

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH**

(By Video Conferencing)

Original Application No.443/2022

Satyam Choudhary

...Applicant

Versus

State of Bihar

...Respondent

Date of hearing: 22.07.2022

**CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Application is registered based on a complaint received by E-Mail.

ORDER

1. Mr. Satyam Choudhary resident of Gouripur Tola, Sukhpur Village, District Supaul, Bihar has sent the present letter petition by email, which is treated and registered as original application, complaining that Powergrid-(North Bihar Power Distribution Company Ltd.) has ruthlessly cut more than 40 mango trees and 100 bamboo trees without any intimation/notification. Being landowners they deserved the right to get notified as it is no one's right to enter their premises and cut the trees without their permission. If they were informed or notified earlier then they would have better managed the trees. The trees were major source of their income and they deserve fair compensation.
2. We have gone through the letter petition and documents attached with the same.
3. The Indian Telegraph Act, 1885 empowers the licensee to simply enter upon any private land and carry out necessary works by invoking Sections 10 and 11 and cut interrupting trees under Section 18 thereof without the prior consent of the owner who could claim compensation under Section 18 and

enhancement thereof under Section 16 thereof. Public interest in execution of the works was given weightage over private interest of the land owner. Section 10, 16 and 18 of the Indian Telegraph Act, 1885 read as under:-

“10. Power for telegraph authority to place and maintain telegraph lines and posts.—*The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along, or across, and posts in or upon, any immovable property:*

Provided that—

(a) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the Central Government, or to be so established or maintained;

(b) the Central Government shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which the telegraph authority places any telegraph line or post; and

(c) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority; and

(d) in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and when it has exercised those powers in respect of any property other than that referred to in clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

16. Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority.—*(1) If the exercise of the powers mentioned in section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.*

(2) If, after the making of an order under sub-section (1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code (45 of 1860).

(3) If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

(4) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the Court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under sub-section (3), or sub-section (4) shall be final:

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority, from the person who has received the same.

18. Removal of trees interrupting telegraphic communication.—

(1) If any tree standing or lying near a telegraph line interrupts, or is likely to interrupt, telegraphic communication, a Magistrate of the first or second class may, on the application of the telegraph authority, cause the tree to be removed or dealt with in such other way as he deems fit.

(2) When disposing of an application under sub-section (1), the Magistrate shall, in the case of any tree in existence before the telegraph line was placed, award to the persons interested in the tree such compensation as he thinks reasonable, and the award shall be final.”

4. The Electricity Act, 2003 which *inter alia* consolidates the laws relating to generation, transmission, distribution, trading and use of electricity etc. empowers the State Government to pass an order under Section 164 thereof conferring upon public officer, licensee or any other persons engaged in the business of supplying electricity any of the power which the telegraph authority possesses under the India Telegraph Act 1885 with respect to placing of electric line for the transmission of electricity. Section 164 of the Electricity Act, 2003 reads as under:-

“164. Exercise of powers of Telegraph Authority in certain cases.—The Appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works, confer upon any public officer, licensee or any other

person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any, as the Appropriate Government may think fit to impose and to the provisions of the Indian Telegraph Act, 1885 (13 of 1885), any of the powers which the telegraph authority possesses under that Act with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained.

5. It may also be observed here that Section 68 of the Electricity Act, 2003, which contains provisions relating to overhead lines, also provides for payment of compensation for cutting of trees interfering with overhead lines. Section 68 of the Electricity Act, 2003 reads as under:-

“Section 68. (Provisions relating to Overhead lines): *-(1) An overhead line shall, with prior approval of the Appropriate Government, be installed or kept installed above ground in accordance with the provisions of sub-section (2).*

(2) The provisions contained in sub-section (1) shall not apply-

(a) in relation to an electric line which has a nominal voltage not exceeding 11 kilovolts and is used or intended to be used for supplying to a single consumer;

(b) in relation to so much of an electric line as is or will be within premises in the occupation or control of the person responsible for its installation; or

(c) in such other cases, as may be prescribed.

(3) The Appropriate Government shall, while granting approval under subsection (1), impose such conditions (including conditions as to the ownership and operation of the line) as appear to it to be necessary.

(4) The Appropriate Government may vary or revoke the approval at any time after the end of such period as may be stipulated in the approval granted by it.

(5) Where any tree standing or lying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead line subsequent to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of electricity or the accessibility of any works, an Executive Magistrate or authority specified by the Appropriate Government may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he or it thinks fit.

(6) When disposing of an application under sub-section (5), an Executive Magistrate or authority specified under that sub-section shall, in the case of any tree in existence before the placing of the overhead line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.

Explanation. - For the purposes of this section, the expression "tree" shall be deemed to include any shrub, hedge, jungle growth or other plant."

6. In the **Power Grid Corporation of India Limited V.s Century Textiles & Industries Limited & Ors. (2017) 5 SCC 143**) Hon'ble Supreme Court observed as under:

"As per the provisions of the Indian Telegraph Act, 1885, unobstructed access to lay down telegraph and/or electricity transmission lines is an imperative in the larger public interest. Electrification of villages all over the country and availability of telegraph lines are the most essential requirements for growth and development of any country, economy and the well-being/progress of the citizens. The legislature has not permitted any kind of impediment/obstruction in achieving this objective and through the scheme of the Indian Telegraph Act, 1885 empowering the licensee to lay telegraph lines, applied the same, as it is, for laying down the electricity transmission lines."

7. In **W.P. No. 18548 of 2013 titled as T. Bhuvaneswari v. District Collector-cum-District Magistrate, (Madras) : Law Finder Doc Id # 1070177**

Hon'ble Madras High Court observed in its order dated 29.11.2013 as under:-

"83. Having taken into consideration the relevant provisions of the Indian Telegraph Act, 1885 and Electricity Act, 2003 and analysis of Section 67 and section 164 of the Electricity Act, 2003, the legal position is that, whenever an order is passed by the appropriate Government, in exercise of powers under section 164 of the Electricity Act, 2003, for placing of electric lines for the transmission of electricity, conferring upon any public officer, licensee or any other person engaged in the business of supplying electricity any of the powers which the telegraph authority possesses under the Indian LAW FINDER Submitted By: Sh. Arun Kumar Tyagi, Registrar General PDF downloaded from the online archives of Chawla Publications(P) Ltd. Telegraph Act, 1885, with respect to the placing of telegraphic lines and posts for the purposes of a telegraph established by the Government, such public officer, licensee or any other person engaged in the business of supplying electricity, exercises all the powers, as that of the telegraph authority, under the Indian Telegraph act, 1885.

84. However, in the absence of such an order under section 164 of the Electricity Act, 2003, if a licensee i.e., a person who has been granted a licence to transmit electricity or to distribute electricity under the Act, proposes to place electric lines, electric plant or other works necessary for transmission or supply of electricity, section 67 of the Electricity Act, 2003 comes into operation and consequently, prior consent of the concerned owner or occupier, may be required, under section 12 (2) of the Indian Electricity Act, 1910.

85. The provisions of the Works of Licensees Rules, 2006 made under section 67 (2) of the Electricity Act, 2003 are in parimateria to Section

12 of the repealed Indian Electricity Act, 1910. The Works of Licensees Rules, 2006 are applicable, only in a case, where the works have been taken up by the licensee, under section 67 (1) of the Electricity Act, 2003. But section 67 (1) of the Electricity Act, 2003, as well as the rules made under Section 67 (2) would govern the field, only in the absence of an order, under section 164 of the Electricity Act, 2003.

86. Section 16 states that if there is any resistance or obstruction, the District Magistrate may in his discretion, order that the telegraph authority shall be permitted to exercise all the powers. Further, after such an order, a person offering any further resistance deemed to have committed offence under Section 188 of the Indian Penal Code. Once the technical feasibility of the project, has been approved by the appropriate Government, by issuing an order under section 164 of the Electricity Act, 2003, no land owner or person interested can seek for shifting or re-aligning of the route, on the premise that the District Collector-cum-District Magistrate, has powers to do so. He has no powers to alter any route or alignment, except to remove the difficulties faced by the licence or the person authorised, pursuant to the orders issued under Section 164 of the Act.

87. If the intention of the Legislature was to seek for consent or permission from every owner and if the right of such owner has to be recognised, in terms of section 16 (1) of the Telegraph Act, due to resistance/obstruction, then the execution of any work or project, would be stopped at every stage. Needless to state that execution of works, involving erection of towers and connection of overhead lines, is done, only after a detailed field study, by identifying a feasible route of the proposed transmission line, and while selecting suitable corridors, residential areas to be avoided, span length, the angle of deviation, extent of damage, likely to be caused, while erecting towers, maintenance cost of electric lines and towers and other factors, have to be considered. Public interest, in providing electricity to a large section of people and industrial establishments, etc., has to be given weight-age over private interest.

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101. Telegraph Act authorises entry into any land, for the purpose of erection of poles or posts and drawing transmission lines over the property. While erecting posts or posts, in the land or drawing lines over the property, one may have to suffer damages, but in the larger interest of the public and considering the mandate to provide electricity, right to use the property, in the manner, as desired by the owner of the property, stands eclipsed by Articles 14 and 21 of the Constitution of India, read with the provisions of the Indian Telegraph Act, 1885 and Electricity Acts. The owner can only seek for compensation to the extent of damage caused.

102. User of the land by the licence or the competent authority does not amount to acquisition of land and therefore, the land owner is entitled to compensation, only to the extent of usage by the licence or competent authority, for erecting poles or posts or drawing lines over the land."

8. In view of the above referred statutory provisions and settled position of law as referred to in the above mentioned judicial precedents, we are of the view that the case merely involves the question of payment of compensation to the applicant for damage caused to the trees of the applicant in accordance with above referred statutory provisions. The applicant may apply to the District Magistrate, Supaul for directing the Project Proponent (NBPDCCL) to pay compensation to him. In case of filing of any such application the District Magistrate, Supaul may look into the matter and take appropriate action in accordance with law for payment of compensation to the applicant within three months. In case of dispute as to sufficiency of compensation the applicant may file an application before the District Judge, Supaul for an order under Section 16 (4) of the Indian Telegraph Act, 1885 for payment of adequate compensation to the applicant for the loss caused by the Project Proponent (NBPDCCL) to him.

9. The application is disposed of accordingly without prejudice to availing of appropriate remedies by the applicant in accordance with law.

10. A copy of this order be sent to District Magistrate, Supaul by E-mail for requisite compliance.

Arun Kumar Tyagi, JM

Dr. Afroz Ahmad, EM

July 22, 2022
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