

CASE NO.:
Appeal (civil) 1726 of 1999

PETITIONER:
S.D.O. Grid Corporation of Orissa Ltd. & Ors.

RESPONDENT:
Timudu Oram

DATE OF JUDGMENT: 28/07/2005

BENCH:
ASHOK BHAN & S.B. SINHA

JUDGMENT:
J U D G M E N T
With

Civil Appeal No.4560/2005
(@ Special Leave Petition) NO. 5591 of 1999)
And
Civil Appeal No.4552/2005
(@ Special Leave Petition (c) No.9788 of 1998).

BHAN, J.

Leave granted in Special Leave Petition (c) No. 5591 of 1999 & 9788 of 1998.

In this batch of three appeals the question which arises for determination is as to whether the High Court was justified in exercising its power under Article 226 of the Constitution of India and award compensation to the respondent writ petitioners even though the appellants \026 who was the respondent in the writ petition \026 had denied the liability on the ground that the deaths had not occurred as a result of their negligence but because of the negligence of the respondent themselves or of an act of God or because of an act of some other persons. These appeals were ordered to be listed along with the case - Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) and others Vs. Sukamani Das (Smt.) and another, [(1999) 7 SCC 298], but were delinked as the service had not been completed on the respondents. The Bench disposed of the batch of 10 appeals and these appeals were ordered to be heard after service is complete.

The facts of Civil Appeal No.1726 of 1999 arising against the order passed by the High Court of Orissa in Writ Petition bearing OJC No.13281 of 1997 are:-

One Themba Bhim, a co-villager of the deceased had taken power supply to his L.I. point. Some other villagers of the village Khuntagaon viz, Ralbindra Oram, Fatha Oram, Gobardhan Kisan and Etwam Oram had illegally taken power supply without the knowledge of GRIDCO Authorities by use of hook from the L.I. point to their houses by means of an un-insulated G.I. wire. On 22.8.97 the unauthorised G.I. wire through which the line was illegally taken got disconnected and fell on the ground. At that time the father of the respondent Japana Oram was

coming with his bullock, the bullock came in contact with the live G.I. wire and as a result thereof got electrocuted. On finding this Japana Oram tried to rescue the bullock and got electrocuted. His wife came to his rescue and hearing her cries her daughter Sabi Oram while trying to detach her parents also was electrocuted. The incident was reported to the local police by the villagers of the Khuntagaon on 23.8.97 wherein the fact of illegal hooking and death due to electrocution was admitted. The local police enquired into the matter and reported the cause and manner of death as stated above. On 23.8.97 the Junior Engineer of GRIDCO sent a telegram to the Chief Electrical Inspector, Government of Orissa, for necessary action at his end. The S.D.O. Electrical Sub-Division Ujalapur on 24.8.97 also submitted report in which the cause of death was mentioned to be due to illegal electric connection taken through hook. On 16.9.97 respondent herein filed a writ petition in the High Court of Orissa at Cuttack being OJC No.13281 of 1997 claiming compensation for the death of the deceased. Counter affidavit was filed by the appellants herein. In the Counter affidavit it was contended that death occurred were due to the negligence of the deceased themselves and the electric live wire were belonging to and maintained by the GRIDCO had not snapped and, therefore, the appellants were not liable to pay any compensation. By the impugned judgment the High Court disposed of the writ petition with a direction to the appellants to pay a sum of Rs.2,70,000/- by way of compensation to the respondent herein.

In Civil Appeal No. _____ of 2005 (@ SLP(C) No.9788 of 1998) arising from OJC No. 6290 of 1994, on the night of 10.5.84 due to heavy storm and rain, one L.T. conductor snapped. This happened despite the fact that the appellant had taken adequate steps to maintain the supply line properly. Before the storm and rain on the night of 10.5.84 the supply line was checked by the Junior Engineer and the lineman in the regular course of checking. However, before information about the snapping of the line was received by the appellants, the deceased while moving in the morning came in contact with the snapped electric line and became unconscious. He was taken to the hospital where he was declared dead. The respondent had filed a suit in the Court of Subordinate Judge, Jajpur against the appellants claiming compensation for the death of deceased being Money Suit No.199 of 1987. The said suit was dismissed by the Subordinate Judge, Jajpur vide order dated 16.5.92. Thereafter, after a delay of 10 years, in the year 1994 the present writ petition was filed in the High Court. The High Court ignoring the fact that the suit filed on the same cause of action had already been dismissed and awarded compensation of Rs.40,000/- to the respondent. According to the appellant, the death occurred not because of their fault but due to act of God.

In Civil Appeal No. _____ of 2005 (@ SLP(C) No.5591 of 1999) arising from OJC No.4247/97

the respondent filed a writ petition in the High Court of Orissa at Cuttack inter alia on the allegations that on 28.5.92 at about 12.00 noon while her husband was returning from the polling station, a live electric wire suddenly snapped and fell on him as a result of which he received severe electrical burn injuries and lost his senses. Some local people took him to the S.D. Hospital, Jajpur but on the way he breathed his last. The respondent alleged that the accident had occurred due to the negligence of the appellants and claimed compensation for the death of the deceased. In the counter affidavit filed by the appellants, it was inter alia submitted that generation and distribution of the energy are regulated through statutory provisions namely the Electricity (Supply) Act, 1948 and the rules framed thereunder. The family of the deceased did not lodge a complaint/FIR in the police station. According to the appellants the husband of the respondent may have died due to electric shock but it was not due to fall of electric wire. The allegations made in the writ petition that, death occurred due to negligence of the appellants was denied. It was stated that there was no negligence on the part of the appellants. It was also submitted that the writ petition involved disputed questions of fact which could not be decided in exercise of writ jurisdiction under Article 226 of the Constitution. The High Court allowed the writ petition and commanded the appellants to pay a sum of Rs.1,50,000/- towards compensation to the respondent.

In Chairman, Grid Corporation of Orissa Ltd. (Gridco) and others (supra) 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 of India and were not fit cases for exercising the jurisdiction under Article 226 of the Constitution of India. 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 appellant 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 of India. 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:-

"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 I 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 or 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."

Similar view was taken by this Court in W.B. State Electricity Board & Ors. Vs. Sachin Banerjee & Ors., 1999 (9) SCC 21. In the said case it was observed as under:

"..... The only grievance of the petitioners relates to an observation in the impugned judgment that two victims had died because of the negligence of the petitioner State Electricity Board. Looking to the fact that the two victims were electrocuted because of an illegal hooking for the purpose of theft or electricity, the petitioners cannot be held guilty of negligence although they may have stated that there is a need for conducting dehooking raids more frequently."

As against this counsel for the respondent cited a later judgment of this Court in M.P. Electricity Board Vs. Shail Kumari & Ors., 2002 (2) SCC 162, wherein this Court has taken the view that the Electricity Board could be fastened with the liability in a case in which the live wire got snapped and fell on the public road which was partially inundated with rainwater. The observation made by this Court in the aforesaid case would not be applicable to the facts of the present case as in the said case a suit had been filed in which a finding of negligence was recorded by the trial Court against the Board. The trial Court after coming to the conclusion that the respondents were entitled to a compensation of Rs.4.34 lacs non-suited the respondents solely on the premise that the claimants had failed to prove their liability for such compensation. The High Court in the said case had recorded a finding, "therefore, the defences put up by MPEB are absolutely without any basis and do not reflect the real position at the spot, rather attempt has been made to conceal the real position in order to avoid responsibility and liability for payment of compensation." On these facts, this Court came to the conclusion that the claimants were entitled to the compensation. Counsel for the appellants also cited a judgment in H.S.E.B. and others Vs. Ram Nath and others, (2004) 5 SCC 793 in which a similar view was taken. In the said case it was observed by the Bench that where disputed questions of fact were involved writ petition would not be the proper remedy but since there was no denial in the written statement that wires were loose and drooping and the claimant had asked the Board to tighten the wires, the Board was held liable to pay the compensation. This finding was recorded because the supplier of electricity did not controvert the facts alleged by the respondent writ petitioner. Disputed questions of facts were not involved and as a result of which the finding recorded by the High Court was upheld.

In the present case, the appellants had disputed the negligence attributed to it and no finding has been recorded by the High Court that the GRIDCO was in any way negligent in the performance of its duty. The present case is squarely covered by the decision of this Court in *Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) and others* (supra). The High Court has also erred in awarding compensation in Civil Appeal No. of 2005 [@ SLP(C) No.9788 of 1998]. The subsequent suit or writ petition would not be maintainable in view of the dismissal of the suit. The writ petition was filed after a lapse of 10 years. No reasons have been given for such an inordinate delay. The High Court erred in entertaining the writ petition after a lapse of 10 years. In such a case, awarding of compensation in exercise of its jurisdiction under Article 226 cannot be justified.

As the High Court had exercised its power under Article 226 of the Constitution without properly appreciating the nature of its jurisdiction, the impugned judgments deserve to be set aside. However, in view of the long lapse of time the appellants will not recover the amounts already paid to the respondents. The civil appeals are disposed of accordingly. No costs.