

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION World Trade
Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai – 400 005 Tel. 022
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Case No. 147 of 2011

**In the matter of
Petition under Section 67 of the E.A. 2003 against the Maharashtra State Electricity
Transmission Company Ltd., for obtaining mandatory permission of the land owner at
the time of erection of 220 KV Mhaisal – Jath Line.**

Shri. V.P. Raja, Chairman

Shri. Shailendra C. Modi

..... Petitioner

Versus

Executive Engineer,
Maharashtra State Electricity Transmission Co. Ltd., Sangli

. Respondent

ORDER

Dated: 22nd November, 2011

Shri. Shailendra C. Modi submitted a Petition under affidavit before the Commission on 11/10/2011 seeking declaration and directions under Section 67 of the E.A. 2003, upon the Maharashtra State Electricity Transmission Company Ltd.,

2. The Prayers of the Petitioner are as follows:

- १) प्रतिवादी यांचे कडून, वादी व संबंधीतांच्या जमिनीत एकूण दोन मनोरे उभे करणेचे प्रस्तावित आहे, त्यास मा. अपिलीय ट्रायब्युलेट यानी महाराष्ट्र राज्य विद्युत पारेषण कंपनी विरुद्ध श्री. विक्रम सुंदरदास सेटीया केस क्र. ८३/२०१० आदेश दि. ०७-सप्टेंबर-२०११ नुसार दिलेल्या आदेशाप्रमाणे जमिन मालकाची पूर्व परवानगी प्रतिवादी यांना बंधनकारक आहे हे जाहिर व्हावे ही विनंती.
- २) एका ठराविक मुदतीत प्रतिवादी याना वादी यांचेशी एकमेकांच्या विचारे जागेची आवश्यकता व त्या नुसार नुकसानभरपाई व /वा भाडेपट्टा वा दोन्ही या बाबत करार करावा व हा करार हाच समझोता असलेचे मा. आयोगाकडे सादर करावा असा आदेश व्हावा ही विनंती.

- ३) असा समझोता होणार नसेल तर कायदेशीर तरतुदींचे पालन करणे बाबत प्रतिवादी यांना आदेश द्यावा ही विनंती.अश्या कायदेशीर प्रक्रीयेचे पालन जो पर्यंत होत नाही, तो पर्यंत प्रतिवादी यानी अथवा संबधीतानी वादी वा संबंधीतांच्या वरील गट क्रमांकाच्या जमिनित केलेला प्रवेश हा बेकायदेशीर असेल, याची जाणीव प्रतिवादी याना देण्यात यावी ही विनंती .
- ४) इतर न्यायाचे आदेश वादी यांचे वतीने व्हावेत ही विनंती.
- ५) जरूर भासल्यास याचिकेत योग्य ती दुरुस्तीस परवानगी असावी ही विनंती.

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

- (i) The Petitioner is a farmer and his family owns the agricultural land bearing Gat No. 536/2 A, 537/ 2 B, 538/2 and 526/1 at Jath, Taluka- Jath, Dist. Sangli.
- (ii) Since last few months, the Contractor, Officers and the employees of the Transmission Company are carrying out the works for erecting the tower line of 220 KV Mhaisal – Jath Line around the land of the Petitioner and the other land owners.
- (iii) It has been experience by the land owners that the Contractor, Officers and employees of the Transmission Company have been suddenly entering the land and carrying out the works for erecting the tower line without giving any prior notice to the owner of the land.
- (iv) The employees of the Respondent came to the land of the Petitioner and the land of his family members and they started carrying out the survey on it by pigging down wooden pins.
- (v) On enquiry it was informed by the Respondent that they are erecting the tower on the said land.
- (vi) Further, after inquiry made by the Petitioner, the Respondent had given the answer as follows:-
 - (1) they proposed to erect the tower on the said land.
 - (2) since it is the Government work no notice is required.
 - (3) since the said work is being done in the public interest no compensation for such activities is required to be given.
- (vii) On inquiry, it has been observed that it is being informed by the Transmission Company that if any compensation is required to be paid to the any person it is to be paid by the concerned contractor.
- (viii) The Petitioner has strongly objected and stopped the work of carrying out the survey on the land of the Petitioner and his concerned land owners.

- (ix) After such objection raised by the Petitioner, the officers of Maha Transco came from the Sangali and threatened the Petitioner and the concerned persons stating that the said work is a Government work and in case if they object the said work, they will erect the tower with the help of police protection.
- (x) The Petitioner inquired the Respondent that How many towers are being erected on his/their land? How much land is required for said purpose?, whether consent of the land owner is required to be taken while doing such works? Whether they will initiate the proceedings for the Compensation or not? If the concerned land owner has not given any consent for such work or the Transmission company failed to obtain the same in such circumstances, whether, the Transmission company has taken any permission from the Government for erecting the towers. It has been seen by the Petitioner that the Petitioner is not getting any answer for such queries.
- (xi) The Petitioner further contended that for the above said purpose the Petitioner sought information under Central Right to Information Act, from the Divisional office of the Transmission Company, Sangli.
- (xii) The Executive Engineer EHV Construction Division vide its letter date 20th August, 2011 bearing No. Ex. Engineer/ EHV Construction Division/ Sangli/RT/No. 1649 has provided the information to the Petitioner which are as follows:-
- a) Two transmission towers are proposed to be erected on the land bearing Gat No. 536/ 2 A, 537 /2 B, 538/2 and 526/1 at Jath.
 - b) Section 67 of the E.A. 2003 and Works of Licensee Rules 2006 are not applicable to the work of erecting the Electricity Tower.
 - c) MSETCL is authorised to erect the tower as per Section 10 of Indian Telegraph Act, 1885 and Section 164 of Indian E.A.2003
 - d) Compensation is to be given for land acquisition for erection of transmission towers and the right to make the assessment of such compensation are available with the District Collector as per circular No. Sankrina 210/ Case No. 29/ Energy-4 Mantralaya Mumbai dated 01.11.2011 Maharashtra Government Industrial Energy and Labour Department.
- (xiii) It is clear to the Petitioner from the information received under Right to Information Act that the Respondent has proposed to erect two towers on the land of the Petitioner as well as on the land of his family members.
- (xiv) The Petitioner submitted that from the correspondence, it was seen that as per the law, the Transmission Company has all the rights to erect the towers without obtaining prior permission from the land owner.

- (xv) Petitioner contended that it is not clear that when the District Magistrate will pay the Compensation and it is not also clear that whether the Compensation will only be paid for the land acquired for erection of towers and Petitioner's right of easement.
 - (xvi) The said land of the Petitioner is in the Prime location of the developed Taluka at Jath and he wishes to develop his land by making it non agricultural land in future. Currently, the Petitioner's land is horticultural land on which crops viz grapes, pomegranate and Gooseberries are taken. The Petitioner has also stated that the Bank of Maharashtra and the State Bank of India Jath have charge on/ given loan on the said land.
 - (xvii) The Petitioner contended that the Respondent is bound to follow the decision given by APTEL in Appeal No. 83 of 2011 wherein, it has been held by APTEL that the Transmission Company shall take the prior permission of the owner of the land before acquiring the same.
 - (xviii) Due to such act of the Respondent the Petitioner was unable to understand that how many towers are proposed to be erected on the land of the Petitioner as well as the land of his family members. After getting such information from the Respondent on the application filed by the Petitioner under Right to Information Act, it came to the knowledge of the Petitioner that the Respondent will erect two towers on the Petitioner's land. Hence there is no such delay in filing present Petition before the Commission.
 - (xix) The Petitioner has filed the present Petition before the Commission under Section 67 of E.A.2003.
4. The Commission vide Notice dated 21/10/2011 had scheduled a hearing in the matter on 09/11/2011. During the hearing Petitioner was present in person in the matter. Shri. A. A. Joshi, Advocate, represented the Respondent MSETCL. In the hearing the Petitioner and the Respondent reiterated the submission made in the Petition and the affidavit-in-reply, respectively.
5. The Respondent filed an Affidavit in reply in the matter on 09/11/2011. In the said Affidavit it has been mainly submitted as under:
- (a) The Respondent has taken up the work of construction of 220 KV D/C on D/C Mhaisal – Jath line having length around 68 kms with involvement of 217 Nos. of towers. The work is approved vide MSETCL MBR No. 23/ 12 dated 20.12.2007 for Rs. 130 Crores.
 - (b) The Location no.s 211 and 212 are on the land owned by the Petitioner. The Respondent has submitted that oral permission was obtained from the Petitioner by the Officers of MSETCL. When the Petitioner demanded information under the RTI Act, the same was fully provided. On receipt of information the Petitioner has not accorded consent.

- (c) The Respondent is exercising its power under Section 164 of the E. A. 2003 read with Section 16 of Indian Telegraph Act, 1885 and Rule No. 3(1) (b) of the Works of Licensee Rules, 2006 of the Central Government.
- (d) The Respondent has already initiated a proceeding before the District Magistrate, Miraj wherein, an application is pending for disposal on 14/11/2011 and the Respondent is ready to pay compensation according to the mode and manner decided by the District Magistrate/ Revenue Authority/ Collector. Hence the Petition filed by the Petitioner is not maintainable and deserves to be dismissed summarily.
6. Having heard both the parties and after considering the relevant materials on record, the Commission is of the view that the first tier authority to adjudicate on objections raised by the owner or occupier of land for carrying out of works is not this Commission. If the provisions of Section 185 of the E. A. 2003 were to be applied then Section 12 to 18 of the Indian Electricity Act, 1910 ("IE Act, 1910") would apply until the rules under Sections 67 to 69 are made by the State Government under the E.A.2003. in which case, Section 12 of the Indian Electricity Act, 1910 inter alia provides as follows:-

"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 where under 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."

(3) When making an order under sub section (2), the District Magistrate or the Commissioner of Police, as the case may be shall fix the amount of compensation or of annual rent, or of both which should in his opinion be paid by the licensee to the owner of occupier.

(4)Every order made by a District Magistrate or a Commissioner of Police under sub- section (2) shall be subject to revision by the State Government.

(5) Nothing contained in sub-section (1) shall be deemed to authorise or empower any licensee to open or break up any street not repairable by the Central Government or the State Government or a local authority, or any railway or tramway, except such streets, railways or tramways (if any), or such parts thereof, as he is specially authorised to break up by his license, without the written consent of the person by whom the street is repairable or of the person for the time being entitled to work the railway or tramway, unless with the written consent of the State Government:

Provided that the State Government shall not give any such consent as aforesaid, until the licensee has given notice by advertisement or otherwise as the State Government may direct, and within such period as the State Government may fix in this behalf. to the person above referred to, and until all representations or objections received in accordance with the notice have been considered by the State Government.

(6) In this section, "occupier" of any building or land means a person in lawful occupation of that building or land."

7. Hence, in terms of Section 185 of Electricity Act, 2003 the Petitioner is required to initially approach the District Magistrate or the Commissioner of Police. On the other hand the Works of Licensees Rules, 2006, notified by the Central Government prescribe that where the owner or occupier of the land raises objection in respect of works to be carried out by the licensee, the licensee shall obtain permission in writing from the District Magistrate or the Commissioner of Police or any other officer authorized by the State Government in this behalf, for carrying out the works. Any of these authorities can also fix after considering the representation 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. Rule 3 in this regard read 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:"

Provide further that if 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 Magistrate or the Commissioner of Police, or the officer authorised may be order in writing direct for any such work, support, stay or strut to be removed or altered.

(2) When making an order under sub-rule (1), the District Magistrate or the Commissioner of Police 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 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 authorised office under sub-rule (1) shall be subject to revision by the Appropriate Commission.

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

8. The Commission further observed that the Commission is not the first tier authority to deal with an objection to erection of transmission towers by a licensee such as MSETCL. From Rule 3 of Works of Licensee Rules, 2006 it could be seen that the first tier authority to examine the grievance pertaining to objection of the owner or occupier, lies before “the District Magistrate or the Commissioner of the Police or any other officer authorized by the State Government in this behalf.”
9. Accordingly, the Respondent has filed an application before the District Magistrate, Miraj, under Section 16 of Indian Telegraph Act, 1885 which is under consideration of the District Magistrate, Miraj and a meeting to discuss the same is scheduled on 14th November, 2011. Hence, the present Petition is not maintainable before the Commission, The Commission comes into picture in terms of sub-rule (3) of Rule 3 only when the order made by the District Magistrate or a Commissioner of Police or an authorized officer as aforesaid is subject matter of revision before the Commission.

In such Circumstances, the present Case No. 147 of 2011 stands dismissed as not maintainable.

Sd/-
(V. P. Raja)
Chairman