

(2017) 04 MAD CK 0250
In the Madras High Court
Case No : 42261 of 2016

M UDAYAKUMAR & ORS.

APPELLANT

Vs

GOVERNMENT OF TAMIL NADU & ORS.

RESPONDENT

Date of Decision : 10-04-2017

Acts Referred:

[Electricity Act, 2003](#), [Section 144](#), [Section 164](#), [Section 68](#) - Factors to be taken into account by adjudicating officer - Exercise of powers of Telegraph Authority in certain

Citation : (2017) 04 MAD CK 0250

Hon'ble Judges : M M Sundresh

Bench : SINGLE BENCH

Advocate : M M Sundresh

Final Decision : Dismissed

Judgement

1. This is the second round of litigation at the instance of the petitioners seeking to challenge the impugned proceedings with the consequential direction forbearing them from laying the proposed transmission lines through their lands with the further direction to consider the alternative proposal sought by them.

2. The petitioners are the owners of the land through which overhead line was sought to be laid by the respondents 2 and 3, pursuant to the scheme for which erection of the line was approved by the first respondent vide Government Order in G.O.Ms.No.74 Energy (A1) Department, dated 26.11.2015. A scheme was sanctioned with the total cost of Rs.12861.62 lakhs. It was published in the Gazette and through newspapers, both English and Tamil. The following is the relevant data qua the project. "a. The project consists of erection of a total of 124 towers.

b. Work has commenced on erection of over 100 towers.

c. Foundation has been completed in 100 locations out of 124.

d. Erection of towers in 66 locations.

e. Out of the petitioners' lands, no work has commenced over the 1st petitioner's land (covering 2 towers), as regards petitioners 2 and 3 (1 and 2 towers respectively) foundation has been completed."

3. The scheme runs through several villages. The project has already been in progress. There is no change in the original alignment made. It was formulated after taking into consideration of the relevant materials.

4. The petitioners, being the land owners, earlier filed a writ petition in W.P.No.23265 of 2015, which was disposed of on 31.07.2015 in the following manner. "Though the petitioner prayed for a larger relief, this Court, in the light of the above facts and circumstances and without going into the merit of the claim projected by him, directs the respondents 2 and 3 to consider and dispose of the petitioner's representation dated 5.5.2015, in accordance with law, within a period of four weeks from the date of receipt of a copy of this order and till then, the respondents 1 and 4 shall defer further decision with regard to the erection of electric poles/pylons on the lands of the petitioner. The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed."

5. Accordingly, the fourth respondent has passed the order dated 24.10.2015 considering the case of the petitioner. Resultantly, the subsequent order passed by the fifth respondent dated 30.10.2015 is also put into challenge. The fourth respondent has passed another consequential order on 22.07.2016, which is also incidentally challenged.

6. The learned Senior Counsel appearing for the petitioner made three submissions. Firstly, it is submitted that there is no prior approval as mandated under Section 68 of the Indian Electricity Act, 2003. Secondly, the Government Order relied upon by respondents 2 and 3 granting approval being subsequent to the project is not in compliance with Section 68 of the Indian Electricity Act, 2003 and in any case, the same has been passed in an arbitrary manner and on a non application of mind. Thirdly, it is submitted that the relevant rules are not followed while laying down the line and the original proposed line has been changed. In support of his contention, the learned Senior Counsel has made reliance on the following decisions. 1. R.Santhana Raj and another V. The Chief Engineer, Non Conventional Energy Source, Anna Salai, Chennai and others (W.P. (MD)No.8844 of 2011 dated 08.11.2011);

2. Mary and others V. The Chairman, Tamil Nadu Generation and Distribution Corporation Ltd., Anna Salai, Chennai-600 002 (W.A.No.1681 of 2014 dated 07.04.2015);

3. Nature Lovers Movement V. State of Kerala and others ((2009) 5 Supreme Court Cases 373); and

4. State of U.P. and others V. Rajiv Gupta and another ((1994) 5 Supreme Court

Cases 686).

7. The learned Additional Advocate General appearing for respondents 2 and 3 would submit that permission for erecting the power evacuation line work under Sections 68 and 144 of the Indian Electricity Act, 2003, has been obtained twice in G.O.Ms.No.102 Energy (CO) Department dated 10.12.2009 and G.O.Ms.No.74 Energy (A1) Department dated 26.11.2015. On the earlier occasion, orders have been passed as per Sections 68 and 164 of the Indian Electricity Act, 2003 and on the subsequent one, it was passed under Section 68 of the Indian Electricity Act, 2003. What is relevant under Section 68 of the Indian Electricity Act, 2003, is that permission before erection of the electricity high tension lines and not before formation of the scheme. The orders have been passed on a careful consideration of the available materials on record. There is no realignment of the route as alleged. The entire aspect from the point of view of the scheme is the public interest and the interest of various stakeholders, including villagers have been taken into account. The work is nearing completion at various areas. The scheme itself is meant for the public. The petitioners being the agriculturists are not affected substantially. By the proposed scheme, many houses will be given electricity. The orders have been passed by the fourth respondent by considering the relevant materials. Due process has been followed. The parameters, such as, avoiding major villages, townships, open borewells, quarries, solar plant lands and dense coconut-fields have been taken into consideration apart from future load growth using a single corridor, using multi circuit towers etc. The rules sought to be relied upon by the petitioner do not apply to a scheme to be carried out meticulously with a minimum damage, if any and in any case, the work is yet to be completed over the petitioners' lands. On the power of respondents 2 and 3 and the role of the fourth respondent reliance has been made on the judgment of the Division Bench in *M/S SRI VIGNESH YARNS PRIVATE LIMITED V. S.SUBRAMANIAN AND OTHERS* (2013 (1) Law Weekly 170).

8. Section 68 of the Indian Electricity Act, 2003, deals with the role of the first respondent in granting administrative approval for electricity high tension lines. Admittedly, such an approval has been granted by the first respondent twice, which are not put into challenge. There is a difference between an administrative order and an quasi judicial order. There is approval for the scheme already formulated by respondents 2 and 3. Therefore, the contention of the learned Senior Counsel appearing for the petitioner even before the scheme such an approval is required cannot be countenanced as it is only meant for overhead electricity high tension lines. For the petitioners' lands, the said exercise is yet to be done and therefore, there is no post facto approval as alleged. Hence, the contentions 1 and 2 sought to be raised are hereby rejected. There need not be a separate order for every overhead line.

9. Respondents 2 and 3 in the counter affidavit clearly stated that there is no change in the original proposed route. Therefore the said contention is also rejected in the absence of any material to back the allegation. The documents

filed by the respondents would show that meticulous preparation has been made for carrying out the project in the public interest. As rightly held by the Honourable Division Bench of this Court in M/S SRI VIGNESH YARNS PRIVATE LIMITED V. S.SUBRAMANIAN AND OTHERS (2013 (1) Law Weekly 170), the role of the District Collector, the fourth respondent is very limited under Section 16 of the Indian Telegraphic Act, 1885. The power of this Court through its judicial review over a decision made by the competent authority consisting of experts is very limited. This Court does not find neither any mala fides nor arbitrariness qua the respondents. As rightly submitted by the learned Additional Advocate General, the rules sought to be relied upon by the petitioners do not apply to the case on hand. In any case, the lines are yet to be erected over the petitioners' lands. The scheme is nearing completion. There is an element of public interest involved. It is not, as if, the agricultural operation of the petitioners is being held up by the scheme. We are also not dealing with the compensation in this writ petition. The judgments relied upon by the learned counsel for the petitioners do not apply to the case on hand. In State of U.P and others V. Rajiv Gupta and another ((1994) 5 Supreme Court Cases 686) the issue was with respect to the award passed by the Collector without prior approval which is mandatory. Similarly, in Nature Lovers Movement V. State of Kerala and others ((2009) 5 Supreme Court Cases 373, the issue was with respect to the prior approval of the Central Government before passing orders towards the reservation of forests or use of forest land for non-forest purpose. As discussed earlier, for the scheme, there is no prior approval as required by the first respondent, as Section 68 of the Indian Electricity Act, 2003, does not mandate such a course, but only it deals with high tension lines. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.