

(2014) 11 MP CK 0085

Madhya Pradesh High Court (Gwalior Bench)

Case No: Writ Appeal No. 269/2014

Alkesh Tripathi

APPELLANT

Vs

The Power Grid Corporation of
India Ltd.

RESPONDENT

Date of Decision: Nov. 17, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226
- Electricity Act, 2003 - Section 164, 67, 68

Hon'ble Judges: S.K. Gangele, J; Rohit Arya, J

Bench: Division Bench

Advocate: Ami Prabal, Advocate for the Appellant; Vinod Bhardwaj, Sr. Advocate and D.K. Garg, Advocate for the Respondent

Judgement

1. This writ appeal is directed against the order dated 15/09/2014 passed in W.P.No. 3868/2014 by learned Single Judge.

2. Grievance of the appellant in this appeal on merits is to the effect that the appellant and other co-owners are carrying out the agricultural activities over the land of their ownership and in question. The respondents, Power Grid Corporation of India Limited (hereinafter referred to as "the Corporation") had proposed to install a tower for laying electric line of 765 KV Gwalior Jaipur transmission line, over appellant's land. It is submitted that instead of installing the towers on a straight line, their alignments have been diverted by angles which according to the appellant is not justified. Therefore, this not only shall cause burden on the public exchequer because of laying of extra length of electric line and more number of towers, but the same shall also be prejudice to the appellant in terms of more coverage of the agricultural land than required.

3. In response thereto, the Corporation has submitted that the action of the Corporation is in accordance with the enabling provisions of the Electricity Act, 2003

(hereinafter referred to as the Act of 2003) and the Indian Telegraph Act, 1855 (hereinafter referred to as the Act of 1855). It is denied that the alignments of towers are being disturbed or extra electric lines are required to be laid over the towers which can cause extra burden on the public exchequer. The allegations in that behalf are devoid of substance and misleading in nature. Instead, because of railway crossing coming en route the transmission line, as per the standard specifications and norms, the towers have been erected in the manner as approved by the competent authority and accordingly, electric lines are being laid through it. The entire exercise is being carried out with proper application of mind and having regard to the provisions of the Acts of 1885 and 2003 in the matter of erection of towers and laying of electric lines over it.

4. Learned single Judge by a detailed Order has analysed the contentions advanced by both the parties and by an impeccable Order dismissed the writ petition.

5. Assailing the Order passed by the learned single Judge, counsel for the appellant contends that in terms of the notification dated 24/12/2003 issued by the Government of India (Annexure R/2), the Corporation is declared to perform the activities as a licensee under the Act of 1885 and Act of 2003. It is provided further that the Corporation shall abide by the provisions of the aforesaid two Acts. According to the counsel for appellant, section 164 of the Act of 2003 and the Works of Licensees Rules, 2006 (hereinafter referred to as the Rules, 2006) provide for complete procedure to be followed in the matter of placing electric lines/cables. It is submitted that the Corporation has not followed the aforesaid provisions of law. Therefore, the entire exercise in the matter of erection of towers and laying of electric lines is an illegal act in the context of alignments of towers and laying of electric lines over the agricultural fields of the appellant. As such, the action of the Corporation is contrary to the Act of 2003 and the Rules, 2006.

6. Learned senior counsel appearing for the Corporation submits that as a matter of fact, the Corporation resorted to exercise its powers under section 164 of the Act of 2003 and the Act of 1885 by virtue of notification dated 24/12/2003 (Annexure R/2). As such, a notice (Annexure P/1) was issued under section 164 of the Act of 2003 bringing to the knowledge of the appellant for installation of tower over the agricultural field of the appellant and requiring them to remain present at the time of installation. It was also replied that for damages caused to trees, etc., over the land, due compensation shall be paid as assessed by competent authority. It is submitted that the Corporation has not exercised the powers under sections 67 and 68 of the Act of 2003. It is further submitted that in view of subrule (4) of rule 3 of Rules 2006, the provisions of Rules, 2006 are not applicable as action has been taken under section 164 of the Act of 2003. Hence, the aforesaid Rules have no application in the context of the present case. Learned senior counsel has referred to judgment of Division Bench at Indore Bench in the case of [Vijay Agrawal Vs. Power Grid Corporation of India Ltd. and Another](#), .

7. Learned senior counsel for the Corporation has also referred to the judgment of the Supreme Court in Civil Appeal No. 6257 of 2013 (Arising from SLP (C) No. 8168 of 2013), Orissa Power Transmission Corporation Limited and others Vs. Asian School of Business Management Trust and others) decided on 05/8/2013 in support of his submission that judicial review under Article 226 of the Constitution of India in such matters is very limited.

8. That apart, learned senior counsel for the Corporation has also brought to the notice of this Court, the fact that on resistance being made by the appellant alongwith one Ashok Kumar Verma, the Corporation has instituted proceedings under section 10 of the Act of 1885 and the same was decided by the Collector vide order dated 01/10/2014. It is submitted that the action taken by the Corporation is, therefore, in accordance with law and no illegality can be found. With the aforesaid submissions, it was prayed that appeal be dismissed.

9. Having considered the submissions made by the parties, this Court is of the view that the issue raised by the counsel for the appellant is no more res integra.

10. A Division Bench of this Court at Indore in Vijay Agrawal's case (supra) has meticulously dealt with the scope, application and restrictions as contained in section 164 of the Act of 2003. It has been categorically held that in view of subrule (4) of rule 3 of Rules, 2006, in the matter of exercise of powers under section 164 of the Act of 2003, the Rules of 2006 so framed have no application.

11. For convenience, subrule (4) of rule 3 of Rules, 2006 is quoted below:

"3. Licensee to carry out works.

(1)

(2)

(3)

(4) Nothing contained in this rule shall effect the powers conferred upon any licensee under Section 164 of the Act."

As such, there is no cavil of doubt that the licensee by virtue of notification dated 24/12/2003 (supra) (Annexure R/2) while exercising the powers under section 164 of the Act of 2003 for placing the towers and laying the electric lines, is not bound by the aforesaid Rules, 2006 but only subject to such conditions as Government think fit may impose and to the provisions of the Act of 2003. There is nothing on record to suggest that any of the conditions or restrictions imposed by the Government have been violated by the Corporation in the matter of erection of towers and placing of electric lines, except the submission of violation of Rules of 2006, which has no application.

12. This Court under such circumstances does not agree with the submissions of counsel for the appellant that the Corporation while erecting towers and laying of electric lines over the land of the appellant has acted illegally or without jurisdiction or the impugned action suffers from extraneous considerations.

13. In response to Court's orders dated 01/10/2014 and 08/10/2014, the Corporation by an affidavit dated 27/10/2014 has offered detailed explanation in the matter of erection of towers and laying of electric lines over the field of the appellant. Reply thereto has also been filed by the appellant.

14. Having gone through the affidavit and reply filed by the appellant, this Court is of the considered opinion that justification offered for erection of the towers and laying of electric lines, as sanctioned by the competent authority is not open to judicial review as no fault can be found therewith. Besides, there is no cavil of doubt that erection of towers and laying of electric lines are in the wider public interest. Hence, even if the appellant has suffered to some extent, this by itself does not justify questioning the act of the Corporation as public purpose or community interest is always paramount and superior to the interest of the individuals.

15. In view of the aforesaid, the appeal sans merit and is hereby dismissed. No order as to cost.