

(2013) 12 UK CK 0022

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 2475 of 2013

Suresh Kumar Saini

APPELLANT

Vs

Power Grid Corporation of India Ltd. and Others

RESPONDENT

Date of Decision : 04-12-2013

Acts Referred:

Citation : AIR 2014 Utt 17 : (2014) 102 ALR 890

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Lok Pal Singh, for the Appellant; Rajendra Singh, for the Respondent

Judgement

Sudhanshu Dhulia, J.—The petitioner has come before this Court challenging the action of the respondents i.e. Power Grid Corporation of India Ltd. (in short "Power Grid"), who are installing High Tension Electric Lines over the land of the petitioner to which the petitioner resists and calls it an arbitrary and illegal action of the respondents. The grievance of the petitioner is that the respondent - Power Grid has changed the alignment of the lines of electric polls in collusion with respondent No. 3. This matter is governed by two Acts, namely, The Electricity Act, 2003 and The Indian Telegraph Act, 1885. Section 164 of the Electricity Act, 2003 gives certain power to the Telegraph Authority, which reads as under:

164. Exercise of powers of Telegraph Authority in certain cases - The Appropriate Government may, by order in writing, for the placing of electricity lines or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any, as the Appropriate Government may think fit to impose and to the provisions of the Indian Telegraph Act, 1885 (13 of 1885), any of the powers which the telegraph authority possesses under that Act with respect to the placing of telegraph lines and posts for the purposes of a telegraph

established or maintained, by the Government or to be so established or maintained.

Section 10 of the Telegraph Act, 1885 is relevant in the present case, which reads as under:

10. Power for telegraph authority to place and maintain telegraph lines and posts.--The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along or across, and posts in or upon, any immovable property:

Provided that--

(a) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the [Central Government], or to be so established or maintained;

(b) the [Central Government] shall not acquire any right other than that of user only in the property under, over, along, across in or upon which the telegraph authority places any telegraph line or post; and

(c) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority; and

(d) in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property other than that referred to in clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

Thereafter Section 16(1) and (2) of the Indian Telegraph Act, 1985 is also relevant in the present case, which reads as under:

16. Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority.--

(1) If the exercise of the powers mentioned in section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.

(2) If, after the making of an order under sub-section (1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for this being exercised, he shall be deemed to have committed an offence u/s 188 of the Indian Penal Code (45 of 1860).

2. In view of the above provisions of law, it is clear that in case, the District Magistrate of the area, if he thinks it fit shall permit the authorities to go ahead with the project and once the permission is given by the District Magistrate, even thereafter, if a person resists for installation of such electricity lines and polls on

his land to the authorities, which in the present case Power Grid, then such an action of a person is punishable u/s 188 of the Indian Penal Code.

3. A Division Bench of the Allahabad High Court in Civil Misc. Writ Petition No. 39173 of 2011 (Jagir Lal & another v. State of U.P. & others) decided on 02.09.2011: (2012 (6) ALJ 142) after considering the provisions of law has held as under:

1. There is no requirement of obtaining any consent of owner before laying a transmission line by an authority exercising power u/s 164 of the Electricity Act, 2003.

2. When owner of the property from where the transmission line is to be drawn obstructs or resists laying down of a line, it is open both for the owner as well as to the authority to approach the District Magistrate for appropriate orders and the District Magistrate in his discretion may permit the laying of the line or refuse such permission.

3. The owner from whose line the electric line is drawn, is entitled for compensation from the authority and in the event he is dissatisfied with the amount of compensation, his remedy is to make an application before the District Judge u/s 16 sub-section (3).

This Court is totally in agreement with the findings arrived at by the Division Bench of the Allahabad High Court, which is presently applicable to the present case. Therefore, the present writ petition is disposed of with a direction that the petitioner as well as the respondent - Power Grid shall approach to the District Magistrate, Haridwar, who shall consider the case of the parties in the light of the provisions mentioned in the body of the judgment and pass appropriate orders in accordance with law. Needful be done within four weeks from the date of production of a certified copy of this order. No order as to costs.