

(1997) 11 KL CK 0054
In the High Court Of Kerala
Case No : W.A. No. 441 of 1997

Valsamma Thomas

APPELLANT

Vs

Additional District Magistrate, Alappuzha and Another

RESPONDENT

Date of Decision : 13-11-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Telegraph Act, 1885 — Section 16(1)

Citation : AIR 1998 Ker 124 : (1998) 1 CivCC 521 : (1998) 1 ILR (Ker) 651

Hon'ble Judges : U.P. Singh, C.J.; S. Sankarasubban, J

Bench : Division Bench

Advocate : S. Krishnamoorthy, for the Appellant; G. Janardhana Kurup, for the Respondent

Final Decision : Dismissed

Judgement

Sankarasubban, J.—This Writ Appeal is filed by the petitioner in O.P. No. 2412/97. In the Original Petition, she had challenged the order passed by the Additional District Magistrate, Alappuzha, u/s 16 of the Indian Telegraph Act read with Section 51 of the Indian Electricity Act.

2. The Kerala State Electricity Board decided to draw 110 KV line through the petitioner's property. This was objected to by the petitioner. According to her, if the line was drawn through the petitioner's property, it would cause great damage to the petitioner's property including the loss of many coconut trees. Further, it was contended that the drawing of the line would also prevent her from constructing a new building in the property. According to the petitioner, there was a barren land adjacent to the petitioner's property and if the line drawn through that property, there would not be any hardship to anyone. When the petitioner obstructed to the drawing of the line, the Assistant Engineer, Kerala State Electricity Board placed the matter before the District Magistrate. The learned Magistrate issued notice to the Assistant Engineer as well as to the petitioner. Petitioner filed objections. After hearing the parties and after getting

the reports regarding the lie of the property, the District Magistrate exercised his power u/s 16(1) of the Indian Telegraph Act and permitted the Electricity Board to draw the line. The order of the District Magistrate is produced in the Original Petition as Ext.P3. It was Ext.P3 order that was challenged before the learned single Judge. The learned single Judge after going through Ext.P3 order and the records was of the view that the Electricity Board had given the maximum concession to the petitioner. The learned Judge also found that there was no irregularity or illegality in the action taken by the Board. Hence, the learned single Judge was of the view that there was no justification to interfere with the order under Article 226 of the Constitution. Against the aforesaid judgment the present appeal has been filed.

3. Shri. S. Krishnamoorthy, counsel appearing for the appellant submitted that against the exercise of discretion u/s 16(1) of the Indian Telegraph Act by the District Magistrate, no other remedy is provided. Hence the aggrieved parties had to approach this Court under Article 226 of the Constitution of India. He submitted that the drawing of the line affected the rights of many persons with regard to their properties and hence when the District Magistrate exercised his power u/s 16(1) of the Telegraph Act, he had to exercise his discretion judicially. The District Magistrate has to consider the entire contentions raised by the parties and further according to him, the order passed by the District Magistrate should contain the answers to the objections raised by the parties. He further contended that even though this Court's power under Article 226 of the Constitution is limited, when dealing with the discretion exercised by the District Magistrate this Court would definitely interfere if it was found that the discretion had been exercised arbitrarily or unreasonably or that the order did not show any reasons.

4. The Standing Counsel for the Electricity Board Shri. G. Janardhana Kurup submitted that the drawing of the electric lines was made for public good. According to the counsel, if interference is caused at every stage, it would be difficult to draw the lines, which would ultimately affect the progress of the country. According to the counsel when once the District Magistrate has passed an order after hearing the parties, this Court would not be justified in interfering with the discretion exercised by the District Magistrate. The learned Counsel further submitted that the process of drawing lines involved technical matters and when once it is found that the District Magistrate had formed an opinion based on relevant materials, this Court should not interfere with such an opinion and substitute its own opinion.

5. Now let us examine the order passed by the District Magistrate. In Ext. P3 order, the District Magistrate states that the petitioner entered appearance and filed objections. The main objections are that the property over which the line has been proposed to be drawn is required for her residential and agricultural purposes. If the line was drawn as proposed, the property would become unsuitable for this purpose. The line could be drawn over the adjacent paddy

field which was lying barren for years. Many of the coconut trees belonging to the petitioner would be damaged.

6. From Ext.P3 order, it is seen that the objections of the petitioner were got enquired through the Tahsildar, Chengannur. The District Magistrate also inspected the site. According to the original proposal, the Board wanted to draw the line by horizontal configuration. After inspection, the District Magistrate took the view that minimum damage would be caused to the petitioner if the line was drawn by vertical configuration instead of horizontal configuration. Hence, sanction was accorded to draw the electric line by reducing the number of spans from 9 to 7 and by changing horizontal configuration to vertical configuration. The Board was also directed to draw the line over the eastern-most portion of the property in order to avert damage to the coconut trees. Thus, on a perusal of the order, it is seen that the learned District Magistrate has exercised his discretion properly and has in fact, directed a change in the drawing of the line, so as to cause the minimum (sic)ardship to the petitioner. It is also further seen from the statement filed by the Board that there is no alternate route to draw the line. If the line was to be removed from the property of the petitioner, then it has to be drawn through the northern edge of the property of the adjacent owner. In that case also, one row of coconut trees planted at the southern edge of the petitioner's property will have to be cut and removed.

7. The question is whether in the nature of the above facts, this Court can interfere with the order of the District Magistrate. It is true that in a State like Kerala, which is thickly populated and with people having small extent of cultivated property the drawing of the electric lines may be causing damage to the cultivation. But the Electricity Act itself provides for compensation in case any damage is caused to the person in the drawing of the lines. In drawing the electric line, the technical feasibility is to be considered. Further, it is also concerned with the amount that will be spent in drawing the lines including the amount of compensation.

8. The discretion exercised u/s 16(1) of the Telegraph Act by the District Magistrate was held to be a judicial discretion by a Full Bench of this Court in Bharat Plywood and Timber Products Private Ltd. Vs. Kerala State Electricity Board Trivandrum and Others, . Govindan Nair, J. (as he then was) speaking for the Bench in paragraph 23 of the judgment observed as follows :

"that an order will not be fourth coming automatically..... The District Magistrate does not grant permission to the authority. But he orders that the authority "shall be permitted". The discretion conferred by the section on the District Magistrate is certainly a judicial discretion....."

The question is how far the discretion exercised by the District Magistrate be interfered by this Court exercising its power under Article 226 of the Constitution of India. When we examine the scope of interference with such an order, we should bear in mind that the Legislature has entrusted the District Magistrate to

decide the disputes between the parties. The District Magistrate has been given discretion to permit or not to permit the Electricity Board or the Telegraph Authority to draw the lines through the property of an individual. While he grants permission, it affects the right of a person with regard to his property. Hence, this function is to be exercised after hearing the affected parties. The District Magistrate has to enquire into the objections listed by the affected parties. The objections may be to minimise the hardship caused to the person by drawing the line through a particular portion of a property. The District Magistrate is to enquire into these objections. Of course, in considering the objections, the District Magistrate has to take into account the technical feasibility and also the expenditure involved. Technical feasibility has to be ascertained from the Department. The Department would be able to give necessary data with regard to the expenditure involved. Considering all these things, the District Magistrate has to pass the order. If the District Magistrate has dealt with all the objections of the complainant and applied his mind with regard to the evidence before him, this Court will be reluctant to interfere with such an order. It is also necessary that the order passed by the District Magistrate should disclose the reasons as to why the objections were rejected. We are of the view that since these objections are hotly contested, the District Magistrate should, in his order, deal with each of the objection in *seriatim* and give his reasons for allowing or rejecting such objection.

9. The ground on which the courts will review the exercise of a discretion is abuse of power, e.g. bad faith, a mistake in construing the limits of the power, a procedural irregularity or unreasonableness in the *Wednesbury* sense -- unreasonableness verging on an absurdity : see the speech of Lord Searman in *Nottinghamshire County Council v. Secy. of State for the Environment* -- 1986 AC 240. Where the existence or non-existence of a fact is left to the judgment and discretion of a public body and that fact involves a broad spectrum ranging from the obvious to the debatable to the just conceivable, it is the duty of the court to leave the decision of that fact to the public body to whom Parliament has entrusted the decision-making power save in a case where it is obvious that the public body, consciously or unconsciously, are acting perversely -- see *W.B. Housing Board and Others Vs. Brijendra Prasad Gupta and Others*, .

10. The Supreme Court in *L. Chandra Kumar Vs. Union of India and others*, -- held that the power of judicial review over legislative action vested in the High Court under Article 226 and in the Supreme Court under Article 32 is an integral and essential feature of the Constitution, constituting part of its basic structure. Under the Constitution power of judicial review of the action of the State or its authorities is unfettered but restraint should however be the hallmark of judicial review. With regard to the meaning of "discretion" Lord Halsbury in *Sharp v. Wakefield* -- (1891) AC 173 -- observed as follows :

" "Discretion" means when it is said that something is to be done within the discretion of the authorities that something is to be done according to the rules

of reason and justice, not according to private opinion according to law and not humour. It is to be, not arbitrary, vague and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself....."

There is nothing like unfettered discretion immune from judicial review ability. In this context, it is relevant to quote the following observations of Benjamin Cardozo in "The Nature of Judicial Process" :

"The judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to "the primordial necessity of order in the social life". Wide enough in all conscience is the field of discretion that remains".

11. It is also clear from the authorities and judicial decisions that judicial review is directed not against the decision, but is confined to the examination of the decision-making process. The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorised by law to decide for itself, a conclusion which is correct in the eyes of the court. Judicial review is not an appeal from a decision, but a review of the manner in which the decision was made.

12. Thus, on a review of the authorities of this question, we come to the following conclusions :

- (1) The District Magistrate has to exercise his discretion judicially.
- (2) He has to pass the order u/s 16(1) of the Telegraph Act, after hearing the parties and after taking such evidence as is required with regard to the objections raised.
- (3) The order passed by the court should be a speaking order.
- (4) The order should reflect the objections raised by the parties and the reasons given by the Magistrate for accepting or rejecting the same.
- (5) The order should also reflect the materials relied on by the District Magistrate for arriving at the conclusion.

If the discretion is exercised by the District Magistrate as above, then unless it is shown that the findings are perverse or that the proceedings are vitiated by mala fides this Court will not be justified in interfering with such orders. This Court will not be justified in substituting its own opinion. It is also worth bearing in mind that this Court has not got technical expertise and will be slow to interfere with such matters.

13. Here, Ext. P. 5 order does not suffer from any infirmities. It is a speaking order. It has also given reasons for rejecting the objections. Now the order, of the District Magistrate has given concessions to the petitioner. There is no allegation of mala fides nor one can say that the order is perverse. In this view, the writ appeal is dismissed.