

Manikkam V.V. Vs. Assistant Engineer, Kseb and ors.

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Court : Kerala

Decided On : Jul-12-2007

Reported in : 2008(1)KLJ334; 2008(1)KLT647

Judge : C.N. Ramachandran Nair, J.

Acts : Indian Telegraph Act - Sections 16(1); Indian Electricity Act - Sections 164

Appeal No. : W.P.(C) No. 11865 of 2007

Appellant : Manikkam V.V.

Respondent : Assistant Engineer, Kseb and ors.

Advocate for Def. : A. Jayasankar,; Manu Govind and; A. Jayakumar, Advs.

Advocate for Pet/Ap. : M.V. Amaresan, Adv.

Judgement :

C.N. Ramachandran Nair, J.

1. The petitioner is challenging Ext. P4 order issued by the Additional District Magistrate approving drawal of electric line for giving electric connection to additional respondents 4 and 5 on the ground that ADM does not have the authority to approve alternate route suggested by the parties in the course of proceedings before him.

2. I heard counsel appearing for the petitioner, Standing Counsel for KSEB and counsel appearing for respondents 2 and 3. It is conceded that Ext. R3(a) sketch produced by respondents 2 and 3 reflect the true state of affairs. The house of the beneficiaries are adjoining properties located beneath the properties of respondents 2 and 3. The line originally proposed was through the boundary of the properties of respondents 2 and 3 and would have been drawn from D to C as shown in the sketch. However, respondents 2 and 3 raised objection stating that the drawing of line in the route proposed by the first respondent would lead to cutting of large number of yielding trees like coconut, jack tree, mango etc. Simultaneously, the third respondent expressed consent to permit the line to be drawn over the southern boundary of his property i.e. from A to B and then to draw the line through the property of beneficiaries through B and C. In fact, this requires drawing of line from post Y which stands installed in the property of the petitioner and three metres line will pass through the property of the petitioner. The ADM approved the alternate route suggested by respondents 2 and 3 which resulted in grievance to the petitioner in as much as three metres of electric line will pass over his property i.e. from Y to A as shown in the sketch. Therefore, petitioner has filed this W.P. against Ext. P4 order approving the alternate route as against the route proposed by first respondent.

3. The first contention raised by counsel for petitioner is that the ADM has no authority to consider alternate route after rejecting the proposal of the KSEB. I am unable to accept this contention because the power conferred on the public officer namely, the ADM under Section 16(1) of the Indian Telegraph Act read with Section 164 of the Indian Electricity Act is not just to consider the proposal by the KSEB, but to accept it or reject it. So long as the Act confers power on the ADM to approve electric line over private property, it pre-supposes that an applicant for electric connection is entitled to the same, no matter whether it involves loss or inconvenience to other land owners. Therefore, exercise of jurisdiction under the statute involves of a scheme by the ADM to give connection to the beneficiary by causing least inconvenience to least number of land owners. When a new line is drawn for giving connection to one or two applicants, it is the duty of the ADM to keep in mind future or projected need of the other applicants in the area and if he finds that an alternate route proposed will lead to benefits to others in the area

who are applicants for electric connection in the waiting list, he is free or rather bound to adopt such a course as the jurisdiction under the above provisions of the statute has to be exercised in a bonafide manner to advance public interest. In fact, even if petitioners argument that the ADM's jurisdiction is either to accept or reject the proposal of KSEB is accepted, still what is required after rejection of the proposal is to forward a fresh proposal in the alternate route to the very same ADM for his consideration and approval. So long as the ADM has the authority to approve line over private properties to give connection to applicants, it is open to him to consider the proposal by the KSEB with reference to alternate proposals raised by parties simultaneously and those initiated by him suo moto on inspection and the ADM is absolutely free to decide for himself the route over which line has to be drawn causing least inconvenience to least number of land owners, no matter the Electricity Board has not made such a proposal or not. In other words, once a reference is made by KSEB under Section 16(1) of the Indian Telegraph Act read with Section 164 of the Indian Electricity Act, the ADM is absolutely free to approve a route for giving connection to the beneficiaries in deviation from the route proposed by KSEB. Therefore, this contention of the petitioner is rejected.

4. In this case I find the ADM has considered the original proposal and turned it down on the ground that the line in the approved route if drawn will lead to cutting of large number of useful trees in the properties of respondents 2 and 3. In fact, the route approved by him as stated in Ext, P4 will eventually lead to easy connections to large number of persons in the area who will be eventually applying for electric connection. Moreover, the approved line essentially passes through the property of the second respondent and of the beneficiaries themselves over which petitioner cannot have any grievance. The line as such passing over petitioner's property is only three metres against which petitioner cannot have any serious grievance. However, on going through the sketch produced before the Court, I find if the pole Y is shifted from petitioner's property to the boundary of his property and second respondent's property, one post proposed at A could probably be avoided and line could be drawn through the boundary of properties of the petitioner and the second respondent i.e. by shifting electric post Y to the boundary thereby avoiding post in the position A in the property of the second respondent. The W.P. is accordingly disposed of upholding Ext. P4 but with direction to the first

respondent to shift the pole from Y to A and avoid one pole if possible and give connection to the beneficiaries without any delay.

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