

A CENTURY RAYON LIMITED

v.

IVP LIMITED AND OTHERS

B (Civil Appeal No. 9063 of 2019)

NOVEMBER 27, 2019

**[N. V. RAMANA, SANJIV KHANNA AND  
KRISHNA MURARI, JJ.]**

C *Injunction – Interim order – Balance of convenience –*  
*Relevant / important considerations – First respondent-company,*  
*owner of land in question, filed suit for permanent injunction*  
*contending that contractors appointed by second respondent-State*  
D *Electricity Distribution Company (MSEDC) were excavating its land*  
*for construction of electricity transmission towers without prior*  
*approval – The electricity transmission towers were being*  
*constructed pursuant to sanction given by MSEDC on an application*  
*made by the appellant – Trial court and first appellate court*  
E *restrained appellant and second respondent by way of temporary*  
*injunction from “making holes for erecting poles on any part of the*  
*suit lands without following due process of law” – Order affirmed*  
*by High Court – On appeal, held: On facts, appellant had*  
*subsequently obtained the necessary permission for erection of the*  
*towers and setting up transmission line subject to payment of*  
*compensation to first respondent in terms of s.16(1) to s.16(4) r/w*  
F *s.10 of the Telegraph Act – Also, as a matter of fact the electricity*  
*transmission towers on the land of first respondent were already*  
*constructed – Therefore, and in a way, MSEDC was already using*  
*the land of first respondent – Further, 80% of the work of laying*  
*the electricity transmission lines was already over and at that stage,*  
G *passing of an interim injunction to stall the setting up and activation*  
*of the transmission lines was not justified in larger public interest –*  
*Balance of convenience did not justify passing of an interim*  
*injunction order in favour of first respondent – Continuation of*  
*injunction not warranted and justified in law – Adequate remedy*  
*would be to set aside the impugned order of High Court as also the*

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*injunction order subject to appellant making an ad hoc payment of Rs. 20,00,000/- with such payment being subject to outcome of the civil suit or the proceedings under the Telegraph Act for quantifying the compensation payable to first respondent – Indian Telegraph Act, 1885 – ss.10 and 16 – Electricity Act, 2003 – s.164.* A

*Electricity Laws – Transmission of electricity – Use of land belonging to third party for setting up of electricity transmission lines – Imperative need for unobstructed access for laying down the electricity transmission lines in the larger public interest as these are essential requirements for growth and development of the country, economy and well-being of citizens – Indian Telegraph Act, 1885 – ss. 10 and 16 – Electricity Act, 2003 – s.164.* B C

*Power Grid Corporation of India Limited v. Century Textiles and Industries Limited and Others (2017) 5 SCC 143 : [2016] 11 SCR 41 – relied on.*

#### Case Law Reference

**[2016] 11 SCR 41                      relied on                      Para 7**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9063 of 2019.

From the Judgment and Order dated 09.01.2019 of the High Court of Judicature at Bombay in Writ Petition (Stamp) No. 19175 of 2018.

N.K. Kaul, Sr. Adv., Mahesh Agarwal, Rishi Agrawala, Ankur Saigal, Anshuman Srivastava, Rohan Talwar, E. C. Agrawala, Advs. for the Appellant. F

Gopal Jain, Sr. Adv., Ms. Jai Kanade, Aslam Ahmed, Ms. Dhanyashree Shah, Saurabh Bindal, Kaushik Laik, Prasad Dighe, Ms. Teja Ray, Ms. Arti Singh, akashdeep Singh Roda, Ms. Pooja Singh, Advs. for the Respondents. G

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A           The Judgment of the Court was delivered by  
**SANJIV KHANNA, J.**

1. Leave granted.

2. The first respondent – IVP Limited is a company and owner of  
B   the non-agricultural land at village Vadavali bearing S. No. 43/32  
admeasuring about 20 R Pot Kharaba 1 R and at village Mohane bearing  
S. No. 42/12 admeasuring about 22R 30P and S. No. 44/2 admeasuring  
about 50 R Pot Kharaba 3R. The first respondent has filed a suit for  
permanent injunction with a grievance that the Maharashtra State  
Electricity Distribution Company Limited (‘MSEDC’ for short), the  
C   second respondent before us, had appointed contractors who were  
excavating its land for construction of the electricity transmission towers  
without any prior approval.

3. The appellant – Century Rayon Limited, who is also a defendant  
D   in the suit, is a company engaged in the business of manufacture and  
sale of chemicals and has its plant at village Mohane, Taluka Kalyan,  
District Thane. The aforesaid electricity transmission towers are being  
constructed on the application dated 2<sup>nd</sup> May 2016 made by the appellant  
to the MSEDC for Line In Line Out (LILO) on 100 KV  
MohaneAmbernath DC TL. Thereupon, the sanction was granted by  
E   the Maharashtra State Electricity Transmission Co. Ltd (‘MSETCL’ for  
short) vide letter 24<sup>th</sup> May 2017 subject to various terms and conditions  
including that the right to way problem for laying of line is to be sorted  
out by the appellant at its cost.

4. The present appeal impugns the judgment and order dated 9<sup>th</sup>  
F   January 2019 passed by the High Court of Bombay, which dismisses  
Writ Petition (Stamp) No. 19175 of 2018, and thereby affirms the order  
passed by the trial court and the first appellate court restraining the  
appellant and the second respondent by way of temporary injunction  
from “making holes for erecting poles on any part of the suit lands without  
following due process of law”.

G           5. A number of issues and contentions have been raised before us  
but we are not inclined to enter into a detailed discussion, for we are  
dealing with an interim injunction order and are inclined to grant relief to  
the appellant subject to certain conditions, leaving the main issues to be  
decided and adjudicated in the civil suit and under the provisions of the

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Indian Telegraph Act, 1885 ('Telegraph Act' for short) read with the Electricity Act, 2003 ('Electricity Act' for short). A

6. There were certain lapses on the part of the MSETCL/MSEDCL and the appellant, as has been noticed in the impugned order, on account of the failure to take necessary permission from the District Magistrate when there was obstruction and objection to the work of erecting the electricity transmission towers on the first respondent's land. However, it is an accepted and admitted position that pursuant to the interim order passed by the first appellate court on 25<sup>th</sup> April 2018, the appellant had initiated appropriate proceedings through licensing authority before the District Magistrate, Thane and thereupon vide order dated 28<sup>th</sup> August 2018 necessary permission for erection of the towers and setting up transmission line has been granted subject to payment of compensation to the first respondent in terms of Section 16(1) to Section 16(4) read with Section 10 of the Telegraph Act. It is correct that the interim order dated 25<sup>th</sup> April 2018 was set aside by the Bombay High Court vide order dated 17<sup>th</sup> May 2018, *albeit* it is an accepted position that as a matter of fact the electricity transmission towers on the land of the first respondent have already been constructed. Therefore, and in a way, the MSEDCL is already using the land of the first respondent. The appellant has highlighted and the MSEDCL affirms that 80% of the work of laying the transmission line is already over and but for the injunction order under challenge the transmission line would have been activated and operationalised. Clearly, therefore, the balance of convenience does not justify passing of an interim injunction order in favour of the first respondent. It is also accepted that the District Magistrate, Thane vide order dated 28<sup>th</sup> August 2018 has granted the necessary permission for erection of the towers and setting up of the transmission line on the land of the first respondent. The relevant portion of this order, which has not been set aside, reads as under: B  
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“[...] Therefore, the line plan finalised is the most proper plan. Therefore, in respect of losses to be caused, proper compensation as may be fixed by the Hon'ble District Magistrate will be paid to the concerned. G

That means, overall by considering all options suggested by concerned, technically most proper line is found to have been included by MSETCL with their aforesaid letter dt. 30/07/2018. Further as per proviso in Section 10(d) of Indian Telegraph Act, H

- A while exercising the said power action will be taken to pay full compensation in respect of their losses to all interested persons, after ensuring that minimum loss will be caused.”

7. On the aspect of use of land belonging to a third party for setting up of the electricity transmission line, we would refer to the judgment of this Court in *Power Grid Corporation of India Limited v. Century Textiles and Industries Limited and Others*<sup>1</sup> wherein a Division Bench of this Court while examining Section 164 of the Electricity Act had observed that the appropriate Government may by order in writing for the purpose of placing of electric lines or electrical plant for the transmission of electricity necessary for the proper coordination of works, confer on any public officer, licensee or any other person engaged in the business of supplying electricity under the Electricity Act any of the powers that the telegraph authority possesses under the Telegraph Act with respect to the placing of the posts and lines for the purposes of a telegraph. This conferment of powers would be subject to such conditions and restrictions, if any, that the appropriate Government may impose and the provisions of the Telegraph Act. Reference was made to Sections 10<sup>2</sup> and 16<sup>3</sup> of the Telegraph Act which postulates the power of the telegraph authority to maintain telegraph lines and posts and the

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<sup>1</sup> (2017) 5 SCC 143

- E <sup>2</sup> **Section 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: -

- F (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
- G (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.

- H <sup>3</sup> **Section 16. Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority.**

provisions relating to compensation in exercise of those powers. Clause (d) to Section 10 requires that the telegraph authority shall do as limited damage as possible in exercise of powers to place and maintain telegraph lines and posts, and full compensation shall be paid to all persons interested for any damage sustained by them. Sub-section (1) to Section 16 states that in case of resistance or obstruction in respect of powers exercised by the telegraph authority under clause (d) to Section 10, the District Magistrate may in his discretion make an order that the telegraph authority shall be permitted to exercise the powers. Sub-section (3) to Section 16 states that if any dispute arises with regard to the sufficiency of the compensation to be paid under clause (d) to Section 10, the District Judge within whose jurisdiction the property is situated shall determine the compensation. On the legal effect of these provisions, this Court had observed:

“21. 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 24-12-2003 exercisable under the 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 Telegraph Act, 1885, it acquires all such powers which are vested in a telegraph authority under

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- (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 this 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

A the provisions of the Telegraph Act, 1885 including power to eliminate any obstruction in the laying down of power transmission lines. As per the provisions of the 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 Telegraph Act, 1885 empowering the licensee to lay telegraph lines, applied the same, as it is, for laying down the electricity transmission lines.

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D 23. Section 10 of the 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 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 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 persons interested for any damage sustained by them by reason of the exercise of those powers.

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26. We also do not find that the action of the Power Grid, in the given circumstances, by not shifting the transmission lines was

G 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:

H 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.

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 lands 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 m from the 400 kV 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 11-3-2008. The Division Bench did not differ with any of these findings.”

The decision highlights the imperative and the need for unobstructed access for laying down the electricity transmission lines in the larger public interest as these are essential requirements for growth and development of the country, economy and well-being of the citizens.

8. Counsel for the first respondent had submitted that the ratio of the aforesaid decision is not applicable as the electricity transmission line in the present case is for the benefit of the appellant and not for the public at large. This is factually disputed by the appellant. The MSETCL in its affidavit has stated that the installation of transmission lines for the generation of High Voltage Electricity is a policy decision of the Government and for the public benefit at large. The service line even if



A is in the nature of “Dedicated Distribution Facilities” has no exclusivity and the MSETCL would be entitled to tap the said service line for providing electricity to other consumers. This factual aspect would be a subject matter of the trial. It would not be appropriate at this stage to disregard the statement made by the MSETCL to stall the setting up and activation of the electricity transmission lines.

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9. During the course of hearing, attempts were made by the parties, that is, the appellant and the first respondent, to settle the matter *albeit* the talks had failed as the first respondent wanted the appellant to purchase a substantial portion of the land owned by it. The appellant expressed its inability to purchase a substantial portion of the land as demanded by the  
C first respondent. It was stated by the appellant that it does not require ownership of such a large area of land. We would not like to comment on the aforesaid stands of both sides and have noted the same only to observe that the dispute does have a commercial aspect, that is monetary compensation which we will not like to adjudicate and would leave this  
D issue open, given the order of the District Magistrate, Thane and as the present appeal is directed against an interim order. Continuation of injunction is not warranted and justified in law.

10. We are, therefore, inclined to set aside the impugned order as also the injunction order subject to the appellant making an *ad hoc*  
E payment of Rs. 20,00,000/- (rupees twenty lakhs only) in addition to the payments already made. On the said payment being made to the first respondent, the MSEDCL and their contractors would be entitled to continue and complete the work of erection of the electricity transmission towers on the land of the first respondent. The payment made would be subject to the outcome of the civil suit or the proceedings under the  
F Telegraph Act for quantifying the compensation payable to the first respondent.

11. The appeal is allowed in the aforesaid terms without any order as to costs. All pending applications stand disposed of.

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Bibhuti Bhushan Bose

Appeal allowed.