

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Raja Basu Chowdhury

FMA 1366 of 2017
with
IA No. CAN 1 of 2015 (Old No. CAN 10597 of 2015)

Sri Tapan Kumar Mondal & Ors.
versus
Union of India & Ors.

For the Appellants : *Mr. Malay Dhar,*
Mr. Satyajit Mondal,
Mr. Amar Nath Sen,
Mr. Shaubik Naskar,
Mr. Amit Bikram Mahata.

For the State : *Mr. Simanta Kabir,*
Mr. Nirjhar Nath.

For the respondent nos.4 to 6 : *Mr. Sumit Ray.*

For the respondent no.2 : *Mr. Saptansu Basu, Sr. Adv.,*
Mr. Piush Chaturvedi,
Mr. Uttam Kumar Mandal.

Hearing is concluded on : *3rd November, 2022.*

Judgment On : **16th January, 2023.**

Raja Basu Chowdhury, J.:

1. The appellants claim to be owners of diverse plots of land and claim to earn their livelihood by cultivation. Appellants claim that the respondent no.2, while installing poles and drawing electricity lines from Barasat to Mullickpur have interfered with the appellants' right of user of lands owned by them. By reason of high tension electricity lines being drawn over the plots of land belonging to the appellants, the same has been damaged and no agriculture is possible thereon. The appellants who claim to earn their livelihood on agriculture, having no other landed property had jointly approached with similarly circumstance persons the office of the District Magistrate and other authorities for ventilating their grievances. Mr. Dhar learned advocate representing the appellants submits that the appellants had not only objected to drawing of high tension electricity lines over the appellants' property but had also demanded compensation on account of wrongful use of the appellants' property by filing joint applications.

2. Mr. Dhar submits that subsequent to coming into force of the Electricity Act, 2003 (hereinafter referred to as the 2003 Act), Works of Licensees Rules (hereinafter referred to as the 2006 Rules) have been framed for regulating the works to be carried out by the licensees. While referring to the said 2006 Rules, it is submitted such rules have been framed under powers conferred by clause (e) of sub-section 2 of Section 176 read with sub-section 2 of Section 67 of the 2003 Act. While referring to the 2006 Rules it is submitted that no work could have been carried out

without complying with the provisions of the 2006 Rules. Since, the respondent no.2 was carrying out works in derogation of the provisions contained in the 2003 Act and 2006 Rules framed thereunder, representations were made to the District Magistrate being the respondent no.3, who is the competent authority under the 2006 Rules, requesting him to direct the respondent no.2, not to energise the supply lines without disposing of the appellants' representations and to give compensation money at the present market rate.

3. By drawing attention of this Court to the several representations made by the appellants it is submitted that the respondent no.2 without affording compensation to the appellants could not have carried out the works and it was the duty of the respondent no.3 as an authority under the 2006 Rules, to ensure that the respondent no.2 acts in compliance with 2003 Act and the 2006 Rules framed thereunder.

4. By referring to the order impugned dated 17th March, 2015 it is submitted that the same was passed based on incorrect representation made by the respondents, no award had been passed concerning the appellants' claim. This Hon'ble Court should direct the District Magistrate to take a decision in the matter on the basis of the representations already submitted by the appellants. He then refers to a memo dated 15th October, 2015 issued by the Joint Secretary, Ministry of Power, to highlight that the State of West Bengal has agreed in principle to follow the guideline, as set forth therein, for determination of compensation payable towards damages in terms of the Indian Telegraph Act, 1885 (hereinafter referred

to as the 1885 Act) which shall be in addition towards normal crop and tree felling compensation.

5. He submits that in the event the Hon'ble Court is of the opinion that the decision should be taken in term of the provisions contained in the 1855 Act, in such event the District Magistrate should be guided by the memo dated 15th October, 2015 issued by the Government of India, Ministry of Power.

6. He says if the respondents claim to be conferred with powers under Section 164 of the 2003 Act, necessary direction should be issued on the District Magistrate, who is the competent authority under the 1885 Act to adjudicate the quantum of compensation payable to the appellants. He submits that in a series of matters directions have been issued on the District Magistrate to determine the compensation payable for drawing of electricity lines. In support of his aforesaid contention, he refers to two several unreported judgments dated 3rd September, 2019 and 14th September, 2021 passed in WP 16292(W) of 2019 and WPA 21421 of 2019 respectively. He also places reliance on an unreported judgment delivered in the case of ***M/s. Suzlon Energy Ltd. Vs. Jayanthi & Ors.***

7. *Per contra*, Mr. Basu learned senior advocate, representing the respondent no.2, submits that by a notification dated 24th December, 2003 published in the Gazette of India the respondent no.2 has been conferred with powers under the 1885 Act, for the purposes morefully indicated in such notification. On 23rd August, 2006, notice under

Sections 10 to 19 of the 1885 Act read with Section 164 of 2003 Act was served upon the owners , for cutting trees/removal of crops falling in the right-of-way required for construction/maintenance of 400 kV Jeerut – Subhasgram transmission line being constructed by Power Grid Corporation (hereinafter referred to as the said Corporation) . While referring to section 164 of the said Act, Mr. Basu submits that the said section confers upon the appropriate Government special powers so as to authorise a licensee to discharge its works in terms of the provisions of the 1855 Act. He submits that in terms of the notification as aforesaid, the respondent no.2 has been conferred with all powers, for the purpose of drawing transmission lines, as provided in the 1855 Act. By referring to sub rule 4 of rule 3 of the 2006 Rules, it is submitted that such rules have no manner of application in the case of the respondent no.2, who has been conferred with the powers under the 1855 Act, in exercise of powers conferred under section 164 of the 2006 Act. While referring to the scheme of the 1855 Act, he says that it is for the respondent no.2 to decide on the quantum including the question, whether any compensation is at all payable. In this context, he places reliance on section 10 sub-section (d) of the 1855 Act, to highlight that it is for the Telegraph Authority to not only decide whether compensation is payable but also to decide the quantum thereof.

8. He says that the learned Judge has rightly passed the order. He says that non-payment of compensation is also a determination in terms of Section 10 sub section (d) of the 1855 Act and the respondent no. 2

cannot be faulted on such ground. By placing reliance on a judgment delivered by the Hon'ble Supreme Court in the case of ***Power Grid Corporation of India Limited -Vs.- Century Textiles and Industries Limited and Ors.***¹, he says it is for the respondent no.2 to determine the compensation including the question whether the same is payable at all. According to Mr Basu, there is no irregularity in the order. The appeal should be dismissed.

9. We have heard the learned advocates appearing for the respective parties and considered the materials on record. We find that the primary question that falls for consideration in the instant appeal is whether the provisions relating to determination of compensation under 1885 Act can be made applicable in respect of works carried out by transmission licensee when, empowered under section 164 of the 2003, Act, de hors the 2006 Rules framed under the 2003 Act and whether in such cases the District Magistrate can be empowered with authority to determine compensation payable to the persons aggrieved including the appellants.

10. Before proceeding further we must indicate that a perusal of Section 164 of the 2003 Act would demonstrate, in order to invoke the aforesaid section an order in writing from the appropriate Government needs to be issued. We find that the respondent no.2 has disclosed a notification dated 24th December 2003, issued by the appropriate Government, wherefrom it would appear that the appropriate Government

¹*Power Grid Corporation of India Limited -Vs.- Century Textiles and Industries Limited and Ors.* (2017) 5 SCC 143.

in exercise of powers conferred by Section 164 of the said Act, has authorized the respondent no.2 to exercise all power vested in the telegraph authority under part III of the 1885 Act, in respect of electrical lines and electrical plant established or maintained, or to be so established or maintained for transmission of electricity or for the purpose of telephonic or telegraphic communication necessary for the proper coordination of the works.

11. Undoubtedly, 2006 Rules has been framed under Section 67(2) of the 2003 Act, however, sub-rule 4 of rule 3 of 2006 Rules, carves out an exception and provides that nothing in Rule 3 shall affect the powers conferred upon any licensee under Section 164 of the said Act. From the above, it seen that the Rule 3 of the 2006 Rules framed under Section 67(2) of the 2003 Act has not been made applicable in cases where the licensee has been empowered under Section 164 of the 2003 Act. As such there is no conflict in exercising powers under 1885 Act by the respondent no.2 when empowered under section 164 of the 2003 Act.

12. We must, however, note that the question, which fell for consideration as to whether the respondent no. 2, on being vested with powers under 1855 Act assumes the mantle of a Telegraph authority within the meaning of the 1885 Act, insofar as payment and determination of compensation is concerned, is no longer *res integra*. The judgment delivered by the Hon'ble Supreme Court in the case of *Power Grid*

*Corporation of India Limited -Vs.- Century Textiles and Industries Limited & Ors.*²), *inter alia*, held :

“19. Another submission made was that permission of the writ petitioner was not obtained which was needed as per Rule 3 of the 2006 Rules. Rule 3(a) reads as under:

“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, wherever 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;”

20. In the instant case, the aforesaid Rule is not applicable in view of Section 164 of the Electricity Act, 2003, which reads as under:

“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 (13 of 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 purposes of a telegraph

²Power Grid Corporation of India Limited -Vs.- Century Textiles and Industries Limited and Ors.², reported in (2017) 5 SCC 143.

established or maintained, by the Government or to be so established or maintained.”

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.”*

13. In the aforesaid judgment in paragraphs 23 and 24 the Hon'ble Supreme Court has also *inter alia* considered the applicability of the 2006 Rules and has, *inter alia*, held as follows:

“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.”*

14. Proceeding further the Hon'ble Supreme Court has concluded that the determination of compensation is required to be made in terms of the provisions of the 1885 Act, and that the final authority to determine sufficiency of compensation vests in the District Judge in terms of Section 16(3) of the said Act.

15. In the light of the pronouncement of the Hon'ble Supreme court in the case of ***Power Grid Corporation of India Limited. (Supra)***³, the judgments relied on by Mr. Dhar do not assist the appellant. The judgment delivered by the Hon'ble Supreme Court in the case of *M/s Suzlon Energy Ltd.* (Supra) also cannot assist the appellant. In the aforesaid case the Hon'ble Supreme Court had also directed the compensation to be determined by the concerned authorities in accordance with law.

16. In the light of the above, we are of the opinion, it is the primary obligation of the respondent no.2 in terms of Section 10 (d) of the Telegraph Act, 1885 to determine compensation and disburse the same, to all persons interested, for any damage sustained by them by reasons of exercise of authority conferred upon it under Section 164 of the said Act. If, however, any dispute arise as regards entitlement to receive compensation, or as to the proportion in which the persons interested are entitled to share in it, or as regards sufficiency of the compensation so determined or entitlement to receive compensation under the 1855 Act, the same shall be decided by the District Judge in accordance with section 16(3) or (4) of the 1885 Act as the case may be.

17. In the present case the respondent no.2 apart from claiming that the appellant no.4 had been disbursed compensation, no document has been disclosed to substantiate such claim. Although it has been

³*Power Grid Corporation of India Limited -Vs.- Century Textiles and Industries Limited and Ors.*³, reported in (2017) 5 SCC 143.

asserted in the affidavit filed by the respondent no.2 that the appellants have not suffered any loss or damage apart from the minor damage sustained between location 45/O and 46/O, we are not impressed by the same. We find that the appellants have made representations which have received by the office of the respondent no. 2 on 27th January, 2014. By the aforesaid representation the petitioners' have alleged to have suffered loss and damage for drawing of transmission line on their land. The appellants say that they are unable to cultivate their lands. We find that the aforesaid representation has not been redressed. No records in connection with determination of compensation payable to the appellants by the respondent no.2 have been produced.

18. Although Mr. Basu learned advocate has submitted that non-payment of compensation is also a determination within the meaning of the 1855 Act, we are not impressed by such submissions. We find that the provisions of the 1885 Act, *inter alia*, not only provides for determination of compensation to be made by the Telegraph Authority at the first instance but the same also confers powers on the District Judge under sub section 3 of section 16 of the 1885 Act to decide dispute that arise concerning the sufficiency of the compensation to be paid under section 10(d) of the 1885 Act. In such circumstances unless a decision is taken and the same is communicated, the appellants would be rendered remediless and shall not be entitled to proceed before the District Judge under sub section 3 section 16 of the 1855 Act. Mr. Basu, could not produce any order passed under section 10(d) of the 1885 Act.

19. In course of hearing the learned advocate representing the State of West Bengal has confirmed that the State Government has not adopted the memo dated 15th October, 2015 issued by the Government of India Ministry of Power and as such we are unable to direct the respondent no.2 to be guided by such memo.

20. For the reasons discussed hereinabove, the order impugned in the present appeal cannot be sustained and the same is, accordingly, set aside. We further find that the matter has been pending for several years, we thus direct the respondent no.2 to consider the representation dated 27th January, 2014, annexed at page 93 of the stay application and to take a decision in the matter as regards the quantum of compensation payable to the affected persons including the individual appellants upon giving an opportunity of hearing to all interested parties and to communicate such decision to the appellants within a period of eight weeks from date of communication of this order along with a copy of the representation dated 27th January, 2014. At the time of hearing, the appellants would be at liberty to file additional documents in support of their claim. Upon determination of such compensation, the respondent no. 2 shall disburse same within a period of two months.

21. We, however, make it clear that if the appellants are aggrieved by the decision, to be taken by the respondent no.2, it shall be open to them to challenge such decision before the District Judge in terms of sub-section 3 of Section 16 of the 1885 Act.

22. With the aforesaid direction, the appeal being FMA No. 1366 of 2017 and the connected application are disposed of.

23. There shall, however, be no order as to costs.

24. Urgent certified copy of the aforesaid order if applied for be made available to the parties on urgent basis.

(Raja Basu Chowdhury, J.)

(Tapabrata Chakraborty, J.)