

In the High Court of Judicature at Hyderabad
for the State of Telangana and the State of Andhra Pradesh

Writ Petition No. 508 of 2018

Between:

Sri Gude Narasimha Rao & others

... Petitioners

and

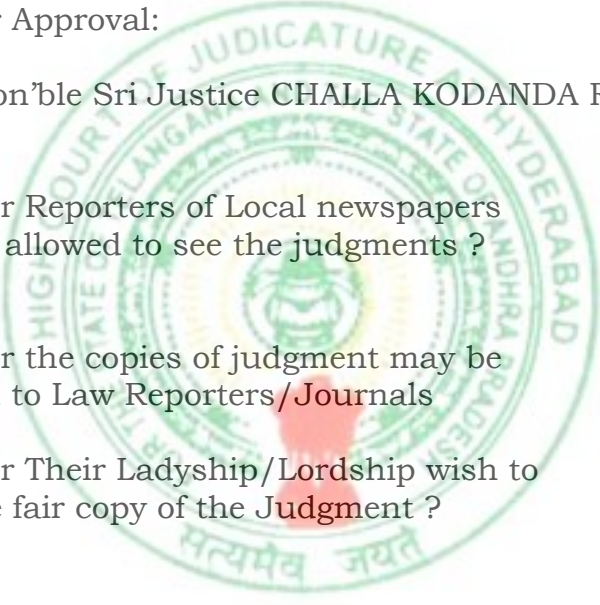
Union of India,
Ministry of Petroleum & Natural Gas
Rep. by its Secretary, New Delhi & others.

...Respondents

Date of Judgment Pronounced: 20-03-2018

Submitted for Approval:

Hon'ble Sri Justice CHALLA KODANDA RAM

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1. Whether Reporters of Local newspapers may be allowed to see the judgments ? Yes/No
 2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
 3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment ? Yes/No

(CHALLA KODANDA RAM)

* The Hon'ble Sri Justice CHALLA KODANDA RAM

+ Writ Petition No.508 of 2018

% Dated 20.03.2018

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Union of India,
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...Respondents

! Counsel for the petitioners: Sri G.V.R. Choudary

^ Counsel for Respondents 1 to 4 : Sri K. Lakshman
Asst. Solicitor General

Counsel for Respondent No.5 : GP for Energy

<GIST:

>HEAD NOTE:

? Cases cited:

- 1) (2011) 10 SCC 203
- 2) (2016) 9 SCC 791
- 3) 1991 Supp. (2) SCC 592

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 508 OF 2018

ORDER :

This Writ Petition has been filed to declare the action of Respondents 1 to 5 in appointing the 6th respondent – Sri A. Venkata Rao, Deputy Collector to act as the ‘Competent Authority’, as defined in Section 2(a) of the Petroleum & Minerals Pipelines (Acquisition of Right of User In Land) Act, 1962 (for short, ‘the Act’) in regard to HPCL, Vijayawada- Dharmapuri Pipeline Project being violative of Article 14 of the Constitution of India.

The facts, in brief, are that: the 1st respondent - Union of India in its Ministry of Petroleum and Natural Gas Department, which is responsible for exploration, production, refining, distribution, marketing, export, import and conservation of petroleum, natural gas, petroleum products and liquefied natural gas in India, initiated Vijayawada-Dharmapuri Pipeline Project and accorded sanction to the 4th respondent HPCL to execute the said project work, by notifying certain lands in Chandarlapadu, Nandigama and Kanchikacherla Mandals, Krishna District. Petitioners herein own and possess various extents of lands in Kadavatikollu Village, Chandarlapdu Mandal. The case of the petitioners is that by virtue of G.O.Rt.No. 1907, General Administration (SC-B) Department, dated 29.8.2017 issued by the 2nd respondent State of Andhra Pradesh, the 6th respondent was appointed as the ‘Competent Authority’, under Section 2(a) of the Act, to perform the functions of the ‘Competent Authority’ prescribed under the said Act.

Placing reliance on the letter dated 01.11.2017 addressed by the 6th respondent to the Secretary to CCLA, Government of Andhra Pradesh, requesting to issue a certificate enabling him to draw salary, emoluments and other incidentals, the petitioners contend that the 6th respondent, though a government employee, is being paid by Respondents 3 and 4 Corporation and hence, there is every possibility to presume that he will have bias in favour of the Corporation.

Pursuant to the notice dated 14.12.2017 served on the petitioners herein and other farmers of Kadavatikollu Village, under Rule 3(3) & Section 3 of the Act, by which the 6th respondent intimated them that their lands would be affected due to laying of petroleum pipelines, apprehending that meagre compensation amount would be offered, the petitioners along with others submitted their objections on 02.01.2018, questioning the very appointment of the 6th respondent as the 'Competent Authority' on the ground of bias. The other objection of the petitioners is that if the pipeline is laid underground, as proposed, their lands would be divided into two parts and they would not be fit for cultivation, thereby their livelihood would get affected severely.

According to the petitioners, the 'Competent Authority' is given wide-ranging powers under Section 5 for considering the objections, under Section 6 for making the report to the Central Government and under Section 10 for determining the compensation for damage/loss or injury and to determine the market value. By virtue of these powers, crucial rights of the

persons interested in the land are bound to be affected. Reliance has been placed on the judgments of the Supreme Court in **Trilok Sudhirbhai Pandya v. Union of India**¹ and **Laljibhai Kadvabhai Savaliya v. State of Gujarat**² to support their case that a person appointed as the 'Competent Authority' could be a person other than a public servant and that he should be a person who is holding or has held a rank not below that of a Subordinate Judge or is a trained legal mind.

Apprehending that the 6th respondent competent authority may not be able to act fairly and unbiased, the petitioners have approached this Court.

Entertaining the Writ Petition, on 18.01.2018, this Court granted interim stay of all further proceedings being conducted by the 6th respondent as the competent authority, for a period of three weeks.

A counter-affidavit sworn to by Sri R. Ramesh, General Manager, Pipeline Projects of Hindustan Petroleum Corporation Limited has been filed on behalf of Respondent 2 to 4. It is stated, at the outset, that the Writ Petition is not maintainable, as it is filed on mere assumptions and presumptions. Nowhere in the Writ Petition, it has been stated the instances where the 6th respondent acted with bias. It has been further stated that the contentions raised by the petitioners based on the judgment in **Laljibhai Kadvabhai Savaliya v. State of Gujarat** are no more *res integra* in view of the judgment of the Hon'ble Supreme Court in

¹ (2011) 10 SCC 203

² (2016) 9 SCC 791

Hindustan Petroleum Corporation Limited v. Yashwant Gajanan Joshi³. It has also been stated that the Central Government under Section 2(2) of the Act, authorized Sri A. Venkata Rao, Deputy Collector, the 6th respondent herein, as the competent authority, who has to discharge the functions as per the provisions of the Act. Before passing award, inviting objections, hearing and deciding on the objections, the petitioners have resorted to file the writ prematurely. It is further submitted that the Corporation is not acquiring the lands of the petitioners. The Act specifically speaks with regard to right of use in land. If there are any damages for the crop, the competent authority would estimate the same and pay the compensation. The lands of the petitioners would not be acquired permanently. As per the provisions of the 1962 Act, the Corporation would start the process of 'Right of Use' only after due process of issuing the notification and hearing the objections. After laying the pipeline, the land would be handed over to the farmers and the ownership of the land lies with the original farmer only. It is further submitted that laying of pipeline is of national importance and the Union of India felt it necessary, in the public interest, to transport petroleum products from Vijayawada to Dharmapuri. It is submitted that by virtue of the interim order passed in this Writ Petition, the 6th respondent is unable to discharge his official functions as 'Competent Authority' which is jeopardizing the national interest. The cost of the project runs into crores of rupees and the public money is involved in this project, he adds.

³ 1991 Supp. (2) SCC 592

An additional counter-affidavit dated 13.02.2018 has been filed on behalf of Respondents 2 to 4 setting out the experience of the 6th respondent to perform the functions as a 'Competent Authority'. It has been stated that the 6th respondent joined in the Revenue Department in 1996 as the Deputy Tahsildar and worked in various places in the erstwhile Andhra Pradesh. He also worked in Quli Qutubshah Urban Development Authority, on deputation, for around five years in Land Acquisition Department. Thereafter, he was promoted as the Tahsildar in 2004 and, on deputation, he worked as an Administrative Officer in Rural Development Department. In 2013, the 6th respondent was further promoted as the Deputy Collector and worked as the Special Deputy Collector, Land Acquisition, HNSS-Unit-III at Kurnool. He also worked as the Chief Administrative Officer, National Health Mission and thereafter, worked as the Competent Authority in Machilipatnam Urban Development Authority Land Pooling. It is further stated that considering the above experience, the State Government has appointed the 6th respondent as the 'Competent Authority'. It is also stated that the above working experience of the 6th respondent shows that he has legal knowledge in revenue matters.

Respondents 2 to 4 have also filed yet another additional affidavit dated 03.03.2018, stating that the 6th respondent passed LLB in 1993 and LLM in 1997, apart from revenue tests, criminal judicial tests, survey and land records etc., and thereby, denying the contention of the petitioners that the 6th respondent is not a legal expertise to hold the post as a 'Competent Authority'.

Learned counsel for the petitioners submits that:

- 1) The fact that the 6th respondent competent authority had addressed the letter dated 01.11.2017 to the Secretary to CCLA, Government of Andhra Pradesh, seeking protection of the salary and emoluments to be paid by the corporation itself is sufficient to create an element of suspicion in the mind of the petitioners that the 6th respondent would act in a biased manner, as he would be receiving monies from the respondent Corporation. He further submits that this issue is squarely covered by the judgment of the Supreme Court in **Trilok Sudhirbhai Pandya's** case (cited1 supra).
- 2) The 6th respondent is incompetent to discharge the functions of a 'Competent Authority', as he is not a judicial officer and legally-competent to discharge the complicated issues of the nature raised in the Writ Petition. In support of this contention, the learned counsel has placed reliance on **Laljibhai Kadvabhai Savaliya's** case (2 supra).
- 3) The alignment of the pipeline that is to be laid is such that the land of the petitioners is divided into two, making it uncultivable and further, on account of the very nature of the restrictions contained in utilisation of the land, on account of laying of pipeline underground, the petitioners would suffer irreparable loss and their earnings would get impaired enormously.

Per contra, learned Senior Counsel appearing on behalf of Respondents 2 to 4 - HPCL, while denying the submissions made

by the learned counsel for the petitioners, would submit that the 6th respondent is a public officer, appointed by the State of Andhra Pradesh, and that he is a highly-qualified and experienced officer to discharge the functions of a 'Competent Authority', hence, his appointment cannot be questioned. He, however, submits that since the emoluments that are payable to the 6th respondent and the terms and conditions of deputation are, in fact, governed and regulated by the Fundamental Rules laid down in Hyderabad Civil Service Rules, which were re-issued *vide* G.O(P).No. 10, dated 22.01.1993, with certain modifications, addressing the letter dated 01.11.2017 by the 6th respondent to the Secretary to CCLA, Government of Andhra Pradesh cannot, in any manner, be presumed or assumed that he would act in a biased manner. By drawing the attention of this Court to the additional affidavits filed on behalf of Respondents 2 to 4, the learned Senior Counsel points out that the 6th respondent, apart from being a post-graduate in law, has rich experience in the matters relating to Revenue Department and particularly, with respect to the land acquisition matters. As a matter of fact, it is only on account of his experience, he was deputed to act as the Competent Authority in the present case. According to the learned Senior Counsel, due to filing of this Writ Petition, the proposed project, which involves not only crores of rupees but also the interests of the public at large, is getting delayed.

Having considered the respective submissions, at the outset, it may be noted that the submissions of the learned counsel for the petitioners are three-fold. As regards the contention of bias and

the competency of the 6th respondent to perform the functions as the 'Competent Authority', the judgment in **Trilok Sudhirbhai Pandya's** case is distinguishable as the same has turned on its own facts. The Supreme Court, taking notice of its earlier judgment rendered by a three-judge Bench in **Yashwant Gajanan Joshi's** case (cited 3 supra), had categorically found that the said judgment is not applicable in the facts of the case before it, for, the acquisition of right of user was in favour of the 4th respondent, which is a private sector company and this private sector company was paying the salary, allowances and all other incidentals of the competent authority. The said judgment had taken note of the fact that the competent authority in **Yashwant Gajanan Joshi's** case was a person in public employment. The ratio of the judgment of the Supreme Court in **Yashwant Gajanan Joshi's** case is directly applicable to the facts on hand, though in the said case, on the facts, the appointment of the individual Mrs. A.R. Gadre was found to be suffering from bias and thus, the said individual's appointment was set aside. However, the law declared therein, in para 14, is to the effect that *"We however wish to make it clear that we do not agree with the general proposition of the High Court that an officer of the Corporation cannot be appointed as a 'competent authority' because he may be biased in favour of the corporation by reason of his employment"*. In paragraphs 12 and 13, the Supreme Court has taken note of the fact that even if the competent authority is an employee of the public-sector Corporation, there would be no bar, and on the other hand, the persons, who had been employed in the Corporation, would be better qualified and

experienced person equipped with proper background to decide the amount of compensation. The Supreme Court has also further observed that *“It would be too broad a proposition to extend the theory of bias to exclude persons only because such person draws the salary from the bodies like public corporation, State Government or Central Government. It would altogether be a different case if it was a case of a private employer and his employee. We cannot equate the case of a person in private employment with that of a person in public employment. The authorities mentioned above and relied upon by Mr. Dholakia are clearly distinguishable.”* In view of the above proposition, there is no justification for this Court to accept the contention of the learned counsel that the 6th respondent competent authority will act in a biased manner.

So far as the second contention of the learned counsel is concerned, in the case on hand, there is no dispute that the 6th respondent is an officer of the State of Andhra Pradesh with vast experience and qualifications, the details of which are set out in the additional affidavit filed on behalf of Respondents 2 to 4. It is not necessary to discuss, in detail, the experience of the 6th respondent as this Court can as well take judicial notice of the factum of the functions of a Tahsildar, who was promoted up to the stage of the Deputy Collector, working in the Revenue Department, day in and day out. In those circumstances, there can be no doubt as to the technical and legal competency of the 6th respondent in determining the compensation for right of user of the property of the petitioners to be affected in laying the pipeline by the 6th respondent.

So far as the adequacy or otherwise of the compensation that may be granted is concerned, it may be noted that in terms of the Right to Fair Compensation, Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the competent authority is a preliminary authority, who has to determine the compensation amount, at the first instance, based on certain parameters and the land owner, if not satisfied with the said compensation, has every right to approach the judicial forum i.e. the District Judge in terms of Section 10(2) of the 2013 Act. It may be noted that under Section 10(2), the District Judge / District Court is required to consider various aspects guided by various judicial precedents enunciated from time to time under the said Act. Even assuming for the sake of argument, in a given case, the competent authority fails to determine, in absolute terms, the compensation, the same can be adjudicated by the judicial forum. Hence, on this ground also, the appointment of the 6th respondent cannot be faulted.

As regards the third contention that on account of laying the pipeline, the petitioners' land is likely to get divided in such a manner that the entire land would become unfit for cultivation, is concerned, at this stage, it can be said that it is only an apprehension and there is no concrete material before this Court. Even if there is a likelihood of part of the land becoming unviable for cultivation, it is always open for the petitioners to urge before the Competent Authority, who is duty-bound to consider all these aspects and fix the compensation and damages suitably.

Keeping in view all these circumstances and also considering the public interest involved in laying the pipe line and there being no merit, this Court does not consider it a fit case to allow the Writ Petition and it is accordingly, dismissed. No costs.

Consequently, the miscellaneous Applications, if any shall stand closed.

CHALLA KODANDA RAM, J

20th March 2018

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