

(2010) 12 GAU CK 0005
In the Gauhati High Court
Case No : WA No. 288 of 2010

Sonaram Baruah and Another	Vs	APPELLANT
Assam State Electricity Board and Others		RESPONDENT

Date of Decision : 07-12-2010

Acts Referred:

Electricity Act, 2003 — Section 68

Citation : (2011) 2 GLR 630

Hon'ble Judges : Madan B. Lokur, C.J.;Utpalendu Bikas Saha, J

Bench : Division Bench

Advocate : A. Choudhury, for the Appellant; B.D. Das, for the Respondent

Final Decision : Dismissed

Judgement

U.B. Saha, J.—In this writ appeal, the Appellants who were the writ Petitioners in WP (C) 6196/2007 ("Appellant-Petitioners") challenged the judgment and order dated 2.7.2010 whereby and whereunder the learned Single Judge of this Court dismissed the writ petition of the Appellant-Petitioners.

2. Heard Mr. A. Choudhury, learned Counsel for the Appellant-Petitioners and Mr. B.D. Das, learned standing Counsel for the Assam State Electricity Board ("ASEB"). Respondent Nos. 1, 2 and 3.

3. Brief fact headed to be discussed are as follow:

Appellant-Petitioners are the residents of Narengi Housing Colony, who raised question in their writ petition relating to the proposal of the Respondents to carry the 11KV/33KV high tension electricity lines over the land of the Appellant-Petitioners, which according to them is illegal and without any authority of law. The prayer of the Petitioners in the writ petition was for diversion of the said 11KV/33KV high tension electricity lines through a particular PWD road which is safer for the inhabitants of the locality. It is also pleaded in the writ petition that they are the allottee and purchaser of the respective plots of land described in paragraph 2 of their writ petition and there is a road through the housing colony

to a place called Seuj Nagar. According to them the Respondents have also considered the said Seuj Nagar road put under that PWD road and for that, certain amount of money have been mobilized for the development of the said road. It has also been stated in the writ petition that there are high power overhead electricity lines, one carrying about 11 Kilo Volts and the other about 33 Kilo Volts which were installed by the Respondent No. 1 many years back, even before the Housing Complex area was acquired by the Respondent No. 4, Assam State Housing Board and they are passing through the housing complex area of the Appellant-Petitioners from Narengi Para station to MES Satgaon and some other destinations for power supply, Not only that subsequently the Respondents, more particularly, Respondent Nos. 4, 5 and 6 had verified, surveyed and allotted various plots of land near and beside these high tension lines and also granted permission for construction of houses.

4. Appellant-Petitioners and some other people of the locality of the aforesaid housing colony have constructed their respective houses with care and caution following the norms of construction of house near and beside the said high tensions lines, even though many accidents took place near and beside the high tension lines in and around the residential area.

5. Further case of the Appellant-Petitioners before the writ Court was that the Respondents had prepared a draft proposal for diverting the 11KV high tension lines through the PWD road and carry the same through Seuj Nagar road and further forward it to Narengi and such a proposal has already been accepted, approved and sanctioned by the PWD and Electricity Authorities but the Respondents, more particularly, Respondent No. 1, ASEB in an illegal and arbitrary manner and in violation of the terms and condition of and the draft proposal plan have decided to divert the aforesaid 11KV high tension lines through and over the houses of the Appellant-Petitioners without any prior information or notification.

6. Being aggrieved by the action of the Respondents, the Appellant-Petitioners had submitted representations from time-to-time but the Respondents did not heed to their representations and ultimately, they challenged the action of the Respondents by way of filing the aforesaid writ petition.

7. The Respondents have filed their counter affidavit denying the contentions raised by the Appellant-Petitioners in their writ petition. The case of the Respondents, inter alia, that the people who have constructed their houses near the high tension lines, did not give any notice to the ASEB.

8. Further, pleaded case of the Respondent No. 1 before the writ Court was that the power supply to the MES (Military Engineering Service) has been provided through the 11KV line originated from the 88/11KV Narengi sub-station of the Lower Assam Electricity Distribution Company Limited and the same has passed through the Housing colony of Seuj Nagar; Oil India Limited land, Puberun Nagar and Defence Department land, etc. It has been stated that the existing 11 KV

line, which connects the MES is very old and was drawn at the time of establishment of the Army Cantonment at Satgaon and presently, the condition of the steel and wooden poles and conductors are not satisfactory resulting in interruption of power supply to MES and in that context it was felt necessary to provide electricity to the MES at the 33 KV voltage level. As the demand of the MES is for 3480 KVA the Respondent-Board is under obligation to provide power under upgraded voltage of 33 KV to the MES as per the Assam Electricity Regulatory Commission guideline and the MES has also applied for supply of the existing quantum of power at 33 KM.

9. Not only that, the Garrison Engineer, MES has already deposited Rs. 62,95,404 to the Board for construction of new 33 KV lines along with terminal equipment at Narengi sub-station as per the approved estimate, which was prepared taking the existing 11 KV line route from 33/11 KV Narengi sub-station to MES Satgaon.

10. In response to the affidavit of the Respondents, the Appellant-Petitioners have also filed their affidavit-in-reply wherein they have reiterated and re-affirmed the stand taken by them in the writ petition.

11. During the course of hearing of the writ petition, learned Single Judge directed the Respondents to constitute a Technical Committee to examine the technical feasibility of installation either of 11 KV/33 KV transmission line over the land of the Petitioners and further to examine the technical feasibility of re-alignment of the proposed transmission lines alongside the PWD road and accordingly the Committee was constituted with the Chief Electrical Inspector-cum-Advisor, Government of Assam and Sub-Divisional Engineer, Narengi. The aforesaid Committee submitted its report and in its concluding part held, thus:

CONCLUSION

After perusing the available records of the case and findings in site inspection, it is evident that a new 33 KV line from Narengi Sub-Station to MES, Gatgaon is required to be drawn to cater the demand of power by MBS to the tune of 3480 KVA. The presently existing 11 KV line feeding 2000 KW power to MES is not capable to carry the additional power required by MES. Moreover, as the existing line has become old and was drawn long back, the vertical and horizontal clearances between the line conductors and ground level and parts of newly constructed houses have reduced considerably in many places. Immediate actions are to be initiated by the LAEDCL/ASEB to increase the said vertical and horizontal clearances of such HV lines drawn in the area along with adequate space along alignment for operation and maintenance in the interest of public safety and also to prevent construction of any structure below and in prohibited proximity of such lines, complying with the statutory safety requirements.

In the instant case, the Committee is of the opinion that drawing a new 33 KV overhead line along the alignment of the existing MES 11 KV line in a composite manner will be possible, if necessary safe clearances are maintained between the

conductors of the overhead line, ground level and nearby buildings/structure with proper Right of Way and prior statutory approval from appropriate Government u/s 68 of the Electricity Act, 2003 for such installing and keeping installed above ground the overhead line of voltage exceeding 11 kilovolts. The alignment of the existing 11 KV MES line across the Petitioners land may be used by replacing the old supports with appropriate supports for drawing of composite line maintaining a safe vertical and horizontal clearances and installing appropriate safety devices there for.

Alternatively, avoiding the plots of lands of the Petitioners, a few spans of Seuj Nagar from the road near Petitioner's house up to the boundary wall of the Oil India Limited, with adequate space for erecting the supporting and fixing necessary Stay wires in the route and installing appropriate safety devices there for. But, it appears that the space required for drawing such a line will not be available along the said road, especially due to presence of several curves of the road that require fitment of additional supports and stay wires to keep the line structures at Place.

However, as the existing line is also used for power supply to two other consumers, arrangements are to be made for strengthening and maintaining Right of Way even in case the old line is not used any further for power supply to MES.

Dated Guwahati the 25th June, 2008

Enclosed: Annexure 1

Members of the Technical Committee

Sd/- Sd/-

(H.K. Buzarbaruah) (S. Baruah)

Sub-Divisional Engineer Narengi Electrical Sub-Division LAEDCL, Narengi Chief Electrical Inspector-cum-Adviser, Government of Assam.

12. The Respondents also filed an affidavit and in the said affidavit highlighted the difficulties in drawing the 33 KV line through Seuj Nagar road, as has been proposed by the Petitioners. Such difficulties are:

(i) If the line is to be diverted through Seuj Nagar road then diversion has to start from already constructed line support No. 4 (installed at a distance of 230 meters from Narengi Sub-Station of ASEB) by taking a 90° turn towards east and this point has a juncture of 3 roads.

(ii) The line will then go straight towards Seuj Nagar by road side and stop near the Namghar. The length of this straight line is 8.30 metre (approximately), Thereafter, the line will gain take 90° turn towards South and proceed along the Eastern road side of newly developed Seuj Nagar Road (with 5 metre approx). This is also at a juncture Point of 3 roads.

(iii) The road has taken a curvature of 1600 (approx.) by traversing a length of 90 meter (near the house named Alakananda) from the previous turning point near Namghar.

(iv) Thereafter, the line will again go Straight to next curvature at a distance of 46 meter from the previous point. This, curvature have a wide angle of 1600 approximately.

(v) Thereafter, the line will go straight towards Wall of Oil India Limited and this line will only meet the new 33 KV line already constructed along the wall of Oil India Limited, A4-pole structure shall be needed in this position to negotiate curvature of about 1200. There is no space to fix stay wire in this position having of wall of Oil India Limited near by.

(vi) 4 pole structures will have to be erected where the line will take sharp turn around 900. The 4 pole structure of 30 meter width (with standard 32 meter horizontal iron channel) at three points where the line take a sharp turn and will cover an area of 9.0 square meter. These 4 pole structures will cover a portion of road at turning point of road and also at junction point of roads. There will be requirement of fitting of stay wires in these structures. At least 4 numbers of stay wires will have to be fitted to neutralize the force exerted on each structure due to tensions of the lines coming from two directions. These stay wires will have to be fitted either on the road or inside the private campus on the road side.

There are two numbers of wide curvature in the Seuj Nagar road where Double pole structures will have to be erected. Stay wires will have to be fitted inside the private boundaries to neutralize the force on structure. Moreover, there will be difficulty of erecting posts along roadside due to presence of water pipes, drains, telephone cables in this developed area. Alternatively, requirement of 4 pole structures can be reduced to 3 (pole) structure by utilizing more stay wires. But fitting of stay wires will not be possible as that will enter into private compounds.

13. The Respondents on 3.7.2009 again filed a further affidavit enclosing the letter dated 23.2.2007 and 9.7.2007 (Annexures "B" and "C" to the aforesaid affidavit) addressed to the Respondent authority by the Garrison, Engineer, MES wherein the Garrison Engineer emphasized on laying of proposed 33KV line on the same alignment under which the present 11KV line is passing through in order to avoid any problem whatsoever.

14. Learned Single Judge in para 20 to 22 of his judgment took notice of the argument of the learned Counsel for the parties as well as the provisions of Section 68 of the Electricity Act, 2003 wherein it is mentioned that before installation of 33KV over head electric supply line, prior approval of the appropriate Government has to be taken which has also admittedly been taken by the ASEB. Learned Single Judge while dismissing the writ petition of the Appellant-Petitioner mainly relied on the report of the Technical Committee dated 25.6.2008 wherein it has been held that the existing 11KV over head distribution transformer line drawn to MES was installed about 40 years back and since then

the MES has considerably increased making a total requirement of 3480 KVs, which is unable to be drawn through the existing 11KV line. Such a position has necessitated wheeling the power at 33 KV transmission voltage. In the said report the Technical Committee also took note of Section 68 of the Electricity Act, 2003 and also suggests that the alignments of the existing 11 KV line across the Appellant-Petitioners land may be used by replacing the old supports with appropriate supports for drawing of composite line for maintaining a horizontal and vertical clearances and fixtures installing an appropriate safety device thereof.

15. Learned Single Judge passed his judgment mainly relying on the report of the Technical Committee/Expert Committee, as stated supra, held that a writ Court cannot sit on an appeal over the finding of Technical/Expert Committee for issuing a direction to the Respondents to act in a particular manner as suggested by the Appellant-Petitioners.

16. More so, according to the learned Single Judge, the Technical/Expert Committee has also taken note of disputed facts raised by the rival parties.

17. At the time of admission hearing of this appeal, learned Counsel for the Appellant-Petitioners urged, inter alia, that the Technical Committee while suggesting for the alignment of high voltage overhead line across the Petitioners land, at the same time, also made an alternative suggestion but the Respondent authority did not act on the alternative suggestion. He also contended that learned Single Judge also failed to consider the alternative suggestion of the Technical Committee and according to him this appeal is fit for admission and consequent thereto the Petitioners are entitled to get the relief sought for.

18. Per contra, Mr. Das, learned Standing Counsel for the ASEB while supporting the impugned judgment and order would contend that installation of high voltage lines like 11KV/33KV is a technical matter and the Court having no expertise on technical subject, should not interfere with the technical report/opinion and the learned Single Judge rightly did not interfere with the action of the Respondents based on technical reports of the Expert Committee and more so, when 90% of the work leading to installation of 33 KV lines have already been completed.

19. He further contended that when the authorities acted as per the prescription of Section 68 of the Electricity Act, 2003, i.e., after obtaining prior approval from the Government of Assam proceeded with the proposed action plan relating to the alignment of 33 KV lines and also acted on the basis of the suggestion of the Technical/Expert Committee, it would not be proper for this Court to interfere with the order of the learned Single Judge as that would adversely affect the interest of the MES who are discharging their duties for the public at large and refusal to installation of lines as proposed by the MES would also result in misutilisation of the funds provided for the purpose.

20. He further urges that the interest of the people at large must not be equated with the interest of some individuals like the Appellant-Petitioners as none of

their legal and fundamental rights has been taken away by the proposed installation of 11KV/33KV high tension electricity lines.

21. We have considered the submission of the learned Counsel for the parties and have also gone through the impugned judgment and order passed by the learned Single Judge and also given our anxious thought to the points raised at the time of admission hearing of the appeal. Admission of writ appeal is not a matter of right, like Civil First Appeal or Criminal Appeal but when a prima facie case is made out for examining the judgment, and order of the learned Single Judge, then only the Court should admit the appeal for hearing. Even if the opinion of the learned Single Judge is erroneous then also the appellate Court cannot interfere with the order of the learned Single Judge unless it is totally perverse and violative of provisions of law. At the time of admission of the appeal the appellate Court should be more cautious to examine the prima facie merit of the appeal and when there is no prima facie merit in an appeal, the Court should avoid admitting the same.

22. By this time it is also settled that when in a case the dispute involved is a technical one like flood management, extinguishment of fire, generation and transmission of power, the Court should take the opinion of the experts of those fields and the Court should not act as an appellate authority over the decision/suggestion of the experts. Only when the opinion of the Technical/Expert Committee is contrary to any provision of law or statutory guideline, then only the Court can interfere with such opinion of the Technical/Expert Committee.

23. On being gone through the impugned judgment and order, we are of the considered opinion that the learned Single Judge rightly granted liberty to the Respondents to proceed with the proposed installation of 11KV/33KV of high tension electricity lines for which the Respondents have obtained prior approval from the Government of Assam and also ready to observe the required safety measures for which the Respondents also furnished additional affidavit wherein they referred to the letter dated 16.7.2009 by which the State Government and the Power Department have accorded prior-approval to the Respondent-authority. Being the subject-matter in dispute is a technical matter like transmission of power supply of 11KV/22KV through a overhead line in a particular area, the writ Court should not sit over the suggestion of the Technical Committee as an appellate authority being the same has no expertise on the subject and as the learned Single Judge has given detailed reasons in support of his conclusion, it is not necessary for us to go for further discussion as we are fully in agreement with the views of the learned Single Judge, inter alia, that the Court having no technical expertise should not sit over suggestion/report of the Technical/Expert Committee as an appellate authority. We are of the opinion that a Technical/Expert Committee is the best authority to Judge a matter where technical question is involved, in the instant case the Respondent acted on such report, hence, the Respondent did not commit any illegality or wrong as alleged. Learned Single Judge very rightly accepted the opinion of the Technical/Expert

Committee and decided the matter.

24. We are of the further opinion that the Appellant-Petitioners failed to make out even a prima facie case for admission of the instant writ appeal. More so, we are again of the opinion that the order of the learned Single Judge does not call for any interference by us.

25. In the result, the writ appeal is dismissed. No order as to costs.