

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

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No.341 of 2023

**Smt. Deepa Jaiswal
Vs.
The State of West Bengal
And others**

For the petitioner	:	Mr. Haradhan Banerjee, Mr. Amitava Pain, Mr. Subhrangshu Dutta, Mr. Nilmoni Das, Mrs. Manideepa Paul
For the WBSETCL	:	Mr. Sumit Kumar Panja, Mr. Sumit Ray
For the State	:	Mr. Manas Kundu, Mr. Debabrata Mondal
Hearing concluded on	:	19.01.2023
Judgment on	:	25.01.2023

Sabyasachi Bhattacharyya, J:-

1. The petitioner is the owner of a plot of land measuring about 45 satak situated at Jalan Industrial Complex in Sankrail, Howrah.
2. Allegedly, the petitioner is running a building material business on one part of the vacant land as well as residing in a G+1 building on another part of the land. The petitioner is also the authorised dealer of renowned cement companies for the last 15 years.
3. The petitioner alleges that on April 8, 2022, the petitioner received a notice from the office of the Block Development Officer (BDO), Sankrail, asking the

petitioner to attend a meeting to be held on April 12, 2022 at the office of the BDO regarding installation of electric tower for Jangalpur Sub-Station. It was disclosed to the petitioner's agent in the meeting that some portion of the petitioner's land was required for installation of electric tower.

4. Subsequently, another notice was issued by the Additional Chief Engineer, Chinsurah Field Zone Office of the West Bengal State Electricity Transmission Company Limited (WBSETCL), asking the petitioner to attend a meeting on May 6, 2022 at the premises of the Jangalpur 220KV Sub-Station for installation of electric tower to feed power to the Jangalpur 220KV GIS. A written objection was given by the petitioner on May 6, 2022 in that regard.
5. Again on May 23, 2022 and May 31, 2022 the BDO issued two letters to the petitioner, reiterating the request for installation of electric tower and directing the petitioner to produce trade licence and other relevant documents. The petitioner also received a notice from the office of the Additional District Magistrate (Power), Howrah, on September 28, 2022 asking the petitioner to attend the hearing on October 13, 2022 in connection with Section 16(1) of the Indian Telegraph Act, 1885 (hereinafter referred to as "the 1885 Act") at the Chamber of the District Magistrate. The petitioner sought for an adjournment, which was granted. Subsequently, another letter was issued by the District Magistrate, Howrah, to attend a meeting on virtual mode on November 3, 2022.
6. The petitioner requested the District Magistrate's permission to appear in the meeting physically on November 3, 2022 instead of virtual mode.

7. On November 3, 2022 the petitioner attended the meeting and made oral submission and raised objection regarding installation of electric tower on her land.
8. Another letter was issued on December 16, 2022 for the petitioner to attend a hearing on December 13, 2022, although, according to the petitioner, the hearing had been concluded on November 3, 2022.
9. The petitioner, on December 13, 2022, appeared through her advocate and filed a written objection against the proposal for installation of electric tower on the petitioner's land.
10. According to the petitioner, on December 27, 2022 some unknown persons, disclosing themselves to be agents of the Additional Chief Engineer, Chinsurah Field Zone Office, WBSETCL, forced the petitioner to open the padlock of her gate to install electric tower.
11. In the present writ petition, the petitioner challenges the order passed by the respondent-authorities for installing electric tower for effective service of high-tension line on the petitioner's land.
12. The learned Senior Advocate appearing for the petitioner contends that no copy of the report and other documents, relied on by the respondent-authorities for passing the order of installation of electric tower, was given to the petitioner at any point of time, thereby contravening the basic tenets of natural justice.
13. It is submitted that the District Magistrate and Collector, Howrah, *vide* Order No.3 dated December 13, 2022, turned down the objection of the petitioner and directed the completion of the project of the WBSETCL with police help.

14. That apart, it is argued that the valuable property of the petitioner was destroyed partially by the respondents and their men and agents, including the boundary wall of the petitioner. By dint of the installation of electric tower carrying high-tension lines, the petitioner's business of manufacturing products would be seriously hampered, causing huge financial losses to the petitioner, it is argued.
15. The learned Senior Advocate appearing for the petitioner cites a Division Bench Judgment of this Court in *Sukdeb Das and others Vs. Kumari Samanta and others*, reported at 2004 (3) CHN 565, for the proposition that the consent of the owner of a land is required for drawing the power line over such land.
16. The learned Senior Advocate next cites *M/s. Mahabir Prasad Santosh Kumar Vs. State of U.P. and others*, reported at AIR 1970 SC1302. It is contended that the District Magistrate had to give some reasons why he turned down the objection of the petitioner, which is deficient in the present impugned order.
17. The learned Senior Advocate next places reliance on *A.K. Kraipak and others Vs. Union of India and others*, reported at AIR 1970 SC 150, for the proposition that natural justice must supplement rules, although not supplanting them. It is further contended that as per the ratio of the said judgment, an order of administrative nature, like quasi-judicial decisions, has to supply reasons and adhere to principles of natural justice.
18. Next citing *Canara Bank and others Vs. Debasis Das and others*, reported at (2003) 4 SCC 557, the petitioner contends that the principles of natural justice are of supreme importance when a quasi-judicial body embarks on

determining disputes between the parties or any administrative action involving civil consequences is in issue.

19. The petitioner cites *Dulal Chandra Mondal Vs. State of West Bengal and others*, a coordinate bench decision reported at (1989) 2 CHN 141. The doctrine of fairness was propounded in the said judgment and it was found that before coming to a firm conclusion as to the alleged guilt of a person, the said person is entitled to copies of the findings and documents on the basis of which such guilt is found.
20. Learned Senior Advocate for the petitioner next cites *Natwar Singh Vs. Director of Enforcement and another* [(2010) 13 SCC 255], which also propounds the fundamental rules of natural justice, the doctrine of fairness and doctrine of disclosure. A proper hearing always includes a fair opportunity to those who are parties in the controversy or when correcting or contradicting anything prejudicial to their view, it was held. Disclosures of such things assists the accused in the timely preparation and presentation of their case and assist the case to focus on all the relevant issues in the trial, it was observed.
21. Learned counsel appearing for the WBSETCL argues that the petitioner was given ample opportunity to place the petitioner's case. Adjournment had been granted at least on three occasions on the petitioner's request. It is submitted that the District Magistrate, while passing the impugned order, categorically considered everything, including the relevant report of the Engineer. As such, the principles of natural justice were not violated at all, it is argued.

22. It is submitted that the District Magistrate was justified in holding, on the basis of the material produced before the District Magistrate, that in the event the petitioner's request of shifting the location of electric tower was acceded, it would tantamount to disruption of the entire scheme, since the respondents had already chalked out the necessary locations of strategic importance on which the respective towers and other installations are to be set up.
23. Moreover, the project had reached almost 95% of its conclusion when the writ petition was filed. By now, it is contended, about 98% of the project has been concluded.
24. Learned counsel places reliance on the Supreme Court judgment of *Power Grid Corporation of India Limited Vs. Century Textiles and Industries Limited and others*, reported at (2017) 5 SCC 143, in support of the proposition that prior consent is not required by the licensee under the Electricity Act, 2003 (for short "the 2003 Act"), who is treated as a telegraph authority under the 1885 Act. Relocation of construction of towers from land covered by mining lease on the ground that it would jeopardize mining operations of the writ petitioner was held to be not sustainable in view of the public interest involved in electrification of villages through the scheme of the 1885 Act. The powers of the telegraph authority conferred by Sections 10, 15 and 16 of the 1885 Act, it was, stand vested in and are enjoyed by the transmission company.
25. In any event, it is submitted, the petitioner is entitled to compensation and, in the event not satisfied with the compensation given, to challenge such

decision before the District Judge in terms of sub-section (3) of Section 16 of the 1885 Act.

26. In such context, learned counsel for the WBSETCL cites an unreported judgment of a Division Bench of this Court rendered in *FMA 1366 of 2017 [Sri Tapan Kumar Mondal and others Vs. Union of India and others]*.
27. The learned Senior Advocate for the petitioner, in reply, reiterates that non-service of copies of the reports and documents relied on by the District Magistrate for holding against the petitioner prejudiced the rights of the petitioner to fair hearing, thus violating the concept of equality before the law as embodied in Article 14 of the Constitution of India. It is submitted that the question of grant of compensation is irrelevant in the present context, since the petitioner seeks shifting of the transformer from the petitioner's property, which would operate to the gross detriment and extreme financial loss for the petitioner.
28. It is submitted that the judgment rendered in *Century Textiles and Industries Limited (supra)*, cited by the WBSETCL, is not applicable on facts to the present case.
29. Upon hearing learned counsel for the parties and considering the judgments cited by them, this Court comes to the following decision:
30. Section 164 of the 2003 Act provides that the appropriate government may, for the placing of electric lines or electrical plant for the transmission of electricity confer upon any public officer, licensee or any other person engaged in the business of supplying electricity any of the powers which the telegraph authority possesses under the 1885 Act with respect to the placing of telegraph lines and posts for the purposes of a telegraph

established or maintained by the government or to be so established or maintained.

- 31.** By virtue of the said provisions, Sections 10 and 16 of the 1885 Act, *inter alia*, have been applied to the installation of electricity lines by licensees under the 2003 Act.
- 32.** Section 10 of the 1885 Act provides, *inter alia*, that 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, subject to certain exceptions as stipulated therein. The petitioner does not fall within any of the exceptions, since she is not the central government or a local authority as contemplated in proviso (a), (b) and (c) of Section 10. Inasmuch as proviso (d) is concerned, the telegraph authority is mandated to do as little damage as possible and when it has exercise those powers in respect of any property, to pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.
- 33.** Again, Section 16(1) provides that if the exercise of the powers mentioned in Section 10 is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.
- 34.** Sub-section (2) of Section 16 provides that 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 Indian Penal Code, 1860.

- 35.** Sub-sections (3) and (4) of Section 16 provide for adjudication of compensation by the District Judge having territorial jurisdiction in case of disputes concerning the sufficiency of compensation payable under Section 10 or as to the persons entitled to receive such compensation or the proportions in which persons interested are entitled to share.
- 36.** A bare perusal of Section 16 of the 1885 Act indicates that the nature of exercise of the powers by the District Magistrate under the said Section does not *per se* envisage any civil adjudication.
- 37.** Since Section 16(2) incriminates a person resisting an order under sub-section (1) under Section 188 of the Indian Penal Code, the sanction behind the District Magistrate's order is penal in nature.
- 38.** Even sub-section (1) of the Section 16 does not provide for any detailed hearing or civil adjudication. As such, the argument of the petitioner that the petitioner ought to have been given copies of all the documents relied on by the District Magistrate is not an essential pre-requisite of such an order.
- 39.** Although the District Magistrate has to give reasons while passing an order under Section 16, the hearing cannot be elevated to the status of a quasi-judicial hearing or a hearing akin to a civil proceeding. Section 10, read in conjunction with Section 16, of the 1885 Act makes it amply clear that an authority under the said Act (in the present case, the Transmission Company) has the right to place and maintain electricity lines and installations under, over, along, or across as well as posts in or upon any immovable property, subject to the exceptions therein. Insofar as the

exceptions given in proviso (a), (b) and (c) are concerned, the petitioner does not fall within the purview of any of such provisos.

- 40.** Inasmuch as the restrictions contained in proviso (d) is concerned, the authority is required to do as little damage as possible and to pay full compensation to all person interested for any damage sustained by them by reason of the exercise of those powers.
- 41.** However, there is no scope of any adjudication of the right, title and/or interest of the parties. The powers of the authorities under the 1885 Act and, by virtue of Section 164 of the 2003 Act, by the Distribution and Transmission Companies is virtually unfettered. There is no option of refusal conferred on the person over whose land the connection is given.
- 42.** It is clear from the tenor of both the 1885 Act and the 2003 Act that the powers conferred on the authorities have been so vested in order to achieve the larger public interest in supersession of limited private interests. Since the very nature of installation of transmission lines directly concerns public good in general, the individual interests of persons have to give way to such larger public interest.
- 43.** In the present case, the District Magistrate gave ample opportunities, at least on three different occasions, to the petitioner to be present/represented before the Magistrate for being heard.
- 44.** However, initially the petitioner had taken several adjournments and ultimately was very much represented by her advocate before the District Magistrate, when the final order dated December 13, 2022 was passed by the District Magistrate and Collector, Howrah. As such, the petitioner is

not entitled to set up the objection of violation of the principle of *Audi Alteram Partem*, which is implicit in the canons of natural justice.

45. Inasmuch as the documents produced before the District Magistrate are concerned, there was no bar in the petitioner seeking inspection of the copies thereof and/or having an inspection from the records of the District Magistrate in accordance with law and following proper procedure. However, there is no mandate on the District Magistrate to compulsorily direct service of copy of each and every document produced before the Magistrate for the purpose of passing an order under Section 16 of the 1885 Act. The said Section merely empowers the District Magistrate, in his discretion, to order that the authority shall be permitted to exercise its powers under Section 10 of the said Act. In the present case, the orders of the District Magistrate were each well-reasoned and backed up by sound decision-making process and, as such, cannot be faulted in any manner.
46. The proceeding before the Magistrate, let alone being a civil suit, is not even in the nature of an adjudication by a judicial authority.
47. Such an order is not required to be backed by elaborate discussion of evidence and/or preceded by adduction of evidence by the parties formally.
48. The very nature of the powers conferred by the 1885 Act on the authorities indicate that those powers can be exercised for the ends of public interest.
49. In the present case, the WBSETCL sufficiently satisfied the District Magistrate as to the technical impossibility of shifting the high-tension lines and the electric towers to any other location than the petitioner's land.

- 50.** The proposed tower inevitably had to be installed on the petitioner's property in order for the same to fall in line with the scheme of things, as planned in detail by the technical experts of the transmission licensee.
- 51.** Inasmuch as the petitioner's claim of compensation is concerned, the impugned orders of the District Magistrate sufficiently took care of the same. In fact, vide order No.3 dated December 13, 2022, the WBSETCL was directed to act as per provisions laid down in Section 10 of the 1885 Act and cause as little damage to the said property/land as possible. Compensation was also directed to be paid to the land owners as per the existing Acts/Rules while performing the projected job.
- 52.** Hence, there cannot be any grievance of the petitioner in that regard. It is premature to argue that no compensation has been paid to the petitioner, since the project is still going on. Moreover, in the event the petitioner is aggrieved by any order of compensation when ultimately passed, it is always open to the petitioner to challenge the same within the contemplation of Section 16, sub-sections (3), (4) and (5) of the 1885 Act. The District Magistrate is not the authority to decide such issues, that too, prematurely as in the present case.
- 53.** Inasmuch as the judgments cited by the petitioner are concerned, the same do not come to the aid of the petitioner for the following reasons:
- 54.** In *Sukdeb Das and others (supra)*, the Division Bench did not lay down any specific ratio of law. In the said brief order, the Division Bench, in the facts of the said case, merely observed that in case the respondents/writ petitioner did not give her consent for drawing the power line then the power line cannot be drawn over the land of the writ petitioner. It was kept

open for the State Electricity Board to draw transmission lines from the plot of others with their consent.

55. Hence, the powers conferred under Sections 10 and 16 of the 1885 read with Section 164 of the 2003 did not even fall for consideration before the said Division Bench.
56. Inasmuch as *M/s. Mahabir Prasad Santosh Kumar (supra)* is concerned, in the said case the District Magistrate had cancelled the license of the appellants to deal in sugar as wholesale distributors. It was held to be a quasi-judicial exercise which necessarily implied that the District Magistrate had to give some reasons why he held the charges proved and the explanation unacceptable.
57. A comparison of the facts of the said case with the instant case reveals that the nature of rights dealt with in the two is entirely different. Since the cancellation of license had penal implications, the charges brought against the licensees had to be proved and the explanation accepted. Obviously, the burden was on the authorities to prove that such charges had been proved against the concerned licensees.
58. In such context, it was held that the District Magistrate had to give reasons. In the present case, however, there is no question of any detailed opportunity of hearing being given to the petitioner and/or consideration of evidence at length. The power conferred under Section 10 of the 1885 Act is almost unbridled inasmuch as the transmission licensee is concerned, the only test being public good. Unless such exercise is palpably colourable, there is no scope of interference by the writ court.

- 59.** In any event, the District Magistrate is empowered, in his discretion, to order that the authority shall be permitted to exercise the powers already vested in it under Section 10. As such, the burden shifts on the complainant to establish that there is palpable jurisdictional error and/or colourable or arbitrary exercise of authority in any manner.
- 60.** In the present case, however, no such element is found to vitiate the action of the authorities. Inasmuch as the *A.K. Kraipak Case (supra)* is concerned, it is an undisputed proposition that natural justice does not supplant but supplement rules. The scope of administrative and quasi-judicial authorities' decision was explored therein. In the present case, however, there are specific provisions of law, as discussed above, which have been followed substantially by the authorities, including the District Magistrate. As such, there is no scope of holding that the same was colourable or arbitrary in any manner.
- 61.** Inasmuch as *Canara Bank and others (supra)* is concerned, the same pertains to disciplinary proceedings where principles of natural justice were recognized by the Supreme Court. It was held that the adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties or any administrative action involving civil consequences is in issue. The limited scope of the exercise of jurisdiction by the District Magistrate under Section 16 of the 1885 Act is, however, confined to ascertaining whether the authorities exercise their power under Section 10 of the said Act in a proper manner. In this case, in view of the detailed findings of the District Magistrate, no such irregularity or illegality

was found by the District Magistrate in the actions of the authorities to refuse an order permitting the telegraph authority to exercise them.

62. Natural justice has not been violated in the present case in any manner.
63. Inasmuch as the coordinate bench judgment in *Dulal Chandra Mondal (supra)* is concerned, the same does not come in aid of the petitioner in the present case. The doctrine of fairness, although a basic concept of proceedings having civil consequences, has not been violated in any demonstrable manner in the present case.
64. The petitioner had been given several opportunities to appear and contest and ultimately had her version ventilated before the District Magistrate by an advocate, who is supposed to be a person having legal expertise.
65. There was ample opportunity for the petitioner to examine or inspect the documents produced before the District Magistrate and nothing prevented the petitioner and/or her representative from seeking inspection or copies of the said documents.
66. Moreover, the petitioner never alleged before the District Magistrate that she or her representative had not been furnished with the documents relied on by the Magistrate despite having asked for the same. Hence, such factual allegation cannot be permitted to be levelled for the first time before the writ court.
67. Inasmuch as *Natwar Singh (supra)* is concerned, the same was rendered in the entirely different context of the Foreign Exchange Management Act (FIMA), 1999, under which documents were required to be supplied at the stage of issuance of notice under Rule 4(1) of the 2000 Rules. The said case dealt with initiation of enquiry under Rule 4(1) which was distinct

from inquiry proper under Rule 4(6) which is the stage for imposition of penalty. The existence of a structured procedure under FEMA and the 2000 Rules and its implications were, in fact, being discussed by the Supreme Court. In such context, the right to fair hearing was held to be a guaranteed right and the concept of fairness, it was observed, may require the adjudicating authority to furnish copies of those documents upon which reliance has been placed by him to issue show-cause notice.

68. However, the use of the expression 'may' even in such a case is significant inasmuch as it does not cast a mandate in each and every case to furnish copies of all documents.
69. The doctrine of adequate disclosure has not been violated in any manner in the present case for the reasons as discussed above.
70. On the other hand, the decision in *Power Grid Corporation of India Limited (supra)*, cited by the WBSETCL is apt in the circumstances of the present case. The same deals with a similar situation where Sections 10 and 16 of the 1885 Act were considered in respect of laying of electrical transmission lines by a licensee under the 2003 Act, precisely as in the present case.
71. It is to be noted that in paragraph no.30 of the said judgment the Supreme Court categorically rejected the argument regarding taking of prior consent from the owner of the land before laying electricity transmission lines.
72. Hence, in the present case as well, there was no compulsion at all upon the transmission licensee to take prior consent of the petitioner for laying transmission tower on the petitioner's land or taking electricity connection over the same.

- 73.** That apart, it may very well be seen from the said judgment that the Supreme Court clearly discussed the concept that the work of providing framework for the distribution and transmission of electricity generated by various generating companies throughout the country, in a way, is discharging functions which are in public interest.
- 74.** The Supreme Court went on to observe that the Power Grid Corporation had to lay transmission lines parallel to the existing lines to erect towers for laying of the said transmission lines, for which a part thereof is going over the land which was leased out to the writ petitioner for mining purposes. Even taking note of the fact that the mining operations would be seriously affected, the Supreme Court reiterated that the Power Grid Corporation was entitled to exercise its powers under Section 10 of the 1885 Act. In the said case, 85% of the work had already been completed. In the present case, it has been pleaded that 95% of the work was already concluded when the writ petition was filed and it is argued by the WBSETCL that by now, about 98% of the work is completed. There is no rebuttal in pleadings or proof by the petitioner to controvert such contention. Hence, the ratio of *Power Grid Corporation of India Limited (supra)* is all the more applicable to the present case.
- 75.** The Supreme Court, in the said case, also observed that the transmission project was of national importance as it was going to benefit the public at large and that the project was on the verge of completion when the writ petition was decided.
- 76.** The same set of facts are squarely applicable to the present case as well and, as such, the ratio laid down by the Supreme Court in *Power Grid*

Corporation of India Limited to the effect that the legislature has not permitted any kind of impediment/obstruction in achieving the objective of electrification through the scheme of the 1885 Act is equally applicable to the instant case as well.

- 77.** A bare perusal of the order of the District Magistrate clearly indicates that the District Magistrate painstakingly considered each and every detailed component of the parties' respective versions, including the fact that the transmission line being constructed was to provide incoming source of power to the Jangalpur GI Sub-Station which was at an advanced stage, that is, 95% of the work was completed and only some testing work was going on towards commissioning. It was further recorded that the same is being constructed to strengthen the transmission work of the State and also to provide power to the upcoming and proposed domestic, commercial, agricultural and industrial consumers in Sankrail and adjoining blocks of the Howrah District. The District Magistrate took into consideration that it was not possible to change the position of the tower due to technical reason, based on the reports submitted by the qualified experts.
- 78.** In fact, the District Magistrate clearly opined that the damages caused to the petitioner's property were to be kept to the minimum and her privacy and security were not to be hampered and also that the payment of full compensation was to be ensured.
- 79.** Hence, I do not find any jurisdictional error or colourable exercise of authority and/or other gross error in the decision-making process of the District Magistrate and/or the exercise of the powers by the WBSETCL in any manner whatsoever. In any event, the enquiry report submitted by the

Inspection-in-Charge of the Sankrail Police Station observed that if the work was done, there would not be any traffic issue, no question of residential status was to be seen at the locale and that there was no question of threat to life of children in the area. Moreover, there is no factory at the site but only a few labourers working for loading and unloading purpose. Such report was considered at length by the District Magistrate before coming to the conclusion that it did.

- 80.** Hence, there is no scope of interfering with the said decision for any reason whatsoever. In view of the above discussions, the writ petition fails.
- 81.** Accordingly, W.P.A. No.341 of 2023 is dismissed on contest, without any order as to costs.
- 82.** Urgent certified copies, if applied for, be issued by the department on compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)