

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

.....

OWP no.1516/2016

Reserved on: 24.09.2024

Pronounced on: 17.12.2024

1. Rayees Ahamd Naikoo Age 23 Years S/o Mohammad Maqbool Naikoo R/o Ahian Gadool Kokernag, Anantnag
2. Sabzar Ahmad Wani Age 24 Years S/o Ab. Rahim Wani R/o Nadsangar, Larnoo, Anantnag
3. Mudasir Ahmad Yatoo Age 22 Years S/o Gh. Mohi ud din Yatoo R/o Laigarpora, Kharpora, Larnoo, Anantnag

.....Petitioner(s)

Through: Mr M.A.Khanday, Advocate

Versus

1. Indian Railway Corporation Co. Ltd. (IRCON) through Managing Director, Head office, Saket, New Delhi India.
2. State of J&K through Comm/Sec. Power Development Department, Civil Sectt. Srinagar/ Jammu.
3. Principal Secretary PDD Civil Sectt. Sgr/Jmu.
4. Development Commissioner J&K Govt. Power Development, Sgr/Jmu.
5. Chief Engineer EM & R.E. Wing Jammu. Supdt. Engineer (S.E) EM&RE) circle first Jammu.
6. Executive Engineer Sub Transmission Division First PDD Jammu
7. Assistant Engineer Sub Transmission Division 1st PDD Jammu
8. Jr. Engineer STD-first Sub division First, PDD Jammu

.....Respondent(s)

Through: Mr Jehangir A. Dar, GA
Mr Hakim Suhail Ishtiyah, Advocate

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. Petitioners claim that they assumed the work and skilled labourers at Subash Nagar, Jammu, for installation of 33 KV Electric Transmission

Line with the principal agent – IRCON for fixation of electric lines at various places of Jammu. On 23rd January 2016, when petitioners were busy at site after installing poles and fixing electric transmission line at the top of installed polls at Subhas Nagar, Jammu, high tension line was deliberately and willfully charged by officials of Power Development Department in most careless and negligent manner without any recourse to precautionary measures of following the standard operation procedures when the field skill labourers were at work besides it respondent no.1 had to supervise scheduled shutdown of total electricity supply from 10 AM to 6 PM of the area through which the transmission line was to be installed. The authorities of the company also took their job of supervising schedule cut down as casually resulting in petitioners, who were in direct contact with heavy 33 KV electric transmission line, sustained major electric burns and shocks. This was carried by Urdu daily newspaper Kashmir Uzma. Petitioners, consequent to electric shock, felt unconscious and were taken to GMC, Jammu. FIR was also lodged. They were referred to SKIMS, Srinagar, for further treatment. Multiple plastic surgeries were undergone of vital organs of bodies of petitioners. This incident, according to petitioners, crippled, disabled and mentally disturbed them. Petitioner no.1 turned 65% disabled, petitioner no.2 turned 40% disabled, whereas petitioner no.3 has received head injury. Petitioners seek a direction in the name of respondents to pay adequate damages as compensation to petitioner; besides to pay medical expenses and other incidental charges incurred by petitioners on their treatment as also pay Rs.8.00 Lacs to petitioner

no.1, Rs.6.00 Lacs to petitioner no.2 and Rs.4.00 Lacs to petitioner no.3. In addition to this, Rs.3.00 Lacs for medical expenses need for further treatment and other miscellaneous expenses including traveling, haltage is also sought by petitioners. Rs.7.00 Lacs each is being prayed for by petitioners for partial disability of electric burns. They also pray respondents to pay Rs.10.00 Lacs for damages for utter and gross negligence. Respondents are also sought to be directed to engage one of the eligible dependent family members of petitioners as permanent employee.

2. Respondent no.1 in its Reply Affidavit has stated that if at all petitioners had any grievances, proper remedy for them was to approach Labour Court under Workmen's Compensation Act against the agency who had utilized services of petitioners. Respondent no.1 has no knowledge or role in engagement of petitioners by the Executing Sub-Contractor, namely, M/s Lone Constructions. There is no negligence on the part of respondent no.1 in the occurrence of incident which took place on 23rd January 2016. Since the work was of very sensitive nature, therefore, whenever such works are being undertaken for execution, shutdown for power supply is being sought from Power Development Department in the concerned area and after completion of work, the site supervisor of respondent no.1 gives clearance for restoration of power supply. The site supervisor makes an entry for restoration of power supply in the log book of concerned receiving station of PDD. In no case power supply is being restored without clearance from executing agency, i.e.,

respondent no.1, even after the time stipulated in the order/permission granted by PDD for shutdown of power supply.

3. In their reply, respondent – Executive Engineer, STD-I, JPDCL, Jammu, has stated that the work for installation of 33 KV Electric Transmission Line was allotted to IRCON, which engaged manpower at their own level for installation of 33 KV Subash Nagar Line. The work had to be carried out during shutdown period from 10.00 AM to 6.00 PM. The shutdown was availed by IRCON on 23rd January 2016. During shutdown period, three labourers got electrocuted. The reason for that is best known by IRCON. It was responsibility of IRCON to take proper care while executing the work and, therefore, accident happened due to negligence of IRCON and that there is no negligence on the part of Department. Respondents also aver that case along with requisite documents of petitioners had been submitted to Inspection Division by Executive Engineer, Electric Division-III, vide letter dated 28th January 2023 for inspection in light of government order in vogue for *ex gratia* compensation.
4. In their Rejoinder Affidavit, petitioners have stated that that counter affidavit/reply filed by respondents is self-contradictory as respondents admit that on 23rd January 2016, petitioner got electrocuted while working as respondents restored power supply without clearance which resulted in electrocution of petitioners and petitioners got seriously injured and have developed disability and are not in a position to earn their livelihood. They would also assert that counter affidavit filed by respondents is self-contradictory as respondents admit that on 23rd

January 2016, petitioners got electrocuted while on working and while on work respondents restored power supply without clearance which resulted in their electrocution.

5. I have heard learned counsel for parties and considered the matter
6. Learned counsel for petitioner would contend that there was gross negligence on the part of respondents which resulted in electrocution.

It is also averment of petitioners that they have a right to life under Article 21 of the Constitution of India inasmuch as health and happy life has been curtailed to petitioner by negligence of respondents.

Incident that occurred on 23rd January 2016 is *res ipsa loquitur* as accident occurred under the management of respondents and accident speaks of itself and accident may not have been occurred if three respondents may have used proper care and have discharged their legal and statutory duties. It was gross negligence of respondents that they had restored power supply without clearance which negligence had not only resulted in snatching livelihood of petitioners but had made the life of petitioners dependent upon their family members. Granting of monetary relief to victims for deprivation of their fundamental rights in petitions filed under Article 226 of the Constitution of India notwithstanding rights available under the civil law to aggrieved party where the courts found that grant of such relief was warranted. The Supreme Court in *Nilabati Behera v. State of Orissa (1993) 2 SCC 746*, has held that Courts being protectors of civil liberties of a citizen, have not only power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Article 32 and 226 of the

Constitution to the victim or heir of victim whose fundamental rights vouched under Article 21 are established to have been flagrantly infringed by calling upon the state to repair the damage done by its officers to fundamental rights of a citizen notwithstanding the right of a citizen to the remedy by way of a civil suit or criminal proceedings. In State of *Andhra Pradesh v. Challa Ramkrishana*, (2000) 5 SCC 712, the Supreme Court held that it is well settled law that in matters involving violation of fundamental rights by law enforcement officials, the strict liability principle will apply and the State must pay compensation to the victims of such violence as a public law remedy under Article 32 and 226. This remedy is in addition to any other private law remedy the victims or their dependents may have. Due to accident dreams of whole families of petitioners have been shattered and same has dilapidated social and economic set up of the families of petitioners. In *D. K. Basu v. State of West Bengal*, (1997) 1 SCC 41, it was held that claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, protection whereof is under the Constitution, is a claim based on strict liability and is in addition to claim available in private law for damages for tortious acts of public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of indefeasible rights guaranteed under Article 21 is a remedy available in public law since the purpose of public law is not only to civilize public power but also to assure citizens that they live under a legal system in which their rights and interests are

protected and preserved. Grant of compensation under Article 32 or Article 226 for violation of fundamental rights guaranteed under Article 21, is an exercise of the Courts under public law jurisdiction for penalizing wrongdoer and fixing liability for public wrong on the State which failed in discharge of its public duty to protect fundamental rights of citizens. The old doctrine of only relegating the aggrieved to remedies available in civil law limits the role of the Courts too much as protector and custodian of indefeasible rights of citizens. The Courts have obligation to satisfy social aspirations of citizens because the Courts and law for people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of offender cannot give such solace to family of victim the civil action for damages is a long drawn and cumbersome judicial process. Monetary compensation for redressal by the Court finding infringement of indefeasible right to life of citizen is, therefore, useful and at the time perhaps the only effective remedy to apply balm to wounds of family members of deceased/victim, who may have been breadwinner of family. He has also made reference to *M.V. Elisabeth v. Harwan Investment and Trading (P) Ltd*, 1993 Supp (2) SCC 433; *Ward v. James* (1965) 2 WLR 455; judgment dated 8th December 2022 passed by this Court in *Lal Jani and others v. State and others*; judgement dated 18th February 2013, passed by this Court in *Ghulam Ahmad Naikoo v. Union of India and others*.

7. There is no dispute about electrocution of petitioners. It was not due to inaction of petitioners, but due to inaction of respondents. Respondent

no.1 – IRCON in its Reply has stated that it was on 24th February 2014 that the work to construct 33/11 KV Sub Stations along with other allied works at Jammu under RPDRP Scheme were allotted to it by J&K Power Development Department – respondent no.2. Respondent no.1 allotted part of the work i.e., reconductoring of 11 KV SN-3 Feeders to Subcontractor, namely, M/s Lone Constructions, Nerupora, Kokernag, Kashmir. Since the work was of very sensitive nature, thus, whenever such works are being undertaken for execution, the shutdown for power supply is being sought from Power Development Department in the concerned area and after completing work, the site-supervisor of respondent-IRCON gives a clearance for restoring power supply. The site-supervisor makes an entry for restoring power supply in the log book of concerned receiving station of PDD. In no case power supply is being restored without clearance from executing agency even after the time stipulated in the order/permission granted by PDD for shutdown of power supply. It is also maintained by respondent no.1 – IRCON, that on 23rd January 2016, the work for reconductoring of 11 KV SN-3 Feeders was being executed by Subcontractor at Subash Nagar, Jammu, after proper permission for shutdown of power supply to SN-3 and SN-4 feeders was granted by concerned of PDD at the request of respondent no.1. But while workers of subcontractor were on job at Subash Nagar, Jammu, suddenly power supply was restored without clearance from respondent no.1 resulting in electrocuting petitioners.

8. Insofar as reply of respondent-State is concerned, it is worth nothing.

Respondents elect to play the blame game but that is not very constructive. The reason being that supply and shutdown of power supply was not in the hands of petitioners or respondent-IRCON. The work was allotted by respondent-department to respondent-IRCON. They and their officials cannot be so careless or rude to switch on the power supply albeit knowing that work is going on. Such a lackadaisical approach on the part of respondent-department or its officials / functionaries is not condonable.

9. The issue is no longer *res integra*. The Supreme Court in M. P. Electricity Board v. Shail Kumari and others (2002) 2 SCC 162, held as under:

“7. It is an admitted fact that the responsibility to supply electric energy in the particular locality was statutorily conferred on the Board. If the energy so transmitted causes injury or death of a human being, who gets unknowingly trapped into it the primary liability to compensate the sufferer is that of the supplier of the electric energy. So long as the voltage of electricity transmitted through the wires is potentially of dangerous dimension the managers of its supply have the added duty to take all safety measures to prevent escape of such energy or to see that the wire snapped would not remain live on the road as users of such road would be under peril. It is no defence on the part of the management of the Board that somebody committed mischief by siphoning such energy to his private property and that the electrocution was from such diverted line. It is the look out of the managers of the supply system to prevent such pilferage by installing necessary devices. At any rate, if any live wire got snapped and fell on the public road the electric current thereon should automatically have been disrupted. Authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps.

8. Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any

other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as “strict liability”. It differs from the liability which arises on account of the negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions.”

10.As early as in the year 1986, the Constitution Bench of the Supreme Court in *M. C. Mehta v. Union of India (1987) 1 SCC 395*, has held that we need not feel inhibited by technical considerations surrounding the rule in *Rylands Vs. Fletcher (1868) L.R.3 H.L. 330* and that we have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialized economy. They, therefore, held that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a- vis the tortious principle of strict liability under the rule in *Rylands Vs. Fletcher* (supra).

11.The question is whether writ petition can be entertained for granting compensation to the petitioner is, thus, no longer *res integra*, in view of the legal position and law laid down in *Mustaq Ahmed and others v.*

State of Jammu & Kashmir and others, AIR 2009 JK 29 and *Joginder*

Singh v. State of J&K and others, AIR 2011 (1) JKJ 722. This Court,

while dealing with the issue, has held in Mustaq Ahmed's case, *supra*

as under: -

“13. The question that, therefore, falls for consideration is as to whether even in such type of cases, where death or injury is caused because of leakage of electric energy by the State engaged in supply of electric energy, which, no doubt, poses a potential threat to the safety of living beings, it not would be debarred from invoking extra ordinary civil writ jurisdiction of the Court when the electrocution had taken place because of no fault of the victim”.

12. This Court in *Mustaq Ahmed's* case (*supra*) also discussed paragraph

26 of the judgment of the Supreme Court in the case of *SDO Grid*

Corporation Ltd. and others v. Timudu Oram, 2005 (6) SCC 156, which

is reproduced as under: -

“26. After referring to all the judgments, in our considered view, the ratio of the judgment handed down by the Apex Court in SDO Grid Corporation's case, AIR 2005 SC 3971 (*supra*) relied upon by Mr. Thakur and also made the basis for rejection of all the three writ petitions filed by the appellants, does not whittle down the law laid down by the Apex Court in M.P. Electricity Board's case, AIR 2002 SC 551 as in SDO Grid Corporation's case, AIR 2005 SC 3971 (*supra*), the Apex Court considered the earlier decision rendered in M.P. Electricity Board's case and without affecting the principle of “strict liability” distinguished the said judgment on the ground that the question of negligence was determined by Civil Court. Therefore, it can be reasonably understood that M.P. Electricity Board's case has been distinguished on its own facts and the Hon'ble Supreme Court has not taken any contrary view from the one already taken with regard to the doctrine of “strict liability” as discussed in extenso in the judgment of Constitution Bench of Supreme Court in M.C. Mehta's case, AIR 1987 SC 1086(*supra*).”

13. The question is that to what extent, petitioners would be entitled to

compensation on account of the injuries suffered by them due to electric

shock on account of negligence of respondents. Petitioner is shown to have 65% disability; petitioner no.2 has 40% disability; and petitioner no.3 has head injury. Payment of compensation to petitioners can be, at this stage, considered according to the Policy framed by the respondents for grant of *ex gratia* relief. For grant of *ex gratia* relief to employees of PDD, other persons or their heir and to owners of domestic animals, who are electrocuted and die or are rendered fully or partially disabled due to negligence of PDD, certain amendments have been made by the Government of Jammu & Kashmir, Finance Department, in the J&K Book of Financial Powers in Chapter 5.9 S.no.123-A(1) in terms of Government Order no.454-F of 2019 dated 24th October 2019, which reads as under:-

“Government of Jammu & Kashmir
Civil Secretariat, Finance Department

Subject: Amendment in the Jammu and Kashmir Book of Financial Powers.

Reference: SAC Decision No.271/22/2019 dated 22.10.2019

Government Order No. 454 -F of 2019
Dated:- 24 . 10 . 2019

Sanction is hereby accorded to the following amendments in the Jammu and Kashmir Book of Financial Powers: -
In the Book of Financial Powers in Chapter 5.9 against S.No.123- A(1), the column ‘Extent’ shall be recast as under:-

S. No.	Nature of power	To whom delegated	Extent
123-A	1) To grant Ex-gratia Relief in favour of the employees of the POD, other persons or their heir and to the owners of Domestic Animals, who are electrocuted and die, or are rendered fully/partially disabled due to the negligence of the	DCP	Full powers within the Budget Provisions with the following scales: A. Human Beings I. In case of Death: Rs.10.00 lacs II. Total Disability: Rs.7.50 lacs.

	PDD, subject to the condition that: i) All the employees of the PDD, whether regular, DRW/Casual labour, Work Charged, Contingent paid etc., engaged in the generation, transmission or supply of electrical energy in the Department, who are killed, incapacitated, wholly or partially, during the course of discharging their bona fide and legitimate duties; ii) Civilians, killed or injured, resulting in their partial or total disability, subject to the explicit condition that the accident is not attributable to them, but to the lapses, attributable to the PDD, as verified by the Director, TTI &C; iii) Domestic animals killed by electrocution, caused due to lapses, attributable to the Department and verified by the Director, TTI&C		III. Partial Disability:Rs.2.00 lacs In case of death of any employee, the Ex-gratia relief shall be paid to the legal heirs of the deceased. The payment shall be subject to the condition that the relief, granted by the Government under the Workman's Compensation, shall be adjusted while making payment of the Ex-gratia relief. <u>B. Domestic Animals</u> i. Cow, bull, horse: Rs.20,000 ii. Sheep/Goat: Rs.5000
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By order of the Government of Jammu & Kashmir.

Sd/-

(Dr.A.K.Mehta), IAS,
Financial Commissioner,
Finance Department.

No.A/68(01)-B-944

Dated: 24.10.2019"

14.Petitioner no.1 is disabled to the extent of 65%; petitioner no.2 is disabled to the extent of 40% and petitioner no.3 has also sustained injuries. It is germane to mention here that the State, being a welfare State, has framed the aforesaid policy, therefore, grant of *ex gratia* relief to petitioners in terms of the said policy would be just and proper to meet the ends of justice. As such, petitioners 1&2 are held entitled to

ex gratia relief of Rs.7.50 Lacs each and petitioner no.3 is held entitled to Rs.2.00 Lacs.

15.In view of the aforesaid discussion and in the facts and circumstances of the case, respondents are directed to pay petitioners 1&2 a sum of Rs.7.50 Lacs each, and petitioner no.3 a sum of Rs.2.00 Lacs as *ex gratia* relief along with interest at the rate of 6% per annum from the date of filing of this petition.

16.Disposed of.

(Vinod Chatterji Koul)
Judge

Srinagar

17.12.2024

Ajaz Ahmad, Secretary

Whether approved for reporting? Yes/No

