

W.P(MD)No.15735 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 01.08.2024

Pronounced on : 04.09.2024

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

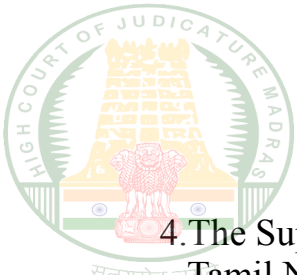
W.P(MD)No.15735 of 2024

T.Muthu Irulappan

.... Petitioner

Vs.

- 1.The State represented by
The Secretary to Government,
Energy Department,
Secretariat, Fort St.George,
Chennai – 600 009.
- 2.The Chairman cum Managing Director,
Tamil Nadu Generation and
Distribution Corporation Limited,
TANGEDCO, TANTRANSCO Building,
NPKRR Maligai, No.144, Anna Salai,
Chennai – 600 022.
- 3.The Chief Engineer / Distribution,
Tamil Nadu Generation and
Distribution Corporation Limited,
TANGEDCO, Tirunelveli Region,
Tirunelveli – 627 001.



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4. The Superintending Engineer,
Tamil Nadu Generation and
Distribution Corporation Limited,
TANGEDCO, Kanyakumari Electrical
Distribution Circle,
Parvathipuram, Veturnimadam,
Nagercoil – 629 003,
Kanyakumari District.

5. The Executive Engineer,
Tamil Nadu Generation and
Distribution Corporation Limited,
TANGEDCO, Distribution,
Boothapandi Sub Station,
Boothapandi – 629 852,
Nagercoil, Kanyakumari District.

6. The Assistant Executive Engineer,
Tamil Nadu Generation and
Distribution Corporation Limited,
TANGEDCO, Distribution,
Boothapandi Sub Station,
Boothapandi – 629 852,
Nagercoil, Kanyakumari District.

7. The Junior Engineer,
Tamil Nadu Generation and
Distribution Corporation Limited,
TANGEDCO, Distribution,
Thuvarankadu, Nagercoil,
Kanyakumari District.

8. The District Collector,
Kanyakumari District, Nagercoil.

9. The Regional Joint Director,
Department of Animal Husbandry,
Dairying and Fisheries Department,
Kanyakumari District, Nagercoil.



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10.The Inspector of Police,
Aralvaimozhi Police Station,
Kanyakumari District.

... Respondents

Prayer : Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the entire records relating to the impugned letter issued by the fourth respondent, namely, the Superintending Engineer, Tamil Nadu Generation and Distribution Corporation Limited, (TANGEDCO), Kanyakumari Electrical Distribution Circle, Parvathipuram, Veturnimadam, Nagercoil, in Ka.No.015863/Me.Po/Ka Mi Pa Va/NiPi.3/T.3/2023, dated 14.02.2024 refusing to pay and disbursement of appropriate compensation amount for the electrocution death of the Petitioner's Milch Cow, on 27.10.2023, due to the leakage of electricity in the 100 KVA Distribution Power Transformer situate at Veeranarayanamangalam, Boothapandi Electricity Sub-station, Thovalai Taluk, Kanyakumari District and to quash the same and consequently direct the respondents to pay appropriate compensation for the Electrocutation death of the petitioner's Milch Cow, on 27.10.2023, due to negligent maintenance of the transformer by the respondents 2 to 7 herein within the time stipulated by this Court.

For Petitioner : Mr.A.Saravanan

For Respondents : Mr.P.T.Thambidurai
Government Advocate for R1, R8 & R9

Mr. S.Deenadhayalan,
Standing Counsel for R2 to R9

Mr.A.Albert James
Government Advocate (Criminal Side)
for R.10



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ORDER

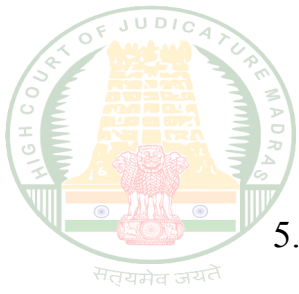
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Heard both sides.

2.The petitioner owned four milch cows. He took them out for grazing on 27.10.2023. He was crossing the land of one Thangaiya. A 100KVA power transformer was in the vicinity. A puddle of water had collected beneath the transformer. It was not fenced. One of the cows of the petitioner stepped into the puddle and died instantaneously. It was obvious that the cow had died due to electrocution. There had been leakage of electricity. The petitioner lodged complaint before the Aralvaimozhi Police Station. Crime No.267 of 2023 was registered. Post-mortem was conducted and it confirmed that death was due to electrocution. Seeking compensation for the loss of his cow, this Writ Petition has been filed.

3.The learned Standing Counsel for the TANGEDCO submitted that the petitioner will have to go before the jurisdictional civil Court for getting relief. He questioned the maintainability of the writ petition.

4.I carefully considered the rival contentions and went through the materials on record.



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5.The core issues raised in this writ petition are no longer res integra.

The Madras High Court had held in *Arulmeri vs. Superintending Engineer, TNEB (2013) 2 MLJ 302* that when the deceased was not at fault and the death had occurred due to snapping of electric wire, there is no need for the dependant to go before the civil court and that relief can be granted in writ proceedings. *Jagannatha Mallick and Ors. Vs. North Electricity Supply Company of Orissa Ltd. And Ors [MANU/OR/0143/2016 ; OJC No.12010 of 2000 dated 26.04.2016]* is an interesting case involving similar facts. The petitioners therein sought compensation for the death of their cows and bullocks due to electrocution. Placing reliance on *M.S Grewal vs. Deep Chand Sood (2001) 8 SCC 151* and other decisions, it was held by the High Court of Orissa that writ petition for payment of compensation for death due to electrocution was maintainable when the facts are not disputed.

6.The Hon'ble Supreme Court in *M.P Electricity Board vs. Shail Kumari (2002) 2 SCC 162* had applied the principle of strict liability on the supplier of electric energy. The principle of strict liability first evolved in *Rylands vs. Fletcher (1868)* was subject to certain exceptions. In *M.C Mehta vs. Union of India (1987) 1 SCC 395*, it was held that we need not feel inhibited by the technical considerations surrounding the rule in *Rylands vs. Fletcher* and that we have to evolve new principles and lay down new norms



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which would adequately deal with the new problems which arise in a highly industrialized economy. In Shail Kumari, it was held that 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.

7.In the case on hand, the electric energy had leaked into the puddle beneath the transformer. The unsuspecting cow had stepped into it and died as a result. Applying the principles set out above, the liability of TANGEDCO to compensate the petitioner is beyond dispute. It is however necessary to probe a little more into the basis of tortious liability in such cases. Such an exercise has become imperative because in Tamil Nadu 9000 people have died of electrocution since 2006. Additionally, 2495 animals (both domestic and wild animals) have been killed across the State during this period. This information was supplied by TANGEDCO under RTI. The news item published in the New Indian Express on 01.11.2023 also contains the following suggestions on how to save lives :

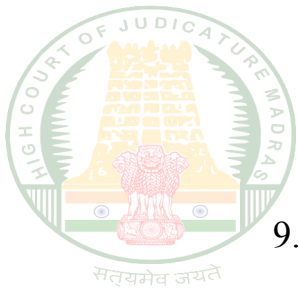
- “Guarding shall be provided across road crossings and along road margins to avoid the death of pedestrians



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- Guarding should be earthed effectively on both sides and tied to the neutral
- Transformer earthing should be proper as IS 3043-2018 so that any fault on the lines will blow the fuse at the transformer
- The earthing device should be connected to the neutral wire of the LT line in the pole so that if any conductor snapping occurs either the LT open type fuse or HG fuse should have blown out immediately.”

8.It is the duty of the State, State instrumentalities and local bodies to ensure that the environment is kept safe and does not pose threat to the lives and limbs of people. There cannot be any quarrel on this proposition. Article 21 of the Constitution of India confers fundamental right on persons that one's life and liberty will not be imperilled except according to the procedure established by law. Applying hohfeldian approach, peoples' rights has its jural correlative and the State is under corresponding duty. Is the converse true ? In other words, if there is none holding a right, is there no duty to bear? Animals are yet to be conferred personhood. They cannot be right-holders (vide *AWBI v. UOI (2023) 9 SCC 322*). Does it mean that the State bears no duty towards them?



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9. In *N.R.Nair v. UOI (AIR 2000 Ker 340)*, it was observed as follows :

“13.....Though not homosapiens, they are also beings entitled to dignified existence and humane treatment sans cruelty and torture. In many respects, they comport better than humans, they kill to eat and eat to live and not live to eat as some of us do, they do not practice deception, fraud, or falsehood and malpractices as humans do, they care for their little ones expecting nothing. In return, they do not proliferate as we do depleting the already scarce resources of the earth, for they practice sex restraint by seasonal mating, nor do they inhale the lethal smoke of tobacco polluting the atmosphere and inflicting harm on fellow beings. All animals except the very lowest exhibit some degree of intelligent behaviour, ranging from learned responses to complex reasoning. Many believe that the lives of humans and animals are equally valuable and that their interests should count equally. Their contribution to the health of human is invaluable, once it is remembered that nearly every advance in health care and combating human diseases been based on animal research. Therefore, it is not only our fundamental duty to show compassion to our animal friends, but also to recognise and protect their rights. While the law currently protects wild life and endangered species from extinction, animals are denied rights, an anachronism which must necessarily change.”

10. It is not as if electrocution is the sole cause. The natural life span of cows is cut short due to consumption of plastic. This source of fatality is on an alarming rise. It is relevant to refer to the 20th Report of Gujarat State Law Commission which contains recommendations for taking appropriate steps to control incidents where cows die after ingesting plastic. The report refers to



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the order dated 15.07.2016 passed by the Hon'ble Supreme Court in WP (Civil)

No.154 of 2012 (***Karuna Society for Animals and Nature v. UOI***). The Court

took note of the fact that plastic materials littered on the road side are consumed by animals adversely affecting their digestive track resulting in their death. The Supreme Court observed that the situation was alarming and called upon the governments to take all necessary steps. The report authored by Hon'ble Justice M.B.Shah, former Judge, Supreme Court of India reads thus :

“6.At present, as the cows are not fed properly, they are left in the society looking for food and the result is, they pick through plastic waste and other indigestible substances. However, once milk production decreases, the owners of cows usually abandon them.

....

8.It is observed that the animals, particularly, cows roam the streets looking for food and it appears that the waste management system of the local authority is extremely lacking and many of the times; such animals are not fed properly. It also appears that, farmers / owners / occupants do not afford to feed their cows, when they stop giving milk and, therefore, they are often let loose to find the nutrients they need on the streets.

9. As cows pick through piles of garbage, they also consume plastic and unsurprisingly, the biggest plastic pollutant digested by cows is plastic bags. The bits of plastic consumed build up in their internal organs which make it difficult for cows to eat. Because of this reason, perhaps, milk production drops. There may be treatment to prevent their death but once milk production stops, farmers / owners / occupants usually abandon cows rather than spend money on their treatment. Resultantly, in number of cases, the animals (cows) loose their valuable lives, after ingesting plastic.

...



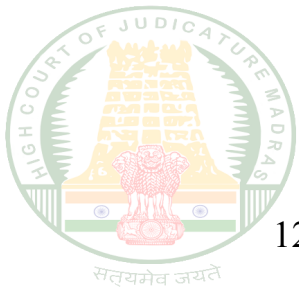
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12.It is felt that the incident of ingesting the plastic by the cows is increasing day-by-day and, thus, lives of such animals remain in danger which is one kind of indirect slaughter of animals and, therefore, appropriate steps are required to be taken by the State Government to control incidents where animals (such as, cows) die after ingesting plastic.”

It was recommended that there is a need to introduce penal provisions to prevent littering of public space by plastic waste.

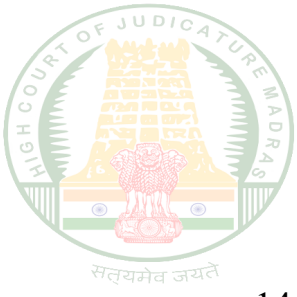
11.If death takes place due to electrocution, the cause is visible. Death due to consumption of plastic is not apparent. In the case of the former, death is instantaneous. In the case of the latter, the death comes gradually and insidiously accompanied by severe pain. The law that speaks of prevention of cruelty to animals is silent on this. Time has come to take note of this disturbing reality and remedy the situation. Courts have a duty to invoke parens patriae jurisdiction to take care of rights of animals since they are unable to take care of themselves (*AWBI v. A.Nagaraja (2014) 7 SCC 547, para 33*). This proposition laid down in *A.Nagaraja* has not been touched in *AWBI v. UOI (2023) 9 SCC 322*.



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12.The question framed at the outset is answered thus : even though animals do not have rights, State and its instrumentalities and local bodies have duty towards them and this duty can be enforced by courts. I hold that the State, its instrumentalities and local bodies including corporations, municipalities and panchayats are obliged to ensure a safe environment. This would include the duty to keep all public streets free of plastic litter. If it is established that death of cows has taken place due to consumption of plastic, action for damages will lie against the erring body/entity. TANGEDCO is obliged to put in place the safety measures mentioned above so that unnatural deaths do not take place either due to leakage of electricity or by snapping of live wires.

13.In the case on hand, TANGEDCO had failed in its duty to ensure safe environment by preventing leakage of electricity. It is therefore liable to compensate the petitioner. If there are factual disputes, then, certainly I would have relegated the petitioner to go before the civil Court. In this case there is no factual dispute at all. The TANGEDCO is squarely responsible for the occurrence. Since the petitioner had suffered loss, the respondents 2 to 7 are directed to pay a sum of Rs.50,000/-(Rupees Fifty Thousand only) to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.



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14.This writ petition is allowed accordingly. There shall be no order as

to costs.

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Index : Yes / No
Internet : Yes / No
NCC : Yes / No
SKM

To

- 1.The Secretary to Government,
Energy Department, Secretariat,
Fort St.George, Chennai – 600 009.
- 2.The District Collector,
Kanyakumari District, Nagercoil.
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G.R.SWAMINATHAN, J.

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