

***THE HONOURABLE SRI JUSTICE P.NAVEEN RAO**

+WRIT PETITION NO.28933 OF 2018

%15.11.2018

Kura Prabhakar, s/o. Mallaiah, Aged about 65 years,
Occu: Agriculture, r/o. H.No.12-1-8, Mohinipura Street,
Siddipet town, Siddipet district.

...Petitioner

Vs.

\$ Executive Engineer, TS TRANSCO Transmission,
Lines Division, Vidyuth Soudha, Hyderabad and
others.

...Respondents

!Counsel for the petitioner(s) : Sri M.Vishnu Vardhan Reddy

Counsel for the Respondent(s) : Sri R.Vinod Reddy, standing
Counsel for Respondents 1&2;
Govt.Pleader for Energy (TG) for
Respondent no.3

<Gist :

>Head Note:

? Cases referred:

(2013) 8 SCC 738

(2017) 5 SCC 143



**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION NO.38933 OF 2018

Between:

Kura Prabhakar, s/o. Mallaiah, Aged about 65 years,
Occu: Agriculture, r/o. H.No.12-1-8, Mohinipura Street,
Siddipet town, Siddipet district.

.....Petitioner

And

Executive Engineer, TS TRANSCO Transmission,
Lines Division, Vidyuth Soudha, Hyderabad and
others.

.....Respondents

JUDGMENT PRONOUNCED ON : 15.11.2018

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers may : YES
be allowed to see the Judgments ? :
2. Whether the copies of judgment may be marked :
to Law Reporters/Journals : YES
3. Whether Their Ladyship/Lordship wish to :
see fair Copy of the Judgment ? :NO

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.28933 OF 2018

ORDER:

Petitioner claims to be the owner and in possession of agricultural land in Sy.No.306 to an extent of Ac.0.08½ guntas, in Sy.No.307 to an extent of Ac.0.10 guntas, and in Sy.No.311 to an extent of Ac.0.23 guntas (total extent of Ac.1.01½ guntas) situated at Irkode village, Siddipet Urban Mandal, Siddipet district. Petitioner claims that he is eking out his livelihood by cultivating the above extent of land. While so, petitioner alleges that Telangana State Transmission Corporation is laying transmission lines passing through his land, adversely affecting his lands. Petitioner alleges that the transmission line was earlier drawn from different extent of land, but the alignment of transmission line is changed affecting the property of petitioner. Petitioner alleges that though he filed objections on 31.07.2018 and 01.08.2018 to both respondents and requested them to show the alignment of transmission line, they refused to show and consider his objection. Alleging inaction on the objection filed, this writ petition is filed.

2. When the matter was taken up for consideration, taking note of the fact that there was change of alignment and earlier alignment was passing through the Government land, this Court by order dated 17.08.2018 granted interim direction as prayed by petitioner and extended from time to time.

3. On 24.09.2018, Court *suo motu* impleaded the Principal Secretary, Panchayat Raj Department as respondent and issued

notice. Pursuant to the notice issued on the Principal Secretary, Panchayat Raj Department, counter-affidavit is filed.

4. Heard learned counsel for petitioner, learned standing counsel for Transmission Corporation and the learned Government Pleader for Panchayat Raj.

5. According to the learned counsel for petitioner, there is no justification to change alignment of transmission line and when plenty of Government land is available, through which transmission lines can be laid, private land cannot be used. He would submit that in the Government land only a small extent is being utilized for construction of 25 number of houses by the Government leaving aside the total extent of land required for construction of 25 number of houses, still huge extent of land is available and the transmission lines can go through the said land.

6. He would further submit that according to Rule 3 of the Works of Licensee Rules, 2006 (for short, 'Rules, 2006'), if objections are raised by the owners of the property and transmission lines passing through their property, unless licensee obtains permission in writing from the District Magistrate, he cannot undertake laying of transmission lines. While so, no such permission was obtained and, therefore, laying of transmission line is *ex facie* illegal.

7. According to respondent-Transmission Corporation, 400 KV transmission line was proposed from Sub-station at Thukurpur to Sub-station at Chandulapur for supplying power to Kaleshwaram Irrigation Project. The total length of the electricity line is 24 KMs

and total number of towers to be erected is 70. The Agency appointed for that purpose conducted detailed survey, submitted its report and said report was approved by the group of engineers of Corporation. Foundation work for 64 towers was completed and 44 towers were erected and stringing of line has been taken up. According to the Transmission Corporation, tower No.8/0 was initially proposed to be erected in the Government land in Sy.No.300 of Irkodu village. However, when TS TRANSCO officials visited the field, they noticed that Panchayat Raj Department was taking up 'two bed room houses' for weaker sections and roof of first floor was already laid and brick work was completed. Having regard to this, the Superintending Engineer along with the technical team visited the site to shift the line, away from 'two bed room houses' construction. However, shifting of line would amount to passing through the State Government Industrial Training Institute and also an arch of a temple. Having regard to these parameters, technical team proposed for shifting of line by relocating tower no.7/1, 8/0, and 9/0 and suggested for erection of new tower bearing no.8/1 to strengthen the line. The Chief Engineer approved the change of alignment. Subsequently, foundation work of tower nos.7/1, 8/0 and 9/0 was completed as farmers, in whose agricultural lands said towers were being erected, have agreed and they received compensation awarded. Along with the counter-affidavit, the sketch of existing original transmission line and after the change of alignment is enclosed.

8. Learned standing counsel would submit that alignment of transmission line is changed for the reasons stated in the counter-

affidavit and it is not *mala fide* exercise nor it was intended to affect the property deliberately and that petitioner would be compensated to the extent of land utilized as per the procedure. He would submit that insofar as laying of transmission lines, erection of towers, the procedure envisaged under the Land Acquisition Act is not applicable and is governed by the Telegraph Act, 1885 and the Electricity Act, 2003. Only to the extent of transmission line, tower affecting the land, compensation would be paid and in the process of erection of tower, if any existing crop or grownup trees are affected, compensation would be paid. He would submit that in view of provisions contained in Electricity Act, 2003; Telegraph Act, 1885; Rule 3(1) of the Rules, 2006, relied upon by the counsel has no application and there is no requirement to obtain prior permission from the District Magistrate even when an objection is filed. In support of his contention, learned standing counsel placed reliance on two decisions of Hon'ble Supreme Court – 1) **Orissa Power Transmission Corporation Limited and others v. Asian School of Business Management Trust and others**¹ and 2) **Power Grid Corporation of India Limited v. Century Textiles and Industries Limited and others**².

9. In the counter-affidavit, deposed by Sri. Vikas Raj, IAS, Principal Secretary, Panchayat Raj Department, he stated that only small extent of land is utilized for construction of 'two bed room houses'. Thus, to the extent submission made by the learned counsel that though larger extent of land is available and only

¹ (2013) 8 SCC 738

² (2017) 5 SCC 143

small extent of land is utilized as answered but the matter cannot rest at that stage.

10. In the counter-affidavit on behalf of Transmission Corporation detailed reasons are assigned for taking a decision to change transmission line from what was originally proposed. They have also enclosed sketch of original line and the change of alignment and Google map describing change of alignment. According to the respondents, original transmission line was directly affecting 'two bed room houses' under construction and substantial progress was made in the construction of those houses. Therefore, the technical team suggested for shifting of tower. At this stage, senior officers and technical team, examined the feasibility of shifting of tower, but having realized that shifting of tower would mean it would pass through the ITI building and temple arch, they have re-drawn the alignment of transmission line and also decided to erect one more tower to adjust length of transmission line on account of re-designing. Thus, it cannot be said that decision is taken deliberately and willfully affecting the property of petitioner in the process and said decision is made in arbitrary exercise of power and authority. The decision was made based on the advice of technical team and engineers, who are the best persons to assess the alignment of transmission lines.

11. Learned counsel for petitioner vehemently contended that as petitioner raised objection on laying of transmission lines, unless the prior permission is obtained from the District Magistrate as required by the proviso appended to Rule 3(1) of the Rules, 2006, transmission lines cannot be laid. However, learned counsel lost

sight of the provision in Sub-rule (4) of Rule 3 of the Rules, 2006. According to this provision, nothing contained in Rule 3 of the Rules, 2006, would affect the powers conferred upon the licensee under Section 164 of the Act, 2003. Section 164 of the Act, 2003 vests power in the licensee as applicable to Telegraph authority. It requires appropriate Government to confer power on the licensee/officer or any other person engaged in the business of supplying electricity to exercise powers for placing electrical lines for the transmission of electricity.

12. The TS TRANSCO is established with avowed objective of laying transmission lines for distribution of electricity. Thus, power is vested in the TS TRANSCO to lay transmission lines. In view of the provision in Section 164 of the Act, 2003, the proviso appended to Rule 3(1) of the Rules 2006 has no application.

13. Even otherwise, as stated in the counter-affidavit on behalf of Transmission Corporation, substantial work was already completed. After the change of alignment, the foundation work of tower nos.7/1, 8/0 and 9/0 was completed and farmers were compensated and only tower no.8/1 is not taken up. At this stage, by accepting the contention of learned counsel for petitioner that for changing of transmission line assuming that erection of transmission line required prior permission from the District Magistrate is mandatory, clock cannot be put back.

14. In **Power Grid Corporation of India Limited** relied by the learned standing counsel, two contentions urged by the learned counsel for petitioner were considered. With reference to the

objection of applying proviso to Rule 3(1) of the Rules 2006, Supreme Court held that in view of the provision in Section 164 of the Act, 2003 and power having been vested in Power Grid Corporation, the Rule has no application. The Court also considered the objection of change of transmission line alignment. Supreme Court having noted that as almost entire work was already completed by the time petitioner started protesting it would not be possible to change alignment.

15. Therefore, I am of considered opinion that the prayer sought by the petitioner that laying of transmission line/tower without taking written permission from the District Magistrate on the objection filed by the petitioner merits no consideration and Writ Petition is liable to be dismissed and is accordingly dismissed. Pending miscellaneous petitions shall stand dismissed.

JUSTICE P.NAVEEN RAO

Date: 15.11.2018
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HON'BLE SRI JUSTICE P.NAVEEN RAO



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