

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
21.08.2018	17.09.2018

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CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.(MD) No.15040 of 2018

and

W.M.P.(MD) Nos.13591, 13592 & 15621 of 2018

- 1.K.S.Natarajan
- 2.Periyasamy
- 3.K.Mani
- 4.K.Krishnamoorthy
- 5.Saminathan
- 6.Ramasamy

... Petitioners

vs.

1. The Government of India,
rep.by its Secretary,
Central Electricity Authority,
Ministry of Power,
Power System Planning &
Project Appraisal-II Division,
Sewa Bhawan, R.K.Puram,
New Delhi-110 066
2. The District Collector,
Office of the District Collector,
Karur District, Karur.
3. The Revenue Divisional Officer,
Karur, Karur District.
4. The Power Grid Corporation of India Ltd.,
Rep.by its Chief Manager,
Coimbatore-Trichy Main Road,
K.Paramathy & (Post),
Karur District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for the records pertaining to the impugned order in Na.Ka.No.H3/168/2018, dated 22.05.2018, on the file of the respondent no.2 and quash the same as illegal and consequently



forbear the 4th respondent from taking steps to erect the High Tension Tower & Lines over the petitioners lands in S.F.Nos.1021/2B, 965/2, 814, 1040/2 & 1034/1 of Thennilai East Village and S.F.Nos.718/1 of Munnur Village, Aravakurichi Taluk, Karur District, without acquiring the "Right of Way" of the petitioner's right under Article : 300A of the Constitution of India and also consequently, direct the respondents to strictly comply the procedure established under Section 68(1) of the Indian Electricity Act, 2003 and the Works of Licensees Rules, 2006, within a stipulated time by this Court.

For Petitioners : Mr.T.Lajapathi Roy

For Respondents : Mr.I.Irulappan for R1

Mr.C.M.Mari Chelliah Prabhu

Additional Government Pleader for R2 & R3

Mr.V.Kalyanaraman

for M/s.Aiyar & Dolia for R4

O R D E R

The petitioners are the residents of Thennilai East and Munnur Village, Aravakurichi Taluk, Karur District. They are owning agricultural lands in various survey numbers in the said Village, as indicated in the affidavit filed in support of the writ petition. According to the petitioners, in January, 2018, on behalf of the fourth respondent - Power Grid Corporation, certain arrangements were made for the implementation of Power Transmission Project i.e. Pugalur HVDC Station to Thiruvallam 400 KV Quad D/C Line, through the agricultural lands situated in and around the petitioners' Village and to draw high tension electric wires across the petitioners' agricultural lands.

2. The grievance of the petitioners is that once the High Tension Towers are erected, the entire agricultural lands would be affected from its agricultural activities and would also lose its market value substantially. According to the petitioners, their families are completely depending upon the agricultural income derived from the lands and such erection of High Tension Towers over their agricultural lands by the fourth respondent would be in negation of their constitutional right to property.

3. Once the High Tension Towers is erected, the Authority would impose stringent conditions by restricting agricultural activities, construction, water wells, beneath the High Tension Towers / Tower Lines. Such conditions would curtail the petitioners' enjoyment of the agricultural lands peacefully.

4. In order to carry out erection of High Tension Towers, the officials of the fourth respondent - Power Grid Corporation entered into the petitioners' lands and started measuring the same. On knowing about the intention of the fourth respondent, the



petitioners made a representation to the Authority concerned and in response to the representation, peace committee meetings were conducted by the third respondent, on 20.02.2018, 17.04.2018 and 19.05.2018, in which the Farmers Association had participated. According to the petitioners, the peace committee meetings were conducted only in terms of the Criminal Procedure Code.

5. While matter stood thus, on 22.05.2018, the second respondent passed an order, under the provisions of the Indian Telegraph Act, 1885 (hereinafter, referred to as "the Act"), granting permission to the fourth respondent - Power Grid Corporation to enter into the petitioners' lands. The said order is being challenged in this writ petition.

6. According to the learned counsel appearing for the petitioners, the petitioners would be satisfied, if the matter is remitted back to the second respondent for fresh consideration, for the reason that the second respondent has not passed a speaking order and he has been merely guided by the decision taken in the peace committee meeting, which cannot be treated as a decision at all.

7. The learned counsel appearing for the petitioners would submit that no doubt, the Authority has power under the Act to seek permission from the District Collector / District Magistrate, but such a power cannot be unilaterally exercised, without considering the legitimate objections of the farmers, whose lands were proposed to be used for erection of High Tension Towers and in support of his contention, the learned counsel for the petitioners would draw the attention of this Court to Section 17 of the Act, which reads as follows:

"17. Removal or alteration of telegraph line or post, on property other than that of a local authority. - (1) When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property, not being property vested in or under the control or management of a local authority, an any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher or lower level or altered in form, he may require the telegraph authority to remove or alter the line of post accordingly.

Provided that, if compensation has been paid under section 10, clause (d), he shall, when making the requisition, tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid



as compensation, whichever may be the smaller sum.

(2) If the telegraph authority omits to comply with the requisition, the person making it may apply to the District Magistrate within whose jurisdiction the property is situate to order the removal or alteration.

(3) A District Magistrate receiving an application under sub-section (2) may, in his discretion, reject the same or make an order, absolutely or subject to conditions, for the removal of the telegraph line or post to any other part of the property or to a higher or lower level or for the alteration of its form; and the order so made shall be final."

8. According to the learned counsel appearing for the petitioners, it is plausible that the Authority can remove or alter the telegraph line on the basis of appreciation of the facts / issues, which fall for consideration before it. But, unfortunately, according to the learned counsel for the petitioners, such a power, vested with the Authority under the provisions of the Act, has not been exercised properly, but the Authority has been merely guided by the outcome of the peace committee meeting conducted by the third respondent, who is not the constituted Authority under the Act. Therefore, the learned counsel for the petitioners would confine his arguments for the present to the effect that the matter may be remitted to the second respondent to consider the objections of the petitioners afresh and pass appropriate orders on merits and in accordance with law, after taking note of the petitioners' objections.

9. Upon notice, Mr.I.Irulappan, learned counsel entered appearance for the first respondent, Mr.C.M.Mari Chelliah Prabhu, learned Additional Government Pleader, entered appearance for the respondents 2 and 3 and Mr.V.Kalyanaraman, learned counsel entered appearance for the fourth respondent.

10. The learned counsel appearing for the fourth respondent strongly objected to the relief being granted to the petitioners in the writ petition, since the Project is envisaged in larger public interest and it cannot be stalled indefinitely at the instance of few farmers. According to the learned counsel for the fourth respondent, power has been delegated to the Power Grid Corporation under Section 164 of the Electricity Act, 2003 and vesting of such power, the fourth respondent - Power Grid Corporation has invoked the power under the Indian Telegraph Act, 1885, in which case, no prior consent is required from the land owners. Further, in view of invocation of emergency provisions under the Act, the provisions of the Works of Licensees Rules, 2006 cannot also made applicable to the present case. The sum and substance of the resistance put up by the fourth respondent, as found in Paragraph No.18 of the counter affidavit, is extracted hereunder:



"18. I submit that, as per Sec.164 of 'The Electricity Act 2003' the Appropriate Government may be order in writing for the placing of electric lines or electrical plant for the transmission of electricity confer upon the 'Licensee' any of the powers which the Telegraph Authority possesses under the Indian Telegraph Act 1885. The Government of India in exercise of powers conferred under Sect. 164 of 'The Electricity Act 2003' had passed an Order dated 24.12.2003, vide Gazette of India No.1148 authorizing this Respondent to exercise all powers vested in the Telegraph Authority under part III of the Indian Telegraph Act, 1885, in respect of Electrical Lines and Electrical plants established or maintained, or to be so established or maintained for Transmission of Electricity or for the purpose of Telephonic or Telegraphic communication, necessary for the proper co-ordination of the works. Since, POWERGRID is conferred with the powers of Telegraph Authority, Rule 3(1) the Works of Licensees Rules, 2006 ceases to apply by virtue of execution clause contained in sub (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."

Therefore, the learned counsel would submit that since the project being a public project, sooner it is executed is better for the public at large.

11. The learned counsel appearing for the fourth respondent would also rely on the decision of the Honourable Division Bench of this Court in **Sri Vignesh Yarns Pvt. Ltd. v. S.Subramaniam**, reported in (2013) 1 MLJ 56, wherein it is held that the power of District Collector under Section 16 or Section 17 of the Act was more in the nature of executing the decision taken under Section 10 of the Act or under Section 67 or Section 68 of the Electricity Act, 2003. The learned counsel would draw the attention of this Court to Paragraph No.19 of the said decision, wherein certain observations have been made. Paragraph No.19 is reproduced hereunder:

"19. As we have observed earlier, as per the scheme of the Act, the District Collector was not empowered either under Section 16 or Section 17 of the Indian Telegraph Act to decide upon the route and his power was more in the nature of execution of a decision taken under Section 10 of the Act or under Section 67 or 68 of the Electricity Act, 2003. Therefore, when the experts namely the officials of the Board took a definite



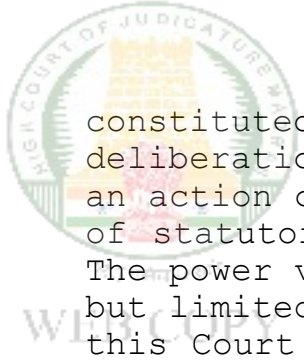
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stand that the original route which was proposed was technically more feasible and it would be in the interest of the public, since the route was along the existing Panchayat road, we find there is absolutely no justification for the Collector to pass an order on 18.7.2011 to change the route which was not found to be technically feasible by the experts. Further, the entire work has been completed except for nine towers and at that stage it would be improper for the District Collector to alter the route, and adopt an alternate route which was found not technically feasible. It is stated that the expenses incurred so far is about Rs.150 crores for erecting lines, apart from Rs.3,000 crores which was spent for construction of the new Thermal Power Plant at Mettur and the power which has to be evacuate through its supply line is to provide uninterrupted power supply to both agriculture and industrial development. Therefore, by virtue of the delay, the power line could not be erected on time though the Power Plant was ready to generate about 600 MW power by the end of March, 2012.

12. On the same line, the learned counsel for the fourth respondent would also rely on the another decision rendered by the Honourable Division Bench of this Court in W.A.No.464 of 2008, dated 10.04.2008. Therefore, he would submit that the District Collector / District Magistrate has no power to change the alignment of transmission line, as the power is very limited in the nature of executing the decision. According to the learned counsel, even other wise, the writ petition is devoid of merits and substance and liable to be dismissed.

13. The learned Additional Government Pleader appearing for the respondents 2 and 3 made submissions and filed a detailed counter affidavit supporting the case of the fourth respondent.

14. Although various grounds have been raised assailing the order of the second respondent, dated 22.05.2018, however, during the course of argument, the learned counsel appearing for the petitioner restricted his prayer only to the point that the second respondent, while disposing of the petitioners' objections under the provisions of the Act, has passed a non-speaking order and not considered the objections on its merits. There is considerable force in the submissions made on behalf of the petitioners, since as could be seen from the impugned order, the second respondent has been merely guided by the deliberation, which took place in the peace committee meeting, which was held before the third respondent, <https://hcservices.ecourts.gov.in/hcservices/> Authority constituted under the Act or under the Electricity Act, 2003. When such being the case, this Court is unable to appreciate as to how the second respondent, who is the

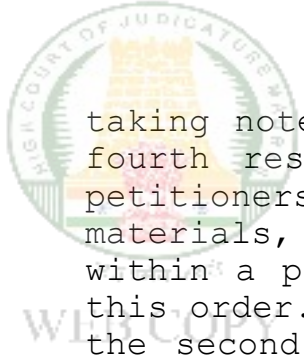


constituted Authority under the Act, can wholly depend on such deliberation, which took place in the peace committee meeting. Such an action on the part of the second respondent amounts to abdication of statutory responsibility, which is vested on him under the Act. The power vested on the second respondent under the Act is not wide, but limited in its scope as held by the Honourable Division Bench of this Court in the above cited decision. Nevertheless, it cannot be gainsaid that the power can be exercised mechanically, without any application of mind. In the teeth of Section 17 of the Act, it is always open to the constituted Authority to take a decision on the merits of the objections of the land owners. This is more so, no consent is required from the land owners, when the power is exercised under the provisions of the Act.

15. Needless to mention that any statute, which provides for the action being taken against the citizens of this country is to be taken only by following the principles of natural justice to say the least. Even in the absence of any particular provision, the fundamental principles of natural justice are to be read in every statutory scheme. Otherwise, any consideration by the official concerned and the grievance of the citizens would render the decision making process meaningless and nugatory. What is to be expected from the second respondent is to consider the objections raised by the petitioners independently, without being guided by the deliberation, which took place outside the realm of consideration. That would alone be in fulfilment of the statutory responsibility cast on the Authority concerned. This is become more imperative, when the land owners are being deprived of the full land value and would suffer curtailment of rights in substantial measure while dealing with their own lands, once erection of high voltage transmission wires takes place. In such view of the matter, the least that could be done in the matter by the second respondent is to give an opportunity of personal hearing to the petitioners before passing any orders. In this case, the second respondent appears to have not considered the objections of the petitioners in all earnestness, however, chosen to dispose of the objections with little application of mind.

16. For the above said reasons, this Court is of the considered view that as contended by the learned counsel for the petitioners, the matter is to be remitted back to the second respondent for fresh consideration and to pass appropriate orders, after evaluating the objections of the farmers and the views of the fourth respondent - Power Grid Corporation in order to uphold the larger public interest.

17. In the above circumstances, the writ petition is allowed and the impugned order in Na.Ka.No.H3/168/2018, dated 22.05.2018, passed by the second respondent, is quashed only to the limited extent as indicated above. The matter is remitted back to the second respondent for fresh consideration. The second respondent is directed to pass orders on merits and in accordance with law, after



taking note of the objections of the farmers and the views of the fourth respondent - Power Grid Corporation. It is open to the petitioners to submit a comprehensive objection with all supportive materials, if they are so advised, before the second respondent, within a period of one week from the date of receipt of a copy of this order. If any such objection and materials are made available, the second respondent shall consider the same and pass a speaking order, within a period of two months, thereafter. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-IV)

To:

1. The Secretary,
Central Electricity Authority,
Ministry of Power,
Power System Planning &
Project Appraisal-II Division,
Sewa Bhawan, R.K.Puram,
New Delhi-110 066.
2. The District Collector,
Office of the District Collector,
Karur District, Karur.
3. The Revenue Divisional Officer,
Karur, Karur District.

+ 1 CC TO Mr.T.LAJAPATHI ROY, ADVOCATE IN SR No. 84656
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 84748

KRK
TE/RP/SAR-4 : 09/10/2018 : 8P/6C

ORDER IN
W.P.(MD) No.15040 of 2018 and
W.M.P.(MD) Nos.13591, 13592 & 15621 of
2018
17.09.2018