
(2012) 12 AHC CK 0152

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 64553 of 2012

Ravi Shankar Jaiswal @ Gauri Shankar

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 12-12-2012

Acts Referred:

Electricity Act, 2003 — Section 164, 53, 54, 67, 68

Telegraph Act, 1885 — Section 10, 11, 16

Works of Licensees Rules, 2006 — Rule 3

Citation : (2012) 12 AHC CK 0152

Hon'ble Judges : S.P.Mehrotra, J and Het Singh Yadav, J

Final Decision : Disposed Of

Judgement

Het Singh Yadav, J.

The present Writ Petition has been filed by the petitioner making the following prayers:

"(i) Issue a writ, order or direction in the nature of mandamus directing the respondents not to install/transmission of 132 K.V. Electric Wire Line and Tower in the boundary of the house of the petitioner and its frontage or any area of the petitioner over the plot no. 8/287 and 30 Mauza Katesar Kalan, Pargana Katehar, Tehsil and District Varanasi.

(ii) Issue a writ, order or direction in the nature of Adinterim mandamus to stay the digging/working for the Installation of 132 K.V. Electric Wire Line and Tower in the boundary of the house of the petitioner over the plot in dispute by specifically respondent no.4 and 5 and other respondents.

(iii) Issue any other suitable writ, order or direction as this Hon''ble Court may deem fit and proper under the facts and circumstances of the case.

(iv) Award the cost of Petition to the petitioner."

As per the averments made in the Writ Petition, the petitioner is the owner of

Plot No. 8/287 and 30, Katesar Kalan, Pargana Katehar, Police Station Chaubepur, District Varanasi, over which residential house and Auto Service Centre are situated.

The grievance raised by the petitioner in the present Writ Petition is that the respondent nos. 4 and 5 are trying to instal Electricity Towers by digging 15X15 meters within the boundary of the petitioner. In the circumstances, the petitioner has filed the present Writ Petition seeking the reliefs, as mentioned above.

We have heard S/Shri S.K. Vidyarthi and Vinod Kumar Srivastava, learned counsel for the petitioner, the learned Standing Counsel appearing for the respondent no.1 and Shri Mahboob Ahmad, learned counsel for the respondent nos. 2,3,4 and 5, and perused the record.

Shri S.K. Vidyarthi, learned counsel for the petitioner refers to the provisions of Sections 53 and 54 of the Electricity Act, 2003 and submits that the concerned respondents are dutybound to protect the public from dangers arising from the generation, transmission or distribution or trading of electricity, or use of electricity supplied or installation, maintenance or use of any electric line or electrical plant. The concerned respondents are further duty bound to eliminate or reduce the risks of personal injury to any person, or damage to property of any person or interference with use of such property.

It is submitted that in view of the said provisions, the respondent nos. 4 and 5 are acting illegally in attempting to instal Electricity Towers within the boundary of the petitioner.

In reply, Shri Mahboob Ahmad, learned counsel for the respondent nos. 2,3 4 and 5 has referred to the provisions contained in Section 67 and Section 164 of the Electricity Act, 2003 and submits that in view of the said provisions, the concerned respondents have power to instal Tower for transmission of electricity and put cables for that purpose also.

Shri Mahboob Ahmad further refers to the Works of Licencees Rules, 2006 and submits that in view of the provisions contained in the first proviso to subrule (1) of Rule 3 of the said Rules, the grievance raised by the petitioner may be examined by the District Magistrate concerned.

We have considered the submissions made by the learned counsel for the parties.

Section 53 of the Electricity Act, 2003 makes provision relating to safety and electricity supply. The said Section is as under:

"53. Provision relating to safety and electricity supply. The Authority may, in consultation with the State Government, specify suitable measures for

(a) protecting the public (including the persons engaged in the generation, transmission or distribution or trading) from dangers arising from the generation, transmission or distribution or trading of electricity, or use of electricity supplied or installation, maintenance or use of any electric line or electrical plant;

- (b) eliminating or reducing the risks of personal injury to any person, or damage to property of any person or interference with use of such property;
- (c) prohibiting the supply or transmission of electricity except by means of a system which conforms to the specifications as may be specified;
- (d) giving notice in the specified form to the Appropriate Commission and the Electrical Inspector, of accidents and failures of supplies or transmissions of electricity;
- (e) keeping by a generating company or licensee the maps, plans and sections relating to supply or transmission of electricity;
- (f) inspection of maps, plans and sections by any person authorised by it or by Electrical Inspector or by any person on payment of specified fee;
- (g) specifying action to be taken in relation to any electric line or electrical plant, or any electrical appliance under the control of a consumer for the purpose of eliminating or reducing the risk of personal injury or damage to property or interference with its use."

Section 53 thus, inter alia, provides that the Authority [i.e. Central Electricity Authority See Sections 2(6) and 70], in consultation with the State Government, specify suitable measures for various items mentioned in clause (a) to (g) of Section 53. For instance, the Authority may specify suitable measures for protecting the public (including the persons engaged in the generation, transmission or distribution or trading) from dangers arising from the generation, transmission or distribution or trading of electricity, or use of electricity supplied or installation, maintenance or use of any electric line or electrical plant [See Clause (a)]. Similarly, the Authority may specify suitable means for eliminating or reducing the risks of personal injury to any person, or damage to property of any person or interference with use of such property [(See clause (b))].

Section 54 of the Electricity Act, 2003 deals with control of transmission and use of electricity and provides as follows:

"54. Control of transmission and use of electricity. (1) Save as otherwise exempted under this Act, no person other than the Central Transmission Utility or a State Transmission Utility, or a licensee shall transmit or use electricity at a rate exceeding two hundred and fifty watts and one hundred volts

- (a) in any street, or
- (b) in any place,
- (i) in which one hundred or more persons are ordinarily likely to be assembled; or
- (ii) which is a factory within the meaning of the Factories Act, 1948 (63 of 1948) or a mine within the meaning of the Mines Act, 1952 (35 of 1952); or
- (iii) to which the State Government, by general or special order, declares the

provisions of this subsection to apply,

without giving, before the commencement of transmission or use of electricity, not less than seven days" notice in writing of his intention to the Electrical Inspector and to the District Magistrate or the Commissioner of Police, as the case may be, containing particulars of the electrical installation and plant, if any, the nature and the purpose of supply and complying with such of the provisions of Part XVII of this Act, as may be applicable:

PROVIDED that nothing in this section shall apply to electricity used for the public carriage of passengers, animals or goods, on, or for the lighting or ventilation of the rolling stock of any railway or tramway subject to the provisions of the Railways Act, 1989 (24 of 1989).

(2) Where any difference or dispute arises as to whether a place is or is not one in which one hundred or more persons are ordinarily likely to be assembled, the matter shall be referred to the State Government, and the decision of the State Government thereon shall be final.

(3) The provisions of this section shall be binding on the Government."

Thus, Section 54, inter alia, lays down, conditions and restrictions, etc. regarding transmission and use of electricity in a street or other place mentioned in the said provision.

Section 67 of the Electricity Act, 2003 makes provision as to opening up of streets, railways, etc.. The said Section is reproduced below:

"67. Provision as to opening up of streets, railways, etc. (1) A licensee may, from time to time but subject always to the terms and conditions of his licence, within his area of supply or transmission or when permitted by the terms of his licence to lay down or place electric supply lines without the area of supply, without that area carry out works such as

(a) to open and break up the soil and pavement of any street, railway or tramway;

(b) to open and break up any sewer, drain or tunnel in or under any street, railway or tramway;

(c) to alter the position of any line or works or pipes, other than a main sewer pipe;

(d) to lay down and place electric lines, electrical plant and other works;

(e) to repair, alter or remove the same;

(f) to do all other acts necessary for transmission or supply of electricity.

(2) The Appropriate Government may, by rules made by it in this behalf, specify,

(a) the cases and circumstances in which the consent in writing of the

Appropriate Government, local authority, owner or occupier, as the case may be, shall be required for carrying out works;

(b) the authority which may grant permission in the circumstances where the owner or occupier objects to the carrying out of works;

(c) the nature and period of notice to be given by the licensee before carrying out works;

(d) the procedure and manner of consideration of objections and suggestions received in accordance with the notice referred to in clause (c);

(e) the determination and payment of compensation or rent to the persons affected by works under this section;

(f) the repairs and works to be carried out when emergency exists;

(g) the right of the owner or occupier to carry out certain works under this section and the payment of expenses therefor;

(h) the procedure for carrying out other works near sewers, pipes or other electric lines or works;

(i) the procedure for alteration of the position of pipes, electric lines, electrical plant, telegraph lines, sewer lines, tunnels, drains, etc.;

(j) the procedure for fencing, guarding, lighting and other safety measures relating to works on streets, railways, tramways, sewers, drains or tunnels and immediate reinstatement thereof;

(k) the avoidance of public nuisance, environmental damage and unnecessary damage to the public and private property by such works;

(l) the procedure for undertaking works which are not reparable by the Appropriate Government, licensee or local authority;

(m) the manner of deposit of amount required for restoration of any railways, tramways, waterways, etc;

(n) the manner of restoration of property affected by such works and maintenance thereof;

(o) the procedure for deposit of compensation payable by the licensee and furnishing of security; and

(p) such other matters as are incidental or consequential to the construction and maintenance of works under this section.

(3) A licensee shall, in exercise of any of the powers conferred by or under this section and the rules made thereunder, 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.

(4) Where any difference or dispute [including amount of compensation under subsection (3)] arises under this section, the matter shall be determined by the Appropriate Commission.

(5) The Appropriate Commission, while determining any difference or dispute arising under this section in addition to any compensation under subsection (3), may impose a penalty not exceeding the amount of compensation payable under that subsection."

Subsection (1) of Section 67, interalia, permits a licensee to carry out works such as those mentioned in Clauses (a) to (f). One of the works mentioned in Clause (d) is laying down and place electric lines, electrical plant and other works.

Subsection (2) of Section 67 lays down that the Appropriate Government may make rules regarding various matters mentioned in Clauses (a) to (p). Clause (a), interalia, shows that such rules may specify the cases and circumstances in which the consent in writing of the owner or occupier shall be required for carrying out works. Clause (b), interalia, shows that the authority which may grant permission in the circumstances where the owner or occupier objects to the carrying out of works.

Subsection (3) of Section 67, interalia, lays down that a licensee shall 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.

Subsection (4) of Section 67 provides for determination of difference or dispute under Section 67 including amount of compensation under subsection (3).

Subsection (5) of Section 67 makes provision for penalty in addition to any compensation.

Section 68 of the Electricity Act, 2003 lays down provisions regarding Overhead lines. The said Section is as under:

"68. Overhead lines. (1) An overhead line shall, with prior approval of the Appropriate Government, be installed or kept installed above ground in accordance with the provisions of subsection (2).

(2) The provisions contained in subsection (1) shall not apply

(a) in relation to an electric line which has a nominal voltage not exceeding 11 kilovolts and is used or intended to be used for supplying to a single consumer;

(b) in relation to so much of an electric line as is or will be within premises in the occupation or control of the person responsible for its installation; or

(c) in such other cases, as may be prescribed.

(3) The Appropriate Government shall, while granting approval under subsection (1), impose such conditions (including conditions as to the ownership and

operation of the line) as appear to it to be necessary.

(4) The Appropriate Government may vary or revoke the approval at any time after the end of such period as may be stipulated in the approval granted by it.

(5) Where any tree standing or lying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead line subsequent to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of electricity or the accessibility of any works, an Executive Magistrate or authority specified by the Appropriate Government may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he or it thinks fit.

(6) When disposing of an application under subsection (5), an Executive Magistrate or authority specified under that subsection shall, in the case of any tree in existence before the placing of the overhead line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.

ExplanationFor the purposes of this section, the expression "tree" shall be deemed to include any shrub, hedge, jungle growth or other plant."

Thus, an overhead line will be installed with prior approval of the Appropriate Government. The Appropriate Government, while granting approval, shall impose conditions as mentioned in the Section.

Section 164 of the Electricity Act, 2003 makes provision for exercise of powers of Telegraph Authority in certain cases. The said Section is as under:

"164. Exercise of powers of Telegraph Authority in certain cases. The Appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper coordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any, as the Appropriate Government may think fit to impose and to the provisions of the Indian Telegraph Act, 1885 (13 of 1885), any of the powers which the telegraph authority possesses under that Act with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained."

Thus, Section 164, inter alia, lays down that the Appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper coordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, any of the powers which the telegraph authority

possesses under that Act with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained.

Section 10 of the Indian Telegraph Act, 1885 deals with power for telegraph authority to place and maintain telegraph lines and posts. The said Section reads as under:

"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 established 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."

Section 10 of the Telegraph Act, 1885 gives power to the telegraph authority to place and maintain a telegraph line under, over, along, or across, and posts in or upon, any immovable property. Provisos (a) to (d) to Section 10 provide various conditions and restrictions etc. in regard to exercise of such power by the telegraph authority.

Section 11 of the Indian Telegraph Act, 1885 deals with power to enter on property in order to repair or remove telegraph lines or posts. The said Section is as under:

"11. Power to enter on property in order to repair or remove telegraph lines or posts. The telegraph authority may, at any time, for the purpose of examining, repairing, altering or removing any telegraph line or post, enter on the property under, over, along, across, in or upon which the line or post has been placed."

Thus, the telegraph authority has power to enter on the property in order to examine, repair, alter or remove any telegraph line or post.

Section 16 of the Indian Telegraph Act, 1885 deals with exercise of powers conferred by Section 10 of the Indian Telegraph Act, 1885, and disputes as to compensation, in case of property other than that of a local authority. The said Section 16 is reproduced 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 under section 188 of the Indian Penal Code (45 of 1860).

(3) If any dispute arises concerning the sufficiency of the compensation to be paid under section 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.

(4) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the Court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under subsection (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under subsection (3) or subsection (4) shall be final:

Provided that nothing in this subsection shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority, from the person who has received the same."

Section 16 of the Indian Telegraph Act, 1885 deals with property mentioned in proviso (d) to Section 10 of the said Act, i.e., any property other than that vested in or under the control or management of any local authority. Section 16 makes provisions for dealing with obstruction or resistance to exercise of powers mentioned in Section 10 and for resolution of dispute as to the sufficiency of compensation and the entitlement of such compensation.

Rule 3 of the Works of Licensees Rules, 2006, framed in exercise of powers conferred by clause (e) of subsection (2) of Section 176 read with subsection (2) of Section 67 of the Electricity Act, 2003, is reproduced below:

"3. Licensee to carry out works. (1) A licensee may ?

(a) carry out works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, whereover or whereunder any electric supplyline or works has not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land;

(b) fix any support of overhead line or any stay or strut required for the purpose of securing in position any support of an overhead line on any building or land or having been so fixed, may alter such support:

Provided that in case where the owner or occupier of the building or land raises objections in respect of works to be carried out under this rule, the licensee shall obtain permission in writing from the District Magistrate or the Commissioner of Police or any other officer authorised by the State Government in this behalf, for carrying out the works:

Provided further that if at any time, the owner or occupier of any building or land on which any works have been carried out or any support of an overhead line, stay or strut has been fixed shows sufficient cause, the District Magistrate or the Commissioner of Police, or the officer authorised may by order in writing direct for any such works, support, stay or strut to be removed or altered.

(2) When making an order under subrule (1), the District Magistrate or the Commissioner of Police or the officer so authorised, as the case may be, shall fix, after considering the representations of the concerned persons, if any, the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.

(3) Every order made by a District Magistrate or a Commissioner of Police or an authorised officer under subrule (1) shall be subject to revision by the Appropriate Commission.

(4) Nothing contained in this rule shall effect the powers conferred upon any licensee under section 164 of the Act."

Thus, clause (a) of subrule (1) of Rule 3 permits a licensee to carry out works in, through, or against, any building, or on, over or under any land with the prior consent of the owner or occupier of such building or land.

Clause (b) of subrule (1) of Rule 3 permits a licensee to fix any support of overhead line or any stay or strut required for the purpose of securing in position any support of an overhead line on any building or land or having been so fixed, may alter such support.

First proviso to the aforesaid Rule 3 lays down that in case where the owner or occupier of the building or land raises objections in respect of works to be carried out under this rule, the licensee shall obtain permission in writing from the District Magistrate or the Commissioner of Police or any other officer authorised

by the State Government in this behalf, for carrying out the works.

Subrule (2) of the aforesaid Rule 3 provides that when making an order under subrule (1), the District Magistrate or the Commissioner of Police or the officer so authorised, as the case may be, shall fix, after considering the representations of the concerned persons, if any, the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier

Subrule (3) of the aforesaid Rule 3 makes provision that every order made by a District Magistrate or a Commissioner of Police or an authorised officer under subrule (1) shall be subject to revision by the Appropriate Commission.

Subrule (4) of the aforesaid Rule 3 provides that nothing contained in the said Rule 3 shall effect the powers conferred on any licensee under Section 164 of the Electricity Act, 2003.

It will, thus, be noticed that the alleged grievance, which is being raised by the petitioner in the present Writ Petition, may be considered by the District Magistrate under the aforesaid Rule 3 of the Works of Licensees Rules, 2006.

From the averments made in the Writ Petition, it appears that the petitioner has already made a representation dated 7.12.2012 (Annexure 4 to the Writ Petition) before the District Magistrate, Varanasi raising his alleged grievance, which has been raised in the present Writ Petition also.

Having regard to the facts and circumstances of the case and having considered the submissions made by the learned counsel for the parties and keeping in view the nature of controversy involved in the present Writ Petition, we are of the opinion that the interest of justice would be subserved by disposing of the Writ Petition with the following directions:

1. Within six weeks from the date of receipt of certified copy of this order, the petitioner will make an application before the District Magistrate, Varanasi (respondent no.3) alongwith a certified copy of this order, copy of his representation dated 7.12.2012 as well as copy of the relevant documents to substantiate his title and occupation in respect of the property in question.
2. On receipt of such application alongwith the documents, the District Magistrate, Varanasi will proceed to consider the representation/objection of the petitioner and pass speaking order thereon in accordance with law expeditiously, preferably within a period of six weeks of the receipt of the said application alongwith the documents, after giving reasonable opportunity of being heard to the petitioner as well as the concerned respondents.

The Writ Petition is accordingly disposed of with the above directions.

It is made clear that this Court has not adjudicated the claim of the petitioner on merits.