

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No.83 of 2011

In the matter of
**Petition under Section 67 of the E.A, 2003 seeking directions upon MSETCL in
regard to erection of Tower.**

**Shri V.P. Raja, Chairman
Shri Vijay. L. Sonavane, Member**

Shri. Indradev Ramnaresh Mishra

..... Petitioner

v/s

1. The Maharashtra State Electricity Transmission Limited, Mumbai
2. Dy. Engineer, MSETCL, EHV Construction, Mumbai

..... Respondents

ORDER

Dated: September 19, 2011

Shri. Indradev Ramnaresh Mishra submitted a Petition under affidavit before the Commission on 30/05/2011.

2. The Prayers of the Petitioner are as under:

“a. That this Honourable Commission be pleased to order and declare that the proposal of the Respondent Nos. 1 and 2 to install the Tower No 9/4 of 220 KV electric supply line from Dahisar to Boisar upon the Petitioner’s land

bearing Survey No.157, Gut No. 146/2 of village Mahagaon, Taluka Palghar, Boisar District Thane is illegal and bad in law.

- b. That this Honourable Commission be pleased to declare that the Endorsement dated 11th May 2011 made by the Tahsildar and Executive Magistrate on the letter dated 27th April 2011 asking the Boisar Police Station to provide police protection to the Respondent Nos. 1 and 2 in entering the petitioner's land and installation of Tower No. 9/4 is not an order under Rule 3 (2) of the Work Licensees Rule 2006.*
- c. That this Honourable Commission be pleased to direct the Respondent Nos. 1 and 2 not to enter upon the petitioner's land bearing survey No. 157, Gut No. 146/2 of Village Mahagoan, Taluka Palghar, Boisar District Thane.*
- d. That pending the hearing and final disposal of the Revision Petition the Respondent nos. 1 and 2 be restrained by an Order of this Honourable Commission from installing Tower No. 9/4 and / or taking steps for installation of the same on the petitioner's land bearing Survey No. 157, Gut No. 146/2 of Village Mahagaon, Taluka Palghar, Boisar District Thane.*
- 3. The brief facts of the case as stated in the Petition are as follows:-**
- i) The Petitioner is the owner of the land, admeasuring about 1 hectare 23.70 R in Survey No. 157 of Village Mahagoan, Taluka Palghar, Boisar (East), District-Thane vide Gut No. 146/2.
- ii) The Petitioner submitted that the said land is an agricultural land and the Petitioner has constructed a residential house on a portion of the said land. Further, on the portion of the said land a low tension overhead electric supply line of TRANSCO for supply of electricity to the residential user is passing over.

- iii) The Respondent No. 1 is executing the work of 220 KV electric supply line from Borivali to Boisar and for the said supply line Tower No. 9/4 is to be erected on the Petitioner's land. Hence, the Respondent No. 2 had served a notice bearing No. Dy. Engineer/ 220 KV/ Engineering/1/1 dated 21st April 2010 to the Petitioner.
- iv) The Respondent No.2 by the notice dated 21/04/2010 had informed the Petitioner that for the said work, the Respondent No. 1 and 2 will have to dig on the Petitioner's land, for concreting and erecting the tower for carrying the electric supply line/wire and the work will be executed by the Respondents and the appropriate compensation will be paid to the Petitioner.
- v) The Petitioner submitted that, on behalf of the Petitioner the son of the Petitioner Shri. Rajkumar Indradev Mishra by filing his objection had represented before the Respondent No. 1 and stated that 1) he proposes to use the said land for non-agricultural user 2) the said tower is coming on the centre of the land which is objectionable and 3) on the other side (outside his plot of land) there is lot of open space and the said tower be erected in the said adjoining land.
- vi) The Petitioner further submitted that the said adjoining land is owned by the State of Maharashtra and the electricity transmission line be re-routed so that the tower could be erected on the government land as far as possible.
- vii) The Petitioner submitted that after filing his objection, the Respondent No. 2 vide its Letter No.SE/EHBCC/AALW/1463 dated 08/07/2010 had informed the Petitioner to obtain and submit No objection Certificate of the adjoining land owner where the Petitioner proposed that the electricity supply line/ Tower is to be shifted. The actual tower position for line to be diverted can be known only after detailed survey. Hence, to carry out detailed survey the Petitioner is required to pay Rs. 25,000/- in the office of Respondent No. 2.

- viii) The Petitioner met Respondents No. 1 & 2 and discussed the same with the Respondents. After the discussions Respondent No. 2 vide its letter No. CA/AUD/B.V. Kalwa/ Engineer 1111 dated 30th June 2010 informed the Petitioner that the said Tower No. 9/4 is shifted from middle of the Petitioner's land by 70 meters near the boundary of the Petitioner's land.
- ix) The Petitioner further submitted that after receiving the said letter dated 30th June 2010, the Petitioner again filed his objection on 20/05/2011 for erection of tower before the Respondent No.1.
- x) The Petitioner submitted that for entering upon the land when the petitioner is objecting, it is obligatory upon the Respondents to apply to the District Magistrate or the Commissioner of Police or the concerned officer appointed in that behalf by the State Govt. and obtain an order Under Rule 3 (1) of work of licensees Rule 2006. But the Respondents have neither filed any application before the Authorized authority nor obtained any such order from the authority.
- xi) The Petitioner further submitted that the Respondent No. 2 made an unlawful application on 27/04/2011 to the Boisar Police station for police protection for erecting the said tower for carrying the said electricity line and sent a copy of the same to the Tahsildar, Palghar, who is an Executive Magistrate. The Ex. Magistrate made an administrative endorsement for information and further action. The Respondent no. 2 with the police protection provided by the Boisar Police Station came to the Petitioner's Land for erecting the tower No. 9/ 4 by using force. The Petitioner once again vide its letter dated 21st May 2011 informed both the Respondents that the letter dated 27/04/2011 is not an order under Rule 3 (2) but, the respondent did not pay any heed to the request of the Petitioner.

4. Hence, the Petitioner has filed the present Petition under Section 67 of the E.A 2003 and under Rule 3(3) of the Works of Licensees Rules 2006 on being aggrieved by the said letter dated 27/04/2011 and the action of Respondents 1 and 2 to forcibly enter upon the Petitioners' land to execute the work for erection of Tower No. 9/4..

5. The Commission vide Notice dated 22/06/2011 scheduled a hearing in the matter on 13/07/2011 at 12.30 p.m. During the hearing held on 13/07/2011 the Commission directed both the parties to settle the Right Of Way (ROW) issue through mutual discussion and granted two (2) weeks time for the same. The matter could not be resolved despite giving an opportunity to both the parties to settle the dispute through mutual discussion.

6. The Respondents during the second hearing held on 24/8/2011 made an oral submission before the Commission as follows:

i) The Respondents submitted that the Petition filed under Section 67 of Electricity Act, 2003 is not maintainable considering the purview and ambit of Section 67 of the Electricity Act, 2003 and the Indian Telegraph Act, 1885 is applicable to the MSETCL as per the Central Government Rules. Further, the Respondents have also mentioned that they have approached the District Magistrate.

ii) The Petitioner did not permit MSETCL to carry out the work in exercise of powers as Telegraph Authority when MSETCL was exercising powers vested in it under Section 10 and Section 16 of the Indian Telegraph Act, 1885.

7. Considering the factual matrix of the case, it is undoubtedly clear that there is a difference/dispute between the parties herein with regard to the 'works' proposed to be carried out by Respondent No.1 the transmission licensee. After hearing the parties and having considered the relevant materials placed on record, the Commission is of the view that PART – VIII of the Electricity Act, 2003 contains provisions with respect to Works of licensees. Respondent No. 1 is a deemed transmission licensee in the State of Maharashtra. Accordingly, PART – VIII of the Electricity Act, 2003 is applicable to MSETCL.

Subsection (2) of Section 67 under the said PART – VIII of the Electricity Act, 2003 provides *inter alia* as follows:-

“(2) The Appropriate Government may, by rules made by it in this behalf, specify, -

.....

(b) the authority which may grant permission in the circumstances where the owner or occupier objects to the carrying out of works;”

The word "works" is defined in Section 2(77) to include *“electric line, and any building, plant, machinery, apparatus and any other thing of whatever description required to transmit, distribute or supply electricity to the public and to carry into effect the objects of a licence or sanction granted under this Act or any other law for the time being in force.”*

Execution of the work of 220 KV electric supply line from Borivali to Boisar and erection of Tower No. 9/4 is "works" within the meaning Section 2(77). However, the rules are yet to be notified by the State Government of Maharashtra as stipulated in Subsection (2) of Section 67 of the Electricity Act, 2003. Hence, in the absence of the said rules it would need to be decided as to who is the authority which may grant permission to MSETCL in the circumstances where the Petitioner objects to the carrying out of works as admittedly the Petitioner has raised objections for erection of Tower No. 9/4 in the course of execution of the work of 220 KV electric supply line from Borivali to Boisar. Where the rules have not been made under Section 67 (including under Subsection (2) of Section 67), Section 185(2)(b) of the 2003 Act provides as follows:-

“(2) Notwithstanding such repeal, -

..

(b) the provisions contained in sections 12 to 18 of the Indian Electricity Act, 1910 and rules made thereunder shall have effect until the rules under section 67 to 69 of this Act are made;”

Hence, it would need to be examined as to what Sections 12 to 18 of the Indian Electricity Act, 1910 lay down in the context of the factual matrix of the present case. In the view of the Commission, the following would be the relevant provision:-

“12(2) Nothing contained in sub-section (1) shall be deemed to authorise or empower a licensee, without the consent of the local authority or of the owner or occupier concerned, as the case may be, to lay down or place any electric supply-line or other work in, through or against any building, or on, over or under any land’ not dedicated to public use whereon, wherever or whereunder any electric supply-line work has not already been lawfully laid down or placed by such licensee:

Provided that any support of an overhead line or any stay or strut required for the sole purpose of securing in position any support of an overhead line may be fixed on any building or land or, having been so fixed, may be altered, notwithstanding the objection of owner or occupier of such building or land, if the District Magistrate or, in a Presidency town, the Commissioner of Police by order in writing so directs:

Provided also, that, if at any time the owner or occupier of any building or land on which any such support, stay or strut has been fixed shows sufficient cause, the District Magistrate or, in a Presidency-town the Commissioner of Police may by order in writing direct any such support, stay or strut to be removed or altered.”

The work of 220 KV electric supply line of the Petitioner from Borivali to Boisar is “works” pertaining to intra-state transmission lines. And erection of Tower No. 9/4 is connected thereto. The Works of Licensees Rules, 2006 notified by Government of India, Ministry of Power vide Notification No. G.S.R 217(E) dated 18th April 2006, has been made in exercise of the powers conferred by clause (e) of sub-section (2) of section 176 read with sub-section (2) of Section 67 of the Electricity Act, 2003. The Works of Licensees Rules, 2006 has been made by the Central Government. However, for the intra-state transmission lines of 220 KV electric supply line of the Petitioner from Borivali to Boisar, rules under Section 180 would have been applicable if they were made by the State Government of Maharashtra. No such rules are in place as of date. Nonetheless, it may be useful to examine what the Works of Licensees Rules, 2006 provides in similar situation. Rule 3 provides as follows:-

“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;

(b) fix any support of overhead line or any stay or strut required for the purpose of securing in position any support of an overhead line on any building or land or having been so fixed, may alter such support:

Provided that in case where the owner or occupier of the building or land raises objections in respect of works to be carried out under this rule, the licensee shall obtain permission in writing from the District Magistrate or the Commissioner of Police or any other officer authorised by the State Government in this behalf, for carrying out the works:”

It can be seen that the second proviso to Section 12(2) of Indian Electricity Act, 1910 contains similar provisions as that in the proviso to Rule 3(1)(b) of the Works of Licensees Rules, 2006 made by the Central Government. The authority to look into these matters under Section 12(2) of Indian Electricity Act, 1910 vests with the District Magistrate or the Commissioner of Police (in a Presidency town). Whereas, in the proviso to Rule 3(1)(b) of The Works of Licensees Rules, 2006 the authority to look into these matters also vests in any other officer authorised by the State Government apart from the District Magistrate or the Commissioner of Police.

Thus, whichever way one looks at it, the appropriate first level authority to accord permission to MSETCL to erect Tower No. 9/4 for the work of 220 KV electric supply line from Borivali to Boisar pertaining to intra-state transmission lines, in view of objections raised by the owner, is the District Magistrate or the Commissioner of Police or any other officer authorised by the State Government.

Hence, it is requisite that the Commission examines as to whether such permission was in fact obtained by MSETCL.

The impugned letter dated 27/04/2011 addressed to Boisar Police Station by the MSETCL (when translated from Marathi into English) reads as follows:

“ MSETCL office Kalwa

Date: 27/04/2011

To,
Asst.Police Inspector,
Boisar,TalukaPalghar,
District Thane.

Subject: Opposition of Shri.IndraDevRamnaresh Mishra, resident of Mahagaon, to the work relating to Renewal of 220kv Kharghar-Kalva to Borivali- Boisar electrical lines and tower foundation and extending police protection.

Dear Sir,

I am to inform you that the work relating to renewal of EHV 220kv line from Borivali- Boisar is under progress from 1964. The work has been taken up by MSETCL with a view to avoid any possible accident in future as the present line is worn out. The tower of this Manora No.9/4 is proposed to be installed on the farm land survey no. 146/2 belonging to ShriIndradevRamaresh Mishra.

The work has been opposed by ShriIndradevRamaresh Mishra staying at Mahagaon, TalukaPalgharDist.Thane, and the work has come to a stand still.

This office has given a notice to the farmer and has also sent a representation to Collector thane with a request to provide police protection.

You are therefore requested to provide police protection for the smooth work of electrical lines

Yours Sincerely

Deputy ExEngineer(Construction Dept)

Kalva

cc.to Deputy Regional Magistrate Dahanu,

Deputy Regional Police Officer Boisar,

TahsildarPalghar,

Ex.Engineer(Construction Dept)Kalva

Circle officer Boisar

”

On the back side of the aforesaid Letter dated 27/04/2011 addressed to Boisar Police Station by MSETCL an instruction by the Executive Magistrate Palghar was given to Deputy Regional Police officer Boisar region, Borivali which (when translated from Marathi into English) reads as follows:

“ To,

Deputy Regional Police officer,

Boisar Region, Borivali

For information and further action

Executive magistrate

Palghar.”

Surely, the endorsement dated 11th May 2011 made by the Tahsildar and Executive Magistrate on the letter dated 27th April 2011 asking the Boisar Police Station to provide police protection to the Respondent Nos. 1 and 2 for entering the petitioner's land for installing Tower No. 9/4 is not a permission to carry out works.

Another letter dated 06/12/2010 addressed to Tahsildar Palghar by the Addl. Collector Thane has been annexed to the Petition which (when translated from Marathi into English) reads as follows:-

“Office of the Addl. Collector, Head Office-Jawhar, Thane

Date:06/12/2010

To,

The Tahsildar

Palghar.

Sir,

Subject: Opposition of land owners-farmer to the work relating to Renewal of 220kv Kharghar-Kalva to Borivali- Boisar electrical lines and tower foundation.

Please find enclosed herewith Xerox copies of 4 cases send to Hon. Collector and District magistrate by Deputy Ex. Engineer (Construction Dept), MSETCL Chiplun, vide his letter dated 22/11/2010

As the four cases come under the jurisdiction of your taluka you may extend co-operation for this work to MSETCL, if necessary, you may also instruct the police department to extend necessary assistance. You should submit a report to this office about the cooperation extended by you from time to time.

Addl Collector Thane

Head Office Jhawar.

”

After examining both the above letters (translated from Marathi into English) and endorsement, the Commission is of the view that if Respondent/s propose to install Tower No 9/4 of 220 KV electric supply line upon the Petitioner's land bearing Survey No.157, Gut No. 146/2 of village Mahagaon, Taluka Palghar, Boisar District Thane, Respondent No. 1 would need to obtain permission from the District Magistrate or the Commissioner of Police or any other officer authorised by the State Government. No such permission has been produced on record. The aforesaid letters cannot be a substitute for the permission as required under law. Till such permission is obtained, Respondent No. 1 cannot lawfully erect and install Tower No 9/4 or to enter upon the petitioner's land for taking any coercive or other action.

As regards, exercise of powers by Respondent No. 1 as Telegraph Authority under Section 10 and Section 16 of the Indian Telegraph Act, 1885, the Hon'ble Appellate Tribunal has succinctly put the position at rest in its recent judgment dated 7th September, 2011 in Appeal No. 83 of 2010 in Maharashtra State Electricity Transmission Company Limited Versus Shri Vikram Sunderdas Setiya, and others. Certain relevant passages are extracted as follows:-

“35. In view of above discussions it becomes evident that provisions of Section 67 and 68 would be applicable to all the licensees irrespective of whether they are empowered to exercise powers of the Telegraph Authority under section 164 of 2003 Act or not. The second question is answered accordingly.

“50. Thus, the Central Government by framing the rules has expressly chosen to give overriding effect of notification under Section 164 over the requirement of the consent of the land owners. Under Section 164 of the 2003 Act, the State Government may accept the powers of the Telegraph Authority under the Telegraph Act subject to the modifications and limitations that may be thought fit. Therefore, it is for the State Government to decide as to what rules are to be framed and to what extent the powers of the Telegraph Authority were to be extended. Thus, it can be concluded that Section 164, as it stands in the absence of the Rules framed by the State Government under Section 67(2) of 2003 Act does not have any overriding effect on any part of Section 67 of the 2003 Act.” {Emphasis added}

“54. Next question for our consideration as to whether, in the absence of rules framed under section 67(2) of 2003 Act, provisions of section 12 to 18 of 1910 Act and in particular whether the consent of land owner under section 12 (2) of

the 1910 would be required in respect of transmission line being laid by the licensee who has been conferred with powers of the telegraph authority under 1885 Act?”

“60. Thus, Section 185(2)(b) of 2003 Act saves the provisions under Section 12 to 18 of the Electricity Act, 1910 till the rules under Section 67 (2) of 2003 Act are framed by the Government. As indicated above, the Government of Maharashtra, the appropriate Government in the present case, has not yet framed such rules. Accordingly, by virtue of this section, the provisions of section 12 would apply.”

“62. The bare reading of the Section 12 of Act, 1910, as reproduced above, would make it clear that any licensee can lay down or place electric supply lines only with the consent of the owner of the land. If there is any objection on the part of owner, the District Magistrate can direct for removal of the same and impose adequate compensation.”

“65. No doubt plain reading of section 10 read with section 16(1) of 1885 Act would suggest that the Telegraph Authority has the right to enter upon the immovable property without prior consent. But, in the absence of non-obstante clause, Section 164 of 2003 Act does not confer such overriding powers to any licensee who has been authorised to exercise powers of Telegraph Authority and the licensee will have to carry out its works within the parameters indicated by the rules framed by the State Government under Section 67(2) of the 2003 Act. In the absence of such rules, provisions of section 12 of 1910 Act by virtue of section 185(2)(b) would apply. Therefore, in terms of section 12(2) of the Indian Electricity Act 1910, prior consent of land owner would be required.

66. The State Government in the present case has not yet framed the Rules under Section 67 (2) of the Act. Section 67 (2) (a) of the Act provides for Rules to be framed even in respect of the consent of the land owners. As mentioned earlier, in the absence of Rules under Section 67 (2) of the Act, Section 185 (2) (b) shall be given its full effect. The effect of the said Section is that Section 12 of the Act, 1910 is specifically saved and will continue to apply till the rules are framed under Section 67 (2) of the 2003 Act. Section 12 of the Electricity Act, 1910, as quoted above, specifically provides for the consent of the land owner. There is nothing in Section 12 of the Act, 1910 which derogates the powers of the Commission under Section 67 of the 2003 Act.”

“67. As observed earlier, the provisions of the Section 12 to 18 of the 1910 Act are applicable in terms of Section 185 (2) (b) of the 2003 Act. Therefore, by virtue of Section 174 of the 2003 Act, Section 12 to 18 of the 1910 Act would have the precedence over any other legislation. This would make it clear that

assuming that there was a conflict between the provisions of the Telegraph Act and the provisions of the 1910 Act, the latter Act would prevail.”

“70. Now let us consider the question of consent of the land owner. The relevant provisions as referred to above and the fact situation as explained above in the present case would give the following details:

(i) As mentioned earlier, the State Government has not framed Rules under Section 67 of the Act.

(ii) It is to be noticed as indicated above, that Section 67 (2) (a) of the Act provides for Rules to be framed even in respect of the consent of the land owner. Therefore, it is conceivable that relevant rules will be framed either for providing for the consent of the land owner by the State Government or dispensing with the consent of the land owner. In the absence of such rules, Section 185 (2) (b) must be given its full effect. If it is so, Section 12-18 of the Act, 1910 are specifically saved and the same will continue to apply till such time the Rules are framed under Section 67 (2) by the State Government.

(iii) Section 12 of the Act, 1910 which is saved by the specific clause, specifically provides for the consent of the land owner. If we look at Section 10 and 11 of the Telegraph Act, it is noticed that there is nothing in those Sections to the effect that no consent is required. As such, there is no conflict of between Section 12 of the Act 1910 and Section 10 and 11 of the Telegraph Act. By way of proper interpretation, both Section 10 of the Telegraph Act and Section 12 of the 1910 Act must be given their full meaning on the principle of harmonious construction.

(v) If both the sets of provision are given their full meaning, it would mean that the licensee may carry out any of the activities under Section 10 of the Telegraph Act, subject to the consent of the land owner under Section 12 of the Act, 1910.

(vi) As indicated above, assuming that there is a conflict between Section 10 of the Telegraph Act and Section 12 of the 1910 Act, Section 12 of 1910 Act would prevail. This question is answered accordingly.”

“71. Next issue before us to be addressed as to whether notification under Section 164 of the 2003 Act would mean that the Appellant has become Telegraph Authority under 1885 Act and all his actions would be governed by the Telegraph Act 1885.”

“76. Merely because Section 164 empowers State Government to confer on the licensee certain powers which can be exercised by a Telegraph authority under the Indian Telegraph Act, it cannot be construed that all the provisions of the Telegraph Act 1885 are to be incorporated into Indian Electricity Act. In other

words, simply because some of the powers of Telegraph Authority under the Indian Telegraph Act 1885 are conferred on a licensee under the Electricity Act, it does not follow that all the rights of a licensee under the Indian Electricity Act are to be governed under the provisions of the Indian Telegraph Act. To put it shortly, the licensee, under the Electricity Act 2003 cannot be construed to be a Telegraph authority under the Telegraph Act.”

The Commission is fortified by the aforesaid judgment of the Hon'ble Appellate Tribunal dated 7th September, 2011 in Appeal No. 83 of 2010.

Accordingly, interest of justice would be served in directing that until Respondent No. 1 obtains permission from the District Magistrate or the Commissioner of Police or any other officer authorised by the State Government, Respondent No. 1 cannot lawfully erect and install Tower No. 9/4 or enter upon the petitioner's land for taking any coercive or other action. Respondent No. 1 is directed accordingly.

With the above directions Case No 83 of 2011 stands disposed of.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman