
(2010) 05 KL CK 0028

In the High Court Of Kerala

Case No : Writ Petition (C) No. 3278 of 2010 (H)

Ajith K.N. and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 18-05-2010

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226
Electricity Act, 1910 — Section 51
Electricity Act, 2003 — Section 164
Telegraph Act, 1885 — Section 10, 16(1)

Citation : (2010) 2 ILR (Ker) 962 : (2010) 2 KLJ 429

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : D. Somasundaram, for the Appellant; Millu Dandapani and Bijoy Chandran, G.P., for the Respondent

Final Decision : Dismissed

Judgement

P.R. Ramachandra Menon, J.—To what extent interference is possible or warranted in a Writ Petition under Article 226 of the Constitution of India, challenging sustainability of the order passed by the Statutory Authority/Addl. District Magistrate invoking the relevant provisions under the Indian Telegraph Act, with regard to drawing of electric lines through the property of the third parties, is the issue involved in this case.

2. The petitioners are challenging Ext.PI 1 order passed by the 7th respondent enabling the 4th respondent to draw 400 K.V. High Tension electric line passing through Vengola/Valayanchirangara/Rayamangalam village areas in Kunnathunadu Taluk, in Ernakulam district through the route proposed by the 4th respondent. The case of the petitioners is that Ext.P4 alternate route suggested by them is much more economical and feasible than the route proposed by the 4th respondent and that if the line is drawn through the alternate route proposed by the petitioners, it will mostly pass through the uncultivated paddy fields, requiring only about 400 rubber trees to be cut and removed; whereas if the

route, specified by the 4th respondent and confirmed by the 7th respondent vide Ext.P11 is implemented, nearly 5000 yielding rubber trees belonging to small agriculturists will have to be cut and removed, besides adversely affecting 40 residential buildings in the area.

3. A totally different version has been put forth by the 4th respondent, referring to Ext.R4(1) sketch produced along with their counter affidavit. It is seriously alleged by the petitioners that the 7th respondent, who conducted the spot inspection and was all along with the petitioners, giving instruction to the 4th respondent to suggest an "alternate route" in the course of spot inspection conducted on 08.01.2010, has arbitrarily taken a U turn, referring to the letter/report of the same date, i.e., 08.01.2010 sent by the 4th respondent and has confirmed the route proposed by the 4th respondent, as per Ext.P11 passed on the very same day. It is also averred that the 7th respondent happened to be transferred out from the office on that day itself and hence suspect some foul play.

4. As a matter of fact, the petitioners and some others had approached this Court earlier by filing W.P. (C) Nos. 27172 and 27195 of 2009 for similar reliefs. After hearing both the sides, the said Writ Petitions were disposed of as per Ext. P6 judgment, directing the statutory authority to consider and pass orders-under Section 10 of the Indian Telegraph Act, after considering the objections preferred by the petitioners therein, affording an opportunity of being heard to their representative as well as the 4th respondent/the Power Grid Corporation of India Limited as specified. Pursuant to the above verdict, a site inspection was conducted by the 7th respondent/statutory authority on 19.11.2009 and the route proposed by the respondent Corporation and the alternate route suggested by the petitioners were examined. On the basis of the site inspection, the respondent Corporation was directed to file a report regarding the feasibility of the alternate proposal, pursuant to which, Ext.P8 report dated 07.12.2009 was submitted by the Power Grid Corporation, giving a comparative study on the feasibility aspects, along with a sketch . Thereafter, Ext.P7 notice of hearing was issued, informing the date of hearing as 22.12.2009. Hearing was conducted on the said date, as well as on 07.01.2010, when the petitioners requested for one more site inspection, stating that the respondent Corporation had not examined all the portions of the alternate route suggested by the petitioners. Acceding to the request of-the-petitioners, one more site inspection was conducted by the 7th respondent on 08.01.2010.

5. During the course of the said subsequent inspection held on 08.01.2010, some suggestions were made from the part of the petitioners, on which, an urgent report was called for by the 7th respondent. Pursuant to this, the position was explained from the part of the Corporation as per letter of the same date, asserting that the course suggested by the petitioners was not feasible at all. After considering the facts and circumstances including the contents of the said letter mentioned above, the 7th respondent finalised the proceedings by passing

Ext. P11 order, whereby the feasibility aspect as projected from the part of the Corporation was held as correct and sustainable and accordingly, the alternate route suggested by the petitioners was held as not feasible and in turn, the respondent Corporation was directed to draw the electric lines, as proposed by them. The correctness and sustainability of the finding and reasoning given by the 7th respondent in Ext.PU is under challenge in this Writ petition, contending that Ext.P11 itself is not a "speaking order" and that much discriminatory course has been pursued in finalising the proceedings, asserting that the petitioners are ready and willing to take out an "Advocate Commission" to substantiate the actual facts and figures.

6. The respondent Corporation has filed a counter affidavit rebutting the averments and allegations raised by the petitioners and explaining the actual facts and circumstances in detail, which however is sought to be controverted from the part of the petitioners by filing a reply affidavit, simultaneously asserting that the inspection of the site by an Advocate Commission is very much essential to solve the issue. Since serious allegations were raised by the petitioners as to the manner in which the proceedings were finalised, particularly leading to the site inspection conducted by the 7th respondents on 08.01.2010, followed by the report stated as filed by the 4th respondent on the same date and finalisation of the proceedings as per Ext. P11 order on 08.01.2010 itself and further since the learned Counsel who represents the 4th and 5th respondents submitted that they were having no objection for deputing an "Advocate Commission", this Court passed an interim order on 17.02.2010, deputing Mr. Sajush Paul A.S., an Advocate of this Court as the Commissioner to inspect the site in question and to submit a detailed report on the route specified by the Corporation and the alternate route suggested by the petitioners. After detailed inspection, the Advocate Commissioner has filed a report referring to the factual particulars collected in respect of both the routes. The petitioners have, of course, filed an objection to the above report with regard to some observations made by the Advocate Commissioner, the matter was heard at length on different dates, lastly on 25.03.2010.

7. Mr. D. Somasundaram, the learned Counsel appearing for the petitioners submitted that the course pursued by the 7th respondent; is nothing but a colourable exercise of power, in so far as the lines are proposed to be drawn by the respondent Corporation causing much loss and hardship to the petitioners by cutting and removing the yielding rubber trees, Coconut palms and such other trees/cultivation without any regard to the plus points of the alternate route suggested by the petitioners which crosses mostly through the uncultivated paddy lands. It was also contended that a conscious attempt was made from the part of the 5th respondent, to deviate the proposed line in the case of Christian Churches, while pursuing a discriminatory attitude and approach in the case of Hindu Temples. The learned Counsel further submitted that the damage to be caused to the residential buildings and yielding trees/cultivation of the petitioners is very high and the alternate route suggested by the petitioners is the most

viable and,, feasible one. Reliance is also placed on the relevant norms to be pursued in such exercise, stating that the proceedings in the instant case have been pursued and finalised in a malafide manner.

8. Mr. Millu Dandapani, the learned Counsel appearing for the 4th and 5th respondents, with specific reference to the contents of the counter affidavit, submitted that the averments and allegations were absolutely devoid of any merit or bonafides and that the factual position as projected from the part of the said respondent, particularly with reference to Ext. P10 Google Map-in-locating the route stands confirmed and supported from the part of the Advocate Commissioner as well, who however has not adverted to the technical aspects, for having no expertise in this regard, but for noting down the actual facts and figures. It is stated with reference to the pleadings and proceedings on record that the line proposed from the part of the Board is comparatively in a straight line, whereas the alternate route suggested by the petitioners is absolutely a zigzag one, passing through different terrains and adversely affecting more number of dwelling houses and buildings and also passing over a temple building (Vimala Devaswom temple); whereas the line proposed by the Corporation is only passing through a portion of the property/boundary of the "Kadalakkavu Bhagavathi temple", Vengola. The insinuation made from the part of the petitioners as to the site inspection conducted on 08.01.2010, the report submitted by the Corporation on the same date and finalisation of the proceedings by the 7th respondent by passing Ext. P11 on the said day itself was also explained with reference to the sequence of events and the relevant records, asserting that no interference was liable to be made with regard to the factual position. Reliance was also placed on the decision rendered by the Full Bench of this Court in Bharat Plywood & Timber Products Pvt. Ltd. v. Kerala State Electricity Board 1970 KLT 872, Division Bench of this Court in Sukumaran P.G v. Power Grid Corporation Ltd. and Ors. 2010 (1) KHC 918 and also by two Single Bench decisions in W.P.(C) 22867 of 2007 and 13496 of 2008, asserting that the case in hand does not call for any interference, both on the question of fact as well as on the question of law, simultaneously adding that the decision in W.P.(C) 13496 of 2008 dismissing the Writ Petition, very much pertains to the very same project involved herein, i.e. drawing of 400 KV electric power line, though in a different segment. The learned Counsel also submitted that the alternate route suggested by the petitioners is obviously in a "zig-zag" manner, as evident from Ext. P10 Google Map and also as revealed from the Sketch attached to the Advocate Commissioner's report; which is stated as not at all feasible for many a reason, including the fact that huge tower lines of 440KV (having a maximum distance of 400 metres between two towers) cannot be drawn with more than 60° deviation under any circumstances. It was also pointed out that the alternate route suggested by the petitioners involved blind curves with wide angles upto 90°, which in turn would necessitate installation of more and more towers, requiring more and more space and much more expense.

9. The learned Government Pleader appearing for the respondents to 3 and 6

and 7 submitted that the petitioners have simply chosen to make some wild allegations in the Writ Petition to stall the operation. The circumstances, under which further site inspection conducted on 08.01.2010 calling for a report from the respondent Corporation, obtaining it on the same date and finalising the proceedings as per Ext. P11 on that date itself was also explained, simultaneously placing the relevant files for perusal of this Court, contending that the entire exercise pursued by the 7th respondent is very much clear and transparent in all respects.

10. With regard to the legal position, it is very much evident that the exercise of powers of the telegraph authority by the officers authorised by notification issued by the Government, u/s 51 of the Electricity Act, 1910 (similar to the relevant provisions in the Electricity Act, 2003) stands very much settled and it does not amount to any unreasonable restriction on the right to hold the property conferred under Article 19(1)(f) of the Constitution of India, as made clear by the Full Bench of this Court in 1970 KLT 872.

11. The scope and power u/s 10 and Section 16(1) of the Indian Telegraph Act 1885 have also been well explained by the Full Bench in the above decision making it crystal clear that interference is possible by this Court, not as a matter of course, but only on exceptional circumstances. Following the above verdict, a Division Bench of this Court has very recently held in Sukumaran P.G. v. Power Grid Corporation Ltd. and Ors. 2010 (1) KHC 918 that in drawing of High Tension electric lines and erection of towers, the owner of the land has no right to disrupt the same, but for the right to file objections before the District Magistrate and to have the same considered and decided (as provided u/s 164 of the Electricity Act, 2003). It is made clear by the Division Bench that if there is 100% diminution in the land value, the owner of the land is entitled to full compensation; that the said drawing of line will not take away the ownership of the land through which the line is drawn or post is erected and that if the compensation paid is inadequate, the aggrieved party can have it challenged by filing an Electricity O.P before the concerned District Court. It has also been held that, if there is any objection regarding drawing of electric line, it is for the District Magistrate to consider the objection and pass final orders.

12. In W.P.(C) No. 22864 of 2007, the learned Single Judge of this Court has held that the views of the experts with regard to the feasibility and other incidental aspects will govern the field, unless it is shown that those views are palpably perverse and so unreasonable and shocking to commonsense and the expert opinion is held out as a camouflage to obtain results out of colourful exercise of administrative power. Taking note of the contentions of the petitioners therein, that the alignment could be placed in a different manner so that trees need not be felled from their private lands, it was observed that the same was not a point to be considered by this Court, more so when the expert body had concluded that no change in the alignment would be required, which led to dismissal of the Writ Petition. W.P.(C) No. 13496 of 2008 pertains to similar circumstances as

involved in the present case in respect of drawal of 400 KV high voltage lines being carried out by the 4th respondent Corporation as part of the very same project in respect of Mysore-Kozhikode segment. The petitioners therein were cultivating Arecanut and Pepper in the proposed line area and challenged the notice proposing to cut down the trees and cultivation for drawing the line. It was contended that the line was deviated in a manner to help a Member of the Parliament who had some plantation in the area, causing additional expenditure, by increasing the line length by 50 Km and in turn affecting the cultivation of the petitioners therein. The petitioners also suggested an alternate route involving upgradation of the existing 220 KV lines and that similar upgradation was effected by the "respondent" Corporation in other areas.

13. After considering the rival contentions as to the feasibility aspect and the materials on record, it was held by this Court that, it could not be said that the statutory authority/Addl. District Magistrate took a view which was wholly perverse. There were materials before the said authority, with reference to which he justifiably came to the conclusion that the alternate proposal suggested by the petitioners was not feasible, thus observing that, if two views were possible, it was not legal to interfere with the decision under Article 226 of the Constitution. Observing that the plea of malafides was not substantiated and that the project was very much one which reflected high public interest, it was held that, if the District Magistrate was inclined in favour of a particular view, which is a "possible view", it was not for this Court to scuttle that opinion and interfere with such proposal and accordingly interference was declined.

14. Considering the case in hand in the above background, the only question to be considered is whether there is any scope for interference-to-hold-that Ext. P11 order passed by the 7th respondent is per se wrong or illegal, having passed the same contrary to the materials on record or on any extraneous consideration or without any application of mind.

15. As observed hereinbefore, the main thrust put forth by the petitioners as contended in paragraph Nos. 5 and 6 of the Writ Petition is about the hostile discrimination in drawing the disputed line over the property of the Hindu Temples, while providing deviation when it came to the cases of the Christian Churches. It is contended by the petitioners in paragraph No. 21 and elsewhere that passing of Ext. P11 order by the 7th respondent is only a malafide attempt, having conducted the site inspection on 08.01.2010, obtaining report from the 4th respondent on the same date and finalising the same on that date itself; when the 7th respondent got transferred out from the post on the next day onwards. But for the vague plea of malafides, the petitioners have not chosen to produce any tangible materials to substantiate the same. It is asserted from the part of the respondent Corporation, with reference to the pleadings and materials on record, including Ext. P10 Google Map and the report of the Advocate Commissioner, that the proposed line does not pass over the building/roof of the temple of Kadalakkavu temple, as contended by the petitioners, but for passing

through the boundary of the said Temple, whereas the report of the Commissioner clearly shows that the alternate route suggested by the petitioners, if implemented, is to cross over the building of the "Vimala Devaswom Temple" (paragraph 9 under the Head "ALTERNATE ROUTE" and paragraph Nos. 6 and 8 of the "COMAPARATIVE STUDY" in the Commissioner's report). After conducting the spot inspection in the presence of the parties concerned, the Advocate Commissioner has asserted that the contention of the petitioners that Ext. P10 Google Map (as to the actual lie and location of the route) is wrong, being different from Ext. P4 sketch provided by the petitioners, cannot be correct and that Ext. PIO Google Map is very much correct (paragraph No. 3 under the Head "COMPARATIVE STUDY" in the Commissioner's report).

16. The sequence of events as discernible from the pleadings and proceedings the petitioners had already approached this Court earlier against drawing the lines as per the proposed route, which led to Ext. P6 judgment, directing them to approach the statutory authority, who was directed to consider the objections and pass final orders after giving an opportunity of hearing to the petitioners. It was accordingly, that the petitioners were given notice and site inspection was conducted on 19.11.2009; that the concerned respondent was directed to submit a report as to the feasibility of the alternate route; that the said respondent submitted a report dated 07.12.2009 giving comparative data as to the feasibility of the proposals along with a sketch; that Ext. P7 notice of personal hearing proposed to be held on 22.12.2009 was issued; that the parties were heard on the said date and later on 07.01.2010; that the petitioners requested for one more site inspection; that another site inspection was conducted on the next day, i.e. on 08.01.2010; that the 4th respondent Corporation was directed to submit a report regarding possibility of changing the route on a small portion as to the position of towers in order to avoid drawing of lines over the Vimala Devaswom Temple" as per the alternate route given and that the position was made clear by the 4th respondent Corporation as per the letter dated 08.01.2010 stating that the same was not feasible. It was after considering the entire facts and circumstances as above, that Ext. P11 order was passed on 08.01.2010 itself. The specific pleading/contentions as above raised from the part of the respondents very much tally with the contents of the original "Note File" produced by the learned Government Pleader, bearing the endorsements made by the 7th respondent and others concerned. This being the position, it is not a case where everything was got finalised as just "two minutes noodles" on 08.01.2010, more so when the additional site inspection conducted on 08.01.2010 was for a "limited purpose" and the report called for on that date was only on a "limited question". The proceedings are very much regular and transparent and Ext. P11 is not tainted with any malafides. That apart, the petitioners have not alleged any malafides against the 7th respondent, who has not been sought to be impleaded in her personal capacity and the allegation is only in respect of the alleged malafide act stated as being pursued by the 5th respondent who also has not been chosen to be impleaded in personal capacity

to sustain the plea of malafides.

17. Yet another aspect to be considered is the factual disclosure made by the Advocate Commissioner vide his report, whereby vivid pictures of the actual facts and circumstances have been projected with much clarity. The difficulties and lack of feasibility expressed from the part of the Corporation with regard to the alternate route suggested by the petitioners have been discussed by the Commissioner in different paragraphs including from paragraph "5". It has also been observed by the Commissioner in paragraph 6 that, at least 80 to 90% deviation are there at some points of the alternate route suggested by the petitioners and that existence of 8 residential buildings belonging to the named persons has been mentioned therein. The lie and location of the property and the topography, particularly as to the terrain as well as the surface condition, as highlighted from the part of the respondent Corporation is observed as correct by the Commissioner as stated in paragraph 7, simultaneously observing that six residential houses and other cultivations were there in the area. The direct crossing of the Temple building belonging to Vimala Devaswom in the alternate route is observed in paragraph "9". Existence of 22 houses including one nursery school and 5 cattle sheds has been noted in paragraph 11, besides existence of other tapping Rubber trees, Nutmeg trees and Jack trees etc.

18. With regard to the line "proposed" by the Corporation, the facts and figures have been described under a separate head. Existence of towers No. 1 to 14 and the line crossing through the properties of different persons have been clearly explained from paragraph Nos. 2 to 13 under the head "PROPOSED LINE" (from page Nos. 5 to 10 of the report). Except the "second tower" stated as coming in the property of the 5th petitioner (paragraph No. 2) and "ninth tower" to be constructed in the property of the 3rd petitioner (paragraph No. 11), other owners of the properties concerned as referred to in paragraph Nos. 2 to 13 pertaining to the "proposed line", have not chosen to approach this Court, even though many others also had earlier challenged drawing of the line by filing different Writ Petitions, which led to Ext. P6 judgment.

19. After the site inspection and personal hearing leading to Ext. P11 order passed by the 7th respondent, it appears that the other petitioners/concerned owners of the properties (except "third" and "fifth" petitioners) are not much affected/aggrieved. The factual position as to the ownership of the property concerned and such other minute details as given by the Commissioner have not been chosen to be rebutted by the petitioners in the objection filed by them to the Commissioner's report. In other words, it appears that most of the persons who had earlier approached this Court do not appear to be aggrieved any further or rather appear to be satisfied with the actual feasibility aspect, as explained from the part of the 4th respondent Corporation, as held by the 7th respondent vide Ext. P11. True, there is a passing statement in Paragraph No. 20 of the Writ Petition that, due to penurious financial situations, 19 of the petitioners in the earlier Writ Petitions could not join the present Writ Petition as petitioners and

that the present petitioners have filed this Writ Petition in a "representative capacity" on behalf of those petitioners as well. This submission does not appear to be palatable to this Court, for the obvious reason that no such authorisation has been produced and further that the said persons, who have not joined hands with the petitioners, cannot be heard to say that they are aggrieved in any manner, in so far as they have not chosen to challenge the proceedings paying the requisite court fee. It only persuades this Court to infer that the said persons, who have been named by the Advocate Commissioner in paragraphs No. 2 to 13 of his report in respect of "PROPOSED LINE" (except 3rd and 5th petitioners), who own the respective properties do not have any grievance at all against Ext. P11. In other words, the alleged "public grievance" as projected in the Writ Petition has turned to be a "private grievance" of very few persons and the challenge is only against cutting of the yielding trees, stating that it will adversely affect their means of livelihood.

20. As pointed out already, the present project intends to transmit electrical energy from the power station in Kudaakuiam in Tamilnadu, which is working on Atomic power, to various parts under the Central Scheme for effecting power supply to various States. The entire State of Kerala is also a beneficiary and at appropriate locations, 400 K.V. tower lines are stepped down to 220 K.V. lines and the energy is being distributed so as to cater to the needs of the General Public.

21. Paramount importance is to be given to the feasibility aspect in drawing the lines. The technical aspects reported by the experts of the field cannot be ignored by this Court and the petitioners have failed to show any culpable mal-exercise of power. As contended by the 4th respondent, the project has to be completed in a phased manner and any delay in drawing the lines and implementing the project can only adversely affect the general public of different States who are the beneficiaries and the State economy at large.

22. Even if the injurious affection stated as pointed out by the petitioners is correct, on comparing the "private interest" of the petitioners with the "public interest" involved, the latter definitely prevails over the "former" and the private interest has to give way to the public interest involved. The petitioners have miserably failed to substantiate the vague plea of malafides, particularly as to the submission that the proposed route is only to favour the contractors. Absolutely no specific pleading or argument is raised or addressed as to how the said course is to extend undue favours to the contractors. More so, when the "line length" as well as "number" of towers to be installed in respect of the alternate route suggested by the petitioners are much more than the route proposed by the 4th respondent Corporation and accepted as the most feasible one by the 7th respondent/statutory authority.

23. In the above facts and circumstances, this Court does not find any merit or bonafides in the Writ Petition. None of the grounds raised in support of the contentions could be held as tenable. No interference is warranted and the Writ

Petition is dismissed accordingly.