



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 20.06.2019

Pronounced on: 26.06.2019

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Coram::

The Honourable Dr. Justice G. Jayachandran

W.P.No.13682 of 2019
& W.M.P.No.13738 of 2019

K. Sivakumar,
S/o. K. Kolandasamy,
No. 74, Nethaji Street,
Velampalayam Pudur, Enchampalli Post,
Modakkurichi Taluk,
Erode District.

... Petitioner

/versus/

1. Southern Regional Power Committee,
Central Electricity Authority,
Cross Road, 29, Race Course Road,
Madhava Nagar, Bengaluru,
Karnataka - 560 009.
2. The Secretary (CEA),
Central Electricity Authority,
Sewabhawan, R.K. Puram, Sector-1,
New Delhi - 110 066.
3. The Chairperson-cum-Managing Director,
Power Grid Corporation of India Limited,
Saudamini, Plot No. 2, Sector 29,
Near IFFCO Chowk,
Gurgaon (Haryana) - 122 001.
4. The General Manager,
Power Grid Corporation of India Limited,
Sangagiri TLC, Bharathi Nagar, Sankari,
Tamil Nadu - 637 301.
5. The Managing Director,
Larsen & Toubro Limited,
Construction Power Transmission and Distribution,
7th floor, D-Wing, TC-3, Tower-B, Mount,
Poonamallee Road, Manapakkam,
Chennai - 600 089.



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6. The District Collector-cum-Executive Magistrate,
Erode District Collectorate,
Erode - 638 011.

7. The Superintendent of Police,
Erode District, Erode - 638 001.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of Certiorari, to call for the entire records with respect of order dated 09.03.2019 made in Na.Ka.No.2473/2018/K4 related to erection of Raigarh-Pugalur part (x) 800 KV HVDC High Tension Tower line to be drawn in Erode District on the file of the 6th respondent herein.

For Petitioner : Mr.S.Lakshmanasamy
Mr.M.Ganesh

For R4 : Mr.R.Thiyagarajan, Senior Counsel
for M/s.Aiyar & Dolia

For R6 & R7 : Mr.D.Suriyanarayanan,
Additional Government Pleader

O R D E R

This Writ Petition is filed seeking writ of certiorari, to call for the entire records pertaining to the order passed by the 6th respondent/the District Collector herein on 09.03.2019 made in relation to the erection of Raigar-Pugalur part (x) 800 KV HVDC High Tension Tower line to be drawn in Erode District.

2. The petitioner is the owner of Agricultural lands in Survey No.14/4, of Thanathampalayam Village, Modakurichi Taluk, Erode District. According to the petitioner, he and other villagers came to know about the project initiated by the Government to erect Tower line 800KV, Raigar-Pugalur HVDC Bipole Transmission line only when the Officers attached to 4th and 5th respondents entered upon their lands, to measure the land. Till then they were kept under dark by the Officials about the project. Their enquiry reveals that, as per the report prepared by Power Grid Corporation of India, they were three different alternatives routes given by the Inspection Team. The authorities have chosen one among them, which runs through the District of Vellore, Krishnagiri, Dharmapuri, Salem, Namakkal and Karur. The said plan was approved under Electricity Act-2003 by the 2nd respondent/The Secretary, Central Electricity

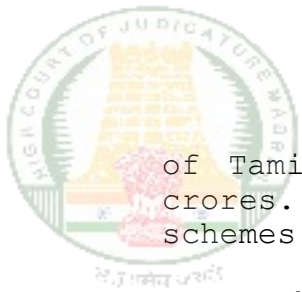


Authority, vide letter No.52/11(PGCIL) 2015-PSP & PA-II dated 24.09.2015. The said prior approval was partially modified by letter dated 18.02.2016. In the said routes, the Erode District was not included and no environmental clearance was obtained. While so, the Transmission line should not pass through Erode and Thiruppur Districts. However, the Officials of the 4th and 5th respondents have entered upon the lands for measurement, without furnishing details in respect of erection of Tower in their lands. The paper publication issued by the Power Grid Corporation of India, does not mention her village, as a proposed route for erection of Tower lines. The Act of the 4th respondent/the General Manager, Power Grid Corporation of India, is contrary to the Rules prescribed under the Indian Telegraph Act, 1885 and Tamil Nadu Electricity Act, 2003, besides it is in violation of Article 300-A of Constitution of India (Right to Property).

3. Meanwhile, the 6th respondent/the District Collector, Erode, issued summons for removal of obstruction to enable the 4th respondent/the General Manager, Power Grid Corporation of India, to erect the tower lines and draw High Tension Electric Line. Accordingly, the petitioner and others appeared before the 6th respondent/the District Collector filed the detailed objection. The 6th respondent/the District Collector, has rejected the objection vide order dated 25.02.2019 and allowed the application filed by the 4th respondent vide order dated 09.03.2019. The judgment of the Hon'ble High Court rendered in W.P.No.30124 of 2018 dated 07.12.2018 is not applicable to her case. However, the 6th respondent/the District Collector, has cited that judgment, as a precedent and rejected the objection petition filed by her.

4. Refuting the above averments, the 4th respondent has filed detailed counter, wherein, it is mentioned that they have not acquired any land of the petitioner. It is only a Right of entry and erection of Tower which is permissible under Indian Telegraph Act 1885 and the Electricity Act 2003, is carried out by the respondent as per the project entrusted to it by the Government. The project is done only after obtaining due clearance, from all concerns.

5. It is stated in the counter affidavit that the project which is the subject matter of the present Writ Petition is Raigarh-Pugalur 6000MV HVDC system with 800 KV HVDC transmission line without tapping in between connecting Raigarh in the state of Chattishgarh and Pugalur in the state of Tamil Nadu. This project is to facilitate evacuation and transfer of powers from various generation plans located in the state of Chattishgarh, which passes through Chattishgarh, Maharashtra, Telangana, Andhra Pradesh and Tamil Nadu. Out of 1838 Kms passing through the above states, 345 kms passes through State



of Tamil Nadu. The total cost of the project is Rs.24,000/- crores. The project is proposed to be implemented under two schemes:

Scheme (i): The project will be 800 KV bipole HVDC link connected Raigarh - Pugalur

Scheme (ii): AC system strengthening with 5 double circuit of 400 KV HVAC Lines connected Pugalur, Arasur Udumalpet, Thiruvallam (POWERGRID) and Edayarpalayam, (TANTRANSCO) substations. The project is going to benefit the state of Tamil Nadu by large. The project which runs through five States is in advance stage of completion. 95% of foundation work, 89% of Tower erection and 66% of stringing work have already been completed. The reschedule time for completion is September - 2019. The said project was approved by the Standing Committee on Power System Planning in Southern region in their meeting held on 31.07.2014 and 07.03.2015. The prior approval of Government of India under Section 68 of Electricity Act was received vide letter dated 29.09.2015.

6. As far as the petitioner case is concerned, one Tower No.185/4 is proposed to be erected in her land. Pursuant to that, when the respondents proceeded to enter into the land of the petitioner, he objected and hence the matter was referred to 6th respondent, who is the authority competent to hear objections under the Indian Telegraph Act, 1885. After hearing his objection, order was passed for removal of obstruction. Thereafter, the respondents have laid the foundation and the tower erection activities, which commenced on 03.06.2019, got completed.

7. It is stated in the counter affidavit that the contention of the petitioner that the prior approval of the project does not include districts of Erode and Thiruppur District is incorrect. The said statement is based on the earlier Environmental Assessment Report. The route alignment in that report was only an indicative, subject to change based on environmental sensitive areas, settlements, techno economic feasibility and actual site conditions during the execution stage. Hence, after the finalisation of the primary route alignment, public notice dated 06.05.2016 was published in the daily mentioning the Districts through which the Transmission line would pass. This notification includes Erode and Thiruppur District. Therefore, the contention of the petitioner that without Environmental Assessment Report and without proper notification, Erode and Thiruppur District were included in the route for erection of Tower line is incorrect and misleading.

8. In the counter, the 4th respondent/the Power Grid Corporation of India, has explained in detailed about the



process underwent before finalisation of the project and the opportunity given to the persons concern to raise their objection and the benefit of erecting the transmission lines pursuant to the approved project.

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9. Section 10 of the Indian Telegraph Act, 1985, confers power on the Authority to enter upon any land. Subject to condition that while entering upon their land, they should ensure that little damage as far as possible should cause to the property and full compensation to the persons interested for any damage sustained to be paid. Similar provision is found in the Electricity Act, 2003 in Section 67 (iii). As far as the determination of compensation is concerned, the Act provides parameters for consideration to determine the compensation.

10. Under Section 16 of the Indian Telegraph Act, 1985, the District Collector is the competent persons to decide objections and the compensation. For the sake of clarity, Sections 10 and 16 of the Indian Telegraph Act, 1885 is extracted below, to show that the 4th respondent is empowered to enter upon the land of the petitioner for erecting tower and the 6th respondent is the competent Authority to hear any objections and to fix compensation for any loss incurred by the land owner.

Section 10 in The Indian Telegraph Act, 1885

10 Power for telegraph authority to place and maintain telegraph lines and posts:- The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along, or across, and posts in or upon, any immovable property: Provided that-

(a) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the 1 [Central Government], or to be so established or maintained;

(b) the 1 [Central Government] shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which the telegraph authority places any telegraph line or post; and

(c) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority; and

(d) in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and, when it has



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exercised those powers in respect of any property other than that referred to in clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

Section 16 of the Indian Telegraph Act, 1885.

16. Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority.—

(1) If the exercise of the powers mentioned in section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.

(2) If, after the making of an order under sub section (1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for this being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code (45 of 1860). (3) If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

(4) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the Court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons



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interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under subsection (3) or subsection (4) shall be final: Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority, from the person who has received the same.

11. In the typed set of papers filed by the 4th respondent, the copy of the notification issued by the Government of India and published in the Gazette on 24.12.2013 is annexed. This notification has designated the 4th respondent/the Power Grid Corporation of India, as licensee for the purpose of establishing Transmission System and to undertake transmission of Electricity through inter-state Transmission System. Under this notification, to carry out the above functioning Power Grid Corporation is vested with the Powers of the Telegraph Authority under Part-III of Indian Telegraph Act, 1885. Thus, in exercise of the powers conferred to the Central Government under Section 164 of Electricity Act, 2003, the Power Grid Corporation is authorized to exercise all the powers vested in the Telegraph Act, 1885. Pursuant to the conferment of this power, the Power Grid Corporation of India has entered upon the land of the petitioner. The contention of the petitioner that there was no proper notification and there is no environmental clearance is also found to be incorrect and misleading. In view of the approval granted by the Ministry of Power, Government of India, dated 29.09.2015, granting prior approval for the Power Grid Corporation, for the schemes covering Raigarh - Pugalur 6000 MV HVDC system and AC System strengthening at Pugalur, the 4th respondent has made a paper publication in the daily circulated within Erode District on 06.05.2016. In this notification, Thiruppur and Erode District and villages covering these District are mentioned. Specifically, Modakkurichi Taluk, Erode District, in which the petitioner land is located is mentioned in the 1st column 2nd row of the notification.

12. The learned Senior Counsel appearing for the 4th respondent/the Power Grid Corporation of India, would submit that a evil design by certain vested interest to undermine this project, so that the general public of Tamil Nadu, he deprived of free flow of Electricity has come into play. Due to misinformation among general public, petitions are filed in this Court. In one such occasion, this Court has gone at length about the scheme, its validity and the right of the land owners



objecting the same. The Court has held that the land owners are always at liberty to seek for compensation and has no locus to challenge the very project under the garb of violation of fundamental right or the other provisions.

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13. The learned Additional Government Pleader appearing for the 6th respondent would submit that the Power Grid Corporation has so far deposited Rs.9 crores for disbursement of compensation to the land owners and the process of dispersing the compensation to them is underway. Having found that the contention raised by the petitioner that Erode and Thiruppur Districts were not included in the notification and the 4th and 5th respondents have entered upon their lands, without authority is incorrect and misleading, this Court has no hesitation to dismiss this Writ Petition.

14. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

To,

1. Southern Regional Power Committee,
Central Electricity Authority,
Cross Road, 29, Race Course Road,
Madhava Nagar, Bengaluru,
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2. The Secretary (CEA),
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6. The District Collector-cum-Executive Magistrate,
Erode District Collectorate,
Erode - 638 011.

7. The Superintendent of Police,
Erode District, Erode - 638 001.

+1cc to M/s.Aiyar & Dolia, Advocate sr.52817

order in
W.P.No.13682 of 2019
& W.M.P.No.13738 of 2019

cp(co)
nr 28/08/2019