

In the High Court at Calcutta
Constitutional Writ Jurisdiction

Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No.9943 of 2023

St. Mary's Technological Foundation and Another
Vs.
The West Bengal State Electricity
Transmission Company Limited and Others

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| For the petitioners | : | Mr. Utpal Das |
| For the WBSETCL | : | Mr. Sumit Kumar Panja Mr. Sumit Roy |
| Hearing concluded on | : | 05.09.2023 |
| Judgment on | : | 25.09.2023 |

Sabyasachi Bhattacharyya, J:-

1. The petitioner no.1 is a company registered under Section 25 of the Companies Act, with the declared object of promoting the educational opportunities in the countries, particularly for the Christian Minorities and students of weaker sections of society.
2. The first petitioner is the absolute owner of the plot-in-question. The second petitioner is a technical campus established by the first petitioner on the said land to serve educational interest of minority communities and weaker sections in eastern India and is approved by several Universities and educational institutions.

- 3.** The grievance of the petitioners is that the respondent no.1-Transmission Company is installing High-Tension overhead line over the said property, thereby virtually rendering it impossible for the petitioners to set up and run the educational institution proposed for the religious minorities and weaker sections of society. It is argued that Article 30 of the Constitution confers rights on minorities to establish and administer educational institutions. Clause (1A) thereof stipulates that in making any law providing for compulsory acquisition of any property of an educational institution established and administered by minorities, the State shall ensure that the amount fixed by or determined under such law for acquisition of such property is such as would not restrict or abrogate the right guaranteed under that Clause.
- 4.** Learned counsel places reliance on the said provision and argues that WBSETCL (West Bengal Electricity Transmission Company Limited) is attempting to violate such constitutionally-guaranteed right of the petitioners.
- 5.** Learned counsel places reliance on the West Bengal Government's Policy and Guidelines for setting up private universities dated January 31, 2013, which was notified in the Official Gazette on February 1, 2013. As per the requirement of the same, in order to set up a university, the land on which the same is set up has to be unencumbered, which provision would not be met if the High Tension (HT) line is continued to be installed over the said property.

- 6.** Learned counsel for the petitioner places reliance on the judgment of *Rev. Sidhajbhai Sabhai and others Vs. State of Bombay and another*, where the purpose of Article 31(1) was discussed. The Supreme Court observed, *inter alia*, that the right established under the said provision is a fundamental right declared in terms absolute. Unlike the fundamental freedoms guaranteed by Article 19, it is not subject to reasonable restrictions, but is intended to be a real right for the protection of the minorities in the matter of setting up of educational institutions of their own choice. The Supreme Court further observed that the right is intended to be effective and is not to be whittled down by so-called regulative measures conceived in the interest not of the minority educational institution, but of the public or the nation as a whole. Otherwise, the right guaranteed under Article 30(1) will be but a “teasing illusion”, a promise of unreality.
- 7.** Learned counsel next cites *The Society of St. Josephs College Vs. Union of India and others*, where the Supreme Court, *inter alia*, held that it is necessary that in a law that provides, in general, for the compulsory acquisition of property, there should be enacted, by amendment thereof, a provision that relates specifically to the acquisition of the property of minority educational institutions which ensures that the amount payable for such acquisition will not in any manner impair the right conferred upon the minorities by Article 30.
- 8.** It is argued that as per the AITCE Rules, State Rules and the UGC (University Grants Commission) Rules, affiliation under which in compliance whereof is necessary for setting up the educational

institution, unencumbered property is a must for setting up a university.

9. It is argued by the petitioners, while controverting the submission of the respondent no.1 that the writ is bad for non-joinder of necessary party, that other entities, if any, are in possession over a small part of the area sought to be encroached by the WBSETCL and, as such, are not necessary parties.
10. Learned counsel for the WBSETCL argues that the right conferred under Article 30 is not absolute. By reading out the language of Article 19 of the Constitution, it is argued that the same pertains to all citizens of India whereas Article 30 pertains only to minority communities. Even Article 21 of the Constitution, it is submitted, refers to all persons, which concept is wider than particular minority communities. It is argued that the courts have settled clearly that the right to get electricity connection is a fundamental right, being a component of Article 21 of the Constitution of India. The transmission line-in-question shall cater to the needs of numerous people in several localities and, as such, such public project ought not to be stalled merely for the inconvenience of a particular institution.
11. Learned counsel, in the said context, places reliance on coordinate Bench judgments of this Court reported at *AIR 2008 Cal 47 [Molay Kumar Acharya Vs. Chairman-cum-Managing Director, W.B. State Electricity Distribution Co. Ltd. & Ors.]* and *AIR 2009 Cal 87 [Fashion Proprietor Aswani Kumar Maity Vs. West Bengal Electricity Distribution Co. Ltd. & Ors.]* in both of which Section 43 was held to be associated

with Article 21, conferring the right on an individual in possession of premises not to be dispossessed therefrom except in accordance with law, implicit in which is the right to get electricity.

- 12.** Learned counsel for the WBSETCL next cites a Supreme Court judgment reported at *(2017) 5 SCC 143 [Power Grid Corpn. of India Ltd. v. Century Textiles & Industries Ltd.]*, where the Supreme Court held that within 410 towers to be erected, 408 had already been erected and the project-in-question was at the verge of completion when the writ petition was filed. It was observed that not only was it unfeasible to change the alignment as almost entire work had already been completed but also the transmission project was of national importance to benefit public at large and to all States through which the said transmission line passed through.
- 13.** 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 the country and the economy and the well-being and progress of citizens, it was held.
- 14.** Learned counsel for the WBSETCL next argues that in the present case, about 17 out of the projected 20 towers have already been installed. Moreover, a Notification was duly published in terms of law regarding the concerned Mouza, before installing the said towers. The petitioners did not, at any point of time, object to such installation.

15. It is next argued that the towers-in-question will not be installed on the property of the petitioners, but only the HT line will run over the same. In any event, the lines would run at a height of 14.2 meters above the ground level and would mostly pass over water-bodies. Hence, the petitioners will not be affected adversely in any manner.
16. It is argued that even the petitioners have sought electricity connection and are using such connection and have expressed their need to draw electricity from High Tension Line.
17. That apart, learned counsel argues that the installation of HT lines does not amount to acquisition of the property but mere user of the same for a limited purpose.
18. Learned counsel cites *Islamic Academy of Education and Another Vs. State of Karnataka and Others*, reported at (2003) 6 SCC 697, for the proposition that Article 30 is not an absolute right. **UP TO THIS**
19. Thus, it is contended, the writ petition ought to be dismissed.
20. Heard learned counsel for the parties. At the outset, the interplay between Article 30(1A) and the other fundamental rights are required to be ascertained in the light of the judgments cited by the parties.
21. Insofar as *Rev. Sidhajibhai Sabhai (supra)* is concerned, the said judgment was delivered by the Supreme Court on August 30, 1962, whereas sub-article (1A) of Article 30 of the Constitution was introduced much later, by the 44th Amendment Act of the Constitution with effect from June 20, 1979. Hence, nothing in the said judgment pertains to the nuances of sub-article (1A) of the Constitution, which is the plinth of the petitioners' case. In any event, the Supreme Court,

in the said judgment, had observed in the context of Article 30(1A) that the same is an absolute right and cannot be diluted by operation of Article 19.

- 22.** Such proposition is not disputed in the present case.
- 23.** Insofar as *The Society of St. Josephs College (supra)* is concerned, the Supreme Court, while considering the context of Clause (1A), refused to accept the submission that the provisions of Clause (1A) of Article 30 should be read into the existing Land Acquisition Act. The Supreme Court observed that it is not necessary that the statute should be enacted exclusively for the compulsory acquisition of the property of minority educational institutions but it is necessary that in a law that provides in general for the compulsory acquisition of property, there should be enacted by amendment a provision that relates specifically to the acquisition of such properties which ensures that the amount payable for such acquisition will not in any manner impair the right conferred upon the minorities by Article 30.
- 24.** In *Islamic Academy of Education (supra)* the Supreme Court, while discussing previous judgments, observed that minorities have a fundamental right to establish and administer educational institutions of their own choice. It was observed that the right under Clause (1) of Article 30 is not absolute, and is subject to reasonable regulations which inter alia may be framed having regard to the public interest and national interest of the country. It was also observed that the right conferred under Article 30(1) cannot be used absolutely and unreasonably. In paragraph 101 of the said judgment, cited by the

WBSETCL, the Supreme Court observed that it will not be a correct proposition of law, on the face of clause (1A) of Article 30 of the Constitution, to contend that the properties of the minority educational institutions cannot be taken over at all. The only right which they have is to get reasonable compensation so as to enable them to establish another educational institution at some other place. It is not necessary to raise a hypothetical question to drive home a point which is of not much consequence and as and when laws are made, their constitutionality will have to be tested on their own merit.

- 25.** The Supreme Court deprecated pre-emptive answers being given on hypothetical questions. In the event running of a minority institution is found to be against the national interest or permissible limits of regulations, it was held that it can be taken over with a view to maintain morality, public order, health, national interest and similar such considerations, which would empower the State to close the institution or take over the management thereof, although the same may be done only in extreme cases. In case of gross mismanagement and violation of the conditions of essentiality certificate also, the State may be held to have the power to close down the institution.
- 26.** Insofar as the present case is concerned, such an extreme situation has not occurred, to prevent the educational institutions being set up by the petitioners.
- 27.** As per the ratio laid down in *Islamic Academy of Education (supra)*, the right conferred under Article 30(1) has been held not to be absolute

but subject to reasonable exceptions and overwhelming public interest.

- 28.** In *The Society of St. Josephs College (supra)*, the Supreme Court laid stress on the fact that, be it by amendment to an existing Act or framing a new Act for acquisition, due provisions are to be made for granting compensation to the minority institutions, commensurate with the right conferred under Article 30(1).
- 29.** Hence, reading the above judgments in proper perspective, the bar on the State is not to acquire any property belonging to a minority institution altogether but with regard to payment of adequate compensation to such a minority institution.
- 30.** Inasmuch as the arguments of the respondents are concerned, it is well-settled that the right to get electricity has been read as a component of Article 21 of the Constitution, conferring the right to life.
- 31.** Seen in proper perspective, *Power Grid Corpn. of India Ltd. (supra)* also gave priority to the public nature of a project and held that under 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, necessary for growth and development of a country and economy and the wellbeing and progress of the citizens.
- 32.** The key is, thus, to strike a balance between Article 30 of the Constitution and overwhelming public interest.
- 33.** In the present case, there a basic fallacy in the argument of the petitioners. The right exercised by the transmission company under the Telegraph Act, 1885 has been enabled in respect of electricity

transmission companies also by virtue of Section 164 of the Electricity Act, 2003, which empowers the authority to place and maintain a line under, over, along or across and posts in or upon, any immovable property under Section 10 of the Telegraph Act, 1885.

- 34.** Section 16 envisages disputes to be referred to the District Magistrate or, in case of insufficiency of compensation, applications being made to the concerned District Judge.
- 35.** Section 16(4) provides that if any dispute arises as to the persons entitled to receive compensation or the proportion in which persons interested are entitled to share it, the telegraph authority may pay to the court of the District Judge, “such amount as he deems sufficient” or where 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.
- 36.** A comprehensive reading of Section 16 shows that the Act has not enumerated any specific modality of calculating compensation but has left the same open, to be decided in case of a dispute by the District Judge.
- 37.** It is well-settled by the various judgments of the Supreme Court cited by both sides that Article 30(1A) does not prevent the State even from acquiring a property, subject to giving appropriate compensation.
- 38.** The quantum of appropriate compensation, as dealt with in *St. Joseph (supra)* as well as *Islamic Academy of Education (supra)*, has to be commensurate with Article 30(1), which provides that all minorities shall have the right to establish and administer educational

institutions of their choice. Clause (1A) provides that in making any law providing for compulsory acquisition of such properties, the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is “such as would not restrict or abrogate the right guaranteed under” Clause (1).

- 39.** Hence, read in conjunction, Clauses (1A) and (1) of Article 30 provide that the compensation to be granted on acquisition of such a property is to be sufficient to enable the minority institution to have the right to establish and administer educational institutions of their choice, the presumption being that the compensation would be adequate to have an alternative location for setting up such institution.
- 40.** Read in such context, in any event, it would be premature at this juncture for the petitioners to seek shifting of the route of the electricity line sought to be installed by the transmission company. The appropriate stage for demanding compensation by the petitioners would only be once the work is completed and the compensation to be granted, if at all, to the petitioners could be assessed by the appropriate authority. In case of dispute, the petitioners can very well approach the District Judge having jurisdiction to ventilate their grievances and claim adequate compensation in the light of Article 30(1A), read with Article 30(1) of the Constitution, read with Section 16 of the Telegraph Act.
- 41.** There is a more basic question involved here. It is, whether the drawing of High Tension Line over the property amounts to “acquisition” of property at all. The term “acquisition” connotes that

the entire property is vested in the State and the control thereof is taken over from the land owner.

- 42.** However, the right conferred under Section 164 of the Electricity Act, 2003, read with Section 10 of the Telegraph Act, 1885, is a much lesser right, being only to draw the line over, under, along or across the property. At the best, the authorities, under Section 11 of the said Act, have a further limited right to enter on the property in order to repair or remove the lines or posts.
- 43.** Thus, the invocation of Article 30(1A) of the Constitution is misconceived in the present case, since the act complained of does not amount to any acquisition of the land at all.
- 44.** Moreover, in the facts of the present case, the line is being drawn at a height of over 14.2 meters from the property. Most of the property is a water body.
- 45.** Hence, under no stretch of imagination can the drawal of High Tension line be classified as “acquisition” to attract the rigours of Article 30(1A).
- 46.** Another important facet of the matter is that already 17 out of 20 towers have been installed under the concerned project of electrification. The High Tension transmission line is to cater to huge sections of society, in the locality and elsewhere, including the petitioners themselves, who would also be beneficiaries thereof.
- 47.** Such overwhelming public interest cannot be brushed aside to give precedence to the right of the petitioners under Article 30(1), as held by the Five-Judge Bench in *Islamic Academy (supra)*.

- 48.** In view of the above considerations, it cannot be said that the WBSETCL is to be restrained from drawing the High Tension Line over the property of the petitioners.
- 49.** Hence, WPA No.9943 of 2023 is dismissed without any order as to costs. Nothing in this order, however, shall prevent the petitioners, if they so choose, to approach the concerned District Judge having territorial jurisdiction over the area for adequate compensation, commensurate with the rights of the petitioners after the work-in-question is complete. If such an approach is made, the District Judge shall decide the same in accordance with law, upon giving adequate opportunity to all concerned, without being influenced on merits in any manner by the observations made above.
- 50.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)