

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 41 of 2009

In the matter of
Petition of Shri Vikram Sunderdas Setiya challenging a Notice dated 20.04.2009
issued under Section 42 of EA 2003

Shri. V. P. Raja, Chairman
Shri. S. B. Kulkarni, Member
Shri. V.L. Sonavane, Member

Shri Vikram Sunderdas Setiya
R/o Plot No. 42, New Friends Co.op Society
Near Bhim Chowk, Jaripatka
Nagpur

.....Petitioner

Vs.

1. Maharashtra State Electricity Transmission Co. Ltd.
through its Executive Engineer
EHVT Lines Construction Sub-Division
Nagpur.

2. Maharashtra State Electricity Transmission Co. Ltd.
through its Deputy Executive Engineer
Office of the Assistant Engineer
EHVT (L) Sub Division
Prakash Bhavan, Nalco Society
Link Road, Sadar, Nagpur 440 001

.....Respondents

ORDER

Dated: October 07, 2009

Shri Vikram Sunderdas Setiya filed a Petition on 10th June 2009, under Section 67(4) of the Electricity Act, 2003 (“EA 2003”) challenging a Notice No. AE/EHVT S-DN/NGP/102 dated 20.04.2009 issued by the EHVT Line Construction Sub-Division, Maharashtra State Electricity Transmission Co. Ltd (MSETCL), Nagpur under the Indian



Telegraph Act,1885 for construction of Plinth and Towers for the purpose of constructing Single Circuit 400 kV Khaparkheda - Koradi Single Circuit transmission line at Location No. 1.

2. The Petitioner prays as follows:

“

- i. *The respondents be directed to produce the location map of the 400KV single circuit transmission lines from khaparkheda to koradi which the respondents have proposed to erect and taken through the field of the petitioner;*
- ii. *The respondents be directed to search out the alternate government land which is available by side of the field of the petitioner for the said purpose;*
- iii. *The notice dated 20.04.2009 be quashed and set aside; or in alternative, the respondents be directed to issue the notice under the existing provisions of law specifically mentioning therein the Survey No., location, the area where on the respondents have proposed to erect the tower and the respondents be further directed to compensate the petitioner by paying the cost of land at prevailing market rate and looking to the possible diminishing value of the agricultural land of the petitioner due to taking the proposed 400 KV line from over the field of the petitioner and the respondents be directed to compensate the petitioner accordingly taking all other incidental aspects of the matter including interest and solacium payable as per provisions of Land Acquisition Act;*
- iv. *During pendency of the present case before this Hon'ble Commission, the effect and operation of the impugned notice dated 20.04.2009 be kindly stayed till the decision of the present case.”*

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

- i. The Petitioner is the owner of agricultural land bearing Survey No.146, admeasuring 1.13 Hectors situated at Mouza-Nanda Koradi, Taluka Kamptee Dist. Nagpur on which the Respondents have planned to erect one tower of MSETCL's proposed 400 KV single circuit Khaparkheda – Koradi transmission line without mentioning the exact location and the area required for the construction of the plinth.
- ii. The Petitioner alleges that the Respondents have issued the Notice dated 20.04.2009 under the provisions of Indian Telegraph Act 1885 (“ITA 1885”) and Electricity (Supply) Act, 1948 (“ES 1948”), whereas it ought to have followed the procedure as contemplated under the EA 2003 and the Works of Licensees Rules, 2006.



- iii. The Petitioner vide letter dated 23.05.09 replied to the said Notice specifying that the Notice is sent in the joint names of the Petitioner and his brother Shri Indrakumar Sethiya, who in no way is concerned with the land, that the Notice does not mention the Survey No., or the location of the land where the construction is to be carried out, does not provide any amount as compensation to the Petitioner and wrongly mentions that the land has no standing crops. The Respondents without paying heed to the said letter cum reply started the digging work on the Petitioner's land on 7th June 2009.
- iv. The Respondents have not explored the availability of alternate Government land nearby so as to divert the said line from his agricultural land which is being used for regular cultivation of crops.
- v. Due to the erection of an electric tower and passage of the said transmission line through his land there is loss of crop as well as diminishing of the market value of the land for which no compensation has been spelt out by the Respondents. Further, there is also a danger to the lives of the people and cattle working in the land due to the same.
- vi. Since the Respondents had proceeded with the work of construction of plinth without paying heed to the Petitioner's request of not to proceed with the work and to stop the illegal work, the Petitioner has filed the present case before this Commission for the purpose of adjudication on the facts stated above.

4. The Respondents (MSETCL) filed its reply dated 17.08.2009 and submitted as follows:

- i. The matter filed by the Petitioner before this Commission is not maintainable and is liable to be dismissed.
- ii. The work with regard to 400 KV Khaperkheda – Koradi Single Circuit Line is sanctioned by the competent authority vide MBR No. 18/13, dated 31.07.2007. After the sanction, the scheme was approved by this Commission and the work began after publishing the public notice with regard to the scheme in the local newspapers having wide circulation in the area as well as in the Maharashtra Government Gazette dated 27.07.2007.
- iii. The total number of locations in the said Khaparkheda - Koradi line is 13 Nos. and out of this, location No.1 falls within the land owned by the Petitioner. The work has been practically completed at all the other locations. There is no alternate Government land available along the sanctioned route of line as well as in the adjoining land. Considering that the construction is already executed, it is not possible now to divert or deviate the route of the proposed line.
- iv. The work of execution of the said line is being carried out in accordance with the law and powers vested on the Respondents. In terms of Section 164 of EA,2003 the Government of Maharashtra (“GoM”) had empowered



MSETCL to exercise all the powers of a telegraph authority possessed under the Indian Telegraph Act, 1885 and that the order to this effect was duly notified and published in the GoM Gazette dated 24.08.2006.

- v. The Petitioner was informed by the Respondents about the works vide Notice dated 20.04.09. The Petitioner vide letter dated 23.05.2009, replied to the Respondent No. 2, mentioning that the Notice lacked certain details. The Respondents replied to the said letter on 27.05.2009, answering all the contentions of the Petitioner and specifying that the Respondents acted as the telegraph authority and would comply with the provisions of providing compensation once the damages are properly assessed.
- vi. The Respondents submit that the Commission has no jurisdiction under Section 67(4) of EA, 2003 considering the fact that the Respondents are already empowered by GoM to exercise the powers of a telegraphic authority.
- vii. The Respondents allege that the petition is essentially an obstruction and if the obstruction continues, the Respondents would proceed to invoke Section 16 (1) of the ITA 1885, and after obtaining due permission from the District Magistrate, the work shall be continued further.
- viii. The Respondents assure that they shall do as little damage as possible during the exercise of powers and shall pay the compensation as per the provisions of ITA 1885. The only right which the Petitioner may have is to seek compensation or to challenge the sufficiency / adequacy of compensation after the same is ascertained and paid by the Respondents.

5. A hearing in the matter was held on 25th August 2009. Shri R.V. Bhasin, Advocate appeared on behalf of the Petitioner. Shri. G.E. Moharir, Advocate appeared on behalf of the Respondents.

6. Shri. R.V. Bhasin appearing on behalf of the Petitioner, submitted that the Respondents issued a Notice dated 20.04.2009 and the said Notice being a threat to the Petitioner to install a tower in the Petitioner's land without his consent, should have been given after affording a chance to the Petitioner to be heard before issuance of the said notice. Elaborating on this contention, Shri. Bhasin referred to Section 67 (2) which provides as under:

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

(a) the cases and circumstances in which the consent in writing of the Appropriate Government, local authority, owner or occupier, as the case may be, shall be required for carrying out works;”

7. Per contra, Shri. G.E. Moharir appearing on behalf of the Respondents, contended that the Respondents carry out the functions of State Transmission Utility within the meaning of Section 39 of the EA 2003. Shri. Moharir also submitted that the scheme of construction of Plinth and Towers for the purpose of constructing Single Circuit 400 kV Khaparkheda - Koradi Single Circuit transmission line, has the



Commission's approval. He further submitted that as per the Notification issued by the Government of Maharashtra in the Gazette on 24.08.2006, the Respondents were empowered to exercise all powers that vested in the telegraph authority as prescribed in the ITA 1885 and that the Respondents thus exercised the powers under Section 164 of the EA 2003, which provides as follows:

“The Appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any, as the Appropriate Government may think fit to impose and to the provisions of the Indian Telegraph Act, 1885, any of the powers which the telegraph authority possesses under that Act with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained”.

Shri. G.E. Moharir appearing on behalf of the Respondents, also referred to Section 10 of the ITA 1885, which provides as under:-

“The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along, or across, and posts in or upon any immovable property:

...

(d) in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property other than that referred to in clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers”.

* (Clause (c) relates to local government i.e. Grampanchayat etc.,).

8. Shri Moharir thus submitted that the Respondents' action was justified under the above mentioned statutory provisions. He further submitted that while acting as the Telegraph Authority, under Section 10 (d) or under any other provisions of the ITA 1885, the Respondents are not obliged to inform the Petitioner or issue any notice to the Petitioner seeking consent for carrying on the work. In this regard, Shri. Moharir referred to the judgment of the Chattisgarh High Court in *Century Textiles and Industries Ltd. Mumbai Vs. Power Grid Corp. of India Ltd. & Ors.* AIR 2008 (NOC) 2035 (CHH). In this case, the High Court interpreted the provisions of Section 164 of EA 2003, and discussed whether the owner of a land is entitled to any notice or has a right of hearing in connection with the proposed telegraph transmission lines. The High Court in this case held that the prior consent of the owner is not necessary. The only right which the owner gets is to take compensation after the power is exercised under Section 10 (d) of the ITA 1885.



9. Shri Moharir confirmed that the Respondents have a right under Section 164 to act as a Telegraph Authority to use any property for the purpose of establishing the transmission lines and ultimately such use of property is not for any personal or individual benefit but for the public purpose, the project being duly approved by the appropriate authority and the Commission.

10. As regards the issue of compensation, Shri. Moharir relied on a decision of Jharkhand High Court in *Bibi Jamila & Anr. Vs. State of Jharkhand & Ors.* 2008 (3) AIR Jhar R 85, wherein the High Court observed that the only remedy which is available to the land owner is to seek compensation for the damages to the property, on account of exercise of power by the Corporation or its employees. Shri Moharir therefore submits that compensation cannot be ascertained by the Respondents before they exercise the powers under Section 10 (d) of the ITA 1885. The Respondents submitted that they undertake to provide all the damages that the Petitioner may suffer due to the exercise of power by the Respondents.

11. Shri Moharir further submitted that the Respondents may have to take recourse to the provisions of Section 16 (1) of the ITA 1885, which provides as under:-

“(1) If the exercise of the powers mentioned in section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them”.

He submitted that the present Petition should be dismissed by the Commission.

12. The Commission enquired of the Respondents as to whether there was any similarity between the powers conferred on the Board under Section 42 of Electricity (Supply) Act, 1948 and 164 of the EA 2003. Shri Moharir submitted that there were similarities between Section 42 of the 1948 Act and Section 164 of the EA 2003, as Section 42 directly empowered the Board to act as a Telegraph Authority, however, Section 164 of the EA 2003 provides that the State Government may by order in writing empower the licensee to act as a Telegraph Authority.

13. Shri Bhasin objected by stating that it was unfair that the Respondents did not seek the Petitioner's consent before undertaking work on his land, damaged the land and did not decide on the compensation payable to the Petitioner. He alleged that it was fundamentally wrong to allow any authority to take over land for laying transmission lines without considering the loss of the land owner. Shri Bhasin submitted that a direction ought to be given to the Respondents to provide the Petitioner with a map of the land coming under the transmission lines and a copy of the survey conducted by the Respondents to see if the Respondents had taken enough care to examine whether the Petitioner's land could have been avoided from the said plan by laying the lines elsewhere.

14. The Commission observed that this was not a case for acquisition of land but the aspect of right of way or easement for putting up transmission lines was in issue. The Commission also observed that in such matters public interest will always override



private interest. The Commission enquired as to whether the Respondents conducted any survey before proceeding on the work; whether the land alignments were taken into consideration and whether any public notices were issued in this regard to inform the land owner about the land being approved for laying of transmission lines.

15. Shri Moharir explained that the scheme was prepared and submitted to the Superintendent Engineer. Once the scheme was sanctioned by the sanctioning authority, this Commission's approval was sought. Until such process was complete, the Respondents were not entitled to issue notices or conduct hearing of the land owners, as contemplated under the Land Acquisition Act, 1894.

16. The Commission observed that in terms of Section 185 of the EA 2003 "*the provisions contained in sections 12 to 18 of the Indian Electricity Act, 1910 and rules made there under shall have effect until the rules under section 67 to 69 of this Act are made*".

The Commission thus enquired of the Respondents as to whether the provisions contained in sections 12 to 18 of the Indian Electricity Act, 1910 and rules made there under were adhered to by the Respondents.

17. Shri Moharir submitted that Sections 12 to 19 of Indian Electricity Act, 1910, provided that a notice shall be issued if the scheme is not sanctioned, however, if the scheme is sanctioned then no notice is required to be issued. He further averred that there is no provision for issuance of notice under Sections 67 to 69 of the EA 2003 and no rules have been made to this effect by the Government of Maharashtra.

18. Having heard the parties and after considering the materials placed on record, the Commission needs to take up the aspect of maintainability and jurisdiction in the first instance. The Respondents submit that the Commission has no jurisdiction under Section 67(4) of the EA, 2003 considering the fact that the Respondents are already empowered by GoM to exercise the powers of a telegraphic authority. The Commission does not sustain this contention for the simple reason that Section 67(4) of the EA 2003 provides that "*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.*" Since, Khaparkheda - Koradi Single Circuit transmission line is an intra-state transmission line, the appropriate Commission is this Commission. Just because the Government of Maharashtra had, under Section 164, empowered MSETCL to exercise all the powers of a telegraph authority under the Indian Telegraph Act, 1885 under Gazette Notification dated 24.08.2006, that does not mean that the powers conferred by Section 67(4) on this Commission to decide the dispute has been taken away by virtue of the said Gazette Notification. Thus, this Commission has the jurisdiction under statute to decide this matter.

19. The Commission is of the view that since no rules have yet been notified by the Government of Maharashtra under Section 67(2) of the EA 2003, the present dispute would have to be viewed in terms of the provisions of Section 185(2)(b) of the said enactment. Therefore, the provisions contained in sections 12 to 18 of the Indian Electricity Act, 1910 and Rules made there under would have to be referred to. Section



12(2) of the Indian Electricity Act, 1910 requires consent of the owner to be obtained by the licensee to lay down or place any electric supply line, or any other work in, or on, over or under any land not dedicated to public use whereon, wherever or whereunder any electric-supply line or work has not already been lawfully laid down or placed by such licensee. The Petitioner has not given his consent as against the Notice No.AE/EHVT S-DN/NGP/102 dated 20.04.2009 issued by the EHVT Line Construction Sub-Division, MSETCL, Nagpur for construction of Plinth and Towers for the purpose of constructing Single Circuit 400 kV Khaparkheda - Koradi Single Circuit transmission line at Location No. 1. The Respondents do not dispute that the Petitioner is the owner of agricultural land bearing Survey No.146, admeasuring 1.13 Hectors situated at Mouza-Nanda, Taluka Kamptee Koradi, Dist. Nagpur on which the Respondents have planned to erect one tower of MSETCL's proposed 400 KV single circuit Khaparkheda – Koradi transmission line. The Respondents also do not dispute that the said land is not dedicated to public use. The Respondents states that the total number of locations in the said Khaparkheda - Koradi line is 13 Nos. and out of this, location No.1 falls within the land owned by the Petitioner. It has been stated by the Respondents that the work has been practically completed at all the other locations. There is no alternate Government land available along the sanctioned route of line as well as in the adjoining land. Respondents further state that considering that the construction is already executed, it is not possible now to divert or deviate the route of the proposed line.

20. The Respondents submitted that while acting as the telegraph authority, under Section 10(d) or under other provisions of the ITA 1885, the Respondents are not obliged to inform the Petitioner or issue any notice to the Petitioner seeking consent for carrying on the work. The Commission does not sustain this contention for the reason that Section 12(2) of the Indian Electricity Act, 1910 provides that *“Nothing contained in sub-section (1) shall be deemed to authorize or empower a licensee, **without consent of theowner or occupier concerned, as the case may be, to lay down or place any electric-supply line, or other work in, or on, over or under any land not dedicated to public use whereon, wherever or whereunder any electric-supply line or work has not already been lawfully laid down or placed by such licensee”***. The term works under the IE Act, 1910 has been defined under Section 2(n) as *“works includes electric supply line, and any building, plant, machinery, apparatus and any other thing of whatever description required to supply energy 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”***. The work with regard to 400 KV Khaperkheda – Koradi Single Circuit Line, is undoubtedly to carry into effect the objects of licence of the Respondents of transmission of electricity. However, the Petitioner has in its prayers asked for compensation for erection of the transmission lines by the Respondents on the land of the Petitioner. The Respondents submitted that they undertake to provide all the damages that the Petitioner may suffer due to the exercise of power by the Respondents. The Commission is of the view that the payment of compensation should work out the dispute between the parties.



21. Thus, with regard to the above position, the prayers as made by the Petitioner need to be examined. The Petitioner has prayed that the Respondents be directed to produce the location map of the 400KV single circuit transmission lines from Khaparkheda to Koradi which the Respondents has proposed to erect and taken through the field of the Petitioner. The Commission accordingly directs the Respondents to do so immediately. Next, the Petitioner has prayed that the Respondents be directed to search out the alternate Government land which is available by side of the field of the Petitioner for the said purpose. The Respondents have confirmed that there is no alternate Government land available along the sanctioned route of line as well as in the adjoining land, and considering that the construction is already executed, it is not possible now to divert or deviate the route of the proposed line. This prayer therefore cannot be granted while also keeping in view the prayer made that the Respondents be directed to compensate the Petitioner, by paying the cost of land at prevailing market rate. The Commission does not wish to express any opinion on the rate of compensation that is payable but directs the Respondents to hear the Petitioner and pay full and fair compensation as admissible to the Petitioner within a period of one month from the date of this Order. In case the Petitioner is aggrieved with the amount of compensation so paid by the Respondents, the Petitioner may take appropriate recourse under law. As the prayer seeking compensation has been granted the Commission is not inclined to interfere in the notice dated 20.04.2009.

With the above observations and necessary directions, the present case stands disposed of.

Sd/-
(V.L. Sonavane)
Member

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(V. P. Raja)
Chairman, MERC



(Sanjay Sethi)
Secretary, MERC