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ଓଡ଼ିଶା ବିଦ୍ୟୁତ୍ ନିୟାମକ ଆୟୋଗ
ODISHA ELECTRICITY REGULATORY COMMISSION
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Present: Shri P.K. Jena, Chairperson
Shri G. Mohapatra, Member
Shri S. K. Ray Mohapatra, Member

Case No. 104/2024

IN THE MATTER OF: Application under Rule 3 (3) of “The Works of Licensees Rules, 2006” read with Notification No.1843-R & R-II-3/2009 dated 20.02.2009 of the Department of Energy, Govt. of Odisha challenging the order dated 10.01.2024 passed by the Collector & District Magistrate, Angul in Misc. Case No.69 of 2023, directing the Petitioner-Licensee to remove the transformer from plot of the Opposite Party.

AND

IN THE MATTER OF:

The Executive Engineer (Elect),
Angul Electrical Division, Angul, TPCODL.
Vrs.
Jyotirmaya Pati & Another

.....Petitioner

.....Respondents

For Petitioner: Shri Debashis Pattnaik, Advocate

For Respondents: Shri Manish Nag Das, Advocate

ORDER

Date of Hearing: 29.04.2025

Date of Order: 29.04.2025

The Executive Engineer (Electrical), TPCODL, Angul Electrical Division, Angul has filed the present Petition challenging the legality, validity & propriety of the Order dated 10.01.2024 passed by the Learned Collector-cum-District Magistrate, Angul in Misc Case No. 69 of 2023, purporting to have been passed under Rule 3 of “The Works of Licensees Rules, 2006” issued under Section 176 (2) (e) read with Section 67 (2) of the Electricity Act, 2003.

2. The prayers of the Revisionist/Petitioner are as follows:

“(i) issue direction setting aside the order dated 10.01.2024 in Misc Case No.69 of 2023 passed by the Learned Collector cum District Magistrate, Angul, and

(ii) issue direction for staying the order dated 10.01.2024 in Misc Case No.69 of 2023 passed by the Learned Collector cum District Magistrate, Angul till disposal of the present application.

(iii) issue any other appropriate order as deemed proper in the interest of justice for which act of kindness the petitioners shall ever pray.”

3. The Case of the Revisionist/Petitioner is that the Transformer in question was installed prior to the year 1996 and the authorization for construction of such Transformer was vested upon the Government of Odisha and accordingly said installation is not an unauthorized one, inasmuch as necessary approval and procedure were adopted for carrying out the installation. Be that as it may, on the request of the Opposite Party No-1-Jyotirmaya Pati, the Petitioner-Licensee conducted a field verification and raised demand of Rs.11, 67,654/- on 29.11.2022 towards the cost of shifting of the said Transformer. Pursuant to receipt of demand, the Opposite Party No-1-Jyotirmaya Pati never paid the same, rather issued a legal notice dated 15.12.2022 for shifting of the Transformer from his property. Thereafter, the Opposite Party No-1-Jyotirmaya Pati approached the Hon’ble High Court of Orissa vide a Writ Petition in W. P. (C) No.2403 of 2023 in the matter and the Hon’ble High Court while disposing of said matter, vide their order dated 05.10.2023 was pleased to direct as follows:

“Accordingly, it is directed that in the event the Petitioner files an application for shifting of the transformer/compensation before the Collector and District Magistrate, Angul within a period of two weeks hence detailing his grievances and enclosing relevant documents, the same shall be considered as expeditiously as possible, preferably within a period of two months therefrom giving opportunity of hearing to the parties concerned and decision thereof shall be communicated to the Petitioner forthwith.”

4. Thereafter, the Opposite Party No-1-Jyotirmaya Pati, who has purchased the said plot from the original owner (Mr. P. K. Das) on 24.12.2021, has filed Misc. Case No.69 of 2023 before the Learned Collector-cum-District Magistrate, Angul with a prayer to direct the Petitioner-Licensee for shifting of the Transformer claiming to have been illegally mounted on the land in question and the Learned Collector-cum-District Magistrate, Angul was pleased to direct the Petitioner-Licensee for removal of the transformer at the cost of the licensee from the said plot, although it has been observed by him that the said transformer existed on the plot since the year 1996.
5. The Petitioner-Licensee has submitted that the Opposite Party No.1 was well aware of the existence of the 100 kVA transformer in the present location before purchasing the said plot and the direction of the Learned Collector-cum-District Magistrate is clear violation of the Notification No.1843-R&R-II-3/2009 dated 20.02.2009 of the Department of Energy, Govt. of Odisha and Regulation 62 of OERC Distribution (Conditions of Supply) Code, 2019. Further, the impugned order passed by the Learned Collector-cum-District Magistrate

under the Works of Licensees Rules, 2006 is without jurisdiction and liable to be quashed. Thus, the instant Revision Application has been filed before the Commission challenging the legality of the impugned order. According to the Petitioner-Licensee, on shifting of the said transformer at its own cost, the Licensee will face irreparable loss and also more than 40 number of consumers connected to the said transformer will face problem of electricity connectivity.

6. The Case of the Opposite Party No-1-Jyotirmaya Pati is that the Petitioner-Licensee has laid down the transformer in contravention of the Electricity Act, 2003 without any permission or authorization from the owner of the land and the same should be shifted, free of cost, when it has been prayed for a direction for shifting of the transformer. The Opposite Party No-1 has asserted correctness of the order under challenge.
7. We heard the parties at length in the hybrid mode.
8. For avoiding prolixity and for brevity, it may be stated here that from the materials produced before us, it is amply established that the disputed Transformer was installed in the year 1996 much before the Electricity Act, 2003 came in to force. Though the Learned Collector passed order directing the Revision Petitioner-Licensee for removal of the Transformer, from the reading of the impugned order pronounced by the Learned Collector-cum-District Magistrate, Angul, it is evidently clear that the Learned Collector-cum-District Magistrate, Angul has not taken in to consideration the Notification No.1843-R & R-II-3/2009 dated. 20.02.2009 of the Department of Energy, Government of Odisha in respect of placing of Electric Lines or Electrical Plants for the Transmission of Electricity for the purpose of Telephonic or Telegraph communication, in Clause 10 issued in exercise of the powers conferred by Section 164 of the Electricity Act, 2003. Relevant portion of the said Order is quoted below:

“ x x x

x x x

x x x

10. Electric lines and Electrical Plants placed before passing of this Act:

Every electric line or electrical plant placed before the passing of this order under, over, along, across, in or upon any property, for the purposes of a power system established or maintained by the (State Government/ State Electricity Board), shall be deemed to have been placed in exercise of the powers conferred by, and after observance of all the requirement of this order.”

9. It is pertinent to state here that as per the provisions of Section 10 to 19 of the Indian Telegraph Act, 1885 read with the provisions under Section 51 of the Indian Electricity Act, 1910, the Electricity Board is not required to obtain consent of the land owner for doing impugned work or for any works as defined in Section 2 (n). It is also not obligatory on the

part of the Competent Authority which has been conferred with powers under the Section 10 of the Indian Telegraph Act to issue prior notice to the owner of the property over which the electric supply line is proposed and before exercising the power under Section 10 of the said Act. In view of the conjoint reading of the provisions under Section 51 of the Indian Electricity Act, 1910 and Section 10 of the Indian Telegraph Act, 1885, for exercise of powers in laying down poles and construction of electric line, consent or prior intimation was not necessary. The only right of the owner or the occupier, as the case may be, is to claim compensation (**please see the judgment of the Hon'ble Gujarat High Court in the Case of Jiviben Motibhai Patel Vrs. Executive Engineer (C&M), Gujarat Electricity Board, Baroda (1996) (1) GLR-470**).

By virtue of Section 42 of the Electricity Supply Act, vesting in the Board, the power possessed by the Telegraph Authority, the Board for the limited purpose of erecting a transmission line is not obliged to acquire any land belonging to any person (**Please see the judgement of the Hon'ble High Court of Andhra Pradesh in the Case of H.Bhadur Singh Vrs. The Divisional Engineer, Andhra Pradesh State Electricity Board, Transmission Line Division reported in (1991) 2 Andhra Law Times at Page-7**).

10. Moreover, by virtue of Section 42 of the Electricity Act, 1948, read with Section 10 of the Indian Telegraph Act, 1885, the Electricity Boards used to lay the electrical lines without acquiring the private lands. Such an action was upheld by the Courts of different jurisdictions in India, eg. a Full Bench Judgment of **Kerala High Court in Mammoo Vrs. State of Kerala (1979 Kerala Law Times 801)**; **Binapani Basu Vrs. Union of India (AIR 1984 Calcutta 258)**; **Maharashtra State Electricity Board Vrs. Janardhan Bhausahab Desai (AIR 1988 Bombay 75)**; **Bharat Plywood and Timber Products Private Ltd. Vrs. Kerala State Electricity Board, Trivandrum (AIR 1972 Kerala 47 Full Bench)**.

There have been a plethora of other decisions taking a similar view as discussed above, reference to which is not necessary to avoid multiplication.

While the above was the position regarding the power to lay electrical lines over private lands without need for acquiring the property, no specific provisions were framed for determination of compensation. Section 10 (d) of the Indian Telegraph Act, 1885 is the only provision based on which compensation used to be awarded. Even the said provision also used to be interpreted in a restrictive sense, viz, that if any damage to the crop or land was caused while laying lines, the land-owner was held to be entitled to some nominal compensation.

11. It is observed that in the impugned order dated 10.01.2024 of the Learned Collector-cum-District Magistrate, Angul, the above-mentioned provisions of law have not been well addressed justifying the said order.
12. In view of the discussions in the forgoing paragraphs, the order dated 10.01.2024 of the Learned Collector-cum-District Magistrate, Angul passed in Misc. Case No.69 of 2023 is hereby set aside. The matter is remanded to the Learned Collector-cum-District Magistrate for hearing afresh giving opportunities to the parties and shall pass order in accordance with the provisions of the Indian Electricity Act, 1910, the Electricity Act, 2003, the Rules and Regulations made thereunder and the relevant policies/notification of the Government of Odisha. Both the parties are directed to appear before the Learned Collector-cum-District Magistrate, Angul on 04.06.2025 for taking appropriate instruction in the matter of hearing.
13. The instant Revision Petition is accordingly disposed of. The Registry is directed to send the copy of this order to the Office of the Learned Collector-cum-District Magistrate, Angul along with the copy of the Petition and other relevant documents forthwith.

Sd/-
(S. K. Ray Mohapatra)
Member

Sd/-
(G. Mohapatra)
Member

Sd/-
(P.K. Jena)
Chairperson