

(2012) 11 MAD CK 0266

Madras High Court

Case No: Writ Petition No. 23442 of 2012 and connected M.Ps

Chairman, Tantransco

APPELLANT

Vs

District Collector and Another

RESPONDENT

Date of Decision: Nov. 22, 2012

Acts Referred:

- Constitution of India, 1950 - Article 14
- Electricity Act, 1910 - Section 51
- Electricity Act, 2003 - Section 10, 164, 67, 68
- Special Economic Zones Act, 2005 - Section 5(2)(c)
- Telegraph Act, 1885 - Section 16, 16(1), 17

Citation: (2013) 1 MLJ 212

Hon'ble Judges: N. Paul Vasanthakumar, J

Bench: Single Bench

Advocate: A. Navaneethakrishnan, A.G. Assisted by G. Vasudevan, for Tantransco, for the Appellant; M.C. Swamy, Special Government Pleader and N. Vijay Narayan, for R.S. Raveendhran, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

N. Paul Vasanthakumar, J.

This writ petition is filed by the then TNEB and now TANTRANSCO (Tamil Nadu Transmission Corporation) challenging the order of the first respondent dated 18.5.2012 giving direction to the petitioner to erect the Tower and realign the power transmission lines along the approved alignment. The case of the petitioner is that the TANTRANSCO sanctioned a scheme of erection of 400 KV Multi Circuit Transmission Line from North Chennai Thermal Power Station (Stage-II) to Alamathy 400 KV SS for a length of about 34 kms for power evacuation to meet out the power crisis existing in the State of Tamil Nadu vide Board Proceedings No. (Permanent)

B.P. (FB) No. 80, dated 11.8.2009 at a total cost of Rs. 168.40 crores. The Government of Tamil Nadu also approved the scheme through G.O. Ms. No. 102, Energy Department, dated 10.12.2009 as provided under Sections 68 and 164 of the Electricity Act, 2003. The petitioner is exercising the power, which the Telegraph Authority possess under the Indian Telegraphic Act, 1885 under the provisions of Section 164 of the Electricity Act, 2003, which has already been conferred upon TNEB u/s 51 of the Indian Electricity Act, 1910 and as such no notice to the land owners and prior consent of the land owners is required before laying the transmission lines. The scheme was also published in the Daily Newspaper Dinamalar on 27.12.2009 and in The Hindu on 27.12.2009 and in the Tamil Nadu Gazette on 24.2.2010 for general information to the public. Further case of the petitioner is that the petitioner has already invested about 150 crores for the said project and the project has to be completed to eliminate the power crisis existing in the State of Tamil Nadu. According to the petitioner, the work is in the final stage and foundation work has been completed in all 114 locations and tower erection has been completed in 110 locations, that means, the work has been completed for about 32 kms out of 34 kms.

2. It is the further case of the petitioner that the second respondent raised objections for erection of towers through their patta lands bearing Survey Nos. 77, 73, 74, 64, 65, 61, 59, 15, 14, 13, 12, 5, 4, 156, 155, 154 and 171 in Athipattu Village, Ponneri Taluk, Thiruvallur District on 27.9.2010 and the same was suitably replied on 14.10.2010 expressing non-feasibility of deviation of overhead transmission line. The second respondent thereafter approached this Court by filing W.P. No. 10644 of 2011, which was disposed of by this Court on 29.4.2011 giving direction to the petitioner Board to approach the District Collector and on such application being made the District Collector was directed to consider the issue raised by the Board and pass appropriate orders as per law. The second respondent thereafter approached the District Collector, Thiruvallur on 10.5.2011 and requested to consider its objections as per Section 16(1) of the Indian Telegraph Act, 1885. The District Collector conducted enquiries and sought for additional particulars from the Revenue Officials and the Officers of the Board, which were also submitted. However, the District Collector passed the impugned order on 18.5.2012 ordering deviation of the route and refused to grant permission to enter into the second respondent's lands. The same is challenged in this writ petition by contending that the District Collector has taken into account the extraneous facts for ordering deviation of route, which is impermissible; that the District Collector has no power to order deviation of line, which is not feasible; that the District Collector cannot decide technical feasibility of the route; and that, the deviation of the route will cause additional expenditure of Rs. 7 crores to the State exchequer, which will be a time consuming process and will hamper power evacuation process, among other things.

3. The second respondent has filed counter affidavit justifying the order of the first respondent/District Collector stating that the District Collector has got power to

order deviation of route in a given case and if the power lines are drawn in a deviated route, the lands of the second respondent can be utilised for locating Conveyor Corridor with Container Terminal for import and export of dry and liquid cargos and Ennore port will be affected and if the Container Terminal is allowed to come, it will be a unique development and will give big boost to the State economy, which will generate job for more than 10,000 youths in the State. For getting permission under the SEZ Act, 2005, there cannot be any public road, electrical lines, etc., cutting across the site. The second respondent thereby justified the order of the first respondent and prayed for dismissal of the writ petition.

4. The present District Collector, Thiruvallur filed a counter affidavit stating that as the Technical Officers of the Tamil Nadu Transmission Corporation, which is laying transmission lines, are the competent persons to decide the alignment of the transmission of overhead lines, the present District Collector has no objection to set aside the order of the then District Collector on public interest in consonance with the technical feasibility.

5. Mr. A. Navaneethakrishnan, learned Advocate General appearing for the petitioner argued that the District Collector has no jurisdiction to order re-alignment of the transmission line as he is not technically competent to order realignment. The learned Advocate General relied on the order of this Court made in W.P. No. 2305 and 2917 of 2012 dated 24.4.2012 (V.K.S., J.), wherein it is held that the District Collector has no jurisdiction to decide about the route of the transmission line. The learned Advocate General further submitted that the said order of the learned single Judge has been affirmed by the First Bench of this Court in W.A. No. 1049, 1050 and 1051 of 2012 by judgment dated 16.11.2012 and therefore the issue involved in this writ petition is covered by the said decision. The learned advocate General also submitted that except three towers, remaining towers were already erected and if the order of the first respondent is allowed to stand, the State will face further power crisis, and on public interest, the impugned order is liable to be set aside.

6. Mr. N. Vijay Narayan, learned senior counsel appearing for the second respondent on the other hand submitted that the District Collector is empowered to pass orders u/s 17 of the Indian Telegraph Act including to order re-alignment. The learned senior counsel also submitted that the District Collector being the statutory authority under the Act, having exercised his discretion on public interest to boost the economy of the State, is justified in passing the impugned order and merely because the then District Collector is transferred and new District Collector has taken charge, the present District Collector cannot contend that the order passed by the then District Collector is not proper. Therefore, the learned senior counsel prayed for dismissal of the writ petition.

7. Mr. M.C. Swamy, learned Special Government Pleader appearing for the first respondent supported the petitioner's case based on the counter affidavit filed by

the present District Collector.

8. I have considered the rival submissions made by the respective counsels.

9. The very issue as to whether the District Collector can decide upon the electricity transmission route under Sections 16 and 17 of the Indian Telegraphic Act, was already considered by the Division Bench of this Court in W.A. Nos. 1049, 1050 and 1051 of 2012 by judgment dated 16.11.2012. In paragraphs 19 to 24 of the judgment, the Division Bench of this Court held as follows:

19... as per the scheme of the Act, the District Collector was not empowered either u/s 16 or Section 17 of the Indian Telegraph Act to decide upon the route and his power was more in the nature of execution of a decision taken u/s 10 of the Act or u/s 67 or 68 of the Electricity Act, 2003. Therefore, when the experts namely the officials of the Board took a definite stand that the original route which was proposed was technically more feasible and it would be in the interest of the public, since the route was along the existing Panchayat road, we find there is absolutely no justification for the Collector to pass an order on 18.7.2011 to change the route which was not found to be technically feasible by the experts. Further, the entire work has been completed except for nine towers and at that stage it would be improper for the District Collector to alter the route, and adopt an alternate route which was found not technically feasible. It is stated that the expenses incurred so far is about Rs. 150 crores for erecting lines, apart from Rs. 3,000 crores which was spent for construction of the new Thermal Power Plant at Mettur and the power which has to be evacuate through its supply line is to provide uninterrupted power supply to both agriculture and industrial development. Therefore, by virtue of the delay, the power line could not be erected on time though the Power Plant was ready to generate about 600 MW power by the end of March, 2012.

20. The learned senior counsel for the appellant, in support of his submissions placed reliance on the decision of the Hon"ble Supreme Court in [M.D., Ramakrishna Poultry P. Ltd. Vs. R. Chellappan and Others](#). In the said case, the appellant was a Private Limited Company engaged in the business of Poultry Farming. The Power Grid Corporation of India Ltd., took up the work of construction of 400 KV power line for evacuation of power from the Neyveli Thermal Station Expansion Project. The transmission towers were required to be installed in various locations and some of which were to be placed in the patta lands of the appellants where the appellants were running Poultry Farm. Based upon opinion obtained from the Department of Animal Husbandry, stating that on account of the emission of electro-magnetic fields from the high voltage transmission lines passing over the poultry sheds, it would adversely affect the performance and health of the birds in the long run, the appellant therein made a request for realignment of the transmission line so that either the Poultry sheds could be avoided or the height of the tower could be raised. Therefore, the appellant wanted a small deviation of the route of the power line in the eastward directions, within his lands, so that minimum damage was effected to

the poultry farm. The Power Grid Corporation submitted that no deviation was feasible. The District Collector/Magistrate conducted a spot inspection and suggested slight shift in the alignment of power line either westward or eastward, so that the transmission line does not pass above the Poultry shed of the appellant. This was challenged by one R. Chellappan who was the respondent before the Supreme Court, by filing a Writ Petition before this Court. The Writ Petition was dismissed and as against which an Appeal was filed before the Division bench and the Appeal was allowed and the Division Bench held that there is no power for the District Collector to direct change of alignment. Challenging the said order, the Poultry Farm filed an Appeal before the Supreme Court. The main thrust of challenge before the Supreme Court was with regard to the jurisdiction of the District Magistrate to direct change of alignment of a transmission line u/s 16 of the Telegraph Act. The respondent therein contended that the District Collector/Magistrate has no power to change the alignment. The State of Tamil Nadu took a stand that the erection of towers for carrying the transmission line was for the benefit of the public at large who stood to benefit from the energising of the target area for the improvement of the lot of the people of the area. It was also pointed out that the appellant had no objection to the power transmission line being taken over its lands and the District Collector had taken into consideration the limited request made on behalf of the appellant company that the route of the power line be diverted in the eastward direction within the limits of its lands instead of passing through the middle of the said lands. The Supreme Court on considering the rival submissions, held that a balance will have to be achieved between the appellant's grievance and both the technical as well as techno-ecological feasibility of altering the route of the transmission lines in keeping with the directions given by the District Collector. Therefore, the Supreme Court keeping aside the technical aspect of the matter as to whether the order passed by the District Collector was one u/s 16 or Section 17 of the Telegraph Act, 1885, in order to arrive at a practical solution to the problem, the Power Grid Corporation accepted the alternate suggestion made on behalf of the appellant Company and raised the height of the lower point of sag of the transmission lines between the two towers. Accordingly, on the facts of the said case, a direction was issued to the Power Grid Corporation to increase the clearance indicated so that it may not affect the appellant's Poultry Farm.

21. Thus, from the facts which was the subject matter of the said decision, it is evidently clear that the same cannot be made applicable to the facts and circumstances of the case on hand. Further, in the instant case there was no direction to the District Collector to examine as to whether which route was more feasible. In fact it has been pointed out that initially the District Collector after holding discussions was of the firm view that the original route planned by the Board was more feasible as it passes along the existing Panchayat Road. Therefore, in our view the alternate route if adopted would be against public interest. Further,

the order passed by the District Collector dated 18.7.2011, does not assign any reasons as to why the transmission line should not pass through the original route. Though the Collector has narrated the contention of the land owners and the view of the Electricity Board, in the penultimate portion of the order has altered the route. No reasons have been assigned as to why the original route should not be adopted. Thus the order of the District Collector apart from being without jurisdiction is also vitiated for not assigning reasons which would offend Article 14 of the Constitution of India.

22. Apart from that, it is also worth to mention here that by reason of the order of the District Collector to follow the second route, the lands of many land owners get affected, whereas by continuing the installation of transmission poles/lines through the original route, it will cross the lands of a very few land owners, and the work could also be completed within the shortest possible time.

23. Learned single Judge has elaborately discussed the provisions of the Indian Telegraph Act, 1885 and the Electricity Act, 2003 vis-a-vis the power of the District Collector/Magistrate, and the conclusion arrived at by the learned single Judge, in our view, needs no interference. However, we are of the view that the learned single Judge is not correct in again sending the matter back to the Electricity Board to take a decision independently in respect of erecting transmission lines, without reference to the order passed by the District Collector. In our view, the learned single Judge ought to have directed the Electricity Board to proceed with the completion of erecting transmission lines through the original route and complete it as expeditiously as possible.

24. For the reasons aforesaid, we do not find any merit in these appeals, and accordingly, all the appeals are dismissed. The Electricity Board is directed to proceed with the work of erecting High Power Transmission Lines through the original route and complete the same as expeditiously as possible...

10. One more aspect to be noted in this writ petition is, already 230 KV overhead line is drawn through the second respondent's lands and if the contention of the then District Collector is to be accepted as per Section 5(2)(c) of SEZ Act, as the power line is running across the second respondent's land already, it is not possible for the second respondent to get clearance for locating the Container Terminal. The learned senior counsel for the second respondent submitted that if the present overhead power line is re-aligned, the second respondent will be in a position to seek for shifting of the existing 230 KV lines. The learned advocate General submitted that when such a proposal was made in the year 2000, the then owner failed to pay the cost for shifting the 230 KV line. It is a fact that the second respondent purchased the lands after the said 230 KV line was drawn, and therefore, the second respondent cannot now plead that the lands will be rendered unfit for locating Container Terminal. In this case also, the petitioner has already spent huge amount and almost completed the work. The request of the second

respondent was earlier rejected by the District Collector. The facts in this case is identical to the facts narrated in the writ appeal order, cited above. In the above circumstances, the impugned order dated 18.5.2012 passed by the first respondent is set aside and the writ petition is allowed as prayed for. No costs. Connected miscellaneous petitions are closed.