
(2013) 09 DEL CK 0176

In the Delhi High Court

Case No : Writ Petition (C) 4140 of 2001

K.K. Mehta and Another

APPELLANT

Vs

Delhi Vidyut Board and Another

RESPONDENT

Date of Decision : 20-09-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 4 ACC 239

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : N. Pradeep Sharma and Ms. Nasreen, for the Appellant; Manish Kr. Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan, J.—Present writ petition has been filed seeking a direction to the respondents to pay to the petitioners Rs. 36,22,000/- on account of thirty per cent burn injuries sustained by petitioner No. 2-Mr. Saurabh Mehta. In the petition, it is alleged that on 30th September, 2000, there was a huge blast in the respondents' sub-station adjoining the park of Shivam Enclave, Delhi in which petitioner No. 2 aged about ten years suffered burn injuries and electric shock in his belly, chest, right shoulder and on the back of his body. It is the petitioners' case that the respondents were negligent in keeping the gates of an unmanned sub-station open.

2. Respondent No. 1 in its counter affidavit has stated that it had no role to play in the injuries suffered by petitioner No. 2 and there was no negligence on its part. The relevant portion of the counter affidavit is reproduced hereinbelow:-

9. Coming back to the facts of the present case the petitioner himself states that his son had in gross defiance of these safety measures entered into the sub station apparently by climbing the fencing as the gates are locked for all times. It seems that even if the story of the petitioner is assured to be correct, (though

not admitting the same to be so), he had no business to enter into the same and if he had done so, he has done so at his own risk and no reason can be attributed to the answering respondents.

xxx xxx xxx 11. Under these circumstances the answering respondents respectfully submits that before filing the compensation, he must establish i) that there was duty on the part of the answering respondents and secondly that there was negligence which resulted in an injury to the son of the petitioner. So far as the question of duty is concerned it is submitted the answering respondents have already stated on oath that the sub station, was properly fenced and locked and the son of the petitioner has apparently entered of his own risk and there is absolutely no negligence on the part of the answering respondents inasmuch as the fencing was properly and squarely had placed the gate of the sub station locked and therefore no damages can be attributed to the respondents much less the sum of Rs. 36,22,000/0 (Rupees thirty six lacks twenty two thousand only) as claimed by the petitioner against the answering respondents. Moreover no particulars have been given by the petitioner as to how an amount of Rs. 36,22,000/- (Rupees thirty six lacks twenty two thousand only) has been arrived at.

(emphasis supplied)

3. Having heard learned counsel for parties, this Court is of the view that in electrocution cases where disputed questions of fact are involved, writ petition is not the appropriate remedy.

4. The Supreme Court in *Chairman, Grid Corporation of Orissa Ltd. (Gridco) and Others Vs. Smt. Sukamani Das and Another*, has held as under:-

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. The mere fact that the wire of the electric transmission line belonging to Appellant I had snapped and the deceased had come in 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 in contact with the wire. In view of the specific defences 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 petitioners. 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.

5. A Coordinate Bench of this Court in Abdul Haque and Others Vs. BSES Yamuna Power Ltd. and Others, , after analysing the entire law has held as under:-

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.

6. Keeping in view the aforesaid mandate of law as well as the averments in the counter affidavit, this Court is of the opinion that disputed questions of facts arise for consideration in the present proceedings.

7. This Court is conscious of the fact that relegating the petitioners who belong to economically weaker sections of society to the civil Court may delay the resolutions of their claims, but in view of the decision of Supreme Court in Sukamani Das (supra), this Court cannot allow the writ petition and grant compensation by applying the principle of strict liability or res ipsa loquitur. Accordingly, the present writ petition is held not maintainable under Article 226 of the Constitution.

8. However, in the interest of justice, it is directed that the time spent in prosecuting the present petition would not be taken into account while calculating the period of limitation for the new proceedings to be filed by the petitioners. Consequently, present writ petition is dismissed with liberty to the petitioners to file appropriate proceedings in accordance with law to seek redressal of their grievances.