

14th December,
2021
(AK)
22

W.P.A 996 of 2021

Hafizur Rahaman Biswas and others
Vs.
Power Grid Corporation of India Limited and others

Mr. Kamalesh Bhattacharya
Mr. Aninda Bhattacharya
...for the petitioners.

Mr. Pius Chaturvedi
Mr. Uttam Kumar Mandal
...for PGCIL.

Learned counsel for the petitioner contends that the respondent no.1, without any notice to the petitioners, who are the alleged owners of the land-in-question, have taken High Tension electric connection over the said land.

Learned counsel contends that, apart from the absence of notice, the specific averments in paragraph no.7 of the writ petition clearly show that, in spite of having an alternative way to draw the line over another property, which is a public drain running parallel to the land of the petitioners, the first respondent chose the petitioner's land for the aforesaid purpose.

Learned counsel appearing for the respondent authorities contends that Section 164 of the Electricity Act specifically envisages the power of the Telegraph Authority in certain cases.

It is stipulated therein that 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 said Government may think fit, to impose the provisions of the Indian Telegraph Act, 1885.

Learned counsel contends that it is specifically stipulated in Rule 3(4) of the Works of Licensees Rules, 2006 that nothing contained in the said Rule shall affect the powers confer upon any licensee under Section 164 of the 2003 Act.

Rule 3 of the 2006 Rules govern the procedure for carrying out of works etc. by a licensee.

Although Rule 3(1)(a) specifies that no such work can be undertaken without the prior consent of the owner or occupier of any building or land, in view of sub-rule (4), the said requirement is rendered nugatory in respect of Telegraph Authorities exercising their power under Section 164 of the 2003 Act.

In the present case, it is contended that the respondent authorities exercised such powers as conferred under Section 164 of the 2003 Act.

In support of his proposition, learned counsel for the respondents places reliance on the following judgments:

1. *Unreported judgment in W.P. 4327 (W) of 2016*

(Mohan Lal Sarkar Vs. Power Grid Corporation of India Ltd and others).

2. 2017 SCC Page-8302 in CAN 3695 of 2017 in W.P. No. 27704 (W) of 2016

(Bajlur Rahaman Sk. And another Vs. WBSETCL & Ors.)

With

CAN 3693 of 2017 in W.P. 12275 (W) of 2015

(Kartick Pandey & Anr. Vs. WBSETCL & Ors.

3. 2016 (12) Page 859

(Power Grid Corporation of India Ltd. Vs. Century Textiles & Industries Ltd. & Ors.)

4. 2017 SCC On Line Cal 15999

(The Managing Director, West Bengal State Electricity Transmission Company Limited & Anr. Vs. Bappaditya Ganguly & Ors.

5. 2011 (2) CHN (CAL) 96

(Tapan Kumar Jana Vs. State of West Bengal)

6. Unreported Judgment Madras High Court

(C. Ram Prakash Vs. Power Grid Corporation of India)

In reply, learned counsel for the petitioner contends that, in the present case, there is no transparency in the decision-making process of the respondent authorities.

Moreover, it is argued that in view of the specific averment in paragraph no.7 of the writ petition as regards existence of an equally feasible alternative way for taking the High Tension Line, it was the incumbent duty of the respondent authorities to explain as to why the option of taking the connection over the petitioners' land in precedence over the adjacent land was exercised.

Such onus not being discharged by the respondent authorities, it is contended, the decision-making process adopted by the respondent authorities was arbitrary and ought to be set aside.

However, as rightly submitted by learned counsel for the respondent authorities, Rule 3(4) of the 2006 Rules clearly excludes the rest of the Rule from affecting any power conferred on the licensee under Section 164 of the 2003 Act.

As such, by dint of sub-rule (4), the mandate of prior consent of owner or occupier, as stipulated in Rule 3(1)(a) of the 2006 Rules, become academic insofar as the Telegraph Authorities are concerned.

In the present case, the respondent authorities acted within the edges of the power conferred under Section 164 of the 2003 Act.

The only fetter that governs the Telegraph Authorities (in the present case the respondent authorities) is provided in Section 10, provisos (a) to (d) of the Indian Telegraph Act, 1885.

There is no requirement to give prior notice to the owner or occupier and/or seek prior consent from the owner or occupier within the four corners of Section 10 of the 1885 Act.

Moreover, the judgments cited by learned counsel for the respondent authorities clearly indicate the settled judicial view in favour of the proposition that the powers conferred under Section 164 of the 2003 Act are

unfettered by Rule 3 of the 2006 Rules, by virtue of Rule 3(4).

That apart, the present writ petition has not challenged any decision-making process of the respondent authorities but the authority and power of the respondents to take such electric connection over the petitioners' plot of land without the petitioner's consent.

The mere allegation in the writ petition, that there is an alternative way for taking such connection, cannot necessitate a judicial enquiry into the matter as to why the respondent authorities exercised their discretion in accordance with law by taking the connection, in view of expediency in the perspective of the respondent authorities, over the petitioners' land.

Such detailed enquiry is entirely beyond the ambit of the present writ petition and the periphery of the writ court's jurisdiction.

As such, there is no merit in the present writ petition.

Accordingly, WPA 996 of 2021 is dismissed on contest, without any order as to costs.

It is made clear that the observations made above are without prejudice to any other independent legal right of the petitioners, for compensation or otherwise, to which the petitioners are otherwise entitled in law.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)