

(2008) 10 CAL CK 0014
In the Calcutta High Court
Case No : Writ Petition No. 17183 (W) of 2008

Gimageria Welfare Primary Teachers Training Institute and
Another APPELLANT

Vs

Chairman, West Bengal State Electricity Distribution Co. Ltd.
and Others RESPONDENT

Date of Decision : 01-10-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 300A
Electricity Act, 2003 — Section 164, 168, 173, 174, 184
Telegraph Act, 1885 — Section 10
West Bengal Panchayat Act, 1973 — Section 212

Citation : (2008) 10 CAL CK 0014

Hon'ble Judges : Dipankar Datta, J

Bench : Single Bench

Advocate : Kashi Kanta Moitra, Sadananda Ganguly, Soumen Dutta, for the
Appellant; Sumit Panja, Sumit Roy, for the Respondent

Final Decision : Dismissed

Judgement

Dipankar Datta, J.

The Judgment of the Court was as follows:

1. Whether or not the petitioners have a legal right to claim direction from the Writ Court for re-location of a transmission tower, proposed to be erected on their immovable property, is the question that calls for an answer on this writ petition.
2. The West Bengal Board of Primary Education, it is claimed by the petitioners, has granted provisional recognition to the petitioner No. 1 to function as a Primary Teachers Training Institute. The petitioner No. 2 claims to be the Secretary of the petitioner No. 1 Institute.
3. For the purpose of achieving the object for which the petitioner No. 1 has been

established, lands were acquired over which training centres have been constructed and a hostel is proposed to be built. In terms of the statutory requirements, the petitioner No. 1 is also required to provide play grounds for the students who are ultimately admitted to take the training to be provided by it.

4. In this writ petition, the petitioners have questioned the action of the West Bengal State Electricity Distribution Company Limited (hereafter the Company) to erect a transmission tower within the Institute campus. A prayer has been made for a direction on the Company to re-locate erection of the tower in such a manner that no tower is erected on plots 287, 281 and 284 belonging to the petitioner No. 1 Institute and that electric lines are not drawn over the same. A further prayer has been made for a direction on the concerned respondents to act in conformity with the Government Order being Annexure P-7 to the petition. That appears to be an order dated 2.4.07 issued by the Principal Secretary to the Government of West Bengal, Department of Panchayats and Rural Development, reference where to shall be made immediately hereafter.

5. Mr. Moitra, learned senior counsel appearing for the petitioners firstly contended that Section 212 of the West Bengal Panchayat Act mandates that in the discharge of their functions, the Gram Panchayat, the Panchayat Samity or the Zilla Parishad shall be guided by instructions/directions as may be given to them by the State Government from time to time in conformity with the provisions of that Act. The order dated 2.4.07 referred to above, according to him, is one such direction issued by the Government and the Panchayats are bound to comply with such order. By the said order, the Government had directed that before any transmission tower is constructed in any Gram Panchayat area, permission of the concerned Gram Panchayat has to be obtained upon deposit of fees. He then referred to the document at page 31 of the petition and contended that no permission of the Gram Panchayat had been obtained for erection of tower within its area and, therefore, the Company had violated the Government Order dated 2.4.07. Permission of the concerned Gram Panchayat, according to him, is a sine qua non for construction or erection of towers. The provisions contained in the order having been observed in the breach, he submitted that the Company had no authority to erect/construct a tower within the campus of the Institute.

6. Next, he contended that the Institute had been established for the purpose of training of prospective teachers and, therefore, the Institute is involved in discharging public function. In terms of the statutory provisions which regulate functioning of the primary teachers training institutes, such institutes must have necessary infrastructure and that is why a vast area of land had to be acquired to provide all the facilities which the institute is bound to provide in terms of the statutory rules. Erection of the tower at the proposed site, he argued, would hamper the Institute's plan to build a hostel and, therefore, the entire scheme would fall through. He, accordingly, prayed for a direction to the Company to relocate the tower at the extreme end of a particular plot so that the Institute's

interests are not hampered in any manner.

7. Mr. Moitra while arguing in support of the petition relied on sketch maps and diagrams to demonstrate that relocation of the tower is not an impossible task and that having regard to the statutory provisions governing the field (Rule 80 of the Indian Electricity Rules, 1980 was referred to) such direction ought to issue. According to him, it is not the stand of the Company on formation of opinion that shifting of the tower is not technically feasible. Since formation of opinion is not reflected, it stands to reason that the Company has not considered the matter in the proper perspective and proceeded unreasonably in that safety and security aspects have not been considered at all and its decision making process thus stands vitiated. Reliance was placed on the decisions reported in *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, and *The Barium Chemicals Ltd. and Another Vs. Sh. A.J. Rana and Others*, in this regard.

8. He also contended that the public notice by which objections were invited did not at all specify the distinct plot numbers on which towers were proposed to be erected and, therefore, the petitioners had no real chance of raising an effective objection. Right to property, apart from being a constitutional right, has now been recognised to be a human right and, accordingly, he urged the Court to pass appropriate orders by balancing the equities. Reliance in this connection was placed on the Apex Court's decision reported in 2007(3) Supreme 410 (*Lachhman Daas vs. Jagat Ram & Ors.*).

9. Reliance was also placed on the decision of the Division Bench of this Court reported in *Sukdeb Das and Others Vs. Kumari Samanta and Others*,) for the proposition that without the petitioners' consent, no works in relation to drawing of electric lines over their property could be resorted to by the Company. He also relied on a decision reported in *Hukam Chand Shyam Lal Vs. Union of India (UOI) and Others*, to contend that when power that is to be exercised is of a drastic nature, it has to be exercised in that manner alone or not at all and an exercise in deviation of the mode prescribed would be violative of fundamental principles of natural justice.

10. He accordingly made a fervent appeal to the Court to grant relief as claimed by the petitioners.

11. Mr. Sumit Panja, learned counsel appearing for the Company vehemently opposed the petition. According to him, the petition is not bonafide and it has been filed at a juncture when substantial progress in work has been made and the project is on the verge of completion.

12. He referred to the counter affidavit filed by the Company to highlight the significance of the project undertaken by the Company. According to him, the Company is in the process of laying 132 Kv Double Circuit Transmission Line from Haldia Kv Station to Egra via Contai 132 Kv sub-station for which a scheme had been formulated by the erstwhile West Bengal State Electricity Board (hereafter the Board). For the purpose of implementation of the project, the scheme was

notified by the Board vide a notification dated 24.2.2005 published in daily newspapers having wide circulation whereby objections were invited from the general public within 60 days. By that notice, the public were made aware that details of the scheme could be had in the office of the Board and that any one desirous of obtaining information could have the same within the time schedule mentioned therein. The project is necessary to meet the growing load demand of people of Digha, Ramnagar, Khejuri and Egra and surrounding areas. He argued that the objection raised by the petitioners, if accepted, would prejudice the interests of a vast majority of the public residing and/or carrying on business in and around the areas mentioned above. The petitioners had not raised any objection within the time stipulated in the public notice. It was only on 15.5.2007 that the Pradhan of the concerned Gram Panchayat, who also happened to be the Secretary of the petitioner No. 1 at the material time, raised an objection and requested the Company to relocate the tower to avoid accidents. At the request of the said Pradhan, the Company had altered the alignment for erecting towers and decided to erect an additional tower for which the Company has already incurred additional expenditure of more than Rs. 15 lacs. With the alteration in alignment, a tower would now be erected within the Institute campus at a site different from the original site. The proposal to relocate the tower had been accepted by the Pradhan of the concerned Gram Panchayat without demur. According to him, now that the said Pradhan is no longer in office and someone else had stepped into his shoes, a fresh objection has been raised when the project is nearing completion.

13. He placed before the Court two orders dated 16.08.2005 and 6.06.2007 for considering whether the Board, now the Company, had in any manner violated any binding rule or not. In exercise of power conferred by the provisions contained in Section 168 of the Indian Electricity Act, 2003 (hereafter the Electricity Act), an order dated 16.08.2005 was published in the Kolkata Gazette which is in the nature of an authorization. The authorization empowered the Board to exercise all powers vested in the Telegraph Authority under Part III of the Indian Telegraph Act, 1885 (hereafter the Telegraph Act) in respect of electrical lines and electrical plant, established or maintained, or to be so established or maintained for the transmission and/or supply of electricity or for the purpose of telephonic or telegraphic communication necessary for the proper coordination of the works within the licensed area of the Board subject to its compliance with the provisions of the Act and the rules made there under. That apart, the Joint Secretary, Department of Power and Non-conventional Energy Sources, Government of West Bengal vide Memo dated 6.6.07 had accorded sanction for implementation of various transmission schemes, including the subject scheme as required u/s 68 of the Act.

14. On the basis thereof, he contended that once the Company has been empowered to exercise power under Part III of the Telegraph Act in terms of Section 164 of the Electricity Act, consent of any land owner for erection of tower on his land is not at all required and the Company is under no obligation to

comply with principles of natural justice and the affected land owner would only be entitled to compensation for damage to property, if any. According to him if consent of the land owner is required to be obtained in respect of every development project, no project can be completed. He laid much stress on the fact that when civil work relating to foundation of the proposed tower was in progress, the petitioners never raised any objection. They having acquiesced, he urged the Court to not to grant any injunction for that would be against public interest.

15. By referring to the provisions contained in Section 174 of the Electricity Act, he contended that it overrides all other enactments subject to provisions contained in Section 173 and 184 thereof and therefore the petitioners' contention that written permission of the Gram Panchayat was a sine qua non prior to erection of tower is absolutely misconceived. He relied on the decisions reported in AIR 2008 (NOC) 1323 (MAD) : T.S.T. Kanznavi vs. Tamil Nadu Electricity Board & Ors., AIR 2008 (NOC) 2034 (ALL) : Braham Singh vs. State of U.P. & Ors., AIR 2008 (NOC) 2035 : (CHH) Century Textiles and Industries Ltd., Mumbai vs. Power Grid Corporation of India Ltd., AIR 2008 (NOC) 2038 (MAD) : Minor Vinesh Kannaiyaram vs. Power Grid Corporation of India Ltd., E. Venkatesan and others Vs. Chairman, Tamil Nadu Electricity Board, Madras and others, , and The Superintending Engineer, TNEB Basin Bridge, Power House, Chennai-12 and three others Vs. Thangaprakasam, for the propositions that when power is exercised u/s 10 of the Telegraph Act, prior notice or compliance with principles of natural justice or abstention of consent from the land owner is not the sine qua non and the land owner is only entitled to damages according to law, that silence maintained at the time of survey amounts to granting consent, and that the Courts cannot go into techno-economical feasibility of matter and also as to what would be the appropriate route for taking transmission line. The decision reported in Ramniklal N. Bhutta and another Vs. State of Maharashtra and others, was relied on for the proposition that Court must weigh the public interest vis-?-vis the private interest and on balancing the competing interests must exercise power under Article 226 and in the process must consider other modes of relief in public interest.

He next referred to Rule 80 of the Electricity Rules as well as the Indian Standard providing for Code of practice for design, installation and maintenance of overhead power lines for demonstrating before the Court that the Company had not made any deviation from the sanctioned scheme in seeking to erect towers and that submission made on behalf of the petitioners was without substance.

17. By placing the order dated 2.04.07 (relied on by Mr. Moitra) in its entirety, Mr. Panja contended that the same had been issued to restrain only the National Thermal Power Corporation and the Damodar Valley Corporation from erecting towers in Gram Panchayat areas for transmission of power and, therefore, it had no applicability so far as the Company is concerned.

18. He also submitted that in a case of the present nature, the decision in

Sukdeb Das (supra) would have no application.

19. He concluded by submitting that the project has already been sufficiently delayed because of frivolous objections raised by the petitioners and that if the Company is allowed to complete the project upon disposal of the writ petition, sufficient number of people would stand benefited prior to the ensuing Pujas and prayed for dismissal of the writ petition.

20. In reply, Mr. Moitra contended that mere formulation of a scheme did not vest the Company with uncanalised power and no carte blanche was offered to the Company to act in a manner it chooses. The impugned action, according to him, is not in accordance with democratic spirit. Since the petitioners" are being sought to be deprived of their property dehors the statutory mandate, he fervently appealed to the Court to save the Institute by passing appropriate orders protecting its interest.

21. This Court has heard learned Counsel for the parties at length and has considered the materials on record along with the decisions cited by learned counsel.

22. As has been noticed, submissions were made on either side by referring to Rule 80 of the Electricity Rules as well as on the Indian Standard providing for Code of practice for design, installation and maintenance of overhead power lines. For the purpose of a decision in respect of the dispute raised herein, this Court considers it unnecessary to deal with the arguments advanced by learned Counsel appearing for the parties for the simple reason that the same would have a bearing only if a tower is erected on the petitioners" plot in violation of such provision. The stage is absolutely premature and, therefore, no opinion is expressed in respect thereof.

23. It is elementary that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal right to do something or to abstain from doing something (see *Mani Subrat Jain and Others Vs. State of Haryana and Others*,).

24. On consideration of the petition as well as on due appreciation of the points raised by Mr. Moitra, it appears that the petitioners have claimed mandamus on the ground that towers have been sought to be erected by the Company in breach of the order dated 2.4.07 referred to above and that the petitioners" right to hold property has been infringed in a manner which offends Article 300A of the Constitution of India.

25. For reasons following, this Court is unable to return any finding that the petitioners" legal rights have been infringed in any manner whatsoever. 26. It is on record that the Company, by its letter dated 8.3.2008 addressed to the Chairman of the Institute in response to his letter dated 2.1.2008, had brought

to his notice that at the request of the erstwhile Pradhan of the concerned Gram Panchayat the location of 4/5 towers had been altered and proposal for erecting an additional tower had been approved involving substantial expenditure to safeguard the interests of the Institute. Since action had been initiated pursuant to such request and foundation works had been completed and erection of tower/stringing works were in progress, the Company had expressed surprise on perusing the contents of the Chairman's letter and in no uncertain terms had made it clear that there is no further scope for diversion. The departmental note-sheet initiated by the Company dated 29.5.2007 in respect of approval of the revised route inclusive of erection of an additional tower is also part of the writ petition.

27. The writ petition was filed on 25.7.2008. To the query of Court as to how the petitioners reacted on receipt of the letter dated 8.3.2008, there was no answer. On consideration of the materials on record, the conclusion is inescapable that the Company had been generous enough to accede to the request of the erstwhile Gram Panchayat Pradhan, who was also the Secretary of the Institute, and that he agreed to the decision taken to relocate the tower and hence no grievance was aired. Filing of the writ petition more than four months after the petitioners were informed that further relocation of tower or diversion of route was not possible is considered sufficient ground to refuse relief to the petitioners on the grounds of delay and acquiescence.

28. That apart, Mr. Panja is correct in his submission that in view of authorization granted to the Board in terms of Section 164 of the Electricity Act to exercise powers of the Telegraph Authority under the Telegraph Act and approval of the subject scheme granted by the Government in the Department of Power u/s 68 of the Electricity Act, any further written permission of the concerned Gram Panchayat was not necessary. It seems to be settled position of law that once a scheme is sanctioned for drawing of lines and work is carried out for construction of poles/towers and drawing of lines from one tower to the other in accordance with such sanctioned scheme, the same may not be interfered with unless it is shown with sufficient clarity that the scheme itself has been contravened. It appears from a reading of Section 10 of the Telegraph Act, 1885 that by necessary implication compliance with principles of natural justice has been excluded and consent of the land owner of the immovable property on which posts are to be erected is not required. The only obligation that is placed on the authority placing the posts is that it shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which the line or post has been placed and that as little damage as possible should be caused in respect of the property in question while giving effect to the said provision. It is only when a property vested in or under the control or management of any local authority is to be used that its permission is required and not otherwise. It is therefore absolutely clear that so long as towers/poles are erected/constructed in accordance with the sanctioned scheme and deviation from the sanctioned scheme is not established, a property owner would have no right to raise any

objection and seek relocation of such towers/poles either on the ground that his consent has not been obtained or that natural justice principles have been violated. Permission to lay posts is required only in respect of a property belonging to a local authority. That is not the case here admittedly.

29. Article 300A does not give any absolute right to hold property and the right guaranteed there under is subject to restriction authorised by law. The provisions of the Electricity Act and the Telegraph Act read together permits trespass of one's property in the event the Company proposes to erect transmission towers and drawing lines between such towers. As in the present case, the Company has exercised powers in terms of the statute which permits it to erect/construct towers on the lands of the petitioners. The petitioners have failed to impress the Court that in so acting, the sanctioned scheme has been contravened. This Court has failed to comprehend as to how an act which is aimed at furthering public interest can be interdicted only because the petitioners' private interests are sought to be disturbed.

30. Though Mr. Panja has sought to distinguish the order dated 2.4.07 by submitting that only the National Thermal Power Corporation and the Damodar Valley Corporation have been restrained from erecting towers within the Gram Panchayat areas without obtaining consent of the concerned Gram Panchayat, it does not appear to be so on a close reading of the same. By the said order not only the said Corporations were required to obtain permission but other Corporations were also obliged to obtain permission. The expression "any other corporation" is wide enough to include even the Company. However, in the considered view of this Court, nothing turns on this order issued by the Government so far as resolving the dispute in the present case is concerned, firstly, in view of the fact that the route/alignment following which the towers were sought to be erected one after the other was altered at the instance of the Pradhan of the concerned Gram Panchayat and, secondly, because of the authorization given by the State Government to the Board in accordance with the provisions contained in Section 68 of the Act. Once the Government upon application of mind sanctions a scheme and empowers the Board/Company to exercise powers akin to Section 10 of the Telegraph Act, an administrative direction issued by the Government to the Panchayats not backed by statutory force cannot override the same and thus erode the efficacy of actions taken in exercise of statutory power.

31. Mr. Panja is also right in his submission that the Division Bench decision in *Sukdev Das* (supra) would have no application in the facts and circumstances of the instant case. Although the Division Bench ordered that without the consent of the aggrieved petitioner lines could not be drawn over her property to supply electricity to the prospective consumer, the fact situation is absolutely different in the present case where actions are being taken being empowered by necessary orders passed u/s 68 and Section 164 of the Electricity Act. In any event, this Court is of the considered view that the decision in *Sukdev Das* (supra) does not

lay down any law which has the effect of a binding precedent.

32. The decision in Lachhman Das (supra) is also of no assistance to the petitioners. In that case, the aggrieved person's right to property was sought to be infringed in a manner not recognized by law. As has been noticed above, the petitioners' right to hold property to the exclusion of all others has been sought to be invaded in accordance with law. Therefore, question of the petitioners' suffering any legal grievance does not and cannot arise.

33. The decision in Hukam Chand (supra) relied on by Mr. Moitra lends no assistance to the petitioners' case. The proposition of law laid down therein is beyond doubt but the petitioners' have utterly failed to demonstrate before this Court that power has been exercised in a manner which has not been sanctioned. No violation of either the Telegraph Act or the Electricity Act has been established in course of the present proceedings.

34. There can hardly be any doubt that due consideration of all relevant factors and formation of opinion for exercise of a particular power conferred by statute or instructions are conditions precedent there for. Mr. Moitra's contention that formation of opinion of the Company is not reflected in its counter affidavit cannot be accepted having regard to the statements made in paragraph 4(k) thereof as well as the letter of the Company dated 8.3.2008 referred to supra. Also, there is no valid ground to assume that while formulating the scheme and approving it, the Board and the State respectively did not consider relevant factors and failed to apply mind. The decisions of the Apex Court in Barium Chemicals (supra) thus are also of no assistance.

35. The petitioners have utterly failed to establish any infringement of their legal rights. For the aforesaid reasons, this Court finds no merit in the writ petition. It stands dismissed. There shall be no order as to costs.

36. Urgent photostat certified copy of this order, if applied for, be furnished to the applicant within 4 days from date of putting in requisites there for.

Later :

37. A prayer for stay has been made by Mr. Sudarshan Ghosh, learned Counsel for the petitioner. The prayer is considered and refused.