
(1991) 12 PAT CK 0037

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 427 of 1991 (R)

Suku Mahto and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 02-12-1991

Acts Referred:

Citation : (1991) 12 PAT CK 0037

Judgement

S.B. Sinha, J.—In this writ application, the Petitioners who are said to be owners of plot Nos. 630 measuring 1.15 acres, 593 measuring 0.39 acres, 577 (new) measuring 0.72 acres, 624 (new) measuring 0.06 acres, total area being 2.32 acres within ward No. 16 of Chakradharpur Municipality, have prayed for issuance of an appropriate writ prohibiting the Respondents from laying down or placing any electric supply line for transmission of energy or other works including construction of any tower, putting of any pole and other electrical appliance in, on, over or under the lands owned and occupied by the Petitioners situated at Mauza Chela Beda, Chakradharpur in the district of Singhbhum as aforementioned.

2. The fact of the matter lies in a very narrow compass.

3. The Petitioner Nos. 1 and 2 are the owners and occupiers of the lands situated in Mouza Chelabera and the said lands have been recorded in the names of the Petitioners in the following manner:

(i) under khata No, 86 plot No. 630 measuring and area of 1.15 acre within ward No. 16 of Chakradharpur Municipality recorded in the name of Petitioner No. 1.

(ii) khata No. 138 plot No. 593 measuring an area of 0.39 acres within Ward No. 16 of of Chakradharpur Municipality recorded in the name of Petitioner No. 1.

(iii) khata No. 1 plot No. 577 (new) measuring an area of 0.72 acres within Ward No. 16 of Chakradharpur Municipality recorded in the name of Petitioner No. 2 and

(iv) khata No. 1, plot No. 624 (new) measuring an area of 0.06 acre within ward No. 16 Chakradharpur Municipality, recorded in the name of Petitioner No. 2, total being 2.32 acres and Petitioners are in lawful occupation of the same.

4. Admittedly, Respondent No. 4 is a Government of India undertaking and is a State within the meaning of Article 12 of the Constitution of India. Respondent No. 7 is a contractor of Respondent No. 4. Allegedly, on 12.1.1989, Respondent No. 6 apprised Petitioner No. 1 that electric supply line or transmission of energy from Jamshedpur to Rourkela would be laid down and for that purpose they will be constructing heavy towers, put poles in large quantity and instal heavy electrical appliances including transformers etc. in, on, over or under the aforesaid lands owned and occupied by the Petitioners. Petitioner No. 1 on 12.1.1989 itself sent an objection to the Sub-divisional Officer, Chakradharpur asserting inter alia, therein that the Petitioners have to construct residential house for their sons as they had been living in an old congested house.

It was further asserted that formalities for acquisition of land were yet to performed for the said purpose.

5. It was further stated that copies of the said objection were sent to the Deputy Commissioner, Singhbhum, Chaibassa (Respondent No. 2) National Thermal Power Corporation, Chakradharpur Branch (Respondent No. 5) and the Engineer, National Thermal Power Corporation, Chakradharpur Branch (Respondent No. 6) and the same is contained in Annexure-1 to the writ application. According to the Petitioners, despite service of the said objection petition, neither any reply was received by them nor they were given any opportunity of being heard.

The Petitioners have contended that the concerned Respondents in view of the provisions contained in Section 12(2) of the Indian Electricity Act have no jurisdiction to do the aforementioned works without their consent.

6. A counter affidavit has been filed only on behalf of Respondent Nos. 4 to 6 wherein inter alia it has been contended that the laying down of transmission line from Jamshedpur to Rourkela is being done in accordance with a duly approved and sanctioned scheme of the National Thermal Power Corporation Limited, and the route alignment passes over the land of the Petitioners. It was further contended that the construction cannot be stopped as it is a project of National importance to facilitate the evacuation of power from Super-thermal power projects of Farakka (West Bengal) and Kahalgaon (Bihar) in the States of Bihar and Orissa.

It has further been contended that as Respondent No. 4 is a power generating company; in terms of Section 42(2) of the Electricity (Supply) Act as well as Section 10 of the Telegraph Act., it has the power of placing wires, poles, wall-brackets, stays, apparatus and appliances for the transmission of electricity or for the transmission of telegraphic or telephonic communications necessary for the proper co-ordination of the works of the Generating company.

It was further contended that it was not necessary to give an opportunity of hearing to the Petitioner as the scheme had duly been published in the Gazette of India on 31.10.1987 and has also been published in the Times of India dated 22.2.1988 in AAZ, Patna dated 21.2.1988, the Statesman dated 20.2.1988 and Anand Bazar Patrika dated 14.2.1988.

It has further been stated that as the scheme is of National importance, a priority has to be given to it.

The said Respondents have also contended:

Even if the Petitioners want to construct any residential house the same will not hamper the work of these Respondent.

7. It has further been contended that in the facts and circumstances of this case, it was not necessary to obtain consent under proviso to Section 12(2) of the Indian Electricity Act and the owner is only entitled to compensation and in case of any dispute the matter can be decided u/s 16 of the Telegraph Act, by the District Judge.

It has also been contended that out of the aforementioned sanctioned scheme, 80% of the foundation of tower and 70% of tower erection work has been completed in the Rourkela-Jamshedpur line.

8. In a rejoinder to the said counter affidavit, the Petitioners, however contended that the purported scheme mentioned by Respondent No. 4 in the counter affidavit cannot be said to be an approved scheme inasmuch as the estimated cost of the scheme being 174.48 crores, the same required compliance of the provisions of Sub-section (2) of Section 29 of the Act and as the conditions precedent for approval of a scheme as laid down therein have not been completed, the purported final scheme as contained in the notification dated 31st October, 1987 and as contained in Annexure-A to the counter affidavit is wholly illegal and without jurisdiction.

9. It was further contended that from a perusal of the notice issued in the newspapers which are contained in Annexures A/1 to A/4, it would appear that thereby notices had been issued in terms of the provisions of Section 28 of the Electricity (Supply) Act, and not in terms of Section 29(2) thereof.

10. Mr. Biren Poddar learned Counsel appearing for the Petitioners raised a short question in support of this writ application. Learned Counsel submitted that as for approval of a scheme, estimated cost whereof is above Rs. 5 crores, the mandatory provisions of the Electricity (Supply) Act having not been complied with, the scheme in-question being illegal and without jurisdiction, the same must be held to be a nullity and, thus, Respondent No. 4's action cannot be said to be protected u/s 42 of the Electricity (Supply) Act and, consequently they have no authority or jurisdiction to carry out any work in violation of the provisions contained in Section 12(2) of the Indian Electricity Act, 1910.

11. Mr. Debi Prasad learned Counsel appearing for the Respondent Nos. 4 to 6; on the other hand, could not controvert that the provisions contained in Section 29(2) of the Electricity (Supply) Act (in short to be stated as the Supply Act) have not been complied with.

Learned Counsel further submitted that as a notification in terms, of Section 31 of the Supply Act has already been complied with, at this juncture, the final scheme cannot be questioned on the ground of alleged non-compliance of the provisions of Sub-section (2) of Section 29 of the Supply Act.

12. It was further submitted that in any event, this Court should not exercise its jurisdiction in view of the facts and circumstances of this case, as if the work of the approved scheme is stopped, it will cause a severe damage to a work of national importance; particularly in view of the fact that the transmission lines are being laid down for supply of electrical energy to the general public.

Learned Counsel in this connection has relied upon *Bharat Plywood and Timber Products Private Ltd. Vs. Kerala State Electricity Board Trivandrum and Others*, and in *Rajak and Others Vs. National Thermal Power Corporation Ltd., Indore and Another*, as also an unreported decision of the Allahabad High Court in Civil (Misc) Writ petition No. 12626 of 1987 (*Sri Laljee Singh v. Sub-divisional Officer and Ors.* disposed of on 22nd July 1987).

13. Sub-sections (1)/(2) of Section 12 of the Electricity Act and the first proviso appended thereto read as follows:

12. Provisions as to the opening and breaking up of streets, railways and tramways

(1) Any licensee may, from time to time but subject always to the terms and conditions of his license within the area of supply, or when permitted by the terms and conditions of his license within the area of supply, or when permitted by the terms of his license to lay down or place electric supply lines without the area of supply, without that area:

(a) open and break up the soil and pavement of any street, railway or tramway

(b) open and break up any sewer, drain or tunnel in or under any street, railway or tramway

(c) lay down and place electric supply-lines and other works;

(d) repair alter or remove the same; and

(e) do all other acts necessary for the due supply of energy.

(2) Nothing contained in Sub-section (1) shall be deemed to authorize or empower a licensee, without the consent of the local authority or of the owner or occupier concerned, as the case may be, to lay down or place any electric supply-line, or other's work in, through or against any building, or on, over or under any land not dedicated to public use whereon, where over or where-under any

electric supply-line or work has not already been lawfully laid down or placed by such licensee:

Provided that any support of an over head line or any stay or strut required for the sole purpose of securing in position any support of an over-head lines may be fixed on any building or land or, having been so fixed, may be altered, notwithstanding the objection of the owner or occupier of such building or land, if the District Magistrate or, in a Presidency-town the Commissioner of Police by order in writing so direct.

14. Section 28(1) of the Electricity (Supply) Act, 1948 provides that the Generating Co. may prepare scheme relating to transmission lines etc.

Section 28(2) provides that the Generating Co. may sanction such scheme either generally or in respect of any part of the area.

Section 28(2-A) provides that after sanction of scheme the generating company shall forward the scheme to Central Electricity Board.

Section 28(3) provides that every sanctioned scheme shall be published in the official Gazette and in such local newspapers as the generating company may consider necessary.

Section 29(2) provides that before finalization of scheme and the submission thereof to the Central Electricity Board for concurrence, the generating company shall cause such scheme with necessary details be published in official Gazette of the State concerned and in such local newspapers as the generating Co. may consider necessary along with not less two months notice before which persons interested may make representation on such scheme.

Section 29(3) provides that the generating company may after considering the representations and after making enquiries, modify the scheme and the scheme so finally prepared shall be submitted by it to the Central Electricity Board along with the representations.

Section 29(4) provides that a copy of the scheme finally prepared u/s 29(3) shall be forwarded to the State Govt.'s concerned, by the generating Co. and if the Central Government is the promoting Govt., a copy of the scheme shall be forwarded to the Central Govt. also.

Section 29(5) provides that Central Electricity Board may give directions regarding form and contents of a scheme and the procedure and other matter relating to the preparation, submission and approval of such scheme.

Section 29(6) provides that Generating Company shall supply any information incidental or supplementary to the scheme if required by the Central Electricity Board.

Section 30 provides the matters to be considered by Central Electricity Board before concurring in any scheme submitted to it u/s 29(1).

Section 31 provides that Central Electricity Board may either concur in the scheme without modification or require the generating Co. to modify the scheme and in either case the Central Electricity Board shall also communicate its decision to the State Governments concerned and if in relation to the Scheme the Central Government is the promoting Government the decision shall be communicated to the Central Government also.

Section 31(2) provides that the Generating Company may prepare a revised scheme if required by Central Electricity Board u/s 31(1) and submit it to the Central Electricity Board for concurrence and thereupon the Central Electricity Board shall concur in the same.

15. Section 42 of the Electricity (Supply) Act, 1948 reads as follows:

Powers to Board for placing wires, poles etc.-

(1) Notwithstanding anything contained in Sections 12 to 16 and 18 of the Indian Electricity Act, 1910 (9 of 1910) but without prejudice to the requirements of Section 17 of that Act where provision in such behalf is made in a sanctioned scheme, the Board shall have, for the 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 Board, all the powers which the telegraph authority possesses under Part III of the Indian Telegraph Act, 1885 (13 of 1885) with regard to a telegraph established or maintained by the Government or to be so established or maintained:

Provided that where a sanctioned scheme does not make such provision as aforesaid, all the provisions of Sections 12 to 19 of the first-mentioned Act shall apply to the works of the Board.

(2) A Generating Company may, for the placing of wires, poles, wall-brackets, stays apparatus and appliances for the transmission of electricity, or for the transmission of telegraphic or telephone communications necessary for the proper-co-ordination of the Generating Company, exercise all or any of the powers which the Board may exercise under Sub-section (1) and subject to the conditions referred to therein.

16. Upon reading the aforementioned provisions, there cannot be any doubt that the provision contained in Sub-section (2) of Section 29 of the said Act is a mandatory one inasmuch as it provides that all persons interested in the scheme may make representations whereupon the Board or the generating company, as the case may be, may upon consideration thereof modify the scheme. The opportunity to make a representation in relation to a scheme to a large extent contains the same object as that of Section 5A of the Land Acquisition Act.

17. Even otherwise, a provision which provides for making an effective representation before an authority which may protect the interest of the persons interested in the scheme must be held to be a mandatory provision.

In the decision of the M.P. High Court in *Rajak and Others Vs. National Thermal Power Corporation Ltd., Indore and Another*, the validity of the final scheme was not questioned but what was questioned was a deviation from the said scheme. The Division Bench of the Madhya Pradesh High Court held that such a power to make a minor modification in the scheme exists in the generating company in terms of Section 32 of the said Act and, thus, the person whose land or building may be utilized can make no grievance with regard to the exercise of power by Respondent No. 4 in terms of Section 36 of the Act and only remedy for the persons owning fields where lines are laid for transmission of electricity, is to get compensation.

18. The question, however, which arises for consideration in this case, is as to whether in the facts and circumstances of this case, this Court should exercise its jurisdiction in favour of the Petitioners under Article 226 of the Constitution of India. As noticed hereinbefore, the scheme to lay down transmission line in Jamshedpur-Rourkela sector is in accordance with a duly sanctioned scheme.

19. There is no doubt that the project undertaken by Respondent No. 4 is of a national importance inasmuch as the same has been undertaken to facilitate the transmission of power from Super Thermal Power Projects of Farakka, West Bengal and Kahalgaon Bihar in the State of Bihar and Orissa.

20. In the petition dated 5.7.1991 filed in this Court for vacating the order of stay, Respondent no. 4 has contended that the work is nearing completion except the portion over the land in respect whereof this writ application has been filed. In such a situation, if we direct Respondent No. 4 to approach the District Magistrate to obtain necessary permission, as provided for in the proviso appended to Sub-section (2) of Section 12 of the Act, the same may cause further delay in the matter of laying down of the line.

21. Even in terms of the provisions of the scheme, the Petitioners are entitled to compensation in terms of the provisions of Indian Telegraph Act which have been incorporated by reference in Section 42 of the Supply Act,

Section 10 of the Indian Telegraph Act provides power of the Telegraph authority to place and maintain telegraph lines and posts:

The Telegraph authority may, from time to time place and maintain a telegraph line in, over, among or across and posts in or upon any immovable property.

The proviso, "d" to Section 10 of the Indian Telegraph Act commands upon the Telegraph authority in the exercise of the powers conferred by the said Section to do as little damage as possible and when it has exercised those powers in respect of any property other than referred to in clause "c", to pay full compensation to all persons interested for any damage sustained by them by reason of exercise of the said powers.

22. In terms of the provisions of Section 10 of the Indian Telegraph Act, it is thus evident that the said power may be exercised in relation to persons other than

local authority without giving any notice.

See *Bharat Plywood and Timber Products Private Ltd. Vs. Kerala State Electricity Board Trivandrum and Others*, .

23. In that view of the matter, there cannot be any doubt that the Petitioners are entitled to obtain full compensation and if any dispute arises concerning the sufficiency of the compensation, that matter, on application for that purpose, may be determined by the District Judge in terms of Sub-section (3) of Section 16 of the said Act.

See *A.M. Nanjan Vs. Madras State Electricity Board*, .

24. This Court, it is now well settled, while exercising its jurisdiction under Article 226 of the Constitution of India may refuse to exercise its jurisdiction in a given case.

In *Joy Bharat Transport Company and Anr. v. Central Coalfields Ltd.* reported in 1988 B.L.T. 192, I had held:

It is now well known that this Court does not interfere within a given case only because it would be lawful to do so. The High Court in exercise of its writ jurisdiction under Articles 226 and 227 of the Constitution of India may refuse to issue writ in the event it is found that substantial justice has been done to the parties or in larger interest it would not be prudent to issue a writ. It is also known that the right of an individual sometimes has got to give way to the right of the public at large. Under Article 226 of the Constitution of India, a High Court may refuse to exercise its jurisdiction in favour of a party who has not approached the Court with clean hands.

In that case reliance was placed upon the decision of the Supreme Court in the case of *Municipal Board Pratapgarh v. Mahendra Singh Chawla and Ors.* Reported in 1982 (2) SCC 331 : 1982 UJ (SC) wherein it has been held as follows:

6. What are the options before us, obviously as a logical corollary to our finding we have to interfere with the judgment of the High Court because the view taken by it is not in conformity with the law. It is at this stage that Mr. Sanghi, learned Counsel for the Respondent invited us to consider the humanitarian aspect of the matter. The submission is that the jurisdiction of this Court under Article 136 of the Constitution is discretionary and therefore this Court is not bound to tilt at every approach found not in consonance or confirmity with law but the interference may have a dileterious effect on the parties involved in the dispute. Laws cannot be interpreted and enforced divorced from their effect on human beings for whom the laws are meant. Undoubtedly rule of law must prevail but as is often said rule of law must run akin to rules of life. And life of law is not logic but experience.

(Underlining is mine for emphasis)

25. A Division Bench of the Allahabad High Court in Civil Misc. Writ Petition No.

12626 of 1987 in almost similar situation refused to grant relief to the Petitioner thereof stating the law thus:

Furthermore, the present is not a fit case where under Article 226 of the Constitution any relief could be granted. It has been stated in the counter affidavit that Rs. 5000000/- would be suffered per day by the National Thermal Power Corporation Limited if the eucalyptus trees belonging to the Petitioner are not cut and line is not laid, as is planned by Respondent No. 2. As a result, the counter affidavit further says, the supply of electricity to Lucknow, Moradabad and other districts would be hampered. As against the interest of the public at large the interest of the Petitioner can not be given any consideration. The Petitioner had been asked by the letter dated 2.7.1987 by the Respondent 3 to be present at the time of cutting of the trees on July 15-16, 1987, so that woods may be removed by him. This can still be done. In our opinion, the present is not a case fit for granting of any of the reliefs prayed for.

26. This aspect of the matter has also recently been considered by the Supreme Court in *M/s. Orissa Cement Limited v. State of Orissa* and *Ors.* Reported in AIR 1991 SC 1976, wherein the Supreme Court opined:

It will be appreciated that it is not always possible in all situations to give a logical and complete effect to a finding. Many situations of this type arise in actual practice. For instance, there are cases where a Court comes to the conclusion that the termination of the services of an employee is invalid, yet it refrains from giving him the benefit of "reinstatement" (i.e. continuity in service) or back wages. In such cases, the direction of the Court does result in a person being denied the benefits that should flow to him as a logical consequence of a declaration in his favour.

27. In this view of the matter, we are of the view that substantial justice would be done to the parties if the concerned Respondents are directed to carry out their balance work without any further delay in terms of the sanctioned scheme as published in the Gazette of India dated 31.8.1987 and as contained in Annexure-A to the counter affidavit, subject to the following conditions:

- (i) That Respondent No. 4. Shall pay to the Petitioners a sum of Rs. 10000/- immediately;
- (ii) Respondent No. 4 shall pay due compensation to the Petitioners in terms of proviso (d) of Section 10 of the Indian Telegraph Act.
- (iii) The Petitioners shall also be entitled to solatium at the rate of 30% over and above the actual amount of compensation payable to the Petitioners by Respondent No. 4.
- (iv) In case of any dispute in relation to the amount of compensation, the matter shall be referred to the District Judge, Singhbhum (West) at Chaibassa in terms of sub-section (3) of Section 16 of the Indian Telegraph Act who shall determine the amount of compensation with utmost expedition and not later than two

months from the date of receipt of an application filed by either of the disputing parties in that regard.

The District Judge shall also direct payment of 30% of the amount of compensation by way of solatium to the Petitioner.

(v) The Petitioners shall also be entitled to interest @9% per annum on the amount of compensation finally determined either in terms of Clause (ii) or Clause (iii) hereinbefore mentioned" from the date when Respondent No. 4 commences works on the Petitioners" land till the payment thereof.

(vi) the amount of Rs. 10000/- shall be adjusted out of the total amount of compensation payable to the Petitioner.

28. In the facts and circumstances of this case, Respondent No. 4 shall also bear the costs of the Petitioner of this writ application, which is quantified at Rs. 10000/. This application is disposed of with the aforementioned directions.

R.N. Sahay, J.

29. I agree.