

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Petition No. 248/2009

**Coram: Dr Pramod Deo, Chairperson
Shri S Jayaraman, Member
Shri V.S.Verma, Member**

Date of final hearing: 12.1.2010

Date of Order: 9.4.2010

In the matter of

Petition under Rule 3(3) of the Works of Licensee Rules, 2006

And in the matter of

M/s. Adani Power Ltd .

... Petitioner

V/s

1. Patel Parsottambhai Laljibhai, residing at K-34,
Jalaramnagar Society, Mehsana.
2. Patel Laljibhai Hirabhai, residing at K-34,
Jalaramnagar Society, Mehsana.
3. Collector, Mehsana.

... Respondents

Following were present:

Shri Sanjay Sen, Advocate, AEL
Shri M.G. Ramchandran, Advocate, Respondent No.1&2
Shri Anand Ganeshan, Advocate for Respondent No.1&2

ORDER

Adani Power Limited (“the Petitioner”), a public limited company under the provisions of the Companies Act, 1956, filed the present petition challenging the legality, validity and propriety of the order dated July 8, 2009 passed by the District Magistrate, Mehsana in MSC/Electric Case/1/2009 purported to be passed under Rule 3 of the Works of Licensees Rules, 2006 (“the Rules”) issued under Section 176(2)(e) read with Section 67(2) of the Electricity Act, 2003 (“EA 2003”).

2. The prayers of the Petitioner are as follows:

“(A) This Hon’ble Commission may be pleased to admit and allow the present petition / application;

(B) This Hon’ble Commission may be pleased to quash and set aside the order dated 08.07.2009 passed by the District Magistrate, Mehsana in MSC/Electric Case/1/2009 at Annexure-A;

(C) This Hon’ble Commission may be pleased to stay the execution, operation and implementation of the Order dated 08.07.2009 passed by the District Magistrate, Mehsana in MSC/Electric Case/1/2009 at Annexure-A;

(D) Such other and further relief that is just, fit and expedient in the facts and circumstances of the case may be granted.”

3. The Petitioner submits that it has erected a 400 KV double circuit transmission line for evacuating the electricity generated from its 2640 MW coal based Thermal Power Plant situated near Mundra in District – Kachch , and which would be transmitted to Taluka, Dahegam, District – Ahmedabad. It is further submitted that the Petitioner, being a generating company, is also

required to set up Dedicated Transmission Line as per Section 10 of EA 2003 from its project site up to the grid sub-station for evacuating the power from the project.

4. The Petitioner submits that the Government of India, Ministry of Power by its letter dated October 10, 2007 had given the Petitioner approval under Section 68(1) of the EA 2003 for setting up Dedicated Transmission Line from Mundra – Dahegam 400 KV D/C to 400 KV switching station at Bapsa village in District Patan. Thereafter, the Central Electricity Authority, Government of India has also given approval for energisation of EHV equipment under Rule 63 of the Indian Electricity Rules, 1956.

5. It is submitted that the Respondent Nos. 1 and 2 (hereinafter referred to as “the Respondents”) had approached the Collector – District Magistrate, Mehsana (Respondent No. 3) by their letter dated February 24, 2009 objecting to the overhead transmission line that is passing above their field. Further to this, the Petitioner has submitted that the electric poles have been erected in the neighbouring land of the Respondents, and only the transmission line is passing above the land of the Respondents, and the persons in whose field the poles have been actually erected have been paid reasonable compensation amount.

6. It is submitted that thereafter, the Respondent No. 3 by its Order dated July 8, 2009 had allowed the application of the Respondents and directed the Petitioner to remove the transmission line from the field of the Respondents bearing Block No. 108/1 (Survey No. 1017) situated at Mouja – Sametra, Taluka – District Mehsana within one month. The Petitioner has submitted that every order made by the District Magistrate or Commissioner of Police or Authorised Officer under Rule 3(1) of the Rules shall be subject to revision by the Appropriate Commission. Accordingly, the Petitioner had approached the Gujarat Electricity Regulatory Commission (“the State Commission”) at Ahmedabad since the transmission line from Mundra Power Plant to Dehgam is situated in District Mehsana, Gujarat and it forms part of the intra-state line falling under the jurisdiction of the State Commission. The Petitioner had submitted before the State Commission that the operation of transmission line includes the overhead transmission line and constructing the transmission line for evacuation of power from Mundra Power Station and bringing it up to Dehgam sub-station would fall within the jurisdiction of the State Commission. It has been further submitted that the Respondents have admitted before the State Commission that the land on which the overhead line has been laid down by the Petitioner is only 3 kms. away from the city of Mehsana and that only the Transmission Line passes above their land and no poles / towers are erected on their land.

7. Thereafter, the State Commission vide its Order dated September 9, 2009 held that it does not have jurisdiction to entertain the petition since the

transmission line forms part of the inter-state transmission system and the State Commission does not have jurisdiction to go into the merits of the case

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8. The Petitioner has therefore approached this Commission under Rule 3(3) of the Rules. Further, the Petitioner has submitted that delay if any in approaching this Commission, has been on account of pursuing the remedy before the State Commission. It has further been submitted that this Commission would be the Appropriate Commission to decide this matter and in exercising its functions under Sections 2(4) read with Section 79(1) of the EA 2003 and Rule 3(3) of the Rules to entertain and decide this revision petition.

9. The Petitioner has formulated grounds as to why the order dated July 8, 2009 passed by the District Magistrate, Mehsana is bad in law. These are detailed below:

(a) District Magistrate, Mehsana has not considered the factual position of the case i.e., that the electric poles were erected in the neighbouring land of the Respondents and only the transmission line is passing above the land of the Respondents, and that the person in whose field the poles have been actually erected have been paid reasonable compensation.

(b) Different competent authorities viz., Ministry of Power and CEA have granted permission in this regard and thus the District Magistrate ought not to have allowed the application of the Respondents. Further, it is submitted that the

same transmission line is also functional and prior approval has been received from the Appropriate Government under Section 68 of the EA 2003.

(c) It has been submitted that the land of the Respondents is not cultivated land but barren land having no cultivation or plantation and therefore no farming or other agricultural activities are going on the land.

(d) It has been submitted that the order passed by the District Magistrate, Mehsana is contrary to Rule 3(1)(a) of the Rules. It has been further submitted that the District Magistrate has a limited power to order removal of works carried out by a licensee and does not enjoy power in relation to all of the works under Section 3(1)(a). Referring to the second proviso to sub-section (1) of Rule 3 of the Rules, the Petitioner has submitted that on a plain reading of the proviso, it is clear that the right to seek removal or alteration of work is available only to the owner or occupier of any land on which work has been carried out and does not cover the owners of land over which the electricity supply line has been laid.

10. The Commission fixed a hearing in the matter on November 24, 2009. Shri Sanjay Sen and Shri Neil Hilderth, Advocates alongwith Shri Malar Deliwala appeared for the Petitioner. The Petitioner was directed to serve copy of the petition on the Respondents. The Commission also directed that pending disposal of the matter, no coercive action for removal of the lines laid by the Petitioner over the land of the Respondents, may be taken. The matter was adjourned to December 12, 2009.

11. During the hearing held on December 3, 2009, Shri Neil Hilderth, Advocate appeared for the Petitioner. None appeared for the Respondents. The Petitioner submitted that due to shortage of time, dasti notice could not be served, and accordingly requested for a short adjournment. The Petitioner submitted its affidavit of service to the Commission on December 18, 2009, informing the Commission about the service of the dasti notice on the Respondents. The Respondent Nos. 1 and 2 submitted their reply in the matter on January 4, 2010. Thereafter, the Commission re-fixed the hearing on January 11, 2010. The averments made by the Respondents during the hearing on 11.2.2010 are as follows:

(a) It was submitted that the Petitioner had laid down the electric lines by force in contravention of Section 67 and 68 of the EA 2003 read with the Rules and Section 185(2)(b) of the EA 2003 read with Sections 12 to 18 of the Indian Electricity Act, 1910 and rules made thereunder. It was submitted that the consent of the Respondents as also the competent authority authorized by the Government of Gujarat were not taken before placing the electric lines.

(b) It has been submitted that the Petitioner cannot be given the status of the Telegraph Authority as per Section 164 of the EA 2003 read with provisions of the Indian Telegraph Act, 1885.

(c) That the stand of the Petitioner that no permission or consent of the owner is necessary for placing Overhead Lines above the land of the Respondents is contrary to Sections 67 and 68 of the EA 2003 and the Rules as well as the Indian Electricity Act, 1910 which had similar provisions. It was further submitted that the electric lines *simpliciter* would be “works” within the meaning of Section 2 (77) of the EA 2003 and therefore, an Overhead Line *simpliciter* as defined in Section 2(48) is an electric line within the meaning of the term, “works”.

(d) That the Commission passed an *ex-parte* order that no coercive action for removal of the lines laid by the Petitioner over the land of the Respondents, may be taken, without hearing the Respondents.

(e) That the Petitioner is not a licensee under the EA 2003, although it is claiming to have been recognized as a licensee for the purpose of putting up a dedicated transmission line.

(f) It has been submitted that the Petitioner has not got any permission with regard to (i) placement of electric line as a part of the dedicated transmission line; (ii) entering into the property of others and more particularly private rights of citizens such as the Respondents who are lawful owners and occupiers of the agricultural land.

(g) That the approval by the Appropriate Government under Sections 67 or 68 of the EA 2003 are not by themselves an authorization to any person to enter upon the properties of others and place electric lines, overhead lines, works, as the case may be. These approvals are rather conditional in terms of the Rules.

(h) It has been submitted that the approval by the Central Electricity Authority for energisation of the lines or works or overhead lines under Rule 63 of the Indian Electricity Rules, 1956 is not in any manner an authority to any person to enter upon the properties of citizens. It is further submitted that prior consent of the owner or occupier of the building or land is required before placing electric lines or overhead lines. In case the owner or occupier objects and the licensee still wishes to proceed, then he has to obtain permission in writing from the State Government for the purpose.

12. The Petitioner submitted its written submissions on January 18, 2010, as follows:

(a) That the order passed by the District Magistrate under the Works of Licensees Rules, 2006 is without jurisdiction and is liable to be quashed, as the Petitioner is a generating company under the EA 2003 and not a licensee under Section 14 of the EA 2003. The Rules framed under Section 67(2) of the EA 2003 applies to a licensee and does not have any application to a generating company. While submitting that generation has been de-licensed under the EA 2003, the Petitioner has referred to para 4(1) of the Statement of Objects and Reasons of the EA 2003 in this regard. It is submitted that according to the proviso to Rule 3(1), the District Magistrate does not have power to order for removal of any overhead line, and the District Magistrate can at best fix the amount of compensation. Rule 13 has been referred which specifically provides

that if the licensee makes a default in complying with any of the provision of the Rules, then compensation may be granted to the person affected.

(b) It has submitted that the Respondents cannot challenge the placing of the overhead line which has been done in accordance with the approval of the Central Government under Section 68 of the EA 2003 without challenging the said approval which has not been done.

(c) That the Respondents had earlier approached the Gujarat High Court in respect of the overhead lines in Writ Petition No. 2053 of 2009 and in the petition, their prayer was only that compensation is to be paid to them for placing the overhead line. It is therefore submitted that, there is no sufficient cause for the District Magistrate to order removal of the transmission line as required under the Rules.

(d) It has been further submitted that, even if Sections 12 to 18 of the Indian Electricity Act, 1910 applies as provided under Section 185 of EA 2003, even then the order of the District Magistrate for removal of overhead line is beyond jurisdiction.

13. The Respondents submitted their written submissions on January 19, 2010, as follows:

(a) No person can interfere with the rights of any other person and enter upon the property or lay down or construct in, under or over the property except under

an Authority duly vested by law, as provided in Article 300A of the Constitution of India.

(b) It has been submitted that the permission granted by the Ministry of Power is subject to all other approvals and permissions required for entering upon the land of others. Further, it is submitted that if the permission granted by the Ministry of Power gives blanket power to the Petitioner, then the whole scheme under Sections 67 and 68 of the EA 2003 and the Rules will become redundant.

(c) It has been submitted that the stand of the Petitioner that Section 68 of EA 2003 over-rides all the other provisions of EA 2003 *inter alia* Sections 67, 69 and 164 of EA 2003 is not correct.

(d) That the essence of Sections 12 to 18 of the Indian Electricity Act, 1910 has been incorporated in Sections 67, 68 and 69 of the EA 2003 and details left to be made in the rules to be made for the purpose.

(e) That due to the limited incorporation of the contents of Sections 12 to 18 of the Indian Electricity Act, 1910 in EA 2003, the savings provision under Section 185(2)(b) of EA 2003 makes continued application of Sections 12 to 18 of the Indian Electricity Act, 1910 until rules are framed in terms of Sections 67 to 69 of the EA 2003.

(f) That Section 68 is subject to Section 67. This is since the licensees and generating companies as well as the electricity boards were all subjected to the same provisions i.e., Section 12(2) of the Indian Electricity Act, 1910, and there is

nothing to show that the Parliament decided to make any such departure for generating companies. It cannot be that licensees will be required to obtain specific permission of the land owner and generating companies are not required to obtain any such permission and are free to enter upon the lands of any person without any restriction.

(g) It is submitted that, under the Indian Electricity Act, 1910, the Overhead Line and Electric Works other than the Overhead Line were all treated as Works. Similarly, under the EA 2003 also the same principle should apply with wordings of the various relevant definitions such as 'Works', 'Electric Supply Line', 'Overhead Line' remaining the same.

(h) It is submitted that Section 68 cannot be read as a provision dealing with person other than the licensee and Section 67 dealing with only the licensees. Section 68 specifically refers to the licensees in sub-section (5) and (6). Therefore, both the provisions i.e., Sections 67 and 68 apply to licensees.

14. Having heard the parties and after considering the materials placed on record, the Commission is of the view that the first question that would arise in this case would be as to whether the Commission has the jurisdiction to decide this matter and if so what is the nature of such jurisdiction. The petition has been filed invoking Rule 3(3) of the Works of Licensees Rules, 2006. These Rules were issued under Government of India, Ministry Of Power, Notification dated 18th April 2006. These Rules provide that they are "*In exercise of the powers*

conferred by clause (e) of sub-section (2) of section 176 read with sub-section (2) of section 67 of the Electricity Act, 2003 (36 of 2003)". Rule 3(3) provides that "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." Therefore, the impugned order dated July 8, 2009 passed by the District Magistrate, Mehsana in MSC/Electric Case/1/2009 is subject to revision by the Appropriate Commission. It is not in dispute that the concerned dedicated overhead transmission line from Mundra Thermal Power Station to Dehgam sub-station of Power Grid Corporation of India Ltd., is an inter-state overhead transmission line and not intra-state overhead transmission line. Under Section 79(1)(c) of the EA 2003 this Commission is required to "regulate the inter-State transmission of electricity". Therefore, this Commission is "the Appropriate Commission" with respect to this specific case within the meaning of Rule 3(3).

15. On behalf of the first two respondents it had been submitted that the Commission can exercise revisional jurisdiction but not appellate jurisdiction. Judgement dated 28th February 2002 of the Hon'ble Supreme Court in *Harshvardhan Chokkani vs. Bhupendra N. Patel & Ors* [(2002) 3 SCC 626] was relied upon in this regard. After perusing the said judgment, the Commission finds that the Hon'ble Supreme Court held that "7. *In examining the legality and the propriety of the order under challenge, what is required to be seen by the High Court is whether it is in violation of any statutory provision or a binding*

precedent or suffers from misreading of the evidence or omission to consider relevant clinching evidence or where the inference drawn from the facts proved is such that no reasonable person could arrive at or the like. It is only in such situations that interference by the High Court in revision in a finding of fact will be justified. Mere possibility of a different view is no ground to interfere in exercise of revisional power.”

16. The impugned order dated July 8, 2009 passed by the Ld. District Magistrate, has been passed on an application made under Rule 3 of the Works of Licensee Rules, 2006 by the first two Respondents herein on 18-3-2009 to the Ld. District Magistrate. In his order the Ld. District Magistrate has taken into account the submission that the Petitioner herein had breached the provisions of Rule 3 of the said Rules by not intimating the first two Respondents and by not obtaining their prior consent and by trespassing on their land for installing electric poles on the land belonging to the first two Respondents herein. Ld. District Magistrate has also recorded in his order that the Petitioner breached the conditions of Licence No. 11/4/07 approved by the Government vide order dated 10-10-2007. Ld. District Magistrate has held that the present Petitioner has illegally laid electric line for electric supply on the land belonging to the first two Respondents herein without obtaining their prior permission. However, Ld. District Magistrate has proceeded on the premise that the present Petitioner is a licensee. This is clear from the following words appearing in the impugned order

“The opponent, who is licensor approved by the Energy Department of the central Government, is also bound to implement the provisions of the Works of Licensee Rules.”

The Commission is of the view that Ld. District Magistrate proceeded on a wrong basis. There is nothing contained in Section 67(2) or the Works of Licensees Rules, 2006 that suggests that the aforesaid applies to non-licensees. The present petitioner is not a licensee under the EA 2003. Thus, on plain reading of Section 67(2) and the Works of Licensees Rules, 2006 the same cannot be applied to him. One cannot read words into a statute. Consequently, the impugned order dated July 8, 2009 passed by the District Magistrate, is bad in law, illegal, *void ab initio*, liable to be interfered with and set aside. The impugned order is therefore hereby set aside. This finding is within the meaning of revision as held by the Hon'ble Supreme Court in *Harshvardhan Chokkani vs. Bhupendra N. Patel & Ors.* Even under Section 115 of the Code of Civil Procedure an order of a subordinate court can be interfered with when such court appears:-

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity.

It would be clearly borne out from the finding of the Commission that the Ld. District Magistrate, exercised a jurisdiction not vested in it by law and has acted in the exercise of its jurisdiction illegally.

17. The Commission has also decided to advise the Central Government for incorporating suitable conditions in its approval under Section 68 of the EA 2003 regarding the procedure to be adopted for disposing of the objections of the owners of the land/buildings while erecting the overhead lines which are dedicated transmission lines.

18. Accordingly, the case stands disposed of. No order as to costs.

Sd/-
(V.S. VERMA)
MEMBER

Sd/-
(S.JAYARAMAN)
MEMBER

Sd/-
(Dr. PRAMOD DEO)
CHAIRPERSON