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W.A.Nos.439 and 440 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.Nos.439 and 440 of 2022

T.Akshaya

.. Appellant in
W.A.No.439/2022

- 1.M.Muniyappa
- 2.Yaaseen Khan
- 3.Sampangiyappa
- 4.Narayanappa
- 5.Sameer Khan
- 6.Ramaiha
- 7.Thanappa

.. Appellants in
W.A.No.440/2022

Vs

1.The State of Tamil Nadu,
rep. by the Principal Secretary to Government,
Department of Energy,
Government of Tamil Nadu,
Fort St. George, Chennai-600 009.

2.The Chairman,
TANTRANSCO,
10th Floor, NPKRR Maaligai,
144, Anna Salai, Chennai.



W.A.Nos.439 and 440 of 2022

WEB COPY

3.The Chief Engineer,
Civil Transmission,
TANTRANSCO,
144, Anna Salai,
Chennai-600 002.

4.The Superintending Engineer,
General Construction Circle,
Tamil Nadu Transmission Corporation,
Krishnagiri.

5.The District Collector,
Krishnagiri District, Krishnagiri.

.. Respondents
1 to 5 in both
the appeals

6.Exide Industries Limited,
rep. by its Authorised Signatory
Siddappa Shivarappa Nimbale,
Having its registered office at
Exide House, 59E, Chowringhee Road,
Kolkata-700 020.

.. Respondent No.6
in W.A.No.440/2022

Writ Appeals filed under Clause 15 of the Letters Patent, against the
common order dated 11.02.2022 in W.P.Nos.8322 and 8366 of 2020.

For the Appellants : Mr.Prashant Bhushan
Senior Counsel
for M/s.K.Jayasudha

For the Respondents : Mr.J.Ravindran
Addl. Advocate General
assisted by
Mr.L.Jaivenkatesh
for respondent Nos.1 and 5
in both appeals



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W.A.Nos.439 and 440 of 2022

: Mr.Sricharan Rangarajan
for Mr.K.Gowtham Kumar
for respondent No.6
in W.A.No.440 of 2022

COMMON JUDGMENT

(Delivered by the Hon'ble Chief Justice)

By these writ appeals a challenge is made to the judgment dated 11.2.2022, whereby the writ petitions preferred by the petitioners/appellants were dismissed.

2. The writ petitions were preferred by petitioners/appellants to challenge the proceedings in Memo dated 26.10.2018 on the file of the third respondent granting approval for erection of 110 KV DC Line on DC Towers with panther conductor for making LILO or the Hosur-Zuzuvzadi-Bagalur 110 KV Feeder at proposed Sevaganappalli 110 KV SS. The challenge was made in reference to Article 14 of the Constitution of India and even alleging breach of the order passed by a Division Bench of the Madurai Bench of the Madras High Court.

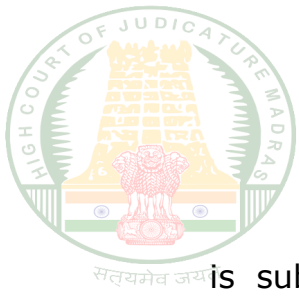


W.A.Nos.439 and 440 of 2022

WEB COPY

3. Learned Senior Counsel for the appellants submitted that the respondents took a decision to erect the DC Towers for laying 110 KV DC Line for supply of electricity to the sixth respondent, i.e., Exide Industries Limited. It is for creation of a sub-station for appropriate supply of electricity to the said company. Based on the proposal and sanction, a resolution was taken to erect 32 DC Towers for laying 110 KV DC line. The work commenced in the year 2019 and, accordingly, towers were erected, but when it came to the agricultural fields of the appellants, it was realized that laying of the high tension transmission lines is not only against the distance norms, but would cause health hazards.

4. Referring to the studies on the subject by the World Health Organization, it was submitted by learned Senior Counsel for the appellants that exposure to low frequency magnetic fields may result in leukaemia among children and, therefore, any transmission line passing through the habitats may result in cancer to persons residing therein. A further study of environmental research has also been referred to indicate the possibility of brain tumor where the residence is in proximity to power lines. In reference to the aforesaid studies, it



W.A.Nos.439 and 440 of 2022

WEB COPY

is submitted that laying of the transmission lines would be health hazardous to the residents of the villages. However, ignoring the aforesaid the respondents are hellbent to complete the work and the learned Single Judge failed to consider the aforesaid aspect while dismissing the writ petitions.

5. In support of the aforesaid submission, a reference of the order passed by the Division Bench of the Madurai Bench in ***R.Palanisamy v. Union of India and others*** [order dated 24.4.2019 made in W.P. (MD) No.9772 of 2019] was given, where in reference to the study of the World Health Organization, a direction was given that if the projects have already been commenced by spending more than 50% of the costs, the respondents need not refrain from proceeding further. The direction sought in the writ petition was not given, but cognizance of the report of the World Health Organization was taken.

6. The learned Single Judge had ignored the order of the Madurai Bench in the case of ***R.Palanisamy v. Union of India and others***, supra, mainly on the ground that in the instant case 75% of the work has already been completed, whereas that could not have been the



W.A.Nos.439 and 440 of 2022

WEB COPY

criteria, and otherwise only 50% work or less than it was completed. Therefore, a challenge to the judgment in reference to the aforesaid finding has been made.

7. A challenge is also made in reference to the distance norms provided for laying transmission lines. For a transmission line of voltage 110 KV, the width of right of way is 22 metres. The norms aforesaid have not been adhered to by the respondents despite being mandatory and such norms cannot be violated on the ground that 50% or 75% of work has already been completed. Therefore, the prayer is to set aside the judgment with a direction to the respondents either to change the alignment of high tension transmission line to the sub-station or to make it underground.

8. Apropos the aforesaid submission, a reference of the Gujarat model has been given which shows that laying of underground transmission lines would not affect the livelihood of the farmers who depend on agricultural lands, though cost of laying underground transmission lines may be more. It is submitted that the appellants are willing to bear the costs to some extent in case the respondents



W.A.Nos.439 and 440 of 2022

WEB COPY

accede to their request for laying underground transmission lines.

Therefore, the prayer is to allow the appeals and set aside the judgment with a direction to the respondent authorities either to realign the line or lay underground transmission lines.

9. The appeal is contested vehemently by learned Additional Advocate General appearing for the respondent authorities. It is submitted that there is no error in the judgment warranting interference of this court. The learned Single Judge has dealt with each and every aspect of the matter after taking note of the facts of the case, which have not been correctly referred by learned counsel for the petitioners.

10. It is submitted that 24 DC Towers out of 32 DC Towers were erected even in the year 2019 itself, leaving only 8 DC Towers to be erected, which could not be erected because of the interim order passed by the learned Single Judge. In fact, it has delayed the project unnecessarily and, that too, when the transmission line is to create a sub-station not only to serve the sixth respondent, but to the adjacent villages having low voltage issues. In any case, from the figures given



W.A.Nos.439 and 440 of 2022

WEB COPY

above, it comes out that more than 75% of the work has already been completed and, therefore, the learned Single Judge has rightly mentioned the facts aforesaid. Without refuting the said factual finding, the appellants are challenging the judgment passed by the learned Single Judge and, therefore, such challenge cannot be sustained.

11. In response to the submission made by learned Senior Counsel for the appellants that residences have been constructed by some of the appellants and, therefore, the overhead transmission lines should not be laid, learned Additional Advocate General, while clarifying the facts, submitted that out of seven appellants in W.A.No.440 of 2022, the erection of towers is not in the agricultural fields of appellant Nos.1, 2, 3 and 6 in W.A.No.440 of 2022 and even transmission lines would not be passing over their residences. Three towers would be erected in the agricultural fields of appellant Nos.4, 5 and 7 in W.A.No.440 of 2022, one tower each in their agricultural lands. The work would have been completed in the year 2019 or 2020, but because of the interim order it could not be carried out and taking advantage of the interim order, the construction of the house



W.A.Nos.439 and 440 of 2022

WEB COPY

was raised much subsequent to the commencement of the project work. He submitted that the act of the appellants shows their malafide intention to somehow frustrate the project already sanctioned in larger public interest. Thus, the argument that the transmission lines would be laid without maintaining the distance norms is not correct inasmuch as such a ground was created by the appellants by raising the construction in agricultural fields and, that too, in violation of the rules. In any event, it is submitted that the construction was raised after the commencement of the erection work and, therefore, there is no bona fide on the part of the appellants to challenge the laying of the transmission lines.

12. It is the further case of the respondent authorities that whatever studies have been referred by learned Senior Counsel for the appellants are not applicable to the situation in our country. The World Health Organization has made recommendations, but if the facts are analysed, it is evident that those studies are made considering the situation obtaining in that country. No incidents of cancer have been reported by virtue of the passing of overhead transmission lines, though even in the State of Tamil Nadu there are many hutments,



W.A.Nos.439 and 440 of 2022

WEB COPY

agricultural fields and villages, where overhead transmission lines are passing. The environmental studies referred by learned Senior Counsel for the appellants are in reference to the countries like Norway, Sweden, Netherlands, etc., and if those studies are applied, then the respondents cannot lay even the power line because it is not in reference to the HT Line, but even power line cannot be laid in close proximity to the residence. He submitted that those studies cannot be relied, because no survey has been conducted in reference to our country. The prayer is, accordingly, to dismiss these appeals as all aspects concerned with the matter have been disuccsed by the learned Single Judge with elaborate discussion and conclusion.

13. We have considered the rival submissions of the parties and scanned the matter carefully.

14. The writ petitions were preferred on a decision taken by the respondent authorities to sanction the project for laying 110 KV DC Line to a sub-station. The allegation levelled by the appellants is that the sub-station is being established solely for the purpose of supply of electricity to Exide Industries Limited, the sixth respondent in



W.A.Nos.439 and 440 of 2022

W.A.No.440 of 2022.

WEB COPY

15. The aforesaid contention has been rebutted by learned Additional Advocate General referring to the fact that the sub-station would be supplying electricity not only to Exide Industries Limited, the sixth respondent in W.A.No.440 of 2022, but even to adjacent villages facing low voltage problem.

16. This court would not like to comment on the aforesaid because the ultimate object with which a project is approved lies within the domain of the respondent authorities and challenge cannot be made only on the ground that the sub-station is going to be created only for the benefit of one company, unless such challenge is sustainable on legal grounds. In the case on hand, learned Additional Advocate General has categorically submitted that the sub-station would also cater to the needs of the adjacent villages facing low voltage issues. In view of the above, we cannot doubt the bona fides of the respondent authorities in conceiving and approving the project for laying 110 KV DC Line on DC Towers.



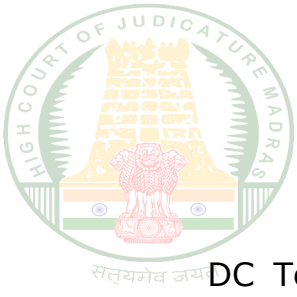
W.A.Nos.439 and 440 of 2022

WEB COPY

17. The issue that is, however, required to be considered is as to whether the said project is opposed to any legal provision. A reference to the distance norms has been given by learned Senior Counsel for the appellants to show that for laying 110 KV line, width of right of way of 22 metres is to be maintained. It has also been pointed out that one of the constructions shown in the photographs is at a distance of less than 22 metres, which infringes the distance norms to be followed by the respondent authorities.

18. The issue aforesaid has been opposed by learned Additional Advocate General appearing for the Electricity Board stating that the construction of the building was raised much after the commencement of the work.

19. If the construction was raised knowing about the project and even after the project work commenced in the year 2019 with erection of many towers as submitted by learned Additional Advocate General, we cannot accept the argument of learned Senior Counsel for the appellants regarding distance norms, as one cannot be permitted to tinker with the situation knowing about the alignment of laying of the

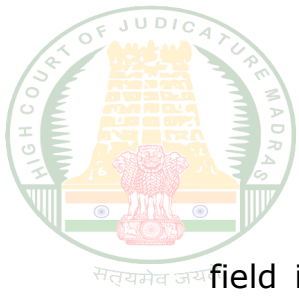


W.A.Nos.439 and 440 of 2022

WEB COPY

DC Towers. It is more so when 24 towers out of 32 towers have already been erected. It is only due to the interim order, the remaining towers could not be erected, out of which only three towers would be passing through the agricultural fields of the appellant Nos.4, 5 and 7 in W.A.No.440 of 2022. Insofar as appellant Nos.1, 2, 3 and 6 in W.A.No.440 of 2022 and the appellant in W.A.No.439 of 2022 are concerned, no reason has been given for filing the appeals or the writ petitions. It is not their grievance that transmission lines are laid near their residential houses in violation of the norms. Therefore, the bona fide of the said appellants in filing of the writ petitions itself is doubtful.

20. When a project is approved considering the larger public interest, the alignment of laying the transmission line cannot be changed as per the wishes of one or two parties, rather it has to be decided by experts and laid accordingly. Moreover, the judgment under challenge shows that on a dispute raised by the appellants, the Revenue Divisional Officer and Village Administrative Officer were directed to physically inspect the site and inform as to whether the route adopted by the experts was the best. The said authorities, in

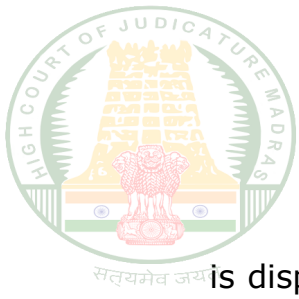


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field inspection, held that the route suggested by the experts is the best route. To avoid repetition, the relevant paragraph of the impugned judgment is quoted hereunder:

"38. Therefore, feasibility is one of the main concerns which needs to be addressed coupled with balancing the conflicting interests, which are the pivotal points to be considered while considering the proposal for alternative route. It has been laid down that those aspects are to be best left to experts and this Court should not sit in the chair of the experts to find out whether the decision taken is proper or not so long as the said decision is within the domains of legality and rationality. In the case on hand, the technical experts have chosen a particular route, which has been endorsed to be the best route by the Revenue Divisional Officer and the Village Administrative Officer on conduct of field inspection. Such being the case, this Court, under the guise of judicial review, cannot import its decision to that of the experts in the field. "

21. The next issue to be considered is what extent of work has been completed. It is the submission of the learned Additional Advocate General that 24 towers out of 32 towers have been erected and 75% of the work has already been completed, though the said fact



W.A.Nos.439 and 440 of 2022

WEB COPY

is disputed by learned Senior Counsel for the appellants on the ground that erection of the tower is not the end of the matter, rather transmission lines are yet to be laid. The fact aforesaid has been disputed by learned Additional Advocate General stating that the process of laying transmission lines on the 24 DC Towers is at the last stage.

22. In any event, the fact aforesaid shows that more than 50% of the work has not only been completed, but work relating to laying of transmission lines is in progress. At this stage, if we direct the realignment of transmission lines, it would tantamount to substituting the view of the experts, which is substantiated by the view of the Revenue Divisional Officer and the Village Administrative Officer. That is not the jurisdiction of the court. In our view, the learned Single Judge has rightly held that the court cannot import its decision to that of the experts in the field. The said plea, therefore, does not merit consideration.

23. The issue that now remains is as to whether underground transmission lines can be laid at this stage. A reference of the Gujarat



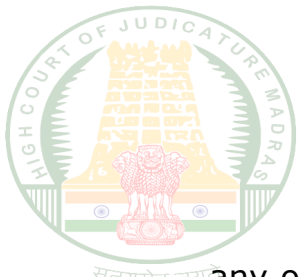
W.A.Nos.439 and 440 of 2022

WEB COPY

model has been given, but it cannot be imposed on the respondent authorities because they have wisdom to decide as to whether to go with underground transmission lines or overhead lines. This court cannot thrust the opinion of the appellants upon the respondents to go for underground transmission lines for the remaining towers. It is for the reason that 24 towers have already been erected and transmission lines are being laid.

24. The next plank of the argument of learned Senior Counsel for the appellant is that the learned Single Judge has failed to consider the Division Bench judgment of the Madurai Bench in the case of ***R.Palanisamy v. Union of India and others***, supra.

25. From a perusal of the judgment under challenge, it is amply clear that the learned Single Judge, while dismissing the writ petitions, in the last two paragraphs, has recorded his opinion as to how new projects should be planned, while rejecting the request of the appellants to direct the respondent authorities to realign the project only at the instance of few affected parties. The learned Single Judge also observed that the appellants failed to point out the violation of



W.A.Nos.439 and 440 of 2022

WEB COPY

any of the provisions of the Indian Telegraph Act or the Electricity Act.

The learned Single Judge also made a reference of the judgment of the Apex Court to show that as per the Indian Electricity Act and provisions therein the transmission line can be laid on the agricultural field, though subject to payment of compensation for use of part of the land. The reference of the judgment has been given by the learned Single Judge. Thus we would not like to repeat the same.

26. For the foregoing reasons, we do not find any merit in the appeals and the same are, accordingly, dismissed. There will be no order as to costs. Consequently, C.M.P.Nos.3226 and 3231 of 2022 are closed.

27. At this juncture, learned counsel for the appellants submitted that a direction be given to the respondent authorities to at least maintain the norms given under Regulation 61 of Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations, 2010 relating to where the minimum distance required to be maintained is 4.1 metres. The aforesaid has also been opposed by learned Additional Advocate General stating that the distance required



W.A.Nos.439 and 440 of 2022

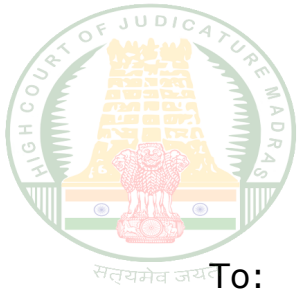
to be maintained is 2.75 metres under Rule 80 of the Indian Electricity Rules, 1956.

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28. Since the issue aforesaid is raised for the first time, the appellants may raise the issue aforesaid afresh with the respondent authorities, who may examine the matter, as laying of the transmission lines should not be in violation of the Rules and Regulations applicable on the issue. It is made clear that the dismissal of the writ petitions and also the writ appeals would not, in any way, come in their way to consider the issue.

(M.N.B., CJ) (D.B.C., J.)
04.03.2022

Index : Yes/No
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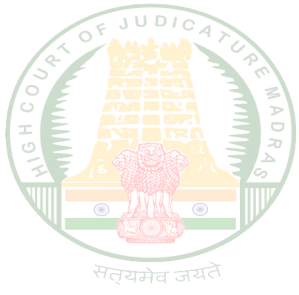


W.A.Nos.439 and 440 of 2022

To:

WEB COPY

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Department of Energy,
Government of Tamil Nadu,
Fort St. George, Chennai-600 009.
- 2.The Chairman,
TANTRANSCO,
10th Floor, NPKRR Maaligai,
144, Anna Salai, Chennai.
- 3.The Chief Engineer,
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W.A.Nos.439 and 440 of 2022

THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.

(sasi)

W.A.Nos.439 and 440 of 2022

04.03.2022