

(2013) 07 KL CK 0118

In the High Court Of Kerala

Case No : Writ Petition (C) No. 13884 of 2013 (I)

Baby Das G.

APPELLANT

Vs

The Kerala State Electricity Board and Others

RESPONDENT

Date of Decision : 02-07-2013

Acts Referred:

Electricity Act, 2003 — Section 164
Telegraph Act, 1885 — Section 16(1)

Citation : (2013) 07 KL CK 0118

Hon'ble Judges : C.K. Abdul Rehim, J

Bench : Single Bench

Advocate : M. Gopikrishnan Nambiar, Sri. P. Gopinath Menon, Sri. P. Benny Thomas, Sri. K. John Mathai and Sri. Sharan Shahier, for the Appellant; Sajeevkumar K. Gopal, S.C. for R1 TO R3 and Sri. Egy N. Elias, Government Pleader for R4, for the Respondent

Final Decision : Disposed Off

Judgement

C.K. Abdul Rehim, J.—Exhibit P3 order passed by the 4th respondent in exercise of power vested u/s 16(1) of the Indian Telegraph Act read with Section 164 of the Electricity Act, 2003, is under challenge in this writ petition. The main ground of challenge raised is that, Ext. P3 proceedings was issued without notice to the petitioner. The petitioner objected drawing of electric line to the 5th respondent's residence in a manner crossing his property. The 3rd respondent had approached the 4th respondent invoking Section 16(1), seeking permission for drawal of the line. It is mentioned in Ext. P3 that notice of hearing was issued to the petitioner as well as to the 5th respondent, for appearance on 05-12-2012 and 11-01-2013. But the petitioner had failed to appear or to submit objections.

2. On the basis of contention raised by the petitioner that no notice was received by him, this court directed the Government pleader to ascertain the position. The office files relating to Ext. P3 proceedings is made available for my perusal. Government Pleader on instructions submitted that the 4th respondent had

caused service of notice through the Village officer of Sarkkara Village. But it is pertinent to note that, address of the petitioner shown in Ext. P3 proceedings is at Chembumukku, Thrikkakara in Ernakulam District. I am at a loss to understand how the Village officer, Sarkkara Village in Thiruvananthapuram District will effect service of notice to the petitioner residing in Thrikkakara in Ernakulam District. It is evident that the 4th respondent had dealt with the matter in a most negligent manner. Before passing the impugned proceedings he has even taken care to verify whether service of notice to the petitioner is complete or not. There is clear violation of principles of natural justice. Hence the impugned order cannot be sustained under law. This court is proposing only a remand of the matter and hence no notice is issued to the 5th respondent in this writ petition.

3. Under the above mentioned circumstances Ext. P3 order is hereby quashed. The 4th respondent is directed to conduct fresh adjudication of the matter and to pass appropriate orders, after affording opportunity of personal hearing to the parties concerned. The petitioner will appear before the 4th respondent on 11-07-2013 at 11 a.m. along with a copy of this judgment. The 4th respondent shall proceed to dispose of the matter after issuing notice to all other parties. An adjudication on the basis of the objections raised by the petitioner against drawing of the line shall be done, notwithstanding the fact that the line has already been drawn.

4. A decision permitting drawal of line through the most feasible route shall be taken, if necessary after conducting site inspection. The matter shall be disposed of at the earliest possible, at any rate within a period of one month from the date of receipt of a copy of this judgment. It is made clear that if the 4th respondent finds that any other alternative route is feasible, the line shall be directed to be drawn through such route, notwithstanding the fact that electric line has already been drawn on the basis of Ext. P3. In such case, shifting of line shall be done by the respondents 1 to 3. Additional expenses for drawing of the new line if any permitted, shall be collected from the 5th respondent after giving credit to amounts already paid. However charges for dismantling the existing line, in such case, shall not be imposed against the petitioner without collecting any additional expenses from the petitioner or from the 5th respondent.