

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO. 27377 OF 2017

Bamadev Behera and others ***Petitioners***

Mr. Prasanna Kumar Routray, Advocate

-versus-

Executive Engineer, CESU, ***Opp. Parties***
Kendrapada and others

Mr. Bibhudhendra Das, Advocate
(For Opp. Party Nos. 1 and 3)

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

15.11.2022

Order No.

01. 1. This matter is taken up through hybrid mode.
2. The Petitioners have filed this writ petition claiming compensation of Rs.12,00,000/- for death of one Pabitra Kumar Behera due to electrocution.
3. Learned counsel for the Petitioners submits that the Petitioner No.1 is the father, Petitioner No.2 is the mother and Petitioner Nos.3 and 4 are wife and child of said Pabitra Kumar Behera (for convenience hereinafter referred to as 'the deceased'). On the ill-fated day, i.e. on 28th May, 2015 at about 5.00 A.M., when the deceased came out of his house to attend the call of nature, he came in contact with an electric poll, which was charged with electricity. As a result, the deceased suffered injury and succumbed to death. The deceased was immediately shifted to the Community Health Centre, Rajnagar, where he was declared dead. Post-mortem report reveals that death of the deceased was due to electrocution. The Medical Officer also intimated the same to the I.I.C., Rajnagar P.S. on 28th May, 2015

and on that basis, Rajnagar U.D. Case No.5 of 2015 was registered and investigation was conducted. It is his submission that due to death of the deceased, his family members, namely, the Petitioners, are suffering a lot as the deceased was the only bread earner of the family and was working as a cook. His monthly income was Rs.18,000/- at the time of his death. Although an application was filed before the authorities of CESU for grant of compensation, but it was not paid any heed. Hence, the Petitioners filed W.P.(C) No. 23980 of 2015 before this Court, which was disposed of on 18th February, 2016 directing the authorities under CESU to dispose of the representation of the Petitioners at an early date. Accordingly, the Assistant General Manager (Electrical), K.E.D. No.I, Kendrapada considering the representation of the Petitioners rejected the same. The said decision was communicated to the Petitioners vide Letter No.10273 dated 15th November, 2017. Being aggrieved, the Petitioners have filed this writ petition.

4. Mr. Dash, learned counsel for the CESU now TPCODL refuted the contention raised by learned counsel for the Petitioners and submitted that a fabricated story has been made out to extract money from the Opposite Parties. Referring to the post-mortem report as at Annexure-2, he submitted that if the statement of father of the deceased is believed, then there would have been injuries on the person of the deceased as he was allegedly dashed against the electric poll while coming out of his house. But the post-mortem report only reveals that the deceased suffered injury on his right thumb. Thus, the story made out by

the Petitioners is not believable. Had there been any electrical accident, power connection would have been tripped instantly at the Substation. But, no such instance had ever detected or reported. Since there is no material on record to come to a conclusion that due to negligent of Opposite Parties, the deceased succumbed to his injury due to electrocution, this writ petition is not at all maintainable. He further submits that post-mortem reveals that the deceased died due to accidental electrocution, which might have occurred in his residence. In that view of the matter, he prays for dismissal of the writ petition.

5. Considering the rival contentions of the parties, this Court finds that there is serious dispute with regard to the incident itself as alleged by the Petitioners. When the incident itself is in dispute, it requires factual adjudication by a competent Court of law by receiving evidence in the matter. There is nothing on record to come to a conclusion that the incident as alleged by the Petitioners had, in fact, taken place. There is also no material on record to come to a conclusion that the Opposite Parties, namely, the authorities under CESU now TPCODL have ever admitted either the incident as alleged or negligence in discharging their duties, which caused death of the deceased. In that view of the matter, the relief sought for by the Petitioners cannot be granted in a writ petition in exercise of power under Article 226 of the Constitution.

6. Accordingly, the writ petition being devoid of any merit stands dismissed.

7. Dismissal of the writ petition shall not preclude the Petitioners from approaching the common law forum for adjudication of their case.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

bks

