

(2015) 08 OHC CK 0030
In the Orissa High Court
Case No : Writ Petition (C) No. 11906 of 2009

Harihar Hota and Others

APPELLANT

Vs

Chief Executive Officer (M.D.), NESCO and Others

RESPONDENT

Date of Decision : 25-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 2 ILR Ori 793

Hon'ble Judges : B.R. Sarangi, J

Bench : Single Bench

Advocate : S.C. Routray, for the Appellant; D.N. Mohaptra, J. Mohanty, P.K. Mohanty, P.K. Nayak and S.N. Dash, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Dr. B.R. Sarangi, J—The petitioners being the parents of Rama Chandra Hota, who died due to electrocution having come in contact with live electric wire of 33 KV, have filed this application seeking for a direction to opposite parties to pay compensation of Rs. 10,00,000/- with interest @ 12% per annum from the date of accident till the date of payment and litigation cost.

2. The short fact of the case, in hand, is that the petitioners' son, Rama Chadnra Hota, who was aged about 28 years and had also acquired +2 qualification, while engaged himself in a colour painting work on 29.10.2007 of the residential house of Nirupama Swain, opposite party No. 9 of ward No. 5, Vyasagar Municipality, Jajpur Road, came in contact with live wire of 33KV line which was hanging at 2 feet height over the roof of the said residential house, as a result of which he sustained severe burn injuries and fell down and lost his sense at the spot. He was carried to Danagadi C.H.C., where after getting some preliminary treatment, he was shifted to SCB Medical College and Hospital, Cuttack where ultimately, he died on 05.11.2007 due to 95% burn injuries. In the post-mortem examination, the doctor opined that the death of Ramchandra was due to electrocution. Accordingly, Mangalabag Police Station registered a P.S.U.D. Case No. 1098 of

2007 on 05.11.2007, consequent upon which U.D.G.R. Case No. 1416 of 2007 was registered before the S.D.J.M., Cuttack. The FIR, Final Form, Inquest Report, Dead Body Challan, Post-mortem examination report, which are annexed as Annexure-2 series indicate that the deceased died due to electrocution followed by burn injuries. Therefore, the petitioners have claimed for compensation of Rs. 10,00,000/- with interest for the premature death of their son due to electrocution.

3. Mr. S.C. Routray, learned counsel for the petitioner strenuously urged that the death of the deceased occurred due to electrocution by coming in contact with live 33kV line which was drawn in a dangerous position over the house of opposite party No. 9. Therefore there is a negligence on the part of the electricity authority in drawing 33KV line over the house of opposite party No. 9, in a dangerous position. The deceased having come in contact with said electricity line while colouring the house of the opposite party No. 9, sustained burn injuries and thereafter succumbed to the same and therefore consequentially the petitioners are entitled to get the compensation as claimed in this petition.

4. Three separate counter affidavits have been filed, one by opposite party No. 1 and 6, one by opposite party Nos. 2 to 5 and 7 to 8 and the other by opposite party No. 9, namely Smt. Nirupama Swain.

5. Mr. A.K. Misha, learned counsel for opposite party Nos. 2 to 5 and 7 to 8 stated that the petitioners' son died due to electrocution by coming in contact with the 33 kv line electric wire due to negligence, fault and omission of opposite party No. 1 in maintaining the height and safety of live high voltage line which was passing over the roof of opposite party No. 9. It is categorically stated that the opposite party Nos. 1 to 8 are no way connected with any incident as after formation of GRIDCO by virtue of the Orissa Electricity Reforms Act, 1955, the GRIDCO owned and operated the distribution undertaking till 25.11.1998. Thereafter, the distribution undertaking of north-eastern part of Odisha was transferred to NESCO with effect from 26.11.1998. Thereafter GRIDCO has no role to play nor liable to pay compensation as claimed. Whereas NESCO authority, opposite party Nos. 2 to 5 and 7 to 8 has stated that the writ petition is not maintainable in view of Rule 82 of the Indian Electricity Rules, 1956 as the case of the petitioners involves disputed questions of fact. The petitioners having approached this Court earlier in W.P.(C) No. 4444 of 2009, which was dismissed on 30.03.2009 vide Annexure-10, for selfsame relief, the present writ petition is not maintainable. It is stated that the same amounts to suppression of facts. It is further urged that the police on enquiry has reported in the final report that there is no foul play. The 33 KV line has been connected since long i.e. prior to 1962 and the house of opposite party No. 9 was constructed much later than the 33 KV line constructed and therefore, no compensation can be payable to the petitioners. That apart, the permission for construction of house under 33 KV line as required under Rule-82 of the Indian Electricity Rules, 1956 has not been obtained and therefore, the benefit cannot be admissible to the petitioners. It is

stated that the death of the deceased has no connection with the present case. As per the Annexure-8, one proposal has been submitted in connection with shifting of 33 KV line but the same has not been done as it has been erected long before and more so, the contention raised by the petitioners that the deceased was earning Rs. 9,000/- per month from out of colouring work, has been disputed. In view of such position, the opposite parties strenuously refuted the claim of the petitioners to pay the compensation due to premature death of their son due to electrocution. In order to substantiate their case, reliance is placed on the judgments of the apex Court in West Bengal Essential Commodities Supply Corporation Vs. Swadesh Agro Farming and Storage Pvt. Ltd. and Another, AIR 1999 SC 3421 : (1999) 6 JT 599 : (1999) 123 PLR 618 : (1999) 5 SCALE 504 : (1999) 8 SCC 315 : (1999) 2 SCR 399 Supp : (2000) 1 UJ 107 : (1999) AIRSCW 3401 : (1999) 7 Supreme 629 ; W.B. State Electricity Board and Others Vs. Sachin Banerjee and Others, (2002) ACJ 337 : AIR 2000 SC 3629 : (1999) 9 SCC 21 and S.D.O. Grid Corporation of Orissa Ltd. and Others Vs. Timudu Oram, (2005) 3 ACC 508 : AIR 2005 SC 3971 : (2005) 5 CTC 695 : (2005) 6 JT 476 : (2005) 141 PLR 543 : (2005) 6 SCC 156 : (2005) 1 SCR 891 Supp : (2005) AIRSCW 3715 : (2005) 6 Supreme 209 .

6. Opposite party No. 9 has categorically stated that due to callous attitude of the authority, the accident has occurred, leading to the premature death of the deceased due to electrocution.

7. On the basis of the facts pleaded above, it is admitted fact that the deceased having come in contact with 33 KV line, suffered 95% burn injuries, carried to Danagadi C.H.C. thereafter he was shifted to S.C.B. Medical College and Hospital, Cuttack where he succumbed to injuries and the medical report as well as inquest report indicates that the petitioners' son died due to injuries on electrocution. Therefore, there is no dispute that the son of the petitioners sustained injury due to electrocution which caused him death.

8. Question now arises as to whether any negligence has been caused by the authority so as to entitle the petitioners to get the compensation as claimed in the petition. As it appears, the petitioners have not produced any materials save and except certain documents on which they rely indicating that there is a protest raised by the local people for shifting of the high tension line over the dense populated locality of Vysanagar area, but the same has not been acceded to by the authority. Unless negligence on the part of the authority is proved, the petitioners cannot be entitled to get compensation as claimed.

9. In exercise of power under Article 226 of the Constitution of India this Court has no jurisdiction to record any evidence to reach at a conclusion that there is negligence on the part of the opposite parties, but the inevitable conclusion is that the injury sustained by the deceased was due to electrocution as he came in contact with 33 KV line while painting. Therefore, the petitioners having lost the sole earning member of the family, may be entitled to get compensation as claimed by following a due procedure in accordance with law. The contention of

the opposite parties is that they have maintained high tension line in proper manner. Therefore, the claim made by the petitioners is not admissible. That question can only be adjudicated by adducing evidence whether there is negligence on the part of the authority in maintaining high tension line in the locality. In *Chairman Grid Corporation of Orissa Ltd. (supra)* the writ petition was filed by the wife of the deceased claiming compensation for the death of her husband due to electrocution on the ground that he came in contact with an electric wire which was lying across the road after getting snapped from the overhead electric line, because of negligence of GRIDCO and its officers in not properly maintaining the line. This Court awarded a compensation of Rs. 1 lakh merely relying upon the fact that live wire of the electric line belonging to the GRIDCO had snapped and the deceased came into contact with it and had died, that ipso facto does not entitle the petitioners to get the compensation unless it is proved by adducing proper evidence regarding negligence on the part of the authority. The apex Court has held that where disputed questions of fact are involved, petition under Article 226 of the Constitution of India is not a proper remedy. The High Court has not and could not have held that disputes in the 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.

10. Similarly in *W.B. State Electricity Board (Supra)*, the apex Court held that two victims were electrocuted because of an illegal hooking for purpose of theft of electricity, thereby electric Board cannot be held guilty of negligence. Therefore, the direction to pay Rs. 50,000/- as ex-gratia payment was maintained but the observation that the two victims had died because of negligence on the part of the Board, has been deleted by the apex Court.

11. In *S.D.O. Grid Corporation of Orissa Ltd. and others (supra)*, the apex Court rejected the claim on the ground that the writ application was filed for compensation on account of death due to electrocution after a lapse of 10 years of the occurrence. No reasons have been given for such inordinate delay. Entertaining the writ petition by the high Court is not proper and as such awarding compensation in such case by exercising the jurisdiction under Article 226 of the Constitution of India is improper.

12. In this case the death has occurred due to electrocution, injury sustained by electrocution has been admitted and the petitioner was carried to Danagadi C.H.C. and then S.C.B. Medical College and Hospital, Cuttack where he succumbed to the injuries and all the reports indicate that the death has occurred due to injuries on electrocution as the deceased came in contact with 33 KV line, which was placed in a dangerous position. In spite of several requests made by the local people, no precautions had been taken by the authority. Therefore, prima facie it appears that the authorities have neglected in their duty in maintaining such high tension line but in the present proceeding, this Court is refrained from adjudicating the question of negligence committed by the

authority in view of the ratio decided in Chairman Grid Corporation of Orissa Ltd. (Supra). Therefore, it is left open to the petitioners to move the appropriate Civil Court to establish whether there is negligence on the part of the opposite parties or not. Unless the same is adjudicated by the appropriate forum, by following due procedure of law and negligence of the authority is established, it is difficult to award the compensation as claimed in the writ application. In any case, since death has occurred due to electrocution there is allegation of non-maintenance of high tension line, ends of justice will be served by granting an ad-interim compensation of Rs. 1,00,000/- to the petitioners leaving it open to them to establish negligence on the part of the authority in a competent Civil Forum by adducing evidence. The said ad-interim compensation of Rs. 1,00,000/- (One Lakh) shall be paid within a period of three months from the date of communication of this judgment.

13. With the above observation and direction, the writ petition stands disposed of.