

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

WA.No. 2004 of 2014 () IN WP(C).13763/2014

AGAINST THE JUDGMENT IN WP(C) 13763/2014 of HIGH COURT OF KERALA
DATED 15.06.2015

APPELLANT/PETITIONER :

SUDHEER MATHEW KURIAN, AGED 40 YEARS
S/O. LATE KURIAKOSE, CHALAKLUZHY HOUSE
KANAPPALAM P.O., EDRUMELI SOUTH VILLAGE
KANJIRAPPILLY TALUK, KOTTAYAM DISTRICT.

BY ADVS.SRI.T.V.GEORGE
SRI.JIMMY GEORGE (THADATHIL)

RESPONDENTS/RESPONDENTS :

1. KERALA STATE ELECTRICITY BOARD
REPRESENTED BY ITS SECRETARY, VYDHUTHI BHAVAN
PATTOM P.O., THIRUVANANTHAPURAM 695001.

2. DEPUTY CHIEF ENGINEER
TRANSMISSION CIRCLE, KERALA STATE ELECTRICITY BOARD
POOVAN THURUTHU, KOTTAYAM-686 012.

3. EXECUTIVE ENGINEER
TRANSMISSION CIRCLE DIVISION
KERALA STATE ELECTRICITY BOARD, POOVANTHURUTHU
KOTTAYAM-686 012.

4. ASSISTANT EXECUTIVE ENGINEER
KERALA STATE ELECTRICITY BOARD, T.C.SECTION
KANAKAPPALAM P.O., ERUMELI, KOTTAYAM-688 509.

5. DISTRICT COLLECTOR AND DISTRICT MAGISTRATE
KOTTAYAM-686 001.

R1 TO R4 BY SRI.K.M.SATHYANATHA MENON, SC, KSEB
R5 SENIOR GOVERNMENT PLEADER SRI. E.M. ABDUL KHADER

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 22-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON &
BABU MATHEW P. JOSEPH JJ**

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W.A No. 2004 of 2014

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Dated, this the 22nd day of July, 2015

JUDGMENT

Ramachandra Menon J.

Interference declined by the learned single Judge with regard to the challenge raised against Ext. P6 order passed by the District Magistrate in not acceding to the proposal mooted by the appellant for shifting 110 KV electric line by changing the tower location is under challenge in this appeal.

2. Considering the increase in the load requirements of Erumely - the pilgrim centre near Sabarimala, setting up of 110 KV Sub Station was proposed by the Board in the Erumely area. The route was specified and approved by the Board for drawing 110 KV double circuit line tapping from tower location 136 of the Pallom - Peermade line at Mannarakkayam, Kanjirappally. But the said route approved by the Board was sought to be challenged by the residents/land owners before this Court. Pursuant to the writ petition filed before this Court, the matter was directed to be considered by

the District Collector who passed an order on 14.08.2008 approving the route through tower location 136, as proposed by the Board. The said order was under challenge in various writ petitions and as per the common judgment in W.P.(C) Nos. 27725 of 2008, 27503 of 2008 and 29851 of 2008, the impugned order was set aside and the District Collector was directed to reconsider the matter after affording an opportunity of hearing.

3. Pursuant to the above verdict, the District Collector after hearing all the parties concerned directed the Board to check the feasibility of alternate proposal. Accordingly, the Board conducted survey of the proposals for tapping from towers 139 and 145 and submitted reports to the District Collector. Thereafter the District Collector conducted site inspection of various routes and after hearing the affected parties, passed a fresh order dated 28.08.2009 rejecting the approved route of the Board through tower location 136 and granting approval for 110 KV line through tower location 139.

4. The said order was challenged by the aggrieved party in W.P.(C) No. 11372 of 2009. Vide judgment dated 28.02.2009, this Court set aside the order and directed the District Magistrate to issue notice to all concerned and to pass fresh order after hearing

them. The District Magistrate accordingly heard all the parties and recorded statements of all concerned, including the father of the appellant, Late C. M. Kuriakose, who was the original owner of the property and had submitted an application before the District Collector for changing the alignment. The said application was forwarded to the Board for enquiry and report. As per the directions of the District Collector, the Board conducted a site inspection of the premises and submitted a detailed report. It was after hearing all concerned, that a fresh order was passed by the District Collector on 15.09.2009, rejecting the objections raised by the parties and directing the Board to draw 110 KV line from the tower location 139, virtually upholding the order passed earlier. Pursuant to the aforesaid order, the Board had marked trees along the line routes and 'tree cutting' notices were issued to all the parties by registered post. A notice of hearing was also issued for submitting the records regarding the ownership for assessing the payment of compensation while cutting and removing the trees. The appellant also accepted the notice and came up for hearing at Kanakapalam, but gave a request for changing the location of the tower. The dispute was sought to be pursued again by the aggrieved parties including the appellant herein by submitting

different writ petitions. They were elaborately considered by the learned single Judge of this Court and as per Ext. P5 common judgment dated 16.07.2013, interference was declined in some cases and in respect of the case filed by the appellant herein [W.P. (C) No. 20896 of 2011] and some other cases, direction was given to the District Collector to consider the matter afresh and to pass appropriate orders after affording an opportunity of hearing. It was accordingly, that the matter was reconsidered by the District Collector, who passed Ext. P6 order dated 11.04.2014 to draw 110 KV line through tower No. 139, which was sought to be challenged again by the appellant who preferred the writ petition contending that feasibility of the alternate proposal was not considered.

5. A detailed statement/counter affidavit was filed from the part of the Board and the writ petitioner filed reply affidavit as well. The appellant/writ petitioner filed I.A. for appointment of an Advocate Commissioner to conduct an inspection and to report the factual aspects in support of his case. The learned single Judge, instead of allowing the said I.A., directed the District Magistrate to conduct an inspection and submit a report as to the various aspects sought to be noted, and also as to the feasibility of the proposal submitted by the writ petitioner. After considering the entire

issue, the District Magistrate submitted a report before the learned single Judge categorically pointing out that there was no violation of any of the provisions of law and further that drawing of the line through the route proposed by the petitioner was not at all feasible, simultaneously observing that, if at all any change was to be effected, it would definitely change a portion of the alignment, adversely affecting the properties of others concerned. After taking note of all facts and figures and placing reliance on the report of the District Collector as aforesaid, interference was declined and the writ petition was dismissed by the learned single Judge; correctness of which is sought to be questioned by the writ petitioner, by way of this writ appeal.

6. Heard Sri. T.V. George, the learned counsel appearing for the appellant as well as Sri. K. M. Sathyanatha Menon, the learned standing counsel appearing for the respondent Board and Sri. E. M. Abdul Khader, the learned senior Government Pleader appearing on behalf of the State.

7. The crux of the submissions made by the learned counsel for the appellant is that there is an unnecessary deviation of line, when it enters the property of the appellant, from tower No.2. There are only two towers between the property of the

petitioner and the Sub station at Erumeli. If the line is drawn directly from tower No. 2 in a straight line, there will not be much damage to property of the appellant and standing rubber trees. It is pointed out that there is a Panchayath road along the western boundary of the appellant's property. It is alleged that the deviation has been effected, only to extend undue advantage to other persons, particularly, one Mr. Rajan Chalakuzhy, who is a near relative of the appellant, in spite of the fact that the line could have been drawn along the western Panchayath road, lying South to North. Yet another contention raised by the appellant is that, there is a PWD road proceeding from West to East, cutting the petitioner's property into two. Property on the northern side of the road is comprised in survey No. 77/2 and while property on the southern side is comprised in survey Nos. 92/1 and 92/2. It is stated that the 3rd tower, which is to be planted in the property of the appellant comprised in Survey No. 92 is sought to be installed close to the residential building and that the appellant will be satisfied if it is relocated and erected in his property situated on the northern side of the PWD road i.e. property in survey No. 77/2. It is also added that the petitioner is ready to meet the necessary expenditure in this regard, if at all any levelling of the property is to

be done so as to satisfy the statutory requirements. These aspects have not been properly considered, analysed or appreciated by the District Collector/District Magistrate. Hence the challenge.

8. The version of the appellant is sought to be rebutted by the learned standing counsel for the Electricity Board and also by the learned Government Pleader; pointing out that the efforts taken by the Board to set up the project and to meet the requirements of the general public, in particular, the pilgrims of Sabarimala, have been stalled all throughout by way of different litigations. In spite of reconsideration of the matter at different times, ascertaining feasibility and all other related aspects, the project could not be implemented, by virtue of which much expenditure has already been incurred. The tender floated earlier has already been cancelled and steps for re-tender have been pursued after approving the revised estimate resulting in much escalation of the cost. The alternate proposal mooted by the appellant has already been considered by the District Collector, when the feasibility was approved with reference to the drawing of line through the tower location 139.

9. After hearing both the sides and going through the

materials on record, this Court finds that no violation of any of the statutory provision is involved and that matter has already been considered by the statutory authority on different occasions. The feasibility of drawing line through the route from tower 139 stands already asserted and explained by the District Collector/District Magistrate. The learned single Judge caused the matter to be examined further by ordering a re- inspection and report by the District Collector. The report submitted by the District Collector in this regard [forming part of the record] clearly reveals the salient features, which are in the following terms :

"The location is in Erumely south village of Kanjarappally taluk, which is a region with hillocks and slopes. The same was observed on the site and first the location "J" was inspected. Location "J" is in a corner of the property of the petitioner and is approximately twenty metres away from the outermost wall of the house of the petitioner, which is more than permissible limit of 2.9 metres as per the regulations 2010. There is a road (Karimbanthodu - Erumely road) in front of the house of the petitioner and on the other side of the road there is another property of the petitioner which he is offering as alternative site for the proposed tower at location "J". It is observed

that the proposed location by petitioner have a level difference of approximately five metres in comparison to the location "J". The site proposed by petitioner is approximately five metres below the location "J", which will affect the height of the electricity line passing through the road and it will require a statutory ground clearance of 6.1 metres as per the regulations 2010. It is an angle tower which means that from here the alignment of the electricity line changes to a certain degree and connects to the next towers both the sides, such an angle will require a change in the project and affect the alignment to an extent.

There is a panchayath road in north-south direction on the eastern side of the property of the petitioner and adjacent to location "J" over which the electricity line is passing through to connect with the next nearest tower. The location "K" is 110 KV substation of the project and it is connected to the location "J" and there is one more tower between these two points which is 330 metres from location "J", on the other side next angle tower is at location "I" and there are four towers between location "I" and location "J" and the nearest tower is 335 metres from location "J". It is correct to say that there will be change in alignment at least between the nearest two towers, one each on both the sides which is a distance

of 330 and 335 metres at both sides means at least alignment will change for 665 metres. "

10. After referring to the adverse consequences which may be caused to the other property owners, the findings are given as extracted below :

- "1. There is a level difference between location "J" and the alternate location proposed by the petitioner which requires statutory clearance as per regulation 2010 and as per the regulation 58 (4) of the regulation 2010 ground clearance has to be more than 6.1 metres and which is not available at the moment.
2. The alignment of the electricity line will change at least upto an extent between the next towers both the sides.
3. Delay each day is causing huge loss to exchequer and denying of a public facility to the people.
4. The alteration in alignment between two nearest towers to location J both the sides will affect land owners more or less in area under electricity line in comparison to the current alignment which may invite new issues for already settled issues.
5. As per the regulations 2010, current alignment poses no threat to house and property of the petitioner."

11. The technical feasibility has been assessed separately by the District Collector in the following terms:

"Regarding the point of technical feasibility, the guideline is regulations of 2010 and on the basis of that KSEB has refused to accept the alteration of the site to the proposed location by the petitioner. KSEB maintains that required minimum statutory ground clearance required is 6.1 metres as per rule 58 (4) of the regulations 2010, which will not be obtained at the alternative site proposed by the petitioner as it is approximately five metres below the level of the current location "J". The selection of a type of a tower requires introspection of many details like the type of electricity line, height and base required as per the site conditions. The specifications regarding height of tower are fixed on the basis of many factors like angle required, minimum ground clearance, maximum sag, vertical spacing between conductors, vertical clearance between earth wire and top conductor. These are formulae to calculate height, base, spacing between conductors, to sum it all the specifications of a tower depends a lot on the site selected for it. In the present case if the site is changed all such calculations for the fixing of the specifications of the tower at the site will change. We can consider it in a

way that since the level difference between location J and the proposed location by petitioner is approximately five metres, the height of the tower has to increase, it will change the case also and since the electricity line has to pass through all towers with minimum ground clearance, it will affect height and base of other towers also. If height of one tower is increased to make electricity, line to pass all through alignment may require adjustments in height of many towers, if not more, at least minimum two nearest towers. For example the current fixed height of the tower at location "J" is 25.945 metres, if it is shifted to location proposed by the petitioner, the effective height will reduce to approximately 20.945 metres and to comply with the requirements of regulations 2010 the height has to increase and which will affect ground clearance of other towers also due to change in suspension of electricity line between towers and above the ground level.

The District Collector mentions that such a change as mentioned above cannot be said as "technically impossible" but it requires redesigning of part of the project and will certainly cause extra financial burden on the exchequer, besides delay in implementation of the project. It is made clear that, even if the change proposed

by the writ petitioner is held as possible, purely on the basis of technical aspects, when it comes to 'feasibility' it would require redesigning of part of the project, as aforesaid. Accordingly, the District Collector has concluded that the proposal mooted by the appellant is not feasible; which has been held by the learned single Judge, as perfectly within the four walls of law. Though the appellant has raised a vague plea of malafides against the authorities of the Board, no specific plea is raised against the District Magistrate and nobody has been impleaded in the personal capacity. In any view of the matter, it has not been substantiated as well, by any reliable material.

12. It is settled law that, scope of judicial review has to be confined to the 'decision making process' and not the decision. Considering the aspects borne out by the records, this Court finds that the interference declined by the learned single Judge is not assailable under any circumstances; more so in view of the law declared by the Apex Court as to the scope of interference under Article 226 of the Constitution of India in such matters in **Union of India Vs. Kushala Shetty [(2011) 12 SCC 69]**, wherein it has been observed that route approval done after taking note of the various aspects involved and the opinion expressed by the technical

experts cannot be intercepted as a matter of course, and that Courts are not equipped to decide the viability or feasibility. The law stands well settled that even if there is some conflict of interest between 'private right' and 'public right', the former has to yield to the latter. There is no tenable ground to interfere with Ext. P6 order passed by the District Magistrate or the verdict passed by the learned single Judge. Interference is declined and writ appeal stands dismissed.

Sd/-

**P. R. RAMACHANDRA MENON,
(JUDGE)**

sd/-

**BABU MATHEW P. JOSEPH,
(JUDGE)**

kmd