.P. Power Corporation Ltd. (Government of U.P. Undertaking) and only thereafter necessary directions were issued for payment of compensation.

12. The negligence is required to be established firstly by the petitioner. Mere fact, that the wire of the electric transmission line belonging to the respondent Corporation had snapped and the deceased had come into contact with it and had died, was not by itself sufficient for awarding compensation. It also required to be examined whether the wire had snapped as a result of any negligence of the Corporation and under which circumstances the deceased had come into contact with the

wire. In view of the specific defences raised by the respondents in each of these cases, they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their control or unauthorised intervention of third parties or that the deceased had not died in the manner stated by the petitioners. These questions could not have been decided properly on the basis of affidavits only. It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy. Mere allegation of negligence could not warrant payment of compensation in cases of accidental death. The petitioners have remedy to approach the Civil Court.

13. In **Chairman, Grid Corporation of Orissa Ltd (Gridco) & ors v. Sukamani Das (Smt.) & anr.** [(1999) 7 SCC 298] the question which arose for consideration was, can the High Court under Article 226 of the Constitution award compensation for death caused due to electrocution on account of negligence, when the liability was emphatically denied on the ground that the death had not occurred as a result of negligence, but because of an act of God or of acts of some other persons. The Apex Court held that it is the settled legal position that where disputed questions of facts are involved, a petition under Article 226 of the Constitution is not a proper remedy. Therefore, questions as to whether death occurred due to negligence or due to act of God or of some third person could not be decided properly on the basis of affidavits only, but should be decided by the Civil Court after appreciating the evidence adduced by the parties.

14. The Supreme Court had also held in *Sukamani Das* (supra) that the power under Article 142 was not available to the High Court while exercising the powers under Article 226 of the Constitution, which was held in **Sanchalakshri v. Vijayakumar Raghuvirprasad Mehta** (1998) 2 SCC 245. The Apex Court also distinguished its earlier decision in **Shakuntala Devi v. Delhi Electric Supply Undertaking**, (1995) 2 SCC 369 holding that the question of negligence can be

properly examined in a suit where correct facts can be established, however, an amount was awarded ex gratia in exercise of the powers of the Supreme Court under Article 142 of the Constitution, which power is not available to the High Court.

15. A two judges Bench of the Supreme Court in **West Bengal State Electricity Board Vs Sachin Banerjee**, (1999) 9 SCC 21, though declined to interfere with the finding of the High Court, had deleted the finding of fact that the victims had died because of negligence of the State Electricity Board and had also allowed the compensation to be retained and not refunded. The Apex Court had held that looking to the fact that the two victims were electrocuted because of an illegal hooking for the purpose of theft of electricity, the petitioners cannot be held guilty of negligence although they may have stated that there is a need for conducting de-hooking raids more frequently.

16. In **Tamil Nadu Electricity Board v. Sumathi & ors** (2000) 4 SCC 543, the question which arose for consideration was whether the High Court under Article 226 of the Constitution can award compensation for death caused due to electrocution on account of improper maintenance of electric wires or equipment by an Electricity Board and can appoint an Arbitrator under Arbitration and Conciliation Act, 1996 to decide the quantum of compensation. While deciding the said case Hon'ble Supreme Court took note of the decisions in **Nilabati Behera Vs State of Orissa**, (1993) 2 SCC 746 and **Chairman Railway Board Vs Chandrima Das**, (2000) 2 SCC 465 and **Chairman, Grid Corporation of Orissa Limited (GRIDCO) v. Smt. Sukamani Das**, (1997) 7 SCC 298 and held that since disputed questions of facts arose in the present appeals the High Court should not have entertained writ petitions under Article 226 of the Constitution and then referred the matter to arbitration in violation of the provisions of the Arbitration and Conciliation Act, 1996. There was no arbitration agreement within the meaning of Section 7 of the Act. Under the Act, award can be enforced as if it is a decree of a court and yet the High Court passed a decree in terms of the award which is not warranted by the provisions of the Act.

The Apex Court opined that exercise of jurisdiction by the High Court in entertaining the petitions was not proper and the High Court in any case could not have proceeded to have the matter adjudicated by an arbitrator in violation of the provisions of the Act.

17. In **Haryana State Electricity Board Vs Ram Nath** (2004) 5 SCC 793, on the facts which were not disputed, the compensation was awarded. In the said case, a five-year old child died as a result of coming into contact with a high tension wire which passed over the roof of the house. The pleas raised in the petition were not denied in the counter affidavit except stating that the entire colony was an unauthorized colony and that un-authorizedly the height of the houses had been raised. The Supreme Court had observed that to the categoric averments set out hereinabove that the wires had become loose and were drooping and touching the roof of the houses, there is no denial. Also to the categoric averments that complaints had been made, both in writing and orally, requesting that the wires had to be tightened, there is no denial. A mere vague statement to the effect that the height was as per the prescribed limit does not detract from the facts that there is a deemed admission that the wires were drooping and touching the roofs.

18. The question of maintainability of a writ petition for claiming compensation for death due to electrocution was again examined by a two-Judges Bench of the Hon'ble Supreme Court in **SDO, Grid Corporation of Orissa Limited Vs Timudu Oram** MANU/SC/0445/2005. The petitions were in fact part of a batch of writ petitions that were disposed of by the judgment in Sukamani Das. However, for some reason, they were not taken up along with that batch. The facts were more or less similar. A co-villager of the deceased had taken power supply to his LI point. Some other villagers had illegally taken power supply from this line by using a hook from the LI point to their houses by means of an un-insulated GI pipe. The unauthorized line got disconnected and fell on the ground. On 22.8.1978 when the father of the respondent was coming along that way, his bullock came in contact with the live GI wire and got electrocuted. His wife came to his rescue

and hearing her cries, her father while trying to rescue her also got electrocuted. A writ petition under Article 226 of the Constitution claiming compensation was filed. In the counter affidavit GRIDCO denied its negligence pointing out that the electric wire got snapped on account of the illegal hooking. In Timudu Oram, an attempt was made to get the Hon'ble Supreme Court to distinguish its earlier ruling in Sukamani Das by referring to the decisions in Shail Kumari (supra) and Ram Nath (supra). Nevertheless, the Supreme Court held that the case would be covered by Sukamani Das since it involved disputed questions of fact. It was held that the High Court erred in entertaining the writ petition under Article 226 of the Constitution after a lapse of ten years.

19. In the light of these binding decisions of the Hon'ble Supreme Court as detailed and discussed herein above, this Court cannot possibly entertain this writ petition and grant compensation on the basis of the principle of strict liability though sending the petitioners to civil court will delay the resolution of their claim. Therefore, this Court has no other option but to hold that the writ petition in the facts and circumstances, which involves disputed questions of facts, is not maintainable and the petitioners will have to approach the appropriate Civil Court to claim the compensation for the death of the husband of the petitioner no.1 on account of alleged negligence of the respondents. It is, however, made clear that the petitioners shall be entitled to avail all legal remedies available to them in accordance with law and they will be entitled to claim the benefit of Section 14 of the Limitations Act, 1963 to avail the legal remedies available to them.

20. The writ petition is, therefore, dismissed. No order as to cost.

Order Date :- 30.11.2023

RKP