
(2011) 06 MAD CK 0257

In the Madras High Court

Case No : Writ Petition No. 12152 of 2011 and M.P. No. 1 of 2011

Commander Prop. Builders (Pvt.) Ltd.

APPELLANT

Vs

Power Grid Corporation of India Ltd.

RESPONDENT

Date of Decision : 15-06-2011

Acts Referred:

Telegraph Act, 1885 — Section 10, 16, 16(1)

Citation : (2011) 06 MAD CK 0257

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : A.R. Karunakaran, for the Appellant; Jayesh B. Dolia, for the Respondent

Final Decision : Dismissed

Judgement

V. Dhanapalan, J.—Though Miscellaneous Petition is listed today, by consent of the learned Counsel on either side, this writ petition is taken up for final disposal.

2. Heard Mr. A.R. Karunakaran, learned Counsel appearing for the Petitioner and Mr. Jayesh B. Dolia, learned Counsel appearing for the Respondents 1 and 2.

3. This Writ Petition has been filed, praying for the issuance of Writ of Mandamus, to forbear the Respondents from interfering with the Petitioner's right in the lands in Survey No. 35/1,39/7 and 77/1B in Paiyanoor Village, Chingelpet Taluk, Kancheepuram District and also for a consequential direction to the Respondents to lay the 230 KV high tension transmission lines from Kalpakkam to Sirucheru through the originally proposed route.

4. It is the claim of the Petitioner that he owns the land in Survey No. 35/1, 39/7 and 77/1B in Paiyanoor Village, Chengelpet Taluk which was purchased by way of a sale deed dated 19.12.2007, registered as Document No. 11421 of 2007 in the Sub-Registrar's Office at Thiruporur. As there was a decision to put up high tension transmission line from Kalpakkam to Sirucheru, on coming to know the, same the local bodies of the area immediately passed a resolution objecting to

the erection of high tension transmission lines and several farmers from the neighbouring villages also challenged the act of the Respondents before this Court inasmuch as a large portion of the land was attempted to be excavated without the concern of the crops and trees lying thereon. No prior intimation was given to the Petitioner, who was also ignorant of the route proposed to be adopted by the Respondents. An undated notice bearing No. 040 was sent on 21.04.2011 under the Indian Telegraph Act (13 of 1885) by the 1st Respondent to the Petitioner without giving any details of the lands in which the 1st Respondent attempted to enter the land in order to erect its transmission masts. Therefore, the Petitioner raised objection not to install the high tension transmission line through his land.

4.1. According to the Petitioner, 230 KV transmission lines proposed to be laid is on the western side of the Bay of Bengal and runs parallel to Buckingham Canal. The said proposal to be carried out now is through the Petitioner's land which cannot be given effect. He raised several grounds in respect of his claim and therefore, prayed for issuance of a direction to forbear the Respondents from erecting the transmission line in his land.

5. On 18.5.2011, this Court, while admitting the Writ Petition, ordered notice and not granted any interim relief in favour of the Petitioner.

6. The Respondents have filed counter affidavit, wherein, it is stated as follows:

Power Grid Corporation of India Ltd (A Govt. of India Enterprise & "Central Transmission Utility" under the aegis of Ministry of Power) is a Corporation of National importance incorporated as a "Government Company" under the provisions of companies Act, 1956, by Government of India with a view to develop an efficient power transmission system network throughout the country and to establish the National Power Grid in the country. They are governed by the Indian Telegraph Act, 1885 and the Electricity Act 2003. All the transmission lines decided to erect was in the public interest after following the procedure contemplated in law.

6.1. The Respondents entrusted with the task of construction of 230 KV double circuit transmission lines from Kalpakkam to Siruseri which is a part of transmission system associated with Kalpakkam Proto Type Fast Breeder Reactor under the approval of Government of India, Ministry of Power vide proceedings vide letter bearing Ref. 11/16/2003-PG dated 18.03.2005. The approval was accorded on the basis of walk over survey conducted on 01.03.2005. The said transmission lines are being constructed to evacuate power proposed to be generated from Kalpakkam Proto Type Fast Breeder Reactor and about 17.5 Mts. on either side of the alignment line, between two towers is the electrical safety zone wherein trees beyond a particular height and permanent structures beyond safety clearance are prohibited. They have taken all safety measures and protection in respect of the erection and transmission lines.

6.2. It is the stand of the Respondent that after the commencement of the

project in the year 2007 and preliminary survey was conducted in the year 2009. Check survey works were carried out during June/July 2010. The best techno economic route alignment was finalised in the year 2010 after thorough survey of various possible options and the most techno economically feasible route was finalised after conducting a detailed survey. The anticipated line length is around 35.6 kms with 143 towers with a estimated cost of the project is Rs. 73.75 crores (approx). The laying of foundation for casting of the towers commenced on 11.06.2010. The project has been envisaged to cater to the power requirements of all southern states and originally scheduled to be commissioned by February 2011 and foundation work in respect of 135 towers has already been completed and erection of towers has also been completed and the stringing activity to an extent of 28 kms has been completed and the balance works are scheduled to be completed by end of June 2011. The transmission line is passing through the Paiyanoor village at different locations wherein works along the entire stretch have been completed namely Tower erection and stringing except those at location Nos. 22/0 to 22B/0 where works are pending for completion and under reference with District Collector cum Magistrate, Kanchipuram, for appropriate orders for removal of obstruction in line with the provisions of the Indian Telegraph Act 1885. At this point of time, the Petitioner has approached this Court for a direction to forbear the Respondents from proceeding further. Any further delay in completion and commissioning of the project would enhance the cost of the project which would have a direct impact on power tariff and result in hike in the cost of power per unit burdening the common man. It will adversely affect the economic status of the State of Tamil Nadu and the entire nation. Further any delay in completing the project or alteration in route alignment will cause heavy loss to the Government exchequer. Therefore, the Respondents pray for dismissal of the writ petition.

7. Learned Counsel for the Petitioner strenuously contended that the action proposed by the Respondents is contrary to the earlier route proposed by them and despite the objections raised by the several land owners, the Respondents have proceeded with the project. It is obligatory on the part of the Respondents to consider such objections by referring the matter to the concerned District Magistrate of the jurisdiction. He would further submit that when there is an alternate route available to erect the high tension transmission lines, it is incumbent on the Respondents to consider the same if it is feasible as per the provisions of the Act.

8. Per contra, Mr. Jayesh B. Dolia, learned Counsel appearing for the Respondents 1 and 2 would vehemently contend that in the interest of entire nation and the State of Tamil Nadu, it is proposed to erect the high tension power line for supply of electricity after taking into consideration of all feasible measures including the experts opinion and invested the huge amount. At this stage, it is not possible for the Respondent to alter the alignment from the proposed erection of transmission lines. He would further submit already the project has been envisaged to cater to the power requirements of all southern

states and scheduled to be commissioned by the end of February, 2011. He pointed out that due to certain stringing activities, the balance works were scheduled to be completed by June 2011. There are only two towers where the stringing operations have to be completed and any further delay in completion and commissioning of the project, would enhance the expenditure which would have a direct impact on power tariff and would result in enhancement of cost of power per unit burdening the common man.

9. The learned Counsel for the Respondents, however, at the end of his argument, brought to the notice of this Court Section 16 of the Indian Telegraph Act, 1885 by which, it is incumbent on the Respondents to refer the matter to the District Magistrate of the jurisdiction concerned, to consider the objections if any in respect of the lands owned or the person interested. Therefore, the learned Counsel for the Respondents submitted that they have already referred the matter to the District Magistrate, Kancheepuram on 14.05.2011 itself and now it is for the Petitioner to approach the District Magistrate and ventilate his grievances including the objections.

10. Heard the learned Counsel for the parties and perused the entire material documents and the relevant provisions of law.

11. The Respondent Corporation being a Government of India Enterprise involved is in the task of establishing an efficient Power Transmission System network throughout the nation and to establish the National Power Grid in the country. The project of laying HT transmission line is undertaken to augment the power supply to the Southern state of Tamil Nadu which will benefit to the public at large. According to the Respondents, for fixing the transmission line route, only the most techno-economically feasible route is chosen which would cost least damage and after complying with the statutory clearances and after taking all the experts' opinion and on a detailed survey, they proposed the present transmission line route which is most techno-economically feasible route in all respects. It is stated that the Respondents have also started the works and the entire stretch, i.e. Tower erection and stringing has been completed except at location Nos. 22/0 to 22B/0. The said project is being carried out for the public purpose and as per the schedule, it is due for commissioning by the end of June 2011. At this stage, the Petitioner has come out with the objection that the original route was not carried out and the Respondents had dropped the proposal of laying the transmission lines through the initially proposed route and on the other hand they proposed to erect the same in other land i.e. in S. Nos. 35/1,39/7 and 77/1B of Paiyanoor village. According to the Petitioner, they raised the objections, however, without considering the same, the Respondents have proceeded with the project work and if the erection is allowed to take place in their lands, it would cause serious prejudice to the rights of the Petitioner and other land owners.

12. However, this claim of the Petitioner is refuted by the Respondents, stating that the project itself is in the interest of public at large and the very necessity to

establish the power grid is to cater to the power requirements of all southern states and at any cost, the said project has to be completed as per the schedule, otherwise, it may not only cause financial loss but also delay in execution of the project. The only grievance of the Petitioner is that the Respondents have proceeded with the project without considering their objections. In this context, it is worthwhile to refer Section 16(1) of the Indian Telegraph Act, 1885, which reads as under:

16. Exercise of Powers conferred by Section 10, and dispute as to compensation, in case of property other than that of a local authority.-(1) If the exercise of the powers mentioned in section 10 in respect of property referred to in Clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.

13. Therefore, a plain reading of the above Section would clearly reveal that in exercise of powers conferred, the telegraph authority shall do as little damage as possible, and when it has exercised those powers in respect of any property other than that referred to in Clause (d) is resisted or obstructed, the District Magistrate while exercising his discretion, can order the telegraph authority permitting to exercise the powers in case of resistance or obstruction. Therefore, having regard to Section 16(1) of the Act, the Respondents are bound to refer the matter to the District Magistrate.

14. In this regard, it is submitted by the learned Counsel for the Respondents that in compliance of Section 16 of the Act, they have already referred the matter to the District Collector concerned in their proceedings in Ref:SR-II/KVPT/CAO/F-505A/2011/818 dated 14.05.2011 and requested to issue suitable orders for the right of way to take up the balance works in the proposed area in order to complete the project work as per the schedule.

15. When that being the situation, the Petitioner can very well approach the District Magistrate, Kancheepuram and raise all his objections in respect of erection of high tension transmission lines in his lands and it is for the District Magistrate to consider and decide the matter after affording an opportunity of hearing to the parties concerned.

16. Accordingly, upon hearing the learned Counsel for the parties and in view of the fact the project itself is undertaken to augment the power supply to the southern state of Tamil Nadu in the interest of public at large, the prayer as sought for by the Petitioner cannot be granted. However, in view of the fact that already, the matter has been referred to the District Magistrate, Kancheepuram, the Writ Petition is disposed on the following terms.

i) Since the Respondents had already referred the matter to the District Magistrate, Kancheepuram in respect of resistance and obstruction over one location at Payyanur village, vide proceedings SR-II/KVPT/CAO/F-505A/2011/818, dated 14.05.2011 the District Magistrate, Kancheepuram is directed to consider the same and pass appropriate orders within a period of four

weeks from the date of receipt of a copy of this order. However, it is needless to say that before passing the orders, the District Magistrate shall issue notice to all persons interested and give them an opportunity to state their objections, if any.

ii) Till the orders are passed by the District Magistrate, the parties to the writ proceedings are directed to maintain status quo as on today.

iii) No costs. Consequently, connected miscellaneous petition is closed.