



**WEST BENGAL HUMAN RIGHTS COMMISSION**

PURTA BHAVAN (2<sup>ND</sup> FLOOR)  
BLOCK-DF, SECTOR-I, SALT LAKE,  
KOLKATA-700 091  
PHONE: 2337-2655, FAX: 2337-9633  
E-mail: [wbhrc8@bsnl.in](mailto:wbhrc8@bsnl.in)

Ref. No. 810/WBHRC/Gen/712/17

Date: 16.5.19

Recommendation No 03 & 04/WBHRC/2019-20/712/GEN/2017

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 Yash Begani s/o - Sunil Begani 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.

WEST BENGAL HUMAN RIGHTS COMMISSION  
Purta Bhavan, 2<sup>nd</sup> Floor, Salt Lake, Kolkata – 700 091.

File No. 712/WBHRC/GEN/2017

Present

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

1. On 8<sup>th</sup> August, 2016 at about 18:33 Hrs one Yash Bengani, a minor aged about 14 years, son of Sri Sunil Bengani, residing at 15-A, Ramesh Mitra Road, Kolkata-700025 was fatally electrocuted in front of premises No. 33, Ramesh Mitra Road, Kolkata-700025. Cognizance was taken by the Commission on the basis of a complaint dated 22<sup>nd</sup> September, 2016 lodged by Sri Radha Kanta Tripathy, Advocate & Rights Activist.

2. A report dated 16<sup>th</sup> June, 2017 furnished by the Chief Legal Advisor of CESC Ltd., in that regard, reads inter alia is as follows:

*That it is a fact that a teenaged school boy (Yash Bengani, son of Sri Sunil Bengani of 15/A, Ramesh Mitra Road, Kolkata-700025), got electrocuted on August 8, 2016 (not August 9, 2016, as indicated in the letter of complaint). It has been reported that at about 6.30 PM on the fateful day, there was huge accumulation of water on Ramesh Mitra Road as consequence of insistent rainfall on that day. While he was travelling in the knee dip water, he somehow came in contact with electrical wires emanating from nearby Trident pole of the Kolkata municipal Corporation (KMC), erected by the side of the road. Electrical wires became live due to frayed insulation of the wires and in the process the victim received severe electric shock.*

*That the victim was immediately taken to SSKM hospital, Kolkata, where he was declared brought dead.*

*That the supply of the KMC kiosk feeding the Trident lamp post was disconnected.*

Authenticated

*N. C. Sarkar*

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



*That the controlling fuse did not operate due to intermittent nature of contact.”*

3. Assistant Commissioner of Police(IV), South Division, Kolkata also held an enquiry and his report dated 7<sup>th</sup> June, 2017 reads inter alia as follows:

*“From the local enquiry it was learnt that on 08.08.16 at about 18:00 hrs one boy namely, Yash Bengani (13 year), S/O-Sunil Bengani of 15A, Ramesh Mitra Road, Kolkata-700025 was returning from private tuition through Ramesh Mitra Road which was submerged by rain water due to heavy rainfall and when he reached in front of premises No. 33, Ramesh Mitra Road somehow he touched one electric (trident) pole situated in front of the said premises and was electrocuted from the said trident pole which was already been electrified due to heavy rain. On arrival at the said spot it was seen that the said boy i.e. Yash Bengani was found submerged he was removed to SSKM Hospital where he was declared as brought dead.”*

4. Statement of Sri Sunil Bengani, father of the deceased was recorded by the police which inter alia reads as follows:

*“On 8/8/16 at about 18/00 hrs he was coming back to his residence after getting his tuition. He was a student of class VIII of Bhowanipur Gujrati Educational Society. At that time our entire area was water logged due to heavy rain. The trident light posts were also partly under water. My son took the help of the lamp post for moving through footpath which was under water. Due to touching the light post my son got electrocuted all on a sudden which took the life of my only son which shocked my family and the residents of the entire area. However it was very unfortunate incident and happened accidentally. The KMC authority and the local representatives promised to look into the matter sympathetically and to help us from Govt. funds but that has not been materialized till date.”*

Authenticated

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



5. The reports referred to above point the finger at the KMC which in its turn sought to hold CESC liable for the accident. A report in that regard received by the Commission under the cover of a letter dated 1<sup>st</sup> October, 2018 reads inter alia as follows:

*“Also it has been observed from the discussions among the local people that the boy was walking holding the iron grill gate at the boundary wall of the housing complex (33A Ramesh Mitra Road) to avoid deep water logging at the fag end of footpath and road and that grill may be electrocuted from the CESC supply panel installed inside the premises which was also submerged by logged rain water. The boundary walls also have electric lamps and associated wiring. Before rescue of the unconscious boy from the logged water, C.E.S.C disconnected the power of the said housing complex. Also it can be assumed the boundary grill at the entrance of the housing complex got electrocuted from the CESC service point inside the housing complex when the logged water level rise and the live parts of the supply point submerged and boy get electric shock from the boundary grill.*

*It can also be pointed out the trident pole was about 10 feet away from the place of occurrence. Moreover the loop slot of the trident pole was never submerged since it lay at higher level. Hence the tragic incident was not happened from the trident pole.”*

6. The resultant effect is that neither the CESC Ltd., nor the KMC took liability of the incident. They merely engaged themselves in blaming each other. No solatium or compensation was paid by either of the aforesaid parties. Which of the parties was at fault is a question of minor importance because it is a case of strict liability irrespective of any negligence. The Apex Court in the case of Parvati Devi Vrs Commissioner of Police Delhi reported in (2000)2 SCC 222 opined as follows:

Authenticated

*N. C. Sarkar*

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

*“ 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.”

7. 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.”

“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

Authenticated

*N. C. Sarkar*

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



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.”

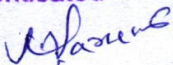
8. The quantum of compensation in the case of State of Himachal Pradesh & Ors Vs Naval Kumar Alias Rohit Kumar reported in 2017(3) SCC 115 was fixed at Rs. 1.25 Crores by the High Court which was reduced by the Supreme Court to a sum of Rs. 90 Lakhs considering the victim was only 8 years old.

*“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.”*

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

10. 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 17<sup>th</sup> 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.

Authenticated



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



11. 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 Sunil Bengani, father of the deceased Yash Bengani.
- (b) The aforesaid amount of compensation should be paid by the Government of West Bengal with liberty to recover the same from the KMC or the CESC Ltd., or both.

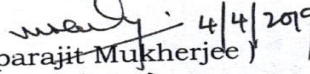
12. Principal Secretary, WBHRC to communicate the recommendations to the Chief Secretary, Govt. of West Bengal and he is requested to communicate an action taken report on the above recommendations to this Commission within a period of 3 (Three) months.

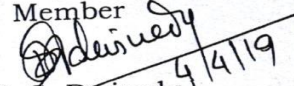


(Justice Girish Chandra Gupta)  
Chairperson

Authenticated

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

  
(Naparajit Mukherjee)  
Member

  
(M. S. Dwivedy)  
Member

Dated, 1<sup>st</sup> April, 2019

- Encl: (1) Report Dt. 16<sup>th</sup> June, 2017 of Chief Legal Advisor, CESC Ltd.  
(2) Report Dt. 07.06.17 of Asstt. Commissioner of Police(III) South Division.  
(3) Statement of Sri Sunil Bengani, father of the deceased.  
(4) Report dated 01.10.2018.  
(5) Apex Court Case Parvati Devi Vs Commissioner of Police Delhi reported in (2000) 2 SCC 222  
(6) M.P. Electricity Board Vs Shail Kumari reported in (2002) 2 SCC 162.  
(7) Himachal Pradesh & Ors Vs Naval Kumar alias Rohit Kumar reported in (2017) 3 SCC 115  
(8) Office Order No. 1186 Dt. 17.03.2017 of WBSEDCL

SDB