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

**DECIDED ON: 16.12.2022
LPA-1115- 2021 (O&M)**

KEWAL GARG @ KEWAL KRISHAN APPELLANT

VERSUS

UNION OF INDIA AND OTHERS RESPONDENTS

LPA-1116-2021 (O&M)

RAVINDER SINGH AND OTHERS APPELLANTS

VERSUS

UNION OF INDIA AND OTHERS RESPONDENTS

LPA-1121-2021 (O&M)

ASHOK GARG APPELLANT

VERSUS

UNION OF INDIA AND OTHERS RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

**Present: Mr. Puneet Bali, Sr. Advocate with
 Mr. Keshav Gupta, Advocate
 for the appellant(s).**

Mr. Satya Pal Jain, Additional Solicitor General of India with

Ms. Neha Sharma, Central Government Counsel
for Union of India.

Ms. Monica Chhibber Sharma, Sr. DAG, Punjab.

Mr. Rajiv Atma Ram, Sr. Advocate with
Mr. I.S. Sidhu, Advocate, for respondent No.4.

SANDEEP MOUDGIL, J.

The aforesaid three appeals i.e. LPA Nos.1115, 1116 and 1121 of 2021, being inter-connected, are disposed of together, for having preferred against a common order passed by the learned Single Judge, dated 25.10.2021, whereby the bunch of three writ petitions bearing CWP No.19391 of 2021, CWP No.5181 of 2021 and CWP No.16724 of 2021, challenging the orders dated 22.10.2020 (Annexure P-18) and 09.11.2020 (Annexure P-19) passed by respondent No.3-Deputy Commissioner, SAS Nagar, Mohali, have been dismissed.

2. It would be appetite to have a glance to the background of facts leading to filing of present intra-Court appeals, wherein all the appellants are aggrieved of laying down a 220 KV Double Circuit Transmission Line (DCTL) in village Mubarakpur, Dera Bassi, Mohali, Punjab.

3. To summarize the contents, in LPA No.1115 of 2021, the appellant is the owner of land over which the transmission line is allegedly being laid whereas, LPA No.1116 of 2021 has been preferred by the workers engaged at the said brick kiln or the family members of those workers. The brick kiln is owned by Kewal Garg @ Kewal Krishan, who is appellant in LPA No.1115 of 2021.

4. The appellants in LPA No.1121 of 2021 have also raised the similar and identical question to seek quashing of the order dated 22.10.2020 (Annexure P-18) passed by the District Magistrate, SAS Nagar, Mohali exercising the powers under Section 16(1) of the Indian Telegraph Act, 1885 (hereinafter referred to as 'Act, 1885' in short) permitting the Power Grid Corporation (PGCIL) to raise construction of towers for laying down 220 KV D/C Chandigarh-Panchkula transmission line, which was reiterated subsequently vide order dated 09.11.2020 (Annexure P-19), after considering the objections raised by respective parties.

5. The parties to the lis are ad idem to the factum of approval as accorded to respondent No.4-PGCIL by the Central Electricity Authority, Ministry of Power, under Section 68 of the Electricity Act, 2003 (hereinafter referred to as 'Act, 2003' in short) to establish 200/66 KV, 2X160, MVAGIS sub-station at UT, Chandigarh along with 220 KV D/C line from Chandigarh GIS sub-station to 400/220 KV, Panchkula-Power Grid Sub-Station. Due publication in various newspapers was made by respondent No.4-PGCIL vide notice dated 13.07.2017 (Annexure P-3). Though, it is alleged to be not proper.

6. The said approval was subject to the Central Electricity Authority (Measures relating to Safety and Electrical Supply) Regulations, 2010 and any subsequent amendments made thereto. The communications subsequent to the notice dated 13.07.2017 (Annexure P-3), which is on record as Annexure P-4, though dated nil, letter dated 22.10.2017 (Annexure P-5) to the Deputy Commissioner, SAS Nagar, Mohali by the PGCIL and order dated 11.01.2018 (Annexure P-6) conveyed to the PGCIL, indicate that after

inspection by the SDM, Dera Bassi and DSP, Dera Bassi, an order was passed with certain suggestions to follow the route laying down to said transmission line via second survey out of three surveys conducted.

7. A further perusal of communication dated 22.01.2018 (Annexure P-7) reiterated the earlier stand for the route of establishing the transmission line, which was objected to by the villagers. The objections were considered by the office of Divisional Commissioner, Ropar and to address the issue, a committee was formed including the members of respondent No.4-PGCIL, Punjab State Transmission Corporation Limited (PSTCL) and the officials of the District Administration, who submitted a detailed report dated 22.06.2018 (Annexure P-9). A technical report was also sought by the Deputy Commissioner from the PSTCL, which revealed in its report dated 26.06.2018 (Annexure P-10) that the distance norms of 500 mts., from the brick kiln for laying down the transmission lines have not been followed and, therefore, an alternate route was suggested. Such decision was conveyed to respondent No.2-Secretary, Department of Power, Government of Punjab by respondent No.3 i.e. Deputy Commissioner, SAS Nagar, Mohali vide letter dated 01.08.2018 (Annexure P-11) with a suggestion for an alternate route.

8. Respondent No.4-PGCIL challenged the aforesaid decision vide ***CWP No.32701 of 2018*** titled as '***Power Grid Corporation of India versus State of Punjab and others***' for quashing the letters dated 26.06.2018 (Annexure P-10) and 01.08.2018 (Annexure P-11) with a further prayer to issue mandamus to the official respondents No.1 to 4 therein for allowing the PGCIL to carry out and complete the construction of transmission line

passing through the site of brick kiln of respondent No.5.

9. In the said writ petition, an application i.e. CM-9132-CWP-2020, was moved in pursuance to the meetings held between Senior Officials of the Punjab Government and its agencies, wherein assurance was given to PGCIL for completion of pending work of laying 220 KV Electricity Transmission Line from Barwala in Haryana to Chandigarh, seeking withdrawal of the writ petition which was allowed to be dismissed as withdrawn vide order dated 16.09.2020 (Annexure P-14), which reads as under:-

“The matter has been taken up through video conferencing in the light of the COVID-19 pandemic.

The application bearing CM-9132-CWP-2020 has been filed by the applicant-petitioner, making prayer for withdrawal of main writ petition.

Ms. Bhavna Gupta, AAG, Punjab has made appearance on behalf of respondent nos. 1 to 4.

The writ petition has been filed for quashing the letters as detailed in the head note of the writ petition and also for seeking mandamus directing the official respondent nos. 1 to 4 to allow the petitioner to carry out and complete the construction of Transmission Line passing through the side of the brick kiln of respondent no.5.

Now it is submitted in the application that various rounds of meetings have been held with the respondents and they now intend to complete the pending work of laying 220 K.V. Electricity transmission line on priority basis. In view of the same, applicant-petitioner does not intend to pursue with the writ petition, to which respondent no.1 to 4 has no objection.

Ordered accordingly.

CWP No. 32701-2018 is dismissed as withdrawn.”

10. Thereafter, opportunity of hearing to the petitioners-appellants was provided by the Deputy Commissioner, SAS Nagar, Mohali and a written representation was also submitted on their behalf. After considering all the objections so raised by the petitioners-appellants either during the personal hearing or in their representations, were considered and orders dated 22.10.2020 (Annexure P-18) and 09.11.2020 (Annexure P-19) were passed, which came to be challenged in the three writ petitions bearing No. CWP No.19391 of 2021, CWP No.5181 of 2021 and CWP No.16724 of 2021.

11. The learned Single Judge with the finding that the huts raised by the labourers/workers at the brick kiln being temporary in nature and can be shifted to any other place within the premises for which respondent No.4 shall bear the cost and with further observation that 90% of the work stood completed i.e. 51 out of total 56 towers stood installed, vide order dated 25.10.2021, which is the subject matter of challenge before this Court in all three Letters Patent Appeals.

12. Learned Senior counsel for the appellants vehemently contended that there is no power of review vested with the new incumbent, Deputy Commissioner, SAS Nagar, Mohali under Section 16 of the Act, 1885, which was passed primarily on three reasons:-

“A. There are 500 labour residing there from past 30-35 years and a mishap can occur anytime if the line is allowed on this route and this aspect was ignored while making the line and the line is not in accordance with law.

B. Line can get weak due to smoke from brick kiln and therefore there can be loss of life.

C. As per PSCPL guidelines (Annex P-21/ Pg 319), the distance should be 500 Meters from brick Kiln. (Even the Central Electricity Authority (Measures Relating to Supply and Electricity Supply) Regulations, 2010 mentions the same distance in Regulation 65(4) at Page 181).”

13. He further submits that the authorities after conducting three surveys recorded that ***“As per the report of the sub divisional magistrate if this high tension line passes over the Brick Kiln/labour quarters/Jhuggis then it will be danger for loss of life therefore suitable changes be made to change the route line”*** and finally observed that line should be taken as per third survey. He has also drawn attention of this Court to the report of a Committee, which was formed to decide upon the alternate rule, of which the relevant part reads as under:-

"Apart from the above the undersigned also brought forward the fact in the meeting that as per the notification the name of village mubarakpur was not mentioned.

In view of the above discussion in the meeting, decision was taken that neutral surveyor be appointed to consider for changing the line to some other place. For this purpose it was decided in the meeting that Sri Sanjeev Gupta Chief engineer PSTCL be requested to visit the site himself along with neutral surveyor, officials of the corporation and the underside so as to someway out may be brought out. This team should visit this site on 26-6-2018 for the above purpose. After inspecting the

spot report shall be submitted."

14. The learned Senior counsel has also laid stress further to the expert report dated 26.06.2018 (Annexure P-10), which suggested for alternate route, wherein further directions were sought in terms of the instructions dated 18.12.1994 (Annexure P-21). It has been further asserted that the Secretary, Power, Punjab called upon PGCIL for meetings, which did not co-operate with the State officials and a categoric letter dated 18.02.2019 (Annexure P-12), to this effect was written, accepting the report dated 26.06.2018 at the level of Secretary, Power, State Punjab, the relevant part of which reads as under:-

“ In view of the fact that PGCIL has not come forward to resolve the issue, the opinion dated 26.06.2018 already submitted by PSTCL remains as it is. Accordingly, the necessary action may be taken at your level please”.

15. On the question of jurisdiction to review, Mr. Puneet Bali, Senior Advocate has also placed reliance upon the order dated 16.09.2020 passed in CWP No.32701 of 2018, wherein the writ petition was dismissed as withdrawn. In the alternate, it is submitted on behalf of the appellants that even if it is presumed for the sake of arguments that the Deputy Commissioner, SAS Nagar, Mohali have the power to review his earlier orders still there has to be some basis and justifiable reasons for the review of the earlier orders, whereas in the case in hand, there is no such material on record, enabling to change the position to review, for the Deputy Commissioner its own earlier orders and he seeks setting aside of the orders passed by the learned Single Judge.

16. The second contention raised by Mr. Puneet Bali, Senior Advocate for the appellants is by deriving a support from two affidavits of Union of India urging that the Union of India specifically stated that the orders dated 22.10.2020 (Annexure P-18) and 09.11.2020 (Annexure P-19) were issued while exercising powers as envisaged under Section 164 of the Electricity Act, 2003 (hereinafter referred to as Act, 2003 in short) and in pursuance thereof, certain conditions of license were imposed under order dated 01.08.2013.

17. Mr. Puneet Bali, learned Senior Advocate for the appellants, while relying upon judgment of the Supreme Court in Deepak Theatre vs. State of Punjab, 1992 Supp (1) SCC 684, challenges the finding given by the learned Single Judge to the effect that the order was merely an internal communication is, therefore, not correct for urging that it is settled principle of law that conditions of license imposed under a statute become a part of the statute itself.

18. The third contention of his argument is that the conditions of license issued under Section 164 of Act, 2003 have been violated, which were imposed on a proposal by the Central Electricity Authority only after recognizing certain complaints and various other cases against PGCIL. Subsequently, after discussions with the PGCIL, the order dated 01.08.2013 was issued as is evident from a part of noting (Annexure P-28) reading as ***“As discussed with Secretary (P), Power Grid in future shall publish the public notice as per the prescribed format which applies to transmission lines under tariff based competitive bidding”***. The stress has been laid by the learned Senior counsel for the appellants to say that noting has been

taken further to urge that PGCIL was mandated to issue public notice in two local daily newspapers of atleast two months in the prescribed format inviting objections and only after considering such objections, if any, the route line ought to have been finalized. Learned Senior Advocate for the appellants has further asserted that the conditions of license imposed under order dated 01.08.2013, were completely bypassed as neither any notice was issued for inviting objections nor the name of village Mubarakpur is mentioned, which ought to have been categorically stated as per the prescribed format enabling the effected residents of that area to file their objections. He has placed reliance upon a decision of the Supreme Court in '*State of Orrisa vs. Sridhar Kumar Malik*' (1985) 3 SCC 697, to submit that the area must be clearly stated for the convenience of residents of that particular place to file objections, whereas, in the present case, the name of the village was not mentioned at all.

19. It has further been asserted by the learned Senior counsel that in the order dated 11.01.2018 (Annexure P-11), the distance of a transmission line has been categorically should be of atleast 500 mts., from a brick kiln, which is also reflected in the instructions issued by the Punjab State Power Corporation Limited as well as stipulated in Regulation 65(4) of the Central Electricity Authority (Measures Relating to Safety and Electricity Supply) Regulations, 2010, which has not been adhered to by the respondents.

20. Lastly, the appellant has sought protection of Right to Property as envisaged under Article 21 of the Constitution of India alleging that if the conditions of the exercise of authority imposed under Section 164 of the Electricity Act, 2003 are violated, the whole action of the respondents is

liable to be rendered illegal.

21. In the case of *LPA No.1121 of 2021* titled as '*Ashok Garg versus Union of India and others*', Mr. Keshav Gupta, Advocate for the appellant argued that the tower is being constructed right in the middle of his land without following due prescribed process, which would not only render the large part of his land useless but will deprive him of his property. It has been further urged that two alternate routes were suggested by the independent experts including the one underground mode of laying the transmission lines but the respondents have not considered it and concluded the submissions with the prayer to allow the present Letters Patent Appeals.

22. On the other hand, Mr. Rajiv Atma Ram, Senior Advocate for the respondent-PGCIL has controverted the fact that no public notice was issued, referring to a public notice dated 13.07.2017 (Annexure P-3), which was duly issued, however, the appellant preferred not to file objections. The representation submitted by the appellant Sh. Kewal Garg in LPA No.1115 of 2021 was undated and addressed to Commissioner, Ropar Division, which was duly replied by the PGCIL vide letter dated 22.01.2018 (Annexure P-7), categorically pointing out that 85% of the foundation and tower erection work has already been completed only after taking all necessary permissions and no objections from various concerned authorities. It has been also stated by the learned Senior Advocate for the respondent-PGCIL that as on today 99% of the work stands completed and only erection of one tower, the foundation of which had been laid, with stringing of wire between the two towers remain. He has, thus, pleaded the great delay on the part of the appellant in objecting to the whole project at this stage.

23. To the contention raised by the appellant with regard to the non-mentioning of village Mubarakpur specifically in the public notice dated 13.07.2017 (Annexure P-3), the attention of this Court has been drawn to the public notice wherein it reads ***“The said transmission line shall pass through, over, under, along or across the lands/immovable properties in and around the area of and/or between the villages mentioned hereinbelow.....”***. Since the village Mubarakpur lies between village Nagla and Pandanwala mentioned therein is, therefore, would be covered by the said notice within the term ***“in and around the area of and/or between the villages”***, as recorded in the said advertisement. It has been further submitted by Mr. Rajiv Atma Ram, learned Senior Advocate that even otherwise there is no requirement of any Act/Rule to give notice to individual landowners while relying upon three judgments i.e. ***‘Power Grid Corporation of India versus Century Textiles and Industries Limited’, (2017) 5 SCC 143, ‘Harbans Singh versus PSTCL’, 2018(1) PLR 604 and ‘Gurmukh Singh versus Punjab State Power Corporation Limited’, 2019(2) PLR 388***. Further asserting that in the case law Century Textiles and Industries Limited (supra), 408 towers out of a total of 410 towers, stood erected and in the case of Harbans Singh (supra), 60% to 70% of the work had been completed. Learned Senior counsel vehemently pressed on the fact that in the present case, admittedly 99% of the work has been done and it is only erection of one tower and stringing of wire between the two towers remain.

24. To the instructions/notification dated 01.08.2013 (Annexure P-28), the learned Senior counsel for the respondent-PGCIL pleaded it to be

the whole misconceived reliance by the appellant stating it to be an Office Order and not even an executive instruction under Article 162 of the Constitution of India. He further laid stress to the word “*as desired*” used in the said order dated 01.08.2013, to assert that nature of the said communication is merely advisory and not mandatory. In support of his argument, to term the instructions/notification dated 01.08.2013 to be an Office Order, reference has been made to Section 67(2)(c) and (d) read with Section 176(2)(c) and 179 of the Electricity Act, 2003 along with Section 10 of the Indian Telegraph Act, 1885, which crystalizes that nature and period of notice to be given before carrying out works and the procedure and manner of consideration of objections and suggestions received in furtherance of the notice can be laid by notifying the Rules. Further, it is argued on behalf of the respondent-PGCIL that alleged instructions/notification/order is dated 01.08.2013, whereas the project was approved by the Government of India on 04/06/08.01.2016 (Annexure P-2), which is much later to the issuance of Annexure P-28. The scheme for construction of 220 KV Transmission Line is approved by the Government of India under Section 68(1) of the Electricity Act, 2003 subject to the conditions contained therein, which is not subject to issuance of Annexure P-28. In the context of another leg of contention with regard to the distance for laying the transmission line, it has been urged that Regulation 61 of the Central Electricity Authority (Measures Relating to Safety and Electricity Supply) Regulations, 2010 mandates the distance required for vertical/horizontal clearance between a building and the transmission line, which has been strictly adhered to in the present case and rather a counter-

attack has been raised on behalf of the respondent vehemently contending that 400 KV Dehar-Panipat Transmission Line was constructed 35 years prior to the establishment of the Brick Kiln in question, which is in violation of the minimum distance required for any Brick Kiln to be constructed near an existing line. The present Brick Kiln is stated to be near the already existing 400KV Dehar-Panipat Transmission Line.

25. As far as the question of jurisdiction to review its own order by the District Magistrate is concerned with regard to the order dated 22.10.2020 (Annexure P-18), it is submitted by the learned Senior Counsel that it is the appellant, who filed a review, which was rejected vide order dated 09.11.2020 (Annexure P19) and, therefore, the law of estoppel would stand in the way against the appellant to say at this stage that review is not maintainable and moreover, there is no review in fact vide order dated 22.10.2020 (Annexure P-18), inasmuch as Annexures P-6, P-8 and P-9 are not the final orders. Learned Senior counsel to conclude his submissions has urged that the transmission line in question is passing over only 3 to 5 labour huts for which an undertaking has already been given by the PGCIL to shift those labour huts/jhuggis at their cost, which are temporary in nature. At this stage, it will not be in the public interest to dismantle the whole project merely for 3 to 5 temporary labour huts.

26. In response to the LPA No.1121 of 2021, the respondents have argued that no representation was ever submitted by the appellants, who are the labour working at the Brick Kiln of Sh. Kewal Krishan Garg i.e. appellant in LPA No.1115 of 2021.

27. Heard learned counsel for the parties.

28. We have considered the rival contentions raised by the learned counsels for the respective parties and on perusal of the record, it is evident that a public notice dated 13.07.2017 (Annexure P-3), was duly issued and admittedly to the said notice, no objections were filed by the appellant. Though a representation is stated to have been made by the appellant in LPA No.1115 of 2021, which is actually undated and addressed to a wrong source i.e. Commissioner, Ropar Division, which in fact ought to have been made to PGCIL, however, still the said representation was forwarded by the Commissioner, Ropar Division to the PGCIL and the same was duly replied on 22.01.2018 (AnnexureP-7), taking the stand that 85% of the foundation and tower erection work is complete that too after taking all necessary permissions and no objections from various concerned authorities.

29. As far as the issue raised by the appellant regarding non-mentioning of village Mubarakpur specifically in the public notice (Annexure P-3), is concerned, the wording of the notice would be very material to be examined in the light of categoric mentioning ***“in and around the area of and/or between the villages”*** is to be read in a wider sense in letter and spirit considering the vital public importance of the project. Even further the said notice recorded as under:-

“The said transmission line shall pass through, over, under, along or across the land/immovable properties in and around the area of and/or between the villages mentioned hereinbelow”.

On a minute examination of the wording, it can be easily inferred without any hesitation in the light of the fact that village Mubarakpur lies between village Nagla and Pandanwala, that the area in

question is well covered fulfilling the requisite conditions in the public notice.

30. On the contention raised by the appellant to the fact that the order dated 01.08.2013, imposes certain conditions for license have been completely by-passed in the present case putting reliance upon Hon'ble Supreme Court Judgment in State of Orissa (Supra), this Court has thoroughly gone through the instructions/notification dated 01.08.2013 (Annexure P-28), which makes it crystal clear that it is only a communication, which is advisory in nature and not mandatory. Furthermore, the said instructions are dated 01.08.2013, whereas the project has been approved by the Government of India much later to that i.e., 04/06/08.01.2016. In fact the present scheme for laying down 220 KV transmission line was approved by the Government of India subject to the conditions contained in Section 68(1) of the Electricity Act, 2003 and not subject to the issuance of instructions/order dated 01.08.2013 and hence, there is no violation to the terms and conditions for issuance of such license.

31. As far as the question of distance required for vertical/horizontal clearance between a building and a transmission line is in dispute, it rests on the fact that 400KV Dehar-Panipat Transmission Line stands erected 35 years prior to the establishment of brick kiln in question and in fact it is the brick kiln, which came into existence in violation of the Regulation 61 of the Central Electricity Authority (Measures Relating to Safety and Electricity Supply), Regulations 2010. Lastly, we are fully diligent about the duty of this Court before reaching to the final conclusion that question raised on jurisdiction to review of the order dated 22.10.2020

(Annexure P-18), shall also be answered. In fact, as per the record, it is the appellant himself, who filed the questioned review, which was rejected vide order dated 09.11.2020 (Annexure P-19). Therefore, it has been successfully argued on behalf of the respondents that Law of Estoppel would come into play against the appellant. Apart from this, even otherwise a perusal of orders dated 11.01.2018 (Annexure P-6), 07.06.2018 (Annexure P-8) and 22.06.2018 (Annexure P-9), are not the final orders and as such it was not a review preferred even by the appellant.

32. It would also be appetite while coming to close our discussion not to ignore the fact of investment made so far in the project and that the transmission line in question would be passing over only 3 to 5 labour huts, which are temporary in nature. Further the PGCIL-respondent has already shown readiness bear the total costs for their shifting. Another aspect also cannot be overlooked by this Court that 99% of the work in the instant case has been completed by the respondents and it is only erection of one tower and stringing of wire between two of them remains that too because of pendency of the present litigation. The reliance made by the respondents in the case of '***Power Grid Corporation of India versus Century Textiles and Industries Limited***', (2017) 5 SCC 143, '***Harbans Singh versus PSTCL***', 2018(1) PLR 604 and '***Gurmukh Singh versus Punjab State Power Corporation Limited***', 2019(2) PLR 388, can be aptly implemented in the instant case, which is rather on much better footings as far as the execution of quantum of work out of the total project is taken into account.

33. This Court, in the light of the discussion made hereinabove and on examination of the record before us, do not find any infirmity and

perversity in the order dated 25.10.2021, passed by the learned Single Judge, and, therefore, the same is upheld.

34. Accordingly, all the present appeals fail being devoid of any merits and are dismissed. No order as to costs.

35. A copy of this order be placed on the files of other connected appeals.

(SANDEEP MOUDGIL)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

16.12.2022
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No