

(2017) 02 DEL CK 0100
In the Delhi High Court
Case No : W.P.(C) 6349 of 2014

Rajeev Singhal

APPELLANT

Vs

M.C.D.

RESPONDENT

Date of Decision : 10-02-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 ACC 766

Hon'ble Judges : Indermeet Kaur, J.

Bench : Single Bench

Advocate : Mr. Uday Gupta, Mr. Hiren Dasan, Mr.M.K. Tripathi and Mr. Chandevreshi, Advocates, for the Petitioners; Mr. Jagdish Sagar, Advocate, for the EDMC; Mr. Shagun Trisal, Advocate, for the Respondent No. 2

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—The petitioners before this Court are the unfortunate parents of Master Akshat Singhal who had succumbed to his death in an unfortunate incident of 05.07.2014. Master Akshat (aged 14 years) had gone with his father in the evening to Sanjay Park, New Gobind Puri to play with his friends. This was his usual routine. His father went off for an evening walk. The child started playing with his friends. They were playing cricket. In the course of this play, when master Akshat went to fetch the ball which was parked at the end of the park near a high mast light pole, his hand touched a high voltage electricity cable wire which electrocuted him. He died on the spot. Master Akshat Singhal was removed to the hospital. FIR No.414 was lodged at the local Police Station. The autopsy report prepared in the course of this investigation has opined the cause of death as a ventricular fibrillation being a result of electrocution; injuries No. 5 & 6 caused by this electrocution were sufficient to cause the death of the child; the injuries were all ante-mortem.

2. The contention of the petitioners is that this park is maintained by the Corporation i.e. East Delhi Municipal Corporation (respondent No. 1). Electricity

inside the park as also in the periphery and all other electric installations made in the park are carried out by the BSES (respondent No. 2). It is because of the co-joint negligent acts of the respondents that the child of the petitioners had died. This petition has been filed seeking compensation from both the afore noted respondents.

3. Learned counsel for the petitioner in support of his submissions has placed reliance upon various judgments. He has highlighted the judgment of the Apex Court reported as (2004) 5 SCC 793 H.S.E.B v. Ram Nath. Submission is that this judgment had considered the impact of the earlier judgment delivered by the Supreme Court reported as (1997) 7 SCC 298 Chairman, Grid Corporation of Orissa Ltd.; that judgment had been distinguished; the Apex Court had noted that where no disputed questions of facts arise (as is in the present case), the family of the victim even in cases of death by electrocution are entitled to compensation. Reliance has also been placed upon another judgment of the Apex Court reported as (2000) 4 SCC 543 Tamil Nadu Electricity Board v. Sumathi & Others. Reliance has also been placed upon a judgment of the Himachal Pradesh High Court delivered in W.P. (C) No.475/2013 Naval Kumar alias Rohit Kumar v. State of H.P. & Others. Submission is that in this case where the child had died because of electrocution, compensation having been awarded of more than Rs.1 crore, the matter had gone in appeal before the Apex Court which had upheld this finding returned by the Himachal Pradesh Bench; modification was only made in the quantum of the compensation.

4. The respondents have refuted the stand of the petitioners. The contention of both the respondents being that disputed questions of fact have arisen; the petitioners are thus not entitled to any relief in writ jurisdiction. At best the parties have to be relegated to a suit where the parties should be given opportunity to lead evidence to prove their respective submissions.

5. Counter affidavit of respondent No. 1 has been perused. The stand of respondent No. 1 being that the lighting around and inside the park is the responsibility of respondent No. 2 who has to maintain the electric connections; the answering respondent is not connected with this maintenance which is under the management and control of respondent No. 2 alone. Attention has been drawn to a Electricity Report prepared by the Department (24.07.2014) pursuant an inquiry had been set up by respondent No. 1. Submission is that as per this Report it has been established that the core PVC wire belonged to the BSES and the PVC cable had a marking upon it noting this property as that of the DESU. No responsibility can be foisted upon respondent No. 1.

6. Counter affidavit of respondent No. 2 has also been perused. It is pointed out that this was the task of respondent No. 1 to maintain the Sanjay Park which included the installation and fittings inside the park; respondent No. 2 was only obliging respondent No. 1 in providing electricity to the park but the maintenance of the electricity poles and wires inside the park were the sole responsibility of respondent No. 1. Respondent No. 2 has no liability qua this incident.

7. Learned counsels for both the respondents have relied upon judgments delivered by this Court. Submission being that in similarly placed cases where death had occurred by electrocution, the Benches of this Court had held that compensation cannot be awarded in cases of electrocution as disputed questions of facts arise; the parties have necessarily to be relegated to trial. Learned counsel for the respondents has placed reliance upon *Madan & Others v. NDPL & Others* delivered on 11.09.2013 in W.P. (C) No.14139/2006. Reliance has also been placed upon *K.K. Mehta v. Delhi Vidyut Board and Another* delivered on 20.09.2013 in W.P. (C) No.4140/2001 to support this same proposition. Reliance has also been placed upon another judgment reported as 142 (2007) DLT 526 *Abdul Haque & Others v. BSES Yamuna Power Ltd. & Others*. Contention being reiterated that disputed questions of fact have arisen in this case as well and as such no relief can be granted to the petitioner in the present proceedings.

8. Arguments have been heard. Record has been perused.

9. The victim Master Akshat Singhal had admittedly died by electrocution while he was playing inside Sanjay Park. The autopsy report has opined his cause of death as the result of electrocution. There is no dispute to this fact.

10. Counter affidavit of respondent No. 1 is relevant. The stand adopted by him is as under:-

"In fact the lighting around and inside the park is entirely the responsibility of Respondent no.2, which is paid by the Answering Respondent to maintain all public lighting within the jurisdiction of the Answering Respondent.

The Answering Respondent attaches hereto, as Annexure R1/1, a copy of Resolution No. 310 dated 18.09.2013 from which it may be seen that the Answering Respondent pays to Respondent No.1 all charges for maintenance of public lighting and electricity consumption charges including New Govindpura where the Sanjay Park is situated. Further, by way of illustration, Annexure R1/2 shows, collectively, payment for semihigh masts and streetlights made by the Answering Respondent to Respondent No.1 during the month of April 2014. The Answering Respondent is, therefore, in no way responsible for management of the electrical installations associated with the said accident. The Answering Respondent has already submitted its report to the Electrical Inspector appointed by the Government under Section 162 of the Electricity Act, 2003, a copy of which is attached as Annexure R1/3, from which it is seen that the electrical installations associated with the said accident were entirely under the control of Respondent No.2. The Answering Respondent merely maintains the municipal park but has not role or responsibility for the electrical installations maintained by Respondent No.2"

11. The Inspection Report is also a relevant document. It had been prepared by the Engineer of respondent No. 1. It is dated 24.07.2014. This document had been prepared pursuant to an inquiry initiated by respondent No. 1 into the death of Master Akshat. Sub-paras 2, 3 & 6 need to be highlighted. They read as

under:-

"2. One no. 2 core (seems 2.10 Sq mm) PVC Cable (Marked as DESU property on it) was taken by the BSES from the MS Pole by the way of tapping from Semi High Mast Pole cable to energise the street light fitting (sodium fitting) installed in front of H.No. C-9, New Govind Pura.

3. The above mentioned 2 Core PVC wire of BSES was got punctured/burnt and leakage current flown in the M S Pole and barbed wire which was got rounded up along with pole and to near by tree guards. ??????..

6. The streetlight was being maintained by BSES since long as confirmed from the site as well as at the time of inspection by Electrical Inspector the street light was functioning and 2 core PVC cable (marked as DESU property) was lying burnt and the pole was having leakage current from this (DESU property make) cable."

12. The relevant extract of the response of respondent No. 2 is reproduced as under:-

" The only duty of the Answering respondent was to provide electricity to the park and the maintenance of the electricity poles, wires etc. present inside the park were to be maintained solely by the Respondent No.1 as will be demonstrated in detail in the following paragraphs.

xxxxxxxxxxxxxxxxxx

2. It was clearly submitted in the said report that the park is maintained by the Respondent No.1 and not the Answering Respondent. It was stated that the park has a metered connection for water pump and lights, for the semi high mast lights inside the park is given a separate electric connection. The same is billed by point wise consumption. The answering Respondent is not responsible either for the maintenance of the semi high mast lamp installed in the park and neither for any electrical installation inside the park. The same is maintained by the Respondent No.1 itself. As a result, any incident occurring inside the premises of the park, as in the present case, is the sole responsibility of the Respondent No.1. The Accident Committee Report dated 09.07.2014 is being annexed herewith as ANNEXURE R2.

xxxxxxxxxx

5???? That all the poles i.e. steel tubular/High Mast/Tabular with decorative lighting fittings and all other fittings and fixtures mounted on pole are the property of the Respondent No.1. It was submitted that all these have been erected, installed and are maintained by Respondent No.1. The Answering Respondent is neither responsible, not authorised for any maintenance work inside the park. The Metallic Pole, the wirings sheet metal box and the Street Light in question, as also the main electric black cable (Tripodore Cable) connecting the Metallic Pole with the street light belongs to the Respondent

NO.1. It was further submitted that the Answering Respondent was charging only the energy charges from the Respondent No.1 without any maintenance charges, as the same are maintained by the Respondent No.1.

XXXXXXXXXXXXXXXXXX

8. That even on 09.07.2014, a letter was sent by the Answering Respondent to the Respondent No.1 stating that most of the semi high masts and park light poles under their maintenance were not having fencing and earthing of switching equipments which may lead to electrocution. A copy of the said letter is annexed herewith as ANNEXURE R-6."

13. The Accident Committee Report dated 09.07.2014 is also a relevant document. This has been marked as Annexure R-2. This report prepared by the Accident Committee of respondent No. 2 states that the park is maintained by the MCD; It has a metered connection and respondent No. 2 is not responsible either for the maintenance of the semi high mask lamp inside the park and nor any other electrical installation inside; the park is maintained by the MCD alone; respondent No. 2 is only providing electricity for which it is charging as per the electricity consumption. The letter dated 09.07.2014 (Annexure R-6) sent by respondent No. 2 to respondent No. 1 is another relevant document. This document states that all high mast and park light poles are under the maintenance of respondent No. 1; the fencing and earthing of switching equipments are not present in the park which may have led to the incident of electrocution. This document which is in Hindi has been penned by respondent No. 2 to respondent No. 1. It clearly states that respondent No. 2 has no liability in the matter but it is respondent No. 1 alone who is liable for the maintenance of the park and any short-fall in the park would be the responsibility of respondent No. 1.

14. Noting the conflicting stands of respondent No. 1 and respondent No. 2, this Court is of the firm view that disputed questions of fact have arisen. There is no doubt that the victim had succumbed to his death on the fateful day and the cause of death was electrocution. This electrocution had taken place in Sanjay Park. The negligence appears to be writ large. Till this point of time, all facts are undisputed.

15. However the question which has to be decided is as to whether respondent No. 1 is liable for this negligent act or whether respondent No. 2 is liable. They are two un-connected Departments. Respondent No. 1 is the Corporation and an entity of the Government. The status of respondent no. 2 may not be strictly that of a Government entity but this Court need not delve into this question (raised by Respondent no. 1) as to whether respondent no.2 would be answerable to writ jurisdiction in the light of the discussion to follow. The definite stand (as is evident from his counter affidavit) of respondent no. 1 is that it was only maintaining the park and all electricity installations were to be looked after by respondent No. 2; its maintenance and management was the task of respondent

No. 2 alone. Respondent no.1 has taken support of its Electricity Report (dated 24.07.2014).

16. The stand of respondent No. 2 has also raised disputed questions of fact; their stand being that once the electrical installations have been affixed in the park, they no-longer had any duty to maintain the park; maintenance work was the sole responsibility of respondent No. 1 alone. Respondent No. 2 was only charging the electricity consumption charges from respondent No. 1.

17. The documentary evidence relied upon by respondent No. 2 i.e. Annexures R-2 & R-6 i.e. the Accident Committee Report and the letter addressed by respondent No. 2 to respondent No. 1 are relevant documents. These documents in the view of this Court, would have to be proved in accordance with law to establish as to who is the negligent party; whether it is respondent No. 1 or respondent No. 2.

18. This gamut of evidence which has been collected in the present matter can be taken care of only in a suit proceeding where parties would be permitted to file their respective evidence and to prove them in accordance with law. They would be permitted to lead not only oral evidence but also documentary evidence. This Court is thus of the view that a trial would be necessitated in the facts of the present case in view of the contrary and opposing stands adopted by the respondents.

18.1 The submission of the petitioners that both the respondents are liable jointly and severely and they should be made to pay compensation @ 50% each is in the view of this Court not a prima-facie finding which can be returned as at the cost of repetition the stand of respondent No. 1 and respondent No. 2 is clear and cogent; each one has foisted the liability upon other. This is not a case where the Court can return a finding only on the basis of the pleadings in this petition and draw a conclusion that both the departments would be liable for half and half. This Court may not be able to grant any relief to the petitioners in this matter but it would be open to the petitioners to file a suit to establish their claim.

19. The judgments relied upon by the learned counsel for the petitioners do not come to his aid. In H.S.E.B., the Apex Court while examining the ratio of the judgment of Chairman, Grid Corporation (supra) had noted that in the present case (before the Supreme Court), there was no dispute on facts; the only defence raised by the Corporation being that the entire colony was an unauthorized colony and the height of the houses had been raised which as per the Apex Court was no defence; since undisputed questions of fact were the subject matter of that petition; the Apex Court had up-held the order of the High Court which in turn had granted compensation to the victim in a case of electrocution. This also appeared to be a case where compensation had been granted in a suit as para 4 of the judgment speaks of undisputed questions of fact in view having arisen in the written statement. The judgment of Tamil Nadu

Electricity Board is also not applicable. In that case, the Court had noted that disputed questions of fact had arisen but had granted relief to the victim noting that this matter was pending before the Court since the last several years; the matter had also been relegated to the arbitration in the interregnum period; the Court was thus not inclined to send the parties for a trial; it was only in those circumstances that the grant of compensation was up-held.

20. The judgment of Himachal Pradesh High Court with utmost respect would not be applicable to the facts of the instant case. Before the Himachal Pradesh High Court also, the co-joint respondents were only one Department i.e. Electricity Board. Here there are two distinct departments and liability of each one of them has to be apportioned.

21. The judgments of co-ordinate Benches of this Court lay down the correct proposition of law. The Bench of this Court in K.K. Mehta (supra) while relying upon the judgment of the Apex Court in Chairman, Grid Corporation was pleased to hold 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. 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 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 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."

22. In Abdul Haque and Others, another Bench of this Court had 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."

23. This writ petition thus cannot be answered in favour of the petitioners. Dismissed.