
(2015) 08 BOM CK 0172
In the Bombay High Court
Case No : Writ Petition No. 2538 of 2011

Jarnail Singh and Others

APPELLANT

Vs

Maharashtra State Electricity Transmission Co. Ltd. and
Others

RESPONDENT

Date of Decision : 03-08-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1)(g), 21, 300A
Electricity Act, 2003 — Section 14, 164, 176(2), 38, 67
Penal Code, 1860 (IPC) — Section 188
Telegraph Act, 1885 — Section 10, 10, 11, 12, 13

Citation : (2015) 5 ABR 455 : (2015) AIR (Bom) 283 : (2015) 6 BomCR 484

Hon'ble Judges : B.P. Dharmadhikari, J;S.B. Shukre, J

Bench : Division Bench

Advocate : R.P. Joshi, for the Appellant; S.P. Dharmadhikari, Senior Advocate
and D.M. Kale, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.B. Shukre, J—By this petition, the petitioners have challenged the judgment and order dated 13.5.2011 passed by the District Magistrate, Nagpur in Case No. 9/MRC-11/2009-10 thereby granting permission to respondent No. 1 to continue with the work of the electricity transmission line from Koradi to Wardha Power Grid, which passes through the land of the petitioner. In doing so, the petitioners have also challenged the entire action of respondent No. 1 in laying the transmission line as being arbitrary and violative of principles of natural justice. The petitioners have also challenged the validity of Section 164 of the Electricity Act, 2003 (hereinafter referred to as "EA, 2003" for the sake of convenience), the Govt. Resolution dated 24.8.2006, first proviso to Rule 3(1) and Rule 3(4) of the Works of Licenses Rules, 2006 (hereinafter referred to as "Rules, 2006" for the sake of convenience) framed under the EA, 2003 as according to the petitioners these provisions violate their fundamental rights guaranteed under Articles 14, 19 and 21 and also their constitutional right to property arising from

Article 300A of the Constitution of India.

2. The petitioners are the owners of the land bearing Gat/Survey No. 110, admeasuring 5.79 Hectares situated at Mouza Metaumri, Tq. Hingna, District Nagpur, wherein the petitioners have a stone crusher unit and a hot mix plant.

3. The respondent No. 1 is a company registered under the provisions of the Companies Act and is owned by the State of Maharashtra. It is a state transmission utility and also a licensee as declared under Sections 38 and 14 of the EA, 2003.

4. There is a power generation unit set up under an explanation project at Koradi Thermal Power Station. The electricity generated at the said unit is required to be evacuated and transmitted across the State by constructing and establishing the power transmission line. Therefore, the respondent No. 1 formulated a scheme for transmission of power by constructing and establishing 400 KV Koradi II to Wardha Power Grid Double circuit transmission line. This scheme has been approved by the State of Maharashtra. Under the scheme, the transmission line passes through various locations including the land belonging to the petitioners. One of the towers being tower No. 34/5 is planned to be erected on the land of the petitioners for the said purpose. One notice dated 12.3.2010 in respect of the proposed tower was issued to the petitioners. The petitioners by reply dated 17.3.2010 took an objection over the proposed erection of the tower on the ground that the situation of the tower was such as to divide land of the petitioners into two halves rendering it useless for carrying on their activities relating to stone quarrying. Therefore, it was suggested by the petitioners that the location of the proposed tower be shifted to the corner of the land so that the transmission line could along the boundary of the land or "pandhan". This way, the petitioners submit, the purpose of the respondent No. 1 would be served and at the same time least damage and inconvenience would be caused to the petitioners.

5. The respondent No. 1, however, did not give any reply to the said suggestion of the petitioners, rather it went ahead with implementation of the project of laying of transmission line. It is stated that as there was obstruction to this work from the petitioners, a police report was also filed. As it appears that the implementation of the scheme could not proceed smoothly because of the obstruction created by the petitioners, respondent No. 1 moved an application under Section 16(1) of the Indian Telegraph Act for permission to continue with the work of transmission line before the District Magistrate, the authority designated for the purpose under the provisions of the Indian Telegraph Act, 1885 (hereinafter called "the Act, 1885" for short). It was submitted by the respondent No. 1 that in exercise of it's powers under Section 164 of the EA, 2003, the State Government conferred on the respondent No. 1, for the purpose of laying of electrical lines and posts for transmission of electricity, all powers which the telegraph authority would possess with respect to placing of telegraph lines and posts under Part III of the Act, 1885 and, therefore, the District

Magistrate would have the authority under Section 16(1) of the said Act, 1885 to decide the justifiability of the objections taken and suggestions given by a land owner.

6. The application so filed by the respondent No. 1 under Section 16(1) of the Act, 1885 was resisted by the petitioners by filing their detailed reply. Apart from taking same grounds as contained in their reply dated 17.3.2010 sent to the notice dated 12.3.2010, the petitioners contended that they were not consulted before finalizing the route of transmission line and suggested that the site of tower that was to be erected be shifted to the border of the land so that the land could be beneficially used and laying of transmission line is also not affected.

7. During the pendency of the application, under Section 16(1) of the Act, 1885, the District Magistrate directed the respondent No. 1 to take inspection so as to consider the suggestion of the petitioners and submit it's report. Accordingly, the respondent No. 1 submitted the report stating that the foundations of the towers following and preceding the tower in question i.e. tower No. 34/5 being already complete, it was not possible to realign the transmission line in the manner suggested by the petitioners. It also submitted in the report that no mining activities were being carried on the subject land. It was, therefore, submitted that deviation of the transmission line was not feasible. During the pendency of the application filed by the respondent No. 1 under Section 16(1) of the Act, 1885, the petitioners had also filed an application under Section 17 of the said Act whereby the petitioners had prayed for issuance of directions to shift the transmission line elsewhere. The District Magistrate heard the parties and after considering the rival arguments and the report of the respondent No. 1, rejected the suggestion of the petitioners and allowed the application of respondent No. 1 filed under Section 16(1) of the Act, 1885 by the order passed on 13th May, 2011. By this order, the District Magistrate granted permission to respondent No. 1 to continue with the work of the transmission line as per the original plan. By the same order, the District Magistrate also prohibited the petitioners from obstructing the work and directed the respondent No. 1 to pay the requisite compensation to the petitioners in accordance with law within a period of one month from the date of completion of work. The present petition challenges this order of learned District Magistrate and also validity of Section 164 of the EA, 2003, Government notification dated 24.8.2006; first proviso to sub-rule (1) and sub-rule (4) of Rule 3 of the Rules, 2006 as being violative of petitioners' fundamental rights under Articles 14, 21 and 19 and his further right under Article 300A of the Constitution of India.

8. We have heard Shri R.P. Joshi, learned counsel for the petitioners, Shri S.P. Dharmadhikari with Advocate Shri D.M. Kale, learned counsel for respondent No. 1, Mrs. B.H. Dangre learned Government Pleader for Respondent No. 2 and Shri Rohit Deo, learned Assistant Solicitor General of India for respondent Nos. 3 to 5. We have perused the paper book of the petition with the assistance of learned counsel for the contesting parties.

9. It is submitted by the learned counsel for the petitioner that the decision regarding finalizing of route of transmission line has civil consequences for the owners of the lands from and over which the transmission line passes and, therefore, it would be necessary for the respondent No. 1, the licensee, which is carrying out the work to at least consult the affected owners of the lands before fixing the route. He further submits that such prior consultation is all the more necessary in view of the provisions of Section 67 of the EA, 2003. He submits that in the instant case, the only notice that was issued to the petitioners was of 12.3.2010 and it was under the provisions of the Act, 1885 and not under the EA, 2003 and, therefore, no notice, as contemplated under the provisions of the EA, 2003 was issued to the petitioners.

10. Learned counsel for the respondent No. 1 as well as learned A.S.G.I. and learned G.P. submit that the scheme of the provisions of the EA, 2003 does not contemplate issuance of notice to affected owners of the immovable properties at the time of finalization of the transmission line and for doing of any such work as erection of towers or posts upon the lands in question and all that is contemplated is giving of hearing to the affected land owners when any objection is taken or any suggestion is given and that too only for considering the justifiability of the objection taken or the suggestion given in respect of carrying out of work on their lands. For this submission, they place their reliance on the judgment of the Division Bench of this Court rendered in the case of *Shri Vivek Brajendra Singh Vs. State Government of Maharashtra and Others*, (2012) 3 ALLMR 130 : (2012) 4 BomCR 116 : (2012) 114 BOMLR 1349 : (2012) 4 MhLj 625 , which according to learned counsel for the respondent No. 1 has been confirmed by the Hon''ble Supreme Court when it disposed of the SLP filed against it.

11. Before we consider the rival arguments, it would be necessary know the source and scope of the authority or power of the respondent No. 1 to take up the work of the implementation of the scheme of laying of transmission line. Action taken by the appropriate Government in pursuance of the power given to it under Section 164 of the EA, 2003 constitutes the source of the authority. Part-III of the Act, 1885, supplies the contents of the said authority or power of the licensee. As this very authority or power has been challenged on various constitutional grounds, it would be necessary to examine the validity of not only Section 164 of the EA, 2003 but also relevant sections of Part III of the Act, 1885. We will first consider Section 164 of the EA, 2003, which reads as under :

"164. Exercise of powers of Telegraph Authority in certain cases.- The Appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works, 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 to the provisions of the Indian Telegraph Act, 1885 (13 of 1885), any of the powers which the telegraph authority possesses under that Act with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained."

A careful reading of the above Section makes it clear it is a provision which enables the appropriate Government, the State of Maharashtra in the present case, to empower or authorise, for the purpose of placing of electric line etc., any public officer, licensee or any other person engaged in the business of supplying electricity to exercise any of the powers which the telegraph authority possesses with respect to the placing of telegraph line and posts for the purpose of telegraph established or maintained by the Government. This section does not contemplate any hearing and it need not as it is only an enabling section. At the time of giving of authorisation to a licensee, there is no scheme formulated and it is not known under, over or through whose lands the electric lines or posts are likely to be placed. At this stage, there is no legal injury nor is there any injured or affected person. Therefore, there is no question of any person being affected by authorisation under Section 164 of the EA, 2003. This being the effect of Section 164, there is no room to say it is bad in law or violative of principle of fairness or even any fundamental freedom to carry on any occupation, business etc. under Articles 14, 21 and 19(1)(g) of the Constitution of India.

12. In exercise of the said enabling power, the State of Maharashtra has issued a Government Resolution dated 24.8.2006 thereby conferring upon the respondent No. 1, a licensee under the EA, 2003, the same powers which a telegraph authority possesses with respect to placing of telegraph line and posts under Part III of the Act, 1885. The notification reads thus :

"INDUSTRIES, ENERGY AND LABOUR DEPARTMENT, Mantralaya, Mumbai 400 032, dated the 24th August, 2006.

ELECTRICITY ACT, 2003.

No. Misc. 06/CR-312/NRG-4. - In exercise of the powers conferred by section 164 of the Electricity Act, 2003 (36 of 2003), and of all other powers enabling it in that behalf, the Government of Maharashtra, for the purpose of placing of electrical lines or electrical plants for transmission of electricity; and for the purpose of telephonic telegraphic or communication necessary for the proper co-ordination of work, hereby, subject to the provisions of the Indian Telegraph Act, 1885 (13 of 1885) (hereinafter referred to as "the Telegraph Act"), confers, on the Maharashtra State Electricity Transaction Company Limited, a licensee engaged in the business of transmission of electricity, all the powers which the telegraph authority possesses with respect to placing of telegraph Lines and posts under Part III of the Telegraph Act.

By order and in the name of the Governor of Maharashtra."

Dr. BHAGWANSAHAI, Secretary to Government"

It is clear from the notification that it is general in nature and does not give authorization only for undertaking the work of subject transmission line. Therefore, for the same reasons as are given in earlier paragraph, it cannot be held to be bad in law.

13. Powers of telegraph authority for the purpose of establishing or maintaining the telegraph are delineated in Part III of the Act 1885. Sections 10 to 17 contained in Part-III deal with powers of the telegraph authority in respect of placing, establishing and maintaining of the telegraph lines and posts. We are concerned here particularly with the powers under Sections 10, 16 and 17 of the Act, 1885, as these sections define the contours and control the sphere of powers of the telegraph authority. These sections are reproduced as under :

"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 the 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 (45 of 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.

17. Removal or alteration of telegraph line or post on property other than that of a local authority.-

(1) When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property, not being property vested in or under the control or management of a local authority, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher or lower level or altered in form, he may require the telegraph authority to remove or alter the line or post accordingly:

Provided that, if compensation has been paid under section 10, clause (d), he shall, when making the requisition, tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever may be the smaller sum.

(2) If the telegraph authority omits to comply with the requisition, the person making it may apply to the District Magistrate within whose jurisdiction the property is situated to order the removal or alteration.

(3) A District Magistrate receiving an application under sub-section (2) may, in his discretion reject the same or make an order, absolutely or subject to conditions, for the removal of the telegraph line or post to any other part of the

property or to higher or lower level or for the alteration of its form; and the order so made shall be final."

14. Upon reading Section 10 as a whole it becomes clear that the power that it gives to the telegraph authority is only for the limited purpose of establishing or maintaining a telegraph. It is no less and no more than the said purpose. It gives no right to the telegraph authority other than that of user only in respect of the property under, over, along or across which a telegraph line passes. By exercising such power, the authority does not become owner of the property and all that it gets is right of user of the property. The Section also makes it obligatory for the authority to pay full compensation to the affected person for the damage he may suffer by reason of exercise of such power. The Section does not contemplate any notice or hearing before exercising the power to establish or maintain a telegraph line, although it envisages payment of compensation. However, it would not make any exercise of power under Section 10 arbitrary and violative of principles of natural justice as contemplated under Articles 14 and 21 of the Constitution for the reason that right to property under Article 300A is a constitutional right which is not absolute and can be taken away by authority of law. What is required is that the law which takes away such a right must provide for just and fair procedure.

15. If we carefully read Section 10 of the Act, 1885, we would notice that it does not completely take away right to property. It only creates some restrictions on the enjoyment of right to property by creating a right of user in the telegraph authority as is clear from proviso (b) and that too in a fair manner. This can be seen from its other proviso. Proviso (a) to Section 10 restricts the power of the telegraph authority only to the purpose of establishing or maintaining the telegraph. It does not allow the authority to use the power for any other purpose thereby keeping it moored to the object of the Act, which is manifestly to empower adequately the Government or any licensee to place telegraph lines, and posts, a work eminently in public interest. Further, the power under Section 10 is not unrestricted or uncanalised. Proviso (d) cautions the authority by laying down that it shall cause as little damage as possible while undertaking the work. It also mandates the authority to pay full compensation to the affected person for the damage it may cause by reason of exercise of the power. Thus, Section 10 prescribes a just and fair procedure for placing limitations on full enjoyment of property and, therefore, cannot be said to be arbitrary and violative of Articles 14 and 21 or 300-A of the Constitution of India, just because it contains no provision for issuance of notice or giving hearing to affected person before the work is undertaken.

16. That apart, when the provision of Section 10 is read with Sections 16 and 17, reproduced earlier, it would become clear that under the scheme of Part-III of the Act, 1885 a fine balance has been struck between the necessity of public interest and the individual need of properly addressing the grievance of the aggrieved. A reading of Sections 16 and 17 would show that none of them

specifically provides for hearing to the person who obstructs or gives suggestion for alteration of the electric line or post. But, such a hearing has to be read in these sections as they confer a discretion upon the District Magistrate to adjudicate on the justifiability of the objection or acceptability of the suggestion and no public authority can exercise a discretion arbitrarily. Very nature of this discretion is such that giving of opportunity of hearing to the aggrieved before it's exercise must be considered to be implicitly present in it. After all, any exercise of such discretion is likely to have reverberations in civil consequences for the owner or occupier of the private land on the one hand and cost-delay escalation in distribution of material resources of nation like the electricity on the other. Therefore, reading of fair opportunity of hearing in exercise of such a discretion is in consonance with the mandate of Articles 14 and 21 and doing so we hold that Section 10 by virtue of existence of Sections 16 and 17 on the statute book, on the whole provides for a fair procedure for partial deprivation of right to property.

17. In the case of Vivek Brajendra Singh (supra), validity of Section 164 was challenged on the ground that it was arbitrary and violative of Article 14 of the Constitution of India as it enables the appropriate Government to empower a licensee or a transmission utility to exercise powers for the purpose of laying of electric lines which a telegraph authority possesses in respect of placing of telegraph lines and posts without granting hearing to the land owners. Rejecting the contention the Division Bench, in para 9, observed thus :

".....At the stage of authorization, it is not possible for the Government to know necessarily the particular area over which the lines are to be laid and which land owners will be affected thereby. As in this case, the authorisation may be general in favour of a transmission company or in a given case special. Therefore, no land owner can be said to be prejudiced by such authorization since the authorization does not contemplate the route over which the line will pass and the land which will be affected. It is not disputed that the route is decided, not by the Government but by the transmission company. There is, therefore, no question of hearing any land owner and of the provision being unconstitutional because it does not provide for such hearing."

18. In that case validity of Section 10 of the Act, 1885 was also challenged and the objection was that it did not provide for hearing to owners of immovable properties under, over, along or across which electric lines are to be placed. Repelling these objections, the Division Bench held that Section 10 of the Act, 1885 does not contemplate notice to an owner or occupier of the land to show cause against the laying of a line and this is because of the clarification given under Proviso (b) in respect of nature of right that Central Government acquires over the land in question. This proviso makes it clear that the Central Government by establishing or maintaining a electric line or posts in or upon, under, over or along any immovable property does not acquire any right other than that of user in the property. The Division Bench further held that hearing

the affected land owners is, however, contemplated under Section 16 of the Act 1885 as according to this Section the District Magistrate is required to enquire as and when an objection is taken or suggestion is given as regards laying or maintaining a telegraph line and decide as to whether or not the obstruction or suggestion is justified and whether or not the permission to continue with the work should be granted. The Division Bench further held that though Section 16 does not expressly provide for hearing by the District Magistrate, the decision of the District Magistrate must be preceded by hearing the person obstructing as his order involves suffering of civil consequences in the sense that the Central Government acquires a right of user in the land of a citizen.

19. Dealing with the contention that at the time of finalization of the transmission line hearing before finalization is necessary, the Division Bench held that the task being of highly specialized nature and the line may stretch to over 100 kilometers, while passing over different kinds of lands, it would not be practicable to hear the land owners along the entire route of the line. It also observed that Parliament has not provided for any notice or hearing to the public at large or to specific land owners at the stage of planning of the layout of the route of the transmission line. The relevant observations of the Division Bench as contained in paragraph 14 are reproduced thus :

".....Moreover, the decision to mark a route for laying an electric line is a highly specialized and technical decision and unrelated to any specific land owner. Moreover, the route may be over hundreds of kilometers passing over Government lands, lands of local authorities and private lands and it may not be practicable to hear land owners along the entire route. Having regard to the specialized and technical nature of the task and the fact that the lines are laid for distribution of an essential material resource of the community, Parliament has not provided for any notice or hearing to the public at large or to specific land owners at the stage of planning of the route."

20. Thus, it would be clear that the Division Bench of this Court has rejected the challenge that Section 164 of the EA, 2003 and Section 10 and Section 16 of the Act, 1885 are arbitrary and violative of Articles 14 and 19 of the Constitution of India.

21. This decision of this Court, according to the learned counsel for the respondent No. 1, has merged in the decision of the Hon^{ble} Supreme Court after it disposed of the Special Leave Petition challenging the decision by its order passed on 7.5.2014 in Petition (S) for Special Leave to Appeal (Civil) No(s). 12338/2012, copy of which is annexed to the petition as Annexure-J2. For this submission, he has placed his reliance upon the case of Kunhayammed and Others Vs. State of Kerala and Another, AIR 2000 SC 2587 : (2000) 162 CTR 97 : (2000) 72 ECC 681 : (2001) 129 ELT 11 : (2000) 245 ITR 360 : (2000) 9 JT 110 : (2000) 5 SCALE 167 : (2000) 6 SCC 359 : (2000) 1 SCR 538 Supp : (2000) 119 STC 505 : (2000) 113 TAXMAN 470 : (2000) 2 UJ 1158 : (2000) AIRSCW 4641 : (2000) AIRSCW 4557 : (2000) AIRSCW 2608 : (2000) 8

Supreme 202 : (2000) 5 Supreme 181 : (2000) 7 Supreme 70 . In the opinion of the learned counsel for the petitioners disposal of the SLP by the Hon''ble Apex Court cannot be interpreted as confirmation of the decision given by the Division Bench of this Court and cannot be termed as it having been merged with the order passed by the Hon''ble Apex Court as the SLP has been merely disposed of.

22. In Kunhayammed, Hon''ble Apex Court has laid down the principles for determining as to when the order of subordinate Court would merge in the decision of the superior forum. But, in our view, the order dated 7.5.2014 passed by the Hon''ble Supreme Court being such that it gives no occasion for this Court to consider the doctrine of merger in the present case. The Hon''ble Supreme Court while disposing of the SLP has made it clear that all questions of law are kept open. So, it would have to be seen if the Division Bench decision in the case of Vivek Brajendra Singh would, on it's own strength, cover the issue raised in this case by the petitioners as regards necessity or otherwise of giving of notice or hearing to them before or at the time of finalization of the route of the transmission line.

23. Having considered the decision of the Division Bench and also the nature of power under Section 164 of the EA, 2003 and the scheme of Part III of the Act, 1885, found by us to be within the constitutional limits, we do not think that denial of hearing at the time of finalization of the transmission route and even at the time of erection of towers or posts for the purpose of laying of transmission line would result in any violation of principles of natural justice or would amount to adopting an unfair and arbitrary procedure not countenanced by Articles 14 and 21 of the Constitution of India. We cannot lose sight of the fact that finalization of route of transmission line is a highly technical and specialized subject, which must be better kept to the wisdom of technical bodies like the respondent No. 1. Also, the route of transmission line invariably runs into several kilometers and it passes through or under or over or along different lands of different persons, who are not experts in the field. In such a scenario, giving of hearing to non-experts that the owners or occupiers of lands are, would be an exercise in futility as they would not be well equipped to deal with technical issues. It would also be an impractical proposition for the sheer number involved and the enormous time required to complete the hearing. Such an exercise would push the cause of public interest into book-seat and one would not know when the work of laying of transmission line would be over.

24. Besides, what the licensee acquires in the land in question is no more than the right of user and that too in lieu of payment of full compensation for the damage the exercise of power may cause. There is also a safeguard in Sections 16 and 17 which, as we have observed, contemplate adequate hearing before the decision on justifiability of objection or suggestion is given by the District Magistrate. The rule requiring giving of hearing before a decision affecting the interests of citizens is taken exists for preventing any damage or loss being caused to the person which otherwise is avoidable, and if it is not avoidable, to

make good the damage or loss by providing a just recompense to that person. This purpose of rule of natural justice is appropriately sub-served by the procedure laid down in Part III, particularly in Sections 10, 16 and 17 of the Act, 1885. Therefore, we have no reason to take a view different from the one taken by the Division Bench in the case of Vivek Brajendra Singh. Thus, we find that it is not necessary to give notice to the owners or occupants of private lands at the time of finalization of the route of the transmission line or even at the time of starting of its work.

25. Even though Section 10 of the Act, 1885 read with Section 164 of the EA, 2003 does not contemplate giving of any notice for the purpose of laying of transmission line, one notice dated 12.3.2010 was indeed given by the respondent No. 1 to the petitioners in this case. According to the petitioners, this notice being under the provisions of the Act, 1885, was no notice under the EA, 2003. We cannot persuade ourselves to accept this contention for the reason that by virtue of notification dated 24.8.2006 powers of the Telegraph Authority in respect of placing of telegraph or communication lines are conferred upon the respondent No. 1 for the purpose of placing of electric lines or electrical plants and, therefore, any exercise of powers under Section 10 of the Act, 1885 would be in reality an exercise of power under the provisions of the EA, 2003 for the purpose of laying of the transmission lines. So notice dated 12.3.2010 issued under the provisions of the Act, 1885 is in fact a notice issued for the purpose of laying of transmission line in exercise of the powers under the provisions of the EA, 2003.

26. Next contention of the learned counsel for the petitioner is that Section 164 of the EA, 2003 does not permit conferring upon the licensee or transmission utility any power for the purpose of laying of the transmission line because under Section 10 of the Act, 1885, a telegraph authority can exercise the power only for the purpose of establishing or maintaining the telegraph as clarified by proviso (a) to section 10 and, therefore, conferment of power of a telegraph authority upon a licensee or transmission utility under Section 164 of the EA, 2003 has to be understood as being only for the purpose of ensuring co-ordination of the works and not for laying of the electric lines. Learned counsel further submits that all powers of the telegraph authority could be conferred upon the licensee or transmission utility for the purpose of laying, placing and maintaining any electric line only if proviso (a) to Section 10 of the Act, 1885 is suitably amended and since this has not been done, the conferment of Section 10 power would not authorise a licensee or transmission utility to lay or place or maintain any electric line under the provisions of the EA, 2003.

27. Learned counsel for the respondent No. 1, learned G.P. and learned A.S.G.I., submit that the interpretation sought to be placed upon Section 164 by the learned counsel for the petitioners is fallacious as Section 164 itself makes it clear that conferment of power of the telegraph authority upon a licensee or transmission utility could be for purposes, inter alia, of placing of electric lines or

electrical plant for transmission of electricity and, therefore, proviso (a) to section 10 would have to be read as authorising exercise of Section 10 power for the purpose of placing of the electric lines and so on.

28. Section 164 of the EA, 2003 is an enabling Section. It authorises appropriate Government to confer power of the telegraph authority upon a licensee or any public officer or any other person engaged in the business of supplying electricity for such purposes as placing of electric lines, electrical plant for transmission of electricity or telephonic or telegraphic communications, necessary for proper co-ordination of works. Section 10 of the Act, 1885 empowers the telegraph authority to place and maintain a telegraph line under, over, along or across and posts in or upon any immovable property. Proviso (a) to it lays down that the telegraph authority shall not exercise said power except for the purpose of telegraph established or maintained or to be so established or maintained. It is thus clear that while Section 10 of the Act, 1885 speaks of the power a telegraph authority possesses in respect of placing, maintaining and establishing a telegraph line under, over, along or across and posts in or upon any immovable property, Section 164 of the EA, 2003 is all about extending the same power of the telegraph authority to the licensee under the EA, 2003 for the purpose of placing and establishing electric lines, posts, plants and so on. Therefore, Section 10 power with restrictions over it under proviso (a) has to be read as it is when it comes to its exercise for the purpose of placing of electric lines etc. It is obvious then that Section 164 of the EA, 2003 cannot be construed as only empowering the appropriate Government to confer power of the Telegraph Authority upon a licensee or a transmission utility only for the purpose of co-ordination of works and not for laying of electric lines.

29. Learned counsel for the petitioner has further submitted that under Section 67(2), of the EA, 2003, power has been conferred upon the appropriate Government to specify by rules, inter alia, the authority which may grant permission in the circumstances where the owner or occupier objects the carrying out of the work, nature and period of notice to be given by the licensee before carrying out of works and the procedure and the manner of consideration of objections and suggestions received in response to the notice issued by the licensee. He points out that section 67(3) requires the licensee to cause as little damage as possible in doing the works. He submits that the Government has neither specified the authority which may consider the objections nor framed any rules prescribing the nature and period of notice to be given by the licensee and the procedure and manner in which objections and suggestions received from the owner or occupier would be considered all of which is so necessary in view of said provisions.

30. Learned counsel for the petitioners further submits that the Government has framed the Works and Licensee Rules, 2006 in exercise of power under Section 176(2) read with Section 67(2) of the EA, 2003 in which nothing has been said about the nature and period of notice to be given by the licensee and also the

procedure and manner of consideration of objections and suggestions. He invites our attention to first proviso to Rule 3(1) which deals with a situation in which objections are raised by the occupier or the owner and submits that it does not lay down the procedure and the manner in which objections should be decided by the District Magistrate. According to him, first proviso to Rule 3(1) is bad in law as it violates the principle of procedural fairness enshrined in Articles 14 and 21 of the Constitution of India. Learned counsel for the petitioner further submits that as Rule 3(4) of the Rules, 2006 lays down that nothing contained in Rule 3 shall affect the powers conferred upon any licensee under Section 164 of the EA, 2003 and Section 164 of the EA, 2003 also does not prescribe any procedure for issuing notice and granting of hearing at the time of giving of authorization to a licensee or transmission utility, this rule too is bad in law.

31. Learned counsel for the respondent No. 1, learned G.P., and learned A.S.G.I. would not agree with the said contentions of learned counsel for the petitioners. They submit that even though first proviso to Rule 3(1) and sub-rule (4) of Rule 3 do not lay down the nature and period of notice to be given by the licensee or the transmission utility, these rules adequately take care of a situation when objection is raised by the owners or the occupiers. They submit that first proviso to Rule 3(1) lays down that whenever objection is taken by owners or occupiers, the licensee shall obtain permission in writing for carrying out the works from the District Magistrate or the Commissioner of Police or any other officer authorised by the State Government in this behalf. They submit that this provision is similar to provision of Section 16 of the Act 1885 and validity of this Section has been upheld by the Division Bench of this Court in the case of Vivek Brajendra Singh.

32. First proviso to sub-rule (1) of Rule 3 lays down that in cases where the owner or the occupier raises an objection in respect of the works to be carried out, the licensee shall obtain permission in writing from the District Magistrate or the authorised officer. Section 16 of the Act, 1885 contains a similar provision and from the words and expressions used therein it can be said that first proviso to Rule 3(1) stands almost in *pari materia* to Section 16(1). We have already found that Section 16 does not violate the rule of fair procedure. Same view has been taken by the Division Bench of this Court in the case of Vivek Brajendra Singh. It would then follow that Rule 3(1) cannot be found to be invalid on the ground of it adopting an arbitrary and unfair procedure. Accordingly, we hold that Rule 3(1) is valid and does not violate the mandate of Articles 14 and 21 of the Constitution of India.

33. As regards validity of Rule 3(4) of the Rules, 2006, we must say that we have already found Section 164 to be *intra vires* the Articles 14 and 21 of the Constitution of India and, therefore, it is not possible to accept the contention that Rule 3(4) of the Rules, 2006, which lays down that nothing contained in Rule 3 shall affect the powers conferred upon any licensee under Section 164 of the Act, is bad in law.

34. Learned counsel for the petitioners has further submitted that even though

the powers of telegraph authority in respect of laying of telegraph lines have been conferred upon the respondent No. 1 for the purpose of laying of transmission lines by notification dated 24.8.2006, such conferment of power does not result in the District Magistrate being declared an authority to exercise powers under Sections 16 and 17 of the Act, 1885 to decide justifiability of the objections or obstructions of the land owner and granting or refusing permission to continue with the work of laying of the transmission line as the notification is silent in this regard.

35. Learned counsel for the respondent No. 1, learned G.P. and learned A.S.G.I. submit that once powers of the telegraph authority are conferred upon the respondent No. 1 which powers are to be found in Part III of the Act, 1885, all powers conferred upon the authorities in that part would also be available, just as they are, to the authorities while exercising their respective powers for the purpose of laying of transmission lines, deciding objections, suggestions and so on.

36. The notification dated 24.8.2006 has been issued by the Government in exercise of powers conferred on it by Section 164 of the EA, 2003. This notification has already been reproduced in this judgment earlier. A careful reading of the notification dated 24.8.2006 shows that the State of Maharashtra has conferred upon the respondent No. 1, for the purpose of laying of electric lines etc., all the powers which a telegraph authority possesses with respect to placing of telegraph lines and posts under Part-III, of the Telegraph Act. The powers of the telegraph authority are contained in para III of the Act, 1885, which consists of 12 sections starting from Sections 10 and ending with Section 19-B. Sections 10 to Section 14, in particular, deal with powers of the telegraph authority and remaining sections relate to disputes between telegraph authority and local authority, exercise of powers by the District Magistrate and other incidental matters. Out of these sections, Sections 10, 16 and 17 are relevant here for considering the issue raised by the petitioners. Section 10 speaks about power of the telegraph authority to place and maintain telegraph lines and posts. Section 16(1) lays down that if the exercise of the powers mentioned in Section 10 in respect of property not vested in or under the control of any local authority is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them. Section 17 deals with the right of the occupier or owner of private land to apply for change of route of the telegraph line or location of the post and makes the District Magistrate as final adjudicatory authority in that regard.

37. It is obvious that power of the District Magistrate under Section 16 or Section 17 is not a stand alone power and it depends for its exercise upon the obstruction or resistance made by the land owner or occupier to the exercise of power by the telegraph authority under Section 10. Exercise of power under either of the Sections 16 and 17 by the District Magistrate is contingent upon two situations, first-there should be an exercise of power by the telegraph authority

for maintaining or establishing of a telegraph line or post and second-there should be resistance or obstruction made or application filed for change of the line or post by the occupier or the owner of the land. Thus, the power under Section 16 or Section 17 depends for it's coming to life upon the exercise of power by the telegraph authority under Section 10. It then follows that power of the District Magistrate under Section 16 or Section 17 is only an extension of power of the telegraph authority under Section 10 and it only makes exercise of power under Section 10 accord with rules of natural justice. In this way, Section 10 on the one hand and Sections 16 and 17 on the other are interrelated to each other and justify existence of each other. In other words, they cannot be read separately in isolation of each others.

38. It would be clear from the above discussion that whenever power of the telegraph authority under Section 10 is conferred upon a licensee like the respondent No. 1 by notification issued in exercise of the power under Section 164 of the EA, 2003, by necessary implication, it follows that power under Section 16 as well as Section 17 of the Act, 1885 is also extended to the disputes arising from laying of the transmission line and is exercisable in that context by the District Magistrate. Therefore, a notification issued in pursuance of Section 164 of the EA, 2003 need not specifically mention about conferment of Section 16 or Section 17 power on the District Magistrate in relation to a work of placing of electric line or posts. Even otherwise, the notification dated 24.8.2006 does mention about conferment on the licensee of the power which a telegraph authority possesses in Part III of the Act, 1885 and Sections 16 and 17 being present in Part III, the notification can be read over as indicating inclusion of power of the District Magistrate for the purpose of deciding justifiability of objections and suggestions of the obstructor taken or given in relation to laying of the transmission line under Sections 16 and 17 of the Act, 1885. Interestingly, facts of this case show that the petitioners themselves had submitted to the authority of the District Magistrate under Sections 16 by filing their reply and also under Section 17 by filing their application. Above all, first proviso to Rule 3(1) of the Rules, 2006, prescribes the District Magistrate or Officer named therein as the authority to decide the objections. We, therefore, reject the contention of the petitioners regarding inadequacy of the notification dated 24.8.2006.

39. Learned counsel for the petitioner has submitted that the proposed tower has been located right in middle of the land of the petitioners and it virtually divides the land into two parts rendering it totally useless for carrying on activity of stone quarrying. He submits that the impugned order passed by the District Magistrate is the result of non-application of mind on his part and that it has been passed without obtaining any opinion of any independent technical expert and also clearance from various authorities under the EA, 2003. He also submits that there has been no communication received by the petitioners regarding mode and manner of fixation of compensation. He also submits that the petitioners are not averse to carrying out of the work of laying of transmission

line and all that the petitioners are seeking is its diversion to the boundary of their land.

40. Learned counsel for the respondent No. 1 has strongly opposed the shifting of the transmission line calling it an impractical suggestion. He also submits that the Collector had obtained opinion of the experts in the matter and that there is complete application of mind on the part of the District Magistrate in passing the impugned order.

41. On perusal of the impugned order passed by the District Magistrate, we find that he had obtained report from the respondent No. 1 regarding feasibility of suggestion given by the petitioners and also found that it is technically not feasible. He has found that realignment of the transmission line would not be possible as the report submitted by the respondent No. 1 reveals that foundations for the towers following and preceding the tower in question are already complete and the realignment is not possible now.

42. On perusal of the record, we find that there is neither any perversity in the impugned order nor any absence of application of mind to the facts of the case on the part of the District Magistrate in passing the order and, therefore, the impugned order has to be upheld as an order passed validly and properly.

43. So far as obtaining of clearance from various authorities is concerned, we must say that it is for the respondent No. 1 and the State Government to do the needful in the matter and the petitioners would have no locus standi to raise any challenge on this ground with the entire scheme having been already duly approved by the State Government.

44. Lastly, it is submitted by the learned counsel for the petitioners that the petitioners were earning their livelihood from the land in question by quarrying stones and since this activity has now come to a complete halt, the petitioners' right to livelihood, a fundamental right guaranteed under Article 21 of the Constitution of India, as held in the case of Centre for Environment and Food Security vs. Union of India and others, reported in (2011)5 SCC 676, and right to carry on occupation or business under Article 19(1)(g) have been taken away. That the stone quarrying activity has been completely affected by the location of the tower of transmission line on the land of the petitioners is seriously disputed by the respondent No. 1. In such a case, a finding of facts would necessarily have to be arrived at which in exercise of extraordinary writ jurisdiction is not possible for this Court. The contention being incapable of consideration deserves to be ignored and we do so. However, taking a sympathetic view in the facts of the case, we would only say that if the petitioners desire and apply for allotment of some alternate land in order to carry on similar activity, same may be considered by the Government in accordance with law.

45. In the result, we find no merit in this petition and it deserves to be dismissed.

46. Writ Petition stands dismissed.

47. However, if any application for allotment of some alternate land for carrying out the same activity of stone quarrying is made by the petitioners to the Government, it may consider the same in accordance with law.

48. No order as to costs.

49. Rule is discharged.

50. At this stage, learned counsel for the petitioners makes a request for continuation of the interim order, which is in operation till today, for a further period of four weeks so as to enable the petitioners to approach the Hon''ble Apex Court for seeking appropriate relief. The prayer has been opposed by the learned counsel for respondent no. 1.

51. However, considering the fact that interim order is in operation till today and also the issue involved in this petition, we are inclined to grant the request.

52. Accordingly, it is directed that the interim order shall continue for further period of four weeks from today and it shall cease to operate automatically thereafter.