

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: March 30th, 2017

1. C.W.P.No.10449 of 2016

Madan Lal

...Petitioner

Versus

State of Punjab & others

...Respondents

2. C.W.P.No.15882 of 2016

Harmesh Kumar

...Petitioner

Versus

State of Punjab & others

...Respondents

3. C.W.P.No.7632 of 2016

Ranjit Singh

...Petitioner

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.S.C.Nagpal, Advocate,
for the petitioner (in CWP No.10449 of 2016)

Mr.RVS Chugh, Advocate,
for the petitioners (in CWP Nos.7632 & 15882 of 2016).

Mr.Yatinder Sharma, Addl.A.G.Punjab,
for the State.

Ms.Rameet Bakshi, Advocate,
for respondent No.5 (in CWP No.7632 of 2016) &
for respondent No.8 (in CWP No.10449 of 2016).

Mr.Vishal Chaudhary, Advocate,
for respondent Nos.2 to 4 (in CWP No.7632 of 2016).

AMIT RAWAL, J.

By this order, I intend to dispose of three Civil Writ Petitions

bearing No.10449, 15882 and 7632 of 2016 as the common questions of law and fact are involved in these cases.

The common grievance of the petitioners in all the petitions is to the Notification dated 30.5.2014 (Annexure P-1) issued by respondent No.2-Punjab State Power Corporation Limited (for short “PSPCL”), vide which it has proposed to undertake the scheme/transmission works at Route Plan of 66 KV SC electric line from 66 KV Sub Station, Chabbewal to 66 KV Sub Station, Sadhu Ashram with a further prayer to issue a writ of mandamus directing the respondent-authorities to re-publish the notification for undertaking the scheme/transmission works in a fair and transparent manner and in accordance with the mandatory terms and conditions.

Mr.S.C.Nagpal, learned counsel for the petitioner in CWP No.10499 of 2016 and Mr.RVS Chugh, learned counsel representing the petitioners in CWP Nos.7632 and 15882 of 2016 submit that the petitioners are exclusive owners in possession of the land. The aforementioned notification has not been issued in accordance with law, in essence as per Section 68 of the Electricity Act, 2003 (for short “2003 Act”) and Rule 3 of the Works of Licensees Rules, 2006 (for brevity “2006 Rules”). For laying down an overhead line, the licensee is required to obtain prior approval of the appropriate Government in accordance with the provisions of sub-section (2) of Section 68. In relation to an electric line, which has a nominal voltage not exceeding 11 kilovolts, the provisions of sub-section (1) shall not apply, whereas the scheme is for 66 KV and, therefore, the prior consent was required.

The petitioners have also referred to the provisions of Rule 3 of 2006 Rules to contend that a licensee may 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, in essence the licence of the authority has to be taken, much less consent. For the sake of brevity, the provisions of Section 68 of 2003 Act and Rule 3 of 2006 Rules read thus:-

“Section 68

“68. Overhead lines.- (1) An overhead line shall, with prior approval of the Appropriate Government, be installed or kept installed above ground in accordance with the provisions of sub-section (2).

(2) The provisions contained in sub-section (1) shall not apply--

(a) in relation to an electric line which has a nominal voltage not exceeding 11 kilovolts and is used or intended to be used for supplying to a single consumer;

(b) in relation to so much of an electric line as is or will be within premises in the occupation or control of the person responsible for its installation; or

(c) in such other cases, as may be prescribed.

(3) The Appropriate Government shall, while granting approval under sub-section (1), impose such conditions (including conditions as to the ownership and operation of the line) as appear to it to be necessary.

(4) The Appropriate Government may vary or revoke the approval at any time after the end of such period as may be stipulated in the approval granted by it.

(5) Where any tree standing or lying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead line subsequent to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of electricity or the accessibility of any works, an Executive Magistrate or

authority specified by the Appropriate Government may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he or it thinks fit.

(6) When disposing of an application under sub-section (5), an Executive Magistrate or authority specified under that sub-section shall, in the case of any tree in existence before the placing of the overhead line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.”

Rule 3

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;

(b) fix any support of overhead line or any stay or strut required for the purpose of securing in position any support of an overhead line on any building or land or having been so fixed, may alter such support: Provided that in case where the owner or occupier of the building or land raises objections in respect of works to be carried out under this rule, the licensee shall obtain permission in writing from the District Magistrate or the Commissioner of Police or any other officer authorised by the State Government in this behalf, for carrying out the works:

Provided further that if at any time, the owner or occupier of any building or land on which any works have been carried out or any support of an overhead line, stay or strut has been fixed shows sufficient cause, the District Magistrate or the Commissioner of Police, or the officer authorised may by order in writing direct

for any such works, support, stay or strut to be removed or altered.

(2) When making an order under sub-rule (1), the District Magistrate or the Commissioner of Police or the officer so authorised, as the case may be, shall fix, after considering the representations of the concerned persons, if any, the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.

(3) Every order made by a District Magistrate or a Commissioner of Police or an authorised officer under sub-rule (1) shall be subject to revision by the Appropriate Commission.

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

They have further submitted that the notification is conspicuously wanting in respect of description of khasra numbers of the land from which the respondents proposed to install transmission works. Even if it has been published in the Newspaper, the petitioners would not have understood its import in correct perspective. In view of the lacking materials, the petitioners would not have foreseen as to whether the laying down of the line by erecting the tower would be going through their land or not. The authorities cannot be callous in their approach, thus, the notification lacks the application of mind, much less transparency.

They have also drawn the attention of this Court to the site plan to show that the line of scheme is not in continuity. Respondent Nos.1 to 4 want to install the tower at mark A to B and then C to D as per red in line. The line of tower from Mark A to E then D as per blue line can also be proposed, which will be rather more convenient and economical to the respondents. The electric lines are being laid as per whims and fancies of the officials. Such an act of the authorities smacks of malafide, biasness,

much less totally fallacious exercise in not inviting of the objections in the absence of the description of the land, much less any site plan attached with the notification.

Per contra, Mr.Vishal Chaudhary, learned counsel representing the PSPCL has submitted that the notification envisages inviting of the objections. The land in question is agricultural in nature and is not the one which has been inhabited. The petitioners have failed to file any objections as the notification contained a notice to all the public inviting the objections. Copy of the gazette notification dated 8.8.2014 has been annexed with the written statement as Annexure R-1.

He further submitted that the proposed route from point A to E and then D as suggested by the petitioners has no bearing with respect to the instant writ petitions, whereas the route/site plan Annexure R-2 makes it clear that the land of petitioner Madan Lal is at least 4-5 kms.away from the proposed suggested route. Prior to the laying down of the aforementioned scheme, a survey was conducted on the land in question, which takes into consideration the existence of the trees and other crops standing on the land. The provisions of Sections 12 and 13 of the repealed Electricity Act have no applicability in the facts of the present case, whereas Section 185 of 2003 Act provides that until the rules are made under Section 67(2) of the Act, the provisions of Sections 12 to 18 of the Indian Electricity Act shall have effect. However, in the instant case, rules have been framed by the Government of Punjab and the said rules are called Punjab Works of Licensee Rules, 2008 notified on 31.12.2008 and published on 16.1.2009.

He has further submitted that the apprehension of the petitioners is nothing but a figment of imagination. Notification is fair and

transparent, wherein adequate mechanism was in place for members of the general public. No objections have been given. Even the doctrine of legitimate expectation is not applicable. No such representation was made by the electricity department and, therefore, the doctrine of legitimate expectation would not apply. He has also referred the provisions of the Indian Telegraph Act, 1885 and, thus, urges this Court for dismissal of the writ petitions.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and substance in the submissions of the learned counsel for the petitioners, for, the notification giving different route plans, including the one involved in the present case, does not satisfy the description of any of the property. For the sake of brevity, relevant portion is reproduced herein below:-

“ Notification
Dated 30 May, 2014
No.:16/T.S.N.-207/Vol.III-It is hereby notified that Punjab State Power Corporation Limited (here-in-after called the PSPCL) proposes to undertake the following schemes/transmission works necessary for the dispersal/distribution of power for the improvement of the transmission and distribution system of the Punjab State Power Corporation Limited:
66 KV TRANSMISSION WORKS FOR THE YEAR 2014-15

Sr.No.	Name of work	Scope of work Approx. Length of Line in Kms.	Size of conductor/ cable size	Approx. cost (Rs. In Lacs)
1	Route Plan of 66 KV LILO line of existing Patiala-Passiana line at Rail Majra (DC on DC)	0.173 KM	0.2 Sq.Inch	605
xx	xxxx	xxxx	xxxx	Xxx

<i>Sr.No.</i>	<i>Name of work</i>	<i>Scope of work Approx. Length of Line in Kms.</i>	<i>Size of conductor/ cable size</i>	<i>Approx. cost (Rs. In Lacs)</i>
16	Route Plan of 66 KV SC on DC line from 66 KV S/S Chabbewal to 66 KV S/S Sadhu Ashram	9.887 KM.	0.2 Sq.Inch	200.21

Even notification (Annexure R-1) dated 8.8.2014 annexed with the written statement is bereft of provisions of law. The same is also identical to Annexure P-1. In my view, this notification would not enable any of the person effected to construe that it pertained to even their area. Even for going from one village to another, there can be routes for the same. Until and unless the khasra numbers are not identified, the effected persons would be prevented from raising the objections. They can always suggest a plan for re-routing it. Apparently, the site plan attached with the writ petition shows that the route plan is in zigzag manner. It could have been straight line, but in the centre of the straight line route, there is a tower of Idea Cellular Service.

I need not delve any further on the issue whether there has been compliance of the provisions of Section 68 of 2003 Act and Rule 3 of 2006 Rules or not. Since the capacity of the line is more than 11 KV, i.e., 66 KV, the approval of the Government is conspicuously wanting. Written statement is also silent about the same, but the purpose of the electricity board is to provide succour to the consumers, but not in the manner and mode as indicated above. Nothing prevented the Electricity Board to show the khasra numbers of the property to enable the effected persons to file the objections and then actually implement the scheme in its letter and spirit.

In CWP No.15882 of 2016, the tower line is going through the house of the petitioner situated in Green City, which is a PUDA approved

Society. In my view, even copy of the survey report, alleged to have been conducted, has not seen the light of the day. Even this Court has been prevented from survey report. If the khasra numbers of the property have been brought to the notice of the effected persons, they would have been able to raise the objection, if any.

In my view, the notification does not stand on the test of reasonability. It is a clear cut case of violation, which falls within the judicial review. Resultantly, the impugned notification is set-aside with a direction to the respondents to cause the notification in accordance with the provisions of the aforementioned Act and also to take the prior approval of the Government.

Writ petitions stand allowed in the aforementioned terms.

March 30th, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No