

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.05.2021

CORAM:

THE HON'BLE MR.JUSTICE R.SURESH KUMAR
and
THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

W.A. No. 1365 of 2021
and
C.M.P. No. 8490 of 2021

1.Jayanthi
2.S.Bhuvaneswari
3.S.Parimala Devi
4.Shanthi
5.T.Govindaraj
6.S.Venkidasamy
7.T.Kangeya Gounder
8.T.Palanisamy
9.A.Balasubramaniam
10.Subramaniam
11.Ganesamoorthy ... Appellants

Vs.

1.The State of Tamil Nadu,
Represented by its Principal Secretary
to the Government,
Energy Department, Fort St. George,
Chennai - 600009.

2.The Joint Managing Director,
Tamil Nadu Generation & Distribution
Corporation (TANGEDCO),
10th Floor, NPKRR Maligai,
144, Anna Salai, Chennai - 600002.

3.The District Collector,
Office of the District Collector,
Tiruppur District, Tiruppur.

4.The Chief Engineer / NCES,
Tamil Nadu Generation & Distribution
Corporation (TANGEDCO),
II Floor, Eastern Wing,
NPKRR Maligai, 144, Anna Salai,
Chennai - 600002.

5.The Superintendent Engineer,
General Construction Circle, TANTRANSCO,
Dr. Subbarayan Road,
Tatabad, Coimbatore - 12.

6.The Executive Engineer,
General Construction Circle, TANTRANSCO,
Ellamedu, Ingur,
Perundurai Taluk,
Erode District.

7.The Superintendent of Police,
Tiruppur District Police,
Tiruppur.

8.The Deputy Superintendent of Police,
Dharapuram Range, Tiruppur District.

9.M/s Sulzon Energy Ltd.,
Represented by its General Manager,
104, 1st Floor, Delta Wing,
Raheja Towers,
177, Anna Salai,
Chennai - 600002.

.... Respondents

This Appeal has been filed under Clause 15 of Letter Patent Appeal against the order dated 31.03.2021 passed in W.P. No. 15896 of 2020.

Prayer in W.P.No.15896 of 2020 : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the impugned orders in Na.Ka.No.6450/2020/E5 dated 08.10.2020 (in respect of all the petitioners) of the 3rd respondent and quash the same as illegal, unlawful and unconstitutional.

For Petitioner : Mr. V.Raghavachari
For Mr. M.Guruprasad

For Respondents: Mr.Ajmal Khan, Senior Counsel
For M/s. Ajmal Associates (For R9)

Mrs. A.Srijeyanthi (For R1 to R3,R7,R8)
Special Government Pleader

Mr. Abdul Saleem (For R4 to R6)

JUDGMENT

(through video conference)

(Order of the Court was made by P.D.AUDIKESAVALU, J)

Heard Mr. V.Raghavachari, Learned Counsel appearing for
the Appellants, Mrs. A.Srijeyanthi, Learned Special Government

Pleader, who takes notice for the First to Third, Seventh and Eighth Respondents, Mr. Abdul Saleem, Learned Counsel, who takes notice for the Fourth to Sixth Respondents and Mr. Ajmal Khan, Learned Senior Counsel of M/s. Ajmal Associates, Learned Counsel for the Caveator / Ninth Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Appellants had filed the Writ Petition in W.P. No. 15896 of 2020 in this Court impeaching the orders in Na.Ka. No. 6450/2020/E5 dated 08.10.2020 passed by the Third Respondent granting permission to the Ninth Respondent to erect electric towers in the respective lands of the Appellants under Section 16(1) of the Indian Telegraph Act, 1885 (hereinafter referred to as 'the Act' for brevity). The grievance ventilated by the Appellants in the Writ Petition was that the 'enter upon permission' was granted without proper service of notice to the land owners and without considering the objections raised by those who had participated in the enquiry, and that the Ninth Respondent had mislead the Third Respondent as if it was an 'Authority' under the Act. The Writ Court after referring to the various decisions governing the controversy arrived at the conclusion that neither the Appellants were entitled to any notice before granting any permission nor there was any violation of principles of natural justice and dismissed the Writ Petition, which is assailed in this Writ Appeal.

3. The primordial contention of the Learned Counsel appearing for the Appellants in this Appeal is that though a specific contention had been raised before the Writ Court that the Ninth Respondent was not an 'Authority' entitled to invoke Section 16 of the Act, the same has not been considered while rejecting the other contentions raised. It is brought to notice by the Learned Counsel appearing for the Ninth Respondent that in the order dated 30.11.2011 in W.P. No. 22967 of 2011, etc., batch filed by similarly placed land owners against the Ninth Respondent, this Court has held that no license was required for generating company for establishing, operating or transmitting a dedicated transmission line, except the conditions mentioned therein and its compliance was not disputed. However, on appeal, the Division Bench of this Court by order dated 12.01.2012 in W.A. No. 2401 of 2011, etc., batch modified that order based upon a subsequent agreement entered between the parties, meaning thereby the order passed in that batch of Writ Petitions cannot be said to have attained finality on the proposition of law now canvassed by the Appellants in this case. It is also stated by the Learned Counsel appearing for the Ninth Respondent that most of the Appellants have entered into compromise with the Ninth Respondent for erection of towers in their respective lands and receive compensation after the order was passed in the Writ Petition and it is only in respect of one tower, the erection is yet to be completed.

Learned Counsel appearing for the Appellants expresses his inability to confirm the said facts without instructions from the concerned persons.

4. Though there does not appear to be any infirmity in the impugned order dated 31.03.2021 in W.P. No. 15896 of 2020 upholding permission granted to the Ninth Respondent under Section 16(1) of the Act to enter upon the property of the Appellants to erect the electric towers in the respective lands of the Appellants, it would be necessary at this juncture to refer to Section 17 of the Act, which reads as follows:-

" 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 from, 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."

permission' has been granted under Section 16(1) of the Act, a land owner is entitled to make an application to the jurisdictional District Magistrate for removing or re-locating the electric towers that have been erected under Section 17 of the Act. Having regard to the pragmatic considerations of cost effectiveness and time saving measures in the larger public interest, it would be appropriate at this stage taking into account the aforesaid rival submissions made by the Learned Counsel appearing for the parties that that enquiry under section 17(2) of the Act can be immediately conducted by the Third Respondent to examine all the contentions that are raised by the Appellants, including as to whether the Ninth Respondent is an 'Authority' entitled to invoke section 16 of the Act, the route for locating the electric towers, the amount of compensation payable and the compromise said to have been entered by the Ninth Respondent with the Appellants. In view of that proposed enquiry, the further implementation of the orders in Na.Ka. No. 6450/2020/E5 dated 08.10.2020 passed by the Third Respondent under section 16(1) of the Act shall be kept in abeyance and the parties shall maintain status quo till its completion. Depending upon its outcome, further action shall proceed in accordance with law. Though obvious, it is made clear that no view is expressed by this Court on the correctness or otherwise on the rival contentions of the parties in this regard.

5. In order to expedite the proceedings, Learned Special Government Pleader, on instructions, states that enquiry under section 17(2) of the Act would be conducted at 11.00 a.m. on 21.05.2021 before the Third Respondent and all the parties concerned including the Appellants and the Ninth Respondent may appear on the said date. The Appellants shall place their objections in writing before the Third Respondent on the said hearing and no further extension of time shall be granted for the same. If the Third Respondent is not in a position to take up the matter for hearing on that date, the adjourned date of hearing shall be informed to all parties concerned in the prescribed manner. As it is stated that the practice has been prevalent that parties can be accompanied by their legal practitioner to represent on their behalf, they may avail such benefit. After affording full opportunity of personal hearing to all parties concerned including the Appellants and the Ninth Respondent and making necessary inspection of the property through the concerned officials, if necessary, the Third Respondent shall deal with each of the contentions raised by the respective parties and shall pass reasoned orders on merits in accordance with law and shall communicate the decision taken to them under written acknowledgement and file a report of such compliance before the Registrar (Judicial) of this Court by 30.06.2021 without fail.

In the result, the Writ Appeal is disposed on the aforesaid terms. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

Maya

To

- 1.The Principal Secretary to the Government,
Energy Department, Fort St. George,
Chennai - 600009.
- 2.The Joint Managing Director,
Tamil Nadu Generation & Distribution
Corporation (TANGEDCO),
10th Floor, NPKRR Maligai,
144, Anna Salai, Chennai - 600002.
- 3.The District Collector,
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- 6.The Executive Engineer,
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- 7.The Superintendent of Police,
Tiruppur District Police,
Tiruppur.

8.The Deputy Superintendent of Police,
Dharapuram Range, Tiruppur District.

9.M/s Sulzon Energy Ltd.,
Represented by its General Manager,
104, 1st Floor, Delta Wing,
Raheja Towers,
177, Anna Salai,
Chennai - 600002.

Copy to

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3. S.Parimala Devi
W/o. Subramaniam
Uththampalayam
Pappini Village
Kangayam Taluk
Tiruppur District.
4. Shanthi
W/o. Sundaravadivel
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S/o. Thirumalaisamy Gounder
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Dhayampalayam (Post)
Uthiyur (Via)
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6. S.Venkidusamy
S/o. Subbaraya Gounder
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10. Subramaniam
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Athikattu Thottam
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+1cc to Mr.M.Guruprasad, Advocate SR.No.27161

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RR(CO)
GMY(13/05/2021)