

(2001) 01 J&K CK 0035
In the Jammu And Kashmir High Court
Case No : Writ Petition No. 123/2K

Des Raj and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-01-2001

Acts Referred:

Electricity (Supply) Act, 1948 — Section 37

Citation : (2001) KashLJ 328

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : J.P.Singh, H.C.Jhelmeria, Advocates appearing for the Parties

Judgement

1. The petitioners challenge the authority of the respondents to utilise the land belonging to them for setting up the transmission towers. The

challenge is made to not only the acquisition proceedings taken under the Land Acquisition Act, whereby that much land which is going to be used

for erecting transmission towers has been acquired but also to the action of the respondents to utilize the aerial space over and above the land of

the petitioners. It is submitted that on account of the laying of these transmission lines, there is risk to the life of those who utilise the land under

beneath. It is accordingly urged that the compensation is not only to be paid for the land acquired by the respondents but also for the land which is

going to come under the air corridor through which the transmission lines are to be carried. It is stated that the width of the tower comes to 160 ft.

The length of the corridor so far as the land of the petitioners is concerned is said to be 900 ft. and its width is said to be 160 ft.

2. The Power Grid Department, for whose benefit the land has been acquired by respondent no. 4, submits that the compensation has been paid

for the land which is going to be utilised for erecting transmission towers. It is submitted that 80% of the compensation has already been deposited.

3. As in the writ petition, a specific mention was not made of the fact that the compensation is required to be paid for that much land which comes

under the transmission lines and as this aspect of the matter has been highlighted in the rejoinder, the counsel for the respondent corporation

submits that the compensation is required to be paid only for the land, which is to be utilised for erection of towers. It is submitted that for airspace,

there is no requirement to pay any compensation.

4. The subject of supply of electricity in the State of Jammu and Kashmir is governed by the Jammu and Kashmir Electricity Supply Act of 1971.

The corresponding Central Act is the Electricity Supply Act of 1948. So far as the State Act is concerned, Section 37 authorises the concerned

authority to place wires, poles, wallbrackets, stays, apparatus and appliances for the transmission of electricity in the manner as may be prescribed

The argument raised by the learned counsel for the petitioners would have to be judged in the light of statutory provision noticed above.

5. The precise question was considered by Madhya Pradesh High Court in the case of *Rajak and Others vs National Thermal Power Corporation*

Ltd. Indore and Another, AIR 1988 MP 172. The National Thermal Power Corporation Ltd was laying over head lines for transmission of

electrical energy and putting up towers for the support of these lines. A petition was filed seeking a writ of mandamus restraining the respondent

corporation from encroaching upon the fields of the petitioners for laying any erection or laying over head lines thereon. A Division Bench of

Madhya Pradesh High Court took note of the provisions of Electricity Supply Act of 1948 and concluded that as there was requisite statutory

sanction for placing such wires and other appliances, therefore no writ could be issued.

6. The aerial right of way has been considered as an essential right of easement by a company engaged in the work of supplying electric energy. A

high tension cable across a river which was officially authorised and was erected in accordance with the requirements a permit, was held not

constitute any unlawful obstruction to navigation rendering the owner and user of the cable liable for damages to vessels coming into contact with

the transmission cables. This view was expressed in Thomson vs. Consolidated Gas Elec. Light and Power Co. of Baltimore DC Md. 111 F.

Supp. (See page 1072 of Corpus Juris Secundum Vol. 29). The only limitation is that the authority engaged in the supply of electricity must keep

high voltage lines over the agriculture land in a safe manner by constant oversight and repair. See Howel vs. San Joaquin Light and Power

Corporation, 261 p. 1107, 87 C.A. 44 (page 1073 of Corpus Juris Secundum Vol. 29). The further factor which is required to be taken note of is

that the concerned authority must adhere to the safety measures and it should keep in mind that persons are likely to sit down on concrete bases

supporting steel towers carrying high tension wires and to touch steel towers with their hands. These towers should be so erected so as not to

cause injuries to person coming into contact with the towers and bases. See Leonard vs. Georgia Power Co., 197 S.E. 869, 58 Ga. App. 130,

modified on other grounds Georgia Power Co. V.s Leonard, 1 S.E. 2d 579, 187 Ga. 608 and 1 S.E. 2d 584, 187 Ga. 616, madate conformed to

Leonard vs. Georgia Power Co., 2 S.E. 2d 144, 59 Ga. 620 (See page 1073 of Corpus Juris Secundum vol. 29). Thus, all that can be said is that

the respondent Power Grid Corporation would maintain and operate tower lines and high voltages wires with care commensurate with the danger

to avoid injury to person or property rightfully on the premises. The care which is required to be taken is the same as a reasonably prudent man

would exercise. Under these circumstances, as a broad proposition of law, it may be stated that the respondents maintaining the electric wires and

appliances have to exercise care as a reasonable prudent man would exercise or care commensurate with or proportionate to danger. This would

include laying down of transmission wires at the requisite distance from the ground. There is no allegation that this care has not been taken. It is

accordingly held that the petitioners are only entitled to compensation for land which is likely to be used for erecting transmission towers. For the

aerial right of way, the compensation is not required to be paid to them. The ownership vests in the person so far as the land is concerned but it

continues to be the ownership of the State so far as aerial space is concerned.

7. In view of the above discussion, I am of the opinion that as indicated above, the petitioners are held not entitled to any compensation so far as

aerial space is concerned. This petition as such is found to be without merit and is dismissed.