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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment Pronounced on***: 15.01.2021

\+ W.P.(C) 8432/2018

MUNNI DEVI ..... Petitioner

Through Ms.Ankita Patnaik, Advocate (DHCLSC)

versus

GOVT. OF NCT OF DELHI & ANR. .... Respondents

Through Mr.Jawahar Raja, ASC (Civil), GNCTD with Mr.Archit Krishna, Adv. for R-1/Govt. of NCT of Delhi.

Mr.Ravi Gupta, Sr.Adv. with Ms.Anju Thomas, Adv. for R-2/BSES-RPL.

Mr.Rajeev M.Roy and Mr.P.Srinivasan, Advs. for R-3/ Reliance General Insurance Co.Ltd.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. This writ petition is filed by the petitioner seeking an appropriate writ of mandamus directing respondents No.1 and 2 to pay a compensation of Rs.30 lakhs or any other reasonable compensation to the petitioner.

2. The case of the petitioner is that her son Mintu Kumar Jha who was 23 years old was pursuing a degree in Bachelor of Science from Indira Gandi Open University. While passing through House No.D-62, DDA Flats, Kalkaji, New Delhi on his bicycle on 16.05.2007 at around 8.05 pm he lost his life due to electrocution when an exposed live electric wire fell down upon his bicycle. This act was totally attributable to the negligence of the respondents.

3. It is stated that the post-mortem report of the deceased son which was conducted by AIIMS on 16.05.2007 clearly shows that death was caused due to electrocution and all injuries of the deceased were ante-mortem in nature.

4. It is stated that the petitioner's son was only 23 years of old and was at the prime of his youth. However, due to carelessness and negligence of the respondents, the petitioner lost her son at a young age. The petitioner's son was pursuing a degree in Bachelor of Science and had a very bright future ahead of him. It is further stated that subsequently Mr.Sonu Kumar Jha, the petitioner's other son who was suffering from acute depression due to his brother's death also passed away on 27.10.2010.

5. It is stated that the petitioner thereafter regularly visited PS Kalkaji to enquire about the death of her son but no information regarding the same was given. Thereafter, the petitioner's husband approached the court of Sh.Nishant Garg, MM, Saket Courts, New Delhi calling for a status report of the incident of 16.05.2007. The court passed an order directing Delhi Police to file a status report. The status report dated 08.12.2017 was filed by the Delhi Police where it was clearly stated that the death of the deceased Sh.Mintu Kumar Jha was caused due to electrocution and all injuries were ante-mortem. Despite this, no FIR was registered by the Police against the respondents.

6. On coming to know about the status report, the petitioner sent a legal notice on 22.12.2017 to respondent No.2/BSES Rajdhani Power Limited demanding compensation but no reply has been received.

7. It is stated that the petitioner is a housewife, suffering from acute anemia while her husband is a labourer and earns about Rs.48000/- per annum. They have no other source of income and her husband is suffering

from asthma and poor eye sight. The petitioner has lost her two sons. The petitioner is a resident of Darbhanga, Bihar and is running from pillar to post in Delhi to get justice for their son who died due to negligence of the respondents. As the petitioner's husband is unable to earn their livelihood, the burden of taking care of the family has fallen on the only surviving son Sh.Amit Kumar Jha who is doing a private job and has to sustain his own family also. It is pointed out that aggrieved by the non-action of the respondents of not giving compensation or not giving a reply to the legal notice; the petitioner along with her husband approached the District Court, Saket by filing a suit seeking compensation to the tune of Rs.30 lakhs. However, the suit was withdrawn by the petitioner due to technical defects and the court was pleased to dismiss the suit as withdrawn with liberty to approach this court vide order dated 24.04.2018. Hence, the present writ petition.

8. Respondent No.1/Govt. of NCT of Delhi has filed a counter affidavit. In the counter affidavit, the statutory structure of the Electricity Companies in Delhi has been explained. The power distribution companies were formed and the distribution businesses have been transferred to the said three distribution companies including respondent No.2/BSES RPL, as per Delhi Electricity Reforms Act. It is stated that the facts of this case pertain to an incident which has happened in the jurisdiction of the distribution licensee BSES RPL/respondent No.2 and respondent No.1/Govt. of NCT of Delhi has no role to pay in the entire incident.

9. Respondent No.2/BSES RPL has also filed its counter affidavit. Various objections including preliminary objections about maintainability of this petition have been taken in the counter affidavit including as follows:

i) The writ petition is not maintainable as a writ seeking relief in the nature of compensation for electrocution is not maintainable and does not come within the purview of Article 226 of the Constitution of India.

ii) The present writ is misconceived as a proper remedy was available to the petitioner before the civil court. The petitioner after filing a civil suit has chosen to withdraw the same, and has erroneously invoked the writ jurisdiction of this court.

iii) The present writ is a bundle of disputed questions of facts which requires extensive evidence by the parties and cannot be decided within the ambit of writ jurisdiction.

iv) Reliance is placed on the judgments of the Supreme Court in the case of ***Chairman Grid Corporation of Orissa Ltd. (GRIDCO) & Ors. v. Smt.Sukamani Das & Anr., 1999 (7) SCC 298*** and ***S.D.O., Grid Corporation of Orissa Ltd. & ORS. v. Timudu Oram, 2005 (6) SCC 156*** to plead that this court should not exercise its jurisdiction.

v) The allegations of negligence on the part of the said respondents have been denied.

10. I have heard learned counsel for the parties.

11. Learned senior counsel appearing for respondent No.2/BSES-RPL has pointed out that in 2017 the petitioner had filed a suit for recovery of damages. The suit could not proceed on account of objections raised relating to the court fees and limitation. It is pointed out that the suit was dismissed as withdrawn with liberty as prayed for subject to issue of limitation by the concerned civil court vide its order dated 24.04.2018. It is pleaded that when the suit has been withdrawn, no writ petition is maintainable. Reliance is placed on the following judgments:

i) ***Crown Wheels Pvt. Ltd. v. BSES RPL*, *2007(145) DLT 577***; and

ii) ***Master Rahul Seth (Minor) v. Mount Carmel School & Anr.*, *2009(163) DLT 461***.

It is further pleaded that there is delay of 12 years in filing of the present writ petition. The claim filed by the petitioner is barred by delay and laches and hence the writ petition is liable to dismissed on the face of it.

12. I may note that on 30.08.2019 this court had directed respondent No.1 to place on record the report of the Electricity Inspector, if any, regarding the incident of electrocution that took place. The SHO PS Kalkaji was also directed to explain the steps taken pursuant to DD No.29A of 16.05.2007 pertaining to the incident that took place.

13. On the next date of hearing i.e. 15.11.2019, Delhi Police stated that the records in question have been destroyed in normal course. A submission was also made that there is no report of the Electricity Inspector. However, in my opinion, the petitioners cannot be made to suffer for the inefficiency of the concerned functionaries, namely, the concerned Police Station and the Electricity Inspector in not fulfilling the necessary requirements.

14. I may now look at the status report dated 08.12.2017 filed by Police Station Kalkaji in the court of learned MM, Saket Courts, New Delhi, which gives the factual background of the case. Relevant portion of the status report reads as follows:

> "…..
> A PCR call at about 9:00 PM was received at Police Station-Kalkaji vide DD No.29A, dated 16/05/2007 and the same was marked to S.I.Rajbir Singh for necessary action. After that, I.O. has reached the spot at D-62, Kalkaji wherein the body of deceased Mintu Kumar Jha was found. It is also come to notice

> that the electric wire fell due to storm and rain, which took place before the incident. After that, statements of brother of deceased Amit Kumar and Sonu Kumar were also recorded, the other witnesses were also examined regarding the incident namely Ashok, Tiwari, Narender Singh Negi and BSES officials were also examined in the matter. The post-mortem was also conducted vide P.M. No.600/2007 at AIIMS Hospital. It has been opined that cause of death is shock due to electrocution. All injuries are ante-mortem in nature."

15. Clearly, the cause of death of deceased- son of the petitioner is shock due to electrocution. All injuries are ante-mortem in nature. The death took place due to an electric wire that fell due to storm and rain, which took place before the incident. It clearly follows that on account of the falling of electric wire the deceased got electrocuted and has expired. Admittedly, respondent No.2/BSES RPL is the distribution company of the area in question.

16. I may now see the relevant pleadings of the petition. In para 2 of the writ petition, it is clearly stated that the deceased Mintu Kumar Jha while passing through a particular flat in Kalkaji on his cycle lost his life due to electrocution when an exposed live electric wire fell down upon him which action is totally attributable to the negligence of the respondents.

17. In the counter affidavit filed by respondent No.2/BSES RPL, the response to para 2 of the writ petition reads as follows:

> "11. That the contents of para Nos.2 to 6 need no reply since the same are either matter of facts or of record. It is respectfully submitted that the answering respondent company is a sympathetic to the petitioner, however, the answering respondent company is not in any manner responsible or liable for the loss suffered by the petitioner."

Clearly, the specific averments of the petitioner about the negligence of the respondents have evoked a vague response.

18. In my opinion, facts speak for themselves and the principle of *res ipsa loquitur* will clearly apply in these facts. In this context reference may be had to the judgment of the Supreme Court in the case of ***Shyam Sunder & Ors v. State of Rajasthan, (1974) 1 SCC 690***, where the concept of *res ipsa loquitur* was explained. Relevant portion of the said judgment reads as follows:

> "10**.** The maxim is stated in its classic form by Erle, C.J.: [*Scott* v. *London & St. Katherine Docks*, (1865) 3 H&C 596, 601]
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> > "... where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care."
>
> The maxim does not embody any rule of substantive law nor a rule of evidence. It is perhaps not a rule of any kind but simply the caption to an argument on the evidence. Lord Shaw remarked that if the phrase had not been in Latin, nobody would have called it a principle [*Ballard* v. *North British Railway Co.*, 1923 SC (HL) 43]. The maxim is only a convenient label to apply to a set of circumstances in which the plaintiff proves a case so as to call for a rebuttal from the defendant, without having to allege and prove any specific act or omission on the part of the defendant. The principal function of the maxim is to prevent injustice which would result if a plaintiff were invariably compelled to prove the precise cause of the accident and the defendant responsible for it even when the facts bearing on these matters are at the outset unknown to him and often within the knowledge of the defendant. But though the parties' relative access to evidence is an influential factor, it is not controlling. Thus, the fact that the defendant is as much at a loss

> to explain the accident or himself died in it, does not preclude an adverse inference against him, if the odds otherwise point to his negligence (see John G. Fleming, *The Law of Torts*, 4th Edn., p. 264). The mere happening of the accident may be more consistent with the negligence on the part of the defendant than with other causes. The maxim is based as commonsense and its purpose is to do justice when the facts bearing on causation and on the care exercised by defendant are at the outset unknown to the plaintiff and are or ought to be within the knowledge of the defendant (see *Barkway* v. *S. Wales Transo* [(1950) 1 All ER 392, 399]).
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> 11. The plaintiff merely proves a result, not any particular act or omission producing the result. If the result, in the circumstances in which he proves it, makes it more probable than not that it was caused by the negligence of the defendants, the doctrine of *res ipsa loquitur* is said to apply, and the plaintiff will be entitled to succeed unless the defendant by evidence rebuts that probability."

The above doctrine would clearly apply here. A clear averment has been made in the petition that respondent No.2/BSES-RPL was guilty of negligence. A young boy has died after coming in contact with a live electric wire that has fallen on the road. In the counter affidavit vague and evasive denial has been made. Clearly based on the above facts and the doctrine of *res ipsa loquitur*, it is clear that respondent No.2/BSES-RPL is guilty of negligence. The death of the deceased took place due to the negligence of respondent No.2.

19. The above view is further fortified by some of the other averments in the counter affidavit of respondent No.2. I may look further at the counter affidavit. In para 9, respondent No.2 states as follows:

> "9. That the petitioner has just made a bald assertion that the alleged incident happened when the petitioner on 16.05.2007

was passing through DDA Flats Kalkaji, New Delhi on his bicycle lost his life due to electrocution when an exposed live electric wire fell down upon his bicycle. It is foremost respectfully submitted that the answering respondent had no information about the said accident till the present writ petition was filed before this Hon'ble Court. Whenever any such accidents occurs, the respondent company after receiving the information about the accident, either from the Police or through a complaint is mandated to inform the office of the Electrical Inspector, Department of Labour who then conducts an inquiry and submits a report to the Investigation Officer in the FIR with details of the lapses and shortcomings and who is responsible for the accident that has occurred. The above process could not be completed in the present case since there was no information regarding the accident to the officials or the local Division office.
…."

20. I cannot help noticing that the above submissions of respondent No.2 in his counter affidavit appear to be incorrect and totally false.

The Police in the status report have clearly stated that some of the witnesses were examined including BSES-RPL officials. The plea of respondent No.2 that it had no knowledge of the incident is contrary to the stand of Delhi Police as stated in the status report.

Even otherwise, it is a strange submission being made by the distribution company In-charge of distribution of electricity in the area. It is inconceivable that a death has taken place due to electrocution from the distribution wires within the territory of respondent No.2 on a public street and respondent No.2 claims ignorance of such a major incident. The plea of respondent No.2 cannot clearly be believed. This vague plea of respondent No.2 fortifies my conclusion of the negligence of respondent No.2. The

negligence of respondent No.2 in maintaining electric wires is writ large on the face of the record.

21. I may now look at some of the other pleas raised by respondent No.2. It has been strongly urged that the writ court would normally not grant compensation in a matter of this nature. Further reliance has been placed by the respondents on the cases of the Supreme Court in the case of ***Chairman Grid Corporation of Orissa Ltd. & Ors. v. Smt.Sukamani Das & Anr.***(supra) and ***S.D.O., Grid Corporation of Orissa Ltd. & ORS. v. Timudu Oram***(supra) to plead that no relief can be granted to the petitioner.

22. Regarding the right of a writ court to award compensation, I have already dealt with such a plea in an earlier matter in the judgment dated 24.08.2020 in the case of ***Meera & Anr. v. MCD***, W.P.(C) 2303/2016 where this court had held as follows:

> "19. The issue arises as to whether in these facts this court can grant relief to the petitioners. In this context reference may be had to the judgment of the Division Bench of this court in the case of Fatima &Ors. Vs. National Zoological Park &Ors., (2016) 232 DLT 31 (DB) relevant paras of which read as follows:-
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> > "10. The issue which first seeks answer from this court is as to whether in these facts this court could grant compensation to the petitioners in the present writ petition. The legal position in this regard may be looked at. The Supreme Court in the case of Nilabati Behera Alias Lalita Behera v. State of Orissa, (1993) 2 SCC 746 was dealing with the issue of award of compensation in proceedings under Article 32/226 of the Constitution. The court noted that the remedy is available in public law based on strict liability for contravention of fundamental rights. The court further held that this right is distinct from and in addition to the remedy in private law for damages for the tort resulting from contravention of the fundamental rights. The court also held

that the Supreme Court and the High Courts have wide powers under Article 32 and Article 226 respectively to forge new tools that may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution. The relevant portion of the judgment reads as follows:-

> "22. We respectfully concur with the view that the court is not helpless and the wide powers given to this Court by Article 32, which itself is a fundamental right, imposes a constitutional obligation on this Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to this Court under Article 142 is also an enabling provision in this behalf. The contrary view would not merely render the court powerless and the constitutional guarantee a mirage, but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. It the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate.
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> xxx
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> 24. The above discussion indicates the principles on which the Court's power under Articles 32 and 226 of the

> Constitution is exercised to award monetary compensation for contravention of a fundamental right.……..”

11. In Air India Statutory Corporation v. United Labour Union, (1997) 9 SCC 377 the Supreme Court held that there is no limitation or fetters on the powers of the High Court under Article 226 of the Constitution except self-imposed limitations. The Supreme Court held as follows:-

> “59. The founding fathers placed no limitation or fetters on the power of the High Court under Article 226 of the Constitution except self-imposed limitations. The arm of the Court is long enough to reach injustice wherever it is found. The Court as sentinel in the qui vive is to mete out justice in given facts. On finding that either the workmen were engaged in violation of the provisions of the Act or were continued as contract labour, despite prohibition of the contract labour under Section 10(1), the High Court has, by judicial review as the basic structure, constitutional duty to enforce the law by appropriate directions. The right to judicial review is now a basic structure of the Constitution by catena of decisions of this Court starting from Indira Gandhi v. Raj Narayan to Bommai's case. It would, therefore, be necessary that instead of leaving the workmen in the lurch, the Court would properly mould the relief and grant the same in accordance with law.

20. I may note that the above judgment was upheld by the Supreme Court in the case of Fatima & Anr. Vs. National Zoological Park &Ors., Civil Appeal No. 9975/2018 dated 25.09.2018.

21. Reference in this context may also be had to a judgment of a Coordinate Bench of this court in the case of Baby Anjum Thr. her Natural Guardian &Anr. Vs. The Chief Executive Officer, BSES Rajdhani Power Ltd., (2012) 189 DLT 1. That was a case in which an injury (amputation of hand) was suffered by

petitioner No. 1 aged 14 years allegedly owing to electrocution attributable to the negligence of the respondent. In the facts, the court noted that the respondent had installed a transformer on the electric pole just adjoining to the parapet wall of the roof of the house of the petitioner. In spite of requests, the said transformer was not removed. On 02.03.2007 the petitioner then aged 4 years while playing on the roof came in contact with the said transformer and suffered an electric shock which threw her off the roof. In those facts, this court held as follows:-

> "5. Once the facts are not in dispute, the negligence of the respondent is writ large and speaks for itself. Considering that the petitioner No.1 is a girl child, has to lead her entire life with the handicap aforesaid which has been evaluated by the Safdarjung Hospital also at 85%, I feel compensation of Rs.7.5 lacs to be appropriate."

22. What follows from the above judgments is that the High Court in exercise of its power under Article 226 of the Constitution of India has no limitations or fetter on the powers except self imposed limitations. The court has the power to award monetary compensation in appropriate cases. Where the negligence of the state/state authorities is clear from the record, appropriate compensation to the family of the victims can be awarded."

Clearly, this court has the powers in an appropriate case to award compensation.

23. Respondent No.2 has also heavily relied upon the judgments of the Supreme Court in the case of ***Chairman, Grid Corporation of Orissa Ltd. Vs. Sukamani Das & Anr.*** (supra) and ***SDO, Grid Corporation of Orissa Ltd. Vs. Timudu Oram*** (supra) to plead that this court should not deal with this petition.

24. I may now look at the aforenoted judgment of the Supreme Court in the case of ***Chairman, Grid Corporation of Orissa Ltd. vs. Sukamani Das***

&Anr. (supra). The facts of the main case that was adjudicated upon were that the deceased Sh.Pratap Chandra Das was proceeding to his village when dark clouds gathered in the sky and there were thunderbolts also. It started raining. He came into contact with an electric wire which was lying across the road after getting snapped from the overhead electric line. It was claimed that the said line snapped because of the negligence of the GRIDCO and its officials. The case of the appellant however was that because of thunderbolt and lightning, one of the conductors of the 12 W LT line had snapped even though proper guarding was provided. It was also noticed that one shackle insulator had broken due to lightning and a conductor had also snapped from that shackle insulator. It was also claimed that Sh. Pratap Chandra Das died due to lightning and not because he had come in contact with the snapped live wire. Further, it was claimed that the 12 W LT line had snapped because of an act of God and not because of any negligence. The Supreme Court in those facts noted as follows:-

> "6. 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 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 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."

25. Hence, in the above case a defence had been taken by the electricity company that the deceased had died on account of lightning and not on account of electrocution. Further, the court also noted that in an action for tort, negligence was required to be established. In those facts, the Supreme Court had taken the view that a writ under Article 226 of the Constitution was not the proper remedy.

26. Reference may also be had to the other judgment of the Supreme Court relied upon by the respondents i.e. ***SDO, Grid Corporation of Orissa Ltd. vs. Timudu Oram***(supra). There were a bunch of appeals in the said case. As per the facts of the first case, some villagers had illegally taken power supply without the knowledge of the GRIDCO authorities by use of a hook from the L-I point to their houses by means of an uninsulated GI wire.

The GI wire got disconnected and fell on the ground. The father of the respondent and other family members got electrocuted. The fact of illegal hooking and death due to electrocution was admitted. In the counter-affidavit, the GRIDCO had taken a plea that the deaths occurred due to the negligence of the deceased themselves and the electric live wire belonging and maintained by the GRIDCO had not snapped and therefore, the GRIDCO was not liable to pay any compensation. The two other matters were heard along with the above noted matter. The Supreme Court concluded as follows:-

> "9. In the present case, the appellants had disputed the negligence attributed to it and no finding has been recorded by the High Court that 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 Corpn. of Orissa Ltd. (GRIDCO) [(1999) 7 SCC 298]. The High Court has also erred in awarding compensation in Civil Appeal No. 4552 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 of the Constitution cannot be justified.

Hence, the Supreme Court set aside the order of the High Court holding that no finding has been recorded by the High Court that GRIDCO was in any way negligent in the performance of its duty.

27. Clearly, in the above two judgments the relief was denied to the family of the victim as there was no finding recorded in the impugned orders

holding the electricity company negligent. The aforesaid two judgments would have no application to the facts of this case where as noted above the negligence of respondent No. 1 is clear from the facts on record. As this court has come to the conclusion that the death of the deceased took place due to the negligence of respondent No. 1, the said respondent is liable to pay necessary compensation"

28. In the given facts, I also look at another judgment of the Supreme Court in the case of ***Madhya Pradesh Electricity Board v. Shail Kumari & Anr., AIR 2002 SC 551***. The facts of that case are akin to the facts of this case. That was a case where the deceased was riding on a bicycle in the night and returning from his factory. There had been rain and the road was partially inundated with water. The cyclist did not notice the live wire on the road and hence he rode the vehicle over the wire which twitched and snatched him and he was instantaneously electrocuted. The main defence raised by the defendant was that the wire in question had been used by somebody to siphon energy for his own use and said act was done clandestinely behind the back of the Electricity Board. The line got unfastened from the hook and it fell on the road over which the cycle driven by the deceased slided resulting in the instantaneous electrocution.

In those facts, the Supreme Court 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.

9. The doctrine of strict liability has its origin in English Common Law when it was propounded in the celebrated case of Rylands v. Fletcher (1868 Law Reports (3) HL 330). Blackburn J., the author of the said rule had observed thus in the said decision:

"The rule of law is that the person who, for his own purpose, brings on his lands and collects and keeps there anything likely

to do mischief if it escapes, must keep it at his peril; and if he does so he is prima facie answerable for all the damage which is the natural consequence of its escape.

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13. In the present case, the Board made an endeavour to rely on the exception to the rule of strict liability (Rylands v. Fletcher) being "an act of stranger". The said exception is not available to the Board as the act attributed to the third respondent should reasonably have been anticipated or at any rate its consequences should have been prevented by the appellant-Board. In Northwestern Utilities, Limited v. London Guarantee and Accident Company, Limited {1936 Appeal Cases 108}, the Privy Council repelled the contention of the defendant based on the aforesaid exception. In that case a hotel belonging to the plaintiffs was destroyed in a fire caused by the escape and ignition of natural gas. The gas had percolated into the hotel basement from a fractured welded joint in an intermediate pressure main situated below the street level and belonging to the defendants which was a public utility company. The fracture was caused during the construction involving underground work by a third party. The Privy Council held that the risk involved in the operation undertaken by the defendant was so great that a high degree care was expected of him since the defendant ought to have appreciated the possibility of such a leakage.

14. The Privy Council has observed in Quebec Railway, Light Heat and Power Company Limited v. Vandry and Ors. {1920 Law Reports Appeal Cases 662} that the company supplying electricity is liable for the damage without proof that they had been negligent. Even the defence that the cables were disrupted on account of a violent wind and high tension current found its way through the low tension cable into the premise of the respondents was held to be not a justifiable defence. Thus, merely because the illegal act could be attributed to a stranger is not enough to absolve the liability of the Board regarding the live wire lying on the road."

29. What follows from the above judgment is that the Supreme Court has in somewhat identical facts taken the view that the company supplying electricity is liable for damages without proof that they have been negligent based on the principle of absolute liability. It is clear that respondent No.2 in any case would be liable for compensating the petitioner on account of the death of her son due to electrocution. That apart, as noted above, this court has also come to a conclusion on the facts of this case that respondent No.2 was negligent in performing its duty. The death of deceased Mintu Kumar Jha took place on account of the negligence on the part of respondent No.2 and its officials. Hence, even otherwise, apart from the principle of absolute liability, on account of its negligence, respondent No.2 is liable to compensate the petitioner.

30. The next plea that has been strongly raised by respondent No.2 in defence is the plea of delay and laches. It has been pleaded that the present writ petition has been filed almost 12 years after the incident has occurred and the relief is barred by delay and laches.

31. In my opinion, the plea is misconceived.

32. Firstly, I cannot help noticing that the petitioner comes from an economically weaker section of the society. The parents of the deceased live in the interior of the Bihar. The husband of the petitioner is working as a labourer. They have painstakingly been following up with the Police for appropriate steps but no results have followed. It is only in 2017 that from the court of learned MM through status report that was filed that some details were provided as to how their son had got electrocuted. Thereafter, they have perused and filed the suit which was dismissed as withdrawn and now they have filed the present writ petition.

33. On the issue of delay and laches, it is settled position of law that it is not a mandatory requirement that every delayed petition must be dismissed on the ground of delay. In this context reference may be had to the judgment of the Supreme Court in the case of ***Vetindia Pharmaceutical Limited v. State of U.P. & Anr, (2020) SCC OnLine 912***, where the court held as follows:

> 15. That brings us to the question of delay. There is no doubt that the High Court in its discretionary jurisdiction may decline to exercise the discretionary writ jurisdiction on ground of delay in approaching the court. But it is only a rule of discretion by exercise of self-restraint evolved by the court in exercise of the discretionary equitable jurisdiction and not a mandatory requirement that every delayed petition must be dismissed on the ground of delay. The Limitation Act stricto sensu does not apply to the writ jurisdiction. The discretion vested in the court under Article 226 of the Constitution therefore has to be a judicious exercise of the discretion after considering all pros and cons of the matter, including the nature of the dispute, the explanation for the delay, whether any third-party rights have intervened etc. The jurisdiction under Article 226 being equitable in nature, questions of proportionality in considering whether the impugned order merits interference or not in exercise of the discretionary jurisdiction will also arise. This Court in *Basanti Prasad* v. *Bihar School Examination Board*, (2009) 6 SCC 791, after referring to *Moon Mills Ltd.* v. *Industrial Court*, AIR 1967 SC 1450, *Maharashtra SRTC* v. *Balwant Regular Motor Service*, AIR 1969 SC 329 and *State of M.P.* v. *Nandlal Jaiswal*, (1986) 4 SCC 566, held that if the delay is properly explained and no third party rights are being affected, the writ court under Article 226 of the Constitution may condone the delay, holding as follows:
>
> > "18. In the normal course, we would not have taken exception to the order passed by the High Court. They are justified in saying that a delinquent employee should not be permitted to revive the stale claim and the High Court in

> exercise of its discretion would not ordinarily assist the tardy and indolent person. This is the traditional view and is well supported by a plethora of decisions of this Court. This Court also has taken the view that there is no inviolable rule, that, whenever there is delay the Court must refuse to entertain a petition. This Court has stated that the writ court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution may condone the delay in filing the petition, if the delay is satisfactorily explained."

34. In this context reference may also be had to the judgment of the Supreme Court in the case of ***Tukaram Kana Joshi & Ors. v. M.I.D.C. & Ors.***, (***2013) 1 SCC 353***, where the court held as follows:

> "14. The High Court committed an error in holding the appellants non- suited on the ground of delay and non-availability of records, as the court failed to appreciate that the appellants had been pursuing their case persistently. Accepting their claim, the statutory authorities had even initiated the acquisition proceedings in 1981, which subsequently lapsed for want of further action on the part of those authorities. The claimants are illiterate and inarticulate persons, who have been deprived of their fundamental rights by the State, without it resorting to any procedure prescribed by law, without the court realising that the enrichment of a welfare State, or of its instrumentalities, at the cost of poor farmers is not permissible, particularly when done at the behest of the State itself. The appellants belonged to a class which did not have any other vocation or any business/calling to fall back upon, for the purpose of earning their livelihood."

35. In the present facts also the petitioners herein are illiterate and inarticulate persons and cannot be deprived of their rights in this manner.

36. Considering the overall situation and also keeping in mind that the jurisdiction under Article 226 of the Constitution of India is equitable in

nature and keeping in view the background of the petitioner, in my opinion, it would not be appropriate to decline relief to the petitioner on the ground of delay and laches in the facts and circumstances of this case. The plea raised by respondent No.2 that the petition is liable to be dismissed on the ground of delay and laches, is rejected.

37. Another plea raised by respondent No.2 is reliance on the two judgments of this court in this case of ***Master Rahul Seth (Minor) v. Mount Carmel School & Anr.*** (supra) and ***Crown Wheels Pvt. Ltd. v. BSES RPL***(supra) to submit that the present writ petition is not maintainable as the petitioner had filed a suit earlier.

38. I may now look at the said judgments.

39. In the case of ***Master Rahul Seth (Minor) v. Mount Carmel School & Anr.*** (supra) the petitioner was suspended from the school. The father of the petitioner filed a suit for perpetual/permanent injunction seeking direction to take back the letter of suspension. As the petitioner in that suit failed to get any interim relief, the father of the petitioner withdrew the suit with liberty to file it before appropriate forum. Instead of filing another suit, the petitioner filed the writ petition in question. It was those facts that this court held that the petitioner is unable to explain as to how a writ petition is maintainable after the suit was filed involving disputed questions of facts which was dismissed as withdrawn. In my opinion, I have already come to a conclusion based on the facts above that respondent No.2 is guilty of negligence. The said judgment would have no application to the facts of this case.

40. I may now look at the other judgment relied upon by respondent No.2, namely, the case of ***Crown Wheels Pvt. Ltd. v. BSES RPL***(supra). That was

a case in which a civil suit was filed for perpetual injunction against Delhi Vidyut Board (DVB) for levying LIP tariff on the basis of the inspection report. The petitioner allowed the civil suit to be dismissed in default. In the meantime, the writ petition was filed seeking the same relief. This court took the view that the inspection report cannot be examined in these proceedings for the simple reason that its validity was put in issue in the civil suit but the petitioner got the civil suit dismissed in default. The petitioner had taken no steps to revive the suit or file an appeal. Having invoked such a remedy against the inspection report this court felt that the petitioner should have exhausted the other avenues available in law instead of seeking to agitate the issue by way of a fresh petition. In my opinion, in the facts of the present case, the aforesaid judgments of the Co-ordinate Bench of this court would not apply. The trial court in this case by its order dated 24.04.2018 had permitted the petitioner to withdraw the suit with liberty to pursue the matter in this court subject to limitation.

41. Coming to the compensation payable to the petitioner. No calculations are mentioned in the writ petition. A bald claim of Rs.30 lakhs is claimed. No details are given.

42. The deceased was doing his graduation from Indira Gandhi Open University. His earning should have been at least around the minimum wages. He would have earned after completing graduation at least Rs.10,000/- to Rs.15,000/- a month. I, accordingly, award a sum of Rs.10,00,000/- (Ten Lakhs only) as compensation to the petitioner.

43. I may note that on 30.08.2019, this court on the request of respondent No.2/BSES RPL had impleaded Reliance General Insurance Company Ltd. as respondent No.3.

44. It is the case of respondent No.2/BSES RPL that the said respondent is covered by the insurance policy of the said Reliance General Insurance Company Ltd. Respondent No.3 denies this.

45. In this circumstance, I direct that the compensation amount will be the liability of respondents No.2 and 3 jointly and severally. It is for them to decide *inter se* as to in terms of the insurance policy taken by respondent No.2, whether the liability to pay compensation is of respondent No.2 or is of respondent No.3. The payment shall be made to the petitioner within three months from today failing which the petitioner shall be entitled to simple interest @ 10% per annum with effect from today.

46. With the above directions, the present petition is disposed of. All pending applications, if any, are also disposed of.

(JAYANT NATH)
JUDGE

JANUARY 15, 2021/v