

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION No.9315 OF 2015

Power Grid Corporation of
India Ltd.
(A Government of India
Enterprise) Through its
Senior Engineer, Having
its office at Dashmesh
Nagar, Aurangabad
PIN-431 005.

..Petitioner

Versus

1]The State of Maharashtra
Through District Magistrate &
Collector, Aurangabad
Maharashtra,
(Copy to be served on
Addl.Government Pleader,
High Court, Aurangabad)

2]Aarnava Precision
Technologies Limited,
140, Jyoti Nagar,
Aurangabad.

..Respondents

Shri L. Ravichander, senior counsel i/b S/Shri S.S. Joshi,
S.H.Joshi and V.D. Salunke for Petitioner.

Shri. S.B. Yawalkar, AGP for Respondent No.1-State.

Shri D.P. Palodkar for Respondent no.2.

WITH
WRIT PETITION 4453 OF 2014

Aarnava Precision
Technologies Limited,
Aurangabad, A Company

registered under the
provisions of the Companies
Act, 1956, Through its
authorised representative
Shri Suryabhan Raosaheb
Chavan

...Petitioner

Versus

1] The Collector, Aurangabad

2] Power Grid Corporation of
India Ltd. (A Government of
India Enterprise) Through its
Deputy General Manager,
Plot No.2, Dashmesh Nagar,
Near State Bank of India, Aurangabad

...Respondents

Shri S.V. Adwant for Petitioner.

Shri. S.B. Yawalkar, AGP for respondent No.1-State.

Shri L. Ravichander, senior counsel i/b S/Shri S.S. Joshi, S.H.
Joshi and V.D. Salunke for Respondent No.2.

**CORAM : S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.**

DATE : 04TH AUGUST, 2017

ORAL JUDGMENT: (Per S.C. Dharmadhikari, J.)

Rule. Respondents waive service. By consent, Rule is made returnable forthwith. Since pleadings are complete, both Petitions are disposed of by this common judgment.

2] By these Petitions under Article 226, the petitioner in Writ Petition No. 9315 of 2015 [Power Grid Corporation of

India Limited] is seeking the following reliefs :

“Prayer clause (B) : The Hon’ble Court may kindly be pleased to issue Writ of Certiorari or any other appropriate Writ, Order or Direction in the nature thereby quash and set aside the impugned order dated 20/08/2013 in case no.57/2013 passed by the Respondent no.1 District Magistrate Aurangabad against the petitioner. It be declared that order dated 20/8/2013, as void, nullity and non-est in the eyes of law.”

2A] The other Writ Petition seeks enforcement of this order.

3] The facts in a nutshell and for appreciating the legal arguments are set out as under :

The facts are taken from Writ Petition No.9315/2015. That is impugning the order passed by the respondent no.1 Collector and District Magistrate, Aurangabad dated 20/8/2013 in Case No.57/2013. The second Writ Petition claims enforcement and execution of this order.

4] The core issue that requires an answer in this Petition, is whether the petitioner can be subjected to the jurisdiction of the Collector and District Magistrate in terms of Section 16 of the Indian Telegraph Act, 1885, which provision can be availed of by parties like the petitioner, so as to implement the provisions of the Electricity Act, 2003. It is apparent by Section 164 of the Electricity Act, 2003, that exercise of powers of Telegraph authority in certain cases is permitted. If that power is invoked, then, whether the Collector and District Magistrate can call upon the petitioner, not to alter the alignment but to take the following steps as directed in the impugned order :

ORDER

“1] The Application filed by the applicant Aarnava Precession Technologies Ltd. Is partly allowed.

2] The prayer made by the Applicant for the shifting of the alignment of the 400 KV DC Aurangabad Boisar Line which is to be erected by the Respondent – Power Grid Corporation Ltd. In the subject land owned and possessed by the applicant, is hereby rejected.

3] The Respondent-Power Grid Corporation Ltd. is hereby directed to maintain Ground clearance of 35 Mtrs from the lowest point of conductor passing throughout the land of applicant situated at in Gat nos.(167/1,167/2 and 177 of Dahegaon, Tq. Gangapur, Dist.Aurangabad between tower location no.29 & 30.

4] The respondent-Power Grid Corporation Ltd. Is hereby directed to conduct a detail Panchanama in respect of the loss/damages caused to the applicant in respect of the subject land, during the process of installation, and erection of the towers and stringing, in the presence of the applicant. After the preparation of the Panchanama the respondent is hereby directed to submit a detailed report regarding the loss/damages caused to the applicant during the process in the office of the District Collector, Aurangabad and thereafter the assessment of the compensation amount payable by the Respondent to the applicant by this office, the respondent shall pay the said assessed amount of compensation to the applicant within the period of 15 days thereafter.

5] The Applicant is hereby directed to not to obstruct or resist the completion of the foundation, erection work of the tower at location no.30 in the subject land by the Respondent as the said work is being carried out in the public interest as per the directions of the Government of India.

6] Inform the parties and close the

proceedings.

Date : 20/08/2013.”

5] The petitioner before us is a Government of India Enterprise. It is claimed that it is a Government Company. It has been notified by the Central Government, as Central Transmission Utility of the Country u/s 38(1) of the Electricity Act, 2003. It is therefore, a deemed transmission licensee. The statutory functions and duties u/s 38(2) and 40 of the Electricity Act, 2003 mandate it, *inter alia*, to undertake the transmission of electricity, through inter-State transmission system (ISTS), to build, maintain, operate an efficient, coordinated and economical transmission system. By relying upon the definition of the term “Grid”, as appearing in Section 2(32) of the Electricity Act, it is contended that for placing and maintaining the electric lines under, over, along, or across, and posts in or upon any immovable property, the Government of India has in exercise of the powers u/s 164 of the Electricity Act, 2003, conferred upon and/or authorised the petitioner, to exercise all powers vesting in and/or possessed by the Telegraph authority under Part-III of the Telegraph Act, 1885. This is conferred by a Notification published in the official gazette dated 24/12/2003.

6] Thus, the petitioner does not acquire the land, but has a right of user. It is legally authorised to use the immovable property for the purpose of establishment of the transmission line including erection of tower. This is expected to be done by causing as little a damage, as possible and if any damage is caused, compensation will be paid, as per the assessment done

by the Executive Magistrate or revenue authority.

7] The petitioner then relies upon a letter dated 3/8/2010, of the Ministry of Power, Government of India. It has conveyed prior approval of the Government u/s 68 of the Electricity Act, 2003. In discharge of its statutory duties and functions, the Power Grid Corporation has to establish, interalia, an extra high voltage Aurangabad (PG)- Boisar/Kharghar 400 KV D/C(Quad) Transmission Line from Aurangabad to Boisar/Kharghar. This is under the sanctioned scheme, as approved by Ministry of Power known as Transmission System of IPP's Generation projects coming up in the State of Chattisgarh under system strengthening of western region and prior approval to the said scheme is accorded by Government of India, u/s 68 of the Electricity Act 2003. The estimated cost of this project is Rs.2127.51 Crores and it is funded through domestic borrowings/means and internal resources of Power Grid with debt equity ratio of 70:30. The petitioner relies upon a copy of the letter dated 3/8/2010 and the cost estimate dated 22/11/2011. These documents are collectively annexed as Annexure-B. The object of the scheme is then set out in the Petition at great length. The petitioner has set up a power hub/sub-station project at Chitepimpalgaon, Tq. and Dist.Aurangabad. It is one of India's major power projects launching 1200 KB power transmission line. It is claimed that it would immensely benefit and boost agriculture, industry, commercial systems and the household consumers and cater to their need of power.

8] The petitioners set out these salient features, and have

specifically urged that, by now 90% of the work is complete. The line was scheduled to commission by last week of July 2015.

9] It is then claimed that there was a route map already chalked out and prepared. The petitioners were proceeding on the line already chalked out.

10] It is in these circumstances, that the petitioners rely upon the provisions of the Telegraph Act 1885. It is common ground that the petitioner invoked section 16 of the Telegraph Act by filing application (being Case No.67) and praying for permission to exercise the powers under section 10 of the said Act. The prayer is in respect of the work of the establishment of the Tower No.29/O in the land, more particular description of which is set out therein. The petitioners also point out that an application was filed by second respondent to this Petition before the Collector. It is pointed out that the second respondent's application dated 20/5/2013 seeks a prohibition against the petitioner, not to carry out the work of high tension lines passing through the land of the second respondent. The copies of two representations and applications are collectively annexed as Annexure "E".

11] Then petitioner replied to this application and raised inter alia the issue of the jurisdiction of the second respondents.

12] It is this application, which has been partly allowed and with the above operative directions, by the impugned order dated 20/8/2013. Pertinently, the petitioners' application as above is also allowed by the order dated 30th September, 2013

(Annexure-H).

13] The order dated 20th August, 2013, is challenged in this Petition on several grounds. Mr. L. Ravichander, learned senior counsel appearing on behalf of petitioner in Writ Petition No.9315/2015, after inviting our attention to the facts narrated above, the legal provisions, would submit that the petitioner is exempted from the provisions of the works of Licensees Rules, 2006, which are relied upon very heavily. Mr. Ravichander, would submit that Part-III of the Indian Telegraph Act, 1885, which contains Section 10, would indicate that no proprietary right is ever acquired and vests in the petitioner, in terms of the exercise carried out. Section 10 Clause-(d) was referred for the purpose that an endeavour is made by the petitioner throughout, to cause minimal damage. In the event there is any damage, there is a remedy to seek compensation. Once there is no acquisition of the property, then we must according to Shri Ravichander, carefully peruse Section 16 (1) of the Telegraph Act, 1885. He would submit that the power in the Collector / District Magistrate and vesting in this case is to assist. Just as it assists the telegraph authority under the Telegraph Act, it must assist the petitioner. There is no other power and vesting in the authority. Mr. Ravichander, relies upon Section 164 of the Electricity Act to contend that it super imposes the Telegraph Authority's power under that Act on the authority under the Act of 2003. He then relies upon Section 38 of the said Act, to urge that it ensures that a power carrier like the petitioner, arranges for transmission of power throughout the country. Mr. Ravichander, then submits that the work in question is a project of national importance. He would submit

that there is a grid and which grid requires the connection so as to lay a complete transmission line, connectivity of grid is brought by linking several places and sites in a project of such magnitude. The whole emphasis is that minimal legal hurdle should be placed in the petitioner's path. That is ensured according to Mr. Ravichander, by the Indian Electricity Act, 2003 and the Rules framed thereunder. Mr. Ravichander, would submit that there is an exemption enjoyed by the petitioner and which is traceable to Section 176, Section 67 (2), Section 68 appearing thereafter and Rule 3(2) of the Rules, which are heavily relied upon by second respondents. Mr. Ravichander, brought to our notice these provisions. The Rules have been relied upon by Shri Adwant, appearing for the second respondents. Mr. Ravichander, has then relied upon the interpretation placed by the Honourable Supreme Court on Section 16 of the Telegraph Act. The Collector can only exercise the power of removal of obstruction and purposefully raised for the smooth laying and passage of the transmission line. The Collector could not have issued directions to realign the towers, since he does not have a technical knowledge and expertise, to decide the placement of the towers and the consequences thereof. It is urged that the Collector completely lost sight of the fact that there is no construction or structure, even according to the second respondents. The application is really premature. It is stated that Rule 3 of the Rules which are heavily relied upon, namely, The Maharashtra Electricity Work of Licensees Rules 2012 and The Work of Licensee Rules, 2006 have no application. Rule 3 of both Rules do not apply to the petitioner. Therefore, the compensation is the only remedy for the private party and that also has to be determined by the District Judge

u/s 16(3) of the Telegraph Act. It is in these circumstances that heavy reliance is placed on the judgment of the Hon'ble Supreme Court in the case of **Power Grid Corporation of India Limited V/s Century Textiles and Industries Limited and others** in Civil Appeal No.10951/2016 decided on 14/12/2016.

14] On the other hand, Mr.Adwant, learned advocate appearing for the contesting respondents, would rely upon the statements which have been made in the application, to support the impugned order. He would also heavily rely upon the judgment of the Hon'ble Supreme Court in the case of **Managing Director, Ramakrishna Poultry Pvt. Ltd. V/s R. Chellappan and others** reported in (2009) 16 S.C.C. 743.

15] Mr.Adwant, also contends that we must read Section 67(2) Clause-(e) and Section 67(1) Clause (d) of the Electricity Act together with the Rules. These Rules have been made under the rule making powers conferred by the Electricity Act. Mr.Adwant, invites our attention to paragraphs 8 to 12, 19 and 20 of the Petition. He then refers to the copies of the representations to the Collector and submits that it is false to allege that there is no construction in the property. There is a construction of a tower and which is installed in the property of the second respondent, by the petitioner. Mr.Adwant, therefore, invites our attention to the definition of the terms 'electric line' appearing in Section 2(20), the "transmission lines" appearing in Section 2(72), and "transmission licensee" appearing in Section 2(73) of the Electricity Act, 2003.

Mr.Adwant, also invites our attention to pages 121 to 125 of the paper book and submits that in the reply affidavit, it has been pointed out as to how the facts have been not correctly depicted. The Collector's order must be perused and considered in the light of the factual position brought before him.

16] Finally, it is urged that for more than 20 months and even after filing the Petition on 8/5/2015, the petitioner did not circulate it, till 10/9/2015. On the other hand, the second respondent had filed a substantive Petition, seeking enforcement of the order of the Collector. In these circumstances, the petitioner's petition is hopelessly delayed and barred by laches. It should be dismissed also on this ground.

17] With the assistance of the learned counsel appearing for both sides, we have perused the Petition, the affidavits placed on record, the annexures to the petition and the legal provisions. We have also perused the judgment and decisions relied upon.

18] The order that is impugned in this Writ Petition, is passed by the District Magistrate, Aurangabad in Case No.57/2013.

19] That case arose out of four representations made in the month of May to August 2013, by the second respondents. The second respondent claimed that the Maharashtra Industrial Development Corporation, Aurangabad (MIDC for short) has allotted a certain piece of land. That piece of land was allotted for a Mega project of the second respondent. The lands allotted

are gat Nos.167/1, 167/2 and 177 situate at Dahegaon, Taluka Gangapur, District Aurangabad. The second respondents have made huge investments in acquiring these lands. The lands have been acquired for establishing a project of manufacturing of sheet metal components, fabricated assemblies, machine components etc. There is a permission granted to manufacture these goods and items by Director of Industries, Maharashtra State, Pune.

20] Pursuant to the purchase of the land, the names of the purchasers-second respondents, have been mutated in the revenue records. The lands which have been purchased, abut Aurangabad Pune State Highway. The second respondent thus stated that the acquisition of the plot of land is lawful, object and purpose for which, the same has been acquired, is as indicated above and to provide a global competitive edge to the State industry, promote employment and balance regional development. Thus, the State has encouraged the second respondent, in setting up the industry. The power supply also has been obtained by making proper application to Maharashtra State Electricity Distribution Company Limited.

21] In the application, reliance was placed on Clause-(e) of sub section 2 of Section 176 and sub-section 2 of Section 67 of the Electricity Act 2003 and the "Works of Licensees Rules 2006". We would reproduce these provisions, discuss them in details a little later. It is submitted that as per Rule 3 of these Rules, District Magistrate, Aurangabad is the repository of the powers and he can consider the representations, as made in writing by second respondent owner of the land from whose

property, the petitioner intends to carry out work, lay down or place any electric supply line.

22] The Collector and District Magistrate assumed that he has power to issue a direction to the petitioner to alter such work, support or any stay or strut to be removed or altered.

23] After setting out as to how the petitioners stepped in and in implementation of the project, it needed to lay down the line, it is stated that there is already one D.C. line passing through respondent No.2's property, which has disturbed the project layout to a great extent and another 400 KB D.C. could cause further impediment and surmountable difficulties in the erection of the project. The Collector and District Magistrate then summarises the objections raised by the second respondents. He also then sets out the response of the petitioner. The specific response in writing of the petitioner, was that it is declared as the Central Transmission Utility under the Electricity Act, 2003. It is a deemed transmission licensee authorised to establish, operate and maintain transmission lines in exercise of the powers conferred by Section 164 of the Electricity Act, 2003. The Government of India has conferred upon the petitioner all the powers vesting in telegraph authority under the Telegraph Act, 1885 by an order dated 24/12/2003. The Petitioner, therefore, discharges a statutory duty and function and performs a statutory duty. It is legally authorised to use immovable property of the second respondents for establishment of the transmission line including erection of tower.

24] The defence of the petitioner therefore, was on the lines indicated by us hereinabove.

25] The Collector perused the judgment of the Hon'ble Supreme Court in the case of Ramkrishna Poultry (supra), then he refers to certain legal provisions and tried to interpret them. In the process, he comes to the conclusion that though the notification of the Central Government dated 24/12/2003 authorised the petitioner, to exercise the powers as per Section 164 of the Electricity Act, 2003, this notification, in the last line makes it clear that it is subject to the condition that the petitioner abides by the provisions of the Electricity Act, 2003. Hence relying upon Section 164 of the Electricity Act, 2003, the petitioner claims an exemption from the Rules but that is not unconditional.

26] Proceeding on these lines, the Collector considers the request of the second respondents regarding shifting of the alignment of the transmission line. Pertinently the principle request of the second respondent was not accepted and granted. The alternate request regarding maintaining the clearance throughout the land of 35 Mtrs. between the SAG point of lowest conductor and the ground deserves consideration according to the Collector and District Magistrate.

27] The Collector's order proceeds on the footing that though the present petitioners have opposed the request regarding shifting of the alignment to the transmission line passing through the subject land, so also, opposed the prayer of the second respondent, for increasing clearance between ground

level and the SAG point of the lowest conductor, the Collector being not inclined to consider the request of the second respondent regarding shifting of the alignment from the subject land and in possession of the second respondents, he can grant the alternate request. All that was before the Collector in the form of materials is a bare plea that some portion of the second respondent's land/property is affected by construction of Tower No.30. The transmission lines between Tower Nos.31 to 30 and 30 to 29 are passing through the land of the second respondents. It is in this view of the matter, the alternate request has been accepted. At the same time, the Collector refers to admitted position that the ground clearance of 38 to 40 meters is already maintained between tower location no.31 and 30, as other lines are required to cross, the existing 500 KV transmission lines. At the relevant time, the construction of tower location no.29 was not commenced by the petitioner.

28] Today, it is reported that the project work is complete to the extent of about 95%.

29] The argument is that it will not be possible to accept this direction of the second respondent for it may be repeated by authorities concerned in other matters as well. It is in these circumstances, that we are examining the rival contentions. Pertinently, this very authority, namely, the Collector and District Magistrate, Aurangabad passed another order on 30th September, 2013, on the application of the Power Grid Corporation of India Limited. The relevant paras of this order read as under :

“9 Apparently it appears from the record that the applicant Power Grid Corporation Ltd. is notified by the Central Government as the “Central Transmission Utility” and therefore has been conferred upon, with all the powers, and is also required to discharge all the Statutory Duties and functions, as the “Central Licensee” under the Electricity Act 2003.

10 On the perusal of record it appears the The Ministry of Power, Government of India u/s 68 of the Electricity Act 2003 has granted approval, vide its letter dtd 5.4.2010, thereby entrusting the applicant with the task of the completion of the erection and operation of the 400 kv D/C Aurangabad-Boisar Transmission Line and in pursuance to the completion of the task of the establishment of the transmission line, the applicant is authorized and empowered under the law to use any immovable property for the establishment and maintenance of the transmission line. It has to be taken into consideration that the applicant is erecting and maintaining the transmission line, which is for the public purpose and is implemented in the larger interest of the state. The said scheme is of national importance. The applicant, while erecting the 400kv D/C Aurangabad-Boisar Transmission Line, is discharging its statutory duties as are mandated u/s 38 and 40 of the Electricity Act 2003 and the Telegraph Act 1885. Moreover the Government of India has accorded prior Approval u/s 68 of the Electricity

Act 2003, for the erection and transmission of the said transmission line.

11 Before the finalization of the optimal route of the transmission line of the applicant, the technical experts, has considered the techno-economic feasibility, and has taken into account all the relevant aspects viz. Social, economic, environmental, ecological and after carrying out the reconnaissance preliminary survey, including the walkover survey and the detailed survey, the applicant appears to have finalized the optimal route of the transmission line, and approval has been granted for the alignment of the each of the tower to be installed, and erected, during the construction of the transmission line, including the one in the land of the Non-Applicant.

12 Thus, the contention of the non-Applicant, that the tower is wrongly aligned in the land of the non-applicant by the applicant, and needs to be shifted, appears to be of hyper technical nature, and does not appear to be reasonable. Just because a particular land is having a commercial potential, it would not be appropriate to resist the Enterprise like that of the appellant from discharging its statutory duties and completing the project of the erection of the transmission line approved by the Government of India.

13 However, while discharging its duties and

*erection of the towers in the land of the non-applicant, the applicant is put under the mandatory statutory obligation, to compensate the Non-Applicant, who is the owner of the land, wherein the Tower is to be erected by the applicant. Thus, in accordance with the provisions of the Telegraph Act 1885, the applicant is liable to compensate all kinds of the damages and loss sustained by the Non-Applicant while installing, erection of towers and stringing of the transmission line. This loss or damage also include the damage caused to the land of the Non-Applicant and the crops and trees standing therein, which are to be uprooted in the process. Thus, by taking into account the actual area, utilized by the applicant, for the installation and erection of the tower no.29/0 in the land owned by the non-applicant in **Gut No 166 of Village-Dahegaon, Taluka-Gangapur, Dist-Aurangabad**; the applicant is liable to pay the damages including towards the area of the land covered under the tower, in addition to the cost of the crops and trees if any uprooted during the process of the installation, and erection of the tower, in the land of the Non-Applicant.*

14 *As such in this view of the case, I am of the considered opinion that in order to maintain the balance of convenience between both the applicant and the non-applicant, it would be just and proper to restrain the non-applicant from causing any kind of obstruction, and resistance,*

to the applicant, during the process of the erection of the tower no.29/0 in the land of the appellant, and simultaneously directing the applicant to pay the compensation to the non-applicant, as regards all the losses and damages sustained by the non-applicant during the process. Thus in exercise of the powers conferred upon by me by u/s 16 of the Indian Telegraph Act 1885, and by exercising the powers conferred upon me under the provisions of Rule 3 and 13 of the Central Works of Licensee Rules 2006, I hereby proceed to pass the following order :-

ORDER

A. The application filed by the applicant is allowed;

*B. The Non-Applicant Namely Shri Sanjay Bhausahib Pardhe, Village-Dahegaon, Taluka - Gangapur, Aurangabad; by him or acting on his agents, relatives or any person authorized by him or acting on his behalf is hereby restrained, permanently, from creating resistance or obstruction of any nature whatsoever, in the installation, erection, and stringing, of the tower no.29/0 in the land in **Gut No166 of Village-Dahegaon, Taluka-Gangapur, Dist-Aurangabad** of the 400kv D/C Aurangabad - Boisar Transmission Line, by the applicant.*

C. The Applicant, Power Grid Corporation of

India Ltd., is hereby directed to conduct the panchanama of the loss of the standing crops and trees, and any kind of damages in the land of the Non-Applicant, which is caused, during the process of the erection and installation of the tower and stringing, in the presence of the Non-Applicant, within 7 days after the completion of the work of the erection, installation of the tower.

D. The Applicant, Power Grid Corporation of India Ltd., is hereby directed firstly to get ascertained the estimated losses of the standing crops and fruit bearing trees, if any, from the Taluka Agricultural officer and after ascertainment of the actual losses sustained by the non-applicant the applicant is directed to pay compensation for the loss of the standing crops and trees in the land of the Non-Applicant, which are damaged, during the process of the erection and installation of the tower and stringing, within 2 months.

E. The Applicant, Power Grid Corporation of India Ltd., is hereby directed to submit the details of the area of the tower, in the office of the District Collector for compensation towards land.

F. The non applicant is directed to furnish the proof regarding the market rates in existence of the lands in vicinity for the purpose of ascertaining the compensation amount. The

non applicant is directed to furnish the proof regarding the market rates in existence of the lands in vicinity for the purpose of ascertaining the compensation amount payable to the non-applicant failing which the Government valuation report of the area of the tower shall be called from the Office of the Joint District Registrar class-I, Aurangabad within 7 days, and upon the receipt of the valuation report, the applicant shall pay the compensation amount to the non-applicant as assessed by this office, in accordance with law within the period of 45 days thereafter. A separate order of assessment of the actual compensation amount to be paid to the Non-applicant will be issued subsequently by this office.

G. The In-charge of the concerned police station is hereby directed to provide the requisite police assistance, to the applicant -Power Grid Corporation of India Ltd., in the event of the further obstruction / resistance by the non-applicant, in order to prevent the outbreak of the law and order situation, in accordance with the provisions of law.

H. Informed the parties and closed the proceedings.”

A perusal of these paragraphs reveal the conflict, confusion and contradiction in the directions. These are indeed sorry state of affairs.

30] The Indian Telegraph Act, 1885, is an Act which amends the law regarding the telegraphs in India. There are definitions in Section 3 and in Part-II Section 4 onwards, there are privileges and powers of the Government. Thereafter, from Part-IIA, we have Universal Service Obligation Fund, we are not concerned with this part. Part III is titled as Power to Place Telegraph Lines and Posts. Section 10 confers power on telegraph authority to place and maintain telegraph lines and posts. Then follows Section 11, which confers a power to enter on property in order to repair or remove telegraph lines or posts. Then, there are provisions applicable to property vested in or under the control or management of local authorities. Sections 12 to 15 deal with that situation. Then follow provisions applicable to other property. As far as that is concerned, Section 16 reads as under :

“16] Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority.- (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.

(2) If, after the making of an order under subsection (1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code (45 of 1860).

(3) If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the

property is situate, be determined by him.

(4) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the Court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under sub-section (3), or sub-section (4) shall be final:

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority, from the person who has received the same."

31] A perusal of Section 16 reveals that it confers power so as to exercise and perform the duties set out in Section 10. In the event there is a dispute in case of a property, other than that of local authority, on the point of compensation, even that has to be dealt with in terms of this Section. A perusal of sub section 1 of Section 16, would reveal that the exercise of powers mentioned in Section 10, in respect of property referred to in Clause(d) of that Section is resisted or obstructed, the District Magistrate, in his discretion, order that the Telegraph Authority shall be permitted to exercise them. The consequences of resistance to the exercise of the order under sub-section (1) and the powers conferred vide that sub-section

are set out in sub-section (2) of section 16. When the powers in respect of property, other than referred to in Clause (c) of Section 10 are exercised, the telegraph authority has to pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers. If any dispute arises concerning sufficiency of the compensation to be paid u/s 10 Clause (d) that application has to be dealt with at the instance of either of the disputing parties, by a District Judge within whose jurisdiction, the property is situate, and he shall determine the quantum of compensation. We are not concerned with sub-sections 4 or 5.

32] Then we come to the Electricity Act, 2003. The Electricity Act 2003 is an Act to consolidate the laws relating to the electricity. The preamble of this Act reads as under :

“An Act to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalisation of electricity tariff, ensuring transparent policies, regarding subsidies, promotion of efficient and environmentally being policies, constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto.”

33] Thus there were two enactments in the field viz. The Indian Electricity Act, 1910 and the Electricity Supply Act, 1948. On account of the developments noticed by the Central Government, particularly the deterioration in the performance of the State Electricity Boards to address this issue and to provide for distancing of Government from determination of

tariff etc. several enactments have been made, it was decided to do away with the two Acts. That was also because of the policy to encourage private sector participation in generation, transmission and distribution and the objective of distancing the regular responsibility from the Government to the regularly constituted commission on account of the need for harmonizing and rationalizing provisions of the above Acts that the new legislation was though necessary. The new legislation viz. The Electricity Act 2003 has also been amended by subsequent Amendment Act 57/2003 and Amendment Act 26/2007.

34] Part-I of this Act contains preliminary provisions and in Section 2, we have to notice a few definitions. The definition of the term “electric line” appears in Section 2(20). It reads as under :

“Section 2(20) : “electric line” means any line which is used for carrying electricity for any purpose and includes -

(a) any support for any such line, that is to say, any structure, tower, pole or other thing in, on, by or from which any such line is, or may be, supported, carried or suspended; and

(b) any apparatus connected to any such line for the purpose of carrying electricity;”

35] A perusal of the same would indicate that it is any line which is used for carrying electricity for any purpose and includes the support for such line viz. Structure, tower, pole etc. and any apparatus connecting to such line for the purpose of carrying electricity. The definition of the term “Grid” is appearing in Section 2(32). The grid is defined to mean high voltage backbone system of interconnected transmission lines,

sub station and generating plants. The definition of the term “Grid Code” appears in Section 2(33) and the definition of the term “Grid Standards” appears in Section 2(34). The term Inter-State Transmission System is defined in Section 2(36) which reads as under :

*“(36) “inter-State transmission system” includes -
(i) any system for the conveyance of electricity by means of main transmission line from the territory of one State to another State;
(ii) The conveyance of electricity across the territory of an intervening State as well as conveyance within the State which is incidental to such inter-State transmission of electricity;
(iii) the transmission of electricity within the territory of a State on a system built, owned, operated, maintained or controlled by a Central Transmission Utility;”*

36] That together with the term “Intra State Transmission System”, as defined in Section 2(37), “licence” and “licensee” defined in Section 2(38) and (39) and definition of the words “Transmission Lines” and “Transmission Licensee” appearing in Section 2(72), and (73) so also the definition of the word “Works” appearing in Section 2(77) completes the narration of the definition. These definitions and the substantive sections of the Act were the said words and expressions appear have to be read together and harmoniously with the other provisions of the Electricity Act, 2003. So read, they demonstrate that the directions of the Collector in the order dated 20th August, 2013, are not innocuous. Part-II of the Act deals with National Electricity Policy and Plan and Part-III deals with Generation of Electricity. Part-IV deals with Licensing. It is clear that no person shall transmit electricity, distribute or undertake trading in electricity, unless he is authorised to do so by license

issued u/s 14 or as exempted u/s 13. Section 14 provides for grant of licence, *inter alia*, to transmit electricity as a transmission licensee. The procedure for granting licence is set out in Section 15 and thereafter Conditions of Licence, the Licensee not to do certain things, Amendment of license, Revocation of Licence and Sale of utilities of licensees are matters dealt with by Section 15 to 20. Then there is a vesting of utility in purchaser by Section 21. There are other provisions in relation to licensee. Part V deals with Transmission of Electricity and Section 25 thereof deals with Inter-State, regional and inter-regional transmission. Thus it is the Central Government which in its discretion can make region-wise demarcation of the country and from time to time, make such modifications therein, as it may consider necessary for the efficient, economical and integrated transmission and supply of electricity, and in particular to facilitate voluntary inter-connections and co-ordination of facilities for the inter-State, regional and inter-regional generation and transmission of electricity. There are several aspects of transmission of electricity which are dealt with by this part and under the sub-heading Inter-State Transmission. Section 38 provides for Central Transmission Utility and its functions. The Central Government may notify any Government company as the Central Transmission Utility and proviso to Section 38 says that such transmission utility shall not engage in the business of generation of electricity or trading in electricity. Prior to this provision, by Section 34 there are Grid Standards, as may be prescribed which every transmission licensee shall comply. The technical standards, of operation, maintenance of transmission lines may be specified by the authority. Section 35

deals with Intervening transmission facilities. Importantly, the functions of the Central Transmission Utility are set out in Section 38 sub section 2. Similar is the position with regard to State Transmission Utility and it is defined (Section 39) and duties of the transmission licensees are set out in Section 40, they read as under :

“40 Duties of transmission licensees.- It shall be the duty of a transmission licensee-

(a) to build, maintain and operate an efficient, co-ordinated and economical inter-State transmission system or intra-State transmission system, as the case may be;

(b) to comply with the directions of the Regional Load Despatch Centre and the State Load Despatch Centre as the case may be;

(c) to provide non-discriminatory open access to its transmission system for use by -

(i) any licensee or generating company on payment of the transmission charges; or

(ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission:

Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy:

Provided further that such surcharge and cross subsidies shall be progressively reduced in the manner as may be specified by the Appropriate Commission:

Provided also that the manner of payment and utilisation of the surcharge shall be specified by the Appropriate Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.”

37] We have therefore, no doubt in our mind that it is the duty of the transmission licensee to build, maintain and operate an efficient coordinated and economical inter-State transmission system or intra-State Transmission system as the case may be. There is other business which can be discharged by the transmission licensee. It is common ground that the petitioner has been notified as a Central Transmission Utility of the country. Thereafter, what we have in the Act are parts regarding distribution of electricity and we are not concerned with the same. We are also not concerned with Tariff, which is a matter dealt with by Part-VII. In Part VIII Section 67 appears and that provision falls under the sub-heading "Works of licensees". Sub section 1 of Section 67 which is titled as "Provision as to opening up of streets, railways etc." enables carrying out works and mentioned in the clauses (a) to (f) of sub section 1. However, these works have to be carried out subject always to the terms and conditions of the licence and when permitted by the same. However, sub section 2 of Section 67 reads as under :

***"Section 67(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 suggestions 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 thereof;

(h) the procedure for carrying out other works near sewers, pipes or other electric line of works;

(i) the procedure for alteration of 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."

38] A bare perusal of the same would indicate as to how an appropriate Government can make Rules and specifying the matters enumerated in Clauses (a) to (p). Sub section 3 of Section 67, says that 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. The word "appropriate Government"

is also defined in Section 2(5) to mean Central Government in respect of a generating company wholly or partly owned by it and in relation of any inter-State generation, transmission, trading or supply of electricity and with respect of any mines covered by section 2(5)(a).

The other two provisions, namely, Sections 68 and 69 relate to over-head lines and Section 68 reads as under :

“68 Overhead lines.- (1) An overhead line shall, with prior approval of the Appropriate Government, be installed or kept installed above ground in accordance with the provisions of sub-section (2).

(2) The provisions contained in sub-section (1) shall not apply -

(a) in relation to an electric line which has a nominal voltage not exceeding 11 kilovolts and is used or intended to be used for supplying to a single consumer;

(b) in relation to so much of an electric line as is or will be within permission in the occupation or control of the person responsible for its installation; or

(c) in such other cases, as may be prescribed.

(3) The Appropriate Government shall, while granting approval under sub-section (1), impose such conditions (including conditions as to the ownership and operation of the line) as appear to it to be necessary.

(4) The Appropriate Government may vary or revoke the approval at any time after the end of such period as may be stipulated in the approval granted by it.

(5) Where any tree standing or lying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead line subsequent to the placing of

such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of electricity or the accessibility of any works, an Executive Magistrate or authority specified by the Appropriate Government may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise deal with as he or it thinks fit.

(6) When disposing of an application under sub-section (5), an Executive Magistrate or authority specified under that sub-section shall, in the case of any tree in existence before the placing of the overhead line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee."

39] A perusal thereof together with Section 69 would reveal as to how the licensees' can initiate the works and they are facilitated in that behalf.

40] Section 164 has been heavily relied upon by both sides. Prior thereto, we must clear the ground as heavy reliance is placed on clause (d) sub section 1 of Section 67, Clause (e) of sub-section 2 of Section 67 and Mr.Adwant, would submit that these provisions would have to be read together with Sections 164, 174 and 176. Clause (d) of Section 67(1) enables carrying out of work such as laying down, placing electric lines, electrical plants and other works and clause (e) deals with determination and payment of compensation or rent to the persons affected by the works under Section 67. Then comes Section 164 which falls in Part-XVII. That is titled "Other provisions" and sub-heading "protective clauses". The protection of railway, highways, airports and canals, docks, wharfs and piers is a provision incorporated to ensure that during the generation,

transmission and distribution, supply or use of electricity, no interference or obstruction is caused in their working. Then there is a protection of telegraphic, telephonic and electric signaling lines. Then there is provision in Section 161, which enables giving of notice of accidents and inquiries. Section 162 provides for appointment of Chief Electrical Inspector and Electrical Inspector. Section 163 confers power on licensee to enter premises and to remove fittings or other apparatus of licensee. Then comes Section 164 reads which as under :

“164 Exercise of powers of Telegraph Authority in certain cases.- 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 (13 of 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.”

41] A perusal of this provision would indicate that the appropriate Government has to make an order in writing for the placing of electric lines or electric plants for the transmission of electricity or for the purpose of telephonic or telegraphic communications, necessary for the proper coordination of works and in that regard, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, the provisions of the Indian Telegraph Act 1885 and the powers which the

telegraph authority possesses under that act. There could be conditions set and restrictions placed, while conferring such powers but it is pertinent that the powers are conferred 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. Thus for the placing of electric lines or electrical plant for the transmission of electricity or necessary for the proper coordination of works, these powers are conferred. We are concerned in this case, not with the later part, but placing of electric lines for the transmission of electricity.

42] Section 167 provides for exemption of electric lines or electrical plants from attachment in certain cases. In Part XVIII which deals with miscellaneous provisions, appears Section 176 conferring power on the Central Government to make rules. Sub-section 2 of Section 176 enables making of provision in the rules for the matters enlisted in clauses (a to z) of sub-section 2 of Section 176. Clause (e) in that regard enables making of rules for the works of licensees affecting the property of owner or occupier under Sub-section 2 of Section 67. Pertinently sub-Section 2 of Section 67 enables the Appropriate Government to make rules specifying the matters enlisted in clauses (a) to (p) of that sub-section. While it is true that there should be avoidance of nuisance, environmental damage and unnecessary damage to public and private property by the works, it is important to note that determination of payment of compensation or rent to persons affected by works in this section is equally a matter dealt with and provided for. It is common ground that even if all

endeavors are made to minimize the damage to the property, still, damage may be inflicted. The damage inflicted then has to be compensated and for determination of those matters, rules have to be made. Hence sub-section 2 of Section 176 enables making of rules, so as to deal with the work of licensee affecting the property of owner or occupier. Sub-section 2 of Section 67 is such a situation and in contemplation of the authority viz. the Appropriate Government. What is then relied upon are the rules and which are traceable to Section 176 sub-section 2. Section 174 is also relied upon by Shri Advant to submit that the provisions of Act namely Electricity Act 2003, have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

43] The rules that are highlighted before us are titled as “The Works of Licensees Rules”. They are made in exercise of the powers conferred by Clause (e) of sub-section 2 of Section 176 read with sub-section 2 of Section 67 of the Electricity Act, 2003. The term “occupier” is defined in rule 2 clause (b) of the Works of Licensees Rules 2006, to mean occupier of any building or land and means a person in lawful occupation of a building or land. Rule 3 of the Works of Licensees Rules 2006 reads as under :

“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:

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 Magistrate or the Commissioner of Police, or the officer authorised may by order in writing direct for any such works, 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 officer under sub-rule (1) shall be subject to revision by the Appropriate Commission.

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

44] A perusal of the Rule 3, would make it clear that the licensee may carry out works, fix any support of over-head line or any stay or strut required for the purpose of securing in position any support of any overhead line on any building or land or having been so fixed, may alter such support. Proviso to rule 3 sub-rule 1 of clause (b) would show that where the owner or occupier of the building or land raised objection in respect of works to be carried out under rule 3, then, the licensee shall obtain permission in writing from the District Magistrate or Commissioner of Police or any Officer authorised by the State Government in this behalf for carrying out the works. Then, there are powers conferred in the District Magistrate or Commissioner of Police or the Authorised Officer. Then there is a remedy of Revision provided to the appropriate commission against the order of the Commissioner of Police or District Magistrate. Sub-rule 3 clarifies that nothing contained in this rule shall affect the powers conferred upon any licensee under section 164 of the Act. Then there is a rule dealing with works affecting streets, railway, tramway, canal or water way. Rule 5 provides for repairs and works during emergency and procedure for carrying out other works near sewers, pipes or electric lines or works is dealt with by Rule 6. Rule 7 deals with alteration of the position of pipes, electric lines etc. Rule 8 deals with works not repairable by the Appropriate Government, licensee or local authority. Procedure for fencing, guarding, lighting and other safety measures relating to works is a matter covered by Rule 9, avoidance of public nuisances etc. is dealt with in Rule 10 and manner of deposit of amount for restoration of railways, tramways, waterways, etc. is dealt with by Rule 11.

The manner of restoration of property affected by such works and maintenance thereof is dealt with by Rule 12. Then, there is a determination and payment of compensation to affected persons, procedure for deposit of compensation payable by the licensee and furnishing of security, determination of dispute or differences by the Appropriate Commission and service of notice. The argument on behalf of the petitioner before us, is that it is exempted from the provisions of the Licensing Rules, as those rules cease to operate in view of Rule 3(4) and Section 164 of the Electricity Act.

45] As referred above, Section 164 enables exercise of powers of telegraph authority in certain cases. Rule 3(4) is dealing with a situation where nothing contained in Rule 3 of the Works of Licensees Rules, 2006, shall affect the powers conferred upon any licensee u/s 164 of the Act. It is therefore, contended that the District Collector in exercise of powers u/s 16 of the Indian Telegraph Act, can consider the application that is contemplated in that Section or provision and that alone can be entertained by the Collector and District Magistrate. It is therefore, contended that the petitioner can take the assistance of Section 16 and move the District Magistrate, who in his discretion, may order that the telegraph authority shall be permitted to exercise the powers mentioned in Section 10 in respect of property referred to in clause (d). Clause (d) as pointed out above appears in Section 10 and which enables exercise of power of telegraph authority to place and maintain telegraph lines and posts on a property other than referred to in section 10(c). In the exercise of 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 the property vesting or under the control or management of any local authority, then, it shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers. Thus, it is urged that the only obligation that is to be discharged, is in terms of sub section 1 of Section 16 of the Telegraph Act, 1885. Under that power, when the petitioner has moved an application, the Collector had no jurisdiction, other than to take care of the matters enumerated in Section 16.

46] However, Mr. Adwant, has placed before us the Maharashtra Rules and he would submit that these Rules are made by the Industries, Energy and Labour Department of the Government of Maharashtra and titled as "The Maharashtra Electricity Works of Licensees Rules 2012". Pertinently these Rules are made in exercise of the powers conferred by Section 180, sub-section 2 of the Electricity Act 2003. That enables the State Government to make rules for carrying out the provisions of this act. It is submitted that Clause (b) of sub-section 2 enables the Maharashtra Government to make rules regarding the work of licensees affecting the property of other persons under sub-section 2 of Section 67. Rule 3 of The Maharashtra Electricity Works of Licensees Rules 2012 reads as under :

"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 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 of 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 Commissioner:

(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."

streets, railways etc. enables the Appropriate Government to make rules for determination and payment of compensation or rent to the persons affected by the works in this Section. The Central Rules which have been brought to our notice are Works of Licensees Rules 2006, and they deal with matters enumerated in sub-section 2 of Section 67. These rules enable determination of compensation but it is evident from reading of rule 3 of the Works of Licensees Rules 2006 and the The Maharashtra Electricity Works of Licensees Rules 2012 that both contain a provision that rule 3 will not affect powers conferred upon any licensee under section 164 of the Act.

48] The question therefore raised is whether powers are conferred by Section 164 of the Act on the petitioner.

49] In that regard, our attention has been invited to the notification published in the Gazette of India [Extraordinary] Part II-Section 3 Sub-section (II) on 24/12/2003. That notification in English, appears at page 42 of the paper book in Writ Petition No.9315/2015. The said notification reads as under :

***“THE GAZETTE OF INDIA
EXTRAORDINARY Part II-Sec3 (iii)
MINISTRY OF POWER
ORDER
New Delhi, the 24th
December, 2003***

S.O. 1463 (E).- Whereas Power Grid Corporation of India Limited, having its registered office at B-9, Qutub Institutional area, Katwaria Sarai, New Delhi (hereinafter referred to as POWERGRID) is a Government Company registered under the Companies Act, 1956 and a licensee engaged in the business of interstate transmission of electricity, under the

Electricity Act, 2003.

And, Whereas Power grid is required to establish transmission system and to undertake transmission of electricity through inter-state transmission system.

And, whereas for placing and maintaining of electric lines or electric plant under, over, along or across posts in or upon any immovable property for the transmission of electricity or for the purpose of telephone or telegraph communications necessary for proper coordination of works, the vesting and exercise of the powers of the Telegraph Authority under Part -III of the Indian Telegraph Act, 1885 (8 of 1885) with respect to the placing of the telegraph lines and posts established or maintained or to be so established or maintained are required to be conferred on the Power grid.

Now, therefore, in exercise of the powers conferred by Section, 164 of the Electricity Act, 2003 the Power grid is hereby authorized to exercise all the powers vested in the Telegraph Authority under Part-III of the Indian Telegraph Act, 1885, in respect of the electric lines and electrical plant established or maintained, or to be so established or maintained for the transmission of electricity or for the purpose of telephonic or telegraphic communication necessary for the proper coordination of the works.

The above authorization is subject to compliance by the Power grid to the requirements of the provisions of the Electricity Act, 2003 and the rules made there under.

*[No.23/73/2003-R & P]
AJAY SHANKAR, Jt. Secy."*

50] The precise question after such a notification was issued, came up for determination and consideration of the Hon'ble Supreme Court of India in the case of **Power Grid Corporation of India Limited V/s Century Textiles and**

Industries Limited and others reported in (2017) 5 S.C.C. 143 (Civil Appeal No.10951 of 2016 decided on 14/12/2016). In paragraph nos.16 to 18 and thereafter 19 onwards, the Hon'ble Supreme Court answered the question and with specific reference to the provisions of the Act. The Court in paragraphs 16 to 26 has observed as under :

“16] In order to appreciate the contentions of the writ petitioner, it is necessary to have a glimpse of the provisions of the electricity Act, 2003 as well as the Rules on which reliance has been placed by Mr. shrivastava.

17] Section 68 and 69 of the Electricity Act, 2003 fall in Part VIII with the caption “Works”. These two provisions directly deal with the overhead lines. As per Section 68, an overhead line can be installed or kept installed above ground “with prior approval of the appropriate Government”. “Appropriate Government” is defined under Section 2 (5) of the Electricity Act, 2003 and it is not in dispute that in the instant case, it would be the Central Government as it is the Central Government which is the appropriate Government in respect of a generating company wholly or partly owned by it and Power Grid is a company which is owned by the Central Government. The argument was that no such prior approval from the Central Government was obtained in terms of the aforesaid provision.

18] We find that this assertion is factually incorrect. The learned Single Judge specifically noted that the Power Grid had obtained prior approval of the Central Government under Section 68 (1) of the Electricity Act, 2003. Though, an attempt was made that this finding is incorrect, we do not agree with the said submission of the writ petitioner as the learned ASG pointed out to us the document containing such an approval.

19] Another submission made was that permission of the writ petitioner was not obtained which was needed as per Rule 3 of the

2006 Rules.

20] In the instant case, the aforesaid Rule is not applicable in view of Section 164 of the Electricity Act, 2003.

21] It is not in dispute that in exercise of powers under the aforesaid provision, the appropriate Government has conferred the powers of telegraph authority vide Notification dated 24-12-2003 exercisable under the Telegraph Act, 1885 upon the Power Grid. It may also be mentioned that a Central transmission utility (CTU) is a deemed licensee under the second proviso to Section 14 of the Electricity Act, 2003. Power Grid is a Central transmission utility and is, therefore, a deemed licensee under the Electricity Act, 2003. This coupled with the fact that Power Grid is treated as authority under the Telegraph Act, 1885, it acquires all such powers which are vested in a telegraph authority under the provisions of the Telegraph Act, 1885 including power to eliminate any obstruction in the laying down of power transmission lines. As per the provisions of the Telegraph Act, 1885, unobstructed access to lay down telegraph and/ or electricity transmission lines is an imperative in the larger public interest. Electrification of villages all over the country and availability of telegraph lines are the most essential requirements for growth and development of any country, economy and the well-being/progress of the citizens. The legislature has not permitted any kind of impediment/obstruction in achieving this objective and through the scheme of the Telegraph Act, 1885 empowering the licensee to lay telegraph lines, applied the same, as it is, for laying down the electricity transmission lines.

22] Powers of the telegraph authority conferred by Section 10, 15 and 16 of the Telegraph Act, 1885, stand vested in and are enjoyed by the Power Grid.

23] Section 10 of the Telegraph Act, 1885 empowers the telegraph authority to place and maintain a telegraph line under, over, along or across and posts in or upon any immovable

property. The provision of Section 10 (b) of the Telegraph Act, 1885 makes it abundantly clear that while acquiring the power to lay down telegraph lines, the Central Government does not acquire any right other than that of user in the property. Further, Section 10 (d) of the Telegraph Act, 1885 obliges the telegraph authority to ensure that it causes as little damage as possible and that the telegraph authority shall also be obliged to pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

24] As Power Grid is given the powers of telegraph authority, Rule 3 (1) of the 2006 Rules ceases to apply in the case of Power Grid by virtue of execution (exemption) clause contained in sub-rule (4) of Rules 3.

25] We, thus, have no hesitation in rejecting the argument of the writ petitioner that the impugned action of the Power Grid was contrary to the provisions of the Electricity Act, 2003.

26] We also do not find that the action of the Power Grid, in the given circumstances, by not shifting the transmission lines was arbitrary. From the facts noted above, it becomes apparent that not only it was unfeasible to change the alignment as almost entire work had already been completed by the time the writ petitioner started protesting against this move, even otherwise, the Power Grid has given sufficient explanation to point out that all relevant factors/aspects were kept in mind while laying down the impugned transmission lines. Such transmission lines had to be straight line to the extent possible for eliminating loss of transmission. It is also explained that electricity transmission is usually laid or crossed over agricultural land where minimum extent of land gets utilised for erecting towers and where agricultural activities are not prejudiced/obstructed in any manner. The purpose is to avoid buildings, religious places, ponds, etc. while laying down these transmission lines. It is only when it becomes inevitable that towers are placed on the private lands to the

minimum and least extent possible. That is what was tried to achieve in the instant case. Another important factor, which needs repetition at this stage is that no blasting is permissible within 300 m from the 400 kV line (already existing) or the tower structure. Mining of limestone can be taken up by adopting the methods other than use of explosive/blasting - without damage to the owner foundation/tower structure or the line, which can be accomplished by using jack hammer/pneumatic hammer with compressor so as to avoid any damage to the line or tower. This aspect has also been taken note of by the learned Single Judge of the High Court in the judgment dated 11-3-2008. The Division Bench did not differ with any of these findings.

Accordingly, Civil Appeal No. 10953 of 2016 preferred by the writ petitioner stands dismissed."

In these circumstances, we do not think that the question is *res-integra*. Once there is a pronouncement of the Hon'ble Supreme Court and by taking into consideration the very provisions and the assertion of Power Grid Corporation Ltd. that it is conferred with the powers of a telegraph authority and the Supreme Court referred to the same Notification dated 24/12/2003, then, we are bound by this judgment.

51] It is not possible to take a different view. The only question then arises, was whether the Collector would have passed any order on the application of the petitioner or could have taken into consideration, the objections of the of the second respondent. The petitioner's application was clearly referable to Section 16 of the Act. The petitioner's application [Case No.67] very clearly refers to Section 16 of the Telegraph Act. Once this application is made in terms of the powers conferred in the petitioner, then the ambit and scope of the

inquiry was extremely limited. The Collector was aware that there was a notification issued and referred above. The argument of the respondent no.2 before us has been referred that the tower is wrongly aligned in its line by petitioner and needs to be shifted. Paragraphs 12 and 14 of the order of the Collector dated 30th September, 2013, reads as under :

“12] Thus, the contention of the non-Applicant, that the tower is wrongly aligned in the land of the non-applicant by the applicant, and needs to be shifted, appears to be of hyper technical nature, and does not appear to be reasonable. Just because a particular land is having a commercial potential, it would not be appropriate to resist the Enterprise like that of the applicant from discharging its statutory duties and completing the project of the erection of the transmission line approved by the Government of India.

13]

14] As such in this view of the case, I am of the considered opinion that in order to maintain the balance of convenience between both the applicant and the non-applicant, it would be just and proper to restrain the non-applicant from causing any kind of obstruction, and resistance, to the applicant, during the process of the erection of the tower no.29/0 in the land of the applicant, and simultaneously directing the applicant to pay the compensation to the non-applicant, as regards all the losses and damages sustained by the non-applicant during the process. Thus in exercise of the powers conferred upon me by u/s 16 of the Indian Telegraph Act 1885, and by exercising the powers conferred upon me under the provisions of Rule 3 and 13 of the Central Works of Licensee Rules 2006 I hereby proceed to pass the following Order:-

ORDER

A The application filed by the applicant is allowed;

B The Non-Applicant Namely Shri Sanjay Bhausahib Pardhe, Village- Dahegaon, Taluka _ Gangapur, Aurangabad; his servants, agents, relatives or any person authorized by him or acting on his behalf is hereby restrained, permanently, from creating resistance or obstruction of any nature whatsoever, in the installation, erection, and stringing, of the tower no.29/0 in the land in Gut No 166 of Village - Dahegaon, Taluka - Gangapur, Dist-Aurangabad of the 400kv D/C Aurangabad - Boisar Transmission Line, by the applicant.

C The Applicant, Power Grid Corporation of India Ltd, is hereby directed, to conduct the panchnama of the loss of the standing crops and trees, and any kind of damages in the land of the Non-Applicant, which is caused, during the process of the erection and installation of the tower and stringing, in the presence of the Non-Applicant, within 7 days after the completion of the work of the erection, installation of the tower.

D The Applicant, Power Grid Corporation of India Ltd, is hereby directed firstly get ascertained the estimated losses of the standing crops and fruit bearing trees if any, from the Taluka Agricultural officer and after ascertainment of the actual losses sustained by the non-applicant the applicant is directed to pay compensation for the loss of the standing crops and trees in the land of the Non-Applicant, which are damaged, during the process of the erection and installation of the tower and stringing, within 2 months.

E The Applicant, Power Grid Corporation of India Ltd, is hereby directed to submit the details of the area of the tower, in the office of the District Collector for compensation towards land.

F The non-applicant is directed to furnish the proof regarding the market rates in existence of the lands in vicinity for the purpose of ascertaining the compensation amount. The non-applicant is directed to furnish the proof

regarding the market rates in existence of the lands in vicinity for the purpose of ascertaining the compensation amount payable to the non-applicant failing which the Government valuation report of the area of the tower shall be called from the Office of the Joint District Registrar class-1, Aurangabad within 7 days, and upon the receipt of the valuation report, the applicant shall pay the compensation amount to the non-applicant as assessed by this office, in accordance with law within the period of 45 days thereafter. A separate order of assessment of the actual compensation amount to be paid to the Non-applicant will be issued subsequently by this office.

G The In-charge of the concerned police station is hereby directed to provide the requisite police assistance, to the applicant - Power Grid Corporation of India Ltd, in the event of the further obstruction/resistance by the non-applicant, in order to prevent the outbreak of the law and order situation, in accordance with the provisions of law.

H Informed the parties and closed the proceedings closed the proceedings.”

52] We do not think that the District Magistrate could have taken over any functions and powers and which are to be exercised by the District Judge. The specific power to compensate parties like the second respondent is vesting with the District Judge. In these circumstances, we do not think that the order and direction insofar as C to F above, can be sustained. We, therefore, quash and set aside that part of the order of the District Magistrate, Aurangabad dated 30/9/2013. The application of the second respondent consequently could not have been entertained. Those were representations made, but we do not see any justification for the Collector and District Magistrate widening the scope of the inquiry and granting the reliefs particularly of the nature reproduced above. Thus

operative directions which we have reproduced from the order dated 20/8/2013 cannot be sustained. Once the Supreme Court judgment binds us, then, the exercise of the Collector needs to be interfered with. We quash and set aside the order dated 20/8/2013.

53] What is left for our consideration is reliance by the petitioners on the judgment of the Hon'ble Supreme Court in the case of Ramakrishna Poultry [supra].

54] That judgment deals with a peculiar situation. That judgment was rendered because there was a consensus, that consensus is to be found from the narration of facts.

55] It was clear from the paragraphs relied upon by Shri Adwant, in the case of **Managing Director, Ramakrishna Poultry Private Limited V/s R. Chellappan and others reported in (2009) 16 S.C.C. 743. [supra]** that the balance was achieved by the Hon'ble Supreme Court between the grievance of Ramakrishna Poultry and both the technical as well as technological flexibility of altering the route of the transmission lines in keeping with the direction given by the District Collector. There the route of the transmission line was to be altered so that it does not pass directly over the appellant's poultry shades. This was because the appellant was ready and also willing to bear the expenses of such alteration. The power grid corporation and its experts had resisted this exercise by urging that the dispute entailed in deviation over the lands of respondent no.1 R.Chellapan, then R.Chellapan would object. In paragraphs no.38 to 40, the Hon'ble Supreme

Court held as under :

“38 Keeping aside the technical aspect of the matter as to whether the order passed by the District Collector was one under Section 16 or Section 17 of the Telegraph Act, 1885, in order to arrive at a practical solution to the problem, the Power Grid Corporation accepted the alternate suggestion made on behalf of the appellant Company and raised the height of the lowest point of sag of the transmission lines between the two towers on either side of the poultry sheds of the appellant Company from 46.5 m to 52 m, which in practical terms means a clearance of 30 ft between the lowest point of the sag and the highest point of the poultry shed. Of course, it has been contended by Mr. Ganesh that according to the report of the experts, even if the height of the tower was raised to 100 m, the electro-magnetic field created by the transmission of high voltage electricity would still encompass the poultry sheds and adversely affect the reproductive system not only of the chickens but of all living things within that zone.

39] However, what goes against the case of the appellant Company is the fact that the purchases of the land for starting the poultry business and the erection of the poultry sheds were effected at a point of time when the process of identifying the route of the transmission lines was already in progress and survey work was being undertaken. We find it difficult to accept that the appellant Company did not have knowledge of the outgoing project, which is for the benefit of a large number of people of the area as against the interest of a single individual.

40] In view of the objections on behalf of the Power Grid Corporation that the deviation in the transmission lines, as suggested on behalf of the appellant Company, could not be practically achieved, we are left with the next best solution i.e. to increase the clearance between the lowest point of the sag of the transmission cable and the topmost portion of the appellant's poultry sheds. It should not also be forgotten that from the point of the sag on both sides the cable moves upwards and the clearance becomes even

greater on both sides of the lowest spot. During the hearing we had asked Mr. Tripathi to confirm with the engineer of the Power Grid Corporation to explore the possibility of raising the height of the towers even further to lessen the damage, if any, that may be caused to the egg-laying capacity of the layers in the appellant's poultry farm."

56] We do not see how these observations can be relied upon for the Hon'ble Supreme Court kept aside the technical aspect of the matter as to whether the order passed by District Collector was one under Sections 16 or 17 of the Telegraph Act, 1885. A practical solution was arrived at because the petitioner power grid corporation accepted the alternate suggestion made on behalf of Ramakrishna Poultry (supra) and raised height of the latest point of SAG of the transmission lines between the two towers on either side of the poultry shades of the appellant company (Ramakrishna Poultry). It is in these circumstances, that the Hon'ble Supreme Court has disposed of the proceedings before it, by setting aside the order of the Division Bench. The Division Bench of the Madras High Court had refused to issue any such direction. However, before the Hon'ble Supreme Court of India, the above practical solution was arrived at and more or less by consent. In such circumstances, and by reserving the powers of the said appellant, to claim compensation, that the Supreme Court allowed the appeal only to the extent indicated in the paragraphs to which we made detailed reference.

57] We do not think that the above observations can be cited as a precedent or principle of law binding upon this Court. All the more, when there is express pronouncement after interpreting and construing legal provisions in the case of this

very petitioner, in the latest judgment of M/s Century Textile (supra).

58] Moreover, there is no consent of the “Power Grid” to abide by the orders of the Collector and District Magistrate impugned in this petition. We feel abiding by them would adversely affect public interest. That would not be feasible and practical either. Now, nearly 100% work is over. If the tower height is to be maintained, as directed, that would mean every District Magistrate, though exercising limited powers in terms of section 16(1) of the Telegraph Act, 1885, can interfere with the alignment of lines, their location, height, length etc. That is not permissible in law. There is a duty to be performed by the District Magistrate in larger public and national interest. The aggrieved person has a right to seek compensation in terms of section 10(d) and if there is any dispute about its sufficiency or apportionment, then, there is a complete mechanism provided by section 16(3) and (4) and by proviso below section 16(4) the right to file a suit as stated and to the extent therein is intact. The Collector and District Magistrate on some sympathetic and liberal view of the powers conferred in him cannot displace this mechanism and render the law redundant. Precisely, the issue of his power and jurisdiction is raised here which must be answered by reference to law. No other view on law, except as above, is permissible.

59] For these reasons, we do not think that the reliance on this judgment is of any help.

60] As a result of the above discussion, Writ Petition

No.9315/2015 succeeds. Rule is made absolute in terms of prayer clause "B". Writ Petition No.4453/2014 is dismissed. Rule discharged.

61] At this stage, Mr.Adwant, prays that the order passed in Civil Application No.5841/2017 in Writ Petition No.4453/2014 be continued for a period of two months so as to enable the petitioner to consider its position. The petitioner in Writ Petition No.4453/14 desires to consider its position and if so advised, challenge this judgment in higher Court. This request is opposed vehemently by Shri S.S.Joshi, Advocate appearing for Power Grid Corporation of India. What we find is that this Court recorded a statement of the second respondent that he will not press the relief prayed in the civil application, however, to protect the structure, it is contended that the stringing of the transmission wires from tower location No.AP-28 to AP-30 is essential, although proposed measure is objected by the petitioner.

62] We do not think that the order passed, based on such a statement, can be said to be operative, once we have dismissed Writ Petition No.4453/2014. In any event, in the order passed on 4/5/2017, which is on Civil Application of the said Power Grid Corporation, this Court in paragraphs no.3 and 4 directed as under :

"3 Since the issue involves technical specifications, we do not propose to go into the question at this stage. However, since the applicant has expressed willingness to abide by the conditions those would be put by this Court while allowing the application, we deem it proper to consider the request made by the applicants in the instant application.

4 It would be open for the applicant to effect

the work of stringing of transmission wires from tower location No.AP-28 to AP-30 subject to final outcome of the instant petition. The applicant undertakes not to claim any equity on the basis of permission accorded to the applicant. The applicant also undertakes to abide by the directions those would be issued while disposing of the writ petition and if such directions require restoration of the original position, the compliance thereof would be at the costs and consequence of the applicant. “

63] Hence, the request of Shri Adwant, cannot be granted. It cannot be granted all the more when the substantive relief claimed in Writ Petition No.4453/2014 is to enforce order dated 20/8/2013 in Case No.57/2013 passed by the Collector/District Magistrate, Aurangabad. We have expressly set aside that order by allowing the Writ Petition of M/s Power Grid Corporation. We have discharged the Rule and dismissed Writ Petition No.4453/2014, hence the request of Shri Adwant is refused.

MANGESH S. PATIL,J. S.C. DHARMADHIKARI ,J.
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