
(2014) 02 KL CK 0168
In the High Court Of Kerala
Case No : W.A. No. 362 of 2013

Moan M. Joseph

APPELLANT

Vs

Kerala State Electricity Board

RESPONDENT

Date of Decision : 13-02-2014

Acts Referred:

Telegraph Act, 1885 — Section 10, 17, 17(1)

Citation : (2014) 2 KLJ 551 : (2014) 4 KLT 22 : (2014) 2 KLT 13

Hon'ble Judges : Antony Dominic, J;Anil K. Narendran, J

Bench : Division Bench

Advocate : C.A. Navas and M.S. Shiraz Abdulla, Advocate for the Appellant;
Sajeevkumar K. Gopal, G. Biju, S. Vinod Bhat, Legith T. Kottakkal and
Government Pleader, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Antony Dominic, J.—Petitioners in W.P.(C). No. 4934/13 are the appellants. They filed the Writ Petition challenging Ext. P3 order passed by the 4th respondent on a petition filed by the 5th respondent under S. 17 of the Indian Telegraph Act, 1885. By that petition, he sought for the shifting of an electric line passing through his property to an adjacent public pathway. By Ext. P3 order, overruling the objections raised by the appellants, the request was allowed. It was in these circumstances that the Writ Petition was filed. The Writ Petition was dismissed by the learned single Judge upholding Ext. P3 order but clarifying that posts shall be erected without in any manner adversely affecting the vehicular traffic. It is aggrieved by this judgment, this appeal has been filed. We heard the learned counsel for the appellants, standing counsel appearing for respondents 1 and 2, standing counsel appearing for the third respondent, learned Government Pleader for the 4th respondent and the learned counsel appearing for the 5th respondent.

2. As we have already stated, the power of the 4th respondent that was invoked by the 5th respondent was under S. 17 of the Indian Telegraph Act and his

request was to shift an electric line passing through his property to a public pathway, adjacent to his residential property. It is this request which is allowed by the impugned order. The question is whether within the scope of S. 17 of the Indian Telegraph Act, such a request made by the 5th respondent could have been entertained by the 4th respondent. This issue will have to be answered with reference to S. 17(1) of the Indian Telegraph Act, which reads thus;

17. Removal or alteration of telegraph line or post on property other than that of a local authority-(1) When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property, not being property vested in or under the control or management of a local authority, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher or lower level or altered in form, he may require the telegraph authority to remove or alter the line or post accordingly:

Provided that, if compensation has been paid u/s 10, clause (d) he shall, when making the requisition, tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever may be the smaller sum.

3. Reading of the above provision shows that the removal or alteration of the telephone line or post that is permissible under this provision is to shift it to another part of the property through which the line is passing or the post is laid or to alter the line or the post to higher or lower level or alter in form. In other words, shifting of a line or post that is permissible under this provision can only be from one part of the property through which the line is passing to another part and not outside the property. If that be so, Ext. P3 order permitting shifting of the line to the adjacent pathway, which is, outside the property of the 5th respondent, is clearly beyond the scope of S. 17.

4. Therefore, Ext. P3 order has to be set aside and we do so. Be that as it may, the request of the 5th respondent for shifting the line can be entertained by respondents 1 and 2 and they can consider whether such shifting is possible within the property of the 5th respondent himself. This the aforesaid respondents shall do untrammelled by anything stated in this judgment. The judgment of the learned single Judge is set aside and the Writ Petition is allowed.

Appeal is disposed of accordingly.