
(2014) 09 MP CK 0106
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3868/2014

Alkesh Tripathi

APPELLANT

Vs

The Power Grid Corporation of India Ltd.

RESPONDENT

Date of Decision : 15-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity Act, 2003 — Section 164, 2(1AA), 67, 68
Penal Code, 1860 (IPC) — Section 188
Right to Information Act, 2005 — Section 8(d)
Telegraph Act, 1885 — Section 10, 10(d), 16

Citation : (2015) 1 MPJR 187

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Ami Prabal, Advocate for the Appellant; V.K. Bhardwaj, Senior Advocate Assisted by Praveen Surange, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Sujoy Paul, J.—This petition filed under Article 226 of the Constitution challenges the action of the respondents in constructing and installing the tower over the land of the petitioner.

Brief facts necessary for adjudication as projected by the petitioner are as under:-

2. The petitioner with seven other persons have purchased two pieces of land near Shivpuri Link Road admeasuring 6.49 Hec. (64900 Sq. Meter), for establishment of an educational institution. The land comprises of survey Nos. 151, 152, 153, 154, 155, 156 & 157 measuring 5.644 Hec. at village Chandohakhurd, Patwari Halka No. 70, Block Barai, Tehsil and Distt. Gwalior vide registered sale deed dated 23.05.2012 for a sum of Rs. 70,50,000/- and remaining part of survey No. 156 measuring 0.846 Hec. vide sale deed dated 20.06.2012 for a sum of Rs. 18,80,000/-.

3. It is further stated that the land is situated within the limit of Municipal

Corporation, Gwalior. Sizable number of educational institutions are situated in the vicinity near Shivpuri Link Road. The petitioner and other co-owners are presently doing agricultural activity over the land in question. On 28.02.2014, by Annexure P/4, petitioner was served with a notice issued by Sr. Engineer, Power Grid Gwalior directing the petitioner to remain present on the spot as the Power Grid Corporation is installing a tower at the land of the petitioner for establishing 765 KV Gwalior-Jaipur transmission line. It is argued that few towers are already installed by the respondents. If a straight line is drawn between the towers already installed, petitioner's land will not come in the way. It is stated that because of influence of some person or for other hidden reasons, the path is being diverted through the land of the petitioner.

4. It is further stated that on physical verification, the petitioner found that the towers came towards the land of the petitioner have been diverted whereas, third existing tower from the tower near railway line are in straight line. If two more towers are installed, they will be in straight (180 angle) and the distance will be only 1009 Mtrs. approximately, while the distance of diverted line is 1114 Mtrs. In para (VII) of the petition, it is stated that the diversion and intended installation of tower in the land of the petitioner is unjustifiable and it will be an unnecessary burden on the public exchequer because the length of the electricity line and numbers of towers will be more if it goes through the petitioner's land. The map prepared by the architect is filed as Annexure P/5 to demonstrate the aforesaid submission.

5. Petitioner preferred an application dated 03.03.2014 under the Right to information Act (RTI) Act seeking survey report of towers both sides of the proposed tower at the land of the petitioner. It is stated that petitioner enclosed a non-judicial stamp with the said application. The said application is returned by the communication dated 22.04.2014 (Annexure P/6). The petitioner was informed that Power Grid Corporation is a Govt. of India enterprise. Under the RTI Act, the petitioner needs to deposit 10/- Rs. through banker's cheque or demand draft or postal order. The said application needs to be addressed with fees to Power Grid Corporation of India Ltd. Vadodara.

6. Mrs. Ami Prabal submits that in the manner petitioner's application dated 03.03.2014 is returned by Annexure P/6, it is clear that respondents are not acting in fair and transparent manner. Petitioner again sent an application with postal order to the local sub-station on 12.05.2014 (Annexure P/7). It is stated that co-owner Rahul Verma also submitted an application under the RTI Act. It is stated that this application also was returned back by communication Annexure P/9 dated 26.05.2014. The petitioner is informed that RTI information can be obtained from the Regional Headquarter of Power Grid Corporation, Vadodara. Criticizing this order, it is stated that intention of the respondents is to suppress the relevant information in order to deprive the petitioner to get the correct information. There is no justification in deviating from easy and feasible path which is cost effective and proper in all respect. It is stated that petitioner again

sent an application by registered post dated 19.06.2014 (Annexure P/10). However, the petitioner has not chosen to file this application along with the petition. Thus, it is not clear as to whom this application was addressed.

7. Mrs. Ami Prabal, further submits that the land of the petitioner is adjacent to a Govt. land. The Govt. land is more accurate place for erecting the towers. The revenue map Annexure P/11 is filed to bolster the submission that laying of electricity line through the petitioner's land is unsafe and costly. If it goes in a straight line through the Govt. land, it will save petitioner's land which is to be used for establishing an educational institution. It is stated that petitioner has preferred detailed representation dated 25.06.2014 (Annexure P/12) to the respondents but to no avail.

8. Mrs. Ami Prabal, learned counsel for the petitioner, further submits that there is a deviation in the electricity line in order to save the land of some influential persons. Attention is drawn on para (a) (page 3-4 of the rejoinder). It is further submitted that non-disclosure of desired information under the RTI Act shows the malicious and capricious action of the respondents. It is further submitted that notices have been issued u/s 10 of the Indian Telegraph Act read with Section 68 & 164 of the Electricity Act. By taking this court to the definition of "telegraph" and "telegraph line" mentioned in Section 2(1AA) and 2(4) respectively, it is argued that the high tension electricity line is not covered under the Telegraph Act, 1885. Section 164 of the Electricity Act and Section 67 and 68 are also relied upon for the same purpose. It is further argued that Govt's. gazette notification Annexure R/2, dated 24th December, 2003, in no uncertain terms makes it clear that delegation of power was given to Power Grid Corporation subject to complying with the Rules made under Electricity Act, 2003. It is strenuously argued that under the Electricity Act the Works of Licensees Rules, 2006 (2006 Rules) are framed.

9. By taking this Court to Rule 3 of the 2006 Rules, it is argued that as per these rules, the licensee (the Power Grid Corporation) is required to obtain prior consent of the owner or occupier for the purpose of laying down electricity lines. It is submitted that in the event, any objection is made by the owner or occupier, licensee must obtain permission in writing from District Magistrate or the Commissioner of Police or any other authorized officer of Govt. for carrying out the work in absence of either prior consent of owner/occupier or expressed permission from the competent authority. The electricity line cannot be taken through the land of the petitioner. In support of this contention, Mrs. Ami Prabal relied on judgment of Patna High Court in Letters Patent Appeal No. 1132/2010 (The Power Grid Corporation Vs. Ram Naresh Singh and Ors) dated 9th February, 2011.

10. On the other hand, Shri V.K. Bhardwaj, Sr. Advocate assisted by Shri Praveen Surange, Advocate submits that the petitioner preferred application under the RTI Act before the incompetent authority. Under the said Act, Public Information Officers (PIO) are appointed. Only authorized officers are competent to give

desired informations. The petitioner was apprised that such information can be obtained from a particular officer in a prescribed manner. No malice can be attributed in this regard against the Corporation. It is further submitted that highly disputed question of facts are involved in the case which cannot be gone into in a writ petition. It is submitted that laying of line is a big project and the estimated cost of the same is Rs. 4672.99 Crores. The Govt. of India has authorized the Power Grid Corporation by Gazette notification dated 24th December, 2003. No rule or provision of the Act is violated.

11. It is further submitted by Shri Bhardwaj that the action of the Corporation is in consonance with the enabling provision of Telegraph Act, Electricity Act and the rules and regulations made thereunder. It is denied that the root of electricity line is being diverted to give benefit to some influential persons. In para 5(VII) of the return, it is stated that the content of para VII is misleading and vague in nature and hence denied. It is submitted that before the land in question, there is railway crossing coming en route the transmission line and hence as per the standard specifications and norms the crossing shall be at right angle to the railway track and in order to strengthen the tower, the angle of crossing shall be near to 90 degree and the minimum distance from the crossing tower shall be atleast equal to the height of the tower plus 6 meters away, measured from the centre nearest railway track. It is further submitted that the angle of tower installed for crossing of railway line and before the land in dispute could be between 30 degree to 60 degree (as per tower design) and in the present case in order to ensure maximum stability to the railway crossing tower and ultimately to safeguard the track in even of any storm etc, the angle of the transmission line passing from the land in question in kept approximate near about 30 degree. It is also important to mention here that adjoining to land in question there is Abadi area followed by some colleges and hence the transmission line could not be laid over them as per provisions of Indian Electricity Act, 2003 and Rules made there under, hence the transmission line immediately after crossing the land in question is again turned on left side in order to secure the safety of the people in that locality. Hence, the present installation of transmission line is strictly in accordance with the specified norms and there is no possibility of any deviation and the same is designed by keeping in mind the safety of the people at large.

12. It is further submitted by learned senior counsel that no interference be made, otherwise it will hamper the progress of the project which is being started in public interest. Shri Bhardwaj also relied on various provisions of the same Acts, rules and regulations on which reliance is placed by the petitioner. In addition, he relied on various judgments of this Court and Supreme Court.

13. No other point is pressed by the learned counsel for the parties.

14. I have bestowed by anxious consideration on the rival contentions of the parties.

15. The petitioner's applications preferred under the RTI Act were returned by informing him that appropriate authority who can furnish information is situated at Vadodara. The application needs to be addressed to him and must be pregnant with necessary amount in the manner prescribed. I find no illegality in the said action of the Corporation. Under the RTI Act, the authority is prescribed who needs to undertake the said exercise of furnishing information. Apart from this, by Annexure P/14 dated 26.06.2014 shows that ultimately the information desired by the petitioner under the RTI were declined by relying to Section 8(d) of the RTI Act. This order was appealable under the Act. There is no material on record to show that petitioner has made any efforts to assail this order before appropriate forum under the R.T.I. Act. In absence thereof, it cannot be said that any non-disclosure of information amounts to deliberate suppression or in other words, malicious in nature.

16. Petitioner's contention regarding diversion of tower from straight line is dealt with in extenso in return. It is specifically denied that the said exercise has been done in order to favour anybody. In addition, it is mentioned that adjoining land is an Abadi area followed by some colleges and hence transmission cannot be laid over that area as per Electricity Act, 2003 and Rules made thereunder. In rejoinder the petitioner has stated that "in fact earlier it was at 90 degree only but there the land of some influential person is situated and after negotiations angle has been changed". Petitioner has not chosen to disclose the name of the alleged influential person nor the description of land is mentioned in clear terms. On the basis of this vague allegation, no malice can be attributed on the other side.

17. In *M.S.M. Sharma Vs. Sri Krishna Sinha and Others*, five Judges Bench of Supreme Court opined that it would not be right to permit the petitioner to raise question, which depends on facts which were not mentioned in the petition but were put forward in a rejoinder to which the respondents had no opportunity to reply. Thus, I am unable to hold that line is being diverted in order to give any undue benefit to any influential person. The same view is taken by the Apex Court in *Ashok Lenka Vs. Rishi Dikshit and Others*,

18. Learned counsel for the petitioner submits that as per notification (Annexure R/2) the line can be laid only when rules are followed. In absence of prior consent of owner or written permission of competent authority, the action is bad in law. Patna High Court's judgment was relied for this purpose. This point is no more *res integra*. In *Vijay Ramchandra Agrawal Vs. Power Grid Corporation of India Ltd.* and another, similar contention was raised. A bare reading of para 12 to 15 of this judgment shows that it was contended by the petitioner therein that as per Sections 68 and 164 of Electricity Act, 2003 read with Section 10 of Indian Telegraph Act, 1885, the action of laying line from petitioner's land is impermissible. Rule 3 of 2006 Rules was also relied upon to submit that in absence of consent obtained prior in time, action of Corporation is bad in law. Writ Court considered these aspects including the 2006 Rules and dismissed the

petition. Para 17 of this judgment reads as under :-

"17. On a perusal of the aforesaid paragraph, it is evidence that no such consent, as claimed by the petitioner, is required, in keeping in view section 10 of the Indian Telegraph Act, 1885 read with section 164 of the Electricity Act, 2003."

Liberty was reserved to the petitioner to claim damages in appropriate proceedings. The Writ Court has taken note of various judgments passed by different High Courts including Andhra Pradesh High Court, Jharkhand High Court and Gujrat High Court. The said judgment of writ Court was tested before the Division Bench in Vijay Agrawal Vs. Power Grid Corporation of India Ltd. and Another, The Division Bench upheld the judgment of Writ Court.

19. In Rajendra Prasad Tiwari and Another Vs. State of M.P. and Others, this court has taken the same view, which reads as under:-

"9. A bare reading of Section 10 makes it clear that it is the duty of the telegraph authority to take line and to grant compensation if any damage is caused payable while exercising the powers of taking the transmission line. Section 16 of the Telegraph Act provides in case of any obstruction is created, District Magistrate is authorized to order that the telegraph authority shall be permitted to exercise the power, in case any obstruction is made by any person. Sub-section (2) of Section 16 provides that such an obstructor shall be deemed to have committed an offence u/s 188 of the Indian Penal Code. Sub-section (3) of Section 16 of the Telegraph Act provides that in case any dispute arises concerning the sufficiency of the compensation to be paid u/s 10(d), an application has to be filed before the District Magistrate. A bare reading of Section 16 and Section 10(d) makes it clear that question of making payment arises only after the transmission line is taken through the field. Only when the exercise is completed and any loss is caused then compensation is required to be determined, not otherwise, as such prayer of the petitioner for determination of compensation before hand, is misconceived as it may be a case where no damage is ultimately caused. Once the line is taken, thereafter if any loss is caused, only in that event compensation can be claimed as apparent from readings of Section 10 and 16. No compensation can be claimed by mere fact transmission line is taken over the field.

20. It is noticed that Patna High Court has taken a different view. However, Indore Bench after taking note of various High Courts' judgments has upheld the similar action of the Corporation. I am bound by the Division Bench judgment of this Court. Considering the aforesaid, I am unable to hold that action of the respondents is either without jurisdiction or suffers from any extraneous or malicious consideration.

21. Apart from this, even if petitioner is made to suffer because of laying of line, it cannot be forgotten that in larger public/national interest the individual may be required to suffer to some extent. Public propose means the general interest of the community as opposed to the interest of individual. This concept is based on

fundamental principle that interest and claim of whole community is always superior to the interest of individual (See : Daulat Singh Surana and Others Vs. First Land Acquisition Collector and Others,

22. In the result, petition is dismissed. Liberty is reserved to the petitioner to claim compensation at appropriate stage before appropriate forum. No costs.