

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 9078 of 2020

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Sujeet Kumar, male, aged about 31 years, Son of Ram Pravesh Singh, resident of Village- Raibagh, P.O.- Kachchidargah, P.S.- Didarganj, District- Patna, PIN-803201, at present MIG-262, Mohalla- Kankarbagh Colony, Near Tempo Stand, P.S.- Kankarbagh, P.O.- Lohiya Nagar, District- Patna, PIN-800020

... .. Petitioner/s

Versus

1. The Power Grid Corporation of India Limited through its Managing Director, having office at Alankar Palace, Boring Road, Patna
2. The Managing Director, Power Grid Corporation of India Limited, having office at Alankar Palace, Boring Road, Patna
3. The Principal Secretary, Energy Department, Govt. of Bihar, Patna
4. The Bihar State Power Holding Company Ltd. having its office at Vidyut Bhawan, Bailey Road, Patna
5. The Chairman-cum-Managing Director, Bihar State Power Holding Company Ltd. having its office at Vidyut Bhawan, Bailey Road, Patna
6. The Bihar State Power Holding Company Limited, having its office at Vidyut Bhawan, Bailey Road, Patna
7. The Chairman-cum-Managing Director, the Bihar State Power Holding Company Limited, having its office at Vidyut Bhawan, Bailey Road, Patna
8. The District Magistrate, Patna
9. The Circle Officer, Patna Sadar, Patna
10. The Senior Superintendent of Police, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shambhu Nath, Advocate
For the Respondent Nos. 1 & 2	:	Mr. Arbind kumar Singh, Advocate
For the State	:	Mr. Ravish Chandra, AC to SC 6
For the BGCL	:	Mr. Harendra Kr. Tiwary, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJAN GUPTA

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJAN GUPTA)

Date : 18-11-2021

The present petition has been filed for restraining the respondents from erecting 132KV Transmission Tower on the residential/commercial land of the petitioner as also to direct the respondents not to use the *raiyati* land of the petitioner for erection of 132 KV Transmission Towers.

2. The learned counsel for the petitioner has submitted that the petitioner is the *raiyat* of the land bearing Plot No. 903, Khata No. 09, Thana No. 43, Mauza-Punadih, Circle-Patna Sadar, CD Block-Patna Rural, District-Patna. It is the further submission of the learned counsel for the petitioner that though adjacent/vacant lands are available but the respondent-Power Grid Corporation of India Limited, with oblique motives, has changed the original alignment of the proposed transmission line for the purposes of erection of 132 KV Transmission Towers/electricity high tension wires and now the respondents are seeking to erect the towers as also the high tension wires over the plot/land of the petitioner. Lastly, it is submitted that no notice was ever given to the petitioner about the proposed erection of 132 KV Tower as also



laying of high tension electricity lines/wires. Therefore, the respondents be directed not to erect the towers/high tension wires over the plot of the petitioner.

3. *Per contra*, the learned counsel for the respondent-Bihar Grid Company Limited (herein after referred to as the "BGCL") has submitted, by referring to the counter affidavit filed in the present case, that the said Company is a Joint Venture of (i) Bihar State Power (Holding) Co. Ltd, constituted under the Companies Act, 1956 having its registered office at Vidyut Bhawan, Bailey Road, Patna & (ii) Power Grid Corporation of India Ltd., a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at B-9 Qutab Institutional Area, Katwaria Sarai, New Delhi. It is further submitted that the said Company was incorporated on 04.01.2013 under the Companies Act, 1956 and has been granted Transmission License by the Bihar Electricity Regulatory Commission, Patna on 21.06.2013. It is also contended that the aforesaid Company is a Transmission Licensee under Section 14 of the Electricity Act, 2003, which has been authorized to construct, maintain and operate inter-state transmission lines, sub-stations and associated installations approved under a scheme by Energy Department, Government of Bihar. It is also submitted that the Government of



Bihar has conferred power of Section 164 of the Electricity Act, 2003 read with Section 10 of the Indian Telegraph Act, 1885, to BGCL, for placing and maintaining of electric lines under, over, along or across, in or upon any immovable property for the transmission of electricity.

4. On merits, it is submitted that two legs of Tower Locations No. 28/0, pertaining to 132 KV S/C Jakkanpur/Mithapur to Fathua Transmission Line at Jakkanpur (new), is falling in the land of the petitioner and in fact out of a total number of 105 towers, foundation of 97 towers has already been completed and 90 towers have also been erected whereafter the stringing work is also on the verge of being commenced.

5. Learned counsel for the BGCL has further submitted that so far as the contention of the petitioner regarding deviation in angles/alignment of towers and restraining the laying of transmission lines, is concerned, the same is not feasible inasmuch as this aspect of the matter was duly taken into consideration by the technical experts and moreover, if at all the request of the petitioner is to be accepted then the same would result in dismantling the entire transmission line which would further result in wastage of public money. In fact the alignment of the transmission towers/lines has been fixed after a detailed survey, as



per the topography of the land with a view to cause the least damage and disturbance to the existing village/populated area. It is further submitted that the transmission line cannot be erected in zigzag manner and the interest of individuals are required to be given way to larger interest since national projects usually benefit a number of states including the State of Bihar. As far as the issue regarding giving prior notice to the petitioner or taking his consent is concerned, it has been submitted that since the BGCL is having user rights under Part III of the Indian Telegraph Act, 1885, there is no requirement of taking prior consent from the concerned land owner and in such case, the petitioner is only entitled to be suitably compensated.

6. In this regard, the learned counsel for the respondent-BGCL has referred to a judgment rendered by the Hon'ble Apex Court in the case of **Power Grid Corporation of India Limited Vs. Century Textiles and Industries Limited and Others**, reported in **(2017) 5 SCC 143**, paragraphs no. 21 to 28 whereof are reproduced herein below:

“21. It is not in dispute that in exercise of powers under the aforesaid provision, the appropriate Government has conferred the powers of telegraph authority vide Notification dated 24-12-2003 exercisable under the Telegraph Act, 1885 upon the Power Grid. It may also be mentioned that a Central transmission utility (CTU) is a



deemed licensee under the second proviso to Section 14 of the Electricity Act, 2003. Power Grid is a Central transmission utility and is, therefore, a deemed licensee under the Electricity Act, 2003. This coupled with the fact that Power Grid is treated as authority under the Telegraph Act, 1885, it acquires all such powers which are vested in a telegraph authority under the provisions of the Telegraph Act, 1885 including power to eliminate any obstruction in the laying down of power transmission lines. As per the provisions of the Telegraph Act, 1885, unobstructed access to lay down telegraph and/or electricity transmission lines is an imperative in the larger public interest. Electrification of villages all over the country and availability of telegraph lines are the most essential requirements for growth and development of any country, economy and the well-being/progress of the citizens. The legislature has not permitted any kind of impediment/obstruction in achieving this objective and through the scheme of the Telegraph Act, 1885 empowering the licensee to lay telegraph lines, applied the same, as it is, for laying down the electricity transmission lines.

22. Powers of the telegraph authority conferred by Sections 10, 15 and 16 of the Telegraph Act, 1885, stand vested in and are enjoyed by the Power Grid. These provisions are reproduced below:

“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 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.

* * *

15. Disputes between telegraph authority and local authority.—(1) If any dispute arises between the telegraph authority and a local authority in consequence of the local authority refusing the permission referred to in Section 10 clause (c), or prescribing any condition under Section 12, or in consequence of the telegraph authority omitting to comply with a requisition made under Section 13, or otherwise in respect of the exercise of the powers conferred by this Act, it shall be determined by such officer as the Central Government may appoint either generally or specially in this behalf.

(2) An appeal from the determination of the officer so appointed shall lie to the Central Government; and the order of the Central Government shall be final.



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 Penal Code, 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 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.”

(emphasis supplied)



23. *Section 10 of the Telegraph Act, 1885 empowers the telegraph authority to place and maintain a telegraph line under, over, along or across and posts in or upon any immovable property. The provision of Section 10(b) of the Telegraph Act, 1885 makes it abundantly clear that while acquiring the power to lay down telegraph lines, the Central Government does not acquire any right other than that of user in the property. Further, Section 10(d) of the Telegraph Act, 1885 obliges the telegraph authority to ensure that it causes as little damage as possible and that the telegraph authority shall also be obliged to pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.*

24. *As Power Grid is given the powers of telegraph authority, Rule 3(1) of the 2006 Rules ceases to apply in the case of Power Grid by virtue of execution clause contained in sub-rule (4) of Rule 3 which reads as under:*

“3. (4) Nothing contained in this rule shall effect the powers conferred upon any licensee under Section 164 of the Act.”

25. *We, thus, have no hesitation in rejecting the argument of the writ petitioner that the impugned action of the Power Grid was contrary to the provisions of the Electricity Act, 2003.*

26. *We also do not find that the action of the Power Grid, in the given circumstances, by not shifting the transmission lines was arbitrary. From the facts noted above, it becomes apparent that not only it was unfeasible*



to change the alignment as almost entire work had already been completed by the time the writ petitioner started protesting against this move, even otherwise, the Power Grid has given sufficient explanation to point out that all relevant factors/aspects were kept in mind while laying down the impugned transmission lines. Such transmission lines had to be in straight line to the extent possible for eliminating loss of transmission. It is also explained that electricity transmission is usually laid or crossed over agricultural land where minimum extent of land gets utilised for erecting towers and where agricultural activities are not prejudiced/obstructed in any manner. The purpose is to avoid buildings, religious places, ponds, etc. while laying down these transmission lines. It is only when it becomes inevitable that towers are placed on the private lands to the minimum and least extent possible. That is what was tried to achieve in the instant case. Another important factor, which needs repetition at this stage is that no blasting is permissible within 300 m from the 400 kV line (already existing) or the tower structure. Mining of limestone can be taken up by adopting the methods other than use of explosive/blasting — without damage to the tower foundation/tower structure or the line, which can be accomplished by using jack hammer/pneumatic hammer with compressor so as to avoid any damage to the line or tower. This aspect has also been taken note of by the learned Single Judge of the High Court in the judgment dated 11-3-20082. The Division Bench¹ did not differ with any of these findings.



Accordingly, Civil Appeal No. 10953 of 2016 preferred by the writ petitioner stands dismissed.

27. At this stage, we deal with the direction of the Division Bench regarding compensation payable to the writ petitioner, or for that matter to the State Government. In the first instance, no such claim was laid by the writ petitioner in the writ petition or by the State Government before the High Court. Furthermore, the High Court could not have given this task to the District Collector, which is contrary to the provisions of Section 16(c) of the Telegraph Act, 1885 which are extended to laying down of electricity lines. As per this provision, such an authority vests with the District Judge.

28. These are sufficient reasons to allow Civil Appeal No. 10951 of 2016 preferred by the Power Grid by setting aside those directions. Ordered accordingly. We make it clear that if the writ petitioner feels that it is entitled to any compensation, the appropriate course of action is to file a suit before the District Judge concerned for this purpose. It would also be apt to point out at this stage that the Central Government has framed guidelines dated 15-10-2015 in this behalf which inter alia provide that the issue of compensation may be resolved having regard to the mode and manner of assessment of compensation as per the said guidelines. Therefore, it would always be open to the writ petitioner to avail the remedy as per the said guidelines.”



7. Having regard to the facts and circumstances of the case, considering the submissions advanced by learned counsel for the parties and taking into account the judgment rendered by the Hon’ble Apex Court in the case of **Century Textiles and Industries Limited** (supra), we do not find any merit in the present writ petition, more so since prior consent of the owner or occupier of the plot/land in question, for construction of Transmission Towers or for laying of transmission lines, is not required, hence the instant writ petition stands dismissed, however without any order as to cost.

(Rajan Gupta, J)

Mohit Kumar Shah, J : I agree.

(Mohit Kumar Shah, J)

Anjani/-

AFR/NAFR	AFR
CAV DATE	15.11.2021
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Transmission Date	

