

ML-50
Ct No.09
07.09.2022
TN

WPA No. 6795 of 2022
IA No: CAN 1 of 2022

Amiya Jana alias Amiya Kumar Jana
Vs.
The State of West Bengal and others

Mr. Prosenjit Mukherjee,
Mr. Arghya Kamal Das,
Mr. Subhajyoti Das

.... for the petitioner

Mr. Srijan Nayak,
Mrs. Rituparna Maitra

.... for the WBSEDCL

Mr. Sumit Kumar Panja,
Mr. Sumit Ray

.... for the WBSETCL

Learned counsel for the petitioner contends that in terms of the photographs annexed to the exception filed by the petitioner to the affidavit affirmed by the respondent no.3, the proposed transmission lines, if taken through the tower as indicated therein, shall ultimately lie immediately over the residential house of the petitioner.

Learned counsel for the Distribution Licensee, of course, disputes such contention and places reliance on the statements made in the affidavit affirmed by respondent no.3 by way of a report, which indicate that even if the line is taken, it shall not be over the

petitioner's residential house but shall, at the worst, traverse one of the sides of the petitioner's property.

Learned counsel appearing for the petitioner further places reliance on Rule 3 of the Works of Licensees Rules, 2006 in support of his proposition that a licensee may carry out works, lay down or place any electric supply line or other works but in case where the owner or occupier of the building or land raises objections in respect of works to be carried out under the rule, the licensee shall obtain permission in writing from the District Magistrate or the Commissioner of Police.

Such a course has not been adopted in the present case, it is submitted.

Such contention is refuted by learned counsel appearing for the Transmission Company by placing reliance on Section 164 of the Electricity Act, 2003, read in conjunction with Sub-Rule (4) of Rule 3 of the 2006 Rules as well as Section 10 of the Telegraph Act, 1885. It is submitted that by operation of the said provisions, transmission lines are exempted from the rigours of Rule 3 of the Works of Licensees Rules, 2006. The enabling provision of Section 164, it is contended, applies Section 10 of the Telegraph Act, 1885 along with other provisions of the said Act, to transmissions lines. As such, the Transmission

Company has ample authority, if so required, to install transmission lines over any immoveable property.

There cannot be any reason why an exception should be made in the present case, it is argued.

Upon considering the submissions of the parties and going through the materials on record, it is evident that the petitioner takes a specific factual objection to the effect that the transmission lines-in-question, if taken through the towers already installed by the Transmission Company, will pass immediately over the petitioner's house, creating safety and security hazards for the petitioner.

However, on a conjoint reading of Rule 3(4), which stipulates that nothing contained in Rule 3 shall affect the powers conferred upon any licensee under Section 164 of the Electricity Act, 2003, with Section 164 of the 2003 Act, which enables the application of the provisions of the Telegraph Act, 1885 to such situations as the present one, we are to fall back upon the provisions of Section 10 of the Telegraph Act, 1885. The provisions of the said section are wide enough to confer the power on the Transmission Authorities to take transmission lines over any immovable property, if need be.

Kept in balance with the public interest involved in installation of transmission lines, the personal limited interest of the petitioner and/or the choice of the petitioner has to give way.

Although it cannot be the law that the right to life of the petitioner, as rightly submitted by learned counsel for the petitioner, will be taken away by virtue of installation of a transmission line, the said factor does not come into play in the present case, since the respondent no.3, in his affidavit, has clearly indicated that the transmission lines-in-question, if taken, shall go over only one of the extremities of the petitioner's property and shall not, in any manner, hamper the living of the petitioner in his residential house as well as that Section 10 of the Telegraph Act, read with Section 164 of the 2003 Act, confer ample power on the Transmission Company to do so.

Although learned counsel for the petitioner has placed reliance on Rule 61 of the Central Rules, 2010, the same merely stipulates that clearances from buildings of lines of voltage exceeding 650 volt have to be taken in a way that an overhead line shall not cross over an existing building "as far as possible" and no building shall be constructed under an existing overhead line. In the present case, the said provision of 1910 has been overridden by the Electricity Act,

2003, including Section 164 of the said Act, read with the Works of Licensees Rules, 2006 and Section 10 of the Telegraph Act, 1885.

As such, WPA No. 6795 of 2022 is disposed of by directing the WBSETCL to complete the installation of the transmission lines-in-question as expeditiously as possible. However, in the event the petitioner actually suffers any damage due to such transmission lines being taken, it will be open to the petitioner to approach the WBSETCL or the appropriate authority for getting compensation on that score. If so approached, the WBSETCL or such authority, as the case may be, shall look into the matter for the purpose of ascertaining as to whether any compensation is payable to the petitioner and, if so, the quantum thereof, and to ensure that such compensation is duly paid to the petitioner expeditiously.

Accordingly, IA No: CAN 1 of 2022 is also disposed of.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)