

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A 3239 of 2022

Tapas Kumar Ghosh

Vs.

**The West Bengal State Electricity Transmission Company Limited
and others**

For the petitioner	:	Md. Sabir Ahmed, Mr. Biswajit Manna, Mr. S. Sarkar, Mr. Tasnim Ahmed
For the WBSETCL	:	Mr. Sumit Kumar Panja, Mr. Sumit Ray
Hearing concluded on	:	27.04.2022
Judgment on	:	04.05.2022

Sabyasachi Bhattacharyya, J:-

1. The petitioner is an owner of the plot of land-in-question. The transmission licensee, that is, respondent no.1 started installing a tower of 400 KV Double Circuit Moose Transmission Line over the land of the petitioner without serving any notice or intimation to the petitioner.

2. On December 22, 2021, the petitioner raised objection in writing before the respondent-Authorities in respect of installation of such tower.
3. Being aggrieved by the aforesaid act of the transmission licensee, the present writ petition has been preferred, primarily seeking to stop installation of the tower.
4. Learned counsel appearing for the writ petitioner contends that, in terms of the Works of Licensees Rules, 2006 (hereinafter referred to as 'the 2006 Rules'), in particular Clause 3(1)(b) thereof, a licensee may fix any support of overhead line, etc., on any building or land.
5. However, as per the first proviso to Clause (b) of Rule 3(1) of the 2006 Rules, in case where the owner or occupier of the building or land raises objections, the licensee has to obtain permission in writing from the authorities stipulated therein.
6. The second proviso thereto provides that if at any time, the owner or occupier of any such building or land shows sufficient cause, the said authorities may, by order in writing, direct for any such works, support, stray or start to be removed or altered.
7. In the present case, it is argued, in view of the written objection raised by the petitioner, who claims to be the owner of the land, the transmission license ought to be restrained from installing the tower, since the forcible work of installation violates the fundamental rights of the petitioner and his legal rights as the owner of the property.
8. Learned counsel appearing for the transmission licensee, on the other hand, submits that sub-rule (4) of Rule 3 of the 2006 Rules stipulates

that nothing contained in the said Rule shall affect the powers conferred upon any licensee under Section 164 of the Electricity Act, 2003 (for the sake of brevity, 'the 2003 Act').

9. That apart, it is contended that Rule 3 of the 2006 Rules pertains only to distribution licensees and not to transmission licenses, the latter being covered by Section 164 of the 2003 Act, which has been excluded from the operation of Rule 3.
10. In order to examine the questions raised by the parties, Rule 3 is set out below:

“3. Licensee to carry out works.- (1) A licensee may –

- (a) carry out works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, whereover or whereunder any electric supply-line or works has not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land;
- (b) fix any support of overhead line or any stay or strut required for the purpose of securing in position any support of an overhead line on any building or land or having been so fixed, may alter such support:

Provided that in case where the owner or occupier of the building or land raises objections in respect of works to be carried out under this rule, the licensee shall obtain permission in writing from the District Magistrate or the Commissioner of Police or any other officer authorised by the State Government in this behalf, for carrying out the works:

Provided further that if at any time, the owner or occupier of any building or land on which any works have been carried out or any support of an overhead line, stay or strut has been fixed shows sufficient cause, the District Magistrate or the Commissioner of Police, or the officer authorised may by order in writing direct for any such works, support, stay or strut to be removed or altered.

- (2) When making an order under sub-rule (1), the District Magistrate or the Commissioner of Police or the officer so authorised, as the case may be, shall fix , after considering the representations of the concerned persons ,if any, the amount of compensation or of

annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.

(3) Every order made by a District Magistrate or a Commissioner of Police or an authorised officer under sub-rule (1) shall be subject to revision by the Appropriate Commission.

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

11. Section 164 of the 2003 Act , on the other hand, reads as follows:

“164. Exercise of powers of Telegraph Authority in certain cases.—*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 coordination 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 Appropriate Government may think fit to impose and to the provisions of the Indian Telegraph Act, 1885, any of the powers which the telegraph authority possesses under that Act with respect to the placing of telegraph lines and posts for the purpose of a telegraph established or maintained, by the Government or to be so established or maintained.*

12. In the preamble of the 2006 Rules, it is clearly stated that the said Rules have been framed in exercise of the powers conferred by Section 176(2)(e), read with Section 67(2), of the 2003 Act.

13. Section 176(2)(e) provides that the Rules which the Central Government may, by notification, make for carrying out the provisions of the 2003 Act under Section 176, in particular and without prejudice to the generality of the foregoing power, may provide for all or any of the matters following thereafter. The said clause is set out below:

“ (e) – The works of licensees affecting the property of owner or occupier under sub-section (2) of Section 67;”

14. On the other hand, Section 67(2) provides that the Appropriate Government may, by Rules made by it, specify the cases as stipulated under the sub-clauses of Section 67(2). It may be noted that Section 67(2), Clause (e), provides that the determination and payment of compensation or rent to the persons affected by works under the said Section shall also be covered by the Rules made by the Appropriate Government.
15. Read in conjunction with Section 176(2)(e), as such, the compensation for works so done are covered by the works under the 2006 Rules. Rule 3(b), on the other hand, provides for the permission in writing from the authorities stipulated therein to licensees where objections are raised in respect of such works by the owner or occupier of the land.
16. However, sub-rule (4) of Rule 3 of the 2006 Rules categorically excludes the powers conferred upon a licensee under Section 164 of the 2003 Act from Rule 3 of the 2006 Rules.
17. On the other hand, Section 164 of the 2003 Act clearly restricts the operation of the said Section to the placing of electric lines or electric plant for the “transmission” of electricity or for the purpose of telephonic or telegraphic communications and does not speak of electric lines for “distribution” of electricity. Hence, on a conjoint and harmonious interpretation of Section 164, which is not applicable to distribution licensees, but only to transmission licensees, the said

section confers power on the transmission licensees which are not affected by the provisions of Rule 3 of the 2006 Rules.

18. Rule 3(4) of the 2006 Rules further ensures such exclusion.
19. As such, since in the present case, the respondent no.1 is a transmission licensee and the installation-in-question is being constructed for the purpose of placing transmission lines for electricity, under Section 164 of the 2003 Act, the licensee, as empowered by the Appropriate Government, can exercise the powers of the Telegraphic Authority in certain cases.
20. In this context, we must look into Section 10 of the Indian Telegraph Act, 1885, (for short, 'the 1885 Act'), which confers the power on the Telegraph Authority to place and maintain telegraphic lines and posts, and draw an analogy in respect of transmission licensees, exercising powers under the 2003 Act, by virtue of Section 164 of the 2003 Act.
21. Part-III of the 1885 Act provides for power to place telegraphic lines and posts. The first Section of Part-III is 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: 1. Subs. by the A.O. 1950, for “Crown” which had been subs. by the A.O. 1937, for “Secretary of State for India in Council”. 2. Ins. by Act 8 of 2004, s. 5 (w.e.f. 1-4-2002).*⁶

Provided that—*(a) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph establish Ector 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;
(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.”

- 22.** As per proviso (d) to Section 10 of the 1885 Act, in the exercise of the power conferred by the Section to place and maintain telegraph lines and posts, the Telegraph Authority is required to 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), which pertains to properties vested in or under the control and management of local Authorities, shall pay full compensation to all persons interested for any damage sustained by them by reason of exercise of those powers.
- 23.** Hence, by dint of the operation of Section 164 of the 2003 Act, transmission licensees enjoy the power conferred by the Telegraph Authority under Section 10 but are also bound by proviso (d) thereto, since the power conferred under Section 10 of the 1885 Act is not unfettered but circumscribed by the provisos of the said Section.
- 24.** Hence, although the present writ petitioner, as owner of the land, is not entitled to seek a restraint order on the transmission licensee or insist upon a permission being obtained under Rule 3 of the 2006 Rules, the petitioner has the rights to claim full compensation for any

damage sustained by him by reason of the work done by the respondent no.1 in the present case.

- 25.** The unreported judgment of this court dated December 14, 2021 rendered in *WPA No.996 of 2021 (Hafizur Rahman Biswas and others Vs. Power Grid Corporation of India Limited and others)* reiterates the above proposition on the powers conferred by Section 164 of the 2003 Act, subject to the fetter provided in Section 10, provisos (a) to (d) of the Indian Telegraph Act, 1885.
- 26.** Even the judgment reported at *(2017) 5 SCC 143*, cited by the petitioner, speaks of compensation that has to be taken into consideration while dealing with such objections.
- 27.** In such view of the matter, WPA No.3239 of 2022 is disposed of by directing the respondent no.3, that is the District Magistrate, Murshidabad to treat the present writ petition as the objection of the writ petitioner with regard to the installation and the work being done on the land of the petitioner by the respondent no.3, that is, the West Bengal State Electricity Transmission Company Limited and, upon giving adequate opportunity of hearing and representation to all the interested parties, to decide the issue as to whether compensation is payable to the petitioner by the respondent no.1-Company and, if so payable, the quantum of such compensation.
- 28.** Such exercise shall be concluded by the respondent no.3 as expeditiously as possible, preferably within two months from the date of communication of this order to the respondent no.3 by the petitioner. The petitioner shall communicate a server copy of this

order with a covering letter of the learned advocate for the petitioner to respondent no.3 for the purpose of ensuring compliance. The parties shall act on such server copy, without insisting upon prior production of a certified copy thereof. It is made clear that this Court has not entered into the merits of the dispute referred to the respondent no.3 and it will be open to the respondent no.3 to consider whether any compensation is payable and/or the quantum of such compensation, if payable, as well as the appropriate time and materials when and on the basis of which such compensation shall be calculated.

- 29.** There will be no order as to costs.
- 30.** Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)