

HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.4212 of 2008

-

Date: April 07, 2015

-

Between:

Godla Sitaram ... Petitioner

And

1. The Government of Andhra Pradesh,

Rep. by its Principal Secretary,

Energy Department, Hyderabad & 2 others. ... Respondents

* * *

HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.4212 of 2008

ORDER:

This writ petition is filed under Article 226 of the Constitution of India for the following relief:

“To declare the action of the respondent authorities with regard to non-payment of compensation to the writ petitioner as illegal and arbitrary.”

2. Heard Sri V. Mallik, learned counsel for the petitioner, learned Government Pleader for respondents 1 and 2 and Sri P. Anand Seshu, learned counsel for the 3rd respondent, apart from perusing the material available before this Court.

3. According to the petitioner, he is the son of one Atchanna, who was working as coolie and residing at Sakivalasa Village, Bhogapuram Mandal, Vizianagaram District, and all the family members were dependants on him. It is the further case of the petitioner that on 24.02.2005 at about 6.00 p.m. when the petitioner's father was sitting beneath a Banyan tree, suddenly a heavy branch of the said tree fell on a current wire and it damaged cement electricity pole and the said pole had fallen on his back and he died instantaneously. On 25.02.2005 the police, Padmanabham Police Station, registered a crime under Section 174 of the Criminal Procedure Code, vide F.I.R.No.11 of 2005. According to the petitioner, on 06.04.2005 and 11.07.2005 he submitted representations, requesting for payment of compensation of Rs.2.00 lakhs and despite the same, being acknowledged by the first respondent, no action has been taken. It is further pleaded that the 2nd respondent-District Collector in his letter dated 28.12.2005 stated that as per the inspection report of the 3rd respondent-Superintending Engineer, the petitioner's father died due to fall of electrical pole and the accident was not due to electric wire and there was no departmental fault.

4. With the above pleadings, challenging the action of the respondents in not paying compensation as illegal, arbitrary and violative of the rights guaranteed under Articles 14 and 21 of the Constitution of India, the present writ petition came to

be instituted.

5. This Court on 31.03.2008 issued *Rule Nisi* and responding to the same, a counter-affidavit has been filed by the 3rd respondent-Superintending Engineer, Visakhapatnam, denying the allegations and the averments made in the affidavit filed in support of the writ petition and in the direction of justifying the impugned action.

6. It is contended by the learned counsel for the petitioner that the action of the respondents in not paying the compensation for the death of the father of the petitioner is illegal, arbitrary and violative of Articles 14 and 21 of the Constitution of India. It is further contended that the petitioner's father lost his life due to negligence of the respondent authorities, as such the impugned action is neither reasonable nor tenable in the eye of law. It is nextly contended that there is absolutely no justification on the part of the respondents in not paying compensation. In support of his submissions and contentions, the learned counsel places reliance on the judgment of the Hon'ble Apex Court in **Union of India V. Prabhakaran Vijaya Kumar and others**.

7. On the contrary, reiterating the contents of the counter-affidavit of the 3rd respondent, it is contended by the learned standing counsel for the 3rd respondent that there is no infringement of either constitutional or statutory right of the petitioner as such the present writ petition under Article 226 of the Constitution of India is not maintainable. It is further submitted that there is no proof of any negligence of the respondent authorities or their subordinates as such question of fastening liability to the respondents does not arise at all. It

is also the contention of the learned standing counsel that since the 3rd respondent's counter puts the petitioner to proof that the petitioner is not the son of the deceased, the said aspect cannot be decided in the present writ petition. It is further submitted that since there are so many factual controversies, the same cannot be gone into in the present writ petition. It is further stated that earlier the petitioner approached the District Legal Services Authority, vide PLC No.623 of 2006, and by order dated 29.07.2006 the Legal Services Authority dismissed the same and directed the petitioner to approach appropriate forum and the petitioner did not disclose the same in the present writ petition and the same is fatal to the case of the petitioner. The learned counsel for the respondent relies on the judgment of the Hon'ble Apex Court in **SDO, Grid Corporation of Orissa Ltd. and others V. Timudu Oram**.

8. In the above background, now the issue that emerges for consideration of this Court is whether the petitioner is entitled for the relief of compensation in the present writ petition under Article 226 of the Constitution of India?

9. The case of the petitioner precisely in the present writ petition is that because of the negligence on the part of the respondent authorities the father of the petitioner lost his life due to electrocution and despite the police registering the crime under Section 174 Cr.P.C and in spite of the representations of the petitioner for payment of compensation, the respondent authorities did not positively respond and the same is preposterous.

10. On the other hand, the respondents are emphatically opposing the relief by denying the element of negligence and

the 3rd respondent also puts the petitioner to proof of the relationship of the petitioner with the deceased Atchanna and the counter further denies that the petitioner was dependant on the deceased. The counter further states that the deceased died due to the act of God, but not due to negligence of the respondent authorities.

11. In this context it is appropriate to refer the judgment of the Hon'ble Apex Court in **SDO, Grid Corporation of Orissa Ltd. and others V. Timudu Oram** (2 supra). In the said judgment the Hon'ble Supreme Court at paragraphs 6, 9 and 10 held as under:

"In Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) and others (supra) with which case these appeals were listed for hearing but could not be heard for want of service this Court took the view that the High Court committed an error in entertaining the writ petitions under Article 226 of the Constitution of India and were not fit cases for exercising the jurisdiction under Article 226 of the Constitution of India. It was held that actions in tort and negligence were required to be established initially by the claimants. The mere fact that the wire of electric transmission line belonging to the appellant had snapped and the deceased had come into contact with it and died by itself was not sufficient for awarding compensation. The Court was required to examine as to whether the wire had snapped as a result of any negligence on the part of the appellants, as a result of which the deceased had come in contact with the wire. In view of the defence raised and the denial by the appellants in each of the cases, the appellants deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission line and yet the wires had snapped because of the circumstances beyond their control or unauthorised intervention of third parties. Such disputed questions of fact could not be decided in exercise of jurisdiction under Article 226 of the Constitution of India. That the High Court could not come to the conclusion that the defence raised by the appellants had been raised only for the sake of it and there was no substance in it. In para 6 it was observed thus:-

"In our opinion, the High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Article 226 of the Constitution. The High Court went wrong in proceeding on the basis that as the deaths had taken

place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission lines of the appellants, that "admittedly/prima facie amounted to negligence on the part of the appellants." The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. The mere fact that the wire of the electric transmission line belonging to Appellant I had snapped and the deceased had come in 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 or the appellants and under which circumstances the deceased had come in contact with the wire. In view of the specific defences raised by the appellants 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. The High Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High Court should have directed the writ petitioners to approach the civil court as it was done in OJC No.5229 of 1995."

In the present case, the appellants had disputed the negligence attributed to it and no finding has been recorded by the High Court that the GRIDCO was in any way negligent in the performance of its duty. The present case is squarely covered by the decision of this Court in *Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) and others (supra)*. The High Court has also erred in awarding compensation in Civil Appeal No.4552 of 2005 [*@ SLP(C) No.9788 of 1998*]. The subsequent suit or writ petition would not be maintainable in view of the dismissal of the suit. The writ petition was filed after a lapse of 10 years. No reasons have been given for such an inordinate delay. The High Court erred in entertaining the writ petition after a lapse of 10 years. In such a case, awarding of compensation in exercise of its jurisdiction under Article 226 cannot be justified.

As the High Court had exercised its power under Article 226 of the Constitution without properly appreciating the nature of its jurisdiction, the impugned judgments deserve to be set aside. However, in view of the long lapse of time the appellants will not recover the amounts already paid to the respondents. The civil appeals are disposed of accordingly. No costs."

12. In the instant case also there is a categorical denial by the 3rd respondent with regard to negligence on their part and there are number of factual controversies which require thorough enquiry and trial and in the considered view of this Court, the same cannot be gone into by this Court under Article 226 of the Constitution of India. It is also plea of the 3rd respondent in the counter that without disclosing the factum of approaching Legal Services Authority and the order passed by the said authority on 29.07.2006, the present writ petition has been filed. There is also no explanation as to why the petitioner filed the present writ petition approximately after one year three months. The judgment in the case of **Union of India V. Prabhakaran Vijaya Kumar and others** (1 supra) would not render any assistance to the petitioner, as the said case arose out of an order passed by the Railway Claims Tribunal. In these circumstances, this Court is neither persuaded nor inclined to grant any relief under Article 226 of the Constitution of India.

13. For the aforesaid reasons and having regard to the law laid down by the Hon'ble Apex Court in **SDO, Grid Corporation of Orissa Ltd. and others V. Timudu Oram** (2 supra), the writ petition is dismissed with liberty to the petitioner herein to avail other remedies, if any.

14. Pending miscellaneous petitions, if any, shall stand dismissed in consequence. No order as to costs.

A.V.SESHA SAI, J

Date: April 07, 2015.

BSB

-
-
-
-
-
-
-

WRIT PETITION No.4212 of 2008

-
-
-
-
-
-
-
-
-
-
-
-
-
-

-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-

-

Date: April 07, 2015

-

BSB

-