

Thressia Vs. K.S.E.B.

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Court : Kerala

Decided On : Dec-19-1986

Reported in : II(1987)ACC546; AIR1988Ker206; (1987)IILLJ271Ker

Judge : Varghese Kalliath, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : O.P. No. 6098 of 1986

Appellant : Thressia

Respondent : K.S.E.B.

Advocate for Pet/Ap. : P.K. Ibrahim, Amicus Curiae

Judgement :
ORDER

Varghese Kalliath, J.

1. A widow of a poor agricultural labourer sent a letter to Justice Balakrishnan. His Lordship Balakrishnan opined that the woeful facts revealed in the letter require it to be considered as an Original Petition under Article 226 of the Constitution. The letter with the opinion of Balakrishnan, J. was placed before Justice Sukumaran. Sukumaran, J. deemed it fit to be taken as an application under Article 226 of the Constitution.

Notice was issued to the Kerala State Electricity Board.

When the petition came up for hearing, I directed the Electricity Board to file its reply to the letter as an affidavit. The Board has filed a counter-affidavit in the case.

2. Now the facts :

The petitioner submits that she is the widow of a poor agricultural labourer. Her husband was an agricultural labourer. She tells this court that her husband was electrocuted on 5-10-1979. This tragedy happened when her husband got himself contacted with a snapped live power line. She says that she has got only 21/2 cents of lands as her sole asset in this world. The petitioner and her children are living in a small hut in that 21/2 cents of land.

3. She unfolds the sordid story of her faithful and strenuous efforts which turned out barren and sterile at the Micawberish treadmill officialism of the Electricity Board. She comes before this court after a sustained but frustrated waiting for seven long years hopefully expecting that the Electricity Board wilt give her adequate monetary palliative for the uncompensatable loss she has suffered. The epitome of her anguish disappointment and dismay, she says in these words :

[Matter in vernacular omitted. --Ed.]

Certainly, the facts narrated in the letter reveal a very sad state of affairs.

4. The complaint is anchored on the inexcusable indifference and negligence of leaving a snapped wire line unattended and unguarded by any one and without any danger signal, but as a trap to snap the lives of innocent pedestrians on the route. This act of cold indifference of the respondents took away the precious life of the only wage earner of the petitioner's family. Further it is said that the Board was careless and indifferent to the extreme extent in the matter of considering the petitioner's claim for compensation. The Board was misleading and misdirecting the petitioner to frustrate her claim for compensation by resorting to the ordinary statutory remedies. She says that the Board has failed mortally in their obligation to consider the claim of compensation.

5. The Board has filed a counter-affidavit. In the counter-affidavit, the Board has admitted that the tragic incident occurred at 4 p.m. on 5-10-1979. The counter states thus :

'A coconut cadjan leaf fell on the live line and snapped and the victim came in contact with the live line electrical conductor and was electrocuted. A spot payment of Rs. 250/ was made to the bereaved family. The legal heirs of the deceased victim are eligible for ex gratia compensation as per the rules.'

it is seen stated in the affidavit that the Superintending Engineer, electrical Circle, Kottayam, recommended the maximum compensation to the legal heirs of the victim. The counter-affidavit admits the fact that it took seven years after the incident to pay even the ex gratia compensation of Rs. 3000/-to the legal heirs of the victim. It is admitted in the counter-affidavit that on 16-5-1981 the income and heirship certificates of the legal heirs of the victim were forwarded to the Chief Engineer. But a final decision for payment of even the ex gratia payment was taken only on 14-3-1986, This order, it seems, has been forwarded to the deponent of the counter-affidavit, namely, the Executive Engineer and he received it only on 15-4-1986, and that on 5-9-1986 the ex gratia payment was made to the petitioner.

6. There is absolutely no explanation offered in the counter-affidavit for the inordinate delay in the matter of paying the ex gratia compensation. This is important when the Board itself has admitted that as per the rules in force, the petitioner is entitled to maximum ex gratia compensation. The fact that the petitioner is entitled to maximum ex gratia compensation is unequivocally admitted in para. 4 of the affidavit. It has to be remembered that the tragic death of the petitioner's husband was on 5-10-1979 and the ex gratia payment was on 5-9-1986 after receiving the complaint of the petitioner as an original petition by this court. The counter-affidavit is singularly and significantly silent about any contributory negligence on the part of the petitioner's husband. The fact that the Board has admitted that the petitioner is entitled to the maximum ex gratia compensation explicitly points to the further fact that the petitioner is entitled to legitimate compensation.

7. In the statement filed by the counsel, who has been appointed amicus curiae in this case, it is stated that the Board was careless and negligent in the matter of drawing the line. He says that as per R. 74 Electricity Rules, the prescribed strength of an overhead line shall have a breaking strength of not less than 350 K.G. and where the voltage is low and the span is 15 metres, the prescribed strength shall not be less than 150 K.Gs. If this rule has been strictly complied with in the matter of drawing the line, the statement proceeds to say that the overhead line would not have broken on the fall of a mere dry cadjan leaf.

8. I think it is a forceful submission which would persuade this court to come to a conclusion that the Board was negligent even in the matter of drawing the line. I am not in a position to examine it any further and to give a precise and positive opinion about it. But the fact remains that though there was time for the Board to give a reply to the statement filed by the counsel appearing Amicus Curiae in this case, no affidavit or counter statement is seen filed in this case,

9. A Division Bench of this court in the case reported in K.S.E.B. v. Kamalakshy Amma, 1986 Ker LT 1124 : (AIR 1987 Ker 253) has observed that when the plaintiffs succeeded in proving that a pedestrian was electrocuted from a live wire hanging down from an electric post, there is a presumption of fact that there was lack of proper care on the part of those in the management or control of the power supply system at the particular place. The Division Bench has relied on the principle *res ipsa loquitur* for drawing the presumption of lack of proper care or negligence on the part of those who are responsible for the management and control of the power supply. Kennedy LJ. explains the meaning of *res ipsa loquitur* as follows (Russell v. L. & S. W. Rly.Co., (1908) 24 TLR 548, 551) :

'The meaning, as I understand, of that phrase. . . is this, that there is, in the circumstances of the particular case, some evidence which, viewed not as a matter of conjecture, but of reasonable argument, makes it more probable that there was some negligence, upon the facts as shown and undisputed, than that the occurrence took place without negligence. The *res* speaks because the facts stand unexplained and therefore, the natural and reasonable, not conjectural, inference from the facts shows that what has happened is reasonably to be

attributed to some act of negligence on the part of somebody; that is, some want of reasonable care under the circumstances.'

The circumstances revealed in this case are eloquently consistent with the negligence of the Board than with any other cause for the accident. In *Syad Akbar v. State of Karnataka*, AIR 1979 SC 1848, Sarkaria J. observed :--

'The event or accident must be of a kind which does not happen in the ordinary course of things if those who have the management and control use due care. Further the event which caused the accident must be within the defendant's control. The reason for this second requirement is that where the defendant has control of the thing which caused the injury, he is in a better position than the plaintiff to explain how the accident occurred.'

10. In the statement it is further elucidated that the petitioner 'is a very poor economically backward person having seven children four girls and three sons.' It is stated that the petitioner's husband had been working as an agricultural labourer and earning a daily wage of Rs. 35/-. It is said that at the time of death, the petitioner's husband was aged 50.

11. On the facts disclosed in this case, I feel that I am justified in concluding certain facts. I hold that the Board was negligent and on the part of the petitioner's husband, there was no contributory negligence. The petitioner and her children were depending on the earnings of the deceased. The ex gratia compensation paid by the Board will not meet the ends of justice in this case. It was paid after unexplained deadly delay. In fact, the counsel appearing for the Board rightly did not advance an argument that the ex gratia compensation is sufficient for the great loss suffered by the petitioner and her children. So, I feel that the petitioner and her children are entitled to compensation.

12. Now, two things remain to be considered in this case. One, whether in these proceedings, I can pass an order directing the respondent-Board to pay a compensation commensurate with the great loss the petitioner and her children suffered on account of the negligence of the Board. As I said earlier, I have no doubt about the liability of the Board to compensate the petitioner. Two, what is

the adequate and reasonable compensation that I can award, if I answer the first question in the affirmative.

13. Normally, this court can consider under Article 226 of the Constitution, questions of violation of fundamental rights of the citizen. In *Olga Tellis v. Bombay Municipal Corporation* (1985) 3 SCC 545 : (AIR 1986 SC 180) the Supreme Court has said that the question of enforcement of the fundamental rights would arise where the action is taken under a statute which is ultra vires of the Constitution, or the action itself is procedurally ultra vires or where an authority under an obligation to act judicially, passes an order in violation of the principles of natural justice. These categories are however not exhaustive. In the same case, the Supreme Court has considered the sweep of the right to life conferred by Article 21. The Supreme Court said : 'Life means something more than mere animal existence. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. It has been made clear that the said aspect is but only one phase of the guarantee under Article 21. The Supreme Court said that an equally important facet of the right under Article 21 is the right to livelihood, because no person can live without the means of living, that is, the means of livelihood. The court said that if the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. There is thus a close nexus between life and the means of livelihood and as such that which alone would make it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life.'

14. I refer to the above quote not to say that this case will come squarely under Article 21 on the basis of deprivation of life of the husband of the petitioner. It cannot be said that this aspect of the matter is almost totally outside the pale of consideration in this case. Since the petitioner before me is the widow of the deceased, I feel that there is close nexus with Article 21 of the Constitution as far as the petitioner is concerned, since the negligent conduct of the Board (State)

vitally and seriously deprive the dependent livelihood of the petitioner and her children.

15. I am conscious that normally Article 226 proceedings cannot be used as a substitute for the enforcement of rights and obligations, which can be enforced legitimately and efficiently by resorting to the normal ordinary processes before civil courts as provided by law. So, naturally, a fiscal compensation or claim has therefore to be claimed and litigated, upon in a suit or other proceedings instituted in a court competent to try it. But, in this case. I have to say that really, the Board is guilty in not taking appropriate actions contemplated as per rules, at least for mitigating the damages suffered by the petitioner, by paying at least the ex gratia compensation in time. Further, the facts disclose that in fact the petitioner was misled by the Board and as a result, no civil action was taken by the petitioner against the Board. I need not repeat that though the accident took place in 1979 and that the Board was fully satisfied that the petitioner is entitled to an ex gratia payment, that payment was also given only in 1986, after these proceedings were initiated. The conduct of the Board clearly justifies this proceeding under Article 226 of the Constitution. Now, filing a suit for compensation is apparently barred by limitation. I cannot say that the Board is not responsible for creating this irreversible and disadvantageous position for the petitioner. Certainly, I must remember that I am dealing with a case against the State, since the Board is a State under Article 12 of the Constitution. In *Rudul Sah v. State of Bihar*, AIR 1983 SC 1986 the Supreme Court has said :

'The right to 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. If civilisation is not to perish in this country as it has perished in some others too well known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights.'

In the above case, the Supreme Court ultimately directed the State Government to pay Rs 30,000/- as compensation. Certainly, this is an award of compensation in a

proceedings under Article 32 of the Constitution. The Court 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 lowest grade competent to try it.'

16. The question whether what sort of relief that would be adequate, and should be granted under Article 226 of the Constitution depends upon the nature and facts of each case, I feel that the guiding principle in all cases is promotion of justice and prevention of injustice. In the present case, the petitioner lost her husband and the children their loving father. It is due to the negligence of the respondent-Board. Now, as it is, the petitioner has been deprived of her right to receive compensation by filing a suit, because it maybe time barred. This happened because of the bureaucratic dilly-dallying indifference in considering the petitioner's claim. In *Hari Raj Singh v. Sanchaiak Panchayat Raj*, AIR 1968 All 246 the court said :

'The powers of this Court under Article 226 are very wide and it can compensate an aggrieved person in any reasonable manner for any loss suffered by him due to nonpayment of his dues.'

I feel if this court refuses to grant the petitioner an adequate relief a great injustice will be done to a widow and her children. I again quote what the Supreme Court said in *Rudul Sah's case* (AIR 1983 SC 1086) :

'The order of compensation passed by us is, as we said above, in the nature of a palliative. We cannot leave the petitioner penniless until the end of his suit, the many appeals and the execution proceedings.'

I cannot say that it is not a plausible argument that can be advanced by the Board that the petitioner can file a suit to recover damages' against the Board. Happily, the Board, has not raised such an objection in their counter-affidavit. I see no good reason for not (sic) relegating the petitioner in this particular case, to the ordinary remedy of a suit at this distance of time since really her claim to compensation is

factually non-controversial, and her cause of action has been imperilled by the elusive and slip away manner in which the claim of compensation was dealt with by the pink ribbons and squirrel cage officialism of the respondent-Board. In these peculiar circumstances, the refusal of this court to pass an order of compensation in favour of the petitioner and her children will amount to a show of volte-face to the realities and justice of the cause. I do not want to do that.

17. Now, the only question that remains for my decision is, considering all the circumstances involved in the case, what is the compensation that I should direct the Board to pay to the petitioner. It is not disputed that the petitioner was earning an amount of Rs. 35A per day as daily wages. Though I cannot presume that he will be getting employment for all days in the year, I can reasonably fix Rs. 500/- a month as the basic amount of earning for calculating the damages to be awarded and on that basis, I think it will be only reasonable, proper and fair to direct the Board to pay to the petitioner and her children an amount of Rs. 72,000/-. (Rupees Seventy Two Thousand only). I direct that the Kerala State Electricity Board should make the payment within three weeks from today. Of course, the petitioner and her children can have recourse to a civil court if it is possible and in that context, the amount now awarded by me also has to be taken into account in fixing the damage by the civil court.

18. I may make it clear that no one should apprehend that the decision in this case involves casting a wide net throwing for the dependants entitled to damages, justifying an approach to this court under Article 226 of the Constitution. I know that this is a wide net but one must be careful however not to fall into the error of assuming, that because the net is wide, the catch will necessarily be large. This is a singular and unique case where this court can justifiably feel that to promote justice and to prevent injustice on the peculiar circumstances emerged in the case, the course adopted in this decision is a compelling remedy that has to be granted to the petitioner.

19. Reasonably, I should feel that I am invited eloquently to envisage a situation where this court may have to face a shoal of claims. I feel this one case of the petitioner and her particular difficulties and the manner in which the case was

treated by the Board stands very much on its own. True, it is easy, to imagine other instances not strikingly different from hers, where the result would not be the same. All such cases will turn on their own particular facts and I only decide that in this case the petitioner is entitled to compensation.

20. I feel that I should disclose the process of decision employed by me before leaving this case. I remember that aphorism that in the decision process, the courts are dominantly coerced not by the essays of their predecessors but by a surer thing -- by an intuition, of fitness of solution to the problem. Vide -- Oliphant -- a Return to stare decisis. General propositions do not decide concrete cases and the life of the law has not been logic, it has been experience. A just solution for the particular case is the crucial factor in the decision process. I have tried to remember that equitable rule of decision that; considerations of justice are directly relevant to the justification of any decision.

21. I share the root better of Lord Denning. He said : 'My root belief is that the proper role of the Judge is to do justice between the parties before him. If there is any rule of law which impairs the doing of justice, then it is in the province of the Judge to do all that he legitimately can, to avoid, that rule -- or even to change it -- so as to do justice in the instant case before Him.I would emphasise however the word legitimately. The Judge is himself subject to the law and must abide by it.'

22. I place on record my great appreciation for the valuable assistance given by Advocate Shri P. K. Ebrahim as amicus curiae in this case.

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