

**JOINT ELECTRICITY REGULATORY COMMISSION FOR
THE STATE OF GOA AND UNION TERRITORIES
GURGAON**

Coram*
Shri S.K.Chaturvedi, Chairperson
Petition No. 131/2014
Date of Order 19.05.2014

In the matter of

Notification dated 25th October, 2013 of Administrator of Daman & Diu and Dadra & Nagar Haveli published on 6.11.2013 in official gazette, illegal construction attempted on land of applicant and order dated 27.03.2014 passed by the District Magistrate of Dadra & Nagar Haveli.

And

M/s Prakash Industries Ltd. a company incorporated under the Companies Act, having its registered office at 15 K.M. Stone, Delhi Road, Hisar-125044Applicant

Versus.

1. The Administrator, Daman & Diu and DNH
2. The Executive Engineer, Electricity Department, Transmission Division, Silvassa, Dadra & Nagar Haveli,Respondents

Argued by

For Applicant

1. Sh. Shailesh Singh, Advocate, Prakash Industries Ltd.
2. Sh. Ashwani Kumar, Advocate, Prakash Industries Ltd.
3. Sh. Dinesh Purandre, Advocate, Prakash Industries Ltd.

For Respondents

1. Sh. H.M. Patel, Executive Engineer, ED- Dadra and Nagar Haveli.
2. Sh. R.B. Chaubal, AE, ED- Dadra and Nagar Haveli.
3. Ms. Swapna Seshadri, Advocate, Respondents.

Order

The applicant – M/s Prakash Industries Ltd. has filed the present revision Application under Rule 3(3) of the works of Licensees Rules, 2006 to quash and set aside order dated 27.03.2014 passed by DM, Silvassa and direct the respondents to route transmission line covered under notification dated 25.10.2013 published on 6.11.2013 in official gazette from outside the land of the Applicant in a manner that neither transmission tower nor transmission lines of the respondents pass through the said land of the Applicant.

Briefly stated facts of the case of the applicant are that the applicant is in business of manufacturing of steel and steel products with principal factory in the State of Chhattisgarh. The applicant is also owner of 2 hectares and 15 Ares industrial land bearing survey no. 18/2/2 in village Khadoli, UT of DNH. The applicant had its plant for manufacturing of structural steel since mid 1990 in the said land. The plant was subsequently dismantled as the applicant company was going through re-structuring under BIFR scheme. The above land is required by the applicant for restarting manufacturing operations. The land and its surroundings and erection of transmission towers in and around the said land can be made clear from photographs attached with the application.

The respondents have initiated a project for erection and commissioning of certain transmission lines within their area of operation. Therefore, the Respondents vide notification dated 25.10.2013 published on 06.11.2013 in official gazette published a public notice under Sections 67,68 and 69 of the Electricity Act, 2003, proposing scheme for placing electric lines and electric plants for transmission of electricity without giving detail of land merely indicating that proposed erection of 220 Kv line from Khadoli to Kala sub-station could affect lands in village Khadoli and invited objections upto 05.01.2014.

The applicant made representation/ objections to the concerned authority seeking information regarding exact route of the proposed scheme and pointed out that erection of transmission tower and drawing transmission lines across his land render the same un-useable. However, the licensee has authority to carry out the work of laying down electric lines and other necessary transmission or supply electricity subject to terms of the license, rules and regulations.

The licensee is also required to give notice u/s 67(2) of the EA, 2003 before carrying out any work and follow Rules and Procedure keeping in view objections and suggestions received pursuant to the notice issued u/s 67 of EA, 2003. The respondents initiated proceedings u/s 67 of the EA, 2003 and fixed date of hearing on 18.01.2014. The applicant reached the office of the respondent on 18.01.2014 but none was available on behalf of respondents to give hearings.

The respondents on 24.01.2014 with project contractor and police forcibly entered the land of the applicant and excavated three deep pits in the South-East Corner of his land under garb of notice dated 21.01.2014. Therefore, the applicant filed Writ Petition No. 1142/2014 in Hon'ble High Court of Bombay against the respondents and obtained interim relief on 30.01.2014. The respondents moved an application on 17.02.2014 in W.P. no. 1142/2014 seeking liberty to proceed with hearings. The Hon'ble High Court on the same day passed order that the hearings contemplated by the respondents could be proceeded with. On 24.02.2014 hearing was held before the Resident District Collector, Silvassa. The Resident District Collector vide order dated 28.02.2014 held that he had no jurisdiction to pass any order and the parties were directed to approach the District Magistrate.

The Hon'ble High Court of Bombay held hearing in W.P. No. 1142/2014 on 28.02.2014. The Hon'ble High Court directed the concerned officer to concluded hearing and pass order on or before 13.03.2014. The applicant on 06.03.2014 received an e-mail from respondent no. 2 stating that District Magistrate, Silvassa had fixed hearings on 11.03.2014. On 07.03.2014 the applicant received order dated 28.02.2014 of the Resident District Collector by email from respondent no. 2.

The District Magistrate, Silvassa held ex-parte hearings and passed order dated 12.03.2014 disposing objections filed by the applicant u/s 16 of the Indian Telegraph Act, 1885. Whereas, the applicant never filed objections u/s 16 of Indian Telegraph Act, 1885.

The respondent no. 2 on the basis of order dated 12.03.2014 passed by District Magistrate moved application no. 7855/2014 in W.P. No. 1142/2014 seeking dismissal of the Writ Petition no. 1142/2014 and vacating ad-interim relief granted in his favour.

On 24.03.2014 the Hon'ble High Court of Bombay set aside order dated 12.03.2014 of the District Magistrate. The District Magistrate on 27.03.2014 started de novo hearing and on the same day disposed of the application of the respondents under Indian Telegraph Act, 1885 and held that there are no provisions of hearings u/s 164 of Indian Telegraph Act, 1885.

The case of the applicant is that the order of the District Magistrate dated 27.03.2014 is against law, facts and without application of mind. The matter came up for hearing before the Hon'ble High Court on

28.03.2014 wherein the respondents raised objections that the applicant has right to file revision under Rule 3 (3) of the Works of Licensees Rules, 2006. On the same day Hon'ble High Court of Bombay passed following order:-

Quote

"The learned Counsel appearing for Respondent nos. 3,4 and 5 states that the order passed by the Collector of Dadra and Nagar Haveli on 27.03.2014 can be subjected to a revision in accordance with sub-rule 3 of Rule 3 of the Works of Electricity Rules, 2006. We accept the statement.

In view of this statement, it is not necessary to entertain this Writ Petition Under Article 226 of the Constitution of India as the petitioner can take recourse to the remedy as aforesaid.

To enable the petitioner to take appropriate steps before the Revisional Authority, we direct that the ad-interim order which is already operative till today, shall continue to operate till 10th April, 2014.

We make it clear that we have made no adjudication on the merits of the controversy and all contentions of the parties are expressly kept open.

Writ Petition is disposed of accordingly.

Civil Application Nos. 942/2014 and 820/2014 does not survive and same are disposed of accordingly."

Unquote

Hence the present revision under Rule 3 (3) of the Works of Licensees Rules, 2006 with a prayer to quash and set aside order dated 27.03.2014 passed by DM, Silvassa and direct the respondents to route transmission line covered under notification dated 25.10.2013 published on 6.11.2013 in official gazette from outside land of the Applicant in a manner that neither transmission tower nor transmission lines of the respondents pass through the said land of the Applicant.

The Commission received the application on 07.04.2014. The Commission examined the application and found in line with the JERC (Conduct of Business) Regulations, 2009, and Electricity Act, 2003.

The Commission sent pre-admission hearing notices to the parties for 05.05.2014. The respondents submitted reply to the application while raising preliminary objections that the application is false and not maintainable under any provision of Electricity Act, 2003 and liable to be dismissed with cost. It is further asserted that power requirement of UT DNH is met from allocation of power from NTPC, NPCIL, NSPCL-Bhilai Central Sector Power Generating Stations of Western Region and 200 MW from EMCO Energy Ltd., (GMR). The present peak demand of UT DNH is 630 MW. Whereas previously about 450 MW power to UT-DNH was met by two Double Circuit 220 Kv line, one D/C line for Kharadpada Sub-Station and another D/C line for Khadoli Sub-Station from 400 Kv Sub-Station of PGCIL at Ambheti-Vapi (CTU) and rest of 180 MW was fed from GETCO system with 5 numbers of 66 Kv circuits i.e. two for Dadra Sub-Station through Vapi of GETCO system and 3 numbers of 66 circuits from Bhilad of GETCO system.

The GETCO since long has been insisting for transfer of load fed through GETCO network to CTU network and in a meeting convened by WRPC on 18.3.2013 at Silvassa it was decided that the 180 MW load of DNH fed from GETCO network shall be shifted to CTU network on priority. Therefore, ED-DNH

shifted 50 MW load of Dadra Area fed from GETCO- Vapi to CTU network and 66 Kv circuit from GETCO Bhilad of 30 MW and thereafter, 100 MW load from GETCO Bhilad fed to ED-DNH 66 Kv Amli sub-station through 66 Kv D/C line remained pending for transfer, therefore, in a meeting WRPC held on 9.10.2013 it was decided that balance 50 MW load will be shifted by December, 2013 and remaining 50 MW latest by March, 2014. It was also decided that if the above load shifting time line is not adhered by ED-DNH in that event GETCO would consider opening of feeders.

On 1.01.2014 at 00:00 hours GETCO opened 66 Kv Bhilad Silvassa, Circuit number 2 which resulted into load shedding of 40 MW. The matter was taken up with Chairman WRPC and MD GUVNL and the time for shifting the load was extended upto 31.01.2014. The ED-DNH was not in a position to shift the load by 31.01.2014, therefore, the matter was again discussed in a meeting between Secretary (Power), DNH and Chairman WRPC/ MD, GUVNL at Vadodara on 31.01.2014, pursuant to which MD GETCO vide his letter dated 01.02.2014 informed that:-

- i. One 66 Kv feeder out of two from Bhilad Sub-Station (GETCO) to Silvassa shall be isolated by March 2014 on commissioning of 400 KV kala Sub-Station by PGCIL.
- ii. Second 66 Kv feeder of sr. no. 1 from Bhilad Sub-Station (GETCO) to Silvassa shall be isolated by April/ May-2014 on commissioning of 100 MVA transformer after repair from BHEL. DNH authorities are requested to follow up and award repair and erection work.

GETCO on 1.04.2014 at 00:00 hours isolated 166Kv feeder which resulted into load shedding of 30 MW. On 4.04.2014, 30 MW load of 66 Kv Bhilad Silvassa line with great difficulty by some internal management and slight reduction in industrial load fed from GETCO network was shifted to CTU network. GETCO is likely to isolate the second feeder by April/ May 2014 which will cause load shedding of about 50 MW.

The 400 Kv, 3x315 MVA Sub-Station of PGCIL at Vapi Ambheti is already saturated to its installed capacity. ED- DNH in view of the persistent insistence of GETCO to shift load to CTU had planned for the following in consultation with PGCIL & CEA.

- i. Establishment of 400/220 Kv GIS Sub-Station at Kala, DNH with associated transmission lines to Kharadpada and Khadoli.
- ii. Establishment of 220/66 Kv Sub-Station at Waghchipa, DNH.
- iii. Augmentation of transformation capacity at Khadoli Sub-Station by 160 MVA.

Therefore, the need for early establishment and commissioning of Kala Sub-Station and evacuation of power by 220 Kv transmission lines to 220/66 Kv khadoli and Kharadpada Subb-Station may be appreciated. ED-DNH in view of the above constraints is not releasing any power connection for the last two months inspite of pending applications for more than 100 MW.

The 400 Kv Sub-Station at Kala has been commissioned on 31st March, 2013 by PGCIL. But commercial operation of the said substation can be done only after the work of 220 Kv, Kala- Khadoli line and Kala-Kharadpada line through which the power from 400 Kv kala Sub-Station will be evacuated is completed. This work has also been awarded to PGCIL by ED-DNH. Therefore, completion of present 220 Kv Kala Khadoli line is very important and urgent to serve public at large. The respondent invited objections for carrying out the work by PGCIL interconnected 220 Kv line from 400 Kv Kala to 220 Kv khadoli and Kharadpada Sub-Station.

The route of the line was served and finalized by a technical expert team of PGCIL and one of the foundations falls within the land of the applicant. The present location, which is in corner of land of the applicant was selected after exploring all and maximum possibility. PGCIL has given following justification for selection of this route:-

- a) The multi circuit tower location is fixed at the corner of the plot considering the residential settlement/ houses at the right side of the tower and at the left side more land of the industry will be involved.
- b) The tower angle at this tower is 47 deg and it will take right turn from this location to cross the new proposed 66 Kv tower line of Electricity Department also as per our engineering design the technically permissible maximum angle at any tower can be 60 deg and in this section power line of 66 Kv is to be crossed after the bridge and road crossing.
- c) There are tribal houses, shops, running factories and PWD road crossing in this section Loc 17A/0-18/0 due to this line cannot be taken right turn before this position so the location is fixed in the barren land belonging to the applicant.
- d) The line goes along the bank of the Sakaltod river so there is terrain constraints.
- e) At the opposite site of the river there is wildlife sanctuary areas of Department of Forest, Govt. of India.
- f) The 220 Kv Kala-Khadoli M/c line's location no. 17/A/0 is multi circuit line having 02ckts for khadoli substation & 02ckts for Kharadpada substation which has already been selected to utilize minimum land area involved otherwise 02 separate towers each for Khadoli and Kharadpada would be erected which will engage more land area than presently involved.
- g) If any position deviation from present position occurs than total tower locations form 400 Kv Kala (Central Transmission Utility) to Kharadpada realignment of all the towers will be required which will further re-alignment of all the towers, which will further delay the completion schedule of the project and great loss to the public in general of DNH.
- h) This is the central scheme for evacuating the power form Central Transmission Utility (CTU) 400/220 Kv Kala substation connected to national Grid of the Country.
- i) The work is at progress at other sites as per the technical norms by the POWERGRID and Electricity Department jointly.

The applicant filed Writ Petition 1142/2014 in the Hon'ble High Court of Bombay with averments that respondent did not give proper opportunity of being heard and principle of natural justice is violated. The Hon'ble High Court directed that hearing may be given to applicant. Therefore, the Resident Deputy Collector, Silvassa on 20.02.2014 heard the parties and passed an order that the matter be heard by Collector, Silvassa. Accordingly Collector heard the parties and passed the order dated 27.03.2014 rejecting objections of the applicant. The Hon'ble High Court in the order dated 28.03.2014 observed that order passed by the Collector can be subjected to revision under Rule 3 (3) of the Work Licensees Act, 2006.

The line is being constructed by ED-DNH in exercise of powers under Section 164 of the EA, 2003. Pending grant of permission under Section 164 of the EA, 2003 authority under Sections 67, 68 and 69 of the EA, 2003 was being exercised for establishing of line. But when permission under Section 164 of the

EA, 2003 was granted on 25.10.2013, ED-DNH was vested with the powers of Telegraph Authority for establishment of the line. It is well settled principle of Law that Section 164 of the EA, 2003 is alternate mechanism for exercise of powers under Sections 67, 68 and 69 of the EA, 2003. Therefore, once power is exercised under Section 164 of the EA, 2003 the question of the consent of land owner does not arise and only question of compensation to be paid for damages survive. The provisions of Rule 3 (3) of the Work Licensees Act, 2006 do not apply for laying down the line.

The respondents on merits asserted that a notification on 25.10.2013 mentioning Sections 67, 68 and 69 of the EA, 2003 as per initial permissions dated 9.02.2012 was issued informing the proposed scheme. The public was called upon to furnish objections within two months from date of publication of the notification. But by amendment dated 25.10.2013 authorization under Section 164 of the EA, 2003 of Telegraph Authority under Indian Telegraph Act, 1885 was conferred upon ED-DNH for placing of electric lines for transmission of electricity. Therefore, the question of consent of the land owner does not arise and the respondents started erection of electric tower. The applicant raised objections, which were heard and rejected by Collector, Silvassa vide order dated 27.03.2014 and observed that provisions of Sections 67, 68 and 69 of the EA, 2003 do not apply on the facts of the case as the respondents have proceeded under Section 164 of the EA, 2003 and Hon'ble High Court of Bombay vide order dated 28.03.2014 dismissed the Writ Petition no. 1142/2014 and all other objections raised by the applicant are denied and prayed for dismissal of the application.

The Commission heard representatives of the parties at length and has gone through the Application and reply carefully and thoroughly. The Commission admitted the Application on 05.05.2014 and numbered as Petition no. 131/2014.

From the pleadings of the parties, documents produced by both the sides and submissions made by the representatives of the parties it is clear that in brief case of applicant is that the respondents published notification dated 25.10.2013 annexure "A" under Sections 67, 68, 69 and 164 of the EA, 2003 and called upon all interested to file objections within two months. The applicant filed objections on 26.12.2013 and sought for hearing. The respondent no. 2 fixed hearing on 18.01.2014, the applicant attended the same, but none was present on behalf of respondent. The Resident District Collector Silvasaa, held hearing on 24.01.2014 and directed the parties to approach DM, Silvassa as he had no jurisdiction to pass any order. The DM, Silvassa held hearing on 27.03.2014 and vide order dated 27.03.2014 observed that provisions of Sections 67, 68 and 69 of the EA, 2003 are not applicable as provision of 164 of the EA, 2003 are applicable. So, objections need not to be called for and consent of the land owner for erection of electric line is not required. The order dated 27.03.2014 passed by DM, Silvassa is illegal, against law and facts so liable to set aside and respondents be restrained from erecting electric line through the land of the applicant.

Whereas the case of the respondents is that as notification dated 25.10.2013 was under Section 164 of the EA, 2003, therefore, consent of the land owner as provided under Sections 67, 68 and 69 of the EA, 2003 is not required, the public authority under Telegraph Act, 1885 is competent to erect electric line without consent of the land owner and the land owner is entitled for compensation only.

Therefore, the only dispute between the parties is as to whether the provisions of Sections 67, 68 and 69 of the EA, 2003 apply on the facts of the case or provision of the Section 164 of the EA, 2003 apply on the facts?

Before proceeding further it is worthwhile to reproduce the provisions of Section 67 and 164 of the EA, 2003:-

Section 67 of the Electricity Act, 2003

Quote

“(1) A licensee may, from time to time but subject always to the terms and conditions of his licence, within his area of supply or transmission or when permitted by the terms of his licence to lay down or place electric supply lines without the area of supply, without that area carry out works such as -

- (a) To open and break up the soil and pavement of any street, railway or tramway;
 - (b) To open and break up any sewer, drain or tunnel in or under any street, railway or tramway;
 - (c) To alter the position of any line or works or pipes, other than a main sewer pipe;
 - (d) To lay down and place electric lines, electrical plant and other works;
 - (e) To repair, alter or remove the same;
 - (f) To do all other acts necessary for transmission or supply of electricity.
- (2) 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;
 - (b) The authority which may grant permission in the circumstances where the owner or occupier objects to the carrying out of works;
 - (c) The nature and period of notice to be given by the licensee before carrying out works;
 - (d) The procedure and manner of consideration of objections and suggestion received in accordance with the notice referred to in clause (c);
 - (e) The determination and payment of compensation or rent to the persons affected by works under this section;
 - (f) The repairs and works to be carried out when emergency exists;
 - (g) The right of the owner or occupier to carry out certain works under this section and the payment of expenses therefor;
 - (h) The procedure for carrying out other works near sewers, pipes or other electric lines or works;
 - (i) The procedure for alteration of the position of pipes, electric lines, electrical plant, telegraph lines, sewer lines, tunnels, drains, etc.;
 - (j) The procedure for fencing, guarding, lighting and other safety measures relating to works on streets, railways, tramways, sewers, drains or tunnels and immediate reinstatement thereof;
 - (k) The avoidance of public nuisance, environmental damage and unnecessary damage to the public and private property by such works;
 - (l) The procedure for undertaking works which are not reparable by the Appropriate Government, licensee or local authority;
 - (m) The manner of deposit of amount required for restoration of any railways, tramways, waterways, etc.;

- (n) The manner of restoration of property affected by such works and maintenance thereof;
 - (o) The procedure for deposit of compensation payable by the licensee and furnishing of security; and
 - (p) Such other matters as are incidental or consequential to the construction and maintenance of works under this section.
- (3) A licensee shall, in exercise of any of the powers conferred by or under this section and the rules made thereunder, cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him.
- (4) 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.
- (5) The Appropriate Commission, while determining any difference or dispute arising under this section in addition to any compensation under sub-section (3), may impose a penalty not exceeding the amount of compensation payable under that sub-section.”

Unquote

Section 164 of the Electricity Act, 2003

Quote

“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 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.”

Unquote

Form bare reading of the notification dated 25.10.2013 published on 6.11.2013 (Annexure “A”) and Sections 67 and 164 of the EA, 2003 it is clear that the competent authority under Section 164 of the EA, 2003 authorized ED-DNH under Telegraph Act, 1885 to erect electric line and consent of the land owner for erection of electric line through his land is not required. Before proceeding further it is also proper to reproduce provision of Section 10 of Indian Telegraph Act, 1885.

Section 10 of Indian Telegraph Act, 1885:-

Quote

Power for telegraph authority to place and maintain telegraph lines and posts:- 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:

Provided that –

- a) The telegraph authority shall not exercise the powers conferred by this Section except for the purposes of a telegraph established or maintained by the [Central Government], or to be so established or maintained.

- b) The [Central Government] shall not acquire any right other than that of user only in the property under, over, along, across in or upon which the telegraph authority places any telegraph line or post; and
- c) Except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority; and
- d) In the exercise of the power 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.

Unquote

Before proceeding further the Commission considers proper to cite some pronouncements of different Hon'ble High Courts.

A. Hon'ble High Court of Andhra Pradesh in case law reported as G.V.S. Rama Krishna and Ors. Vs. A.P. Transco rep. by its Managing Director and Ors. AIR 2009 Andhra Pradesh 158 has held as under:-

"For the aforesaid reasons, I am of the opinion that Section 164 of the Electricity Act, 2003 read with Section 10 of the Indian Telegraph Act, 1885 recognized the absolute power of the A.P. Transco to proceed with placing of electric supply lines or electric posts for the transmission of electricity on or over the private lands subject to the right of the owner/occupier to claim compensation if any damage is sustained by him by reason of placing of such electric supply lines, in other words, neither the acquisition of the lands is necessary nor there is any need for consent of the owner or occupier."

B. The Hon'ble High Court of Andhra Pradesh in case law reported as K. Subba Raju Vs. Executive Engineer, TLC Division, APTRANSCO and Ors. 2010 (2) APLJ 243 has held as under:-

"It is not in dispute that in the instant case a notification has been issued invoking Section 164 of the Electricity Act, 2003. Therefore, Section 67(1) of the said Act or the Works of Licensees Rules, 2006 made under Section 67(2) are not attracted and as per Section 164 of the Electricity Act, 2003 read with Section 10 of the Indian Telegraph Act, 1885, the respondents can proceed with the placing of electric supply lines or electric poles for the transmission of the electricity on or over the lands of the petitioner without acquiring the same and there is also no need to obtain his consent."

C. The Hon'ble High Court of Gujarat in Order dated 29.8.2013 in SCA No. 18334 of 2011 & batch passed titled Dilip Singh Chauhan & Ors. Vs. Gujarat Urja Vikas Nigam Limited has held as under:-

"In our view, as observed by us herein above the Act itself provides two separate mode and mechanism for laying down the line by the licensee on the property of the owner or occupier. One mode is the procedure provided under Section 67 (2) of the Act read with Rules of 2006. The later mode is available only if the power is so conferred by the appropriate Government under Section 164 of the Act and order is issued for such purpose. If the order is issued under Section 164 of the Act for conferring the power upon a particular licensee – Electricity Company, it will be for the concerned Electricity Company and its officers to follow the mode and mechanism as provided under Telegraph Act and not under Section 67 of the Act read with the Rules of 2006. It is only in absence of order under Section 164 of the Act, any licensee for laying down the land would be required to follow the procedure under Section 67 (2) of the Act read with the Rules of 2006. Under these circumstances, it cannot be said that even if the order under Section 164 of the Act is issued by the appropriate Government conferring power upon the licensee as that of the Telegraph Authority under the Telegraph Act, the licensee would be required to follow the procedure under Section 67(2) of the Act read with the Rules 2006. Therefore, the contention cannot be accepted."

D. The Hon'ble High Court of Gujarat in case law reported as Himmatbhai Vallabhai Patel Vs. Chief Engineer (Project) Gujarat Energy Transmission and 2 Ors AIR 2011 Gujarat 405 again held as under:-

"The above discussion makes it abundantly clear that Section 164 of the Electricity Act, 2003 read with Section 10 of the Indian Telegraph Act, 1885 recognized the absolute power of the Respondent No. 1 to proceed with laying High Tension Electric Lines or electric posts for the transmission of electricity on or over the lands belonged to the Petitioners subject to the right of the Petitioners to claim compensation if any damage is sustained by them by reason of laying such High Tension Electric Lines, in other words, neither the acquisition of the lands is necessary nor there is any need for consent of the Petitioners."

Similar view has been taken by Hon'ble High Court of Bombay in case law reported as **Brajendre Singh Vs. State Government of Maharashtra and others (2012) 4 Mah LJ 625.**

After having heard learned representatives of the parties at length, going through the pleadings of the parties and documents relied upon by both the sides, provisions of Electricity Act, 2003 and Indian Telegraph Act, 1885 and the case law cited above G.V.S. Rama Krishna and Ors., Vs. A.P. Transco rep. by its Managing Director and Ors., K. Subba Raju Vs. Executive Engineer, TLC Division, APTRANSCO and Ors., Dilip Singh Chauhan & Ors., Vs. Gujarat Urja Vikas Nigam Limited and Himmatbhai Vallabhai Patel Vs. Chief Engineer (Project) Gujarat Energy Transmission and 2 Ors. supra (SUPRA) the Commission is of the considered opinion that the case law cited above has full force on the facts and circumstances of the present case.

The Commission further observed that the route of the line was served and finalized by a technical expert team of PGCIL and one of the foundations falls within the land of the applicant. The present location, which is in corner of land of the applicant was selected after exploring all and maximum possibility. The multi circuit tower location is fixed at the corner of the plot considering the residential settlement/ houses at the right side of the tower and at the left side more land of the industry will be involved. The tower angle at this tower is 47 deg and it will take right turn from this location to cross the new proposed 66 Kv tower line of Electricity Department also as per engineering design the technically permissible maximum angle at any tower can be 60 deg and in this section power line of 66 Kv is to be crossed after the bridge and road crossing. There are tribal houses, shops, running factories and PWD road crossing in this section Loc 17A/0-18/0 due to this line cannot be taken right turn before this position so the location is fixed in the barren land belonging to the applicant. The line goes along the bank of the Sakaltod river so there is terrain constraints. At the opposite site of the river there is wildlife sanctuary areas of Department of Forest, Govt. of India. The 220 Kv Kala-Khadoli M/c line's location no. 17/A/0 is multi circuit line having 02ckts for khadoli substation & 02ckts for Kharadpada substation which has already been selected to utilize minimum land area involved otherwise 02 separate towers each for Khadoli and Kharadpada would be erected which will engage more land area than presently involved. If any position deviation from present position occurs than total tower locations form 400 Kv Kala (Central Transmission Utility) to Kharadpada realignment of all the towers will be required which will further leads to re-alignment of all the towers, which will further delay the completion schedule of the project and great loss to the public in general of DNH. This is the central scheme for evacuating the power form Central Transmission Utility (CTU) 400/220 Kv Kala substation connected to national Grid of the Country. The work is at progress at other sites as per the technical norms by the POWERGRID and Electricity Department jointly.

The respondents issued notification on 25.10.2013 mentioning Sections 67, 68 and 69 of the EA, 2003 as per initial permissions dated 9.02.2012 informing the proposed scheme. The public was called upon to furnish objections within two months from date of publication of the notification. But none including the applicant filed any objection against the scheme and laying of electric line.

The Commission after analyzing the provisions of Sections 67 and 164 of the EA, 2003 and Section 10 of Indian Telegraph Act, 1885 is of the opinion that it is very obvious that whenever an order is passed by the appropriate Government in exercise of the powers under Section 164 of the Electricity Act, 2003 for placing of electric lines for the transmission of electricity, conferring upon any Public Officer, licensee or any other person engaged in the business of supplying electricity any of the powers which the telegraph authority possesses under the Indian Telegraph Act, 1885 with respect to the placing of telegraphic lines and posts for the purposes of a telegraph established by the Government, such public officer, licensee or any other person engaged in the business of supplying electricity stands in the same position as regards the exercise of power as the telegraph authority under the Indian Telegraph Act, 1885. It is, however, true that in absence of such an order under Section 164 of the Electricity Act, 2003, if a licensee i.e. a person who has been granted a licence to transmit electricity or to distribute electricity under the Act, proposes to place electric lines, electric poles or other works necessary for transmission or supply of electricity, Section 67 of the Electricity Act, 2003 comes into operation and consequently it is mandatory to obtain the consent of the concerned owner or occupier. In the present case, Section 164 of the Electricity Act, 2003 has admittedly been invoked and in exercise of the powers conferred hereunder, the Government of India conferred on the Respondent No. 1 the powers which the telegraph authority possesses under the Indian Telegraph Act, 1885. Consequently, the Respondent No. 1, for the purpose of laying High Tension Power Lines through the lands of the Petitioners, is competent to exercise all the powers possessed by the telegraphic authority under the Indian Telegraph Act, 1885.

Section 10 of the Indian Telegraph Act, 1885 empowers the telegraph authorities to place and maintain the telegraph lines under, over, along or across and posts in or upon any immovable property. However, the said power shall not be exercised in respect of any property vested in or under the control or management of any local authority without the permission of that authority. The proviso (d) to Section 10 of the Indian Telegraph Act, 1885 further makes it clear that while exercising powers conferred under Section-10, the telegraph authority shall do as little damage as possible and when it has exercised those powers in respect of any property other than the property under the control or management of the local authority, shall pay full compensation to all the persons interested for any damage sustained by them by reason of exercise of the said powers. It is also important to take note of proviso (b) to Section 10 of the Indian Telegraph Act, 1885, under which, the Central Government shall not acquire any right other than that of user only in the property under, over, along, across in or upon which the telegraph authority places any telegraph lines or posts. Thus, it is apparent that the powers under Section 10 of the Indian Telegraph Act, 1885 can be exercised without acquiring the land in question and the only right that can be exercised is the right of user in the property and for the purposes mentioned in that Section.

The above discussion makes it abundantly clear that Section 164 of the Electricity Act, 2003 read with Section 10 of the Indian Telegraph Act, 1885 recognized the absolute power of the Respondent No. 1 to proceed with laying High Tension Electric Lines or electric posts for the transmission of electricity on or

over the lands belonged to the Petitioners subject to the right of the Petitioners to claim compensation if any damage is sustained by them by reason of laying such High Tension Electric Lines, in other words, neither the acquisition of the lands is necessary nor there is any need for consent of the Petitioners.

In the instant case the respondents started proceedings under Sections 67 to 69 of the EA, 2003 by way of notification dated 09.02.2012. The respondents did not receive any objections. The matter for authorization under Section 164 of the EA, 2003 was pending with the competent authority. The respondents vide notification dated 25.10.2013 issued on 6.11.2013 Annexure "A" authorized ED-DNH to erect electric line through the land of the applicant under the Indian Telegraph Act, 1885. From bare reading of the provisions of Section 10 of the Indian Telegraph Act, 1885 and Section 164 of the EA, 2003 it is clear that under provisions of Section 10 of the Indian Telegraph Act, 1885 and Section 164 of the EA, 2003 prior consent of the land owner is not required for erection of electric line.

The respondents are proceeding/ placing electric line through the land of the applicant exercising powers under Section 164 of the EA, 2003 and Section 10 of the Indian Telegraph Act, 1885, therefore, there is no question of taking consent of the applicant before placing electric line through his land. The powers vested in ED-DNH under section 164 of the EA, 2003 of Section 10 of the Indian Telegraph Act, 1885 are absolute. The applicant has no right of being heard before placing the electric line through his land. He is entitled for compensation only. So the provisions of Regulation (3) (3) of the Works of Licensees Rules, 2006 do not apply on the facts of the present application. Hence, the revision is not maintainable

In the light of above discussion and observations the revision is not maintainable and is hereby dismissed.

Sd/-

(S.K.Chaturvedi)

Chairman

Member (Vacant)

- * As per Regulation 9 (II) of JERC (Conduct of Business) Regulations, 2009 "Coram is two". Whereas as per proviso of Regulation 9 (II) of JERC (Conduct of Business) Regulations, 2009 if Chairperson or the Member is prevented from attending hearing of which he has been given notice the Member or the Chairman as the case may be attending the meeting shall validly constitute the Coram. Post of the Member is vacant. According to provisions of Section 93 of the Electricity Act, 2003 no act or proceedings of the appropriate Commission shall be questioned or invalidated merely on the ground of existence of any vacancy or defect in the Constitution of the appropriate Commission. So the Chairperson only constitute a valid Coram.

Certified Copy

(Anish Garg)

Secretary