

(2023) 03 OHC CK 0092

In the Orissa High Court

Case No : Writ Petition (C) No.21035 Of 2021

Executive Engineer (Electrical), TPCODL Bhubaneswar
Electrical Division, Bhubaneswar At/P.O.- Rasulgarh, District
Khurda & Another

APPELLANT

Vs

Smt. Soubhagini Patra, W/O. Late Prakash Ch. Chhotray
Patra, Plot No.1241, At- Jagannath Nagar, Road No.13, GGP
Colony, Bhubaneswar District Khurda & Another

RESPONDENT

Date of Decision : 14-03-2023

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Indian Penal Code, 1860 — Section 188
Electricity Act, 2003 — Section 42(5), 53, 142, 161, 164
Works of Licensee Rules, 2006 — Rule 3, 391), 3(1)(a), 3(1)(b)
Indian Telegraph Act, 1885 — Section 10, 16

Citation : (2023) 03 OHC CK 0092

Hon'ble Judges : S. Talapatra, J;Savitri Ratho, J

Bench : Division Bench

Advocate : S.C. Dash, Santanu Kumar Sarangi, A.K. Nayak

Final Decision : Allowed

Judgement

S. Talapatra, J

1. By means of this writ petition, the petitioners representing the Tata Power Central Odisha Distribution Limited (TPCODL) have challenged the order dated 07.04.2021 delivered in the complaint case being GRF, BBSR, CC No.165/2021, Annexure-3 to the writ petition.

2. By the said order dated 07.04.2021, the GRF directed the petitioners to take all necessary steps to remove the distribution transformers having capacity of 500 KVA and 200 KVA from the private plots of the complainant to a convenient place, but without encroaching upon the private plot of the complainant (the opposite party No.1 herein).

3. It has been observed in the said order that, those transformers were installed on the private land of the opposite party No.1 violating the relevant regulation as framed by the Odisha Electricity Regulatory Commission (OERC). Hence, the petitioners have either to shift the transformers to any other place within fifteen days or the petitioners have to pay a sum of Rs.3,000/- (Rupees three thousand) per day on demand, for each day of delay in shifting the said transformers from the complainant's private plot. In addition to that, the petitioners will be held responsible for loss of life or property that may occur due to the delay, because of unsafe mode of installation in the close proximity of the opposite party No.1's premises.

4. At the time of issuance of the notice, by the order dated 28.07.2021, it had been ordered that the petitioners would deposit a sum of Rs.20,000/- (Rupees twenty thousand) towards litigation expenses, within a period of two weeks. It has been further observed that subject to compliance of the above direction, the impugned order shall remain stayed till the next date.

5. It appears from the Registry's note dated 28.07.2021, the said amount of Rs.20,000/- as the litigation cost has been paid by the petitioners by a Demand Draft, a copy of which was filed in this case.

6. Mr. S.C. Dash, learned counsel appearing for the petitioners has submitted that the order of the GRF is grossly arbitrary in as much as Section-42(5) of the Electricity Act does not authorize it to pass the direction for removing the transformers in question from the land of the opposite party No.1 to the other location. Mr. Dash, learned counsel has quite emphatically submitted that those transformers were installed in the year 2010 and one of which was upgraded from 250 KVA to 500 KVA through the OPTCL under Biju Gramya Jyoti Yojana (BGJY) Scheme in the year 2018, to cater the load growth.

7. Shifting of the said distribution transformers is not feasible, as there is no alternative space available due to the less width of the Road No.13 adjoining to the present location. At the time of installation of those transformers, the opposite party No.1 (the complainant) did not raise any objection.

8. Mr. Dash, learned counsel has taken us to the reply filed by the petitioners before the GRF, which is Annexure-2 to the writ petition. Para-3 of the said reply, filed before the GRF reads as follows:

".....After the field verification, it is found that there is no space in Road No.13 of Jagannath Nagar to shift the entire electrical installation and there is no complaint made by the complainant while installation of DTR in 2010 as well as in the up-gradation and installation of 100 KVA DTR in the year 2018 to the year 2021 March, as reported by SDO (Eng.) Rasulgarh Sub-Division, BBSR."

9. Mr. Dash, learned counsel has submitted that the GRF has been constituted under Section-42 (5) of the Electricity Act, 2003. It lacks the power and jurisdiction to entertain the dispute from the general public not relating to the

grievances of the electrical consumers. The GRF can exercise the power to adjudicate the dispute between the licensee and the consumer relating to the defects and the deficiencies in rendering the services to the electrical consumers by the licensee.

10. It has been further submitted by Mr. Dash, learned counsel that the OERC, by its Circular No. GRF-1/2004 dated 19.10.2004, Annexure-4 to the writ petition, has laid down the procedure for functioning of the GRF and conducting the proceeding of GRFs.

11. Regulation-2.3 provides that subject to the provisions of the Electricity Act, 2003, Rules, Regulations, Notifications made thereunder, the Forum shall generally dispose of the complaints relating to the defects or deficiencies in the electricity services as defined in the relevant Regulations. Below the Clause-2.3 of the said Notification dated 19.10.2004, Annexure-4 to the writ petition, some examples have been cited. No mention has been made for shifting of the transformers. If the jurisdiction is not conferred by the law, no forum or the Court can wield jurisdiction.

12. According to the Works of the Licensee Rules, 2006, the grievance can only be redressed by the District Magistrate in view of the second proviso to sub-clause-(b) of Clause-1 under Rule-3 of the Works of Licensee Rules, 2006 and hence, the impugned order as passed by the GRF is illegal, as the GRF does not hold any authority or jurisdiction to pass such order.

13. According to Mr. Dash, learned counsel, Schedule-III of the Odisha Electricity Regulatory Commission (Licensees' Standards of Performance) Regulations, 2004 lays down the amount to be paid as compensation only if it is proved that the licensee had failed to maintain the standard of performance specified in Schedule-I. Without any regard to the said provisions, it has been directed that unless the transformers are shifted within the stipulated date, the opposite party No.1 will be entitled to charge Rs.3,000/- for each day's delay.

14. The opposite party No.1 has filed the counter affidavit. It has been asserted in the counter affidavit that there is no dispute as regards the land on which the transformers were installed belongs to the opposite party No.1. As the opposite party No.1 is old and lives alone, most of the time, she stays in her daughter's house in the Mancheswar area. The opposite party No.1 is also suffering from the spinal problem. It has been categorically asserted by the opposite party No.1 in para-9 of the said counter affidavit that prior to installation of the transformers, no permission or consent was taken by the Electricity Department. Therefore, the opposite party No.1 did not have constructive knowledge regarding the activity of the petitioners viz. encroachment of the land for installation of the transformers. That is the reason why the opposite party No.1 could not raise any objection at the time when the transformers were being installed.

15. It has been also stated that the said transformers were installed for providing electricity to 22 duplex houses in the GGP Purab Housing Complex at Rasulgarh,

Bhubaneswar.

16. In para-12(a), which has been incorporated by way of amendment, it has been asserted as under:

"The electricity transformer of 100 KVA was installed in the said duplex housing complex and the opposite party No.1 had also taken electricity connection from the said feeder. Another 500 KVA transformer was also installed. Later on taking advantage of the opposite party No.1's absence, both the transformers had been shifted to her land after 2010 without her knowledge or permission."

17. Mr. Santanu Kumar Sarangi, learned Senior Counsel appearing for the opposite party No.1 has submitted that the solitary issue that has fallen for consideration of this Court hinges on unauthorized installation of two transformers on the land of the opposite party No.1 during her absence. The opposite party No.1 had made a representation to the authorities, but no action has been taken.

18. It has been admitted by Mr. Sarangi, learned Senior Counsel that the contention of the petitioners is accurate that in the year 2010, the initial installation [of the transformers] was made. Later on, it had been up-graded to 500 KV under OPTCL, BGJY Scheme in 2018. It has been also stated by Mr. Sarangi, learned Senior Counsel that in the year 2018, another 10 KV DTR was installed. The purpose of such installation was to supply electricity to the duplex project.

19. Mr. Sarangi, learned Senior Counsel has contended further that the petitioners have misconstrued Rule-3 (1) of the Works of the Licensee Rule, 2006 to raise the above plea conveniently. The petitioners' contention that the issue of shifting of the transformers will be covered under Rule-3(1), sub-rule-(b) of the Works of the Licensee Rule, 2006 is misconceived.

20. According to Mr. Sarangi, learned Senior Counsel, what has been contended by the petitioners that the grievance of the opposite party No.1 is covered under Rule-3, Clause-1 is unsustainable. It has been emphasized that there is no dispute in respect of the proprietorship of the land. Even the petitioners have clearly admitted that there had been no prior permission /consent from the land owner for installation of those transformers.

21. Rule-3(1)(a) of the Works of the Licensees Rule, 2006 provides that any of the acts such as laying down or placing any electric supply line over or under any land, the prior consent or permission of the owner or occupier of any building or land is sine qua non for the licensee and in the event, any objection is raised by the owner or the occupier of the land or building, the licensee shall obtain permission in writing from the District Magistrate for carrying out such work.

22. Regarding the jurisdiction of the GRF, it has been contended by Mr. Sarangi, learned Senior Counsel that the opposite party No.1 is a complainant within the meaning of Clause-15 of Section-2 of the Electricity Act, 2003. As the consumer

is aggrieved by the installation of the transformers and inaction of the distribution licensee in shifting of those illegally installed transformers, the Forum had the jurisdiction under Section-42(5) of the Electricity Act, 2003.

23. The Circular No.GRF-1/2004, dated 19.10.2004 merely gives some illustrations where the GRF can exercise its jurisdiction, but that cannot be said to have provided the exhaustive list of areas of the disputes.

24. Mr. Sarangi, learned Senior Counsel at the fag-end of his submission, has referred to Section-53 of the Electricity Act which provides that the authorities may in consultation with the State Government, specify suitable measures for protecting the public including the persons engaged in the generation, transmission or distribution or trading from danger arising from the generation, transmission or distribution or trading of electricity or use of electricity supply or installation, maintenance or use of the electric line and electrical plant.

25. According to Mr. Sarangi, learned Senior Counsel, the action of the petitioners is wholly illegal and that action is adrift from the safety regulations as noted above and also under Chapter-IV of Regulation-88 of the CEA (Measures Relating to the Safety and Electric Supply) Regulations. It has been pointed out by Mr. Sarangi, learned Senior Counsel that the petitioners have approached this Court without complying with the order of the GRF to avoid penalty as prescribed under Section-142 of the Electricity Act, 2003 for non-compliance of the order and hence, this writ petition should be dismissed without further consideration.

26. In response, Mr. Dash, learned counsel has referred to the order dated 20.02.2009 issued by the Government of Odisha in exercise of the powers conferred by Section-164 of the Electricity Act, 2003. In the said order, vide Clause-8(3), it has been provided that the District Magistrate receiving an application under sub-section-(2) may in his discretion reject the same or make an order, absolutely or subject to the conditions for the removal of the electricity line or plants to any other part or property or to the higher or lower level of its form ; and the order shall be final.

27. In Clause-10 of the said direction, it has been further provided that every electric line or electrical plant, placed before passing of the said order, over, along, across, in or upon any property, for the purposes of a power system established or maintained by the State Government/State Electricity Board, shall be deemed to have been placed in exercise of the powers conferred by, and after observance of all the requirement of that Order.

28. As sequel, we may read Section-164 of the Electricity Act, 2003. The said Section provides that the appropriate Government may, by the order in writing, for placing of electrical lines or electrical plant for the transmission of the electricity or for the purpose of telephonic or telegraphic communications, necessary for the proper co-ordination of works, may confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any, as

the Appropriate Government may think fit to impose and subject to the provisions of the Indian Telegraph Act, 1885, any of the powers which the telegraph authority possesses under that Act with respect to the placing of the telegraph lines and posts for the purposes of a telegraph established or maintained by the Government or to be so established or maintained.

29. In *Manoranjan Sa and others vs. State of Odisha and others*: 2019 (I) OLR (NOC) 1095: AIR 2019 Orissa 85, this Court had observed that the Indian Telegraph Act, 1885 has been made applicable for the purposes of placing electric lines and electric plants for transportation of the electricity for the public interest. But the mode of the implementation is to be followed by the mandate of Section-164 of the Electricity Act, 2003 read with Sections-10 & 16 of the Indian Telegraph Act, 1885.

30. Sections- 10 & 16 of the Indian Telegraph Act provide as follows:

"10. Power for telegraph authority to place and maintain telegraph lines and posts – The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along, or across, and posts in or upon any immovable property: Provided that –

a. the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the [Central Government], or to be so established or maintained;

b. the [Central Government] shall not acquire any right other than that of user only in the property under, over, along, across in or upon which the telegraph authority places any telegraph line or post; and

c. except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority ; and

d. in exercise of the powers conferred by this section, 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 (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

16. Exercise of powers conferred by Section 10, and disputes 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. (2) If, after the making of an order under sub section (1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for this being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code (45of 1860). (3) If any dispute arises concerning the sufficiency of the compensation to be

paid under section 10, clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him. (4) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the Court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount ; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it. (5) Every determination of a dispute by a District Judge under sub-section (3) or sub-section (4) shall be final:

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority, from the person who has received the same."

31. Section-16 of the Indian Telegraph Act, 1885 lays down the powers of the District Magistrates for taking action in respect of the disputes as mentioned under Sections-10 and 16 of the Indian Telegraph Act, 1885.

32. From a comparative study of the Indian Telegraph Act, 1885 and the order dated 20.07.2009, it is to be noted that Section-16 of the Indian Telegraph Act has been recalibrated by the State Government by exercise of its authority as provided by Section 161 of the Indian Electricity Act, 2003. Clause-7 of the Order dated 20.02.2009, as referred above, reads as follows:

"7. Exercise of powers conferred by Section 1, and disputes as to compensation, in case of property other than that of a Local Authority-

(1) If the exercise of the powers mentioned in section 1 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 electricity Authority shall be permitted to exercise them.

(2) If, after the making of an order under sub-section (1), any person resists the exercise of those powers, or having control over the property, does not give all facilities for this being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code (45 of 1860).

(3) If any dispute arises concerning the sufficiency of the compensation to be paid under section 1, clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situated, be determined by him.

(4) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the Electricity Authority may pay into the Court of the District Judge such amount as

he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under sub-section (3) or sub-section (4) shall be final: Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the Electricity Authority, from the person who has received the same."

33. It is apparent that the mechanism that has been adopted by Clause-7 of the said order dated 20.02.2009 is in respect of the disputes those can be taken care of, by the District Judge and, if there is a requirement of payment of the compensation, that will be proposed and determined by the District Magistrate. If any individual or the party is aggrieved by the order of the District Magistrate, he may approach the District Judge within whose jurisdiction or limit the property is situated, to determine the sufficiency of the compensation following the procedure as laid down under the said clause.

34. Mr. Dash, learned counsel has also relied on a decision of this Court in Kulamani Kar vs. The Executive Engineer (Electrical), Kuakhia Electrical Division, Kuakhia, District- Jajpur & others [the common judgment dated 02.11.2022 delivered in W.P.(C) No.11264 of 2022 and W.P.(C) No.14517 of 2022] whereby, it has been observed as follows:

"7. Mr. Dash, learned counsel appearing for the petitioner in W.P.(C) No.14517 of 2022 has contended that the order of the GRF is without jurisdiction in as much as The Works of Licensee Rules, 2006 which came into force with effect from 18.04.2006 has specifically created the authority who can direct shifting of the line or in the event of any difficulty faced by the person over whose land or the property, the line is drawn up and attend to such issues. Mr. Dash, learned counsel has referred to Rule-3 of the said Rules, which reads as follows:

"3. Licensee to carry out works.- (1) A licensee may –

(a) carry out works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, whereover or whereunder any electric supply-line or works has not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land;

(b) fix any support of overhead line or any stay or strut required for the purpose of securing in position any support of any overhead line on any building or land or having been so fixed, may alter such support:

Provided that in case where the owner or occupier of the building or land raises

objections in respect of works to be carried out under this rule, the licensee shall obtain permission in writing from the District Magistrate or the Commissioner of Police or any other officer authorized by the State Government in this behalf, for carrying out the works:

Provided further that if at any time, the owner or occupier of any building or land on which any works have been carried out or any support of an overhead line, stay or strut has been fixed shows sufficient cause, the District Magistrate or the Commissioner of Police, or the officer authorized may be ordered in writing direct for any such works, support, stay or strut to be removed or altered.

(2) When making an order under sub-rule(1), the District Magistrate or the Commissioner of Police or the officer so authorized, as the case may be, shall fix, after considering the representations of the concerned persons, if any, the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.

(3) Every order made by a District Magistrate or a Commissioner of Police or an authorized officer under sub-rule(1) shall be subject to revision by the Appropriate Commission.

(4) Nothing contained in this rule shall affect the powers conferred upon any licensee under section 164 of the Act.”

8. It is apparent from the said rule that, if at any time, the owner or any occupier of any building or land on which any works have been carried out or any support of an overhead line, stay or strut has been fixed, shows sufficient cause, the District Magistrate or the Commissioner of Police, or the officer so authorized may by order in writing direct for any such works, support, stay or strut to be removed or altered.

9. Sub-Rule(2) also provides authority to the District Magistrate or the Commissioner of Police or the other officers, who are authorized, to determine the amount of compensation or of annual rent or both, which should in their opinion be paid by the licensee to the owner or the occupier.”

[Emphasis added]

35. Having appreciated the rival contentions as advanced by the counsel for the parties, we are of the considered view that the GRF did not have the requisite jurisdiction to entertain the dispute relating to shifting of the transformers in as much as by rules/practice directions as framed under Section- 164 of the Indian Electricity Act, it has been clearly provided under [Rule-3 of the Works of Licensee Rules, 2006] that at any time, the owner or occupier of any building or land from which any works have been carried out or any support of an overhead line has been fixed, shows sufficient cause, the District Magistrate or the

Commissioner of Police or the Officers so authorized may give order in writing directing any such works support, stay or struck to be removed or altered. This provision has been supplemented by the provisions of the order dated 20.02.2019, which are substantially pari materia to the provisions of Rule-3 of the Works of Licensee Rule, 2006.

36. Therefore, either the District Magistrate or the Commissioner of Police, if he is so authorized to exercise such power is the authority which will deal with such dispute. As such, the order dated 07.04.2021, Annexure-3 to the writ petition, is interfered with and set-aside as being issued without any jurisdiction. But the opposite party No.1 is given liberty to approach the authority, i.e. the District Magistrate of the district where the opposite party No.1's land is situated for removing the transformers which have been installed without her prior permission and for granting compensation, if any.

37. Such petition shall be filed within a period of fifteen days from the date of receiving a copy of this order, to the District Magistrate, if the opposite party No.1 is so inclined.

38. We direct the District Magistrate to decide the issue in the dispute, if he is approached by the opposite party No.1, and pass the final order within, a period of six weeks from the date of receipt of the petition from the opposite party No.1, in accordance with law.

39. In terms of the above, this writ petition stands allowed, subject to the liberty granted to the opposite party No.1.

40. There shall be no order as to costs.

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