

(2013) 07 KL CK 0138
In the High Court Of Kerala
Case No : WP (C) . No. 3192 of 2013 (Y)

Kanaran

APPELLANT

Vs

The Additional District Magistrate, The Executive Engineer,
Kerala State Electricity Board, Koyilandy, Assistant Engineer,
Kerala State Electricity Board, Thikkodi and Vinodan

RESPONDENT

Date of Decision : 01-07-2013

Acts Referred:

Electricity Act, 2003 — Section 164
Telegraph Act, 1885 — Section 16(1)

Citation : (2013) 3 ILR (Ker) 526 : (2013) 3 KHC 445

Hon'ble Judges : C.K. Abdul Rehim, J

Bench : Single Bench

Advocate : K. Mohanakannan and Smt. A.R. Pravitha, for the Appellant; Egy. N. Ealias, Government Pleader for R1, Sri. Sajeevkumar K. Gopal, SC, KSEB, by R2 and R3, Sri. V.V. Surendran and Sri. P.A. Harish, for R4, for the Respondent

Final Decision : Allowed

Judgement

C.K. Abdul Rehim, J.—Ext. P7 order passed by the 1st respondent in exercise of power vested u/s 16(1) of the Indian Telegraph Act, 1885, is under challenge in this writ petition. The petitioner is one among the objectors against drawing of electric line to the 4th respondent's house. In the petition filed by the Assistant Executive Engineer before the 1st respondent, three routes were suggested. The length of each route was specifically described. The petitioner and other respondents in Ext. P7 raised stiff objections with respect to the first route suggested as "ABCD". The 1st respondent thereupon required the Assistant Executive Engineer to conduct an inspection and to suggest alternate routes if any available. It is stated that a report was submitted to the effect that the route "ABCD" is the most feasible and less expensive one. By accepting that report, permission was granted to draw the line through the route "ABCD". Contention of the petitioner is that, objection submitted before the 1st respondent, copy of which is produced as Ext. P5, has not been adverted to by the 1st respondent. In

spite of specific contention that the other two routes suggested are through path ways and public road, feasibility of those routes were not considered. It is contended that length of the other two routes are not correctly mentioned in the report submitted by the Assistant Executive Engineer.

2. Per contra, Standing Counsel for respondents 2 and 3 as well as counsel appearing for 4th respondent contended that, in the report submitted before the 1st respondent, the correct position and factual situation has been enumerated and it is only after being convinced that the route "ABCD" is the shortest and less expensive one, the permission is granted.

3. While discharging powers vested under 16(1) of the Indian Telegraph Act, 1885 read with Section 164 of the Electricity Act, 2003, no doubt, the 1st respondent is discharging a quasi-judicial function. All principles of natural justices need to be adhered strictly. Admittedly a written objection has been filed before the 1st respondent by the petitioner. No advertence to that objection is reflected in the impugned order. It is evident that three routes were suggested by the authorities of the K.S.E.B. itself. Feasibility of all the three routes based on the objections raised by the petitioner ought to have been examined and adjudicated on the basis of an enquiry conducted by the 1st respondent. For conducting such an adjudication and for arriving at a just conclusion if a site inspection is required, the same ought to have been done either personally by the 1st respondent or through any competent officer independent of the authorities of K.S.E.B. In the case at hand the 1st respondent had merely accepted the report submitted by the Assistant Executive Engineer, who is the applicant before him in the proceedings. From the proceedings it is not evident as to whether a copy of the report was made available to the objectors and they were given opportunity to object such report.

4. In the decision of this court in *Harrisons Malayalam Limited Vs. Kerala State Electricity Board*, it is held that when the District Magistrate observe that, "the matter was further examined in the light of the argument at the time of hearing and the further details collected from the Assistant Executive Engineer" he is not exercising the powers properly. It is observed that, the further details collected from the Assistant Executive Engineer were not known to the petitioner. He was not given opportunity to contradict or to explain the adverse effects of the further details collected. When an authority is invested under law with power to affect property rights of one person, the said authority is bound to give such person an opportunity of being heard before it proceeds to act on some materials adverse to him. This, it is observed, is as a rule of universal application and is founded on plainest principles of justice.

5. In a Division Bench ruling of this Court in *Valsamma Thomas Vs. Additional District Magistrate, Alappuzha and Another*, the parameters to be followed in exercise of jurisdiction u/s 16(1) is enumerated, which reads as follows:

(1) The District Magistrate has to exercise his discretion judicially.

(2) He has to pass the order under S. 16(1) of the Telegraph Act, after hearing the parties and after taking such evidence as is required with regard to the objections raised.

(3) The order passed by the Court should be a speaking order.

(4) The order should reflect the objections raised by the parties and reasons given by the Magistrate for accepting or rejecting the same.

(5) The order should also reflect the materials relied on by the District Magistrate for arriving at the conclusion.

6. Reviewed on the basis of the legal principles settled as above, this court has no hesitation to hold that the impugned order does not reflect proper exercise of the quasi-judicial authority. Obtaining report from the applicant with respect to feasibility of the alternate routes is not a proper procedure. Non-advertence to the objections and denial of opportunity to controvert the subsequent report is writ at large in the impugned order. Hence I am of the opinion that the matter requires reconsideration and a fresh decision at the hands of the 1st respondent. In the result, the writ petition is allowed and Ext. P7 is hereby quashed. The matter is remitted for fresh adjudication and decision. The 1st respondent shall consider the application afresh and decide the same after affording opportunity to all parties concerned. If it is found necessary, the 1st respondent shall conduct personal inspection at the site or shall obtain report from any competent officer other than officials of the K.S.E.B. A final decision in this regard shall be taken at the earliest possible, at any rate within a period of one month from the date of receipt of a copy of this judgment.

The petitioner or the 4th respondent will produce a copy of this judgment before the 1st respondent for an early compliance of the directions.