

(2017) 03 AHC CK 0138
In the Allahabad High Court
Case No : Misc. Bench No. - 5008 of 2017

Hasheeb Ahamad Khan

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 22-03-2017

Acts Referred:

Electricity Act, 2003 — Section 164
Telegraph Act, 1885 — Section 10, Section 16

Citation : (2017) 4 ADJ 441

Hon'ble Judges : Amreshwar Pratap Sahi and Sanjay Harkauli, JJ.

Bench : Division Bench

Advocate : Jagdish Prasad Maurya, Advocate, for the Petitioner; C.S.C, Puneet Chandra, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Shri Jagdish Prasad Maurya, learned counsel for the petitioners and Shri Puneet Chandra, learned counsel for respondent-Power Transmission Corporation.
2. This writ petition has been preferred questioning the correctness of the order passed by the District Magistrate rejecting the representation of the petitioner which was an objection regarding installation of transmission lines across the agricultural holding of the petitioners.
3. The contention was that the petitioners' holding would be disturbed and their agricultural operations would be equally affected as well as the groves of the petitioners would be under continuous threat of being damaged on account of the installation of such electricity lines.
4. The petitioners had approached this Court earlier in W.P. No.14518 (M/B) of 2016 that was disposed off with a direction to the District Magistrate to consider the grievance of the petitioners in terms of the Works of Licensees Rules, 2006 and pass an appropriate order in this regard. The District Magistrate, Lucknow has accordingly passed the impugned order dated 30th September, 2016 stating

that all appropriate steps for pre-survey prior to the installation was undertaken and after appropriate measurements and taking into consideration the alignment of the transmission lines, the location of the towers was finalised with a further condition that since the line is passing through the area where there are Mango Groves, the height of the transmission lines shall be enhanced from 5 meters to 10 meters as per the demand on the spot in order to ensure that none of the groves and their plantations are in any way affected by any such installation.

5. The District Magistrate has also while passing the order indicated that the appropriate steps for enhancing the security and safety of the groves shall be taken so that no damage is caused either to the life or property of the petitioners.

6. Shri Maurya submits that the transmission line has been realigned in order to accommodate certain influential persons and therefore, this aspect of the matter has been overlooked by the District Magistrate.

7. Learned counsel for the respondent-Power Transmission Corporation has submitted that adequate indications have been given about the steps undertaken in order to ensure that the laying down of the transmission line does not cause any inconvenience or damage to the petitioners. It is further submitted that the District Magistrate has passed a composite order in order to ensure that no damage is caused either to the life or property of the petitioner or otherwise cause any inconvenience to them.

8. We had entertained the writ petition and one of the issues that had cropped up was with regard to the jurisdiction of the District Magistrate to proceed to decide the matter, as the power corporation had taken a step that in view of the provisions of Section 164 of the Electricity Act, 2003 read with the Indian Telegraph Act, 1885 Sections 10 & 16 thereof, the District Magistrate had no authority to proceed to take the matter under the Works of Licensees Rules, 2006. This issue was canvassed before us in the connected writ petition no.3824 (M/B) of 2017 yesterday i.e., on 21.03.2016 and we have disposed off the said issue holding that the District Magistrate in the absence of any specific notification conferring this authority on the Transmission Corporation continues to enjoy the authority to decide such a claim in terms of Section 16(1) of the Indian Telegraph Act, 1885 read with Section 164 of the Electricity Act, 2003. The order dated 20th March, 2017 passed in the said writ petition is extracted hereinunder:-

"This writ petition has been filed by the U.P. Power Transmission Corporation praying for quashing of the order dated 30.11.2016 passed by the District Magistrate in the purported exercise of powers under the Works of Licensee Rules, 2006 as directed by this Court on 24.02.2016 in Writ Petition no.3617 (MB) of 2016. The contention raised by the Power Transmission Corporation is that the District Magistrate does not have any jurisdiction or authority to adjudicate on any such controversy relating to the laying down of transmission lines by the petitioner Corporation. It is urged that the powers are to be

exercised by the authority itself namely the Power Transmission Corporation in accordance with Section 164 of the Electricity Act, 2003 which applies the Indian Telegraph Act, 1885 for the said purpose.

Learned counsel for the petitioner submits that the Corporation has been notified to exercise authority as contemplated under section 16(1) of the 1885 Act and consequently, the District Magistrate ought not to have proceeded with the matter.

To support and substantiate the said submission, learned counsel for the petitioner has relied on a Division Bench judgment in the case of Jagir Lal and another v. State of U.P. and others; 2012 (6) ADJ 784 to urge that the Power Transmission Corporation will continue to have the authority to exercise such powers keeping in view the notification dated 31.05.1961 that has been issued under section 51 of the Indian Electricity Act, 1910. He submits that the said notification still continues to be in force and consequently, it is only the petitioner Corporation which will be entitled to exercise such powers to the exclusion of the District Magistrate. Learned counsel for the petitioner has further invited the attention of the Court to the judgment of the Apex Court in the case of Power Grid Corporation of India Limited v. Century Textiles and Industries Limited and others; Civil Appeal No.10951 of 2016 decided on 14.12.2016 where also it was established that the authority was empowered under the provisions of Section 164 of the Electricity Act, 2003 to exercise the power under the Indian Telegraph Act, 1885 as such, the petitioner Power Transmission Corporation on the same analogy will be entitled to exercise such powers and not the District Magistrate. Learned counsel for the petitioner in the connected writ petition No.5008 (MB) of 2017 has submitted that in view of the provisions of Section 185 of the Electricity Act, 2003, the provisions of the Indian Electricity Act, 1910 have been repealed and therefore, the notification dated 31.05.1961 is no longer available to be enforced for construing such authority conferred upon the petitioner Corporation. It is submitted that unless there is a fresh notification conferring such powers on the Corporation, a notification issued under 1910 Act, which has already been repealed cannot be taken recourse to and, therefore, the Division Bench judgment in the case of Jagir Lal (supra) will not come to the aid of the petitioner. He further submits that the Apex Court Judgment in the case of Power Grid Corporation in paragraph 20 has clarified that the powers can be exercised by the authority provided the authority has been conferred such powers under a notification validly issued as per the provisions of Section 164 of the Electricity Act, 2003 read with the Indian Telegraph Act, 1985.

Learned counsel for the Power Transmission Corporation, however, submits that the Works of Licensee Rules cannot be applied keeping in view the judgment in the case of the Power Grid Corporation of India Limited and the decision in the case of Jagir Lal (supra) in the matter of laying down of Transmission lines by the petitioner Corporation inasmuch as such authority stands conferred on the petitioner Corporation exclusively under a notification and to the exclusion of the

District Magistrate.

Learned counsel for the petitioner in the connected writ petition No.5008 (MB) of 2017 has submitted that in view of the provisions of Section 185 of the Electricity Act, 2003, the provisions of the Indian Electricity Act, 1910 have been repealed and therefore, the notification dated 31.05.1961 is no longer available to be enforced for construing such authority conferred upon the petitioner Corporation. It is submitted that unless there is a fresh notification conferring such powers on the Corporation, a notification issued under 1910 Act, which has already been repealed cannot be taken recourse to and, therefore, the Division Bench judgment in the case of Jagir Lal (supra) will not come to the aid of the petitioner. He further submits that the Apex Court Judgment in the case of Power Grid Corporation in paragraph 20 has clarified that the powers can be exercised by the authority provided the authority has been conferred such powers under a notification validly issued as per the provisions of Section 164 of the Electricity Act, 2003 read with the Indian Telegraph Act, 1985.

Learned counsel for the Power Transmission Corporation, however, submits that the Works of Licensee Rules cannot be applied keeping in view the judgment in the case of the Power Grid Corporation of India Limited and the decision in the case of Jagir Lal (supra) in the matter of laying down of Transmission lines by the petitioner Corporation inasmuch as such authority stands conferred on the petitioner Corporation exclusively under a notification and to the exclusion of the District Magistrate.

Having considered the aforesaid submissions, we have been unable to locate any such power having been conferred on the authority by way of a fresh notification as is urged on behalf of the learned counsel for the petitioner. The notification dated 31.05.1961 was obviously issued under the 1910 Act, which has been repealed under section 185 of the 2003 Act. There is no indication of saving of such notifications under Section 185 above. Consequently, the same cannot be pressed into service for the purpose of continuing the applicability of the aforesaid notification in terms of section 164 of the 2003 Act. No fresh notification has been brought to our notice that may confer such authority on the petitioner Corporation and, therefore, by virtue of section 16(1) of the 1885 Telegraph Act, the District Magistrate will continue to have the authority to adjudicate any such issue in the event there is a resistance or obstruction being created by the land owner.

In the instant case, the District Magistrate has taken a decision. Consequently, we are of the opinion that the issue of lack of authority does not appear to arise in this case even if the Works of Licensee Rule, 2006 are not applicable.

Learned counsel for the petitioner then prays that the matter may be looked into on the merits of the claim as well inasmuch as the respondent in the present case is neither the owner or valid occupier of the land.

Put up on 22.03.2017 along with writ petition no.5008(MB) of 2017."

9. The issue with regard to entertaining the claim on merits, therefore, by the District Magistrate does not suffer from any patent lack of jurisdiction even though the Works of Licensees Rules, 2006 does not apply in the matter. The District Magistrate in view of what has been indicated above, therefore, had the authority to adjudicate the controversy.

10. On the merits of the claim what we find is that the District Magistrate clearly spells out the entire exercise undertaken and the report in this regard of the competent authorities and the survey reports that ultimately led to the finalisation of the track of the line. As indicated above, the order of the District Magistrate itself takes into consideration objectively all the issues raised including the alignment part of the transmission line. We, therefore, do not find any infirmity in the view taken by the District Magistrate either on the technical grounds raised by the petitioners or otherwise indicating any damage that is likely to be caused to the petitioners which has been secured under the impugned order.

11. Consequently, if the interest of the petitioners stands secured without causing any actual damage, we find no reason to interfere with the order of the District Magistrate dated 30th September, 2016 impugned herein.

12. The writ petition is accordingly rejected.