

IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD

* * * *

WRIT PETITION Nos.4503 & 5873 OF 2019

W.P.No.4503 of 2019:

T.Sudhakar Reddy & Another

...Petitioners

And

The State of Telangana, rep. by its Chief Secretary,
Secretariat Buildings, Hyderabad & Others

... Respondents

W.P.No.5873 of 2019:

Patel Steel & Cement Agencies,
Rep. by its Proprietor & Others

...Petitioners

And

The State of Telangana, Energy Department,
Secretariat Buildings, Secretariat, Hyderabad,
Rep. by its Principal Secretary & Others

... Respondents

JUDGMENT PRONOUNCED ON: 22.04.2019

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? :
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? :
3. Whether His Lordship wishes to
see the fair copy of the Judgment? :

T.AMARNATH GOUD, J

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**WRIT PETITION Nos.4503 & 5873 OF 2019****COMMON ORDER:**

As the legal issue involved in both the writ petitions is one and the same, they are being disposed of by this common order.

W.P.No.4503 of 2019:

This writ petition is filed challenging the action of the respondents-Telangana State Transmission Corporation (TRANSCO) in laying 400 KV power transmission lines through the properties of the petitioners in various survey numbers of Potharam Village, Manoharabad Mandal and Sabashpally Village, Shivampet Mandal of Medak District.

It is the case of the petitioners that first petitioner is the owner of agricultural lands admeasuring Ac.8-16½ guntas in Sy. Nos.258/A-AA-E, 254, 255/E, 256/A, 257, 258 and 260/AA of Potharam Village, Manoharabad Mandal, Medak District and the second petitioner is the owner of agricultural lands admeasuring Ac.6-12½ guntas in Sy. Nos.159, 160, 161, 162, 163, 166, 167, 169 and 180 of Sabashpally Village, Shivampet Mandal, Medak District. While they are in enjoyment of their lands, on 24.01.2019, the officials of the TRANSCO, without information to the petitioners, tried to trespass into their lands. In those circumstances, the petitioners gave a representation to respondent No.6 on 30.01.2019, upon which, respondent No.6 issued a letter

dated 02.02.2019 informing the petitioners that TRANSCO is intending to construct 400 KV Quad Moose Double Circuit line from Ramagundam to 400 KV Narsapur Sub-Station under Telangana STPP-I Power Evacuation Scheme and the line passes through their lands. The grievance of the petitioners is that the respondents have highhandedly laid High Tension lines through their lands without consent and notice and also without following due process of law and hence, the petitioners seek a direction to the respondents to remove the same.

Respondent Nos.3 to 6 filed their counter stating that a 400 KV line was proposed for evacuation of power from NTPC Super Thermal Power Plant (STPP) Stage-I Ramagundam Generating sub-station, for the purpose of providing uninterrupted power supply to the farmers as per the policy of the State Government and also to provide power to the surrounding districts. The power shall also be utilized for Kaleswaram Lift Irrigation Project. The scheme has also been published in the Telangana Gazette No.16, dated 20.04.2017, along with other schemes. They stated that they are empowered under Section 164 of the Electricity Act, 2003 (for short, the Act of 2003) to confer upon any licensee or on any other person engaged in the business of supplying electricity under the Act of 2002 to place electric lines or electric plant for transmission of electricity and also empower the said persons to exercise powers under Section 10 of the Indian Telegraph Act, 1884 (for short, the Act of 1885) with respect to Telegraph lines and posts. Accordingly, they

erected the lines by following the due process of law and sought to dismiss the writ petition.

W.P.No.5873 of 2019:

This writ petition is filed challenging the action of the respondents in laying electrical lines through the properties of the petitioners in various survey numbers of Hydernagar Village, Balanagar Mandal, Ranga Reddy District.

It is the case of the petitioners that they are owners of various open plots in Sy.No.148 to 155 and 156/1 of Hydernagar Village, Balanagar Mandal, Ranga Reddy District. While they are in enjoyment of their respective plots, the third respondent, on 16.03.2019, tried to lay electrical lines through their properties without any notice, consent and payment of compensation. The grievance of the petitioners is that the respondents are highhandedly trying to lay electrical lines through their lands without consent and notice and also against due process of law.

Though no separate counter affidavit is filed by the respondents in this writ petition, however, this matter being connected with W.P.No.4503 of 2019 and since the stand of the respondents is clear by the averments in the counter affidavit filed in W.P.No.4503 of 2019 with respect to the subject matter, this Court deems it appropriate to dispose this writ petition as well taking into account the averments contained in the counter in W.P.No.4503 of 2019.

Sri P.Venu Gopal, learned Senior Counsel representing Sri D.V.S.Sita Rama Raju, learned counsel for the petitioners in W.P.No.4503 of 2019, submits that though the respondents are vested with the power of laying of lines under Section 164 of the Act of 2003 and Section 10 of the Act of 1885, they have to follow the procedure laid down under Rule 3 of the Andhra Pradesh Works of Licensees Rules, 2007 (for short, the Rules), which were issued under G.O.Ms.No.24, Energy (Pr.II) Department, dated 27.02.2007. He further submits that the respondents did not give any notice to the petitioners with respect to the proposal of laying electrical lines through their lands and highhandedly laid the electrical lines.

Sri V.V.N.Narayana Rao, learned counsel for the petitioners in W.P.No.5873 of 2019, submits that according to Rule 3 of the Rules, if objections are raised by the owners of the property for laying transmission lines through their property, until and unless the licensee obtains permission in writing from the District Magistrate, he cannot undertake laying of transmission lines. In the case on hand, as the respondents did not obtain such permission, the laying of transmission lines is illegal and arbitrary.

Sri R.Vinod Reddy, learned Standing Counsel for TRANSCO appearing in both the writ petitions, submits that the respondents are vested with the power of laying of lines under Section 164 of the Act of 2003 and Section 10 of the Act of 1885 and accordingly, they laid the lines by following the due process of

law. To buttress his submission, he relied on a decision of the Apex Court in **Power Grid Corpn. Of India Ltd. Vs. Century Textiles & Industries Ltd.**¹, the decision of this Court in **Devisetty Ramaswamy Vs. Chief Engineer, A.P.TRANSCO**² and also an unreported judgment of this Court in W.P.No.28933 of 2018, dated 15.11.2018.

Admittedly, the petitioners have not denied the power vested with TRANSCO under Section 164 of the Act of 2003 and Section 10 of the Act of 1885, but however, according to the petitioners, provisions of Rule 3 of the Rules should have been complied with. In order to decide the issue, it is necessary to refer to the relevant provisions.

Section 164 of the Act of 2003 reads as under:

“Section 164. Exercise of powers of Telegraph Authority in certain cases:

The Appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any, as the Appropriate Government may think fit to impose and to the provisions of the Indian Telegraph Act, 1885 (13 of 1885), any of the powers which the telegraph authority possesses under that Act with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained.”

Section 10 of the Act of 1885 reads as under:

“Section 10. Power for telegraph authority to place and maintain telegraph lines and posts.- The

¹ (2017) 5 SCC 143

² 2013 (4) ALD 88

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 Central Government, or to be so established or maintained;
- (b) the 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 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.”

Rule 3 of the Rules reads as under:

“Rule 3. Licensee to carry out works:- A licensee may:-

- (a) carry out works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, wherever or whereunder any electric supply-line or works has not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land;
- (b) fix any support of overhead line or any stay or strut required for the purpose of securing in position any support of an overhead line on any building or land or having been so fixed, may alter such support;

Provided that in case where the owner or occupier of the building or land raises objections in respect of works to be carried out under this rule, the licensee shall obtain permission in writing from the District Magistrate or the Commissioner of Police or any other

officer authorized by the State Government in this behalf, for carrying out the works:

Provided further that if at any time, the owner or occupier of any building or land on which any works have been carried out or any support of an overhead line, stay or strut has been fixed shows sufficient cause, the District Magistrate or the Commissioner of Police, or the officer authorized may be order in writing direct for such works, support, stay or strut to be removed or altered.

(2) When making an order under sub-rule (1), the District Magistrate or the Commissioner of Police or the officer so authorized, as the case may be, shall fix, after considering the representations of the concerned persons, if any, the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.

(3) Every order made by a District Magistrate or a Commissioner of Police or an authorized officer under sub-rule (1) shall be subject to revision by the Appropriate Commission.

(4) Nothing contained in this rule shall effect the powers conferred upon any license under section 164 of the Act.”

Coming to the judgments relied upon by the learned Standing Counsel for the TRANSCO in **Power Grid Corpn. Of India Ltd.’s** case (supra), the procedure contemplated under Rule 3 of the Rules has not been brought to the notice of the Hon’ble Supreme Court and hence the same was not dealt with. This Court also, in the aforesaid judgments, had no occasion to deal with the procedure laid down under Rule 3 of the Rules; and therefore, there was no finding or observation in that regard. It is to be noted that the provisions of Section 164 of the Act of 2003 and Section 10 of the Act of 1885 are silent with regard to the procedure to be followed, but in Rule 3 of the Rules, there is a procedure for laying of

transmission lines. Therefore, the procedure contemplated in Rule 3 of the Rules has statutory force of law, and hence the same must be followed by the respondents.

In the counter-affidavit, the respondents have not stated that they have issued notice to the petitioners or called for the objections. The said action of the respondents is hit by doctrine of *audi alteram partem*. Apart from the same, when there is procedure contemplated under Rule 3 of the Rules for intimating and obtaining the consent of the owner or occupier of any building or land, the action of the respondents in not following the same is illegal and arbitrary. The proviso to Rule 3 stipulates that in case where the owner or occupier of the building or land raises objections, the licensee shall obtain permission in writing from the District Magistrate or the Commissioner of Police or any other officer authorized by the State Government in this behalf, for carrying out the works. In the present case, the respondents did not obtain such permission.

Since Article 300-A of the Constitution of India protects the rights of citizens towards their properties, the same cannot be taken away by the respondents highhandedly. It is needless to observe that entering into private property without proper authorization, and without following due procedure, would amount to trespass. The Officers of the respondents-TRANSCO are not above law, and hence are bound to follow the procedure

contemplated under law. Moreover, in the Gazette notification, the villages of the petitioners are not mentioned. Therefore, the question of laying the transmission lines in the lands of the petitioners, without following due process of law, is unjust, arbitrary and violative of Article 300-A of the Constitution of India.

In the facts and circumstances of the present cases, without going into the controversy whether the respondents already laid high-tension lines or not, this Court is of the firm opinion that the action of the respondents in trying to lay the transmission lines without issuing any notice and without following due procedure, is contrary to law and hence, they must be restrained from doing so.

For the aforesaid reasons, the writ petitions are liable to be allowed and they are allowed. Miscellaneous petitions pending in both the writ petitions, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

Date: 22.04.2019

Note:

L.R. Copy to be marked.

B/o. TJMR