

(2004) 11 PAT CK 0071
In the Patna High Court
Case No : CWJC No. 4261 of 2000

Arvind Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 11-11-2004

Acts Referred:

Electricity (Supply) Act, 1948 — Section 42
Electricity Act, 1910 — Section 12, 18, 19
Telegraph Act, 1885 — Section 10, 17

Citation : (2005) 1 PLJR 487

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Advocate : Mohit Kr. Shah, for the Appellant;

Final Decision : Dismissed

Judgement

R.S. Garg, J.—Heard learned counsel for the parties. The petitioner Arvind Kumar being aggrieved by the action of the respondent Bihar State Electricity Board is before this Court making a prayer that a direction be issued to the respondents not to fix electric poles in the raiyati/agricutural land of the petitioner so also in side of the field which is the only passage for the villagers to go to their fields. According to him the Engineers of the State Electricity Board started fixing pillars on the private land of the petitioner and the other villagers for carrying 11 KVA electric line and they have also sunk holes for fixing the poles. The respondents after notice have appeared in the Court and have submitted that permission/sanction of the petitioner is not required in light of the provisions as contained in Section 10 of the Indian Telegraph Act, the powers conferred upon the telegraph authority have also been conferred upon the State Electricity Board. It is submitted that the petitioner can not seek an injunction against the State Electricity authorities and the State Electricity authorities are acting in accordance with law.

2. On the last date of hearing learned counsel for the petitioner placed his

reliance upon a judgment of this Court in the matter of Durgesh Nandani vs. State of Bihar & others 2000(1) All PLR 217 and contended that without the permission of the land owner the respondents would not be entitled to fix the electric poles or take the over head line from the land of the land owner. The respondents submit before the Court that the said judgment in the matter of Durgesh Nandani was on its own facts. In the said matter from the land of the said petitioner the electric line was carried and when she wanted to use the property to its best she made an application to the Electricity Board u/s 17 of Indian Telegraph Act for removal/shifting of the electric poles. The State Electricity Board authorities in the said matter issued a bill to the said person, the said bill was challenged in C.W.J.C. No. 4536 of 1999. After hearing both the parties and taking into consideration the effect and impact of Sections 10 and 17 of Indian Telegraph Act so also of Rule 82 of 1956 Rules made under 1910 Act, in the said matter the High Court observed that if the land owner has not received any compensation/damages then he would not be liable to pay the charges for shifting/removal of the electric line. That judgment is not a authority to say that without the permission of the land owner the poles can not be fixed nor the over head line can be carried. If the powers are conferred upon an authority under the Statute then the statutory authority conferred upon such person is always required to be seen. It is also to be seen that Section 10 confers powers upon the Telegraph authority to carry the lines. Such powers have been conferred upon the authorities so that without facing any problems under the hands of the land owners etc. the lines are laid properly and the public service is done in accordance with law. It was next contended that in accordance with Section 12 of 1910 Act the permission is a must. To counter the said argument learned counsel for the State Electricity Board has placed his reliance upon Section 42 of the Indian Electricity Supply Act, 1948. He submits that 1948 Act which is subsequent in time has clearly observed that notwithstanding anything contained in Sections 12 to 16, 18 and 19 of the Indian Electricity Act, 1910 a particular action can be taken by the Board. If that be so and as the said judgment does not apply to the facts of the case, there is no scope for interference. I find no reason to interfere, the petition is dismissed.