

# THE HIGH COURT OF MEGHALAYA

## **WA No.33/2014** **In WP(C) No.197/2012**

The Meghalaya Energy Corporation Ltd,  
represented by its Managing Director,  
Lumjingshai, Short Round Road, Shillong

:::: Appellant

-Vs-

Shri. Sukendra Sangma,  
S/o (L) T.L. Momin,  
R/o Govt. Quarters,  
Police Reserve Complex,  
P.S. Shillong Sardar, Shillong,  
East Khasi Hills District, Meghalaya

:::: Respondent

**BEFORE**  
**HON'BLE MR. JUSTICE UMA NATH SINGH, CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE T. NANDAKUMAR SINGH**

For the Appellant : Mr. SM Suna, Adv

For the Respondent : Mr. AS Siddiqui, Adv

Date of hearing : **16.04.2015**

Date of Judgment & Order : **22.04.2015**

**JUDGMENT AND ORDER**  
**(Justice T. Nandakumar Singh)**

This writ appeal is directed against the judgment and order of the learned Single Judge dated 17.04.2014 passed in WP(C)No.197/2012 wherein and where-under, the learned Single Judge held that the respondent No.2 (present appellant) and the State of Meghalaya represented by the Commissioner & Secretary, Power Department, Govt. of Meghalaya are liable to pay adequate compensation to the respondent/writ petitioner for the death of the respondent/writ petitioner's daughter-in-law (L) Anita Sangma on 19.02.2012 due to electrocution and ordered that while calculating the

compensation, the appellant and the State of Meghalaya are to follow the method of calculation as made in the case of ***Smti. Skilinda lawphniaw v. The Meghalaya Energy Corporation Ltd. and others*** of the High Court of Meghalaya and further directed the appellant and the State of Meghalaya to remove all the high tension electric wire lines from public places as well as from overhead of the residential houses. The domestic lines or street lights line are to be insulated to prevent further damage to any other person or persons and to prevent untimely death of the residents of the State. Besides that Rules laid down for safety measures should be followed strictly as laid down in the different Rules and Acts.

2. Heard Mr. SM Suna, learned counsel for the appellant and Mr. AS Siddiqui, learned counsel for the respondent/writ petitioner.

3. The fact of the case sufficient for deciding the present writ appeal is briefly noted. The respondent/writ petitioner is the father-in-law of the deceased Anita Sangma, who died due to electrocution on 19.02.2012, when she tried to save a lady named Ms. Sital Sangma from the unprotected and uncoated high tension wire. On 19.02.2012, at about 3:30 PM, Anita Sangma and Sheetal Joshi, who were residents of the Three Storied Quarter No.13 at Police Reserve, Police Bazar Shillong were standing on the terrace of the building. One of them dropped a ten rupees note to the ground. The note got lodged on the upper surface of the projection from the wall on the first floor of the building. Sheetal Joshi attempted to retrieve the ten rupees note with the help of a ½" G.I. Pipe, which is normally used in water distribution to houses. After pushing the note which dropped to the ground, she withdrew the G.I. Pipe towards the terrace. As the pipe rotated anti clock wise in her hands and the top edge of the side wall, the part of the pipe which was moving upward came in contact with the topmost conductor after

missing the other two vertically placed below. She instantaneously got electrocuted. Seeing her friend in distress, Anita Sangma (deceased) screamed for help and being ignorant of the danger lurking ahead of her, she tried to rescue Sheetal Joshi. Her contact with Sheetal Joshi caused her to be electrocuted as well. Thereafter, Anita Sangma's right leg came in contact with the pipe which was still connected to the H.T. 11 KV line. The short circuit caused heavy spark at the points of contacts. Pinky Sangma upon hearing her sister-in-law Anita Sangma scream for help came rushing and found that Anita Sangma and Sheetal Joshi both of them were lying unconscious on the ground because of electrocution. The victims were immediately shifted to the hospital. The heavy electric shock caused severe burns and charring of flesh in their limbs. Anita Sangma succumbed to her injuries and the doctors in the hospital declared her brought death. Sheetal Joshi survived and was admitted to the ICU of Woodland Hospital, Shillong. After a prolonged treatment, she also expired on 09.07.2012. The post mortem examination of the dead body of the deceased Anita Sangma was conducted on 20.02.2012 in Civil Hospital, Shillong and the Medical Officer, who conducted the post mortem examination opined that the cause of death was due to electrocution and to this effect, an FIR was also lodged on 21.02.2012 and later on a case being Shillong Sardar PS (U.D.) Case No.14 (2) of 2012 was registered.

**4.** Shri. Sanjay K. Sangma, husband of the deceased (L) Anita Sangma predeceased her on 13.05.2011 leaving her with two minor children namely Miss. Rebika Sangma and Master Samuel Sangma, who were born on 29.11.2002 and 04.12.2003 respectively. The respondent/writ petitioner who is a retired police personnel had been appointed as a guardian of the said two minor children vide Guardianship Certificate dated 30.05.2012 issued under the order of the Judge, District Council Court, Shillong. In the

writ petition it had been pleaded categorically that the death of (L) Anita Sangma was not due to negligence on her part but she became the victim of an unfortunate event while trying to save a lady who was entangled with the wires which were not coated by the appellant. On the failure of the appellant to pay compensation for the unfortunate death of (L) Anita Sangma due to electrocution, the respondent/writ petitioner submitted a representation to the appellant requesting for payment of compensation but the appellant did not pay any heed to the said representation. Hence, the Writ Petition No.197/2012 for a direction to the appellant and the State of Meghalaya to pay compensation for the death of (L) Anita Sangma due to electrocution and /or pass any other order/orders deem fit and proper in the circumstances of the case.

**5.** The appellant filed affidavit-in-opposition wherein, the appellant is not denying that the high tension wire passing through the said three storied building of the Police Reserve is naked and not insulated. The appellant stated in the affidavit-in-opposition that the overhead line was constructed as per the rules and guidelines laid down by the Central Electricity Authority (Electricity Safety Regulations, 2010) which specified that the horizontal clearance between the nearest conductor and any part of such building shall, on the basis of maximum deflection due to wind pressure, be no less than – for lines of voltages exceeding 650 V upto and including 11,000 Volts is 1.2. meter. The appellant further stated that the horizontal clearance between the nearest conductor and the building at the spot where the accident took place is 1.9 meter and as such, the appellant is not undertaking a hazardous activity and also that risky exposures to human life does not arise at all and therefore, the appellant is not liable to pay any compensation.

6. Under Section 53 of the Electricity Act, 2003, the authority may, in consultation with the State Govt., specify suitable measures for safe and electricity supply. Section 53 of the Electricity Act, 2003 reads as follows:-

***“53. Provision relating to safety and electricity supply.- The Authority may, in consultation with the State Government, specify suitable measures for--***

*(a) protecting the public (including the persons engaged in the generation, transmission or distribution or trading) from dangers arising from the generation, transmission or distribution or trading of electricity, or use of electricity supplied or installation, maintenance or use of any electric line or electrical plant;*

*(b) eliminating or reducing the risks of personal injury to any person, or damage to property of any person or interference with use of such property;*

*(c) prohibiting the supply or transmission of electricity except by means of a system which conforms to the specifications as may be specified;*

*(d) giving notice in the specified form to the Appropriate Commission and the Electrical Inspector, of accidents and failures of supplies or transmissions of electricity;*

*(e) keeping by a generating company or licensee the maps, plans and sections relating to supply or transmission of electricity;*

*(f) inspection of maps, plans and sections by any person authorized by it or by Electrical Inspector or by any person on payment of specified fee;*

*(g) specifying action to be taken in relation to any electric line or electrical plant, or any electrical appliance under the control of a consumer for the purpose of eliminating or reducing the risk of personal injury or damage to property or interference with its use.”*

7. It is the duty of the appellant as well as the State Govt. to take all preventive measures to save the life and property of the consumer in general, humans in particular, in the whole State of Meghalaya. In exercise of the powers conferred by Section 177 of the Electricity Act, 2003, the Central Electricity Authority makes the Regulations called “Central Electricity

Authority (Measures relating to Safety and Electric Supply) Regulations, 2010” and notified vide Notification No. CEVI/59/CEA/EL New Delhi 20<sup>th</sup> September, 2010. Under Regulation 2 (j) “conductor” means any wire, cable, bar, tube, rail or plate used for conducting electricity and so arranged as to be electrically connected to a system. Further under Regulation 2 (m) “covered with insulating material” means adequately covered with insulating material of such quality and thickness as to prevent danger. Regulation 2 (zb) defined the meaning of “installation” as such, any composite electrical unit used for the purpose of generating, transforming, transmitting, converting, distributing or utilizing electricity. Regulations 12 & 13 of the Regulations, 2010, specifically provide general safety requirements, pertaining to construction, installation, protection, operation and maintenance of electric supply lines apparatus and service lines and apparatus on consumer’s premises. Regulations 12 & 13 of the said Regulations, 2010 read as follows:-

***“12. General safety requirements, pertaining to construction, installation, protection, operation and maintenance of electric supply lines apparatus:-***

*(1) All electric supply lines and apparatus shall be of sufficient rating for power, insulation and estimated fault current and of sufficient mechanical strength, for the duty cycle which they may be required to perform under the environmental conditions of installation, and shall be constructed, installed, protected, worked and maintained in such a manner as to ensure safety of human beings, animals and property.*

*(2) Save as otherwise provided in these regulations, the relevant code of practice of the Bureau of Indian Standards or National Electrical Code, if any, may be followed to carry out the purposes of this regulation and in the event of any inconsistency, the provisions of these regulations shall prevail.*

*(3) The material and apparatus used shall conform to the relevant specifications of the Bureau of Indian Standards or International Electro-Technical Commission where such specifications have already been laid down.*

*(4) All electrical equipment shall be installed above the Mean Sea Level (MSL) as declared by local Municipal Authorities and*

*where such equipment is to be installed in the basement, consumer shall ensure that the design of the basement should be such that there is no seepage or leakage or logging of water in the basement.*

**13. Service lines and apparatus on consumer's premises:-**

*(1) The supplier shall ensure that all electric supply lines, wires, Fittings and apparatus belonging to him or under his control, which are on a consumer's premises, are in a safe-condition and in all respects fit for supplying electricity and the supplier shall take precautions to avoid danger arising on such premises from such supply lines, wires, fittings and apparatus.*

*(2) Service lines placed by the supplier on the premises of a consumer which are underground or which are accessible shall be so insulated and protected by the supplier as to be secured under all ordinary conditions against electrical, mechanical, chemical or other injury to the insulation.*

*(3) The consumer shall, as far as circumstances permit, take precautions for the safe custody of the equipment on his premises belonging to the supplier.*

*(4) The consumer shall also ensure that the installation under his control is, maintained in a safe condition."*

8. Regulation 106 of the said Regulations, 2010 provides the requirements to be fulfilled in safe supply of electricity. Regulation 106 of the said Regulations, 2010 reads as follows:-

**"106. Cables. –**

*All cables, other than flexible cables for portable or transportable apparatus, shall fulfill the following requirements, namely:-*

*(i) all such cables, other than the outer conductor of a concentric cable, shall be covered with insulating material and shall be efficiently protected from mechanical damage and supported at sufficiently frequent intervals and in such a manner as to prevent damage to such cables;*

*(ii)(a) except as provided in clause (iii) no cables other than concentric cables or single core or two core or multi core cables protected by a metallic covering and which contain all the conductors of a circuit shall be used where the voltage exceeds 125 V or when an Inspector considers that there is risk of igniting gas or coal dust or other inflammable material, and so directs;*

*(b) the sheath of metal-sheathed cables and the metallic armouring of armoured cables shall be of a thickness not less than the recommended from time to time in the relevant standard of the Bureau of Indian Standards;*

*(iii) where a voltage exceeding 250 V but not exceeding 650 V direct current system is used, two single core cables may be used for any circuit provided that their metallic coverings are bonded together by earth conductors so placed that the distance between any two consecutive bonds is not greater than thirty meters measured along either cable;*

*(iv) The metallic covering of every cable shall be –*

*(a) electrically and mechanically continuous throughout;*

*(b) earthed, if it is required by sub-regulation (3) of regulation 101 to be earthed by a connection to the earthing system of conductivity specified therein;*

*(c) efficiently protected against corrosion where necessary;*

*d) of a conductivity at all parts and at all joints at least equal to fifty per cent of the conductivity of the largest conductor enclosed by the said metallic covering; and*

*(e) where there may be risk of igniting gas, coal-dust, or other inflammable material, so constructed as to prevent, as far as practicable, the occurrence of open sparking as the result of any fault or leakage from live conductors.*

*(v) cables and conductors where connected to motors, transformers, switchgear and other apparatus, shall be installed so that,-*

*(a) they are mechanically protected by securely attaching the metallic covering to the apparatus; and*

*(b) the insulating material at each cable end is efficiently sealed so as to prevent the diminution of its insulating properties;*

*(vi) where necessary to prevent abrasion or to secure gas-tightness, properly constructed glands or bushes shall be provided;*

*(vii) un armoured cables or conductors shall be conveyed either in metallic pipes or metal casings or suspended from efficient insulators by means of non-conducting materials which will not cut the covering and which will prevent contact with any timbering or metal work and if separate insulated conductors are used, they shall be installed at least 3.75 cm. apart and shall not be brought together except at lamps, switches and fittings.*



9. Regulation 17 of the said Regulations, 2010 provides the requirements to be fulfilled for bare conductors. Regulation 17 of the said Regulations, 2010 reads as follows:-

***“17. Accessibility of bare conductors:-***

*Where bare conductors are used in a building, the owner of such conductors shall, -*

*(a) ensure that they are inaccessible;*

*(b) provide in readily accessible position switches for rendering them dead whenever necessary; and*

*(c) take such other safety measures as are specified in the relevant Indian Standards.”*

10. In the affidavit-in-opposition filed by the appellant, there is not even a whisper that the appellant had fulfilled the requirements for safe electricity supply under Regulations 12, 13, 17 & 106 of the said Regulations, 2010. Even in the report of the Senior Electrical Inspector, Meghalaya, Shillong submitted under his letter dated 25.03.2014 to the Commissioner & Secretary to the Govt. of Meghalaya, Power Department, Shillong in connection with the said incident of electrocution on 19.02.2012, did not mention that the appellant had fulfilled the requirements for safe electricity supply more particularly under Regulations 12, 13, 17 & 106 of the said Regulations, 2010. It is settled law that there is distinction between pleadings under the CPC and writ petitions or/counter affidavits. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded; in a writ petition or in a counter affidavit, not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. Ref: ***Bharat Singh & Ors v. State of Haryana & Ors: AIR 1988 SC 2181***. Para 13 of the AIR in ***Bharat Singh's*** case (*Supra*) reads as follows:-

*“13. As has been already noticed, although the point as to profiteering by the State was pleaded in the writ petitions before the High Court as an abstract point of law, there was no reference to any material in support thereof nor was the point argued at the hearing of the writ petitions. Before us also, no particulars and no facts have been given in the special leave petitions or in the writ petitions or in any affidavit, but the point has been sought to be substantiated at the time of hearing by referring to certain facts stated in the said application by HSIDC. In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter affidavit as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellants is not entertainable. But, in spite of that, we have entertained it to show that it is devoid of any merit.”*

11. The Apex Court (Constitution Bench) in ***Katra Education Society, Allahabad v. State of Uttar Pradesh & Ors: AIR 1966 SC 1307*** observed that a plea of a party cannot be taken into consideration unless the petition contains a full averment of the ground on which the plea is taken. The Apex Court in ***Narendra Bahadur Singh & Anr v. State of U.P. & Ors: AIR 1977 SC 660*** held that the party seeking to challenge the validity of a notification on a ground involving question of facts should make necessary averments of the facts which can assail the notification on that ground. The Apex Court further held that in the absence of necessary material facts having bearing on the point, it will be difficult to sustain that point. This Court is also of considered view that in the absence of necessary material facts supported by affidavit and documents for proving a particular point or plea which required to be substantiated by facts, it would be difficult to sustain that fact or point. In the present case, it is difficult to sustain the defence of the

appellant in their counter affidavit that instantaneous death of (L) Anita Sangma due to electrocution, was not because of their failure to comply with safety measures under the aforesaid Rules and Regulations.

12. The Apex Court in ***D.K. Basu v. State of WB: (1997) 1 SCC 416*** (SCC p.439 para 45) held that “The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim and civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at time perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family”.

13. The rule in ***Rylands v. Fletcher: (1868) LR 3 HL 330: (1861-73) All ER Rep 1*** laid down a principle of liability that if a person who brings on to his land and collects and keeps there anything likely to do harm and such thing escapes and does damage to another, he is liable to compensate for the damage caused. This rule applies only to non-natural user of the land and it does not apply to things naturally on the land or where the escape is due to an act of God and an act of a stranger or the default of the person injured or where the thing which escapes is present by the consent of the person injured or in certain cases where there is statutory authority. This rule evolved in the 19th century at a time when all these developments of science

and technology had not taken place cannot afford any guidance in evolving any standard of liability consistent with the constitutional norms and the needs of the present day economy and social structure. In a modern industrial society with highly developed scientific knowledge and technology where hazardous or inherently dangerous industries are necessary to carry on as part of developmental programme, Court need not feel inhibited by this rule merely because the new law does not recognize the rule of strict and absolute liability in case of an enterprise engaged in hazardous and dangerous activity. Law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. Law cannot afford to remain static. The Court cannot allow judicial thinking to be constricted by reference to the law as it prevails in England or in any other foreign country. Though the Court should be prepared to receive light from whatever source it comes, but it has to build up its own jurisprudence. It has to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialized economy. If it is found that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concomitant to an industrial economy the Court should not hesitate to evolve such principles of liability merely because it has not been so done in England. (Ref: ***M.C. Mehta & Anr v. Union of India & Ors: (1987) 1 SCC 395***).

14. The Apex Court in ***M.C. Mehta's*** case (*Supra*) held that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm

results to anyone. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results to anyone on account of an accident in the operation of such 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 as a part of social cost for carrying on such activity, regardless of whether it is carried on carefully or not. Such liability is not subject to any of the exceptions which operate vis-à-vis the tortious principle of strict liability under the rule in **Rylands v. Fletcher**.

15. From the ratio laid down by the Apex Court in the celebrated case of **M.C. Mehta's** case (*Supra*), it is clear that in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident as a part of the social cost for carrying on such activity, regardless of whether it is carried on carefully or not under the tortious of strict liability and it is not subject to any of the exceptions under the rule in **Rylands v. Fletcher**. Para 31 of the SCC in **M.C. Mehta's** case (*Supra*) reads as follows:-

*“31. .... The rule in **Rylands v. Fletcher: (1868) LR 3 HL 330: 19 LT 220: (1861-73) All ER Rep 1** was evolved in the year 1866 and it provides that a person who for his own purposes brings on to his land and collects and keeps there anything likely to do mischief if it escapes must keep it at his peril and, if he fails to do so, is prima facie liable for the damage which is the natural consequence of its escape. The liability under this rule is strict and it is no defence that the thing escaped without that person's wilful act, default or neglect or even that he had no knowledge of its existence. This rule laid down a principle of liability that if a person who brings on to his land and collects and keeps there anything likely to do harm and such thing escapes and does damage to another, he is liable to compensate for the damage caused. Of course, this rule applies only to non-natural user of the land and it does not*

apply to things naturally on the land or where the escape is due to an act of God and an act of a stranger or the default of the person injured or where the thing which escapes is present by the consent of the person injured or in certain cases where there is statutory authority. Vide Halsbury Laws of England, Vol. 45 para 1305. Considerable case law has developed in England as to what is natural and what is non-natural use of land and what are precisely the circumstances in which this rule may be displaced. But it is not necessary for us to consider these decisions laying down the parameters of this rule because in a modern industrial society with highly developed scientific knowledge and technology where hazardous or inherently dangerous industries are necessary to carry as part of the developmental programme. This rule evolved in the 19th Century at a time when all these developments of science and technology had not taken place cannot afford any guidance in evolving any standard of liability consistent with the constitutional norms and the needs of the present day economy and social structure. We need not feel inhibited by this rule which was evolved in the context of a totally different kind of economy. Law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. As new situations arise the law has to be evolved in order to meet the challenge of such new situations. Law cannot afford to remain static. We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialised economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any other foreign country. We no longer need the crutches of a foreign legal order. We are certainly prepared to receive light from whatever source it comes but we have to build our own jurisprudence and we cannot countenance an argument that merely because the law in England does not recognise the rule of strict and absolute liability in cases of hazardous or dangerous liability or the rule as laid down in **Rylands v. Fletcher: (1868) LR 3 HL 330: 19 LT 220: (1861-73) All ER Rep 1** as developed in England recognizes certain limitations and exceptions, we in India must hold back our hands back and not venture to evolve a new principle of liability which English courts have not done so. We have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concomitant to an industrial economy, there is no reason why we should hesitate to evolve such principle of liability merely because it has not been so done in England. We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a

*potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. ....”*

16. The Apex Court in ***M.P. Electricity Board v. Shail Kumari & Ors: (2002) 2 SCC 162*** had considered and discussed the doctrine of “strict liability” and held that a person undertaking an activity involving hazardous or risky exposure to life is liable under the law of torts to compensate the injury suffered by any other person irrespective of any negligence or callousness on the part of the managers of such undertaking, the basis of such liability is foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as “strict liability”. The M.P. Electricity Board was ordered to pay compensation for the electrocution of a cyclist because of a livewire got snapped and fell on the public road which was partially inundated with water. Paras 7, 8, 11, 12, 13 & 14 of the SCC in ***M.P. Electricity Board’s*** case (*Supra*) read 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.

11. The rule of strict liability has been approved and followed in many subsequent decisions in England. A recent decision in recognition of the said doctrine is rendered by the House of Lords in **Cambridge Water Co. Ltd. v. Eastern Counties Leather Plc: (1994) 1 All ER 53 (HL)**. The said principle gained approval in India, and decisions of the High Courts are a legion to that effect. A Constitution Bench of this Court in **Charan Lal Sahu v. Union of India: (1990) 1 SCC 613** and a Division Bench in **Gujarat SRTC v. Ramanbhai Prabhatbhai: (1987) 3 SCC 234: 1987 SCC (Cri) 482** had followed with approval the principle in **Rylands v. Fletcher: (1868) 3 HL 330: (1961-73) All ER Rep 1**. By referring to the above two decisions a two Judge Bench of this Court has reiterated the same principle in **Kaushnuma Begum v. New India Assurance Co. Ltd. (2001) 2 SCC 9: 2001 SCC (Cri) 268**.

12. In **M.C. Mehta v. Union of India: (1987) 1 SCC 395: 1987 SCC (L&S) 37** this Court has gone even beyond the rule of strict liability by holding that: (SCC p.421, para 31)

“where an enterprise is engaged in a hazardous or inherently dangerous activity and harm is caused on any one on account of the accident in the operation of such activity, the enterprise is strictly and absolutely liable to compensate those who are affected by the accident; such liability is not subject to any of the exceptions to the principle of strict liability under the rule in **Rylands v. Fletcher: (1868) 3 HL 330: (1961-73) All ER Rep 1**.”



13. In the present case, the Board made an endeavour to rely on the exception to the rule of strict liability (**Rylands v. Fletcher: (1868) 3 HL 330: (1961-73) All ER Rep 1**) 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 AC 108: 105 LJPC 18: 154 LT 89**, the Privy Council repelled the contention of the defendant based on the aforecited 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: 1920 AC 662: 89 LJPC 99: 123 LT 1** 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.”

17. No doubt, 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) 3 HL 330** that “the true rule of law is that the person who, for his own purposes, brings on his land, 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 answerable for all the damage which are the natural consequence of its escape”. The rule of ‘strict liability’ has been proved and followed in subsequent decisions in England. The said doctrine of ‘strict liability’ gained approval in India.

18. The Constitution Bench of the Apex Court in the celebrated case of **M.C. Mehta's** case (*Supra*), held that 'strict liability' is not subject to any of the exception which operate vis-à-vis the purpose of law of strict liability under the Rules in **Reylands v. Fletcher's** case (*Supra*). In a case where the enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone; and if any harm results to anyone on account of an accident in the operation of such 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. In the present case, the appellant (respondent in the writ petition) is engaged in inherently dangerous act of stretching/lying overhead H/T livewire through the electric poles and also there is foreseeable risk inherent in the very nature of such activities and principle of strict liability is applicable to them. Therefore, electrocution is a foreseeable risk and as stated above, there is no material pleading regarding taking up of reasonable precaution such as providing guards/disc insulator of the wire of prescribed quality and covering the livewire with insulating material of such quality and thickness as to prevent danger, as provided for such safety measures in the Indian Electricity Rules, 1956, Indian Electricity Act, 2003 and the Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations, 2010 in the counter affidavit of the appellant (respondent in the writ petition). Accordingly, in the given case, we are unable to persuade ourselves to accept the defence of the appellant (respondent in the writ petition) that as (L) Anita Sangma was negligent on her part in saving Sheetal Joshi, the appellant (respondent in the writ petition) is not liable for the death of (L) Anita Sangma due to electrocution.

19. The ratio laid down in **M.C. Mehta's** case (*Supra*) was also followed by the Apex Court in **Kaushnuma Begum (Smt) & Ors v. New India Assurance Co. Ltd. & Ors: (2001) 2 SCC 9**. (Paras 15, 16 and 17 of the SCC in **Kaushnuma Begum's** case (*Supra*) read as follows:-

*“15. The Rule in **Reylands v. Fletcher: (1861-73) All ER Rep 1** has been referred to by this Court in a number of decisions. While dealing with the liability of industries engaged in hazardous or dangerous activities P.N. Bhagwati, C.J., speaking for the Constitution Bench in **M.C. Mehta v. Union of India: (1987) 1 SCC 395** expressed the view that there is no necessity to bank on the rule in **Reylands v. Fletcher**. What the learned Judge observed is this: (SCC p.420, para 31)*

*“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. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any other foreign country. We no longer need the crutches of a foreign legal order.”*

*16. It is pertinent to point out that the Constitution Bench did not disapprove the rule. On the contrary, learned Judges further said that “we are certainly prepared to receive light from whatever source it comes”. It means that the Constitution Bench did not foreclose the application of the rule as a legal proposition.*

*17. In **Charan Lal Sahu v. Union of India: (1990) 1 SCC 613** another Constitution Bench of this court while dealing with Bhopal gas leak disaster cases, made a reference to the earlier decisions in M.C. Mehta but did not take the same view. The rule of strict liability was found favour with. Yet another Constitution Bench in **Union Carbide Corpn. v. Union of India: (1991) 4 SCC 584** referred to M.C. Mehta decision but did not detract from the rule in **Reylands v. Fletcher**.”*

20. The Apex Court, in view of the doctrine of strict liability, in **Parvati Devi & Ors v. Commissioner of Police, Delhi & Ors: (2000) 3 SCC 754** held that once the fact of death by electrocution while walking on road is established, the authority concerned, New Delhi Municipal Corporation

(NDMC) must be held to be negligent and responsible for the death.

Relevant portion of the judgment reads as follows:-

*“..... Once it is established that the death occurred on account of electrocution while walking on the road, necessarily the authorities concerned must be held to be negligent, and therefore, in the case in hand, it would be NDMC who would be responsible for the death in question. It is found from the records that the appellant was serving as a machineman in The Statesman and was aged 54 years on the date of death, and the age of retirement is 60 years. Taking these factors into consideration, we direct that the appellants, who are the legal heirs of the deceased, be awarded compensation to the tune of Rs.1,00,000 and NDMC should pay the same within 3 months from today failing which it will carry interest at the rate of 12%. This should be in total satisfaction of the compensation for the legal heirs of the deceased.”*

21. For the foregoing reasons, we are of the considered view that under the Doctrine of ‘strict liability’, the appellant undertaking an activity involving hazardous or risk exposure to human life irrespective of any negligence or callousness on their part is liable to pay compensation. We reiterate the decision of Privy Council in **Quebec Rly., Light, Heat and Power Co. Ltd.** case (*Supra*) that the Company supplying electricity is liable for the damage without proof that they had been negligent.

22. For the reasons discussed above, we are of the considered view that the present appeal is utterly devoid of merit. However, we modify sub-para 3 of para 18 of the impugned judgment and order of the learned Single Judge dated 17.04.2014 passed in WP(C)No.197/2012 only to the extent that the appellant shall cover the conductor/cables passing through public places where there are residential buildings and overhead of the residential houses, with insulating material of such quality and thickness to prevent danger and shall efficiently be protected from mechanical damage and supported at sufficiently frequent intervals to prevent untimely death of

the residents of the State or members of the public and also that the rule for safety measures as laid down in different Rules and Regulations mentioned in the aforementioned paras should be followed strictly and also that the compensation mentioned in the impugned judgment and order of the learned Single Judge dated 17.04.2014 shall be paid within a period of 6 (six) weeks from the date of receipt of a certified copy of this judgment and order.

**23.** With the above modification mentioned in the aforesaid para No.22, the judgment and order of the learned Single Judge dated 17.04.2014 passed in WP(C)No.197/2012 is upheld and appeal is hereby dismissed.

**24.** Parties have to bear their own costs.

**JUDGE**

**CHIEF JUSTICE**

*Lam*