

M/L. 55.
April 5, 2023.
MNS.

WPA No. 17816 of 2018

M/s. APCON
Vs.
West Bengal State Electricity
Distribution Company Limited and others

Mr. Lakshman Chandra Halder

...for the petitioner

Dr. Madhusudan Saha Roy

...for the WBSEDCL.

Learned counsel for the petitioner submits that despite the enquiry report of the West Bengal State Electricity Distribution Company Limited (WBSEDCL) itself having indicted one Sanjoy Mondal, the brother of the victim of electrocution Ajoy Mondal, as the person at whose instigation the deceased person undertook the work for which he was electrocuted, the WBSEDCL has, by the impugned communication dated August 24, 2018, advised the Divisional Manager of the Bidhannagar Division- II, WBSEDCL to take necessary initiation towards realization of Rs.4,50,440/-, that is, the amount of compensation paid to the family of the victim,

from the “erring” agency, that is, the petitioner and a compliance report to be sent in that regard.

Learned counsel places reliance, in particular, on Clause 7 of the additional observations of the Accident Enquiry Committee appointed by the WBSEDCL itself, which is annexed at page 27 of the affidavit-in-opposition filed by the WBSEDCL, to harp on the point that the tannery itself, where the said Sanjoy Mondal and Ajoy Mondal were working as temporary employees, had sought the service of Sanjoy Mondal for the DP isolator maintenance and painting for which they had applied for shut down for a particular period. It is further pointed out from Clause 7 that accordingly, Sanjoy Mondal had engaged his brother Ajoy Mondal on that fateful day.

It is contended that the WBSEDCL, without any opportunity of hearing being given to the petitioner, and going contrary to its own enquiry report, has sought to take penal action against the petitioner and has withheld the amount of compensation paid to the family of the victim by deducting the same from the dues of the petitioner.

That apart, it is argued that the entire gamut of the allegations made, even in the police case initiated, is against the said Sanjoy Mondal and not against any employee of the present petitioner.

As such, it is contended that the WBSEDCL be directed to disburse all the dues of the petitioner, including the amount withheld in lieu of compensation.

Learned counsel appearing for the WBSEDCL places reliance on the statement of the said Sanjoy Mondal, at whose behest allegedly the victim had undertaken the work-in-question, which led to the unfortunate electrocution.

It was stated by Sanjoy Mondal, *inter alia*, that in presence of one Lal Babu, who was an employee of the petitioner-contractor, the line was directed to be disconnected.

It is stated by Sanjoy Mondal that Lal Babu himself disowned the responsibility of making such disconnection and directed the said Sanjoy Mondal and his men to effect disconnection themselves. As a consequence, after being assured by the said Lal Babu that the electricity supply had been disconnected to the line, the

work was undertaken by the victim Ajoy Mondal, since deceased, which led to his unfortunate demise.

Learned counsel further places reliance on the Indemnity Bond executed by the petitioner-contractor, which clearly establishes responsibility on the contractor for any type of accident which may take place during the course of work undertaken by the contractor.

It is further submitted that in the Accident Enquiry Report of the WBSEDCL itself, which is relied on by the petitioner, Clause 9 is clearly in consonance with the statement of Sanjoy Mondal as indicated above, it was stated in the said Clause that since Lal Babu and his men refused to do the work, Sanjoy and his men had to commence the work. Before starting, they had asked Lal Babu, the employee of the petitioner, and his men whether the line was isolated and was confirmed in that regard by the said Lal Babu and his men. The victim Ajoy Mondal thereafter touched the discharge rod to the three phases of the conductor and hung the rod to the middle phase and climbed the DP structure and commenced the work of disconnecting the jumper

while sitting on an adjoining channel, which led to his electrocution.

Upon a perusal of the materials annexed to the pleadings of the parties, it is clear that even in the enquiry report filed at the behest of the WBSEDCL, the clear aspersion for being responsible for the accident was on the employees of the petitioner, namely, Lal Babu and his people.

It is seen prima facie from the materials on record that there was gross negligence on the part of the employees of the contractor. Since the employees are the agents of the contractor, who is the principal and employer, it cannot be denied that the petitioner has some responsibility in the event it is established that its employees were at fault.

The allegations in the report say that Lal Babu and his men, the employees of the petitioner not only instigated the victim to undertake the work-in-question but also assured him that the conductor had been isolated, upon which the victim met his demise.

Moreover, learned counsel for the WBSEDCL is justified in placing reliance on the Indemnity Bond since it has come out from the

enquiry that the petitioner cannot absolve its responsibility.

However, the petitioner is justified in contending that the WBSEDCL cannot deduct any amount from the petitioner's dues or recover any amount regarding the compensation from the petitioner without giving an opportunity of defending itself to the petitioner.

Yet, it is seen from Clause 4 of the impugned communication dated August 24, 2018, that the cause of action pleaded in the writ petition is rather premature, since the said Clause merely contains an advisory to take necessary initiation towards realization of the sum from the petitioner. As of date, no such steps have been taken against the petitioner by the WBSEDCL and, as such, it cannot be said that the WBSEDCL is in fault in any manner till date.

However, needless to say, the principles of natural justice require that the petitioner is heard before taking any stringent action, including deduction of the amount of compensation from the petitioner's dues, by the WBSEDCL.

Accordingly, WPA No. 17816 of 2018 is disposed of without any interference with the impugned communication dated August 24, 2018

seeking initiation of action against the petitioner on the score of realization of the compensation amount.

However, it is made clear that whatever action is taken by the WBSEDCL pursuant to such impugned advice and/or otherwise with regard to the alleged negligence of the petitioner and its men for the electrocution accident, the same shall be undertaken upon prior notice to the petitioner and decided on an opportunity of hearing being adequately given to the petitioner in accordance with law.

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.)