

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10669 of 2020

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Ashok Kumar Sharma Son of Late Jagarnath Sharma Resident of Muhalla-
Lakhani Bigaha, P.S.-Danapur, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Human Resource Development, Govt. of Bihar, Patna.
3. The the Princiapal Secretary, Department of Power an Energy, Govt. of Bihar, Patna.
4. The Bihar State Power (Holding) Company Ltd (Hereinafter referred as the BSPHCL) through its Chairman-Cum-Managing Director (Hereinafter referred as the C.M.D.) the B.S.E.B., Vidyut Bhawan, Baily Road, Patna.
5. The C.M.D., BSPHCL, Vidyut Bhawan, Baily Road, Patna
6. The District Magistrate, Patna.
7. The Managing Director (Hereinafter referred as the M.D.) South Bihar State Power Distribution Co. Ltd. (Hereinafter referred as the The SBPDCL.), Vidyut Bhawan, Baily Road, Patna.-1,
8. The General Manager-Cum-Chief Engineer, SBPDCL, Are Electricity Board, Bihar, Vidyut Bhawan, Patna.
9. The Electric Superintending Engineer, Transmission, Electric Supply Circle, PESU, Patna.
10. The Electric Executive Engineer, Electric Supply Division, Danapur, Patna.
11. The Electric Executive Engineer, Canal Electri Connection, Electric Supply Division, Patliputra Colony Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Ishwar Prasad, Advocate
For the Respondent/s : Mr. Ashutosh Ranjan Pandey, AAG-15

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

3 17-01-2022 This application has been taken up for online hearing
through video conference because of COVID-19 pandemic



restrictions.

The petitioner is seeking following relief in the present writ application :-

“That this application is being filed on behalf of the petitioner for issuance of appropriate writ or writs / order or orders / direction or directions in the nature of “Writ of Mandamus commanding the respondents to shift and diver the existing transmission of 33000 [11000x3 line] KVA electric wires line with existing dilapidated poles from over the densely populated residential house/mohalla of the petitioner to some other nearby vacant place in the following facts and circumstances of the case is presently passing over the roofs of the houses of the petitioner and others and also to replace the same by new wiring/new poles as the old electric wiring is in very dilapidated condition due to which several related accidents have already taken place and also for grant any other relief or reliefs if the petitioner is found entitled”

Learned counsel appearing on behalf of the respondents have rightly placed reliance on the Supreme Court's decision in case of ***Power Grid Corporation of India Limited Vs. Century Textiles and Industries Limited and Ors.*** reported in (2017) 5 SCC 143, paragraphs 21 to 28 of which reads thus :-

“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 11-3-2008 [Century Textiles & Industries Ltd. v. Power Grid Corpn. of India Ltd., WP (C) No. 1909 of 2007, decided on 11-3-2008 (Chh)] . The Division Bench [Century Textiles & Industries Ltd. v. Power Grid Corpn. of India Ltd., Writ Appeal No. 42 of 2008, decided on 2-8-2010 (Chh)] 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.”

Relying upon the said decision of the Supreme Court,



a co-ordinate Bench of this Court, in similar circumstance has disposed of CWJC No. 1917 of 2021 by an order dated 03.12.2021, CWJC No. 9078 of 2020 by an order dated 18.11.2021 and CWJC No. 9207 of 2020 by an order dated 15.11.2021, with a liberty to avail such other remedies as are provided for under the law or as noted in the aforesaid judgement of the Supreme Court.

Considering the facts and circumstances of the case, this writ application is disposed of with the same observation.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

K.K.RAO/-

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