

(1991) 10 GAU CK 0004
In the Gauhati High Court

Surya Kanta Talukdar

APPELLANT

Vs

Assam State Electricity Board and Others

RESPONDENT

Date of Decision : 08-10-1991

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 32

Citation : (1993) 2 ACC 226

Hon'ble Judges : U.L. Bhat, C.J

Bench : Single Bench

Judgement

U.L. Bhat, C.J.—The petitioner has filed the writ petition Under Article 226 of the Constitution of India seeking a writ of mandamus commanding the Assam State Electricity Board and its officers to pay the petitioner a sum of Rs. 2,00,000/- as compensation on account of the death of his daughter due to electrocution on 18.3.1991 at about 5.30 a.m. Mr. N.N. Saikia, learned Standing Counsel for the Assam State Electricity Board, who appeared for the respondents, opposed the admission of the writ petition on the ground that the proper remedy is by way of a suit

2. The petitioner has two adult sons and four daughters of whom three have been married. The youngest daughter Dipti Talukdar, aged about 15 years, was studying in the IX Standard. According to him, at about 5.30 a.m. on 18.3.1991 when she was walking on the road, her leg came in contact with a broken naked electric wire lying on the road and she died by electrocution. He alleged that on the previous night a tree near his house fell down and the electric wire had snapped. Since he did not receive any compensation, he caused a notice dated 10.4.1991 to be sent to the respondents demanding compensation of Rs. 50,000/-. Thereafter, his son wrote to the respondents seeking employment and he was asked to submit an application in proper form, which he did. Since there was no response, he has filed the instant writ petition.

3. In response to the objection raised on behalf of the respondents, learned Counsel for the petitioner, Mr. S. N. Medhi, contended that on several occasions

the Supreme Court as well as this Court have entertained compensation Claims Under Article 226 of the Constitution and awarded compensation. He has cited those decisions which are considered presently.

4. One of the decisions relied upon is Rudul Sah Vs. State of Bihar and Another, where the Supreme Court had to consider the relief to be granted Under Article 32 of the Constitution of India in a petition seeking writ of habeas corpus. Petitioner therein was acquitted of a criminal charge in 1968 but was actually released from jail in 1982. He was in illegal detention for over fourteen years. He sought his release and asked for ancillary relief?s like rehabilitation, reimbursement of expenses which he may have to incur for medical treatment and compensation for the illegal incarceration. The Supreme Court awarded in all a sum of Rs. 35,000/- and gave liberty to him to file suit for recovery of appropriate damages from the State and its erring officials. The Supreme Court described the order of compensation as being in the nature of a palliative. Dealing with the question whether the Supreme Court should order compensation, it was observed:

It is true that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of Courts, civil and criminal. A money Claim has, therefore, to be agitated in and adjudicated upon in a suit instituted in a Court of lower grade competent to try it. But the important question for our consideration is whether in the exercise of its jurisdiction Under Article 32, this Court can pass an order for the payment of money if such an order is in the nature of awarding compensation consequential upon deprivation of a fundamental right. The instant case is illustrative of such cases....

The petitioner could have been relegated to the ordinary remedy of a suit if his Claim to compensation was factually controversial in the sense that a Civil Court may or may not have upheld his Claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his faour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated.... 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.... The right of compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. Therefore, the State must repair the damage done" by its officers to the petitioner"s rights.

(Emphasis supplied)

5. The above dictum was laid down in the case of an unlawful detention of over fourteen years in violation of the petitioner's fundamental right, the case did not involve any doubt whatsoever about the petitioner's getting decree of recovery for damages. This decision cannot be an authority for the proposition that the High Court should necessarily entertain a Writ Petition Under Article 226 of the Constitution involving a Claim for damages on account of a negligent act of the Electricity Board or its officers.

6. Reliance is also placed on the decision of *Ram and Shyam Company Vs. State of Haryana and Others*, In that case at an auction held in regard to the grant of an annual lease governed by statutory rules, the appellant was the successful and highest bidder, but the State Government did not confirm the sale and afresh auction was notified in which also the appellant was the highest bidder. Once again the State Government declined to confirm the same. On an offer made by one of the rivals, the Chief Minister passed an order accepting the offer. The appellant challenged this action before the High Court which declined to interfere on the ground that the petitioner had an alternative remedy since the rules provide for an appeal. The Supreme Court indicated that an appeal before the Chief Minister or the State Government against the decision of the Chief Minister would be no remedy at all and the Writ Petition should not have been thrown out on the ground of an existence of an effective alternative remedy. The Supreme Court observed:

Ordinarily it is true that the Court has imposed a restraint in its own wisdom on its exercise of jurisdiction Under Article 226 where the party invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law. At any rate, it does not oust the jurisdiction of the Court.

This decision would be of no assistance to the petitioner.

7. Reliance is also placed on a decision of *Bhim Singh v. State of Jammu and Kashmir* 1986 ACJ 867 (SC). The petitioner therein, a member of the Legislative Assembly, was suspended from the Assembly and this order was stayed by the High Court. Thereafter, when he was on his way to Srinagar to attend the session he was arrested and taken away. His wife acting on his behalf filed a petition before the High Court for a writ of habeas corpus. He was ultimately released on bail by the Sessions Judge before whom he was produced. The Supreme Court, in matter before it, found that the detention was unlawful and violative of his constitutional right. The Supreme Court indicated that it has the right to award monetary compensation by way of exemplary cost or otherwise and awarded a sum of Rs. 50,000/- as compensation. This also is a case of violation of fundamental rights.

8. Reliance is also placed on two decisions of this Court in *Judicial enquiry into gang-rape demanded* 1988 (1) GLR 489 and *T. Sitarani Gupta v. State of Assam*

1982 (2) GLR 268. In the former case, the High Court acted on press report of the gang-rape by armed policemen and issued suo motu notice and rule to the State which on the next day appointed a judicial Commission. The Court held that it was competent to make rehabilitation grant to the injured or the alleged ravished women. The principle which may be apposite in the facts of that case can have no relevance to the facts of the present case. The second case related to a petition filed Under Article 226 of the Constitution of India by an advocate on behalf of the widow of a driver, who was in a motor vehicle accident. The widow, on account of her ignorance, could not file a Claim either before the M.A.C. Tribunal or Workmen's Compensation Commissioner. After coming into contact with the lawyer she filed a petition before the High Court. By that time the Claims before the Tribunal and the Commissioner had become barred by limitation. The Court felt that though ordinarily it would not grant any relief on account of existence of alternative remedy and on account of delay, in the particular facts of the case it proceeded to grant some relief. However, the Court did not lay down any principle which would be of any assistance to the petitioner in the facts of the case under consideration by us.

9. It would be useful to refer to certain other decisions as well. It has been observed by the Supreme Court in *Union of India v. T.R. Varma* AIR 1987 SC 882:

It is well-settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the Court to issue a writ; but the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs. And where such remedy exists, it will be a sound exercise of discretion to refuse to interfere in a petition Under Article 226 unless there are good grounds there for.

In *State of Orissa v. Dr. (Miss) Binapani Dei* AIR 1967 SC 1969 the Supreme Court observed:

Under Article 226 of the Constitution, the High Court is not precluded from entering upon a decision on questions of fact raised by the petition. Where an enquiry into complicated questions of fact arises in a petition Under Article 226 of the Constitution before the right of an aggrieved party to obtain relief Claimed may be determined, the High Court may in appropriate cases decline to enter upon that enquiry and may refer the party Claiming relief to a suit. But the question is one of discretion and not of jurisdiction of the Court.

We will now refer to a decision which is more or less apposite to the present case, namely, *L.I.C. of India v. Kiran Sinha* 1985 ACJ 657 (SC) wherein a Claim for payment of money under an Insurance Policy was made before the High Court Under Article 226 of the Constitution and the High Court allowed the prayer. The Supreme Court set aside the judgment of the High Court observing:

The High Court could not have in the circumstances of this case directed the

payment of the money Claimed under the insurance policies in question in a petition filed Under Article 226 of the Constitution. The only remedy available to the respondent in this case was a suit before a Civil Court.

(Emphasis supplied)

10. There is a decision of the High Court of Kerala on almost identical facts. The decision is in *Kerala State Electricity Board v. Thressia* 1988 ACJ 404 (Kerala). The widow of a person electrocuted filed a petition Under Article 226 of the Constitution against the Kerala State Electricity Board Claiming compensation. Learned Single Judge who heard the case ordered payment of compensation. In appeal a Division Bench relying on two decisions of the Supreme Court held that the High Court had no jurisdiction Under Article 226 of the Constitution to award damage for the negligence of the Electricity Board which resulted in the death of the petitioner's husband.

11. It would be useful to refer to a passage appearing at page 1228 in Vol. II of the Constitutional Law of India, 3rd Edn., by H.M. Seervai:

The writ of mandamus is not a writ of course or a writ of right but is, as a rule, discretionary...In exercising its discretion, the Court will refuse the writ, if there is an alternative remedy at law, but the alternative remedy must be equally convenient, beneficial and effectual. In England such alternative remedies include a petition of right (replaced by proceedings under the Crown Proceedings Act, 1947); an appeal to a Court or Tribunal; an election petition; an execution; an action at law.

and again at page 1229:

An order for mandamus will lie to compel public officials or a public body to perform any public duties which they have failed to perform.

12. It has been observed in *Legal Control of Government* by B.Schwartz and H.W.R. Wade:

The important aspect of the prerogative remedies is that they belong exclusively to public law (with the exception of habeas corpus), their primary object being to make the machinery of government work properly rather than to enforce private rights. This introduces a valuable "public interest" element...in a suit of mandamus the Queen is calling for the proper discharge of some public duty. Although private persons are, of course, the real plaintiffs, the public character of the proceedings is more than a mere form.

13. The principles governing issue of writ of mandamus or direction in the nature of mandamus are well established. It is a command directed to any person, corporation or inferior Tribunal requiring them to do some particular act which pertains to their office and is in the nature of a public duty. It is intended to compel exercise of jurisdiction. As a general rule, grant of such an order is discretionary; it is not an order of right. It can be refused not only on merits but

also on account of special circumstances relating to delay, conduct of parties or existence or otherwise of equity. A mandamus may be issued when there is a specific legal right and no specific remedy; it may be refused when there is an alternative remedy which is equally convenient, effectual, adequate or efficacious. Existence of such an alternative remedy does not affect the jurisdiction of the Court to issue a writ or direction; but existence of remedy has to be taken into consideration in the matter of exercise of jurisdiction by the Court. We ordinarily decline to exercise jurisdiction in favour of the Claimant in such cases unless there are good grounds there for.

14. The Claim in the present writ petition is based on negligence of the Electricity Board and its officers. It is true that there is no statutory remedy provided in such cases by the statutes governing the functioning of Electricity Board, though there are statutory guidelines as to the manner in which such accidents are to be dealt with. The ordinary common law remedy in the case of a Claim arising from a tortious liability based on negligence is by way of a suit in a Competent Court. It cannot be the policy of High Court to entertain writ petition seeking writ of mandamus commanding the Electricity Board to pay the compensation for the consequences of the negligent act of its officers. In some cases, Supreme Court and various High Courts have granted monetary compensation to aggrieved persons but such cases are mostly cases of grave invasion or violation of fundamental rights or of gang-rape and the like. The solitary decision in favour of the petitioner in *Sita Rani Gupta's Case* 1982 (2) GLR 268 where the extraordinary circumstances of the case persuaded this Court to entertain writ petition. This is certainly an exceptional case and in the domain of law as in other domains, exceptions cannot be converted into a rule. Relief based on negligent act of instrumentality of State or its officers can be granted only on proof of actionable negligence. It may well be that in a given case actionable negligence can be presumed provided facts leading to such a presumption are admitted or proved. The present is a case where only the fact of accidental death is admitted, but not the circumstances under which it happened; nor is the responsibility of the Board or its officers admitted. The quantification of compensation also is a matter which is capable of giving rise to controversy since the petitioner himself who at one stage Claimed Rs. 50,000/- has now Claimed Rs. 2,00,000/-. The proper and effective remedy of the petitioner is by way of a suit in a Competent Civil Court. No reason or ground is urged to show that remedy by way of suit in the present case cannot be effective or adequate. It may be that the suit may not be disposed of immediately or the prosecution of suit may involve expenses; this, however, cannot persuade the High Court to entertain the writ petition since the same consequence may befall the remedy by way of a writ petition also since such remedy may not also be speedy or cheap. Having regard to all the relevant circumstances, we are satisfied that the writ petition should not be entertained and the petitioner must be referred to a civil suit.

15 Learned Counsel for the petitioner stated that this Court has entertained

similar writ petitions in Civil Rules 628 of 1989 and 198 of 1989 and relied on the decision of the Supreme Court in *Bir Bajrang Kumar v. State of Bihar*, to contend that this Court must necessarily admit the present writ petition. In the above case Supreme Court on going through the records was satisfied that one of the cases involving an identical point had already been admitted by the High Court and Another identical writ petition was dismissed by the same High Court. The Supreme Court pointed out that this creates a very anomalous position and there is a clear possibility of two contradictory judgments being rendered by the same High Court. Full facts of the case are not set out in the reported decision, but a reading of the short decision makes it clear that several cases arose on the identical fact situation. In such a case if one writ petition is entertained the other also has to be entertained. This decision cannot help the petitioner to contend that since writ petitions in regard to two other cases of death by electrocution have been admitted, the present also should be admitted. Even in the two writ petitions mentioned we find that rule has been issued only in one but not in the other though interim orders have been passed in both the cases. It is worthwhile noticing that the writ petitions filed in 1989 are even now pending. This should clearly indicate that remedy by way of writ petition need not necessarily be an expeditious or efficacious remedy. It is quite possible that the aspects considered in this judgment were not presented to the Court when the other writ petitions were presented. We are not persuaded to hold that the pendency of the other writ petitions is an adequate ground for entertaining the present writ petition.

16. We, therefore, dismiss the writ petition and refer the petitioner to a competent Civil Court.