

SUPREME COURT OF INDIA

Power Grid Corporation of India Ltd.

Vs.

Century Textiles & Industries Ltd. & Ors.

C.A.No.10951 of 2016

(A.K.Sikri and R.Banumathi,JJ.,)

14.12.2016

JUDGMENT

A.K.Sikri,J.,

SLP (Civil)No.34382 of 2010

1. Judgment and order dated August 02, 2010 passed by the High Court of Chhattisgarh in Writ Appeal No. 42 of 2008, which was filed by Century Textiles & Industries Limited, is the subject matter of challenge in Civil Appeal Nos. 10951 and 10953 of 2016. These appeals are by both the parties. The aforesaid writ appeal was filed by Century Textiles & Industries Limited against the judgment dated March 11, 2008 passed by the learned Single Judge of the said High Court in Writ Petition (Civil) No. 1909 of 2007 filed by it in which the Power Grid Corporation of India Limited was the main contesting respondent. Since both the parties have challenged the impugned order, for the sake of clarity, we would refer Century Textiles & Industries Limited as the 'writ petitioner' and the Power Grid Corporation of India Limited as the 'Power Grid'.

2. The writ petitioner is engaged in the manufacture of cement. It is having its cement manufacturing unit at Baikunth. Limestone is one of the minerals which is required for manufacturing cement and to facilitate the supply thereof, the State of Chhattisgarh (hereinafter referred to as the 'State Government') had granted the writ petitioner mining lease in the vicinity of the manufacturing unit. For this purpose, the writ petitioner had submitted mining plan, duly approved by the Indian Bureau of Mines (for short, 'IBM'), Government of India, of the area of 74.843 hectares at village Tulsu and Bahesar. The lease period is 30 years. There is a registered lease deed dated September 30, 2002 executed between the writ petitioner and the State Government. Thereafter, the writ petitioner had submitted an application for modification of the mining plan, which was also approved on January 14, 2005 by the Government of India, subject to certain conditions.

3. The Power Grid, which is a Government of India Undertaking, is primarily engaged in the work of providing framework for the distribution and transmission of electricity generated by

various generating companies throughout the country. In a way, it is discharging function which is in public interest. It is well-known that India is an energy deficient country, notwithstanding rapid expansion in this direction in the last few years, and particularly after the entry of private sector, insofar as production of electricity is concerned. Still, there are many households where lighting of even electrical bulb is a dream. Moreover, the socio-economic development of the country depends on this critical infrastructure. Keeping in view these parameters, one of the objectives of the Power Grid is to transmit the energy to remote areas.

4. At the time when the aforesaid mining lease dated September 30, 2002 was executed in favour of the writ petitioner, there existed a 400 KV transmission line outside the boundary of the existing mining lease of 237.003 hectares and the said transmission line (Sipat - Raipur) was to run parallel along the existing lines. In fact, this transmission line was completed and commissioned by the Power Grid in November 1999, work whereof had commenced in the year 1996.

5. Since the Power Grid had to lay the transmission lines parallel to the existing lines to erect towers for laying of the said transmission lines, it was observed that a part thereof was going over the land which was leased out to the writ petitioner for mining purposes. Notice in this behalf was served by the Power Grid to the writ petitioner on October 03, 2006 for erection of the said towers. At the same time, excavation work for erection of towers also started. In this notice, it was inter alia mentioned that 400 KV Sipat-Raipur transmission line would pass through the property leased out to the writ petitioner for mining. The writ petitioner replied to the said notice vide its communication dated October 18, 2006 pointing out that the area earmarked for excavation and erection of towers by the Power Grid comes under mining lease area and there was a possibility that the tower to be put would get damaged due to blasting operation done at the mines as the area comes under the danger zone. In these circumstances, the Power Grid was requested to relocate the area for construction of tower, which should be far away from the leased area.

6. However, as the Power Grid did not accede to the request of the writ petitioner, the writ petitioner approached the High Court by filing the aforesaid writ petition stating that the three towers in the mining area, as also the adjacent area to the mining area proposed to be constructed by the Power Grid with high tension electricity, line would force the writ petitioner to stop mining in the area nearby the proposed towers as it would not be able to do any blasting for the purpose of mining. It was contended that if the towers are allowed to be erected on the land covered by the mining lease, the writ petitioner would be precluded from carrying out mining over the adjacent area of towers of 500 mts. as per the relevant provisions of law (to which we shall advert to at appropriate stage) and it would seriously jeopardise the operations of the writ petitioner. It was contended that the mining area carries reserve of 10 million tonnes of limestone which is needed for manufacture of cement in the cement plant of the writ petitioner. It was, thus, prayed in the writ petition that the Power Grid be not allowed to erect any tower over the mining lease area and reallocate the same.

7. The Power Grid contested the writ petition by filing its counter affidavit. Maintainability of the writ petition was questioned on the ground that the relief claimed in the writ petition is beyond the scope of writ jurisdiction under Articles 226 and 227 of the Constitution of India. It was further stated that the Power Grid is a Central Transmission Utility of the country. It undertakes transmission of electric power through Inter-State Transmission System to establish and operate Regional and National Power Grids. Sipat Generation Scheme is to come up and surplus power of Eastern Region would be pooled through 400 KV Sipat-Raipur Transmission line for dispersal of surplus generation of power in Western Region. Length of the above corridor is 148 kms. and estimated cost of the project is Rs.199 crores. Eighty five percent of the work has already been completed with an investment of Rs.170 crores. Out of 400 towers to be erected, 390 towers have already been erected. The tower line under construction runs parallel to the 400 KV Korba-Raipur power line which is in existence since 1999. The writ petitioner has obtained leasehold right in the year 2002 and over and across their leasehold land, Korba-Raipur transmission line already existed and even then they could carry on their mining activities. They have obtained the leasehold rights without obtaining clearance certificate from the Electrical Inspector. The map submitted by the writ petitioner for obtaining mining lease was submitted without showing the existence of 400 KV Korba-Raipur transmission line established by the Power Grid in the year 1999. The writ petitioner has its explosive magazine building in the same area and blasting near the magazine area is also prohibited.

8. The learned Single Judge, after hearing the writ petitioner, dismissed the writ petition filed by it holding that under the relevant provisions of the Indian Telegraph Act, 1885, the Electricity Act, 2003, and Rules framed thereunder, the Power Grid was within its right to erect those towers. On facts also the learned Single Judge took the view that since the work had started long ago, and even earlier to the grant of mining lease in favour of the writ petitioner, and further that out of 410 towers to be erected, 408 towers had already been erected, it would not be possible at that stage to change the alignment. These factual aspects are summarized in para 25 of the judgment of the learned Single Judge and we would like to reproduce the same here at this stage:

“25. From the pleading of the respective parties, it is observed that:

(i) there is already existing 400 KV Transmission Line from Korba to Raipur erected in the year 1999 at a distance of about 100 meters from the proposed power line. The petitioner cannot do blasting operations in the vicinity of 300 meters from the existing power line also, thus only 100 meters strip of lease hold land and only a short span of two towers would be affected by erection of the new transmission line;

(ii) The Explosive Magazine Building of the company is also situated in the same area. That also prohibits the petitioner from using explosives in its vicinity for the purpose of mining lime stone;

(iii) Rule 83(2) of the Indian Electricity Rules, 1956 prohibits blasting for any purpose within 300 meters from the boundary of sub-station or from the high voltage

of extra-high voltage electric supply lines or tower structure without the consultation of the owner of such sub-station or electric supply lines or tower structures and in case of mining lease hold area, without the written permission of the Chief Inspector of Mines or the Electrical Inspector of Mines;

(iv) Out of 410 towers to be erected in a span of 149.43 km., 408 towers have already been erected by respondent No.1 and only two towers remains to be erected so as to complete the project; and

(v) The transmission line under construction runs parallel to the other existing line commissioned in the year 1999 and there are field limitation as also technical limitations enumerated by the respondent No.1 in Para 5.16 of their affidavit making the change in the said route alignment of Sipat-Raipur transmission completely impossible.”

9. The writ petitioner challenged the said order in appeal. The Division Bench, vide the impugned judgment, has not granted the relief insofar as changing the site of erection of towers is concerned. At the same time, it has taken the view that once the towers are erected on the area as planned, which falls within the mining lease area, it would cause loss not only to the writ petitioner but even to the State Government which will be deprived of royalty. A direction is given to the District Collector to work out the compensation that would be payable to the writ petitioner. It is further observed that if the District Collector comes to the conclusion that compensation is also payable to the State Government, he would refer the matter to the State Government for constituting a High Powered Committee for arriving at the quantum of compensation.

10. Insofar as the writ petitioner is concerned, it is not entirely satisfied with the aforesaid outcome as, according to it, the Power Grid should not be allowed to erect any towers over the mining area. That is the reason for filing the special leave petition by the writ petitioner, out of which the instant Civil Appeal arises. Insofar as the Power Grid is concerned, it has challenged the direction of the High Court in referring the matter to the District Collector for quantifying the compensation/damages to be paid to the writ petitioner as, according to it, no such direction could be given and, in any case, the District Collector has no authority to decide the issue of compensation.

11. Mr. Maninder Singh, learned Additional Solicitor General, and Mr. S.B. Upadhyay, learned senior counsel, argued on behalf of the Power Grid, whereas Mr. Shrivastava, learned senior counsel, argued for the writ petitioner, and Mr. Gilda, Additional Advocate General, appeared for the State Government.

12. We may mention here that two more writ petitions were filed in the High Court: one by Mr. Ram Naresh Singh and the other by Ajay Munjal Memorial Trust. Insofar as the case of Mr. Ram Naresh Singh is concerned, 524 towers are constructed in District Sasaram in the State of Bihar and only one tower is placed on the land belonging to respondent Nos. 1 and 2 therein. The High Court of Patna has decided the case in favour of respondent Nos. 1 and 2

on the ground that no notice was issued to them to seek their prior consent. Likewise, in the case of Ajay Munjal Memorial Trust, transmission lines laid down by the Power Grid covered the area of 418 kms. One such tower is placed on the land belonging to the said Trust. Here also, the challenge was made by the appellant on the ground that their prior consent was not taken. However, in this behalf, the High Court of Jharkhand has repelled the challenge. It is for this reason that Civil Appeal Nos. 8951 of 2011 and 8342 of 2009 were also heard along with the main case and the counsel appearing for the respective parties made their submissions, which have also been taken into consideration.

13. We first take up the case of the writ petitioner - Century Textiles & Industries Ltd., i.e. Civil Appeal No. 10953 of 2016. In this case, as noticed earlier, the learned Single Judge while dismissing the writ petition took into consideration certain admitted facts, which were not disputed by the writ petitioner before the Division Bench or in this Court. First important fact is that the transmission line from Korba to Raipur with 400 KV had already been erected in the year 1999. Thus, this transmission line was in existence when the writ petitioner was given the mining lease of the area in question. The said transmission line is hardly at a distance of 100 mts. from the proposed power line. As per the provisions of Rule 83(2) of the Indian Electricity Rules, 1956, no blasting operation can be carried out in the vicinity of 300 mts. from the existing power line. Effect of this was, insofar as proposed power line is concerned, only 100 mts. strip of leasehold land and only a short span of two towers is going to be affected by erection of the new transmission line. Other important factor to be taken note of is that out of 410 towers which were to be erected over an area of 149.43 kms., 408 towers had already been erected by the Power Grid to complete the project in question when the writ petition was filed by the writ petitioner. One more significant fact is that the transmission line under construction runs parallel to the existing Kolba-Raipur transmission line which was erected in the year 1999. This imposes field limitation as well as technical limitations in making a change in the route alignment of Sipat-Raipur transmission line. It could also not be disputed that the transmission project is of national importance as it is going to benefit public at large, not only in the State of Chhattisgarh but various other States through which the aforesaid transmission line passes through. Project was at the verge of completion when the writ petition was decided by the learned Single Judge and it has since been completed.

14. It is also of significance that the Division Bench has not differed with the aforesaid factual position, including the fact that the project in question is in public interest and, therefore, allowed the completion of the project. Notwithstanding these findings of the High Court, both by the Single Judge as well as the Division Bench, argument of the writ petitioner is that the erection of two towers on the mining area leased out to the writ petitioner is going to render a large chunk of mining area unusable. It is not only going to affect the supply of limestone to the writ petitioner for the manufacture of cement, thereby causing financial loss to the writ petitioner, even the State Government would be suffering financially in the form of royalty. It is, thus, argued that such a loss is also of public nature not only in financial terms, but in making the valuable mineral available for production of cement, which is an essential commodity. On this basis, it is argued that realignment of the two towers is a better option, which would sub-serve both the competing public interests, one

projected by the writ petitioner and the other by the Power Grid, as cost of realignment of the overhead lines was barely Rs.4.50 crores as against the loss to the State Exchequer in the sum of Rs.120 crores and to the writ petitioner in the neighbourhood of Rs. 690 crores and, therefore, action of the Power Grid is arbitrary, unjust and unfair as well. It is further submitted that there is violation of Sections 68 and 69 of the Electricity Act, 2003 as well as Rules 3 and 10 of the Works of Licensees Rules, 2006 (hereinafter referred to as 'Rules, 2006') in laying down the overhead lines and, therefore, the High Court erred in law in permitting the same.

15. In order to appreciate the contentions of the writ petitioner, it is necessary to have a glimpse of the provisions of the Electricity Act, 2003 as well as Rules on which reliance has been placed by Mr. Shrivastava.

16. Sections 68 and 69 of the Electricity Act, 2003 fall in Part VIII with the caption 'WORKS'. These two provisions directly deal with the overhead lines. As per Section 68, an overhead line can be installed or kept installed above ground 'with prior approval of the Appropriate Government. 'Appropriate Government is defined under Section 2(5) of the Electricity Act, 2003 and it is not in dispute that in the instant case, it would be the Central Government as it is the Central Government which is the Appropriate Government in respect of a generating company wholly or partly owned by it and Power Grid is a company which is owned by the Central Government. The argument was that no such prior approval from the Central Government was obtained in terms of the aforesaid provision.

17. We find that this assertion is factually incorrect. The learned Single Judge specifically noted that the Power Grid had obtained prior approval of the Central Government under Section 68(1) of the Electricity Act, 2003. Though, an attempt was made that this finding is incorrect, we do not agree with the said submission of the writ petitioner as the learned ASG pointed out to us the document containing such an approval.

18. Another submission made was that permission of the writ petitioner was not obtained which was needed as per Rule 3 of the Rules, 2006. Rule 3(a) reads as under:

“3. Licensee to carry out works. - (1) A licensee may - (a) carry out works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, wherever or whereunder any electric supply-line or works has not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land.”

19. In the instant case, the aforesaid Rule is not applicable in view of Section 164 of the Electricity Act, 2003, which 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.”

20. It is not in dispute that in exercise of powers under the aforesaid provision, the Appropriate Government has conferred the powers of Telegraph Authority vide notification dated December 24, 2003 exercisable under Indian Telegraph Act, 1885 upon the Power Grid. It may also be mentioned that a Central Transmission Utility (CTU) is a deemed licensee under the second proviso to Section 14 of the Electricity Act, 2003. Power Grid is a Central Transmission Utility and is, therefore, a deemed licensee under the Electricity Act, 2003. This coupled with the fact that Power Grid is treated as Authority under the Indian Telegraph Act, 1885, it 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. 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. Powers of the Telegraph Authority conferred by Sections 10, 15 and 16 of the Indian Telegraph Act, 1885, stand vested in and are enjoyed by the Power Grid. These provisions are reproduced below:

“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.”

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“15. Disputes between telegraph authority and local authority.—

(1) If any dispute arises between the telegraph authority and a local authority in consequence of the local authority refusing the permission referred to in section 10, clause

(c), or prescribing any condition under section 12, or in consequence of the telegraph authority omitting to comply with a requisition made under section 13, or otherwise in respect of the exercise of the powers conferred by this Act, it shall be determined by such officer as the 1[Central Government] may appoint either generally or specially in this behalf.

(2) An appeal from the determination of the officer so appointed shall lie to the Central Government; and the order of the Central Government shall be final.”

“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, 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...”

21. Section 10 of the Indian Telegraph Act, 1885 empowers the Telegraph Authority to place and maintain a telegraph line under, over, along or across and posts in or upon any immovable property. The provision of Section 10(b) of the Indian Telegraph Act, 1885 makes it abundantly clear that while acquiring the power to lay down telegraph lines, the Central Government does not acquire any right other than that of user in the property. Further, Section 10(d) of the Indian Telegraph Act, 1885 obliges the Telegraph Authority to ensure that it causes as little damage as possible and that the Telegraph Authority shall also be obliged to pay full compensation to all person interested for any damage sustained by them by reason of the exercise of those powers.

22. As Power Grid is given the powers of Telegraph Authority, Rule 3(1) of the Rules, 2006 ceases to apply in the case of Power Grid by virtue of execution clause contained in sub-rule (4) of Rule 3 which reads as under:

“3(4). - Nothing contained in this rule shall effect the powers conferred upon any licensee under Section 164 of the Act.”

23. We, thus, have no hesitation in rejecting the argument of the writ petitioner that the impugned action of the Power Grid was contrary to the provisions of the Electricity Act, 2003.

24. We also do not find that the action of the Power Grid, in the given circumstances, by not shifting the transmission lines was arbitrary. From the facts noted above, it becomes apparent that not only it was unfeasible to change the alignment as almost entire work had already been completed by the time the writ petitioner started protesting against this move, even otherwise, the Power Grid has given sufficient explanation to point out that all relevant factors aspects were kept in mind while laying down the impugned transmission lines. Such transmission lines had to be in straight line to the extent possible for eliminating loss of transmission. It is also explained that electricity transmission is usually laid or crossed over agricultural land where minimum extent of land gets utilised for erecting towers and where agricultural activities are not prejudiced/obstructed in any manner. The purpose is to avoid buildings, religious places, ponds etc. while laying down these transmission lines. It is only when it becomes inevitable that towers are placed on the private lines to the minimum and

least extent possible. That is what was tried to achieve in the instant case. Another important factor, which needs repetition at this stage is that no blasting is permissible within 300 mts. from the 400KV line (already existing) or the tower structure. Mining of limestone can be taken up by adopting the methods other than use of explosive/blasting - without damage to the tower foundation/tower structure or the line, which can be accomplished by using jack hammer/pneumatic hammer with compressor so as to avoid any damage to the line or tower. This aspect has also been taken note of by the learned Single Judge of the High Court in the judgment dated March 11, 2008. The Division Bench did not differ with any of these findings. Accordingly, Civil Appeal No. 10953 of 2016 preferred by the writ petitioner stands dismissed.

25. At this stage, we deal with the direction of the Division Bench regarding compensation payable to the writ petitioner, or for that matter to the State Government. In the first instance, no such claim was laid by the writ petitioner in the writ petition or by the State Government before the High Court. Furthermore, the High Court could not have given this task to the District Collector, which is contrary to the provisions of Section 16(c) of the Indian Telegraph Act, 1885 which are extended to laying down of electricity lines. As per this provision, such an authority vests with the District Judge.

26. These are sufficient reasons to allow Civil Appeal No. 10951 of 2016 preferred by the Power Grid by setting aside those directions. Ordered accordingly. We make it clear that if the writ petitioner feels that it is entitled to any compensation, the appropriate course of action is to file a suit before the concerned District Judge for this purpose. It would also be apt to point out at this stage that the Central Government has framed guidelines dated October 15, 2015 in this behalf which inter alia provide that the issue of compensation may be resolved having regard to the mode and manner of assessment of compensation as per the said guidelines. Therefore, it would always be open to the writ petitioner to avail the remedy as per the said guidelines.

27. C.A.No.8951 of 2011

This appeal is filed by Power Grid in the case of Ram Naresh Singh. In this case, transmission lines are in District Sasaram in the State of Bihar. The complete work for laying down the transmission lines where 524 overhead towers have been erected by the Power Grid. Out of these, only 1 tower is located at the land belonging to Ram Naresh Singh. The dispute raised is with regard to quantum of compensation and as per the provisions of Section 16 of the Indian Telegraph Act, 1885, it is to be settled by the District Judge. Thus, for all the reasons given above in the case of Century Textiles & Industries Limited, this appeal of the Power Grid stands allowed and the judgment of the High Court is set aside.

28. C.A.No. 8342 of 2009

The appellant in this case also raised the issue of taking prior consent from it, as the owner of the land, before laying electricity transmission lines. This argument has been rejected by us

while dealing with the appeal of Century Textiles & Industries Limited. Accordingly, this appeal is also dismissed.