

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.10.2020

PRONOUNCED ON : 02.11.2020

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.15166 of 2020

G.Sendhattikalaipandian

... Petitioner

Vs.

1. The Inspector of Police
Alangulam police station,
Virudhunagar District.

2. The Superintending Engineer
TANGEDCO, Virudhunagar Distribution Circle
Virudhunagar District.

... Respondents

PRAYER: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, direct the respondents to expedite the investigation in Crime No.355 of 2020 on the file of Alangulam Police Station, Virudhunagar District and to pay maximum compensation for the petitioner's son Saravanan who died due to electrocution.

For Petitioner : Mr.G.Sendhattikalaipandian,
Party-in-Person.

For R-1 : Mr.V.Neelakandan,
Additional Public Prosecutor.

For R-2 : Mrs.S.Srimathy,
for Mr.S.M.S.Johny Basha.

* * *

ORDER

I hail from Thiruvarur. It was ruled by Manu Needhi Cholan (I refuse to rename or call him by some other name merely because "Manu" may sound politically incorrect). This King had hung a giant bell in front of his palace. Any one seeking justice could ring it and he will be heard and justice rendered. One day, it so happened that a young calf had got crushed under the wheels of the chariot on which the only son of the king, Prince Veedhi Vidangan was travelling. The mother of the calf walked to the palace gates and rang the bell. The king came out and learnt what happened. The king ordered that his son should be killed in the same way so that he could undergo the very same pain as that of the cow. The legend has been depicted in stone near the vitta vassal of the temple and it is one of my earliest memories. The

Bench of Justice R.K.Agarwal and Justice D.Y.Chandrachud referred to this legend in one of their orders.

2. We are a proud republican State. There is no place for kings to hand out summary sentences. But then, wrongs continue to be perpetrated and tragedies continue to occur. There are lakhs of people crying for justice. It becomes our duty to speedily respond.

3. When I sat on the Bench on 29.10.2020 to commence the day's proceedings, I saw before me a middle aged villager holding a petition. On enquiry, I came to know that he is eking out his life as a gardener. He and his wife Ramalakshmi were blessed with two sons, namely, Saravanan and Bharathi. Saravanan was everything to them. He was studious and disciplined. He had passed out of Ayya Nadar Janaki Ammal College, Sivakasi in First Class in B.Sc.(Visual Communication). He took up post-graduation in M.A.(Journalism) in Madras University. He was a meritorious student. His only dream in life was to clear civil services and become District Collector. On account of Covid-19 pandemic, Saravanan had come back to the village. On 07.10.2020 at about

9.30 a.m., after dropping his father in the market, he was returning home through the customary pathway running across a private land belonging to a local factory. He came in contact with a live overhanging wire. He was electrocuted and died on the spot. Crime No.355 of 2020 was registered on the file of Alangulam police station for the offence under Section 304(2) of I.P.C. against unknown electricity board officials.

4. Sendhattikalaipandian is the bereaved father who stood before me. He had sent a petition through e-mail to the Registrar(Judicial), Madurai Bench, Madras High Court seeking justice.

5. I did not have the heart to tell him that he should consult a lawyer and file a proper writ petition before the High Court or a suit for compensation before the civil court. I was reminded of the decision reported in (2013) 2 MLJ 302 (Arulmeri V. Superintendent of Engineer, TNEB) wherein it was authoritatively held that when the deceased was not at fault and the death had occurred due to fall of electric wire, there is no need for the dependent to go before the civil court and that relief

can be granted in writ proceedings. Did not Justice V.R.Krishna Iyer treat letters as writ petitions?. I directed the Registry to number the e-mail sent by Sendhattikalaipandian as a writ petition. The jurisdictional police and TANGEDCO were arrayed as respondents. I directed the learned Standing counsel for TANGEDCO and the learned Additional Public Prosecutor to take notice and obtain full instructions and be ready when the matter is taken up for disposal at 1.00 p.m. I also directed the concerned officials to appear before the Court through web hearing with all relevant particulars. I must place on record my appreciation for the response shown by the learned Standing counsel. The officials also presented their case before me. With the consent of the learned Standing counsel appearing for the respondents, the writ petition was taken up for final hearing in the afternoon.

6. The stand of TANGEDCO was that HT line of 11 KV Alangulam feeder fed from 110/11KV Alangulam Sub-Station snapped on account of squirrel interference. The line had fallen on Karuvelam bushes that had grown underneath. It did not touch the ground. Therefore, the feeder had not tripped at the Sub-Station. Without noticing the same, Saravanan, son of the petitioner came in contact with the overhanging line. The learned Standing

counsel would contend that the officials of TANGEDCO cannot be blamed for what had happened. The tragedy is attributable squarely to Act of God. Alangulam is an interior village. Squirrels are known to climb up the electric poles and meddle with the wires. In this case, while doing so, the tail of squirrel appears to have touched V-Cross arm. That led to passing of what is known as fault current. Since the line could not bear the heavy load, it had snapped. The snapped line had straightaway fallen on the ground, the feeder would have tripped and the electricity supply would have also stopped. But then, it had fallen on Karuvelam bushes that had grown underneath. The learned Standing counsel pointed out that due to bird hits and rodent interference, such mishaps do occur. The electricity board officials cannot be accused of having been negligent at all. In any event, as per their settled policy, TANGEDCO is ready to disburse a sum of Rs.5,00,000/- to the petitioner. The learned Standing counsel would submit that if the petitioner is seeking higher compensation, he must necessarily move the jurisdictional civil Court. She placed reliance on the decision of the Hon'ble Supreme Court reported in (2005) 6 SCC 156(SDO Grid Corporation of Orissa Ltd. and Others V. Timudu Oram).

7. I reserved orders and posted the matter for pronouncing judgement on 02.11.2020. In order to satisfy my conscience, I made a spot inspection. I am satisfied that the occurrence had taken place on account of rodent interference. The Sub-Inspector of Police as well as the Executive Engineer showed me photographs of the squirrel that lay dead near the ill-fated electric pole. I must, however, categorically reject the stand taken by TANGEDCO that Saravanan had taken the route by disregarding the warning given by some local persons. When I specifically queried the concerned official in this regard, she was unable to give the source of information. The investigation officer, namely, the Sub-Inspector of Police categorically told me in the presence of the TANGEDCO that Saravanan was absolutely unaware of the impending danger. It is also confirmed that the route taken by Saravanan is the customary pathway used by the local villagers. The Sub-Inspector of Police had taken photographs of the occurrence spot and it can be seen therefrom that the electric poles did not have any squirrel guard. If the squirrel guards had been installed, probably the incident could have been averted. If Karuvelam bushes beneath the electric lines had been

cut and removed, probably the snapped line could have straightaway fallen on the ground and the feeder would have got tripped thereby disconnecting the supply of electricity. But these are “ifs” of life. On a overall consideration of the circumstances, I come to the conclusion that the tragedy is purely an Act of God and TANGEDCO cannot be fastened with any negligence as such.

8. But then, the question that arises is whether on that ground, TANGEDCO can be exonerated from its liability. Should the writ petitioner be satisfied with the sum of Rs.5,00,000/- given as ex-gratia payment on compassionate grounds? Should he have to move the jurisdictional civil court if he wants any higher compensation?

9. The issue is no longer res integra. The Hon'ble Supreme Court in the decision reported in (2002) 2 SCC 162 (M.P.Electricity Board V. Shail Kumari and Others) held as follows:-

"7. It is an admitted fact that the responsibility to supply electric energy in the particular locality was statutorily conferred on the Board. If the energy so transmitted causes injury or death of a human being, who gets unknowingly trapped into it the primary liability to compensate the sufferer is that of the supplier of the electric energy. So

long as the voltage of electricity transmitted through the wires is potentially of dangerous dimension the managers of its supply have the added duty to take all safety measures to prevent escape of such energy or to see that the wire snapped would not remain live on the road as users of such road would be under peril. It is no defence on the part of the management of the Board that somebody committed mischief by siphoning such energy to his private property and that the electrocution was from such diverted line. It is the look out of the managers of the supply system to prevent such pilferage by installing necessary devices. At any rate, if any live wire got snapped and fell on the public road the electric current thereon should automatically have been disrupted. Authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps.

8. Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as "strict liability". It differs from the liability which arises on account of the negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions."

10. As early as in the year 1986, the Constitution Bench of the Hon'ble Supreme Court in M.C.Mehta Vs. Union of India (1987) 1 SCC 395 held that we need not feel inhibited by technical considerations surrounding the rule in Rylands Vs. Fletcher (1868) L.R.3 H.L. 330 and that we have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialized economy. They therefore held that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortuous principle of strict liability under the rule in Rylands Vs. Fletcher.

11. The Madras High Court in a string of decisions has held that public law remedy is very much available in such cases. I can straightaway refer to the decisions reported in 2012 (2) CTC

646 (Alamelu Vs. State of Tamilnadu) and (2013) 2 MLJ 302 (Arulmeri V. Superintendent of Engineer, TNEB).

12. It has further been laid down that compensation payable in such cases can be determined by applying the formula applied for computing damages in motor accident cases. Saravanan was aged 22 years, when he died. He is survived by his parents and his younger brother Bharathi. Saravanan of course was not in a salaried job. Therefore, his monthly income can be taken as Rs.12,000/-. Since he was a bachelor, he would have spent 50% of the sum on himself. The multiplier is "18". The loss of income to the family can be calculated as follows:-

$$\text{Rs.6,000/-} \times 12 \times 18 = \text{Rs.12,96,000/-}$$

A further sum of Rs.70,000/- must be awarded under the conventional heads. He was riding a two wheeler and it was damaged beyond repair. The value of the vehicle can be assessed at Rs.20,000/-. The total sum payable to the family can therefore be computed as Rs.13,86,000/-(Rupees Thirteen Lakhs and Eighty Six Thousand only). Invoking the Board proceedings (Per.)(FB) TANGEDCO Proceedings No.6 dated 16.10.2019, TANGEDCO was directed to pay a sum of Rs.5,00,000/- and the same was paid to

the petitioner on 29.10.2020. TANGEDCO is also directed to pay the balance amount of Rs.8,86,000/- within a period of twelve weeks from the date of receipt of a copy of this order. TANGEDCO is directed to create two Fixed Deposits, one for a sum of Rs.6,00,000/- in the name of the mother of the deceased, namely, Ramalakshmi and Rs.2,86,000/- in the name of the father of the deceased, namely, Sendhattikalaipandian in any nationalised bank. The deposit holders cannot encash the fixed deposits for a period of ten years. They can however withdraw the accrued interest once in three months.

13. I cannot stop with this. Considering the special facts and circumstances of the case, I am of the view that TANGEDCO should also offer the job of Junior Assistant on compassionate grounds to the second son of the petitioner. Thiru.S.Bharathi, second son of the petitioner is presently studying II Year B.Sc. (Computer Science) in P.S.R. Arts and Science College, Sivakasi. He is therefore having necessary educational qualification to be appointed to the said post. The Hon'ble Supreme Court in (1996) 5 SCC 647 (Vellore Citizens Welfare Forum V. Union of India) held that the polluter should not only compensate the victims of

pollution but also bear the cost of restoring the environment to its original condition. The same proposition can be applied by way of analogy to the case on hand. It is not enough that TANGEDCO pays a certain amount towards compensation. That by no stretch of imagination undo the tragedy that has befallen the petitioner's family. Only by offering employment to the second son, the situation can be substantially remedied.

14. I can draw yet another illustration. When large extent of land is acquired for setting up public sector undertakings, the persons who lost their lands are given compensation. In quite a few cases, the family members are also given preference in the matter of employment.

15. I cannot lose sight of the fact that TANGEDCO is a public sector undertaking. It is no doubt a corporation but it is "State" within the meaning of Article 12 of the Constitution of India. It is very much amenable to writ jurisdiction. Its obligations are also correspondingly higher. I therefore allow this writ petition with the following directions:-

a) TANGEDCO is directed to pay a further sum of Rs.8,86,000/-(Rupees Eight Lakhs and Eighty Six Thousand only)

within a period of twelve weeks from the date of receipt of a copy of this order. The payment shall be made in the manner indicated above.

b) TANGEDCO is directed to give compassionate appointment to Thiru.S.Bharathi, second son of the petitioner as Junior Assistant and post him in Virudhunagar District itself. The appointment order will be issued within a period of three weeks from the date of receipt of a copy of this order.

16. This cannot be the end of the matter. TANGEDCO must ensure that such occurrences do not occur in future. Of course, there can never be any impregnable shield against bird hits or rodent interference. But TANGEDCO can undertake a comprehensive safety audit. Bushes underneath the electric poles and transmission lines can be cleared. They can announce cash prizes for young scientists to come out with ideas as to how the feeder can trip automatically, once line is snapped. I am told that in Japan, the safety standards are truly impeccable. It appears that in Japan, the electricity transmission lines are laid in insulated form beneath the ground. The lines do not carry load beyond what is required. It is only in India, the lines carry

unnecessary load that enables pilferage. We are aware that whenever the political parties conduct meetings, the first thing that they do is to put a hook on a nearest electricity line to tap electricity. “கொக்கி போடுதல்” (putting a hook) is a term with which all of us are familiar. What was the originally a department of the Government became a statutory board and has now metamorphosed into a Corporation. While the form has changed, the situation on ground remains the same. The time has come to administer shock to the system. We look forward to the day when TANGEDCO will be a profitable enterprise and maintaining the highest safety standards.

17. With these observations, this writ petition stands allowed. No costs.

सत्यमेव जयते

02.11.2020

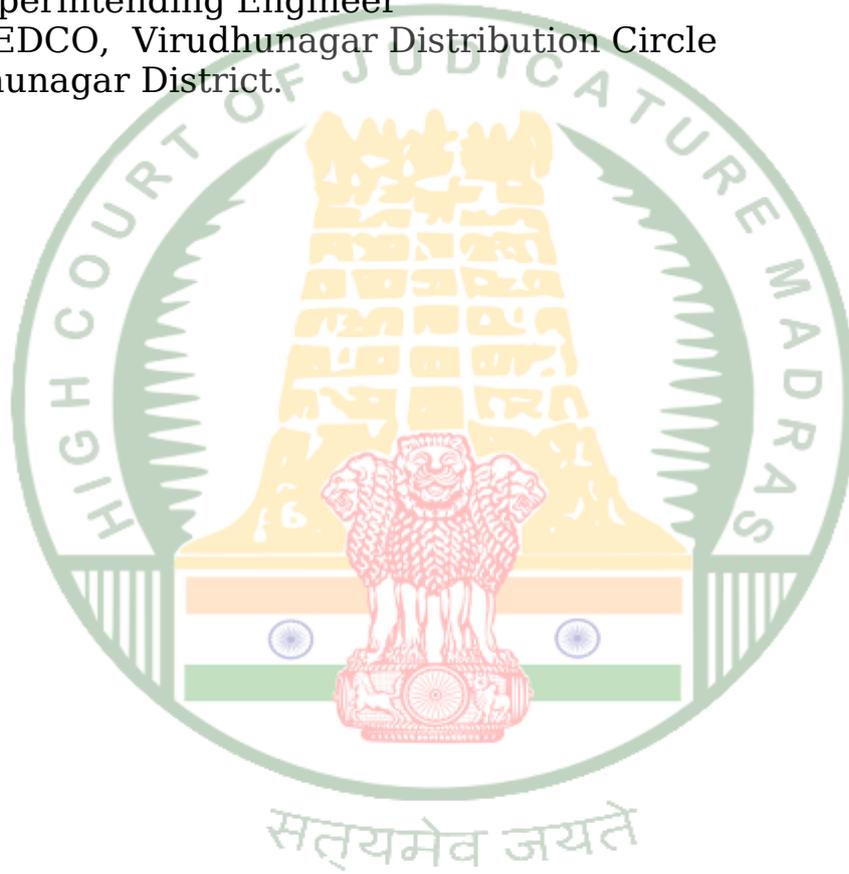
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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

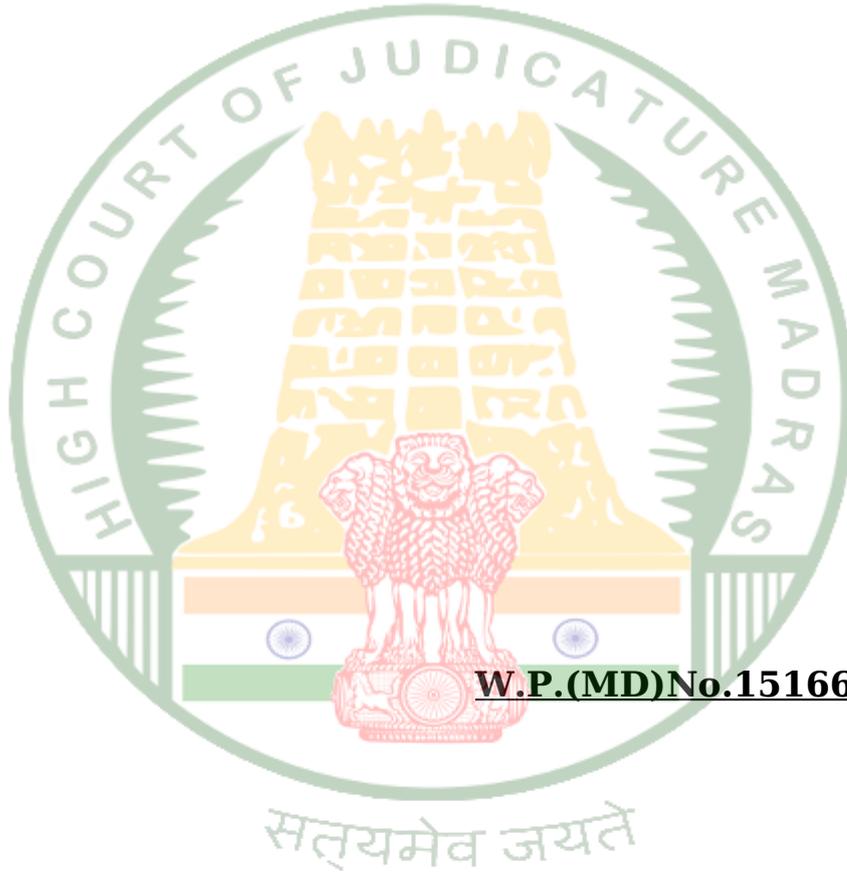
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