

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

205

CWP-21806-2017 (O&M)
Date of decision: 13.02.2024

Mukesh Kumar

...Petitioner

VERSUS

Haryana Vidhyut Parsaran Nigam Limited and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Ms. Malkit Kaur, Advocate for
Mr. Mohammad Arshad, Advocate for the petitioner.

Mr. Gaurav Jindal, Advocate for respondents No. 1 to 3.

VINOD S. BHARDWAJ, J. (Oral)

1. Prayer in the present petition is for issuance of directions to the respondents to realign the 66 KV High Tension Line in the State in a straight line as against the alignment currently done.
2. Learned counsel for the petitioner contends that petitioner- Mukesh Kumar has approached this Court claiming that he along with his wife are exclusive owners in possession of agricultural land bearing *Khewat* No.1050, *Khata* No.1125, Rect. No. 120, Kill Nos.9 (7-2), 10 (0-5), 12 (8-0), total measuring 15 *kanals* 17 *marlas* situated in the revenue estate of village and Tehsil Tauru, District Nuh as per the copy of *jamabandi* and *Aks Shizra* for the year 2008-09. She further contends that the petitioner had come to know about the execution of work of laying transmission lines only

when the officials of respondents transmission licensee started digging on their land, for erection of the transmission towers and lines, without any notice to the petitioner. It thereafter came to the knowledge of the petitioner that the transmission line is being laid down in a zigzag manner instead of laying it in a straight line.

3. It is submitted that a representation was moved before the Deputy Commissioner, Mewat, however, no action was taken thereupon. It is further averred that a writ petition pertaining to the same issue bearing CWP No.18021 of 2017 titled as 'Sahida and others Vs. Haryana Vidhyut Prasan Nigam', was filed before this Court and the same was disposed of vide order dated 01.09.2017 with a direction to respondent No.1 (therein) to consider the matter on the basis of pleas raised by the petitioners in the representation and to take appropriate decision as per the rules/norms.

4. It is contended that the respondent-Distribution Licensee has thereafter erected the transmission lines notwithstanding that the decision had not been taken on the said representation. Hence the present writ petition was filed.

5. Written statement has been filed on behalf of respondents No.1 to 3, wherein it has been averred as under:-

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3. That the present writ petition is misconceived and devoid of any merit. The petitioner have not approached this Hon'ble court with clean hand and suppressed true material facts from the knowledge of this Hon'ble Court as the answering respondents has not entered upon the land of

petitioner illegally and without any authority. The Haryana Govt. Power Deptt. Vide memo no-1/5/2009-1 dated 01.12.2009 has conferred HVPNL with all the powers possessed by the telegraph authority under Part-III of the Indian Telegraph Act. 1885 (13 of 1885) in respect of laying electrical line etc. That in exercise of the powers under section 164 of the Electricity Act,2003(36 of 2003), the Governor of Haryana conferred the HVPNL with all the powers possessed by the telegraph authority under Part-III of the Indian Telegraph Act,1885(13 of 1885), in respect of electrical lines and electrical plant established or maintained, or to be so established or maintained for the transmission of electricity or for the purpose of telephonic or telegraphic communication necessary for the proper coordination of the works copy of which is annexed herewith as Annexure R-1. In view of above power, HVPNL can lay down electric lines & and electrical plant in state of Haryana.

4. That the present writ petition is not maintainable in so far as relief of restraining HVPNL from execution of the work of electrical transmission line. As the said work is being executed under the scheme notified in Haryana Govt. Gazette by notification. That reliance is placed upon the judgment dated 19.07.2011 passed in CWP No.7902 of 2011 where the Hon'ble high court while disposing of the bunch of writ petitions vide order dated 19.7.2011 upheld the primacy

of public interest over private objectors and recognized the authority of the State or its licensee to lay overhead wires irrespective of objections of private landowners and restricted the limit of objections to be governed by the executive function to take a decision on the objection and carry out the scheme untrammelled by objections beyond consideration of compensation payable Further, the Hon'ble High Court upheld the power of licensee to lay overhead transmission lines without prior consent of the landowner. A copy of judgment is annexed herewith as Annexure R-2.

5. *That reliance is also placed on Braham Singh Vs State of U.P. &Ors. AIR 2008 (NOC) 2034(ALL), the Allahabad High Court relying upon a judgment of the Madras High Court in E. Venkatesan & Ors. vs. Chairman, Tamil Nadu Electricity Board Madras &Ors. AIR 1977 Madras 64, where in it was held that when a Licensee exercises powers under Section 51 of the Electricity Act read with Section 10 of the Telegraph Act, the owner is not entitled to any notice before laying the poll or construct any tower, nor any consent is required from them.*

Further in G.V.S. Rama Krishna s/o Nageswara Rao &Ors. Vs. A.P. Transco AIR 2009 Andhra Pradesh 158, the Andhra Pradesh High Court held that under Section 164 of the Electricity Act, 2003 read with Section 10 of the Indian

Telegraph Act, 1885, the Transmission Company could proceed to place an electric polls for the transmission of electricity over private land without any consent of the owner or occupier. It is stated that HVPNL can also exercise these powers by virtue of power conferred under Section 164 of the Act, 2003.

6. That Reliance is also placed on the judgment dated 06.12.2017 passed by Hon'ble High Court in CWP No. 25966 of 2017 titled as Harbans Singh and others Vs Punjab State Transmission Corporation Ltd. and another whereby Hon'ble High Court while relying upon the Vivek Brajendra Singh Vs State of Government of Maharashtra and others 2012 (4) BCR 116 where in it was held that there is no hearing contemplated against laying of lines. A decision to mark route for laying electric line is a highly specialized and technical. The route may be running into hundreds of kilometers passing through land owned by different owners and it may not be possible to offer hearing to all the owners, as only right to use small-small of portions of land on which towers are erected, is acquired. The project being of important nature and creation of infrastructure, the Parliament has not provided for any notice of hearing at that stage. It was further found unreasonable to confer right on the owners or occupiers of the land on the route to suggest alternates. If that process is adopted, the

project will never be completed as any such decision would be subject to judicial review and the State or its functionaries may not be able to provide infrastructure. Further Andhra Pradesh High Court in G. V. S. Rama Krishna son of Nageswara Rao and others vs A. P. Transco rep. By its Managing Director, Vidyuth Soudha and others 2010 (8) RCR (Civil) 2223, clearly laid down that the only right available to landowners is to receive compensation and damages, if any, sustained by them, as neither there is acquisition of land nor there is any need of consent of the owners or occupiers. Even in the Power Grid Corporation of India Limited vs Century Textiles & Industries Limited and others 2017(1) Recent Apex Judgments 696, the Hon'ble the Supreme Court declined to interfere in the process of laying of power lines by way of dismissing the writ petition. A copy of the judgment dated 06.12.2017 is annexed herewith as Annexure R-3.

7. That the present petition is a clear misuse of the process of the law against answering respondent as the work was started on March 2017 which has been completed on 12.08.2017 whereas petition has been filed on 20.09.2017. This petition has been filed just to harass and humiliate the answering respondent as the land of the petitioner has not been rendered uncultivable. In fact land is still cultivable. Total land of the petitioner is 12 Kanal 17 Marla and the transmission line of 66 KV has been

laid after following required horizontal and vertical clearances of CEA Rules 2010.

8. That the route chosen by the answering respondent is the most economical and viable route and carries approval of competent authority which was communicated vide letter dated 15.02.2017 (Annexure R-4) and therefore the contention of the petitioner that the alignment has been chosen to benefit the respondent no 4 is wrong and denied vehemently and thus the petition deserves to be dismissed on this ground alone.

9. That the petitioner had failed to raise any objection regarding route plan of line within the period of two months as prescribed in the notification dated 15/07/2014(Annexure R-5) and thus forfeited right to raise any objection. Thus present petition is not maintainable on this short ground alone.

10. That it is respectfully submitted that Executive Engineer of Electrical Inspectorate vide memo no. 10974 dated 23.08.2017 has granted the approval for commissioning/energizing of the lines (Annexure R-6).

xxx”.

6. Even though the above-said reply, raising all the material objections was filed on behalf of the respondents-transmission licensee on 17.08.2018, however, the petitioner chose not to file any replication/rejoinder controverting the specific stand of the respondent-

department.

7. Learned counsel for the petitioner has argued that the petitioner was not aware of the issuance of notification as the same was never published in the vernacular language or was made known to the petitioner and that in the absence of any effective notice, the laying of transmission lines was illegal and is liable to be set aside. She further contends that the zig-zag transmission line had been laid only to extend an undue concession to the private respondent No.4 and by making the transmission line pass through the land of the petitioner.

8. Learned counsel for the respondents on the other hand contends that the Distribution Licensee is notified as a Licensee and is competent to exercise the powers under the Telegraph Act, 1885. It is submitted that prior to the initiation of the work of laying of the electric transmission line, a notification was published and a period of two months was granted to the landowners to file their objections against the proposed transmission lines. No objection was filed by the petitioner to the laying thereof. He further contends that the work of laying of transmission lines was completed by the respondents on 12.08.2017 whereas the present petition has been filed by the petitioner on 20.09.2017 i.e. after the completion of the work itself but the said fact was not disclosed by the petitioner herein.

9. I have heard the learned counsel for the parties and have gone through the documents available on record.

10. It is undisputed that as per the provisions of the Electricity Act, 2003, whenever a high tension wire/transmission lines is to be laid by the transmission licensee, an appropriate notification is required to be issued

giving the details of the proposed transmission lines and the revenue estate through which such transmission line is to pass. The specific stand of the respondents-transmission licensee that such notification was published and an opportunity of hearing was extended to the landowners who intended to file any objections and also that no objection was filed by the petitioner has remained undisputed. It is also the specific case of the respondents that the route chosen by the transmission licensee was most economical, viable and the same was carried out with the approval of the competent authority as communicated vide letter dated 15.02.2017. The energisation of the electric transmission lines was also approved by the Executive Engineer of the Electrical Inspectorate vide memo No.10974 of 23.08.2017.

11. Counsel for the respondents also specifically acknowledges that a landowner is entitled to admissible compensation for the land falling beneath the transmission tower and also entitled for the crop loss compensation on account of the **R.O.W.** requirements and that in the event an appropriate application is moved by the petitioner seeking compensation as per the Rules, the transmission licensee shall remit such payment, which is duly determined by the competent authority in law.

12. Further, counsel for the petitioner was confronted with the fact that the notification dated 15.07.2014 (Annexure R-5) had been appended by the respondents along with the above said reply, however, for inexplicable reasons the petitioner failed in raising a challenge to the said notification despite the same having been placed on record before this Court. No satisfactory reply was given for such failure.

13. In the absence of any challenge to the said notification, this

Court cannot exercise its power of judicial review against the notification that remains un-impugned. Hence, the legality or rationality of the notification and transmission lay out plan approved by the competent authority cannot be gone into by this Court. Hence, the prayer of realigning the transmission line made by the petitioner cannot be sustained or allowed at this belated stage, more-so when the work is already complete and the petition was filed after energisation of the transmission line.

14. **The present petition is accordingly dismissed to the said extent.**

15. The petitioner is, however, at liberty to move an appropriate application before the competent authority for grant of compensation as is admissible to him under the Electricity Act, 2003 read with the provisions of the Telegraph Act.

16. All other misc. applications, if any, stands disposed of.

(VINOD S. BHARDWAJ)
JUDGE

13.02.2024

Mangal Singh

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No