

(2011) 02 J&K CK 0025

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 170 of 2008, CMP No's. 238 of 2008, 305 and 389 of 2010

Neelam Raj Baigra and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 01-02-2011

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2011) 2 JKJ 98

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sunil Hali, J.—Petitioners are the residents of village Dalah in district Udhampur. It is stated that they have constructed their residential

houses in the said village and are living there for the last more than three decades. A High Tension transmission line was proposed to be laid in the

said village by the Respondents. Having come to know about this fact, the Petitioners including other villagers objected to it and made a

representation to the District Development Commissioner, Udhampur, who directed the concerned Executive Engineer to look into the matter.

2. Representation is also said to have been made to the concerned MLA, who endorsed the said representation to the Chief Planning Officer,

Udhampur. Vide his communication dated 9th of January, 2008, the aforesaid officer directed the Executive Engineer, Transmission Line,

Construction Division I-Respondent No. 4, to change the alignment of the High Tension Transmission Line over the vacant land.

3. The further case, as projected, is that vide another representation made to

Respondent No. 6, the Petitioners requested the said authority to change the alignment of 4th Tower (Tower No. 127) of the High Tension Transmission Line from Grid Station, Udhampur, regarding which a recommendation was made to the Chief Engineer, System and Operation Wing, Gladny, Jammu.

4. The grievance projected by the Petitioners is that even though a recommendation was made in favour of the Petitioners for shifting of the Tower by Respondent No. 6, vide award impugned dated 5th of February, 2008, the said authority acquired 1 kanal 3 marlas of land situated in the

aforementioned village for installation of Tower at location No. 127 of 220 KV Gladni-Udhampur Transmission Line. It is stated that the

Respondents have started the work regarding installation of the Tower over the acquired land which is a residential area and as a result, their right

to life has been jeopardized. Besides, installation of the Tower and laying of High Tension Transmission Line over the residential area has

endangered the life and liberty of the inhabitants of the area.

5. The Petitioners have placed on record a site plan to show that there is only one street entry to the said village and the High tension transmission

line is to pass over the said street. A play ground as also a school building is shown to be existing in the vicinity. The Petitioners plead that in case,

the High Tension transmission line is allowed to pass over the said area, a great amount of risk would be involved so far as school going children

are concerned. It is under these circumstances, direction is sought to Respondents to change the alignment of Gladny Transmission Line at Tower

No. 127 of 220 KV Gladni Udhampur Transmission Line from the acquired site to any available vacant land.

6. Respondents in their objections have stated that Tower No. 127, of which reference has been made in the petition, was erected in the year

2001, when there was no residential house or any school building existing on spot. For the purpose of laying down the Transmission line, which is a

vital link of electricity to the areas concerned, huge expenditure has been incurred by the Respondent Department and in case, the work in this

regard is stopped, this would not be in the larger public interest.

7. The further contention raised by the Respondents is that another High Tension 132 KV transmission line which is under the control of TLMD-I

Janipur, and is supplying the power, is already passing through the locality to which no objection has been raised by the Petitioners. Placing

reliance on a judgment of a Division Bench of this Court in LPA131/01 titled Ran Vijay Chand v. State and Ors. decided on 16th of December,

2004, it is contended that the Petitioners cannot have any grievance.

8. I have heard the learned Counsel for the parties.

9. Two fold prayer has been made in this writ petition; one for directions to the Respondents to change the alignment of Gladny Transmission Line

at Tower No. 127 of 220 KV Gladni Udampur Transmission Line situate at village Dalah, Udampur from 4th No. Tower from Grid Station

Udampur, and, the second, directing the Respondents not to lay the transmission Line over the houses of the inhabitants of Village Dalah, near

Housing Colony Udampur on the Gladny-Udampur Transmission Line Tower No. 127 situate at village Dalah, Udampur.

10. In order to address the controversy raised by the Petitioners, it is necessary to define the right which the Petitioners claim and the power of the

Court to enforce such a right.

11. It is not in dispute that there is a sanctioned scheme for laying transmission lines 220 KV Gladni-Udampur after securing an administrative

approval to the project subsequent to its clearance from Techno-Economic Committee. The scheme empowers the Respondents to go ahead with

the work in pursuance to the sanctioned scheme. Changing the course of the alignment, as prayed for by the Petitioners, cannot be accepted in

view of the decision taken by the experts, who have, after due deliberations, prescribed the alignment which is sought to be changed. This Court

would not be permitted to enter into arena as to how the alignment of the Transmission Line has to be provided. Respondents will have unfettered

power to go ahead under the sanctioned scheme. The only right which the Petitioners can claim in this behalf is providing of compensation for

purposes of raising the towers. The compensation has already been assessed in this behalf by the competent authority for the land which has been

acquired. No compensation can be claimed by the Petitioners in respect of aerial space which is the sole domain of the State Government. So the

laying of the Transmission Line, based on the original project framework, is the statutory power of the Respondents and no interference is

warranted from this Court to restrain them. The State has, undoubtedly, sovereign right to lay the Transmission Line in order to implement the sanctioned scheme.

12. The learned Advocate General has stated that all the safety measures, appropriate height, which is within the safety zone, will be undertaken while laying the aforesaid Transmission Line.

13. Regarding the second contention that the proposed laying of the Transmission Line by the Respondents is injurious to the public health and safety, it is noted that no material has been placed by the Petitioners on record indicating the nature of the hazard which is likely to be caused by the Transmission Line. The experts, who have sanctioned the scheme, have taken due care of the fact that no injury is caused to the people either on their health or to the user of their property. It is in this context that appropriate height has to be maintained, as admitted by learned Advocate General, which will keep the Transmission Line within the safety zone.

14. In view of the discussion hereinabove, both the prayers cannot be accepted. The right to life, as contended by Mr. Johal, is a fundamental right guaranteed under Article 21 of the Constitution and is required to be protected. There is no material on the basis of which this argument can be understood as to how by laying the Transmission Line there is eminent threat to the life of the Petitioners. It is also not in dispute that a person can be deprived of his fundamental right by taking recourse to the procedure prescribed by law, which must be fair, just and reasonable.

15. In the present case, even though there is no threat to the life of the Petitioners, the laying down of the Transmission Line over an aerial space is not likely to cause any threat to the life of the Petitioners. If there is any mishap or negligence in this behalf, the Petitioner will be well within their rights to claim compensation for the same.

16. In view of what has been said above, I do not find any substance in this writ petition, which is, accordingly, dismissed. Interim directions issued shall stand vacated.