

Devisetty Ramaswamy Vs. the Chief Engineer, 400 Kv Line Ap Trans

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Court : Andhra Pradesh

Decided On : Apr-02-2013

Judge : Sanjay Kumar

Appellant : Devisetty Ramaswamy

Respondent : The Chief Engineer, 400 Kv Line Ap Trans

Advocate for Def. : Sri. G.Krishna Murthy. Counsel

Advocate for Pet/Ap. : Sri. G.Krishna Murthy

Judgement :

THE HON'BLE SRI JUSTICE SANJAY KUMAR W.P.NO.16017 OF 201.02-04-2013 Devisetty Ramaswamy The Chief Engineer, 400 KV Line AP Transco (APSPDCL), B-Block, Vidyuth Soudha, Hyderabad and others.

HEAD NOTE: Counsel for appellants : Sri G.Krishna Murthy.

Counsel for respondents : Sri O.Manohar Reddy.

?CASES REFERRED:

1.

2007 (6) ALD 40.(DB) 2.

AIR 197.SC 170.3.

(2003) 3 SCC 47.4.

AIR 200.ANDHRA PRADESH 158 1) 5.

2010(4) ALD 35.6.

(2007) 6 SCC 79.7.

(2008) 11 SCC 47.ORDER The petitioner, a resident of Sattenapally in Guntur District, owns an extent of Ac.4.46 cents in Sy.Nos.438 and 431/2 of Madala Village, Muppala Mandal, Guntur District.

He states that he raises dry crops such as jute, chilly, cotton etc in these lands.

The cause for grievance in this writ petition is that the Transmission Corporation of Andhra Pradesh Limited (APTRANSCO) proposed to erect a tower in his lands in the process of laying transmission lines from Nunna to Sattenapally.

He issued legal notice dated 04.04.2012 to the APTRANSCO in this regard alleging that his lands would be rendered useless by installation of the tower and that it would also have an adverse impact in terms of the lands' sale value as well as the feasibility of raising bank loans on the security thereof.

He complained that no notice or opportunity was given to him prior to the decision to install a tower in his lands.

He further alleged that the authorities had diverted the transmission lines at the instance of the big ryots of Madala Village and that upon enquiry, he was able to confirm that the line route had been modified to his detriment without following any procedure and without notice to him.

The petitioner further stated that he was served with a notice on 14.05.2012 to the effect that the APTRANSCO would be exercising powers under Section 10 of the Indian Telegraph Act, 1885 (for brevity, 'the Act of 1885') and that the laying of transmission lines would result in removal of some trees and crops in his lands.

He was given the option of either choosing payment of compensation or delivery of the removed trees and crops.

Relying on Sections 67 and 68 of the Electricity Act, 2003 (for brevity, 'the Act of 2003'), the 'Works of Licensees Rules, 2006' (for brevity, 'the Rules of 2006'), and provisions of some repealed enactments, the petitioner contended that the action of APTRANSCO was in violation of law.

He further stated that powers had not been conferred on the APTRANSCO by the appropriate Government under Section 164 of the Act of 2003, as the Central Government had to do so through publication of a notification in the Gazette of India.

He relied upon the amended procedure for obtaining authorization under Section 164 of the Act of 2003, as set out in the letter dated 20.10.2011 of the Government of India, and alleged that this procedure had not been followed.

He stated that APTRANSCO ought to have acquired his land by invoking the provisions of the Land Acquisition Act, 1894 and that he was being deprived of his property in violation of constitutional protections.

The petitioner further stated that in the light of the notice served upon him in May, 2012, he apprehended that he would be dispossessed pursuant thereto.

He sought a consequential direction to the authorities not to erect the tower in his lands.

On 31.05.2012 this Court passed the following order: " The respondents, without following the procedure prescribed under the Electricity Act, 2003 (for short, 'the Act'), shall not erect 400 KV Tower and Transmission Line VTPS, Srisailam LLCO, Sattenapally in the petitioner's land.

Sri G.Krishna Murthy, learned counsel for the petitioner, submits that the provisions of Sections 164 and 165 of the Act are violated by the respondents.

In the circumstances, there shall be interim direction as prayed for, for a period of three (3) weeks.

Post on 11.06.2012." Thereafter, on 11.06.2012, the interim direction granted earlier was extended until further orders.

WVMP No.2337 of 2012 was filed by respondents 1, 2, 3, 4 and 7, the Officers of the APTRANSCO, to vacate the said order.

Significantly, neither the APTRANSCO nor the Government of India were made parties to the writ petition but only their Officers, by designation, were impleaded.

The writ petition is therefore liable to be dismissed at the threshold on this preliminary ground.

(See Y.SUSHEELA vs.

ASSISTANT GENERAL MANAGER (ADMN.) FOR CHIEF GENERAL MANAGER, BSNL, A.P.CIRCLE, HYDERABAD¹, RANJEET MAL vs.

GENERAL MANAGER, NORTHERN RAILWAY, NEW DELHI² and CHIEF CONSERVATOR OF FORESTS vs.

COLLECTOR³).

However, as arguments were advanced by the learned counsel on the merits of the matter, this Court deems it appropriate to deal with the same.

In the counter filed in support of the vacate stay petition, the APTRANSCO stated that a notification was issued in the A.P.

Gazette dated 18.06.2005 that it proposed to augment the transmission system around Vemagiri and Peddapuram areas by erecting transmission lines and sub-stations.

In this process, a 440 KV D/C line, LILO (line in and line out) from Nunna - Srisailam (LBPH) and a 400 KV D/C line to Narasaraopet (Sattenapally) 400/220 KV SS were notified.

Persons interested were invited to make representations in the context of this scheme within two months from the date of the notification.

This notice was also published in the Hindu English Newspaper and Eenadu Telugu Newspaper on 11.05.2005 and 12.05.2005 respectively.

No representations/objections were received in response thereto.

The APTRANSCO admitted that a tower would be raised in the petitioner's lands but denied that the same would have an impact over the entire extent.

It stated that the distance between the legs of the tower would be ten meters and for the purpose of the tower foundation, a pit of 3 1/2 metres depth would be dug but the outer exposed portion would be only one metre.

It further stated that except for this portion, the lands would not be affected and cultivation could go on as usual.

The APTRANSCO denied that the route of the transmission line was changed at any one's behest.

It was stated that an extent of Ac.44.00 cents belonging to Satavahana Spinning Mills was originally handed over to it for constructing a 400 KV sub-station.

However, as the existing buildings and machinery of the mills posed a hindrance, the orientation of the transmission lines was slightly modified.

The APTRANSCO further stated that it was exercising powers under Section 164 of the Act of 2003 and that the provisions of Section 67 of the Act of 2003 had no application.

Consequently, the Rules of 2006 were also stated to have no application.

It pointed out that the subject transmission line was not an inter-state transmission line and therefore, the amended procedure for obtaining authorization under Section 164 of the Act of 2003, notified under the letter dated 20.10.2011 of the Ministry of Power, Government of India, had no application.

It further pointed out that it had already been authorized under Section 164 of the Act of 2003 by the Government of Andhra Pradesh, vide G.O.Ms.No.115, Energy

(PR.III) Department, dated 07.10.2003, in so far as works within the State were concerned.

The APTRANSCO further pointed out that the transmission line laid over the petitioner's lands would be at a height of 21 metres from the ground level and that it would have no impact upon his cultivation activities.

It stated that there was no necessity to acquire the entire extent of the petitioner's lands as only a small part thereof would be used for erection of the tower and therefore, the provisions of the Land Acquisition Act, 1894 did not come into play.

The APTRANSCO concluded by stating that except for erection of this tower in the petitioner's lands, the entire line over an extent of seven kilometres had been completed and that only the stringing of the line was to be finished.

The sub-station was to be completed by 31.12.2012.

The APTRANSCO undertook to pay compensation to the petitioner for any damage caused, as per the provisions of the Act of 1885.

It pointed out that the proposed line was for the benefit of the public at large and to meet the additional load demand in Guntur and Prakasam Districts.

It therefore sought vacation of the interim order.

In his reply, the petitioner reiterated that his property rights were affected and that the respondents had no right to lay lines or erect towers through his lands without following the due procedure.

He again asserted that the APTRANSCO had no right or jurisdiction to deviate from or modify the sanctioned scheme.

He complained that he was not given an opportunity of hearing at any point of time and claimed ignorance of the notifications issued in the A.P.Gazette and the Newspapers.

He pointed out that these notifications did not indicate that Sattenapally and Madala would be affected.

He contended that once high voltage transmission lines passed over his lands, the value thereof would automatically decrease and that nobody would come forward to purchase them.

He therefore demanded proper compensation for the affected lands.

The key issue that arises for consideration is whether any legal obligation is cast upon the APTRANSCO to publish a notification with regard to the transmission scheme and call for objections from those affected thereby.

In consequence, the issue would also arise as to whether the APTRANSCO is required to obtain the consent of the owners/occupiers of the lands affected by such transmission scheme.

Section 164 of the Act of 2003 empowers the appropriate Government, by an order in writing, to confer upon a public officer, licensee or any other person engaged in the business of supplying electricity, the power to place electric lines or an electric plant for the transmission of electricity, subject to such conditions and restrictions as it may think fit to impose.

Thereupon, the authorized public officer, licensee or other person would have all the powers which a telegraph authority possesses under the Act of 1885 with regard to placing of telegraph lines and posts.

Section 67 of the Act of 2003, on the other hand, figures in Part VIII of the Act of 2003, dealing with works of licensees.

Sub-section (1) thereof states to the effect that a licensee may, subject to the terms and conditions of his licence, lay or place electric supply lines within his area of supply or transmission.

Section 67(2) authorizes the appropriate Government to make rules on various issues, including cases and circumstances in which the consent of an owner/occupier may be required for carrying out the works.

The Rules of 2006 were framed by the Government of India under Section 67 (2) r/w Section 176(2)(e) of the Act of 2003.

The interplay between the provisions of Section 67 and Section 164 of the Act of 2003 was dealt with at length by a learned Judge of this Court in G.V.S.RAMA KRISHNA vs.

A.P.TRANSCO REP.

BY ITS MANAGING DIRECTOR, VIDYUTH SOUDHA4.

In that case, a transmission scheme was undertaken by the APTRANSCO in exercise of powers conferred under Section 164 of the Act of 2003.

In this process, the APTRANSCO issued a notification inviting objections from persons interested in or aggrieved by grounding of the transmission scheme.

No objections were however received.

The contention of the petitioners in that case was that the scheme was not in keeping with the provisions of the Electricity (Supply) Act, 1948 (for brevity, 'the Act of 1948) and the Indian Electricity Act, 1910 (for brevity, the Act of 1910).

The learned Judge observed that though Section 67((1) of the Act of 2003 was identical to Section 12(1) of the repealed Act of 1910, Section 67(2) of the Act of 2003 varied from Section 12(2) of the repealed Act of 1910, in as much as Section 67(2) did not say that consent of the owner/occupier was mandatory but left it to be provided for by the appropriate Government by way of Rules.

The learned Judge was erroneously led to believe that no Rules had been framed under Section 67(2).

Being under this impression, the learned Judge relied upon Section 185 of the Act of 2003 dealing with 'repeal and savings' and more particularly, Section 185(2)(b) which saved Sections 12 to 18 of the Act of 1910 and the Rules framed thereunder, until Rules were made under Sections 67 to 69 of the Act of 2003.

On an analysis of Sections 67 and 164 of the Act of 2003, the learned Judge observed that if power was conferred under Section 164 of the Act of 2003 by the appropriate Government upon any public officer, licensee or other person engaged in the business of supplying electricity, such public officer, licensee or other person could exercise the powers of a telegraph authority under the Act of 1885.

The learned Judge opined that in the absence of an order under Section 164 of the Act of 2003, a licensee, being a person who had been granted a licence to transmit or distribute electricity under the Act of 2003, who proposed to place electric lines or other works for transmission or supply of electricity, would necessarily have to do so under Section 67 of the Act of 2003 and consequently, it would be mandatory that such licensee obtain the consent of the concerned owner/ occupier as required by Section 12(2) of the Act of 1910.

On facts, the learned Judge found that the subject scheme was undertaken in exercise of powers under Section 164 of the Act of 2003 and it was therefore not necessary for the licensee to either acquire the land or obtain the consent of the owner/occupier.

In this regard, the learned Judge observed: "33.

For the aforesaid reasons, I am of the opinion that Section 164 of the Electricity Act, 2003 read with Section 10 of the Indian Telegraph Act, 1885 recognized the absolute power of the A.P.

Transco to proceed with placing of electric supply lines or electric poles for the transmission of electricity on or over the private lands subject to the right of the owner/occupier to claim compensation if any damage is sustained by him by reason of placing of such electric supply lines.

In other words, neither the acquisition of the lands is necessary nor there is any need for consent of the owner or occupier.

It is also relevant to note that since Section 28 or 42 of the Electricity (Supply) Act, 1948 are not saved under Section 185 of the Electricity Act, 2003, there is no need to publish a sanctioned scheme nor it is necessary to give any notice by publication in local news papers as required under Section 29 (2) of the Electricity (Supply) Act, 1948.

In spite of the same, the notification dated 14.07.2008 was published in the A.P.

Gazette as well as two local dailies inviting objections from the interested/aggrieved persons and no objections were received from anyone." In K.SUBBA RAJU vs.

EXECUTIVE ENGINEER, TLC DIVISION, AP TRANSCO, VISAKHAPATNAM DISTRICT⁵, the same learned Judge again had occasion to deal with these provisions.

The subject matter of this writ petition was the laying of electric lines by the APTRANSCO and it was the contention of the petitioner therein that the procedure laid down in the relevant Rules had not been followed.

It was brought to the notice of the learned Judge that in exercise of the power conferred by Section 67(2) of the Act of 2003, the 'Works of Licensees Rules, 2006' had been promulgated dealing with the procedure to be followed by a licensee while undertaking works in accordance with Section 67(1) of the Act of 2003.

It was contended before the learned Judge that the earlier judgment in G.V.S.RAMA KRISHNA⁴ would not come to the aid of the APTRANSCO, as these Rules were not taken into account therein.

The learned Judge was however disinclined to agree, as it was made clear even in the earlier judgment that consent of the owner/occupier was necessary only in the absence of an order under Section 164 of the Act of 2003 and that legal position remained unaltered.

The learned Judge observed that the Rules of 2006 made under Section 67(2) of the Act of 2003 were in pari materia to Section 12 of the repealed Act of 1910 and that the said Rules would be applicable only where the works were taken up by a licensee under Section 67(1) of the Act of 2003.

The learned Judge pointed out that it had been clarified even in *G.V.S. RAMA KRISHNA*⁴ that Section 67(1) of the Act of 2003, as well as the Rules made under Section 67(2) thereof, would govern the field only in the absence of an order under Section 164 of the Act of 2003 and consequently, in a case where an order was passed by the appropriate Government in exercise of powers under Section 164 of the Act of 2003, the authorized licensee would be competent to exercise such powers which a telegraph authority possessed under the Act of 1885 with respect to placing of lines and poles.

The learned Judge further observed that as powers under Section 10 of the Act of 1885 could be exercised without acquiring the land, the same would be the position with a licensee conferred with such powers under Section 164 of the Act of 2003.

On facts, the learned Judge found that the laying of electric lines in that case was pursuant to a notification invoking Section 164 of the Act of 2003 and therefore, Section 67(1) of the Act of 2003 and the Rules of 2006 were not attracted.

The learned Judge consequently held that there was no necessity for the APTRANSCO to obtain the consent of the owner/occupier who was affected by the laying of such lines.

Insofar as the issue of compensation is concerned, the judgment of the Supreme Court in *KERALA STATE ELECTRICITY BOARD vs.*

*LIVISHA*⁶ makes it clear that the owner of a land would be entitled to claim compensation on the basis of various factors.

In this regard, the Supreme Court observed as under: "9.

Both telegraph lines and electrical lines are required to be drawn over the agricultural lands and/or other properties belonging to third parties.

In drawing such lines, the entire land cannot be acquired but the effect thereof would be diminution of value of the property over which such line is drawn.

The Telegraph Act, 1885 provides for the manner in which the amount of compensation is to be computed therefor....

10.

The situs of the land, the distance between the high voltage electricity line laid thereover, the extent of the line thereon as also the fact as to whether the high voltage line passes over a small tract of land or through the middle of the land and other similar relevant factors in our opinion would be determinative.

The value of the land would also be a relevant factor.

The owner of the land furthermore, in a given situation may lose his substantive right to use the property for the purpose for which the same was meant to be used." This principle was again reiterated by the Supreme Court in KERALA STATE ELECTRICITY BOARD vs.

CHINAMMA ANTONY⁷.

Presently, the issue is whether the petitioner can stall the subject scheme on the ground that he was not given prior notice or an opportunity of hearing.

The judgments of this Court in G.V.S.RAMA KRISHNA⁴ and in K.SUBBA RAJU⁵ speak against the petitioner insofar as this aspect is concerned.

As pointed out in G.V.S.RAMA KRISHNA⁴, it was not even necessary for the APTRANSCO to issue a notification setting out the details of the scheme and calling for objections as the provisions in the Act of 1948 requiring the said procedure stood repealed by the Act of 2003.

The procedure envisaged by the Rules of 2006 read with Section 67 of the Act of 2003 had no application to the case, once Section 164 was pressed into service.

Section 68 of the Act 2003 also has no application to the case on hand as the said provision, dealing with overhead lines, also figures in Part VIII relating to works of licensees and was in continuation of Section 67.

Further, per the observations of the Supreme Court in para (9) of LIVISHA6, the petitioner cannot assert that his entire land should be acquired.

Pertinent to note, Section 165 of the Act of 2003 requires acquisition of the affected land under the provisions of the Land Acquisition Act, 1894 only upon the recommendation of the appropriate Commission i.e., the Andhra Pradesh Electricity Regulatory Commission.

Admittedly, no such recommendation was made in the present case.

The quantum of the compensation to be paid for the loss caused to the owner, be it in terms of diminution of the value of the lands or the actual damage caused to the lands, crops and trees, would have to be determined only after the laying of the lines/towers, as is clear from the observations of the Supreme Court in para (10) of LIVISHA6, extracted supra.

Separate machinery is provided in the event the owner of the land concerned is dissatisfied with the compensation awarded.

Perceived inadequacy of compensation cannot therefore be a reason to stall the work at the grounding stage.

Though Sri G.Krishna Murthy, learned counsel, did not advance any arguments vis- -vis the Act of 1885, it is relevant to note that Section 164 of the Act of 2003 subjects the public officer, licensee or other person engaged in the business of supplying electricity, who is authorized to exercise the powers conferred by the provisions of the Act of 1885, not only to the conditions and restrictions that may be imposed by the appropriate Government but also to the provisions of the Act of 1885 itself.

Therefore, exercise of powers by the authorized public officer, licensee or other person under Section 10 of the Act of 1885 would also be conditioned by the liabilities imposed upon the telegraph authority under the other provisions of the Act of 1885.

Section 10 of the Act of 1885 figures in Part III dealing with 'Power to place telegraph lines and posts'.

Section 12 to 14 of the Act of 1885 deal with provisions applicable to property vested in or under the control or management of local authorities.

Sections 16 and 17 are applicable to other property.

Section 16 (1) of the Act of 1885 states that if the exercise of powers under Section 10 thereof is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.

Section 16 (2) postulates that if, after the making of such order, any person resists or obstructs exercise of powers under Section 10, he shall be deemed to have committed an offence under Section 188 IPC.

Sufficiency of compensation and disputes arising in the context thereof are dealt with under Section 16 (3), (4) and (5) of the Act of 1885.

Section 17 deals with removal or alteration of telegraph lines or posts on property other than that of a local authority.

This provision reads to the effect that after a telegraph line or post is placed by the telegraph authority in a property, not being one vested in or under the control or management of a local authority, any person entitled to deal with the property can apply to the telegraph authority for removal of a telegraph line or post laid in such property to another part thereof or to a higher or lower level or be altered in form.

Upon failure of the telegraph authority to comply with such a request, the District Magistrate, acting upon the complaint of the person aggrieved, is empowered under Section 17 (3) to make an order either rejecting the request or requiring removal of a telegraph line or post to any other part of the property or to a higher

or lower level or alteration of its form.

Such an order is deemed to be final.

Reading these provisions together, it is clear that the power of the District Magistrate to hear a party whose land is affected would arise only after the laying of the line or post and upon the failure of the authority concerned to act upon his request for removal of the line or post etc.

The discretion referred to in Section 16 (1) of the Act of 1885, which is to be exercised by the District Magistrate while ordering that the authority shall be permitted to act in pursuance of the powers conferred by Section 10 thereof, cannot be interpreted to mean that the District Magistrate should, at that stage, give notice to and entertain objections from the person affected by such exercise of powers.

To hold so would render superfluous the provisions of Section 17, which specifically state that the power of the District Magistrate to act upon a complaint from an affected person would arise only after the laying of the line or post in his lands and upon the failure of the authority concerned in acting upon his requisition for removal of such line or post etc.

Harmonious construction of these provisions leads to the inevitable conclusion that while exercising his discretion under Section 16 (1) of the Act of 1885, the District Magistrate is not required to issue notice to the person objecting to or resisting the exercise of powers by the authority under Section 10 of the Act of 1885 or give him an opportunity of hearing.

On the above analysis, this Court finds that there is no provision in the Act of 1885 which mandates prior notice or an opportunity of hearing to be provided to the owner/occupier of a premises affected by the laying of lines or posts and therefore, there is no question of such owner/occupier being put on notice or demanding an opportunity of hearing before the grounding of the scheme.

Section 17 postulates that such a right would arise only after laying of the lines or posts and upon the failure of the authority concerned to act upon a requisition to

remove or relocate such lines or posts etc.

Insofar as Section 164 of the Act of 2003 is concerned, the judgments of this Court in G.V.S.RAMA KRISHNA⁴ and K.SUBBA RAJU⁵ put it beyond doubt that while exercising powers thereunder, the APTRANSCO would not be required to either initiate acquisition of land or obtain consent from the owner.

It was also held that in such a situation, Section 67 of the Act of 2003 and the Rules of 2006 framed thereunder would have no application.

This Court respectfully agrees.

Viewed from any angle, the petitioner failed to establish any failure on the part of the APTRANSCO in following the due procedure in the case on hand.

The issue of the petitioner's entitlement to compensation would arise only at a later date and it cannot therefore be a ground at this stage to hinder the completion of the scheme.

The Writ Petition is therefore devoid of merit and is accordingly dismissed.

Interim order dated 31.05.2012 shall stand vacated in the light of this final order.

In consequence, WPMP No.20634 of 2012 and WVMP No.2337 of 2012 are also closed.

No order as to costs.

----- SANJAY KUMAR, J.

2nd APRIL, 2013

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