

(1995) 08 KL CK 0005
In the High Court Of Kerala
Case No : W.A. No. 328 of 1995

K.P. Mathai

APPELLANT

Vs

K.S.E. Board and Others

RESPONDENT

Date of Decision : 31-08-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20(2)
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 20, 20(2)
Electricity Act, 1910 — Section 51
Penal Code, 1860 (IPC) — Section 188
Telegraph Act, 1885 — Section 10, 16, 16(1)

Citation : AIR 1996 Ker 186 : (1996) 1 ILR (Ker) 172

Hon'ble Judges : M.M. Pareed Pillay, C.J;P. Shanmugam, J

Bench : Division Bench

Advocate : G. Janardana Kurup and John K. George, for the Appellant; O.V. Radhakrishnan, M.V. Ibrahimkutty and Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Pareed Pillay, C.J.—Original Petition filed by the appellant challenging the validity of Ext. P4 order of the 5th respondent (Additional District Magistrate, Ernakulam) in exercise of his powers u/s 16(1) of the Indian Telegraph Act, 1885 read with Section 51 of the Indian Electricity Act, 1910 was dismissed by the learned Single Judge. The sole legal contention raised in the appeal is that the Additional District Magistrate lacked jurisdiction in passing Ext. P4 order and on that score it has to be set aside. The question mooted for consideration is whether the Additional District Magistrate has legal competency to issue Ext. P4 order u/s 16(1) of the Indian Telegraph Act read with Section 51 of the Indian Electricity Act. Contention of the appellant is that the District Magistrate alone is competent to pass the order and not the Additional District Magistrate. Contrary stand is taken by the respondents counsel.

2. For a better appreciation of the case reference to section 10 and Section 16(1)

and (2) of the Indian Telegraph Act would be useful. Section 10 reads:

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 power 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 Cl.(c) shall pay full compensation to all persons interested for any damages sustained by them by reason of the exercise of those powers.

Section 16

16. Exercise of powers conferred by Sec. 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 Sec. 10 in respect of property referred to in Cl.(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), person resists the exercise of those powers, or, having control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence under Sec. 188 of the Indian Penal Code (45 of 1860).

3. Whether the Additional District Magistrate can also exercise the powers under the Indian. Telegraph Act would require consideration of Section 20(2) of the Code of Criminal Procedure, 1973. Section 20(2) reads:

The State Government may appoint any Executive Magistrate to be an Additional District Magistrate and such Magistrate shall have such of the powers of a District Magistrate under this Code or under any other law for the time being in force as may be directed by the State Government.

4. From a reading of Section 20(2) it can be discerned that the State Government has power to appoint any Executive Magistrate to be an Additional

District Magistrate and such Magistrate shall have such of the powers of the District Magistrate under the Code or under any law for the time being in force as may be directed by the State Government. It was contended by the appellant that the Additional District Magistrate being not vested by such power could not have passed Ext.P4 order. The said contention is not tenable in view of the notification u/s 20(2) of the Code of Criminal Procedure empowering Additional District Magistrate to exercise the powers conferred on the District Magistrate. S.R.O. No. 514/81 dated 31.3.1981 is extracted below:

In exercise of the powers conferred by sub-section (2) of Section 20 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), the Government of Kerala hereby direct that the Additional District Magistrates appointed under the said subsection shall have all the powers of a District Magistrate under the said Code

This notification makes the position clear as against the contention advanced by the appellant.

5. Appellant contends that the said notification cannot have any application as it only says that the Additional District Magistrate has all the powers of the District Magistrate under the Code and not under any other enactment. The argument that the said notification would not be sufficient to hold that Additional District Magistrate has power u/s 16(1) of the Indian Telegraph Act read with Section 51 of the, Indian Electricity Act is not tenable as it is not possible to hold that the notification is confined only to the powers of Additional District Magistrate vis-a-vis the Code of Criminal Procedure. There is nothing in the notification to suggest that the power vested in the District Magistrate under enactments other than the Code of Criminal Procedure cannot be exercised by the Additional District Magistrate. On a reading of the notification along with Section 20(2) of the Code of Criminal Procedure it cannot be held that the Additional District Magistrate lacks power u/s 16(1) of the Indian Telegraph Act read with Section 51 of the Indian Electricity Act. Section 20(2) of the Code postulates that all the powers of a District Magistrate under the Code or under any other law for the time being in force can be exercised by the Additional District Magistrate as directed by the State Government. That being the position we cannot agree with the contention of the appellant that Additional District Magistrate lacked jurisdiction in passing Ext. P4 order. On hearing the parties the 5th respondent came to the conclusion against the appellant's contention that if the line proposed by the second respondent is drawn it would cause damage to the existing fruit bearing trees. The factual finding is to the effect that no damage would be caused to any of the trees in the property by drawing the electricity line. On verifying the records and also on site inspection the 5th respondent was convinced that the objections raised by the appellant are baseless and hence not tenable. He also held that the route suggested the Assistant Executive Engineer (Electrical Major Section) Kalady is the one which causes least damage and also the shortest one compared to alternative routes. It is also made clear in the impugned order that the proposed line would cross only 75 metres of paddy field owned by the

appellant (writ petitioner). It is further stated that no electric post will be erected in the paddy field for the purpose of drawing the line. On the factual findings of the 5th respondent this court cannot obviously interfere under Article 226 of the Constitution of India.

The Writ Appeal is devoid of merit. Writ Appeal is dismissed.