

27th September,
2023
(AK)
17

W.P.A 23088 of 2023

Debabrata Sarkar and another
Vs.
The State of West Bengal and others

Mr. Abhishek Halder
Mr. Swadesh Misra
Ms. Madhurima Basu

...for the petitioners.

Mr. Sumit Kr. Panja
Mr. Sumit Ray

...for the WBSETCL.

Mr. Anirban Ray
Mr. Sk. Md. Galib
Ms. Tanwishree Mukherjee

...for the State.

1. Learned counsel for the petitioners contends that the petitioners are the owners of a homestead land over which a high tension electricity connection is being taken by the respondent/Transmission Licensee.
2. It is contended that in terms of Section 10(d) of the Indian Telegraph Act, 1885, which has purportedly been resorted to by the Transmission Licensee, the authority is required to do as little damage as possible while exercising the powers conferred under the said Section.
3. Learned counsel for the petitioners places reliance on the documents annexed to the supplementary affidavit filed in court today, to indicate that the line could very

well be taken from a submerged portion of the property, which is immediately adjacent to the portion over which it is now being taken.

4. It is submitted that such steps on the part of the Transmission Licensee would lessen the damages caused to the petitioners.

5. That apart, learned counsel seeks to rely on Section 10(a) of the 1885 Act to indicate that the said Section operates in respect of cases where the telegraph installations are maintained by the Central Government as opposed to the present case.

6. It is argued that the petitioners' valuable rights are being hampered by the action of the Transmission Licensee, giving rise to the present writ petition.

7. Learned counsel for the Transmission Licensee places reliance on the notification which was duly issued by the Transmission Licensee before carrying out the work-in-question.

8. It is further submitted that the provisions of Section 10 of the Indian Telegraph Act, 1885 apply *mutatis mutandis* in terms of Section 164 of the Electricity Act, 2003.

9. Hence, it is argued that the provisions thereof are applicable to the present Transmission Licensee as well.

10. More importantly, it is argued, about 99.9% of the work-in-question has been completed and in the coming

October, the Transmission Licensee is due to electrify the line-in-question.

11. Hence, it would be adverse to the interest of the public at large if at this stage any deviation is to be undertaken by the Transmission Licensee.

12. Upon considering the arguments of parties, I find from the provisions of the concerned statutes that Section 164 of the Electricity Act, 2003, undoubtedly, applies the provisions of the Indian Telegraph Act, 1885 *mutatis mutandis* to the electricity authorities, including Transmission Licensees as well.

13. The most important provisions of the 1885 Act which are applicable are Sections 10 and 16 of the said Act.

14. In the present case, Section 10 is the relevant provision which enables the authorities, including Transmission Licensees under the 2003 Act as well, to place and maintain telegraph lines/electricity lines, under, over, along or across and posts in or upon any immovable property.

15. The remedy of the petitioners, who are allegedly owners of a homestead property which suffers due to such transmission line, lies in proviso (d) of Section 10 which provides that in such cases, full compensation has to be paid to the persons interested for any damage

sustained by them by reason of the exercise of those powers.

16. The Transmission Licensee had already given a hearing to the petitioners, although barely giving three days for the petitioners to get prepared for such hearing. At this juncture, when the work is on the verge of completion and the line is going to be electrified soon, public interest would definitely be hampered in the event the line is directed to be shifted.

17. Thus, the contention of the petitioners as regards an alternative route for taking the line being available cannot be looked into at this juncture.

18. In any event, the petitioners were at liberty to point out the alternative route, if the petitioners so felt, before the Transmission Licensee at the time when the petitioners were given a hearing.

19. The only remedy which is available to the petitioners at this juncture is to claim compensation from the Transmission Licensee.

20. Definitely, immediately upon completion of the work, the Transmission Licensee shall grant adequate compensation to the petitioners and for such purpose, give a hearing to the petitioners.

21. If aggrieved by the quantum thereof, the petitioners will be at liberty to approach the appropriate authorities.

22. It may be noted here that the Division Bench judgment cited by learned counsel for the petitioners is not applicable in the present circumstances.

21. In the said judgment, no ratio was laid down as such but it was observed that the writ petitioners therein did not give consent for drawing the power line for which the power line could not be drawn over the land of the writ petitioners. It was further observed that it would be open to the State electricity Board to draw transmission line from the plot of others with their consent and in accordance with law.

23. However, as indicated above, the said judgment does not lay down any proposition of law as such, nor does it deal with any of the provisions of law as discussed in the present order. Moreover, the circumstances of the said case were not discussed sufficiently to ascertain the work had been substantially completed there as well.

24. Hence, nothing hinges on the said judgment insofar as the present case is concerned.

25. Accordingly, WPA 23088 of 2023 is disposed of by granting liberty to the petitioners to approach the appropriate forum in the event the petitioners are dissatisfied with the quantum of compensation granted to them.

26. The respondent/ Transmission Licensee shall immediately take steps for grant of adequate

compensation to the petitioners and for such purpose shall give an opportunity of hearing to the petitioners at the earliest, preferably within one month from date.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)