



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5th Floor, Singareni Bhavan, Red Hills, Hyderabad-500 004

O. P. No. 17 of 2016

Dated 07.08.2017

Present

Sri. Ismail Ali Khan, Chairman
Sri. H. Srinivasulu, Member

Between:

Allu Venkat Reddy S/o Nagi Reddy, Survey No. 353 and 58,
Two Towers and lines R/o Pedda Ummantala Village,
Pudur Mandal, Ranga Reddy District.

... Petitioner

And

Chairman & Managing Director,
M/s. Transmission Corporation of Telangana Limited,
Vidyut Soudha, Khairatabad, Hyderabad – 500 082.

... Respondent

This petition came up for hearing on 16.06.2016, 09.08.2016 and 14.06.2017. Sri. P. Chengal Reddy, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondent along with Smt. Priya Iyengar, Advocate were present on 16.06.2016 and 09.08.2016 and Sri. P. Chengal Reddy, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondent along with Sri. B. Vijay Bhaskar, Advocate were present on 14.06.2017. The petition having stood for consideration to this day, the Commission passed the following:

ORDER

This petition is filed by the petitioner with a prayer to direct the respondent to pay compensation for the loss of crop and also for loss of value of the land under the towers and lines on the following alleged facts:

2. This petition is filed before this Commission under section 67 (4) and (5) of the Electricity Act, 2003 (Act, 2003). The petitioner is the owner of the land bearing Sy. Nos. 353 and 358 of Pedda Umenthala village, Pudur Mandal, Ranga Reddy District, Telangana State. The respondent, who is a licensee under the Electricity Act, 2003 constructed two towers and drawn lines in the project Shankarpalli – Pargi laying 220 KV transmission line during the years 2013-15. The petitioner filed a xerox copy of the pass book of the said land. The respondent constructed towers and drawn lines on the land without obtaining the consent of the petitioner and without following the procedure as per the Electricity Rules, 2006. The respondent neither gave any notice nor offered any compensation or lease amount. The respondent also constructed towers and lines without obtaining permission from the District Magistrate as required under the Licensee Rules, 2006. This petition is for the payment of the compensation for the loss of crops under the towers and lines at the time of construction. Further the value of the land has totally eroded under the towers and lines because any development activity is prohibited under the Indian Electricity Act, 1910. Therefore, the petitioner claimed the compensation for the loss of crops, loss of value of the land, loss of livelihood on account of the construction of the towers and also interest therein from the date of eligibility of compensation. The Commission has power to resolve the disputes between the land owner and the licensee. The petitioner also relied on a judgment of the Appellate Tribunal for Electricity (ATE) in Appeal No. 83 of 2011.

3. It is claimed that the respondent has neither followed the procedure nor paid any compensation to the petitioner, hence, the petitioner gave a notice dated 26.12.2015 to the respondent and copies of the same were also sent to the Chief Engineer Construction, TSTRANSCO, Hyderabad, the Secretary, Energy, Govt. of Telangana and the Collector and District Magistrate, Ranga Reddy. In response to

the said notice, the Joint Secretary, Energy Department, forwarded the same to the Chairman, Transmission Company vide reference letter No. 32 / Budget / 2016 dated 08.01.2016. The respondent has neither paid the compensation nor gave any reply to the notice.

4. The petitioner further stated that the respondent had paid compensation to the land owners in Ranga Reddy District vide Memo No. CE / Const. / SE / PM – 1 / D1-A3 / F.LILO-Crop Compensation / D. No. 77 / 2014 dated 28.08.2014. The High-Tension towers and lines are in the proximity of Hyderabad – Vikarabad highway and also Shamshabad Airport and connected by the roads and has electricity and other infrastructure. It is an upcoming industrial area, mini educational institutions and factories are located in the area. Hence, the lands of the petitioner have potential for residential, industrial and commercial complexes. The registration value of the land is a sum of Rs.1,000/- per sq. yard as per Registration Office, Chevella [for stamp duty purpose]. The construction of towers and lines has long implications to the land owners. An electric tower of 400 KV occupies 600 sq. yards land (approximately) and each tower weighs 14 / 15 tones, to withstand the weight and the wind velocity of the lines, with foundations of 10 sq. feet for each leg (four legs for each tower) is constructed. Under each tower the land of 600 sq. yards becomes permanently unfit for agriculture or commercial purpose for 60 years, which is the life span of a tower.

5. Under the high-tension lines of 400 KV for each kilometer of line, Twelve (12) acres of land usage is restricted and the value substantially gets eroded. Under the lines, Seventy five (75) feet on each side (150 feet) for 1 K. M. land underneath is not allowed to have any permanent construction such as houses, godown, cattle / poultry sheds or commercial complexes under the Indian Electricity Act, 1910. Further, the electromagnetic waves cause constant humming sounds. Moreover, no electronic equipment works under the lines. The cultivation of horticulture crops like mango or coconut or any plantation crops over 10 feet height is not allowed under the lines. Therefore, the land owner farmer is compelled to use the land under the lines only for limited agricultural activity. This is depriving him of futuristic development. Therefore, the petitioner filed this petition for the reliefs.

6. The petitioner also filed an additional affidavit by reproducing the rules of the A.P. Government of the year 2007 and the same are applicable to the Telangana State Electricity Regulatory Commission. The additional prayer of the petitioner is to direct the respondent to pay 100% compensation for the land under the towers and 30% for the right of way (ROW) corridor and also the compensation of three to four times of the land value as per the new guidelines issued by the State Government with interest for the interregnum period be added to the compensation.

7. The respondent has filed a counter-affidavit stating that under Section 164 of the Electricity Act, 2003, the Government of Telangana has powers for placing the electricity supply lines (or electric plant for transmission of electricity or the purpose of telephonic or telegraphic communication necessary for proper coordination of works that a telegraphic authority possesses under the provisions of The Telegraphic Act, 1885). It is submitted that the Chief Engineer, Construction, A. P. Transco (TSTRANSCO) has published a press note in Telugu and English daily newspapers, namely, Eenadu and the Hindu on 04.04.2012 with the concurrence of the then Government of Andhra Pradesh vide a Gazette notification on 23.05.2012 specifying the forthcoming list of transmission lines and substations with a request to furnish any objections and representations from the aggrieved parties. The petitioner has not furnished any objection in response to the above notification within the stipulated time. Further, the claim of the petitioner that the respondent has laid towers and drawn lines on the land without obtaining consent is denied. As the valuation statement assessed by the respondent duly authorized by the revenue officials was accepted by the petitioner and account payee cheques were also accepted by the petitioner. The compensation was paid for the loss of standing crop in installments as per the site requirement and based on the progress of work. There are no rules or provisions in TSTRANSCO for awarding compensation for the value of the land, which is effected during the construction of 132 / 220 KV lines. TSTRANSCO being a non-profit organization, these works are generally taken up keeping the tangible benefits to the larger section of the society. G. O. Ms. No. 115 dated 07.10.2003 clearly indicates the authorization of the power to the licensees.

8. The respondent has followed the proper procedure in laying the towers and lines and also in payment of the value assessed for the standing crop, which was accepted by the petitioner. Therefore, it cannot be presumed that there was a lapse on the part of the respondent in following the procedure. The respondent filed the details of hand receipts and payment by cheques to the petitioner. It is a general procedure that during the course of execution of line works, respondent updates and obtains the prior verbal permission from the concerned land owner and the same procedure was also followed in this case. The details of compensation amount paid to the petitioner are given below.

Sl. No.	Name of the land owner/farmer	Sy.No.	Village/Mandal	Amount	Cheque No.	Remarks
1	Allu Venkat Reddy	353	Pedda Ummantala Pudur Mandal (Tower Loc. No.97)	Rs.9,000	000178/04.08.14	During the foundation work
				Rs.15,000	000694/01.07.15	During the erection work
				Rs.12,000	000695/01.07.15	During the stringing work
2	Allu Venkat Reddy	358	Pedda Ummantala Pudur Mandal (Tower Loc. No.99)	Rs.10,500	000335/04.04.16	During the foundation work
				Rs.12,000	000336/04.04.16	During the erection work
				Rs.9,000	000337/04.04.16	During the stringing work

9. The petitioner got issued a legal notice, which was served on the respondent on 26.12.2015, after receiving a few installments of payment by the petitioner. The petitioner admitted that the respondent is a non-profit organization.

10. The allegation that the respondent has neither followed the procedure nor paid the amount of compensation is far from the view of truth the above details and the supporting documents thereof. The respondent has complied with the procedure

as per the Act in vogue. As no land has been acquired for the purpose of laying towers and drawing lines on the said land, the provisions of the Land Acquisition Act are not applicable to this case.

11. The claim of the petitioner that the respondent has not taken action on the notice issued by him is not correct. The Director of the transmission company, i.e., TSTRANSCO has submitted a report to the Joint Secretary, Energy Department, Govt. vide letter No. CPT132 / SE / Const. / F – No. 220 KV Pergi / D. No. 1084 / 16 dated 31.03.2016.

12. The subject matter mentioned by the petitioner pertains to 400 KV lines bearing the size of the tower end to end conductor distance is much more than 220 / 132 KV lines. The respondent has not accorded any specific guidelines for payment of crop compensation in case of 132 KV and 220 KV lines as per letter dated 28.08.2014 of CE / Const. / TRANSCO. The petitioner has not filed any objection within the two months as stipulated in the notification.

13. The Chairman and Managing Director, TSTRANSCO addressed a letter dated 10.04.2015 to the District Collector, Ranga Reddy District requesting him to examine the revision of the compensation amounts for 400 KV lines and also requested to communicate the guidelines for the payment of compensation to the affected farmers in laying 220 KV transmission lines in Ranga Reddy District. The line erected was 220 KV line and the claim of the petitioner does not reflect to the line erected [Not 400KV lines]. As the matter comes under the purview of the revenue authorities, who have to give the guidelines on the issue.

14. The respondent sent a detailed reply to the legal notice issued by the petitioner to his advocate on 31.03.2016 and requested for the dismissal of the petition.

15. The Commission heard the arguments of the counsel for both the parties and reserved the matter for orders while directing both the counsel to file their written submissions within one week.

16. The counsel for the petitioner filed his written submissions on 21.06.2017 whereas the counsel for the respondent did not choose to file any written submissions on behalf of the respondent.

17. We have perused the material on record and considered the submissions of both the parties very carefully. The issues that arise for consideration of this Commission are :

- i. Whether the right to property is a fundamental right or right recognized under Article 300-A of the Constitution of India?
- ii. Whether the respondent followed the procedure while issuing the notice under the Electricity Act, 2003 and the Rules framed there under?
- iii. Whether the respondent obtained either oral or written consent of the petitioner prior to construction of towers and laying lines?
- iv. Whether the respondent paid compensation towards loss / damage to the crops to the petitioner while constructing towers and laying lines, if so, the petitioner received amounts or not?
- v. Whether the Commission is having jurisdiction to award compensation for the land covered under the towers and right of way below the lines?

ISSUE NO. 1:- Whether the right to property is a fundamental right or right recognized under Article 300-A of the Constitution of India?

18. The learned counsel for the petitioner contended that the right to property is no more a fundamental right after amendments made to the Constitution, but the right is recognized under the Article 300-A of the Constitution of India. Of late, this right to property is recognized as a human right also. The learned counsel for the respondent contended that there is no loss of title over the property, therefore, the question is whether it is right under Article 300-A or is a human right is unnecessary and further contended that the licensee has not taken away the possession of the property and merely laying lines and towers thus in effect, the title to the property still vests with the petitioner and he can undertake such suitable activity on the land as may be desirable to him.

19. The right to property is now considered to be not only Constitutional and Statutory Right but also a human right. Human rights have already been considered in realm of individual rights such as right to health, right to livelihood, right to shelter and employment etc. But now human rights are bearing a multi faceted dimension. Right to property is also considered very much a part of the new dimension by the Apex Court in the following cases.

“i) Supreme Court of India SLP (Civil) No. 28034 / 2011 - State of Haryana Vs Mukesh Kumar & others on 30 September, 2011.

ii) AIR 1955 SC 41

iii) Nanbhai Khachar Vs State of Gujarat & others.”

Therefore, in view of the above settled principle of law, the property right is recognized under Article 300-A of the Constitution and of late, it is recognized as a human right also. Therefore, this Commission is in agreement with the above contention of the learned counsel for the petitioner.

ISSUE NO. 2: Whether the respondent obtained either oral or written consent of the petitioner prior to construction of towers and laying lines?

20. The learned counsel for the petitioner contended that the respondent has not followed the procedure as prescribed under the Electricity Act, 2003 or the Rules framed thereunder. His further contention is that no notice was given to the petitioner and the consent was not obtained from the petitioner as prescribed under the Act, 2003 and the Rules. The learned counsel for the respondent contended that it has followed the procedure as prescribed under the Act and Rules and also followed the procedure communicated by the Government of India in due consideration of the relevant Acts, Court judgments and interest of the public at large. The learned counsel for respondent relied upon a judgment given by the Hon'ble Andhra Pradesh High Court in Devishetti Ramaswamy VS. Chief Engineer - - - on 2nd April, 2013, wherein it is held that the procedure for getting the consent of the owner of the land and also that no notice is required to be issued to the owner before laying the poles or constructing the towers. Therefore, the following said principle laid down in the judgment, no consent is required before laying the poles but has followed all the due procedures communicated by the Government of India.

21. The newspaper publication was given by the respondent calling for the objections within two months and no objections were received from the land owners concerned. In the above said judgment, it is further held that it is not necessary to give any notice by publication in the local newspapers as required under section 29 (2) of the Electricity (Supply) Act, 1948. The petitioner submitted that a notice is necessary but the respondent's reply is that a notice is not required. There is no dispute that the newspaper publication was given by the respondent and also a gazette notification was issued on 23.05.2012. Therefore, this Commission is of the view that the gazette notification and newspaper publication amount to sufficient notice to the land owners including the petitioner. Admittedly, the petitioner has neither raised any objections before the respondent nor communicated to them under any registered notice. To establish that the petitioner raised such objections, the counsel has not filed any record or evidence before this Commission. The petitioner relied upon the letter dated 26.12.2015 in the form of a legal notice to the respondent and also to the Chief Engineer, Construction, TSTRANSCO, to the Secretary Energy, Govt. of Telangana and to the Collector and District Magistrate, Ranga Reddy. After that notice, the petitioner has filed this petition before this Commission for the reliefs as prayed in the petition. The said notice by the petitioner is only after the receipt of certain sums towards the crop loss / damage in the years 2014 and 2015. In view of the judgment in Devishetti Ramaswamy (supra), no notice is actually necessary but a newspaper publication and also gazette notification were got issued by the respondent. Therefore, there is no force in the contention of the petitioner's counsel. The learned counsel for the petitioner also relied on the Rules 3 and 4 of the Works of Licensee Rules, 2006 of the Government of India and the same were adopted by the erstwhile Andhra Pradesh Government. For better appreciation, the Rules 3 (1) (a) and 3 (3) of the Works Licensee Rules, 2006 are reproduced below.

"3. Licensee to carry out works:-

(1) A licensee may –

- (a) Carry out works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, wherever or whereunder any electric supply-line or

works has not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land;

(2) x x x

(3) Every order made by a District Magistrate or a Commissioner of Police or an authorized officer under sub-rule (1) shall be subject to revision by the Commission.”

Relying upon the said Rules, the learned counsel for the petitioner contended that the licensee has not obtained the permission in writing from the District Magistrate or Commissioner of Police or any other officer authorized by the State Government for carrying out the works. Even if the contention of the petitioner is correct, that no written permission was obtained by the licensee as per Rule 3 (1) (a), the petitioner should have approached this Commission under Rule 3 (3) of the said Rules. According to Rule 3 (3), the Commission has power to revise the orders passed by a District Magistrate or Commissioner of Police or any other officer authorized under rule 3 sub-rule (1). Had the petitioner approached this Commission to stop the work as the licensee did not obtain the permission in writing, the Commission would have passed necessary orders after due enquiry in this matter. Now at a belated stage after completion of construction of the towers and laying the lines, the petitioner cannot raise such plea as he is estopped from it by his conduct. Therefore, this issue is answered against the petitioner and in favour of the respondent.

ISSUE NO. 3 Whether the respondent obtained either oral or written consent of the petitioner prior to construction of towers and laying lines? and

ISSUE No.4 Whether the respondent paid compensation towards loss / damage to the crops to the petitioner while constructing towers and laying lines, if so, the petitioner received amounts or not?

22. The contention of the learned counsel for the petitioner is that no consent either in writing or verbal was taken from the petitioner for laying lines and construction of towers in his land. The learned counsel for the respondent contended that no written consent was obtained from the petitioner but the licensee obtained the verbal consent from the petitioner and also contended that the acceptance of

amounts paid towards the loss of damage to the crops amounts to 'consent by conduct'.

23. It is true that the consent can be in writing or oral or consent can be inferred by the conduct of the parties. The learned counsel for the respondent contended that after following the due procedure they had obtained the prior verbal permission from the petitioner and the petitioner also submitted the vouchers and statements duly accepting the valuation statement of damages done for standing trees / crop etc. assessed by the revenue department officials. It is further submitted that the revenue officials involved were part and parcel of the District Administration headed by the District Collector. Therefore, it has to be presumed that the TSTRANSCO has followed the due procedure. The respondent herein filed the valuation statements prepared by the revenue officials and also payment of amounts through cheques to the petitioner. During the course of arguments on 14.06.2017, the learned counsel for the petitioner confirmed the payment of compensation only for the crop and not for the rights over property acquired for the said purpose. The admission by the counsel for the petitioner that he received the amounts towards crop damage by way of cheques amounts to consent by the conduct of the petitioner. Therefore, the petitioner cannot turn around and say that he has not given any consent for laying of lines and construction of towers through his land. This Commission holds that the petitioner had given verbal consent and also by his conduct. Accordingly, these issues are answered in favour of the respondent and against the petitioner.

ISSUE NO. 5: Whether the Commission is having jurisdiction to award compensation for the land covered under the towers and the right of way below the lines?

24. The learned counsel for the petitioner contended that this Commission has the jurisdiction to award the compensation under section 67 (4) of the Electricity Act, 2003 and in the event of non-compliance of the order, the Commission can also impose penalty, in addition to the compensation, under section 67 (5) of the Act, 2003. The learned counsel for the petitioner mainly relied on the decisions of the Patna High Court in Case No. 1132 of 2010, the Gujarat High Court in Case Nos.

C/SPA/18334/2011, orders of the Appellate Tribunal for Electricity in Appeal Nos. 83/2010 and 135/2012 and also the order of Maharashtra Electricity Regulatory Commission in Case No. 8/2014. The learned counsel for the respondent contended that the amount of compensation should be determined by the licensee itself and in case the land owner is not satisfied with the compensation given by the licensee, then, he has to prefer an appeal before the District Judge but not to the Electricity Regulatory Commission. In support of the contention, he relied on cases decided and reported in 2000 ADJ (3) 703 and 2012 ADJ (6) 784. Therefore, his contention is that this Commission is not having jurisdiction to entertain this petition.

25. For deciding the jurisdiction issue, certain facts have to be born in mind, which were admitted by both the parties. In the petition itself, it was stated that a legal notice dated 26.12.2015 was issued to (1) The Chairman, Transmission Corporation of Telangana Limited, (2) The Chief Engineer, Construction, TSTRANSCO, (3) The Secretary, Energy, Govt. of Telangana, Secretariat and (4) The Collector and District Magistrate, Ranga Reddy District mentioning all the details of his claim and also demanding the TSTRANSCO to pay the compensation to the petitioner within three weeks from the date of receiving the notice failing which legal / other measures will be initiated to recover the compensation from the TSTRANSCO. In the said notice, it was also alleged by the petitioner that TSTRANSCO had agreed to pay compensation for the right of way, and for the diminution in the value of land vide reference No. C1/115/2014 dated 08.08.2014 as ordered by the District Collector, Ranga Reddy. The effect of the legal notice is that the petitioner is aware that he should approach the District Collector, Ranga Reddy for payment of compensation for the land covered under the towers and also right of way under the lines. Having received the notice, the Joint Secretary to the Government addressed a letter dated 08.01.2016 to the Chairman and Managing Director, TSTRANSCO, Hyderabad for taking necessary action and intimate the action taken by him. The Chief Engineer, TSTRANSCO wrote a letter to Sri P. Chengal Reddy, Advocate of the petitioner in Lr. No. CPT130/SE-Const/F220KV Parigi / D. No. 1083/2016 dated 31.03.2016 and the same runs as under:

“ii) The above line was erected from 400/220KV Shankarpally SS to 220/132KV Parigi SS through Pedda Ummantala and Medikunda (Medikonda) Village. It is to submit that during the course of carrying out of this line work the standing crops were damaged in the mentioned villages in Survey numbers mentioned in the legal notice.

iii) Further, it is to submit that during the execution of the line work, standing crop valuation statements were issued to the concerned land owners, and the assessed value of the standing crop was accepted by the respective land owners and the same was certified by the MRO and accepted by the land owners was paid towards crop compensation for standing crop damaged to the members mentioned in the legal notice.

.....

v) Further, it is to inform that the area of damage for 400KV A, B & C type towers upto 350 Sq. Yards and area of damage for 400 KV ‘D’ type tower is above 350 Sq. yards. Where as in case of the damage for 220 KV A, B & C type tower is 60 Sq. yards and area of damage for 220 KV ‘D’ type is above 60 Sq. yards.

.....”

26. The next important letter according to the petitioner is D. O. Lr. No. CPT/SE-PE-2/ Parigi B. No.253/2015 dated 10.04.2015 addressed by Sri D. Prabhakar Rao, Chairman & Managing Director, TSTRANSCO to Sri M. Raghunandan Rao, IAS., District Collector, Ranga Reddy stating that the farmers are demanding huge compensation for 220 KV tower on par with 400 KV towers for 220 KV Shankarpalli to Parigi line passing parallel to 400 KV line from Suryapet to 400 KV Shankerpalli sub-station. As there are 137 locations for which towers are to be erected for the 220 KV Line, the amount of compensation to be paid will be huge. Therefore, he requested the District Collector, Ranga Reddy to examine for the revision of compensation amount for the orders passed in the reference (3) and also requested to communicate the guidelines for payment of compensation to affected farmers in laying of 220 KV transmission lines in HMDA / GHMC areas of Ranga Reddy as the area of damage is around 60 yards. Subsequent to the above correspondence, it is

not known whether any guidelines were issued by the District Collector, Ranga Reddy in respect of payment of compensation for the land lost under the tower base and also the right of way below the lines. It seems both the petitioner and the respondent kept silent without pursuing the matter with the District Collector, Ranga Reddy as he is the competent authority to award the compensation to the land owners.

27. Now, the Commission examines the provisions of the Electricity Act, 2003 read with Rules framed under section 67 (2) by the Central Government and which were adopted by the erstwhile Andhra Pradesh State Government and subsequently after bifurcation Telangana State Government also adopted the said rules.

28. For better understanding section 67, sub-sections 3, 4 and 5 of the Act, 2003 are extracted below.

“67 (2) (e) the determination and payment of compensation or rent to the persons affected by works under this section:

.....

(3) A licensee shall, in exercise of any of the powers conferred by or under this section and the rules made thereunder, cause as little damage, detriment and inconvenience as may be and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him.

(4) Where any difference or dispute (including amount of compensation under sub-section (3) arises under this section, the matter shall be determined by the Appropriate Commission.

(5) The Appropriate Commission, while determining any difference or dispute arising under this section in addition to any compensation under sub-section (3), may impose a penalty not exceeding the amount of compensation payable under that sub-section.”

29. The following rules of Works of Licensees Rules, 2006 are relevant for the purpose of appreciation of the issue.

“Rule 3 (2) When making an order under sub-rule (1), the District Magistrate or the commissioner of Police or the officer so authorized, as the case may be, shall fix, after considering the representations of the concerned persons, if any, the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.

(3) Every order made by a District Magistrate or a Commissioner of Police or an authorized officer under sub-rule (1) shall be subject to revision by the Commission.

(4) Nothing contained in this rule shall affect the powers conferred upon any licensee under section 164 of the Act.

.....”

30. Section 67 (4) of the Act, 2003 stipulates that any difference or dispute [(including amount of compensation under sub-section (3)] arises under this section, the matter shall be determined by the appropriate commission. Under section 67 (2) of the Act, 2003, the appropriate government may, by rules made by it in this behalf specify to determine and pay compensation or rent to the persons affected. Therefore, the government in exercise of the power given to it had framed the above rules for implementation of the intention and purpose of the sub-sections (3) and (4) of section 67 of the Act, 2003. The rules and sections have to be read harmoniously to arrive at the correct conclusion in implementing the purpose for which they were made. The rules and section cannot be read separately to arrive at a different meaning to defeat the purpose of rules itself. Therefore, on a combined reading of the above rules and section together, the meaning is that it is the District Collector or Commissioner of Police or the officer so authorized shall fix the compensation after considering the representations of the concerned persons, which should in his opinion be paid by the licensee to the owner or occupier. In the present case both the petitioner and the respondent addressed the letters to the District Collector, Ranga Reddy District for fixing the compensation and seeking the guidelines in respect of 220 KV lines. On such orders passed by the District Collector and if the parties are not satisfied with the said order, can approach this Commission to revise the said order of the District Collector and this Commission is having the power of

revision of such compensation only but cannot fix the compensation contrary to sub-rule (3) of Rule 3 of the said Rules, 2006. If a contrary view is taken to the above view, then the purpose of framing of the rules will be defeated. At this juncture, we rely on the judgments passed by the Hon'ble ATE in Appeal Nos. 83/2010 and 135/2012.

31. In the Appeal No. 83/2010 on the file of the Hon'ble ATE, the facts are that the State Government has not framed rules under section 67 (2) of the Act, 2003, therefore, the Hon'ble ATE took a view that in the absence of the rules framed by the Government, the provisions of section 67 (4) will apply, which confer power upon the appropriate commission to resolve the disputes between the land owner and the licensees. The above view taken by the Appellate authority is based on two facts, 1) the powers under section 164 of the Act, 2003 confer powers on the licensee to lay lines without seeking prior consent of the land owners as the officers of the licensee are conferred with certain powers of the Telegraphic Authority and 2) in view of section 164 the prior consent is not necessary for the licensee because power is conferred under section 164 of the Act, 2003.

32. In the present case on hand, the admitted facts are that the Rules framed by the Central Government under section 67 (2) were adopted by the State Government of Andhra Pradesh and after bifurcation of the State, the said rules were also adopted by the Telangana State Government. It is the claim of the respondent that the power is conferred on the respondent by the government under section 164 of the Act, 2003, and the respondent is entitled to exercise the powers of Telegraph Authority as such it is not necessary to obtain the prior consent from the landowner / petitioner. The respondent has not filed any gazette notification or order conferring powers under section 164 on it. Therefore, in the absence of such notification, it is difficult for the Commission to conclude whether such power is conferred or not.

33. Conferment of power becomes necessary under section 164 of the Act, 2003 in the absence of the rules framed under 67 (2) of the Act, 2003, as stated above the Rules were adopted by the Telangana State Government, the procedure laid in the said rules has to be followed. As the rules reproduced earlier clearly show that the

District Magistrate, Commissioner of Police or the officer so authorized has to make an order giving permission and at the same time, he has to also fix the compensation amount or annual rent or both, which should in his opinion be paid by the license to the owner or occupier, the sub-rule (2) of Rule 3 is clear that a simultaneous duty is cast upon the authorities mentioned in sub-rule (2) of Rule 3 that they must grant permission and also fix the compensation. If any of the party that is landowner or the licensee is aggrieved, then, he can approach the Commission for revision of the said order. Therefore, the reading of rules framed under section 67 (2) make clear that those orders only are subject to revision by the appropriate commission. If a different view is taken from the above, the scheme of the rules framed will become void and cannot be enforced.

34. In the Appeal No. 135/2012 on the file of the Hon'ble ATE, the facts are that the licensee approached the District Magistrate for police help to execute the works as the representatives of the landowners were hindering the work and the District Magistrate by order dated 18.11.2011 provided the police help to the respondents / licensees to execute the works. Aggrieved by the said order, the landowner filed the appeal before the Haryana State Commission for staying the transmission licensee from entering into the land and stoppage of work related to erection of a transmission line in his land and also prayed to grant ad-interim exparte protection by directing the respondents not to take any coercive action and not to enter into the land till further orders by the State Commission. The State Commission did not grant interim relief observing that the tower had already been erected. Ultimately, the State Commission passed impugned order on 24.12.2012 directing the landowner to approach the District Magistrate for the compensation. The Appellate Authority held that the facts in the present case are similar to the facts in Appeal No. 83 of 2010, hence followed the ratio laid down by it in the said matter.

35. The Haryana State Commission findings that in the absence of Works of Licensee rules to be framed by the State Government as required under section 67 to 69 of the Act, 2003, the provisions contained in sections 12 to 18 of the Indian Electricity Act, 1910 shall have effect in line with the Tribunal's judgment in Appeal No. 83 of 2010. The effect of the findings of the Hon'ble ATE in the above appeals

are based on facts, which are similar in nature and the powers are conferred to the licensee under section 164 of the Act, 2003. However, the Haryana State Commission held that it has jurisdiction under section 67 (4) of the Act, 2003 to adjudicate in the matter is also in line with the Tribunal's judgment in the said appeal ie., 83/2010. Having observed that the State Commission has jurisdiction to adjudicate in the matter but it passed the impugned order directing the appellant to approach the District Magistrate.

36. The appellate authority in both the cases held that section 67 (4) gives the power to the appropriate commission to decide where any difference or dispute including the amount of compensation under section sub-section (3) of section 67. It also considered the effect of rules framed under section 67 (2) and ultimately concluded that the sub-rule 4 of rule 3 will not affect the powers conferred under section 164 of the Act, 2003 on the licensee and also stated that the sub-rules 1 to 3 of rule 3 will not override the effect of section 164 and Rules framed under section 67 (2) would govern the licensee, but not the Commission.

37. Framing of rules under section 67 (2) of the Act, 2003 and also effect of section 164 of the Act, 2003 was considered by the Hon'ble Patna High Court in Case No. 1132/2010. The relevant findings are in paras 10 and 11 of the judgment and they are reproduced hereunder for better appreciation.

"10. It is evident on a plain reading of rule 3 that it takes up electricity supply line only and not telegraph lines and posts. This strengthens our conclusion in paragraph-8 herein above. Sub-rule (a) provides that the licensee shall obtain prior consent of the owner or occupier of the building or land, which inheres in itself the requirement of giving an opportunity to the owner or occupier to make a representation and prior consent is refused, then the licensee shall be required to apply its mind and dispose of the same by a reasoned order. This does not by itself vest in the licensee the authority to over-rule the objection(s) to be followed by their activities. The correct legal position is that, in the event of refusal to give prior consent, the licensee has the forum of appeal provided by sub-rule (b), and anyone aggrieved by order can move in revision before appropriate Commission under sub-rule (3) of Rule 3. We have indicated

hereinabove the requirement on the part of the District Magistrate or the Commissioner of Police as the case may be, while considering the matter under sub-rule (a) and making an order under sub-rule (1), to consider very objectively and dispassionately while dealing with the appeal. It is relevant to state that, in our view, powers under sub-rules 1(b) and 1(4) are in the nature of quasi-judicial functions. It is further relevant to state that it will be open to the District Magistrate or the Commissioner of Police to allow or reject the appeal after recording reasons in support of his order. The first proviso to rule (b) is to the effect that, even if by virtue of permission structure has been made and sufficient cause has been shown by owner of land that the order under the first proviso to sub-rule (b) has with the passage of time has served its purpose, direction can be issued to the licensee to remove the transmission towers.

10.1) Sub-rule (2) of rule 3 is equally important in the present context. It makes imperative for the authorities either under sub-rule.

(a) or sub-rule (b) to determine the amount of compensation as part of the order granting permission to the licensee to install transmission towers. With respect to the issues relating to compensation as per sub-rule (2), the forum of revision is available to both the sides before the appropriate Commission. We are informed at the Bar, as has also been noticed by the learned single Judge, that the Electricity Regulatory Commission is the appropriate Commission in the present context.

11. We now consider the scope and content of sub-rule (4) of rule 3 of the Rules. It appears to us that the meaning, content, and sweep of sub-rule (4) becomes evident once we realize the distinction between the telegraph lines and posts on the one hand, and the transmission towers, on the other, and clearly spelt out hereinabove. We are of the view that the scope and sweep of sub-rule (4) is confined to the issues relating to telegraph lines and posts, and does not apply to issues relating to installation of transmission towers. The Act would become unworkable if any different construction is put on sub-rule (4). In fact, in our view, the position is so clear that it does not require any interpretative process.”

38. The Hon'ble Gujarat High Court held in Case No. C / SPA / 18334 /2011 judgment dated 29.08.2013 as follows.

“....The later mode is available only if the power is so conferred by the appropriate Government under Section 164 of the Act and order is issued for such purpose. If the order is issued under section 164 of the Act for conferring the power upon a particular licensee Electricity Company, it will be for the concerned Electricity Company and its officers to follow the mode and mechanism as provided under Telegraph act and not under Section 67 of the Act read with the Rules of 2006. It is only in absence of order under Section 164 of the Act, any licensee for laying down the land would be required to follow the procedure under section 67 (2) of the act read with the Rules of 2006....

x x x x

x x x x

..... The Act of 2003 and more particularly Section 164 of the Act are the laws of 21st Century. At the first brush we may say that by the laws of 21st Century i.e. Electricity Act, the power so conferred by the Act of 19th Century are continued. If the Act of 21st century providing the method and mechanism under Section 67 of the Act read with the Rules of 2006 are considered, it does require the consent of the owner and also in absence of the consent, if the Police Commissioner or the Magistrate is to grant permission simultaneous assessment of the compensation and the payment thereof subject to revisional power by appropriate Commission, whereas the mechanism so provided under the Telegraph Act is different, but while interpreting the provisions of the Telegraph Act for exercise of the power by any person as that of the Telegraph act for laying down of the lines of electricity we need to keep in mind the rights and obligations so prevailing in 21st Century and it cannot be as that of 19th Century when the position of the country, including the development in the society and the science was far behind.”

39. The above findings of both the Hon'ble High Courts clarify that rules framed under section 67 (2) of the Act will apply in case of electricity towers and transmission lines. If any different meaning is given to sub-rule (4) of Rule 3, then Section 164 of the Act would become unworkable. Therefore, the appellate authority's finding as stated above is that it is only this Commission has the power to decide the compensation runs contrary to the above judgments of the Hon'ble High Courts. Apart from that, this Commission also does not have enough machinery or man power to fix the compensation under the provisions of the Land Acquisition Act. Therefore, keeping in view of all the factors, the Parliament thought it better and framed rules for giving permission and also to award compensation simultaneously to the District Magistrate / Commissioner of Police or the officer so authorized and, in case any party is aggrieved, then, he can file a revision petition before the appropriate Commission. If any contrary view is taken, then, the rules framed under section 67 (2) become unworkable. Thus, this Commission is of the opinion that it cannot award compensation directly but it can revise the order of the District Magistrate / Commissioner of Police or the officer so authorized. Therefore, the issue is answered accordingly. Further the finding of the Hon'ble ATE that rules would govern only licensee and not the Commission is also contrary to the said proposition of the Hon'ble Patna High Court. The judgment of the Hon'ble Patna High Court is binding as it is a court of record, and there is no contrary judgment to the above by our own jurisdictional High Court.

40. In two recent orders of the Maharashtra Electricity Regulatory Commission in Case Nos. 94 to 97 of 2012 and 8 of 2014, the Commission held that it got only revisional power to revise the orders awarding the compensation to the landowners, but cannot entertain the application for awarding the compensation directly. The Maharashtra Government also adopted the Central Government Rules of 2006, which were adopted by the Telangana Government also.

41. As already observed, the petitioner has given consent by his conduct and also gave a notice to the District Collector, Ranga Reddy to award the compensation to his land lost under the tower base and also for right of way under the lines and the petitioner did not inform this Commission as what happened to it, similarly the

respondent also wrote a letter to the District Collector, Ranga Reddy on 15.04.2015 to give the guidelines for payment of compensation in respect of 220 KV transmission lines. In view of the said facts, both parties are aware that it is the District Collector only, who is competent to award the compensation, but for the reasons best known to them, they approached this Commission contending that this Commission is having jurisdiction to award the compensation. This Commission cannot assume the jurisdiction on its own, the jurisdiction must be conferred on it by the Act and Rules.

42. While awarding the compensation under the Electricity Act, 2003 the District Magistrate – Collector should follow the principles of natural justice and also the provisions of the Land Acquisition Act. The Collector must bear in mind, the land and its location whether it is in interior village or nearer to the cities and urban areas and having potentiality for developing into residential and industrial complexes. If the land is interior in the village it may not have much potentiality, if it is nearer to the cities and urban areas it will have potential for being converted into residential plots and commercial plots and therefore, obviously the rates will be higher for the lands abutting the highways and roads rather than the interior lands. The potentiality will also depend upon the amenities available like water, power, communications and transportation. Therefore, if the land is having the above amenities, it will fetch much higher rate than the land without the above amenities. The learned counsel for the petitioner relied on a number of decisions in support of his above contentions and this Commission thought it necessary not to refer them as the compensation has to be decided by the District Collector only. The petitioner is at liberty to cite all the decisions before the District Collector for claiming the adequate compensation. The Collector while granting the compensation also has to keep in mind the guidelines issued by the Government of India in respect of right of way.

43. Before parting with this case, the Commission expresses its deep concern about the farmers whose land values are diminishing on account of laying of towers without payment of adequate compensation. This Commission directs the licensees to approach the District Collector urgently for framing of the appropriate guidelines for awarding of compensation to the farmers and others for laying 132 KV, 220KV

and 400 KV lines and right of way through the land of various owners. We also advise the Direct Collectors to frame the guidelines in a fair and transparent manner to reduce the disputes, if not framed already, and also to keep in mind the public interest. This Commission has the power to revise the compensation order passed by the District Collector. The role of this Commission has to be in consonance with the provisions of Section 67(4) of the Electricity Act, 2003 and not otherwise. Therefore, the Commission cannot grant the relief as prayed by the petitioner.

44. **IN THE RESULT**, in view of the findings on issues 1 to 5, the petition of the petitioner is disposed of accordingly. In the circumstances, the parties shall bear their own costs.

This order is corrected and signed on this the 7th day of August, 2017.

**Sd/-
(H. SRINIVASULU)
MEMBER**

**Sd/-
(ISMAIL ALI KHAN)
CHAIRMAN**

// CERTIFIED COPY//