

(2012) 02 BOM CK 0121
In the Bombay High Court
Case No : Writ Petition No. 556 of 2012

Kashiram Mahadeo Akre and Others

APPELLANT

Vs

N.T.P.C. Ltd., Mouda and The District Magistrate (Collector),
Collector Building, Civil Lines, Nagpur

RESPONDENT

Date of Decision : 23-02-2012

Acts Referred:

Electricity Act, 2003 — Section 164

Telegraph Act, 1885 — Section 10, 16, 16(1), 3(6)

Citation : (2012) 4 ALLMR 162 : (2012) ELR 517 : (2012) 3 MhLj 131

Hon'ble Judges : Vasantia Naik, J

Bench : Single Bench

Advocate : Alok Daga, for the Appellant; Ramesh Darda with Shri A.N. Laddhad, Counsel for the Respondent No. 1 and Shri P.V. Bhoyar, Assistant Government Pleader for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

Smt. Vasantia Naik, J.—Rule made returnable forthwith. The petition is heard finally with the consent of the learned counsel for the parties.

The petitioners impugn the order passed by the District Magistrate on a preliminary objection raised by the petitioners to the tenability of the application filed by the respondent No. 1 Corporation u/s 16(1) of the Indian Telegraph Act, 1885 seeking permission to continue the work of construction of 132 KV Tower.

2. The petitioners are agriculturists and the owners of land in village Mouda, District Nagpur. The respondent No. 1 Corporation had started the project for generation of 1000 MW electricity at Mouda which is known as the Mouda Super Thermal Power Project. The respondent No. 1 Corporation had informed the petitioners that it would start the construction of the High Tension Lines by erecting the tower in the land of the petitioners. The petitioners had raised an objection to the erection of the tower in their land. Since the petitioners were obstructing the work of erection of the tower and laying the lines, the respondent

No. 1Corporation filed an application u/s 16(1) of the Indian Telegraph Act, 1885 before the District Magistrate for grant of permission to continue the work of construction of the tower and laying the lines. The petitioners raised a preliminary objection to the tenability of the application on the ground that the respondent No. 1Corporation was not a "Telegraph Authority" within the meaning of the term under the provisions of Section 3(6) of the Indian Telegraph Act, 1885 and, hence, the District Magistrate had no jurisdiction to entertain the application filed by the respondent No. 1Corporation u/s 16 of the Act of 1885. The District Magistrate, however, rejected the preliminary objection by the impugned order dated 30.01.2012.

3. Shri Daga, the learned counsel for the petitioners, submitted that the District Magistrate did not have jurisdiction to entertain the application filed by the respondent No. 1Corporation u/s 16 of the Indian Telegraph Act, 1885 as only a "Telegraph Authority" within the meaning of the term u/s 3(6) of the Act of 1885 was entitled to file an application u/s 16 and the respondent No. 1Corporation was not a Telegraph Authority. The learned counsel for the petitioners submitted that neither was the respondent No. 1Corporation a "Telegraph Authority" within the meaning of the term u/s 3(6) of the Act of 1885 nor was the respondent No. 1Corporation conferred with any powers of the Telegraph Authority under the Act of 1885 by the order of the Appropriate Government in writing as required u/s 164 of the Electricity Act, 2003. In the aforesaid background, according to the learned counsel for the petitioners, the application filed by the respondent No. 1Corporation u/s 16 of the Indian Telegraph Act, 1885 was not tenable and the District Magistrate committed a serious error in holding that the application was tenable because the project implemented by the respondent No. 1Corporation was a Government Approved Project.

4. The learned counsel for the respondent No. 1Corporation did not make any specific submission in reply to the submissions made on behalf of the petitioners. However, the learned counsel for the petitioners submitted that in case, the respondent No. 1Corporation has approached the wrong forum u/s 16 of the Indian Telegraph Act, 1885, the respondent No. 1Corporation would approach the Appropriate Authority under the provisions of Electricity Act, 2003 and the Works of Licensees Rules, 2006.

5. Shri Bhoyar, the learned Assistant Government Pleader, supported the order passed by the respondent No. 2District Magistrate on 30.01.2012 and submitted that the authority has rightly held that the application filed by the respondent No. 1Corporation was tenable and the objection was liable to be dismissed.

6. For considering whether the application filed by the respondent No. 1Corporation was tenable before the District Magistrate u/s 16 of the Indian Telegraph Act, 1885, it would be necessary to consider the relevant provisions of the Act of 1885. Section 16 of the Indian Telegraph Act, 1885 stipulates that if the Telegraph Authority is obstructed or resisted by any person in maintaining or laying the telegraph lines upon any immovable property, the District Magistrate

may, in his discretion, order that the Telegraph Authority shall be permitted to exercise the power to maintain the telegraph lines. Section 10 of the Act of 1885 stipulates that 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. The section also casts a duty on the Telegraph Authority to do as little damage as possible while placing and maintaining a telegraph line and to pay full compensation to all persons interested. It is, thus, clear from the reading of the provisions of Section 10 of the Act of 1885 that a Telegraph Authority is empowered to place and maintain a telegraph line in the manner prescribed by the provisions of Section 10 and while placing and maintaining the telegraph line, if there is any obstruction or resistance, the Telegraph authority is entitled to approach the District Magistrate u/s 16 of the Act of 1885 for permission to remove the obstruction. It is, thus, clear from a reading of the provisions of Section 10 and 16 that a "Telegraph Authority" is empowered to place and maintain the telegraph lines and to seek an appropriate order from the District Magistrate in case there is any resistance or obstruction while exercising the power u/s 10.

7. Since only the Telegraph Authority is entitled to approach the District Magistrate u/s 16(1) of the Act, it is necessary to consider whether the respondent No. 1 Corporation is a "Telegraph Authority". A Telegraph Authority is defined u/s 3(6) of the Act of 1885. Section 3(6) of the Act of 1885 reads thus

Telegraph Authority" means the Director General of [Posts and Telegraphs], and includes any officer empowered by him to perform all or any of the functions of the telegraph authority under this Act.

It is the case of the petitioner that the respondent No. 1 Corporation is not a "Telegraph Authority" under the provisions of the Act of 1885 and it is also not the case of the respondent No. 1 Corporation that it is the "Telegraph Authority" within the meaning of the term u/s 3(6). It would now be necessary to consider the provisions of Section 164 of the Electricity Act, 2003, which permit a public officer, licensee or any other person engaged in the business of supplying electricity under the Act of 2003 to exercise the powers of the Telegraph Authority under the Act of 1885, in case the said public officer, licensee or other person engaged in the business of supplying electricity under the Electricity Act of 2003 is empowered by the Appropriate Government by an order in writing in that regard. It is the case of the petitioners that the respondent No. 1 Corporation is not authorized by the Appropriate Government, in writing, to exercise the powers of the Telegraph Authority under the provisions of the Indian Telegraph Act, 1885 for placing of the Telegraph lines and posts. The counsel for the respondent No. 1 Corporation though was granted enough time, is not in a position to point out that the Appropriate Government has, by an order in writing, empowered the respondent No. 1 Corporation to exercise the powers of the Telegraph Authority under the Indian Telegraph Act, 1885. In fact, it is informed to this Court that there is no order of the Appropriate Government in

writing, as is required u/s 164 of the Act of 2003. If that be so, it is clear that the respondent No. 1 Corporation is neither a "Telegraph Authority" within the meaning of the term u/s 3(6) of the Indian Telegraph Act, 1885 nor is the respondent No. 1 Corporation empowered to exercise the powers of the Telegraph Authority as contemplated by the provisions of Section 164 of the Electricity Act, 2003. Since u/s 16(1) of the Act of 1885, only a "Telegraph Authority" is entitled to file an application to the District Magistrate for appropriate orders against the persons resisting or obstructing the exercise of powers u/s 10, it could be said that the respondent No. 1 Corporation, not being a Telegraph Authority could not have filed an application u/s 16 of the Indian Telegraph Act, 1885 before the District Magistrate for appropriate orders. So also, the District Magistrate did not have jurisdiction to entertain the application filed by the respondent No. 1 Corporation u/s 16(1) of the Indian Telegraph Act, 1885. The District Magistrate committed a serious illegality in overruling the objection raised by the petitioners and in holding that the application filed by the respondent No. 1 Corporation was tenable as the Project sought to be implemented by the respondent No. 1 Corporation was a Government Approved Project. In the facts of the case, the impugned order is liable to be set aside and the preliminary objection to the tenability of the application u/s 16(1) of the Act of 1885 needs to be upheld.

8. For the reasons aforesaid, the writ petition is allowed. The impugned order passed by the respondent No. 2 on 30.01.2012 is quashed and set aside. The application filed by the respondent No. 1 Corporation u/s 16(1) of the Indian Telegraph Act, 1885 is not tenable and is, therefore, dismissed as such. The respondent No. 1 Corporation would, however be at liberty to take recourse to other remedies available to the respondent No. 1 in law.

Rule is made absolute in the aforesaid terms. No order as to costs.