

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 3490 of 2017**

Yogesh Gupta S/o Shri B. L. Gupta Aged About 42 Years R/o Shanti Niketan Villa, Near Ameri Railway Crossing, Ameri Road, Shanti Nagar Ring Road No. 2, Bilaspur, District Bilaspur (C.G.)

---- Petitioner**Versus**

1. Union Of India, Ministry of Power, Through its Secretary, Central Electricity Authority Sewa Bhawan R K Puram , New Delhi.
2. State Of Chhattisgarh Through, its Secretary Department Of Revenue Mantralaya Mahanadi Bhawan Naya Raipur (C.G.)
3. Power Finance Corporation Consulting Limited Through its Vice President and Project In Charge , First Floor, "Urjanidhi", 1 Barakhamba Lane, Connaught Place, New Delhi
4. M/s Chhattisgarh - WR Transmission Limited, having its Registered Office At C- 105, Anand Niketan New Delhi and Corporate Office at 7A, Sambhav Building, Judges Bungalow Road, Bodakdev, Ahmedabad, Gujarat
5. The Collector, District Janjgir Champa (C.G.).
6. The Tahsildar , Tahsil Janjgir , District Janjgir Champa (C.G.)

---- Respondents

For Petitioner	: Mr. Bhaskar Pyashi, Advocate.
For State	: Mr. Shashank Thakur, Govt. Advocate.

Order On Board**02/01/2018**

(1) Central Electricity Authority has granted approval by its memorandum dated 24th April, 2015 in favour of Power Finance Corporation Consulting Limited, respondent No. 3 herein for IPPs in

Chhattisgarh and other generation projects in western region in favour of M/s Chhattisgarh - WR Transmission Limited, respondent No. 4 herein, which also includes Champa (pool) to Dharamjaigarh, 765 KV S/C Line. Thereafter, Central Electricity Authority by its notification dated 20th October, 2016 conferred the power under Section 164 of the Electricity Act, 2003 possessed by telegraph authority under the Indian Telegraph Act, 1885 (henceforth "Act, 1885") for laying of electric line under the transmission scheme "System Strengthening for IPPs in Chhattisgarh and other generation projects in western region in favour of respondent No. 4 herein and the respondents No. 4 started its work erecting transmission line also in the land of the petitioner.

(2) Feeling aggrieved against the action of respondent No. 4 erecting transmission line also in the land of the petitioner, this writ petition has been filed stating inter alia that the manner in which the respondents are acting in furtherance of approval to erect the pole on the petitioner's land or by crossing line by cable is contrary to law as the alternative land is available with the State Government and, therefore, impugned action be quashed and the respondents be directed either to erect the tower on the governmental land or to take entire land of the petitioner and relied upon the decision of the Supreme Court in the matter of **M.C. Mehta (II) Vs. Union of India and others**¹.

(3) I have heard learned counsel appearing for the petitioner at length.

1 (1988) 1 SCC 471

(4) The Supreme Court in the matter of **Power Grid Corporation of India Limited Vs. Century Textiles and Industries Limited and others**² has held that prior consent of owner or occupier of the land under Rule 3 of the Works of Licensee Rules, 2006 for construction of transmission towers or laying transmission lines is not required by licensee under Electricity Act, 2003 and Telegraph Act, 1885 provides for unobstructed access to lay down telegraphs lines by telegraph authority. Relevant paragraph of the report states as under:-

“21. It is not in dispute that 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, 185 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 tht Power Grid is treated as authority under the Telegraph Act, 1885, it acquires all such powers which are veted 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 in imperative in the larger public interest.

2 (2017) 5 SCC 143

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.

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 provisions 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.

(5) Finally, the Supreme Court in the aforesaid case, has held that land owner will be entitled for compensation by filing application before the District Judge and held as under:-

“27. At this stage, we deal with the direction of the Division Bench regarding compensation payable

to the writ petitioner, or for that matter to the State Government. In the first instance, no such claim was laid by the writ petitioner in the writ petition or by the State Government before the High Court. Furthermore, the High Court could not have given this task to the District Collector, which is contrary to the provisions of Section 16(c) of the Telegraph Act, 1885 which are extended to laying down of electricity lines. As per this provision, such an authority vests with the District Judge.”

(6) In view of the aforesaid legal position, the remedy of the petitioner is to claim compensation by filing an application before the District Judge, I do not find any merit in the instant writ petition and judgment relied upon by the petitioner is inapplicable to the facts of the present case.

(7) Accordingly, the writ petition fails and is hereby dismissed. However, it is open to the petitioner to claim compensation in accordance with law.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-