

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

**CWP No.9311 of 2017 (O&M)
Date of decision : 15.05.2023**

Jatin Kumar (minor) through his FatherPetitioner

Versus

PSPCL and othersRespondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. P.K. Bansal, Advocate
for the petitioner.

Ms. Mehak Sawhney, Advocate
for the respondents.

PANKAJ JAIN, J.

By way of present writ petition, the petitioner prays for writ in the nature of certiorari *qua* order dated 21st of February, 2017 (Annexure P-14), whereby the claim of the petitioner seeking compensation for the burn injuries suffered on account of electrocution stands declined.

2. The petitioner is a minor child, while flying a kite on the roof of his house met with an accident and suffered 70% burn injuries. The high voltage wires passing over the house where the petitioner was flying kite were the cause of the accident. The petitioner remained hospitalized for 17 days. Father of the petitioner represented to the various authorities of the respondent Corporation seeking financial help asserting that accident was on account of negligence of the

respondent-Corporation. However, respondent-Corporation remained inert w.r.t. the compensation as sought for. The petitioner thereafter approached this Court by way of CWP No.22262 of 2016 wherein this Court directed respondent No.3 as under :-

“Having heard the learned counsel for the petitioner and without expressing any opinion on the merits of case, lest it should prejudice the rights of either of the parties, the present writ petition is disposed of, with a direction to the Superintending Engineer, Punjab State Power Corporation Limited, Sri Muktsar Sahib-respondent No.3, to look into the matter, consider the grievance of the petitioner raised vide his representation dated 24.08.2016 as Annexure P-10 (colly) and decide the same at an early date, by passing an appropriate order thereon, strictly in accordance with law, but in any case within a period of two months from the date of receipt of a certified copy of this order.

With the above-said observations made and directions issued, the instant writ petition stands disposed of.”

3. In view of directions passed by this Court, petitioner again represented to the respondents for grant of compensation. However his application was rejected vide order dated 21st of February, 2017 holding that the house below the electric line was constructed unauthorizedly and the accident occurred due to own negligence of the injured (minor petitioner). It was further stated that the electric lines can be shifted but only on specific request and on deposit of requisite costs but neither such request was made nor any cost was desposited by the petitioner or his father. Order dated 21st of February, 2017 has

been placed on record as Annexure P-14. The same reads as under :-

“Speaking Order no.22

Date 21.02.2017

The petitioner Jatin Kumar (Minor) S/o Sh. Sanjeev Kumar has filed a CWP No.22262 of 2016 in Hon'ble High Court Punjab & Haryana, Chandigarh. While disposing the above noted Civil Writ Petition, the Hon'ble High Court, Punjab & Haryana Chandigarh directed the respondent No.3.

“to look into the matter, consider the grievance of the petitioner raised vide his representation dated 24.08.2016 as Annexure P-10 (colly) and decide the same at an early date, by passing an appropriate order thereon, strictly in accordance with law, but in any case within a period of two months from the date of receipt of a certified copy of this order.”

In compliance thereof while seeing gravity & importance of the case, a committee was constituted vide this office order no. 04 dt. 03-01-2017 to investigate the cause/facts/circumstances of the accident case of Jatin Kumar(Minor) S/o Sh. Sanjiv Kumar R/o Nai Abadi Street no.11, Abohar. The following officers were the members of this committee :-

- 1) Er, Malkeet Singh Sidhu, (Member)
Addl. SE/DS Division, PSPCL, Abohar
- 2) Er, Kuldeep Verma, (Member)
Addl. SE/DS Division, PSPCL, Sri Muktsar Sahib

The above committee submitted their report to this office vide letter no. Of 1009 dated 20-02-2017 of Addl. SE/DS Division, PSPCL, Abohar.

On the basis of above report, 11 KV Nai Abadi Feeder had already been existing since 57 years in the interest of public & the house was constructed un-authorisedly below the electric line of 11 KV Nai Abadi Feeder later on house was purchased by Smt. Janak Rani (Grandmother of petitioner) approximatedly 36 years ago. Hence, Smt. Janak Rani's house was constructed under the 11 KV Nai Abadi Feeder which already exists. This accident occurred due to negligency of (injured) Jatin Kumar who was flying kite on the roof of his house and thus he met with this Non-Fatal Accident.

As per ELECTRICITY SUPPLY INSTRUCTIONS MANUAL (amended upto 31.03.2011) Instruction no. 40.2, 40.4 and Commercial circular no. 08/2006 existing electric lines/poles can be shifted as deposit work on the specific request of an individual and by depositing cost of new material to be used for shifting of such electric line/pole and cost of labour as per sanctioned estimate (Specially sanctioned for particular work). In this

case petitioner Sh. Sanjeev Kumar, resident of House no-237, St. no.-11, Nai Abadi, Abohar has not submitted any request for shifting of electric line of 11 KV Nai Abadi feeder in the concerned Sub Division no.-2, PSPCL, Abohar prior to occurrence of this accident dated 19.08.2016 and nor deposited any amount for shifting of electric line/pole.

In the light of above facts, the petitioner is not liable for any compensation because the accident occurred due to the negligency of Sh. Jatin Kumar and his family. The petitioner has never applied for shifting of 11 KV Nai Abadi Feeder's line/poles as per the norms of PSPCL.

So the claim of the Petitioner is hereby rejected.

Sd/-
Dy. Chief Engineer,
DS Circle, PSPCL,
Sri Muktsar Sahib”

4. Counsel for the petitioner submits that order (Annexure P-14) is in the teeth of doctrine of strict liability propounded and reiterated by this Court in the case of **Raman vs. State of Haryana and others', 2013(3) R.C.R. (Criminal) 653** under the Rules enacted under 1910 Act which are still in existence. Having been adopted under 2003 Act, the licensee is responsible for over-head cables and is under duty to ensure that no loss of life and property is caused in the eventuality of any accident.

5. Per contra, Ms. Sawhney submits that there being disputed questions of facts, the present matter cannot be adjudicated in the writ jurisdiction. She further relies upon Electricity Supply Instructions Manual which as per her cast duty upon the resident of a house to submit requests for shifting lines. She thus submits that negligence being on part of Sanjeev Kumar i.e. father of the petitioner, there is no

legal infirmity in order dated 21st of February, 2017 and the same need not be quashed.

6. I have heard counsel for the parties and gone through the records of the case.

7. In order to ascertain the extent of caution casted upon the respondent Corporation-licensee under the Electricity Act, 2003 it will be apt to peruse the relevant provisions of the Electricity Act, 2003, which read as under :-

"Section 68. (Provisions relating to Overhead lines): (1) An overhead line shall, with prior approval of the Appropriate Government, be installed or kept installed above ground in accordance with the provisions of sub-section (2).

2. The provisions contained in sub-section (1) shall not apply -

- (a) in relation to an electric line which has a nominal voltage not exceeding 11 kilovolts and is used or intended to be used for supplying to a single consumer;
- (b) in relation to so much of an electric line as is or will be within premises in the occupation or control of the person responsible for its installation; or
- (c) in such other cases as may be prescribed.

(3) The Appropriate Government shall, while granting approval under sub-section (1), impose such conditions (including conditions as to the ownership and operation of the line) as appear to it to be necessary

(4) The Appropriate Government may vary or revoke the approval at any time after the end of such period as may be stipulated in the approval granted by it.

(5) Where any tree standing or lying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead line subsequent to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of electricity or the to interrupt or interfere with, the conveyance or transmission of electricity or the accessibility of any works, an Executive Magistrate or authority specified by the Appropriate Government may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he or it thinks fit.

(6) When disposing of an application under sub-section (5), an Executive Magistrate or authority specified under that sub-section shall, in the case of any tree in existence before the placing of the overhead line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.

Explanation. - For purposes of this section, the expression "tree" shall be deemed to include any shrub, hedge, jungle growth or other plant."

8. Electricity Rules, 1956 have been enacted under Section 37 of the Indian Electricity Act, 1910 to lay down the procedure of safety and protective devices *qua* overhead electricity lines passing over part of any street, public place or any consumer's premises. Rules 29, 44, 45, 46 and 91 thereof read as under :-

"29. Construction, installation, protection, operation and maintenance of electric supply lines and apparatus. - (1) All electric supply lines and apparatus shall be of sufficient ratings

for power, insulation and estimated fault current and of sufficient mechanical strength, for the duty which they may be required to perform under the environmental conditions of installation, and shall be constructed, installed, protected, worked and maintained in such a manner as to ensure safety of [human beings, animals and property].

(2) Save as otherwise provided in these rules, the relevant code of practice of the [Bureau of Indian Standards] [including National Electrical Code] if any may be followed to carry out the purposes of this rule and in the event of any inconsistency, the provision of these rules shall prevail.

(3) The material and apparatus used shall conform to the relevant specifications of the [Bureau of Indian Standards] where such specifications have already been laid down."

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44. Instructions for restoration of persons suffering from electric shock. - (1) Instructions, in English or Hindi and the local language of the district and where Hindi is the local language, in English and Hindi for the restoration of persons suffering from electric shock, shall be affixed by the owner in a conspicuous place in every generating station, enclosed sub-station, enclosed switch-station and in every factory as defined in clause (m) of Section 2 of the Factories Act, 1948 (63 of 1948) in which electricity is used and in such other premises where electricity is used as the Inspector or any officer appointed to assist the Inspector may, by notice in writing served on the owner, direct.

(2) Copies of the instructions shall be supplied on demand by an officer or officers appointed by the Central or the State Government in this behalf at a price to be fixed by the Central or the State Government.

(3) The owner of every generating station, enclosed

substation, enclosed switch-station and every factory or other premises to which this rule applies, shall ensure that all authorised persons employed by him are acquainted with and are competent to apply the instructions referred to in sub-rule (1).

(4) In every manner high voltage or extra-high voltage generating station, sub station or switch station, an artificial respirator shall be provided and kept in good working condition.

45. Precautions to be adopted by consumers, [owners, occupiers], electrical, contractors, electrical workmen and suppliers

- (1) No electrical installation work, including additions, alterations, repairs and adjustments to existing installations, except such replacement of lamps, fans, fuses, switches, low voltage domestic appliances and fittings as in no way alters its capacity or character, shall be carried out upon the premises of or on behalf of any [consumer, supplier, owner or occupier] for the purpose of supply to such [consumer, supplier, owner or occupier] except by an electrical contractor licensed in this behalf by the State Government and under the direct supervision of a person holding a certificate of competency and by a person holding a permit issued or recognised by the State Government :

Provided that in the case of works executed for or on behalf of the Central Government and in the case of installations in mines, oil fields and railways, the Central Government and in other cases the State Government may, by notification in the Official Gazette, exempt, on such conditions as it may impose, any such work described therein either generally or in the case of any specific class of [consumers, suppliers, owners or occupiers] from so much of this sub-rule as requires such work to be carried out by an electrical contract licensed by the State Government in this behalf.

(2) No electrical installation work which has been carried out in contravention of sub-rule (1) shall either be energised or connected to the works of any supplier.]

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46. Periodical inspection and testing of installation, - (1)(a)

Where an installation is already connected to the supply system of the supplier, every such installation shall be periodically inspected and tested at intervals not exceeding five years either by the Inspector (or any officer appointed to assist the Inspector) or by the supplier as may be directed by the State Government in this behalf or in the case of installation belonging to, or under the control of the Central Government, and in the case of installations in mines, oil fields and railways by the Central Government.

(aa) the periodical inspection and testing of high voltage and extra high voltage installations belonging to supplier, shall also be carried out at intervals not exceeding five years by the inspector or any officer appointed to assist the inspector.]

(b) Where the supplier is directed by the Central or the State Government as the case may be to inspect and test the installation he shall report on the condition of the installation to the consumer concerned in a form approved by the Inspector and shall submit a copy of such report to the Inspector or to any officer appointed to assist the Inspector and authorised under sub-rule (2) of the rule 4A.

(c) Subject to the approval of the Inspector, the forms of inspection report contained in Annexure IX-A may, with such variations as the circumstances of each case require, be used for the purposes of this sub-rule.

(2)(a) The fees for such inspection and test shall be determined by the Central or the State Government, as the case may be, in the case of each class of consumers and shall be payable by the consumer in advance.

(b) In the event of the failure of any consumer to pay the fees on or before the date specified in the fee-notice, supply to the installation of such consumer shall be liable to be disconnected under the direction of the Inspector. Such disconnection, however, shall not be made by the supplier without giving to the consumer seven clear days' notice in writing of his intention so to do.

(c) In the event of the failure of the owner of any installation to rectify the defects in his installation pointed out by the Inspector or by any officer appointed to assist him and authorised under sub-rule (2) of Rule 4A in the form set out in Annexure IX and within the time indicated therein, such installation shall be liable to be disconnected [under the directions of the Inspector] after serving the owner of such installation with a notice :

Provided that the installation shall not be disconnected in case an appeal is made under rule 6 and the appellate authority has stayed the orders of disconnection.

Provided further that the time indicated in the notice shall not be less than 48 hours in any case.

Provided also that nothing contained in this clause shall have any effect on the application of rule 49.

(3) Notwithstanding the provisions of this rule, the consumer shall at all times be solely responsible for the maintenance of his installation in such condition as to be free from danger."

"91. Safety and protective devices :- (1) Every overhead line, (not being suspended from a dead bearer wire and not being covered with insulating material and not being a trolley-wire) erected over any part of street or other public place or in any factory or mine or on any consumers' premises shall be protected with a device approved by the Inspector for rendering the line electrically harmless in case it breaks.

(2) An Inspector may by notice in writing require the owner

of any such overhead line wherever it may be erected to protect it in the manner specified in sub-rule (I).

(3) The owner of every high and extra-high voltage overhead line shall make adequate arrangements to the satisfaction of the Inspector to prevent unauthorised persons from ascending any of the supports of such overhead lines which can be easily climbed upon without the help of a ladder or special appliances. Rails, reinforced cement concrete poles and pre-stressed cement concrete poles without steps, tubular poles, wooden supports without steps, I-sections and channels shall be deemed as supports which cannot be easily climbed upon for the purpose of this rule]."

(emphasis supplied)

9. Though 1910 Act stands repealed by 2003 Act but by virtue of Section 185(2)(c) these Rules continue to have effect. In the present mechanized world where life revolves around use of energy and machines, the situations which are hazardous and pose threat to life and property need to be taken care of. Law has evolved to make the person handling life threatening devices liable. It is this principle that has been termed as Rule of Strict Liability. Near home in the enlightening judgment authored by Justice Rajiv Narain Raina in the case of '**Raman vs. State of Haryana and others**' (supra), the Court held as under :

"24. I think that on failure to use all reasonable means to prevent escape of an inherently dangerous thing, which by nature electricity is, the standard of care will be very high and the onus would be on the supplier to show that there was no negligence.

In this case, the respondent-Nigam has not successfully discharged the onus to the satisfaction of this Court.”

10. After going through plethora of judgments dealing on the issue the Court further held as under :

“33. On a reading of the above case law the real question in this case which arises to my mind is whether the supplier of electricity can excuse himself by showing that the escape was owing to the petitioner's default. There is, however, little doubt on the other issues arising out of strict liability; burden of proof of escape of potentially dangerous thing causing injury wittingly or by surprise; standard of care required from Licensee which is circumspect statutorily under the Act and rules to do certain acts and things in the manner specified; jurisdiction of this court to award compensation in appropriate cases in writ jurisdiction and the connected issue of quantification of compensation so that it is neither under compensation nor overcompensation etc.; that in the present case such factors tilt in favour of the injured and need not detain us. The claim made in the petition is an actionable claim and the case is an eminently fit one for grant of compensation in exercise of powers under Article 226 of the Constitution.”

11. The respondent-Corporation admittedly being supplier of electricity through 11 KV *Nai Abadi Feeder line* cannot evade its liability merely because there was no representation for shifting of wires by any individual. A tort-feasor involved in a hazardous activity which has an exposure to human life is fastened with strict liability. As per statutory rules, once there was an overhead wire installed over

a premises, Corporation was responsible to maintain the same and to ensure that the premises underneath is protected even in case the line breaks. Resultantly, the respondent Corporation is held negligent in the accident that left petitioner electrocuted.

12. So far as the presence of the injured on the place of accident is concerned, the same is undisputed. Further the Admission & Discharge Card shows that the petitioner suffered “electric harsh burn – 70%”.

13. Admittedly in the present case, the accident did occur and the minor petitioner received injuries on account of electrocution. The overhead lines were installed by the respondent-Corporation itself. The electricity connection/meters were duly provided by them to the houses beneath the overhead lines. Thus the respondent cannot escape its liability towards precautionary measure to prevent such mishap. Further, Article 31 of the United Nations Convention on the Rights of the Child (UNCRC) provides a specific right for all children to have rest and leisure, to engage in play and recreational activities appropriate to their age and to participate freely in cultural life and the arts. The petitioner, a minor while flying a kite came in contact with high-power electric wire on the roof and suffered 70% burn injuries. Hence, negligence on the part of the petitioner cannot be made out.

14. The petitioner was merely 7 years old when he got

electrocuted. He remained hospitalized for about 20 days. As per the pleadings Rs.1.35 lacs were spent by the parents for his treatment at Bathinda and Rs.1.6 lacs during treatment at PGIMER Chandigarh. Even after discharge the petitioner had to be given dressings on wounds on alternate dates on which Rs.1500/- were spent every time for around two years.

15. This Court cannot be oblivious of the fact that owing to 70% burn injuries suffered by the petitioner his future life has also been marred by physical deformity and has been deprived of normal childhood. The burn injuries have left scars on his body.

16. Keeping in view the above, the petitioner is awarded compensation of Rs.20.00 lacs. The same shall carry an interest @ 6% per annum from the date of filing of first writ i.e. 8th of November, 2016 till the date of actual realization.

17. The petitioner has been saddled with the costs of approaching this Court twice, the petitioner is further awarded litigation cost of Rs.1.00 lac.

18. Respondents are directed to release compensation to the petitioner within a period of eight weeks from the date of receipt of certified copy of this order.

May 15, 2023

Dpr

**(PANKAJ JAIN)
JUDGE**

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No