

2024:PHHC:163087



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-29058-2023

Date of decision: 05.12.2024

BHARAT AHIRWAR

.....Petitioner

VERSUS

DAKSHIN HARYANA BIJLI VITRAN NIGAM LIMITED AND
OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Sunil Tandon, Advocate
for the petitioner.
(Through Video Conferencing).

Mr. Vivek Saini, Advocate
for respondents No.1 to 3-DHBVNL.

VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present writ petition is to the order No. 186 dated 30.11.2023 (Annexure P-8) passed by the Executive Engineer Operation, Dakshin Haryana Bijli Vitran Nigam Limited Manesar, Gurugram –respondent No. 3 whereby the claim of the petitioner for grant of compensation has been rejected, with a further prayer that the respondents be directed to pay the compensation to the tune of Rs. 50 lacs, on account of death of Sandhya-wife of the petitioner.

2. Learned Counsel appearing on behalf of the petitioner contends that the petitioner, who was working as a Labourer lost his Wife Sandhya, aged 29 years due to electrocution. He submits that on 21.07.2021, the petitioner along with wife and another lady were doing the work of

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plastering in the house of one Ashok Kumar son of Bhavanar Singh. An 11 KV high tension wire was passing adjacent to the house. While on her way to the roof, Sandhya came into contact with HT line and suffered an electric current and consequential death. He submits that incident was reported to the Police whereupon FIR No. 266 dated 22.07.2021 was also registered at Police Station, Bilaspur, District Gurugram. An application was also submitted for grant of compensation but no steps were taken. Consequently, CWP-8336-2022 was filed by the petitioner which was disposed of by this Court vide order dated 15.09.2022 directing the respondents to take a decision on the claim of the petitioner within a period of four months. Since no decision was taken, a COCP-1365-2023 was filed on 11.09.2023 which was rendered infructuous since an order was passed on 07.06.2023 declining the claim of the petitioner. Aggrieved thereof, the petitioner filed CWP-14415 of 2023 which was disposed of by this Court vide order dated 07.10.2023 directing the respondents to take a decision on the claim of the petitioner within a period of four months of the date of receipt of certified copy thereof. After the matter having been remanded, the respondent No.3 has passed the order yet again on 30.11.2023, declining the claim for the same reasons. Hence, the present petition.

3. Counsel for the respondent-distribution licensee has been confronted with the prescribed conditions of the compensation policy as also the contents and reasoning given by the respondent No.3 in its order. The relevant extract of the speaking order bearing office order No. 87 dated

07.06.2023 and order No. 186 dated 30.11.2023 reads thus:-



ORDER No. 87 DATED 07.06.2023	ORDER No. 186 DATED 30.11.2023
<i>The site was visited by SDO (OP) sub division DHBVN Bhora Kalan on dated 23.07.2021 at 9.30 AM & found that un-authorized construction was running under HT line of 11 KV Bhora Kalan AP feeder line by Sh. Ashok Kumar S/o Sh. Bhawner Singh. Both workers Smt. Sandhya w/o Sh. Sunil resident of District Sagar (MP) and Smt. Sandhya w/o Sh. Bharat Ahirwar Disstt. Sagar Madhya Pardesh was working over the roof where line was passing nearby. The HT line was about 22 feet from the ground level and was/is at adequate height and accurate conditions. That Boombo, Pillars were installed in the nearby plot of Sh. Gajraj Chauhan for construction and plastering over the back side wall of under construction house. When both workers were trying to hand the cement mix/moter in the pan from top of roof to her fellow workers who were working in the back side of plot got electrocuted. A notice to remove the unauthorized constructions was also issued by SDO (OP) Sub division DHBVN Bhora Kalan vide his office memo no. 1038 dated 05.07.2021 to Sh. Ashok Kumar S/o Sh. Bhanwar Singh to remove the unauthorized construction's structure but he refused to take it. However, the</i>	<i>The site was visited by SDO (OP) sub division DHBVN Bhora Kalan on dated 23.07.2021 at 9.30 AM & found that un-authorized construction was running under HT line of 11 KV Bhora Kalan AP feeder line by Sh. Ashok Kumar Sio Sh. Bhawner Singh. Both workers Smt. Sandhya w/o Sh. Sunil resident of District Sagar (MP) and Smt. Sandhya w/o Sh. Bharat Ahirwar Distt. Sagar Madhya Pardesh was working over the roof where the line was passing nearby. The HT line was about 22 feet from the ground level and was/is at adequate height and accurate conditions. That Bamboo, Pillars were installed in the nearby plot of Sh. Gajraj Chauhan for construction and plastering over the back side wall of under construction house. When both workers were trying to hand the cement mix/motor in the pan from top of roof to her fellow workers who were working in the back side of plot got electrocuted. A notice to remove the unauthorized constructions was also issued by SDO (OP) Sub division DHBVN Bhora Kalan vide his office memo no.1038 dated 05.07.2021 to Sh. Ashok Kumar S/o Sh. Bhanwar Singh to remove the unauthorized construction's structure but he refused to take it. However, the</i>



<i>copy of notice was forwarded to concerned authorities ie SDM Civil Pataudi and SHO Bilashpur for taking necessary action against the owner of building. <u>Copy of notice and site photographs are attached.</u></i> <i>Keeping, in view of the facts explained above it is clear that there is no negligency on the part of the Nigam because the electricity line was/is in proper conditions at the time of said incident. That the owner of the said house is alone responsible for this accident because he has violated the terms and conditions of Electricity Act 2003 as well as indian Electricity Rules 1956.</i> <i>The Chief Engineer (OP) DHBVN Delhi, it has been decided to close the case without compensation vide his office order no. 59 dated 25.11.2021 after legal advice received from LR HPU HVPNL Panchkula.</i> <i>Therefore, claim of the petitioners are not feasible of acceptance and the same is rejected as there is no fault/negligancy on the part of the Nigam and the Nigam is nowhere responsible for this accident. Hence (DHBVN) cannot make liable to pay any compensation. That the electricity wire/cable is properly maintained by the DHBVN. There is no any</i>	<i>copy of notice was forwarded to concerned authorities i.e. SDM Civil Pataudi and SHO Bilaspur for taking necessary action against the owner of building.</i> <i>Keeping, in view of the facts explained above, it is clear that there is no negligence on the part of the Nigam because the electricity line was/is in proper conditions at the time of said incident. <u>As per DHBVN notification No. 17/SE/Admn/REG-15 dated 15.07.2019, private persons are also awarded compensation as per formula applicable to its regular employees in case the Nigam owns its negligence, but in the instant fatal accident case of 2 no private persons.</u> the owner of the said house is alone responsible for this accident because he has violated the terms and conditions of Electricity Act 2003 as well as Indian Electricity Rules 1956.</i> <i>As per section 161 of Electricity Act 2003, if any accident occur with the transmission, generation, distribution supply or use of electricity, the chief electricity inspector or electrical inspector appointed by the appropriate authority to holds an inquiry and report with respect to cause of accident and also responsibility. In the present matter as per CEI report the owner of</i>
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deficiency/negligency from DHBVN side.	the house has been held responsible for the aforesaid accident. That after, due considering the facts and circumstances of the case read with Section 1A of Fatal Accident Act, 1855, it is clear that accident occurred due to negligence of owner of the house and no wrongful act or any negligence can be attributed to Nigam. Therefore, the claim of the petitioner is not feasible of acceptance. <u>Conclusion: -</u> Keeping in view of above and hearing through Whatsapp video call with complainant, it is decided that the claim of the petitioners are not feasible of acceptance and the same is rejected as there is no fault/negligence on the part of the Nigam and the. Nigam is nowhere responsible for this accident. Hence (DHBVN) Nigam is nowhere responsible for this accident and hence, DHBVN cannot made liable to pay any compensation as horizontal/vertical distance of the lines as per Rule 60 & 61 of Central Electricity Authority Rules, 2010 was properly maintained:
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(Emphasis Supplied)

4. Counsel for the petitioner has been confronted with the fact that the respondent No.3 has not made a reference to the applicable Government policy about payment of compensation and the fresh order has been passed



only by a change of expression. It is also been pointed out by the Counsel that despite a specific reference had been made by this Court in its order that competent authority shall decide the claim made by the petitioner as per the policy dated 15.07.2019, however, the impugned order dated 30.11.2023 again fails to reflect a consideration of the policy dated 15.07.2019. It is stated therein that the policy provides for compensation to be paid to the regular employees whereas the policy also stipulates no fault compensation to third parties. Hence, the relevant clause have been conveniently ignored.

5. There is no mention in the order as to under what clause of the policy, the petitioner-claimant would be disentitled to the Award of compensation and what is the effect of a no fault liability that has been fastened upon the distribution licensee.

6. Counsel for the respondent is also not in a position to controvert the fact that Clause 11 of the Policy notified by the respondents has not been taken into consideration while passing the above said impugned order.

7. This Court is being repeatedly approached by the claimant aggrieved of mechanical orders being passed repeatedly by the Executing Officers without any reference to or meaningful interpretations of the policy notified by the Government, thus denying and depriving the victims of the compensation to which the law entitles them. Such a tendency shows a lackluster and a completely regressive attitude on the part of the authorities in shedding responsibility which needs to be curbed.



8. Some of the relevant clauses of the compensation Policy need a specific reference:-

“1. Dakshin Haryana Bijli Virtan Nigam (hereinafter called DHBVN) is engaged in activities which are hazardous and risky to human life. Presently, DHBVN pays compensation to its employees under Employees Compensation Act 1923. Similarly, private persons are also awarded compensation as per formula applicable to its regular employees in case the Nigam owns its negligence.

2. It has been noticed that there are certain discrepancies as well as inadequacy in the compensation presently being paid for the fatal as well as non-fatal accidents of human beings due to electrocution. Under such circumstances, the Nigam should compensate for the damage caused to human life due to electrocution, irrespective of any carelessness or fault on its part or on the part of employees of the Nigam.

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4. The compensation allowed under these instructions is over and above the benefits otherwise admissible to the concerned categories as per the terms of employment/contract/ applicable law.

7. Category of the affected person:-

The affected victims covered under the policy are categorized as under:-

I. Regular employees of the Nigam.

II. Contractual workers (Direct - Part Time and Full Time).



III. Contractual workers (Part Time and Full Time through contractors)

IV. Private Persons...

(a) Adults.

b) Children.

V. Workmen engaged by contractor on Nigam's works.

11. Private Person for Fatal Accident & Non-Fatal Accidents

DHBVN is engaged in the hazardous activity and risky for the human life and thus DHBVN owns strict liability for compensation to the private person. Accordingly, the compensation to the private person shall be payable in case of fatal as well as non-fatal accident irrespective of the reasons for such accident as the electricity system is open to the public. The compensation amount shall be payable as per provision of the Employees Compensation Act, 1923. However, this compensation shall be applicable for the accident cases occurring with the electrical network of the DHBVN and not in private premises.

(Emphasis Supplied)

9. It is evident that the policy stipulates payment of compensation for no fault as well and the only condition prescribed therein is that death ought to be from the public system of the distribution licensee. Despite the matter being sent twice, the bureaucratic approach seems to defeat its own policy.



10. The present writ petition is accordingly allowed, in view of the policy dated 15.07.2019. A no fault liability, as is admissible to the petitioner in terms of the policy dated 15.07.2019, be released in favour of the petitioner. The respondent No.3-Executive Engineer Operation, Dakshin Haryana Bijli Vitran Nigam Limited, would also be further subject to a ***cost of Rs. 25,000/- to be deposited with the “Haryana Legal Services Committee”*** for passing orders in a mechanical manner without any application of mind and without taking into consideration the objectives of the policy.

11. The cost may be recovered from the officer who passed the said order.

12. The benefits as ordered by this Court be released in favour of the petitioner within a period of three months of receipt of certified copy thereof failing which the petitioner shall be entitled to interest @ 6% from the date of filing of the present writ petition till its disbursement. The Department shall be entitled to recover the interest liability solely from the official(s) responsible for causing the delay.

(VINOD S. BHARDWAJ)
JUDGE

DECEMBER 05, 2024
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No