

(2013) 10 MAD CK 0174

In the Madras High Court

Case No : Writ Petition No"s. 27279 to 27281 of 2013 and M.P. No"s. 1, 1 and 1 of 2013

N. Shanmugam

APPELLANT

Vs

The District Collector, Coimbatore District and The
Superintending Engineer, General Construction Circle, Tamil
Nadu Electricity Board

RESPONDENT

Date of Decision : 03-10-2013

Acts Referred:

Citation : (2013) 10 MAD CK 0174

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : K. Govi Ganesan, for the Appellant; R. Vijayakumar, Addl. Govt. Pleader for Respondent 1 and Mr. S.K. Raameshuwar for TNEB for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

S. Manikumar, J.—The petitioner in these Writ Petitions is the owner of the agricultural lands situated in S.F. Nos. 973, 547, 529 and 530 at Vadavalli Village, Coimbatore District. It is the case of the petitioner that the Superintending Engineer, General Construction Circle, Tamil Nadu Electricity Board, Tatabad, Coimbatore/second respondent herein carried out the work of LILO of Thudiyalur-Arasur 110 KV line at Karamadai 230/110 KV Sub Station for electricity supply and pursuant to the same, he wanted to erect towers in the petitioner"s lands for carrying High Tension Wires. On receipt of the information, the petitioner objected to the proposal stating that already High Tension Line passes through his lands and erecting towers would affect his agricultural operations. The safety was also one of the terms.

2. On the objections, the Superintending Engineer, General Construction Circle, Tamil Nadu Electricity Board, Tatabad, Coimbatore/second respondent herein, referred the matter to the District Collector Coimbatore/first respondent herein,

u/s 16(1) of the Indian Telegraph Act, 1948 and as per Section 68 of the Indian Electricity Act, 2003, for removal of obstructions.

3. It is the grievance of the petitioner that the District Collector, Coimbatore/first respondent, without considering the objections in proper perspective, vide impugned proceedings R.Dis. No. 19472/2012/C2, R.Dis. No. 19471/2012/c2 dated 14.05.2013 and R.Dis. No. 19474/2012/C2 dated 13.05.2013, in the respective Writ Petitions, rejected the objections. Consequently, the District Collector, Coimbatore, directed the Tamil Nadu Electricity Board (General Construction Circle) to carry out the tower line works so as to complete the scheme. The Superintendent of Police, Coimbatore District, was directed to render necessary assistance for the execution of the work. As against these impugned orders, the present Writ Petitions have been filed.

4. Assailing the correctness of the impugned orders passed by the District Collector, Coimbatore, Mr. K. Govi Ganesan, learned counsel for the petitioner submitted that the first respondent has failed to consider that erection of towers in the middle of the petitioner's lands would affect the agricultural operations and that there are other transmission lines, in the lands, in survey numbers stated supra. Learned counsel for the petitioner has also submitted that though the statement of the Assistant Executive Engineer, Transmission Line Construction II, GCC Coimbatore, has been referred to in the impugned proceedings, a copy of the same has not been furnished to the petitioners and hence, there is a violation of the principles of natural justice. It is also his contention that adequate compensation has not been paid to the petitioners for the damage caused to the trees in the lands.

5. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

6. Mr. R. Vijaya Kumar, learned Additional Government Pleader, takes notice on behalf of the first respondent, and Mr. S.K. Rameshuwar, learned counsel Standing Counsel for TNEB, takes notice on behalf of the second respondent.

7. Mr. S.K. Rameshuwar, learned counsel appearing on behalf of the second respondent, on instructions submitted that, the work has already been completed. However, Mr. K. Govi Ganesan, learned counsel appearing for the writ petitioner submitted that the work has just commenced.

8. Though separate orders have been issued in respect of the Survey Numbers, the contents being one and the same, it is suffice to extract one of the orders, for the purpose of adjudication as to its correctness. Hence, impugned proceedings dated 13.05.2013 is extracted hereunder.

PROCEEDINGS OF THE DISTRICT COLLECTOR, COIMBATORE, PRESENT: THIRU M. KARUNAGARAM, I.A.S., R. Dis. No. 19474/2012/C2 Dated 13.05.2013

Sub:

Tamil Nadu Transmission Corporation General Construction Circle Coimbatore LILO of Gobi Annur 110 KV Feeder at Karamadai 230/110 KVSS objection raised by Thiru N. Shanmugam, Bilichi, Coimbatore conducted detail enquiry passing of orders reg.

Ref: Superintending Engineer, General Construction Circle/ Lr. No. SE/GCC/CBE/DB/AEE/GI/F Karamadai/HO KV Line/D782/12 dt. 13.03.2012.

ORDER:-

The Superintending Engineer, Tamil Nadu Electricity Board in the reference 1st cited, has stated that Tamil Nadu Transmission Corporation (Tamil Nadu Electricity Board) is carrying out the work of LILO of Gobi-Annur 110 KV Line at Karamadai 230/110 KV Sub Station for uninterrupted electric supply. The Scheme is approved by Tamil Nadu Electricity Board vide B.P. 566 dt. 27.10.2007. The sub setting and concreting work are under progress. Out of 59 towers 28 nos tower concreting works were completed and for the remaining locations, the works are under progress. The above location N. 48 (Multi circuit) is situated in the Vadavalli Village in S.F. No. 529 and 530 of the landowner (Objector) Thiru. N. Shanmugam S/o. Nanjappa Gounder, Poosari Thottam, Bilichi (Post) Coimbatore. The Indian Electricity Act, 2003, Section 68 and Indian Telegraphic Act 1948 Part III, Sec, 16(1) empowers the District Magistrate/Collector in his discretion order that the TRANSCO (Tamil Nadu Electricity Board) to erect the tower and the line for LILO of Gobi-Annur 110 KV line at Karamadai 230/110 KV Sub Station.

Further he also stated that the concreting for the location No. 47 & 49 have been already completed. The above tower location No. 48 (Multi Circuit) have to be erected since in a straight line and cannot be deviated as per Technical aspects and requested the District Collector to pass orders on his discretion. Overruling the objection raised to carryout to tower line works at location No. 48 (Multi Circuit) in S.F. No. 528 and 529 owned by the above land owner so as to complete the scheme and to meet out the long felt needs of public in and around Annur and Karamadai and to improve the quality of power supply and transmission network.

The objector and the Tamil Nadu Electricity Board officials were called for enquiry on 07.09.2012.

During the enquiry, Thiru N. Shanmugam's brother N. Chenniappan has stated that the Tamil Nadu Electricity Board Department has proposed to erect High Transmission Line in SF 529 & 530 Coimbatore (North) Vadavalli Village (Location 48) which will affect the agricultural activities and requested to shift the line to the extreme end of the land so that to safe guard the livelihood of the family.

On the other side, the Assistant Executive Engineer, Transmission Line Construction II, Coimbatore has stated that TANTRANSCO is proceeding the transmission line work as per the approved profile and schedule. Already a huge

quantum of expenditure have been incurred in this scheme and 60% of work have been completed and requested entry permission to proceed the erection activities of the above work at Location No. 48 in the land of Thiru N. Shanmugam (S.F. No. 529 and 530 Vadavalli Village, Coimbatore (North) Taluk, Coimbatore so as to complete the scheme.

Later, Land Owner Thiru N. Shanmugam appeared before District Collector on 21.09.2012 and stated that if the tower line is erected in his land the agricultural activities will get affected and requested to erect the tower line in one corner of his land.

I have heard the objections raised by the land owner and the Tamil Nadu Electricity Board.

Since, the above scheme has already been approved by the Tamil Nadu Electricity Board and hence the tower line in location 48 at S.F. 529 and 530 of the land owned by Thiru N. Shanmugam could not be deviated. I find no valid reason for the land owner to interfere with the work of Tamil Nadu Electricity Board in respect of his land for carrying out the erection of tower line in S.F. No. 529 and 530 of Vadavalli Village, Coimbatore North Taluk, Coimbatore.

As per the powers conferred u/s 16(1) of the Indian Telegraph Act, 1885, I overrule the objections raised by the land owner as it is unsustainable and order Tamil Nadu Electricity Board to carryout the tower line works at location No. 48 in S.F. No. 529 and 530 owned by the objector so as to complete the scheme and meet out the long felt needs of the public in and around Annur and Karamadai and to improve the quality of power supply and transmission network.

The Superintendent of Police, Coimbatore District is directed to render necessary assistance to the Tamil Nadu Electricity Board for execution of work.

District Collector, Coimbatore.

9. Perusal of the impugned order shows that insofar as erection of High Tension Lines, in Survey Nos. 529 and 530, Vadavalli Village, Coimbatore (North) Taluk, Coimbatore, opportunity has been given to the writ petitioner and that in the enquiry held on 7.9.2012, either the petitioner or his representative has been heard. The Assistant Executive Engineer, Transmission Line Construction II, Coimbatore has stated that TANTRANSOCO is only executing the transmission line work, as per the approved profile and schedule. Already, a huge amount of expenditure has been incurred in this scheme and 60% of work has been completed and requested entry permission to proceed with the erection activities of the above work at Location No. 48 in the land of the petitioner so as to complete the same.

10. Perusal of the proceedings further discloses that the scheme had already been approved by the Tamil Nadu Electricity Board and hence, the power line Location 48, situated at Survey Nos. 529 and 530, Vadavalli Village, Coimbatore (North) Taluk, Coimbatore, could not be deviated.

11. In M/s. Sri Vignesh Yarns Pvt. Ltd. Vs. S. Subramaniam Gounder and Others, , a Honb"le Division Bench of this Court considered the competency of the District Collector, under Sections 16 and 17 of the Indian Telegraph Act (13 of 1985) to decide upon the route, where power is in the nature of execution of the decision taken u/s 10 of the Indian Telegraph Act or under Sections 67 or 68 of the Electricity Act, 2003. After considering the statutory provisions and the decisions in C. Ram Prakash and C. Naren Dharmaraj Vs. Power Grid Corporation of India Ltd. of this Court and M.D., Ramakrishna Poultry P. Ltd. Vs. R. Chellappan and Others, of the Hon"ble Supreme Court, the Hon"ble Division Bench of this Court, at Paragraph Nos. 17 to 20, held as follows:-

17. From the aforesaid orders, it is evidently clear that the only grievance made by the petitioners in those writ petitions was that the respondent-electricity authorities have not taken permission to enter upon their property from the District Collector/Magistrate as prescribed by law. It also reveals from the above orders that the work was in progress and the only direction was to proceed with the work after obtaining appropriate orders from the District Collector/Magistrate under the provisions of the Indian Telegraph Act, 1885. The District Collector, however, in his impugned order dated 18.07.2011 proceeded on the assumption that he was directed to conduct an enquiry and to give opportunity to the petitioners and the officials of the Electricity Board to express their opinion with regard to the feasibility of proceeding with the erection of transmission line on the original route so decided by the authorities of the Board. The District Collector further observed in his impugned order that since there were objections for taking electric line and erecting electric poles, the Revenue Divisional Officer has to conduct an enquiry and file a detailed report after making necessary survey. The Revenue Divisional Officer in his report has given his own suggestion as to the land over which the transmission line should go. It was categorically brought to the notice of the District Collector that except the work of erecting 9 power towers in the area of Sundakampalayam and Nambiyampalayam and erection of 400 KV High Voltage electric routes from Mettur to Arasur, all other works leading to erection of power towers on both sides are at the stage of completion. The District Collector was also informed that for the purpose of distribution of electricity to the public, 600 MW capacity power tower is to be erected at Mettur, from where electric supply has to be taken to the sub-station at Karumathampatti having capacity of 400 KV, that the formation of electric route has to be completed by the end of July 2011, and that if the works undertaken at Mettur Thermal Power Station and the works relating to formation of electric routes are not completed, then the TNEB will be forced to a situation of immobilizing its funds to the tune of Rs. 140 crores. In spite of all these facts, the District Collector, Tiruppur has granted permission to the TNEB for the erection of power tower and electricity lines through different route. In our considered opinion, the District Collector is not vested with such power either u/s 16 or 17 of the Indian Telegraph Act, 1885. Learned single Judge has rightly held that the power of the District Collector is more in the nature of execution of the

decision taken u/s 10 of the Indian Telegraph Act, 1885 or under Sections 67 and 68 of the Electricity Act, 2003. We are also of the definite opinion that the District Collector has no authority to change the alignment and to give a new route for transmission of the electricity, especially when the experts of the Electricity Board asserted that the original alignment proposed was the best alignment in the interest of the public at large. It has not been disputed that pursuant to the earlier orders passed by this Court, the Board officials approached the District Collector to give permission for studying the feasibility of the alternative routes, and after due survey, they narrowed in on two possible routes and also suggested the merits and demerits of both of them. The Board, however, asserted before the District Collector that the route originally approved by the Board was more feasible and ought to be adopted as it was along the existing panchayat road. It has not been disputed by the appellants that the District Collector in his public hearing/meeting had orally declared that the Boards original approved route would only be followed. But, in the meantime, the District Collector was transferred and the incoming District Collector again called for a meeting and by passing the impugned order, changed the alignment and directed to follow the second route. That being the position, the incoming District Collector ought to have followed the decision taken by the then District Collector approving the original route.

18. We have perused the counter affidavit filed by the Executive Engineer, Transmission Line Construction, Salem, and the facts stated therein have not been controverted by the appellants. It is seen that the Tamil Nadu Electricity Board proposed to erect a new 400 KV Double Circuit line from the newly constructed 600 MW capacity at Mettur Thermal Power Station Stage-III to Arasur 400 Sub Station to evacuate the electric Power supply, which is to be generated from MTPS Stage-III. The scheme was approved by the Government of Tamil Nadu by Notification dated 02.10.2009, and there was no objection to such Notification. The entire route length of 110 Km with 324 Nos. supporting towers and the work commenced during January, 2010 and was scheduled to be completed by October 2011. It has been further stated that all the works are completed except for nine towers between AP 171/0 to AP 174/0, which are proposed in Nambiyampalayam and Sundakkampalayam areas near Avinashi. At that stage, the work was delayed due to objections raised by certain land owners. About seven land owners filed writ petitions before this Court being W.P. Nos. 9728 of 2010 ect. Batch, which was disposed of giving certain directions. In the earlier part of this order, we have extracted the directions issued in those cases. By virtue of the said directions, the Electricity Board was directed to proceed with the work after obtaining appropriate orders of the District Collector/Magistrate under the provisions of the Indian Telegraph Act and the District Collector was directed to pass appropriate orders within fifteen days. In terms of the directions, the Tamil Nadu Electricity Board requested permission from the District Collector, Tiruppur, to enter upon the land to enable them to proceed with the work. The District Collector issued directions to the officials of the Electricity

Board to study the feasibility of an alternate route and survey was also conducted, pursuant to which a proposal was submitted in respect of two possible routes with merits and demerits of both the routes. The Electricity Board took a definite stand that considering the technical aspects, the original route which was approved by the Board was more feasible as the route was to be taken along the existing Panchayat road. Thereafter, meeting was convened between 17.5.2011 and 19.5.2011 and the land owners as well as the officials of the Electricity Board participated in the discussion and it is stated that it was orally agreed that the original route will be adopted. However, in the meantime, the said District Collector was transferred and another officer was posted in his place, who is said to have conducted meetings with the land owners and the Engineers of the Board on 04.07.2011 and 05.07.2011 and he has passed an order on 18.7.2011 to proceed with the work in the second alternate route instead of the original route which was found to be more feasible by the Board as the route was along the existing Panchayat road. When the Electricity Board attempted to implement the order passed by the District Collector dated 18.07.2011, objection was raised by the land owners. This gave rise to the filing of Writ Petitions which are the subject matter of these Writ Appeals.

19. As we have observed earlier, as per the scheme of the Act, the District Collector was not empowered either u/s 16 or Section 17 of the Indian Telegraph Act to decide upon the route and his power was more in the nature of execution of a decision taken u/s 10 of the Act or u/s 67 or 68 of the Electricity Act, 2003. Therefore, when the experts namely the officials of the Board took a definite stand that the original route which was proposed was technically more feasible and it would be in the interest of the public, since the route was along the existing Panchayat road, we find there is absolutely no justification for the Collector to pass an order on 18.7.2011 to change the route which was not found to be technically feasible by the experts. Further, the entire work has been completed except for nine towers and at that stage it would be improper for the District Collector to alter the route, and adopt an alternate route which was found not technically feasible. It is stated that the expenses incurred so far is about Rs. 150 crores for erecting lines, apart from Rs. 3,000 crores which was spent for construction of the new Thermal Power Plant at Mettur and the power which has to be evacuate through its supply line is to provide uninterrupted power supply to both agriculture and industrial development. Therefore, by virtue of the delay, the power line could not be erected on time though the Power Plant was ready to generate about 600 MW power by the end of March, 2012.

20. The learned Senior counsel for the appellant, in support of his submissions placed reliance on the decision of the Hon''ble Supreme Court in *M.D., Ramakrishna Poultry P. Ltd. Vs. R. Chellappan and Others*, . In the said case, the appellant was a Private Limited Company engaged in the business of Poultry Farming. The Power Grid Corporation of India Ltd., took up the work of construction of 400 KV power line for evacuation of power from the Neyveli Thermal Station Expansion Project. The transmission towers were required to be

installed in various locations and some of which were to be placed in the patta lands of the appellants where the appellants were running Poultry Farm. Based upon opinion obtained from the Department of Animal Husbandry, stating that on account of the emission of electro-magnetic fields from the high voltage transmission lines passing over the poultry sheds, it would adversely affect the performance and health of the birds in the long run, the appellant therein made a request for realignment of the transmission line so that either the Poultry sheds could be avoided or the height of the tower could be raised. Therefore, the appellant wanted a small deviation of the route of the power line in the eastward directions, within his lands, so that minimum damage was effected to the poultry farm. The Power Grid Corporation submitted that no deviation was feasible. The District Collector/Magistrate conducted a spot inspection and suggested slight shift in the alignment of power line either westward or eastward, so that the transmission line does not pass above the Poultry shed of the appellant. This was challenged by one R. Chellappan who was the respondent before the Supreme Court, by filing a Writ Petition before this Court. The Writ Petition was dismissed and as against which an Appeal was filed before the Division bench and the Appeal was allowed and the Division Bench held that there is no power for the District Collector to direct change of alignment. Challenging the said order, the Poultry Farm filed an Appeal before the Supreme Court. The main thrust of challenge before the Supreme Court was with regard to the jurisdiction of the District Magistrate to direct change of alignment of a transmission line u/s 16 of the Telegraph Act. The respondent therein contended that the District Collector/Magistrate has no power to change the alignment. The State of Tamil Nadu took a stand that the erection of towers for carrying the transmission line was for the benefit of the public at large who stood to benefit from the energizing of the target area for the improvement of the lot of the people of the area. It was also pointed out that the appellant had no objection to the power transmission line being taken over its lands and the District Collector had taken into consideration the limited request made on behalf of the appellant company that the route of the power line be diverted in the eastward direction within the limits of its lands instead of passing through the middle of the said lands. The Supreme Court on considering the rival submissions, held that a balance will have to be achieved between the appellant's grievance and both the technical as well as technoeological feasibility of altering the route of the transmission lines in keeping with the directions given by the District Collector. Therefore, the Supreme Court keeping aside the technical aspect of the matter as to whether the order passed by the District Collector was one u/s 16 or Section 17 of the Telegraph Act, 1885, in order to arrive at a practical solution to the problem, the Power Grid Corporation accepted the alternate suggestion made on behalf of the appellant Company and raised the height of the Tower point of sag of the transmission lines between the two towers. Accordingly, on the facts of the said case, a direction was issued to the Power Grid Corporation to increase the clearance indicated so that it may not affect the appellant's Poultry Farm.

12. In the light of the decision stated supra and the discussion, this Court is of the view that there is no manifest illegality committed by the District Collector, Coimbatore District, in overruling the objections of the petitioner. That apart, from the reading of the impugned orders, it could be seen that the scheme had come out taking into consideration the long felt need of the public in and around Annur and Karamadai and to improve the quality of power supply and transmission network. As such, public interest is involved. Accordingly, for the reasons stated supra, the Writ Petitions are dismissed. The connected Miscellaneous Petitions are also dismissed. No costs.