

# **The Kerala State Electricity Board vs Livisha Etc. Etc on 18 May, 2007**

**Author: S.B. Sinha**

**Bench: S.B. Sinha, Markandey Katju**

CASE NO.:

Appeal (civil) 289 of 2006

PETITIONER:

The Kerala State Electricity Board

RESPONDENT:

Livisha etc. etc.

DATE OF JUDGMENT: 18/05/2007

BENCH:

S.B. Sinha & Markandey Katju

JUDGMENT:

**J U D G M E N T** With CA 1810/06, 1938/06, 1939/06, CA 2774/2007 @ SLP(C) 2658/05, CA 2773/2007 @ SLP(C) 26214/05, CA 2772/2007 @ 1020/06, CA 2771/2007 @ SLP(C) 6451/06, CA 3769/06 and CA 145/07.

S.B. SINHA, J.

1. Leave granted in SLPs.

2. These appeals involving common questions of law and fact were taken up for hearing together and are being disposed of by this common judgment. What would be the amount of compensation for the trees cut and removed by the Kerala State Electricity Board, a body corporate, constituted and incorporated under Electricity (Supply) Act, 1948 is the question involved in these appeals. Indisputably, amount of compensation for the said purpose is determined in terms of the provisions of Section 10, Part III of the Indian Telegraph Act, 1885.

3. Before we embark upon the said question, we may notice the amount of compensation that has been determined by the Appellant-Board as also by the Reference Court being the District Judge.

4. Trees have been cut and removed for drawal of 110 K.V. Electric Line. The Board/Land Acquisition Officer determined the amount of compensation whereupon reference was made. The learned District Judge while determining the amount of compensation followed a judgment of 5 Judge Bench of the Kerala High Court in Kumba Amma v. K.S.E.B. [2000 (1) KLT 542], holding that

annuity thereof shall be calculated on the basis of 5% return. Revision applications having been filed thereagainst. The High Court in some cases, as noticed hereinbefore, enhanced the amount of compensation, fixing the rate of diminution at 50% instead of 40%.

5. It is not in dispute that the High Court of Kerala at different point of time took different views in the matter. To begin with, in Kerala Electricity Board v. Thomas [1961 KLT 238], it was held that the principle which should be resorted to for the said purpose is annuity method. Fair return of 5% interest per annum was held to be reasonable for calculating the amount of compensation. Allegedly, the Board was following the principle laid down in the said judgment in determining the amount of compensation.

6. The question again came up for consideration before the High Court in K.S.E. Board v. Marthoma Rubber Co. Ltd. reported in 1981 KLT 646, wherein a Full Bench of the said Court opined that it would be safe to adopt the means of return on a fixed deposit for the usual period of 5 years or 63 months whichever is held reasonable and anticipated return for long term basis. The usual bank rate of interest at the relevant point of time was 10% for long term deposits, i.e., over 5 years. The said rate of interest was adopted by the Board to be a fair return and the amount of annuity was being calculated on the said basis. However, in Kumba Amma (supra), a 5 Judge Bench of the High Court opined that inflation was a relevant factor which should be taken into consideration while computing the amount of compensation for destruction of trees.

7. We may, however, notice that in one of the impugned judgments, a learned Single Judge of the High Court held :-

"The court below has fixed the land value at Rs.20,000/- per cent and the rate of diminution at 40%. Taking Exhibits A1 and A2 produced, the lower court is correct in fixing the land value at Rs.20,000/- per cent cannot be the reasonable land value in this case. Hence I fix the land value in this case at Rs.30,000/- per cent. So also the rate of diminution in land value is fixed at 50% instead of 40% fixed by the court below. The order passed by the court below is modified accordingly."

No reason has been assigned in support of the above view. The materials placed on record were not analysed. Why such a view was taken also does not appear from the records of the case. The amount of compensation is required to be determined keeping in view the purpose and object of the statute. There cannot be any fixed formula therefor or the other. Although, undoubtedly one formula laid down, may assist the Board and/or Reference Court to apply the same but there cannot be hard and fast rule in this behalf. A fixed formula for determining the amount of compensation although may make the task of the Land Acquisition Officer or the Reference Court easier but in our opinion each case is required to be taken on its own merit. We may hasten to add that the purpose and object of the Act and the methodology laid down therein for the purpose thereof should be the guiding factor. The 5 Judges Bench of the Kerala High Court referred to a large number of decisions which are applicable in the cases of death or fatal accident. It is from that point of view that the 5 Judges Bench proceeded to consider as to what is meant by 'real rate of interest'. Ultimately opining that 5% return as held in the case of Thomas (supra) and not a higher rate of interest as observed in K.S.E

Board (supra) should be the guiding factor, it was held :-

"The dispute in this case arose when trees standing in petitioners' property were cut down on 9.9.1980. The respondents have not made available before us any material to show that the real rate of interest in 1980 was something different from 5%. Their only contention based on 1981 KLT 646 is that what is relevant is the prevalent rate of interest which was 10%. This contention we have already rejected, as such rate does not take into account the factor of inflation. Under these circumstances, we hold that the rate of interest to be applied in the present case is 5%. We hasten to add that we should not be understood as having laid down 5% as the real rate of interest for subsequent period. The rate of interest applicable in India has been held as 4% by Jagannadha Rao, J. in AIR 1988 AP 89. 11 years have lapsed after the above judgment. Whether it should be the same rate of return that has to be applied for the period before and after the above judgment or whether a higher or lower rate, is a matter to be decided in appropriate cases where relevant data is available. Till such time, the Board will adopt 5% as rate of return. But, we make it clear that cases finally concluded by decisions of the Court will not be reopened."

8. The Indian Telegraph Act was enacted to amend the law relating to telegraphs in India. Section 51 of the Indian Electricity Act, 1910 reads as under:-

"51. Exercise in certain cases of powers of telegraph authority.- Notwithstanding anything contained in sections 12 to 16 (both inclusive) and sections 18 and 19, the State Government in the case of intra-State transmission system, may, by order in writing, for placing of electric supply- lines, appliances and apparatus for the transmission of energy or for the purpose of telephonic or telegraphic communication necessary for the proper coordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying energy to the public under this Act, subject to such conditions and restrictions (if any) as the State Government may think fit to impose, and to the provisions of the Indian Telegraph Act, 1885 (3 of 1885), any of the powers which the telegraph-authority possesses under the 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 establishment or maintained."

9. Both telegraph lines and electrical lines are required to be drawn over the agricultural lands and/or other properties belonging to third parties. In drawing such lines, the entire land cannot be acquired but the effect thereof would be diminution of value of the property over which such line is drawn. The Telegraph Act, 1885 provides for the manner in which the amount of compensation is to be computed therefor. Section 10 of the Act empowers the authority to place and maintain a telegraph line under, over, along or across, or posts in or upon any immovable property. Section 11 empowers the officers to enter on property in order to repair or remove telegraph lines or posts. Section 12 empowers the authority to grant permission for laying down such lines to a local authority in terms of clauses (c) & (d) of the proviso to Section 10 of the Act subject to reasonable

conditions as it may think fit. Section 16 of the said Act reads as under :-

"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 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 persons who has received the same."

10. The situs of the land, the distance between the high voltage electricity line laid thereover, the extent of the line thereon as also the fact as to whether the high voltage line passes over a small track of land or through the middle of the land and other similar relevant factors in our opinion would be determinative. The value of the land would also be a relevant factor. The owner of the land furthermore, in a given situation may lose his substantive right to use the property for the purpose for which the same was meant to be used.

11. So far as the compensation in relation to fruit bearing trees are concerned the same would also depend upon the facts and circumstances of each case.

12. We may, incidentally, refer to a recent decision of this Court in Land Acquisition Officer, A.P. v. Kamandana Ramakrishna Rao & Anr. reported in 2007 AIR SCW 1145 wherein claim on yield basis has been held to be relevant for determining the amount of compensation payable under the Land Acquisition Act, same principle has been reiterated in Kapur Singh Mistry v. Financial Commission & Revenue Secretary to Govt. of Punjab & Ors. 1995 Supp. (2) SCC 635, State of Haryana v. Gurcharan Singh & Anr. 1995 Supp. (2) SCC 637, para 4, and Airports Authority of India v. Satyagopal Roy & Ors. (2002) 3 SCC 527. In Airport Authority (Supra), it was held :-

"14. Hence, in our view, there was no reason for the High Court not to follow the decision rendered by this Court in Gurucharan Singh's case and determine the compensation payable to the respondents on the basis of the yield from the trees by applying 8 years' multiplier. In this view of the matter, in our view, the High Court committed error apparent in awarding compensation adopting the multiplier of 18."

13. We are, therefore, of the opinion that the High Court should consider the matter afresh on the merit of each matter having regard to the fact situation obtaining therein. The impugned judgments, therefore, cannot be sustained. These are set aside accordingly. The matters are remitted to the High Court for consideration thereon afresh. The appeals are allowed. In the facts and circumstances of the case, there shall be no order as to costs.