

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.7870 of 2016 (O&M)

Date of Decision:24.9.2019

Smt.Kalawati and others ... Petitioners

Versus

State of Haryana and others ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.S.R.Hooda, Advocate for the petitioners

Mr.Saurabh Mohunta, DAG, Haryana

Mr.C.L.Sharma, Advocate for respondents no.2 to 4

RAJIV NARAIN RAINA, J.

1. By way of this petition, the petitioners have prayed for issuance of a writ of mandamus directing the respondent-Uttar Haryana Bijli Vitran Nigam, Sonapat (for short “the Nigam”) to pay them compensation of at least ₹ 20 lakhs as their only earning family member died due to electrocution as a result of sheer negligence of the agents of the Nigam in failing to maintain the electricity transformer in a safe and proper manner, the offending object the deceased came in contact with leading to burn injuries resulting in death.

2. The petition has been contested by the respondents by putting in their written statement taking several pleas refuting the allegations and praying for the dismissal of the petition. .

3. I have heard learned counsel for the parties and perused the paper-book.

4. On a due consideration of the respective cases set up by the parties I find that this petition deserves to be dismissed while refusing to exercise writ jurisdiction for the following reasons:-

5. The alleged incident took place on 2.7.2010 and the writ petition has been filed in April, 2016. Therefore, it deserves dismissal on account of delay and laches.

6. The story in the application dated 11.7.2010 recounted by petitioner no.2 to the SHO, P.S.Safdarjung Enclave, New Delhi does not tally with the story set up in the writ petition, and therefore, the manner in which the alleged occurrence took place is highly doubtful there being no eye witnesses accounts available on record. The version in the DDR dated 11.7.2010 was that the alleged victim was admitted in hospital with 20% burn injuries suffered due to contact with electric current and patient died during treatment in Safdarjung Hospital, New Delhi after about 11 days of admission. The story narrated was that on 2.7.2010 at about 5.00 p.m. in the evening when late Ashok Kumar was going towards his fields, on the way an electric wire fell upon his head after breaking and for this reason he got serious burn injuries and fell unconscious. He was immediately rushed for treatment to JD Sharma Hospital where he was given first aid. He was referred to Safdarjung Hospital and he died on 11.7.2010 at about 9.40 a.m. during treatment. In the legal notice dated 31.1.2012 (Annex. P-7), claim was staked at Rs.15 lakhs compensation against the respondent Nigam.

7. A different version has been set up in paragraph 2 of the writ petition alleging 20% burn injuries while coming into physical contact of electric current while late Ashok Kumar was passing by an electric transformer. There was no mention of transformer in the earlier

version. The Nigam argues that if the conductor had snapped there should have been an electricity supply complaint which would have been rectified and restored after taking PTW and reconnecting the conductor. As per record, there was no such complaint and the JE of the area had made a statement that no such incident of snapping of conductor wires had occurred on 2.7.2010. The two divergent stands are completely contradictory which cannot be resolved in writ proceedings without benefit of recorded evidence. The Nigam surmises and it is not unbelievable that the victim might have been injured with some home appliances and electric equipment or due to other causes which may also cause similar injuries.

8. Furthermore, the opinion of the doctors in the MLR recorded at the Safdarjung Hospital, New Delhi was that the injured was brought with history of sustaining burn injuries on 2.7.2010 and died during treatment on 11.7.2010. As per postmortem report, death in this case was due to septicemia caused by ante-mortem infected thermal burn injuries caused by flames of fire. To connect the death with the fault of the Nigam and its agents cannot be established. Both the statements fly in each other's teeth are antithetical and irreconcilably contradictory, thus, a firm opinion cannot be arrived at without legal evidence. No report was made immediately on the date of alleged incident i.e. 2.7.2010 with the local police authorities. It was only on 11.7.2010, the application (Annex. P-3) was made to the SHO, P.S.Safdarjung Enclave, New Delhi.

9. Moreover, the news item relied upon by the petitioners may be based on allegations levelled by the villagers, but does not contain any indication of negligence of the Nigam in its installation of

transformer over headlines or lose wires. Besides, judicial notice cannot be taken of a news item without corroborative evidence that too recorded at the earliest and not after many years intervening the death in 2010 and the filing of the writ petition in 2016 claiming compensation.

10. There is likelihood that the cause of injuries may be domestic accidental fire as suggested by the doctors and not through the medium of electricity from either of the disputed sources. Irrefutably, the death was caused due to septicemia which may not have any causal connection with the Nigam, even if burn injury is an accomplished fact, but the versions of the story are contradictory raising seriously disputed questions of fact which cannot be resolved in the present petition.

11. It would have been sound advice in 2010 to resort to civil remedy, had the petitioner approached the trial court within limitation claiming compensation and damages against the Nigam to be tried by evidence. Even if the benefit of Section 14 of the Limitation Act is given to the petitioner, it is only the period after the filing of the petition in April, 2016 till the date of disposal which can be exempted from the period of limitation, but by that time the remedy was extinguished. Therefore, I see no reason, which normally, I may have considered to relegate the petitioners to civil remedy, but nothing fruitful would come out on such proceedings at this distance of time as the action would be barred by time.

12. In view of the above disputed factual position which can hardly be reconstructed today of past events without any moorings in

substantive evidence available on record in summary writ jurisdiction, I find no merit in the writ petition which is ordered to stand dismissed.

24.9.2019
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes/No