
(2014) 09 AHC CK 0289

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 23783 of 2010

Neetu Devi

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 19-09-2014

Acts Referred:

Constitution of India, 1950 — Article 21, 22(2), 226, 32
Electricity Act, 2003 — Section 161

Citation : (2015) 1 ACC 119 : (2016) ACJ 423 : (2014) 9 ADJ 649 : (2015) 2 ALJ 147 : (2014) 107 ALR 588

Hon'ble Judges : Mahesh Chandra Tripathi, J;Devi Prasad Singh, J

Bench : Division Bench

Advocate : Nisheeth Yadav and C.B. Yadav, Advocate for the Appellant; Rajesh Tripathi, Advocate for the Respondent

Judgement

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1. Heard learned counsel representing the parties. The petitioner has preferred the instant writ petition under Article 226 of the constitution of India to issue a writ in the nature of mandamus directing the U.P. Power Corporation Limited to pay compensation. According to the petitioner's counsel, petitioner's husband on 8.7.2009, at about 6:30 a.m., Arimardan Singh came in contact with the insulated open cable installed by U.P. Power Corporation Limited. On being touched with the insulated cable, he was electrocuted and succumbed to injuries. Post mortem was conducted and the post mortem report revealed that he died because of electrocution. A copy of post mortem report of petitioner's husband, has been annexed as Annexure 3 to the writ petition. After the death of petitioner's husband, the petitioner requested the Executive Engineer of U.P. Power Corporation Limited for payment of compensation. A copy of representation submitted to the competent authority, has been filed as Annexure No. 4 to the writ petition.

2. It has also been submitted by the petitioner's counsel that the incident

occurred because of lapse on the part of U.P. Power Corporation Limited and its Maintenance Engineer. On account of negligence of the U.P. Power Corporation Limited to maintain its electricity line, the electrocution took place.

A legal notice was also sent by the petitioner for payment of compensation to the tune of Rs. 75,00,000/-. In spite of repeated requests made, the compensation was not paid.

3. Submission of the petitioner's counsel is that in pursuance of provisions contained in Rule 29, 30(4), 50(1) and 77(3) of Indian Electricity Rules, 1956, the petitioner is entitled for compensation. It is also submitted that immediate compensation of Rs. 1,00,000/- should also be paid to the petitioner under relevant Rules. A specific pleading has been made in the writ petition that the respondent U.P. Power Corporation Limited has not maintained its electricity line with sufficient care to prevent such mis-happening. Accordingly, the dependant of the deceased person who suffered on account of ill-maintenance of electricity line, shall be entitled for payment of compensation. The aforesaid Rules relied upon by the petitioner's counsel, are reproduced as under:

29. Construction, installation, protection, operation and maintenance of electric supply lines and apparatus--(1) All electric supply lines and apparatus shall be of sufficient ratings for power, insulation and estimated fault current and of sufficient mechanical strength, for the duty which they may be required to perform under the environmental conditions of installation, and shall be constructed, installed, protected, worked and maintained in such a manner as to ensure safety of [human beings, animals and property.

(2) Save as otherwise provided in these rules, the relevant code of practice of the 3 [Bureau of Indian Standards] 4[including National Electrical Code] if any may be followed to carry out the purposes of this rule and in the event of any inconsistency, the provision of these rules shall prevail.

(3) The material and apparatus used shall conform to the relevant specifications of the [Bureau of Indian Standards] where such specifications have already been laid down.

30. Service lines and apparatus on consumer's premises--(1) The supplier shall ensure that all electric supply lines, wires, fittings and apparatus belonging to him or under his control, which are on a consumer's premises, are in a safe condition and in all respects fit for supplying energy and the supplier shall take due precautions to avoid danger arising on such premises from such supply lines, wires, fittings and apparatus.

(2) Service-lines placed by the supplier on the premises of a consumer which are underground or which are accessible shall be so insulated and protected by the supplier as to be secured under all ordinary conditions against electrical, mechanical, chemical or other injury to the insulation.

(3) The consumer shall, as far as circumstances permit, take precautions for the

safe custody of the equipment on his premises belonging to the supplier.

(4) The consumer shall also ensure that the installation under his control is maintained in a safe condition.

50. Supply and use of energy--(1) The energy shall not be supplied, transformed, converted or used or continued to be supplied, transformed, converted or used unless provisions as set out below are observed:

(a) The following controls of requisite capacity to carry and break the current 2[are placed] after the point of commencement of supply as defined in Rule 58 so as to be readily accessible and capable of being easily operated to completely isolate the supply to the installation such equipment being in addition to any equipment installed for controlling individual circuits or apparatus:

(i) a linked switch with fuse(s) or a circuit breaker by low and medium voltage consumers.

(ii) a linked switch with fuse(s) or a circuit breaker by HV consumers having aggregate installed transformer/apparatus capacity up to 1000 KVA to be supplied at voltage upto 11 KV and 2500 KVA at higher-voltages (above 11 KV and not exceeding 33 KV).

(iii) a circuit breaker by HV consumers having an aggregate installed transformer/apparatus capacity above 1000 KVA and supplied at 11 KV and above 2500 KVA supplied at higher voltages (above 11 KV and not exceeding 33 KV).

(iv) a circuit breaker by EHV consumer;

Provided that where the point of commencement of supply and the consumer apparatus are near each other one linked switch with fuse(s) or circuit breaker near the point of commencement of supply as required by this clause shall be considered sufficient for the purpose of this rule;

(b) In case of every transformer the following shall be provided:

(i) On primary side for transformers a linked switch with fuse(s) or circuit breaker of adequate capacity:

Provided that the linked switch on the primary side of the transformer may be of such capacity as to carry the full load current and to break only the magnetising current of the transformer:

[Provided further that for transformers--

(A) having a capacity of 5000 KVA and above and installed before the commencement of the Indian Electricity (Amendment-1) Rules, 2000 and

(B) having a capacity of 1000 KVA and above and installed on or after the commencement of the Indian Electricity (Amendment-1) Rules, 2000 a circuit breaker shall be provided.]

Provided further that the provision of linked switch on the primary side of the transformer shall not apply to the unit auxiliary transformer of the" generator.

(ii) In respect of all transformers installed on or after the commencement of the Indian Electricity (Amendment-1) Rules, 2000, on the secondary side of all transformers transforming HV to EHV, MV or LV a circuit breaker of adequate rating shall be installed:

Provided that for supplier's transformers of capacity upto 630 KVA, a linked switch with fuse or circuit breaker of adequate rating shall be installed on secondary side.]

(c) Except in the case of composite control gear designed as a unit distinct circuit is protected against excess energy by means of suitable cut-out or a circuit breaker of adequate breaking capacity suitably located and, so constructed as to prevent danger from overheating, arcing or scattering of hot metal when it comes into operation and to permit for ready renewal of the fusible metal of the cut-out without danger;

(d) The supply of energy of each motor or a group of motors or other apparatus meant for operating one particular machine is controlled by a suitable linked switch or a circuit breaker or an emergency tripping device with manual reset of requisite capacity placed in such a position as to be adjacent to the motor or a group of motors or other apparatus readily accessible to and easily operated by the person incharge and so connected in the circuit that by its means all supply of energy can be cut off from the motor or group of motors or apparatus from any regulating switch, resistance of other device associated therewith;

(e) All insulating materials are chosen with special regard to the circumstances of its proposed use and their mechanical strength is sufficient for its purpose and so far as is practicable of such a character or so protected as to maintain adequately its insulating property under all working conditions in respect of Temperature and moisture; and

(f) Adequate precautions shall be taken to ensure that no live parts are so exposed as to cause danger."

(2) Where energy is being supplied, transformed, converted or used the [consumer, supplier or the owner] of the concerned installation shall be responsible for the continuous observance of the provisions of sub-rule (1) in respect of his installations.

(3) Every consumer shall use all reasonable mean to ensure that where energy is supplied by a supplier no person other than the supplier shall interfere with the service lines and apparatus placed by the supplier on the premises of the consumer.]"

77. Clearance above ground of the lowest conductor--(1) No conductor of an overhead line, including service lines, erected across a street shall at any part

thereof be at a height of less than--

(2) No conductor of an overhead line, including service lines, erected along any street shall at any part thereof be at a height less than--

(3) No conductor of in overhead line including service lines, erected elsewhere than along or across any street shall be at a height less than--

(4) For extra-high voltage lines the clearance above ground shall not be less than 5.2 metres plus 0.3 metre for every 33,000 volts or part thereof by which the voltage of the line exceeds 33,000 volts.

Provided that the minimum clearance along or across any street shall not be less than 6.1 metres."

4. A plain reading of the aforesaid Rules as well as factual matrix on record, prima facie makes out a case for payment of compensation since electrical line was not maintained in terms of Rules (supra).

5. Rule 29 (supra) makes it mandatory to maintain electricity supply line and its insulation with sufficient mechanical strength. It is because of the failure on the part of the respondents in maintaining the electricity line that the petitioner's husband has succumbed to electrocution.

6. Petitioner's counsel also relied upon a circular dated 19.6.2008 contained in Annexure 9 to the writ petition. For convenience, the entire office memorandum dated 19.6.2008 is reproduced as under:

7. A plain reading of the aforesaid office memo of U.P. Power Corporation Limited shows that the sufferer shall be entitled to Rs. 1,00,000/- as a measure of immediate compensatory payment. Why respondent U.P. Power Corporation Limited has failed to discharge its statutory obligation is not borne out from the record. Otherwise also, the amount of Rs. 1,00,000/- is too meagre in the event of death on account of electrocution.

Office memorandum (supra) grants non-statutory immediate relief. Courts may provide compensation in view of actual damage caused, which may be much higher than it (supra).

8. Rule 29 of the Indian Electricity Rules, 1956 (supra), provides that all electricity supply line and apparatus shall contain sufficient safeguard and insulation to check such incident. There appears to be no room of doubt that in case respondents would have taken necessary steps in pursuance of statutory duty, then incident would not have happened and petitioner's husband aged about 26 years of life, would not have suffered with untimely death.

Thus, it appears that on account of negligence on the part of U.P. Power Corporation Limited, vis-a-vis respondent No. 6, the incident occurred and petitioner's husband died because of electrocution.

9. While submitting reply to the present writ petition, it has been submitted by

the respondents that under Section 161 of Indian Electricity Act, 2003, the Directorate Electrical Supply has been assigned duty for inquiry of such incident. According to report of the Director, Electricity Safety, Farrukhabad, 80 kilo volt ampere was given to the Industrial Training Institute, Farrukhabad campus by the Dakshinanchal Vidyut Vitran, Limited Fatehgarh, Farrukhabad on low transmission line. It has also been stated that the maintenance of electricity after the energy meter was the sole responsibility of Industrial Training Institute, Farrukhabad. One Ram Naresh Instructor Machine, Industrial Training Institute, Farrukhabad is allotted residential house in the campus where he lives alongwith family members. At the relevant time, he was posted at ITI, Allahabad. Being close friend of Ram Naresh, Sri Amrendra Singh was staying in his house. According to the report, when Amrendra Singh was going to take bath, he came into contact with broken cable at the stairs of the bathroom. In consequence thereof, he was electrocuted. A finding has been recorded by the inquiry officer that the electricity maintenance of the house was not in accordance with Rules 29, 30(4), 50(1), 77(3) of the Indian Electricity Rules, 1956. A finding has been further recorded that it was sheer negligence on the part of the Principal, ITI, Farrukhabad with defective installation of electricity line. The Director Electrical Safety, submitted report on 30.9.2009 and also furnished a copy thereof to the petitioner informing her to contact the Principal ITI, Farrukhabad for payment of compensation. Thus, the respondent No. 5, U.P. Power Corporation Limited avoided responsibility to pay compensation in spite of the fact that a finding has been recorded with regard to negligence in maintenance of power connection.

10. It is submitted by the learned counsel for the respondent U.P. Power Corporation Limited that the Director, Electrical Safety Farrukhabad has nowhere recorded finding that the U.P. Power Corporation Limited is liable to make payment of compensation. In view of the above, the U.P. Power Corporation Limited has set up a case that it shall not be liable to make payment of compensation. The responsibility to pay compensation in pursuance of report of the Director Electrical Safety, has been shifted on the Principal ITI who has also disowned the liability to pay compensation. In such a situation, a question has cropped up as to who is responsible to pay the compensation on account of electrocution of petitioner's husband.

11. The statutory provisions discussed hereinabove, provides to maintain the electricity line or cables strictly in accordance with Rules to avoid any such incident.

12. Rule 29 (supra) casts a duty on U.P. Power Corporation Limited also to do needful with regard to installation, protection and maintenance of electricity supply line and apparatus. U.P. Power Corporation Limited cannot shirk from the statutory duty to ensure that the electricity lines are maintained in accordance with Rules and sufficient safeguard.

13. Nothing has been brought on record while filing counter-affidavit that the required inspection has been done in accordance with rules by the officers of the

U.P. Power Corporation Limited to check the maintenance of electricity line. Being a connection of high voltage, it was expected that the U.P. Power Corporation Limited shall ensure that the consumer is maintaining the electricity line in accordance with Rules. It does not mean that the consumer can disown the liability with regard to maintenance of electricity line within its own premises. Section 31 of the Indian Electricity Rules, 1956, also casts duty on the consumer with regard to maintenance of electricity line within its own premises. For convenience, Section 31 (supra) is reproduced as under:

"31. Cut-out on consumer's premises.--(1) The supplier shall provide a suitable cut-out in each conductor of every service-line other than an earthed or earthed neutral conductor or the earthed external conductor of a concentric cable within a consumer's premises, in an accessible position. Such cut-out shall be contained within an adequately enclosed fireproof receptacle. Where more than one consumer is supplied through a common service-line, each such consumer shall be provided with an independent cut-out at the point of junction to the common service.

(2) Every electric supply line other than the earth or earthed neutral conductor of any system or the earthed external conductor of a concentric cable shall be protected by a suitable cut-out by its owner. 1[(3) *****]

1. Sub-rule (3) omitted by GSR 358, dt. 30.4.1987, w.e.f. 5.9.1987."

14. In the present case, it appears that the respondent Industrial Training Institute as well as U.P. Power Corporation Limited, have failed to discharge their statutory obligation with regard to maintenance of electricity line. The report submitted by the Director Electrical Safety is the eye opener which shows how the consumer and U.P. Power Corporation Limited have been negligent in the discharge of their statutory duty. While supplying electricity line to the industrial consumers, it shall always be obligatory on the part of the Electricity Department to have a regular check with regard to use of electricity line by such industrial units. In case the U.P. Power Corporation Limited would have done regular inspection of respondent industrial unit, such incident would not have occurred.

15. The husband of the petitioner had visited his friend for personal reason and stayed in the premises in question. It is not only the consumer but whosoever visits the consumer and suffers from such incident/accident, shall be entitled for payment of compensation in pursuance of office memo of the U.P. Power Corporation Limited (supra). Accordingly, we are of the view that not only the U.P. Power Corporation limited but also the respondent Industrial Training Institute shall be liable to pay compensation. Both are jointly responsible and seem to be negligent to maintain electricity line. A person who had gone to attend his friend in young age, had suffered with the accident leaving behind the petitioner widow, without any source of livelihood, in such situation, it shall be appropriate that the petitioner be awarded some compensatory costs and the U.P. Power Corporation Limited may also be directed to pay compensation in

accordance with statutory Rules (supra) which shall be in addition to the damages claimed by the petitioner by filing a suit or approaching other appropriate alike forum for payment of compensation.

16. Death because of electrocution in view of ill-maintenance of electricity line by the respondents, is violative of Article 21 of the Constitution of India. In the matter involving infringement or deprivation of fundamental right, this Court has got ample power to award compensation under Article 226 of the Constitution of India.

In the present case, because of ill-maintenance of electricity line as held in the report of the Director, Electrical Safety, the husband became victim of it. Hence in such a situation, this Court may direct for payment of compensation.

17. In the case in *Raghuvansh Dewanchand Bhasin Vs. State of Maharashtra and Another*, , while considering the ambit and scope of Article 21 and its violation, and Court's right to payment compensation, their lordships held as under:

17. It is trite principle of law that in matters involving infringement or deprivation of a fundamental right; abuse of process of law, harassment etc., the Courts have ample power to award adequate compensation to an aggrieved person not only to remedy the wrong done to him but also to serve as a deterrent for the wrongdoer.

18. In *Rudul Sah v. State of Bihar*, Y.V. Chandrachud, C.J., speaking for a Bench of three learned Judges of this Court had observed thus: (SCC p. 147, para 10)

"10....One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt."

19. In *Bhim Singh, MLA v. State of J. & K.*, holding illegal detention in police custody of the petitioner Bhim Singh to be violative of his rights under Articles 21 and 22(2) of the Constitution, this Court, in exercise of its power to award compensation under Article 32, directed the State to pay monetary compensation to the petitioner. Relying on *Rudal Sah*, O. Chinnappa Reddy, J. echoed the following views: (SCC p. 686, para 2)

"2....When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation..."

20. In *Nilabati Behera (Smt.) Alias Lalita Behera v. State of Orissa*, clearing the doubt and indicating the precise nature of the constitutional remedy under

Articles 32 and 226 of the Constitution to award compensation for contravention of fundamental rights, which had arisen because of the observation that "the petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial" in Rudul Sah (SCC p. 147, para 10), J.S. Verma, J. (as His Lordship then was) stated as under: (Nilabati Behera case, SCC pp. 762-63, para 17)

"17 It follows that "a claim in public law for compensation" for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is "distinct from, and in addition to, the remedy in private law for damages for the tort" resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in Rudul Sah and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights."

(emphasis supplied)

21. In the same decision, in his concurring judgment, Dr. A.S. Anand, J. (as His Lordship then was), explaining the scope and purpose of public law proceedings and private law proceedings stated as under: (Nilabati Behera case, SCC pp. 768-69, para 34)

"34. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the Court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in

such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making "monetary amends" under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of "exemplary damages" awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a Court of competent jurisdiction or/and prosecute the offender under the penal law."

(emphasis supplied)

22. The power and jurisdiction of this Court and the High Courts to grant monetary compensation in exercise of its jurisdiction respectively under Articles 32 and 226 of the Constitution of India to a victim whose fundamental rights under Article 21 of the Constitution are violated are thus, well-established. However, the question now is whether on facts in hand, the appellant is entitled to monetary compensation in addition to what has already been awarded to him by the High Court. Having considered the case in the light of the fact-situation stated above, we are of the opinion that the appellant does not deserve further monetary compensation."

18. Accordingly, in view of above, since in the present case, the petitioner's husband suffered because of negligence on the part of the respondent Nos. 2, 5 and 6, and while staying with his own friend petitioner's husband died on account of electrocution at the young age of 26 years leaving the petitioner widow, this Court may grant compensation which shall be in addition to the petitioner's right in accordance with law before the appropriate Court or forum.

19. It shall be appropriate that the respondent No. 5 U.P. Power Corporation Limited Respondent No. 6 Principal, Industrial Training Institute (ITI), Farrukhabad, who seems to be equally responsible for ill-maintenance of electricity connection be directed to pay compensation.

20. In such a situation, where a young man of 26 years electrocuted because of fault of respondent U.P. Power Corporation Limited as well as respondent No. 6, appropriate compensation may be awarded as a measure of immediate relief to the widow apart from the costs in view of the judgment in Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), . We assess the compensation to the tune of Rs. 10,00,000/- (ten lakhs) which shall be paid by respondent U.P. Power Corporation Limited, as well as respondent No. 6 equally (five lakh each).

We further assess the costs to both of them to the tune of Rs. 1,00,000/-, one lakh each (total rupees two lakhs). The compensation paid in pursuance of the present judgment, shall be in addition to whatever is being paid to the petitioner widow of the deceased husband by other forum in a civil suit or other statutory authority. We feel that amount of Rs. 12,00,000/- (twelve lakhs) shall not compensate the vacuum created in the life of widow but it shall be a solace to

her to prepare a future plan of life and deterrent to wrong doers.

Accordingly, the writ petition is allowed. A writ in the nature of mandamus is issued directing the respondent No. 2 and 5, and respondent No. 6 to pay an amount of Rs. 5,00,000/- each (total rupees ten lakhs). The costs is assessed to Rs. 1,00,000/- each payable by respondent No. 2 and 5, and respondent No. 6 (total rupees two lakhs).

Let the amount of Rs. 12,00,000/- (total rupees twelve lakhs) be deposited by the respondent No. 2 and 5 and respondent No. 6 equally within two months in this Court to which the petitioner shall be entitled to withdraw. In the event of failure on the part of the respondent No. 2 and 5 and respondent No. 6 to deposit the aforesaid amount, the District Magistrate, Lucknow as well as District Farrukhabad shall recover the same from the respondent No. 2 and 5 and respondent No. 6, as arrears of land revenue and remit it to this Court which the petitioner shall be entitled to withdraw. Registry of this Court to take follow up action.

The writ petition is allowed accordingly. The compensation paid in pursuance of the present judgment, shall be in addition to compensation claimed by the petitioner in suit before appropriate Court, authority or forum.