

(1988) 06 KL CK 0018
In the High Court Of Kerala
Case No : O.P. No. 3249 of 1988

Harrisons Malayalam Limited

APPELLANT

Vs

Kerala State Electricity Board

RESPONDENT

Date of Decision : 24-06-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 482
Electricity Act, 1910 — Section 51
Telegraph Act, 1885 — Section 16(1)

Citation : (1988) 2 KLJ 92

Hon'ble Judges : Varghese Kalliath, J

Bench : Single Bench

Advocate : Menon and Pai, for the Appellant; Kallada Sukumaran, for the Respondent

Final Decision : Allowed

Judgement

Varghese Kalliath, J.—This is an original petition filed by a Company - Harrisons Malayalam Limited - challenging an order of the District Collector & Executive District Magistrate, Idukki (the third respondent in the O. P). Copy of the order is Ext. P7. This order was passed in a proceedings u/s 16(1) of the Indian Telegraphs Act read with section 51 of the Indian Electricity Act, 1910. The fourth respondent in the O.P. applied for an electric connection to his building No. 77A of Peruvanthanam Panchayat and the Kerala State Electricity Board being a statutory body constituted u/s 5 of the Electricity (Supply) Act, 1948, is bound by the provisions of the Act to supply electric connection to the applicant. But, it was not possible to give electric connection without drawing the power line through the property of the petitioner.

2. The power line that has to be drawn is II K.V. Service line. Petitioner herein objected the drawing of the line through the petitioner's property. Certain objections were raised by the petitioner regarding the feasibility of drawing the line through the property. According to the petitioner, the alignment chosen by

the Kerala State Electricity Board is not the proper alignment and it was possible to draw the electric line through another alignment, in the objection, the petitioner has stated that avoiding his property, the power line can be drawn through the property of others. The authorities under the Kerala State Electricity Board considered the question and applied for the permission of the third respondent. The third respondent is the authority to act when a dispute of this nature arises.

3. The main grievance of the petitioner is that by drawing the line 75 yielding rubber trees will have to be cut and removed and that it will cause great loss and damage to the petitioner. Of course, the counsel for the petitioner submits that the line can be drawn through a different alignment causing not so much hardship that is possible to have in case it is drawn through the property of the petitioner.

4. The matter was considered by the third respondent - The objections raised by the petitioner were also considered. The third respondent came to the conclusion that the alignment suggested by the Kerala State Electricity Board is the proper alignment and that the line has to be drawn through the property of the petitioner. All the objections raised by the petitioner before the third respondent were considered by third respondent and all the objections were rejected.

5. In regard to the nature of power exercised by District Magistrate u/s 16 (1) of the Indian Telegraphs Act, there are several decisions of this court. In *Mammoo vs. State of Kerala* (1979 KLT 801 (F.B.)), this court said:-

... These are in the nature of restrictions in the exercise of the power and do not restrict the discretion to determine the property over which the lines are to pass or posts are to be erected. That discretion is in the telegraph authority. If he is resisted or restricted he seeks permission from the District Magistrate whose adjudication does not cover the question whether line is to be drawn over any specific item of property or whether posts are to be erected or not in any specific item of property. S. 16 does not indicate that as within the power of the District Magistrate. The enquiry by the District Magistrate would be in the nature of a ministerial enquiry. There is no question of calling for evidence, sifting such evidence, and coming to a judicial decision thereon.

6. This decision was referred to in *Kesavan vs. Addl. District Magistrate* (1986 KLT 394) by Paripoornan J. His Lordship observed thus:-

It is settled law that an authority should act in good faith and fairly listen to both sides, in as much as that was a duty which lay on anyone who decided anything. But the authority was not bound to treat such a question as though it were a trial. It could obtain information in any way which it thought best, always giving a fair opportunity to those who were parties to the controversy to correct or contradict any relevant statement prejudicial to their view.

Earlier, in *Bharat Plywoods & Timber Products Pvt. Ltd. v. Electricity Board* (1970

KLT 872 (F.B), this Court had occasion to consider the nature of jurisdiction exercised by the District Magistrate u/s 16 (1) of the Indian Telegraph Act. This Court said that "the discretion conferred by the section on the District Magistrate is certainly a judicial discretion, and in cases where the District Magistrate refuses to pass an order that the telegraph authority shall be permitted to exercise the powers mentioned in S. 10, it is inconceivable that the telegraph authority may, notwithstanding such refusal, continue to exercise such powers.

7. In 1979 K.L.T.801, the Full Bench was considering the question whether the proceedings before the District Magistrate is judicial or not. It was for the purpose of deciding the question whether a petition u/s 482 of the Code of Criminal procedure or the revisional jurisdiction of this court (section 397) can be "invoked for cancelling an order of the District Magistrate. The Full Bench was more concerned with the question whether the decision is judicial or the proceedings before the District Magistrate is judicial or not of course, it is easy to decide the question whether the proceedings before the District Magistrate is judicial or not and the answer given is that it is not judicial. In considering that matter, the Full Bench also said that the nature of the power exercised by the District Magistrate is ministerial in nature.

8. I feel that that observation was not very much necessary for the decision of that case. Normally, the electricity Board approaches the District Magistrate for permission when the neighbouring owner objects that the power line cannot be taken through his property. Notice is given to the objector. He is given an opportunity to file his objection and an opportunity to be heard. He is allowed to appoint a counsel and argue his case. All these parameters are indicative of the fact the authority is exercising though not a judicial function, he is exercising a quasi-judicial power. The Full Bench in 1970 KLT 872 also points to the fact that the District Magistrate is obliged to exercise a judicial discretion. In this context, I feel that the observation that the power exercised by the District Magistrate u/s 16(1) of the Indian Telegraphs Act is ministerial in nature is open to doubt. Applying the decision of Paripoornan. J. (1986 KLT 395), I have to say that in this case, the District Magistrate was not exercising his power properly for the reason that he has stated in his decision "the matter was further examined in the light of the arguments at the time of hearing and the further details collected from the Assistant Executive Engineer". Plainly speaking "the further details collected from the Assistant Executive Engineer" were not known to the petitioner. He had no opportunity to contradict or to explain the adverse effect of the further details collected by the District Magistrate. I am of the opinion that an authority which is by law invested with power to affect the property rights of one person is bound to give such personal opportunity of being heard before it proceeds to act on some materials adverse to the cause he wanted to espouse before the authority. This I feel is a rule of universal application and founded on the plainest principles of justice, whether the authority acted in exercise of a quasi judicial power or "ministerially".

9. In this connection, I shall also refer to the decision reported in Kan Singh Vs. State Transport Appellate Tribunal and Others, . The Supreme Court, in a case arising under the Motor Vehicles Act, observed thus:-

Where the R.T.A. while rejecting the application for renewal of an inter-state permit for a particular route took into account materials placed before the R.T.A. by applicants for permits and by the State Road Transport Corporation in respect of other materials available to the applicant for the particular route, the procedure was vitiated for non-observance of principles of natural justice even though the point involved i.e. whether the Corporation had placed sufficient material on record to satisfy the R.T.A. concerned that the grant of a further permit or further permits to it would not prejudicially affect the nationalised services already run by it was common to all meetings in which applications of various other applicants were considered.

10. Even for an R.T.A., the Supreme Court has mandated that principles of natural justice have to be complied with, and relying on materials on which the aggrieved party has no access, will amount to violation of principles of natural justice. Here, the District Magistrate has relied on certain materials which are not disclosed to the petitioner for arriving at impugned decision. This is in violation of the principles of natural justice and on this ground, the order has to be set aside. In the result, I quash Ext. P7 order and remit the case to the District Magistrate (third respondent) for a fresh disposal. I make it clear that the matter has already been delayed and there is no justification for any further delay in this matter. A decision has to be taken by the third respondent as expeditiously as possible. Further, I make it clear that the petitioner will not be allowed to raise any further objections other than the objections already raised by him, before the third respondent.

O. P. is allowed as above. Issue carbon copy of this judgment to both sides on usual terms.