

AD-15
Ct No.09
09.06.2023
TN

WPA No. 12714 of 2023

Jugajit Banerjee and another
Vs.
The State of West Bengal and others

Mr. Niladri Sekhar Ghosh,
Ms. Sompurna Chatterjee,
Mr. Sourav Mondal

.... for the petitioners

Mr. Jahar Lal De,
Ms. Debarati Sen (Bose)

.... for the State

Mr. Srijan Nayak,
Mrs. Rituparna Maitra

.... for the WBSEDCL

Learned counsel for the petitioners contends that the petitioners were third parties to a previous writ petition bearing WPA No. 6313 of 2022, which was disposed of vide order dated May 05, 2022 by this court directing the respondent no.7 therein, that is, the District Magistrate, Bankura to decide the dispute between the writ petitioner therein/claimant and the WBSEDCL for payment of compensation on the death of the said petitioner's husband by electrocution.

It is submitted that, pursuant to the said order, the District Magistrate, by the impugned order dated December 28, 2022, decided the matter against the present petitioners, who are local cable operators,

directing the petitioners to pay Rs. 5 lakh between themselves to the claimant as compensation for their alleged involvement in the accidental death of the petitioner's husband. It is argued that the District Magistrate did not have the authority or jurisdiction under law to pass such an order directing the petitioners to pay compensation under any statute whatsoever.

That apart, it is argued that even in the order dated May 05, 2022, this court had specified that the court had not gone into the merits of the dispute between the WBSEDCL and the petitioner therein regarding the liability and/or quantum of compensation while passing the said order, indicating thereby that the dispute was exclusively between the WBSEDCL and the claimant. However, the petitioners, who were third parties to the writ petition, were roped in and subsequently compensation has been directed by the District Magistrate *de hors* the law and jurisdiction.

It is further submitted that a prior criminal case is pending against the petitioners on similar allegations, which has reached the stage of filing of charge-sheet. Since the petitioners' defence in the said matter would be directly and adversely prejudiced by virtue of the order impugned herein, it is submitted

that the District Magistrate ought not to have passed the direction for payment of compensation. It is argued that, virtually taking the plea of the direction of this court, the District Magistrate has prejudged the criminal case against the petitioners, which exercise is palpably *de hors* the law.

Learned counsel appearing for the State-respondent submits that the District Magistrate acted well within his jurisdiction and strictly in terms of the direction of this court dated May 05, 2022 and there was no jurisdictional error or irregularity on the part of the District Magistrate in passing the order impugned herein. It is pointed out from the impugned order itself that the District Magistrate took pains to give adequate hearing to all concerned, including the present petitioners and, upon an elaborate consideration of all evidence, including the statements of all concerned, assessed the quantum of compensation after fixing liability on the present petitioners. The said exercise, as such, could not be faulted and was well within the periphery of the direction of this court.

Learned counsel appearing for the WBSEDCL also makes submissions in similar tune. It is contended that the order of this court dated May 05, 2022 was very specific and left ample scope for the

District Magistrate to give adequate hearing to all concerned and to come to a conclusion on the basis of enquiry or materials, for the purpose of fixing liability. The District Magistrate has done precisely the same and, as such, could not be faulted in any manner.

The “statement of fact” containing written instructions and a copy of the Magistrate’s order, filed in court today by learned counsel for the State, be kept on record.

Upon a perusal of the order dated May 05, 2022 passed in WPA No. 6313 of 2022, it is clear that, undoubtedly, the dispute in the said case had arisen between the claimant and the WBSEDCL, where the State was also a party. The present writ petitioners are correct inasmuch as the said writ petitioners were not parties to the said writ petition. However, no rights of the present writ petitioners were decided or curtailed by way of the said order. Yet, from the ordering portion of the order dated May 05, 2022, it is clear that the District Magistrate was directed to decide the dispute regarding the liability for payment of compensation on the occasion of electrocution of the petitioner’s deceased husband. For such purpose, adequate hearing was to be given to “all concerned” and to come to a conclusion on the basis of enquiry or

materials as deemed necessary by the District Magistrate.

In the present case, the District Magistrate complied with the said order and, only upon due notice to the present writ petitioners and upon hearing them, passed the direction of payment of compensation against the writ petitioners.

In fact, as rightly pointed out by learned counsel for the State, the order dated May 05, 2022 itself contained the rationale of the direction being given to the District Magistrate. It was observed by this court that the appropriate remedy of the petitioner would ordinarily be before a competent civil court, since evidence on facts might be required to be taken for the purpose for deciding the dispute between the WBSedCL and the petitioner. However, in view of the financial condition of the petitioner, who is a day labour, such resolution of the matter by the civil court would go to the detriment of the petitioner rather than benefit her, due to the apprehended time and resources which would be consumed due to pendency of the matter before the civil court. On such premise, the direction was passed.

It is noteworthy that the petitioners never took the point of jurisdiction before the District Magistrate but, in full compliance of the notice of the District

Magistrate, appeared before the said authority and advanced arguments. After having submitted to the jurisdiction of the District Magistrate and having made out their case before the Magistrate, only upon having lost in the said case by being saddled with compensation, the petitioners have chosen to prefer the instant writ petition.

However, the scope of interference under the present application under Article 226 of the Constitution of India is extremely limited; more so, since the petitioners themselves submitted to the jurisdiction of the District Magistrate instead of objecting to the alleged jurisdiction of the District Magistrate at the outset.

That apart, the petitioners have not challenged the order of this court dated May 05, 2022 as well.

Hence, the present challenge cannot be upheld on the ground of jurisdiction as raised by the petitioners.

Moreover, a mere perusal of the impugned order of the District Magistrate reveals that the District Magistrate entered into the merits of the case painstakingly and, upon considering the statements of the relevant witnesses and going through the materials on record and after giving due hearing to the writ petitioners, arrived at the conclusion that it was

the cable operators in the area, that is, the writ petitioners, who were responsible for the accidental death due to their negligence. As such, a meagre amount of Rs. 5 lakh was directed as compensation to be paid together by the petitioners.

In any event taking into consideration the uneven social status of the writ petitioners and the claimant, the paltry amount directed to be paid does not justify interference.

However, the petitioners are justified in apprehending that the said adjudication by the District Magistrate might, in the absence of any observations by this court to that effect, affect the outcome of the criminal trial going on against them.

Accordingly, WPA No. 12714 of 2023 is disposed of without interfering with the order of the District Magistrate dated December 28, 2022. However, it is made clear that nothing in the order of the District Magistrate and/or this order or the order dated May 05, 2022 of this court shall prejudice the petitioners in any manner in the criminal trial going on against the petitioners on the self-same allegation.

It is further clarified that the scope of enquiry by the District Magistrate in the impugned order, being entirely in adherence to the direction of the writ court and limited to the assessment of the civil liability of

the negligent party to pay compensation, shall not have any direct bearing on the criminal trial. The effect of the District Magistrate's adjudication on the criminal trial would only be to the extent of that an otherwise civil adjudication in such regard. It is well-settled that the standards of proof in a criminal trial and a civil assessment are entirely different. The criminal court, taking up the criminal proceeding against the petitioners, shall keep in mind the above observations and, accordingly, decide the said case independently in accordance with law without being influenced unnecessarily in any manner by any of the observations made herein or in the impugned order of the District Magistrate.

The compensation awarded by the District Magistrate, however, shall be without prejudice to the rights of the claimant to seek further compensation before a competent civil court, if the claimant is of the opinion that the quantum of compensation given is not sufficient.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)