

(2010) 07 GAU CK 0020

In the Gauhati High Court

Case No : Writ Petition (C) No's. 6196 of 2007 and 450 of 2008

Sonaram Baruah and Others

APPELLANT

Vs

Assam State Electricity Board and Others

RESPONDENT

Date of Decision : 02-07-2010

Acts Referred:

Electricity Act, 2003 — Section 68, 68(2)

Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 4, 5

Citation : (2010) 4 GLT 445

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : A.K. Bhattacharjee and A. Choudhury, for the Appellant; B.D. Das, H.K. Sarma, G.N. Sahewalla and Aslam, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—The dispute raised in both the writ petitions is in respect of the proposal of the Respondents to carry the 11KV/33 KV High Tension Electricity Lines over the land of the Petitioners, which according to the Petitioners, is illegal and without any authority of law. The Petitioners have prayed for diversion of the said electricity lines through the particular P.W.D. Road.

2. While W.P. (C) No. 6196/2007 has been filed by two residents of the particular locality over whose land the proposed high tension wire is sought to be drawn. The second writ petition has been filed by 18 Petitioners, who are the residents of the particular Housing Colony, who would be allegedly affected in the event of carrying the 11 KV/33 KV High Tension Electricity Lines as proposed by the Respondents.

3. Since both the writ petitions pertain to the same grievance and based on the same cause of action, they have been heard together and are being disposed of by this common judgment and order.

4. The Petitioners No. 1 and 2 are the allottee and purchaser respectively of the

plots of land described in paragraph 2 of the first writ petition while the Petitioners in the second writ petition are the members of the particular Housing Development Society. It has been averred in the writ petition that there is a road through the Housing Colony to a place called Seuj Nagar. According to the Petitioners, the Respondents have considered Seuj Nagar road to be under P.W.D. Road and for that, certain amount of money has also been mobilized for development of the said road.

5. In paragraph 7 of W.P. (C) No. 6196/ 2007, it has been stated that there are high power overhead electricity lines, one carrying about 11 Kilo Volts and the other carrying about 33 Kilo Volts, which were installed by the Assam State Electricity Board many years back, even before the housing complex area of the land was acquired by the Assam State Housing Board and they are passing through the housing complex area of the Petitioners from Narengi Power Station to M.E.S. Satgaon and some other destinations for power supply. Subsequently, the Respondents, more particularly, the Respondents No. 4, 5 and 6 had verified, surveyed and allotted various plots of land to many people near and beside those high tension lines and also granted permission for construction of houses.

6. According to the Petitioners, they and other people of the area of the Housing Colony have constructed their respective houses very carefully following all the norms of construction of house near and beside the said High Tension Lines. But even then, many accidents took place near and beside the High Tension Lines in and around the residential area. It is the stand of the Petitioners that the Respondents have not taken any precautionary measures in and around the High Tension Lines. It has been alleged that they have only demarcated the open land beneath the 33 KV lines and declared it as Green Area, but no other precautionary measures have been taken.

7. It has been stated in the writ petition that the Respondents had prepared a draft proposal for diverting the 11 KV High Tension Electricity Lines through the P.W.D. road of the Housing Colony and carry the same through the Seuj Nagar road and further forward it towards M.E.S. Narengi. According to the Petitioners, such a proposal has already been accepted, approved and sanctioned by the P.W.D. and the electricity authorities. However, the Respondents, more particularly, the Respondent-ASEB in an illegal and arbitrary manner and in violation of the terms and conditions of the draft proposal plan have decided to divert the 11KV High Tension Electricity Lines through and over the houses of the Petitioners in W.P. (C) No. 6196/ 2007 without any prior information or notification. It is the further stand of the Petitioners that the said authorities are also trying to acquire certain portion of the land of the Petitioner No. 2 for erection and installation of the electricity posts for carrying 11 KV High Tension Lines.

8. Being aggrieved, the Petitioners had submitted time-to-time representations but the same did not yield any result.

9. It is in the aforesaid background and more particularly, when according to the Petitioners, there could be alternative carrying of the High Tension Electricity Lines over the P.W.D. road, the proposed action of the Respondents is illegal and arbitrary. Accordingly, they have prayed for interference of this Court in the matter.

10. The Respondents have filed their counter affidavit denying the contentions raised in the writ petition. According to them, the people, who have constructed the houses near the High Tension Lines, did not give any notice to the A.S.E.B. In paragraph 6 of the counter affidavit, it has been denied that the A.S.E.B. has diverted the 33 KV High Tension Lines through and over the houses of the Petitioners and Ors. in an illegal and arbitrary manner. It has been stated that the earlier proposal for drawing the new 33 KV lines over the Seuj Nagar roadside has been abandoned on valid ground. The ground being objection from M.E.S., which has paid the construction costs of the lines. It has also been stated that it would also require extra steel tubular poles for negotiating the curves along the road. According to the Petitioners, such a diversion may also lead to law and order problem.

11. It has been stated in the counter affidavit that the power supply to M.E.S. (Military Engineering Service) has been provided through the 11 KV MES lines originated from 33/11 KV Narengi substation 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 M.E.S 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 M.E.S.

12. It was on the above context, it was felt necessary to provide power supply to M.E.S. at 33 KV voltage level. According to the Respondents, the demand of the M.E.S. is for 3480 KW And the Respondent Board is under obligation to provide power at upgraded voltage of 33 KV to M.E.S as per the Assam Electricity Regulatory Commission Guidelines. The M.E.S. has also applied for supplying the existing quantum of power at 33 KV.

13. The Respondents have categorically stated that the consumers will get quality power at 33 KV line with minimum interruptions for less operational activities at sending end sub-station, less line fault for installation of line conductors on 14.5. Meter high steel poles and without any other distribution transformer in the line. The Respondents have emphasized on providing quality power supply to defence establishment where arms and ammunitions are stored and nation's vital security systems are installed. Thus, according to the Respondents, delivering power at 33 KV will lessen the system transmission loss which is a national interest.

14. In the affidavit, it has also been stated that the Garrison Engineer, M.E.S. has already deposited Rs. 62,95,404/- on 23.4.2006 to the Board for construction of new 33 KV lines along with terminal equipment at Narengi substation as per the approved estimate, which was prepared taking the existing 11 KV line route from 33/11 KV Narengi sub-station to M.E.S. Satgaon.

15. The Petitioners have filed an affidavit-in-reply to the said affidavit-in-opposition and in the said reply, have reiterated and reaffirmed the stand in the writ petition.

16. During the course of hearing of the writ petitions, this Court on the basis of the submissions made by the learned Counsel for the parties, thought it prudent to constitute a Technical Committee to examine the technical feasibility of installation either of 11/33 KV transmission line over the land of the Petitioners and further, to examine the technical feasibility of re-alignment of the proposed transmission line alongside the P.W.D. road. The committee was constituted with the Chief Electrical Inspector-cum-Advisor, Government of Assam and Sub-Divisional Engineer, Narengi. Direction was issued to the committee to examine the matter in detail in presence of the parties. Direction was also issued to examine the question relating to endangering of human life and property. Pursuant to the aforesaid direction of this Court, the committee has gone to the site, met people there including the Petitioners and officials of the Respondents. The committee has also considered the technical feasibility of drawing the High Tension Electricity Lines. On the basis of such exercise, the committee in its report after giving the brief background of the case and finding during the enquiry and also the consideration based for determination of the issue has concluded as follows:

CONCLUSION After perusing the available records of the case and findings in site inspection, it is evident that a new 33KV line from Narengi Sub Station to MES, Satgaon is required to be drawn to cater the demand of power by MES 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 M.E.S. 11 KV line in 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 over head line of voltage exceeding 11 kilo volts. The alignment of the existing 11 KV MES line across the Petitioner's 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 33 KV overhead line may be drawn along the existing PWD/ Public road at Seujnagar from the road near Petitioner's house up to the boundary wall of the Oil India Limited, with adequate space for erecting the supports 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 ChiefElectrical Engineer
Inspector- Narengi Electrical -cum-Adviser, Sub-Division LAEDCL,Narengi
Government of Assam

17. The Respondents have filed an additional affidavit and in the said affidavit, they have highlighted the difficulties on 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 meter from Narengi substation 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 83.0 meter (approximately). Thereafter the line will again take 90° turn towards south and proceed along the eastern road side of newly developed Seuj Nagar Road (with 5 meter approx.). This is also at a juncture point of 3 roads.

(iii) The road has taken a curvature of 160° (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 160" 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. A 4-pole structure shall be needed in this position to negotiate curvature of about 120°. There is no space to fix stay wire in this position for having a wall of Oil India Limited nearby.

(vi) 4 Pole structures will have to be erected where the line will take sharp turn around 90°. The 4 pole structure of 3.0 meter width (with standard 3.2 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.

18. In paragraph 5 of the said affidavit, it has been stated that the Respondent-Board will take maximum safety measures in drawing the composite line in the existing proposed area and it will ensure more safety to the Petitioners and other residents. Thus, it has been urged that it is technically advisable to draw the line through the existing line in public interest.

19. The Respondents have filed a further affidavit on 3.7.2009 enclosing therewith Annexure-"B" and "C" letters dated 20.3.2007 and 9.7.2007 addressed to the Respondent-authority by the Garrison Engineer, M.E.S. By the first letter, the Garrison Engineer emphasized on laying of proposed 33 KV line on the same alignment under which the present 11 KV line is passing through in order to avoid any problem whatsoever. By the second letter dated 9.7.2007, the Garrison Engineer emphasized the need for early construction of the 33 KV feeder. Referring to these two letters, it is the contention of the Petitioners that the stand of the Respondents in its first affidavit that there was objection from the Garrison Engineer, is not correct.

20. In the additional affidavit filed by the Respondents, apart from highlighting the difficulties on drawing the 33 KV line through Seuj Nagar road, as suggested by the Petitioners, it has also been stated that the following measures will be taken to ensure the safety in drawing the composite line through the occupied

land of the Petitioners and Ors. .

(a) SP 76 type steel tubular poles have been used in the line. The height of this type of 33 KV poles is 14.5 meters and height above ground level is 12.5 meters. The present height of the existing 11 KV line has come down to 4 meters approximately due to development of land by the Petitioners without intimating the Board. The 33 KV line will remain at a height of 10.5 meters upto 12.5 meters from ground.

(b) The composite 11 KV line will be kept at a height of 8.5 meters above ground.

(c) One cradle ground will be given along the line in the disputed portion below the 11 KV line as a protection against snapping of line.

(d) The deponent further states that at present necessary protection system has been installed at 33/11 KV Narengi substation for the 33 KV line viz. for earth fault and over current fault for automatic disconnection of the line instantaneously on the occurrence of short circuit. This type of protection system is already operating in the 11 KV line. Beside this, the poles will be earthed for quick response of earth fault protection system. The same protection will cover the composite line proposed to be taken over Petitioner's land.

21. When the argument was made that u/s 68 of the Electricity Act, 2003, the prior approval of the State Government is required for installation or kept installed above ground and overhead line, the State Government filed its affidavit on 26.3.2009. In the said affidavit, it has been stated that the Government of Assam in the Power Department did not take any decision in the matter as the same was subjudice before this Court. As per the said affidavit, the State Government was waiting for the report of the Technical Committee and that the State Government would abide by any direction, which may be issued in this proceeding. It is on record that the Government of Assam in the Power Department has conveyed its decision vide letter dated 17.7.2009 addressed to the learned Sr. Govt. Advocate, Assam that the Government has already approved the 33 KV overhead electricity supply line from 33/11 KV Narengi substation to M.E.S. sub-station inside the Army Cantonment, Satgaon as per the provision of Section 68 of the Electricity Act, 2003 along the alignment, as proposed by the Respondent-authority subject to compliance with the safety provisions as per rules. Along with the said letter, the copy of the letter dated 16.7.2009 addressed to the Respondent authority by the Government of Assam in the Power (Electricity) Department under the signature of the Deputy Secretary conveying the approval of the proposed line has also been enclosed.

22. The additional fact, which is required to be taken note of is that the private Respondents have filed Misc. Case No. 2368/ 2008 praying for vacation/ alteration/ modification of the interim order dated 29.5.2008 passed in the writ petition. By the said interim order, direction was issued for furnishing the abovementioned report by the appointed Technical Committee. It is the case of the private Respondents that the proposed diversion is not required and that the

proposed 33 KV line can be drawn on the existing line and diversion of the same through the thickly populated area will endanger the lives and properties of the said locality. In the Misc. Application, it has been stated that the during plotting of the land, a safe distance from the tension line was maintained and that the area below the High Tension Line was not allotted to any one. However, in due course, few people including the Petitioners unlawfully encroached upon the land below the existing 11 KV line, which is restricted area as per the Indian Electricity Rules, 1996 and illegally constructed Assam Type houses thereon, which was never sold to them by the Assam State Housing Board nor any permission had been obtained for constructing such houses.

23. I have heard Mr. A.K. Bhattacharyya, learned Sr. counsel assisted by Mr. A. Choudhuiy, learned Counsel for the Petitioners and so also, Mr. B.D. Das, learned Standing Counsel, Assam State Electricity Board. I have also heard Mr. G.N. Sahewalla, learned Sr. counsel assisted by Md. Aslam, learned Counsel representing the Respondents No. 11 to 34 i.e. the private Respondents, who have filed the aforesaid Misc. Case No. 2368/ 2008. I have also gone through the entire materials on record.

24. On being pointed out as to how the writ Court can adjudicate a matter involving disputed facts and in absence of any expertise as to the feasibility or otherwise of the proposed action plan of the Respondents, Mr. Bhattacharyya, learned Counsel for the Petitioners, upon a reference to the aforesaid provisions of Section 68 of the Electricity Act, 2003, submitted that in absence of any prior approval from the Government towards drawing the 33 KV High Tension Lines, the Assam State Electricity Board must not be allowed to draw the said line. To emphasize on the consequence of not obtaining prior approval, he has placed reliance on the following decisions:

- 1) AIR 1961 SC 1026 (Commissioner of Income Tax, Bihar and Orissa v. Maharaja Pratapsingh Bahadur of Gidhaur);
- 2) Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others,
- 3) State of Mysore and Another Vs. R. Basappa and Others,
- 4) (1986) Supp. SCC 584 (T.R. Kapur v. State of Haryana);
- 5) State of U.P. and Others Vs. Rajiv Gupta and Another,
- 6) Director of Education and others Vs. Gajadhar Prasad Verma,
- 7) H.M.T. House Building Co-operative Society Vs. Syed Khader and others,
- 8) Shabi Construction Company Vs. City and Industrial Development Corporation and Another,
- 9) (1995) Supp 1 SCC 587 (State of M.P. v. Krishnadas Tikaram);
- 10) Kalpnath Rai Vs. State (through CBI),

11) State of A.P. Vs. A. Sathyanarayana and Others, and -

12) (2004) 7 SCC 696 (Ganesh Rajaram Dube v. State of Maharashtra).

25. In the aforesaid decisions, the principles relating to obtaining prior approval and the consequence of not obtaining the same, have been discussed. The said decisions are on various fields. According to Mr. Bhattacharyya, learned Counsel for the Petitioners, the requirement of prior approval being mandatory, there cannot be any deviation from such mandatory provisions by providing any ex post facto approval. All the aforesaid decisions are on the question of consequence of not obtaining the prior approval and it has been held that in absence of prior approval as per the requirement of law, the action taken or proposed must be held to be without any sanction of law. As has been held in Sathyanarayana(supra), the prior approval need not be only in writing but may also be oral. In that case, the designated Judge had refused to register the case under Sections 4 and 5 of the T.A.D.A. on the ground of their being no prior approval in voting. Observing that such prior approval could be even oral, the Apex Court interfered with the order of the designated Court and issued direction to proceed with the matter in accordance with law.

26. While there is no quarrel with the aforesaid proposition of law, it is to be seen" as to whether in the instant case the requirement of Section 68 of the Act has been complied with or not. Section 68 of the Act provides that an overhead line shall, with prior approval of the appropriate Government, be installed or kept installed above ground in accordance with the provisions of Sub-section (2). Sub-section (2) of Section 68 of the Act reads as follows:

(2) The provision contained in Sub-section (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.

27. In the instant case, the line is yet to be drawn and it is only at the proposal stage. The State Government has accorded its prior approval by its aforesaid letter dated 16.7.2009. For a ready reference, the letter is quoted below:

Sub: Application for approval u/s 68 of the Electricity Act, 2003 for 33 KV Overhead Supply Line.

Ref: Your letter vide No. CEIA/SES-836/08/ 22 Dated 13.07.2009.

Sir,

With reference to your letter on the subject cited above, I am directed to communicate the approval of Government as per your proposal u/s 68 of the

Electricity Act, 2003 for 33 KV over head electric supply line from 33/11KV Narengi sub-station of L.A.E.D.C.L. to MES sub-station inside Army Cantonment, Satgaon, Narengi along the alignment as proposed by the L.A.E.D.C.L. subject to compliance with the safety provisions of the Indian Electricity Rules, 1956.

28. Thus, it cannot be said that the requirement of prior approval in terms of Section 68 of the Act has not been obtained. The requirement is that an overhead line shall, with prior approval of the appropriate Government, be installed or kept installed above ground in accordance with the provisions of Sub-section (2) of the Act. Thus, the requirement is to obtain prior approval for installation or to be kept installed an overhead line above ground and not to obtain prior approval for the proposal itself. Further, the 11 KV line is already in existence. The alignment is sought to be made by drawing the 33 KV and 11 KV composite line on the existing line and while doing so, protective measures, as has been disclosed in the additional affidavit, referred to above, are also being adopted. In such a situation, it cannot be said to be a case of violation of mandatory requirement of obtaining prior approval from the appropriate Government.

29. In the report of the Technical Committee dated 25.6.2008, it has been held that the existing 11 KV overhead distribution transformer line drawn to M.E.S. was installed about 40 years back. Since then, the M.E.S. has considerably increased making a total requirement of 3480 KVs, which is unable to be drawn through the existing 11 KV line. Such a position has necessitated wheeling the power at 33 KV transmission voltage. The said Technical Committee is of the opinion that the proposed 33 KV overhead line along with alignment of the existing M.E.S. 11 KV line in composite manner is possible by maintaining safe clearance between the conductors of the overhead line ground level and nearby buildings/structures with proper right of way and prior statutory approval from the appropriate Government u/s 68 of the Electricity Act, 2003. The report further suggests that the alignment of the existing 11 KV line of the M.E.S. lines 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 fixtures installing an appropriate safety device thereof.

30. The alternative suggestion made in the report, on which the learned Counsel for the Petitioners put much emphasis itself suggests that the space required for the same will not be available along side the road specially due to presence of several curves of the road.

That would require fitment of additional supports and stay wires to keep the line structures at the place.

31. On a total reading of the report, what has transpired is that the Expert Committee has basically recommended for drawing the 33 KV line along the alignment of the existing 11 KV line in a composite manner with the safety

measures suggested. In the report, the alternative proposal, on which the Petitioners have put much emphasis, has also been discussed and the difficulties to work out the said alternative proposal have been pointed out.

32. All the aforesaid disputed facts having been taken care of by the appointed Technical/ Expert Committee and this Court having had no expertise to sit on appeal over the finding of the said committee, cannot issue any direction to the Respondents to act in a particular manner, as has been suggested by the Petitioners. Situated thus, the reliefs prayed for by the Respondents cannot be Ranted. The Respondents are granted Uberty to proceed with the proposed installation of the 33 KV line, for which the State Government has already granted prior approval subject, however, to the observance of all the required safety measures, for which, undertaking has been furnished in the additional affidavit and mention has been made in the letter dated 16.7.2009, by which the State Government in the Power Department has accorded prior approval to the Respondent authority.

33. Writ petitions are dismissed without, however, any order as to costs.