

19th February,
2024
(AK)
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W.P.A 15906 of 2023

Rima Saha
Vs.
The State of West Bengal and others

Mr. Somnath Roy Chowdhury
Ms. Arpita Chowdhury
...for the petitioner.

Mr. Anand Farmania
Mr. Sanjay Mukherji
...for the State.

Mr. Debjit Mukherjee
...for the WBSEDCL.

1. The petitioner is the widow of a deceased person who met his demise by electrocution.
2. Learned counsel for the petitioner contends that the post-mortem report itself indicates that the petitioner died of electrocution and there was no inebriation of the petitioner at the relevant point of time as insinuated by the WBSEDCL.
3. Insofar as the defence of the WBSEDCL in refusing compensation, that the building was constructed eight years back whereas the overhead cable was drawn more than twenty five years back, it is argued that the regulations demand that periodical surveillance every five year have to be conducted by the Distribution Licensee and if an encroachment is found, the owner has to be asked to remove such

encroachment on the equipment of the Distribution Licensee.

4. Since no such act was done by the WBSEDCL, it is to be presumed that the said defence is frivolous.
5. Thirdly, mere absence of any criminal complaint against the officers of the WBSEDCL, it is argued, does not *prima facie* alleviate the negligence on the part of the WBSEDCL.
6. The father of the petitioner had at the relevant point of time made the complaint before the police against the friends who were accompanying the deceased person at the relevant point of time.
7. However, the same has no bearing upon the involvement of the WBSEDCL and the negligence and strict liability cast upon the WBSEDCL in law.
8. Learned counsel for the WBSEDCL controverts the allegations and submits that no power supply line was tripped, indicating that there was no electrocution.
9. Secondly, the building was constructed only eight years prior to the accident whereas the electricity cable was drawn twenty five years back.
10. Hence, it is indicated that the construction was made in violation of law, precariously close to the cable, which was, at the relevant point of time, duly drawn, keeping in view the safety measures contemplated in law.

11. Thirdly, there is no criminal complaint till date against the WBSEDCL which indicates that there was no involvement of the Distribution Licensee at any point of time.
12. Insofar as the first objection is concerned, merely because no line was tripped according to the WBSEDCL, the WBSEDCL is not absolved of its liability for death due to electrocution.
13. The post-mortem report of the deceased, submitted by the appropriate authorities, shows the cause of death to be the effect of electrocution and ante-mortem in nature.
14. The insinuation of the WBSEDCL that the victim might have been inebriated at the relevant point of time is also *prima facie* disbelieved in view of the component 4(c) of the report, which deals with the abdominal portion of the victim and clearly enumerates that the stomach of the deceased contained liquid of 200-300 ml. “with no untoward smell”, thereby ruling out *prima facie* the existence of any alcohol in the stomach of the deceased at the relevant point of time or consequential inebriation which according to the WBSEDCL led to the demise.
15. However, on the other grounds, the petitioner has a weak case insofar as the writ court is concerned.

16. The attending circumstances *prima facie* indicate that the building was constructed eight years prior to the electrocution which has not been denied by cogent evidence by the petitioner.
17. The cable itself was drawn much prior to that, which might lead to the conclusion that the building was constructed subsequently in violation of the norms guiding construction of buildings and relating to electricity.
18. However, the writ court cannot take a conclusive call either way on such count. Even if the building was constructed much after the cable was drawn over the plot of land, it does not *ipso facto* mean that the building must have been constructed in violation of Municipal Laws and Electricity Regulations.
19. It might very well have been that the building was constructed properly but due to the negligence of the WBSEDCL the electricity wires lay precariously close to the top of the building or had dropped down to that level.
20. Anyway, the said conclusion cannot be arrived at without taking conclusive evidence of both sides which involves the adjudication of a disputed question of fact.

21. As regards no criminal complaint having been lodged against the WBSEDCL, the same also, *ipso facto*, is at best circumstantial.
22. Even if the petitioner's father at the relevant point of time did not have a perception of involvement of the WBSEDCL, the same does not *per se* rule out the involvement of the Distribution Licensee or their negligence, nor does it indict that Distribution Licensee either.
23. On such count as well, detailed evidence is required to be led, which can only be done before a competent civil court.
24. In such view of the matter, insofar as the writ court is concerned, there is *prima facie* evidence of the victim having died of electrocution but as regards the negligence or liability on the part of the Distribution Licensee and the entitlement of the petitioner, if any, to compensation from the WBSEDCL, the matter has to be decided before a competent civil court.
25. Accordingly, WPA 15906 of 2023 is disposed of by granting liberty to the petitioner to approach the competent civil court having jurisdiction for adequate compensation, if the petitioner is so entitled, from the WBSEDCL or any other person, in which case the civil court shall decide the suit independently and in accordance with law without

being influenced in any manner on merits by the observations made herein above.

26. The report filed in court today be kept on record.

27. There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)