

**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. 28 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 Orders dated 30 November, 2011 and 31
December, 2011 passed by Ld. Divisional Magistrate, Wai in
Misc. Application No. 12 and 13 of 2011.**

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

Shri Ramchandra P. Farande & Others
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 Ramchandra P. 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 Ramchandra P. Farande & others submitted a Petition under affidavit before the Commission on 2 March, 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 30 November, 2011 and 31 December, 2011 passed by Ld. Divisional Magistrate, Wai in Misc. Application No. 12 and 13 of 2011.

2. The prayers of the Petitioner 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. 29 and 34.*
- c) *This Hon'ble Commission may be pleased to direct the Respondent 1 and 2 to withdraw the incorrect Tower line and build 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 Petitioners 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.441, 436, 488/A/1, and 489 situated at Ozarde, Taluka Wai, District Satara.
- (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. The high tension wires of tower no. 29 to 34 pass over the house and suit land of the Petitioners and obstruct path which is used by the Petitioners.

- (iv) As the high tension wires of tower no. 29 to 34 pass over the house and suit land of the Petitioners, they have challenged the activity of the Respondents No. 1 and 2 by way of filing a regular Civil Suit No. 105 of 2011 and regular Civil Suit No. 499 of 2011 before the Civil Judge Senior Division, Satara. Civil Judge Senior Division, Satara declined to grant interim relief to the Petitioners. Extra Ad-hoc District Judge protected the Petitioner's right through Order dated 6 September, 2011 passed in Misc. Appeal No. 119 of 2011.
- (v) The Respondents No. 1 and 2 filed a Misc. Application No. 8 of 2011 dated 26 August, 2011 before the Divisional Magistrate /Collector, Satara thereby informing the Divisional Magistrate /Collector that the Petitioners were obstructing the progress work of loop in loop out (LILO) 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 Divisional Magistrate /Collector, Satara. After hearing both sides, the Divisional Magistrate, Wai was pleased to allow 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 Misc. Application No. 12 of 2011 before the Divisional Magistrate, Wai thereby informing that the Petitioners are obstructing the progress work of LILO on 132 kV Lonand-Wai electricity line between tower no. 31 and 32 since high tension wires are passing from their land. The Petitioners appeared and resisted the case by filing their affidavit. After hearing both sides, the Divisional Magistrate, Wai allowed the Misc. Application No. 12 of 2011 and passed the Judgment and Order on 30 November, 2011.
- (vii) The Respondents No. 1 and 2 again filed Misc. Application No. 13 of 2011 before the Divisional Magistrate, Wai alleging that the Petitioners are obstructing the progress of LILO work on the 132 kV Lonand-Wai electricity line between tower no. 31 to 33 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 Judgment and Order on 31 December, 2011.
- (viii) The Petitioners submitted that they have sought information under the Right To Information Act from MSETCL, Sangli about the distance of the tower nos. 30 & 31 from the national highway and the department informed them that the distance between the mentioned towers and national highway is near about 3.25 km.
- (ix) Thus, being aggrieved and dissatisfied by the Judgment and Order dated 30 November, 2011 and 31 December, 2011 passed by the Divisional

Magistrate, Wai in Misc. Application Nos. 12 and 13 of 2011 (the impugned Orders), thereby allowing the applications filed by the Respondents, the Petitioners filed the Petition under Section 67 (4) of the Electricity Act, 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, has 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 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 Petitioner's submissions. 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 Petitioner's 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 filed an affidavit before the Commission on 19 April, 2012 and the Respondents submitted their para-wise 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 the 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 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 completed on both the sides and the transmission lines are ready & 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 Orders of the Divisional Magistrate dated 30 November, 2011 and 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 have stated that high tension wires of tower no. 29 to 34 goes through the house and the suit land of the Petitioners. The Petitioners have agitated this issue before the Civil Judge, Senior Division Satara by filing a Civil Suit on 20 December, 2011. The Respondents No. 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 3 November, 2011, MSETCL has filed a Misc application no. 12 of 2011 and Misc application no. 13 of 2011 before the Divisional Magistrate complaining that the Petitioners are obstructing the progress of the works of the aforesaid transmission line. Divisional Magistrate passed Orders dated 30 November, 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 on 132 kV Lonand–Wai transmission line and 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 of the District Magistrate, Nagpur passed 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 Orders passed by the Divisional Magistrate is bad in law, erroneous, bad on facts, inequitable, etc. The Petitioners stated 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 state that it is not possible for high tension electric wires of tower to go from the house of the Petitioners since towers 30 & 31 is 3.25 kms away from the highway. In their reply, the Respondents No.1 and 2 stated that the Petition relates to LILO on 132 kV Lonand to Wai EHV line for Kisanveer Co Gen (Bhuinj). This line is already erected and charged on 14 February, 2012. The Respondents No.1 and 2 stated that the Petitioners do not have *locus standi* as neither any transmission tower is situated in the Petitioners' land nor were the Petitioners 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 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 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 it by Section 164 of EA, 2003 and Section 10 (d) of the 1885 Act. As regards the Order of the Extra Jt. Adhoc District Judge in Civil Appeal No. 119 of 2011 is concerned it protected the Petitioners by granting temporary injunction till the time the Respondents obtained permission of the District Magistrate or final decision of the civil suit whichever is earlier; and as regards the regular civil suit no. 499 of 2011 filed by the Petitioners is concerned no interim relief was granted by the Civil Judge Senior Division, Satara. It is furthermore stated that the said matters are pending but have 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 for the erection of transmission line on 6 November, 2009.

17. The Commission has examined the impugned Orders 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 Orders, 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 was 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 trees. 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 Orders 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 Orders suffers from misreading of evidence or has omitted to consider any relevant evidence. It is not as if the impugned Orders take a view that no reasonable person would arrive at. On the other hand, the District Magistrate has ensured through its Orders 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 Orders are in line with the onus cast upon the licensee under Sub-section 3 of Section 67 of the Electricity Act, 2003.

It will be apt to quote a passage from the aforesaid Hon'ble High Court's judgement as follows:-

"..it seems unreasonable to confer on the owners or occupiers of land a choice about what should be the route of the electric line and where it should be placed, since such a decision must yield to the dictates of technical knowledge, expertise and viability. There is no doubt that if all owners and occupiers of land over hundreds of kilometers are allowed to have a say and object to the routes and if the validity of the Orders passed under objection is allowed to be contested, the route may not get finalized for years. Having regard to the importance of electricity to the life of citizen, particularly to essential services and industry, such a procedure would be detrimental to public interest."

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.

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

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

As regards the contention that the impugned Orders of the Divisional Magistrate is in violation of Article 300A of the Constitution, the said Article reads as under:-

"300A. No person shall be deprived of his property save by authority of law.

MSETCL has been empowered with the powers of a telegraph authority under the Indian Telegraph Act, 1885. Under Section 10 of the said 1885 Act, it is clear that the Central Government thereby does not acquire any right other than that of user in the property. The provision provides for payment of full compensation to all persons interested in the land for any damage sustained by them by reason of exercise of those powers. Hence, by laying transmission lines, erecting towers etc., MSETCL acquires rights of user in the land and not the land. The present case does not involve the acquisition of land but only the use by MSETCL for a limited purpose, for which there is provision for payment of compensation. Therefore, there is no question of depriving any person of his property. Thus, the contention pertaining to violation of Article 300A of the Constitution is rejected.

20. 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