
(2001) 07 P&H CK 0187
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8903 of 2001

Subhash Chand Batra

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 19-07-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Electricity (Supply) Act, 1948 — Section 10, 28, 29, 29(2), 37

Citation : (2001) 4 RCR(Civil) 576

Hon'ble Judges : Swatanter Kumar, J;S.S. Nijjar, J

Bench : Division Bench

Advocate : Rajesh Garg, for the Appellant; H.S. Gill and H.C. Rahi, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Nijjar, J.—This petition under Articles 226/227 of the Constitution of India seeking issuance of an appropriate writ, order or direction especially in the nature of mandamus directing the respondents, especially respondent No. 3 not to erect high power tension line tower in the land/premises belonging to the petitioner.

2. It is the case of the petitioner that he owns agricultural land comprising in Rect. No. 62 Khasra No. 10/1 and 10/2 in village Badshahpur Tehsil and District Gurgaon. At the relevant time, crops were standing on the land. He is a resident of Delhi and has agricultural land in village Badshahpur. The scheme for installation of transmission line from village Badshahpur to Jaipur by-pass Sector 10 Gurgaon was originally sanctioned by respondents and the said transmission line was passing over the premises of Golf Country Club, Sohana Road, Gurgaon. The respondents, at the instance of Golf Club prepared alternative route of the transmission line without complying with the mandatory provisions of Section 28 of the Electricity (Supply) Act, 1948 and also Indian Telegraph Act, 1955. The alteration of the route plan was challenged in this Court by one Tahar Singh vide

Civil Writ Petition No. 16104 of 1998. This petition was admitted on 14.10.1998. While issuing notice of motion, respondents were directed not to lay the electricity cable in accordance with the impugned plan. Thereafter, one Vijay Singh filed CWP No. 684 of 1999 which was allowed by this Court by order dated 8.4.2000. The respondents were directed not to erect the high power tension line in the agricultural land near the residential house of Vijay Singh, the petitioner therein. It was however, clarified that the petition has been allowed on the ground that there was non-compliance of the provisions of Sections 28 and 29 of the Electricity (Supply) Act with regard to the revised scheme. The respondents were granted the liberty either to arrive at settlement by negotiations with petitioner or issue a modified scheme after following the procedure prescribed under Sections 28 and 29 of the Act. It is also the case of the petitioner that in gross violation of the order passed by this Court, respondents again proceeded to erect transmission line over the land of the petitioner (Vijay Singh) in CWP No. 684 of 1999. He was, therefore, constrained to file another writ petition, namely, CWP No. 1938 of 2001. It was contended that the modified scheme as published u/s 29(2) of the Electricity (Supply) Act, 1948 did not contain the khasra number of the land belonging to the petitioner therein, and therefore, no objections could be filed. On 12.2.2001 a Division Bench of this Court issued Notice of Motion for 10.5.2001. It was also directed that meanwhile, digging operation on the land of the petitioner therein will remain stayed. Now the petitioner, who lives in Delhi, has been informed by his farm attendants that respondents are prepared to dig in his fields for erection of the towers for the electricity supply line. The petitioner all along entertained the belief that laying of electrical cable has been stayed by this Court by various orders appended with the writ petition. He, therefore, made enquiries and came to know that respondents had published a notification in a daily newspaper on 11.4.2001 wherein the land of the petitioner is also included in the proposed modified scheme for laying the electricity cable. Since the petitioner does not permanently reside in the village, he did not come to know about preparation and the publication of the modified scheme. Not knowing about the publication of the modified scheme, he has not filed any objections thereto. Therefore, the petitioner has even lost the right to file objections in terms of the Electricity (Supply) Act, 1948. It is further pleaded that as per the provisions of Section 29 of the Electricity (Supply) Act, even the revised scheme cannot be executed without the approval of the Central Electricity Authority whereas the respondents have not obtained such approval from the authority as mentioned in Section 29 of the Act. The learned counsel for the petitioner submitted that a perusal of the notification itself shows that the same has not been sanctioned as it is mentioned in the scheme that it shall be deemed to be sanctioned with or without modification by the Central Electricity Authority. According to the learned counsel, it was mandatory and obligatory for the respondents to obtain the sanction of the authority and only thereafter the same can be executed. Learned counsel for the petitioner further submitted that if the petitioner had been given the opportunity to submit the objections, he would have shown the respondents that the initial unrevised plan of the transmission

line was 2.455 kms, in length whereas the revised plan would have a longer route of 2.815 kms. involving greater expenditure.

3. Written statement has been filed on behalf of the respondents. The respondents have stated that the 66 KV line proposed to pass from the lands belonging to villages Badshahpur, Fazilpur etc., is meant to supply electricity to large number of consumers consisting of domestic and commercial consumers of Section 10, Sector 9 and industries of Section 37 Part I and II and few other pockets in which agricultural consumers of Gurgaon are involved. This line will feed 66 KV Sub Stations, but work on some of them is held up due to litigation. The total population of the aforesaid sectors is suffering due to inadequate/shortage of power and low voltage resulting into frequent break downs in the existing temporary system for the last more than six years. The general public has been agitating due to inadequate and volatile supply of electricity. On the other hand, respondents are unable to release any new connection without the erection of 66 KV Sub Stations. It is further stated that even the essential services like water supply and hospitals are suffering on this account, The present plan to lay overhead 66 KV Line or Towers instead of underground cables in the land, was framed to meet the aforesaid urgent and essential demand. It is further stated that there is absolutely no construction either residential or industrial near the safe permissible limits through which 66 KV Line is proposed to feed the incoming 66 KV Sub Station is. It is further stated that if this line is not constructed, immediately it will become difficult, if not impossible for the department to provide normal/proper supply to all sections of the population. It is the case of the respondents that the notification has been validity issued u/s 29(2) of the Electricity (Supply) Act, 1948. Khasra numbers of the land in which the towers are to be erected have been duly mentioned. The notification has been published in leading newspapers viz., Indian Express and Rashtriya Sahara (Hindi Version) dated 11.4.2001. The notification provides that any licensee or other person interested can raise any objection and/or may make representation upon the above scheme within two months of the publication of this notification. No objection was received from any person within the prescribed period. Thus, the respondents are within their right to lay the H.T. Power Line. It is submitted by Mr. Gill on the basis of the pleadings in the written statement that the petitioner having not filed any objection during the stipulated period, cannot be permitted to challenge the scheme. Factually, the case put up by the petitioner to the effect that he was not aware of the notification as he lives in Delhi, is denied. It is stated that although the petitioner lives in Delhi, his land is being looked after by his attendants. Furthermore, the petitioner has brick-kilns in the adjoining land. He is a frequent visitor at the brick-kilns. With regard to the allegation that the original route was altered at the instance of the Golf Club, it is submitted that the Club had filed the civil suit and obtained interim relief. Since it was necessary to supply electricity to a large segment of the population and the litigation was likely to take a long time, a slight alteration was decided to be made with the approval of the competent authority. This alteration, however,

required additional expenditure of Rs. 15.00 lacs. The Golf Club had agreed to deposit a sum of Rs. 15.00 lacs as compensation. This was deposited.

4. It was further submitted by Mr. Gill that the decision in CWP No. 684 of 1999 is of no assistance to the petitioner as the High Court had allowed the same on the ground that there was non-compliance with Sections 28 and 29 of the Electricity (Supply) Act. With regard to writ petition, namely, CWP No. 1938 of 2001, it is submitted by Mr. Gill that after the decision in CWP No. 684 of 99, Vijay Singh had actually entered into a settlement with the respondents. It was, on the basis of this settlement that the respondents had started the digging work. The settlement had, however, remained only oral as Vijay Singh did not sign the same. Taking advantage of this Vijay Singh filed writ petition, namely, CWP No. 1938 of 2001 and got the order of stay. The notification dated 31.10.2000 which is the subject matter of the CWP No. 1938 of 2001, stands duty cancelled and is not being acted upon. The present notification which was issued on 10.4.2001, has been sanctioned in accordance with law. Therefore, the writ petition deserves to be dismissed.

5. We have considered the arguments put forward by the learned counsel for the parties.

6. The star argument of the learned counsel for the petitioner is that the notification Annexure P-5 cannot be executed as the respondents have not obtained prior approval from the authority as mentioned in Section 29 of the Act. According to the learned counsel, obtaining of such a sanction was mandatory. A perusal of sub-section (2) of Section 29 clearly shows that concurrence of the authority is required for the implementation of every scheme estimated to involve capital expenditure exceeding such sum, as may be fixed by the Central Government. In order to satisfy ourselves, Mr. Gill was directed to produce the latest notification setting out the limits of expenditure for which the concurrence of the authorities would be required. Mr. Gill has produced a notification issued by the Government of India, Ministry of Power, New Delhi dated 9.10.1994. The aforesaid notification reads as follows :-

"Notification

S.O. 3264. In exercise of power conferred by Subsection (1) of Section 29 of the Electricity (Supply) Act, 1948 (54 of 1948), the Central Government hereby fixes exceeding one hundred crores of rupees as estimated capital expenditure to involve in a scheme for the purpose of submitting such scheme to the Central Electricity Authority for its concurrence.

(F.No. 25/4/89-D (SED)

Sd/- A.K. Upadhyay Joint Secretary to the Government of India."

7. A perusal of the aforesaid notification clearly shows that the concurrence of the authorities would be required in projects exceeding Rs. 100 crores of rupees as estimated capital expenditure. The scheme which is sought to be executed on

the basis of the notification Annexure P-5 does not fall within the purview of the aforesaid notification. There is no other illegality which has been pointed out by the learned counsel for the petitioner. It must, however, be noticed that the learned counsel had submitted that the petitioner has been deprived of the opportunity to raise objections as he was a resident of Delhi. The notification having been duly published in the newspapers cannot be said to be illegal. The land owned by the petitioner is specifically mentioned in the notification. This fact is not even disputed by the petitioner. As noted above, Vijay Singh had earlier filed CWP No. 1938 of 2001 challenging the notification dated 31.10.2000. Digging operations on his land were stayed by this Court by its order dated 12.2.2001 on the ground that the modified scheme as published u/s 29(2) of the Electricity (Supply) Act, 1948 did not contain the khasra number belonging to the petitioner, and therefore, no objection could be filed. This is not the situation in the present writ petition. In the present case, the khasra number has been specifically mentioned. Factually, also Mr. Gill seems to be correct in submitting that the plea put forward is an after-thought as the petitioner is a regular visitor on his brick-kilns. Mr. Gill is also right in his submission that the decision in CWP No. 684 of 1999 is of no assistance to the petitioner in the present case as the same had been allowed on the ground that there, has been non-compliance of the provisions of Sections 28 and 29 of the Electricity (Supply) Act. A perusal of the judgment shows that it has been specifically held as under :-

"6.....Now the respondent No. 3 is erecting the towers as per revised scheme which was never approved or notified and in these circumstances, the action on the part of respondent No. 3 in changing the route of high power tension line has to be held unlawful and illegal.

8.....We have allowed this petition on the ground that there was non-compliance of the provisions of Sections 28 and 29 of the Electricity (Supply) Act with regard to the revised scheme. Therefore, we are making this observation while allowing the petition that the respondents would always be at liberty either to arrive on settlement by negotiations with the petitioners or issue a modified scheme after following the procedure prescribed in Sections 28 and 29 of the Act."

8. In pursuance of the aforesaid directions, the respondents had actually tried to settle the matter with Vijay Singh who was the petitioner in CWP No. 684 of 1999. Having reached a settlement, Vijay Singh did not comply with the same. Instead he filed CWP No. 1938 of 2001 and got the interim order as noticed earlier. The respondents were left with no alternative but to formulate the scheme which is the subject matter of the present writ petition.

9. Shortage of electricity is a complaint shared by all the citizens of India. Therefore, laying of electricity supply lines is of utmost importance. Such developmental projects cannot be allowed to be stalled on technical grounds. The Court has to take into consideration the public interest and the objects sought to be achieved by the scheme or the notification. The Court has to

perform a balancing act by protecting the interest of the individual, while at the same time, advancing the interest of the public. Private interest cannot be permitted to put fetters on development schemes essential for improving the general standard of living of the population in a particular area, except on the clearest legal grounds. In our opinion, no such ground has been put forth by the petitioner in the present writ petition. A perusal of the notification shows that the Board had reserved to itself powers interms of Section 42 of the Electricity (Supply) Act, 1948. This Section gave the power to the Board for placing of any wires, poles, wall-brackets, stays, apparatus and appliances for the transmission and distribution of electricity or for the transmission of telegraphic or telephonic communications necessary for the proper co-ordination of the works of the HVPN i.e. Haryana Vidhyut Prasaran Nigam, for the areas mentioned in the notification. Therefore, it cannot be said that the digging work being done by the respondents is outside the powers granted to them under the Electricity (Supply) Act, 1948. In the written statement, it has been clearly set out that the 66 KV line proposed to be set up under the impugned notification is meant to serve the electricity needs of a large number of consumers, domestic as well as commercial, in one of the rapidly growing townships, surrounding the capital of India. The initial notification was issued in the year 1998. Three years have elapsed and the respondents have not been able to make any progress on account of orders issued either by the Civil Court or by this Court. We are of the considered opinion that the present notification does not suffer from any legal infirmity. The writ petition is de-void of merit and the same is dismissed. No costs.

10. Petition dismissed .