
(1993) 08 PAT CK 0035

In the Patna High Court

Case No : Writ Jurisdiction Case No. 7105 of 1989

Kamleshwar Prasad Mishra and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 27-08-1993

Acts Referred:

Constitution of India, 1950 — Article 12
Electricity Act, 1910 — Section 37
Electricity Rules, 1910 — Rule 77, 79, 80, 82, 83
Telegraph Act, 1885 — Section 16

Citation : (1994) 1 PLJR 613

Hon'ble Judges : S.B. Sinha, J;R.N. Prasad, J

Bench : Division Bench

Advocate : Manu Shankar Mishra, Mithilesh Kumar Rai, Anil Kumar Tiwary and Arun Kumar, for the Appellant; S.K. Singh, Y.V. Giri and Sharwan Kumar, for the Respondent

Judgement

S.B. Sinha, J.—The prayer of the Petitioners in this application is that the Respondents Be commanded to shift the high tension wire from the plot and house of the Petitioners situated in Sachivalaya Colony, Sector "O", Kankarbagh, Patna.

2. The Petitioners who are four in numbers, are owners of plot Nos. B-49 B- 48, B-40 and B-20 Sector "O" of Sachivalaya Colony, Kankarbagh.

3. The said colony was constructed by the Members of a Co-operative Society, namely Patna Secretariat Ministerial Officer's Cooperative House Construction Society Ltd. (hereinafter referred to the Society).

4. The Petitioners alongwith the writ application have annexed a copy of the plan of the colony which is marked as Annexure-1 to the writ application.

5. The Petitioners have contended that from the said plan it would appear that the High Voltage Overhead lines have been erected by the Bihar State Electricity

Board (hereinafter referred to as the Board) hazardedly causing danger to the safety of the life and property of the Petitioners.

6. The Petitioners have contended that the building plan of the houses had duly been approved by the Patna Regional Development Authority in accordance with law.

7. The Bihar State Electricity Board constructed a power Sub-station near the Central School, Kankerbagh. The Board has extended the electric over head wire on, plot No. B-49 having a capacity of 33,000 volts.

8. The predecessor-in-interest of the Petitioner No. 1 Raj Roy Mishra filed an application before the chairman. The Board by a letter dated 16.9.1983 requested him to shift the said lines. After the death of said Shri Mishra, his wife also made a representation 4.3.1984 (Annexure-4). The Secretary of the Society also made a similar request by his letter dated 17.5.1984, but no action was taken in this regard.

9. On 20th September, 1989 the Executive Engineer, of the Board expressed his inability to shift the lines from the present position since the same had allegedly been constructed prior to the construction of the residential houses of the Petitioners.

10. The Petitioners have however, contended that the lines had been erected after the protest was made. Mrs. Mishra again filed a representation to the concerned authorities through registered post on 12.12.1989 which is contained in Annexure-8 to the writ application.

11. A counter affidavit has been filed on behalf of the Respondent Nos. 3 to 5 wherein inter alia it was contended that the 33 K.V. line was laid in the year 1982 and at that time no house building had been constructed or was under construction.

12. It has also been stated that prior to the construction of houses, the Petitioners did not give any notice to the Board and they had also not forwarded the relevant plans of the proposed structure of the building as is required under the Electricity Rules and thus the said constructions had been made in violation thereof.

13. It has also been stated that the Petitioner No. 1 had made encroachment on the public land after the 33 K.V. line was laid down and thus themselves did not follow the rules nor obtained clearance certificate.

14. This case depicts a sordid state of affairs. Despite the fact that the Petitioners had filed numerous representations, no action had been taken by the Board at the appropriate time nor the stand taken in the counter affidavits were earlier disclosed by the Executive Engineer in his reply to the same of the said representation.

15. This writ application was filed on 8.8.1989. Various adjournments had been,

granted from time to time to the Board for filing counter affidavit, but the same had not been done.

16. On 18.5.1990, a Bench of this Court imposed a cost of Rs. 2,000/- (Rupees two thousand) upon the Bihar State Electricity Board and directed it to take all steps for complying with the provisions of Rule 82 of the Indian Electricity Rules, 1910 and also take such remedial measures as are necessary for the purposes of protection of life and property of the Petitioners and other similarly situated persons.

17. An application for modification was filed by the Respondent-Board on 17.8.1990. The said application was rejected by Anr. Bench of this Court on 8.11.90, in terms whereof the aforementioned sum of Rs. 2,000/- was directed to be paid within a period of two weeks.

The Bench further observed as follows:

We may also indicate that it will be better if this amount of Rs. 2,000/- is realised from the persons responsible for delay in filing the counter affidavit. We hope a statement to that effect will be done on the next date.

18. When the matter was again listed, by an order dated 8.2.1991 a Bench of this Court while observing that the grievance of the Petitioner is a matter of grave consequence, affecting the life of people, requested the Senior Electrical Inspector for rendering his opinion as to whether further constructions over the land in question can be carried out in the existing circumstances, if not, whether it is feasible to divert the high tension lines through some other routes without endangering the life and property of the inhabitants of the area.

19. The Senior Electrical Inspector, Bihar has submitted his report to this Court on 21.12.1991 wherein inter alia he has opined that Shri Mishra cannot add Anr. storey to his house.

He further found that the erection of overhead line was in violation of Rule 80 of the Indian Electricity Rules. He also found that the line has also been erected over a children park in contravention of Rule 77 of the Indian Electricity Rules, 1956. He, therefore opined that the existence of the aforementioned 33 K.V. line would be dangerous to the life of the Petitioners and other persons. His further opinion in the matter was that it was not proper for the Board to erect the line over children park.

He therefore, suggested as follows:

Uprokat 33 K.V. line ke 33-11 K.V. sub-station, Kankarbagh se nikal kar dahini or (dakshin) gaya Hanuman Nagar road kee ore le jana hoga. Uske bad dahini ore (paschim) Patna central School (ek private sanstha) ke samne picha sarak se ghum kar Rajendra Nagar over bridge wali sarak par ushi line me punah jorna hoga. Ess Ashya ka ek naksa niche diya gaya hai jisme bartman line nila rang se awam prastawit line lal rang se darshaya gaya hai.

20. He also has annexed a plan showing the existing portions of the construction etc.

21. A counter affidavit to the said report has been filed on 17.5.1993. According to the Bihar State Electricity Board, the suggestion given by the Senior Electrical Inspector is neither practicable nor feasible. In the said counter affidavit, it has inter alia been stated as follows:

That 33 K.V. PESU V. Feeder has cross just on the border of the east side of the plot No. B-49 of the Sachivalaya Colony. It appears that owner of the said plot has not followed the provisions of P.R.D.A. Rules and regulations in constructing his house, as a result one phase wire of 33 K.V. PESU V Feeder has crossed through eastern Border of his house but the same is still about 16 ft. high from the road. At present, there is no danger to his house from that Feeder. However, if he constructs second storey, it may obstruct the construction. If the owner of the said plot would have constructed the house as per the Rules and Regulations of the P.R.D.A. i.e. sufficient land clearance of about 10 ft. from the boundary wall to the main building construction, there should not have such a danger or obstruction. The Electricity Board has constructed this Feeder much prior to the construction of the said house over plot No. B-49.

That it is stated that in plot No. B-49 eastern side of the house has been constructed just on the road without leaving sufficient space in between the boundary wall and the building.

That with regard to the proposal given by the Senior Electrical Inspector, Bihar Patna regarding shifting of existing PESU V. Feeder, it is stated that it is neither possible nor viable because the proposed route as suggested by the Inspector, there is already in existence two numbers 11 K.V. Hanuman Nagar Feeder on both sides of the road leading to Hanuman Nagar L.T. line as well. There is no possibility to construct third line of 33 K.V.A. line on that proposed route. The construction will endanger the existing 11 K.V. Feeder and electric line resulting in injury to power system and breaking of fire.

22. Mr. Manu Shankar Mishra, the learned Counsel appearing on behalf of the Petitioner has submitted that the action of the Respondents is violative of Rule 83 of the Indian Electricity Rules. It has been stated that in the year 1982 there was only one house in the colony which was constructed in the year 1978.

23. It has been submitted that although the Respondents have stated that the residential houses situate on plot No. B-20 and B-40 have not been constructed in accordance with the sanctioned plan, no allegation has been made in respect of the constructions made on other plots.

He further submitted that it is not correct to say that in extending the high tension line the Board had not violated Rules 79,80 and 82 of the Indian Electricity Act.

24. The learned Counsel further submitted that even in relation to public street,

a citizen has a right which cannot be curtailed.

The learned Counsel further relied upon a decision in *Managers of the Metropolitan Asylum District v. Frederic Hill and Ors.* reported in 1881 (6) App Cases 193, *Birmingham And Midland Motor Omnibus Co. Ltd. v. Worcestershire Country Council* reported in 1967 (1) All B.R. 544 and *Pennsylvania Coal Co. v. H.J. Mohan and Ors.* reported in 260 US 393 at page 415.

The learned Counsel further relied upon Section 77 of the Indian Telegraph Act.

25. Mr. Y.V. Giri the learned Counsel appearing on behalf of the Respondent Board has submitted that the Petitioner is not entitled to any relief whatsoever inasmuch as they constructed their houses after the high tension line has actually been drawn.

26. Rules 77, 80, 82 and 83 of the Indian Electricity Rules which are relevant for the purpose of this case read thus:

77. Clearance above ground of the conductor--

(1) no conductor of an overhead line, including service lines, erected across a street shall at any part thereof be at a height less than--

(a) for low and medium voltage lines ... 5.8 Metres

(b) for high voltage lines ... 6.1 metres.

(2) No conductor of an overhead line, including service lines, erected along any street shall at any part thereof be at a height less than --

(a) for low, medium voltage lines ... 5.5. metres

(b) for high voltage lines ... 5.8 metres.

(3) No conductor of an overhead line including service lined erected elsewhere than along or across any street shall be at a height less than --

(a) for low, medium, and high voltage lines upto and including 11,000 volts, if bare ... 4.6 metre

(b) for low, medium and high voltage lines upto and including 11,000 volts, insulated ... 5.0 metres

(c) for high voltage lines above 11,000 volts ... 5.2 metres

(4) for extra-high voltage lines the clearance above ground shall not be less than 5.2 metres plus 0.3 metre for every 33,000 volts or part thereof by which the voltage of the line exceeds 33,000 volts.

Provided that the minimum clearance along or across any street shall not be less than 6.1 metres.

80. Clearance from buildings of high and extra-high voltage lines.--(1) Where a

high or extra-high voltage overhead line passes above or adjacent to any building or part of a building it shall have on the basis of maximum sag a vertical clearance above the highest part of the building immediately under such line, of not less than --

(a) for high voltage lines ... 3.7 Metres upto and including 33,000 volts

(b) for extra-high volt- ... 3.7 Metres age lines plus 0.3 metre for every additional 33,000 volts or part thereof.

82. Erection of or alteration of buildings, structures, flood banks and elevation of roads.-- (1) If at any time subsequent to the erection of an overhead line (whether covered with insulating material or bare), any person proposes to erect a new building or structure of bank or to raise any road level or to carry out any other type of work whether permanent or temporary or to make in or upon any building or structure or flood bank or road, any permanent or temporary addition or alteration, he and the contractor whom he employs to carry out the erection, addition or alteration, shall if such work, building, structure, flood bank road or additions and alterations, thereto would, during or after the construction result in contravention of any of the provisions of Rule 77,79 or 80, give notice in writing of his intention to the supplier and to the Inspector and shall furnish therewith a scale drawing showing the proposed buildings, structure flood bank road, and addition or alteration and scaffolding required during the construction.

(2)(a) On receipt of the notice referred to in Sub-rule (1) or otherwise, the supplier shall examine whether the line under reference was lawfully laid and whether the person was liable to pay the cost of alteration and if so, send a notice without undue delay, to such person together with an estimate of the cost of the expenditure likely to be incurred to so alter the overhead line and require him to deposit, within 30 days of the receipt of the notice with the supplier, the amount of the estimated cost.

(b) If the person referred to in Sub-rule (1) disputes the supplier's estimated cost of a alteration of the over-head line or even the responsibility to pay such test, the dispute may be referred to the Inspector by either of the parties whereupon the same shall be decided by the Inspector.

(3) No work upon such building, structure, flood bank, road and addition or alteration thereto shall be commenced or continued until the Inspector had certified that provisions of Rules 77, 79 or 80 are not likely to be contravened either during or after the aforesaid construction: Provided that the Inspector may, if he is satisfied that the overhead line has been so guarded as to secure the protection of persons or property from injury, or risk of injury, permit the work to be executed prior to the alteration of the overhead line, or, in the case of temporary addition or alteration, without alteration of the overhead line.

(4) On receipt of the deposit, the supplier shall alter the overhead line within one month of the date of deposit or within such longer period as the Inspector may

allow and ensure that it shall not contravene the provisions of Rule 77, 79 or 80 either during or after such construction.

(5) In the absence of an agreement to the contrary between the parties concerned, the cost of such alteration of the overhead line laid down shall be estimated on the following basis, namely:

(a) the cost of additional material used on the alteration giving the due credit for the depreciated cost of the material which would be available from the existing line;

(b) the wages of labour employed in effecting the alteration;

(c) supervision charges to the extent of 15 per cent of the wages mentioned in Clause (b) and;

(d) and changes incurred by the supplier in complying with the provisions of Section 16 of the Act in respect of such alterations.

(6) Where the estimated cost of the alteration of the overhead line is not deposited the supplier shall be considered as an aggrieved party for the purpose of this rule.

83. (sic)-it should be 82A) Transporting and storing of material near overhead lines:

(1) No roads, pipes or similar materials shall be taken below or in the vicinity of any bare overhead conductors or lines if they are likely to infringe the provisions for clearances under Rule, 79 and 80, Unless such materials are transported under the direct supervision, of a competent person authorised in this behalf by the owner of such overhead conductors or lines:

(2) Under no circumstances rods, pipes or other similar materials shall be brought within the flash over distance of bare live conductors or lines, and

(3) No material or earth work or agricultural produce shall be dumped or stored or trees grown below or in the vicinity of bare overhead conductors/lines so as to reduce the requisite safely clearance supplied under Rules 79 and 80.

27. In this case evidently there has been a flagrant violation of the statutory Rules both from the sides of the Petitioner as also the Bihar State Electricity Board. Even assuming that the construction of the houses were made by the Petitioners after 1982, it was the duty of the Respondent to take recourse to Rule 82 of the Rules.

28. The predecessor in-interest of the Petitioner No. 1 as also the Secretary of the society had been issuing letters to the Board and thus it was its duty as a "State" within the meaning of Article 12 of the Constitution of India to bring it to the notice of the Electrical Inspector so as to enable him to take appropriate measures in that regard.

29. Overhead lines which was previously known as "Aerial Lines" means any electric supply Line which is placed above ground and in the open space.

30. Chapter VIII of the Indian Electricity Rules framed u/s 37 of the Indian Electricity Act, 1910 deal with over-head lines, underground cables and generating stations.

31. It is admitted that the sub-station in question had already been installed by the Board, it, was, therefore, its duty to see that the statutory rules are complied with.

32. There cannot be any doubt that the Board as a deemed licensee under the Indian Electricity Act is bound to comply with the provisions of the Indian Electricity Rules.

33. The Board, therefore, was bound to strictly comply with the provisions of the Indian Electricity Rules.

There cannot be any doubt that in a given case the court may refuse to interfere with a matter where the right of a person is involved if thereby a greater public inconvenience could be caused which may be subject to payment of reasonable compensation as may be provided for to the persons aggrieved.

In *Birmingham and Midland Motor Omnibus Co. Ltd. v. Worcestershire Country Council* reported in 1967 (1) All. E.R. 544 it has been held that such an action must be justified in law.

34. In *Pennsylvania Coal Co. v. Malion* reported in 260 United States page 392 and page 415 it was held as follows:

The right of the public in a street purchased or laid out by eminent domain are those that it has paid for. In any case its representatives have been so short sighted as to acquire only surface rights, without the right of support, we see no more authority for supplying the latter without compensation than there was for taking the right of way in the first place, and refusing to pay for it because the public wanted it very much. The protection of private property in the 5th Amendment presupposes that it is wanted for public use, but provides that it shall not be taken for such use without compensation. A similar assumption is made in the decisions upon the 14th Amendment. *Hairston v. Danville W.R. Co.* 208 U.S. 598, 605, 53 L.ed. 637, 639, 23 Cup. Ct.R.P. 331, 13 Ann. Case, 1008- When this seemingly absolute protection is bound to be qualified by the police power, the natural tendency of human nature is to extend the qualification more and more until at least private property disappears. But that cannot be accomplished in this way under the constitution of the United states.

The general rule, at least, is that while property, may be regulated to a certain extent, if regulation goes too far it will be recognised as a taking. It may be doubted how far exceptional cases, like the blowing up of a house to stop a conflagration, go and if they go beyond the general rule, whether they do not

stand as much upon tradition as upon principle.

35. The aforementioned decisions had been quoted with approval in numerous cases (see for example *Belfast Corporation v. O.D. Cars Ltd.* reported in 1960 (1) All. E.R. 65 at page 70).

36. The decision of the United State in *Pennsylvania Coal's* case (Supra) has also been quoted with approval by the Supreme Court in *Chiranjit Lal Choudhary v. Union of India and Ors.* reported in 1950 Supreme Court Reports, 869.

37. However, in view of the fact that allegedly the Senior Electrical Inspector has submitted a report not in presence of the authorities of the Bihar State Electricity Board, we direct that a Committee be constituted with the following members so as to sort out the differences between the parties and suggest remedial measures therefore namely:

Chief Electrical Inspector, Convenor, Vice Chairman of the Patna Regional Development Authority and Chief Engineer Electricity Works Department of the State of Bihar. They shall visit the spot and make an enquiry in presence of the parties. They shall submit a report to this Court within one month from the date of the receipt of a copy of this order.

38. The Members of the Committee shall hold the site inspection and suggest remedial measures, if possible, so far as the grievances made by the Petitioners are concerned.

39. The Bihar State Electricity Board shall bear the entire cost which may be incurred for this purpose and it is directed that a sum of Rs. 5,000/- will be deposited by it within one week from today.

Put up this case after two months.

R.N. Prasad, J.

40. I agree.