
(2007) 06 UK CK 0030

In the Uttarakhand High Court

Case No : Writ Petition No. 262 of 2007 (M/B)

Nandan Singh Rathor

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 11-06-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 1 UC 27

Hon'ble Judges : Rajeev Gupta, C.J.;J.C.S. Rawat, J

Bench : Division Bench

Advocate : H.C. Bisht, for the Appellant; Lalit Sharma, Brief Holder for the Respondent No. 1 and B.D. Upadhyaya, for the Respondent

Judgement

Rajeev Gupta, C.J.—Mr. H.C. Bisht, Advocate for the Petitioner. Mr. Lalit Sharma, Brief Holder for Respondent No. 1. Mr. .B.D. Upadhyaya, Advocate for Respondents Nos. 2 & 3. They are heard.

2. Petitioner Nandan Singh Rathor has filed this writ petition for the following reliefs:

A. Issue a writ, order or direction in the nature of certiorari to quash the order dated 19-01-2007 (Annexure No. 7) passed by the Respondent No. 2 so far it relates to rejection of the employment of Petitioner.

B. Issue a writ order or direction in the name of mandamus directing the Respondents to pay adequate compensation to the Petitioner and also specifically disclose the amount of compensation to be paid to the Petitioner.

C. Issue any suitable writ, order or direction which this Hon"ble Court may deem fit and proper in the circumstances of the case.

D. Award cost of writ petition to the Petitioner.

3. The learned Counsel for Respondents Nos. 2 & 3, placing reliance on the dictum of the Apex Court in the case of S.D.O. Grid Corporation of Orissa Ltd.

and Others Vs. Timudu Oram, , has raised a preliminary objection about the maintainability of the writ petition on the ground that the writ petition involves disputed questions of fact, which cannot be resolved in a writ petition under Article 226 of the Constitution of India.

4. The Apex Court, in the case of SDO, Grid Corporation of Orissa Ltd. and Ors. v. Timudu Oram (supra), while considering the question of maintainability of a writ petition under Article 226 of the Constitution of India in the matters relating to compensation, observed in para 6:

6. In Chairman, Grid Corpn. of Orissa Ltd. (GRIDCO) with which case these appeals were listed for hearing but could not be heard for want of service, this Court took the view that the High Court committed an error in entertaining the writ petitions under Article 226 of the Constitution and were not fit cases for exercising the jurisdiction under Article 226 of the Constitution. It was held that actions in tort and negligence were required to be established initially by the claimants. The mere fact that the wire of electric transmission line belonging to the Appellants had snapped and the deceased had come into contact with it and died by itself was not sufficient for awarding compensation. The Court was required to examine as to whether the wire had snapped as a result of any negligence on the part of the Appellants, as a result of which the deceased had come in contact with the wire. In view of the defence raised and the denial by the Appellants in each of the cases, the Appellants deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission line and yet the wires had snapped because of the circumstances beyond their control or unauthorised intervention of third parties. Such disputed questions of fact could not be decided in exercise of jurisdiction under Article 226 of the Constitution. That the High Court could not come to the conclusion that the defence raised by the Appellants had been raised only for the sake of it and there was no substance in it. In para 6 it was observed thus: (SCC pp. 301-02)

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 1 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. In the present case too, the factual averments made by the Petitioner in regard to the incident are not admitted by the Respondents. Thus, the disputed questions of fact would require leading of evidence by the parties, which course is not permissible in the proceedings under Article 226 of the Constitution of India.

6. That apart, the assessment of just and proper compensation to be awarded to the Petitioner would also require leading of evidence by the parties. The Petitioner's relief for grant of employment is also dependent on the Petitioner's establishing negligence on the part of Respondents Nos. 2 & 3.

7. In this view of the matter, the writ petition is liable to be dismissed.

8. The Petitioner, however, shall be at liberty to approach the Civil Court for the redressal of his grievances projected in the writ petition.

9. With the above observation, the writ petition stands disposed