
(2002) 02 MP CK 0097

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3411 of 2001

Gangadeen

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 15-02-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2002) 4 MPLJ 460

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : R.N. Singh and Akhilesh Singh, for the Appellant; M.L. Jaiswal and P.K. Jaiswal for Respondents Nos. 2 to 4 and Alok Aradhe, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.

By this writ petition preferred under Articles 226/227 of the Constitution of India the petitioner has prayed for issue of a writ in the nature of mandamus commanding the respondents No. 2 and 3 not to erect poles on Khasra No. 648/1 situate at village Bamhauri belonging to the petitioner for erecting service line for the purposes of supply of energy to the respondent No. 5 and for grant of such other relief/reliefs as may be deemed fit and proper in the facts and circumstances of the case.

The facts as have been unfurled are that the petitioner is the owner of the land situate on Khasra No. 648/1 in the village Bamhauri, District Satna wherefrom the electricity supply is likely to be erected for supply of electricity to the respondent No. 5. The petitioner submitted a representation to the SDO, Rampur the respondent No. 4 herein highlighting that the respondent No. 2 and 3 Secretary, Madhya Pradesh Electricity Board and Assistant Superintending Engineer, MPEB, respectively trying to erect electricity supply line by erecting poles on the land of the petitioner though there is no scheme for such a supply.

It has been put forth that an agreement dated 11-8-1999 has been executed between the respondent No. 2 and 5 and the respondent Nos. 2 and 3 are bent upon laying down the service line on the land of the petitioner. It is averred in the petition that the service line is to be erected for the supply of the electricity to the establishment of the respondent No. 5 as per agreement dated 11-8-1999 as a result of which the provisions enshrined u/s 12 to 19 of the Indian Electricity Act are attracted and the said provision being obligatory whenever public streets railway and tram are not available it will be the duty of the licensee to make the land available for service to the respondent No. 2. According to the said provision it is the duty of the consumer to make the land available at his own expenses for the erection of service line. It is urged that loss relating to supply clearly provides that it is obligatory on the part of the consumer to make the land available for erecting of service line. It is the duty of the respondent No. 5 to purchase the land by private negotiation but same has not been done. It is averred that as the condition has not been satisfied the right of the petitioner has been affected and the grievance of the petition has not been looked into by the respondent 2 and 3.

A return has been filed by the respondents 2 and 3 contending, inter alia, that the MPEB had prepared a sanctioned scheme which was duly published in the M.P. Gazette dated 2-5-1997 u/s 28 of the Electricity Supply Act, 1948. The said notification was also published in the news paper having local circulation. It is put forth that on 132 KV single branch line of M/s Prism Cement of the length 5 Kms was also one of the sanctioned scheme mentioned therein. In the aforesaid sanctioned scheme the Board was not to incur any capital expenditure and the expenses to be incurred were to be borne by the M/s Prism Cement. The Board, therefore, prepared an estimate of the expenditure involved therein which came to Rs. 71.02 lacs. Since the expenses were to become by M/s Prism Cement Ltd. it was specified as a deposit work in the notification itself and it did not constitute the estimated capital expenditure upto 2046 crores as specified in the notification. A copy of the scheme has been brought on record as Annexure R-1. Under the said scheme, two towers and the supply lines were to be erected on the land of Surya Pratap and Udairaj who are brothers. Since the Prism Cement did not want the line to be laid it in order to wriggle out of its contractual obligations, both Surya Pratap and Udairaj Singh being instigated by the respondent No. 5 filed various litigations and obtained stay orders. They succeeded partly in delaying the laying of line but this Court rejected their contentions. The Prism Cement, itself filed the writ petition in which this Court directed the Board to draw the line. Having failed in their design to install the line the said company filed the present petition at the instance of the petitioner on the similar grounds which have been rejected by this Court in the case of Udairaj Singh and Surya Pratap Singh. According to the respondents the expenditure involved in the sanctioned schemes is below the sum of rupees 100 Crores as specified by notification by the Central Government u/s 29(1) of Supply Act. It is also averred that the respondents 2 and 3 moved an application before the

District Magistrate u/s 16 of the Telegraph Act read with section 42 of the Electricity (Supply) Act and had obtained necessary order for laying down the lines. It is putforth that the tower has four legs each legs covering an area $3/2$ ft and $3/2$ ft. The space in between the legs can be used. The overhead lines passing over the land does not in any way interfere with the use of land below it. The one tower which falls on the land will not in any way disturb the agricultural operation carried out by the petitioner. The supply line has been drawn as per the agreement with the respondent No. 5. It is also putforth that the provisions of sections 12 to 19 would not apply and the Board has a right u/s 42 of the Electricity Supply Act equivalent to the power of Telegraph Authority as laid down under the Telegraph Act. The line drawn is under a sanctioned scheme and the petitioner is only entitled for compensation which was determined by the Revenue Authority and the amount of compensation was offered to him vide letter dated 15-6-2001 but the petitioner did not come to collect the same nor did he dispute the amount of compensation. According to the said respondents the petitioner's right is no way infringed and he is not entitled to any relief.

The respondent No. 5 has also filed a reply indicating that by virtue of section 42(1) of Electricity Supply Act the MPEB has the power which the Telegraph authority possesses under part-III of Indian Telegraph Act for the purposes of execution of a sanctioned scheme. The clause (d) of the proviso to section 10 stipulates that the telegraph authority shall pay full compensation to all the interested persons or any damage sustained by them by reasons of exercise of those powers. sub-section (3) of section 13 provides that if any dispute arises concerning the sufficiency of the compensation to be paid u/s 10. The dispute can be adjudicated by the District Judge. Thus the aforesaid reply only deals with the factum of grant of compensation and the manner as has been envisaged in law. The stand of the petitioner in respect of any aspect has not be disputed.

I have heard Mr. R.N. Singh, learned senior counsel along with Mr. Akhilesh Singh for the petitioner and Mr. M.L. Jaiswal, learned senior counsel along with Mr. P.K. Jaiswal, for the respondents 2 to 4 and Mr. Alok Aradhe, learned counsel for the respondent No. 5.

It is submitted by Mr. Singh that as the line is being drawn by erecting the poles on the land of the petitioner the same has to be purchased by the respondent No. 5 but as the same has not been done the line can not be drawn on his land. It is urged that the action of the respondents 2 and 3 is absolutely arbitrary and affects the rights of the petitioner.

Mr. M.L. Jaiswal, learned senior counsel has submitted that on similar grounds one Surya Pratap Singh filed W.P. No. 4455/2000 and this Court disposed of the same by directing that formalities shall be complied by the Board. The learned senior counsel has also relied on the order passed in M.A. No. 826/01 preferred by Udairaj Singh wherein this Court observed that the land owner is only entitled to compensation. Basing on the aforesaid judgment it is putforth by Mr. Jaiswal that the submission of at the instance of the petitioner is devoid of any

substance.

The core question that falls for consideration is whether non purchase of the land by the respondent No. 5 would debar the Board to carry out of the operation for the purpose of supply of the electricity to the respondent No. 5. To put it differently, whether the petitioner can stop such an activity. I may hasten to add the stand taken by the Board that the petitioner is a tool in the hands of respondent No. 5 and at his instance the present petition has been filed need not be adverted to as an individual right has been canvassed by the petitioner and the same has to be dealt with in an individual perspective. At this juncture, I may profitably refer to the decision rendered in the case of Surya Pratap Singh vs. M.P. Electricity Board and Others (W.P. No. 4455/2000) wherein this Court taking note of various provisions of Electricity Supply Act, 1948 and Indian Telegraph Act 1985 and appreciating the contentions with regard to the sanction of scheme provided u/s 28(2) and 29(1) of the Act came to hold in paragraphs 10 and 11 as under:

"10. It was next contended by Mr. Jaiswal that as the scheme falls u/s 28 but it clearly comes within section 42 of the Act. He has drawn the attention of this Court under sub-section 2(A) of section 28 which stipulates that the Board or, as the case may be, the generating company shall, as soon as may be after it has sanctioned any scheme which is not of the nature referred to in section 29, forward the scheme to the Authority and, if required by the Authority by the Authority so to do, supply to the authority any information incidental or supplementary to the scheme within such period as may be specified by the authority. It is further provided in sub-section (3) that every scheme sanctioned under this section shall be published in the official gazette and in such local newspapers as the Board may consider necessary. During course of hearing, Mr. Jaiswal, learned senior counsel, has fairly conceded that the Board has not forwarded the scheme to the Authority as defined u/s 2(1) of the Act which means Central Electricity Authority and has also not got it published in the official gazette or any such local newspaper. While so submitting Mr. Jaiswal also submitted that these requirements are not mandatory inasmuch as no objections are required to be called for from the interested persons and no representations are also warranted. He has made a distinction between these requirement and the requirement contemplated under sub-sections (2) and (6) of section 29 of the Act. On a perusal of both the provisions it is clearly perceivable that there is gulf difference between the scheme u/s 29 of the Act. The Act provides very specified mode with regard to the scheme prepared u/s 29 of the Act. As far as scheme u/s 28 is concerned the authority has to be forwarded the scheme and further if any information is required the same has to be supplied. The concurrence by the Authority is not provided in the statute. Publication in the gazette in the local newspapers also does not stipulate that objections/representations are to be considered. In view of the mater I am of the considered view the said cannot be regarded as mandatory. That apart, the petitioner has approached this Court while the work has almost commenced and

there has been progress. At this juncture, it would not be apposite to restrain the Board. However, the Board should communicate the scheme to the Authority and shall supply requisite information if so required by the said authority. The Board shall also publish the scheme in the official gazette and in two local newspapers within a period of two months from today. This direction is given so that even if there is lacuna the same would stand cured.

At this stage, I think it appropriate to issue a direction that the petitioner is entitled to compensation if his land is affected and the same shall be assessed as expeditiously as possible by the competent authority and the petitioner should receive compensation from the Board. The assessment in question shall be completed within a period of two months and the same shall be paid by the Board to the petitioner within a period of two weeks from the date of such assessment. It needs no special emphasis to state that if the petitioners is aggrieved by the quantum of compensation it will be open to him to challenge the same in accordance with law."

In the case of Udai Raj Singh this Court in Misc. Appeal No. 826/2001 in paragraph 6 and 7 expressed the view in the following terms:

"6. It is clear from the contentions raised as above as well as perusal of the order (Annx. R/3) that the Scheme proposed by the respondents No. 1 and 2 is not covered by the provisions of section 29 of the "Act" and that it is covered u/s 28 of the "Act". Therefore, there appears to be no necessity for the respondents No. 1 and 2 to have obtained concurrence of the authority as envisaged u/s 29 of the "Act". It further appears from documents filed by the respondents No. 1 and 2 that the directions in a similar matter given by order (Annex. R/3) in Writ Petition No. 4455/2000 have been duly complied with.

It is clear that the plaintiff/appellant at best would be entitled to compensation as per law. If he has any grievance regarding the quantum of compensation, legal remedies as against such determination of compensation by respondents No. 1 and 2 are available to him. However, on that count, the Scheme cannot be directed to be stayed and the respondents No. 1 and 2 cannot be asked to keep their hands off from laying down the electricity line as is proposed by them. The balance of convenience is certainly preponderantly in favour of the respondents No. 1 and 2 and not in favour of the plaintiff/appellant. It also appears that as the plaintiff/appellant is only entitled to compensation as per law he is not likely to suffer irreparable loss in case temporary injunction as prayed by him is not granted. In view of the above, the prayer of the plaintiff/appellant that, respondents No. 1 and 2 be restrained from implementing the proposed scheme of laying down the electricity line over the land of the plaintiff/appellant, does not deserve to be allowed."

If the aforesaid decisions are understood in correct perspective there remains no scintilla of doubt that the petitioner can claim compensation but cannot create any impediment in drawing of line. This Court in the case of Surya Pratap Singh

(supra) has dealt in detail with regard to the nature of the scheme and expressed its opinion and in the case Udai Raj Singh (supra) has dealt with the facet of compensation. Judged from any angle there remains no iota of doubt that the petitioner's right is a limited one and he cannot project it in a larger canvas and create a remora in the carrying of statutory duty by the respondents 2 and 3.

Consequently, I do not find any merit in the writ petition preferred by the petitioner and the same stands dismissed without any order as to costs.