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Court : Kerala

Decided On : Aug-08-1986

Reported in : AIR1987Ker136

Judge : M.P. Menon, J.

Acts : [Constitution of India](#) - Article 226; [Telegraph Act, 1885](#) - Sections 16; [Electricity Act, 1910](#) - Sections 51; Electricity Rules, 1956 - Rules 79 and 91

Appeal No. : O.P. No. 5497 of 1982

Appellant : Kochumariam and anr.

Respondent : Kerala State Electricity Board, Trivandrum and ors.

Advocate for Def. : V.M. Kurien and; T.P.K. Nambiar, Adv.

Advocate for Pet/Ap. : Govind Bharathan, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

M.P. Menon, J.

1. Mother and son are the petitioners. They are consumers of electricity, and are being supplied energy through a post standing in their property. The 4th respondent is their neighbour. In 1981 she got a motor-cum-pump set from the Anthikad NES Block, and applied for an (agricultural) electric connection for using it. The Asst. Engineer and the Asst. Executive Engineer of the K.S.E. Board at Peringottukara thought of giving this connection by drawing a line from the post standing in the first petitioner's property. But she would not agree to that course; in fact, she considered the 4th respondent's desire to get such a connection as a personal challenge (see para 3 of Ext. P6) to her. The officers of the Board considered the feasibility of drawing the line from another post standing on the side of the Puthenpeedika-Muttichoor Road; but here again, the line had to cross the property of one Smt. Rose, who too had objections to such drawing. The matter was accordingly referred to the Additional District Magistrate, under Section 16 of the Telegraph Act, read with Section 51 of the Indian Electricity Act. And as per Ext. P. 9 order, the District Magistrate permitted the Asst. Executive Engineer to draw the line from the post standing in the 1st petitioner's property.

2. The petitioners challenged Ext. P9 (and two other communications to be referred to presently). The second petitioner (son) has come into the picture because he too was 'impleaded' in the proceedings before the District Magistrate, as the proposed alignment was to pass over 3 cents of land gifted or given to him by the mother, for erecting an 'oil crush'.

3. Exts. P1 and P3 are notices issued by the Asst. Engineer and Asst. Executive Engineer to the 1st petitioner, proposing to draw the line along her property and assuring her that only the least inconvenience would be caused. Exts. P2 and P4 are the objections to these notices asserting that such unilateral proposals could not be accepted, suggesting that the line could be drawn from another post, and also indicating that any attempt to carry out the proposal would be treated and dealt with as an attempt to trespass. Ext. P5 is the notice issued to the 1st petitioner by the District Magistrate, with copies to others including Smt. Rosa, requesting them to appear before him on 10-2-82 in connection with the proposal and the objections. Ext. P6 is the written objection filed by the 1st petitioner on 10-2-82. Ext. P7 is a supplementary representation dt. 4-3-82, and Ext. P8 is the

objection filed by the 2nd petitioner on 31-5-82. Ext. P9 is dated 14-6-82, and it appears that the line was drawn as permitted therein, within a day or two. Ext. P11 is a letter dt. 16-8-82 from the Asst. Executive Engineer to the 1st petitioner stating that during an inspection of the place (apparently after receipt of notice of this writpetition) conducted on 12-8-82, the 2nd petitioner had informed him that there was need for shifting the line. Ext. P12 is a communication to the petitioners, from the Asst. Engineer, pointing out that 'mango branches' were touching the over-head lines and that the 'newly extended shed' had to be dismantled for avoiding accidents.

4. Ext. P9 proceedings of the District Magistrate contain a summary of the various steps he had taken to enquire into the matter, and also of the reasons which influenced him to overrule the objections of the petitioners. The District Magistrate inspected the site on 2-3-1982 : the parties were present, but the Asst. Executive Engineer was not present. This officer however subsequently met the District Magistrate and explained the Board's stand, as had been set out in his letter dt. 14-1-1982. It appears that Advocates appearing for the parties were once heard on 10-2-82, and again on 22-3-82, after the 2nd petitioner came to the scene. After hearing counsel and examining relevant material, the District Magistrate found that the alternate proposal made by the petitioners to draw the line from a post on the public road) would involve 'longer distance' and the cutting of yielding coconut trees. On the other hand, if the line were to be drawn from the post in the petitioner's property, all that had to be done was to cut a branch of a mango tree. The alignment to which the petitioners were objecting was thus less costly, required a smaller quantity of material and was also more advantageous from the point of possible damage to trees. As for the apprehended danger to the 'oil crush' or its shed, the Asst. Executive Engineer had reported that no such danger would really be there, and the District Magistrate was inclined to rely on the report.

5. Ext. P9 is challenged by the petitioners on the following grounds : --

(i) Sections 10 and 16 of the Telegraph Act, Section 51 of the Indian Electricity Act and Rules 79 and 91 of the Indian Electricity Rules are all unconstitutional and

invalid, and the exercise of power by the District Magistrate thereunder must therefore be treated as incompetent:

(ii) The decision of the District Magistrate rests on the impression he gathered during the site inspection, and such an approach is impermissible;

(iii) The petitioners had alleged mala fides, but this aspect has not been considered at all;

(iv) The District Magistrate has been influenced by considerations like the length of the line, damage to trees etc., and not by the relevant consideration which could only have been the danger and disadvantage to the petitioners;

(v) The District Magistrate had a separate discussion with the Asst. Executive Engineer, after the local inspection and in the absence of the parties; he also relied on a report of the Engineer without divulging its contents to them; and both these items of conduct were opposed to the rules of fair-play and natural justice;

(vi) No care has been taken by the District Magistrate to consider the question whether the line was to be drawn in accordance with Rules 79 and 91;

(vii) In any event, the effect of Ext. P9 is to adversely affect the 2nd petitioner's fundamental rights under Articles 19(1)(g) and 21 of the Constitution.

There is also a prayer to quash Exts. P11 and P12 as orders consequential to and dependent on Ext. P9.

6. The challenge to the provisions of the Electricity Act and Telegraph Act, as also the Electricity Rules, has to fail for the simple reason that the Union of India and the Central Electricity Board are not made parties to this writ petition. Grounds (ii) and (v) also cannot have much of a force when it is borne in mind, as indicated by the Full Bench in *Mammoo v. State of Kerala*. 1979 Ker LT 801 : AIR 1980 Ker 18), that the District Magistrate functioning under Section 16 of the Telegraph Act is not a court exercising basically adjudicatory functions by collecting evidence and declaring rights of parties, but only an authority exercising his discretion in the matter of granting permission to the Telegraph authorities, after a ministerial

enquiry. Even otherwise, it is clear from a reading of Ext. P9 that the decision therein rests on facts which were not in dispute (and which are even now not in dispute) facts relevant for comparing lengths, costs and damages and not on any impression about a disputed fact gathered during the course of the inspection. There is no case, and at any rate, there is nothing on record to suggest, that drawing the line along the property of Mrs. Rose would not have involved use of more material and considerably higher damage to standing trees, etc. The site inspection was made on 2-3-82, after the first hearing on 10-2-82, probably for appreciating the nature of the rival contentions. As for the separate discussion with the Asst. Executive Engineer also, Ext. P9 docs not show that it was that circumstance which had titled the sealers; the so-called 'discussion' must have been by way of an attempt to explain the true nature of the earlier report dt. 14-1-82. Again, the petitioners have also no case that they were denied access to the contents of the report notwithstanding demand or request. As the Full Bench said, the District Magistrate was not functioning as a court; he was not trying a case. He could not be blamed for not specifically referring to the scope of the local inspection or for failure to supply copies of the reports to the parties. An administrative authority forming part of the mechanism of the government cannot function in the same manner as a court would try a case, even in cases where some kind of enquiries are involved, just as a court cannot function, in the matter of trying a case, as an administrative authority performing governmental duties.

7. The British Report of the Committee on Ministers Powers (1933) had made an attempt to define the nature of decisions classified as 'judicial', 'quasi judicial' and 'administrative'. A judicial decision, it was said, pre-supposed a dispute between two or more parties involving four requisites ; (1) presentation of the case by the parties ; (2) ascertainment of facts by means of evidence adduced by them ; (3) submission of legal arguments when questions of law are involved and (4) a decision disposing of the whole matter by recording findings on the facts in dispute and applying the law to the facts so found. A quasi judicial decision also presupposed a dispute always involving requisites (1) and (2), sometimes requisite (3) also, but never (4). But in the case of an administrative decision the authority concerned had no duty to adopt any set standards : the grounds on which it acted and the means if adopted for informing itself before so acting, were all left to its

discretion. Modern administrative law may have much to say about the almost uncontrolled nature of the freedom so recognised in favour of administrative decisions; but even in the Continental system, more pre-occupied with administrative justice and uninhibited by the apprehensions of a Diocy, contemporary legal literature has been careful not to define the limits of administrative discretion in more than very rough outlines : lack of competence, fault of form, violation of the law, incorrect motivation and failure to act in the public interest. And a cursory examination of Ext. P9 in this case will be sufficient to satisfy anyone that its author has not transgressed any of even those limits.

8. The complaint that the allegation regarding mala fides has not been examined in Ext. P9, is also besides the point. There was only an allegation that the 4th respondent's son-in-law was an Asst. Engineer of the Board somewhere in Trichur. This by itself was insufficient to deserve any serious discussion, even if it is assumed that what was crucial was the bona fides of the Board officials, and not the merits of the rival contentions regarding feasibility, cost, danger, damage and convenience.

9. Nor is it possible to accept the contention that in exercising power under Section 16 of the Telegraph Act and deciding which of the alternatives was to be permitted, the length of the line involved, the quantity and cost of material and the damage or inconvenience caused to property owners were totally irrelevant. As matter of fact, these were some of the points in issue between the parties, as could be seen from Ext P6. and the District Magistrate could not be found fault with for having considered them. As for danger to the 2nd petitioner's oil crush and the shed housing it, that also was obviously considered. The Electricity Act and the Rules contain elaborate provisions for ensuring safety and avoiding danger in all such cases : Rules 79 and 91 relied on by the petitioners themselves show that it is not per se dangerous or impermissible to draw electric lines over the roof of buildings; protective measures can be taken, and the need for taking such measures and disputes about their adequacy are matters for the Electrical Inspector to consider. The District Magistrate grants the permission under Section 16, before the line is drawn, and he should necessarily proceed under the assumption that it will be done in accordance with the Electricity Act and the

Rules. If any violation occurs, it is a matter to be looked into by others competent and authorised under the statute, after such violation takes place i.e. after the line is drawn. I therefore think that grounds (iv) and (vi) are also without substance.

10. The last ground based on Articles 19(1)(g) and 21 are also not made out. The electric line in question was drawn in June, 1982 and the 2nd petitioner has been carrying on his 'oil crush' business as usual, all these years, without any difficulty. There is nothing to suggest that this business is his only means of livelihood, to attract the theory that livelihood also is within the scope of 'life' in Article 21. At any rate, my attention has not been drawn to a single averment in the Original Petition to suggest, much less establish, that the business and the means of livelihood of the 2nd petitioner have been in any way affected by the line in question. Suggestions were thrown at the hearing about need for expansion and the possible hindrance that may be caused by the line, but Rules 82 of the Electricity Rules furnishes a complete answer to this apprehension also.

11. Keeping aside the microscope of law for a moment and looking at the problem with the naked eye of common sense, what after ail is this big controversy about? On objections being raised by the petitioners about serving one of their neighbours also from the same post, in the matter of giving a new electric connection, the competent statutory authority called for remarks, reports and objections, went to the spot, spoke to the parties, heard their counsel and ultimately approved the proposal made by the officials of the Electricity Board. Can you say that the grant of permission for drawing a line over some piece of land or even a roof, or for cutting the branch of a tree for the purpose, is such a preposterous thing these days, as to justify an approach to this Court with complaints of offending not only justice and fair play but also the fundamental rights to live and carry on a profession, and even raising challenges to the validity of the enactments and a set of statutory rules? An attempt of this kind, to inflate some personal and, may be, temporary difference of opinion between two neighbours of Peringottukara, into a complicated constitutional question to be gone into at length by this Court, in exercise of its extraordinary jurisdiction, is like trying to use a shot-gun to kill a fly. Rightly, perhaps, did Durkheim say that 'without moral commitment to support it law is not part of society, but mere words written on official paper barren and

socially irrelevant'.

12. Turning now to Ext. P11, the petitioners' case is that they had not told the Asst. Executive Engineer that there was no need to shift the line, as asserted by him in the said communication. This controversy is immaterial because the petitioners can always invoke Rule 82 if they want a realignment; and under Sub-rule (2)(b), the dispute regarding any liability for the cost can be got resolved through the Electrical Inspector. Ext. P12 is only in the nature of an advice or warning given in the interests of the petitioners themselves, and they are obviously free to ignore it, if they are so minded.

No grounds are thus made out for quashing Exts. P9, P11 and P12. The O.P. is therefore dismissed, but without any order as to costs.

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