

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1. **CWP No.17595 of 2021 (O&M)**
Date of Decision: 19.04.2022

Rajesh Kumar and anotherPetitioners
Vs
State of Haryana and othersRespondents

2. **CWP No.19741 of 2021 (O&M)**

Bharat and othersPetitioners
Vs
State of Haryana and othersRespondents

3. **CWP No.19904 of 2021 (O&M)**

Naresh Kumar and othersPetitioners
Vs
State of Haryana and othersRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Pankaj Bali, Advocate
for the petitioners in CWP Nos.17595 & 19904 of 2021.

Mr. Sanjeev Sharma, Sr. Advocate with
Mr. R. Kartikeya, Advocate
for the petitioners in CWP No.19741 of 2021.

Mr. Vivek Chauhan, Addl. A.G. Haryana.

Mr. Puneet Jindal, Sr. Advocate with
Mr. Amandeep Singh Meho, Advocate
for respondents No.2 and 3 in CWP Nos.17595 &
19904 of 2021 and
for respondent No.2 in CWP No.19741 of 2021.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, CWP Nos.17595, 19741 and 19904 of 2021 are being decided.

[2]. In CWP Nos.17595 and 19904 of 2021, petitioners have approached this Court for issuance of a writ in the nature of certiorari/mandamus directing the official respondents not to change the directions of 132 KV S/C line on D/C tower from 132 KV Sub-Station, Shekhpura Jagir (Nagla Megha) to Karnal Co-op. Sugar Mill Ltd. from TL No.14 against the site plan approved by the Haryana Space Application Centre (hereinafter referred to as 'the HARSAC') as the official respondents are changing the alignment of 132 KV due to pressure of respondent No.6, who is real brother of local MLA.

[3]. In CWP No.19741 of 2021, petitioners have sought quashing of impugned notices dated 24.02.2021 and 27.02.2021 issued for erection of transmission lines for creation of 132 KV S/C lines from 132 KV Sub-Station Shekhpura Jagir (Nagla Megha) to Karnal Co-operative Sugar Mill, Karnal and issuance of directions to the respondents to consider the options given by the petitioners in a time bound manner and opt for shorter alternative passages connecting the 132 KV Sub-Station Shekhpura Jagir (Nagla Megha) to Karnal Co-operative Sugar Mill, Karnal as well as the alternative proposal to connect 132 KV Sub Station Shekhpura Jagir (Nagla Megha) to Co-

operative Sugar Mill, Karnal by laying or erection of 33 KV Line at 33 KV voltage instead of 132 KV voltage level, following the natural trajectory of right of way and further by seeking report/opinion from an independent agency.

Since all the writ petitions involve similar controversy, therefore, for brevity common facts are being noticed.

[4]. Vide Memo No.Ch-113/CETS-09 dated 18.06.2019, Memorandum of Understanding (for short 'the MOU') was executed between the Haryana Vidyut Prasaran Nigam Limited (for short 'the HVPNL) and HARSAC for preparation of shortest possible route of upcoming transmission of HVPNL. The above MOU was signed between the HVPNL and HARSAC on 12.06.2019. As per the decision of the Board of Directors (BOD), the route plan of all the upcoming transmission of HVPNL is to be got conducted from HARSAC by using Geographic Information System (GIS) by each of the XEN/TS under TS Zone as per the terms and conditions of the MOU signed with HARSAC. The HARSAC is a nodal agency of Haryana Government for all geo-informatics applications related activities. HARSAC has the expertise and infrastructure facilities related to remote sensing and GIS. The matter regarding GIS was discussed in the meeting of Whole Time Directors (for short 'the WTD') HVPNL. In the meeting dated 22.12.2020 a decision

was taken with reference to scope of work, commercial proposal, roles and responsibilities and manpower requirement. After due deliberations, the MOU was given final shape. The MOU details the modalities and the terms and conditions for conducting the route survey for construction of 66 KV and above voltage level power transmission lines of HVPNL in the State of Haryana and to define the rights and obligations of either party thereto and other arrangements between the parties. The MOU came into force w.e.f. 12.06.2019 and will be reviewable after five years with the mutual consent of both the parties. According to terms and conditions optimized single route line will be provided by HARSAC, however, there may be some scope of minor changes on the request from HVPNL. The HARSAC will initiate the work after receiving 100% payment in advance. This MOU was for whole State of Haryana.

[5]. On 19.01.2021, XEN TS Divn, HVPNL, Karnal wrote to HARSAC regarding invoice for route alignment for relaying of 132 KV H.T. line from new switch yard Karnal Co-op Sugar Mill to HVPNL sub station Shekhpura Jagir. Request was made to submit the invoice as per terms and conditions of MOU between HVPNL and HARSAC for necessary route survey of relaying of 132 KV H.T. line from new switch yard Karnal Co-op Sugar Mill to HVPNL sub station Shekhpura Jagir under TS Division,

Karnal at the earliest. On 01.02.2021, proposal was approved by the Whole Time Directors (WTD's) with reference to description of work. The information was circulated to different offices of HVPNL throughout the State of Haryana including the Chief Engineer/TS, HVPNL, Panchkula, Superintending Engineer (TS), HVPNL, Karnal and Executive Engineer (TS), HVPNL, Karnal. It is significant to note that TS Wing is comprising of many officers. On 24.02.2021, a public notice was issued by HVPNL that any licensee or other person interested may raise any objection and/or may make representation upon the above scheme within 2 months of the publication of the notification, after which no further objection and/or representation shall be entertained and the scheme shall be deemed to be sanctioned with or without modification by the Nigam.

[6]. Vide memo dated 03.03.2021, a tentative route survey was communicated by the Superintending Engineer, TS Circle, HVPNL, Karnal to XEN/TS Division, HVPNL Karnal regarding submission of tentative route survey and plan from tower location No.1 to tower location No.23 for creation of 132 KV 0.2 Sq” S/C Shekhpura Jagir to Karnal Co-operative Sugar Mill line on D/C towers. The aforesaid tentative route survey was prepared in association with HARSAC and was surveyed by JE,

Civil, HVPNL, Karnal, SDO, Construction, HVPNL, Karnal and HDM, TS, HVPNL, Karnal, XEN/TS Division, HVPNL, Karnal, CHD TS Circle, HVPNL, Karnal and SE, TS Circle, HVPNL, Karnal. Since the land of the petitioners was not in the aforesaid tentative route survey, therefore, no objections were filed. The route survey was finalized. It was certified that 27 meter corridor will be maintained throughout the line. Minimum clearance between the existing 11 KV, 33 KV, 66 KV, 220 KV, 132 KV, 400 KV and 765 KV line will be maintained 3.05 meters. It was also certified that adequate clearance will be as per Indian Electricity Rules. The SDO, Construction, S/Divn, HVPNL, Karnal has signed the approved route in confirmation of the aforesaid certification after personally checking that the locations of the straight angle towers satisfied with proposed route and location. It was counter-signed by the XEN/TS Division, HVPNL, Karnal. On 19.05.2021, award of work construction was given to M/s K. Ramachandra Rao. Name of the line was creation of 132 KV S/C line on D/C towers from 132 KV S/Stn. Shekhpura Jagir (Nagla Megha) to Karnal Co-operative Sugar Mill Ltd. Karnal with 0.2 Sq. ACSR Conductor. Length of the line was 4.3 kms.

[7]. On 02.06.2021, XEN, TS Divn, HVPNL, Karnal accordingly wrote to the HARSAC with a request to re-route

alignment for relaying of 132 KV EHT line from new switch yard Karnal Co-op, Sugar Mill to HVPNL Sub Station, Shekhpura Jagir. There was a change in the route in the periphery of Sugar Mill due to non-feasible location. It was informed that due to change in the route, feasibility be explored for another route alignment from location no.14 to 9 from any other area as marked in the existing route of HARSAC. Copy was circulated to Chief Engineer, TS, HVPNL, Panchkula and S.E. TS Circle, HVPNL, Karnal. On 11.06.2021, HARSAC replied and rejected the change of route already sanctioned being the shortest possible route for transmission lines in HVPNL in the State of Haryana. HARSAC informed the concerned quarter that as per satellite data, guidelines of HVPNL in MOU, the best shortest and feasible route has already been submitted to the HVPNL.

[8]. On 07.07.2021, a representation was filed by the farmers before the Power Minister, Haryana. Out of the applicants, Satish Kumar and Daya Singh are petitioners No.4 and 10 in CWP No.19741 of 2021 respectively. The said representation was filed by the petitioners in CWP No.19741 of 2021. On the aforesaid representation given by the farmers of village Shekhpura Jagir to the Power Minister, Haryana, a committee was constituted vide order dated 22.07.2021 passed by the Superintending Engineer, TS Circle, HVPNL, Karnal

consisting of following members:-

1. *Sh. Anil Ghalwat, Xen/TL Design, HVPNL, Panchkula.*
2. *Sh. Birender Singh, Xen/TS Division, HVPNL, Kurukshetra.*
3. *Sh. Sandeep Kadyan, SDO/Construction, Sub-Division, HVPNL, Karnal.*
4. *Sh. Vishal Raheja, AEE/TL Mtc. Sub-Division, HVPNL, Karnal.”*

[9]. The aforesaid committee was to submit its report along with recommendations for any technical feasible shortest route. The committee visited Karnal and assembled at the site location on 24.07.2021 and 26.07.2021. The committee submitted its report. The committee found that stubbing/foundation work from TL No.1 to 4 (Substation side) and TL No.15 to 21 (Sugar Mill side) have already been completed by the firm. The possible route submitted by the farmers and the TS Wing Karnal were not found feasible due to the following reasons:-

- (i) The provision of termination of both ends i.e. Substation side and Sugar Mill side in the proposed route plans has not been done as per site requirement.
- (ii) All the proposed route plans are passing/crossing-over the land of BPL Plots as initiated by TS Wing, Karnal.

- (iii) All the proposed route plans are passing through Down Valley which is around 20 feet depth.
- (iv) State Road Crossing of the line shown in the proposed route plans has not been done at proper angle.
- (v) There are some hurdles/obstacles/land marks which have not been shown in some of the proposed route plans viz. Factory, Tube wells and constructed buildings etc.”

[10]. The Committee also found that in case of shifting of existing transmission lines, a designated committee consisting of concerned SE/TS, SE/NCR and SE/Design has also been constituted by the Whole Time Directors (WTD), HVPNL. TS Wing prepares tentative alternate possible routes and submit to the committee. The committee by visiting the site location can give recommendations after due deliberation. On 04.09.2021, the Executive Engineer, TS Division, HVPNL, Karnal accordingly wrote to the aforesaid Committee constituted by the Whole Time Directors (WTD's) vide order dated 22.07.2021 referring to the report dated 28.07.2021 submitted by the committee that a technical feasible shorter route is explored, which is required to be checked by the committee constituted on the matter. A request was made to check the technical feasibility for the

proposed tentative route between tower location no.9 to 14 of the subject cited line at the earliest.

[11]. Thereafter the committee gave its report on 06.09.2021 and found the proposed route submitted by TS Wing as technically feasible. It was observed that the technical route explored and proposed by the TS Wing was deliberated by the Committee on 05.09.2021 and thereafter recommendation was made that *ibid* route proposed and submitted by TS Wing was technically feasible. It was also observed that all necessary clearance and ROW's shall be ensured by TS Wing.

[12]. The grievance of the petitioners is that the alleged deliberations of the Committee took place on 05.09.2021 i.e. Sunday and report of clearance dated 06.09.2021 was given in haste without ensuring right of way by the TS Wing which was left to be ensured at a later point of time. The aforesaid Committee was requested on 04.09.2021 to explore and check the feasibility and on the next day i.e. on 05.09.2021 (Sunday), the Committee allegedly found the alternative route submitted by the TS Wing to be technically feasible. In the lead case i.e. CWP No.17595 of 2021, notice of motion was issued on 08.09.2021. Thereafter on 10.09.2021, the Whole Time Directors (WTD's) approved the re-alignment of 132 KV S/C Sugar Mill, Karnal Shekhpura Jagir Line between tower location

no.9 to 14. The said plan was prepared by the HVPNL of the changed route.

[13]. Learned Senior counsel for the petitioners on the basis of aforesaid facts submitted that there was no occasion for the Committee consisting of four officers constituted by the Superintending Engineer, TS Circle, HVPNL, Karnal on 22.07.2021 to deliberate on 05.09.2021 i.e. being Sunday and found the route proposed by TS Wing, Karnal to be technically feasible. That report was submitted in haste without adhering to the requirement of ensuring right of way. The Committee was asked to see the feasibility on 04.09.2021 and thereafter the Committee undertook the assignment in haste thereby giving way to 5th proposal which was prejudicial to the interests of the petitioners. The 5th route was approved by the competent authority.

[14]. Learned Senior counsel by referring to the site plan Annexure P-4, Annexure R-2/10 and Annexure P-13 submitted that the action of the respondent/Nigam smacks of *mala fide*. Re-routing between tower location no.9 to 14 is ill advised, just to save the land of influential person out of consideration.

[15]. Learned Senior counsel further submitted that permission under Section 16 of the Indian Telegraph Act, 1885 is mandatory. The District Magistrate after hearing the land

owners could have determined whether the line was on the notified route or notified route was changed.

[16]. In order to understand the controversy in detail, it is relevant to reproduce the relevant provisions of the Act i.e. Section 164 of the Electricity Act, 2003; Rule 3 of the Works of Licensees Rules, 2006; Sections 10 & 16 of the Indian Telegraph Act, 1885 and Sections 20A and 41(ha) of the Specific Relief Act, 1963:-

“Section 164 of the Electricity Act, 2003

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 coordination 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.

Rule 3 of the Works of Licensees Rules, 2006.

Rule 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.

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

Sections 10 and 16 of the Indian Telegraph Act, 1885.

Section 10 – Power for telegraph authority to place and maintain telegraph lines and posts – *The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along or across, and posts in or upon, any immovable property: Provided that—*

(a) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph establish or maintained by the Central Government, or to be so established or maintained;

(b) the Central Government shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which the telegraph authority places any telegraph line or post;

(c) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority; and

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

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Section 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 sub-section (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 subsection (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.

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Sections 20A and 41 (ha) of the Specific Relief Act, 1963.

20A. Special provisions for contract relating to infrastructure project -

(1) *No injunction shall be granted by a court in a suit under this Act involving contract relating to an infrastructure project specified in the Schedule, where granting injunction would cause impediment or delay in the progress or completion of such infrastructure project.*

Explanation.—For the purposes of this section, section 20B and clause (ha) of section 41, the expression “infrastructure project” means the category of projects and infrastructure Sub-Sectors specified in the Schedule.

(2) *The Central Government may, depending upon the requirement for development of infrastructure projects, and if it considers necessary or expedient to do so, by notification in the Official Gazette, amend the Schedule relating to any Category of projects or Infrastructure Sub-Sectors.*

(3) *Every notification issued under this Act by the Central Government shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive*

sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be made, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

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Section 41 - Injunction when refused.— *An injunction cannot be granted — (a) to (h) XXXXX XXXXX*

(ha) if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project.

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[17]. Learned Senior counsel by relying upon **Mahendrasinh Hathisinh Rana vs. Union of India & 5, 2015 SCC OnLine Guj 5281; M/s Cetex Petrochemicals Limited vs. The Chief Engineer (Transmission/Civil), Tamil Nadu Transmission Corporation Limited and others, 2021(1) WritLR 332; V.V. Jayaram and others vs. Kerala State Electricity Board, 2016(5) R.C.R. (Civil) 643; Surat Singh vs. Municipal Corporation of Delhi, 1989(1) R.C.R. (Criminal) 361; Writ Petition Nos.26557-26559/2018** titled '**Sri A.R. Rajanna and another vs. Assistant Executive Engineer, Mescom and another**', decided on 05.07.2018; **Bharat Plywood and Timber**

Products Private Ltd. vs. Kerala State Electricity Board

Trivandrum and others, 1972 AIR (Kerala) 47 (Full Bench)

and *The Power Grid Corporation of India Limited vs.*

Century Textiles & Industries Limited & Ors., 2017 AIR

(Supreme Court) 1141 submitted that when the authority is to

exercise the power under 10(d) of the Telegraph Act, the owner or the occupier has a right to resist. If the same is resisted,

officer so concerned with the power has to apply to the District

Magistrate for passing of the order under Section 16(1) and

when the District Magistrate has to exercise the power for

passing of order, he has to exercise his discretion. At the time

when the District Magistrate is to exercise the discretion for

passing of the order, apart from hearing, the affected person

which in any case is required for observance of the principles of

natural justice, the District Magistrate has to apply his mind

whether there is any alteration in the route of transmission line

as approved by the Appropriate Government in favour of the

licensee or not. The District Magistrate has to exercise his

discretion judicially. He has to pass the order under Section

16(1) of the Telegraph Act after hearing the parties and after

taking such evidence as is required with regard to the objections

raised. The order passed by the District Magistrate has to be a

speaking order and the same should reflect the objections

raised by the parties and the reasons given by the District Magistrate for accepting or rejecting the same. The order must reflect the material relied by the District Magistrate for arriving at such a conclusion. Section 16(3) of the Indian Telegraph Act, 1885 provides for 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 situated, be determined by him. The determination done by the District Judge under Section 16(3) of the Act shall be final in terms of Section 16(5) of the Act. The licensee has no unrestricted powers to fix electric poles or to install over-head lines over the land of any person when there is resistance or obstruction by that person. Sub-Section(1) of Section 16 provides that if in the exercise of powers conferred by clause (d) of Section 10, there is any resistance or obstruction, the District Magistrate may in his discretion order that the telegraph authority shall be permitted to exercise those powers. It is obvious, therefore, that before passing any such order the District Magistrate will give hearing to the person so resisting or obstructing the telegraph authority on the exercise of its powers. It is only after passing of the order by the District Magistrate, if the person resisting the exercise or powers by the telegraph authority does not give all the facilities for the exercise

of those powers, he is deemed to have committed an offence under Section 188 IPC. Before passing an order under Section 16(1) of the District Magistrate has necessarily to issue notice to all persons interested and give them an opportunity to state their objections, if any. Without giving such an opportunity he will not have any material, at any rate, adequate material to decide whether he should pass an order that the authority shall be permitted.

[18]. Learned Senior counsel further submitted that the wording of Section 16 of the Telegraph Act would show that the expression that “District Magistrate may, in his discretion” that an order will not be forthcoming automatically. A District Magistrate may in his discretion in a given case refuse or decline to pass an order that the telegraph authority shall be permitted to exercise the powers. The wording is significant. The District Magistrate does not grant permission to the authority. But he orders that the authority “shall be permitted”. The discretion conferred by the section on the District Magistrate is certainly a judicial discretion, and, in cases where the District Magistrate refuses to pass an order that the telegraph authority shall be permitted to exercise the powers mentioned in Section 10 of the Act, it is conceivable that the telegraph authority may, notwithstanding such refusal, continue to exercise such powers.

The wording of section is indicative of the fact that in cases of resistance or obstruction the District Magistrate shall have to decide whether the authority should be permitted or not to exercise the power under Section 16 of the Telegraph Act. The telegraph authority cannot override or ignore the resistance or obstruction and continue to exercise the powers under Section 10 of the Act notwithstanding such resistance or obstruction. It follows that, when an owner or occupier resists or obstructs the exercise of the power under Section 10 of the Act, the telegraph authority will have to approach the District Magistrate for an order under sub-section (1) of Section 16 of the Act and can exercise the power under Section 10 of the Act only in cases where the District Magistrate deems it fit to pass an order that he shall be permitted to do the work. The powers under Section 10 of the Act is thus a conditional power and is dependent upon the order being passed under Section 16(1) of the Act by the District Magistrate that the authority may be permitted. The resistance/obstruction by the owner even after passing of an order by the District Magistrate would attract penal consequences in terms of Section 188 IPC. Sub-Section (2) of Section 16 of the Telegraph Act has positive as well as negative aspect. The former being the duty on the part of the person having control over the property to give all facilities for the exercise of power under Section 10 of the Act and the latter not

to resist the exercise of such power. Resistance after passing of the order is deemed to be an offence under Section 188 IPC. It is only the resistance after passing of the order which would be covered under Section 188 IPC. The initial resistance or obstruction would not attract such implication. Sections 10 and 16 of the Telegraph Act have to be read altogether. When there is a resistance or obstruction, power under Section 10 of the Act can be exercised only when the District Magistrate passes an order under Section 16(1) of the Act that he shall be permitted to exercise the power.

[19]. Per contra, learned Senior counsel for respondents-HVPL submitted that the competent authority i.e. Financial Commissioner and Principal Secretary to Government, Haryana, Power Department has passed an order dated 21.12.2009 in exercise of powers under Section 164 of the Electricity Act, 2003 (36 of 2003), the Governor of Haryana has conferred HVPL with all the powers possessed by the telegraph authority under Part-III of the Indian Telegraph Act, 1885 (13 of 1885) in respect of electrical 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. With the conferment of all the powers

possessed by the telegraph authority, the HVPNL is competent to undertake the project and no opportunity is available to the owners or occupiers of the land except to claim compensation before the District Magistrate under Sections 10(d) & 16(3) of the Telegraph Act.

[20]. Learned Senior counsel further submitted that proposal for construction of 132 KV S/C line on D/C towers from 132 KV substation Shekhpura Jagir (Nagla Megha) to Karnal Co-operative Sugar Mill Ltd., Karnal with 0.2 sq" ACSR conductor was awarded to M/s K. Ramachandra Rao Transmission & Projects Pvt. Ltd. Some farmers protested and represented before the Power Minister. A walk over survey was conducted and alternative technically feasible shorter route was explored between tower No.9 to 14 which is 169 meters shorter in length than the one earlier proposed which was approved by the Whole Time Directors (WTD's) HVPNL as conveyed vide letter dated 13.09.2021. Petitioners in CWP No.19741 of 2021 has espoused their grievances that the line to be constructed for Sugar Mill, Karnal should be at 33 KV voltage level in place of 132 KV voltage. The Karnal Co-operative Sugar Mill requested for evacuation of power supply and connecting line at 132 KV level for matching equipments installed at their end. A letter was also received from the Karnal Co-operative Sugar Mill

requesting not to reconsider the issue of voltage level from 132 KV to any lower level of voltage. The scheme was approved for connecting at 132 KV voltage level as the reliability of evacuation of power at 132 KV S/Stn is better, efficient and also fault level is less as per the formula unilaterally devised and accepted by the Nigam. Line losses will be less if voltage is higher due to increase of size of conductor. The writ-petitioners in CWP No.19741 of 2021 could not suggest any alternative route for 132 KV Shekhpura Jagir-Sugar Mill Line at 132 KV level. Line losses are inversely proportional to the square of the voltage, which means that if the voltage is increased, the line losses will be decreased. All the stake holders in CWP No.17595 of 2021, CWP No.19741 of 2021 and CWP No.19904 of 2021 were duly heard in the proceedings of meeting conducted on 11.10.2021 in the chamber of Executive Engineer, TS Division, HVPNL, Karnal in respect of exploring the possibility of alternative route for evacuation of 132 KV sub station. Work of construction of 12 number of towers out of 21 numbers have already been completed as per approved route.

[21]. Learned Senior counsel submitted that the project is infrastructural project. No restraint order can be passed in view of amended provisions of Sections 20A and 41 (ha) of the Specific Relief Act, 1963. Learned Senior counsel by relying

upon *The Power Grid Corporation of India Limited*'s case (supra); *CWP No.25966 of 2017* titled '*Harbans Singh & others vs. Punjab State Transmission Corporation Limited and another*' decided on 06.12.2017; *Kanwar Singh vs. Union of India Ministry of Power, Shram Shakti Bhawan, New Delhi and others, 2011(4) R.C.R. (Civil) 490; CR No.4024 of 2018* titled '*Gurmukh Singh vs. Punjab State Power Corporation Limited and others*' decided on 24.01.2019; *CWP No.1039 of 2018* titled '*Shri Bhagwan and others vs. State of Haryana and another*' decided on 25.01.2018; *CWP No.2934 of 2018* titled '*Gian Singh vs. Haryana Vidyut Parsaran Nigam Ltd. and others*' decided on 19.03.2018; *CR No.2215 of 2021* titled '*Chief Engineer, Haryana Vidyut Prasaran Nigam Limited and others*' decided on 13.12.2021 further submitted that in view of powers conferred under Section 164 of the Electricity Act, 2003, there is no requirement of hearing the owners of the land in this infrastructural project. The appropriate Government has conferred the power of Telegraph Authority exercisable under Indian Telegraph Act upon HVPNL being the State transmission utility that falls under the second proviso to Section 14 of the Electricity Act. In view of such conferment of powers of telegraph authority, the exercise of powers are unconditional.

The HVPNL has an absolute power to get the lines laid through the land. The affected persons have no right to be heard. If the owners of the property resist the effort of the Authority, then District Magistrate can permit the licensee to carry out the work. Further resistance can lead to criminal prosecution under Section 188 IPC. Only right which the owner of the property has in such a situation is *qua* the compensation under the Telegraph Act. The authority entering upon the private property of an owner is required to ensure minimum damage to the property while carrying out the infrastructural project and for that the authority has to pay the compensation for the damaged cost during that process. If the owner is not satisfied with the compensation, he can approach to the Court for enhancement of compensation and the order passed by the District Judge in terms of Section 16(3) of the Telegraph Act would be final. Beyond this, the owner has no right in respect of resistance or obstruction to laying of the electric lines. It is for the satisfaction of the authority to plan the route of the line keeping in view the appropriate factors. Land owners have no say to suggest any alternative route after issuance of notification under Section 164 of the Electricity Act. Rule 3 of Works of Licensees Rules, 2006 would not be applicable. Under the provisions of Telegraph Act, the authorized officer is entitled to erect/lay the lines over any immovable property. The only requirement in exercise of such

powers under Section 10 of the Telegraph Act is that while exercising such powers minimum damage would be caused to the property and for such damage the compensation shall be paid to the owner. The scope of power is further elaborated by Section 16 of the Telegraph Act which has not conceded any absolute right to a private person to resist any exercise of such power under Section 10 of the Telegraph Act. If a person attempts to resist exercise of such power, then the District Magistrate can order/direct the said person not to resist and further resistance thereafter would lead to penal action under Section 188 IPC. The Indian Telegraph Act was enacted in 1887 and still holds the field on authorization in terms of Section 164 of the Electricity Act. Provisions of the Act is not under challenge in these cases and the provisions are to be read in the manner they are written. The Court is bound to take the said provisions as validly existing on the statute book and the same are to be read in the letters and spirit.

[22]. Learned Senior counsel for the respondents further submitted that in view of aforecited judgments the private owner of the land does not have any right to be heard *qua* alignment/laying of electricity lines. Learned Senior counsel also relied upon Division Bench judgment of Gujarat High Court in **LPA No.534 of 2020** titled '**Gujarat State Energy**

Transmission Corporation Limited vs. Ratilal Maganji

Brahmbhatt (BAROT)' decided on 06.11.2020 which has been upheld by the Hon'ble Apex Court in SLP No.51 of 2021 decided on 01.02.2021.

[23]. Learned Senior counsel for the petitioners rejoined the proceedings and submitted that the State has not framed any rule in respect of works of licensee affecting the property of other persons under Sub-Section (2) of Section 67 of the Act. If Section 164 of the Electricity Act is applied, then authorization takes place to carry out the work under the Telegraph Act. The Works of Licensees Rules 2006 would be applicable in case the appropriate Government being the Central Government. Since the State Government has not framed the rules, therefore, as per Section 185(b) of the old Act, it would not be applicable as the same would not be under Section 67(1) of the Act where only licensee is authorized.

[24]. Learned Senior counsel for the petitioners further submitted that in all the precedents cited by learned counsel for the respondents, Section 164 of the Electricity Act was not in issue. Since the appropriate Government was the State Government and in all those cases, central rules were relied. The grievance of the petitioners in CWP No.19741 of 2021 is that the feasibility of alternative routes or more precisely

shortest possible route had not been examined by the respondents. The alternative routes are 800 meter shorter than the routes proposed by the respondents. By referring to letter dated 19.01.2021, addressed by the Xen TS Divn, HVPNL, Karnal to HARSAC, learned Senior counsel submitted that it was pre-decided and pre-conceived case of installation of 132 KV HT Line. HARSAC was requested by the Nigam for providing route alignment. The co-ordinates given in the said letters were wrong and based on incorrect reference points provided by respondent No.2. HARSAC submitted a proposed tentative route for erection of transmission lines. The plan was approved by the Nigam on 03.03.2021 before the time given for objections i.e. two months. After the submission of aforesaid proposed tentative route, the matter was examined by the officials of HVPNL and they allegedly determined the cost component including the compensation payable to the land owners without actually determining the feasibility of setting up the transmission line.

[25]. Learned Senior counsel for the petitioners in CWP No.19471 of 2021 by referring to the noting sheet provided to the petitioners under RTI Act submitted that even before issuance of notification with reference to the proposal for setting up the transmission lines, certain calculations were made and

the proposed compensation was also statedly determined. In the RTI information as Annexure P-5 attached with CWP No.19741 of 2021, feasibility of creation of 33 KV line was found to be feasible. The feasibility of evacuation of power at 33 KV level at 132 KV S/Stn HVPNL, Shekhpura Jagir, Karnal was given by Superintending Engineer/Op Circle, UHBVN Karnal to SE/P&D UHBVN, Panchkula. The work was to be approved by the planning wing. The total cost of estimate is Rs.3,87,10,319.00. The work was started as per terms and conditions of turnkey contract on the basis of tentative routes that shows pre-occupation of mind.

[26]. Learned Senior counsel for the petitioners in CWP No.19741 of 2021 further submitted that date of issuance of notice is 24.02.2021. Petitioners have agricultural land in two villages namely Rampur Kata Baag and Shekhpura and are aggrieved by setting up of transmission lines. As per RTI information, the entire proposal for laying down the transmission line was already in place, but still for the reasons best known to the authorities, the public notices were issued and the same were silent with respect to co-ordinates of details of the location from where the transmission lines were to pass and where the erection of poles would be installed. 27 meters wide passage i.e. 89 feet was to be left under the lines and for about 1 km, this

would cover 25,542 sq. mts. of land belonging to petitioners No.2 and 3. Notices were issued during currency of second wave of COVID-19 pandemic. Circulation of newspapers were also stopped. The period for filing objections and for visiting the offices were fully barred due to health concerns during the COVID-19. Even with this background, respondents proceeded ahead to the proposed line of action. No objections were received from any individual during the said period and that is how the respondent-Nigam got a free hand to act according to its whims and fancies in a pre-determined plan to divert from the main route proposed by the HARSAC. Use of 33 KV lines would have been more economical and efficient for transmission of electricity. The plan given by the HARSAC was statedly approved on 03.03.2021 while notices were issued on 24.02.221 and 27.02.2021 and hence an empty formality.

[27]. Learned Senior counsel for the petitioners in CWP No.19741 of 2021 also raised the issue of crop compensation for acres. In pith and substance, the grievance of the petitioners in CWP No.19741 of 2021 is for viability of adopting evacuation power at 33 KV level in place of 132 KV level and also to strive for shortest possible route.

[28]. I have considered the arguments and have also perused the record made available before the Court during

course of hearing.

[29]. The issue in respect of laying transmission lines and the interpretation of provisions of Indian Telegraph Act viz.-a-viz. Section 164 of the Electricity Act, 2003 are no longer *res integra*. The project being infrastructure project has to be viewed from the angle of respondents where numerous intra-departmental stages have to be gone into. Under Rule 4 of Works of Licensees Rules 2006, it has been provided that nothing contained in this rule shall affect the powers conferred upon any licensee under Section 164 of the Act. Admittedly, the powers have been conferred upon the licensee under Section 164 of the Electricity Act vide order dated 21.12.2009 passed on behalf of Governor of Haryana, therefore, Works of Licensees Rules 2006 are not strictly applicable. Section 10(b) of the Telegraph Act, 1885 would show that the telegraph authority has been conferred with the power to place and maintain the telegraph line under, over, along or across the line in any immovable property. Under sub-section 10(d) it casts upon an obligation upon the telegraph authority to do as little damage as possible. It also requires that the telegraph authority shall pay full compensation to all the persons interested for the damages sustained by them by reasons of exercise of said powers. Section 10 of the Act does not make any distinction between the

initial erection or its continuation. The section itself begins by using the words "from time to time". Thus, if the power is to be exercised from time to time, it is apparent that after the erection process is completed, the authority has been empowered to exercise powers under Section 10 even for the purposes of maintenance, repairs and alteration etc.

[30]. In view of Section 164 of the Electricity Act, the question of consent of any kind for erecting the poles and transmission lines on a private land is not required, if the same is read in conjunction with Section 10 of the Telegraph Act. There is statutory obligation cast upon the authority to ensure that minimal damage is caused. The powers under Section 10 of the Telegraph Act, 1885 are wide and extensive. While exercising the power, it is not necessary for the licensee to put to individuals/owners of the land on notice. The licensee has got the power under Sections 10 and 16 of the Indian Telegraph Act, 1885. Such a power has been conferred upon the licensee in the public interest. The exercise of the said power by erecting the towers with overhead lines would not amount to an acquisition. It is true that such an action would diminish the value of the property of an individual, but at the same time, it cannot be termed as an acquisition. Section 16 of the Indian Telegraph Act provides for a mechanism by which the owner can approach the competent authority, if there is an obstruction

or resistance. It is not necessary that in each and every case, the owner will have to approach the District Magistrate. The word "objection" has got a different connotation than the words "resistance" or "obstruction". A resistance or obstruction would mean preventing the statutory body from carrying out the public duty. Whereas an objection is merely a form of protest. Under Section 16 of the Indian Telegraph Act, the District Magistrate has got no power to go into the merits of the case and find out as to whether the alignment proposed is correct or not and there is any possibility of realignment. The prescription of Section 16 of the Indian Telegraph Act is very specific to provide aid to the licensee to perform its statutory duty. The scope of Section 10 of the Indian Telegraph Act vis-a-vis. Section 16 of the Indian Telegraph Act, has to be construed so as to give true meaning to the aforesaid provisions. The exercise of power under Section 10 of the Act is not conditional on compliance with the provisions of Section 16(1) of the Telegraph Act. The power given under Section 10 of the Act is absolute. It is only when there is a resistance or obstruction in the exercise of that power then occasion arises to approach the District Magistrate. If there is no resistance or obstruction, there is no occasion for the telegraph authority to approach the District Magistrate. The resistance and obstruction envisaged by Section 16(1) of the Act is different. This will be clear on reading of sub-section (1) of

Section 16 of the Act. It is for the purpose of Section 188 IPC, that an application is to be given under Section 16(1) of the Act to the District Magistrate. Section 188 IPC makes the disobedience of an order duly promulgated by the public servant an offence. Section 16 is really in aid of the discharge of statutory duty and exercise of statutory power postulated by Section 10 of the Telegraph Act.

[31]. When the power under Section 164 of the Electricity Act read with Section 10 of the Telegraph Act is exercised, then the licensee is not acquiring any land, rather is only making use of the land for the purpose of laying electric lines for which full compensation is to be given for the damage caused. It is apparent from this provision that no notice is required to be given to the owner before laying the polls or constructing any tower, nor any consent is required from the owner. Section 28 and 42 of the Electricity (Supply) Act, 1948 are not saved under Section 185 of the Electricity Act, 2003, therefore, there is no need to publish a sanctioned scheme nor it is necessary to give any notice by publication in local newspapers as required under Section 29 (2) of the Electricity (Supply) Act, 1948. In spite of the same, the notification was published inviting objection. No objections were received due to the COVID-19 or any other reasons. This very issue was considered in **S.M. Rao vs State of Karnataka, AIR 1999 Karnataka 475** and it was held that

absence of the details in public notice are not fatal. When the line has to travel long distance non-mentioning of land particulars is not certainly fatal. Many a time drawing of the line depends on the soil condition and other local situation as well. Therefore, there cannot be any such contemplation as to through which property the line will have to be drawn. It is otherwise when the owner is not required to be heard in terms of interpretation of Section 164 of the Electricity Act read with Section 10 of the Telegraph Act. This ground does not exist to see nullification of the proposed action.

[32]. The Division Bench of Gujarat High Court in **Gujarat State Energy Transmission Corporation Limited's** case (supra) has dealt with the ratios of all the celebrated judgments on the issue and ultimately rejected the contention as projected by the petitioners therein. Following conclusions are drawn by the Division Bench of the Gujarat High Court:-

“58.1 The Part III of the Telegraph Act, 1885, deals with the Power to place "Telegraph Lines and Posts" and there are other provisions in the said Act, applicable to all the properties. As seen from the plethora of cases, the powers conferred on the telegraph authority to place and maintain telegraph lines and towers, are traceable to Sections 10, 11 and 14 of the Act, 1885 and by virtue of Section 164 of the Electricity Act, 2003, it is conferred on any public officer, licensee or any other person engaged in the business of supplying electricity.

58.2 *As per Clause (c) to Section 10, the authority can exercise its powers in respect of the property of a local authority only, by obtaining permission of that authority, whereas, no such permission is required in relation to the property of others. Section 10 does not contemplate notice to an owner or occupier of land to show cause against laying of a line and it authorizes the telegraph authority, to place a telegraph line under, over, along or across any immovable property. The proviso makes it clear that the licensee or any other authorised person does not acquire any right, other than that of user of the property. The right conferred on the land owner is only to seek for payment of compensation for any damage sustained by him, by reason of exercise of the powers.*

58.3 *Section 10 of the Indian Telegraph Act, 1885, confers a legal sanction to a telegraph authority to enter into any private property, subject to the condition that, while entering into the property and during the course of execution of any work, the telegraph authority is under an obligation to cause as little damage, as possible, and shall pay full compensation to all the persons interested for any damage sustained by them, while exercising the powers conferred under Section 10 of the Act.*

58.4. *When power of the telegraph authority to enter into any private property, is subject to the conditions to cause as little damage as possible, and when there is a provision for payment of compensation, the question as to whether, the said authority should seek for consent from the owner of the property, or provide him an opportunity of hearing before entering into the property, does not arise. However, the land owner may be informed of the work to be executed.*

58.5 *Since the powers under Section 10 of the Indian*

Telegraph Act, 1885, can be exercised without acquiring the land in question, once an order is passed by the appropriate government under Section 164 of the Electricity Act, 2003, the public officer, licensee or any other person engaged in the business of supplying electricity shall be entitled to proceed with the works of placing the electric lines without acquiring the land in question. Usage of the land by the licensee or the authorised person, does not amount to acquisition.

58.6 Section 164 of the Electricity Act, 2003, empowers the State Government to confer, by an order in writing, powers which the telegraph authority possesses under the Indian Telegraph Act, 1885, with respect to placing of the telegraph lines and posts, on any public officer, licensee or any other person engaged in the business of supplying electricity under that Act, for placing of electrical plants and electric lines, in terms of Section 2(20), which defines "electric line", as 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; "

58.7 The power conferred on any public officer, licensee or any other person engaged in the business of supplying electricity under the Electricity Act, for the abovesaid purpose, may be subject to such conditions, if any, the Government may deem fit to impose and also subject to the provisions of the Indian Telegraph Act, 1885.

58.8 The authorisation, in terms of Section 164 of the Electricity Act, 2003, read with Section 10 of the Indian Telegraph Act, 1885, authorising the public officer or licensee or any other person engaged in supplying electricity, all the powers of the Telegraph Authority, which includes the power to enter into any private property, subject to the condition that while entering into the property and the public officer or licensee or any other person, authorised under the Act, is under an obligation to cause as little damage as possible, with a guarantee for payment of compensation for the owner of the land or the persons interested.

58.9 Sections 16 and 17 respectively of the Indian Telegraph Act, 1885, do not limit the absolute powers of the telegraph authority to enter into any property for the purpose of enforcement of Section 10 of the Indian Telegraph Act, 1885, read with Section 164 of the Electricity Act, 2003, by which, the public officer or licensee or any other person engaged in the business of supplying electricity under this Act, is empowered to exercise all the powers, for the purpose of placing electrical plant, line, erection of towers, conductors, poles, etc.

58.10 The intention of the Legislature, is to provide electricity, in terms of Section 43 of the Electricity Act, 2003. When the purpose of the Act, is to provide the basic amenity of electricity to the public at large, and if every objection/resistance has to be entertained under Section 16(1) of the Indian Telegraph Act, 1885, then it would render Section 10 of the Indian Telegraph Act, 1885 and Section 164 of the Electricity Act, 2003, meaningless, thereby, the power conferred on the telegraph authority to

enter into any property, subject to causing, as little damage as possible, with an assurance of payment of compensation to the damage, if any, would be redundant.

58.11 If Section 16(1) of the Act, has to be construed, conferring a right on the landowner to seek for an opportunity of prior notice or consent, then the very purpose of Section 10 of the Indian Telegraph Act, 1885 and Section 164 of the Electricity Act, 2003, would be defeated.

58.12 Vis-a-vis Section 185 (2) (b) of the Electricity Act, 2003 and Section 12 (2) of the repealed Indian Electricity Act, 1910, under which the consent of the owner or occupier is essential and on the issue, as to the enforceability of Section 12 of the Act, until the Rules are made under Section 67 of the Electricity Act, 2003, consent of the owner or occupier is necessary, only in the absence of any order, passed under Section 164 of the Electricity Act, 2003.

58.13 Having taken into consideration the relevant provisions of the Indian Telegraph Act, 1885 and Electricity Act, 2003 and analysis of Section 67 and section 164 of the Electricity Act, 2003, the legal position is that, whenever an order is passed by the appropriate Government, in exercise of powers under Section 164 of the Electricity Act, 2003, for placing of electric lines for the transmission of electricity, conferring upon any public officer, licensee or any other person engaged in the business of supplying electricity any of the powers which the telegraph authority possesses under the Indian Telegraph Act, 1885, with respect to the placing of telegraphic lines and posts for the purposes of a

telegraph established by the Government, such public officer, licensee or any other person engaged in the business of supplying electricity, exercises all the powers, as that of the telegraph authority, under the Indian Telegraph act, 1885.

58.14 However, in the absence of such an order under Section 164 of the Electricity Act, 2003, if a licensee i.e., a person who has been granted a licence to transmit electricity or to distribute electricity under the Act, proposes to place electric lines, electric plant or other works necessary for transmission or supply of electricity, Section 67 of the Electricity Act, 2003 comes into operation and consequently, prior consent of the concerned owner or occupier, may be required, under Section 12 (2) of the Indian Electricity Act, 1910.

58.15 The provisions of the Works of Licensees Rules, 2006 made under Section 67 (2) of the Electricity Act, 2003 are in pari materia to Section 12 of the repealed Indian Electricity Act, 1910. The Works of Licensees Rules, 2006 are applicable, only in a case, where the works have been taken up by the licensee, under Section 67 (1) of the Electricity Act, 2003. But Section 67 (1) of the Electricity Act, 2003, as well as the rules made under Section 67 (2) would govern the field, only in the absence of an order, under Section 164 of the Electricity Act, 2003.

58.16 Section 16 states that if there is any resistance or obstruction, the District Magistrate may in his discretion, order that the telegraph authority shall be permitted to exercise all the powers. Further, after such an order, a person offering any further resistance is deemed to have

committed offence under Section 188 of the Indian Penal Code. Once the technical feasibility of the project, has been approved by the appropriate Government, by issuing an order under Section 164 of the Electricity Act, 2003, no land owner or person interested can seek for shifting or re-aligning of the route, on the premise that the District Collector-cum-District Magistrate, has the powers to do so. The District Collector has no powers to alter any route or alignment, except to remove the difficulties faced by the licensee or the person authorised, pursuant to the orders issued under Section 164 of the Act.

58.17 If the intention of the Legislature was to seek for consent or permission from every owner and if the right of such owner has to be recognised, in terms of Section 16(1) of the Telegraph Act, due to resistance/obstruction, then the execution of any work or project, would be stopped at every stage. Needless to state that the execution of works, involving erection of towers and connection of overhead lines, is done, only after a detailed field study, by identifying a feasible route of the proposed transmission line, and while selecting suitable corridors, residential areas to be avoided, span length, the angle of deviation, extent of damage, likely to be caused, while erecting towers, maintenance cost of electric lines and towers and other factors, have to be considered. Public interest, in providing electricity to a large section of people and industrial establishments, etc., has to be given weightage over private interest.

58.18 If the authorities have to recognize the right of obstruction or resistance, in terms of Section 16(1) of the Indian Telegraph Act, 1885, then the moment, any

notification is published, all the landowners or interested persons, who have the knowledge of the commencement of any development work, would immediately resist or obstruct the work, and may even seek for re-location or if the towers, posts had already been erected, may seek for re-alignment or removal of towers and plants, erected by the public officer or licensee or any other person, engaged in the business of supplying electricity, authorised to carry out the works, in terms of an order passed by the appropriate Government, under Section 164 of the Electricity Act, 2003.

58.19 When a project involves huge expenditure, erection of many towers at various places and when such project involves, greater public interest, then even a single owner, under the pretext of making objections/resistance, would attempt to stall the process of execution of the project. When entry into any property is legally authorised, with payment of compensation to the land owner, no prior consent is required.

58.20 The Apex Court and other Courts in India, have categorically held that the action of the licensee or the competent authority, in erecting poles or posts, in the property or drawing lines over the property, does not amount to acquisition of lands and it amounts to only user of the property to the extent indicated and therefore, there is no requirement to initiate any land acquisition proceedings, giving opportunity to the land owners, when execution of the work, is ordered under Section 164 of the Act and accordingly, carried out by the licensee or any other competent authority.

58.21 Even if any Court issues any directions to consider the representation of any land owner or person interested, such directions are required to be considered only to the limited extent of payment of compensation, to be given by the licensee or the competent authority and the directions issued, if any, would not empower the District Collector-cum-District Magistrate, to pass any order, contrary to the orders, passed under Section 164 of the Act.

58.22. When the appropriate Government passes an order under Section 164 of the Act, the Collector is bound by the said order, and he is not superior to the Government, to hold that the Government has erred in passing an order, under Section 164 of the Act, authorising the licensee or the competent authority to carry out the work, in the route, which involves Techno-Economic Consideration.

58.23 The Act confers powers to the Telegraph Authority to determine the property over which the lines are to pass or posts to be erected. The powers of the District Magistrate under Section 16(1) of the Indian Telegraph Act, 1885, does not extent to any adjudication, as to from where and how, the line has to be drawn over any specific item of the property or where posts have to be erected or not, in any specific item of the property.

58.24 The Power of the District Magistrate is confined only to the extent of exercising his discretion in granting permission to the Telegraph Act, to execute the work, when an application is made by the licensee or the competent authority.

58.25. *Section 10 of the Indian Telegraph Act gives legal sanction to the licencing authority to enter into any property, to lay poles or posts or draw electric lines. But while doing so, the damage of the property should be less. If there is any resistance, the licensee or the authorised person may approach the District Magistrate-cum-District Collector, to grant permission.*

58.26. *Once the power is conferred on the licensee or any other competent authority, there can be no objection to the implementation of the scheme, on the principles of natural justice or on the ground of unauthorised use of the land.*

58.27. *The legislature has conferred powers on the appropriate Government to authorize a public officer or a licensee, etc., under the Electricity Act to exercise the specific powers of an authority under the Indian Telegraph Act, 1885. The authorisation may be general in favour of a transmission company or in a given case, special. The route is decided by the transmission company. The decision to mark a route for laying an electric line is a highly specialized and technical. At that time, it is unrelated to any specific land owner. The route may be for over hundreds of kilometers passing over Government lands, lands of local authorities and private lands and it may not be practicable to hear the land owners along the entire route.*

58.28. *Having regard to the specialized and technical nature of the task, and the fact that the lines are laid for distribution of electricity, it is the view of this Court that, the*

Legislature has not provided for any notice or hearing to the public at large, or to the land owners. Therefore, when the appropriate Government authorises a person or any body under the Electricity Act, to exercise the powers of the Telegraph Authority, all the powers under the Indian Telegraph Act, 1885, are meant to be exercised.

*58.The Electricity Act, 2003, is a progressive enactment, with a specific purpose of providing electricity to a large number of people, across the country, to promote industrial and sustainable development in all walks of life. Right of a land owner to possess and enjoy the property, though recognised as a Constitutional Right, under Article 300-A of the Constitution of India, such right has to yield to the Articles 14 and 21 respectively of the Constitution of India, which strive to achieve the Constitutional Goals, enshrined in the basic structure of the Constitution of India. [see **T. Bhuvanewari vs. The District Collector cum District Magistrate, Erode District, Erode, W.P. No.18548 of 2013, decided on 19.11.2013]**”*

[33]. The aforesaid judgment has been upheld by the Hon'ble Apex Court in SLP(C) No.51 of 2021 decided on 01.02.2021. In view of aforesaid, it can be seen that under the provisions of the Indian Telegraph Act, the private owner of the land does not have any right to be heard in respect of alignment of electricity lines. It is not for the Court to add words or sentence in the statute so as to introduce the requirement of publication of notification and inviting objections from the

affected persons, therefore, any such attempt by the Court would be more in violation than the compliance. Even if public notice is issued and there is some violation of the time in filing objections etc. for want of land details, the same is of no consequence in view of interpretation of the statute as held in the aforesaid precedents. The authorized person as a "*persona designata*" is bound to act as per provisions of the statute and would be particularly, tempted to so act when the provisions gave such unbridled power to him. Any public notice in view of this situation would be of no legal consequence. While passing the order under Section 164 of the Electricity Act, the Governor of Haryana/competent authority could have imposed such conditions while conferring power upon the licensee under the Telegraph Act, but cautiously such conditions have not been imposed in respect of hearing of any person before exercising powers under the Telegraph Act. Admittedly, such powers have been conferred unaffected by such conditions, therefore, it is only the provisions of Telegraph Act which would govern the matter in issue. The right available to the affected person is only to seek quantum of compensation on account of damage caused by the authority and not *per se* right of the authority to cause such damage. Therefore, public notice issued by the competent authority cannot be held to be bad for want of necessary particulars viz. name, place and description of land

etc. The licensee is not under obligation even to issue such public notice.

[34]. Provision of Rule 3 of the Works of Licensees Rules 2006 stands superseded by the unconditional authorization of the appropriate Government/competent authority in favour of the licensee in terms of Section 164 of the Electricity Act conferring authority to exercise powers under the Telegraph Act.

[35]. For the reasons recorded hereinabove, the objections raised by the petitioners for non-applicability of ratio(s) of **The Power Grid Corporation of India Limited; Gurmukh Singh** and **Harbans Singh's** cases (supra) is rejected. The controversy squarely falls under the domain of cases discussed in **Gujarat State Energy Transmission Corporation Limited's** case (supra) which has been upheld by the Hon'ble Supreme Court in SLP(C) No.51 of 2021.

[36]. In view of above, I do not find any merit in these writ petitions and the same are accordingly dismissed. Pending application(s), if any, stand(s) disposed of.

April 19, 2022

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No