

(1985) 12 KL CK 0010
In the High Court Of Kerala
Case No : O.P. No. 10893 of 1985-H

T.M. Kesavan

APPELLANT

Vs

Addl. Dist. Magistrate

RESPONDENT

Date of Decision : 19-12-1985

Acts Referred:

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

Citation : AIR 1986 Ker 248

Hon'ble Judges : K.S. Paripoornan, J

Bench : Single Bench

Advocate : Palazhi Gopinatha Menon, for the Appellant;

Final Decision : Dismissed

Judgement

K.S. Paripoornan, J.—The petitioner is a resident in Chavakkad Taluk. The third respondent is residing just on the northern side of the compound of the petitioner's property. The attack in this O. P. is against Ext. P 5 order passed by the 1st respondent dt. 27-11-1985. The second respondent-Assistant Executive Engineer, Electrical Major Section, Chavakkad set in motion Section 16(1) of the Telegraph Act, 1885 read with Section 51 of the Electricity Act before the 1st respondent. That was to supply electrical energy to House No. 7/369 in Sy. No. 3/3D, Orumanayur Village, the residence of the 3rd respondent. After considering the objections the first respondent held that the objections raised by the petitioner are unsustainable. The Board was permitted to draw the electric line as proposed. The petitioner assails Ext. P 5 order.

2. I heard counsel for the petitioner. It was contended that the first respondent has not considered the objections raised by the petitioner in a proper perspective. The alternate route suggested by the petitioner to draw the line to the third respondent was not properly appreciated. The first respondent inspected the site. There was no notice, nor was a copy of the report supplied. This is violative of the principles of natural justice.

3. There is no force in the above submission. In Ext. P 5, the first respondent has referred to the objections raised by the petitioner. The alternative route suggested by the petitioner was found to be , unacceptable. This is not a case where the 1st respondent has not considered the case set up or has failed to advert to the plea of the petitioner that there is an alternative route to draw the line. On facts, the 1st respondent disagreed with the plea of the petitioner. There is no illegality or other jurisdictional error in rejecting the objections of the petitioner.

4. The next contention is with regard to the absence of notice for the personal inspection. The petitioner's counsel pointed out that the 1st respondent is a quasi-judicial authority. There was no notice before the inspection. The result of the inspection was not disclosed. It is illegal. There is no force in this submission either. A Full Bench of this court in *Mammoo Vs. State of Kerala and Another*, , para 13 at p. 806 (of Ker LT) : (at p. 24 of AIR), after referring to Section 16 of the Indian Telegraph Act, observed as follows :

"..... The enquiry by the District Magistrate would be in the nature of a ministerial enquiry. There is no question of calling for evidence, sifting such evidence, and coming to a judicial decision thereon. the District Magistrate functions in this case only as an administrative or executive authority and the exercise of his discretion u/s 16(1) is only as incidental to an executive or administrative exercise. His decision is not that of a court much less that of a Criminal Court....."

It is settled law that such an authority should act in good faith and fairly listen to both sides, inasmuch as that was duty which lay on anyone who decided anything. But the authority was not bound to treat such a question as though it were a trial. It could obtain information in any way, which it thought best, always giving a fair opportunity to those who were parties to the controversy to correct or contradict any relevant statement prejudicial to their view. If the result of the personal inspection was disclosed, it might have been useful. But I do not think that the 1st respondent was bound to do so, any more than it would have been bound to disclose all minutes made on the papers in the office before a decision was reached. (See *Local Government Board v. Arlidge* 1915 AC 120 : 1915 All ER 1 . So, the second objection that the petitioner was not given a notice regarding the personal inspection, nor was the petitioner informed about his impression is of no consequence.

The first respondent has considered the entire matter in Ext. P 5 proceedings. It is not open to any attack.

5. The Original Petition is without force. It is dismissed in limine.