



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.07.2019

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
AND
THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A(MD)NO.537 OF 2019

and

C.M.P(MD)No.4535 of 2019

T.Sivakumar : Appellant/Respondent No.2
vs.

1. The Superintending Engineer,
Tamil Nadu Electricity Board,
General Construction Circle,
K.Pudur,
Madurai. : Respondent No.1/Petitioner

2.The District Collector,
Theni District,
Theni. : Respondent No.2/Respondent No.1

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent praying this Court to set aside the order passed by this Court in W.P(MD)No.23342 of 2016, dated 04.04.2019.

Prayer in WP(MD). 23342/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in Na.Ka.No. 29041/2014/C2 dated 04.11.2016 passed by the 1st respondent and quash the same and consequently direct the petitioner to erect the tower along the approved alignment.

For Appellant	: Mr.R.Suriyanarayanan
For Respondent No.1	: Mr.S.M.S.Johnny Basha Standing Counsel
For Respondent No.2	: Mr.VR.Shanmuganathan Special Govt.Pleader

JUDGMENT

[Judgment of the Court was made by **SENTHILKUMAR RAMAMOORTHY, J.**]

In this Writ Appeal, the order in W.P(MD)No.23342 of 2016, whereby, the Writ Petition filed by the first respondent herein was allowed, is put to challenge.



2.By the said order, the Writ Court quashed the order issued by the second respondent herein on 4.11.2016, whereby, the first the alignment and install the electricity transmission tower at a different location from that place.

3.We have heard the submissions made by the learned counsel appearing for the appellant and the learned Standing Counsel appearing for the first respondent/Electricity Board and the learned Special Government Pleader appearing for the second respondent.

4.The learned counsel for the appellant submitted that the Writ Court failed to consider Section 17 of the Indian Telegraph Act, 1885(hereinafter referred to as 'The Telegraph Act') which expressly authorizes the owner of the land to approach the District Collector, if he intends to shift or remove the telegraph line or posts to some other part of his land. In particular, he submitted that under Sub-Section (3) thereof, the District Collector has the discretion to make an order for the removal of telegraph line or posts to any other part of the property. In view of that, he submitted that the Writ Court erred in holding that the District Collector did not have the power to direct a change of alignment. He emphasized the fact that the power under Section 17 of the Indian Telegraph Act could be exercised even after the Telegraph line or posts concerned had already been installed, whereas, in the instant case, the appellant had approached the District Collector before the tower was installed by the first respondent herein.

5.In response, the learned Special Government Pleader appearing for the second respondent denied the said contentions and pointed out that the District Collector does not have the jurisdiction to alter the alignment, as correctly held by the Writ Court.

6.We have carefully considered the pleadings, documents and the oral submissions made on either side.

7.On perusal of the order, dated 4.11.2016, which was impugned in the Writ Petition, we find that the Electricity Board made a reference to the District Collector under Section 16(1) of the Indian Telegraph Act, 1885 because the installation of the electricity transmission line was at an advanced stage inasmuch as 7 transmission towers out of 8 had been installed and that the installation of the 8th tower is objected to by the owner, namely, the Appellant. It is further seen from the said order, dated 4.11.2016 that the Superintending Engineer of the Electricity Board has stated categorically that it is not technically feasible to change the alignment at this juncture, when seven towers have already been installed and the foundation has already been laid for the installation of the tower in the Appellant's premises. In this regard, it is relevant to note that the impugned order in the instant case has been passed on a reference under Section 16 of the Telegraph Act and not on an application by the land owner under Section 17(2) of the Telegraph Act. Therefore, it has to be examined



whether Section 16 of the Telegraph Act empowers the District Collector to direct that the alignment be altered. Sections 16 and 17 of the Telegraph Act reads as follows:

''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 their 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 Section10, 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), the 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 interested are entitled to share in it.

(5)Every determination of a dispute by a District Judge under sub-section (3), or sub-section (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.

17.Removal or alteration of telegraph line or post, on property other than that of a local authority.--(1) When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property, not being property vested in or under the



control or management of a local authority, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher or lower level or altered in form, he may require the telegraph authority to remove or alter the line of post accordingly;

Provided that, if compensation has been paid under Section 10, clause(d), he shall, when making the requisition, tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever may be the smaller sum..

(2) If the telegraph authority omits to comply with the requisition, the person making it may apply to the District Magistrate within whose jurisdiction the property is situate to order the removal or alteration.

(3) A District Magistrate receiving an application under sub-section (2) may, in his discretion, reject the same or make an order, absolutely or subject to conditions, for the removal of the telegraph line or post to any other part of the property or to a higher or lower level or for the alteration of its form; and the order so made shall be final.'

8. On examining Section 16 of the Telegraph Act, we find that it empowers the District Magistrate to ensure that the Electricity Board or the Telegraph Department is able to exercise its powers under Section 10 of the said Act to install and maintain Telegraph lines or posts. Consequently, it is clear that there is no power under Section 16 of the said Act to direct that the alignment be altered. Even otherwise, if Section 17 of the above Act is examined, it indicates that the District Collector has the discretion to accept or reject the application. In the instant case, the exercise of the said discretion should be examined in the factual context. As stated earlier, at Page No.6 of the order impugned in the Writ Petition, there is a categorical statement by the Superintending Engineer that it is not technically feasible, as per the first respondent herein, to alter the alignment in view of the fact that 7 electricity towers have already been installed. In view of the said factual position that it is not technically feasible to shift the tower, it has to be examined whether the earlier judgment of the Division Bench of this Court in **Sri Vignesh Yarns Private Limited represented by its Managing Director Sri T.Sivakumar, Tiruppur .vs. S.Subramanian and others reported in (2013) 1 MLJ 56** would apply. In the said decision, the Division Bench had categorically held as follows in paragraph Nos.17 and 19:

<https://hcservices.ecourts.gov.in/hcservices/> 17. From the aforesaid orders, it is evidently clear that the only grievance made by the petitioners in



those writ petitions was that the respondent-electricity authorities have not taken permission to enter upon their property from the District Collector/Magistrate as prescribed by law. It also reveals from the above orders that the work was in progress and the only direction was to proceed with the work after obtaining appropriate orders from the District Collector/Magistrate under the provisions of the Indian Telegraph Act, 1885. The District Collector, however, in his impugned order dated 18.07.2011 proceeded on the assumption that he was directed to conduct an enquiry and to give opportunity to the petitioners and the officials of the Electricity Board to express their opinion with regard to the feasibility of proceeding with the erection of transmission line on the original route so decided by the authorities of the Board. The District Collector further observed in his impugned order that since there were objections for taking electric line and erecting electric poles, the Revenue Divisional Officer has to conduct an enquiry and file a detailed report after making necessary survey. The Revenue Divisional Officer in his report has given his own suggestion as to the land over which the transmission line should go. It was categorically brought to the notice of the District Collector that except the work of erecting 9 power towers in the area of Sundakampalayam and Nambiyampalayam and erection of 400 KV High Voltage electric routes from Mettur to Arasur, all other works leading to erection of power towers on both sides are at the stage of completion. The District Collector was also informed that for the purpose of distribution of electricity to the public, 600 MW capacity power tower is to be erected at Mettur, from where electric supply has to be taken to the sub-station at Karumathampatti having capacity of 400 KV, that the formation of electric route has to be completed by the end of July 2011, and that if the works undertaken at Mettur Thermal Power Station and the works relating to formation of electric routes are not completed, then the TNEB will be forced to a situation of immobilizing its funds to the tune of Rs.140 crores. In spite of all these facts, the District Collector, Tiruppur has granted permission to the TNEB for the erection of power tower and electricity lines through different route. 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 Boards 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.

19. As we have observed earlier, as per the scheme of the Act, the District Collector was not empowered either under Section 16 or Section 17 of the Indian Telegraph Act to decide upon the route and his power was more in the nature of execution of a decision taken under Section 10 of the Act or under Section 67 or 68 of the Electricity Act, 2003. Therefore, when the experts namely the officials of the Board took a definite stand that the original route which was proposed was technically more feasible and it would be in the interest of the public, since the route was along the existing Panchayat road, we find there is absolutely no justification for the Collector to pass an order on 18.7.2011 to change the route which was not found to be technically feasible by the experts. Further, the entire work has been completed except for nine towers and at that stage it would be improper for the District Collector to alter the route, and adopt an alternate route which was found not technically feasible. It is stated that the expenses incurred so far is about Rs.150 crores for erecting lines, apart from Rs.3,000 crores which was spent for construction of the new Thermal Power Plant at Mettur and the power which has to be evacuate through its supply line is to provide uninterrupted power supply to both agriculture and industrial development. Therefore, by



virtue of the delay, the power line could not be erected on time though the Power Plant was ready to generate about 600 MW power by the end of March, 2012.

9. In our view, the said decision is squarely applicable to the facts of the present case, as correctly concluded by the Writ Court. Accordingly, We do not find any infirmity in the order of the Writ Court and consequently, the Writ Appeal is liable to be dismissed and accordingly, the same stands dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Superintending Engineer,
Tamil Nadu Electricity Board,
General Construction Circle,
K.Pudur,
Madurai.

2. The District Collector,
Theni District,
Theni.

+1 CC to Mr.R.SURIYANARAYANAN, Advocate (SR-74259[F] dated 09/07/2019)

+1 CC to SPL GP (SR-74515[F] dated 10/07/2019)

+1 CC to Mrs.S.SRIMATHY, Advocate (SR-74711[F] dated 11/07/2019)

JUDGMENT MADE IN
W.A(MD) NO. 537 OF 2019
and
C.M.P(MD) No. 4535 of 2019
09.07.2019

vsn

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