
(2017) 03 KL CK 0005
In the High Court Of Kerala
Case No : W.P(C).No.40808 of 2016

Venukumar

APPELLANT

Vs

The Additional District Magistrate, Collectorate

RESPONDENT

Date of Decision : 14-03-2017

Acts Referred:

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

Citation : (2017) 2 KLT 21

Hon'ble Judges : Mr. K. Vinod Chandran, J.

Bench : Single Bench

Advocate : Sri. M.V. Thampan, Sri. K.V. Anil Kumar and Sri. R. Reji, Advocates, for the Petitioner; Sri. Mathew George Vadakkal, Government Pleader, for the Respondent No. 1; Sri. P.A. Ahamed, Standing Counsel, for the Respondent No. 2; Sri. Saju J Panicker, Advocate, for the Respondent No. 3; SRI. Sudheer Ganesh Kumar R., SC, KSEB, for the Respondent

Final Decision : Allowed

Judgement

Mr. K. Vinod Chandran, J.—The petitioner impugn Exhibit P3 order passed by the Additional District Magistrate [for brevity "ADM"]. By that order the most feasible route was given up and a circuitous route, with enormous expenditure, was approved, is the grievance.

2. The sketch of the property is seen at Exhibit P1. The alternate routes under consideration were FGH, ADE and ABCE; the former among which is the most feasible one even according to the impugned order. When the petitioner applied for electric connection; to the north-east of the petitioner's property, a post was erected [shown as "G"] drawing line from another post lying to the east of the said post [shown as "F"]. The 3rd respondent is the owner on the eastern boundary of the property of one Ramachandran Pillai [consumer No.9333], which property lies to the east of the petitioner's property. There was also existing a line to Ramachandran Pillai's property from post "F".

3. The 3rd respondent objected to the existing line from post "F" on the ground that he consented to drawing of the line, over his property on the mistaken assumption as to the said post having been erected inside the property of Ramachandran Pillai. The said line was one existing for 20 years as is seen from the impugned order and the objection was raised only on the petitioner requesting a line to be drawn from the post "F". The allegation of the 3rd respondent was that the petitioner had consented to draw a line through his property to post "F" and then to Ramachandran Pillai; on the belief that the post was in the latter's property and later it was realized that it was erected in his own property. The 3rd respondent however did not apply for any shifting of line before the Board, but approached the Consumer Grievance Redressal Forum (South), Kottarakkara [for brevity "CGRF"]; which passed Exhibit R3(a) order.

4. In Exhibit R3(a) order, the CGRF had found that there were two alternate routes suggested and directed the Board to remove the overhead line over the 3rd respondents property. The petitioner contends that both the alternate routes are circuitous and there would be a liability cast on him to reimburse the costs and expenses. The respondent-Board, however, submits that if line through the alternate route is drawn on or before 31.03.2017, then the entire expenses would be borne by the Board under the "Total Electrification Programme". The ADM, by the impugned order found the route FGH to be the most feasible one, but it was reported by the Board that the same had been removed on the orders of the CGRF. The ADM had proceeded merely on the ground that suits are pending between the petitioner, Ramachandran Pillai and the 3rd respondent and that the CGRF had directed the petitioner's line to be drawn through either of the alternate routes. It is on this basis that the Board submits that they would give connection bearing the cost of the additional posts, under the "Total Electrification Programme".

5. Despite the fact that the Board has undertaken to bear the expenses, it is to be noticed that the expenditure is to be borne under a scheme of the Government, utilizing public funds. Public money cannot be used to settle personal scores of citizens and under the specified scheme it can only be utilized to achieve the goal of total electrification by providing connection to the needy and those who cannot otherwise afford drawing of electric connection.

6. It is also very pertinent that the 3rd respondent had approached the wrong forum for shifting of the line and also failed to implead either the petitioner or his immediate neighbour, Ramachandran Pillai who are affected by the shifting. It is quite unfortunate that an adjudicatory forum, like the CGRF considered the so called complaint without the affected parties in the party array. The contention of the 3rd respondent before the CGRF was that consent granted to his neighbouring land owner to erect a post and draw the line was on a misapprehension that the post is erected in the neighbour's property and not his. Having subsequently detected that the post is erected in his property, the 3rd respondent sought for removal of the same. In fact, it is seen from the order

of the CGRF and also the impugned order that the post shown as "F" in the sketch above referred, had been in existence for the last 20 years. In such circumstances, if the 3rd respondent required shifting of the electric line, he should have applied before the appropriate authority and there could be found no grievance which could be agitated before the CGRF.

7. The CGRF, as is seen from Exhibit R3(a), has referred to the complaint having been originated on the petitioner requesting for an electric connection. The allegation of Ramachandran Pillai, having misled the Board as also the 3rd respondent by erecting a post in the property of the 3rd respondent; is an incident dating back to 20 years. The ownership of the property had to be established in a Civil Court and the shifting had to be considered first by the original authority and not in a complaint styled as a consumer grievance especially when the post was existing for the last 20 years. The CGRF ought to have been more careful in proceeding with a complaint so filed, especially without hearing the affected parties.

8. In the context of the above reasoning, the objection of the 3rd respondent is found to be untenable. The order of the CGRF does not bind the petitioner also. Admittedly there was a connection granted to his immediate neighbour, Ramachandran Pillai, twenty years back from the post shown as "F". The Board has proposed as the most feasible route; the one in which line can be drawn from post "F" to that erected at "G", and weather proof wiring provided to the petitioners house at "H", as seen from the sketch. The route at ADE, which is now approved by the ADM, passes through another property whose owner has objected to the same. The owner of the said property lying to the south-east of the petitioner is his mother, but that alone cannot be a reason for overruling the objection. Further the line drawn as per the said proposal cuts across the full length of the adjacent property and requires erection of one post within that property. The third proposal also requires erection of two posts and again cuts through the entire length of a property and was found to be very expensive and was hence rejected by the ADM itself. The proposal approved, is to draw the line through ADE, through the petitioner's mothers property.

9. On the facts as noticed herein above, it is found that the proposal originally made by the Board, "FGH" is the most feasible one and merely for reason of a pending Civil Suit, there can be no shifting of a line which has been existing for the past 20 years. Providing of connection through the approved alternate proposal would also lead to public money being wasted; which is undertaken to be done under the "Total Electrification Programme". The gravity of hardship and the proportion of prejudice caused to each of the adjacent property owners has to be examined to decide on the permission to be granted for drawing of electric line by the ADM under the Indian Telegraph Act. The statutory power exercised by the ADM, is quasi judicial in nature and this Court is not sitting in appeal but a review of the decision taken. The test is to look at whether an illegality has been occasioned, a relevant fact ignored or an irrelevant fact taken into account

rendering the decision perverse.

10. The ADM found the route FGH to be most feasible. This was the original proposal of the KSEB also, who has the technical expertise to decide the feasibility. The route was given up on account of the order of the CGRF, which was reported to have been implemented by the Board and the pending suits between the petitioner, Ramachandran Pillai and the 3rd respondent. These were irrelevant considerations when the electricity connection of Ramachandran Pillai was existing for the last 20 years. The complaint before the CGRF was also that a consent was granted to Ramachandran Pillai on the mistaken belief that the post was erected in his property. The 3rd respondents claim on title in any event cannot unsettle the consent, to draw line to post "F" through his property, which was existing for the last very many years. The proceedings before the CGRF does not bind either Ramachandran Pillai or the petitioner, who were not parties there. The complaint styled as a consumer grievance has been found to be not of that nature since the contention was of shifting an existing line; which had to be first addressed by the officials of the Board. The ADM hence took into account irrelevant considerations.

11. The relevant considerations of the relative prejudice and hardship was not at all looked into by the ADM. The route (FGH) approved by the ADM, was one passing through the property of another, in the south-eastern boundary of the petitioner. True the property was of the petitioner's mother, but that has been found to be not a relevant consideration insofar as an objection having been raised, with respect to the drawing of an electric line through the property. It has also been found that the drawing of line through the route ADE, requires the overhead line to cut through the entire property of the mother of the petitioner and a post erected in her property.

12. The most feasible line as found by the ADM was one, wherein an overhead line had to be drawn from the existing post at "F", with an additional post erected at "G" and a weatherproof line drawn to the petitioner's property. The overhead line from post "F" passes through the property of the immediate neighbour of the petitioner, on the eastern boundary, ie: Ramachandran Pillai, who has given consent to the drawing of the line. The objection raised by the 3rd respondent to the drawing of line through the most feasible route is also only on account of an apprehension that the post erected at "F", about 20 years back was in fact inside his property and not in the property of his immediate neighbour on his western boundary; Ramachandran Pillai. The title dispute; in view of the long passage of time, would not affect the drawing of line since admittedly a consent was granted by the 3rd respondent. As of now if at all there is an objection it can only be against the drawing of line, from post "F", which line passes over the property of Ramachandran Pillai, who has given consent to the petitioner. Testing the proportionate hardship and prejudice it cannot but be found that the most feasible route is FGH through which the petitioner can be provided a connection. There is absolutely no prejudice caused to the 3rd

respondent, but for the vindictive allegations against a connection existing for the past 20 years.

13. The additional expenditure is also a relevant consideration which the ADM discounted. The submission of the Board with regard to providing electric connection free of cost, through a more circuitous route, cannot also be countenanced since public money is involved and it cannot be frittered away to settle personal scores, resulting in a departure from the essential intention in framing the scheme.

14. The impugned order cannot on all the above counts be sustained. Ideally there should be a remand, but the facts are not in dispute and the alternate routes are very clearly discernible from the sketch and also the impugned order, which is passed on a physical inspection. The rival contentions noticed above also require no further factual adjudication. Hence, there need be no remand and the feasible route as found by the ADM can be allowed to be implemented i.e.: FGH. The facts also indicate the existing line of 20 years having been removed; which will be restored and the connection provided to the petitioner through the route FGH seen from the sketch. Exhibit P3 is hence found to be perverse, in having not approved the most feasible route, as found by the ADM and suggested by the KSEB. The impugned order would stand set aside and the line would be drawn as proposed in the route FGH to the petitioner's residence.

15. Writ petition is allowed. No costs.