

Item No. 03

(Court No. 1)

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(By Video Conferencing)

Original Application No. 115/2019

Sharath RK

Applicant

Versus

State of Karnataka

Respondent(s)

Date of hearing: 13.04.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Respondent(s): Mr. Rajat Jonathan Shaw, Advocate for the State of Karnataka
Mr. Mukesh Kumar, Advocate for KSPCB

ORDER

1. Grievance in this application is that there is illegal construction of houses and shops under the high-power transmission lines without safety distance as per the laid down norms at Ashwath Nagar, Thanisandra main road, under BBMP Ward No.6. Storm water drains connected to the lakes of Bangalore were also encroached, resulting in untreated waste water being discharged into the said drains. On account of illegal constructions and parking, the roads were blocked.

2. A report was sought from the Bruhat Bengaluru Mahanagara Palike (BBMP). The matter was thereafter considered on 09.01.2020 in

the light of the report dated 06.01.2020 filed by the BBMP. It was observed:-

“The BBMP has filed a report on 06.01.2020 inter alia stating as follows:

“There were totally 320 nos. of unauthorised Building/Houses/Shops/Sheds at Thanisandra main road Eastern and Western side of the roads along High Tension Line in Ashwathanagara in ward No. 06 (Thanisandra) of Byatarayanapura sub division of BBMP Bangalore. Joint survey of these illegal built buildings/shops/sheds along with Bescom and BBMP Revenue Department is necessary to mark exactly the Horizontal Clearance at HTL as specified in notification and also to ascertain the property owners for which more time is required.”

Since it is acknowledged that there are illegal and unauthorized constructions, the authorities must take remedial measures in accordance with law by using such force as may be necessary at the earliest and file compliance report before the next date by email at judicial-ngt@gov.in.”

3. The matter was thereafter considered on 18.09.2020 in the light of further report of the BBMP about the demarcation and action taken for removing the encroachments. The Tribunal also considered the applications filed by the alleged encroachers in pursuance of the order of the Hon'ble Supreme Court dated 15.07.2020 in *Civil Appeal No. 2757 of 2020, Yuvraj Jangid & Ors. v. Sharath RK & Anr.* The Tribunal directed further remedial action and filing of an action taken report. Operative part of the order is reproduced below:-

“1&2....xxx.....xxx.....xxx.....xxx

3. *Accordingly, a further report has been filed by the BBMP on 18.09.2020 to the effect that demarcation was done and notices were issued under Section 308 of Karnataka Municipal Corporation Act, 1976 to the concerned buildings owners/users so that BBMP can take further action for removal of encroachments. Relevant part of the report is as follows:-*

“As per the directions Hon'ble Tribunal in the hearing dated 09-01-2020 the following action were taken. A meeting conducted by the Joint Commissioner, Yelahanka Zone, BBMP with BBMP Engineering wing, BBMP Revenue wing, KPTCL (Karnataka Power Transmission corporation Limited) and

BESCOM (Bangalore Electricity Supply company limited) officers. The above matter is discussed in detail, regarding the action to be taken on buildings constructed under/near High Tension Lines at Ashwathnagar in Ward No 6 (Thanisandra). The BESCOM Officers stated that they provided power supply to the buildings based on the orders prevailing on the day of commission/service and will be submitting the details of all consumers along the both HT lines. i.e. of 66 KV and 220 KV.

According to the Central Electricity Authority (Measures relating to safety and electric supply) Regulations, 2010 the KPTCL published a Correction notification dated 07-02-2019 regarding the lifting of vertical clearance and the provision for Horizontal corridor for the building construction/ planting of trees along the HT lines and listed as Annexure-1. As such the horizontal corridor for 220 KV HT line is 3.80mtr and for 66 KV line is 2.80mtr. The Joint Commissioner, Yelahanka Zone, BBMP directed the concerned KPTCL officers to demarcate the horizontal corridor in the area mentioned by the Hon'ble Tribunal and instructed the BESCOM to submit the list of RR no's and date of service for the installations for the properties marked by the KPTCL authorities along 220 KV & 66KV HT lines in Ashwathnagar, Thanisandra Ward no.6 of BBMP.

The KPTCL officials marked the Horizontal corridor as per CEA (Measures relating to safety & electric supply) Regulations 2010 Rules along both HT lines in presence of BESCOM, BBMP Engineering and Revenue Department officials. The Assistant Executive Engineer (Ele), Nagawara Sub-Division, BESCOM submitted the list of RR no's and date of service for the installations nearer to 220 KV, 66KV lines and listed as Annexure-2.

According to the list given by BESCOM Department.

out of 143 properties of Buildings/shops/sheds along 66KV HT Line 40 Nos. are commissioned after the publication of CEA (Measures relating to safety & electric supply) Regulations 2010 & 2 Nos. commissioned after the KPTCL Notification dated 07-02-2019 regarding the lifting of vertical clearance and the provision for Horizontal corridor for the building construction/ planting of trees along the HT lines.

Out of 132 properties of Buildings/shops/sheds along 220KV HT Line 38 Nos. are commissioned after the publication of CEA (Measures relating to safety & electric supply) Regulations 2010 & NONE commissioned after the KPTCL Notification dated 07-02-2019 regarding the lifting of vertical clearance and the provision for Horizontal corridor for the building construction/ planting of trees along the HT lines.

As per the demarcation of Horizontal corridor by KPTCL authorities, notices served to the owners / users of buildings / shops/ sheds by BBMP for the buildings under / near HT line for submitting the documents to the BBMP for further verification as per section 308 of KMC Act 1976. As on 21-03-2020 totally 75 Nos of

Building owner / users submitted their documents. From 22-03-2020 there is pandemic situation due to Covid -19. The Property owners/ users who have submitted the documents to BBMP office is verified. They are not having the building sanctioned plans as the land is Purely Revenue. Executive Engineer, Bescom, Shivajinagar Division, Bangalore has been requested under this office Letter No: BBMP/ AEE/BTP/SD/ 151 /2020-21 dated 10-09-2020 to take immediate and urgent steps in implementing CEA (Measures relating to safety & electric supply) Regulations 2010 and report back, so that BBMP would take issue of removal of hutments, public buildings existing below HT lines, forward which would enable to submit final report to Hon'ble National Green Tribunal, Principle Bench, New Delhi. Reply is awaited.”

4. I.A. Nos. 225/2020 and I.A. No. 316/2020 have been filed for impleadment by the persons identified as encroachers/violators by the BBMP. In I.A. No. 316/2020, a copy of the order of the Hon'ble Supreme Court dated 15.07.2020 in Civil Appeal No. 2757/2020 filed against the order of this Tribunal dated 09.01.2020 has also been filed. The order is reproduced below:

“Permission to file appeal is granted.

The order dated 09.01.2020 passed by the National Green Tribunal is challenged in this appeal. By the said order, the Tribunal directed the authorities to remove 320 unauthorized building/ houses/ shops /sheds at Thanisandra main road Eastern and Western side of the roads along High Tension Live in Ashwathanagara in ward No.06 (Thanisandra) of Byatarayanapura Sub-Division of Bruhat Bengaluru Mahanagara Palike (BBMP) Bangalore by using force, if necessary.

The appellants have filed this appeal alleging that the Tribunal does not have jurisdiction to adjudicate the matter which mainly pertains to the constructions being made under high tension wires. Mr. Devadatt Kamat, learned senior counsel appearing for the appellants argued that the respondent's complaint does not pertain to any environmental violation.

As the appeal is filed against an interlocutory order, we are of the opinion that the appellants should be granted liberty to approach the Tribunal seeking a modification of the Order dated 09.01.2020 which was passed in their absence. The Tribunal is requested to dispose off the said application filed by the appellants expeditiously.

In the meanwhile, no coercive action shall be taken against the appellants.

The appeal is disposed of. Pending application(s), if any, shall stand disposed of.”

5. Only grievance pointed out by the applicant is that they have not been heard by the BBMP so that they could explain that they were not encroachers. **No plea of lack of jurisdiction has been raised. Moreover, the issue of conservation of water bodies and incidental thereto clearly falls within the jurisdiction of this Tribunal. As regards the said parties' grievance of being heard and given opportunity to show that they were not encroachers/violators, order of the Tribunal clearly mentions that action has to be taken by the statutory authority in accordance with law. The action taken report also shows that notices have been given to them before action is taken. The Tribunal has not determined as to which individual is violator which is to be determined by the statutory authority concerned. The Tribunal has required the statutory authority to perform its duty of protecting environment to which no exception can be taken.** I.A. Nos. 225/2020, 227/2020 and 316/2020 accordingly stand disposed of.

6. **Let further remedial action be taken by the BBMP in accordance with law and report of status as on 31.01.2021 filed before the next date by e-mail at [judicial-
ngt@gov.in](mailto:judicial-ngt@gov.in) preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.”**

4. Thereafter, matter was further considered on 15.04.2021 in the light of report dated 24.02.2021 filed by BBMP. It was directed:-

“1&2.....xxx.....xxx.....xxx

3. **In pursuance of above, a report has been filed by the BBMP on 24.02.2021 to the effect that the process of horizontal and vertical clearance in terms of Central Electricity Authority Rules, 2010 to the buildings near the high-power tension lines was being looked into. There is, however, no mention about the remedial action taken to prevent discharge of untreated sewage in the drains and removing the illegal constructions under the high-power tension lines without following the safety norms. There is no report about the meaningful action for removing encroachment.**

4. **Let the remedial action be now taken expeditiously by the BBMP and compliance report filed before the next date by e-mail at [judicial-
ngt@gov.in](mailto:judicial-ngt@gov.in) preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.”**

5. In pursuance of above, further report has been filed by BBMP on 29.01.2022 as follows:-

“Following actions were taken

- 1. Earlier there was no any underground drainage system to dispose untreated sewage water in the ward No. 06 and Ashwath Nagar surrounding area, because these areas were earlier in the Grama panchayath which are directly comes to BBMP Jurisdiction. Now the Bangalore Water Supply and Sewerage Board (BWSSB) has taken up the underground drainage System in the Ashwath Nagar, Thanisandra and Surrounding area of ward No. 06 to dispose untreated sewage water to the Sewage Treatment Plant (STP).**
- 2. Already Sewer lines were laid Manholes constructed and house to house connections were done to dispose untreated sewage water to the STP.**
- 3. Sewage treatment plant construction work is under progress. The BWSSB has completed 90% of the under ground drainage system.**
4. From BBMP RCC Drains were already constructed in the Ashwath Nagar High Tension lines to dispose rain water and surface water from connecting roads of the Ashwath Nagar and Surrounding area so that the water should not stands on the road.
5. As per the Hon'ble NGT Court order dated 18.09.2020, the notices were given to the individual violators in the Ashwath Nagar high tension line as per the violation list given by the Executive Engineer, KPTCL to this office on dated 27.04.2021, said that the Hon'ble NGT Court has not have jurisdiction to Adjudicate the matter which mainly pertain to the construction being made under High Tension Wires, and also said that there is no environment violation by the residents. The Hon'ble Supreme Court in its orders dated 15.07.2020 in Civil Appeal No. 2757/2020 order that "we are of the opinion that the Appellants should be granted the liberty to approach the tribunal seeking the modification of order dated 09.01.2020 which was passed in their absence. In the meanwhile no coercive action shall be taken against the appellants"

From BBMP and BWSSB all necessary actions were taken by providing underground drainage system to dispose untreated sewage water to sewage treatment plant (STP) and also constructed the RCC Drains to dispose the surface and rain water in Ashwath Nagar, surrounding area as well as other area of ward No. 06 and taken all necessary actions for protection of environment.

The Electricity power to these buildings were given by the Bangalore Electricity Supply Company limited (BESCOM). Any violations pertains to high tension lines, the KPTCL has to take remedial action as per norms. There were so many such cases in Ashwath Nagar Surrounding and other areas of Bangalore. From BBMP letter sent to Executive Engineer (Elect), Shivajinagara Division, BESCOM for disconnections of the power supply to the Buildings under/Near High Tension Lines.

Hence, the report is submitted with a request to Hon'ble NGT Court to dispose of the case as all necessary action taken by the BBMP, BWSSB for protection of environment.”

6. From the above, we notice that some steps for drainage system have been taken but further work needs to be completed. It is reported that 90% of underground drainage has been completed. Construction of the STP is in progress. There has to be synchronization of entire sewerage works i.e. underground sewerage and the STP. The storm water or surface water run off through storm water drains needs to carry only unpolluted water so that receiving water bodies/lakes do not get contaminated. BBMP does not appear to have taken action against encroachments beyond saying that it is for electricity department to take further action.

7. Accordingly, the BBMP may take further action in terms of completion of sewerage, STP, maintenance of storm water drains and safeguarding public on account of high-tension line in coordination with concerned Authorities which may be overseen by the Chief Secretary, Karnataka. In case any grievance survives, it will be open to the aggrieved parties to take remedies in accordance with law.

The application is disposed of.

A copy of this order be forwarded to the Chief Secretary, Karnataka by email for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Arun Kumar Tyagi, JM

Prof. A. Senthil Vel, EM

Dr. Vijay Kulkarni, EM

Dr. Afroz Ahmad, EM

April 13, 2022
Original Application No. 115/2019
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