

(2011) 09 AP CK 0058
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 1866 of 2002

Smt. Chilukuru Bharati and Others

APPELLANT

Vs

The A.P. State Electricity Board, and Others

RESPONDENT

Date of Decision : 05-09-2011

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (2011) 09 AP CK 0058

Hon'ble Judges : V.V.S. Rao, J;B.N. Rao Nalla, J

Bench : Division Bench

Advocate : P. Veera Reddy, for the Appellant; O. Manohar Reddy and G.P. for Home, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Sri Justice V.V.S. Rao

1. The first petitioner is the wife, second petitioner is the son and petitioner Nos. 3 and 4 are parents of one C. Brahmananda Reddy. They filed writ petition, being W.P.No.8150 of 1997, seeking a direction to the respondents to pay a sum of Rs. 7,00,000/- towards damages and compensation for the death of Brahmananda Reddy. On 09.07.1996 due to electric shock, which according to the petitioners is a result of negligence of the respondents, Brahmananda Reddy died. By order and judgment dated 30.09.2002, the learned single Judge disposed of the said writ petition directing payment of Rs. 50,000/- as ex gratia.

2. Brahmananda Reddy was an agriculturist. On 09.07.1996 at about 5:30 am when he was proceeding to his agriculture garden, he came in contact with a live electricity wire on the ground, which had fallen due to heavy gale. On coming into contact with the live wire, he died. A case in Crime No. 37 of 1996 was registered at P.S. Kuderu in Anantapur District. The petitioners contended that the respondents did not take care to maintain the distance as required under the Indian Electricity Rules, 1956. In the counter the respondents pleaded that the

wire which was fallen down on that day belonged to the consumer and it was not supplied by the Board at the time of releasing supply and that the responsibility to safeguard the wire is with the consumer. Learned Judge came to the conclusion that the question of payment of compensation has to be agitated in the civil Court. However, having regard to the fact that Brahmananda Reddy died after coming into contact with live electricity wire, directed payment of Rs. 50,000/- as ex gratia.

3. Learned Counsel for the petitioners would contend that when there is a clear finding recorded that the electricity wire fell on the ground as a result of snapping of the wire due to heave rain, the learned Judge ought to have drawn an inference that such snapping is due to negligence on the part of the respondents. When there were no disputed questions of fact, nothing prevented the writ Court to award compensation as asked for. Per contra, the Standing Counsel for electricity relies on S.D.O. Grid Corporation of Orissa Ltd. and Others Vs. Timudu Oram, to refute the petitioners' submission.

4. Apart from the question of filing a suit for recovery of damages for the death of Brahmananda Reddy, whether a writ petition claiming damages for the death due to electrocution is maintainable? The question is no more res integra.

5. In Chairman, Grid Corporation of Orissa Ltd. (Gridco) and Others Vs. Smt. Sukamani Das and Another, facts were as follows. Pratap Chandra Das, husband of Sukamani Das, on a day of violent inclement weather contacted an electric wire lying across the road and died. A writ petition was filed before Orissa High Court which accepted the writ petition and awarded compensation of Rs. 1,00,000/- for the negligence of the appellant corporation.

6. The Supreme Court reversed the judgment of the Orissa High Court observing as under.

7. 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 "admitted/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 defence 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 unauthorized 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.

8. In *Tamil Nadu Electricity Board v. Sumathi* AIR 2000 SC 1603, after referring to *Sukamani Das* and the other case law, the Supreme Court ruled as under.

9. In view of the clear proposition of law laid by this Court in *Sukamani Das* case (supra) when disputed question of fact arises and there is clear denial of any tortious liability remedy under Article 226 of the Constitution may not be proper. However it cannot be understood as laying a law that in every case of tortious liability recourse must be had to a suit. When there is negligence on the face of it and infringement of Article 21 is there it cannot be said that there will be any bar to proceed under Article 226 of the Constitution. Right of life is one of the basic human rights guaranteed under Article 21 of the Constitution. In *U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others*, where one of us (Wadhwa, J.) was a party, this Court after examining various decisions of the courts on the power of the High Court under Article 226 of the Constitution observed that the language of Article 226 of the Constitution does not admit of any limitation on the powers of the High Court for the exercise of jurisdiction thereunder though by various decisions of this Court with varying and divergent views. It has been held that jurisdiction under Article 226 can be exercised only when a body or authority, the decision of which is complained, was exercising its power in the discharge of public duty and that writ is a public law remedy.

10. If a citizen is deprived of inalienable human right to life by State action or due to failure on the part of the employees of the State in their "Duty to care" the aggrieved person or his/her dependants can invoke the public law remedy for compensation. However, every petition for such compensation cannot be accepted. Only those petitions where petitioner or his dependants demonstrate the callous attitude which resulted in the deprivation of fundamental right, the court can award compensation under public law as "palliative to apply balm to the wounds" and leave it to the aggrieved to approach Civil Court for compensation in tort. These principles are well settled by reason of the decision of the Supreme Court in *Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others*, , *D.K. Basu Vs. State of West Bengal*, and *The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others*,

11. In the result, we do not find any reason to interfere with the order of the learned single Judge.

12. The writ appeal is, therefore, dismissed, without any order as to costs.