

(2008) 04 MAD CK 0127

In the Madras High Court

Case No : Writ Petition No. 33812 of 2007

R. Kannan rep. by his Power Agent, K. Sivasubramanian

APPELLANT

Vs

Power Grid Corporation (India) Limited

RESPONDENT

Date of Decision : 04-04-2008

Acts Referred:

Constitution of India, 1950 — Article 136, 14, 226, 227
Electricity (Supply) Act, 1948 — Section 45
Electricity Act, 1910 — Section 12, 13, 14, 15, 16
Electricity Act, 2003 — Section 14, 164
Electricity Rules, 1956 — Rule 233
Telegraph Act, 1885 — Section 10, 11, 12, 13, 14

Citation : (2008) 4 MLJ 892

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : R. Alagirisamy for M. Md.Ibrahim Ali, for the Appellant; Jayesh B. Dolia, for Aiyar and Dolia for respondent 1 and 2 and Hasan Fizal, Government Advocate for respondent 3, for the Respondent

Final Decision : Dismissed

Judgement

V. Dhanapalan, J.—This Writ Petition has been filed, praying for issuance of a writ of certiorarified mandamus, to call for the records relating to Rc.30232/2007/M1, dated 11.10.2007, passed by the third respondent received by the petitioner on 19.10.2007, quash the same and consequently direct the third respondent to pass fresh order after considering the alternative alignment proposal submitted through the expert by the petitioner.

2. According to the petitioner, the property situate at Ninnakarai Village, Kattangulathur, Kancheepuram District, comprised in Survey Nos. 362 and 363 measuring an extent of 13.67 acres belongs to him and his younger brother, by virtue of a registered will executed by their father. While so, the second respondent has attempted to interfere with the peaceful possession by putting up towers for the purpose of high tension overhead lines in the said property. The

petitioner has filed written objection before the second respondent but without passing any orders, the second respondent again attempted to proceed with the digging work in the property. Therefore, the petitioner approached this Court by way of filing Writ Petition No. 47813 of 2006 for issuance of a writ of mandamus, forbearing the respondents 1 and 2 from putting up towers and this Court, by an order, dated 18.01.2007, in a batch of writ petitions, passed the following order:

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.

3. Pursuant to the said order, the third respondent issued a notice to the petitioner to attend the enquiry on 19.02.2007, but, due to health problem, the petitioner was not able to attend the enquiry and, therefore, on 23.02.2007, a detailed representation was submitted through messenger with a specific request to afford an opportunity of personal hearing before passing any final order, but the third respondent, by an order dated 23.05.2007, without affording any opportunity of being heard in person and overruling the objections, permitted the second respondent to carry out the work as per Section 16(1) and (2) of the Indian Telegraph Act, 1835. Aggrieved over the said order, the petitioner again filed W.P. No. 21147 of 2007, whereupon this Court, on 21.06.2007, directed the third respondent to afford an opportunity of being heard to the petitioner. In pursuance of the said direction, the third respondent has passed the order, dated 11.10.2007, against which this Writ Petition has been filed.

4. Respondents 1 and 2/Corporation have filed a counter affidavit, stating as follows:

(a) It is the Central Transmission Utility under the Ministry of Power and has been entrusted with the construction of Sriperambudur to Kalivanthapattu 400 KV D/C Power Transmission Line comprising 94 Towers with a length of 30.673 kms. at a total cost of Rs. 588.25 crores; the scheme is duly approved by 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 South Chennai in particular and will be a big boost to the industrial and agricultural growth in the State and it is executing the project after observing all legal procedures and as per the existing provisions under the Indian Electricity Act, Sections 10 to 19 of the Indian Telegraph Act, 1885, Indian

Electricity Rules, 1956 and the Woks of Licensees Rules, 2006.

(b) Sriperambudur to Kalivanthapattu 400 KV D/C Power Transmission Line is of 30.673 kms. length and has 94 towers in the entire section against which foundation work has been completed at 86 locations and 80 towers have been erected and the erection of balance towers is in progress; conductor stringing has been completed to an extent of 18 kms. and the project is scheduled to be completed and commissioned by November 2007.

(c) 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.

(d) 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 the 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.

(e) 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.

(f) The whole process undertaken by the respondents is for a public purpose and any realignment of this line at this advanced stage is not at all techno-economically feasible and laying of towers in the land will not render the land unusable as alleged by the petitioner.

(g) Any delay in completion and commissioning of the project would enhance the cost of the project which would have a direct impact on power tariff and result in hike in the cost of power, burdening the common man.

(h) When the officials of the Corporation surveyed the petitioner's land during January, 2004, to connect the Sriperambudur Sub-station and the proposed Sub-station at Kallivanthapattu, it was a vacant land with bushes grown all around and there was no boundary wall and it was the most feasible route to reduce the forest damage.

(i) The petitioner submitted a technical expert's opinion for changing the alignment of the HT line away from his land over existing buildings and temple in the nearby land and the objection with regard to change of alignment was discussed and considered by the third respondent during the enquiry and only thereafter the third respondent came to a conclusion that the alternate route suggested by the technical expert employed by the petitioner was not feasible.

(j) At no point of time, the petitioner attended the meeting whereas he was represented by a representative who was afforded fullest and fair opportunity by the third respondent and hence the averment that the petitioner was not given

personal hearing does not hold good.

(k) The petitioner knowing full well that HT lines are proposed to be drawn over his lands, had plotted to make the lay out in such a way to have roads and open areas like park under the line and sold the land under Co-operative Housing Scheme.

(l) The technical expert employed by the petitioner has exposure with regard to laying of Low Tension lines less than 220 KV and below and he does not have exposure with regard to 400 KV line, whereas the Corporation is having technical expertise with regard to drawing of HT lines and has established and maintained about 65,000 Circuit Kilo Metres all over India. The drawing furnished by the technical expert had technical draw back on the face of it and no suggestion whatsoever was given by the technical expert to link the proposed alignment with the portion crossing the forest land. The alignment cannot be diverted over the other persons' buildings and structures and the span length of the line in the diverted portion was more than 400 metres which is not technically feasible, as it is not within the permissible span length of 400 KV lines.

(m) The line was aligned in such a view to cross the forest area with minimum damage and the Ministry of Environment and Forests has accorded Stage-I approval for diversion of 3.19 hectares of forest land in Gudalur Reserve Forest of Tambaram Range of Chinglepet Division for laying 400 KV D/C line from Sriperumbudur to Kalivanthapattu in favour of the Corporation. At this stage, shifting of the alignment inside the forest is not at all possible. The proposal submitted by the technical expert envisages total shifting of alignment inside the forest area, which will cause more damage to the forest.

5. The third respondent/District Collector has also filed a counter, denying the allegations made in the affidavit of the petitioner, and stating that the petitioner was summoned for enquiry on 19.02.2007 and though the petitioner received the summons, he did not turn up for enquiry in spite of a specific direction by this Court, but filed a petition on his behalf; reasonable opportunity of being heard was extended to both the parties and both the parties represented in the enquiries held on 13.08.2007 and 17.09.2007; the technical adviser for the petitioner was not technically competent to give suggestions for 400 KV lines; no discriminatory treatment was meted out to the petitioner; the written submissions filed by the first respondent during the enquiry on 19.09.2007 were considered along with the objections of the petitioner and, only thereafter, on a careful analysis of the materials available on record and after arriving at the subjective satisfaction, in the interest of public and in accordance with law, the impugned order was passed on 11.10.2007, and, as such, it is not vitiated by any means. Accordingly, he has prayed for dismissal of the Writ Petition.

6. Mr.R.Alagirisamy, learned Senior Counsel for the petitioner, has contended that the third respondent went wrong in passing the impugned order by simply recording the contentions of the respective parties and not recording the reasons

for rejecting the objections of the petitioner and he ought to have considered the objections of the petitioner that the erection of towers in the land belonging to the petitioner would make the entire land measuring an extent of 13.67 acres unusable for construction of houses. He also argues that without even considering the suggestion of the petitioner through his technical expert that the proposed power line be diverted through the other poramboke lands available immediately next to the layouts, the third respondent, without assigning any reasons, permitted the first and second respondents to carry out the work of erecting high tension power lines through the petitioner's lands, which is arbitrary, illegal, unjust and unsustainable in law and, therefore, the order passed by the third respondent is liable to be quashed.

7. The next limb of contention of the learned Senior Counsel is that the petitioner was not given a personal hearing and by relying on the para-wise remarks and written submissions filed by the Corporation, the impugned order was passed. Further, according to him, the written submissions filed by the first and second respondents before the third respondent were not furnished to the petitioner. In other words, his contention is, that, had the written submissions of the Corporation been furnished, the petitioner would have demonstrated that the said submissions were not correct. He further adds that the third respondent failed to consider that there are buildings in the proposed line and that the alternate proposed line does not pass over the buildings and, therefore, if the impugned order passed by the third respondent is not set aside, the respondents 1 and 2 may interfere with the peaceful possession by digging work for construction in the middle of petitioner's property, which would cause irreparable loss and hardship to the petitioner.

8. The bottom line of the learned Senior Counsel is that though the enquiry was conducted on 17.09.2007, the District Magistrate relied upon a letter given by the Corporation, dated 19.09.2007, after the enquiry was over and, without giving an opportunity to the petitioner to examine as to what are all the contents of the letter, passed the impugned order, rejecting the case of the petitioner, which is against law.

9. In support of his contentions, learned Senior Counsel for the petitioner 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, :

34. The decisions of this Court referred to above indicate that with regard to the requirement to record reasons the approach of this Court is more in line with that of the American Courts. An important consideration which was weighed with the Court for holding that an administrative authority exercising quasi-judicial functions must record the reasons for its decision, is that such a decision is subject to the appellate jurisdiction of this Court under Article 136 of the Constitution as well as the supervisory jurisdiction of the High Courts under Article 227 of the Constitution and that the reasons, if recorded, would enable this Court or the High Courts to effectively exercise the appellate or supervisory power. But this is not the sole consideration. The other considerations which have also weighed with the Court in taking this view are that the requirement of recording reasons would (i) guarantee consideration by the authority; (ii) introduce clarity in the decisions; and (iii) minimise chances of arbitrariness in decision-making. In this regard a distinction has been drawn between ordinary Courts of law and tribunals and authorities exercising judicial functions on the ground that a Judge is trained to look at things objectively uninfluenced by

considerations of policy or expediency whereas an executive officer generally looks at things from the stand point of policy and expediency.

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 vitiated 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 infraction 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. Jayesh Dolia, learned Counsel appearing for the 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 which has 94 towers, foundation work has been completed at 86 locations and 80 towers have been erected and the erection of balance towers is in progress; further, conductor stringing has been completed to an extent of 18 kms. and the balance is under progress and it is a time bound project scheduled to be completed and commissioned by November, 2007 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. Also, according to the learned Counsel, 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 Corporation 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 petitioner, the petitioners cannot stall the project by invoking the jurisdiction under Article 226 of the Constitution of India.

11. On the other hand, Mr.Hasan Fizal, learned Government Advocate, appearing for the third 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 petitioner independently and passed an order u/s 16(1) of the Indian Telegraph Act,1885, overruling the objections of the petitioners and permitting the Corporation to take the power lines through the land owned by the petitioner. The learned Government Advocate strengthened his submissions on "eminent domain", pointing out that 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 order passed by the District Collector and the same cannot be interfered with.

12. In support of their contentions, learned Counsel for the respondents have 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 objections, 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. Power Grid Corporation of India Limited has been entrusted with the construction of Sriperambudur to Kalivanthapattu 400 KV D/C Power Transmission Line comprising 94 Towers with a length of 30.673 kms. at a total

cost of Rs. 588.25 crores. The said scheme is duly approved by 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 South Chennai in particular and will be a big boost to the industrial and agricultural growth in the State. The Corporation is an authority to execute the project after observing all legal procedures and as per the existing provisions under the Electricity Act, Sections 10 to 19 of the Indian Telegraph Act, 1885, Indian Electricity Rules, 1956 and the Woks of Licensees Rules, 2006. It appears that the project work has commenced and it is a time bound project. Out of 94 towers in the entire area, foundation work has been completed at 86 locations and 80 towers have been erected and the erection of balance towers is in progress and the project is scheduled to be completed and commissioned by November 2007.

15. 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 coordination of work. Similarly, 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 Corporation to get permission from such authority.

16. It transpires 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 respondents 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, this petitioner moved this Court by filing a Writ Petition, 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, directing the Corporation to approach the District Magistrate concerned in each case for permission to deal with the objections raised by the petitioner in each case and that the said District Magistrate shall consider the objections and pass orders in accordance with the provisions. It was also observed in the said order that the project involves huge expenditure and therefore any avoidable delay cannot be permitted and that the petitioners cannot think that by avoiding any notice or summons from the District Magistrate, they can indefinitely delay the matter. In addition, it was directed that 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, 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 petitioner along with the submissions of the Power Grid Corporation. An enquiry was conducted on 19.02.2007 and the objector/petitioner filed his written submissions so also the Corporation. Thereafter, taking into account the said written submissions filed by the parties, the District Collector on 23.05.2007, permitted the Corporation to continue the construction work, setting aside the objections of the petitioner. Aggrieved over the said order, the petitioner again filed W.P. No. 21147 of 2007, whereupon, this Court, on 21.06.2007, directed the third respondent to afford an opportunity of being heard to the petitioner and pass appropriate orders. In pursuance of the said direction, the third respondent summoned the writ petitioner and the Corporation on 13.08.2007 and 17.09.2007 and they also filed their written submissions. The Corporation refuted the claim of the petitioner for the alternative alignment proposed through the technical expert for the following reasons:

(i) The alignment passes over the existing buildings, temples etc., which has to be avoided.

(ii) One of the span lengths given in the proposal is 432 metres, which is beyond the permissible span length of 400 metres for 400 KV lines.

(iii) Technical expert has given a one sided advice only to avoid the line passing through the petitioner's land and shifting the alignment over other's properties without indicating the connection with our (Corporation) alignment at the other end.

(iv) The profile submitted by the expert does not indicate the presence of any structures underneath the line and the clearances thereof. It is not clear whether the technical expert has taken into consideration the type of conductor and the number of conductors used and whether proper sag template has been used for preparing the profile.

(v) TNEB lines and other lines referred by the technical expert are of lesser voltage and have no relevance to 400 KV lines in the matter of clearances and right of way.

This clearly indicates that the technical adviser for the petitioner is not competent to give suggestions for 400 KV lines and therefore the alternative suggested by the petitioner through his technical expert is not feasible.

Therefore, the District Collector has permitted the Corporation to go ahead with the erection work. The said order of the District Collector is under challenge in this Writ Petition.

19. At this juncture, the main points that revolve around are, whether the District Collector has considered the objections in the light of the directions of this Court and also whether he has afforded an opportunity of personal hearing to the petitioner ?

20. 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 petitioner. This Court is duty bound to examine whether the order passed by the District Collector is in conformity with the law laid down; the manner in which the enquiry was conducted and also whether the decision taken by the Collector is in accordance with law.

21. It shall be stated that pursuant to the direction of this Court on 21.06.2007, the District Collector summoned the writ petitioner and the Corporation on 13.08.2007 and 17.09.2007 and they also filed their written submissions. It is to be noted that the Corporation refuted the claim of the petitioner for the alternative alignment proposed through the technical expert, as stated supra. Further, after analysing all the points expressed by the parties, the District Collector has permitted the Corporation to go ahead with the erection work, as it is the only feasible route the Corporation can take, in order to minimize the extent of Reserve Forest. Therefore, the contention of the learned Senior Counsel for the petitioner that the petitioner was not given an opportunity of being heard and that the suggestions made by the petitioner through his technical expert are not considered by the District Collector is not tenable. With regard to the contention that though the enquiry was conducted on 17.09.2007, the District Magistrate relied upon a letter dated 19.09.2007 submitted by the Corporation and did not afford an opportunity to the petitioner to examine as to the contents of the said letter, it has to be stated that the contents of the said letter, which is relied upon by the District Magistrate, are only the repetitions of the counter statement of the Corporation, which is made available to the petitioner. Therefore, there is no need to give much importance to the said letter. In the absence of any prejudice having been caused to the petitioner, I do not think that any substantial right has accrued to him. As such, the said contention also fails.

22. It is well settled in Daulat Singh Surana's case, referred to above, that public interest is always superior to the interest of an individual. When the Corporation exercises powers u/s 164 of the Indian Electricity Act read with Section 10 of the Indian Telegraph Act, they are not acquiring the land, but they are only making use of it. Moreover, the project is a time bound one, which has already been delayed by now, and any further delay in completing the project or alteration in route alignment would cause heavy loss to the Government exchequer.

23. For all the foregoing reasons, this Writ Petition is dismissed. No costs. Consequently, the connected M.P. No. 1 of 2007 is also dismissed.