

WEST BENGAL HUMAN RIGHTS COMMISSION

PURTA BHAVAN (2ND FLOOR)
BLOCK-DF, SECTOR-I, SALT LAKE,
KOLKATA-700 091

PHONE: 2337-2655, FAX: 2337-9633

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Ref. No.

753/WBHRC/SMC/23/18

Date: 6.5.19

Recommendation No 01&02/WBHRC/2019-20/23/SMC/2018

From: Shri Laima Chozah IAS,
OSD & Ex-officio Principal Secretary & CEO.

To: The Chief Secretary
Government of West Bengal
NABANNA
325, Sarat Chatterjee Road
Mandirtala, P.O.- Shibpur,
Howrah-711102

Sir,

I am directed to send herewith an authenticated copy of the Recommendations dated 03.04.2019 in connection with the death of Prasenjit Mondal by electrocution made by the West Bengal Human Rights Commission alongwith enclosures for taking necessary action. The recommendations are self-explanatory.

Action taken or proposed to be taken by the Government on the recommendations may please be intimated to the Commission within 3(three) months.

Yours faithfully,


OSD & E.O. Pr. Secretary & CEO.

o/c

WEST BENGAL HUMAN RIGHTS COMMISSION

Purta Bhavan, 2nd Floor, Salt Lake, Kolkata – 700 091.

File No. 23/WBHRC/ SMC/2018

Present

- | | |
|---------------------------------|-------------|
| 1. Justice Girish Chandra Gupta | Chairperson |
| 2. Shri Naparajit Mukherjee | Member |
| 3. Shri M. S. Dwivedy | Member |

1. The Commission took suo motu cognizance of the death of Prasenjit Mondal, aged about 22 years, by electrocution at about 23:00 hrs on 1st April, 2018 at the junction of Garden Reach Road and Dumayne Avenue reported by the Ananda Bazar Patrika dated 3rd April, 2018. The Commission called for a report from CESC Ltd.

2. By a letter dated 24th April, 2018 the CESC Ltd informed the Commission as follows:

After the said unfortunate accident that occurred at about 23:00 hrs on 1st April, 2018 investigation was carried out by us on the self-same day and it was revealed that, while passing by the victim, Prasenjit Mondal, accidentally came in contact with one KMC street-light pole near the crossing of Dumayne Avenue and Garden Reach Road, Kolkata. It was further revealed that the street-light pole had become electrified due to frayed insulation of the electric wires of the installation and in the process the victim received severe electric shock. The victim was immediately taken to SSKM hospital, Kolkata, where he was declared as 'brought dead'.

After the incident, the supply to the said street-lighting kiosk (not a feeder box, as reported) feeding the said street-light pole, was disconnected by us by removing the fuse at our feeder pillar box end. The matter was brought to the notice of the concerned Police Station being West Port Police Station through G.D. No. 14 dated 2nd April, 2018. It appears that since the nature of contact was intermittent, the controlling fuse did not operate.

Authenticated



N. C. Sarkar

Assistant Secretary

West Bengal Human Rights Commission

Though, neither the said damaged kiosk nor the concerned street light pole belongs to CESC nor anyone of these is maintained by CESC for obvious reasons still in terms of the relevant provisions of the Electricity Act, 2013, as amended from time to time, we submitted an accident report in the prescribed format to the Chief Electrical Inspector, West Bengal, a copy whereof is enclosed for kind perusal. Subsequently, the street-light pole and the said damaged roadside kiosk were both repaired by the KMC, being their properties and thereafter on their request the supply to the said street-light pole was restored."

3. The Commission by its order dated 26th July, 2018 communicated the letter dated 24th April, 2018 to the KMC and called for a report indicating whether any compensation had been paid to the next of the kin of the victim.

4. Pursuant to the aforesaid order a report under the cover of a letter dated 5th December, 2018 was received which reads as follows:

"On 01.04.2018, it was reported that one man while passing by on the road which was slightly submerged in rain water fell beside the pillar box. The site was inspected and found that the pillar box, which have CESC DDC unit for supply of power to street lights had been damaged due to an accident by some unknown vehicle. The said pillar-box foundation was repaired seven days before and again it had been damaged perhaps the same day or the day before the incident. Though the pillar- box belongs to KMC, CESC provides DDC unit which is under their control. Moreover, it was found that the pillar-box foundation was only damaged but all electrical apparatus and cables were found intact. Also, the insulations are found in good conditions. The nearby pole was found ok and glowing. It was learnt from some local people that when the victim was passing by on the submerged road, he might got electric shock from the faulty electric (underground) cable network of CESC under road which was submerged as the man suddenly fell before touching the pillar-box.

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Assistant Secretary

W.B. Human Rights Commission

Hence, the unfortunate tragic incident did not happen due to electric shock from the pillar-box or the adjacent pole.”

5. Upon comparison of the reports of CESC Ltd., with the one furnished by the KMC it would be clear that varying reasons leading to the death of the victim Prasenjit were cited by both the parties. According to the CESC Ltd., the cause of death was as follows:

“the victim, Prasenjit Mondal, accidentally came in contact with the KMC street-light pole near the crossing of Duamyne Avenue and Garden Reach Road, Kolkata. It was further revealed that the street-light pole had become electrified due to frayed insulation of the electric wires of the installation and in the process the victim received severe electric shock.”

Whereas according to KMC, the victim Prasenjit might have “got electric shock from the faulty electric (underground) cable network of CESC under road which was submerged as the man suddenly fell before touching the pillar-box.”

6. The CESC Ltd., has held KMC liable for the accident leading to the death and KMC in its turn has held the CESC liable for the accidental death. Negligence has been attributed against each other by the parties aforesaid. There is though no denial of the assertion by the CESC Ltd that “the street-light pole and the said damaged roadside kiosk were both repaired by the KMC” subsequent to the accident.

7. Liability in law however, does not arise merely out of negligence. Irrespective of any negligence the parties who brought the electricity at the fateful spot are liable on the principle of ‘strict liability’.

8. Evidently neither the CESC Ltd., nor the KMC took liability of the incident nor was any compensation or solatium paid. They merely engaged themselves in blaming each other. Which of the parties was at

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W.B. Human Rights Commission

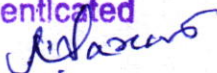
fault is a question of minor importance because the case has to be considered on the principle of strict liability. The Apex Court in the case of Parvati Devi Vs Commissioner of Police Delhi reported in (2000)2 SCC 222 opined as follows:

“ 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.”

9. In the case of M.P. Electricity Board Vs. Shail Kumari And Ors reported in (2002) 2 SCC 162 the following view was expressed:

“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 lookout 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.”

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N. C. Sarkar
Assistant Secretary
W.B. Human Rights Commission

“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 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.”

10. The quantum of compensation in the case of State of Himachal Pradesh & Ors Vs Naval Kumar Alias Rohit Kumar reported in 2017(3) SCC 115 was fixed at Rs. 1.25 Crores by the High Court which was reduced by the Supreme Court to a sum of Rs. 90 Lakhs considering the victim was only 8 years old.

“In our considered view, taking into consideration the facts and circumstances of the case such as the respondent’s family background, his age(8 years), nature of permanent disability suffered by the respondent, his performance in studies, the determination of monthly/yearly income made by the High Court, expenses incurred and all the relevant factors, which are usually taken into account in awarding compensation to the victim, the respondent is held entitled for a total lump sum compensation of Rs. 90,00,000/- (Rs ninety lakhs) together with interest payable @ 6% p.a. in place of Rs. 1,25,00,000

awarded by the High Court.”

11. The law laid down by the Supreme Court is the law of the land under article 141 of the Constitution of India. There is as such, no doubt that both the authorities, viz; CESC Ltd., and KMC are jointly

Authenticated

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Assistant Secretary

W.B. Human Rights Commission

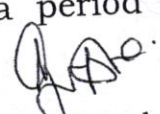
and severally liable in law to pay adequate compensation for the loss of life.

12. As regards quantum of compensation we however choose to take a conservative view and leave the victim to press for adequate compensation before the appropriate forum. By an Office order No. 1186 dated 17th March, 2017 quantum of solatium in case of accidental death by electrocution was fixed at Rs. 5,00,000/- by the West Bengal State Electricity Distribution Company Ltd. We choose to follow the same standard.

13. The Commission in the circumstances, makes the following recommendations which would not however preclude the victim from claiming any further compensation before a Court of law :

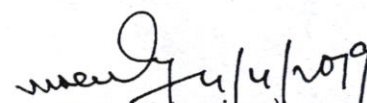
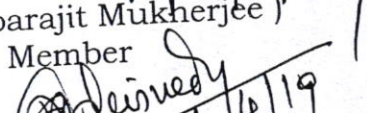
- (a) A sum of Rs. 5,00,000/- (Rupees Five lakhs) be paid to Sri Sukumar Mondal, father of the deceased Prasenjit Mondal.
- (b) The aforesaid amount of solatium should be paid by the Government of West Bengal with liberty to recover the same from the KMC or the CESC Ltd., or both.

14. Principal Secretary, WBHRC to communicate the recommendations to the Chief Secretary, Govt. of West Bengal and he is requested to communicate an action taken report on the above recommendations to this Commission within a period of 3 (Three) months.


(Justice Girish Chandra Gupta)
Chairperson

Authenticated

N. C. Sarkar
Assistant Secretary
W.B. Human Rights Commission


(Napanarajit Mukherjee)
Member

(M. S. Dwivedy)
Member
4/4/19

Dated, 3rd April, 2019

Contd..

- Encl: (1) Letter Dt. 24th April, 2018 of CESC Ltd.
(2) Letter Dt. 5th December, 2018 of the Special
Municipal Commissioner, KMC.
(3) Apex Court Case Parvati Devi Vs Commissioner of Police
Delhi reported in (2000) 2 SCC 222.
(4) M.P. Electricity Board Vs Shail Kumari reported in
(2002) 2 SCC 162.
(5) Himachal Pradesh & Ors Vs Naval Kumar alias Rohit
Kumar reported in (2017) 3 SCC 115
(6) Office Order No. 1186 Dt. 17.03.2017 of WBSEDCL.

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N. C. Sarkar
N. C. Sarkar
Assistant Secretary
W.B. Human Rights Commission

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By Fax / Speed Post

**GOVERNMENT OF WEST BENGAL
HOME & HILL AFFAIRS DEPARTMENT
HUMAN RIGHTS BRANCH
WRITERS' BUILDINGS, KOLKATA - 700 001**

No.190(Sanc.)-HS/HRC/Recom(WB)-08/19

Dated, Kolkata, the 06th February, 2020.



From: Sri S.K Das.
Deputy Secretary to the
Government of West Bengal.

To: The District Magistrate,
Malda.

Sub: Payment of interim compensation of Rs.5,00,000/- (Rupees five lakh) to Sri Sukumar Mondal, father of deceased Prasenjit Mondal Mahajampur Madapur, P.S-English Bazar, Madapur, Malda as per recommendation of West Bengal Human Rights Commission & acceptance by State Government.

**Ref.: 1. West Bengal Human Rights Commission's ref No.753/WBHRC/SMC/23/18, dt.06.05.2019.
2. The report of Commissioner of Police, Kolkata, vide No.13200/RPT + Enclo, dt.25.07.2019**

Sir,

I am directed by order of the Governor to say that on the basis of recommendation of West Bengal Human Rights Commission which was accepted by the State Government, the Governor has been pleased to accord sanction to the expenditure of a sum of Rs.5,00,000/- (Rupees five lakh) to Sri Sukumar Mondal father of the deceased Prasenjit Mondal.

The Governor is further pleased to place an allotment of Rs.5,00,000/- (Rupees five lakh) only at the disposal of the District Magistrate, Malda who will act as the Drawing & Disbursing Officer in this respect.

The amount sanctioned above may be disbursed to the above mentioned person on proper identification by the local civil authorities.

The charge on this account shall be debited to the head, "2235-Social Security and Welfare-60-Other Social Security and Welfare Programmes-200-Other Programmes-N.P-Non Plan- 015-Other Ex-gratia Payments-Voted-31-Grants-in-aid-02-Other Grants", under Demand No.18 out of the current year's (2019-2020) budget provision.

This has the concurrence of Finance Department Group-"N" U/O. No.2529, dt.17.12.2019 & Group "D" U/O No. Group D/2019-2020/0254 dt.23.12.2019.

After payment of compensation, an intimation with full address of the recipient along with the copy of receipted voucher and date of payment may kindly be sent to this Department for future reference.

Yours faithfully,
[Handwritten signature]
[S.K Das]
Deputy Secretary

Continued...Page.2