

In the High Court at Calcutta
Constitutional Writ Jurisdiction

Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No.28872 of 2022

Pradipta Mukherjee

Vs.

The State of West Bengal and others

For the petitioner : Mr. Indrajeet Dasgupta
Ms. Puspita Bhowmick

For the WBSEDCL : Mr. Srijan Nayak,
Mr. Debjit Mukherjee

For the State : Ms. Sutapa Sanyal
Mr. Anand Farmania

Hearing concluded on : 13.03.2023

Judgment on : 16.03.2023

Sabyasachi Bhattacharyya, J:-

1. The petitioner purchased a land on March 15, 2011 and started making construction of a house thereon in the year 2017. A High Tension Overhead Electricity Line was drawn in the meantime over the land of the petitioner.
2. It is contended that no notice was given to the petitioner in that regard.
3. Upon the petitioner giving representation for shifting of the electric line, the same was not acted upon by the respondent-Authorities,

upon which a writ petition bearing WPA No.2645 of 2021 was moved by the petitioner, which was disposed of on March 2, 2021, *inter alia*, directing the Distribution Licensee to show that the petitioner's consent had been taken and compensation had been paid to the petitioner. Subsequently, on April 7, 2021 a hearing was given to the petitioner by the WBSEDCL. On May 3, 2021, the respondent-Distribution Licensee observed that the petitioner may again approach the WBSEDCL for issuance of fresh quotation for shifting of the High Tension Line as per norms of the Distribution Company.

4. The petitioner next moved an application under Section 17(2) of the Indian Telegraph Act, 1885 (hereinafter referred to as, "the 1885 Act") [wrongly stated to be under Section 10(2) thereof]. The petitioner again moved a writ petition against the inaction of the Distribution Licensee in sitting tight over the application, giving rise to WPA No.6871 of 2022. The same was disposed of on May 10, 2022 by directing the District Magistrate, South 24 Parganas to decide on such application of the petitioner by treating it to be under Section 17 of the 1885 Act by ignoring the erroneous caption of the same. Although after the time-limit stipulated by this Court, the District Magistrate issued notices on the parties for hearing, which was held on September 26, 2022. A field enquiry was directed to be undertaken by the Assistant Engineer (Technical), Garia Division of the WBSEDCL. Ultimately, on October 20, 2022, the District Magistrate found that shifting of the High Tension over head line was technically feasible, subject to payment of quotation amount by the petitioner.

5. Being aggrieved by the said order, insofar as the Magistrate directed the petitioner to bear the shifting charges, the present writ petition has been filed.
6. Written notes of arguments is filed by the petitioner. Learned counsel for the petitioner contends that upon a proper construction of Section 17 of the 1885 Act, it has to be construed that the Distribution Licensee, and not the applicant, is required to bear the expenses for removal/shifting of electricity line. In the present case, it is submitted that no compensation as contemplated in the proviso to Section 17(1) was paid to the petitioner. As such, the question of tendering amount requisite to defray the expense by the petitioner does not arise.
7. It is submitted that on a strict interpretation of Section 17(1) of the Act, it is required to be held that the petitioner is not liable to pay the shifting charges.
8. Learned counsel for the petitioner places reliance on *Indore Vikas Pradhikaran Vs. Pure Industrial Coke and Chemicals Limited*, reported at (2007) 8 SCC 705, for the proposition that the right to property is now considered to be not only a Constitutional right but also a human right.
9. It is submitted that Sections 10 and 16 of the 1885 Act have no significance in the present case, since the petitioner is not seeking any compensation. In the judgment passed in *FMA 336 of 2022*, referred to by the District Magistrate, a Division Bench of this Court, it is submitted, did not take into consideration the Section 17(1) of the 1885 Act.

10. In the case of *Debaprasad Das Vs. West Bengal State Electricity Distribution Company Limited and others*, reported at 2022 SCC OnLine Cal 189, a Division Bench of this Court again held that in the facts and circumstances of the said case, the petitioner therein was granted the liberty to deposit estimated costs of shifting work to the respondents/electricity authority.
11. In *Power Grid Corporation of India Limited Vs. Century Textiles and Industries Limited and others*, reported at (2017) 5 SCC 143, the Supreme Court held that if the writ petitioner is entitled to compensation, the appropriate course of action is to file a suit before the concerned District Judge. However, the said case, learned counsel argues, can be factually distinguished inasmuch as it was found that it was not feasible to shift the power lines. In the present case, however, no such impossibility has been expressed by the respondents. On the contrary, the WBSEDCL has found it feasible to shift the lines/poles.
12. Learned counsel appearing for the WBSEDCL seeks to argue that the WBSEDCL was not responsible for the transmission line having been installed over the petitioner's land. However, such argument was negated *vide* Order dated March 13, 2023 to the effect that the District Magistrate had directed an inspection to be held by the WBSEDCL, upon which a report was submitted by the Divisional Engineer (Technical), Garia Division of the WBSEDCL, upon which the WBSEDCL was directed by the District Magistrate to reassess the value of quotation amount for shifting the line.

13. Thus, the licensee having not taken such point at any previous stage and the objection having been turned down by this Court, the said point is no longer available to the WBSEDCL.
14. By the same Order of this Court dated March 13, 2023, the second objection taken by the WBSEDCL, relying on Clause 4 of Regulation 53 of the WBERC, was also turned down, since such provision applies to installation of extensions of new plants/lines, distribution mains etc., in order to supply electricity to a applicant and does not cover the shifting of an existing High Tension line.
15. The moot question which has fallen for consideration in the present case is whether the applicant has the liability to pay the shifting charges for removal or alteration of a High Tension electricity line or an electricity post.
16. Section 17 of the 1885 Act reads as follows:

“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.”

- 17.** The proviso to sub-section (1) thereof stipulates that if compensation has been paid under Section 10(d) of the Act, the applicant 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.
- 18.** However, the language of sub-section (1) of Section 17 is very clear inasmuch as the right of a person to seek removal of an electricity line or post is restricted to a removal to another part of the property itself or to a higher or lower level or altered in form. In such cases, the telegraph authority may be required to remove or alter the line or post accordingly.
- 19.** The expression “or to a higher or lower level or altered in form” has to be read in perspective. The principle of *ejusdem generis* squarely applicable and the subsequent general terms are to be read along with the previous specific words used in the sub-section.

- 20.** The previous part of the relevant clause provides that the line or post should be removed to *another part thereof*, the ‘thereof’ qualifying the property with regard to which the petitioner seeks the shifting or alteration. Unless the subsequent phrase “to a higher or lower level or altered in form” is read in the context of the same property, the previous words would become redundant. This is because it is absurd that a person can seek such removal only to another part of the same property with which the person desires to deal while if the removal is to a higher or lower level or it is an alteration in form, the petitioner can seek such shifting to any other land belonging to others.
- 21.** Such violation of the rights of third parties cannot be contemplated within the limited periphery of Section 17 of the 1885 Act.
- 22.** As such, only if the petitioner seeks a shifting or alteration or removal to another part or a higher or lower level of the same property, regarding which the petitioner wants to deal, and over which the line/post goes, he may require the authorities to remove or alter the line or post accordingly. Since there is no provision in the said Section for payment of any amount, apart from cases where compensation was previously paid to the person, in cases where compensation was never paid, the proviso to sub-section (1) of Section 17 does not apply.
- 23.** In the present case, it is nobody’s contention that any compensation was ever paid to the petitioner. The purpose of the proviso as intended by the legislature is abundantly clear, being that the petitioner has to make good 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. Since no compensation was paid to the petitioner in the present case, there is no scope of applying such yardstick of half of the amount of compensation or the requisite expenses, whichever is smaller. As per the said sub-section, however, there is no stipulation as to who will bear the liability of paying the shifting charges.

- 24.** In the absence of any specific provision casting the burden on the licensee to bear such expenses, norms of prudence only dictate that the person seeking such shifting or alteration for his own convenience, in the event he desires to deal with his property in a manner rendering it necessary or convenient to remove the line or pole, is to pay for such removal/alteration.
- 25.** Inasmuch as the present case is concerned, the High Tension electricity line has been taken over the land of the petitioner since quite a long time.
- 26.** Unless an objection is taken by the owner/occupier at the relevant juncture when the line is first taken, there is no scope of any compensation being granted to such owner/occupier. In the present case, the petitioner sat tight over the matter and only in the year 2017, much after the drawing of the said High Tension line, sought removal of the High Tension line for his own convenience.
- 27.** Poverty is not an apt justification for the present petitioner shying away from payment of the expenses for shifting, since the purpose of

such shifting is that the petitioner intends to build a house on the property.

- 28.** That apart, public interest, which is one of the objects and purpose of the enactment of the Telegraph Act, 1885, read in conjunction with the Electricity Act, 2003, cannot make way to the personal interest of a private individual. If the law is laid down to the effect that in each and every case, the licensee is to shift or alter High Tension electricity lines at the whims or pleasure of an owner/occupier, who did not object in the first place to installation of such line, it would be impossible and hugely expensive for any distribution licensee or transmission licensee to lay down wires, either overhead or underground, for the purpose of electrification of vast expanses of area, including domestic, industrial and commercial units.
- 29.** Hence, such absurd interpretation cannot be lent to Section 17 of the 1885 Act, which applies to electricity lines and poles as well by virtue of Section 164 of the Electricity Act, 2003. In such view of the matter, the contention of the petitioner cannot be upheld even upon a purposive interpretation of Section 17(1) of the 1885 Act.
- 30.** Hence, WPA No.28872 of 2022 is dismissed on contest without any order as to costs.
- 31.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)