

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

WA.No. 1573 of 2013 () IN WP(C).1190/2010

AGAINST THE ORDER/JUDGMENT IN WP(C) 1190/2010 of HIGH COURT OF KERALA
DATED 16-07-2013

APPELLANT(S)/PETITIONERS 1,2 AND 7 TO 19:

1. K.S.JOSEPH
KARIMPANAL HOUSE, VIZHIKATHODU P.O., KANJIRAPPALLY
KOTTAYAM DISTRICT.
2. DONY SEBASTIAN
KARIPPAPPARAMBIL HOUSE, KANJIRAPPALLY
KOTTAYAM DISTRICT.
3. K.S.THOMAS
KARIMPANAL HOUSE, VIZHIKATHODU P.O., KOOVAPPALLY
KANJIRAPPALLY, KOTTAYAM DISTRICT.
4. ANITHA THOMAS
KARIMPANAL HOUSE, VIZHIKATHODU P.O., KANJIRAPPALLY
KOTTAYAM DISTRICT.
5. JOHN JOSEPH
EDATHINAKKATTU HOUSE, MANNARKAYAM P.O., CHIRAKKADAVU
KANJIRAPPALLY, KOTTAYAM DISTRICT.
6. SHAJI MATHEW
THAKADIYIL HOUSE, CHIRAKKADAVU EAST, KANJIRAPPALLY
KOTTAYAM DISTRICT.
7. V.M.MATHEW
VELLAPANNIL HOUSE, ARUVITHURA P.O., ERATTUPETTA
KOTTAYAM DISTRICT.
8. MARIAMMA MATHEW
VELLAPANNIL HOUSE, ARUVITHURA P.O., ERATTUPETTA
KOTTAYAM DISTRICT.
9. THOMAS NICHOLAS
KARIMPANAL HOUSE, VIZHIKATHODU P.O., KANJIRAPPALLY
KOTTAYAM DISTRICT.
10. JOSEPH NICHOLAS
KARIMPANAL HOUSE, VIZHIKATHODU P.O., KANJIRAPPALLY
KOTTAYAM DISTRICT.
11. K.S.SEBASTIAN
KARIMPANAL HOUSE, VIZHIKATHODU P.O., KANJIRAPPALLY
KOTTAYAM DISTRICT.

12. ELIZABETH ALEXANDER
KARIMPANAL HOUSE, VIZHIKATHODU P.O., KANJIRAPPALLY
KOTTAYAM DISTRICT.

13. A.J.THOMAS
ARUVIYIL HOUSE, KODAKACHIRA, PALAI
KOTTAYAM DISTRICT.

14. HANIBALL DOMINIC
KARIPPAPARAMBIL HOUSE, MUTTAMBALAM P.O.
KOTTAYAM DISTRICT.

15. BENOY CYRIAC
NJAVALLY HOUSE, PODIMATTOM, KANJIRAPPALLY
KOTTAYAM DISTRICT.

BY ADVS.SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI
SRI.BRIJESH MOHAN
SRI.JIKKU SEBAN GEORGE

RESPONDENT (S) /RESPONDENTS:

1. THE DISTRICT COLLECTOR
KOTTAYAM-686002.

2. KERALA STATE ELECTRICITY BOARD
REPRESENTED BY ITS SECRETARY, VYDHUTHI BHAVAN
THIRUVANANTHAPURAM-695004.

3. THE DISTRICT MAGISTRATE (DISTRICT COLLECTOR)
PATHANAMTHITTA-689645.

R2 BY ADV. SRI.P.SANTHALINGAM (SR.)
R2 BY ADV. SRI.S.SHARAN,SC,K.S.E.BOARD
R BY GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 20/12/2013
ALONG WITH WA. 1695/2013, WPC. 22616/2014, WPC. 22617/2014, THE
COURT ON 29-01-2015, DELIVERED THE FOLLOWING:

**T.R. RAMACHANDRAN NAIR &
P.V. ASHA, JJ.**

**W.A.Nos.1573 & 1695 of 2013
&
W.P.(C) Nos.22616 & 22617 of 2014**

Dated this the 29th day of January, 2015

JUDGMENT

Ramachandran Nair, J.

These cases have been posted together, as common questions arise for consideration. The orders under challenge are issued under Section 16 of the Indian Telegraph Act by the District Collector, exercising the power as District Magistrate. The leading case is Writ Appeal NO.1695/2013.

2. Learned Senior Counsel Shri K. Jayakumar and Shri K. Jaju Babu and learned counsel Shri N. Reghuraj are appearing for the appellants/petitioners, Shri P. Santhalingam, learned Senior Counsel appeared for the Kerala State Electricity Board and Shri R. Padmaraj, learned Senior Government Pleader appeared for the District Collector. Learned counsel Shri S.P. Chaly, Mathew G. Vadakkal, Shri Renny

Augustine and Shri G. Sreekumar (Chelur) appeared for party respondents.

3. Writ Appeal No.1695/2013 is filed against the judgment in W.P.(C) No.3420/2010 and W.A. No.1573/2013 is from W.P.(C) No.1190/2010. The learned Single Judge, after rejecting all the contentions of the petitioners, upheld the order passed by the District Magistrate. W.P.(C) NO.3240/2010 which was heard along with W.P. (C) Nos.1190/2010 and 37589/2009, have been dismissed. The learned Single Judge also directed the Kerala State Electricity Board (for short “the Board”) to place objections of the petitioners in certain other writ petitions, viz. W.P.(C) Nos.3594/2011, 5178/2011, 6452/2011, 6445/2011 and 20896/2011, to the District Magistrate and he was directed to pass appropriate orders after hearing those petitioners. The resultant order thereafter passed by the District Magistrate overruling the objections, is under challenge in W.P.(C) Nos.22616/2014 and 22617/2014. Those writ petitions were placed along with the writ appeals, to be considered together.

4. The work proposed by the Electricity Board is for fixing the line route of 110 K.V. line from Kanjirappally to Erumely. This is by upgrading the existing 66 KV line upto Mundakayam as 110 KV line . The original alignment was proposed from Tower No.136. By the impugned order in the writ petition (Ext.P4 in W.P.(C)NO.3240/2010), the drawing of line from Tower No.139 has been permitted.

5. The following facts emerge from the records produced before this Court and from the arguments of the learned Senior Counsel on both sides and other learned counsel appearing for the parties. Actually, the proposal for alignment of 110 KV line from Tower 136 was originally approved by the KSEB. Even though objections were placed by certain persons, it was overruled by the District Magistrate and the District Magistrate passed an order which is clear from the files. This was challenged by the objectors before this Court in W.P.(C) No.27725/2008 and connected cases. The order passed by the District Magistrate was set aside on a finding that there is no consideration of the alternate routes suggested by the parties and

this Court directed the District Magistrate to take a fresh decision. Thereafter, the Board and its officers proposed drawing of the line from tower 139 by a report which was approved by the District Magistrate as per Ext.R8(b) order dated 28.2.2009. The said order was under challenge before this Court by various persons in W.P.(C) No.11434/2009 and by judgment dated 15.4.2009 this Court set aside the order for not hearing all the objectors and the matter was remitted back for passing fresh order after hearing all parties. (Ext.R8(c). After hearing all the parties, the District Magistrate passed the fresh order which is produced as Ext.P4.

6. While attacking the order passed by the District Magistrate, the learned Senior Counsel Shri K. Jayakumar raised the following arguments: The District Magistrate directed the Board to suggest the alternate route. Such a procedure is unheard of. It is submitted that Ext.P2 report is the result of a scientific study and Route from tower 136 was then proposed. It will be clear from the records that before proposing to shift the route from Tower 136 the Board and its officials

had not conducted a scientific study like the one conducted when Ext.P2 report was filed. In the absence of such a scientific study as regards the feasibility, the proposal for shifting it to Tower 139 cannot be accepted. It is submitted that after considering various aspects this Court appointed an Advocate Commissioner to file a report on various aspects. The report of the Commissioner also justifies the pleas of the appellants. Learned Senior Counsel referred to the details of the report of the Commissioner also and submitted that it will show that the route from Tower 136 will be the ideal one. In the absence of any material to support the shifting of it from tower 139, the District Collector could not have decided to approve it. Thus, learned Senior Counsel submitted that there is no techno feasibility report to show that the route from Tower 139 is more feasible. Our attention was invited to the interim order passed by a Division Bench on 7.12.2011 in W.P.(C) No.37589/2009 which shows that there was no approval for shifting the line from Tower 136 to Tower 139 by any competent authority. It is also submitted by the learned Senior Counsel that the personal

verification made by the District Collector cannot hold good. It is also contended that the factual details recorded in the order of the District Collector are not correct in the light of the materials produced before this Court by the Advocate Commissioner.

6. With regard to the power of the District Magistrate, learned Senior Counsel relied upon various decisions of this Court including that of a Full Bench of this Court in **Bharat Plywoods & T. Products v. Kerala State Electricity Board** (1970 KLT 832) and submitted that the power extends to consider the various aspects. Actually, it is a power conferred on the District Magistrate to permit drawing of the line. If that be so, it is submitted that only if there is proper independent assessment, such a permission can be granted. Here, there is no comparative study as regards the economic viability also. It is a case where the District Collector should satisfy himself that the materials placed, leads only to a proper conclusion. In this context, learned Senior Counsel also relied upon the decision of this Court in **Valsamma Thomas v. Addl. District Magistrate** (1997 (2) KLT 979).

7. Thus, the crux of the argument is that the data furnished by the Board before the District Collector and its acceptance is without making any independent assessment. Learned Senior Counsel also explained that the power available to the Board cannot be exercised for a different purpose. If that be so, the same will be malafide and arbitrary. It is submitted that the minutes of the meeting held on 22.3.2012 relied upon by the Board, turned out to be not correct, in the sense that even the presence of the Members of the Legislative Assembly as recorded in it was found to be not correct later. In this context, reference was made to the affidavit filed on behalf of the Government by an Additional Secretary dated 24.9.2012 and submitted that such an approval, if any made, itself is illusory and the same being legally unsustainable, the materials produced by the officers of the Board before the District Magistrate to have the proposed line from tower 139 being without approval of the competent authority of the Board, could not have been relied upon by the learned Single Judge. Learned Senior Counsel submitted that in a matter like this, the power

is only to find the most feasible route affecting least number of persons and herein Tower 136 alone satisfies the above test.

8. Learned Senior Counsel for the appellants highlighted the fact that the power under Section 16(1) of the Indian Telegraph Act being of a quasi-judicial nature, he will have to take an independent decision after ascertaining various materials which is absent in this case. It is submitted that the learned Single Judge was not right in ignoring the report of the Advocate Commissioner appointed by this Court.

9. Shri Santhalingam, learned Senior Counsel for the Board explained that when Ext.P2 report was submitted, 110 KV line had not been drawn up to Tower No.139. Therefore, the feasibility of drawing the line from Tower 139 was not considered at that point of time and the drawing of line from Tower 136 alone was considered then, by Ext.P2.

10. It is submitted that after approval of the same by the District Magistrate, some persons approached this Court by filing W.P.(C) NO.27725/2008 and connected cases. Our attention was invited to the

observations in the said judgment. The initial order passed by the District Collector is dated 14.8.2008 (Ext.P2 in W.P.(C) NO.1190/2010) which was set aside by this Court in the judgment in W.P.(C) No.27725/2008. The common complaint raised before this Court was that alternate routes were not considered. The District Collector thereafter passed the order dated 28.2.2009 (Ext.R8(b) in W.P.(C) NO.3240/2010). The District Collector, after being convinced that drawing from Tower No.139 is the most ideal one which will cause less hardship to all as it is cost effective, approved it. He had conducted a personal inspection of the routes also as is clear from the said order. This was also subjected to challenge before this Court and on the complaint that there is violation of the principles of natural justice in not hearing some of the objectors, again the order was set aside and after hearing parties, Ext.P4 order has been passed in detail. Learned Senior Counsel brushed aside the argument raised by the learned Senior Counsel for the appellants that the alternate route has not been approved by the competent wing of the Board. It is submitted

that any mistake in the minutes of the meeting about the participants will not destroy the decision itself.

11. A meeting was convened by the Additional Chief Secretary to Government on 22.3.2010. It has been explained in the affidavit filed by the Additional Chief Secretary (Revenue) (Devaswom Department) dated 24.9.2012 that actually three members of the Legislative Assembly did not participate in the meeting, even though they had been issued intimation about the convening of the meeting. It has been explained in the affidavit that by an inadvertent mistake it so happened that their names were included in the list of persons who participated in the meeting. It is also submitted that since the minutes have been amended which is evident from Annexure A2, the objections cannot survive. Learned Senior Counsel therefore submitted that actually the line from Ranni to Kanakappalam was originally proposed which was resisted by the local people. The distance is more from Ranni. The Board has upgraded 66 KV line to 110 KV line and at the relevant time the construction of the same upto Tower No.136

was over. It is submitted that in the discussion of the meeting held as evident from Annexure A2, all the aspects have been considered and the view taken is that the option from Tower 139 is the most feasible one. The cost factor also has been considered therein. The other option of having an underground cable was not technically feasible in view of the geographic features. The cost was also found to be much higher. It is submitted that even if it is true that a meeting was conducted after Ext.P4 order was passed, it also shows that the line from Tower 139 is most feasible. The argument that it is not technically feasible cannot be sustained. Learned Senior Counsel explained that when there is a direction from this Court to consider the alternate route, the proposal to draw the line from Tower No.139 was submitted after conducting a proper survey by the officers of the Board. Therefore, it is only in tune with the directions of this Court the matter was proceeded with. If that be so, learned Senior Counsel submitted that there is no illegality in the matter.

12. Learned Senior Counsel further submitted that the report of

the Advocate Commissioner has been rightly rejected by the learned Single Judge. The objections to the report filed by the Board were also referred to in that context. It is submitted that the Advocate Commissioner cannot be said to be an expert and merely because objections of some local people have been referred to, that is not the end of the matter.

13. Shri S.P. Chaly, learned counsel appearing for some of the respondents also supported the above arguments and contended that in a matter like this, the view taken by the District Collector, unless tainted by arbitrariness, malafides or non application of mind, cannot be interfered with by this Court. Herein, initially Tower 136 was proposed against which serious objections were raised. This Court specifically directed consideration of the alternate route. Therefore, when there is a specific direction to consider the objection regarding alternate route, the Board was right in suggesting the alternate route after conducting a survey. Learned counsel further pointed out that all the aspects have been considered by the learned Single Judge in detail.

This Court cannot act as an appellate authority in assessing facts and substitute its own views to that of the District Magistrate. Such a jurisdiction being absent, learned counsel submitted that the broad parameters, viz. whether the principles of natural justice have been violated or not; whether the decision is arbitrary or not and whether relevant materials have been considered or not, are some of the tests which were considered by the learned Single Judge. He also relied upon a decision of this Court in **Kesavan v. Addl. District Magistrate** (1986 KLT 395) wherein the scope of power under Section 16(1) of the Indian Telegraph Act was examined and it was held that what is required is to give a fair hearing to the parties to the controversy. Therein, the question was considered in the light of the argument that before personal inspection, notice should have been issued and this Court found that such a course need not have been adopted.

14. The following facts are clear from the pleadings of the Board. The proposal of the KSEB is to upgrade the existing 66 KV line from Pallom to Kanjirappally as 110 KV line. This is due to the

increase in load demand on the 66 KV feeder. This line will be extended upto Erumeli for giving supply to Erumely Sub station at Kanakappalam. Erumeli is an important pilgrim centre, on the route to Sabarimala.

15. Initially there was an alternate suggestion by some objectors, to draw line from Mundakayam to Erumeli which was raised before the District Collector. It was considered but found not feasible for various reasons. For executing such a proposal, the existing 66 KV line has to be upgraded upto Mundakayam and the line is to be extended upto Erumeli. The same will have to pass through Erumeli town which is thickly populated. The Board contended that it will not be economically feasible, as residential area will be affected. The Board also points out that presently the power supply to Erumeli area is fed from 11KV feeder of Kanjirappally and Mundakayam sub stations and during Sabarimala season the lines will be overloaded and uninterrupted power supply to Erumeli area during the said season will have to be maintained. For this, load shedding in other areas is being

imposed. Therefore, 110 KV sub station was proposed in Erumeli area to meet the power requirements.

16. In the year 2006 there was a proposal to draw a line from Ranni to Kanakappalam, but it was dropped by the Board by order dated 20.6.2006. This had to be abandoned due to strong public protest. Thereafter, the sanction was accorded to draw 110 KV Double Circuit line to the proposed Sub Station from Kanjirappally. For that, the 66 KV Sub station Kanjirappally has to be upgraded as 110 KV and secondly the existing 66 KV Single Circuit line from Pallom to Kanjirappally will have to be upgraded 110 KV double circuit.

17. Initially, the tower location was fixed at Tower 136 at Mannarakkayam in Kanjirappally for the route proposed. The same was approved by the District Collector. This was challenged in a series of writ petitions which were disposed of by this Court by judgment dated 20.10.2008. A learned Single Judge of this Court accepted the argument of the learned counsel for the petitioners therein that the alternate routes pointed out have not been considered in the order

passed by the District Collector. Accordingly, the order was set aside. Fresh order was directed to be passed after hearing the objections of the parties. The District Collector passed fresh proceedings (produced as Ext.R8(b) in W.P.(C) No.3240/2010 dated 28.2.2009) after hearing parties. This was sought to be challenged by some of the objectors stating that they were not heard and the said order was quashed by judgment in W.P.(C) No.11434/2009. After giving notice to 157 persons the present order Ex.P4 in W.P.(C) NO.3240/2010 has been passed approving the route from location 139. Before proposing it, site inspection was conducted by the Board. It is found in Ext.P4 that the same is most ideal and feasible and the Board was permitted to draw the line from location 139.

18. As Shri K. Jayakumar, learned Senior Counsel vehemently contended that the proposal at T-139 had not emanated from the Board, but it was suggested by the District Collector in his proceedings, we will consider the said argument first. In this context, Shri K. Jayakumar invited our attention to the interim order passed by a

Division Bench of this Court on 7.12.2011 when the matters were initially considered by the said Bench. After perusing the various files, the Division Bench observed in paragraph 5 that going by the records, the competing proposals are T-136 and T-139 and the technical feasibility of either of those lines is not approved by the Chief Engineer, Transmission Circle. It was also observed in paragraph 9 that the Chief Engineer has accorded technical sanction and the Board authorities appear to have granted financial sanction for the route T-139 after the impugned order of the District Magistrate. It was observed that the Bench is not expressing anything on the merits of the rival contentions and finally in paragraph 12 the Bench took the view that the matters will gain the immediate attention of the Chairman of the KSEB, Secretary to the Government of Kerala in the Department of Power and the Additional Chief Secretary who is in charge of Devaswoms.

19. A meeting was held by the Additional Chief Secretary on 22.3.2012 in the light of the above directions. The amended Record of

Discussion has been produced as Annexure A2 in W.P.(C) No.1190/2010. As regards this document, learned Senior Counsel Shri Jayakumar submitted that the names of three M.L.As. have been mentioned among the list of participants and actually they had not participated in the meeting. Therefore, the said document has no value. As regards this aspect, an affidavit has been filed by the Additional Secretary to Revenue (Devaswoms) dated 22.9.2012. It is averred in the affidavit that while preparing the minutes a mistake has occurred and actually the three M.L.As. did not attend the meeting though they had been issued intimation about the convening of the meeting by the Additional Chief Secretary. Therefore, by an inadvertent mistake it so happened in the list of persons to participate in the meeting and the same has been corrected and the minutes of the meeting has been amended accordingly.

20. Learned Senior Counsel for the Board submitted that in the light of the abovestated facts, there is no basis in the submission that the alignment from Tower 139 has not been subjected to any feasibility

study or approval.

21. The vehement argument raised by the learned Senior Counsel for the appellant is that unlike the study report Ext.P2, there is no techno feasibility study and the enquiry with regard to Tower No.139 for drawing line has been directed by the District Magistrate.

22. The answer to the same is that in the light of the judgment of this Court in W.P.(C) No.37013/2007 and W.P.(C) No.27725/2008, it was obligatory to find out the alternate route.

23. We have already referred to the judgment in W.P.(C) No.27725/2008. In the earlier judgment in W.P.(C) No.37013/2007 this Court passed the following order:

“There will be a direction to the KSEB to identify the route which causes least inconvenience to the least number of land owners and give proposal to the District Collector taking into account the cost aspect also, and District Collector will decide the matter as provided under Section 16(1) of the Indian Telegraph Act read with Section 164 of the new Electricity Act. There will be a direction to the KSEB to instal post and draw line only after line is approved by the District Collector.”

It is therefore submitted that the argument that the District Collector directed the KSEB to find out the alternate route is not correct. This resulted in an order dated 14.8.2008 which was set aside in W.P.(C) NO.27725/2008 on the ground that there should be consideration about the alternate route, which was absent. In the above background we find that there is no illegality in submitting the proposal to draw the line from tower 139. The District Magistrate and the Board have only complied with the directions of this Court.

24. The next aspect is regarding the non acceptance of the report of the Advocate Commissioner by the learned Single Judge. Learned Senior Counsel for the appellant raised arguments to the effect that the Commissioner was appointed as per the interim order of the learned Single Judge to have an inspection and to furnish details with regard to different routes from Tower Nos.136 and 139. It is submitted that the same will show that inconvenience is more for public if the route as approved now in Ext.P4 is accepted.

25. Before going into the said contentions, we will just refer to

the contents of Ext.P4 order. The order shows that various objections were raised by different parties. These proposals have been considered by the District Magistrate as evident from internal page 5 onwards. Initially, the District Collector considered the alternate proposals submitted by certain parties, viz. (i) drawing of 110 KV lines from Sub Station, Ranni to Kanakappalam; (ii) Construction of a 110 KV sub station at Makkappuzha and drawing 110 KV lines from there to Kanakappalam; and (iii) Drawing line from Mundakayam sub station to Kanakappalam. All these were rejected as not feasible. Then, he proceeded to consider the remaining three proposals: (i) the route suggested by the KSEB from the location 136; (ii) The second proposal put forward by the KSEB as directed by the District Collector to avoid public hardship from location 139; and (iii) the alternate route through Anathanam quarry location 145. A table has been prepared showing the comparative assessment. Tables have been prepared by considering the drawing of the line to areas including over one colony, named Kanakappalam Colony and avoiding the same. It is recorded

that on a comparative assessment it is seen that if the line is drawn through location 136, the line will pass over 12 dwelling houses whereas in the route from the location 139 it will be 9 out of which one house is built after passing of the second order and from location 145, it will be 18. Five buildings were adjacent to the line for location 136 and 139 and 12 adjacent buildings for location 145. The number of angles are 9 in all these locations. If the line is drawn through Kanakappalam colony as originally proposed, it will affect the poor people residing there. It is recorded that on a comparison, it will lead to the conclusion that drawing line from 139 is most ideal causing less hardships to the people especially that from the lowest strata of the society. It is also stated that moreover, not a single house has to be shifted as there is ample vertical/lateral clearance. Finally, it is observed that taking into account all the above facts, technical and economic feasibility of the proposal, he is convinced that line route from location 139 is the most ideal and feasible and accordingly the Board was granted permission.

26. In the report the Commissioner has made certain observations. The emphasis mainly was on finding out the number of dwelling houses affected by drawing the line from Tower 136 to Tower 139 and the number of individual property holders affected by it. The respective distance of the route has also been mentioned. An additional report was also filed to correct certain errors. Going by the additional report, the distance from Tower 136 will be 4.2 kms. to the common point known as Padinjarekkara estate and the distance from 139 will be 3.887 kms.

27. Learned Senior Counsel for the Electricity Board, Shri P. Santhalingam and learned counsel appearing for the contesting respondents Shri S.P. Chaly and Shri Mathew G. Vadakkal submitted that serious objections have been raised with regard to the defaults in the commissioner's report. One of the objections is that the location of houses and properties has not been verified through revenue officials. It is therefore submitted that no reliance can be placed on the report.

28. Learned Single Judge, in paragraph 43 of the judgment

considered the report and took the view that it will not be feasible to refer to the report of the Advocate Commissioner as against the District Collector's order in ascertaining the number of persons affected. The District Magistrate has verified and submitted the report with reference to the situation which prevailed as on the said date and not at the time when the Advocate Commissioner had visited the said place. After referring to the report showing that only 67 persons are affected if the line is drawn from Tower No.139 and only 46 persons are affected if the line is drawn through Tower No.136, the learned Single Judge referred to the objections of the party respondents that the Commissioner had relied upon the list of affected persons submitted by the third petitioner and the list was not prepared on the basis of revenue records.

29. Even though great stress is made on the report of the Commissioner by the learned Senior Counsel for the appellant Shri K. Jayakumar, we are of the view that the study conducted by the Commissioner cannot be said to be so scientific. It is also clear from

the objections raised by the KSEB that they have taken a stand that the report was prepared by the Commissioner without verifying the details by reference to the revenue records. The learned Single Judge has not chosen to accept the report based on these aspects and we find no reason to disagree with the same.

30. The next question is whether the argument that Ext.P4 and the conclusions thereon are unsupportable, is correct. Learned Senior Counsel for the Board Shri P. Santhalingam submitted that in the light of the judgments of this Court in W.P.(C) Nos.37013/2007 and 27725/2008, the feasibility of alternate route had to be reported to the District Collector. In the report submitted by the Board before the District Collector on 27.1.2009, various details have been mentioned. It is submitted that the same will show that a survey was conducted as directed by the District Collector in respect of the two alternate routes. The fresh survey was conducted in respect of the route from Tower 139 and from Anathanam quarry. The District Collector passed a fresh order on 28.2.2009 which is Ext.R8(b) in W.P.(C)No.3240/2010. Our

attention was invited to the said order to submit that the District Collector personally visited both the routes. He has recorded therein that the people affected along the approved route is more when compared with the alternate route suggested from location route 139. Thus, it is submitted that there was a site inspection by the District Collector also. Thereafter, the alternate route, viz. Pampooranpara (location 139) to Padinjarekkara Estate (point E in the Deviation Drawing) and from Point E in Padinjarekkara Estate to Substation site at Kanakappalam along with the already approved route of the Chief Engineer was approved avoiding the Kanakappalam colony. It is submitted that this was challenged in W.P.(C) No.11434/2009 and this Court directed the District Collector to pass a fresh order in the light of the fact that some of the petitioners were not given opportunity of being heard. It is submitted that the merits of the matter as recorded in the order are still relevant while considering the sequence of events.

31. In the impugned order Ext.P4, in the second page objections raised by some of the parties including the appellants herein have been

considered. As regards these objectors, the finding is that none of the houses will be affected as there is ample lateral as well as vertical clearance. With regard to appellant No.1 in W.A.No.1695/2013, there is 12.3 meters of lateral clearance from centre of the proposed 110 KV line and also the line is passing 2 meters away from the boundary of their property. The house of one Shri Baby Mantharayil is situated 15 metres away from the central line. We are not going into the individual cases of all parties, since we will not be entering into any assessment on facts which has already been made by the District Collector.

32. The main objection of Shri K. Jayakumar, learned Senior Counsel is that as we have already noticed, there is no techno feasibility scientific survey. His contention is also that it is the District Collector who directed the survey. We have already noticed the judgment of this Court in W.P.(C) Nos.37013/2007 and 27725/2008 wherein this Court directed the consideration of alternate routes. Therefore, we find nothing wrong in directing a survey which is to implement the directions of this Court.

33. In this context, we think it proper to refer to the minutes of the meeting convened by the Additional Chief Secretary to Government of Kerala on 22.3.2012. As already noticed, the meeting was held as directed by this Court in the interim order dated 7.12.2011 by the Division Bench. The observations of the committee which included the Additional Chief Secretary and the Chairman and one member of the KSEB show the following aspects:

“The requirement for power in Erumely is increasing year after year in connection with the Mandalapooja-Makaravilakku festival. It is also proposed to constitute a township in Erumely. The Sabari Rail is also proposed to terminate at Erumely. For all these developmental activities power would be required. Therefore, the infrastructure to provide power that is, the substation and transmission line have to be planned and implemented taking into consideration the growth of power requirement during next two decades. It was under these circumstances 110 KV Substation with associated transmission lines was proposed in Erumely. The administrative sanction was issued as early as in 2000. Site for construction of 110 KV substation was acquired in 2005

and the construction of 110 KV substation is in advanced stage. The building and the yard structures have been constructed. Only the transformers and other electrical installations for the control and security have to be installed.”

It is noted further down that the original proposal to draw a line from Ranni was resisted by local people and in the light of the direction issued by this Court in O.P.No.2051/2001 various other options were considered. Thereafter, the KSEB decided to upgrade 66 KV transmission line from Pallom to Peerumedu to 110 KV and the construction of the same upto Kanjirappally is over. We hereinbelow reproduce the further observations which have a bearing on the question:

“.....Therefore, the various other options that can be considered are from tower points 136, 139 and 145. It was found that the option from tower point 139 is the most feasible one. This is the option which causes least disturbance to the local people. 110 KV lines will require clearance of strips of land having a width of 22 meters. Tower lines cannot be constructed in a zig-zag manner since it is not technically feasible and financially viable. The

proposed construction of fresh transmission line from tower No.139 of Kanjirappally - Peerumedu line to Erumeli (Kanakappalam) Substation would involve construction of 110 KV line of a distance of 9.905 kms and it would cost around Rs.3.00 crores. The total line work involves upgradation of 1.5 km of 66 KV Single Circuit (SC) line to 110 KV Double Circuit (DC) line up to tower location 139 and construction of 9.905 kms new 110 KV DC line from location 139 to Erumely substation. The committee also considered the other option of having a Under Ground (UG) Cable. It was found that laying UG cable is not technically feasible in view of the steep terrain and geological features like rocky patches. The cost also is prohibitively high to the tune of Rs.30 crores. Considering the above facts the committee came to the conclusion that the route from tower point 139 is the most feasible one.”

Hence, now that the high level meeting has taken the said stand that the proposed construction from tower 139 is the most feasible one, we do not find anything wrong in the proposal as such. Therefore, the contention that a techno feasibility survey was not conducted earlier, cannot hold good. The above view was taken by the learned Single

Judge also and we concur with the same.

34. The learned Single Judge has considered various arguments from paragraph 39 onwards of the judgment. Before considering the same, the learned Single Judge referred to the dictum laid down in the following judgments of the Apex Court:

“State of Punjab v. Gurdial Singh {(1980) 2 SCC 471}, Shrisht Dhawan v. Shaw Broothers {(1992) 1 SCC 534}, Bajaj Hindustan Ltd. v. Sir Shadi Lal Enterprises Ltd. {(2011) 1 SCC 640}, Radhy Shyam v. State of U.P. {(2011) 5 SCC 553}, Noida Entrepreneurs Assn. v. Noida {(2011) 6 SCC 508}, K.T. Plantation (P) Ltd. v. State of Karnataka {(2011) 9 SCC 1}, Union of India v. Kushala Shetty {(2011) 12 SCC 69}, Greater Noida Industrial Development Authority v. Devendra Kumar {(2011) 12 SCC 375}”

Thereafter, various legal points have been considered. The question whether the decision of the District Magistrate is vitiated for arbitrariness, non consideration of relevant facts, non application of mind, etc. have been considered in detail. It was held in paragraph 41 that all the three routes were considered and after making a

comparative assessment of the proposal, the Board was directed to avoid a colony, viz. Kanakappalam and the proposal from tower No.139 which avoids Kanakappalam colony was approved. The learned Single Judge also observed that “it is also found that not even a single house has to be shifted as there is ample vertical/lateral clearance.”

35. In paragraph 42, it is noticed that as far as economic feasibility is concerned, the District Magistrate had annexed a report submitted by the Assistant Engineer in respect of the complaints raised by various persons whose property will be affected on account of the drawing of line from Tower No.139. It was observed that according to the District Magistrate “after avoiding Kanakappalam colony, the line passes over only 5 buildings, adjacent to 5 buildings and the number of ankles are less and apparently it affects lesser number of persons.” The learned Single Judge took the view that if there a dispute with regard to the participants in the meeting convened by the Additional Chief Secretary, that will not make the decision of the meeting invalid

as it cannot be disputed that there was a meeting and we also concur with the same. The scope of the power of the KSEB and its officers, in the light of the statutory provisions under the Telegraph Act has been considered in detail and it was held that as various aspects have been considered in detail by the District Magistrate, there is no scope for interference. The finding is that going by the jurisdiction of the District Magistrate, he will have to consider whether the resistance or objections of the land owners or holders is justifiable or not. In that process, if alternate routes are suggested by the land owners/holders and if KSEB finds that such options are technically feasible and it is approved by them, necessarily the District Magistrate can evaluate whether the said proposal can be considered. It is also noted that the District Magistrate has expressed his opinion based on the opinion expressed by the KSEB and it is also found that the route suggested by the appellants is not viable for which reasons have also been mentioned. It is hence concluded that when such being the position, the permission granted by the District Magistrate cannot be said to be

invalid.

36. The jurisdiction of the District Magistrate in this regard has been succinctly put by a Full Bench of this Court in **Bharat Plywoods & T. Products v. Kertala State Electricity Board** (1970 KLT 872 - FB) and by a Division Bench in **Valsamma Thomas v. Addl. District Magistrate** (1997 (2) KLT 979).

37. In **Bharat Plywood's case** (1970 KLT 872 - FB), while interpreting Section 16 of the Indian Telegraph Act, 1885, the Full Bench held that “when an owner or occupier resists or obstructs the exercise of the power under Section 10, the telegraph authority will have to approach the District Magistrate for an order under sub-section (1) of section 16 and can exercise the power under Section 10 only in cases where the District Magistrate deems it fit to pass an order that he shall be permitted to do so. The power conferred by Section 10 is thus a conditional power; conditional on an order being passed under Section 16(1) by the District Magistrate that the authority may be permitted, in case of resistance or obstruction, to exercise the power.

This is so not only in regard to a telegraph authority but to the public officer or any other person authorised under the Electricity Act.” The above paragraph is highlighted by learned Senior Counsel Shri Jayakumar to contend that the word “permitted” therein is important. Therefore, the permission of the District Magistrate as such is required for drawing the line and hence the jurisdiction is wider.

38. In the later decision of the Division Bench in **Valsamma Thomas's case** (1997 (2) KLT 979) how the discretion should be exercised by the District Magistrate, has been explained in paragraph 12. We extract the said paragraph hereinbelow:

“12. Thus, on a review of the authorities on 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 under 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 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.”

This Court further held as follows:

“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 malafides 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.”

The learned Single Judge found that the order passed by the District Magistrate is fully in tune with the above principles. We also affirm the said view. We are fully satisfied that all the aspects have been considered by the District Magistrate while rendering Ext.P4 order.

39. In W.P.(C) Nos.22616/2014 and 22617/2014 the order dated 11.4.2014 (Ext.P7 in both the writ petitions) is under challenge. This order is passed in tune with the direction issued by the learned Single

Judge in the operative portion of the judgment whereby the Board was directed to place their objections to the District Magistrate. The District Magistrate has passed a fresh order which is under challenge herein. More or less same grounds have been taken by the petitioners also to challenge the order passed by the District Magistrate.

40. Shri N. Reghuraj, learned counsel for the petitioners in the writ petitions supported the arguments of Shri K. Jayakumar, learned Senior Counsel for the appellants. It is highlighted by reference to the report of the Advocate Commissioner, Ext.P5 produced in W.P.(C) No.22616/2014 that the report and its contents should have been considered by the District Magistrate. It is submitted that even though reliance was placed on them, the same was not considered. He also referred to the initial report Ex.P1 whereby the line route from 136 was surveyed. It is submitted that the same need not have been varied at all. Learned counsel also made submissions on the findings by the District Magistrate and submitted that they do not reflect the correct position. It is submitted that the absence of a techno feasibility study

will vitiate the entire action.

41. We have already considered various aspects. In the order Ext.P7, what we find is that everyone of the details have been considered including the history of the proposal and the various orders passed by this Court and the District Magistrate. The District Magistrate did not rely upon the commission report since the same was not accepted by this Court in the common judgment. The argument that no techno feasibility study was conducted, was also rejected. It is observed in paragraph 8 that even the objections raised by the individual petitioners were directed to be verified by the Board and according to their report, no dwelling house/building is coming within the clearance area of the alignment through the route from Tower Point 139. We find that there is elaborate consideration of various aspects. Reference has been made to the original proposal from Ranni to Kanakappalam, dropping of it later, consideration of the proposal from tower point 136 and later from tower point 139. It is found that the project is a feasible one.

42. We find that the above order has been passed after hearing the petitioners also and after considering their objections. For the reasons already stated by us, we find no infirmity in the said order also. Accordingly, the writ appeals and the writ petitions are dismissed. No costs.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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