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TAMIL NADU ELECTRICITY BOARD

v.

SUMATHI AND ORS.

APRIL 27, 2000

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[D.P. WADHWA AND SYED SHAH MOHAMMED QUADRI, JJ.]

*Constitution of India, 1950—Article 226—Writ jurisdiction—Tortious liability—Disputed questions of facts—Reference to arbitrator—No arbitration agreement between the parties within the meaning of Section 7 of Arbitration Act, 1996—Exercise of jurisdiction by the High Court in entertaining the petitions—Whether proper—Held, no.*

*Article 226—Writ jurisdiction—Reference to arbitrator for adjudication of disputed facts—Thereafter on the basis of award passing decree—Whether correct—Held, no—There is no provision for referring the matter to arbitrator by intervention of the Court—If during the pendency of the proceedings in the court parties have entered into an arbitration agreement then they have to proceed in accordance with the provisions of the Arbitration Act, 1998—Arbitration and Conciliation Act, 1996.*

*Article 226—Writ jurisdiction—Scope of—When disputed question of fact arises and there is clear denial of any tortious liability, remedy under Article 226 of the Constitution may not be proper—But when there is negligence on the face of it and infringement of Article 21 is there, it cannot be said that there will be any bar to proceed under.*

*Article 136—Discretionary jurisdiction—Scope of—Claim of compensation in writ petition—Exercise of writ jurisdiction by the High Court held to be unjustified—In the facts and circumstances of the case, whether it would be equitable to send the respondents to take proceedings in civil court—Held, No—Hence, appellant restrained from recovering any amount already paid to the claimants.*

*Arbitration and Conciliation Act, 1996—Sections 2(e), 34 & 36—Award can be enforced as if it is a decree of a court.*

*Respondents filed writ petition before High Court, seeking compensation against the appellant, for death by electrocution. Since there was disputed question of fact, the case was referred to the Arbitrator to decide the question of compensation, with the consent of both the parties. The*

award of the Arbitrator was made rule of the court, and High Court A passed decree in favour of the respondents.

In appeal to this Court, appellant contended that High Court by referring the matter to Arbitrator has created a new jurisdiction to deal with the alleged negligence of the appellant and has also appointed a forum for adjudication of the same, that creation of such a forum and jurisdiction is legislative in character and it could not be done or assumed otherwise; and that adjudication of the disputed subject by the Arbitrator was not consented to by the appellant.

The respondents contended that since respondent's right to life under Article 21 has been violated because of the negligence of the public authorities, High Court under Article 226 has the power to award compensation; that since reference was made to the Arbitrator with consent of both the parties and the Arbitrator held proceedings in accordance with law, and decree was passed after examination of the award and the proceeding, the appellant was estopped from taking a contrary stand, and that in view of the facts and circumstances of the case, it would not be equitable to send the respondents to take proceedings in a civil court.

Allowing the appeal, this Court

HELD : 1. When disputed question of fact arises and there is clear denial of any tortious liability, remedy under Article 226 of the Constitution may not be proper. However it cannot be understood as laying a law that in every case of tortious liability recourse must be had to a suit. When there is negligence on the face of it and infringement of Article 21 is there, it cannot be said that there will be any bar to proceed under Article 226 of the Constitution. Right of life is one of the basis human right guaranteed under Article 21 of the Constitution. [716-D-E]

*Chairman, Grid Corporation of Orissa Ltd. & Others v. Sukamani Das and Another, [1999] 7 SCC 298, relied on.*

*U.P. State Co-operative Land Development Bank Ltd. v. Chandra Bhan Dubey & Ors., [1999] 1 SCC 741; Shakuntala Devi v. Delhi Electric Supply Undertaking, [1995] 2 SCC 369; The Chairman Railway Board and Others v. Mrs. Chandrima Das, [2000] 1 SCALE 279; Nilabati Behra v. State of Orissa and Others, [1993] 2 SCC 746; Kumari (Smt.) v. State of Tamil Nadu and Others, [1992] 2 SCC 223, referred to.*

A 2.1. There is no provision in the Arbitration and Conciliation Act, 1998 (new Act) for referring the matter to arbitrator by intervention of the Court. However, if during the pendency of the proceedings in the court parties have entered into an arbitration agreement then they have to proceed in accordance with the provisions of the new Act and when award is made it is a decree and it cannot be filed in the High Court and it has to be filed in the court as defined in clause (e) of Section 2 of the new Act for its enforcement as a decree under Section 36 of the new Act. If there is challenge to the award recourse has to be under Section 34 of the new Act. [716-B-C]

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C *P. Anand Gajapathi Raju and Others v. P.V.G. Raju (died) and Others*, [2000] 3 SCALE 330, relied on.

D 2.2. Exercise of jurisdiction by the High Court in entertaining the petitions was not proper and High Court in any case could not have proceeded to have the matter adjudicated by an arbitrator in violation of the provisions of the new Act. Since disputed question of facts arose in the present appeals, the High Court should not have entertained writ petitions under Article 226 of the Constitution and then referred the matter to arbitration in violation of the provisions of the new Act. There was no arbitration agreement within the meaning of Section 7 of the new Act. Under the new Act award can be enforced as if it is a decree of a court and yet the High Court passed a decree in terms of the award which is not warranted by the provisions of the new Act. [718-G; E]

*A.R. Antulay v. R.S. Nayak*, [1988] Suppl. 1 SCR 1, referred to.

F 4. In view of the facts and circumstances of these cases when death occurred due to electrocution and all this time expired it would not be equitable to send the respondents to take proceedings in a civil court. [719-B]

Therefore, the appellant is restrained from recovering any amount from any of the respondents, which has been paid to them in terms of the impugned judgments of the High Court. [719-E]

G *Municipal Board, Pratabgarh v. Mahendra Singh Chawla and Others* [1982] 3 SCC 331, relied on.

H 5. The contention that the appellant did not consent to adjudication of the subject of dispute by an arbitrator; cannot be taken note of, as the High Court specifically said that it was by consent of the parties that the reference was being made to the arbitrator. [718-H; 719-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2981-82 of 2000 Etc. A

From the Judgment and Order dated 12.3.97 of the Madras High Court in W.P. No. 545/96 and W.M.P. No. 910 of 1996.

WITH B

Civil Appeal Nos. 2983-2995 of 2000.

From the Judgment and Order dated 12.3.97, 10.3.97, 12.3.97, 10.3.97, 12.3.97, 7.3.97 and 14.3.97 of the Madras High Court in W.P. No. 11326/96, W.M.P. No. 15162/96, W.A. No. 1838/92, W.P. No. 9153/92, W.M.P. No. 13209/92, W.P. No. 3874/96, W.M.P. No. 6216/96, W.P. No. 14887/95, W.M.P. No. 23730/95, W.A. No. 1285/94, C.M.P. Nos. 17986/96, 1548/97 and W.P. No. 5012 of 1996.

R. Mohan, M.N. Krishnamani, M.A. Krishna Moorthy, R. Nedumaran, V.G. Pragasam, Ms. Sushma Manchanda, Ms. K. Sarada Devi, C.S. Ashri and B. Sunita Rao for the appearing parties.

The Judgment of the Court was delivered by

D.P. WADHWA, J. We grant leave to appeal. E

The questions, which arise for consideration in this batch of eight appeals, are: (1) can the High Court under Article 226 of the Constitution award compensation for the death caused due to electrocution on account of improper maintenance of electric wires or equipment by the Tamil Nadu Electricity Board, the appellant and (2) whether the High Court while exercising jurisdiction under Article 226 of the Constitution can appoint an arbitrator under the Arbitration and Conciliation Act, 1996 (new Act) to decide the quantum of compensation and then make the award of the arbitrator Rule of the Court? F

First question has recently been dealt with by judgment of this Court in *Chairman, Grid Corporation of Orissa Ltd. & Others v. Sukamani Das and Another*. In that case the deceased met his death due to electrocution. It was alleged that while the deceased was proceeding from his village to another place he decided to return back as dark clouds gathered in the sky and there

A were thunderbolts also. While he was returning it started raining and while walking on the road he came in contact with an electric wire which was lying across the road after getting snapped from the overhead electric line. It was thus alleged that the electric wire had snapped because of the negligence of the appellant and its officers in not properly maintaining the electricity transmission line. Thus claim for damages was laid. Appellant Grid Corporation of Orissa submitted that there was no negligence and it was because of the thunderbolt and the lightening that one of the conductors of the 12 W LT line had snapped even though proper guarding was provided and further that as soon as information regarding the snapping of line was received from the line helper of the village concerned the power was disconnected. It was also contended that the deceased did not die as a result of coming into contact with the live electric wire but he met his death due to lightening. The appellant Grid Corporation objected to the jurisdiction of the High Court under Article 226 of the Constitution and said that proper remedy was a civil suit as disputed question of fact arose and evidence had to be led by both the parties. High Court, however, decided the matter on merit and awarded compensation of rupees one lakh. On appeal this Court said that High Court committed an error in entertaining the writ petition as it was not a fit case for exercising power under Article 226 of the Constitution. It was observed that High Court went wrong in proceeding on the basis that as the death had taken place because of electrocution as a result of the deceased coming into contact with snapped live wire of the electric transmission line of the appellants which "admittedly/prima facie amounted to negligence on the part of the appellants". This Court said that High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimant. This Court further said that it was a settled legal position that where disputed questions of facts were involved a petition under Article 226 of the Constitution was not a proper remedy. Reference was made to a decision of this Court in *Shakuntala Devi v. Delhi Electric Supply Undertaking*, [1995] 2 SCC 369 wherein this Court specifically exercised jurisdiction under Article 142 of the Constitution and it was said that the judgment was rendered on the facts of that case and would not be treated as a precedent in any other matter.

Shakuntala Devi case was a petition under Article 32 of the Constitution where Shakuntala Devi had claimed compensation of Rs.5 lakhs on account of death of her husband, who got electrocuted by a live wire of electricity of the respondent. A live main electricity cable/wire which was

resting on an electricity pole had got snapped and was lying in the rainy and waterlogged village. Various complaints were made by the residents of the village to the officers of the respondent, which was statutorily bound to maintain electrical installation lines in proper conditions. Deceased was not aware of the electricity leakage and when he came in contact with the live cable he got electrocuted on the spot and died instantaneously. According to Shakuntala Devi this was on account of criminal negligence on the part of the respondent. The Court observed that as this disaster had left the petitioner and her young children destitute, the present petition was moved under Article 32 of the Constitution presumably relying upon petitioner's fundamental rights under Article 21 of the Constitution which had got adversely affected on account of the negligent act of the officials of respondent. In these circumstances this Court said that it was a fit case to exercise its jurisdiction under Article 142 of the Constitution and granted relief to Shakuntala Devi. This Court, however, did not go into the question of infringement of the rights of Shakuntala Devi guaranteed under Article 21 of the Constitution.

In the present cases, however, High Court went a step further. Here in some of the appeals High Court by consent appointed an arbitrator to decide the question of compensation. Till the arbitrator gave his award an interim compensation amounting to Rs.30,000 or so was awarded. Only in one of the appeals before us (SLP (C) Nos. 14421- 23/97) the arbitrator had given his award. In others during the pendency of these appeals the arbitrator gave his awards. The award, after hearing the objections of the appellant, was made Rule of the Court. High Court examined the evidence recorded by the arbitrator. A decree was passed in favour of the respondents, which was to carry interest at the rate of 12% per annum from the date of the filing of writ petition till the date of realisation. Similar is the result in other seven appeals.

It was contended by Mr. M.N. Krishnamani, Senior Advocate for the respondents that these appeals were distinguishable from the judgment of this court in Sukamani Das case inasmuch as matter was referred to the arbitrator, who recorded evidence in accordance with the provisions of the new Act and the award was subject to scrutiny by the High Court and only it was thereafter that a decree was passed. Reference was made to a decision of this Court in *The Chairman Railway Board and Others v. Mrs. Chandrima Das*, (2000) 1 SCALE 279 where the petitioner, a woman, was gang raped by the employees of the railway in a room of Yatri Nivas, maintained by the Central Government in the Ministry of Railways and it was held that the High Court of

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A Calcutta rightly invoked its power under Article 226 of the Constitution and awarded compensation of Rs.10 lakhs to the victim. This Court, while upholding the judgment of the High Court, said "the contention that victim should have approached the Civil Court for damages and the matter should not have been considered in a petition under Article 226 of the Constitution, cannot be accepted. Where public functionaries are involved and the matter relates to the violation of the fundamental rights or the enforcement of public duties, the remedy would still be available under the public law notwithstanding that a suit could be filed for damages under private law". Reference was also made to another decision of this Court in *Nilabati Behra v. State of Orissa and Others*, [1993] 2 SCC 746 where this Court directed the State of Orissa to pay a sum of Rs.1,50,000 as compensation to the appellant, who was the mother of the deceased, who was the victim of a custodial death. Yet another decision to which reference is made is *Kumari (Smt) v. State of Tamil Nadu and Others*, [1992] 2 SCC 223. In that case a six years old boy died as a result of falling in a ten feet deep sewerage tank in the city of Madras.

D The tank was not covered with a lid and was left open. Mother of the boy filed a petition under Article 226 of the Constitution before the Madras High Court seeking a writ of mandamus directing the respondents to pay Rs.50,000 as compensation. The writ petition was dismissed on the ground that in writ jurisdiction it was not possible to determine as to which of the respondents was negligent in leaving the sewerage tank uncovered. This Court awarded a compensation of Rs.50,000 saying "in the facts and circumstances of this case we set aside the High Court judgment and direct that respondent No. 1, the State of Tamil Nadu shall pay to the appellant a sum of Rs.50,000 with interest at the rate of 12% per annum from January 1, 1990 till the date of payment". It was left open to the State of Tamil Nadu to take appropriate proceedings to claim the said amount or any part thereof from any of the respondents or any other authority which might be responsible for keeping the sewerage tank open.

G Respondents in these appeals before us have strongly relied on Article 21 of the Constitution to maintain their petitions under Article 226 of the Constitution. They referred to the following observations of this Court in the case of *Nilabati Behra*, where this Court held thus "adverting to the grant of relief to the heirs of a victim of a custodial death for the infraction or invasion of his rights guaranteed under Article 21 of the Constitution, it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortious Act of the State as that remedy in Private Law indeed is

available to the aggrieved party. The primary source of the Public Law proceedings stems from the prerogative writs and the courts have, therefore, to evolve 'new tools' to give relief in Public Law by moulding it according to the situation with a view to preserve and protect the Rule of Law". Further the Court goes to hold in para 33 of the judgment:

"The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much as protector and guarantor 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."

It was thus submitted that respondents' right to life under Article 21 of the Constitution had been violated because of the negligence of the public authorities and that it was a well settled legal proposition that High Court under Article 226 of the Constitution had the power to award compensation in case of violation of fundamental rights by State's instrumentality or servants and the award of compensation in proceedings for enforcement of fundamental rights under Articles 226 and 32 of the Constitution is a remedy available in Public Law. Finally it was submitted that the Public Law proceedings serve a different purpose than the Private Law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 226 by the High Court for infringement the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in Public Law. Therefore, when the Court moulds the relief by granting compensation under Article 226 of the Constitution, it does so under the Public Law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizens. It was, therefore, submitted by the respondents that the judgment of the High Court was right in law as compensation could be awarded under Article 226 for the infringement of fundamental rights of the citizens.

On the second question it was submitted that since reference was made to the arbitrator with the consent of both the parties and the arbitrator held proceedings in accordance with law and thereafter this Court also examined the award and proceedings and on that basis passed a decree it was impermissible for the appellant to contend otherwise and rather appellant was

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A estopped for taking a contrary stand before this Court. It was submitted that the provisions of new Act had been fully complied with and there was no error in the award or High Court passing a decree on that basis.

This Court in *P. Anand Gajapathi Raju and Others v. P.V.G. Raju (dead) and Others*, (Civil Appeal No. 5351 of 1993 decided on 26.3.2000),

B has held that there is no provision in the new Act for referring the matter to arbitrator by intervention of the Court. However, if during the pendency of the proceedings in the court parties have entered into an arbitration agreement then they have to proceed in accordance with the provisions of the new Act and when award is made it is a decree and it cannot be filed in the High Court and it has to be filed in the court as defined in clause (e) of Section 2 of the new Act for its enforcement as a decree under Section 36 of the new Act. If there is challenge to the award recourse has to be under Section 34 of the new Act.

D In view of the clear proposition of law laid by this Court in *Sukamani Das* case when disputed question of fact arises and there is clear denial of any tortious liability remedy under Article 226 of the Constitution may not be proper. However, it cannot be understood as laying a law that in every case of tortious liability recourse must be had to a suit. When there is

E negligence on the face of it and infringement of Article 21 is there it cannot be said that there will be any bar to proceed under Article 226 of the Constitution. Right of life is one of the basic human rights guaranteed under Article 21 of the Constitution. In *U.P. State Co-operative Land Development Bank Ltd. v. Chandra Bhan Dubey & Ors.*, [1999] 1 SCC 741 where one of us (Wadhwa, J.) was a party, this Court after examining various decisions of

F the courts on the power of the High Court under Article 226 of the Constitution observed that the language of Article 226 of the Constitution does not admit of any limitation on the powers of the High Court for the exercise of jurisdiction thereunder though by various decisions of this Court with varying and divergent views, it has been held that jurisdiction under Article 226 can be exercised only when a body or authority, the decision of

G which is complained, was exercising its power in the discharge of public duty and that writ is a public law remedy. This Court then observed :

H “... [i]t may not be necessary to examine any further the question if Article 226 makes a divide between public law and private law.

Prima facie from the language of the Article 226 there does not

appear to exist such a divide. To understand the explicit language of the Article it is not necessary for us to rely on the decision of English Courts as rightly cautioned by the earlier Benches of this Court. It does appear to us that Article 226 while empowering the High Court for issue of orders or directions to any authority or person does not make any such difference between public functions and private functions. It is not necessary for us in this case to go into this question as to what is the nature, scope and amplitude of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari. They are certainly founded on the English system of jurisprudence. Article 226 of the Constitution also speaks of directions and orders which can be issued to any person or authority including, in appropriate cases, any Government. Under clause (1) of Article 367 unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372 apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India. "Person" under Section 2(42) of the General Clauses Act shall include any company, or association or body of individuals, whether incorporated or not. Constitution is not a statute. It is a fountain head of all the statutes. When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a cooperative society or association or body of individuals whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this court has laid down certain guidelines and self-imposed limitations have been put there subject to which High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances. High Court does not interfere when an equally efficacious alternative remedy is available or when there is established procedure to remedy a wrong or enforce a right. A party may not be allowed to by-pass

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A the normal channel of civil and criminal litigation. High Court does not act like a proverbial 'bull in china shop' in the exercise of its jurisdiction under Article 226.

B In the present case, disputed questions of facts did arise and the High Court was itself aware of the same. It was on that account that the High Court referred the disputes through arbitration for adjudication. It was submitted by Mr. R. Mohan, learned senior counsel for the appellant, that the High Court by referring the matter to arbitration has created a new jurisdiction to deal with the alleged negligence of the appellant and has also appointed a forum for adjudication of the same. It was submitted that creation of such a forum and jurisdiction is legislative in character and it could not be done or assumed otherwise. In support of his submission Mr. Mohan referred to a Constitution Bench decision of this Court in *A.R. Antulay v. R.S. Nayak & Anr.*, [1988] Supp. 1 SCR 1 where the Court had observed :

D "The power to create or enlarge jurisdiction is legislative in character, so also the power to confer a right of appeal or to take away a right of appeal Parliament alone can do it by law and no Court, whether superior or inferior or both combined can enlarge the jurisdiction of a Court or divest a person of his rights of revision and appeal"

E Since disputed questions of facts arose in the present appeals the High Court should not have entertained writ petitions under Article 226 of the Constitution and then referred the matter to arbitration in violation of the provisions of the new Act. There was no arbitration agreement within the meaning of Section 7 of the new Act. Under the new Act award can be enforced as if it is a decree of a court and yet the High Court passed a decree in terms of the award which is not warranted by the provisions of the new Act. Appellant had also raised plea of bar of limitation as in many cases if suits had been filed those would have been dismissed as having been filed beyond the period of limitation. In our opinion exercise of jurisdiction by the High Court in entertaining the petitions was not proper and High Court in any case could not have proceeded to have the matter adjudicated by an arbitrator in violation of the provisions of the new Act. Mr. Mohan also contended that the appellant did not consent to adjudication of subject disputes by an arbitrator. That the matter was referred to the arbitrator without the consent of the appellant as now being alleged can not be taken note of

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as the High Court specifically said that it was by consent of the parties that the reference was being made to the arbitrator.

It was submitted by Mr. Krishnamani that in view of the facts and circumstances of these cases when deaths occurred due to electrocution and all this time has expired it would not be equitable to send the respondents to take proceedings in a civil court. He referred to a decision of this Court in *Municipal Board, Pratabgarh v. Mahendra Singh Chawla and Others*, [1982] 3 SCC 331 where this Court made following observations:

“While exercising the discretionary jurisdiction under Article 136, law is to be tempered with equity and if the equitable situation demands after setting right the legal formulations not to take it to the logical end, the Supreme Court would be failing in its duty if it does not notice equitable considerations and mould the final order. In exercise of the extraordinary jurisdiction under Article 136 the discretion should be so exercised by the Court that justice may be rendered to both the parties.”

We are inclined to agree with the last submission of Mr. Krishnamani.

We answer both the questions in favour of the appellant. We would, therefore, allow the appeals and dismiss the writ petitions filed by the respondents. In the circumstances, however, we restrain the appellant from recovering any amount from any of the respondents, which has been paid to them in terms of the impugned judgments of the High Court. There shall be no order as to costs.

K.K.T.

Appeals allowed.

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