

(1999) 12 PAT CK 0058
In the Patna High Court
Case No : S.W.J.C. No. 4536 of 1999

Smt. Durgesh Nandani

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 03-12-1999

Acts Referred:

Electricity (Supply) Act, 1948 — Section 42

Electricity Rules, 1956 — Rule 82

Telegraph Act, 1885 — Section 10, 11, 12, 13, 14

Citation : AIR 2000 Patna 135 : (2000) 1 PLJR 892

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : J.P. Sharma, for the Appellant; Mihir Kumar Jha and M.K. Shah, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—By a registered deed of sale dated 26-9-1994 the petitioner purchased a piece of land measuring Seven and a half decimals in area, forming part of Survey Plot No. 1323 under Khata No. 757 in Tauzi No. 5806 and situate at Mauza Mainpura presently under Patliputra Police Station in the town and district of Patna. 2. According to the petitioner she had purchased the aforesaid piece of land for constructing a residential house but she is unable to construct the house on account of two electricity poles fixed and installed there from before by the Bihar State Electricity Board. She requested the officials of the Board to remove the two poles on the plea that they were coming in the way of construction of her house. The Board's officials, however, took the stand that they would remove the poles only on her making payment of the expenses (provisionally estimated at Rs. 21046.00) of the removal and reinstallation of those poles at some other place.

3. This writ petition has been filed challenging the demand for the aforesaid sum made by the Board (as contained in Annexure-5) and for a direction to the Board

to remove the two poles from the land of the petitioner at its own expense.

4. Mr. Mihir Kumar Jha, learned counsel appearing for the Board submitted that Rule 82 of the Indian Electricity Rules provided the necessary legal sanction for the demand that the expense of removal of the poles be borne by the petitioner. Rule 82 of the Indian Electricity Rules is as follows :--

"Rule 82. Erection of or alteration to buildings, structures, flood banks and elevation of roads. --(1) If at any time subsequent to the erection of an overhead line {whether covered with insulting material or bare), any person proposes to erect a new building or structure or flood bank or to raise any road level or to carry out any other type of work whether permanent or temporary or to make in or upon any building or structure or flood bank or road, any permanent or temporary addition or alteration, he and the contractor whom he employs to carry out the erection, addition or alteration, shall, if such work, building, structure, flood bank, road or additions and alterations, thereto would, during or after the construction result in contravention of any of the provisions of Rule 77, 78 or 80, give notice in writing of his Intention to the supplier and to the Inspector and shall furnish therewith a scale drawing showing the proposed building, structure, flood bank, road, any addition or alteration and scaffolding required during the construction.

(2) (a) On receipt of the notice referred to in Sub-rule (1) or otherwise, the supplier shall examine whether the line under reference was lawfully laid and whether the person was liable to pay the cost of alteration and if so send a notice without undue delay to such person together with an estimate of the cost of the expenditure likely to be incurred to so alter the overhead line and require him to deposit without 30 days of the receipt of the notice with the supplier, the amount of the estimated cost.

(b) If the person referred to In Sub-rule (1) disputes the supplier's estimated cost of alteration of the overhead line or even the responsibility to pay such cost, the dispute may be referred to the Inspector by either of the parties whereupon the same shall be decided by the Inspector.

(3) No work upon such building, structure, flood bank, road and addition or alteration thereto shall be commenced or continued until the Inspector has certified that provisions of Rules 77, 79 or 80 are not likely to be contravened either during or after the aforesaid construction ;

Provided that the Inspector may, if he is satisfied that the overhead line has been so guarded as to secure the protection of persons or property from injury, or risk of injury, permit the work to be executed prior to the alteration of the overhead line or, in the case of temporary addition or alteration, without alteration of the overhead line.

(4) On receipt of the deposit, the supplier shall alter the overhead line within one month of the date of deposit or within such longer period as the Inspector may

allow and ensure that it shall not contravene the provisions of Rules 77, 79 or 80 either during or after such construction.

(5) In the absence of an agreement to the contrary between the parties concerned, the cost of such alteration of the overhead line laid down shall be estimated on the following basis, namely :--

(a) the cost of additional material used on the alteration giving due credit for the depreciated cost of the material which would be available from the existing line;

(b) the wages of labour employed in effecting the alteration.

(c) supervision charges to the extent of 15 percent of the wages mentioned in Clause (b); and

(d) any charges incurred by a supplier in complying with the provisions of Section 16 of the Act in respect of such alterations.

(6) Where the estimate cost of the alteration of the overhead line is not deposited, the supplier shall be considered as an aggrieved party for the purpose of this rule."

5. In support of his contention founded on the aforesaid rule Mr. Jha relied upon a decision of this Court in Premier Synthetics Vs. State of Bihar and Others, .

6. Reliance placed on Premier Synthetics appears to be very far fetched because the decision on the face of it is contrary to the submission made by Mr. Jha. In Premier Synthetics the Board had laid out overhead lines for transmission of electric current at 3300 volts passing through the petitioner's land disregarding and overriding the petitioner's objections . In that circumstance this Court held that in future the Board would not be entitled to demand any expense or cost for the removal of the overhead line from the petitioner's land. The operative portion of the order was as follows :

"I, therefore, hold that the petitioner shall be entitled to make an application to the respondent Board as and when the petitioner proposes to construct building/structure on his land, then in that event, the Board shall remove the overhead line within a reasonable time at its own cost and expenditure."

On the basis of the decision in Premier Synthetics Mr. Jha sought to contend that in case no objection was raised at the time of the installation of the electric line/pole, the Board would be entitled to demand the expenses in the event the electric line/pole was to be later removed at the request land owners. The submission seems to overlook that a land owner may be prevented from raising objection, at the time of the pole being fixed on his land, for any number of reasons and the failure to raise objections may not always be the same as giving permission or consent.

7. Mr. Jha also relied upon a bench the decision of Rajasthan High Court in Jaipur Development Authority Vs. The State of Rajasthan and Others, . The Rajasthan

decision appearantly supports the contention raised by Mr. Jha.

8. However, I find an obvious infirmity In the submission made by Mr. Jha relying upon rule 82 of the Indian Electricity rules. Before invoking the provision of Rule 82 it must be shown that the Board's entry and presence over a private piece of land was lawful.

9. Now, there are only two ways in which one may lawfully enter and maintain ones presence over a piece of land belonging to some other private person : one, on the basis of the permission and consent given by the land owner and the other by virtue of permission accorded by law.

10. In the case in hand there is admittedly no material to indicate that the two poles were fixed on the land in question with the permission and consent of its owner. Therefore, the Board's presence over the land can be held to be lawful only if it can be shown that the Board entered and maintained its presence over the land in exercise of its right conferred by law.

11. In this regard Section 42 of the Electricity (Supply) Act dealing with the Boar's power for placing wires, poles etc. provides that where provision is made in a sanctioned scheme, the Board would have, for the placing of any wires, poles appliances etc. for the transmission and distribution of electricity all the powers which the Telegraph authority possessed under Part III (comprising Sections 10 to 19B) of the Indian Telegraph Act, 1885; further, in the absence of a sanctioned scheme making such provision all the provisions of Sections 12 to 19 of the Indian Telegraph Act would apply to the works of the Board.

12. This takes us to Part III of the Indian Telegraph Act, 1885 dealing with the power to place telegraph lines and posts. Section 10 of the Indian Telegraph Act gives the telegraph authority the power to place and maintain telegraph lines and posts. Section 10 is as follows :

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 tepegraph 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 provideid, 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."

13. Section 11 gives power to enter on property in order to repair or remove telegraph lines or posts.

14. Section 16 provides that in case the exercise of powers u/s 10 is resisted or obstructed the District Magistrate may order that the telegraph authority would be permitted to exercise them.

15. The next provisions relevant for the matter in hand are confined in Section 17, dealing with the removal or alteration of telegraph line or post on property other than that of a local authority. Section 17 is as follows :--

"17. Removal or alteration of telegraph line or post on property other than that of a local authority, --(1) When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property, not being property vested in or under the control or management of a local authority, and "any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher or lower level or altered in form, he may require the telegraph authority to remove or alter the line or post accordingly; Provided that, if compensation has been paid u/s 10, Clause (d), he shall when making the requisition, tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever maybe the smaller sum.

(2) If the telegraph authority omits to comply with the requisition, the person making it may apply to the District Magistrate within whose jurisdiction the property is situate to order the removal or alteration.

(3) A District Magistrate receiving an application under Sub-section (2) may, in his discretion, reject the same or make an order, absolutely or subject to conditions, for the removal of the telegraph line or post to any other part of the property or to a higher or lower level or for the alteration of its form; and the order so made shall be final."

16. It is thus to be seen that Section 10 of the Telegraph Act empowers the authority to enter on a private, piece of land and to fix and instal there telegraph lines and posts etc. However, the section enjoins upon the authority to cause as little damage as possible in the exercise of that power and further to pay full compensation for the damages arising from the exercise of the power u/s 10.

17. Section 17 gives the land owner the right to ask for the removal or alteration of telegraph line or post as and when he would desire to deal with the property in such manner as to render it necessary or convenient that the telegraph line or

post should be removed. In that event the only condition is that if the land owner had received compensation u/s 10(d), he must either pay the expenses of removal or alteration or half the amount received by him as compensation, whichever may be the smaller sum.

18. As noted above, by virtue of Section 42 of the Electricity (Supply) Act the Board acquires the powers under Part III (Sections 10 to 19B) of the Indian Telegraph Act in case provision is made in sanctioned scheme and the powers under Sections 12 to 19 of the Telegraph Act in case the sanctioned scheme does not make such provision.

19. The entry and presence of the Board on the petitioner's land may, therefore, be held to be valid and lawful by virtue of the powers conferred by the above discussed provisions of the Telegraph Act but then it naturally follows that in case the entry over a private piece of land was without the permission or consent of the land owner and on the basis of the statutory power under the provisions of the Telegraph Act then the question of removal of the pole would also be governed by the provisions contained in Section 17 of the Act. In terms of Section 17, if the land owner was not paid any damages u/s 10(d) then he is not obliged to make payment of the expense of the removal. In case, however, the land owner was paid damages u/s 10(d) of the Telegraph Act, he can ask for the removal of the lines/poles only on tendering either the amount requisite to defray the expense of the removal or half of the amount paid as compensation, whichever may be the smaller sum.

20. On a consideration of the relevant legal provisions and on hearing counsel for the parties the legal position that emerges can be summed up as follows :--

(i) In case the Board fixes and installs electric poles and/or other appliances on a private piece of land or takes an overhead line passing through a private piece of land without the express permission or consent of the land owner and in exercise of the powers conferred by part III of the Indian Telegraph Act, the question of removal or alteration of the line, pole or other appliances etc. will be governed strictly by the provisions of Section 17 of the Indian Telegraph Act and in those cases the provisions of Rule 82 of the Indian Electricity Rules will have no application.

(ii) The provision of Rule 82 shall apply to cases where the Board fixes and installs electricity lines/poles or other appliances on a private piece of land or carries an overhead line through a private piece of land on the invitation of the land owner or with his express permission or consent.

21. Now coming back to the facts of this case it is an admitted position that the two poles were fixed on the land in question without the approval and consent of its owner. It, therefore, follows that the Board fixed the two poles in exercise of the right conferred by the provisions of the Indian Telegraph Act. There is no material to indicate that the petitioner or the erstwhile owner of the land was paid any damages u/s 10(d) of the Indian Telegraph Act. The proviso to Section

17(1) would, therefore, have no application in this case and the petitioner, therefore, has no legal obligation to pay the expenses of the removal of the two poles. The Board is bound to remove the two poles at its own expenses. The impugned demand as contained in Annexure 5 is accordingly quashed.

22. For the reasons discussed above, this writ petition is allowed and the respondent authorities are directed to remove the two poles from the petitioner's land to an alternative site without insisting for the petitioner to pay the expenses of removal. It is expected that the removal of the poles from the petitioner's land will be duly carried out within one month from the date of receipt/ production of a copy of this order.