
(1986) 07 KL CK 0006
In the High Court Of Kerala
Case No : O.P. No. 5101 of 1985

Kunjulakshmi

APPELLANT

Vs

The District Magistrate and Others

RESPONDENT

Date of Decision : 17-07-1986

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Telegraph Act, 1885 — Section 10, 16, 16(1)

Citation : (1986) 23 KLJ 817

Hon'ble Judges : K.P. Radhakrishna Menon, J

Bench : Single Bench

Advocate : K.K. Usha, for the Appellant; Government Pleader for 1st Respondent and T.P. Kelu Nambiar for K.S.E.B., for the Respondent

Final Decision : Dismissed

Judgement

Radhakrishna Menon, J.—Whether or not the District Magistrate while exercising the discretion vested in him u/s 16(1) of the Indian Telegraph Act, 1885 (for short, the Act) has the authority to interfere with the power of the telegraph authority u/s 10 of the said Act, to place and maintain lines, under, over, along or across and posts in or upon any immovable property made mention of in Clause (d) of the proviso to the said section, is the question arising for consideration in this O.P. According to me this question no more is res integra in view of the Full Bench decision of this Court in Mammoo v. State of Kerala 1979 KLT 801 (F.B) This Court after considering the scheme of the Act has held thus:

Section 10 of the Act, as already indicated, gives the telegraph authority power to place and maintain telegraph line in or upon any immovable property. The proviso indicates that such power is to be exercised only for telegraph established or maintained by the Central Government or to be so established and maintained, that the Central Government acquires only the right of user. That in the case of local authority the exercise has to be with permission of that authority and that in the exercise of such power as little damage as possible is to

be caused. These are in the nature of restrictions in the exercise of the power and do not restrict the discretion to determine the property over which the lines are to pass or posts are to be erected. That discretion is in the telegraph authority. If he is resisted or restricted he seeks permission from the District Magistrate whose adjudication does not cover the question whether line is to be drawn over any specific item of property or whether posts are to be erected or not in any specific item of property. Section 16 does not indicate that as within the power of the District Magistrate. The enquiry by the District Magistrate would be in the nature of a ministerial enquiry. There is no question of calling for evidence, sifting such evidence, and coming to a judicial decision thereon. In the event such judicial decision on issues was contemplated by Section 16(1) there would necessarily have been indication in the section as to the issues that could be so considered and judicially disposed of by the District Magistrate. No doubt Section 16(1) provides that in granting permission to the telegraph authority the District Magistrate is to exercise his discretion.

(emphasis supplied)

2. It can thus be seen that the power to be exercised by the authorities mentioned in Section 10 of the Act is distinct and different from the discretion, the District Magistrate would exercise u/s 16(1) of the Act. In short these powers/discretions are mutually exclusive. One authority cannot transgress upon the field allotted to the other. If that be the position the choice of the property for the purpose of drawing the line etc. made by the telegraph authority cannot be interfered with by the District Magistrate in the exercise of the discretion vested in him u/s 16.

3. In Mammoo's case the Full Bench has held thus:

If so the District Magistrate functions in this case only as an administrative or executive authority and the exercise of his discretion u/s 16(1) is only that incidental to an executive or administrative exercise.

The Full Bench has also held that: "the enquiry by the District Magistrate u/s 16 of the Telegraph Act, would be in the nature of a ministerial enquiry. There is no question of calling for evidence, sifting such evidence and coming to a judicial decision thereon". During the course of the ministerial enquiry if the District Magistrate finds that the exercise of power by the telegraph authority u/s 10 in respect of property mentioned in Clause (d) of that Section is resisted or obstructed, the District Magistrate may order that the telegraph authority shall be permitted to exercise them. The wording of the section is that "the telegraph authority shall be permitted to exercise" the power vested in him u/s 10 and to accomplish this (that is the legislative intent), the District Magistrate may, in his discretion pass appropriate orders. This discretion however, should be judicially exercised which however, is different from judicially deciding the issue as held by the Full Bench in Mammoo's case 1979 KLT 801 (F.B.). And therefore, the District Magistrate, on receipt of information from the telegraph authority about

the resistance or obstruction in respect of the property mentioned in Clause (d) of Section 10 shall not automatically order that the telegraph authority shall be permitted to exercise the power mentioned in Section 10. He shall issue notice to all the interested persons and after conducting what is called a ministerial enquiry, if he is satisfied that the obstruction or the resistance is likely to interfere with the power of the telegraph authority u/s 10, he will pass appropriate orders permitting the telegraph authority to exercise the said power. The District Magistrate will thus be in direct control of the situation which would enable him even to avert a breach of the peace which otherwise may ensue if the telegraph authority of its own accord, take steps to remove the obstruction or resistance.

4. The above position notwithstanding, the learned counsel for the Petitioner relying on an earlier Full Bench decision of this Court in *Bharat Plywood and Timber products (P) Ltd v. Kerala State Electricity Board* 1970 KLT 872 (F.B.) contended that the discretion vested in the District Magistrate u/s 16(1) is also for the purpose of resolving the dispute relating to the choice of the property for the drawing of line etc., by the authority u/s 10 of the Act. In support of this contention she relied on the following passage from the said Full Bench decision:

Before passing an order u/s 16(1) the District Magistrate has necessarily to issue notice to all persons interested and give them an opportunity to state their objections if any. Without giving such an opportunity he will not have any material, at any rate, adequate material to decide whether he should pass an order that the authority shall be permitted.

It is not as if this Full Bench decision has not been taken note of by the later Full Bench; as a matter of fact, only after considering the above Full Bench decision, the later Full Bench enunciated the Law which I have referred to earlier in this judgment. The above passage cited therefore has to be understood in the light of the dictum, the later Full Bench has laid down. So understood, according to me, the jurisdiction of the District Magistrate u/s 16(1) of the Act is only to see that requisite permission is given to the authority made mention of in Section 10 in the discharge of its functions under the said section.

5. Even on the merits of the case I am of the view that the Petitioner is not entitled to any relief. It is seen from the order that the District Magistrate has taken into account matters which are exclusively within the jurisdiction of the authority mentioned in Section 10(1), before he passed the impugned order. Whatever that be, after considering the various contentions, the Petitioner had raised before him, the District Magistrate came to the conclusion that the alignment proposed by the Electricity Board is more suitable and feasible than the one suggested by the Petitioner. On a perusal of the order it can be seen that the Petitioner has been given sufficient and more opportunities to ventilate her grievances against the proposed drawing of the electric line over her property. The District Magistrate in fact has considered her objections threadbare and that it is so can be seen from the order itself.

The line cannot be drawn through the path suggested by the counter Petitioner due to the heavy flow of water, especially at rainy season. The line support cannot be erected properly and this will invite danger to human life and property.

4. The case was posted for hearing on 17th April 1985. The Petitioner and the Assistant Executive, Engineer, K.S.E. Board, Tripunithura were present. At the time of hearing the counter Petitioners have stated that the line should not be drawn across their property. Since they have plan to construct a building there in future after partition. They have also informed that they have no objection of the line drawn along their boundary.

5. Based on the above argument I directed the Assistant Executive Engineer to Inspect the site and submit a report with sketch for drawing the electric line along the boundary of the property of the Counter Petitioners, in such a manner that the line does not affect their future construction plan.

6. The case was again posted for hearing on 25th April 1985. The Assistant Executive Engineer was present on 25th April 1985. He has furnished his report as Ref. No. DB. 32/84-85/582 dated 24th April 1985. His report is discussed below:

1. He has inspected the site along with the Petitioners and prepared a sketch in consultation with them, for drawing the electric line along the boundary of the property of the objectors in such a manner that this line docs not affect their future construction plan. He has also pointed out that if this proposal is implemented an extra expenditure will have to be incurred by the K.S.E.Board for providing the additional posts and line. He further added that after the site inspection, one Sri Mani Joseph appeared before him and stated that the new alignment falls within his property and that it would not fall within the property of the original objectors.

7. In view of the fact that the new alignment does not fall within the property of the objectors and that it is against the decision taken on 17th April 1985 and that the new alignment is more expensive than the original alignment, the Assistant Executive Engineer was requested to submit fresh proposals for drawing the line to the Petitioner s property in a manner which will be least expensive to the Kerala State Electricity Board.

8. The case was again posted for hearing on 7th May 1985. The Assistant Executive Engineer and the objectors were present for hearing. As directed on 29tn April 1985 the Assistant Executive Engineer has furnished his proposal with the sketch for drawing electric line throughout the counter Petitioners property, which is the direct and shortest alignment for providing line to the house of the applicant. This line does not go over any residential building or any other building. But it will affect only a few trees belonging to the land of the objectors."

These findings thus arrived at are findings of fact which cannot be interfered with in a proceeding under Articles 226 and 227 of the Constitution of India.

The O.P. is without merits. Accordingly the same is dismissed.