

(2008) 03 MAD CK 0071

In the Madras High Court

Case No : Writ Petition No's. 15739 and 15740 of 2007

P. Balamani and A. Saraswathi

APPELLANT

Vs

The District Magistrate and District Collector and The Chief
Engineer, Power Grid Corporation of India Ltd. (A
Government of India Enterprise)

RESPONDENT

Date of Decision : 14-03-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Electricity (Supply) Act, 1948 — Section 45
Electricity Act, 1910 — Section 12, 13, 14, 15, 16
Electricity Act, 2003 — Section 14, 164, 35, 38(1)
Electricity Rules, 1956 — Rule 233
Telegraph Act, 1885 — Section 10, 16, 16(1), 16(3)
Works of Licensees Rules, 2006 — Rule 3(2)

Citation : (2008) 2 CTC 555 : (2008) 4 MLJ 22

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : A.L. Somayaji for D. Krishnakumar, for the Appellant; L.S.M. Hasan Fazal, Government Advocate for Respondent No. 1 and Jayesh Dolia, for Aiyar and Dolia, for the Respondent

Judgement

V. Dhanapalan, J.—These Writ Petitions have been filed by Balamani and Saraswathi respectively, challenging the proceedings of the

District Magistrate and District Collector, Coimbatore, dated 10.04.2007.

2. Since the issued involved in both the writ petitions is common, they are being disposed of by this common order.

3. Petitioners case in both the petitions is as follows:

a. They own agricultural punja lands to an extent of 1.33.5 acres comprised in S. No. 308/1 of K. Ayyampalayam, Palladam Taluk, Coimbatore

District and they do not own any other agricultural land other than the said

lands. Both of them purchased the lands in the same survey number out of the total extent of 2.67 acres in the year 1996. To eke out their livelihood, they commenced construction of a poultry shed in their lands. Their husbands are retired employees of a mill and they have no independent income and their families are depending upon the aforesaid agricultural land to lead a peaceful life. The length of their lands on the southern portion is 44 metres and they are valuable lands.

b. While so, Power Grid Corporation of India Limited (for short "the Power Grid Corporation"), the second respondent had proposed to install

high tension power lines through the land of one Subbayya Gounder and other persons who are the owners of the petitioners' adjacent lands and it

appears that they have influenced the Power Grid Corporation to drop the installation of power lines over their lands and to alter its plan and also

to shift its route of transmission alignment across the petitioners' lands. After knowing the action of the respondents in shifting the alignment from

the original plan, the petitioners have sent their objections on 15.06.2006 to the respondents, but, there has been no response to their objections

and instead, the Power Grid Corporation has tried to enter into their lands for erecting electricity lines. Aggrieved by the action of the Power Grid

Corporation, the petitioners approached this Court in W.P. No. 38812 of 2006 in which this Court passed an order dated 18.01.2007, directing

the Power Grid Corporation to approach the District Magistrate and further directed the District Magistrate to consider the objections and pass

orders in accordance with law. Accordingly, the Power Grid Corporation moved the District Magistrate for permission to carry on the work of

installation of towers. But, the District Magistrate, without following the order of this Court in true spirit, has passed the impugned order on

10.04.2007 which is non-speaking in nature, contrary to the provisions of law and without assigning any reason for overruling the petitioners'

objections.

4. Aggrieved over the above order of the District Collector, these writ petitions have been filed on various grounds that:

i the first respondent has gone wrong in not furnishing the copy of the application made by the second respondent;

ii the first respondent has not considered the petitioners' objections that the

erection of towers in their land would make the entire land unusable for construction of poultry farm;

iii the alignment deviation is discriminatory and without jurisdiction; as per Sub-rule 2 of Rule 3 of the Works of Licensee Rules, 2006, the first

respondent has to fix the compensation or annual rent or both and without doing so, he cannot proceed and he has failed to follow the provisions

of the Works of Licensee Rules, 2006 while passing the impugned order which is unsustainable; and

iv the first respondent has not considered the petitioners' objections properly and shifting of alignment is an act of mala fide and arbitrary exercise of powers.

5. A counter has been filed by the District Collector, stating as follows:

(a) The petitioners had filed W.P. Nos.38812 and 38848 of 2006 to restrain the District Collector, Coimbatore, and the Power Grid Corporation

of India from interfering with their possession and enjoyment of the land comprised in S.F. No. 308/1 of K. Ayyampalayam Village, Palladam

Taluk, Coimbatore District and this Hon'ble Court by its order dated 18.01.2007 had directed the Power Grid Corporation to approach the

District Magistrate for permission to deal with the objections raised and also directed the District Magistrate to consider the objections and pass

orders in accordance with the provisions of the Electricity Act 2003 and the Telegraph Act 1885.

(b) The petitioners again filed W.P.Nos.15739 of 2007 and 15740 of 2007 against the orders passed by the District Magistrate and District

Collector, Coimbatore, for the permission granted to the erection of High Tension Power line and construction of tower by Power Grid

Corporation in S.F. No. 308/1 of K. Ayyampalayam Village owned by the respective petitioners.

(c) He has perused the records and written statement filed by the land owners and the officials of the Corporation and enquired them on

26.02.2007 and 06.03.2007 after having a detailed enquiry and based on the discussions with the officials of Power Grid Corporation and the

land owners. The land owners had produced no evidence to prove malafide in change of alignment of line and the Corporation had recorded that

the alignment was not changed either. Therefore, he passed an order dated

10.04.2007 u/s 16(1) of Indian Telegraph Act overruling the

objections of the petitioners herein after also analysing the technical feasibility for change of alignment and only then permitted the Corporation to

take the power line through the land owned by the petitioners as per current alignment.

(d) The objections of the writ petitioners were overruled as they were not supported by evidence and in the interest of greater public purpose to

enable the Corporation for erection of electric tower lines through the land belonging to the writ petitioners.

(e) Therefore, the order dated 10.04.2007 is not arbitrary and contrary to the provisions of law and is sustainable; the objections of the petitioners

were overruled only after considering and analysing the technical feasibilities; a detailed enquiry was conducted wherein the petitioners had

participated and after considering all the aspects of the case, the order was passed and hence, the Writ Petitions are liable to be dismissed.

6. A counter has been filed by the Power Grid Corporation, stating that:

a. It is the Central Transmission Utility under the Ministry of Power and has been entrusted with the construction of Udumalpet to Arasur 400 KV

D/C Power Transmission Line comprising 189 towers with a length of 65.116 kms. under Neyveli Thermal Station Stage - II expansion project, a

scheme duly approved by the Government of India to provide quality power at large with greater reliability particularly to the

agricultural/residential/commercial establishments for the State of Tamil Nadu in general and villages of Udumalpet and Arasur in particular and will

be a big boost to the industrial and agricultural growth in the State.

b. It is executing the project after observing all legal procedures under the provisions of the Indian Electricity Act, 2003 and the Indian Telegraph

Act, 1885, the Indian Electricity Rules, 1956 and the Works of Licensees Rules, 2006 to the extent applicable;

c. The foundation work has been completed at 108 locations out of 189 towers and erection of towers is in progress and in respect of the

remaining, the project is to be completed and commissioned by January 2008 as per schedule;

d. The Government of India, in exercise of powers conferred by Sub-section (1) of Section 38 of the Electricity Act, 2003 (Act 36 of 2003) had

notified it as the Central Transmission Utility vide Notification dated 27.11.2003 published vide Gazette of India No. 1084 dated 04.12.2003 and

as per Section 14 of the Electricity Act, Central Transmission Utility shall be deemed to be a Transmission Licensee under the Act; as per Section

164 of the Electricity Act, 2003, the appropriate Government, may by order in writing, for the placing of electric lines or electrical plant for the

transmission of electricity, confer upon the licensee any of the powers which the Telegraph Authority possesses under the Indian Telegraph Act,

1885.

e. Also, the Government of India, in exercise of powers conferred by Section 164 of the Electricity Act, 2003, has passed an order dated

24.12.2003 vide Gazette of India No. 1148 authorizing it to exercise all powers vested in the Telegraph Authority under Part III of the Indian

Telegraph Act, 1885 in respect of electrical lines and electrical plants established or maintained for transmission of electricity or for the purpose of

telephonic or telegraphic communication necessary for the proper coordination of work;

f. As per Section 10 of the Indian Telegraph Act, 1885, it is not necessary to issue personal notice or to get prior consent from the private land

owners and as per Section 10(c) of the said Act, if the property is vested in or under the control of any local authority, then, it is necessary for the

petitioner to get permission from such authority;

g. The above provisions have been scrupulously followed by it and while fixing the transmission line route, only the most techno-economically

feasible route is chosen causing least damage after complying with the statutory clearances and avoiding places of inhabitation, worship and densely

populated areas and in the case of the petitioners, while the transmission line requires a clear corridor of 48 metres only, i.e. 24 metres on either

side from the centre of the transmission line, all crops can be cultivated and fruit-bearing trees of short height can be grown and buildings can be

put up by maintaining sufficient safety electric clearance as per the Electricity Rules; the transmission line would not have any impact on human

beings, animals, plants, etc. or on the geological or ecological system beyond the statutory clearance/norms provided by the Indian Electricity

Rules, 1956;

h. The whole process undertaken by it is for public purpose and any re-alignment of this line at this advanced stage is not at all techno-economically feasible and any delay in completion and commissioning of the project would enhance the cost of the project which would have a direct impact on the power tariff and result in hike in the cost of power per unit burdening the common man and it would also adversely affect the economic status of the State of Tamil Nadu and the entire nation, besides causing heavy loss to the Government Exchequer;

i. The petitioners without understanding the importance of the major project undertaken by it and only with a view to drag on the matter and for their personal benefits, have filed these writ petitions;

j. The statements of the petitioners in paragraph 3 of the affidavit that they intend to utilise the land for construction of a poultry shed and in paragraph 4 that they hail from agricultural family, their husbands are retired employees of a mill and have no independent income go contrary to one another;

k. As per the order of this Court dated 18.01.2007 passed in a batch of writ petitions, the petitioners were given opportunity of hearing and all the above facts and the importance of the project have been published in a statement of defence before the District Magistrate and District Collector;

l. While recommending the route, it tries to avoid erection of towers and drawing of line through villages, temples, historical places, forest areas, etc. and no preference is given to any individual's land as alleged by the petitioners; the route is being followed as per the detailed survey conducted during May 2005; the objections given by the petitioners culminated in filing of W.P. No. 38848 of 2006 before this Court which was disposed of on 18.01.2007 and in view of the above facts, it has got the right to enter upon any land for the purpose of implementation of the project as per the provisions of the Indian Telegraph Act.

m. Taking into account the cost of the project and the industrial growth and power management, it has overruled the objections of the petitioners which are not germane and the first respondent has exercised his powers as contemplated u/s 10 of the Telegraph Act;

n. By exercising its power vested under the Indian Telegraph Act, it has entered into the petitioners' lands only for the purpose of laying the tower

and the lands can be fully utilised by the land owners and the laying of tower by them will not render their lands unusable and the land owners can

cultivate crops, grow trees and put up building construction by maintaining sufficient safety and this has been taken into account as per the

Electricity Rules as the transmission line requires only 48 metres, i.e. 24 metres on either side;

o. There is no deviation from the original route and the same is being executed as per the original approval and the question of paying

compensation would arise only in the event of land being acquired and moreover, compensation would be paid only for the trees/crops, if any,

damaged during the execution of the work as assessed by the revenue authorities;

p. The cost of the project is estimated at Rs. 632 crores and transmission lines are being laid for augmenting power supply to the southern States;

the works were in progress and it was engaged in the work of excavation for the foundation for laying the transmission tower/line;

q. Since the balance of convenience is in its favour and the project involves national importance, the writ petitions have to be dismissed.

7. Mr. A.L. Somayaji, learned Senior Counsel appearing for the petitioners, has contended that the first respondent went wrong in passing a non-

speaking order by simply recording the contentions of the respective parties and not recording the reasons for rejecting the objections of the

petitioners; he ought to have considered the objections of the petitioners that the erection of Towers in the land belonging to the petitioners would

make the entire land measuring an extent of 2.67 acres unusable for construction of poultry farm, house and for other agricultural purposes. He

further contended that the first respondent failed to see that the petitioners cannot either cultivate the land or run the poultry farm in the event of the

electricity poles being erected in their land, as the length of the land is only 44 metres; the first respondent ought to have seen that in the original

proposal for erection of electric lines, the land comprised in S. No. 308/2, which belonged to one Subbayya Gounder, was taken over and bowing

to the pressure exerted by the said Subbayya Gounder, the second respondent changed the alignment of the Transmission line by deviating into the

petitioners' land, which is discriminatory and without any justification.

8. It is the further contention of the learned Senior Counsel for the petitioners that the first respondent ought to have seen that as per Sub-rule 2 of

Rule 3 of the Works of Licensee Rules 2006, he has to fix the compensation or annual rent or both, which should in his opinion be paid by the

licensee to the owner or occupier; but he has not fixed the amount of compensation or annual rent as mandated by the provisions of the Works of

Licensee Rules 2006; the first respondent also went wrong in not considering the undisputed fact that the second respondent had earmarked the

locations for construction of proposed towers after conducting preliminary survey and detailed surveys were conducted thrice whereby the

alignment should have passed through the land of petitioners" neighbours and thereafter without assigning any reasons, the second respondent

altered his plan by shifting the alignment of transmission lines which is an act of mala fide and arbitrary exercise of power; but the first respondent,

without appreciating this fact, has erroneously overruled the objection. Therefore, learned Senior Counsel strongly contended that the order passed

by the first respondent is not sustainable and the same has to be quashed.

9. In support of his contentions, learned Senior Counsel for the petitioners has cited the following decisions:

(i) State of Mysore Vs. S.S. Makapur, :

3. ...For a correct appreciation of the position, it is necessary to repeat what has often been said that tribunals exercising quasi-judicial functions

are not Courts and that therefore they are not bound to follow the procedures prescribed for trial of actions in Courts nor are they bound by strict

rules of evidence. They can, unlike Courts, obtain all information material for the points under enquiry from all sources and through all channels,

without being fettered by rules and procedure which govern proceedings in Court. The only obligation which the law casts on them is that they

should not act on any information which they may receive unless they put it to the party against whom it is to be used and given him a fair

opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case but where such an opportunity had

been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in

Courts.

ii. Orient Paper Mills Ltd. Vs. Union of India (UOI), :

8. If the power exercised by the Collector was a quasi-judicial power-as we hold it to be-that power cannot be controlled by the directions issued

by the Board. No authority however high placed can control the decision of a judicial or a quasi-judicial authority. That is the essence of our

judicial system. There is no provision in the Act empowering the Board to issue directions to the assessing authorities or the appellate authorities in

the matter of deciding disputes between the persons who are called upon to pay duty and the department. It is true that the assessing authorities as

well as the appellate authorities are judges in their own cause; yet when they are called upon to decide disputes arising under the Act they must act

independently and impartially. They cannot be said to act independently if their judgment is controlled by the directions given by others. Then it is a

misnomer to call their orders as their judgments; they would essentially be the judgments of the authority that gave the directions and which

authority had given those judgments without hearing the aggrieved party. The only provision under which the Board can issue directions is Rule 233

of the Rules framed under the Act. The rule says that the Board and the Collectors may issue written instructions providing for any supplemental

matters arising out of these Rules. Under this rule, the only instruction that the Board can issue is that relating to administrative matters; otherwise

that rule will have to be considered as ultra vires Section 35 of the Act.

(iii) S.N. Mukherjee Vs. Union of India, :

35. Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt

facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also

weighed with this Court in holding that an administrative authority must record reasons for its decision are of no less significance. These

considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of

arbitrariness and ensures a degree of fairness in the process of decisions-making. The said purpose would apply equally to all decisions and its

application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that

reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether

the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as

elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is

necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The

need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms

such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.

(iv) Valsamma Thomas Vs. Additional District Magistrate, Alappuzha and Another, :

12. Thus, on review of the authorities of this question, we come to the following conclusions:

(1) The District Magistrate has to exercise his discretion judicially.

(2) He has to pass the order u/s 16(1) of the Telegraph Act, after hearing the parties and after taking such evidence as is required with regard to

the objections raised.

(3) The order passed by the court should be a speaking order.

(4) The order should reflect the objections raised by the parties and the reasons given by the Magistrate for accepting or rejecting the same.

(5) The order should also reflect the materials relied on by the District Magistrate for arriving at the conclusion.

If the discretion is exercised by the District Magistrate as above, then unless it is shown that the findings are perverse or that the proceedings are

vitiating by mala fides this Court will not be justified in interfering with such orders. This Court will not be justified in substituting its own opinion. It

is also worth bearing in mind that this Court has not got technical expertise and will be slow to interfere with such matters.

(v) Canara Bank and Others Vs. Shri Debasis Das and Others, :

19. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always

expressly in a statute or in rules framed thereunder. They may be implied from

the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression "civil consequences" encompasses infringement of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

10. Per contra, Mr. Hasan Fazal, learned Government Advocate, appearing for the first respondent/District Collector has contended that the

District Collector, who is also a Magistrate under the Act, has considered the entire objections raised by the petitioners independently and rejected

the objections and further directed the Corporation to proceed with the erection of H.T. Power Lines. The learned Government Advocate further

submitted that the land owners had not produced any evidence to prove malafide in change of alignment of line. Therefore, the District Collector

has passed an order u/s 16(1) of the Indian Telegraph Act, 1885, overruling the objections of the petitioners, after analysing the technical feasibility

for change of alignment and permitting the Corporation to take the power line through the land owned by the petitioners as per current alignment.

He strengthened his submissions on "eminent domain" and in the interest of greater public purposes, the individual interest cannot be against it and

the authorities have every right to take note of the public interest over the individual interest. Therefore, there is no infirmity in the orders passed by

the District Collector and the same cannot be interfered with.

11. On the other hand, Mr. Jayesh Dolia, learned Counsel appearing for the second respondent Corporation, has strenuously contended that the

Corporation is the Central Transmission Utility under the Ministry of Power and has been entrusted with the Project to provide quality power at

large with greater reliability particularly to the agricultural, residential and commercial establishments for the State of Tamil Nadu and it is executing

the project after observing all legal procedures under the provisions of the Act

and the Rules. He also submitted that in the entire section of the project, foundation work has been completed at 108 locations and erection of towers is in progress and it is a time bound project to be completed by January, 2008 as per schedule and because of the pendency of the writ petitions, they could not proceed further. The learned Counsel made a point that the Government of India, in exercise of powers conferred by Section 164 of the Electricity Act, 2003, has passed an order dated 24.12.2003 to exercise all powers vested in the Telegraph Authority in respect of electrical lines and electrical plants established or maintained for transmission of electricity or for the purpose of telephonic or telegraphic communication necessary for the proper coordination of work. As per Section 10 of the Indian Telegraph Act, 1885, it is not necessary to issue personal notice or to get prior consent from the private land owners and as per Section 10(c) of the said Act, if the property is vested in or under the control of any local authority, then, it is necessary for the petitioner to get permission from such authority. He vehemently contended that the transmission line route is as per the experts opinion and the most techno-economically feasible route is chosen causing least damage after complying with the statutory clearances and avoiding places of inhabitation, worship and densely populated areas, including the geological or ecological system. Therefore, the whole process undertaken by the Corporation is for a public purpose and any re-alignment of this line at this advanced stage is not at all techno-economically feasible and any delay in completing the project or alteration in route will cause heavy loss to the Government exchequer. Hence, in the absence of any valid reasons to object to the erection of transmission lines and when there is larger public interest involved in the project and also there is no damage to the properties of the petitioners, the petitioners cannot stall the project by invoking the jurisdiction under Article 226 of the Constitution of India.

12. In support of their contentions, learned Counsel for the respondents cited the following decisions:

(i) Bharat Plywood and Timber Products Private Ltd. Vs. Kerala State Electricity Board Trivandrum and Others, :

23. it is clear from the wording of Section 16 and particularly from the expression ""the District Magistrate may, in his discretion"", that an order will

not be forthcoming automatically. A District Magistrate may in his discretion in a given case refuse or decline to pass an order that the telegraph

authority shall be permitted to exercise the powers. The wording is significant. The District Magistrate does not grant permission to the authority.

But, he orders that the authority ""shall be permitted."" The discretion conferred by the section on the District Magistrate is certainly a judicial

discretion, and, in cases where the District Magistrate refuses to pass an order that the telegraph authority shall be permitted to exercise the

powers mentioned in Section 10, it is inconceivable that the telegraph authority may, notwithstanding such refusal, continue to exercise such

powers. The wording of the section is thus itself indicative of the fact that in cases of resistance or obstruction the District Magistrate will have to

decide whether the authority should be permitted or not to exercise the powers u/s 16 of the Telegraph Act. This necessarily means that the

telegraph authority cannot override or ignore the resistance or obstruction and continue to exercise the powers u/s 10 notwithstanding such

resistance or obstruction. It follows that, when an owner or occupier resists or obstructs the exercise of the power u/s 10, the telegraph authority

will have to approach the District Magistrate for an order under Sub-section (1) of an order under Sub-section (1) of Section 16 and can exercise

the power u/s 10 only in cases where the District Magistrate deems it fit to pass an order that he shall be permitted to do so. The power conferred

by Section 10 is thus a conditional power; conditional on an order being passed u/s 16(1) by the District Magistrate that the authority may be

permitted, in case of resistance or obstruction, to exercise the power. This is so not only in regard to a telegraph authority but to the public officer

or any other person authorised under the Electricity Act.

(ii) 1994 WLR 445 M. Nithyanandam and two Ors. v. The Chairman, Tamil Nadu Electricity Board, Madras-2 and Ors.:

26. The above section, in my opinion, gives authority for placing the poles or the towers in a private land and Clause (d) referred to above

provides for payment of compensation. Section 16(1) provides for the Board approaching the District Magistrate in case of resistance by the

owner. Section 16(3) provides for the mode for fixing the compensation in case of dispute regarding the sufficiency of the compensation.

27. In the light of the non-obstante clause in Section 42, excluding in categorical terms the applicability of Sections 12 to 16, 18 and 19 of the Indian

Electricity Act, 1910, in any considered opinion, it is not open to the petitioners to rely on Section 12 of the Indian Electricity Act, 1910. As stated

above, the petitioners strongly relied on the decision reported in 1959 (II) MLJ 446. In that case, Basheer Ahmed Sayeed, J., was pleased to deal

only with the scope of Section 12. The scope of Section 42 was apparently not brought to the notice of the learned Judge. Therefore, the

petitioners herein cannot call in aid the said decision.

28. It was argued by Mr. A. Venkatesan, learned Counsel for the petitioners, that the learned Judge had observed in the above decision that only

apparatus and appliances to be placed and high tension wire cannot at all be used or put up. The petitioners cannot rely upon the observations

made by the learned Judge. Provisions of Section 42 are very clear and at the end of the 20th century, it is no longer open to anybody to contend

the high tension towers cannot be put up.

(iii) A.M. Ismail and Others etc. Vs. Union of India (UOI) and Others, :

8. On a survey of these authorities, it is clear that the District Magistrate is discharging an administrative function and the general principle of natural

justice and other procedural regulations would apply. The contention of the petitioners that the District Magistrate is given unlimited power and,

therefore, the said provision is illegal cannot be accepted. The District Magistrate hears objectors and consider whether the objections raised by

the property owners are reasonable. If the District Magistrate is of the view that it is not proper to draw line through the objections" property he

shall decline permission to draw line through their property. If, on the other hand, the District Magistrate, finds that the objectors are raising

frivolous objectors, the District Magistrate is competent to rule out such objections and direct the authorities to draw the proposed line. Therefore,

I do not find that Section 16(1) of the Indian Telegraph Act, 1885 is in any way violative of Article 14 of the Constitution.

10. Coming to the facts of the cases, petitioners" objection is that there are alternate lines and this was not considered by the District Magistrate. It

may be noticed that this line was proposed in 1992 and because of the obstruction it could not be drawn. The proposal is to draw 3 K.M. Long

11 K.V. Line for the purpose of voltage improvement and by the proposed scheme about 400 persons are benefited. There is also proposal to instal a transformer at Edayirickapuzha. Most of the petitioners are also benefited by the proposed line. It is true that some of the petitioners will have to suffer a little inconvenience by the drawal of these lines. But considering the benefit that may derive to the consumers, the objections raised by the petitioners are not weighty and the District Magistrate rightly overruled these objections. The question was elaborately considered by the District Magistrate rightly overruled these objections. The question was elaborately considered by the District Magistrate and the alternate suggestion to construct the line along the public road was also found not feasible. It is also pointed out that the route is by the side of a thodu and the petitioners are not seriously affected in the sense that their trees are not to be cut and removed to a greater extent.

(iv) E. Venkatesan and others Vs. Chairman, Tamil Nadu Electricity Board, Madras and others, :

20. In this case, the fact that there was a notification in 1961 is not a matter in dispute. Subsequently proceedings have been issued by the first respondent on 18.12.1993 whereby the scheme was approved, and it was also declared that the Board will exercise power of Telegraph Authority u/s 45 of the Electricity Supply Act, and, therefore, the Electricity Board shall not be bound by the provisions of Sections 12 to 16, 18 and 19 of the Indian Electricity Act, 1910. In view of the notification and also the approved Scheme, no argument can be put forward by the petitioners that the officers of the Electricity Board are not entitled to enter the property or to draw the electric line. Once the power under the Telegraphs Act is given to the public officers of the Board, they are also entitled to dig pits and also instal towers over the property. The question of consent from the petitioners does not arise for consideration, nor is it required under law.

(v) A decision of the Division Bench of this Court in W.A. No. 572 of 2001 in the case of The Chairman, Power Grid Corporation of India Ltd.

and Anr. v. Vivasaya Vizhipunarvu Iyakkam:

4. Mr. Dolia, learned Counsel appearing on behalf of the appellants says that the direction by the learned single Judge is beyond the scope of

Section 10 of the Telegraphs Act. He says that the Act nowhere provides that while erecting the lines, the compensation should be decided in

advance, and then alone the trees should be cut, whereas, the respondents herein and the original petitioners before the learned single Judge very

earnestly point out that once the trees are cut, there would be no question of firstly their identification and secondly about a proper compensation

being decided upon, as in that case, the concerned authorities would not have, anything available to know about the age and capacity of yield, etc.

(vi) An unreported judgment of this Court in W.P. Nos. 49172 of 2006, etc. batch of cases:

22. In at least one writ petition, it is contended that instead of the transmission towers being installed in a straight line, there is a deviation. For this,

there may be perfectly justifiable technical explanation on the side of the Corporation. This project has been conceived by technical experts, and

considering the magnitude of the project and the fact that it covers large extent of land running through many districts, the minor deviations that the

petitioner alleges must be ignored. However, it is the jurisdiction of the District Magistrate to consider the objections, and it will be possible for the

objector as well as the Corporation to explain before the District Magistrate the manner in which the land lies and prove either that the erection of

the transmission towers is improper or that the erection of the towers has been done in the optimum manner possible and that there could be no

other way of doing it.

(vii) A recent judgment of the Supreme Court reported in (2007) 1 SCC 641 in the matter of Daulat Singh Surana and Ors. v. First Land

Acquisition Collector and Ors.:

68. The right of eminent domain is the right of the State to reassert either temporarily or permanently its dominion over any piece of land on

account of public exigency and for public good.

74. The power of compulsory acquisition as described by the term "eminent domain" can be exercised only in the interest and for the welfare of the

people. The concept of public purpose should include the matters, such as, safety, security, health, welfare and prosperity of the community or

public at large.

75. The concept of "eminent domain" is an essential attribute of every State.

This concept is based on the fundamental principle that the interest and claim of the whole community is always superior to the interest of an individual.

13. Heard the learned Counsel for the respective parties and perused the material available on record, the relevant provisions of the Act and the Rules and also the decisions cited by the counsel for the parties.

14. The Power Grid Corporation of India Limited has been entrusted with the construction of Udumalpet to Arasur 400 KV D/C Power

Transmission Line comprising 189 towers with a length of 65.116 kms. under Neyveli Thermal Station Stage-II expansion project. This project

has been approved by the Government of India to provide quality power at large with greater reliability particularly to the agricultural, residential

and commercial establishments for the State of Tamil Nadu in general and the villages of that area in particular to boost the growth in the State. The

Power Grid Corporation is an authority to execute the project after observing all legal procedures and as per the existing provisions of the

Electricity Act, 2003 and under the provisions of the Indian Telegraph Act, 1885 and also under the relevant rules. It appears that the project

work has commenced and it is a time bound project. Out of 189 towers in the entire area, foundation work has been completed at 108 locations

and erection of towers is in progress and the project is to be completed by January, 2008, as per schedule. As per Section 14 of the Electricity

Act, 2003, Central Transmission Utility shall be deemed to be a Transmission Licensee and as per Section 164 of the Act, the appropriate

Government may by order in writing for the placing of electric lines or electrical plant for the transmission of electricity confer upon the Licensee

any of the powers which the Telegraph Authority possesses. Accordingly, the Power Grid Corporation has been entrusted with the power to

exercise all the powers in respect of electrical lines and electrical plants established or maintained for transmission of electricity or for the proper

co-ordination of work.

15. As per Section 10 of the Indian Telegraph Act, it is not necessary to issue personal notice or get prior consent from the private land owners

and as per Section 10(c), if the property is vested in or under the control of any local authority, it is necessary for the petitioner to get permission

from such authority.

16. It appears that the project has been taken over and the route finalised on expert opinion and also taking note of the techno-economically feasible route and it is causing least damage after complying with the statutory clearances. Further, the viability of erecting such a transmission line takes the most techno- economically feasible route avoiding places of inhabitation, worship and densely populated areas. It is seen that since the transmission line requires a clear corridor of 48 metres only i.e., 24 metres on either side from the centre of the transmission line, all crops can be cultivated and fruit bearing trees of short height can be grown and building put up by maintaining sufficient safety electric clearance as per the Electricity Rules, 1956, and this transmission line would not have any impact on human beings, animals, plants etc. or on the geological or ecological system beyond the statutory clearance. Therefore, the whole process undertaken by the respondent is for a public purpose and any re-alignment of this line at this advanced stage is not at all techno-economically feasible.

17. Earlier, these writ petitioners moved this Court in a batch of Writ Petitions before exhausting the remedy under the relevant provisions of the Act. On a careful consideration of the matter and upon perusing the entire materials, this Court passed an order on 18.01.2007 in W.P. No. 49172 of 2006 and other connected matters and disposed of all the petitions with the following direction:

The Power Grid Corporation shall, as early as it deems fit, approach the District Magistrate concerned in each case for permission to deal with the objections raised by the petitioners in each case and the said District Magistrate shall consider the objections and pass orders in accordance with the provisions which have been extracted above. This project involves huge expenditure and therefore, we cannot permit any avoidable delay. The petitioners cannot think that by avoiding any notice or summons from the District Magistrate, they can indefinitely delay the matter. Immediately on receipt of the request by the Corporation for permission, the District Magistrate shall issue notice to the respective objectors and after hearing their objections, shall pass orders in accordance with law, within a period of six weeks from the date on which the Corporation makes a request for permission to the District Magistrate.

18. Based on the above directions, the District Collector has proceeded under the provisions of Section 16(1) of the Indian Telegraph Act to hear

the objections of the petitioners along with the submissions of the Power Grid Corporation. An enquiry was conducted on 26.02.2007 and the

objectors filed their written submissions so also the Corporation.

19. The learned District Magistrate, after going through the written submissions filed by both the land owners and the Corporation, held as follows:

I have gone through the written statement filed by the land owners and the Power Grid Corporation of India Limited. The land owners

apprehension of malafide in the alignment is found baseless. The above project is being carried out for industrial growth and power management in

Coimbatore District. I find no valid reasons to interfere in the laying of power line by Power Grid Corporation of India Limited in respect of the

objectors land.

As per the powers conferred u/s 16(1) of the Indian Telegraph Act 1855, I overrule the objections raised by the land owner and allow the Chief

Manager Power Grid Corporation Limited, Coimbatore, to take the line through the land in S.F. No. 308/1 of K. Ayyampalayam village of

Palladam Taluk as planned.

20. The above orders of the District Collector are under challenge in these Writ Petitions.

21. The main controversy that centres around is, whether the District Collector has considered the objections in the light of the directions of this

Court and also in the manner known to law.

22. This Court is not an expert body to go into the feasibility or non- feasibility of the transmission lines to be erected and the factual matrix

controverted to by the parties in making alignment of route of transmission lines and also to consider the alternate alignment in the light of the

objections of the petitioners. This Court is duty bound to examine whether the order passed by the District Collector is in conformity with the law

laid down; the procedure adopted by the authorities; the manner in which the enquiry was conducted and also whether the decision taken by the

Collector is in accordance with law.

23. A strenuous argument was advanced by the learned Counsel for the petitioners that the first respondent has not at all assigned any reasons to

reject the objections, when they are substantial and have to be taken note of.

24. There is no whisper in the impugned order about the consideration of the objections by the District Collector and the statement of the

Corporation and finally the order was passed without assigning reasons and with total non- application of mind.

25. A careful analysis of the impugned proceedings passed by the District Magistrate/District Collector, pursuant to the orders of this Court, would

go to show that they are non-speaking orders, as the District Magistrate has not at all gone into the objections in detail to consider the same

independently, by applying his mind. Reasoning is the heartbeat of every conclusion and without the same, the conclusion becomes lifeless. The

rationale behind it is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is

spelling out reasons for the order made. Therefore, I am not inclined to go into the other aspects of the matter, which the learned Counsel on either

side have advanced their arguments. I am only inclined to interfere with the impugned orders, as they are non-speaking ones. As such, the

impugned orders cannot be sustained and are set aside, remitting the matters back to the District Collector for consideration.

26. While doing so, this Court is conscious of the importance of the project, involving huge amount, for the benefit of the public at large and its time

boundedness. Therefore, I direct the District Magistrate, Coimbatore, to consider the objections of the parties and pass orders, giving reasonings,

within a period of four weeks from today. It is open to the parties to these proceedings to agitate all other issues, if any, over which they are

aggrieved, if they so desire. The time factor indicated in this order has to be strictly adhered to, taking note of the causing of delay in the project.

27. Writ Petitions are disposed of in the above terms. No costs. Consequently, the connected M.P. Nos. 1 and 2 of 2007 are closed.