

25.06.2024
Sl. No.33(DL)
srm

W.P.A. No. 4186 of 2024

Biswajit Sarkar

Versus

**The West Bengal State Electricity Distribution
Company Limited & Ors.**

Mr. Rinku Sen,
Mr. Sagnik Bhattacharya

...for the Petitioner.

Mr. Saurav Chaudhuri

...for the WBSEDCL.

1. Affidavit-of-service is taken on record.
2. The writ petition has been filed challenging an order dated January 11, 2024 passed by the District Magistrate, Paschim Medinipur.
3. According to the petitioner, the said order was passed without considering the fact that the overhead line was crossing through the land of the petitioner. The lines were drawn even after the petitioner had become the owner.
4. The fact that the petitioner had obtained the land use and compatibility certificate from the Midnapore Kharagpur Development Authority is not in dispute. The proposed plan for construction of a residential building indicates

that the petitioner proposed to construct a building of measuring 11 mtrs. in height.

5. It has been contended that the construction proposed to be raised by the petitioner would be in danger, if the high tension line continues to exist. The District Magistrate found that the petitioner did not raise any objection at the time of laying of the high tension lines. It was detected that shifting of the pole which was in front of the land, would not be possible. The breadth of the existing road was only 15 ft. and another 33 kv. Line existed just on the opposite side of the road. The minimum distance for safety transmission would be compromised if the disputed pole was shifted.
6. Considering the factual findings of the District Magistrate, this Court is not inclined to pass any orders directing shifting of the overhead lines as of now. It has been found that there has been no erection of any pole within the premises of the petitioner. Only the overhead high tension wires had been drawn. The District Magistrate found that the authorities did not face any objection when such stringing was done. The petitioner was already the owner of the land. It was found that the

proposal for laying the line was made prior to the petitioner obtaining the LUC certificate.

7. The findings of the District Magistrate are quoted below:-

“Verified all the papers, documents, enquiry report and photos, it appears that;

1. The said 33 KV feeder line from Dharma 220/132/33 KV Sub-Station was approved by EC.CP & ED 30.04.2009 as per proposal Midnapore (O&M) Sub-Division.

2. Petitioner is owner of the land by virtue of register deeds in the year 2010 i.e. after sanction of the proposal.

3. As per joint enquiry report no pole has been erected on the petitioner's plot Petitioner got permission from Midnapore Kharagpur Development Authority to use his land as residential purpose on 25.03.2011. But W.B.S.E.D.C.L. placed work order on 24.11.2010 for creation of poles and transmission line.

4. Petitioner demanded to shift the existing pole in front of his plot to another place. But, it is physically not possible due to following reason;

a) The existing road breadth is only 15 feet and there is another high tension 33 KV line just opposite side of the road. Minimum distance for safely transmission shall be compromised, if the disputed pole is shifted.

b) Private land is not possible to use without concurrence of the land owner

5. The said 33 KV feeder has been connected with 33/11 Sub-Station of Keshpur to provide power supply to approximately 16000 consumers.

6. Any disturbance of said 33 KV line, shall affect greater public interest, safety measure and transmission rules shall be compromised.

7. The said 33KV line has been erected as per Section 21 and Section 68 of West Bengal Electricity Act, 2003.

Verified all the papers, documents, report, photograph and heard both the parties, petitioner's demand for shifting of existing poles is hear by rejected.”

8. The protection which the petitioner is entitled to, is under the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2023 (hereinafter referred to as the said Regulations).
9. Regulations 65 of the said Regulations is worth mentioning in this case as it provides for the steps to be taken when any person proposes to erect a new building or structure or flood bank subsequent to erection of an overhead line.
10. Regulation 65 is quoted below:-

“65. Erection or alteration of buildings, structures, flood banks and elevation of roads.-(1) If at any time subsequent to the erection of an overhead line, whether covered with insulating material or not or underground cable, any person proposes to erect a new building or structure or flood bank or to raise any road level or to carry out any other type of work whether permanent or temporary or to make in or upon any building, or structure or flood bank or road, any permanent or temporary addition or alteration, such person and the contractor whom he employs to carry out the erection, addition or alteration, shall give intimation in writing of his intention to do so, to the supplier or owner and to the Electrical Inspector and shall furnish therewith a scale drawing showing the proposed building, structure, flood bank, road or any addition or alteration and scaffolding thereof required during the construction.

(2) On receipt of such intimation, the supplier or owner shall examine,-

(a) whether the overhead line or underground cable under reference was laid in accordance with the provisions of these regulations and any other law for the time being in force;

(b) whether it is technically feasible;

(c) whether it meets the requirement of right of way; and

(d) whether such person was liable to pay the cost of alteration of the overhead line or underground cable and if so, issue a notice within a period of thirty days to such person together with an estimate of the cost of the expenditure likely to be incurred to alter the overhead line or underground cable and require him to deposit, within thirty days of the receipt of the notice, with the supplier or owner, the amount of the estimated cost.

(3) If such person disputes the cost of alteration of the overhead line or underground cable estimated by the supplier or owner or even the responsibility to pay such cost, the dispute may be referred to the Electrical Inspector who shall after hearing both parties decide upon the issue in accordance with sub-regulation (4).

(4) The Electrical Inspector shall estimate the cost of alteration of overhead line or underground cable on the following basis, namely: --

(a) the cost of material used for the alteration after accounting for the depreciated cost of the material of the existing line or underground cable;

(b) the wages of labour employed in the alteration; and

(c) the supervision charge to the extent of fifteen per cent of the wages mentioned in clause (b) and charges incurred by the owner or supplier or consumer in complying with the provisions of section 67 of the Act, in respect of alterations.

(5) Any addition or alteration to the building or structure shall be allowed only after the deposit of such estimated cost to the supplier or owner.

(6) No work upon such building, structure, flood bank, road and addition or alteration thereto shall commence or continue until the Electrical Inspector certifies that regulations 60, 62, 63, 66 and regulation 79 have not been contravened either during or after the construction:

Provided that the Electrical Inspector may, if he is satisfied that the overhead line or underground cable has been so guarded as to secure the protection of persons or property from

injury, certify within fifteen days that the work may be executed prior to the alteration of the overhead line or underground cable or in the case of temporary addition or alteration, without alteration of the overhead line or underground cable.

(7) The supplier or owner shall, on receipt of such deposit, alter the overhead line or underground cable in such a way that it does not contravene the regulations 60, 62, 63 and 79 either during or after such construction within two months from the date of such deposit or within such longer period as the Electrical Inspector may permit for reasons to be recorded in writing."

11. The safety norms to be followed has been stated in Regulations 62 and 63 of the said Regulations, which are quoted below:-

"62. Clearance from buildings of lines of voltage and service lines not exceeding 650 V. (1) An overhead line shall not cross over an existing building as far as possible and no building shall be constructed under an existing overhead line.

(2) Where an overhead line of voltage not exceeding 650 V passes above or adjacent to or terminates on any building, the following minimum clearances from any accessible point, on the basis of maximum sag, shall be observed, namely: -

(i) for any flat roof, open balcony, varandah roof and lean-to-roof, -

(a) when the line passes above the building, a vertical clearance of 2.5 metre from the highest point; and

(b) when the line passes adjacent to the building, a horizontal clearance of 1.2 metre from the nearest point;

(ii) for pitched roof, -

(a) when the line passes above the building, a vertical clearance of 2.5 metre immediately under the line; and

(b) when the line passes adjacent to the building, a horizontal clearance of 1.2 metre.

- (3) Any conductor so situated as to have a clearance less than that specified in sub-regulation (2) shall be replaced with Aerial Bunched Cable and to be attached at suitable intervals to a bare earthed bearer wire having a breaking strength of not less than 350 kgf.
- (4) The horizontal clearance shall be measured when the line is at a maximum deflection from the vertical due to wind pressure.
- (5) The vertical and horizontal clearances shall be measured as per illustration provided in Schedule VIII C. Explanation. For the purposes of this regulation, the expression "building" shall be deemed to include any structure, whether permanent or temporary.

63. Clearances from buildings of lines of voltage exceeding 650 V.

- (1) An overhead line shall not cross over an existing building as far as possible and no building shall be constructed under an existing overhead line.
- (2) Where an overhead line of voltage exceeding 650 V passes above or adjacent to any building or part of a building it shall have on the basis of maximum sag a vertical clearance above the highest part of the building immediately under such line, of not less than, -

- | | |
|---|---|
| (i) for lines of voltages exceeding 650 V and up to and including 33 kV | 3.7 metre; |
| (ii) for lines of voltages exceeding 33 kV | 3.7 metre plus 0.30 metre for every additional 33 KV or part thereof. |

- (3) The horizontal clearance between the nearest conductor and any part of such building shall, on the basis of maximum deflection due to wind pressure, be not less than, -

- | | |
|--|------------|
| (i) for lines of voltages exceeding 650 V and up to and including 11 kV | 1.2 metre; |
| (ii) for lines of voltages exceeding 11 kV and up to and including 33 kV | 2.0 metre; |

(iii) for lines of voltages exceeding 33 kV

2.0 metre plus
0.3 metre for
every additional
33 kV or part
thereof.

(4) For high voltage direct current systems, the vertical and horizontal clearances, on the basis of maximum deflection due to wind pressure, from buildings shall be maintained as below:

Sl. No.	High Voltage Direct Current	Vertical Clearance (metre)	Horizontal Clearance (metre)
1.	100 kV	4.6	2.9
2.	200 kV	5.8	4.1
3.	300 kV	7.0	5.3
4.	400 kV	7.9	6.2
5.	500 kV	9.1	7.4
6.	600 kV	10.3	8.6
7.	800 kV	12.4	10.7

(5) The vertical and horizontal clearances shall be as measured as illustrated in Schedule VIII C.

Explanation. For the purposes of this regulation, the expression "building" shall be deemed to include any structure, whether permanent or temporary.

12. Thus, if the petitioner wishes to construct any building,
- he will approach the authorities in terms of Regulation 65
- which has been quoted above and the authority shall be
- bound to take steps to ensure that measures as per the
- Regulations 62 and 63 and 65 are taken.
13. The writ petition is, thus, disposed of.
14. Parties are directed to act on the basis of the server copy
- of this order.

(Shampa Sarkar, J.)