

ODISHA HUMAN RIGHTS COMMISSION
2nd Floor, Toshali Bhawan, Satyanagar
Bhubaneswar-751007

OHRC Case No. 2318 of 2016

Shri Himanshu Sekhar Panda

... petitioner

ORDER

The petitioner Himanshu Sekhar Panda of village Talakurunia under Khantapada Police Station area in Balasore alleged that on 27.7.2013, his father Surendra Panda who inadvertently came in contact with a 33 KV electric power line which was hanging precariously proved disastrous to his life and a despite a long and expensive treatment at SCB Medical College & Hospital, Cuttack and also in SUM Hospital, Bhubaneswar, he became crippled life-long as his right leg is completely paralysed and two of the fingers of his left leg have been amputated. The petitioner also alleged that though the NESCO authorities of Balasore held out assurance to bear the cost of treatment of his father and also to provide a job to a member of his family, nothing has been done.

Perused the enquiry report of the IIC, Khantapada Police Station which has been sent by the S.P., Balasore in its letter dated 26.9.16 which speaks that on 24.7.13 at about 9.30 AM, one Surendra Panda, father of the petitioner was going to the cultivable land with seed

packets (paddy sapplings) on his head on the village road, he unknowingly came in contact with 33 KV conductor which hanging at a low height and received serious burn injuries on his person. Initially, he had undergone treatment in the District Headquarters' Hospital, Balasore and thereafter he was shifted to the SCB Medical College & Hospital, Cuttack and lastly to the SUM Hospital, Bhubaneswar.

On the report of one Jogendra Panda, cousin brother of the injured, Khantapada PS Case No.301/2013 was registered and the case ended in Final Report being true. Following a public out-cry over this incident, the higher authorities of the NESCO gave an assurance to meet the cost of treatment of the injured and also to offer a job to a member of his family as the injured was the only bread winner of the family. However, such assurances have not yet been carried out by the NESCO authorities.

The IIC, Khantapada PS, who conducted an enquiry into matter on the instruction of the S.P., Balasore observed that the petitioner is a poor boy and has been finding it difficult to provide necessary treatment to his father as also to maintain the family. The NESCO authorities are apparently not showing any serious consideration to the plight of the petitioner, for which he has been going without any kind of help from them over the last three years.

Also perused the report of the Executive Engineer (Electrical), Soro Electrical Division, Soro, Balasore dated 17.12.16. According to its report, when the accident victim Surendra Panda was passing under the 33KV line near Jhadta carrying paddy seeds in a sack on his head, it came in contact with live 33 KV sagging line and thereby sustained

injuries. Such a thing could happen as some miscreants had cut/damaged the 33 KV Stay wires which led to sagging of the overhead conductor. In other words, due to such action of the miscreants, the overhead conductor could not retain the earlier position and swayed to a side with pressure bending down with the weight of the pole.

It is contended in the report that while the Electricity Department takes the entire responsibility for periodic check and maintenance, it is equally the responsibility on the part of the general public to bring to the notice of the Department in case of any problem for suitable remedial action. It is also contended that since the sagging of the electric wire was quite visible on that fateful day, the victim could have avoided to pass under it until action is taken by the Department to restore the line to his proper position. It has been held that such an accident could take place not because of any negligence on part of the Department but because of negligence of the victim concerned. Accordingly, the Executive Engineer (E), Soro Electrical Division, Soro held the view that neither the State nor the licensee is accountable for such an accident and hence not liable to pay any further compensation.

Perused the treatment papers as well as the Handicapped Certificate of Surendra Panda, the father of the petitioner.

The petitioner has submitted that as against an amount of Rs1,04,000/- spent towards the medical treatment of his father, only an amount of Rs.12,000/- has been given by Shri Ashok Kumar Mohanty, General Manager, Electrical Section, Gopalpur. The petitioner further submitted that an amount of Rs.2,000/- is being spent every month for the treatment of his father since his return from the Hospital.

The Commission heard both Shri Bhupendranath Sahu, Executive Engineer (Electrical), Soro Electrical Division and Shri Pradeep Kumar Dash, Junior Manager (Electrical), Gopalpur (Electrical) Section on 23.2.17 when both of them appeared before the Commission on notice. Though both the officials have in no uncertain terms admitted that Surendra Panda had suffered injuries owing to his coming into contact with 33 live KV line that resulted in amputation of two fingers of his left leg and paralysis of his right leg, they contended that due to his own fault Sunrendra Panda met with such an accident and the Electricity Department is in no way responsible for the same and hence the prayer of the petitioner has no merit for consideration.

The alibi taken by the Department that if information could have been given to the Department, immediate action could have been taken either to stop the power supply or to repair same is hardly acceptable. It implies that as long as no information has been received from any source, the Electricity Department would have nothing to do in the matter and anybody who comes in direct contact with the live wire is himself responsible for the consequences which is attributable to his negligence. From such two things, it is clerly evident that he who suffers injuries or gets crippled due to such injuries are left to fend for himself and the Department would not take any responsibility whatsoever in such a situation. Since the Department is aware that accidents of such a nature is sure to cause potential risk to human lives, as in the present case, it cannot evade its responsibility in mitigating the incalculable loss sustained by the victim and his family as well. It is quite natural, no one would knowingly welcome his disaster, or for that matter death. In the

present case, if the victim could have a slightest knowledge or information that the power line is hanging, he would have definitely not stepped into the death-trap.

Therefore, the stand taken by the Executive Engineer (E), Soro Electrical Division, Soro that neither the State nor its instruments are responsible for loss caused to the victim is not acceptable. It is immaterial for whose action the power line sagged, but the fact remains that the power line belongs to the Department and hence any person who is injured or crippled or dead being in direct contact with the live wire deserves compensation as his Right to Life was either seriously threatened or extinguished.

It is pertinent to refer to the observation of the Apex Court of the country made in the case of **M.C. Meheta Vrs. Union of India (1987) 1 SCC 395** which says that *“where an enterprise is engaged in a hazardous or inherently dangerous activity and harm is caused on anyone 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 Ryelands vrs. Fletcher.”*

Thus, the well-settled position of law is that when any organisation is engaged in any trade which is hazardous in nature, it is incumbent upon the organisation to guard against any possible hazards impacting the life of any person. Since the job of power supply by the Electricity Distribution Company is undoubtedly a hazardous trade, proper periodic checking and maintenance of the system is to be ensured under all circumstances to avoid any accident. As it appears, in

the instant case, the authorities have not given serious attention towards periodic checking of the overhead LT conductor and its maintenance. In this context, it is apt to say that **“Stitch in time saves nine”**.

In the instant case, the physical disability of Surendra Panda which is being certified to be 55% by the competent medical authorities has been clearly admitted both by Shri Bhupendranath Sahu, Executive Engineer (Electrical), Soro Electrical Division and Shri Pradeep Kumar Dash, Junior Manager (E), Gopalpur (Electrical) Section before the Commission on 23.2.2017.

It is the settled position of law that efforts should always be made to provide adequate compensation not only for the physical injury and treatment but also for the pain, suffering and trauma caused due to the accident and inability to lead a normal life and enjoy amenities.

The Commission taking into consideration the socio-economic condition of the victim's family, the permanent incapacitation of the victim to do any work and he, himself, being a burden to the family till the rest of his life, and in terms of the provision of 18(a)(i) of the Protection of Human Rights Act, 1993 recommends the Electricity distribution Company, i.e., NESCO to pay an amount of Rs.3 lakhs (Rupees three lakhs) as compensation to the victim Surendra Panda, the father of the petitioner within two months

Let a copy of this order be sent to the Chief Executive Director, NESCO Utility, Corporate Office, Januganja, Balasore, Senior General Manager (Electrical), , General Manager (Commercial), General Manager (Operation), NESCO Utility, Balasore and Executive Engineer(

Electrical), Soro Division, Soro, Balasore for compliance of the direction of the Commission within two months and compliance report be submitted by that period.

JUSTICE B. K. MISRA
ACTING CHAIRPERSON