

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.03.2021

DELIVERED ON : 17.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.4718 of 2020
and WMP.No.5576 of 2020

M/s.Cetex Petrochemicals Limited,
Represented by its Executive Director (operations),
Mr.S.Gowthaman,
Santhangadu Village, Manali,
Chennai - 600 068.

...Petitioner

vs.

- 1.The Chief Engineer (Transmission/Civil),
Tamil Nadu Transmission Corporation Limited,
Tamil Nadu Electricity Board,
Anna Salai, Chennai - 600 002.
- 2.The Superintending Engineer,
Operation-1, Chennai,
Tamil Nadu Transmission Corporation Limited,
Tamil Nadu Electricity Board,
Koratur 230 KV SS Campus,
Chennai - 600 080.
- 3.The Executive Engineer (Civil/TLC),
Transmission Line Construction,
Tamil Nadu Transmission Corporation Limited,
Tamil Nadu Electricity Board,
A10, Thiru-Vi-Ka-Industrial Estate,
Guindy, Chennai - 32.
- 4.The District Collector,
No.62, Rajaji Salai,
4th floor, Chennai - 600 001.

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order proceeding Rc No.15221/2019/J12 dated 31.01.2020 passed by the 4th respondent and quash the same and direct the respondents 1-3 to set up their proposed construction

activity of any tower including Multi towers beyond the 90 meters of the LPG storage bullets situated in the Petitioners' premises at Sathangadu Village, Manali, Chennai - 600 068 in the view of SMPV rules No.22 of the Petroleum Safety and Explosive Organisation (PESO) Act.

For Petitioner : Mr.J.Sivananda Raaj
for M/s.Adeesh Anto
For Respondents 1 to 3 : Mr.Abdul Saleem
For Respondent 4 : Mr.V.Shanmuga Sundar for R4
Special Government Pleader

O R D E R

The issue that arises for consideration in this writ petition is whether the procedure contemplated under section 16 of the Indian Telegraph Act, 1885 which empowers the District Magistrate / District Collector to permit the telegraph authority to enter upon any immovable property for the purpose of installing and maintaining telegraph lines has been followed under the impugned order.

2. In the case on hand, the fourth respondent has passed the impugned order dated 31.01.2020 under section 16(1) of the Indian Telegraph Act, 1885 permitting the third respondent to lay a 400 kv HT tower with Twin Moose conductors in the petitioner's factory. Aggrieved by the same, this writ petition has been filed.

3. The petitioner has challenged the impugned order primarily on the following grounds:

(a) The impugned order has been passed by not following the procedure contemplated under section 10 and section 16 of the Indian Telegraph Act, 1885.

(b) The fourth respondent has mechanically passed the order without considering the objections raised by the petitioner and has failed to understand the implications of the order which amounts to violation of Static and Mobile Pressure Vessels (Unfired) Rules (hereinafter referred to as SMPV Rules) and Safety norms.

(c) The principles of natural justice has been violated by the fourth respondent by not affording a fair hearing to the petitioner while passing the impugned order.

4. Learned counsel for the petitioner drew the attention of this Court to Section 10 of Indian Telegraph Act, 1885 and in particular, he referred to proviso (d) of the said section and would submit that the said statutory procedure has not been adhered to by the telegraph authority (hereinafter referred to as "TANTRANSO") as they have failed to take note of the fact that as per SMPV Rules, the minimum safety distance for liquefied flammable gases in respect of vessel capacity having between 7,50,000 and 38,00,000 litres should be 90 meters i.e., LPG bullet area can be installed only at a place which is 90 meters away to the nearest bullet. Learned counsel for the petitioner would submit that the petitioner is having a total of 9 LPG bullets in their factory having capacity of about 37,29,000 litres kept in a highly compressed and explosive state. According to him, if the proposed tower is to be installed in the petitioner's premises, it would amount to violation of Rule 22 of SMPV Rules which stipulates the minimum distance of 90 meters between bullets and the high tension electricity tower. According to him, high tension electricity tower inside the premises within 90 meters prescribed limit will increase the risk of an accident. He would further submit that if any untoward fire accident happens, due to the violation of SMPV Rules, there is every chance of the fire spreading to the petitioner's refinery as it is connected to pipelines resulting in devastating catastrophic effect in the surrounding areas.

5. Learned counsel for the petitioner would submit that the earlier undertaking given by the petitioner to the respondents 1 to 3 in the year 2013 pertains to 110 kv HT tower line to be erected outside the 90 meters safety boundary prescribed by SMPV rules for the use of M/s.Futura Polysters, the neighbouring factory. But according to him, the said undertaking was not given for the proposed 400 kv HT tower which the respondents 1 to 3 proposes to install in the petitioner's factory in the year 2018.

6. Learned counsel for the petitioner drew the attention of this Court to the following documents:

(a) Letter dated 27.05.2011 sent to the Superintending Engineer - Operation I, Tamil Nadu Electricity Board

(b) No objection certificate dated 30.11.2012 issued by Assistant District Magistrate / District Revenue Officer, Tiruvallur in favour of the petitioner.

(c) The order of the Additional District Magistrate / District Revenue Officer, Tiruvallur District dated 04.01.2013 permitting the change of alignment of high tension line in the petitioner's premises by TNEB.

(d) The report accompanying the estimate submitted by the Chief Engineer, CEDC/North, Electricity Distribution Circle, Chennai intimating the petitioner that the cost of the estimate for deviation of existing 110 kv spur line to M/s.Futura Polyesters between loc 7 and 9 running inside the premises of the petitioner is Rs.70,54,050/-

(e) Undertaking given by the petitioner on 13.05.2013 to bear the cost of remaining amount for the proposed diversion of existing 110 kv line running inside the petitioner's premises.

(f) A Cheque for a sum of Rs.70,54,050/- issued by the petitioner in favour of the respondents toward the cost of diverting the existing 110 kv line passing through the petitioner's premises.

(g) Letter dated 10.03.2014 sent to the Superintending Engineer requesting him to remove the 110 kv HT conductors inside the petitioner's premises to enable them to go ahead with their commissioning activities for their expansion needs.

(h) Letter dated 28.07.2015 sent to the Superintending Engineer - Operation I, intimating that 110 kv HT line diversion work has not been completed by the then TNEB inside the petitioner's premises as agreed by them. In the same letter, the petitioner had requested the then TNEB to refund the balance amount of their deposit towards diversion work, since originally the envisaged work was not required, due to the closure of M/s.Futura Polyester, the neighbouring factory.

(i) Licence dated 09.03.2016 issued by the Joint Chief Controller of Explosives South Circle, Chennai for the storage of compressed gas in favour of the petitioner and the conditions imposed thereunder.

(j) Letter dated 08.10.2018 sent to the Chief Engineer, CEDC North, Chennai intimating him that the proposed HT towers falls within the limit near the bullet area and therefore, the petitioner has got objections for any installation of tower lines inside the premises in view of the safety requirements.

(k) Letter dated 29.01.2019 sent by the petitioner to the Superintending Engineer, Chennai, reiterating their objection to the installation of HT tower in their premises for safety reasons.

(l) Letter dated 28.02.2019 from the Executive Engineer, TANTRANSO to the petitioner intimating the petitioner about the undertaking given by the petitioner in the year 2013 to arrange the leeway for execution of works by the TNEB as per the terms and conditions of supply of Electricity Act.

(m) Sketch produced by the Executive Engineer and the Assistant Engineer, TNEB, showing the deviation of 110 kv HT tower from the existing place to the proposed place.

(n) Letter dated 04.03.2019 of TANTRANSCO to the petitioner intimating the petitioner that one number of HT tower was erected inside the petitioner's premises and the remaining two number of towers will be erected inside the petitioner's premises along the periphery of the petitioner's compound wall. In the same letter, TANTRANSCO has stated that if the petitioner is going to object for their proposal, TANTRANSCO will have no option but to erect all the three numbers of towers diagonally in the petitioner's land.

(o) Order dated 20.03.2019 passed by this Court in W.P.No.8045 of 2019 filed by the petitioner. The petitioner had filed the said writ petition seeking for a direction to the respondents therein to set up the proposed construction activity of any tower including multi towers beyond the 90 meters of the LPG storage bullets situated in the petitioner's premises in view of Rule 22 of the SMPV Rules of the Petroleum Safety and Explosives Organisation (PESO) Act. In the said order, this Court had directed the fourth respondent to consider the petitioner's representation and pass appropriate orders within a period of four weeks thereafter as per section 16 of the Indian Telegraph Act, 1885 along with the relevant rules by giving notice to the petitioner.

(p) The impugned order dated 31.01.2020 passed by the fourth respondent where the fourth respondent has recorded the fact that since the distance between the proposed tower and the LPG storage is 72 meters, the Revenue Divisional Officer, North Chennai, has not recommended for entering upon the premises. Based on the consent given by the petitioner in the year 2013 to install 110 kv HT tower through the petitioner's property, the fourth respondent has passed the impugned order permitting the laying of new 400 kv HT tower in the petitioner's premises.

(q) Photographs of the petitioner's factory showing LPG bullets containing the compressed gas.

(r) Static and Mobile Pressure Vessels (Unfired) Rules, 2015. In particular, reference was made to Rule 22 with regard to the location of pressure vessels. The minimum safety distance for liquefied flammable gases as per Table-3 under the SMPV Rules between the 9 bullets of the petitioner which can carry 37,29,000 litres and the proposed HT tower should be 90 meters.

7. The learned counsel for the petitioner would submit that arbitrarily by total non application of mind to the aforementioned documents, the impugned order dated 31.01.2020 has been passed by the fourth respondent under section 16(1) of

the Indian Telegraph Act, 1885. According to him, in clear violation of Rule 22 of SMPV Rules, the impugned order has been passed as the minimum distance criteria has been given a go-by by the respondents which will be dangerous to the locality as the petitioner is a manufacturer of inflammable products. He would also contend that the earlier consent given by the petitioner in the year 2013 was for 110 kv HT tower, whereas the proposal made by the respondents 1 to 3 in the year 2018 is for installation of a 400 kv HT tower. He would also submit that under the impugned order, the damage that may be caused to the petitioner's factory by the installation of tower has not been considered which is mandatory as per proviso (d) to Section 10 of the Indian Telegraph Act, 1885.

8. It is also contended by the learned counsel for the petitioner that none of the documents referred to above were considered by the fourth respondent in the impugned order. According to him, no fair hearing was afforded to the petitioner to substantiate their case that TANTRANSCO are not entitled for installation of HT tower within the petitioner's premises. According to him, in the year 2013, the consent was given only for shifting the existing 110 HT tower outside the petitioner's premises by depositing a sum of Rs.70,54,050/- with the respondents.

9. According to the learned counsel for the petitioner, acting on the earlier consent, without following the due process of law, the fourth respondent has passed the impugned order under section 16(1) of the Indian Telegraph Act, 1885 permitting TANTRANSCO to enter upon the petitioner's premises to install the 400 kv HT tower.

10. In support of his contentions, the learned counsel for the petitioner relied upon the following authorities:

(a) A Full Bench Judgement of the Kerala High Court in the case of Bharat Plywood and Timber Products Private Limited vs. Kerala State Electricity Board, Trivandrum and others reported in AIR 1972 Ker 47 (FB);

(b) A decision of the Hon'ble Supreme Court in the case of Manuelsons Hotels Private Limited vs. State of Kerala & Others reported in AIR 2016 SC 2322;

(c) A Single Bench decision of this Court in the case of P.Balamani and Others vs. the District Magistrate and District Collector and Others reported in 2008 (2) CTC 555;

(d) A decision of the Hon'ble Supreme Court in the case of Ramlila Maidan Incident, in re suo motu WP (Crl.) No.122 of 2011 reported in (2012) 5 SCC 1;

(e) A Division Bench Judgement of the Kerala High Court in the case of Valsamma Thomas vs. Additional District Magistrate, Alappuzha and Others reported in AIR 1998 Ker 124.

Referring to the aforementioned authorities, the learned counsel for the petitioner would submit that the principles laid down in the aforesaid decisions have not been followed by the fourth respondent and the fourth respondent has also not exercised his discretion judicially by taking into consideration the evidence placed on record by the petitioner before him and therefore, according to him, the impugned order will have to be quashed.

11. Per contra, learned standing counsel for the respondents 1 to 3 would submit that initially a 110 kv HT tower from TPT-Manali feeder to M/s.Futura Polyester Ltd was established in the year 1972 by the then TNEB through the petitioner's property. According to the learned standing counsel, the petitioner's company was formed only in the year 1990 and the existing 110 kv corridor was passing through the petitioner's property even before the petitioner established their factory.

12. Learned standing counsel for the respondents 1 to 3 drew the attention of this Court to the letter dated 27.06.2011 sent by the petitioner to the electricity board requesting them for shifting of existing 110 kv HT towers within the petitioner's premises and would submit that the said proposal was accepted by TNEB on condition that the petitioner pays a sum of Rs.70,54,050/- along with the undertaking letter. Thereafter, the petitioner paid the amount and their request for shifting of 110 kv HT towers was accepted by TNEB and accordingly, tower numbers 7A to 9A were shifted within the petitioner's premises. According to the learned standing counsel for the respondents 1 to 3, while carrying on the foundation and remaining works for the shift of 110 kv tower in the petitioner's premises, the present project i.e., erection of another 400 kv DC line with Twin Moose Conductor and 230 kv DC line with Zebra conductor in Multi Circuit towers from Manali 400 kv GIS SS to proposed Pulianthope 400 kv GIS SS was proposed. Hence, the deviation work in 110 kv line was stopped temporarily and the work was not abandoned.

13. According to the learned standing counsel for the respondents 1 to 3, TANTRANSCO proposed to erect the 400 kv tower in the already approved 110 kv tower corridor instead of another corridor as it would affect the petitioner. Learned standing counsel for the respondents 1 to 3 would also submit that the proposal to erect the 400 kv HT tower on the already approved 110 kv corridor is as per the technical approval.

14. Learned standing counsel for the respondents 1 to 3 drew

the attention of this Court to the sketch disclosing the details of the installation of the proposed 400 kv HT tower in the petitioner's premises and would submit that the said tower is to be installed only in the place where the petitioner agreed for shifting of the existing 110 kv HT tower earlier. Therefore, he would submit that the present 400 kv HT tower was proposed to be erected in the already approved corridor lying idle in the petitioner's premises. He would also submit that the deviation proposal for the three towers to be erected within the petitioner's premises in the present project is only to help the petitioner i.e., two towers namely 7A and 8A as per approved deviation was proposed to be laid outside the compound wall of the petitioner's premises and tower location no.9A was retained within the petitioner's premises considering the technical feasibility.

15. According to the learned standing counsel for the respondents 1 to 3, only the tower no.9A which was renumbered as tower location no.20 in the present 400 kv project was retained to be installed within the petitioner's premises and therefore, according to him, no prejudice will be caused to the petitioner's business interest, as earlier the petitioner had given consent for three towers whereas in the present project, only one tower is required to be installed within the petitioner's premises. It is further contended by the learned Standing Counsel that there is a container yard operating near the northern boundary of the petitioner's premises and therefore, there is no possibility of shifting the proposed 400 kv HT line outside the petitioner's premises. According to the learned standing counsel for the respondents 1 to 3, SMPV rules has to be adhered to both by the petitioner as well as the respondents, but the onus is on the petitioner to follow the rules strictly by placing all bullets in the place by maintaining the safety standards prescribed under the SMPV rules and to maintain the safe distance from the high tension electric lines.

16. According to the learned standing counsel for the respondents 1 to 3, the petitioner has erected the bullets in their premises in prohibition of the safe distance, despite having knowledge about the proposed location of tower number 9A which has been renumbered as location no.20. Hence he would submit that there is no possibility of realignment of the proposed 400 kv HT tower to any other place. Learned standing counsel for the respondents 1 to 3 relied upon the following authorities in support of his submission:

(a) A decision of the Hon'ble Supreme 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;

(b) A Division Bench Judgment of the Madurai Bench of this Court in the case of C.Ram Prakash and another vs. Power Grid Corporation of India Limited and another reported in 2011-4-L.W.924;

(c) A Single Bench Decision of the Madurai Bench of this Court in the case of R.Santhana Raj and another vs. The Chief Engineer, Non-Conventional Energy Source, Chennai and others reported in 2012 (1) CTC 504;

(d) A Division Bench Judgment of this Court in the case of Sri Vignesh Yarns Private Limited vs. S.Subramaniam & other reported in 2013-1-L.W. 170;

(e) A Division Bench Judgment of this Court in the case of T.Thirumalai vs. The District Collector, Dindigul District and others reported in 2016 SCC Online Mad 15421

(f) A Division Bench Judgment of this Court dated 11.04.2019 in the case of R.Raja and others vs. The District Collector, Dharmapuri District and others

17. Relying upon the aforesaid decisions, learned standing counsel for the respondents 1 to 3 would submit that TANTRANSO are empowered to lay a transmission line in the petitioner's property in public welfare and for the development of the nation. According to him, the scheme will improve the low voltage problem, uninterrupted power supply and also will cater to the growing power demand, besides improving the system stability in the transmission network for the benefit of the people of Tamil Nadu.

Discussion:

18. Admittedly, the present HT tower proposed to be installed by TANTRANSO in the petitioner's premises is a 400 kv HT tower, whereas in the agreement reached between the petitioner and the respondents for shifting of the existing HT tower inside the petitioner's premises in the year 2013 was for a 110 kv HT tower.

19. Section 10 of the Indian Telegraph Act, 1885 reads as follows:

" 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."

20. As per the proviso d to section 10 of the Indian Telegraph Act, 1885, TANTRANSCO while exercising powers for installation of HT tower in the petitioner's premises will have to make sure that while installing the HT tower they cause little damage as possible to the petitioner's premises. The agreement reached between the petitioner and the respondents in the year 2013 was only for 110 kv HT tower and not for 400 kv HT tower, where the electricity generation capacity is almost 4 times than what was agreed upon by the petitioner with the respondents in the year 2013. The extent of damages that may be caused to the petitioner's premises in case of 110 kv HT tower and in case of 400 kv HT tower is not disclosed in the impugned order granting permission for TANTRANSCO to enter into the premises of the petitioner for the purpose of laying 400 kv HT tower.

21. The petitioner is admittedly engaged in the business of manufacturing petroleum products specifically Methyl Ethyl Ketone (MEK) and Secondary Butyl Alcohol (SBA) which are admittedly inflammable products. In the year 2013, when the petitioner reached the understanding with the respondents for shifting of the existing 110 kv HT line, they intended to set up 6 LPG bullets to store the compressed gas. However, when the respondents attempted to enter into the petitioner's premises for the purpose of installation of 400 kv HT tower in lieu of the existing ones, the petitioner was having 9 LPG bullets which can carry nearly 37,29,000 litres of compressed gas. The storage capacity of the liquefied gas in the petitioner's factory has increased by many times than what was available in the year 2011. The petitioner has taken a consistent stand that the installation of 400 kv HT tower inside the petitioner's premises is dangerous, due to the fact that the petitioner is manufacturing inflammable products. The petitioner has relied upon the Static and Mobile Pressure Vessels (Unfired) Rules, 2015 and in particular, he has relied upon table-3 contained therein which stipulates the minimum safety distance from building or group of buildings or line of adjoining property and the LPG bullets. As seen from table-3 of the SMPV rules, there should be a minimum distance of 90 meters between building or group of buildings or line of adjoining property and the LPG bullets.

22. In the impugned order, the fourth respondent has extracted the report of the Revenue Divisional Officer, North Chennai which discloses that the distance between the proposed HT tower and the LPG storage is 72 meters, whereas table-3 of the SMPV rules stipulates that there should be a minimum distance of 90 meters. According to the petitioner, there is a clear violation of SMPV rules committed by TANTRANSCO. It is their case that despite the said violation, the fourth respondent arbitrarily and by total non application of mind to the SMPV rules has passed the impugned order.

23. As rightly contended by the learned counsel for the petitioner, the fourth respondent has not given reasons as to why the report of the Revenue Divisional Officer, North Chennai which discloses that the distance between the proposed HT tower and the LPG storage is only 72 meters was rejected by the fourth respondent. In the impugned order, the SMPV rules which the petitioner relied upon for the purpose of preventing the TANTRANSCO to erect the 400 kv HT tower inside the petitioner's premises has also not been considered by the fourth respondent.

24. In the order dated 20.03.2019 passed by this Court in W.P.No.8045 of 2019, in the earlier round of litigation, it was made clear that the petitioner's representation will have to be considered by the fourth respondent only in accordance with section 16 of the Indian Telegraph Act, 1885 along with relevant rules by giving notice to the petitioner. Even in the earlier round of litigation in W.P.No.8045 of 2019, the petitioner has raised the very same contention that the approved installation of 400 kv HT tower inside the petitioner's premises is in violation of Rule 22 of SMPV rules framed under the PESO, Act. Despite the directions given by this Court on 20.03.2019 in W.P.No.8045 of 2019, the fourth respondent has failed to give due consideration to Rule 22 of SMPV rules and table-3 found thereunder. The fourth respondent in the impugned order has permitted TANTRANSCO to enter the petitioner's premises to lay 400 kv HT tower only on the basis that in the year 2011, the petitioner has given consent for shifting the existing 110 kv HT tower within the premises of the petitioner.

25. As observed earlier, the power generated in 110 kv HT tower and the power generated in 400 kv HT tower are drastically different. In case of 400 kv HT tower which TANTRANSCO proposes to erect in the petitioner's premises, the generation of power is many times higher than in a 110 kv HT tower. As seen from the impugned order, all these factors have not been considered by the fourth respondent. It is also the contention of the petitioner before this court that in the earlier understanding reached by the petitioner and the respondents in the year 2013, the understanding was that 110 kv HT tower in the petitioner's premises will have to be shifted outside the petitioner's premises by the respondents on payment of a sum of Rs.70,54,050/- to the respondents which the petitioner has subsequently paid. Even though the same has been disputed by the respondents who have taken a stand that the said understanding was reached to enable the petitioner to shift 110 kv HT tower to another location in the very same premises of the petitioner to enable the petitioner to utilise the space properly without any inconvenience.

26. Several letters have been produced by the petitioner before this Court in support of their stand which have not been considered by the fourth respondent in the impugned order. There is no doubt that TANTRANSCO is empowered to erect HT towers in any property, but the same will have to be done only in accordance with the procedure contemplated under section 10 and section 16 of the Indian Telegraph Act, 1885. The petitioner has raised the very same objections that has been raised before this Court in the enquiry proceedings before the fourth respondent.

The same has also been extracted in the impugned order. However, none of the objections have been considered by the fourth respondent in the impugned order.

27. Without considering the objections of the petitioner and without adhering to the directions given by this Court in W.P.No.4085 of 2019 on 20.03.2019, in the earlier round of litigation, the fourth respondent has passed the impugned order permitting TANTRANSCO to enter upon the petitioner's premises for the installation of 400 kv HT tower by a non speaking order. The fourth respondent ought to have given due consideration to the fact that the petitioner is manufacturing and storing inflammable products in its factory premises. In such circumstances, necessarily, each and every document filed by the petitioner as well as the statutory provisions pertaining to the erection of 400 kv HT tower ought to have been strictly adhered to by the fourth respondent. However, the fourth respondent has not considered the statutory provisions relied upon by the petitioner in the impugned order.

28. From the decisions relied upon by the learned counsel for the petitioner referred to supra, it is clear that (a) The District Magistrate has to exercise his discretion judicially. (b) He has to pass the order under section 16(1) of the Indian Telegraph Act, 1885 after hearing the parties and after taking such evidence as is required with regard to the objections raised. (c) The order passed by the District Magistrate should be a speaking order. (d) The order should reflect the objections raised by parties and the reasons given by the Magistrate for accepting or rejecting the same and (e) The order should also reflect the materials relied on by the District Magistrate for arriving at the conclusion.

29. In the case on hand, the fourth respondent has not exercised his discretion judicially and he has not considered the objections raised by the petitioner in the enquiry proceedings. The fourth respondent has also not given reasons as to why the report of the Revenue Divisional Officer, North Chennai revealing that the proposed 400 kv HT tower is within 72 meters from the petitioner's building was rejected. In the impugned order, though the fourth respondent has extracted the objections raised by the petitioner, no reasons have been given for rejecting the said objections. By total non application of mind, the fourth respondent without giving any reason, has accepted the undertaking given by the petitioner in the year 2013 which pertains to 110 kv HT tower, whereas the proposed tower pertains to 400 kv HT tower. No reasons have been given by

the fourth respondent whatsoever in the impugned order as to how the undertaking given by the petitioner to the then TNEB in the year 2013 is applicable for the year 2018, that too, when a new body by name TANTRANSCO has taken control of installation of towers, despite the directions given by this Court in the earlier round of litigation by order dated 20.03.2019 in W.P.No.8045 of 2019 that the fourth respondent while passing the final orders under section 16(1) of the Indian Telegraph Act, 1885 has to consider the SMPV rules in the PESO Act. However, the same has not been done so.

30. Admittedly, the petitioner is manufacturing and storing hazardous and inflammable products. It is also their consistent stand that any fire accident in their premises will have devastating catastrophic effect endangering the lives of many people in and around the said area. The latin maxim "salus populi supremo lex" (the safety of the people is a supreme law) and "salus republica supremo lex" (safety of the state is the supreme law) comes into play. However, under the impugned order, the fourth respondent has not given due consideration with regard to safety aspect of the proposal to erect 400 kv HT tower in the petitioner's premises where admittedly, inflammable products are manufactured and stored.

31. The decisions relied upon by the learned counsel for the petitioner as to the procedure to be followed by the District Magistrate/District Collector under section 16(1) of the Indian Telegraph Act, 1885 referred to supra are squarely applicable to the facts of the instant case as the due procedure has not been followed by the fourth respondent.

32. Insofar as the decisions relied upon by the learned standing counsel for the respondents 1 to 3 referred to supra are concerned, they do not have any bearing for the grounds raised by the petitioner in this writ petition as they all deal with the powers of TANTRANSCO authority to erect the high tension towers in any property. Those powers have not been disputed by the petitioner but the only contention raised by the petitioner in this writ petition is the procedure contemplated under sections 10 and 16(1) of the Indian Telegraph Act, 1885 and the directions given by this Court in W.P.No.4085 of 2019 in the earlier round of litigation has not been adhered to by the fourth respondent. There is no doubt about the power vested with TANTRANSCO to erect HT towers in any property but the same will have to be done only in accordance with the due procedure established under law and by adhering to the procedure contemplated under various statutory provisions referred to by the petitioner in this writ petition.

33. For the foregoing reason, this Court is of the considered view that since the procedure has not been followed, the impugned order passed by the fourth respondent under section 16(1) of the Indian Telegraph Act, 1885 has to be necessarily quashed and the matter remanded back to the fourth respondent for fresh consideration on merits and in accordance with law after affording a fair hearing to the petitioner and after giving due consideration to the objections raised by the petitioner.

34. In the result, the impugned order dated 31.01.2020 passed by the fourth respondent is hereby quashed and the matter is remanded back to the fourth respondent for fresh consideration and the fourth respondent shall pass final orders on merits and in accordance with law after giving due consideration to the objections raised by the petitioner and also after granting the petitioner a right of personal hearing within a period of twelve weeks from the date of receipt of a copy of this order.

35. With the aforesaid direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

nl

To

- 1.The Chief Engineer (Transmission/Civil),
Tamil Nadu Transmission Corporation Limited,
Tamil Nadu Electricity Board,
Anna Salai, Chennai - 600 002.
- 2.The Superintending Engineer,
Operation-1, Chennai,
Tamil Nadu Transmission Corporation Limited,
Tamil Nadu Electricity Board,
Koratur 230 KV SS Campus,
Chennai - 600 080.

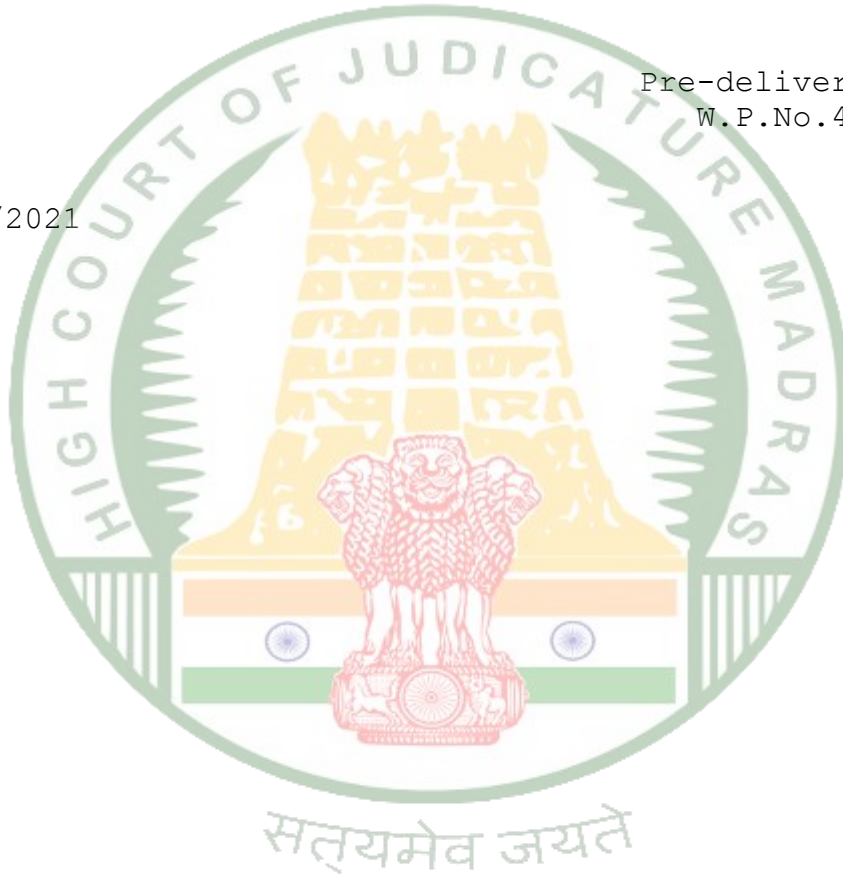
3.The Executive Engineer(Civil/TLC),
Transmission Line Construction,
Tamil Nadu Transmission Corporation Limited,
Tamil Nadu Electricity Board,
A10, Thiru-Vi-Ka-Industrial Estate,
Guindy, Chennai - 32.

4.The District Collector,
No.62, Rajaji Salai,
4th floor, Chennai - 600 001.

+1cc to Mr.Adeesh Anto, Advocate, S.R.No.16834

Pre-delivery order in
W.P.No.4718 of 2020

AK II (CO)
KKV/19/03/2021



WEB COPY