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**JINADASA  
VS  
CEYLON ELECTRICITY BOARD AND OTHERS**

COURT OF APPEAL  
SRIPAVAN, J.  
SRISKANDARAJAH, J.  
CA 2080/03  
SEPTEMBER 7, 14, 2004  
OCTOBER 26, 2004  
NOVEMBER 5, 2004

*Writ of Certiorari - Electricity Act - Sections 12, 13, 15 - Drawing of electricity lines - No Inquiry held - No procedural fairness - proper procedures not followed - consequences.?*

2-CM 6553

The 1st Respondent - Ceylon Electricity Board was carrying out a Project, to draw a power line from Matara to Tangalle. As the line was to be drawn over a portion of the land belonging to him, the Petitioner lodged his written objections with the 3rd Respondent. An inquiry was held in 1999 and at the Inquiry it was assured that the power line would not affect the foundation already laid in his land for a house. In 2002, the 3rd Respondent began to excavate 15ft. behind the house already built in order to erect a tower, contrary to the previous undertaking given to the Petitioner. The power line according to the Petitioner, if drawn would go over his house for which he did not consent. The Petitioner sought to quash the said decision as no Inquiry was held, before the impugned decision was taken.

#### HELD

- (i) Electricity Act provides the procedure to be adopted with regard to installing electricity lines. Section 13 makes it mandatory that specifications, plans, drawings of the area of supply of electricity must show the route of each such electric line. These documents were not produced to Court by the Respondents.
- (ii) Where proper procedures are not followed, the Court will not hesitate to strike down the impugned order as being ultra vires. Had the 1st Respondent followed the procedure spelt out in Section 15, this Court would have been in a position to ascertain whether in fact there was a deviation of the power line which was approved by the Chief Electrical Inspector and produced before the 2nd Respondent (Divisional Secretary) at the Inquiry.
- (iii) The procedure followed by the 1st and 2nd Respondents is flawed.

APPLICATION for a Writ of Certiorari

Mohan Pieris P. C., with Ms. Nuwanthi Dias for the Petitioner.

Ms. B.Thilakaratne, D. S.G., for Respondents.

*cur.adv. vult.*

January 10, 2005

**SRIPAVAN, J.**

The first respondent Board was carrying out a project to draw a power line from Matara to Tangalle. The petitioner came to know that the said line was to be drawn over a portion of the land belonging to him. Hence,

the petitioner lodged his written objections with the third respondent. The petitioner alleges that thereafter an inquiry was held by the second respondent in the year 1999 and states that at the inquiry it was assured that the power line would not affect the foundation already laid in his land for a house. However, in the year 2001 the third respondent entered the petitioner's land, demarcated a corridor for the said line and requested him to clear the said portion of the land which the petitioner did without any protest. Accordingly 20 coconut trees, 4 jak trees and 12 other trees in the said demarcated portion of the land were felled and the first respondent paid compensation to the petitioner in a sum of Rs.46,250. It is to the petitioner's surprise that on 5th November 2002, the third respondent began to excavate 15 feet behind the house already built by the petitioner in order to erect a tower which the petitioner alleges contrary to the previous undertaking given to him. The power line, according to the petitioner if drawn would go over his house for which he did not consent. The petitioner states that he was not summoned for the purported site inspection nor was given any hearing before a decision to draw the power line over his house was taken. Accordingly, the petitioner seeks to quash the decision contained in the letter dated 9th July, 1999 marked P7 which the respondents claim to be the decision to draw the power line over the petitioner's house.

The learned Deputy Solicitor General submitted that as averred in paragraph 21 of the affidavit of the second respondent dated 28th April 2004, the construction of the tower and the drawing of lines were done in accordance with the route approved by his predecessor based on a rough sketch produced by the first respondent. In this context, it may be relevant to consider, *inter alia*, the nature and scope of Sec. 15 of the Electricity Act which can be summarised as follows :-

- (1) The first respondent or a person authorised by it is entitled to enter upon any land after giving one weeks notice in order to carryout the works referred to in Sec. 12.;
- (2) Prior to the carrying out the works referred to in Sec. 12, the first respondent shall give thirty days notice in terms of Sec. 15 (3) as fully and accurately as possible the nature and extent of the acts intended to be done.;

- (3) Any person affected by such notice may within fourteen days is entitled to lodge a written objection with the Government Agent to any of the intended acts of the first respondent ;
- (4) The Government Agent shall in writing notify such objection to the first respondent and fix date for hearing ;
- (5) The objector shall be informed of the date of hearing.

Thus, the Electricity Act provides the procedure to be adopted with regard to installing electricity lines. Sec. 12(3) of the said Act specifically states that the first respondent shall not execute any of the works enumerated in Column 1 (which includes laying of electric lines) of Subsection 1 except in accordance with specifications, plans and drawings approved by the Chief Electrical Inspector. Column 2 in Sec. 13 of the said Act makes it mandatory that specifications, plans and drawings of the area of supply of electricity must show the route of each such electric line.

Though the second respondent in Paragraph 8 of his affidavit concedes that an inquiry was held in terms of Sec. 15 of the said Act, neither the specifications nor the plans and drawings of the area of supply showing the route of the electric line were produced before court. On the other hand, the petitioner in Paragraphs 8 and 9 of his affidavit dated 28th November, 2003 alleges that he lodged written objections with the third respondent as he was made to understand that the line would be drawn over a portion of his land. This allegation was accepted by the third respondent in his affidavit dated 29th April, 2004.

No procedure had been laid down in the Electricity Act to lodge objections with the third respondent. Since the petitioner on his own volition lodged objections with the third respondent, the only inference that could be drawn was that the first respondent failed to give the petitioner thirty days notice in terms of Sec. 15(3) specifying accurately the nature and extent of the acts intended to be done together with plans and drawings of the area of electricity supply showing the route of such line. It is only after such a notice is given the petitioner is legally entitled to lodge his objections with the Government Agent. It is imperative that the procedure laid down in the Electricity Act should be properly observed. The provisions of the statute in this respect are supposed to provide safeguards to the petitioner. It is

only by procedural fairness administrative powers are rendered tolerable. When an administrative act is challenged by way of judicial review, the court is concerned with the legality of the order made. Where proper procedures are not followed, the court will not hesitate to strike down the impugned order as being *ultra vires*. Had the first respondent followed the procedure spelt out in Sec. 15, this court would have been in a position to ascertain whether in fact there was a deviation of the route of the power line which was approved by the Chief Electrical Inspector and produced before the second respondent at the inquiry.

The learned Deputy Solicitor General urged that in October, 2001 the trees were marked and felled from the petitioner's land in order to maintain a corridor of sixty feet for the purposes of drawing electricity lines. The first respondent accordingly paid compensation to the petitioner in a sum of Rs. 46,250 on 25th January, 2002 as evidenced by P5. This fact is accepted by the third respondent in Paragraph 12(e) of his affidavit dated 29th April, 2004. Notwithstanding the payment of compensation to the petitioner to the portion of the land already cleared, the first respondent by an undated letter marked P10 requested the petitioner to cut down further 29 trees on or before 17th December, 2003 for which, compensation has been estimated as Rs.38,600. This raises a doubt as to whether the first respondent was trying to deviate from the original route and demanded the petitioner to cut down further trees contrary to the proviso Sec. 17 of the said Act which reads as follows:

"Provided that where compensation has been paid under any of those sections, no further compensation shall be payable for the felling or lopping of any tree or the removal of vegetation which has grown or been allowed to grow or for the removal of any wire which has been fixed after that payment in such a manner as to obstruct or interfere with the electric line or apparatus."

Though counsel for the respondents on 7th September, 2004 moved for time to get instructions with regard to the basis upon which the document marked P10 was sent to the petitioner, no satisfying explanation was tendered to court.

The respondents in their written submissions stated that as long as the power line is in the construction phase and if the officers of the first

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respondent Board are of the opinion that additional trees, outside the 60 feet perimeter should be cleared then they could issue vouchers providing compensation as permitted by law. However, the learned Deputy Solicitor General did not refer to any statutory provision which empowers the first respondent to do so. In view of the foregoing, I conclude that the procedure followed by the first and/or second respondents are flawed. No electric lines could be drawn on a *rough sketch* provided by the first respondent as stated by the second respondent in Paragraph 21 of his affidavit. Accordingly, a writ of certiorari is issued quashing the decision contained in the letter dated 9th July, 1999 marked P7. The petitioner is entitled for costs in a sum of Rs.5,000 payable by the first and the second respondents in equal shares.

**Sriskandarajah, J.** — I agree

*Application Allowed.*

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