
(2006) 05 MP CK 0001
In the Madhya Pradesh High Court

Rajendra Prasad Tiwari and Another	Vs	APPELLANT
State of M.P. and Others		RESPONDENT

Date of Decision : 04-05-2006

Acts Referred:

COMPANIES ACT, 1956 — Section 617
Electricity Act, 2003 — Section 164, 38
Penal Code, 1860 (IPC) — Section 188
Telegraph Act, 1885 — Section 10, 16

Citation : AIR 2007 MP 115

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Arun Mishra, J.—In this petition, petitioners have assailed an order (P/7) dt. 6-3-2006 passed by the Sub-Divisional Officer. Prayer has also been made to grant compensation to petitioners for usage of their agricultural lands for taking transmission line over it.

2. Petitioners have submitted that the petitioner No. 1 is having total 1.40 hectares of agricultural land adjoining to the road, Respondent No. 4; Power Grid Corporation India Limited has proposed 400 KV line over the field. As per the survey conducted by respondent No. 4, the power line was to be taken from the side of the field thereby causing minimum loss to the petitioner. However, the respondent No. 4 has modified the direction of the High Tension Power line, thereby taking the line diagonally over the field so as to cross a cluster of newly built illegal houses. The officers of the respondent No. 4 are hand in glove with the owners of the houses and there is an unwritten sharing of 50% of compensation between them. The entire land of the petitioner No. 1 is liable to become un-useful due to the inherent dangers of HT line as apparent from map (P/2) which shows sanction map of the line. The Collector, Sidhi has issued a public notice (P/3) requiring the people to give co-operation. The respondent No. 4 has been notified under the provisions of Section 164 of the Electricity Act,

2003 to exercise powers under the Telegraph Act as per the notification (P/4) dated 1st January, 2004. When the petitioner resisted, the respondent No. 4 filed a complaint (P/5) before the SDO. Reply (P/6) was submitted. Order (P/7) has been passed by the SDO on 6-3-2006 requiring the petitioners and others not to obstruct.

3. Petitioner No. 2 is also having the total 35 acres of agricultural land 27 acres was used by the respondent No. 4 for running the high tension electric line without giving any compensation. There are already four High Tension lines, crossing over the fields of the petitioner. Now the respondent No. 4 is trying to construct a fifth HT line, as a result of which the entire land is under a mess of HT lines, thereby making it absolutely unarable due to the dangers of 400 KV line. Reply (P/9) to the notice was given to the SDO. Hence, the petition has been filed.

4. It is submitted that the SDO has no jurisdiction to pass such an order. Telegraph authority is duty bound to pass an order directing compensation u/s 10(d) of the Indian Telegraph Act, 1885. The property of the petitioners have become unworkable due to high voltage line. Petitioners land is likely to become unuseful. The fields have become un-usable and are damaged permanently. The respondent No. 4 cannot use coercive method and cannot act on the strength of the order passed by the SDO. Respondent No. 4 is duty bound under the Telegraph Act to compensate for the loss.

5. A return has been filed by the respondent No. 4 contending that the Power Grid Corporation of India Limited is a Government of India undertaking, a Government Company, u/s 617 of the Companies Act, 1956. It is also notified u/s 38 of the Electricity Act, 2003 as the "Central Transmission Utility" of the country. It is the function of the respondent No. 4 to undertake transmission of electricity through inter-State Transmission Systems. Power Grid has planned to create a strong and vibrant National Power Grid in a phased manner to ensure optimum utilization of generating resources, conservation of eco-sensitive right of way and for having flexibility to accommodate uncertainty of generation plans. A perspective transmission plan has been evolved for strengthening the Regional Grid and to support the generating capacity addition programme of about 1,00,000 MW during Xth and XI plan. In accordance with the Tenth Plan ending 2007, the power generating capacity is to be added in Western Region under Vindhyachal Super Power Project Stage III of National Thermal Power Corporation Ltd. (NTPC). The respondent No. 4 formulated a scheme known as Vindhyachal-Korbe 400 KV S/C line Scheme. The length of the said line will be about 289 k.m. which has to be completed by June 2006. The estimated cost of the said line is about 210 crores. Line was sanctioned by Government of India. Sanction was finalized as per approved route (R-4/A) in February 2005. Line to the extent of 249 Kms. has already been drawn. After completion of this project additional power will flow in the States of Madhya Pradesh, Maharashtra, Gujarat and Goa in the line with completion of Vindhyachal 2 x 500 M. V. State-III Project

of NTPC. There is no damage as yet been caused to the petitioners. It is in order to lay the line, many a times it is necessary to enter the lands, vehicles are used. In the process of laying the lines, the crop is damaged in case crop is standing on the land, laying the lines with the clearance provided by Rule 77 of the Electricity Rules does not cause any damage to the land. In any case payment of compensation is not condition precedent u/s 10. It is only after any kind of damage is caused that right to compensation accrues. In case any damage is caused and dispute arises concerning the sufficiency of the compensation to be paid u/s 10(d), it may be determined by the District Judge within whose jurisdiction the property is situate, on application by either of the disputing parties. Hence, petition filed is baseless. No damage has been caused. As such no compensation can be claimed. In case any damage is caused, it has to be determined as per the prescribed procedure. Order dt. 6-3-2006 is in exercise of magisterial power. Respondent No. 3 has merely stated in the order that no obstruction shall be caused in laying the transmission line in order to maintain law and order situation. Ex parte order of status quo which has been obtained in causing irreparable injury to the public cause as men and machine deployed by work site are idle. As such order of status quo be vacated.

6. Shri Aditya Adhikari, learned Counsel appearing on behalf of the petitioners has submitted that the SDO could not have passed the order (P/7). It was for the District Magistrate who could have issued the order of restraint u/s 16 of the Indian Telegraph Act, 1885. He has further submitted that right to claim compensation is available u/s 10. Thus, the compensation has to be paid for the loss, only then transmission line can be taken through the field of the petitioner.

7. Shri N.S. Kale, learned Sr. counsel with Ms. J. Pandit and Shri Kumares Pathak, GA, appearing on behalf of the respondents have submitted that the Collector has issued necessary order not to create obstruction exercising the statutory powers on 6-12-2005 in the form of public notice not to create any obstruction, informing the consequences and compensation is not payable until unless damage is caused by taking of line in the field. No compensation is to be claimed until unless damage is caused to the property. It was also pointed out by the Collector that new houses, pump house, well etc. are constructed with mala fide intention in order to create obstruction, which was improper. They were advised not to create any obstruction in the way of transmission line. SDO has simply passed an order in the magisterial capacity advising the petitioners not to create any obstruction. District Magistrate has already passed an order. Petitioners have no right to obstruct the transmission line, Petition is misconceived. Prayer for compensation is premature as line has not been taken so far from the field, as such there is no question of any damage caused. Hence, petition being misconceived be dismissed and order of status-quo which has caused immense harm to the public cause, which was granted on 30-3-2006 be vacated and petition be dismissed with exemplary costs.

8. After hearing learned Counsel for the parties, in my opinion, there is no merit

in this petition. A bare reading of Sections 10 and 16 makes it clear that there is unfettered right available to the respondent No. 4 to lay the transmission line and simply by laying of the transmission line in the agricultural field owned by the petitioners no compensation can be claimed until unless any damage is caused. Section 10 is quoted below:

10. Power for telegraph authority to place and maintain telegraph lines and posts :-- The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along, or across, and posts in or upon, any immovable property:

Provided that

(a) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph establishment or maintained by the Central Government, or to be so established or maintained;

(b) the Central Government shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which the telegraph authority places any telegraph line or post; and

(c) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority; and

(d) in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property other than that referred to in Clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

9. A bare reading of Section 10 makes it clear that it is the duty of the telegraph authority to take line and to grant compensation if any damage is caused payable while exercising the powers of taking the transmission line. Section 16 of the Telegraph Act provides in case any obstruction is created, District Magistrate is authorized to order that the telegraph authority shall be permitted to exercise the power, in case any obstruction is made by any person. Sub-section (2) of Section 16 provides that such an obstructor shall be deemed to have committed an offence u/s 188 of the Indian Penal Code. Sub-section (3) of Section 16 of the Telegraph Act provides that in case any dispute arises concerning the sufficiency of the compensation to be paid u/s 10(d), an application has to be filed before the District Magistrate. A bare reading of Section 16 and Section 10(d) makes it clear that question of making payment arises only after the transmission line is taken through the field. Only when the exercise is completed and any loss is caused then compensation is required to be determined, not otherwise, as such prayer of the petitioner for determination of compensation before hand, is misconceived as it may be a case where no damage is ultimately caused. Once the line is taken, thereafter if any loss is caused, only in that event compensation

can be claimed as apparent from reading of Sections 10 and 16. No compensation can be claimed by mere fact transmission line is taken over the field. Causing of damage is sine qua non for compensation. Sub-sections (1), (2) and (3) of Section 16 are quoted below:

16. Exercise of powers conferred by Section 10, and disputes as to compensation, in case of property other than that of a local authority,-- (1) If the exercise of the powers mentioned in Section 10 in respect of property referred to in Clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion order that the telegraph authority shall be permitted to exercise them.

(2) If, after the making of an order under Sub-section (1), any person resists the exercise of those powers, or having control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence u/s 188 of the Indian Penal Code, 1860 (45 of 1860).

(3) If any dispute arises concerning the sufficiency of the compensation to be paid u/s 10, Clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

10. Coming to the submission raised by the petitioner that the District Magistrate was empowered to pass an order u/s 16(1) of the Telegraph Act : It is apparent from the public notice (P/3) that the District Magistrate, Sidhi has modified it to the public that if any obstruction is caused in laying the transmission line, action shall be taken as contemplated u/s 16(3) of the Telegraph Act, 1885. Passing of the order by the SDO, who is a magisterial authority is superfluous. There is criminal liability which has been incurred by the petitioners of being prosecuted as provided u/s 16(2), in case any obstruction is caused by them in future. Respondents to initiate appropriate action in accordance with law against the petitioner. I find no merit in this writ petition. Same is dismissed. Interim stay is hereby vacated. It is clear that due to the petition work of immense importance was interdicted for more than a month. Hence, petitioner to pay costs of Rs. 5,000/- to the State.