

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2009
(Arising out of SLP(C)No.24713/2008)

M.D., M/s. Ramakrishna Poultry P. Ltd. ...Appellant

Vs.

R. Chellappan & Ors. ...Respondents

J U D G M E N T

ALTAMAS KABIR, J.

1. Leave granted.

2. The appellant is a Private Limited Company engaged in the business of poultry farming which is confined to the production of eggs. It has constructed three separate sheds on Survey Nos.242/2 and 249/3 in Nanniyur Pudur Village in Karur District in the State of Tamil Nadu for

accommodating about 1.25 lakh layer birds. It is the case of the appellant that it had invested a sum of about Rs.6 crores in acquiring the lands, erecting the sheds thereupon and acquiring the birds for the purpose of starting the poultry farm.

3. At this juncture, it may be noted that the lands on which the poultry farm was started by the appellant, had been acquired in two stages. About 11 acres of land were acquired by the appellant-Company on 23rd June, 2004 and about 4 acres were acquired on 19th November, 2004.

5. At about the same time, the 3rd respondent, The Power Grid Corporation of India Ltd. (hereinafter referred to as 'the Corporation') took up the work of construction of a 400 KV Perambalur - Pugalur D/C Line as part of the Neyveli Thermal Station Expansion Project for evacuation of electricity generated therein. In the process, transmission towers were required to be installed in various

locations, some of which were private lands, including the Patta lands of the appellant, where its poultry farm is situated.

6. On 8th October, 2006, the appellant sought an opinion from the Assistant Director, Department of Animal Husbandry, regarding the effect on the layer birds on account of emission of electro magnetic fields from the High Voltage Transmission Lines passing over the poultry sheds. According to the said authority, the passing of High Voltage Electricity Current Transmission Wires over the poultry sheds would adversely affect the performance and health of the birds in the long run.

7. The appellant thereupon filed Writ Petition No.6850/06 before the High Court, seeking a re-alignment of the transmission lines so that either the appellant's poultry sheds could be avoided or the height of the tower/pylon could be raised.

Relying on an earlier order dated 18th January, 2007, passed by a learned Single Judge of the Madras High court in Writ Petition No.49172/06, the learned Single Judge of the Madras High Court by his judgment and order dated 31st January, 2007, disposed of the said Writ Petition, along with other connected writ petitions, with liberty to the writ petitioners to submit their objections, if any, to the District Magistrate concerned, within a period of two weeks from the date of the order. The District Magistrate was directed to consider the same in the light of the order passed by the Court and pass an order on merits and in accordance with law, after affording an opportunity to the petitioners, as well as the respondents, to make out their respective cases, within a period of six weeks thereafter.

8. Pursuant to the aforesaid order, the District Magistrate issued notice to the appellant and the Corporation to file objections, if any. The

appellant filed its objections indicating the damage that would be caused to the poultry farm, if the transmission line was not shifted to avoid the poultry sheds. The appellant asked for a small deviation of the route of the power line in the eastward direction, within his lands, so that minimum damage was effected to the poultry farm. On the other hand, the Corporation submitted that no deviation of the transmission line from the approved route of alignment was feasible. After a spot inspection, the District Magistrate upon being satisfied as to the damage that was likely to be caused to the appellant's poultry farm, was of the view that a slight shift in the alignment of the power line from location No.145 to location No.144, either westward or eastward, might not cause extensive damage to the coconut trees or the temple indicated by the respondents, while, at the same time, it would not affect the health of the birds in the poultry farm. Accordingly, by his order

dated 30th April, 2007, passed under Section 17(3) of the Indian Telegraph Act, 1885 (hereinafter referred to as the 'Telegraph Act'), the District Magistrate directed the Corporation to realign the transmission power line in such a way that it did not pass above the poultry sheds of the appellant.

9. Inasmuch as, the proposed realignment entailed that the transmission lines would pass over a portion of the adjacent plot belonging to the first respondent, R. Chellappan, he challenged the said order of the District Magistrate in Writ Petition No.10259/07 on 19th November, 2007, and the same was dismissed upon holding that the order of the District Magistrate did not suffer from any infirmity or arbitrariness. Aggrieved by the order of the learned Single Judge, the first respondent filed Writ Appeal No.522/08 which was allowed by the Division Bench on consideration of the provisions of Section 16 of the Telegraph Act and holding that under the said provisions, the

District Collector had no power to direct change of alignment.

10. Aggrieved by the said order, the appellant has filed the present appeal.

11. The main thrust of challenge is with regard to the jurisdiction of the District Magistrate to direct change of alignment of a transmission line under Section 16 of the Telegraph Act, which, under the provisions of Section 51 of The Indian Electricity Act, 1910, which is equivalent to the provisions of Section 164 of the Electricity Act, 2003, empowers the appropriate Government to confer on any Authority or person engaged in the business of supplying electricity under the Act, any of the powers which the Telegraph Authority possesses under the Telegraph Act with respect to the placing of telephonic lines or posts for the purpose of a telephone established or maintained by the Government or to be so established or maintained.

On behalf of the appellant it was submitted that the Division Bench was wrong in holding that under Section 16 of the Telegraph Act, the District Magistrate had no power to change the alignment and that the Division Bench had failed to notice that the order of the District Magistrate was not under Section 16, but under Section 17(3) of the said Act.

12. Another ground of challenge was that the impugned order of the Division Bench was contrary to the earlier order dated 31st January, 2007, directing the Corporation to approach the District Magistrate concerned in each case for permission to deal with the objections raised by the petitioners with the further direction that the said District Magistrate would consider the objections and pass orders in accordance with the provisions which have been indicated in the said order. It was also urged that since the same had become final between the parties, there was no scope for a contrary

order to be passed, as has been done in terms of the impugned order of the Division Bench in Writ Appeal No.522/08, holding that under Section 16 of the Telegraph Act the District Collector was not empowered to change the alignment.

13. The last ground of challenge was that the Division Bench had lost sight of the fact that the Corporation had, in fact, accepted the order passed by the District Magistrate and has even acted thereupon, as it had stated in its Counter Affidavit filed in response to the writ petition filed by R. Chellappan.

14. Mr. S. Ganesh, learned Senior counsel appearing for the appellant, submitted that Sections 10 and 17 of the Telegraph Act have to be read pragmatically to meet a situation where the transmission line had already been erected and even if the alternative prayer made by the appellant in its writ petition was to be granted, the same would

not lessen the danger of the Electromagnetic Waves created by the high power transmission lines damaging the health of the birds in the poultry farm and adversely affecting their egg-laying capacity. Mr. Ganesh urged that such a prayer had been made without the assistance of the opinion of an expert, who has subsequently indicated in no uncertain terms that even if the height of the transmission lines was raised to double the height to which it had been raised, it would still adversely affect the egg-laying capacity of the birds.

15. Mr. Ganesh vehemently submitted that the application of the appellant being under Section 17 of the Telegraph Act, it was within the power and jurisdiction of the District Magistrate to direct a small deviation of the transmission line over the appellant's own lands, the expenses wherefor would be borne by the appellant, so as to avoid its passing directly over the poultry sheds. Mr.

Ganesh also submitted that since the Corporation was ready and willing to make a deviation over the adjoining land belonging to Respondent No.1, except for the alleged damage as may be caused to the coconut trees and the temple on its revised route, there was no reason why the same could not be adopted in order to save the huge investment which the appellant had already made in the poultry farm, the loss whereof would completely cripple the appellant's business, particularly, when the poultry farm was already in operation before the evacuation project from the Neyveli dam had even been contemplated or started.

16. Learned counsel appearing for the Respondent No.1 supported the order of the District Collector but contended that since the interest of the public at large relating to supply of electricity was involved, it was necessary for the dispute to be set at rest so that the transmission line could be commissioned at the earliest opportunity.

17. On behalf of the Corporation, Mr. Parag Tripathi, learned Additional Solicitor General contended that the order of the District Magistrate directing change in alignment of the transmission line did not take into consideration various factors, namely, that the transmission line which would pass over the contiguous plot belonged to the Respondent No.1 and bordered the plot of the appellant.

18. Mr. Tripathi submitted that the electricity to be generated by the Neyveli Thermal-II Expansion in the State of Tamil Nadu has to be distributed by the construction of a 400 KV D/C transmission line from Neyveli to Pugalur comprising of 576 towers with a length of 198 kms. connecting the Neyveli Thermal Power Station II to Pugalur 400 KV Sub-station. The estimated cost of the project was set at Rs.691.83 crores. He also submitted that on 24th December, 2003, the Government of India had, in

exercise of its powers conferred under Section 164 of the Electricity Act of 2003, passed an order authorizing the Corporation to exercise all the powers vested in the Telegraph Authority under Part III of the Indian Telegraph Act, 1885 in respect of the electrical lines and electrical plants established or maintained, or to be so established or maintained for transmission of electricity or for the purpose of telephonic or telegraphic communication necessary for the proper coordination of work. Further more, M/s. Shyama Power (India) Private Ltd. had already been issued the Works Order for detailed survey on 9th June, 2004 and such work had been completed in the year 2004 itself. He submitted that the local public was taken into confidence during the consultation programmes organized by the Corporation on 2nd October, 2004 and only thereafter, on completion of the survey works, the route alignment was marked along with vital landmarks, including the crossing

of the Cauveri river and the locations on which the towers were to be erected. Mr. Tripathi contended that despite having knowledge that the area was marked for an overhead transmission line over Survey Nos.249/1 to 249/11 and 242 of Nanniyur Village, the petitioner went on to purchase the lands on which the poultry farm was established on 23rd June, 2004 and 19th November, 2004. The learned Additional Solicitor General also submitted that the work of the project had advanced to a stage where out of the total number of 576 locations, the foundation work for erection of towers had been completed in respect of 568 locations and towers had already been erected at 553 locations. Furthermore, out of the length of 198 kms., the stringing work of the transmission lines had been completed upto 171 kms. and, although, the transmission line should have been commissioned on or before the month of October, 2007, the same had been delayed due to the present litigation. The

learned Additional Solicitor General also submitted that the representation made by the appellant-Company had been disposed of by the Corporation on 7th May, 2005 on the ground that at the time of the survey work, there was no poultry farm in existence and that it was not techno-economically feasible to realign the transmission line at the advanced stage of implementation. Mr. Tripathi urged that the fact that the Managing Director of the appellant-Company was a local man would also be evident from the fact that the Certificate of Incorporation of the appellant-Company indicates the plots in question to be the address of the Company and it is difficult to accept that the Managing Director of the Company did not have any knowledge of the ongoing project, which included large scale survey work for finalizing the alignment and the route to be taken, including the construction of towers/pylons for carrying the transmission lines.

19. It was also submitted that the alternate prayer made on behalf of the appellant-Company had been duly considered and acted upon and the height of the transmission towers in question had been raised from 46.5 meters to 52 meters so that the gap between the highest point of the construction and the lowest point of the sag in the transmission line was 30 ft. The same having been done, the appellant should not have any further cause for complaint.

20. Mr. Tripathi submitted that while passing the order, purporting to be an order under Section 17 of the Telegraph Act, the District Magistrate had failed to take into consideration that an order under Section 17 could only be passed after the erection of the towers and that too for altering the alignment within the same land. Further more, the alternate plea of raising the height of the towers, as also the technical feasibility regarding the crossing of the transmission lines at the

Highway crossing and also the river Cauveri, together with the higher cost provision for realignment and the ecological aspect had not been taken into consideration by the District Collector, who passed the order on 30th April, 2007 in a purely mechanical manner without giving any thought to the various consequences that such order was bound to give rise to.

21. Mr. Tripathi referred to the Full Bench decision of the Kerala High Court in Mammoo Vs. State of Kerala & Anr. [AIR 1980 Kerala 18], where it was held that while Section 16(1) of the Telegraph Act vested the District Magistrate with certain authority which he would be entitled to exercise in his discretion, such functions were only of an administrative or executive nature. In effect, it was held that the District Magistrate, while exercising power under Section 16(1) of the above Act, did not act as a Court, but in a purely administrative capacity.

22. Reference was also made to the decision of the Kerala High Court in Moidu alias Kunnippa Vs. The District Magistrate and District Collector, Malappuram and Ors. [MANU/KE/0410/1998], in support of the submission that in order to attract Section 17 of the aforesaid Act, the telegraph line or post in question would have had to be installed and would have had to be shifted from one portion to another portion of the same property._

23. Mr. Tripathi submitted that having regard to the prayers made by the appellant in its Writ Petition (MD) No.6850/06 before the Madurai Bench of the Madras High Court, the alternate prayer for raising the height of the tower has been acted upon by the Corporation and the appellant could not, therefore, have any further grievance against the Corporation with regard to the carriage of the transmission lines over the appellant's property.

24. Appearing for R. Chellappan, the Respondent No.1, Mr. A.T.M. Ranga Ramanujam, learned Senior counsel adopted Mr. Tipathi's submissions and submitted that if the order of the District Collector was accepted as having been passed under Section 17 of the Indian Telegraph Act, then any realignment of the transmission line would have to be effected within the plot of the person at whose instance such realignment is sought. The proposed alternate alignment through the land of the Respondent No.1 was not, therefore, permissible and such proposed alternate alignment was liable to be rejected.

25. On the other hand, Mr. R. Nedumaran, learned counsel appearing for the State of Tamil Nadu, while supporting the order passed by the District Collector, urged that the erection of the towers for carrying the transmission lines 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. Mr. Nedumaran, however, also pointed out that from the order of the District Magistrate and Collector dated 30th April, 2007, it would be more or less evident that the poultry sheds had been constructed before the proposed route alignment. From the order of the District Collector, Mr. Nedumaran also pointed out that while the appellant had no objection to the power transmission line being taken over its lands, 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 which would cause extensive damage to its poultry farm. Mr. Nedumaran submitted that the Collector, by invoking his powers under Section 17(3) of the Indian Telegraph Act, 1885, directed the Appellant-Company to realign the transmission lines in such a

way that they did not pass directly above the poultry sheds of the Respondent No.1 situated at S.F. Nos.242/2 and 249/3, Nanniyur Village, Karur Taluk.

26. On consideration of the rival submissions made on behalf of the respective parties, it is obvious 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. The simplest and the most ideal solution would have been to alter the route of the transmission lines so that they did not directly pass over the appellant's poultry sheds, particularly when the appellant is ready and willing to bear the expenses of such alteration. However, since, according to the Power Grid Corporation and its experts, that would entail a deviation over the lands of the Respondent No.1, R. Chellappan, the same gave rise

to the objections raised by R. Chellappan. Keeping aside the technical aspect of the matter as to whether the order passed by the District Collector was one under Sections 16 or 17 of the Indian 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 lowest point of sag of the transmission lines between the two towers on either side of the poultry sheds of the Appellant-company from 46.5 meters To 52 meters, which in practical terms means a clearance of 30 ft. between the lowest point of the sag and the highest point of the poultry shed. Of course, it has been contended by Mr. Ganesh that according to the report of the expert, even if the height of the tower was raised to a 100 meters, the electro-magnetic field created by the transmission of high voltage electricity would still encompass the poultry sheds and

adversely affect the reproductive system not only of the chickens but of all living things within that zone.

27. However, what goes against the case of the Appellant-Company is the fact that the purchases of the land for starting the poultry business and the erection of the poultry sheds were effected at a point of time when the process of identifying the route of the transmission lines was already in progress and survey work was being undertaken. We find it difficult to accept that the Appellant-company did not have knowledge of the ongoing project, which is for the benefit of a large number of people of the area as against the interest of a single individual. In view of the objections on behalf of the Power Grid Corporation that the deviation in the transmission lines, as suggested on behalf of the Appellant-company, could not be practically achieved, we are left with the next best solution, i.e., to increase the clearance

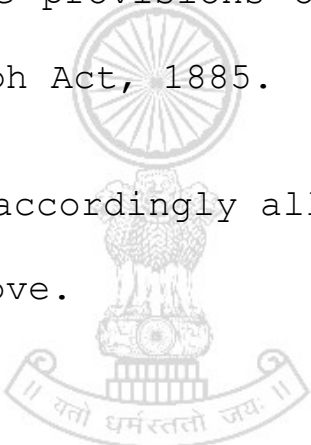
between the lowest point of the sag of the transmission cable and the top most portion of the appellant's poultry sheds. It should not also be forgotten that from the point of the sag on both sides the cable moves upwards and the clearance becomes even greater on both sides of the lowest spot. During the hearing we had asked Mr. Tripathi to confirm with the Engineers of the Power Grid Corporation to explore the possibility of raising the height of the towers even further to lessen the damage, if any, that may be caused to the egg laying capacity of the layers in the appellant's poultry farm.

28. Although, the response appears to be equivocal, we set aside the order of the Division Bench of the Madras High Court impugned in this appeal and direct the Power Grid Corporation to increase the clearance indicated above from 52 meters to 56 meters so that the clearance between the lowest

point of the sag of the cable and the top most portion of the poultry shed is not less than 40 ft.

29. The Appellant-Company will be entitled to such compensation to which it may be entitled for use of its lands or the damage caused thereto on account of the erection of the tower/pylon for carrying the transmission lines over the appellant's plant, in accordance with the provisions of Section 10(d) of the Indian Telegraph Act, 1885.

30. The appeal is accordingly allowed to the extent indicated hereinabove.


J. _____
(ALTAMAS KABIR)

J. _____
(CYRIAC JOSEPH)

New Delhi

Dated: 08.05.2009