

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai – 400 005
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Case No. 25 of 2012

**In the matter of
Petition under Section 67(4) of the E.A, 2003 and Article 300-A of the Constitution
of India, challenging the Judgment and Order dated 31 December, 2011 issued by
Ld. Divisional Magistrate, Wai in Misc. Application No. 13 of 2011.**

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

Shri Ganpat Khanderao Farande
Shri Subhash Khanderao Farande
Ozarde, Taluka Wai
Satara.

... Petitioners

V/s

1. The Executive Engineer
EHV Construction-cum-O & M Zone, Sangli
Maharashtra State Electricity Transmission Co Ltd.
2. The Dy. Executive Engineer
EHVT Construction Line Sub-Division, Satara
Maharashtra State Electricity Transmission Co Ltd.
3. Divisional Magistrate
Division Wai,
Satara.

... Respondents

Present during the hearings:

For the Petitioners: Shri Ganpat Khanderao Farande and Shri Subhash Khanderao Farande in person

For the Respondents: Shri V. P. Gulavani, Respondent No. 2, in person
Shri Abhijeet A. Joshi & Shri Dhananjay D. Deshmukh, Advocates, for the Respondents No 1 & 2.

ORDER

Dated: 31 July, 2012

Shri Ganpat Khanderao Farande & Shri Subhash Khanderao Farande submitted a Petition under affidavit before the Commission on 27 February, 2012, under Section 67 (4) of Electricity Act, 2003 (EA 2003) and Article 300-A of the Constitution of India, challenging the legality, validity and propriety of an Order dated 31 December, 2011 passed by Ld. Divisional Magistrate, Wai in Misc. Application No. 13 of 2011.

2. The prayers of the Petitioners are as follows:

“

- a) *Rule be issued;*
- b) *Pending the hearing and final disposal of the present Petition, this Hon'ble Commission may be pleased to direct the Respondent 1 & 2, not to progress any work between Electricity Towers No. 30 and 31.*
- c) *This Hon'ble Commission may be pleased to direct the Respondent 1 and 2 to withdraw the incorrect Tower line and built it as per the origin Sanctioned plan by the M.S.E.T.Co. Ltd, Sangli.*
- d) *Interim and ad-interim relief in terms of prayer clause [b]granted.*
- e) *Cost of this Petition be provided for.*
- f) *Any other just, equitable and consequential relief / Order may kindly be passed in of the Petition as this Hon'ble Commission may deem fit and proper in the interest of justice.”*

3. The brief facts of the case as stated in the Petition are as follows:-

- (i) The Petitioners are owners of agricultural land bearing Gat No.488/B/1 situated at Ozarde, Taluka Wai, District Satara. It is submitted that the Petitioners are running the business of jaggery unit along with the workers living in the said premises. The Petitioners further submitted that the workers who work in the jaggery unit are living along with the Petitioners at the said premises and the Suit Land is N.A. land as per the order dated 27 November, 1987 in Order No. UNA/SR-168 passed by the divisional officer Wai and the Petitioners are using the said land for the same purpose since inception.
- (ii) It is submitted that the Petitioners came to know in the month of April 2011 that MSETCL has signed a contract with the Kisanvir co-op. sugar factory for the transfer of electricity generated by the factory, and that MSETCL is planning to start work on the tower line for high tension wires from the sugar factory.
- (iii) The Petitioners submitted that as per the sanctioned plan tower no. 31 would be in the land Gat No. 483 at village Ozarde. In spite of this, with

ulterior motive, the Respondents No. 1 & 2 have built tower no. 31 between Gat No. 483 and Gat No. 489 plots at village Ozarde.

- (iv) As the high tension wires of tower no. 30 & 31 pass over the house and suit land of the Petitioners, they have challenged this activity of the Respondents No. 1 and 2 by way of filing a Regular Civil Suit No. 112 of 2011 on 5 August, 2011 before the Civil Judge Senior Division, Satara and they have also filed a written application before the Electricity Arbitrator, Karad.
- (v) The Respondents No. 1 and 2 filed a Misc. Application No. 8 of 2011 dated 26/08/2011 before the District Collector Satara thereby informing the Collector that the Petitioners along with other 14 people were obstructing the progress of loop in loop out (LILO) work on 132 kV Lonand-Wai transmission line and prayed for restraining the Petitioners from doing the same. The Petitioners denied all the contentions raised by the Respondents before the Collector. After hearing both sides, the Divisional Magistrate, Wai allowed the Misc. Application No. 8 of 2011 filed by the Respondents and passed the Judgment and Order on 30 September, 2011.
- (vi) The Respondents Nos. 1 and 2 again filed a Misc. Application No. 13 of 2011 dated 19 December, 2011 before the Collector, Satara alleging that the Petitioners are obstructing the progress of LILO work on the 132 kV Lonand-Wai electricity line between tower no. 31 and 32 since high tension wires are passing through their land. The Petitioners responded filing their affidavit. After hearing both sides, the divisional magistrate, Wai allowed the Misc. Application No. 13 of 2011 and passed the Judgement and Order on 31 December, 2011.
- (vii) The Petitioners submitted that they have sought information under the Right To Information (RTI) from the PWD department Wai about the distance of the house from the national highway and the department informed the Petitioners that the distance is exactly 598 metres. As regards availing of the information from MSETCL, Sangli about the distance of the tower nos. 30 & 31 from the National highway, the concerned department is said to have informed them that the distance between the mentioned Towers and the national highway is about 3.25 km.
- (viii) Thus, being aggrieved and dissatisfied by the Judgement and Order dated 31 December, 2011 passed by the Divisional Magistrate, Wai in Misc. Application No. 13 of 2011 (the impugned Order), thereby allowing the applications filed by the Respondents, the Petitioners have filed the present Petition before this Commission under Section 67(4) of the Electricity Act, 2003 (EA 2003) and Article 300-A of Constitution of India.

4. The Petitioners, on being aggrieved by the impugned Orders passed by the Respondent No. 3, have filed the present Petition before the Commission, challenging

the legality, validity and propriety of the impugned Orders by invoking the provisions of Section 67 (4) of the EA 2003 and Article 300-A of the Constitution of India.

5. The Petitioners submitted that the Respondent No.3 has acted in an arbitrary and biased manner while deciding the present matter and has denied justice to the Petitioners.

6. Pursuant to the Commission's notice dated 26 March, 2012 a hearing in the matter was held on 2 April, 2012 at the Commission's office. The Petitioners reiterated the facts and submissions made in the Petition. The Petitioners mainly submitted that Respondent No. 3 has passed the Order within five days without considering the submissions made by the Petitioners. The Respondents No. 1 & 2 mentioned that the said line is already charged and the said transmission tower is not located on Petitioners land, only the line conductors are passing through the Petitioners land.

7. During the hearing the Commission observed that, the oral submissions made by the Petitioners during the hearing held on 2 April, 2012 were contradictory to its written submissions filed on affidavit dated 29 February, 2012.

8. After hearing the parties, the Commission directed as follows:-

(i) The Petitioners were permitted to amend/ modify the Petition stating the issues precisely, on affidavit, with a copy served on the other parties.

(ii) The Respondents were directed to submit their paragraph-wise reply, with the copy served on the other parties.

9. In accordance with the Commission's direction, the Petitioners submitted an affidavit to the Commission on 19 April, 2012 and the Respondents submitted their parawise reply on 2 May, 2012.

10. The Commission vide notice dated 11 April, 2012 scheduled a second hearing in the matter on 2 May, 2012. During this hearing, the Commission observed that the Petitioners did not amend the Petition specifically and Petitioners sought some time to go through the reply filed by the Respondent. The Respondents submitted that the construction of the transmission line was executed as per the original plan and the original route map has not changed. The Respondents further submitted that the route map is only indicative of route and is not meter perfect.

11. The Commission vide notice dated 14 May, 2012 scheduled a third hearing in the matter on 4 July, 2012. During the hearing, the Commission observed that all the pleadings were complete on both the sides and the transmission lines are ready and charged.

DECISION WITH REASONS

12. The Petitioners have invoked the powers of the Commission under Section 67 (4) of the EA 2003 to decide as to whether the Order of the divisional magistrate dated 31 December 2011 should be sustained or not in law. The main contention of the Petitioners is that the work of tower line of high tension wires by Maharashtra State Electricity Transmission Company Ltd., (“MSETCL”) for the purpose of evacuation of electricity from a sugar factory, is contrary to the original sanctioned map. The said transmission line/tower no. 31 was not supposed to transgress Gat No. 489 at village Ozarde. The Petitioners has stated that high tension wires of tower no. 30 and 31 goes through the house of the suit land of the Petitioners. The Petitioners have agitated this issue before the Civil Judge, Wai by filing a civil suit on or about 5 August, 2011. Respondent Nos. 1 and 2 are officers of MSETCL which is a company engaged in the business of transmission of electricity in the State of Maharashtra. On or about 21 December, 2011, MSETCL filed an application before the divisional magistrate complaining that the Petitioners are obstructing the progress of the works of the aforesaid transmission lines. Divisional magistrate passed Orders dated 30 September, 2011 and 31 December, 2011.

13. The State Government of Maharashtra (GoM) has notified the Works of Licensee Rules under Section 67 to 69 of the Electricity Act, 2003 dated 16 May, 2012. Section 3 of Maharashtra Electricity Works of Licensees Rules, 2012 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, where over or whereunder any electric supply-line or works has not already been lawfully laid down or placed by such licensee, with the prior written 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 by an application obtain permission in writing from the District Collector or any other officer authorised by the State Government in this behalf, for carrying out the works:

Provided further that if at any time, the owner or occupier of any building or land on which any works have been carried out or any support of an overhead line, stay or strut has been fixed shows sufficient cause, the District Collector or the officer authorised may by order in writing direct for any such works, support, stay or strut to be removed or altered.

Provided also that, in case the District Collector does not issue a direction within fifteen days from the date of receipt of application or does not consent to the proposed works, the licensee may seek direction from the Commission.

(2) When making an order under sub-rule (1), the District Collector or the officer so authorised, as the case may be, shall fix after considering the representations of the concerned persons, if any, the amount of compensation, which should in his opinion be paid by the licensee to the owner or occupier.

(3) Every order made by a District Collector or an authorised officer under sub-rule (1) shall be subject to revision by Commission.

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

These aforesaid Rules provide that an Order made by a district collector or an authorised officer shall be subject to revision by Commission.

14. The district magistrate by its impugned Order dated 31 December, 2011 has granted permission to Maharashtra State Electricity Transmission Co. Ltd., Sangli to complete the construction work for laying of LILO of 132 kV Lonand–Wai transmission line with the direction that the Petitioners should not obstruct the same. The district magistrate has directed that MSETCL shall have to pay compensation if required in future for the loss to the crops and other damages to the farm land owners and other concerned farmers eligible for the damages.

15. A notification dated 24 August, 2006 has been issued by the Government of Maharashtra under Section 164 of the Electricity Act, 2003, empowering the Maharashtra State Electricity Transmission Company Ltd., (MSETCL) to exercise the powers of a Telegraph Authority for the purpose of laying of electric lines. MSETCL is engaged in the business of transmission of electricity in the State of Maharashtra. The Hon’ble Bombay High Court, Nagpur Bench, has passed a judgement dated 22 March, 2012 in a batch of writ Petitions (Writ Petition No.256 Of 2012 and others) examining

inter alia objections raised by owners/occupiers of land through which the transmission lines of MSETCL were being laid. The Hon'ble High Court also took into account an Order passed by district magistrate, Nagpur under Section 16 (1) of the Indian Telegraph Act, 1885 granting permission to MSETCL to carry out and to continue the work of the transmission line under the powers vested in MSETCL under Section 164 of the EA 2003 and directing MSETCL to pay requisite compensation in accordance with law. In the aforesaid Writ Petitions not only the district magistrate's Order was challenged but the challenge covered a far larger scope, i.e., the aforesaid notification issued under Section 164 empowering MSETCL with the powers of the telegraph authority, validity of Section 164 of the EA 2003 and Section 10 of the Indian Telegraph Act, 1885. Section 16 of the 1885 Act vests authority in the district magistrate to enquire into the obstructions or resistance pertaining to the act of laying transmission lines. The Hon'ble High Court has held that once the powers of a telegraph authority has been vested on MSETCL under Section 164 the question of seeking prior consent under Section 12 of the now repealed 1910 Act does not apply. While exercising powers of a telegraph authority, Sections 10 to 16 of the Indian Telegraph Act 1885 do not provide for obtaining consent of the owner or occupier of the land.

16. On the grounds made in the Petition the Petitioners state that the impugned Order passed by the Divisional Magistrate is bad in law, erroneous, bad on facts, inequitable, etc. The Petitioners state that the Divisional Magistrate failed to consider that as per the original map of MSETCL the tower line did not go through the land of the Petitioners. The Petitioners states that it is not possible for high tension wires of tower no. 30 and 31 to go from the house of the Petitioners since the house is only 598 metres from the highway and tower nos. 30 and 31 is 3.25 km away from the highway. The Respondents No.1 and 2 in their reply state that the Petition relates to LILO work on 132 kV Lonand to Wai EHV line for Kisanveer Co Gen (Bhuinj). This line is stated to be already erected and charged. The Respondents No.1 and 2 state that the Petitioners do not have *locus standi* as neither any transmission tower is situated in the Petitioners land nor the Petitioners were affected in any way due to the erection of the transmission line. According to the Respondents, the contentions of the Petitioners are on false premise and do not have any merit. Hence, MSETCL had to approach the sub-divisional magistrate to stop the Petitioners and their frivolous objections. The Respondents deny any ulterior motive for changing the route of the electric line which is stated to have been done to save trees and crop and to cause minimum damage to the farmers land. It is stated that the original route map was not at all changed. A route map is indicative of the route and is not even metre perfect. It is just a rough sketch of the route. Only change in the transmission line is the moving of tower no. 31 from middle of Gat No. 483 to its border and as a consequence moving of tower no. 30 eastwards. tower no. 31 was moved to the edge of Gat No. 483 to save crops and trees. Any change in the positions of tower nos. 29 to 34 has been denied. The overhead line does not pass through Gat No 488B/1 which is a NA plot. It is stated that MSETCL has acted according to the powers conferred on by Section 164 of EA 2003 and Section 10 (d) of the 1885 Act. As regards the regular Civil Suit No. 112 of 2011 filed by the

Petitioners, it is stated that the said matter is pending but has become infructuous as MSETCL has already constructed the transmission line with the permission of the district magistrate and the line is operationalised. It is also stated that MSETCL has issued a public notice of the erection of transmission line on 6 November, 2009.

17. The Commission has examined the impugned order passed by the Divisional Magistrate. The divisional magistrate has considered the objections raised by the Petitioners regarding the laying of transmission line not being in accordance with the original sanctioned plan. MSETCL has denied the existence of the factum of the tower and the line passing over the house of the Petitioners. The divisional magistrate was of the opinion that the authorisation under Section 164 to MSETCL to exercise the powers of a telegraph authority empowered it to carry out the activity of laying of transmission lines and the towers in question. The Divisional Magistrate was also of the opinion that in public interest it should not be obstructed. The Divisional Magistrate directed that all precautions should be taken by MSETCL towards damage to crops, property etc and if required compensation should be granted. The Divisional Magistrate was also of the view that natural justice requires allowing MSETCL to lay transmission lines and erect the towers in question.

18. On a perusal of the impugned Order, the Commission is of the view that MSETCL being a transmission licensee having powers of the telegraph authority under Section 164 and also being the state transmission utility were entitled to change the transmission line by moving of tower no. 31 from middle of Gat No. 483 to its border and as a consequence moving of tower no. 30 eastwards. Tower no. 31 was moved to the edge of Gat No. 483 in order to save crop and tress. The Petitioners have not shown any illegality in this regard. Moreover, the divisional magistrate has directed MSETCL to pay compensation for any destruction of crop and trees. The Petitioners have themselves admitted in their Petition that the divisional magistrate while passing the impugned Order has heard both the sides and perused all the evidence on record. So, there is no question of violation of natural justice. The Commission does not find that there is any violation of any statutory provision or any binding precedent or that the impugned Order suffers from misreading of evidence or has omitted to consider any relevant evidence. It is not as if the impugned Order take a view that no reasonable person would arrive at. On the other hand, the district magistrate has ensured by its Order that least damage, detriment or inconvenience is caused and that compensation is determined and paid for any damage, etc. The Commission is of the view that the said directions in the impugned Order are in line with the onus cast upon the licensee under Sub-section 3 of Section 67 of the Electricity Act, 2003.

19. The Commission is of the view that the directions of the District Magistrate to have the amount of compensation determined and paid to the land owners is in accordance with the powers vested under the Maharashtra Electricity Works of Licensees Rules, 2012.

20. The impugned Order also reveals that the Respondent No. 3 has followed the principles of natural justice while conducting the hearings and while passing the impugned Order. All the parties were given opportunity to file their submissions and to present their case.

21. After going through the impugned Order, it cannot be held that the District Magistrate has acted in the exercise of jurisdiction illegally or with any material irregularity.

22. In view of the above findings, the Commission does not find any merit in this Petition and finds it necessary to dismiss it.

In view of the above, the present Petition stands dismissed. No orders as to cost.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman