

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.113 OF 2019

Kalpana wd/o Gajanan Lakhe
Age: 42 years, Occu.: Household,
R/o. Jalwa Murar,
Tq. Mudkhed, Dist. Nanded

... Petitioner

Versus

1. Maharashtra State Electricity
Distribution Co. Ltd.
Estrella Batteries Expansion Building,
Ground Floor, Plot No.1, Dharavi Road,
Matunga, Mumbai - 400019.
Through it's Administrative Head.
2. The Superintending Engineer,
M.S.E.D.C. Ltd.,
Anna Bhau Sathe Chauk,
V.I.P Road, Nanded,
Tq. and Dist. Nanded.

... Respondents

...

Mr. V. B. Dhage, Advocate for the petitioner.
Mr. P. B. Paithankar, Advocate for respondent Nos.1 and 2.

...

**CORAM : DIPANKAR DATTA, C.J. AND
SMT. VIBHA KANKANWADI, J.**

DATE : NOVEMBER 14, 2022.

JUDGMENT :- [Per Smt. Vibha Kankanwadi, J.]

. Rule. Rule made returnable forthwith. Heard learned advocates
for the parties finally, by consent.

2. Present petition has been filed, invoking the constitutional powers of this Court under Article 226 of Constitution of India, for issuing writ of mandamus to direct the respondents to pay compensation of Rs.5,00,000/- with interest @ 18% as per the circular dated 20.11.2008 and 22.03.2011 to the petitioner.

3. The facts giving rise to the petition are that the petitioner's husband - Gajanan Laxman Lakhe was an agriculturist. He along with the petitioner and the family was resident of village Jawla, Murar, Tq. Mudkhed, Dist. Nanded. He had built a new house and around 18.30 hours on 03.11.2014, he was on the roof of the house and was giving water to the constructed walls of the gallery. Thereafter, he took an iron rod to clear the stagnant water from the balcony and in that process, the iron rod touched the main electricity line, which was passing in front of the house. Due to the high voltage electric wire came in contact with deceased Gajanan through the said iron rod, he got electrocuted. The petitioner has specifically contended that the respondents authorities had not made proper arrangements to cover the main electricity line despite several oral requests by the villagers. Deceased was shifted to Civil Hospital at Barad, where he was declared dead. The brother of the deceased informed the death to the police and on the basis of his narration, accidental death was reported vide A. D. No.12 of 2014 to the

Barad Police Station. The police authorities have carried out the spot as well as inquest panchanama on 04.11.2014. The postmortem of the dead body was conducted. The probable cause of death is stated as "death due to cardio respiratory failure due to deep burn at five fingers of right hand due to electric shock". It has been clearly averred that deceased Gajanan got electrocuted due to the negligence of the respondents authorities and, therefore, they are liable to pay compensation to the petitioner, who is his legal representative.

4. Petitioner has further contended that there are circulars dated 20.11.2008 and 22.03.2011 issued by respondent no.1 for the financial assistance to the legal representative of those persons, who die in an accident due to electric shock. Petitioner had given a written representation for grant of compensation to her, however, no such financial assistance has been given in view of those circulars and, therefore, she is required to approach this Court in its writ jurisdiction.

5. Respondents appeared after the notice was issued and by specific order dated 24.03.2022, learned Advocate for respondent nos.1 and 2 sought time to file affidavit-in-reply and accordingly, the time was granted. Thus, it is to be noted that in spite of opportunity granted to respondent nos.1 and 2, they failed to file their reply.

6. Heard learned Advocate Mr. V. B. Dhage for the petitioner and learned Advocate Mr. P. B. Paithankar for respondent nos.1 and 2.

7. Learned Advocate for the petitioner after reiterating the facts of the case submitted that though it can be seen that the petitioner was seeking compensation time and again, it has not been granted. Even the Electricity Inspector of Electricity Inspection Department, Nanded had made inquiry as contemplated under Section 161 of the Indian Electricity Act, 2003 and had given report which is in consonance with the pleadings of the petitioner, yet no action has been taken for grant of compensation. He has further submitted that as per the earlier circulars dated 20.11.2008, the amount of compensation was fixed, in case of death, irrespective of age and earning capacity of the deceased person, at Rs.2,00,000/-, but thereafter the said amount now has been increased to Rs.4,00,000/- by circular dated 09.03.2016 and, therefore, the petitioner is entitled to get the benefit of the subsequent circular also.

8. Learned Advocate for the petitioner relied on the decision in **Balaji s/o Sheshrao Lamdade Vs. Maharashtra State Electricity Distribution Co. Ltd. and others, Writ Petition No.1890 of 2017** decided on 02.12.2019 to support the claim of the petitioner, wherein the same circulars were relied and the petitioner was granted benefit of the subsequent circular also. He further relied on the decision by this Court in **Parigabai w/o**

Ashok Kakde and others Vs. State of Maharashtra through the Collector Aurangabad and others, (MANU/MH/0188/2021). He submitted that in this case also, the death was due to electrocution and then this Court had even granted consortium, funeral expenses to the petitioner therein and it was held that it can be granted under Section 357A of the Code of Criminal Procedure. In the nutshell, he submitted that this further amount can also be granted in addition to the amount which can be given under the Administrative Circular No.533 dated 09.03.2016.

9. Learned Advocate appearing for the respondents strongly objected the petition and submitted that there is no dispute about the circulars issued by respondent no.1, however, from the facts of the case it cannot be said that it was the negligence of any employee of the respondents and, therefore, the petitioner is not entitled to get compensation.

10. It is to be noted from the papers those have been produced by the petitioner that the incident had taken place on 03.11.2014 around 6.30 p.m. and it is stated that Gajanan was taken to Hospital and then he was declared dead. Immediately, the matter was reported to police and A.D. has been registered. The inquest panchanama as well as spot panchanama have been carried out and the postmortem report in clear terms gives the probable cause of death. Further, even the inquiry appears to have been made on behalf of the respondents in view of

Section 161 of the Indian Electricity Act, 2003, which reads thus :-

"Section 161. (Notice of accidents and injuries): --- (1) If any accident occurs in connection with the generation, transmission, distribution, supply or use of electricity in or in connection with, any part of the electric lines or electrical plant of any person and the accident results or is likely to have resulted in loss of human or animal life or in any injury to a human being or an animal, such person shall give notice of the occurrence and of any such loss or injury actually caused by the accident, in such form and within such time as may be prescribed, to the Electrical Inspector or such other person as aforesaid and to such other authorities as the Appropriate Government may by general or special order, direct.

(2) The Appropriate Government may, if it thinks fit, require any Electrical Inspector, or any other person appointed by it in this behalf, to inquire and report-

(a) as to the cause of any accident affecting the safety of the public, which may have been occasioned by or in connection with, the generation, transmission, distribution, supply or use of electricity, or

(b) as to the manner in, and extent to, which the provisions of this Act or rules and regulations made thereunder or of any licence, so far as those provisions affect the safety of any person, have been complied with.

(3) Every Electrical Inspector or other person holding an inquiry under sub- section (2) shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 for the purpose of enforcing the attendance of witnesses and compelling the production of documents and material objects, and every person required by an Electrical Inspector be legally bound to do so within the meaning of section 176 of the Indian Penal Code."

Therefore, in view of Section 161(3) of the Indian Electricity Act, 2003, it can be said that such Electrical Inspector has all the powers of a Civil Court for the purpose of enforcing the attendance of the witnesses and compelling the production of documents and material objects. Therefore, when the Electrical Inspector in this case has given a report on 07.09.2015, it can be presumed that he has used all the powers granted to him for conducting the inquiry. He has not come to a conclusion that Gajanan got electrocuted on account of any human intervention. Under such circumstance, we need not go into the aspect of whether there was negligence of any employee of the respondents or not.

11. Another aspect that is required to be considered is that in spite of granting opportunity to the respondents, they have not filed affidavit-in-reply. The 'doctrine of non-traverse' i.e. acceptance by non denial

therefore can very well be pressed into service in this case; as the pleadings of the petitioner as well as the documents supporting it inspire confidence.

12. Maharashtra State Electricity Distribution Company Limited had issued Administrative Circular No.192 on 20.11.2008 for payment of compensation and immediate financial assistance in case of fatal/non-fatal accidents to outsiders (human being as well as animals), however, it appears that there is a clarification later on issued by Administrative Circular No.332 on 22.03.2011 stating that such compensation has to be given in respect of non-fatal accidents to outsiders (human being only). A fixed sum of Rs.2,00,000/- irrespective of age and earning capacity of the deceased was prescribed in circular dated 20.11.2008, but it was then increased to Rs.2,50,000/- by the circular dated 22.03.2011. Here, the incident had taken place on 03.11.2014 when this subsequent circular dated 22.03.2011 was in force. Taking into consideration the purpose for which the said circular was issued and the procedure that was adopted, the respondent authorities ought to have granted compensation to the petitioner. Now, one more administrative circular appears to have been issued by respondent no.1 on 09.03.2016 for enhancement in the compensation that was declared in the earlier two referred circulars. When the amount of compensation has undergone

revision periodically, then the amount so revised will become due to such person who is seeking redressal.

13. Reliance can be placed on the decision by the Hon'ble Supreme Court in **Rathi Menon Vs. Union of India**, [AIR 2001 SC 1333], wherein it has been held that, *"The compensation must be fixed as per what on Rules prescribed at the time of making the order for payment of compensation and not in terms of money value which prevailed on date of accident."* The observations are, *"The relevance of the date of untoward incident is that the right to claim compensation from the Railway Administration would be acquired by the injured on that date. The statute did not fix the amount of compensation, but left it to be determined by the Central Government from time to time by means of rules. Hence, the time of ordering payment is more important to determine as to what is the extent of the compensation which is prescribed by the rules to be disbursed to the claimant."*

Thereafter, in **N. Parmeswaran Pillai Vs. Union of India & another** [AIR 2002 Supreme Court 1834], it was held that, *"In view of authoritative pronouncement made in Rathi Menon's case (Supra), the appellants were entitled to enhancement in the compensation."* In that case, the legal representatives of the deceased had claimed compensation of Rs.2,00,000/- but then in the meantime, the Central

Government had enhanced the compensation and, therefore, compensation at the enhanced rate was granted.

14. Though the above pronouncements are under the Indian Railways Act, 1989, the ratio is applicable here also. The compensation to be paid is not fixed by any statute. The Distribution Company has made those rules under its powers and periodically the amount of compensation is reviewed or reconsidered. Hence, in this case also the petitioner is entitled to get compensation at the enhanced rate i.e. Rs.4,00,000/-.

15. The decision in **Balaji Sheshrao Lamdade** (Supra) has been considered here. However, as regards **Parigabai Ashok Kakde** (Supra) is concerned, it is to be noted that this Court had taken support of provisions under Section 357A of the Code of Criminal Procedure, but it appears that the circulars have not been considered for awarding compensation. Even after giving amount under the head of consortium, funeral expenses etc, the amount of compensation that was awarded was Rs.4,00,000/-, which is equivalent to the amount as per circular dated 09.03.2016 and, therefore, no separate amount can be granted under the head loss of consortium, funeral expenses etc.

16. It has been accepted by both the parties that there is no other forum available for the petitioner to seek redressal of her grievance. She

cannot approach any other forum for getting the said fixed amount of compensation declared as per the circular. No doubt, she can approach to Civil Court for getting compensation for any tortuous act of the Company; however, it will not be relating to implementation of the circular. Hence, case is made out by the petitioner for the exercise of powers of this Court under Article 226 of Constitution of India for issuing writ. We therefore, proceed to pass following order :-

ORDER

- i) Writ petition is hereby allowed.
- ii) Respondents are directed to pay amount of Rs. 4,00,000/- (Rupees Four Lakhs only) to the petitioner within a period of two months.
- iii) Rule is made absolute in the above terms

[SMT. VIBHA KANKANWADI, J.]

[CHIEF JUSTICE]

scm