

(2021) 03 MAN CK 0008
In the Manipur High Court
Case No : Writ Petition (C) No. 799 Of 2019

Seikhothang Haokip

APPELLANT

Vs

Chairman & Managing Director

RESPONDENT

Date of Decision : 17-03-2021

Acts Referred:

Electricity Act, 2003 — Section 67, 68
Indian Telegraph Act, 1885 — Section 1C, 16
Constitution Of India, 1950 — Article 300A

Citation : (2021) 03 MAN CK 0008

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : N. Biren, Nitin Kheda

Final Decision : Dismissed

Judgement

[1] Heard Shri N. Biren, learned Advocate appearing for the petitioner and Shri Nitin Khera, learned Advocate appearing on behalf of the respondent.

[2] By the instant writ petition, the petitioner has prayed for issuing a writ of mandamus or any other appropriate writ to direct the respondents to pay compensation in terms of the letter dated 15-10-2015 of the Government of India, Ministry of power, Shriram Shakti Bhawan, Rafi Marg, New Delhi.

[3.1] According to the petitioner, he is the Chief of the Mongbung Village, Jiribam District, Manipur. Some Heavy Electric Towers were erected/ installed passing through his village, agricultural land as well as homestead land causing damages to about 320 sq.ft covering a distance of 2 (two) kilometer. On account of the said heavy electric towers being erected/ installed passing through his village, his villagers were/ are unable to construct any kind of buildings including Government offices, schools or private houses and on top of that, no plantation of trees, rubbers, bamboos, agricultural crops, etc. thereon is possible resulting in the helplessness of the villagers. The petitioner approached the respondent/ authority concerned on many occasions for payment of compensation for the

lands affected by the said installation of heavy electric towers but his application was never considered by the respondent.

[3.2] The petitioner learnt from the reliable sources that in respect of the land owners/ chefs of the neighboring villages namely Talbung, Mutugal, Phaital, Muktukhal, Tarbung etc., certain amount of compensation had been paid to them, while the same being denied to the petitioner, although he is the owner of the said village, as is evident from the attested map/ scale of the SDC, Jiribam, paying Hill House Tax thereof. The petitioner submitted a representation dated 09-03-2018 to the authority concerned/ respondent for payment of compensation and according to him, the amount of compensation calculated by him came to be about Rs. 96,00,000/- (Rupees ninety-six lakhs) only. Being aggrieved by the inaction on the part of the respondent, the petitioner approached this Court by way of writ petition being WP(C) No.498 of 2018 which was dismissed by this Court vide its judgment and order dated 06-05-2019, the relevant portion of which read as under:

"[10] In the present case, the land of the petitioner was not acquired at all and while erecting/ installing the transmission line, certain damages were caused to his land for which adequate compensation had already been paid to him by the NEEPCO about thirty years ago. Therefore, in view of the decision rendered by the Hon'ble Supreme Court in Power Grid Corporation of India Limited Vs. Century Textiles and Industries Ltd. case, the instant writ petition is devoid of any merit and is liable to be dismissed by this court. In case the petitioner feels that the compensation granted earlier, was not sufficient or the damages caused to his land stood aggravated in course of time, it is open to him to approach the respondent No.4 for redressal of his grievance so that the same can be considered by it in accordance with law. In this regard, the petitioner appears to have submitted a representation dated 09-03-2018 to the State respondents who are not concerned with the installation of the transmission line.

[11] In view of the above and for the reasons stated hereinabove, the instant writ petition is dismissed with no order as to costs. It is open to the petitioner to submit a representation to the respondent No.4 for redressal of his grievance and in the event of such a representation being submitted by him, the same shall be considered and disposed of by the respondent No.4, as expeditiously as possible, in accordance with law."

[3.3] In terms of the above judgment and order, the petitioner submitted a representation dated 27-05-2019 to the respondent No.4 therein, who is the Chairman and Managing Director, Power Grid Corporation of India who considered it and rejected the same on 31-07-2019. Being aggrieved by the rejection of his representation on 31-07-2019, the instant writ petition has been filed by him praying for issuing a writ of mandamus in terms of the letter dated 15-10-2015 issued by the Government of India, Ministry of power, Shriram Shakti Bhawan, Rafi Marg, New Delhi. According to the petitioner, the respondent, while considering the representation, has failed to consider the letter

dated 15-10-2015 resulting in the violation of Article 300A of the Constitution of India.

[4] The instant writ petition is contested by the respondent by way of an affidavit stating that the respondent is a company incorporated under the Companies Act, 1956 but has been notified as POWERGRID, a Central Transmission Utility which is authorized to exercise all power vested in the Telegraph Authority. The transmission line from Jiribam to Aizawl was handed over to it by the NEEPCO Ltd. in the year, 1992 along with the records/ files which were typed and handwritten on papers. From the said files, it was found that the SDO, NEEPCO Ltd., wrote a letter dated 12-06-1987 to the ADDL. District Magistrate, Jiribam enclosing therewith a list of the names of the affected land owners including that of the petitioner. After a joint survey being conducted at that point of time, the damage relating to tree, crop/surface etc. was assessed and the compensation thereof was paid for which the petitioner signed an undertaking/ letter of acceptance. In other words, the compensation was paid to the petitioner without any objection being raised by him at that point of time. This Court while passing the judgment and order dated 06-05-2019, observed that the land of the petitioner was not acquired and that the compensation for the surface damage had been paid and accepted by the petitioner. The instant writ petition has been filed by the petitioner on the similar grounds and that too, on the basis of a letter dated 15-10-2019 bringing forth a guideline which has no relevance to the present case. The question of violation of the provisions of Article 300A does not arise at all, as the petitioner has not been deprived of his property.

[5] On 26-09-2019 when the instant writ petition came up for consideration, this Court issued notice to the respondent. After the notice being served upon the respondent, it did file its counter affidavit, the details of which are referred to hereinabove in the preceding paragraph. On 11-02-2020, when this matter was listed, Shri N. Biren, the learned counsel appearing for the petitioner submitted that no rejoinder was required to be filed in the matter and accordingly, the matter was directed to be listed on 17-03-2020 for disposal in the category of admission. Due to COVID-19 pandemic, the instant writ petition could not be disposed of in time as directed and on 14-10-2020 when the matter was taken up for consideration through video conference, it was submitted by Shri Nitin Khera, learned counsel appearing for the respondent that the guidelines as contained in the letter dated 15-10-2020 would have no application to the case of the petitioner for the reason that in terms of para 4 thereof, the State Government had issued a Notification dated 28-03-2018. In view of his submission, he was granted time to file an additional affidavit enclosing therewith a copy of the Notification dated 28-03-2018 which he could do it sometime in the month of December, 2020. Since a new document was produced by the respondent, the petitioner was granted some time to file a rejoinder thereto which was filed by the petitioner on 05-02-2021. After the pleadings were complete, this matter was taken up for hearing on 01-03-2021.

[6] In order to decide the issue involved herein, this Court deems it appropriate to reproduce the letter dated 15-10-2015 and Notification dated 28-03-2018 which read as under:

"No. 3/7/2015-Trans Government of Manipur Ministry of Power Shram Shakti Bhawan

Rafi Marg, New Delhi - 110001

Dated, 15th October, 2015

To

1. Chief Secretaries/Administrators of all the States/UTs (As per list attached)
2. Chairperson, CEA, New Delhi with the request to disseminate the above guidelines to all the stakeholders.
3. CMD, PGCIL, Gurgaon.
4. CEO, POSOCO, New Delhi.
5. Secretary, CERC, New Delhi.
6. CMD of State Power Utilities/SEBs.

Subject:- Guidelines for payment of compensation towards damages in regard to Right of Way for transmission lines.

During the Power Ministers Conference held on April 9-10, 2015 at Guwahati with States/UTs, it has, inter alia, been decided to constitute a Committee under the chairmanship of Special Secretary, Ministry of Power to analyse the issues related to Right of Way for laying of transmission lines in the country and to suggest a uniform methodology for payment of compensation on this count. Subsequently, this Ministry had constituted a Committee with representatives from various State Governments and others. The Committee held several meetings to obtain the views of State Governments on the issue and submitted its Report along with the recommendations (copy of the Report is at Annex-1).

2. The Recommendations made by the Committee are hereby formulated in the form of following guidelines for determining the compensation towards "damages" as stipulated in section 67 and 68 of the Electricity Act, 2003 read with Section 1C and 16 of Indian Telegraph Act, 1885 which will be in addition to the compensation towards normal crop and tree damages. This amount will be payable only for transmission lines supported by a tower base of 66 KV and above, and not for sub-transmission and distribution lines below 66 KV:-

(i) Compensation @ 85% of land value as determined by District Magistrate or any other authority based on Circle rate/ Guideline value/ Stamp Act rates for tower base area (between four legs) impacted severely due to installation of tower/pylon structure.

(ii) Compensation towards diminution of land value in the width of Right of Way (RoW) Corridor due to laying of transmission line and imposing certain restriction would be decided by the States as per categorization/ type of land in different places of States, subject to a maximum of 15% of land value as determined based on Circle rate/ Guideline value/Stamp Act rates;

(iii) In areas where land owner/ owners have been offered/ accepted alternate mode of compensation by concerned corporation/Municipality under Transfer Development Rights (TDR) policy of State, the licensee Utility shall deposit compensation amount as per (i) &

(ii) above with the concerned Corporation/Municipality/ Local Body or the State Government.

(iv) For this purpose, the width of RoW corridor shall not be more than that prescribed in the table at Annex-2 and shall not be less than the width directly below the conductors.

3. Necessary action may kindly be taken accordingly. These guidelines may not only facilitate an early resolution of RoW issues and also facilitate completion of the vital transmission lines through active support of State/UT administration.

4. All the States/UTs etc. are requested to take suitable decision regarding adoption of the guidelines considering that acquisition of land is a State subject.

Yours faithfully, (Jyoti Arora) Joint Secretary (Trans.) Tele: 011-2371 0389 Copy, along with enclosure, forwarded to the following:

1. Secretaries of Government of India (Infrastructure Ministries/ Deptt. Including MoEF - As per attached list)

2. Prime Minister's Office (Kind Attn: Shri Nripendra Mishra, Principal Secretary to PM)

3. Technical Director, NIC, Ministry of Power with the request to host on the website of Ministry of Power.

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Copy to P.S. to Hon'ble MoSP (IC)/ Secretary (Power)/ AS (BNS)/ AS (BPP)/ All Joint Secretaries/ EA/All Directors/ DSs, Ministry of Power.

--And--

"GOVERNMENT OF MANIPUR SECRETARIAT: POWER DEPARTMENT

....

N O T I F I C A T I O N

Dated, Imphal, the 28th March, 2018

No. 14/15/2017-Power: The Governor of Manipur is pleased to notify the

following methodology for payment of compensation towards damages in regard to Right of Way for transmission lines in accordance with the Guidelines of Ministry of Power, Govt. of India, vide Ref. No. 3/7/2015- Trans. Dated 15.10.2015 for maintaining uniformity in compensation payment to the affected land owners during construction of transmission lines. These guidelines of payment methodology of compensation towards "damages" as stipulated in Section 67 & 68 of the Electricity Act, 2003 read with Section 10 and 16 of Indian Telegraph Act, 1885 shall be in addition to the compensation towards normal crop and tree damages. This amount will be payable only for transmission lines supported by tower base of 66 KV and above and not for sub-transmission and distribution lines below 66 KV.

i. Compensation @ 85% of the land value as determined by District Magistrate or any other authority based on Circle rate/Guideline value/Stamp Act rates for tower base area (between four legs) impacted severely due to installation of tower/ pylon structure.

ii. Compensation towards diminution of land value in the width of Right of Way (RoW) corridor due to laying of transmission line and imposing certain restriction which would be decided by the States as per categorization/ type of land in different places of States, subject to a maximum of 15% of land value as determined based on Circle rate/ Guidelines value/Stamp Act rates.

iii. In areas where land owner/owners have been offered/accepted alternate mode of compensation by concerned corporation/ Municipality under Transfer Development Rights (TDS) policy of State, the licensee/ Utility shall deposit compensation amount as per (i) &

(ii) above with the concerned Corporation/Municipality/ Local body or the State Government.

iv. For this purpose, the width of RoW corridor shall not be more than that prescribed in table below and shall not be less than the width directly below the conductors.

Table for RoW width for different voltage line*

Transmission voltage in KV

Width of Right of Way in metres

66 KV

18

132 KV

27

220 KV

35

400 KV S/C

46

400 KV D/C

46

765 S/C

(Width delta configuration)

64

765 D/C

67

* Width of Right of Way is as per Ministry of Environment & Forest (MoEF) guidelines dated 05.05.2014

These guidelines shall be effective from the date of issue of notification for those new transmission line/ projects. This notification shall not be applicable for i) existing transmission lines which are already in service or completed portion of all ongoing transmission lines, ii) maintenance of any existing transmission line, iii) stringing of second circuit on the existing Double Circuit transmission towers, iv) re-conducting/ re- stringing of aged transmission lines and v) repairing/ reconstruction of existing transmission towers etc.

This is issued with the approval of the Cabinet in its meeting held on 12/03/2018 and in consultation with Law Department and Finance Department, Govt. of Manipur.

By order etc.

(Rajani Ranjan Rashmi)

Chief Secretary (Power), Govt. of Manipur.

Copy to:

1. Secretary to Chief Minister, Manipur.
2. P.P.S. to Minister (Finance/Power/Revenue), Government of Manipur.
3. The Joint Secretary (Trans.), Ministry of Power, Government of India, Shram Shakti Bhawan, Rafi Marg, New Delhi - 110001.
4. Managing Director (MSPCL/MSPDCL).
5. The Executive Director, NERTS, Power Grid Corp. of India Ltd. (PGCIL), Dongtiah, Lower Nongrah, Lapalang, Shillong 793006, Meghalaya.

6. Director, Printing & Stationery, Government of Manipur, for publication in the State Gazette Notification.

7. Guard File."

[7] From the perusal of the letter dated 15-10-2015, it is seen that it is a letter addressed to all the State Governments through their Chief Secretaries and other stakeholders informing that the Committee constituted with representative from various State Governments and others, had submitted its report and that its recommendations had been formulated in the form of guidelines for determining compensation towards 'damages' as stipulated in Section 67 and 68 of the Indian Electricity Act, 2003 with Section 10 and 16 of the Indian Telegraph Act, 1885. As many as four guidelines have been enumerated therein. It is further seen from paragraph 4 of the said letter that all the States/ UTs etc. were requested to take suitable decision regarding adoption of the guidelines considering that acquisition of land is a State subject. This para 4 makes it very clear that the application of the guidelines as enumerated in the letter, was not automatic and that they were required to be adopted by the States/ UTs and others, for which the appropriate decision ought to be taken by the States/ UTs in that regard. There is no controversy about these guidelines formulated by the Government of India. All that has been submitted by the counsel appearing for the respondent, is that pursuant to the request made by the Government of India as mentioned in para 4 of the letter, the Government of Manipur had issued a Notification dated 28-03-2018 adopting the said guidelines. It has further been submitted by him that the guidelines have been made effective from the date of notification for those new transmission lines/ projects and balance uncompleted portion of ongoing transmission lines and that they will have no application to existing transmission lines which are already in service. On perusal of the said Notification, the submission of the counsel appearing for the respondent has some force and merit. So far as the petitioner's case is concerned, the transmission line was erected/ commissioned in the year, 1988, when his father was the chief of the village. The observations made by this Court in the earlier writ petition being WP(C) No.498 of 2018 as regards the facts and circumstances, are relevant and will clearly demonstrate that the instant writ petition is devoid of any merit and is accordingly liable to be dismissed. Para 7 and 8 of the judgment and order dated 06-05-2019 read as under:

"[7] The undisputed facts which have emerged from the pleadings of the parties as aforesaid, are that the petitioner is the Chief of the Mongbung Village as is evident from the certificate dated 20-07-2015 produced by him along with rejoinder affidavit. At the time when the transmission line was commissioned/ erected on 01-09-1988 NEEPCO, the petitioner's father was the Chief of the said village. Prior to the erection/ installation of the transmission line, a joint inspection was conducted as is evident from the letter dated 12-06-1987 of the SDO (Elect), NEEPCO Ltd., Jiribam addressed to the Addl. District Magistrate (I), Jiribam and after the land of the petitioner being inspected, on 28-07- 1987 tree,

crop/ surface damage was assessed and the evaluation of different fruits was also done. The petitioner signed an undertaking/ letter of acceptance whereby he agreed to the formula deduced by the NEEPCO, Jiribam for the proportionate deduction from the claim in respect of the transmission line. The compensation thereof was paid to the petitioner without any objection being raised by him at that point of time.

[8] After about 30 years and that too, after the petitioner having been declared as the Chief of the Mongbung Village, claimed compensation in respect of the damages caused to his land on the ground that he is entitled to compensation under the provisions of Article 300-A. In order to substantiate it, the learned counsel appearing for the petitioner has relied upon various decisions of the Hon'ble Supreme Court as mentioned hereinabove. But on perusal thereof, it is seen that the facts of the said cases are not identical to that of the present case and therefore, the same will have no application at all. In the said cases, since the land was acquired, the question of payment of compensation did arise. But in the present case, the land of the petitioner was not acquired at all by the respondent No.4. The learned counsel appearing for the respondent No.4 made his submission raising some relevant points-one, the land of the petitioner was not acquired by the respondent No.4 except the use thereof; two, so far as the damages caused to the land are concerned, it was duly assessed by the concerned authorities and the compensation thereof was paid, thereafter, to the petitioner; three, the instant writ petitioner is barred by delay and laches, as the same has been filed after about thirty years from the day when the cause of action arose; four, in the instant petition, the petitioner has suppressed material facts as regards the payment of compensation and five, the respondent No.4 which took over the assets and liabilities of NEEPCO, is required to act in accordance with the provisions of the Telegraph Act, 1885. His submissions have some force and merit. Section 10 of the Telegraph Act, 1885 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."

[8] In view of the above and for the reasons stated hereinabove, the instant writ petition is dismissed with no order as to costs.