

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.08.2019

Coram:

THE HON'BLE DR. JUSTICE G. JAYACHANDRAN

Writ Petition No.25402 of 2019
and
W.M.P.No.24941 of 2019

S.V.Raju

.. Petitioner

/versus/

1.The District Collector,
Tirupur District,
Tirupur.

2.Power Grid Corporation of India Ltd.,
Rep.by its Chief Manager,
No.1, Puliakulam,
Coimbatore 641 001.

3.The Deputy General Manager,
Power Grid Corporation of India Ltd.,
Southern Region Transmission System-II,
400 KV Substation,
Myvadi (Post), Via Kaniyur,
Udumalaipettai 642 203.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the 1st respondent herein to consider the representation of the petitioner dated 16.07.2019 in accordance with law before constructing Towers and Electrical Lines for the 400 KV Edayarpalayam-udumalpet D/C line project in the petitioner's patta land in S.No.454 and 455/1A at Moongil Tholovu Village, Udumalaipet Taluk, Tirupur District.

For Petitioner :Mr.M.Sivavarthanan

For Respondents:Mr.N.Inbanathan, AGP for R1
Mr.V.Kalyanaraman,st.c for
M/s Aiyar & Dolia for R2 and R3

O R D E R

By consent, the main writ petition itself is taken up for final disposal at the admission stage itself.

2. Heard Mr.M.Sivavarthanan, learned counsel appearing for the petitioner and Mr.N.Inbanathan, learned Additional Government Pleader, who takes notice on behalf of the first respondent and Mr.V.Kalyanaraman, learned standing counsel, who takes notice on behalf of respondents 2 and 3.

3.The prayer in the writ petition is to issue a Writ of Mandamus directing the 1st respondent herein to consider the representation of the petitioner dated 16.07.2019 in accordance with law before constructing Towers and Electrical Lines for the 400 KV Edayarpalayam-Udumalpet D/C line project in the petitioner's patta land in S.No.454 and 455/1A at Moongil Tholovu Village, Udumalaipet Taluk, Tirupur District.

4.The petitioner herein is the owner of the agricultural land in S.Nos.452/1A, 453/1, 454, 455/1A and 455/3A2 at Moongil Tholovu Village, Udumalaipet Taluk, Tirupur District. His grievance is that in the year 2014, The Tamil Nadu Generation and Distribution Corporation Limited (in short "TANGEDCO") for its project of supplying, creating, testing and commissioning of 400 KV DC line from Rasipalayam 400 KV SS to Anikadavu 400 KV SS erected towers in the middle of his land. While carrying out the work, he lost coconut trees and standing crops and the same was compensated by the TANGEDCO later.

5. Again in the year 2015, for erection of additional towers, his land was sought by the TANGEDCO. Hence, the petitioner has approached this Court by way of filing W.P.No.16732 of 2015 seeking Mandamus to direct the District Collector to consider the representation of the petitioner dated 13.04.2015 for re-alignment of the power line. In the said writ petition, this Court directed the District Collector to consider and dispose of the representation of the petitioner dated 13.04.2015 in accordance with law. Accordingly, the District Collector, after affording opportunity to the TANGEDCO and the petitioner herein(land owner) accepted the proposal of the TANGEDCO to alter the alignment passing through the petitioner's land.

6. While so, when the Power Grid Corporation for erection of towers under 400 KV Edayarpalayam-udumalpet D/C line project sought for the lands of the petitioner with line passing through the middle of S.No.455/1A, the petitioner gave a

representation on 09.04.2018 to the respondents wherein he expressed his grievance that already he has lost substantial extent of land for erection of towers by TANGEDCO and if the power line of Power Grid Corporation run in the middle of his land, he will be put to irreparable loss. Since the representation for re-alignment of the high power electricity line was not considered by the respondents, the petitioner has approached this Court by way of filing W.P.No.14046 of 2018 wherein this Court, vide order dated 19.03.2019, directed the respondents (Power Grid Corporation) to consider the technical aspects raised by the petitioner in his representation dated 09.04.2018 and pass a suitable order on merits and in accordance with law. Accordingly, the Power Grid Corporation, vide its communication dated 06.06.2019, has informed the petitioner that re-alignment of the proposed high power electricity line on the western side of his land is not feasible. Now, the petitioner herein aggrieved by the technical report given by the Power Grid Corporation has given a representation to the District Collector on 16.07.2019.

7. In this writ petition, he seeks for Mandamus to direct the District Collector to consider his representation dated 16.07.2019 and pass orders on merits.

8. The learned standing counsel appearing for respondents 2 and 3 would submit that the Division Bench of this Court in Sri Vignesh Yarns Pvt. Ltd., rep by its Managing Director Sri T.Sivakumar, Tiruppur v. S.Subramaniam reported in (2013) 1 MLJ 56 has categorically held that the District Collector is not empowered either under Section 16 or Section 17 of the Indian Telegraph Act, 1885 to decide upon the route.

9. Contrarily, the learned counsel appearing for the petitioner would submit that the representation of the petitioner to the District Collector is under Section 16(1) of the Indian Telegraph Act, 1885, which has to be read along with Section 10(d) of the Indian Telegraph Act, 1885 which amply indicates that the District Collector is empowered to consider any objection regarding alignment taking into consideration the effect of erecting the towers and likelihood of damage to be caused to the land owner.

10. Reading of Section 10(d) of the Indian Telegraph Act, 1885 and Section 16(1) of the Indian Telegraph Act, 1885, indicates the authority shall not only consider the technical aspect but also shall consider the collateral damage likely to be caused to the land owner.

11. The contention of the learned standing counsel appearing for respondents 2 and 3 that the technical

infeasibility expressed by the Department is suffice to decline the request of the petitioner herein, may not be correct, in the light of Section 16(1) r/w Section 10(d) of the Indian Telegraph Act 1885.

12. In the Division Bench judgment referred by the learned standing counsel appearing for respondents 2 and 3, in paragraph No.17, the Division Bench has held as under:-

"In our considered opinion, the District Collector is not vested with such power either under Section 16 or 17 of the Indian Telegraph Act, 1885. Learned Single Judge has rightly held that the power of the District Collector is more in the nature of execution of the decision taken under Section 10 of the Indian Telegraph Act, 1885 or under Sections 67 and 68 of the Electricity Act, 2003. We are also of the definite opinion that the District Collector has no authority to change the alignment and to give a new route for transmission of the electricity, especially when the experts of the Electricity Board asserted that the original alignment proposed was the best alignment in the interest of the public at large. It has not been disputed that pursuant to the earlier orders passed by this Court, the Board officials approached the District Collector to give permission for studying the feasibility of the alternative routes, and after due survey, they narrowed in on two possible routes and also suggested the merits and demerits of both of them. The Board, however, asserted before the District Collector that the route originally approved by the Board was more feasible and ought to be adopted as it was along the existing panchayat road. It has not been disputed by the appellants that the District Collector in his public hearing/meeting had orally declared that the Board's original approved route would only be followed. But, in the meantime, the District Collector was transferred and the incoming District Collector again called for a meeting and by passing the impugned order, changed the alignment and directed to follow the second route. That being the

position, the incoming District Collector ought to have followed the decision taken by the then District Collector approving the original route."

13. Insofar as this case is concerned, in the earlier round of litigation, when the TANGEDCO approached for erection of 230KV S/C transmission line, the petitioner has made a similar request to the District Collector. After considering factual scenario and the submission of the TANGEDCO, the District Collector has made some alteration in the alignment. The technical feasibility of re-aligning the line though may not be possible as indicated by the reply of Power Grid Corporation vide letter dated 06.06.2019, the possibility of least damage to the property may be found by the District Collector, while allowing the Power Grid Corporation to proceed with the project. For the said purpose, the representation of the petitioner herein dated 16.07.2019 has to be considered by the District Collector. Therefore, the first respondent herein/District Collector is directed to consider the representation dated 16.07.2019 given by the petitioner and pass appropriate order, within a period of two weeks from today.

14. Accordingly, this writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

To:

1.The District Collector,
Tirupur District,
Tirupur.

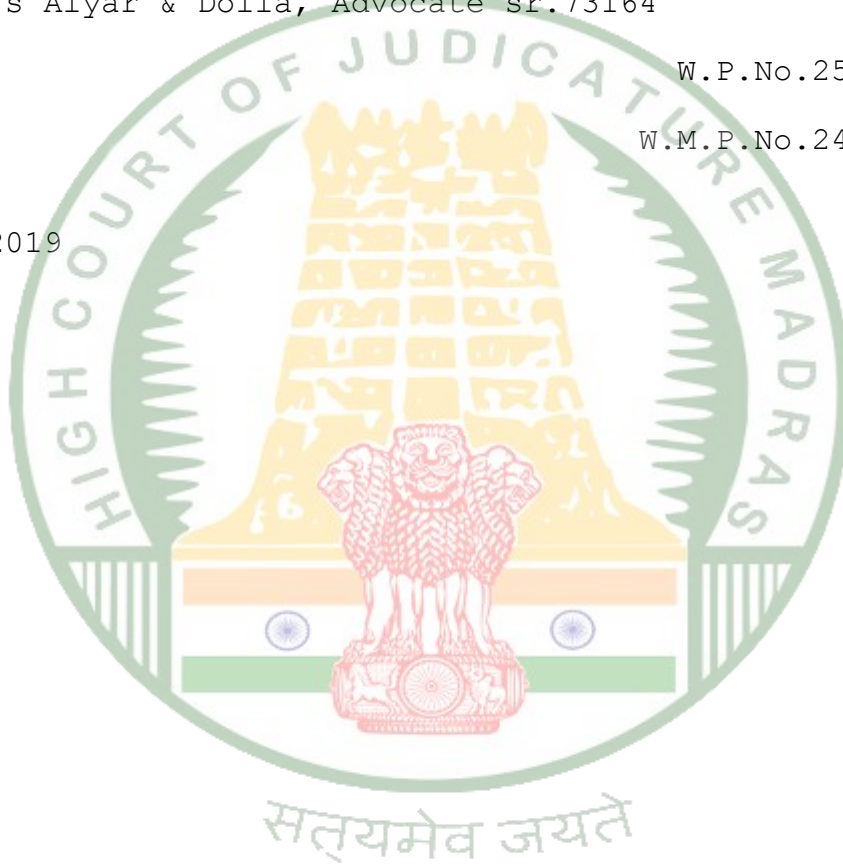
2.Power Grid Corporation of India Ltd.,
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Southern Region Transmission System-II,
400 KV Substation,
Myvadi(Post), Via Kaniyur,
Udumalaipettai 642 203.

+lcc to Government Pleader sr.74023
+lcc to Mr.M.Sivavarthan, Advocate sr.73260
+lcc to M/s Aiyar & Dolia, Advocate sr.73164

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