

(2004) 06 KAR CK 0032

In the Karnataka High Court

Case No : Writ Petition No"s. 45255 to 45258 of 2002

Sri Puthu Poojary and Others

APPELLANT

Vs

The Deputy Commissioner and Others

RESPONDENT

Date of Decision : 19-06-2004

Acts Referred:

Electricity Act, 1910 — Section 51
Telegraph Act, 1885 — Section 10, 16, 16 (1)

Citation : (2004) ILR (Kar) 3096 : (2004) 6 KarLJ 302 : (2004) 3 KCCR 2021

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

Bench : Single Bench

Advocate : G.K.V. Murthy and P.E. Umesh, for the Appellant; N.K. Gupta, for R2, S. Vishwajith Shetty, for R3 and R4 and B.P. Puttasiddaiah, HCGP for R1, for the Respondent

Final Decision : Allowed

Judgement

D.V. Shylendra Kumar, J.—These Writ Petitions are presented by four persons amongst whom first petitioner who is the owner of the land over which certain power lines have been drawn and petitioners 2 to 4 who are supporting the case of the first petitioner challenging the order bearing No. MAG(2)CR 267:2001-02 dated 3.12.2002 passed by the 1st respondent, District Magistrate in exercise of the powers u/s 16(1) of the Indian Telegraph Act, 1885 read with Section 51 of the Indian Electricity Act, 1910 allowing the application filed by the 2nd respondent Assistant Executive Engineer, Karnataka Power Transmission Corporation Limited, permitting the power lines to be drawn over the 1st petitioner"s land.

2. Grievance of the 1st petitioner is that for the purpose of providing new power connection to the residence of the 3rd and 4th respondents the 2nd respondent has deliberately drawn the power line over the land of the 1st petitioner though it was not really necessary to do so for the purpose for which it was done. Petitioners" complaint is that drawing of such power lines over the land of the 1st

petitioner adversely affects the interest of the 1st petitioner particularly the agricultural operations carried on by him and the action is most mala fide on the part of the 2nd respondent who had been prevailed over not only by respondents 3 and 4 for doing so but also by another neighbour by name Smt. Vasamma from whose land power line could have been conveniently drawn to the 3rd and 4th respondents and this has been avoided to sub-serve the cause of the said Smt. Vasamma at the cost of the 1st petitioner.

3. The Electrical Authorities have been given certain powers in the matter of drawing of power lines and if they could face any resistance or difficulties while drawing such power lines provisions of Section 10 and 16 Telegraphs Act which has been adopted in the Indian Electricity Act are pressed into service. The District Magistrate acts as an independent authority to look into the grievance of the Electrical Authorities for the difficulties that they have faced while drawing power lines as also the representations or complaints that the persons who are obstructing/ preventing such drawing of lines and on being satisfied that the drawing of power lines is a must and cannot be avoided as is proposed by the Electrical Authorities the District Magistrate passes an order permitting the Electrical Authorities to draw the lines whereupon the person who is complaining of being affected cannot obstruct any more and the said obstruction in fact constitutes an offence in terms of Sub-section 2 of Section 16 of the Act.

4. The consequence of an order passed by the District Magistrate in terms of Section 16 is both civil and criminal on a person complaining of being affected in the sense if a power line is arbitrarily or deliberately drawn on a person's property it affects his civil rights which are diminished and at the same time though the person has a legitimate grievance or subject to hardship if continues to obstruct he will have to face criminal proceedings under the provisions of the Indian Penal Code, consequences of such nature which are rather serious and as such requires a certain degree of application of mind, and fairness in the proceedings on the part of the District Magistrate who passes an order on such occasion.

5. In the present case application of the Electrical Authority had been notified to all concerned including the first petitioner and the first petitioner and other neighbours including the 3rd and 4th respondents had filed their representations/ objections.

6. The District Magistrate had also called for a report from the Revenue Inspector through the Tahsildar and the Tahsildar submitted such report to the District Magistrate. The District Magistrate has also called upon the Electrical Authorities to give their response to the various objections that had been raised against their application.

7. Unfortunately though time had been given to the Electrical Authority, the 2nd respondent, it appears did not respond to the same. The District Magistrate after perusing the pleadings/ representation before him, the report of the Revenue

Inspector through the Tahsildar has passed the impugned order holding that the proposal of the Electrical Authorities to draw power line over the land of the 1st petitioner is inevitable in the circumstances and as such permitted the 2nd respondent to go ahead with the work. It is aggrieved by this order, petitioners have approached this Court by filing these Writ Petitions claiming that they have no other remedy to redress their grievance.

8. Notice had been issued to the respondents in these Writ Petitions. Second respondent has entered appearance through Sri N.K. Gupta, learned Counsel, respondents 3 and 4 are also represented by Sri S. Vishwajith Shetty, learned Counsel. Statement of objections on behalf of these respondents are filed. Additional statement of objections and counters have also been filed.

9. It is the contention of Sri G.K.V. Murthy, learned Counsel for the petitioners that the order passed by the District Magistrate suffers from lack of application of mind, that none of the objections that had been put forth by the petitioner has been considered at all, that the order is a non speaking order and the District Magistrate has in an arbitrary manner brushed aside all objections and has mechanically permitted the 2nd respondent to go ahead with its proposal. Learned Counsel has also at great length argued that the authorities had a cost effective alternative route to draw the power lines from the other existing power lines but have instead chosen to draw the line only from the power line available at the first petitioner's land by doing which they invariably draw the power line over the land of the first petitioner and to the detriment of the 1st petitioner.

10. Learned Counsel for the petitioners further submits that the order apart from being bad for non application of mind on the part of the District Magistrate also suffers due to the deliberate and mala fide action on the part of the 2nd respondent who in collusion with the 3rd and 4th respondents and for the benefit of one Smt. Vasamma have indulged in the action to the detriment of the interest of the 1st petitioner and the petitioner should be protected from such vindictive action.

11. In the statement of objections filed on behalf of the 3rd and 4th respondents, petition averments are strongly denied, that the petitioner cannot question the discretion of the District Magistrate by filing Writ Petitions that the authorities found that drawing of power lines as is now proposed was the most suitable one to provide power connection to 3rd and 4th respondents that it was both technically feasible and economically most cost effective, that the District Magistrate after taking into consideration all aspects of the matter has passed the impugned order and as such there is no need for this Court to interfere with the same in exercise of writ jurisdiction under Articles 226 & 227 of the Constitution of India.

12. Sri N.K. Gupta, learned Counsel for the 2nd respondent has also vehemently urged that the pleadings in the petitions are not very accurate, that the sketch as prepared and furnished by the petitioners along with the petition and the

rejoinder are not very correct, that the distance mentioned therein between the pole points are not correct and the sketch as produced under Annexure R 7 produced along with the additional statement of objections filed on behalf of the 2nd respondent is accurate, the sketch depicts the true state of affairs and as per this sketch the authorities had found that drawing of the power line as now proposed is the most suitable one for providing power connection to the residence of 3rd and 4th respondents.

13. It is not necessary for this Court to go into the details as to whether the way chosen for providing power connection is the proper one or not, what is being done now is against the ideal situation or even to examine the dispute with regard to the distances. It is not the function of this Court to sit in appeal over a decision of the District Magistrate or to examine such disputed facts in exercise of writ jurisdiction. But what is important is that when a statutory authority functions in exercise of the statutory power, the authority should act in furtherance of the objects of the statute and keep in mind the purposes and the intention for which the authority is vested with such powers. The authority should always show the awareness that he is exercising that power and for the purposes for which it is meant for and in the context under which provisions is made for, namely providing relief to the persons who are likely to be affected by giving them an opportunity, examine their say in the matter, take into consideration all other relevant aspects by gathering information of the entire circumstances and pass a reasoned order.

14. Unfortunately in the instant case the order passed by the District Magistrate suffers from several wants. No doubt the 2nd respondent electrical authority had approached the District Magistrate by filing an application u/s 16(1) of the Act but that application was opposed particularly by the 1st petitioner and co-petitioners. First petitioner expressly claims that his interest is being affected. The District Magistrate had called for a report about the true state of affairs at the place from the Tahsildar through the Revenue Inspector such report did arrive and was before the District Magistrate. Unfortunately the report did not positively support the case of the applicant, but was to the contra. The order passed by the District Magistrate while recites that the District Magistrate had occasion to look into the report and examine them does not indicate anywhere as to why recommendation in the report is not being accepted. As the report was not supportive of the applicant's case the District Magistrate should have shown his awareness to this aspect and should have spelt out the reasons as to why notwithstanding such report the District Magistrate is inclined to allow the application. This coupled with the fact that the electrical authorities had not given any response to the objections filed to the application particularly by the 1st petitioner left the District Magistrate in a situation wherein he did not have material on record based on which could have allowed the application as per the impugned order.

15. A decision that is to be taken by the District Magistrate in exercise of his

power u/s 16 should be one that can pass scrutiny and the tests of principles of Administrative Law. As noticed earlier the District Magistrate functioning as a statutory authority is in the position of a quasi judicial functionary. The conclusion that the application should be allowed and that the proposal was inevitable unfortunately is not supported by any material on record but remains an independent conclusion of the authority dehors material on record and such an order cannot be sustained.

16. In the circumstances the order at Annexure G is quashed by issue of a writ of certiorari. The matter is remitted, to the District Magistrate to consider afresh the application of the 2nd respondent in the light of all aspects and material placed before him and such additional pleadings and material as the parties may choose to place before the authority within a period of four weeks from the date of receipt of a copy of this order.

17. The District Magistrate to pass orders afresh in accordance with law within a period of four months from the date of receipt of a copy of this order. Rule issued and made absolute.

18. Writ Petitions allowed.