



W.P(MD) No.19843 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.12.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI**

**W.P(MD) No.19843 of 2017
&
W.M.P.(MD)No.6326 of 2019**

A.Rajesh

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Principal Secretary,
Energy Department,
Fort St.George, Chennai.

2.The Chairman, TANGEDCO,
10th Floor NPKRR Maaligai,
144, Anna Salai, Chennai-600 002.

3.The Superintending Engineer,
Kanyakumari Electricity Distribution Circle,
Nagercoil, Kanyakumari District.

4.T.K.Manikandan

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the respondents to pay Rs.25,00,000/- as compensation for the unnatural death of the petitioner's parents namely 1) Ayyadurai and 2) Mary due to the electrocution at the fourth respondent's farm land on 06.06.2016 or any other compensation amount fixed by this Court based on the petitioner's representation dated 04.04.2017 within a time stipulated by this Court.

For Petitioner : Mr.Ananth C.Rajesh

For Respondents : Mr.S.Shaji Bino
Special Government Pleader for R1

: Mr.S.Deenadhayalan
Standing Counsel for R2 & R3

: Mr.R.Gandhi, Senior Counsel
for Mr.P.Dharmaraj for R4

: Mr.S.C.Herold Singh
for proposed respondent / R5



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ORDER

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(Order of the Court was made by **G.R.SWAMINATHAN, J.**)

Heard both sides.

2.The writ petitioner's parents were agricultural labourers. On 06.06.2016, they came in contact with the electric fencing unauthorizedly put up in the petition-mentioned land. Both tragically died due to electrocution. In this regard, Crime No.215 of 2016 was registered on the file of the Boothapandy Police Station. The deceased had left behind three children including the writ petitioner herein. Each of them was paid a sum of Rs.2,00,000/- towards ex-gratia by TANGEDCO. Contending that the amount paid was insufficient, W.P.(MD)No.19843 of 2017 was filed.

3.The matter was listed before His Lordship The Hon'ble Mr.Justice K.Kumaresh Babu. His Lordship noted that on the issue of liability of TANGEDCO in respect of such deaths, there are conflicting views. In *B.Kumar v. State of Tamil Nadu and ors* (WP(MD)No.4388 of 2020 dated 04.10.2023), the petitioner sought compensation for the



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death of his father who had come into contact with an unauthorised electric fencing put up by a private party. The learned Judge took the view that without going into the issue as to whether there was negligence on the part of the Electricity Department, ex-gratia payment must be paid by TANGEDCO to the tune of Rs.5.00 lakhs as per Board Proceedings No.6 dated 16.10.2019. In ***M.Devi v. The Chairman, TNEB*** (WP(MD)No.21207 of 2021), it was held that TANGEDCO cannot be made liable to pay any compensation for the death that occurred due to illegal erection of electric wire fencing by a private party. It is interesting to note both the orders were delivered by His Lordship Mr.Justice N.Anand Venkatesh.

4.Following the note put up by the Registry, the writ petition has been placed before us to resolve the conflicting views.

5.In fact, such conflicting opinions had been rendered by earlier Benches also. In ***Superintending Engineer, TNEB v. Sundari (2009) 6 CTC 487***, it was held that the electricity board officials are expected to go on rounds to see as to whether there is any misuse of electricity



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supply. The learned Judge felt that if such oversight had been there, the unauthorised electric fencing would not have been put up and the death due to electrocution would have been prevented. Since the officials were negligent, by applying strict liability theory, the Board was made liable.

6.Contra view was taken in ***Duraiswamy v. E.E, Operation and Maintenance, Trichy (2012) 2 CWC 401***. It was observed therein that such continuous supervision was physically impossible and the electricity board was held not liable for the illegal act committed by the consumers.

7.The learned counsel appearing for the writ petitioner submitted that the principles of strict liability has to be applied in this case and that the TANGEDCO is answerable. He relied on the decision of the Hon'ble Supreme Court reported in ***(2002) 2 SCC 162 (M.P.Electricity Board Vs. Shail Kumari)***.

8.The learned Standing Counsel for TANGEDCO on the other hand drew our attention to the decision of the Hon'ble Division Bench of



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the Kerala High Court in *RFA.No.676 of 2011 (K.J.James Vs. The Secretary, Kerala State Electricity Board)*. Vide order dated

30.05.2014, the Kerala High Court had held that the electricity board will not be liable for any consequences arising out of the unauthorised fencing put up by third parties. According to TANGEDCO, the fourth respondent, who is the land owner, must be mulcted with liability and not the Corporation.

9.The learned counsel for the land owner on the other hand takes the plea that it was the lessee ie., the fifth respondent who had put up the electric fencing unauthorisedly and that it is he who must answer.

10.The learned counsel appearing for the fifth respondent claims that there is no lessee-lessor relationship with the fourth respondent at all. According to him, the fifth respondent had been falsely implicated on account of previous enmity. He also would add that the fifth respondent had been acquitted in the criminal case.

11.In response to the aforesaid submission, the learned Senior



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Counsel appearing for the fourth respondent would point out that the acquittal was not on merits but only by granting the benefit of doubt.

12. We carefully considered the rival contentions and went through the materials on record. Two issues arise for consideration before us :

(I) Whether TANGEDCO can be made liable for deaths that occur due to unauthorised erection of electric fences ?

(II) If TANGEDCO cannot be made liable, on whom the liability should be fastened ?

13. Liability can ordinarily be fastened in tort only on proof of negligence. One exception to this rule is the concept of strict liability. This exception is commonly known as the rule in ***Rylands v. Fletcher*** (LR) 3 H.L 330. The principle was stated in the following terms :

“...The person who, for his own purposes, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril ; and if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing



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that the escape was owing to the plaintiff's default ; or, perhaps that escape was the consequence of vis major, or the act of god..”

14.This principle has been adopted in our jurisprudence also (vide ***Charan Lal Sahu v. UOI (1990) 1 SCC 613, Gujarat SRTC v. Ramanbhai Prabhatbhai (1987) 3 SCC 234***). In ***UOI v. Prabakaran Vijaya Kumar (2008) 9 SCC 527***, the Hon'ble Supreme Court held that strict liability focuses on nature of the defendant's activity as opposed to his negligence and that the undertakers of those activities which are so hazardous that they may constitute a danger to the person or property of another have to compensate for the damage caused by them irrespective of any fault on their part.

15.The rule in ***Rylands v. Fletcher*** can be applied against the defendant only if it can be shown that the dangerous thing, which caused the mischief or damage, escaped from his custody. Where the person who is sought to be made liable had no domain or possession or control over the dangerous thing, the principle of strict liability cannot be applied. Coming to the case on hand, TANGEDCO is no doubt an undertaker of a hazardous activity. But as a licensee under the Electricity Act, it supplies

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electricity to its consumers. There are generation points. There are transmission lines. They are under the domain and control of TANGEDCO/TANTRANSCO. But when a consumer is in receipt of electricity supply and he resorts to illegal or unauthorised use, TANGEDCO cannot be said to be in control of the situation at all. It is the consumer who has brought into his land or premises the dangerous thing for his own purposes. And it is the consumer who must take the consequence of his actions. It would be running counter to the elementary principles of liability to fasten responsibility on TANGEDCO for such deaths due to electrocution. It is well settled that putting up electric fencing is illegal. If a consumer erects such an illegal fence and death ensues as a result, it is the person who erected the fence who is liable and not TANGEDCO. We are conscious that views have been expressed that TANGEDCO's duty is to prevent such erections. However, we remind ourselves that law does not compel a man to do what he cannot possibly perform (*Lex non cogit ad impossibilia*). India is a vast country. A public organisation like TANGEDCO suffers from chronic shortage of manpower. It is impossible to maintain a round the clock vigil over the activity of every consumer. If a particular consumer



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indulges in an illegality, it is he who must be made answerable and not the TANGEDCO.

16.The Hon'ble Division Bench of the Kerala High Court in *RFA.No.676 of 2011 (K.J.James Vs. The Secretary, Kerala State Electricity Board)* held that duty to take care in case of unauthorised fencing is on the person who operates such activity. The neighbourhood principle that is envisaged under the Tort law of jurisprudence really indicates that an act which is under contemplation and in control of a person, that person is liable for any mischief arising out of the act. Statutory duty on the part of the board is only to grant permit or refuse permit to put up energised fencing. This will in no way bring nexus to the operation of such fencing by the person concerned.

17.We respectfully concur with the view taken by the Hon'ble Kerala High Court in the aforesaid decision. We endorse the view taken in *Duraiswamy v. E.E, Operation and Maintenance, Trichy (2012) 2 CWC 401* as well as *M.Devi v. The Chairman, TNEB (WP(MD)No. 21207 of 2021*. We overrule the view taken in *Superintending Engineer, TNEB v. Sundari (2009) 6 CTC 487*.



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18.Payment of ex-gratia by TANGEDCO will not make it liable.

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In ***Reliance General Insurance Company Ltd. v. Manjula Kabiraj Das (2023 ; BHC – AS ; 12015)***, the Bombay High Court held that ex-gratia means “by favour”. It is a payment voluntarily made. We hold that TANGEDCO cannot be directed to make ex-gratia payments. Whether to pay or not in such cases may be left to the compassionate decision of the body.

19.Once we exonerate TANGEDCO, liability must be fastened on either of the private parties or both. In writ proceedings, it is not possible to adjudicate factual aspects. This is particularly because the fifth respondent completely denies the very existence of the lessee-lessor relationship. At the same time, the writ petitioner cannot be rendered remedyless. I permit the petitioner to institute a suit before the jurisdictional Civil Court. If such a suit is filed within eight weeks from the date of receipt of a copy of this order, it shall be entertained without reference to limitation. None of the defendants shall be allowed to raise the plea of limitation. The civil court will determine the question of liability on the basis of the evidence adduced before it. Merely because



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the fifth respondent has been acquitted in the criminal case, that by itself is not decisive of the issue. In ***Kishan Singh v. Gurpal Singh*** and ors **(2010) 8 SCC 775**, it was held that findings in civil or criminal cases are independent. Standard of proof differ. Whereas in civil cases it is preponderance of probabilities, in criminal cases it is proof beyond reasonable doubt. The threshold in criminal cases is higher. The prosecution could not meet that bar and that is how, the fifth respondent secured acquittal. The judgment of acquittal will not bind the civil court in which the suit for damages may be instituted by the petitioner/legal heirs of the deceased.

20.Considering the economic circumstances of the writ petitioner and his siblings, one of whom is said to be mentally challenged, we permit the petitioner and his siblings to file a suit without paying court fee. The civil court shall number the suit immediately and dispose it of on merits and in accordance with law within a period of eight months thereafter.



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21.The writ appeal is disposed of accordingly. No costs.

Consequently, connected miscellaneous petition is closed.

(G.R.S., J.) & (R.K.M., J.)
10.12.2025

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
rmi/skm

To

The Principal Secretary,
Energy Department,
Fort St.George, Chennai.



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AND
R.KALAIMATHI, J.

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