

**(2003) 08 KAR CK 0007**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 22906 of 2001**

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| S. Jogindar Singh Sabarwal                                              | Vs | APPELLANT  |
| The Karnataka Power Transmission Corporation Ltd. (KPTCL)<br>and Others |    | RESPONDENT |

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**Date of Decision :** 27-08-2003

**Acts Referred:**

Constitution of India, 1950 — Article 12, 226  
Electricity Supply Regulations — Regulation 9.04, 9.04 (3)

**Citation :** AIR 2004 Kar 141 : (2003) ILR (Kar) 4284 : (2003) 4 KCCR 377 SN

**Hon'ble Judges :** D.V. Shylendra Kumar, J

**Bench :** Single Bench

**Advocate :** Sriyuths Puttige R. Ramesh, Imran Pasha, Sharda, Laxmi and Lokesh, for the Appellant; Srinivasa Rao H, for R1 to R4, Ananthakrishna Murthy H.R. and Associates, for the Respondent

**Final Decision :** Allowed

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## Judgement

Shylendra Kumar, J.—Though the matter is listed for orders on I.A.I/03 for early hearing, with the consent of the Counsel on both sides the matter is heard finally and is disposed off by the following order:-

2. The petitioner has approached this Court complaining of certain high handed action on the part of respondent 1 to 4, the Karnataka Power Transmission Corporation Ltd. ("the Corporation" for short) and its officials. It is alleged that the action on the part of the petitioner is lacking in bona fide; that it is virtually a malafide action particularly with a view to favour the fifth respondent and to the detriment of the petitioner, the respondents having exercised power vested in them akin to the exercise of the power by the "State" within the meaning of Article 12 of the Constitution of India, petitioner has approached this Court seeking for relief under Article 226 of the Constitution of India.

3. The factual malpractice out of which the present controversy arises is as under:-

4. Petitioner is the owner of the premises bearing Nos. 19 and 20 at H. Siddaiah Road, Opposite to Urvashi Theatre, Bangalore. A new structure was put up in this premises namely a hotel with a commercial complex and power connection was sought for from respondents 1 to 4. Respondents did provide connection as per a sanction letter dated 19.1.1999 from the second respondent addressed the petitioner that power supply to the extent of 40 K.V. with 10 HP. has been sanctioned subject to certain conditions mentioned in the communication.

5. It is one of the conditions that a space measuring 20" x 15" for erecting the transformer should be provided within the premises with easy access from the main road. Such a space was provided and a suitable transformer was purchased by the petitioner and was erected at the place earmarked for it under the supervision of respondents 1 to 4. Ultimately power connection was also provided by the end of January, 1999.

6. The complaint of the petitioner is that suddenly and within a month thereafter, the officials of the Corporation have replaced the transformer by another transformer of the capacity of 500 KV which had earlier been installed in the premises across, belonging to the fifth respondent. The grievance of the petitioner is that such shifting of the transformer of 500 KV which was in the premises of the fifth respondent to replace the transformer which had been installed in his place and of lesser capacity, has caused considerable difficulties such as disrupted power supply as of now apart from the risk and danger to the children who play in the vicinity and the other persons who move around and that the respondents 1 to 4 have taken such action with mala fide intention of favouring the fifth respondent in whose premises the transformer had been located earlier. It is this action on the part of the respondents 1 to 4 from shifting the 500 KV transformer which was located in the premises of the fifth respondent to the premises of the petitioner and removing the earlier transformer which he had installed at his cost at his place, that has irked the petitioner and made him to approach this Court for relief.

7. Petitioner has urged that shifting of the transformer is without the authority of law; that necessary procedure required for such shifting is not followed; that even where a transformer is located in private place, the authorities cannot replace it with bigger one; that the petitioner had not been put on notice or his consent obtained before effecting a change and the entire action is with the sole intention of favouring the fifth respondent, the adjoining theatre owner. It is also however asserted that the said transformer was in the premises of the theatre for about three decades and suddenly the authorities have shifted it to the petitioner's premises in a surreptitious manner; that inspite of several representations to the respondent-authorities to remove the bigger transformer and to restore the original transformer in its place, the respondents have not taken any action in this regard and the petitioner has been constrained to approach this Court for suitable relief.

8. Respondents 1 to 4 have filed their statement of objections by way of an

affidavit sworn to by Sri A.N. Jayaraj, Assistant Executive Engineer, K.P.T.C.L. S2 Sub-Division, Bangalore, the 4th respondent to the Writ Petition. It is admitted that the Power Corporation had provided power connection to the commercial complex owned by the petitioner to an extent of 40 KWS = 10 HP and the specified load of the building was assessed at 81 KW; that the space earmarked for the installation of transformer measuring 15" x 25" was also provided by the petitioner as per Regulation 9.04(3) of the Electricity Supply Regulations. It is asserted that the space required to have access to a public road and is exclusively reserved for the transformer centre and the Corporation has a right to utilise the space and the transformer structure as and when necessity arises to supply electricity to other consumers also. It is stated that it is the responsibility of the Corporation to maintain the transformer after the erection; that the space which had been offered was of a lesser extent than what was needed and that the petitioner has put up a compound while excluding this space earmarked for erection of transformer and handed over to the Corporation. The affidavit goes on to state that the owners of Urvashi Theatre had been representing to the respondents that the transformer located in their premises requires to be shifted elsewhere as it posed danger to public safety, particularly with thousands of cinema viewers moving around the theatre every day and had been urging upon the Corporation to so shift the transformer for the past several years. It is stated that it is under such circumstances that the transformer was shifted solely with public interest in view and to safeguard them from being exposed to the risk of moving in the vicinity of a high voltage transformer. It is also asserted that the transformer that had been located in the theatre was not only catering to the needs of the theatre but also to the other consumers in the area; that the location of the transformer as of now does not really pose any danger or is a source of risk to others; that it is located at the far end of the road which does not go beyond and the transformer area being beyond the compound wall put up by the petitioner around his property cannot be said to cause any danger to any one else. A sketch indicating the location of the theatre, building of the petitioner and the surrounding topographies, is annexed to this application. It is also asserted that when once a transformer which is installed is handed to the Corporation, it becomes the property of the Corporation and the Corporation, in exercise of their powers as provided under the Regulations, can upgrade the transformer by replacing it by a transformer of a higher capacity as and when required and to cater to the additional needs of the consumers in the area. It is stated that the extent of the transformer as shifted is not any source of danger to the petitioner and as such there is no real cause of action to move this Court and the Writ Petition deserves to be dismissed.

9. In the objections statement filed on behalf of the fifth respondent, it is highlighted that the theatre by name Urvashi Talkies is well known for its cleanliness, safety and providing good facilities to the cinema viewers; that it is reputed theatre in Bangalore City; that the owners of the theatre had notice the location of the transformer in their theatre was a source of hindrance to the

movement of people coming to view the movies and also constituted a source of threat of their lives and as many children, elderly person, sick and infirm persons also come to the theatre, they are being exposed to such danger and as such theatre owners had been moving the electricity authorities ever since the year 1996 to shift the transformer to some other location; that the authorities, when they found that they could shift it to some other place, had called upon the theatre owners to deposit a sum of Rs. 51,408 towards shifting charges and that this respondent had promptly deposited the same and it is only thereafter, i.e. from 1996 to 1999, the transformer had been shifted. It is asserted that it is in the larger public interest particularly the general public who visit the theatre and as such the action is a bona fide action on the part of respondents 1 to 4 and no interference is called for by this Court at the instance of the petitioner on such action on the part of the authorities.

10. Sri P.R. Ramesh, learned Counsel appearing for the petitioner submitted that the entire action on the part of respondents 1 to 4 in shifting the transformer from its earlier location namely the theatre premises to the present premises of the petitioner smacks of malafides and biased action in favour of the fifth respondent; that it is purely an act of favouritism in favour of the fifth respondent; that the authorities have grossly misused the powers vested in them under the provisions of the Regulations to effect such a shift; that the authorities have resorted to such action behind the back of the petitioner in a surreptitious manner and even within a period of one month from the date of provision of power to the petitioner through a transformer which the petitioner had installed at its place and at its cost; that respondents 1 to 4 have misused the power vested in them in the exercise of their statutory functions for the benefit of the fifth respondent, which action cannot be sustained in law and it is necessary to hold that the action of respondents 1 to 4 in shifting the transformer from its earlier location to the premises of the petitioner is an illegal action in law and requires to be set right. In this regard, learned Counsel for the petitioner has placed reliance on the decision of the Supreme Court in the case of Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, . Attention of the Court is drawn to para 118 of this judgment wherein the Supreme Court had occasion to examine the manner of exercise of power vested in an authority, as to the consequence of exercising such power for irrelevant reasons and on extraneous considerations. Learned Counsel submits that it is fraud on the power vested in the authorities, they exercising it for the private gain of the fifth respondent. Learned Counsel submits that the present case is a clear incidence of such exercise of power maliciously and to favour the fifth respondent at the cost of the petitioner. The observations of the Supreme Court in Express Newspapers" case supra is as under:-

"Fraud on power voids the order if it is not exercised bona fide for the end design. There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises when an authority misuses its power in breach of law, say by taking into account bona fide, and with best of intentions, some

extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would be a case of fraud on powers. The misuse in bad faith arises when the power is exercised for an improper motive, say, to satisfy a private or personal grudge or for wreaking vengeance of a Minister as in *S. Pratap Singh Vs. The State of Punjab*, . A power is exercised maliciously if its exercise is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power for an "alien" purpose other than the one for which the power is conferred is mala fide use of that power. Same is the position when an order is made for a purpose other than that which finds place in the order. The ulterior or alien purpose clearly speaks of the misuse of the power and it was observed as early as in 1904 by Lord Lindley in *General Assembly of Free Church of Scotland v. Overtown* 1904 AC 515 "that there is a condition implied in this as well as in other instruments which create powers, namely, that the powers shall be used bona fide for the purpose for which they are conferred". It was said by Warrington, C.J. in *Short v. Poole Corporation* (1926) 1 Ch 66 that:

"No public body can be regarded as having statutory authority to act in bad faith or from corrupt motives, and any action purporting to be of that body, but proved to be committed in bad faith or from corrupt motive, would certainly be held to be inoperative."

In *Lazarus Estates Ltd v. Beasley* (1956) 2 QB 702 Lord Denning, LJ said:

"No judgment of a Court, no order of Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."

See also, in *Lazarus* case at p. 722 per Lord Parker, C.J.

"Fraud" vitiates all transaction known to the law of however high a degree of solemnity."

All these three decisions have been cited with approval by this Court in *Pratap Singh's* case."

11. Learned Counsel submits that it is just and necessary to not only invalidate the illegal action on the part of respondents 1 to 4, but also to direct them to remove the transformer from the premises of the petitioner and further direct them to restore to earlier transformer which was there in that place from which the petitioner was able to get power supply without any interruptions.

12. Sri Srinivasa Rao, learned Counsel for respondents 1 to 4 has defended the action on the part of these respondents and with reference to the affidavit filed on behalf of them. Learned Counsel by drawing attention to the provisions of Regulations 9.04 of the Electricity Supply Regulations submits that the authorities have always the power to replace an existing transformer by increasing the capacity of the transformer if the situation so warrants and at a place which is handed over to the Corporation subsequent to the installation of a transformer in that is a place to which the Corporation is entitled for access

throughout; that the transformer once erected and handed over to the Corporation for maintenance thereafter becomes property of the Corporation; that it is in the discretion of the corporation to effect changes by replacing it with a transformer of higher capacity depending upon the requirements and the necessity; that the petitioner cannot put forth any objections in this regard so long as supply of power is ensured to the petitioner to through the transformer.

13. Learned Counsel also submits that the exercise of power in the present case is clearly for the benefits of the general public at large; that by shifting the transformer to the present location the threat, risk and danger posed to the cinema viewing public is now removed; that every day thousands of people move around in the theatre and the shifting of the transformer has greatly ensured their safety and welfare. Learned Counsel submits that no malafides can be attributed to the action on the part of the respondents 1 to 4, particularly as the fifth respondent had been representing to the authorities of the Corporation for the past about two to three years prior to the shifting; that it was not any sudden move or to cause any inconvenience or hardship to the petitioner that the step was taken. Learned Counsel submits that the action on the part of the Corporation is neither an action to favour the fifth respondents nor an action to the detriment of the petitioner and as such there is no occasion for this Court to entertain a petition of this nature and the Writ Petition deserves to be dismissed.

14. Sri H.R. Ananthakrishna Murthy, learned Counsel appearing for the fifth respondent has also submitted that the owners of the theatre namely the fifth respondent, had been making persistent efforts to have the transformer shifted from the premises of the theatre only with a view to safeguard the interest of cinema viewing public; that it was an hindrance for their movement and a source of danger, that the authorities have acted only after taking note of this possibility with a view to safeguard the interest of the general public; that necessary charges have been paid in this regard and the action cannot be characterised as biased or malafide action.

15. Learned Counsel also submits that if the action is held to be bad and the transformer is to be removed from the present location where it is now stationed for the past about four years, it will be inevitably shifted back to the premises of the theatre which will again be a source of danger to the cinema viewing public and it should be avoided at any cost. Learned Counsel has also urged that the Writ Petition should not be entertained as the petitioner has approached the Court at a very belated stage and at any rate two years after the shifting of the transformer to its present location and urges that this petition has to be dismissed.

16. I have looked into the pleading of the petitioner and the respondents and have also given my anxious consideration to the submissions of the learned Counsel made at the Bar.

17. Here is a situation where a transformer which was located in a premises for

the past about 27 years is shifted to another premises and to replace a transformer which had been erected just a month earlier. It is little difficult to accept the plea on behalf of the respondents that the shifting was with the bona fide intention of safeguarding the interest of general public and of the cinema viewing population. If it was a source of danger to such members of the public, it was a source of danger ever since the year 1972 and did not become a source of danger suddenly in the year 1999. It is not demonstrated as to what measures had been either envisaged or had been suggested by the respondent authorities vis-a-vis the fifth respondent for protecting the interest of the cinema viewing public. There is no doubt that respondents could have reacted with a sense of urgency and with a sense of responsibility if it was such a danger if the location of the transformer in the compound of the cinema theatre was a danger to the cinema viewing public. The authorities had never exhibited any response either to this. The authorities getting active within a span of one month of the erection of a transformer at the premises of the petitioner and a transformer of the capacity which caters to the needs of the petitioner, definitely sounds an alarm bell. It may be true that the fifth respondent had been representing and urging the authorities to shift the transformer to some other location. But there is nothing on record to indicate that authorities had responded to such request earlier. It was a problem to which they were alive even at the time of installation of the transformer at the place of the petitioner. If the authorities did genuinely intend to safeguard public interest, they could have as well apprised the petitioner that position even at the time of installation that the transformer of commensurate capacity to cater to the needs of the locality is to be installed there. The authorities did not choose to do so. What is most surprising is that even when they intend to take action, they did not up rise the petitioner. The minimum that was expected is that the petitioner should have been put on notice that such an action is being taken. The manner of exercise of power leaves no doubt that the power is exercised in a surreptitious manner and to pre-empt any response or resistance on the part of the petitioner. If the authorities had such power, there was no need for them to fear or apprehend any response on the part of the petitioner. That was not done. On the other hand, after exercising the power in a hasty and surreptitious manner, for the purpose of shifting the transformer from the earlier location in the premises of the fifth respondent to the premises of the petitioner, respondents come up with the explanation that they have such power to sustain their action. The question is not as to whether they have the power, but as to whether such power has been exercised in a bona fide manner and for the purpose for which it is meant. The authorities calling in aid, concern for public safety and protecting public interest, suddenly in the year 1999 when the situation was prevalent ever since the year 1972, to shift the transformer from the premise of the fifth respondent to the premises of the petitioner, is a clear indicator that the power was not exercised in a bona fide manner.

18. Even assuming that the existence of the transformer within the premises of

the fifth respondent theatre could pose such a threat to the cinema viewing population, it was necessary that adequate safety measures should have been taken earlier also. It is not as though this is the only theatre in the City where a transformer is located. Learned Counsel for respondents 1 to 4 fairly concedes that there are any number of theatres within whose premises such transformers are actually located and they continue to remain so even now. Obviously sufficient safety precautions should have been taken there. Such safety measures could have been taken in the present case also and within the premises of the fifth respondent. It is not as though by shifting the transformer to the petitioner's premises alone that such safety could be achieved. The shifting also cannot be said, will not cause any risk or danger to the people who have to move around the present place to which it is shifted. It will be an equally risky proposition for such building. May be the number of people who move around it will less as of now.

19. In the circumstances, on the facts as revealed above, the power which enables the respondents 1 to 4 either to upgrade the capacity of a transformer at an existing location or shifting of transformer from one place to another has certainly been misused and abused and the action is not sustainable in law. A sense of responsibility and fairness is clearly lacking on the part of respondents 1 to 4.

20. Accordingly this Writ Petition is accepted. A writ of mandamus is issued to respondents 1 to 4 to forthwith shift the transformer from its present location in the premises of the petitioner. It is also open to the respondent to shift it back to the premises of the fifth respondent unless they are able to find a place where it may be located without objection from any other quarter. The respondents 1 to 4 are also directed to restore transformer of the capacity which had been installed earlier at the premises of the petitioner earlier and in a proper working condition.

21. Writ Petition is allowed with costs of Rs. 5,000/- payable by respondents 1 to 4.