

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

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No.28267 of 2022

**Nadugopal Shinri
Vs.
The West Bengal State Electricity
Distribution Company Limited and others**

For the petitioner	:	Mr. Mohinoor Rahaman, Ms. Maria Rahaman, Ms. Iqra Rahaman
For the WBSEDCL	:	Mr. Amitabh Shukla, Mr. Prakash Ch. Pandey
Hearing concluded on	:	20.01.2023
Judgment on	:	16.02.2023

Sabyasachi Bhattacharyya, J:-

1. The petitioner alleges that the WBSEB (now WBSEDCL) extended a High Tension Overhead Line of about 11 KV over the petitioner's *bastu* land about 30/40 years back without taking permission from the petitioner at any point of time. The line has gone over the residential house and kitchen of the petitioner and due to improper maintenance any serious accident may occur at any moment, for which the petitioner and his family are always in panic. The petitioner has allegedly got allocation of funds under the Pradhan Mantri Awaas Yojana but owing to the overhead high tension line is not being able to erect any residential house on the plot.

- 2.** The petitioner, accordingly, made representations to the WBSEDCL to shift the line from over the petitioner's premises; more so, since there is an alternative government road/pathway over which another high tension line has been taken, over which the line-in-dispute can also be drawn.
- 3.** The WBSEDCL raised a provisional quotation of Rs. 2,26,644.24 p. for shifting the line, which the petitioner, a cultivator of humble means, was unable to pay. As such, the WBSEDCL dismissed his representation.
- 4.** The petitioner preferred a challenge before the Ombudsman against the above decision. Initially the petitioner had to move a writ petition to get an order directing the Ombudsman to decide the challenge expeditiously. Then on June 21, 2022 the Ombudsman decided that the cost of shifting the high-tension line has to be paid by the petitioner and if there is any dispute on the point of cost the matter was to be referred to the Electrical Inspector.
- 5.** The petitioner, being aggrieved, moved a writ petition bearing WPA No. 14394 of 2022 which was disposed of vide order dated August 17, 2022 by directing the respondent no. 5, that is, the District Magistrate of Purba Medinipur to decide the issue of entitlement of compensation of the petitioner in respect of the electricity connection as well as whether any expense for removal or alteration of the said connection has to be defrayed by the petitioner and, if so, the quantum thereof.
- 6.** Upon hearing the parties, the District Magistrate, vide impugned order no. 2 dated November 23, 2022, observed that there is no need for shifting the "electric pole of high tension line".

7. The petitioner has challenged the said order and prayed for a direction on the WBSEDCL to shift the line from over the petitioner's property in the present writ petition.
8. Heard learned counsel for the parties.
9. Two questions have come up for consideration here:
 - (i) Whether the District Magistrate acted without jurisdiction in passing the impugned order?
 - (ii) Whether the petitioner has to pay for shifting of the high tension line as he has asked for it?
10. As regards the impugned order of the District Magistrate, the same cannot stand a moment's scrutiny. It was finally settled in the first round of litigation that the WBSEDCL was agreeable to shift the line; however, upon the petitioner paying the shifting charges. The WBSEDCL even raised a provisional quotation specifying the expenses for such shifting. The Ombudsman had directed shifting but upon the petitioner paying the necessary shifting charges.
11. When the matter came up before this court thereafter, the matter was sent to the District Magistrate to decide on the limited questions of entitlement to compensation of the petitioner in respect of the electricity connection as well as whether any expense for removal or alteration of the said connection has to be defrayed by the petitioner and, if so, the quantum thereof.
12. Hence, there was little or no scope of the District Magistrate reopening the issue of shifting. Thus the impugned order is bad *ex facie* inasmuch as the Magistrate held that there is no need for shifting "electric pole". It was

beyond the scope of the District Magistrate's jurisdiction to negate the shifting altogether, instead of deciding who was to pay the shifting charges and the quantum of shifting charges and/or compensation.

- 13.** Moreover, the impugned order is cryptic and is required to be set aside on such score as well.
- 14.** However, the more important question which arises is whether the petitioner is entitled to compensation and/or who has to pay for the shifting of the high tension overhead line from over the petitioner's land.
- 15.** In the present case, the disputed line admittedly exists since 30/40 years. Although no consent/permission is proved to have been taken from the petitioner, by not praying for compensation during 3-4 decades, the petitioner has waived his claim in that regard.
- 16.** As observed above and corroborated by the chain of events in the present case, the moot question is who has to bear the shifting charges, since, having already raised a provisional quotation, the WBSEDCL has conceded to the position that the shifting is technically feasible.
- 17.** To decide the question, Section 164 of the Electricity Act, 2003 is to be referred to first. It empowers the appropriate government to confer upon any public officer, licensee, etc. any of the powers which the telegraph authority possesses under the Indian Telegraph Act, 1885, 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, 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.

18. The relevant provisions of the 1885 Act in this context are Sections 10 and 17, which read as follows:

“10. Power for telegraph authority to place and maintain telegraph lines and posts .—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:

Provided that—

(a) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the Central Government, or to be so established or maintained;

(b) the Central Government shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which the telegraph authority places any telegraph line or post;

(c) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority; and

(d) in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property other than that referred to in clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

17. Removal or alteration of telegraph line or post on property other than that of a local authority.—*(1) When, under the foregoing provisions of this 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:

Provided that, if compensation has been paid under section 10, clause (d), he shall, when making the requisition, tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever may be the smaller sum.

(2) If the telegraph authority omits to comply with the requisition, the person making it may apply to the District Magistrate within whose jurisdiction the property is situate to order the removal or alteration.

(3) A District Magistrate receiving an application under sub-section (2) may, in his discretion, reject the same or make an order, absolutely or subject to conditions, for the removal of the telegraph line or post to any other part of the property or to a higher or lower level or for the alteration of its form; and the order so made shall be final.”

- 19.** Section 17(1) clearly provides that when a line has been placed by an authority over any property, not being property vested in or under 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 accordingly.
- 20.** Since the distribution licensee in the present case has drawn the high tension overhead line over the petitioner’s land, the petitioner is obviously a person entitled to ask for a shifting, more so since he has a logical reason

to do so as he has obtained funds under a Central Government scheme to construct a residential house on the land.

21. Conspicuously, the language used in Section 17 is “desires to deal with that property in such manner as to render it necessary or convenient that the line should be removed...”. The expression “desires” is of wide amplitude and gives sufficient scope to a person over whose land the line has been drawn to seek removal of the line.
22. However, the following part of the Section is crucial. It continues: “... removed to another part thereof or to a higher or lower level or altered in form...”. The phrase “another part thereof” clearly qualifies the property. Thus, the removal of the line has to be on another part of the same property or to a higher or lower level or altered in form. Hence, if a person over whose property the line has been drawn seeks removal of the line only to another part of the *same* property or a higher or lower level or altered in form, in such case the mere desire and/or convenience of the owner to deal with the property would necessitate removal of the line/post by the licensee.
23. Examining the proviso to Section 17(1), the same envisages only a case where compensation has been paid under Section 10, Clause (d), that is, when damage has been done by the licensee and it has paid full compensation therefor to the land-owner. Only in such cases, as per the proviso to sub-section (1) of Section 17, the person making the requisition has to tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration or half the compensation received by

him, whichever is smaller. This is obviously to ensure that the land-owner is not unjustly enriched.

- 24.** In the present case, no such question arises, since compensation has not been paid to the petitioner, nor has he asked for the same, at any point of time.
- 25.** The crux of the above discussion leads us to the conclusion that if the petitioner had sought a removal within the same property or shifting to a higher or lower level or alteration in form, the petitioner would not have to pay anything, as he has not received compensation in the first place.
- 26.** However, the present petitioner seeks the shifting of the high tension overhead line to a different plot of government land altogether, and not to another part of his own property, to suit his purpose. Such a situation is not covered by Section 17 (1) of the 1885 Act.
- 27.** Thus, although the order of the District Magistrate is bad both in law and suffers from excess exercise of jurisdiction, the petitioner cannot get a shifting of the line according to his representation unless he pays the necessary expenses for such shifting.
- 28.** WPA 28267 of 2022 is, accordingly, disposed of on contest by setting aside the impugned order of the Magistrate, bearing Order no. 2 dated November 23, 2022. However, the claim of the WBSEDCL of the necessary expenses for shifting from the petitioner is justified. In the event the petitioner deposits the necessary amount in terms of the quotation raised by the WBSEDCL, the WBSEDCL shall shift the high tension overhead line from over the petitioner's property to an alternative location. However, in the

event of non-payment by the petitioner, there will be no obligation on the part of the WBSEDCL to so shift.

- 29.** Nothing in this order shall, however, preclude the petitioner from seeking a removal of the high-tension line to a different part of his own property-in-question, in which case, if otherwise technically feasible, the same shall be done by the WBSEDCL at its own expense.
- 30.** There will be no order as to costs.
- 31.** Urgent certified copies, if applied for, be issued to the applicants subject to compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)