

(1990) 10 KL CK 0059
In the High Court Of Kerala
Case No : O.P. 9328/88-I

K.P. Gopala Krishnan

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 04-10-1990

Acts Referred:

Electricity Act, 1910 — Section 12(2), 2(1), 51
Telegraph Act, 1885 — Section 16, 16(1)

Citation : (1990) 10 KL CK 0059

Hon'ble Judges : Sreedharan, J

Bench : Single Bench

Advocate : N.N. Venkitachalam, for the Appellant; Molly Jacob, Government Pleader for Respondent No. 1, L.G. Poti and A.K. Varghese, for the Respondent

Judgement

Sreedharan, J.—Petitioner is aggrieved by Ext. P-3 order passed by first Respondent. The circumstances under which Ext. P-3 happened to be passed are, in short, as follows: Third Respondent wanted to have electric line drawn to her house across the property belonging to the Petitioner. After wiring her building she was waiting for electric connection to her house by drawing line. According to the officers of the Electricity Board, the shortest route through which electric line could be drawn to the house of third Respondent is across the Petitioner's land. Since the Petitioner did not accord sanction for the said purpose third Respondent moved Ext. P-1 application before the Revenue Divisional Officer, Palakkad. A copy of the same was sent to first Respondent as well. The Assistant Executive Engineer of the Board filed a statement before the Collector that there exists a permanent footpath to third Respondents property across the land of the Petitioner and that electric line can be drawn along the said footpath and that will be the shortest line. He also reported that the Petitioner's land being paddy field, no tree will have to be cut. According to him, the alternate alignment suggested by the Petitioner would entail cutting of trees and that line will have to pass across properties belonging to others. Petitioner in his turn approached the first Respondent against the drawing of line across his property. He stated that he is

having an idea to put up a residential building and electric line if drawn will be a hindrance to the building. He also stated that line if drawn will be a permanent danger to the building which is about to be constructed.

2. The District Collector after considering the relative contentions raised by the Petitioner on the one hand and third Respondent and the Assistant Executive Engineer on the other, came to the conclusion that there exists a permanent pathway across the Petitioner's property to reach the house of third Respondent and that electric line is to be allowed to be drawn along that pathway which is the shortest route. Accordingly, in exercise of the powers u/s 12(2) of the Indian Electricity Act, 1910, hereinafter referred to as the "Electricity Act" and the Indian Telegraph Act, 1885, hereinafter referred to as "the Telegraph Act" the District Collector overruled the objections raised by the Petitioner and allowed electric line to be drawn across his property to give electric connection to third Respondent. Hence this Original Petition.

3. A detailed counter affidavit has been filed on behalf of 2nd Respondent, the Assistant Executive Engineer. The averments made therein are to the following effect. Petitioner's property is a paddy field. There is an electric supply line through the pathway which is on the eastern side of the Petitioner's property. That supply line is to be extended through the same open pathway and then energy supplied to the house of third Respondent. If the line is so drawn, no loss, damage or hazard will be caused to the property of the Petitioner. Nor will the value of the property be diminished. Paddy cultivation will not be affected by drawing service line of 230 volts. For approaching third Respondent's property there exists two alternate routes. One through the pathway of the Petitioner's paddy field and the other by cutting across two or three parambas with residences. The only technically feasible and shortest route, for drawing electric supply line to third Respondent's property is through the paddy field of the Petitioner inasmuch as rib tree is to be cut and no clearance need be maintained. The existence of the pathway was noticed at the time of inspection of the property by the District Collector. Ext. P-3 order was passed on 4th November 1988 and the line drawn and energised on 14th November 1988. Therefore, the Original Petition has become infructuous and it has only to be dismissed.

4. Third Respondent in Ext. P-1 has not made mention of the existence of any pathway across the property of the Petitioner. In the counter affidavit filed on behalf of 2nd Respondent it is averred that the existence of pathway was noticed at the time of the inspection of the property by first Respondent. Reference to the pathway is to the ridges seen in the paddy field. The fact that people are allowed to walk along the ridges separating the plots in a paddy field will not make those ridges public pathways. Third Respondent had no case that she was using the property of the Petitioner for ingress into and egress from her land. The District Collector basing on the report of the Assistant Executive Engineer found the existence of a permanent pathway to the house of third Respondent through the paddy field belonging to the Petitioner when he passed Ext. P-3

order. This finding entered by the first Respondent is not based on any evidence because in the counter affidavit the Assistant Executive Engineer states that the pathway was found out only when the District Collector inspected the site.

5. Learned Counsel representing the Petitioner submitted that the District Collector had exercised power u/s 12(2) of the Electricity Act for issuing Ext. P-3 order. That provision, according to counsel, does not empower the District Collector to pass an order in the nature of Ext. P-3. According to him, the power u/s 12(2) of the Electricity Act can be invoked only for the purpose of providing support to overhead line or any stay or strut required for the sole purpose of securing in position any support of an overhead line. This provision has no application to the facts of this case and so the order, Ext. P-3, was one issued without authority. In reply to this argument, learned Counsel representing the Board brought to my notice Section 51 of the Electricity Act which makes Section 16 of the Telegraph Act applicable to the drawing of lines. It is submitted by the learned Counsel representing third Respondent that Ext. P-3 order was in fact issued u/s 16(1) of the Telegraph Act.

6. The order, Ext. P-3, specifically makes mention of the provisions contained in Section 12(2) of the Electricity Act as the source of power for issuing the same. It is true that first Respondent has also stated that the order is issued under the Telegraph Act as well. When the validity of an order is questioned before Court, the validity or otherwise of that, order is to be tested on the facts stated therein. Grounds for issuance of that order are not to be stated or supplied in the affidavit filed in the case. If the validity of an order is to be tested on the basis of the averments made in the affidavit, then no order will be open to challenge because reasons can be supplied later. This is not the legal position. At this juncture it is worthwhile to note the following observations made by the Supreme Court in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, .

The second equally relevant matter is that when a statutory. functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out.

So, for finding out the source of power for first Respondent to pass Ext. P-3 order one has to look into Ext. P-3 itself. First Respondent has not invoked any of the provisions u/s 16(1) of the Telegraph Act.

7. Yet another argument advanced by the learned Counsel representing the Petitioner is that Section 51 of the Electricity Act can be pressed into service only for drawing electric supply lines and not for service lines. In the instant case the line drawn to the house of third Respondent across the property of the Petitioner is not "Electric supply line" but it is only "service line". This being the position, it

is argued that first Respondent cannot invoke the powers u/s 16 of the Telegraph Act on the basis of Section 51 of the Electricity Act.

8. Electric supply line has been defined in the Electricity Act under Clause 2(f) as follows:

electric supply line means a wire, conductor or other means used for conveying, transmitting distributing energy (whether by overhead line or underground cable), together with any casing, covering, coating, tube, pipe or insulator enclosing, surrounding or supporting the same or any part thereof, or any apparatus connected therewith for the purpose of so conveying, transmitting or distributing such energy and includes any support, cross arm, stay, strut or safety device erected or set up for that purpose.

Section 2(1) of the Electricity Act defines "service line" in the following terms.

Service line means any electric supply line through which energy is, or is intended to be, supplied:

(i) to a single consumer either from a distributing main or immediately from the supplier's premises, or

(ii) from a distributing main to a group of consumers on the same premises or on adjoining premises, supplied from the same point of the distributing main.

A reading of these definitions will clearly makes out a marked difference between the above said two lines. Electric supply line is one for conveying, transmitting or distributing electrical energy. Service line is an electric supply line intended to supply energy to a single consumer or a group of consumers from the same point of the distributing main. So, the service line is to be drawn from the distributing main. The lines drawn with the help of electric posts are electric supply lines and connection taken from the post to the building are service lines. For giving electrical energy to third Respondent line had to be drawn by fixing posts in the property belonging to the Petitioner. The line so drawn can only be considered as supply line. That line is an electric supply line. An electric supply line can have a dead end at the post which is fixed at the terminal. The fact that the distribution line ends at a post does not make the line anything other than electric supply line. Since the electric supply line has to be drawn for giving electrical energy to third Respondent, Section 51 of the Electricity Act comes into operation and consequently, the power u/s 16 of the Telegraph Act can be invoked.

9. The feasibility or otherwise of the alternate alignment suggested by the Petitioner has not been properly appreciated by first Respondent while issuing Ext. P-3 order. First Respondent without any authority had found the existence of a permanent pathway across the Petitioner's property. That finding entered by the first Respondent without jurisdiction will go to adversely affect the Petitioner and his rights over the property. Since first Respondent has not approached the issue in the correct perspective, I quash Ext. P-3 order and direct first

Respondent to take back the petition filed by third Respondent to his file and to dispose of the same in accordance with law after affording the parties a reasonable opportunity of being heard in the matter. Final order on the petition should be passed by first Respondent within one month from the date of receipt of a copy of the judgment.

The Original Petition is disposed of in the above terms.