

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 25900 of 2022

Lalit Kumar Agarwala & Anr.
Vs.
The West Bengal State Electricity
Transmission Company Limited & Ors.

Mr. Prosenjit Mukherjee,
Mr. Argha Kamal Das
...for the petitioners

Mr. Sumit Kumar Panja,
Mr. Sumit Ray
...for the WBSETCL

Mr. Himadri Sikher Chakraborty,
Mr. Munshi Mizanur Rahaman
... for the State

Learned counsel appearing for the petitioners argues that the action of the West Bengal State Electricity Transmission Company Limited (WBSETCL) in issuing a notice to the petitioners on November 07, 2022, indicating that the petitioners' land would be taken for installation of towers for the purpose of drawing high-tension electricity lines, is palpably illegal.

It is submitted that while the relevant order was issued on September 28, 2022, whereby the Scheme was initiated, the required notification under Section 164 of the Electricity Act, 2003 (2003 Act), read with the Indian Telegraph Act, 1885 (1885 Act) had been

published long back, that is, on November 16, 2021. It is submitted that in view of such subsequent initiation of the Scheme, there has been no compliance with the provisions as envisaged in Section 164 of the 2003 Act, read with the 1885 Act.

It is further contended that the Transmission Company has also flouted the law in issuing the notice to the petitioners, straight away indicating that the works would be done over the petitioners' property, thereby reducing the value of the petitioners' valuable land, without even complying with any of the provisions of law, including the statutory mandate on the Transmission Company to take prior permission of the petitioners.

In that regard, learned counsel places reliance on the provisions of Section 68 and Section 164 of the 2003 Act and Section 17 of the 1885 Act. It is further submitted that Section 17 of the 1885 Act clearly mentions that when, under the provisions of the said 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 form, he may require the telegraph authority to remove or alter the line or post accordingly. It is argued that Section 164 of the 2003 Act enabled the applications of Section 17 of the 1885 Act to the Instant Case.

Learned counsel appearing for the WBSETCL submits that the project is at the stage of competition.

It is submitted that for installation of the towers, only a portion of the petitioners' land is absolutely essential for the purpose of electrifying the NH-6. It is also submitted, on instruction, by learned counsel for the WBSETCL that when the petitioners were approached for offering compensation, the petitioners had insisted upon payment of the entire value of the property, which is *de hors* the law.

Such contention, of course, is countered by learned counsel for the petitioners, also on instruction.

A perusal of the materials annexed to the writ petition reveal that on November 16, 2021, there had been newspaper publication indicating that the Hajichowk Mouza, among others, of the Paschim Medinipur District under the Kharagpur Police Station had been designated for conferment of power under the relevant Act as relied on by the petitioners, that is, Section 164 of the 2003 Act.

As far as the present project is concerned, the order dated September 28, 2022, also annexed to the

writ petition, discloses that the Department of Power, Government of West Bengal, vide an order dated August 16, 2005, had conferred upon WBSETCL (erstwhile WBSEB) the authority to exercise all powers vested in the Telegraph Authority under Part-III of the Indian Telegraph Act, 1885 pursuant to Section 164 of the Electricity Act, 2003. It also transpires from the said order that Mouza-Hajichowk, where the petitioners' land is admittedly situated, is also covered by the areas where such permission is applicable.

As such, I do not find any illegality or inconsistency between the order dated September 28, 2022 and the newspaper advertisement on November 16, 2021, both of which refer to Mouza-Hajichowk. Although the petitioners' specific land has not been indicated in either of the two, such argument would amount to stretching interpretation of the the law too far, inasmuch as it cannot be said that prior to completion of the project, the authorities would be sure as to the exact location of which lands would be covered by the works of the transmission company.

That apart, although the Works of Licensees Rules, 2006, as contended by the petitioners, are applicable in such cases, transmission Company are excluded from the periphery of the said Rules, as rightly pointed by learned counsel for the WBSETCL.

Inasmuch as Section 17 of the 1885 Act is concerned, the same envisages only the removal or alteration of a telegraph line or post, subsequent to the same having been installed, that too, providing for payment by the person concerned of the amount requisite to defray the expenses of removal or alteration or half of the amount paid as compensation, whichever may be the smaller sum.

In the present case, however, the tower-in-question has not yet been installed on the property-in-question. As such, it would be premature to apply Section 17 of 1885 Act to the present case.

Inasmuch as Section 10 of the 1885 Act is concerned, the same confers power on the Telegraph Authority to place and maintain lines under, over, along or across and posts in or upon any immovable property, subject to the proviso therein.

Since Section 164 of the 2003 Act has enabled the applicability of Section 10 of the 1885 Act to transmission licensees as well, which fall within the contemplation of the 2003 Act, there cannot be any manner of dispute as regards the applicability of Section 10 of the 1885 Act in the present case as well. Since it is well-settled that the persons, whose right are affected by the works of any Transmission Company and/or Distribution Company, are entitled to compensation, as deemed adequate, the petitioners'

right to get compensation cannot be curtailed in any manner. In any event, vide communication dated November 07, 2022, the WBSETCL had made it very clear to the petitioners that compensation as per Electricity Act, 2003 would be provided for the works on a portion of the petitioners' land. In view of such action having been taken by the WBSETCL, no illegality, as alleged by the petitioners, is found in the entire chain of activities of the WBSETCL.

As such, W.P.A. No. 25900 of 2022 is disposed of with liberty to the petitioners, if aggrieved by the quantum of compensation payable by the WBSETCL, to approach the concerned District Magistrate to iron out creases on the said issue and resolve the same.

If so approached, the District Magistrate shall decide the issue in accordance with law, upon giving adequate opportunity of hearing to all concerned, without being influenced on merits by any of the observations made herein.

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 of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)