

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 118/MP/2013**

**Sub:** Revision Petition under Section 79(1)(c) and section 67(4) of the Electricity Act, 2003 read with Rule 3(3) of the Works of Licensees Rules, 2006 seeking directions for construction of 400 kV D/C Byrinihat to Bongaigaon section of Palatana-Bongaigaon transmission line as per the approved alignment passing through extension of the Regional Institute of Science and Technology, 9<sup>th</sup> Mile Campus at Technocity, Baridua, Raid Marwet, Ri Bhoi District, Meghalaya.

Date of Hearing : 29.10.2013

Coram : Shri Gireesh B. Pradhan, Chairperson  
Shri M. Deena Dayalan, Member  
Shri A. K. Singhal, Member

Petitioner : North East Transmission Company Limited, Shillong

Respondents: : 1. Education Research and Development Foundation  
(ERD Foundation)  
Dispur, Gauhati  
&  
Regional Institute of Science and Technology,  
Meghalaya

2. Deputy Commissioner, Ri Bhoi district, Meghalaya  
3. Power Grid Corporation of India Limited, New Delhi  
4. State of Meghalaya, through Secretary Power

Department : Shillong.

Parties present : Shri Vishal Gupta, Advocate for the petitioner  
Shri Abraham M. Pattiyani, Advocate for ERD Foundation

**Record of Proceedings**

Learned counsel for the petitioner submitted that this petition has been filed by North East Transmission Company Limited, an inter-State licensee of the Commission under section 67 of the Electricity Act, 2003 (the Act) read with Works of Licensee Rules, 2006(Rules). Learned counsel narrated the facts of the case as under:-

- (a) The petitioner is constructing a 400 kV transmission line from Palatana in Tripura to Bongaigaon in Assam. A part of this line namely, Byrnihat-Bongaigan section, is passing through Meghalaya. About 350 meters of this line is passing through the educational institution of Respondent No.1. The

- pillars are located outside the campus and the line is passing through the institution.
- (b) The petitioner had a meeting with the Respondent No.1, made a joint site inspection and wrote in July 2012 for construction of the lines. However, on account of the objection of Respondent No.1, the works on the line have been stalled.
  - (c) Respondent No. 1 claims that the institution is its private property. However, the law permits that the licensee can carry out the works with the consent of the property owner and if consent is not given, then the licensee has to approach the appropriate authority under the rules and the appropriate authority will deal with the matter and issue orders. This procedure has been complied with.
  - (d) This is a project in national interest. This is going to supply 765 MW power to the North-East. The progress of the entire North-East is jeopardized. Also the generating station which is being constructed at the cost of public exchequer would be stalled.
  - (e) As regards the objection of the Respondent No.1 on the ground of private land, learned counsel submitted Section 67(1) authorizes the licensee to open and break the soil, and pavement of any street, railway or tramway, or any sewer, drain or tunnel and to alter the position of any line or works or pipes other than a main sewer pipe to carry out its work. The Appropriate Government has been authorized to specify by rules the cases and circumstances in which the consent in writing of the Appropriate Government, local authority, owner or occupier shall be required, the authority to grant permission when the owner or occupier makes objection, the nature and period of notice by licensee, the procedure and manner of consideration of objection etc. Central Government has specified the Works of Licensee Rules, 2006 and under Rule 3 of the Rules lays down the procedure for the purpose under which in case of objection by an owner or occupier of the land, the licensee can seek permission of the District Magistrate, Commissioner of Police or any other officer authorized by the State Government.
  - (f) The petitioner has complied with the procedure. The petitioner was granted forest clearance from Ministry of environment & Forest vide letters dated 27.2.2010 and 30.4.2012 as 10 kms was lying in Myllem Reserve Forest. The petitioner has engaged PGCIL as project consultant. PGCIL wrote a letter dated 17.7.2012 to Respondent No.1 to reorient the plan of the extension part of the institution and allow construction of the line in the approved route alignment. Respondent No.1 replied PGCIL in its letter dated 18.7.2012 raising certain objections like the line would ruin the RITS campus and difficulty in arranging alternative site in suitable location and requested PGCIL to realign the plan and construct the proposed transmission line greatly far off from the RITS campus. Subsequently, Respondent No.1 approached the Deputy commissioner, District Ri-Bhoi, Meghalaya in its letter dated 23.1.2013 alleging illegal activities by the

PGCIL. Deputy commissioner, Ri-Bhoi District in its letter dated 22.3.2013 replied that the erection of the subject transmission line is in larger public and national interest and would have to be completed immediately and any obstruction/hindrance would be dealt with as per the provisions of law.

- (g) Thereafter, Respondent No.1 approached the High Court of Meghalaya for restraint on the petitioner to give effect to the letter 17.7.2012 and the Deputy Commissioner's notice dated 22.3.2013. High Court of Meghalaya in its order dated 5.4.2013 after noting the submission of learned counsel for the parties that any dispute between the parties should be determined by the Appropriate Commission under section 67 of the Act, directed the parties to approach Appropriate Commission and till the matter in dispute is settled by the Appropriate Commission, the construction of the subject transmission line passing through the campus of Respondent No.1 would remain suspended.
- (h) Despite the knowledge that the petitioner is an inter-State transmission licensee and PGCIL is executing the project, Respondent No.1 has deliberately not approached this Commission and is enjoying the interim relief granted by the High Court. From the counter affidavit of the Respondent no.1, it now transpires that the Respondent No.1 approached the Meghalaya Electricity Regulatory Commission (MeERC) and in its order dated 7.5.2013 in Petition No.1/2013, MeERC has held that the dispute is not maintainable before that Commission, and accordingly has directed the parties to CERC as early as possible.

2. Learned counsel for the petitioner dealt with the objections of Respondent No.1 and the legal issues involved as under:-

(a) One of the objections taken by Respondent No.1 is that the present petition is not maintainable since Respondent No.1 being the aggrieved party will be filing a petition before this Commission. It is not known when Respondent No.1 will be filing the petition. The project is stalled because of the stay by the High Court and inaction by the Respondent No.1 to file the petition before this Commission which is the Appropriate Commission.

(b) This Commission had directed the petitioner during the hearing on 23.7.2013, to find out whether there is any alternative to avoid the campus. The petitioner has filed an additional affidavit on 16.8.2013 to that effect enclosing a sketch showing two routes (chosen route and alternative route) aligned with the vicinity of the said institute. Out of the length of 2.43 km of the chosen route, only 350 m passes through the institute of Respondent No.1. There is no tower location within the campus of the institute and the power carrying conductors between location No.177A/0 and 177B/0 are located outside the campus at a safe height of about 33 meters instead of the requirement of minimum height of 8.84 meter over the ground as per the relevant rules. The alternative route is 3.1 km and involves 10 towers and cannot be adopted at this stage on account of forest clearance involved which may delay the line by two years which is not in national interest.

(c) As regards the objection of Respondent No.1 that the line would endanger the lives of teachers, students and support staff, it was submitted that the construction is being made as per the National Safety Standard and the tower is at the height of 33 meters and therefore, there is no danger to the lives of the persons inside the institute.

(d) As regards issue raised by Respondent No.1 that the institute is located in an earthquake prone area, it was submitted that the entire State of Meghalaya is earthquake prone and the objection of the Respondent No.1 is suggestive that the State should not have transmission line at all.

(e) As regards the helipad, the Respondent No.1 has not placed any document on record to show whether the Airport authority of India has given any permission. This is important because airport Authority of India has given permission to the subject transmission line.

(f) Right of Way has been recognized in the Act and the Rules. The private rights of Respondent No.1 cannot be stretched to defeat the construction of the transmission lines which is in national interest.

3. Learned counsel for the Respondent no.1 submitted as under:-

- (a) As per section 67 of the Act read with Rules, the licensee is required to obtain the consent of owner or occupier of the land. The petitioner has not sought any permission from the Respondent No.1.
- (b) At the time of planning of construction of the transmission lines, when the petitioner found that it is a private land, they should have followed the process of law and sought permission of Respondent No.1.
- (c) The petitioner merely wrote a letter dated 17.7.2012 to Respondent No.1 to reorient its construction plan. Respondent No.1 has already constructed the office, helipad and a six storeyed student hostel has been constructed. Respondent No.1 in its letter dated 8.7.2012 brought out the various problems associated with the passing of the transmission lines over the campus of the institute and requested the petitioner to realign the transmission line.
- (d) The petitioner without acting upon the letter of Respondent No.1, the petitioner started the work. Thereafter, Respondent no.1 approached Deputy Commissioner in response to which the Deputy Commissioner issued a notice.
- (e) After issue of the notice, the petitioner should have asked for permission from Respondent No.1 and in case of denial should have approached the competent authority under the Rules. Therefore, this petition is not maintainable as the revision petition has not been filed in accordance with the rules.

- (f) There is no request from the petitioner for permission from Respondent No.1. There is no order from the District Collector or any other appropriate authority against which the petitioner can approach the commission under Rule 3(3) of the Rules. Therefore, the petitioner has no cause of action to approach this Commission.
- (g) Education is in public interest. If the transmission line passes over the hostel, then the parents may not allow their children to stay in the hostel. In that case, the Institute will suffer. If the parties are ready and if the Commission directs, the parties will set down to a negotiation process to find out an acceptable solution.

4. Learned counsel for the petitioner submitted that the Respondent's submission regarding non-maintainability of the petition is wrong since the High Court after noting the submission of parties has directed to approach the Commission under Works of Licence Rules. Moreover, the Respondent No.1 is proceeding on the erroneous conception that the petitioner is going to use the land of the Institute for transmission lines. He further submitted that the apprehension of the respondent regarding danger to life is unfounded. As regards the alternative transmission line, this is not possible because of the time taken for obtaining forest clearance.

5. The Commission enquired from the petitioner whether it had approached the Deputy Commissioner after issue of the public notice, learned counsel for the Respondent No.1 submitted that it had no cause of action to approach the Deputy Commissioner as the petitioner had not used any part of its premises for the transmission line. The Commission observed that since Respondent No.1 had not approached the Deputy Commissioner subsequently, it would be construed that it had given its consent for construction of the transmission line.

6. The Commission further observed that there is no construction, no stay or no strut on the property of Respondent No.1 and the line is passing overhead at a height of 33 meters from the ground and therefore sufficient clearance is available between the hang of the wire and the building. If the objection of Respondent No.1 is considered and given effect to, then it will be difficult to construct the transmission line. Learned counsel for Respondent No.1 submitted that the hostel is a six storeyed building in which students are staying and the transmission line will be a danger to the safety of the inmates of the hostel.

7. The Commission enquired whether the entire premise is occupied by buildings, learned counsel for the petitioner submitted that there are vacant spaces in the premises. In response to the Commission's query whether the Respondent No.1 is agreeable to the transmission lines being taken over the vacant spaces in the campus, learned counsel sought time to seek instruction from Respondent No.1.

8. Learned counsel for Respondent No.1 submitted that the Commission may allow the parties to discuss and find out a solution whether the alternative route could be found out outside the campus. The commission clarified that the alternative route has to be found out within the precinct of the campus only.

9. Considering the importance of the project and the timeline available for implementation of the project, the Commission decided to seek expert opinion on the route alignment over the campus of ERDF. Accordingly, the Commission directed Central Electricity Authority to examine the following after site inspection and submit a report by 25.11.2013:-

- (a) Whether the portion of the transmission lines passing through the ERDF campus as per the alignment planned meets the safety requirement as per the standards prescribed for transmission lines in the country.
- (b) Any feasible re-routing of the transmission line within campus which can be quickly implemented in view of already created civil structures/hostel building (as claimed by respondents) while following requisite safety regulations.

10. The petitioner and Respondent No.1 were directed to coordinate with CEA in this regard and submit all drawings/ relevant documents CEA.

11. The Commission further directed the PGCIL to submit the following by affidavit by 25.11.2013:-

- (a) Number of institutional buildings in the country over which the transmission lines of PGCIL has passed;
- (b) Section 164 approval obtained by petitioner/PGCIL for implementation of the project.

12. The Commission clarified that if no acceptable solution is found as per the directions in para 9 of this Record of Proceeding, the Commission shall proceed to pass the order based on the written pleadings and submission of the parties.

13. Subject to the above, the Commission reserved order in the petition.

**By order of the Commission**

**Sd/-  
(T. Rout)  
Chief (Legal)**