

(2023) 07 CAL CK 0052
In the Calcutta High Court

Case No : WPA No. 10669 Of 2019, CAN 1 Of 2019, 2, 3 Of 2020(Old CAN 5751 Of 2019)

Supartha Ghosh

APPELLANT

Vs

West Bengal State Electricity Transmission Company Limited
And Others

RESPONDENT

Date of Decision : 11-07-2023

Acts Referred:

Works of Licensees Rules, 2006 — Rule 3, 3(1), 3(2), 3(4)
Indian Telegraph Act, 1885 — Section 10, 10(d), 16, 16(3)
Electricity Act, 2003 — Section 68, 164

Citation : (2023) 07 CAL CK 0052

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Siddhartha Banerjee, Abhisek Baran Das, Srijoni Chongdar, Sumit Kumar Panja, Sumit Ray

Final Decision : Dismissed

Judgement

Sabyasachi Bhattacharyya, J

1. The writ petition, along with all connected applications, is taken up for hearing.
2. The petitioner claims that the petitioner has a mango orchard, where rare species of mangoes are grown.
3. It is submitted that due to high voltage transmission line taken by the West Bengal State Electricity Transmission Company Limited (WBSETCL), the production of such mango is being adversely affected, thereby hampering the livelihood of the petitioner and causing detriment to the mango orchard.
4. Learned counsel for the petitioner argues that the petitioner has objected at all relevant points of time in the year, 2016, when the proposal of drawing high tension transmission line over the said orchard was mooted. The petitioner, it is argued, wrote several representations, but to no effect. Although a survey was

held, it is submitted that, in blatant violation of the petitioner's right to conserve the rare mangoes grown in his orchard, the high tension line was ultimately installed. The petitioner thereafter sought for shifting of the said lines to some alternative route, to which the respondent-Authorities responded in the negative. The matter came up to this court in a previous round of litigation, when a co-ordinate Bench directed the concerned District Magistrate (DM) to decide the issue. The DM, however, turned down the contention of the petitioner by the impugned order, thus, necessitating the present writ petition.

5. Learned counsel appearing for the petitioners places reliance on several print-outs, purportedly from different websites, to show that high tension electricity transmission lines have an adverse impact on vegetation in general and fruit orchards in particular.

6. A communication dated December 7, 2018 issued by the Department of Food Processing Industries and Horticulture of the Government has also been relied on by the petitioner to argue that the proposed high tension line was destined to be fatal to the trees in the mango orchard maintained by the petitioner. It is submitted that, being authored by an expert body of the State Government, the said communication ought to have been considered by the Magistrate.

7. Initially, when a writ petition was filed to that effect, the matter was relegated to the DM, upon a consideration of which the DM had ultimately passed the impugned order turning down the request of the petitioner for shifting of such line. It is argued that the said order is vitiated on several grounds. It is submitted that the alleged documentary evidence led by the respondents before the DM was never served on the petitioner. Non-disclosure of such documents, it is argued, is in gross violation of natural justice.

8. The writ petitioner had submitted several documents during hearing to establish the harmful effects of the proposed high tension line on the orchard which were in the nature of experts' opinions. However, those were summarily discarded in an arbitrary manner on the plea that those were not endorsed by Government authorities.

9. The DM made an observation, it is argued, that there is no guideline regarding regulation of high voltage electricity lines above fruit orchards, losing sight of Rule 3 of the Works of Licensees Rules, 2006. Sub-rule (1)(a) of the same clearly lays down that a licensee may carry out works of placement of any electricity supply line over any land with the prior consent of the owner or occupier. The first proviso to Rule 3(1) provides a mechanism for redressal of the grievances and/or for consideration of the objections raised by a land owner against proposed installation of electricity line. The said provisions were given a go-by while observing that there were no existing guidelines.

10. The said provisions, in Rule 3(2), also provide for compensation to the affected persons, it is argued.

11. Learned counsel for the petitioners alleges that the height of the bottom connector has been kept precariously close to the tree-tops.

12. It is argued that Section 10(d) of the Indian Telegraph Act, 1885 (hereinafter referred to as, "the 1885 Act") also imposes a mandatory obligation upon the licensee to take all precautionary and other measures to ensure that all damages likely to be caused to a private property are avoided while laying high tension electricity line. No material could be placed before the DM by the licensee to indicate such measures.

13. It is argued that Sections 10 and 16 of the 1885 Act were also overlooked by the DM while passing the impugned order.

14. Moreover, the approval of the appropriate Government was not taken under Section 68 of the Electricity Act, 2003 (for short, "the 2003 Act"), it is argued.

15. Learned counsel for the respondent-Authorities submits that there is nothing on record to establish that the petitioner's mango orchard would suffer in any manner due to installation of high tension transmission line. It is submitted that all options were explored to ascertain whether any alternative route was available for shifting the line. However, detailed surveys failed to bear fruit and, as such, it was held by the DM correctly that there is no scope of shifting the high-tension electricity transmission lines as asked for by the petitioner.

16. The documents obtained by the petitioner from the internet, it is argued, do not specifically show that electro-magnetic fields have adverse effect over plants, particularly mangoes; rather, it appears from those documents that the effect of such fields is seen prominently with regard to living things humans, plants and animals.

17. In view of the DM having given a hearing to both sides and passed a well-reasoned order in accordance with law, it is submitted that no interference is called for.

18. It is contended that the DM examined the report of the Superintending Engineer, Malda Field Zonal Office, WBSETCL and observed that keeping in mind the interest of the owner of the mango orchard, the height of the bottom conductor from the ground has been kept at 12.6m, whereas the maximum height of the existing trees is 5.5m. Thus, the distance between the top point of the mango trees and the bottom point of the conductor is 7.1 m.

19. There was a consideration for diversion of the line by the BDO, Gajole, which was also not found to be feasible as it fell in non-permissible vicinity of human habitation, village area and village road. Keeping in view the larger interest of the public of the locality, since the high tension line is the power source for the entire northern part of Malda District, the same has to be given primacy over the limited interest of the petitioner.

20. It is lastly argued that the high tension line-in-question over the orchard was

charged with electricity on February 14, 2022 and February 15, 2022. However, there is nothing on record or even any complaint regarding the deterioration of the quality of mangoes or other products from the mango orchard after such period. Hence, the writ petition ought to be dismissed.

21. A perusal of the records indicate that although the matter was previously referred to the DM, apparently under the Works of Licensees Rules, 2006, and the petitioner also relies on the said Rules, those Rules are not applicable in the present case, since the disputed lines pertain to "transmission" of electricity.

22. Rule 3(4) of the 2006 Rules stipulates that nothing contained therein shall affect the powers conferred upon any licensee under Section 164 of the 2003 Act. Section 164 of the 2003 Act, on the other hand, provides for the exercise of powers of Telegraph Authority for placing of electric lines or electric plant for the "transmission" of electricity.

23. The present case, being one of transmission and not of distribution, is not covered by the 2006 Rules. Under Section 164 of the 2003 Act, the relevant statute in this regard is the 1885 Act.

24. Section 10 of the 1885 Act empowers the Telegraph Authority and, by virtue of the enabling provision of Section 164 of the 2003 Act, also transmission licensees, to place and maintain lines under, over, along, across and posts in or upon "any" immovable property.

25. There is nothing on record to indicate that the project-in-question was otherwise without approval of the relevant authorities. Such plea also does not find place in any previous objection raised by the petitioner before the concerned authorities.

26. Clause (d) of the proviso to Section 10 of the 1885 Act obligates the authorities, in the exercise of their powers conferred by the Section, to do as little damage as possible. When such power has been exercised, the authorities are also mandated to pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

27. It is noteworthy that no prior permission from the owner of lands is contemplated in Section 10 of the 1885 Act.

28. In the present case, since the respondent-Authorities installed the high tension transmission lines for supplying electricity to the entire populace of North Malda, the same was obviously in public interest.

29. Myopic private interest, it is well-settled, has to give way to larger public interest, as in the present case.

30. The petitioner has also failed to elevate his case to such a high pedestal as to attract environmental issues in general.

31. In any event, a balance has to be struck between the advancement of

civilization and protection of environment. In the present case, however, the issue is the alleged protection of a mango orchard owned by an individual, on the ground that rare species of fruit-bearing mango trees are situated in such orchard. Although such endeavour of the petitioner is appreciated, the same cannot be equated with an environmental issue of general importance. The matter boils down to the personal interest of the petitioner in the orchard, which has to give way to the larger public interest involved in electrifying the entire northern portion of the Malda District of West Bengal.

32. Reverting back to the 1885 Act, Clause (d) of the proviso to Section 10, it may be kept in mind, stipulates that compensation shall be paid to all persons "interested for any damage sustained by them by reason of the exercise of those powers".

33. In the present case, the petitioner has not claimed any compensation from the authorities at any point of time or even pleaded any case for getting compensation on the ground of loss suffered due to installation of the high-tension transmission line.

34. Hence, it cannot be said that the petitioner is a "person interested" for such damages.

35. That apart, for getting such damages, the petitioner has to establish that any damage has been sustained by him by reason of the exercise of the powers by the transmission company. Having not done so, the petitioner cannot argue that the question of compensation was not considered by the DM. Compensation was a still-born issue before the Magistrate, since the petitioner never claimed the same.

36. Insofar as the Section 16 of the 1885 Act is concerned, sub-section (1) of the same empowers the Magistrate to order that the authority shall be permitted to exercise its powers in case of any obstruction. Such chapter being over in the present case, and the transmission line-in-question having already been electrified long back in February, 2022, the question of exercise of jurisdiction under the said sub-section does not arise any more.

37. Section 16(3) stipulates that if any dispute arises concerning the sufficiency of compensation to be paid under Section 10, Clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge having territorial jurisdiction, be determined by him.

38. In the present case, as observed earlier, the petitioner has not even claimed any compensation or quantified any such claim. Hence, the question of disputing the quantum of such compensation under Section 16(3) of the 1885 Act before the District Judge would be a non-issue.

39. In the present case, the DM, pursuant to a previous direction of this Court, passed a well-reasoned order, taking into consideration all relevant factors. It was clearly considered by the DM, on the report of a Superintending Engineer,

Malda Field Zonal Office, WBSETCL, that the distance between the top point of mango trees and bottom point of conductor is 7.1 m.

40. It is to be kept in mind that the proceeding before the DM was not a regular suit before a civil court, that elaborate procedural law as contemplated in the Civil Procedure Code would apply. The DM, as such, acted well within his power to take note of the report filed by the Superintending Engineer, although there is nothing on record to show that a copy thereof was given to the petitioner. The said document, being authored by a technical expert, has the weight of expert opinion. The petitioner not being such an expert in the field, the DM did not commit any patent error, sufficient to justify the order being set aside, in relying on such report without hearing the petitioner elaborately on the same.

41. That apart, there nothing on record to indicate that any guideline actually exists with regard to trees in particular. The required guidelines as provided under the Regulations of the WBERC have been well-maintained by the transmission company.

42. The Magistrate also took pains to look into the records, advert to material facts, and observe that a consideration was made for diversion of the line by the BDO, Gajole. However, it was not found to be either technically feasible or viable on administrative ground, since the alternative route goes through the vicinity of human habitation, village area and village road, which would cause maximum damage in the event the route was shifted to such location. Even a re-survey was carried on by the Site Engineer, which faced strong resistance from the local villager.

43. Taking all such facets of the matter into consideration, the Magistrate gave primacy to larger public interest over the limited interest of the petitioner. The alleged damages to the petitioner, in any event, could not be established by cogent evidence by the petitioner, apart from stray reports from the internet, which is often a reservoir of unconfirmed information.

44. In the absence of any specific proof that the petitioner has suffered any injury or damage due to the high tension transmission line, the DM acted well within his jurisdiction in passing the impugned order.

45. Even in this Court, repeated opportunities were given to the petitioner to name a willing expert for the purpose of holding a joint inspection with the transmission licensee and presenting a report showing the alleged adverse effects on the mango trees situated in the orchard of the petitioner, due to the high tension line. However, the petitioner failed to take advantage of such repeated opportunities on several occasions, although the Transmission Licensee was agreeable to provide its expert.

46. Thus, adverse inference has to be drawn against the petitioner on such score as well, as regards the veracity of the petitioner's claim of damage to the trees.

47. In such view of the matter, even the alternative relief of damages/

compensation cannot be given to the petitioner, for the dual reason that the petitioner never claimed such compensation during any relevant point of time and that the petitioner has failed to establish even prima facie the allegation that the petitioner has suffered any sort of damage due to installation of the high tension line over the mango orchard. Hence, the writ petition fails.

48. Accordingly, WPA No.10669 of 2019 and, consequentially, CAN 1 of 2019 (Old CAN 5751 of 2019), CAN 2 of 2020 and CAN 3 of 2020, all filed in connection therewith, are dismissed on contest without, however, any order as to costs.

Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.