

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10519 of 2016

=====

Vidya Sagar Tiwari S/o Late Sri Ram Tiwari R/o village - Bhariyar, P.O. Yogia,
Via Arak, P.S. Brahmpur, Distt. - Buxar

.... Petitioner

Versus

1. The State of Bihar
2. The District Magistrate, Buxar
3. North Bihar Power Distribution Company Ltd. through Managing Director,
Vidyut Bhawan, Bailey Road, Patna
4. Managing Director, North Bihar Power Distribution Company Ltd., Vidyut
Bhawan, Bailey Road, Patna
5. The Assistant, Electrical Engineer (Project), Electrical Supply Division,
Charitravan, Buxar

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar Upadhyay, Adv.
Mr. Sanjay Kumar, Adv.

For the State : Mr. Pankaj Kumar Singh, A.C. to G.A.-IX

For the NBPDC : Mr. Anand Kumar Ojha, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 10-07-2017

Heard learned counsel for the petitioner, learned
counsel for the North Bihar Power Distribution Company Limited
and learned counsel for the State.

2. In this case, the petitioner is challenging the action of
the Power Grid Corporation for hanging 11000 KV wire over the
Khata No.110, Plot No.560, admeasuring about 1 acre and 36
decimal of land, situated at village- Bhariyar, District-Buxar,
claiming to be in violation of Rule-3(a)(b) Proviso-2 of the Works
of Licensees Rule, 2006. The ground has been taken that under the



Rule before mounting the pole or hanging the wire, the Power Grid Corporation is required to give notice and only thereafter they could have established the electrical pole and hang the wire over the land.

3. The Power Grid Corporation has been given the task to create transmission infrastructure for the purpose of electrification of rural and urban areas through out the country and for that north, south east and west centres have to be connected to each other with a view to extract and utilize the power as and where the extra power was available. It is well-known that India is an energy deficient country, notwithstanding rapid expansion in this direction in the last few years, and particularly after the entry of private sector, insofar as production of electricity is concerned. Still, there are many households where lighting of even electrical bulb is a dream. Moreover, the social-economic development of the country depends on this critical infrastructure. Keeping in these parameters, one of the objects of the power Grid Corporation is to transmit the energy to remote area.

4. In the State of Bihar also the Power Grid Corporation is working on laying the transmission line. In this exercise, the Power Grid Corporation is to place the poles for laying the wire. The Khata No.110, Plot No.560 came in the alignment for mounting the pole and hanging the wire. When the employees of the Power Grid



Corporation started digging the earth, the petitioner raised objection, the land over which the electrical wire has to be laid, would be used for construction of his house in near future inasmuch as high voltage power will cause a damage to *flora and fauna* standing on his land and requested that the alignment of the wire be deviated and electrical poles should be shifted on another land. The authority did not give any reply, which compelled the petitioner to approach this Court.

5. Primarily, the petitioner has raised the objection that if the Power Grid Corporation was/is intending to utilize the land and mount electrical pole, in such circumstance, in terms of the Rule 3(a)(b) Proviso 2 of the Works of Licensees Rules, 2006, it is incumbent upon the Power Grid Corporation to give prior notice to the petitioner and only thereafter they can utilize the land for the purposes of laying wire and establishing the electrical pole, which they have not done and as such, the whole action is illegal, nullity and the Power Grid Corporation should be asked to put the pole in a different place so that he would be able to utilize the land in a proper manner.

6. Learned counsel for the South Bihar Power Distribution Company as well as the State submitted that the Power Grid Corporation is under the control of the Central Government



and the Central Government has granted sanction to the Power Grid Corporation to carry out the work of transmission in every part of India. In pursuance thereof, the work is in progress. It has further submitted that in view of Section 164 read with Section 3 of the Electricity Act, 2003, it is evidently clear that there was no need for the Power Grid Corporation to give notice before laying the wire and utilizing the land for the purposes of establishing the pole and placed reliance on the judgment of the Hon'ble Supreme Court in the case of *The Power Grid Corporation of India Limited vs. Century Textiles & Industries Limited and Ors.* reported in **2017(2) PLJR, 152.**

7. Learned counsel for the petitioner has tried his best to distinguish the case, submitting that in the cited case, notice was given to the Century Textiles and Industries, it was a Government land, was given on lease by the Government, already the electrical wire was going parallel to the proposed site and putting the pole on the land did not cause any loss and as such, that judgment is completely distinguishable and not applicable to the facts of the present case.

8. It is a fact that the Power Grid Corporation has been given the task of laying down the electric wire from the generating station to the different distribution centres for the purposes of



electrification of the rural areas as well as to the urban areas so that the socio-economic activities would improve, which ultimately, improve the quality of life of people.

9. One of the submissions was raised before the Hon'ble Supreme Court that, without giving any notice, the Power Grid Corporation cannot put electric poles as well as hang the wire. The Hon'ble Supreme Court has considered Section 164 of the Electricity Act, 2003 and Sections 10, 15, 16 of the Telegraph Act and arrived to a conclusion that as the appropriate Government, in the present case, it would be the Central Government, has already granted approval for hanging the electric wire for transmission of electricity in different areas of the States, in such circumstance, there is no need for the Power Grid Corporation to give notice, only thereafter they can utilize the land, accordingly the issue raised for prior notice has been rejected, electrification is in national interest will improve the socio-economic structure of the country.

10. It will be relevant to quote paragraph Nos. 16 to 24 of the said judgment, which read as under:-

"16 Sections 68 and 69 of the Electricity Act, 2003 fall in Part VIII with the caption 'WORKS'. These two provisions directly deal with the overhead lines. As per Section 68, an overhead line can be installed or kept installed above ground 'with prior approval of the Appropriate Government'. 'Appropriate Government' is defined under Section 2(5) of the



Electricity Act, 2003 and it is not in dispute that in the instant case, it would be the Central Government as it is the Central Government which is the Appropriate Government in respect of a generating company wholly or partly owned by it and Power Grid is a company which is owned by the Central Government. The argument was that no such prior approval from the Central Government was obtained in terms of the aforesaid provision.

17. We find that this assertion is factually incorrect. The learned Single Judge specifically noted that the Power Grid had obtained prior approval of the Central Government under Section 68(1) of the Electricity Act, 2003. Though, an attempt was made that this finding is incorrect, we do not agree with the said submission of the writ petitioner as the learned ASG pointed out to us the document containing such an approval.

18. Another submission made was that permission of the writ petitioner was not obtained which was needed as per Rule 3 of the Rules, 2006. Rule 3(a) reads as under:

*“3. Licensee to carry out works. - (1) A licensee may -
(a) carry out works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, wherever or whereunder any electric supply-line or works has not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land.”*

19. In the instant case, the aforesaid Rule is not applicable in view of Section 164 of the Electricity Act, 2003, which reads as under:

“164. Exercise of powers of Telegraph Authority in certain cases.-The Appropriate Government may, by order in writing, for the placing of electric lines or electrical



plant for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any, as the Appropriate Government may think fit to impose and to the provisions of the Indian Telegraph Act, 1885 (13 of 1885), any of the powers which the telegraph authority possesses under that Act with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained.”

20. *It is not in dispute that in exercise of powers under the aforesaid provision, the Appropriate Government has conferred the powers of Telegraph Authority vide notification dated December 24, 2003 exercisable under Indian Telegraph Act, 1885 upon the Power Grid. It may also be mentioned that a Central Transmission Utility (CTU) is a deemed licensee under the second proviso to Section 14 of the Electricity Act, 2003. Power Grid is a Central Transmission Utility and is, therefore, a deemed licensee under the Electricity Act, 2003. This coupled with the fact that Power Grid is treated as Authority under the Indian Telegraph Act, 1885, it acquires all such powers which are vested in a Telegraph Authority under the provisions of the Indian Telegraph Act, 1885 including power to eliminate any obstruction in the laying down of power transmission lines. As per the provisions of the Indian Telegraph Act, 1885, unobstructed access to lay down telegraph and/or electricity transmission lines is an imperative in the larger public interest. Electrification of villages all over the country and availability of telegraph lines are the most essential requirements for growth and development of any country,*



economy and the well-being/progress of the citizens. The legislature has not permitted any kind of impediment/obstruction in achieving this objective and through the scheme of the Indian Telegraph Act, 1885 empowering the licensee to lay telegraph lines, applied the same, as it is, for laying down the electricity transmission lines. Powers of the Telegraph Authority conferred by Sections 10, 15 and 16 of the Indian Telegraph Act, 1885, stand vested in and are enjoyed by the Power Grid. These provisions are reproduced below:

“10. Power for telegraph authority to place and maintain telegraph lines and posts.— The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along, or across, and posts in or upon, any immovable property:

Provided that—

(a) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the Central Government, or to be so established or maintained;

(b) the Central Government shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which the telegraph authority places any telegraph line or post; and

(c) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority; and

(d) in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property other than that referred to in clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of



the exercise of those powers.”

xx xx xx

“15. Disputes between telegraph authority and local authority.—(1) If any dispute arises between the telegraph authority and a local authority in consequence of the local authority refusing the permission referred to in section 10, clause (c), or prescribing any condition under section 12, or in consequence of the telegraph authority omitting to comply with a requisition made under section 13, or otherwise in respect of the exercise of the powers conferred by this Act, it shall be determined by such officer as the [Central Government] may appoint either generally or specially in this behalf.

(2) An appeal from the determination of the officer so appointed shall lie to the Central Government, and the order of the Central Government shall be final.”

“16. Exercise of powers conferred by section 10 and disputes as to compensation, in case of property other than that of a local authority.—(1) If the exercise of the powers mentioned in section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.

(2) If, after the making of an order under sub-section (1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code, 1860 (45 of 1860).

(3) If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (d), it



shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

(4) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under sub-section (3), or sub-section (4) shall be final.

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority, from the person who has received the same..."

21. Section 10 of the Indian Telegraph Act, 1885 empowers the Telegraph Authority to place and maintain a telegraph line under, over, along or across and posts in or upon any immovable property. The provision of Section 10(b) of the Indian Telegraph Act, 1885 makes it abundantly clear that while acquiring the power to lay down telegraph lines, the Central Government does not acquire any right other than that of user in the property. Further, Section 10(d) of the Indian Telegraph Act, 1885 obliges the Telegraph Authority to ensure that it causes as little damage as possible and that



the Telegraph Authority shall also be obliged to pay full compensation to all person interested for any damage sustained by them by reason of the exercise of those powers.

22. As Power Grid is given the powers of Telegraph Authority, Rule 3(1) of the Rules, 2006 ceases to apply in the case of Power Grid by virtue of execution clause contained in sub-rule (4) of Rule 3 which reads as under:

“3(4). Nothing contained in this rule shall effect the powers conferred upon any licensee under Section 164 of the Act.”

23. We, thus, have no hesitation in rejecting the argument of the writ petitioner that the impugned action of the Power Grid was contrary to the provisions of the Electricity Act, 2003.

24. We also do not find that the action of the Power Grid, in the given Circumstances, by not shifting the transmission lines were arbitrary. From the facts noted above, it becomes apparent that not only it was unfeasible to change the alignment as almost entire work had already been completed by the time the writ petitioner started protesting against this move, even otherwise, the Power Grid has given sufficient explanation to point out that all relevant factors/ aspects were kept in mind while laying down the impugned transmission lines. Such transmission lines had to be in straight line to the extent possible for eliminating loss of transmission. It is also explained that electricity transmission is usually laid or crossed over agricultural land where minimum extent of land gets utilised for erecting towers and where agricultural activities are not prejudiced/obstructed in any manner. The purpose is to avoid buildings, religious places, ponds etc. while laying down these transmission lines. It is only when it becomes inevitable that towers are placed on the private lines to the minimum and least extent possible. That is what was tried to achieve in the instant case. Another



important factor, which needs repetition at this stage is that no blasting is permissible within 300 mts. from the 400KV line (already existing) or the tower structure. Mining of limestone can be taken up by adopting the methods other than use of explosive/blasting – without damage to the tower foundation/tower structure or the line, which can be accomplished by using jack hammer/pneumatic hammer with compressor so as to avoid any damage to the line or tower. This aspect has also been taken note of by the learned Single Judge of the High Court in the judgment dated March 11, 2008. The Division Bench did not differ with any of these findings.”

11. As the present case is completely covered by the aforesaid decision, here also the Power Grid Corporation was contemplating to put electric pole over the land of the petitioner and even if they have not give prior notice to the petitioner, the action of the Corporation cannot be said to be wrong.

12. Accordingly, this writ application is dismissed. However, the petitioner, if so advised, may approach to the competent authority for compensation of amount as provided under the Telegraph Act.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	20.07.2017
Transmission Date	N/A.

