



GAHC010005882014

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

WRIT PETITION (C) No. 684/2014

1. Sri Babu Ghosh, S/o - Late Uma Charan Ghosh, R/o -
Matiabad, P.O. - Gauripur, District - Dhubri, Assam.
2. Dharani Kanta Ghosh, S/o - Late Umacharan Ghosh, R/o -
Matiabad, P.O. - Gauripur, District - Dhubri, Assam.
3. Bakul Ghosh [Mahendra], S/o - Late Umacharan Ghosh, R/o
- Motiabad, P.O.- Gauripur, District - Dhubri, Assam.
4. Md. Afzal Ali, S/o - Late Meser Ali, R/o – Village - Goalgaon,
Geramari, Dhubri, District - Dhubri, Assam.
5. Janeb Ali, S/o - Late Meser Ali, R/o – Village - Goalgaon,
Geramari, Dhubri, District - Dhubri, Assam.
6. Sahad Ali, S/o - Late Akhtar Ali, R/o – Village - Goalgaon,
Geramari, Dhubri, District - Dhubri, Assam.
7. Sri Ratan Kumar Barman, S/o - Late Ganiram Barman, R/o –
Village - Asharikandi, P.O. - Asharikandi, P.S. - Gauripur,
District - Dhubri, Assam.
8. Sri Ratan Lal Barman, S/o - Late Jatindra Nath Barman, R/o
– Village - Goalgaon, Geramari, Dhubri, District - Dhubri,
Assam.
9. Sakat Ali, S/o - Late Janmatullah Sk, R/o – Village -
Goalgaon, Geramari, Dhubri, District - Dhubri, Assam.
10. Nur Islam Sk, S/o - Golap Uddin Ali, R/o Village - Goalgaon,



Geramari, Dhubri, District - Dhubri, Assam.

.....Petitioners

-Versus-

1. The Assam State Electricity Board, Bijulee Bhawan, Paltan Bazar, Guwahati - 781001, District - Kamrup [M], Assam, represented by its Chairman.
2. The A.E.G.C.L. Assam Electricity Grid Corporation Ltd., Bijulee Bhawan, Paltan Bazar, Guwahati - 781001, District - Kamrup [M], Assam, Represented by its Chief General Manager/Managing Director.
3. The General Manager, Lower Assam T & T Zone, AEGCL, ASEB, Narengi, Guwahati - 781026, District - Kamrup [M], Assam.
4. The Senior Manager, Sub-Station Division, AEGCL, ASEB, Dhaligaon, District - Bongaigaon, Assam, Pin – 783385.
5. The Manager, T & T Sub-Division, AEGCL, ASEB, Gauripur, District - Dhubri, Assam, Pin- 783331.
6. The Deputy Commissioner, Dhubri, District – Dhubri, Assam, PIN – 783301.

.....Respondents

Advocates :

Petitioners	: Ms. V.V. Thanyu, Advocate.
Respondent nos. 1 - 5	: Mr. S. Kotoki, Standing Counsel, Assam Electricity Grid Corporation Ltd. : Mr. K.P. Pathak, Advocate.
Respondent no. 6	: Ms. S. Sharma, Junior Government Advocate
Date of Hearing, Judgment & Order	: 20.07.2023

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
JUDGMENT & ORDER [ORAL]

By the present writ petition instituted under Article 226 of the Constitution of India, the petitioners have inter alia sought for a direction in the nature of Mandamus and/or Certiorari and/or any other appropriate writ, order or direction for restraining the respondents from erecting electrical post/polls over the lands of the petitioners and stringing high voltage power transmission lines over the lands and houses of the petitioners.

2. The petitioners, 10 [ten] in nos., have joined together to institute the writ petition projecting that they have a common cause of action. The petitioners have claimed that the petitioners are residents of contiguous villages within Gauripur Revenue Circle, District – Dhubri and each of the petitioners individually owns and possesses contiguous plots of land located at Village – Matiabog, Goalgaon, Asharikandi, etc. According to the petitioners, they have constructed their dwelling houses on one portion of their respective plots of land and the remaining portions are being used by them for agricultural activities wherefrom they earn their livelihood. The case projected by the petitioners, in brief, is that the officials of the respondent Assam Electricity Grid Corporation Ltd. entered the lands of the petitioners sometime in the year 2009 in an allegedly illegal and unauthorized manner to install transformers, R.C.C. posts, etc. upon the lands of the petitioners with the view to stringing high voltage power transmission lines over the lands and houses of the petitioners for transmission of power to some other points. Having faced strong objection from the petitioners, the respondent authorities had to abandon the exercise at that

point of time. But in the year 2012, the respondent authorities resumed their activities of stringing high voltage power transmission lines over the lands and houses of the petitioners. Having noticed such activities from the respondents' sides, the petitioners stated to have served a legal notice, for and on behalf of the petitioner nos. 1, 2 & 3, upon the respondent no. 5 on 12.12.2012 requesting the authorities not to undertake any works of erecting any electrical tower/posts and stringing high voltage transmission lines over the said lands and dwelling houses of the petitioners. The said legal notice was responded to from the end of the respondent no. 5 with a reply dated 19.02.2013 stating inter alia that the proposed transmission line is a 132 KV line which was to be drawn between Gouripur and Bilashipara and every process of stringing the transmission line had been undertaken as per the provisions of the Electricity Act, 2003 and the Works of Licensees Rules, 2006. It was further informed that as the said project of installation of 132 KV line was in national interest, there should not be any obstruction from the ends of the said three petitioners i.e. the petitioner nos. 1, 2 & 3. As the respondent authorities had thereafter, refused to stop from the works of erecting electrical towers/ posts and stringing of transmission lines upon the petitioners' lands and dwelling houses, the petitioners have contended that they are compelled to institute the writ petition seeking appropriate reliefs.

3. Heard Ms. V.V. Thanyu, learned counsel for the petitioners; Mr. S. Kotoki, learned Standing Counsel, Assam Electricity Grid Corporation Ltd. [AEGCL] assisted by Mr. K.P. Pathak, learned counsel for the respondent nos. 1 – 5; and Ms. S. Sharma, learned Junior Government Advocate, Assam for the respondent no. 6.

4. Ms. Thanyu, learned counsel for the petitioners has submitted that despite objection of the petitioners, the respondent authorities had gone ahead to erect electrical towers/posts/polls upon the lands of the petitioners and also to string the high voltage power transmission lines over the dwelling houses of the petitioners and the same had given rise to a serious apprehension that in the event of occurrence of any untoward incident, the petitioners would be exposed to grave dangers. According to the petitioners, there is an alternative convenient route available for installing/stringing the high voltage power transmission line, which is along the side of a river nearby and had the said alternative convenient route been availed by the respondent authorities, there was definite possibility of avoiding the lands and dwelling houses of the petitioners. It is the case of the petitioners that the alternative route would have substantially reduced the cost of the works also because the number of posts required to be set up in that route, would have been much less.

5. Mr. Katoki, learned counsel for the respondent nos. 1 – 5 objecting to the submissions of the learned counsel for the petitioners, has submitted that the stringing of the 132 KV transmission line was pursuant to the responsibility entrusted to the AEGCL by the Department of Power [Electricity], Government of Assam. The stringing of 132 KV transmission line was pursuant to a detailed project report and a detailed survey. He has submitted that the stringing of 132 KV line was as per the alignment finalised at after a detailed survey, etc. and the same was carried out after an order granting Right of Way by the District Magistrate, Dhubri.



6. I have duly considered the submission of the learned counsel for the parties and have also perused the materials brought on record by the parties through their pleadings.

7. From the counter-affidavit filed on behalf of the respondent nos. 1 – 5, it is noticed that the Department of Power [Electricity], Government of Assam after considering the rapid increase of demand of electricity and the need to provide 100% electricity supply to each and every dwelling house especially in rural areas and also to provide adequate and quality power to the people of the State, handed over the responsibility of power transmission to the respondent AEGCL to develop a transmission system at 132 KV level and above for power evacuation. In order to carry out such responsibility, the AEGCL had planned to construct the 132 KV transmission lines under reference from 132 KV Gauripur Grid Sub-Station to 132 KV Bilasipara Grid Sub-Station and due sanction for the project was accorded under the Non-Lapsable Central Pole Resource [NLCPR] funded scheme. It was on 11.04.2012, the work order was issued. Before issuance of the work order, a survey was carried out in the year 2009 to avoid hurdles like orchards, village sites, low and marshy areas, forest areas, etc. as per the technical specifications issued by the erstwhile Assam State Electricity Board [ASEB]. It is further averred that during survey, utmost attention, as much as possible, was paid to avoid dwelling houses and permanent structures.

8. It has emerged that circuit length of 132 KV Gauripur-Bilasipara transmission line was 37 Km in length and it required erection of 124 nos. of towers with 45 nos. angle points within the territorial areas of Dhubri district. It is stated that at the time of filing counter affidavit on 21.04.2014, foundation

works of 75 nos. of towers out of total 124, were completed with no complaint from any of the other land owners/pattadars except the petitioners herein. By an order dated 26.03.2013 of the District Magistrate, Dhubri issued in exercise of the powers conferred on him under Section 3[1] of the Works of Licensees Rules, 2006 framed under the Electricity Act, 2003, the said authority allowed the respondent AEGCL to carry out the necessary construction works of the proposed 132 KV single circuit transmission lines on double circuit towers from existing 132 KV Matiabag Gauripur Sub-Station. The order dated 26.03.2013 had further observed that the land owners whose lands/house etc. would fall within the alignment, if any, would be at liberty to file representation before the District Magistrate, Dhubri for any damages caused to such lands/house, etc. for which the licensee i.e. the respondent AEGCL to be legally bound to pay reasonable compensation or annual rent or both to the land owners, as assessed by the District Magistrate, Dhubri based on such representation.

9. It has been averred from the respondent AEGCL's side that during the course of survey works made in respect of the petitioners' lands for the transmission lines, it was reported that there was no house on the said lands of the petitioners and the said lands were then used for agricultural purposes. But, after finalization of the survey, the petitioners nos. 1, 2 & 3 had erected one thatched house over their plot of lands covering tag mark used at the time of survey works. Denying any possibility of any danger to the lives of the petitioners, if the transmission line drawn over the said route in question, it has been asserted that the entire construction would be carried out as per the design of the transmission line by putting in place due protection from cyclonic storm and seismic effect. Denying the contentions of the petitioners that there

could be an alternative convenient route, it has been categorically asserted that the alignment which the respondent AEGCL tagged, was the only technically viable route for the transmission line in question for the reason that 132 KV Gauripur Sub-Station was located in the northern side from where entry and exit was to be connected only on that side. It is further asserted that technically, the dead end tower of the transmission line is to be at 0° to the grantry and the crossing of National High Way – 31 was also to be at 90° and under such condition, the re-location of Tower no. 3 in the lands of the petitioners nos. 1, 2 & 3 was technically unavoidable. It has been further asserted that the river lie in between Tower no. 3 and Tower no. 4, which had already been fixed and it would be technically not feasible for re-alignment and re-fixation of the locations of Tower nos. 3, 4, 5 & 6. The Additional Deputy Commissioner, Dhubri on 05.03.2014 directed the authorities of the respondent AEGCL along with PWD [Building] Division and the Divisional Forest Officer, Dhubri, etc. to visit the sites for assessment of house/trees standing on the proposed lands for assessment of land compensation in respect of NLCPR funded 132 KV Gauripur-Bilasipara line, then under construction. The said authorities were directed to depute concerned officials including concerned Supervisor Kanungo/Lat Mandal, with all relevant documents to the sites along with relevant records of Village – Matiabog, etc. It is the case of the respondent AEGCL authorities that when such assessment works were being carried out pursuant to the order dated 05.03.2014, on 12.03.2014, the petitioners had made some obstruction and due to such obstruction, no assessment could be made in respect of the petitioners' lands. It has been averred that except the petitioners' lands, the other affected persons' lands had already been assessed for due compensation.

10. It is claimed that on completion of the 132 KV single circuit transmission line on double circuit towers on the stretch between Gauripur-Bilasipara, there would be improvements in the quality of power supply in the entire Dhubri district. In the year 2014, Dhubri district used to get power supply from Gauripur Grid Sub-Station with entry of 130 K.M. from 132 KV Dhaligaon-Gossaigaon-Gauripur line. With the completion of the Gauripur-Bilasipara project, Gauripur Grid would be able to cater to the demand for power to much larger extent. The said project would cater power supply to Dhubri district with 137 K.M. from 132 KV transmission line instead of 130 K.M. transmission line and would minimize the transmission loss and improve the voltage regulation.

11. Section 68 of the Electricity Act, 2003 mentions about overhead lines. As per sub-section [1] of Section 68 of the Electricity Act, 2003, an overhead line can be installed or can be kept installed above ground in accordance with the provisions of sub-section [2] thereof, with prior approval of the Appropriate Government. As per sub-section [3] of Section 68 of the Electricity Act, 2003, the Appropriate Government can impose such conditions as appears to it to be necessary while granting approval under sub-section [1]. Section 164 of the Electricity Act, 2003 has, inter alia, provided that the Appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity, confer upon any public officer, licensee or any other person engaged in the business of electricity under the Electricity Act, 2003, subject to such conditions and restrictions, if any, as the Appropriate Government may think fit to impose and subject to the provisions of the Indian Telegraph Act, 1885, any of the powers which the telegraph authority possesses under the Indian Telegraph Act, 1885 with respect to the placing of telegraph

lines and posts for the purposes of a telegraph established or maintained. It is by virtue of the provisions of Section 68 and Section 164 of the Electricity Act, 2003, the Appropriate Government can confer upon a licensee or any other person engaged in the business of supplying electricity under the Electricity Act, 2003, subject to such conditions and restrictions, any of the powers possessed by the telegraph authority under the Indian Telegraph Act, 1885 with respect to placing of telegraph lines and posts, for the purpose of placing of electric lines for transmission of electricity.

12. It is appropriate to refer also to the provisions of Section 10 and Section 16 of the Indian Telegraph Act, 1885 :

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;

[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 and 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, 1860 [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.

13. It is discernible from the provisions of Section 10 of the Indian Telegraph

Act, 1885 that like the telegraph authority, the licensee under the Electricity Act, 2003 while placing and maintaining an electrical line under, over, along or across, and posts in or upon, any immovable property does not require any right other than the right of user only in the property under, over, along, across, in or upon which the licensee places any electrical line or post. In doing so, the licensee is required cause as little damage as possible and the licensee is responsible for paying full compensation to all persons interested for any damage sustained by them for reason of the exercise of those powers. In view of the provisions contained in Section 16, if the exercise of the powers mentioned in Section 10 in respect of property referred to in clause [d] thereof is resisted or obstructed, the District Magistrate, Dhubri, in his discretion, order that the licensee shall be permitted to exercise them. If, after the making of an order by the District Magistrate, Dhubri 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, such person is to be deemed to have committed an offence under Section 188 of the Indian Penal Code, 1860. The provision of Section 16 of the Indian Telegraph Act, 1885 has further provided for payment of compensation.

14. As per Section 2[38] of the Electricity Act, 2003, 'licence' means a licence granted under Section 14 of the said Act whereas as per Section 2[39] of the Electricity Act, 2003, 'licensee' means a person who has been granted a licence under Section 14. It is not in dispute that the AEGCL is a State Transmission Utility and a State Transmission Utility [STU] is deemed to be a transmission licensee under the 2nd proviso to Section 14 of the Electricity Act, 2003. It is not the case of the petitioners that the respondent AEGCL, a licensee under the

Electricity Act, 2003, had carried out the survey in respect of the petitioners' lands without any authority. It is also not a case of the petitioners that the respondent AEGCL had no authority to erect the electric towers and to string the transmission line of Gauripur-Bilasipara project. The petitioners have not been able to dislodge the case of the AEGCL on the said aspects. The only case of the petitioner, as has emerged from the contentions, is that there was a possibility to change the alignment/route of the 132 KV transmission line by the side of a nearby river and if such alignment would have been made, there would have been no damage or danger to the petitioners' lands and dwelling houses.

15. In *Managing Director, Ramakrishna Poultry Private Limited vs. R. Chellappan and others*, reported in [2009] 16 SCC 743, realignment of an electric transmission line was requested by the appellant, a private limited company, engaged in the business of poultry farming. Projecting that it had invested a sum of about Rs. 6 crores in acquiring the lands, erecting the sheds thereupon, acquiring the birds for the purpose of starting the poultry farm, etc., it requested for alignment of the transmission line by shifting, to avoid the poultry sheds. The appellant contended that a small deviation in the route of the power line in the eastward direction would cause minimum damage to the poultry farm. On the other hand, the licensee submitted that no deviation of the transmission line from the approved route of alignment was feasible. After a spot specification, 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 one location to another location, either westward or eastward, might not cause extensive damage to anybody else and it would not affect that appellant's poultry farm. By referring

to the provisions of Section 10 and Section 16 of the Indian Telegraph Act, 1885 and Section 164 of the Electricity Act, 2003, the Hon'ble Supreme Court of India has observed that on the basis of the said provisions, a District Collector is not empowered to change the alignment of a transmission line from its approved route. It is observed that deviation in transmission line could not be made against the views of the experts and public interests could be allowed to suffer for individual interests. What is of importance is the technical and technological feasibility of the approved route.

16. In *Power Grid Corporation of India Limited vs. Century Textiles and Industries Limited and others*, reported in [2017] 5 SCC 143, the writ petitioner approached the High Court by filing a writ petition stating that the three towers in its mining areas with high tension electricity line would force the writ petitioner to stop mining in the area nearby the proposed towers. The licensee contested the writ petition contending inter alia that out of 400 towers to be erected under the concerned project, 390 towers had already been erected. The writ petition was dismissed by holding that under the provisions of the Indian Telegraph Act, 1885, the Electricity Act, 2003 and the Rules framed therein, the licensee was within its right to erect those towers. The Hon'ble Supreme Court of India has observed that a deemed licensee under the Electricity Act, 2003 acquires all such powers which are vested in a telegraph authority under the provisions of the Indian Telegraph Act, 1885 including power to eliminate any obstruction in the laying down of power transmission lines. 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. It has been further observed that the Legislature has not permitted any kind of impediment/obstruction in achieving such objective and through the scheme of the Indian Telegraph Act, 1885 and the Electricity Act, 2003, empowering the licensee to lay such lines is in public interest.

17. From the materials on record, it has emerged that the relocation of the towers, that is, Tower no. 3, Tower no. 4, Tower no. 5 and Tower no. 6 with the Tower no. 3 within the lands of the petitioner nos. 1, 2 & 3, is technically not feasible and there cannot be any alternative technically viable route of the 132 KV Gauripur-Bilasipara transmission line. Laying of the transmission lines has to be on the approved route in larger public interests. The respondent AEGCL as a licensee and State Transmission Utility, has already been accorded approval to exercise the Right to Use on the approved route in terms of the provisions contained in Section 64 and Section 164 of the Electricity Act, 2003 read with Section 10 and Section 16 of the Indian Telegraph Act, 1885. Thus, this Court does not find any merit in the contentions raised by the petitioners regarding realignment of the 132 KV transmission line from or over the petitioners' lands or dwelling houses, as the petitioners' individual interests have to give way to larger public interests. Consequently, the writ petition is found bereft of any merits and the same is liable to be dismissed. It is accordingly ordered. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant