

**(2007) 07 DEL CK 0248**

**In the Delhi High Court**

**Case No :** Writ Petition (C) No. 5510 of 1998 and CM No. 7565 of 2005 and Writ Petition (C) No's. 5811 of 2001 and 5016 and 6704 of 2002

Abdul Haque and Others

APPELLANT

Vs

BSES Yamuna Power Ltd. and Others <BR> Surender Kaur  
Vs BSES Rajdhani Power Ltd. <BR> Smt. Ram Wati Vs BSES  
Yamuna Power Ltd. <BR> Smt. Sunderpatta Vs BSES  
Rajdhani Power Ltd. and Others

RESPONDENT

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**Date of Decision :** 20-07-2007

**Acts Referred:**

Arbitration and Conciliation Act, 1996 — Section 7  
Constitution of India, 1950 — Article 142, 226  
Limitation Act, 1963 — Section 14

**Citation :** (2007) 142 DLT 526 : (2007) 97 DRJ 415

**Hon'ble Judges :** Dr. S. Muralidhar, J

**Bench :** Single Bench

**Advocate :** H.L. Narula and Bhupesh Narula, in Writ Petition C No. 5510 of 1998 and CM No. 7565/2005, Fanish K. Jha, in Writ Petition C No. 5811 of 2001, B.S. Randhawa, in Writ Petition C No. 5016 of 2002 and S.C. Sagar, in Writ Petition C No. 6704 of 200, for the Appellant; Rajnish Jha, Gurdev Pal Singh, for MCD in Writ Petition (C) No. 5510 of 1998 and CM No. 7565/2005 and J.J. Sarkar, for DDA in Writ Pertition (C) No. 5510 of 1998 and CM No. 7565/2005, Aditya Jhanji, for Viraj R. Datar in Writ Petition (C) No. 5811 of 2001, Anupam Verma in Writ Petition (C) No. 5016 of 2002 and Vaishali Mehra, in Writ Petition (C) No. 6704 of 2002, Gyan Prakash and Vishnu Dayal for Respondent No. 2 in Writ Petition (C) No. 6704 of 2002 and Payal Srivastava, for GNCTD in Writ Petition (C) No. 6704 of 2002, for the Respondent

**Final Decision :** Dismissed

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## Judgement

S. Muralidhar, J.—In each of these four writ petitions the principal relief sought is a direction to the Respondents to pay compensation to the petitioners who are the legal representatives of persons who died as a result of electrocution after coming into contact with a live electricity wire. Since the facts and the reliefs claimed are similar, these petitions are being disposed of by this common

judgment. This Court proceeds to uphold the preliminary objection of the respondent based on the judgments of the Hon'ble Supreme Court, that since these petitions involve adjudication of disputed questions of fact, they are not maintainable as such under Article 226 of the Constitution.

2. In the first petition Abdul Haque v. DVB, the claim is by the parents, widow and the child of the deceased Shri Allam, aged about 30 years who is stated to have been electrocuted at about 2.45 p.m on 1.7.1998 near Lal Mohd. Masjid, D-Block, New Seemapuri, while trying to put aside an electric wire lying on the road. It is stated that the wires had been lying on the road for some days prior to the incident and no action was being taken despite complaints made by the persons of the locality. The claimant as well as the deceased were the residents of jhuggies in the area. It is submitted in the petition that the Respondent No. 1-Delhi Vidyut Board ("DVB") is under an obligation to provide safety measures to ensure the upkeep of the electric wires. The petitioners say that the death of Allam occurred due to the negligence of the DVB. They have claimed compensation in the sum of Rs. 13 lakhs.

3. The counter affidavit filed by the DVB on 18.2.1999 denies any liability. It is stated that there was no live electricity wire on the roads kept by DVB and that no complaint was received with regard to the illegal extension of wire by the dweller of Jhuggi Jhopri (JJ) clusters. It is denied that the deceased died of electrocution. It is claimed that the concerned JJ cluster is an Un electrified pocket and it is possible that the dwellers of the JJ clusters might have illegally extended wires from DVB poles for theft of electricity without any permission of DVB.

4. At one stage on 21.9.2000 this Court took note of the submissions made by the petitioner with reference to certain photographs to indicate that the JJ colony concerned was electrified. The respondent was then asked to file an affidavit indicating whether the colony was electrified. An affidavit was filed on 20.4.2001 on behalf of the respondent stating that "the pocket in question i.e. Jhuggi Jhopri colony D-Block, New Seema Puri is totally Un electrified pocket. There is no electrification of any nature and there is no transformer installed." It was stated that there is no DVB mains/poles in the said area. It was denied that the steel tubbier poles with street light fitting (as indicated in the photographs produced by the petitioners) has not been provided by the DVB and that the photographs themselves show that "the whole abadi is using electricity by tapping from DVB mains."

5. This Court felt that if the DVB had not put up the poles as shown in the photographs filed by the petitioners, the MCD and the DDA should be made parties. Accordingly, the following order was passed on 24.4.2001:

In view of the additional affidavit filed by respondents that respondent have not put up the poles as shown in the photographs filed by the petitioners and MCD and DDA being not a party before me, there is no ground to interfere. At this

stage counsel for the petitioner says that he would like to implead MCD and DDA as party in view of the additional affidavit filed by the respondents. On the oral request of petitioner, MCD and DDA are made parties in this case. Let amended memo of parties be filed within one week. Thereafter notice be issued to the newly impleaded respondents MCD and DDA, on filing of process fee, both by ordinary process as well as registered A/D covers, returnable on 27.9.2001.

6. Thereafter the MCD and the DDA have filed their respective reply affidavits. The DDA has denied its liability in the matter stating that it had taken the possession of the area in question only on 27.3.1979. The MCD has not filed any affidavit.

7. On 19.4.2005 the BSES Yamuna Power Limited the successor-in-interest of the DVB was impleaded as Respondent No. 1 in its place. The parties were directed to file their respective written submissions by an order dated 10.5.2005. A compilation of judgments has been filed by learned Counsel for the petitioner. Respondent No. 1 sought to rely upon the judgments of the Hon'ble Supreme Court in *Chairman, Grid Corporation of Orissa Ltd. (Gridco) and Others Vs. Smt. Sukamani Das and Another*, and *Tamil Nadu Electricity Board Vs. Sumathi and Others*, to contend that the petition was not maintainable.

8. The facts in the second petition *Surender Kaur v. Delhi Vidyut Board* are that the deceased Puran Singh, husband of the petitioner, who was living in D-300, Ambedkar Colony, Chattarpur, New Delhi went to attend the call of nature on 16.6.1998 at about 8.30/9.00 a.m. It is stated that he came in contact with a naked electric wire and fell unconscious on account of shock. He was declared brought dead to the All India Institute of Medical Sciences. The postmortem report confirmed the cause of death as ante-mortem injury in the form an "electric entry wound (laceration type)". The deceased was 36 years at the time of death leaving behind his widow and four minor children aged 12, 6, 4 and one and half years. He was employed as a Constable with the Delhi Police drawing a salary of about Rs. 5,900/- per month. It was stated that late Puran Singh's family was in dire straits. It is claimed that the death occurred due to the negligence of the DVB which was responsible for the safety and upkeep of the electric cables in the area.

9. The writ petition was filed on 19.9.2001. On 6.8.2002 a counter affidavit was filed by the DVB pointing out that as a result of privatization of the power sector in Delhi, the DVB had ceased to exist. It was further pointed out that the petition involved disputed questions of facts which could not be examined in a writ petition. The proper remedy for the petitioner was to file a civil suit. Any negligence on the part of the DVB was denied. The petitioner was on 6.8.2002 permitted to implead the BSES Rajdhani Power Limited as a respondent. The petition was dismissed for default on 29.11.2005 but has been restored to file by a separate order made today.

10. In the third petition *Ram Wati v. Govt. of NCT of Delhi* the petitioner is the wife of late Shri Peter Yunus who died as a result of the electrocution on 8.7.2001 at about 1.30 am when an electric wire fell over his head in front of his house at Kichiripur, Delhi. It is stated that the postmortem report also confirmed death due to electrocution. The deceased Peter Yunus has left behind his wife (the petitioner) and five children aged 21, 18, 16, 13 and 11 years respectively, three of whom are sons and two daughters. It is claimed that the death was caused on account of the negligence of the DVB as it had failed to perform its obligation to maintain the electric wires. The successor-in-interest of the DVB viz., the BSES Rajdhani Power Ltd., was imp leaded in its place. The petitioner had earlier approached the State Consumer Disputes Redressal Commission with a claim for compensation which however was withdrawn on 7.5.2002 with liberty to approach the appropriate Civil Court for the redressal of her grievances.

11. In its counter affidavit, the DVB raised a preliminary objection as to the maintainability of the petition on the ground that it involved disputed questions of fact. It was again pointed out that the DVB has ceased to exist and the successor-in-interest of the DVB, the BSES Yamuna Power Limited (BYPL) was imp leaded in its place. The BYPL by its affidavit dated 5.9.2005 placed on record a copy of the report dated 21.4.2005 of the Accident Enquiry Committee which indicated that:

1. The illegal tapings are still existing and some of the residents of the colony are stealing electricity through these tapings.
2. All deteriorated conductor has been replaced with Dog Conductor.
3. The No. of residents of the area has extended their balconies/chajjas which has become accessible to BSES LV mains.
4. As reported by Manager (Oprn) information has been submitted to the MCD and Police Authorities for taking appropriate action.
5. The illegal construction are also found at site under LT Network of the Area due to which no proper vertical clearance found as per I.E. Rules.
6. Guarding through earth wire is existing at site to avoid accident due to snapping of conductor as per safety measures.

It was further pointed out in the Report that:

The Accident Enquiry Committee opined that similar conditions were prevailing at the time of accident. J.J. Cluster and J.J. Resettlement colony are still having considerable theft of energy which is a social problem and unless until strict laws are made to act as deterrent for the people indulging in theft of energy, it would be difficult to have 100% safety of consumer and residents in such like area.

13. The fourth petition *Sunderpatta v. DVB* arises out of the death of the petitioner's husband Babloo aged about 30 years on 30.6.2000 at about 9.30 p.m. After having his meal, Babloo had gone out for washing his hands and face

at a nearby tap within the premises of Budh Vihar Temple, Sidharth Basti, Hari Nagar Ashram, New Delhi. The family of the deceased was living with him there in a room on rent. It is stated that suddenly a high power electricity wire fell upon him and immediately he was taken to nearby hospital where he was declared "brought dead." The deceased was working as a private gardener and was earning Rs. 5,000/- per month. He had left behind his wife and four minor children. The postmortem report confirmed the death due to "ante mortem electrocution."

14. In the petition it is claimed that the Budh Vihar Temple was unauthorisedly siphoning electricity and supplying it to the tenants. In particular it was stated:

The dangerous pilferage electricity wiring were passing over the main gate of the temple via bathroom and latrine seemed to be found always in seepage (the pilferage electricity is continued by the respondent No. 3 by extracting the electricity from the main pole of supply which is controlled and supervised by the respondent No. 1 and 2 jointly and severally its staff till date). The pilferage electricity bifurcated to the tenants. The deceased and other tenants had asked the respondent No. 3 for installation of legal electricity meter to them but the respondent No. 3 was not least bothered about it nor making any reasonable care and cautions in this regard.

15. It is claimed that the respondent DVB failed to take reasonable precaution to ensure the safety and upkeep of the electric wires. The petitioner claimed a sum of Rs. 10 lakhs as compensation. A written complaint was initially given to the National Human Rights Commission and thereafter the present petition was filed on 19.10.2002.

16. The successor in interest of the DVB, BSES Rajdhani Power Limited has raised a preliminary objection as to the maintainability of the writ petition. It is further stated that the petition is barred by limitation u/s 72 of the Limitation Act. Reliance has been placed on a judgment of this Court in Smt. Krishna Chaubey and Others Vs. The Govt. of NCT of Delhi and Others, . On merits it was denied that the Respondent No. 1 was negligent and consequently liable to pay compensation. It was claimed that the petitioner in collusion with the Budh Vihar temple was stealing electricity.

17. Since the respondents in each of the aforesaid petitions have raised the plea of maintainability of the writ petition on account of the disputed questions of fact, this Court proposes to decide this issue first.

18.1 The first decision relied upon by the respondents is Chairman, Grid Corporation of Orissa Limited (GRIDCO) v. Smt. Sukamani Das (supra). The facts of that case were that one Pratap Chandra Das, while returning by walk to his village Amara in Orissa from another village, came in contact with an electric wire which was lying across the road. According to the claimants in that case, the electric wire had snapped on account of the negligence of GRIDCO and its officers who were required to maintain the electricity transmission line.

18.2 The legal representatives of the deceased claimed compensation in the sum of Rs. 3 lakhs against the GRIDCO by filing a writ petition in the Orissa High Court under Article 226 of the Constitution. In their reply in those proceedings, the GRIDCO took a stand that 12 WLT line had snapped on account of thunderbolt and lightning even though proper guarding was provided. Therefore, the death due to negligence was denied and the defense of an act of God was raised. It was also contended that since the matter involved the disputed questions of fact, the writ petition was not maintainable. The High Court nevertheless awarded the petitioners compensation in the sum of Rs. 1 lakh. GRIDCO then appealed to the Hon"ble Supreme Court.

18.3 Reversing the decision of the High Court, the Hon"ble Supreme Court held (SCC, p. 301):

6. In our opinion, the High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Article 226 of the Constitution. The High Court went wrong in proceeding on the basis that as the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission lines of the appellants, that "admittedly prima facie amounted to negligence on the part of the appellants". The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. Mere fact that the wire of the electric transmission line belonging to the appellant No. 1 had snapped and the deceased had come into contact with it and had died was not by itself sufficient for awarding compensation. It also required to be examined whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had come into contact with the wire. In view of the specific defenses raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their control or unauthorised intervention of third parties or that the deceased had not died in the manner stated by the petitioner. These questions could not have been decided properly on the basis of affidavits only. It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy. The High Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High Court should have directed the writ petitioners to approach the Civil Court as it was done in OJC No. 5229 of 1995.

18.4 In Sukamani Das, the earlier decision in Shakuntala Devi (Smt) Vs. Delhi Electric Supply Undertaking and Others, was held inapplicable as in that case it was held the question of negligence "can be properly examined in a suit where correct facts can be established.? The respondent had been directed to make payment of a reasonable amount ex gratia in exercise of the powers of the

Hon''ble Supreme Court under Article 142 of the Constitution. In Sukamani Das the Hon''ble Supreme Court observed that the power under Article 142 was not available to the High Courts while exercising their powers under Article 226 of the Constitution, as held in *Sanchalakshri v. Vijayakumar Raghuvirprasad Mehta* (1998) 2 SCC 245.

19. In a short order in 2002 ACJ 337 (SC) , a two-Judge Bench of the Hon''ble Supreme Court observed in the facts of that case:

Looking to the fact that the two victims were electrocuted because of an illegal hooking for the purpose of theft of electricity, the petitioners cannot be held guilty of negligence although they may have stated that there is a need for conducting dehooking raids more frequently.

The Hon''ble Supreme Court while declining to interfere with the impugned order of the High Court directed that the High Court's finding to the effect that "the two victims had died because of the negligence of the State Electricity Board" should be deleted from the impugned order. However, the amount paid as compensation was asked not to be refunded.

20.1 In *T.N. Electricity Board v. Sumathi* (supra), the questions which arose for consideration were:

(1) Can the High Court under Article 226 of the Constitution award compensation for death caused due to electrocution on account of improper maintenance of electric wires or equipment by the Tamil Nadu Electricity Board, the appellant; and

(2) Whether the High Court while exercising jurisdiction under Article 226 of the Constitution can appoint an arbitrator under the Arbitration and Conciliation Act, 1996 (new Act) to decide the quantum of compensation and then make the award of the arbitrator rule of the court.

20.2 The Hon''ble Supreme Court in *Sumathi* was again dealing with a case where a writ petition had been filed in the Madras High Court claiming compensation for the death of a victim due to electrocution on account of improper, maintenance of electric wires or equipments by the Tamil Nadu Electricity Board." The High Court referred the matter to an arbitrator and then proceeded to award compensation in terms of the arbitrator's award. The Hon''ble Supreme Court took note of the decisions in *Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others*, , *The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others*, , and *Sukamani Das* and held (SCC, p. 552):

Since disputed questions of facts arose in the present appeals the High Court should not have entertained writ petitions under Article 226 of the Constitution and then referred the matter to arbitration in violation of the provisions of the new Act. There was no arbitration agreement within the meaning of Section 7 of the new Act. Under the new Act award can be enforced as if it is a decree of a

court and yet the High Court passed a decree in terms of the award which is not warranted by the provisions of the new Act. The appellant had also raised the plea of bar of limitation as in many cases if suits had been filed those would have been dismissed as having been filed beyond the period of limitation. In our opinion exercise of jurisdiction by the High Court in entertaining the petitions was not proper and the High Court in any case could not have proceeded to have the matter adjudicated by an arbitrator in violation of the provisions of the new Act.

Impliedly, Therefore, the Hon''ble Supreme Court in *Sumathi* distinguished the decisions in *Nilabati Behera* and *Chandrima Das* in their application to a case where the claim was for compensation for death due to electrocution and where the facts were disputed.

21. Two years later in *Madhya Pradesh Electricity Board Vs. Shail Kumari and Others*, a two-Judge Bench of the Hon''ble Supreme Court applied the strict liability principle to award compensation in a case of death due to electrocution. However, an important distinguishing feature in this case was that the Court was considering an appeal arising out of a judgment in a civil suit filed by the heirs of the victim for compensation. Therefore, the Hon''ble Supreme Court had no occasion to consider the issue of maintainability of a writ petition for the same relief under Article 226 of the Constitution.

22.1 The question of payment of compensation in a writ petition under Article 226 for the death due to the electrocution again came up for consideration before a two-Judge Bench of the Hon''ble Supreme Court in *Haryana State Electricity Board v. Ram Nath* : (2004)5SCC793 . The facts here were that a five-year old child died as a result of coming into contact with a high- tension wire which was passed over the roof of her house. It is noticed in the counter affidavit filed in the writ petition there was no denial to these averments except stating that "the entire colony was an unauthorized colony and that unauthorizedly the height of the houses had been raised." The Hon''ble Supreme Court observed:

To the categoric averments set out hereinabove that the wires had become loose and were drooping and touching the roof of the houses, there is no denial. To the categoric averments that complaints had been made, both in writing and orally, requesting that the wires had to be tightened, there is no denial. A mere vague statement to the effect that the height was as per the prescribed limit does not detract from the facts that there is a deemed admission that the wires were drooping and touching the roofs.

22.2 In *Ram Nath*, the Hon''ble Supreme Court noticed the judgment of *Sukamani Das* but impliedly distinguished it on the ground that the case being decided by it (i.e. *Ram Nath*) did not involve disputed questions of fact. The Court found that (SCC, p 795)

...the unauthorized constructions have been put up close to their wires it is their duty to ensure that the construction is got demolished by moving the appropriate authorities and if necessary, by moving the court of law. Otherwise, they would

take the consequences of their inaction. If there are complaints that these wires are drooping and almost touching houses, they have to ensure that the required distance is kept between the houses and the wires, even though the houses be unauthorized.

23.1 The question of maintainability of a writ petition for claiming compensation for a death due to electrocution was again examined by a two-Judge Bench of the Hon''ble Supreme Court in *S.D.O. Grid Corporation of Orissa Ltd. and Others Vs. Timudu Oram*, . The petitions were in fact part of a batch of writ petitions that were disposed of by the judgment in *Sukamani Das*. However, for some reason, they were not taken up along with that batch. The facts were more or less similar. A co-villager of the deceased had taken power supply to his LI point. Some other villagers had illegally taken power supply from this line by using a hook from the LI point to their houses by means of an insulated GI pipe. The unauthorized line got disconnected and fell on the ground. On 22.8.1978 when the father of the respondent was coming along that way, his bullock came in contact with the live GI wire and got electrocuted. His wife came to his rescue and hearing her cries, her father while trying to rescue her also got electrocuted. A writ petition under Article 226 of the Constitution claiming compensation was filed. In the counter affidavit GRIDCO denied its negligence pointing out that the electric wire got snapped on account of the illegal hooking.

23.2 In *Timudu Oram*, an attempt was made to get the Hon''ble Supreme Court to distinguish its earlier ruling in *Sukamani Das* by referring to the decisions in *Shail Kumari* and *Ram Nath*. Nevertheless, the Supreme Court held that the case would be covered by *Sukamani Das* since it involved disputed questions of fact. It was held that the High Court erred in entertaining the writ petition under Article 226 of the Constitution after a lapse of ten years.

24. The approach of the Hon''ble Supreme Court in certain other cases where writ petitions have been filed claiming compensation for constitutional wrongs, involving death or injuries not due to electrocution, has been different. The most prominent among these decisions are *Rudul Sah Vs. State of Bihar* and *Another*, , *D.K. Basu Vs. State of West Bengal*, and *Chairman, Railway Board v. Chandrima Das* (supra). Significantly, some of these judgments have been noticed in *Tamil Nadu Electricity Board v. Sumathi* (supra) and it has nevertheless been held that in cases of electrocution involving disputed questions of fact a writ petition under Article 226 is not maintainable. It is in the electrocution cases as can be seen from the discussion hereinabove, that the approach has been different. In *Ram Nath*, the Hon''ble Supreme Court upheld the award of compensation by distinguishing *Sukamani Das*. Later, in *Timudu Oram*, after noticing and distinguishing *Ram Nath* the Hon''ble Supreme Court reiterated and followed the decision *Sukamani Das* holding that a writ petition under Article 226 was not maintainable. The decision in *Sumathi* is also to the same effect. All these decisions are of two- Judge benches. *Timudu Oram*, being the most recent decision, and consistent with *Sukamani Das* and *Sumathi* must be held to

express the present status of the law and is binding.

25. The net result is that in cases involving claim for compensation on account of death due to electrocution, where the facts are disputed, the Hon''ble Supreme Court has held that a writ petition for payment of compensation is not maintainable under Article 226 of the Constitution. The remedy in such cases will obviously be only before the Civil Court.

26. Resultantly, the question whether the alleged illegal tapping of electricity, even if proved in a given case, will provide a defense to the electricity distribution company to avoid the applicability of the strict liability principle, need not be examined in the present proceedings.

27. The petitioners in the present cases have sought to rely upon the judgments of the High Courts, including this Court, where compensation has been awarded in a writ petition under Article 226 of the Constitution. Reference has made to the judgments in Smt. Shobha v. Govt. of Nct of Delhi 2003 IV AD (Del) 492, Poonam Sharma v. Union of India 2003 VI AD (Del) 373, Association of Victims of Uphaar Tragedy v. Union of India 2003 (2) JCC 715, Kamla Devi v. Govt. of NCT of Delhi 2004 VI AD (Del) 557, B.L. Wali v. Union of India 2004 VIII AD (Del) 341 , A.V.V.N.L. and Others Vs. Smt. Sarli and Others, Rizwan Ahmad Vs. The State of Bihar and Others, , M.P. Electricity Board Vs. Smt. Sunder Bai and Others, Suni Manoj Mathew v. BSES Rajdhani 2006 (1) LRC 339 and Ramesh Singh Pawar Vs. M.P. Electricity Board and Others,

28. However, only four of the cited judgments pertain to claims for compensation for death due to electrocution. The approach in these cases has been to apply either the strict liability principle or the rest ipsa loquitur principle to justify the award of compensation under Article 226 of the Constitution.

29. In A.V.V.N.L. v. Smt. Sarli (supra), a reference has been made to the decision in Shail Kumari in order to justify the award of the compensation. However the case was an appeal before the High Court against the judgment of the Additional District Judge in a civil suit. Likewise, in M.P. Electricity Board v. Smt. Sunder Bai (supra), also the case came up by way of an appeal from a judgment in a civil suit. Neither decision Therefore considered the issue of maintainability of a writ petition claiming compensation for death due to electrocution.

30. The judgment of the Division Bench of the Patna High Court in Bihar of Electricity Board v. Ram Swaroop Yadav (supra) does not advert to the question of maintainability of the writ petition under Article 226 of the Constitution. Therefore, no reference has been made to any of the judgments of the Hon''ble Supreme Court in the electrocution cases referred to above.

31. The judgment in Suni Manoj Mathew v. BSES Rajdhani (supra) was rendered by a learned Single Judge of this Court in a writ petition under Article 226 of the Constitution. The Court granted compensation to the petitioner for the death as a result of a heavy metal ladder used for repairing street lighting rolling down the

pavement and colliding with a motorcycle being driven by the victim. It was not a case of death due to electrocution. That perhaps explains why no reference was made to any of the judgments of the Hon''ble Supreme Court in the electrocution cases.

32. Ramesh Singh Pawar v. Madhya Pradesh Electricity Board (supra) is a judgment by a learned Single Judge of the Madhya Pradesh High Court in a writ petition under Article 226 of the Constitution. The learned Single Judge referred to both judgments Sukamani Das and Shail Kumari and sought to distinguish Sukamani Das on the reasoning that the judgment in Shail Kumari is a later one. However the learned Single Judge appears to have overlooked the fact that Shail Kumari was not a decision arising out of the writ petition under Article 226 of the Constitution but in an appeal against a decision in a civil suit. While, as has been pointed out in this decision, it is true that the principle of strict liability enunciated in Nilabati Behera had not been considered by the Hon''ble Supreme Court in Sukamani Das, the subsequent decision in Sumathi does notice those decisions and yet adopts the same line as Sukamani Das. Further, the judgment in Sukamani Das has been followed by the subsequent judgment in Timudu Oram. For the all the above reasons, none of the judgments of the High Courts relied upon by the petitioners can help their cases.

33. In the cases on hand, the victims belong to the economically weaker section of the society. The deaths of the victims have indeed occurred in tragic circumstances. The fact of death due to electrocution in each case is not disputed. However, the respondent electricity distribution company has denied liability on the ground that the live wire with which the victim came into contact was illegally tapped. In Sukamani Das it was held that mere fact that the wire of the electric transmission line belonging to the appellant No. 1 had snapped and the deceased had come into contact with it and had died was not by itself sufficient for awarding compensation.? The facts of the cases on hand are in that sense not very different from the facts that arose for determination in the electrocution cases decided by the Hon''ble Supreme Court which have been referred to hereinabove.

34. This Court is conscious that relegating these petitioners to the civil court may delay the resolution of their claims but, in light of the binding decisions of the Hon''ble Supreme Court in Sukamani Das, Sumathi and Timudu Oram, this Court cannot possibly entertain these writ petitions and grant compensation by applying the principle of strict liability or rest ipsa loquitur.

35. This Court accordingly upholds the preliminary objection of the respondents that since these petitions involve adjudication of disputed questions of fact, they are not maintainable as such under Article 226 of the Constitution. However, it is made clear that it will be open to the petitioners to avail of other appropriate legal remedies in accordance with law. It is also made clear that the petitioners would be able to claim the benefit of Section 14 of the Limitation Act to explain the delay if any in approaching the civil court.

36. These writ petitions are, accordingly, dismissed with no order as to costs.