

(2004) 12 J&K CK 0006
In the Jammu And Kashmir High Court
Case No : LPA (W) No. 131 of 2001

Ranvijay Chand and Another	Vs	APPELLANT
State of Jammu & Kashmir and Others		RESPONDENT

Date of Decision : 16-12-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Constitution of Jammu and Kashmir, 1956 — Section 103
Jammu and Kashmir Electricity Act, 1997 — Section 18
Jammu and Kashmir High Court Rules, 1997 — Rule 36

Citation : (2005) 1 JKJ 236

Hon'ble Judges : Sudesh Kumar Gupta, J

Bench : Single Bench

Advocate : Sindhu Sharma, for the Appellant; A.H. Naik, General and Shaista Hakeem, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

S.K. Gupta, J.—Petitioner under Article 226 of the Constitution of India read with Section 103 of the Constitution of Jammu and Kashmir

had been commenced by the petitioners, who happened to be the owners in respect of the land aggregating 18 kanals 18 marlas across which the

Power Development Department of the State, respondent-2, is said to be laying overhead lines for transmission of electrical energy and putting up

towers for support of those lines. By the writ petition, the petitioners have sought a writ of prohibition restraining the respondents from spreading

the 220 KV transmission lines including construction of any steel tower over and in the land of the petitioners situated in village Omara, Tehsil and

District Udhampur, and further directing the respondents to align the transmission lines in such a manner that the same are laid over the adjacent

available Government land without involving the land of the petitioners. The writ petition, however, came to be dismissed by the learned Single

Judge vide his judgment and order dated 04-09-2001 and its correctness came to be impugned in LPA (W) No. 131/2001 by the

appellants/petitioners. Hon'ble Judges composing the Bench differed in their view and the Lord Chief Justice under Rule 36 of the Jammu and

Kashmir High Court Rules, 1997 designated another Judge to hear on the point on which the Judges differed in their view. This is how the matter

came to be heard by this Court. The facts of the case, in brief, may be stated as follows.

2. In pursuance of a Scheme, respondent-2, Power Development Department of Jammu and Kashmir Government formulated a project report for

laying transmission lines 220 KV S/C Gladni, Udhampur and after securing an administrative approval to the project subsequent to its clearance by

the Techno-Economic Committee vide order No. 27-PDD of 1996 dated 19-01-1996, a survey was conducted for the execution of the Scheme

to be purely for public purpose. On the approval of the plan, the land of the petitioners was to be utilized for the laying of the transmission lines.

After crossing the Army area, transmission lines had to cross over the land of the petitioners/appellants for completing the connection with Tower

No. 113 of the transmission lines. That in between Tower No. 112 and Tower No. 113 was located the land in occupation of the

appellants/petitioners. Transmission lines were to cross through the land of the appellants/petitioners for completion, which, according to them, was

likely to reduce its utility and could not be used for agriculture purposes as it had been used earlier, besides its availability for residential use.

According to the appellants/petitioners, the proposed spreading/laying of the transmission lines is passing through the middle of their land and will

render the entire piece of land unusable being reduced in its utility either for agriculture purpose or for residential use. The appellants/petitioners

approached the respondents with a representation in urging for re-alignment, as the Department has already done in deviating from the original

alignment and the overhead transmission lines be laid on one side of the land so that minimum land of the appellants is utilized and minimum damage

is caused while installing the proposed Tower in re-alignment,

3. The stand taken by the respondents in their return is that respondents are within their rights to install the Towers in accordance with the original project report based on a sanctioned Scheme and the petitioners/appellants are only entitled to compensation as per the Electricity Act for the land, which is likely to be used for erecting Transmission Towers. That the respondents cannot be prevented from doing an act, which is recognized by a statute. The act of the respondents in laying the transmission lines to provide electricity and undisturbed power supply is in the larger interest of the public. Further plea of the respondents is that so long as the work is done by the respondents, viz., Power Development Department of the State, in accordance with the sanctioned Scheme and the statutory provisions contained in the Jammu and Kashmir Electricity Act, 1997, it cannot be interfered notwithstanding that the transmission lines are being spread over the field of the individuals, subject to their right to claim damages if approved. However, with regard to the aerial right of way, it continues to be with the State and the individual owners cannot claim compensation in respect thereof. The respondents further stated that all necessary care would be taken to maintain and operate the tower lines and high voltage wires to avoid injury to persons or property of the individuals. The transmission wires would be laid at a requisite distance from the ground. That apart, the necessary care would also be taken with regard to the clearance and safety while laying the supply lines overhead the land of the appellants. The respondents also denied the reduction in utility of the appellants' land either for residential use or for agriculture purpose. That there is no violation of any legal, statutory, constitutional or fundamental rights of the appellants necessitating the Court to exercise its power of judicial review.

4. I have heard the learned counsel appearing for the respective parties at length and also considered their rival contentions meticulously in context with the material on record.

5. The sole question that falls for consideration in this case is whether the Power Development Department of the Government can be prevented from laying the transmission lines at Gladni Udampur, to provide undisturbed power supply in larger interest of the public recognized by a statute and can be interfered by the Court in exercise of its power of judicial review

merely on the ground of the omission of the respondents to use the minimum land of the individuals in the alignment plan of transmission lines. Section 18 of the Jammu and Kashmir Electricity Act, 1997 recognizes the absolute powers of the Power Development Department and is reproduced below;

18. Compensation for damage. -- (1) A licensee shall, in exercise of any of the powers conferred by or under this Act, cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him.

6. The aforesaid provisions in its plain meaning clearly recognizes that except for erecting a tower and installing posts for the purpose of carrying

high tension wires, no right is claimed in the property of the individual, viz., appellants herein, and in case any damage is caused to the property in

the installation of the tower in their land, full compensation has to be paid in respect of the damage or inconvenience occasioned to him. Any

interference in the exercise of this recognized statutory powers by respondent-2 would be affecting the interest of public at large. In other words,

constructing concrete basis for installing high posts to draw high tension wires for supply of electricity over the land of the appellants is subject to

their right to claim damages.

7. Admittedly, there is a sanctioned Scheme in pursuance of which project report was formulated by the Power Development Department of the

Government, to which administrative approval was accorded after clearance from the Techno-Economic Committee. The Scheme empowered

respondent-2 and his power is traceable to the Electricity Act to go ahead with the work in pursuance of a sanctioned Scheme of constructing and

installing high posts to draw high tension wires for the supply of electricity over the land of the appellants. The respondents, in such a case, would

have unfettered power to go ahead with the work intended to do under the sanctioned Scheme and utilize the land of the appellants, of course,

subject to their right to claim damages.

8. In the instant case, admittedly, the execution of the work placing overhead transmission lines and erection of towers is being carried out in

execution of the original project report and the sanctioned Scheme of the Power

Development Department of the State Government which has all the powers for placing such wires and erection of transmission lines of electricity under the Electricity Act. There cannot be any valid objections by the appellants to the implementation of the sanctioned Scheme either by invoking the principles of natural justice on the ground that their land is being utilized unauthorizedly, arbitrarily, or that utility either for residential use or for the purpose of agriculture would be reduced. Compensation in respect of such use of the land is provided u/s 18 of the Electricity Act.

9. Mrs. Sindhu Sharma, learned counsel appearing for the appellants, vehemently urged that by directing the respondents to install the proposed tower in re-alignment plan, minimum land of the appellants could be used so as to cause minimum damage. The contention though apparently appears to be attractive, but cannot be accepted for various reasons. So long as the transmission lines are being laid overhead the land of the appellants in implementation of the sanctioned Scheme based on the original project report, within the framework of the statutory powers of the respondents, no interference by the Court is warranted to restrain them from doing so. The State has, undoubtedly, sovereign right to provide undisturbed electric supply by laying transmission lines in implementation of the sanctioned Scheme and the approved project report in the manner provided in the project report and cleared by the Tech no-Economic Committee after having analyzed its feasibility.

10. It is well settled that the administrative or executive action of the State can be subject to judicial review only when the procedure followed in taking action is contrary to law and not the decision itself.

11. It is further contended by appellants' counsel, Mrs. Sindhu Sharma, that the proposed laying of transmission line by the respondents is injurious to public life and safety. This, however, stood refuted by Mr. A.H. Naik, learned Advocate General, in stating that neither any such plea has been taken by the appellants in their pleadings nor any material has been placed on record to support their contention. The argument advanced by the learned Advocate General is manifestly convincing and accepted, in the absence of any specific plea raised by the appellants in the representation.

On the other hand, the case of the appellants is only that implementation of the sanctioned Scheme and laying of the transmission lines overhead

across their land is likely to damage their property and reduce its utility both as agriculture land and for residential purpose.

12. Further contention of the appellants/petitioners is that the State be directed to minimize the use of their land in laying transmission lines by

changing the alignment indicated in the original plan. This plea, however, also cannot be accepted because the original project report has sought its

clearance from the Techno-Economic Committee with regard to its feasibility after having analyzed the public safety and human life aspect and

keeping in view the physical study of the alignment of the transmission lines. In such circumstances, the re-alignment cannot be directed only with a

purpose to utilize the minimum land of the appellants at the cost and risk of the public safety. This argument, however, is also not available to the

appellants/petitioners in view of the unambiguous and emphatic denial by the respondents that spreading of transmission lines over the land of the

appellants/petitioners is in no way going to occasion any damage or reducing its utility for any purpose whatsoever. The correspondence

exchanged between the appellants/petitioners, respondents and the Army Authorities did not, in any manner, vouch the cause of the

appellants/petitioners, as the transmission lines are being laid as per the original alignment approved in the project report in pursuance of the

sanctioned Scheme and its feasibility cleared by the Techno-Economic Committee. The towers are being erected on which the transmission lines

are to be laid across the land of the appellants/petitioners, in the manner provided in the project report and in such event, the appellants/petitioners

cannot assert any right legal, fundamental or constitutional, violated by the respondents in doing an act within the purview of its powers recognized

by the statute.

13. In the above view of the matter and ultimate analysis of the facts and circumstances of the case discussed above, I subscribe and agree with

the view taken by His Lordship (Hon'ble Justice N.A. Kakru) in this LPA in declining to interference with the judgment of the learned Single

Judge. In view of the majority opinion, the LPA is hereby dismissed.