

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**1. Civil Revision No.3444 of 2018
Date of Decision: 29.05.2018**

**M/s Power Grid Corporation of India and Anr.
.....Petitioners
Vs**

**M/s Gujarat Enviro Protection & Infrastructure Haryana
(Pvt.) Ltd. and ors.
.....Respondents**

2. Civil Revision No.3456 of 2018

**M/s Power Grid Corporation of India and Anr.
.....Petitioners
Vs**

**M/s Gujarat Enviro Protection & Infrastructure Haryana
(Pvt.) Ltd. and ors.
.....Respondents**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

**Present:Mr. Akshay Bhan, Sr. Advocate with
Mr. Aman Bansal, Advocate
for the petitioners.**

**Mr. Jai Bhagwan Sharma, Advocate and
Mr. KR. J.P. Bhati, Advocate
for respondent No.1.**

RAJ MOHAN SINGH, J.

**[1]. Vide this common order Civil Revision Nos.3444 and
3456 of 2018 are being decided.**

[2]. The first petition i.e. Civil Revision No.3444 of 2018 has

been filed against the order dated 18.05.2018 passed by the Addl. District Judge, Faridabad vide which *status quo* was granted with regard to installation of electricity lines till the next date of hearing i.e. 18.07.2018. Simultaneously parties were directed to place on record the scientific research and study material in support of their respective claims so that matter can be decided in an appropriate manner.

[3]. The second petition i.e. Civil Revision No.3456 of 2018 has been filed against the order dated 17.04.2018 passed by the Civil Judge (Jr. Divn.) Faridabad whereby the application filed by the petitioner under Order 7 Rule 11 read with Section 151 CPC was dismissed.

[4]. The facts involved in both the petitions are overlapping, therefore, for brevity common facts are being noticed.

[5]. Respondent No.1 filed a suit for permanent injunction and mandatory injunction against the petitioners, Haryana State Pollution Control Board, Municipal Corporation, Faridabad and State of Haryana through Deputy Commissioner, Faridabad on the ground that Supreme Court Monitoring Committee was constituted and the said Committee has given direction to the Chairman of Punjab/Haryana/Himachal Pradesh/Chandigarh vide letter dated 20.09.2005 that treatment sewage disposal facility 'TSDF' in Haryana is being set up near Faridabad. The

preparations are in advance stage of completion. In order to expedite completion of work for making TSDF function operational, directions were issued to the Haryana Government. Plaintiff is an enviro infrastructure company and is working for Haryana State Pollution Control Board (for short 'the HSPCB') for the purposes of managing and disposal of hazardous waste generated by the industries situated in Haryana State. Plaintiff has been authorised by the HSPCB for management, treatment and disposal of hazardous waste generating in Haryana. Plaintiff has been working over the premises in question since the year 2009 as the physical possession was handed over to the plaintiff on 22.06.2006. The HSPCB has instructed all the industries in the State of Haryana to develop a common facility for disposal of their hazardous waste. Municipal Corporation, Faridabad has allotted the land measuring 31 acres at Pali Mohabtabad, Stone Crusher Zone village Pali on leasehold to Haryana Environmental Management Society in the year 2005. The land was identified by the Environmental Department, Government of Haryana in the year 1998 vide Notification dated 27.05.1997.

[6]. Haryana Environmental Management Society entered into agreement dated 30.06.2005 with the plaintiff to build and operate the TSDF (Treatment, Storage, Disposal Facility) for

disposal of hazardous waste generated by its member industries. Plaintiff has asserted that the plaintiff obtained authority to build and operate the TSDF from HSPCB. The hazardous waste received from the industries contains very highly inflammable material. The waste requires treatment in proper and scientific manner in accordance with 'The Hazardous Wastes (Management & Handling) Rules 1989 as amended under Environment (Protection) Act, 1986 of Environment Ministry Govt. of India and Central Pollution Control Board.

[7]. It was further asserted by the plaintiff that defendants No.1 and 2/petitioners have erected high tension transmission wires towers adjacent to the premises of the plaintiff for the purposes of transmission of high tension power transmitting lines having 1,32,000/2,40,000 Volts and for which they are bent upon to install high tension wires over the premises of the plaintiff in an illegal manner. Plaintiff asserted that radiation impact of the above said high tension wires is within the radius of 30 to 50 ft. both vertically and horizontally. During the rainy days, the diameter is enhanced upto to such area as may fatal to human life. The life of the site is stated to be of 30 years. After the landfill is filled upto the ground level, it is further filled upto the height of about 5 meters. After the period of completion of approximately 30 years, when the site will be filled, then there

would be capping of whole landfill premises just to protect the environment and after that the said premises will remain under observation for the next 30 years, to know the chemical reaction, if any. Due to the said scientific reason, high tension wires passing over the premises of the plaintiff will be of great danger to human life and environment as it may cause chemical explosion.

[8]. Along with the suit, an application under Order 39 Rules 1 and 2 CPC was filed for grant of ad interim injunction. One more application under Order 7 Rule 11 CPC was filed for rejection of plaint on the ground of jurisdiction of the civil Court.

[9]. The trial Court vide order dated 19.04.2018 has observed that defendant Nos.1 and 2/petitioners have erected electric poles adjacent to the land and they have right to erect electric poles as per their schedule programme and have power under Indian Telegraph Act as they have obtained NOC from Forest Department as well as Airport Authority. The apprehension of the plaintiff with regard to radiation impact within the radius of 30 to 50 ft., with further possibility of enhancement in rainy season only an anticipation as the project has not yet fully started. The such plea would be decided as per evidence to be led by the parties at appropriate stage. The case was not found fit for issuing any direction qua maintenance of

status quo at the spot as defendants/petitioners are discharging functions of public interest.

[10]. The application under Order 7 Rule 11 CPC was dismissed by the trial Court vide order dated 17.04.2018 as the ground was having mixed questions of law and facts.

[11]. Feeling aggrieved against the order dated 19.04.2018, the plaintiff filed misc. appeal before the lower Appellate Court. The lower Appellate Court passed the order dated 18.05.2018 on finding that the record of the trial Court was not available on that day. Hazardous waste related to chemical of various types is being filled and stored in the premises in question. Thus, till the next date of hearing the parties were directed to observe *status quo* with regard to installation of electric lines over the premises under the possession of the plaintiff. Order of status quo was passed till the next date of hearing i.e. 18.07.2018. Record of the trial Court was ordered to be requisitioned by the date fixed. In the meanwhile, parties were directed to place on record scientific research and study material in support of their respective claims so that matter can be decided in an appropriate manner.

[12]. Learned Senior counsel for the petitioners submitted that jurisdiction of the civil Court is barred under Section 145 of the Electricity Act. No injunction can be granted by the civil

Court against installation of electric poles which are being installed as per policy and programme in public interest having fixed schedule. The order of status quo would result in disaster as it may cause irreparable loss to the project of national importance. The infrastructure which has been created would come to half thereby causing irreparable loss to the petitioners/defendants No.1 and 2. Petitioners have already obtained no objection from Forest Department as well as from Airport Authority. The plaintiff has no *prima facie* case, nor any balance of convenience is in favour of the plaintiff, rather order of status quo would cause irreparable loss to the petitioners and not to the plaintiff as the project started by the plaintiff has not come up upto the plinth level. Petitioners have already erected electric pillars. The overhead lines would be 25.20 meters in height.

[13]. Learned Senior counsel by relying upon **Power Grid Corporation of India vs. Rajbir Singh and others, 2009(5) R.C.R. (Civil) 742, Civil Revision No.1826 of 2014** titled '**Om Parkash vs. Line Incharge, Amit Kumar & Ors.** decided on 11.03.2014 and **RSA No.2344 of 2011** titled '**Khushal Chand vs. Haryana Vidyut Parsaran Nigam Ltd.**', decided on 20.07.2012 contended that in the project of national importance, the Court should be slow in granting any injunction.

[14]. Learned Senior counsel further submitted that in the instant case, the main case has been kept for 18.07.2018 by the Addl. District Judge, Faridabad and in the meanwhile status quo has been granted. The Court should not have interfered in the said issue as jurisdiction of the civil Court is barred under Section 145 of the Electricity Act. Injunction cannot be granted by the Court in respect of any action or to be taken in pursuance of any power conferred by or under the Electricity Act and no interference can be made in the breach of national importance creating infrastructure. Huge infrastructure has been installed in the form of pillars, stretching of wires is to be done as per schedules programme. Over hanging wires would be at the height of 25.20 meters.

[15]. On the other hand, learned counsel for respondent No.1 vehemently argued that as per Supreme Court Monitoring Committee, the proposed action was taken wherein, plaintiff was assigned the task of sub lessee under Haryana Environmental Management Society to whom lease was given by the Municipal Corporation, Faridabad. The plaintiff has already constructed the site. The operation of storing hazardous waste is in the process. 32 acres of land was notified for establishment of TSDF. The operating period of TSDF is 20 years and post closure monitoring of the secured landfill was to be for 30

years as per Central Pollution Control Board guidelines and land would be kept under lease for atleast 50 years for TSDF. There would be capping of whole landfill premises just to protect the environment and after that the said premises will remain under observation for the next 30 years to know the chemical reaction, if any.

[16]. Learned counsel further submitted that the plaintiff/respondent No.1 has also demonstrated that the project is also of national importance and is being monitored by the Supreme Court Monitoring Committee. Therefore, any such act of the petitioners would be dangerous and may play havoc with the project of the plaintiff. Plaintiff is a private limited company and is sub lessee under the Haryana Environmental Management Society, who has been granted lease by the Municipal Corporation, Faridabad. As per handing over of the project assets, the agreement will expire by efflux of time i.e. 10 years or at the end of 20 years or such further period in case the lease deed is further renewed or under earlier termination in accordance with provisions of the contract/agreement. Upon expiry of this agreement, the operator shall handover the vacant and peaceful possession of the project site including the project assets, save and except tangible movable assets, at no cost to Haryana Environmental Management Society in perfect working

condition. After expiry of the agreement, the Haryana Environmental Management Society shall have all the rights to deal with HWM facility. The operator shall continue to have the post-closure obligations as required under law and carry out post closure monitoring obligations in accordance with and for the duration stipulated. The closure reserved fund would be made available to the operator for the purposes as stipulated in relevant clause of the agreement.

[17]. I have considered the submissions made by learned counsel for the parties.

[18]. The photographs which have been placed on record before the Court are suggestive of the fact that the storage of industrial waste is in process and the waste has not come up upto the plinth level. The project is a long term project. At the same time, petitioners' project is also of national importance. The jurisdiction of civil Court would be a debatable issue. At the same time in terms of precedents on record i.e. **Power Grid Corporation of India's** case (supra) interference by the civil Court in the case like the present one was deprecated. Para nos.7 and 8 of the judgment would be of help to this Court in appreciating the controversy. The same is reproduced hereasunder:-

7. *"It is a case where both the courts below have not*

appreciated the fact as to what disaster the orders passed by them was going to cause. The projects of national importance creating infrastructure are not to be interfered with in the manner, it has been done by the courts below. The courts have to be extra cautious in dealing with such cases. As is evident from the material placed on record, the dispute seems to be between respondents No. 1 & 2 and Jaswant Singh, who are neighbours. As per the original route of the transmission line, two towers bearing No. 64/8 and 64/9 were to pass through the land owned by respondent No. 1 and two towers bearing No. 64/6 and 64/7 were to pass through the land owned by Jaswant Singh Lamba. A perusal of the site plan (Annexure P.21) shows that there is no change as far as tower No. 64/9 to be installed in the land of respondent No. 1 is concerned. It is only the location of tower No. 64/8, which has been changed with the change in the route to avoid damage to kinnow orchard in the land of Jaswant Singh Lamba, where the lines have been shifted on one side of the land owned by him. In the objections filed by Jaswant Singh Lamba, the matter was examined by the competent authority and the change in the route was approved. All what was sought to be argued by learned counsel for respondents No. 1 and 2 was that with the change in route, the transmission lines will affect more area in the land owned by him, as compared to the land under original route, has no legs to stand, as there is absolute right with the petitioner to instal tower in exercise of powers under the Electricity Act read with Telegraph Act. Respondents No. 1 and 2 or any other land owner has right to receive compensation on account of user of the land for installation of towers and the transmission lines. The plea that change in route which led to increase in the length of transmission lines and will cost

more to the petitioner is not the domain of respondents No. 1 and 2 to examine or to challenge in the court, as it is the job of the experts who have to consider every aspect of the matter. In the present case, considering the objections raised by Jaswant Singh Lamba and with a view to avoid loss to the kinnow orchards grown by him, route was changed a little bit. No such type of damage has been claimed by respondents No. 1 and 2 in their land.

8. *As far as legal issues are concerned, though the suit was filed not only against the petitioner but also Secretary, Minister of Power, but neither any prior notice under Section 80 CPC was issued nor the prayer for exemption thereof was made in the suit. Not only this, Section 145 of the Electricity Act clearly mandates that no court shall grant any injunction in respect of any action taken or to be taken in pursuance of any power conferred by or under the Electricity Act. In the present case, the petitioner has been declared as a Central Transmission Utility and is carrying on the job of laying transmission lines for NRSSS-V Scheme under the Electricity Act. Accordingly, even in terms of the aforesaid provision, the process of installation of transmission lines could not be stalled. Further, in my opinion, no prejudice as such has been caused to respondents No. 1 and 2 as with the change in location of one of the towers in the land owned by them, the number of towers in their land remains the same. Even if a little bit more line will pass through their land is inconsequential for the reason that they will get compensation therefor. It is only about 200 meters length of line, which has been increased in the land owned by respondents No. 1 and 2.*

[19]. Section 164 of the Electricity Act, 2003 read with Section 10 and 16 of the Indian Telegraph Act, 1885 would show that after obtaining technical approval sanction of the Ministry of Power, Government of India, the appropriate authority can use the land for the purpose of transmission line without acquiring it. However, the persons interested would be entitled to the compensation for the use of their land under the Acts. The plaintiff cannot injunct the defendants to stop commissioning of electric transmission line. The Electricity Department enjoys the same power as were in the Telegraph Act with regard to telegraph line of Government under part III of Indian Telegraph Act, 1885. The Telegraph Authority has power to maintain the telegraph line in or upon any immovable property. Even under the works of licensees under Section 164 of the Act are the exceptions to Rule 3 of the aforesaid Rules.

[20]. At this stage, having given thoughtful consideration, I find that the lower Appellate Court has not applied its judicial mind to the controversy in question as on the date i.e. 18.05.2018, the record was not available before the lower Appellate Court and the Court simply directed the parties to observe status quo till the next date of hearing i.e. 18.07.2018. Any observation on merits at this stage by this Court would prejudice the case of either of the parties in the appeal before

the Addl. District Judge, Faridabad, therefore, I do not wish to comment upon the legality or otherwise of the arguments raised by both the sides at this stage.

[21]. Prima facie, I am of view that the interference by the lower Appellate Court at such a premature stage of the appeal was not warranted. The Court could have waited for upto 18.07.2018 for passing any order in the appeal arising out of Order 39 Rules 1 and 2 CPC. Projects are going on from both the sides. The gravity of damage on both sides can be appreciated only with the material on record and the arguments of the parties on merits before the lower Appellate Court.

[22]. At this stage of the appeal, the grant of status quo in my considered opinion was unwarranted. The lower Appellate Court could have waited for the adjourned date so as to enable both the parties to argue on merits with reference to record which would have received by the lower Appellate Court by the adjourned date.

[23]. In view of facts and circumstances of the case, I deem it appropriate to set aside the interim direction of status quo, however lower Appellate Court would be obligated to consider the issue arising out of application under Order 39 Rules 1 and 2 in appeal in accordance with law without being influenced by any statement of fact recorded hereinabove. It is made clear

that the vacation of status quo may not be construed to be an opinion on merits of the case. The Court may visualize the facts and circumstances of the case with reference to *prima facie* evidence on record and then proceed to pass lawful order on the adjourned date i.e. 18.07.2018.

[24]. So far as application, under Order 7 Rule 11 CPC is concerned, in my considered opinion no such indulgence can be granted at this stage of litigation because the question of jurisdiction is a mixed question of law and facts which depends upon nature of evidence to be produced by the parties.

[25]. In view of above, Civil Revision No.3456 of 2018 is hereby dismissed and Civil Revision No.3444 of 2018 is partially accepted in the manner as narrated above. Let the lower Appellate Court take final call of the issue on the adjourned date and decide the appeal on merits without being influenced by any finding recording hereinabove.

May 29, 2018

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No