

(2016) 08 RAJ CK 0074

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1258 of 2016

M/s. Mahalaxmi Industries

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 08-08-2016

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 300A
Work Licensees Rules, 2006 — Rule 3(1)

Citation : (2016) 166 AIC 775

Hon'ble Judges : Mr. Govind Mathur and Mr. Kailash Chandra Sharma, JJ.

Bench : Division Bench

Advocate : Mr. M.S. Singhvi, Senior Advocate, assisted by Mr. Varun Singhvi, Mr. B.S. Sandhu and Mr. Ripudaman Singh Advocates, for the Petitioner; Mr. M.R. Singhvi, Senior Advocate, assisted by Mr. Bhavit Sharma, Mr. Ravi Bhansali, Senior Advocate, assisted by Mr.

Final Decision : Dismissed

Judgement

Mr. Govind Mathur, J.—In pursuance to a notification issued by the Energy Department, Government of Rajasthan, under Section 164 of the Electricity Act, 2003 (hereinafter referred to as "the Act of 2003") as well as the powers available being the Telegraph Authority as per provisions of the Telegraph Act, 1885 (hereinafter referred to as "the Act of 1885"), the Chief Engineer, Rajasthan Rajya Vidyut Prasaran Nigam Limited (hereinafter referred to as "the RRVPN Limited"), accorded sanction for right of way for erection/construction of 400 KV D/C BHADLA-BIKANER TRANSMISSION LINE, passing through the villages enlisted in a notification dated July 4, 2013. While passing through the village KHARA, the electricity line was to cross the boundaries of the factory of the petitioners, a partnership firm. As per the petitioners this fact came into their knowledge when certain officials of the RRVPN Limited visited the site on 23.9.2013 and orally informed about proposed electricity line. It was also conveyed to them that to execute the project, the boundary and a part of building of the petitioners' factory have to be broken. Apprehending damage, the

petitioners preferred a civil suit which came to be rejected being barred as per Section 145 of the Act of 2003. An appeal giving challenge to that also came to be rejected on March 1, 2014. The petitioners then approached to the authorities of the Government of Rajasthan as well as the RRVPN Limited for redressal of the grievance with regard to the way granted to the electricity line, but of no consequence, hence the instant petition for writ is preferred.

2. The case of the petitioners is that the RRVPN Limited is acting arbitrarily while laying down the electricity line, as much as no notice is given to the petitioners and the persons alike while entering and damaging their property. The authorities of the RRVPN Limited are trespassing to the land of the petitioners causing destruction to it and snatching the property which could not have been taken without authority of law as prescribed under Article 300-A of the Constitution of India. According to the petitioners the Central Government in exercise of the powers conferred by clause(e) of subsection(2) of Section 176 read with sub-section(2) of Section 67 of the Act of 2003 framed the Works of Licensees Rules, 2006 (hereinafter referred to as "the Rules of 2006"), rule 3 of which provides a procedure for entering into a property wherefrom electricity line is to be passed, but the procedure prescribed is neither fair nor objective. It is asserted that Rule 3(1) of the Rules of 2006 empowers a licensee to forcefully take over possession on property and even to destroy it, as such, rule 3(1) is bad being contrary to Article 300-A of the Constitution of India. Learned Senior Advocate while substantiating this argument asserted that Rule 3(1) of the Rules of 2006 arms a licensee with unguided, unchanneled arbitrary powers, hence, the same is hit by Articles 14, 19 and 21 of the Constitution of India also. In support of the argument certain judgments are also cited to the effect that if any statute germinates any arbitrary power which is in conflict of the fundamental rights of a citizen, then such statute deserves to be declared unconstitutional.

3. Per contra, as per learned counsel appearing on behalf of the RRVPN Limited, the argument advanced by learned counsel is having no merit in view of the fact that whatever power given under the Rules of 2003 which are framed by the Central Government exercising powers under the Act of 2003 are just and reasonable. It is asserted that as per Section 164 of the Act of 2003 the licensee is having all authority which are available to a telegraph authority under the Act of 1885 with respect to the placing of telegraph line and posts for the purpose of a telegraph established or maintained, by the Government or to be so established or maintained. In view of it, the licensee while laying down electricity line shall adhere the procedure given under Part-III of the Act of 1885 in addition to rule 3 of the Rules of 2006. Shri. M.R.Singhvi, learned Senior Advocate, also cited a Division Bench judgment of Bombay High Court in the case of Jarnail Singh v. Maharashtra State Electricity Transmission Company Limited, Nagpur, reported in AIR 2015 Bombay 283, affirming the constitutional validity of rule 3 of the Rules of 2006.

4. Heard learned counsels.

5. It is not in dispute that the licensee, in light of the provisions of the Act of 1885, is a telegraph authority and is abide to adhere the procedure given in Part-III of the said Act in addition to Rule 3 of the Rules of 2006. Accordingly, while examining constitutional validity of Rule 3, the nature and scope of the provisions of the Act of 1885 are also required to be taken into consideration. Suffice to mention that a Division Bench of Bombay High Court had occasion to examine all the arguments raised in this petition for writ in the case of Jarnail Singh (supra). In the case aforesaid Hon"ble Bombay High Court thrashed constitutionality of Sections 10 and 16 of the Act of 1885 and also Rule 3 of the Rules of 2006. For read reference it would be appropriate to quote certain portions of the judgment which are as follows:-

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Action taken by the appropriate Government in pursuance of the power given to it under Section 164 of the EA, 2003 constitutes the source of the authority. Part-III of the Act, 1885, supplies the contents of the said authority or power of the licensee. As this very authority or power has been challenged on various constitutional grounds, it would be necessary to examine the validity of not only Section 164 of the EA, 2003 but also relevant sections of Part III of the Act, 1885.

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A careful reading of the above Section makes it clear it is a provision which enables the appropriate Government, the State of Maharashtra in the present case, to empower or authorise, for the purpose of placing of electric line etc., any public officer, licensee or any other person engaged in the business of supplying electricity to exercise any of the powers which the telegraph authority possesses with respect to the placing of telegraph line and posts for the purpose of telegraph established or maintained by the Government. This section does not contemplate any hearing and it need not as it is only an enabling section. At the time of giving of authorisation to a licensee, there is no scheme formulated and it is not known under, over or through whose lands the electric lines or posts are likely to be placed. At this stage, there is no legal injury nor is there any injured or affected person. Therefore, there is no question of any person being affected by authorisation under Section 164 of the EA, 2003. This being the effect of Section 164, there is no room to say it is bad in law or violative of principle of fairness or even any fundamental freedom to carry on any occupation, business etc. under Articles 14, 21 and 19(1)(g) of the Constitution of India.

13. Powers of telegraph authority for the purpose of establishing or maintaining the telegraph are delineated in Part III of the Act 1885. Sections 10 to 17 contained in Part-III deal with powers of the telegraph authority in respect of

placing, establishing and maintaining of the telegraph lines and posts.

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14. Upon reading Section 10 as a whole it becomes clear that the power that it gives to the telegraph authority is only for the limited purpose of establishing or maintaining a telegraph. It is no less and no more than the said purpose. It gives no right to the telegraph authority other than that of user only in respect of the property under, over, along or across which a telegraph line passes. By exercising such power, the authority does not become owner of the property and all that it gets is right of user of the property. The Section also makes it obligatory for the authority to pay full compensation to the affected person for the damage he may suffer by reason of exercise of such power. The Section does not contemplate any notice or hearing before exercising the power to establish or maintain a telegraph line, although it envisages payment of compensation. However, it would not make any exercise of power under Section 10 arbitrary and violative of principles of natural justice as contemplated under Articles 14 and 21 of the Constitution for the reason that right to property under Article 300A is a constitutional right which is not absolute and can be taken away by authority of law. What is required is that the law which takes away such a right must provide for just and fair procedure.

15. If we carefully read Section 10 of the Act, 1885, we would notice that it does not completely take away right to property. It only creates some restrictions on the enjoyment of right to property by creating a right of user in the telegraph authority as is clear from proviso (b) and that too in a fair manner. This can be seen from it's other proviso. Proviso (a) to Section 10 restricts the power of the telegraph authority only to the purpose of establishing or maintaining the telegraph. It does not allow the authority to use the power for any other purpose thereby keeping it moored to the object of the Act, which is manifestly to empower adequately the Government or any licensee to place telegraph lines, and posts, a work eminently in public interest. Further, the power under Section 10 is not unrestricted or uncanalised. Proviso (d) cautions the authority by laying down that it shall cause as little damage as possible while undertaking the work. It also mandates the authority to pay full compensation to the affected person for the damage it may cause by reason of exercise of the power. Thus, Section 10 prescribes a just and fair procedure for placing limitations on full enjoyment of property and, therefore, cannot be said to be arbitrary and violative of Articles 14 and 21 or 300-A of the Constitution of India, just because it contains no provision for issuance of notice or giving hearing to affected person before the work is undertaken.

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it would become clear that under the scheme of Part-III of the Act, 1885 a fine balance has been struck between the necessity of public interest and the individual need of properly addressing the grievance of the aggrieved. A reading of Sections 16 and 17 would show that none of them specifically provides for hearing to the person who obstructs or gives suggestion for alteration of the electric line or post. But, such a hearing has to be read in these sections as they confer a discretion upon the District Magistrate to adjudicate on the justifiability of the objection or acceptability of the suggestion and no public authority can exercise a discretion arbitrarily. Very nature of this discretion is such that giving of opportunity of hearing to the aggrieved before it's exercise must be considered to be implicitly present in it. After all, any exercise of such discretion is likely to have reverberations in civil consequences for the owner or occupier of the private land on the one hand and cost-delay escalation in distribution of material resources of nation like the electricity on the other. Therefore, reading of fair opportunity of hearing in exercise of such a discretion is in consonance with the mandate of Articles 14 and 21 and doing so we hold that Section 10 by virtue of existence of Sections 16 and 17 on the statute book, on the whole provides for a fair procedure for partial deprivation of right to property.

24., what the licensee acquires in the land in question is no more than the right of user and that too in lieu of payment of full compensation for the damage the exercise of power may cause. There is also a safeguard in Sections 16 and 17 which, as we have observed, contemplate adequate hearing before the decision on justifiability of objection or suggestion is given by the District Magistrate. The rule requiring giving of hearing before a decision affecting the interests of citizens is taken exists for preventing any damage or loss being caused to the person which otherwise is avoidable, and if it is not avoidable, to make good the damage or loss by providing a just recompense to that person. This purpose of rule of natural justice is appropriately sub-served by the procedure laid down in Part III, particularly in Sections 10, 16 and 17 of the Act, 1885.

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6. After dealing with the provisions of the Act of 1885, learned Division Bench of Bombay High Court examined validity of Rule 3(1) of the Rules of 2006 and held as under:-

"32. First proviso to sub-rule (1) of Rule 3 lays down that in cases where the owner or the occupier raises an objection in respect of the works to be carried out, the licensee shall obtain permission in writing from the District Magistrate or the authorised officer. Section 16 of the Act, 1885 contains a similar provision

and from the words and expressions used therein it can be said that first proviso to Rule 3(1) stands almost in pari materia to Section 16(1). We have already found that Section 16 does not violate the rule of fair procedure. Same view has been taken by the Division Bench of this Court in the case of Vivek Brajendra Singh. It would then follow that Rule 3(1) cannot be found to be invalid on the ground of it adopting an arbitrary and unfair procedure. Accordingly, we hold that Rule 3(1) is valid and does not violate the mandate of Articles 14 and 21 of the Constitution of India."

7. We are in absolute agreement with the consideration made and the findings arrived by the Bombay High Court while examining the issue in question. We adopt the same with a conclusion that Rule 3(1) of the Rules of 2006 lays down nothing which may be in conflict with any right of the petitioners enshrined under Part-III of the Constitution of India.

8. The writ petition, thus, having no merit, hence dismissed.

9. Learned counsel appearing on behalf of the petitioners, at this stage, made a request for continuation of interim order, which is in operation today for a period of two weeks, so as to enable the petitioners to approach Hon"ble Apex Court to have appropriate relief.

10. The prayer has been opposed by learned counsels appearing on behalf of the respondents, however, considering the fact that the interim order is in operation till today, the issue involved in this petition and also looking to the fact that in the case of Jarnail Singh (supra) a similar kind of prayer was accepted by the Hon"ble Bombay High Court, we are also inclined to extend the interim relief for a period of two weeks.

11. Accordingly, it is directed that the interim order already operating in favour of petitioners shall continue for a further period of two weeks from today and shall cease automatically thereafter.