

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 118/MP/2013

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

Date of Hearing: 29.10.2013

Date of Order: 10.03.2014

In the matter of

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 direction for construction of 400 kV D/C Byrinihat to Bongaigoan section of Pallatana-Bongaigaon transmission line as per the approved alignment passing through the extension of the Regional Institute of Science and technology, 9th Mile Campus at Technocity, Baridua, Raid Marwet, Ri Bhoi District, Meghalaya

**And
in the matter of**

North East Transmission Company Limited
Pallatana Consultancy Work, Dongkitch,
Lower Nongrah, Lapalang,
Shillong 793 006.

Petitioner

Vs

1. Education Research and Development Foundation
Central I.T, College Campus
Dr. RP Road, Dispur, Guwahati-781 006

2. Deputy Commissioner
Ri Bhoi District
Meghalaya

3. Power Grid Corporation of India Limited
B-9, Qutab Institutional Area, Katwaria Sarai
New Delhi-110 016

4. Secretary, Power Department,
State of Meghalaya,
Additional Secretariat Building,
Room No. 212, Shillong 793 001

Respondents



Parties Present:

For Petitioner

Shri Vishal Gupta, Advocate

For Respondents

Shri Abraham M. Pattiyani, Advocate, ERD Foundation

ORDER

The petitioner, North East Transmission Company Limited has filed the present 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 a direction to the Respondent Nos.1 and 2 to allow, and not to obstruct the petitioner to construct the 400 kV D/C Byrinihat to Bongaigaon section of Pallatana - Bongaigaon transmission line as per the approved alignment passing through the extension of the Regional Institute of Science and Technology, Baridua, Raid Marwet, Ri Bhoi District, Meghalaya. The petitioner has made the following prayers:

"(i) That this Hon'ble Commission may allow the instant revision petition and accord its sanction to the Petitioner herein to construct 400 kV D/C Byrinihat to Bongaigaon section of Pallatana-Bongaigaon transmission line as per the approved alignment passing through the extension of the Regional Institute of Science and Technology, 9th Mile Campus at Technocity, Baridua, Raid Marwet, Ri Bhoi District, Meghalaya; and

(ii) Restrain Respondent No. 1 from making any obstruction or hindrance to the construction of 400 kV D/C Byrinihat to Bongaigaon section of Pallatana-Bongaigaon transmission line as per the approved alignment passing through the extension of the Regional Institute of Science and Technology, 9th Mile Campus at Technocity, Baridua, Raid Marwet, Ri Bhoi District, Meghalaya;

(iii) Direct Respondent No. 2 Deputy Commissioner (DC) and the Police Authorities to provide necessary assistance to the petitioner to enable it to lay down the transmission line on the route aligned and prevent any obstruction or hindrance by Respondent No.2 or any other person claiming through or under him; and

(iv) Such other order or orders as this Hon'ble Commission may wish to pass for doing substantial justice in the matter and to uphold the provisions of the Act of 2003."

2. The petitioner is an inter-State transmission licensee in terms of Section 2(73) of the Electricity Act and is engaged in the development and operation of the power transmission in the North Eastern States of India.

3. The Respondent No. 1, Education Research and Development Foundation (ERDF) is a society registered under the Societies Registration Act, 1860 and is *inter alia* engaged in establishing and operating educational institutions. The Respondent No. 2, Deputy Commissioner is the designated authority under the Works of Licensee Rules, 2006. The Respondent No. 3, Power Grid of India Limited (PGCIL) is the Central Transmission Utility under Section 2(10) of the Act and is responsible for inter- state transmission in electricity.

4. The petitioner has been entrusted with the construction of 400 kV D/C transmission line from Pallatana in Tripura to Bongaigaon in Assam for evacuation of electricity generated from 726 MW gas based power plant of ONGC Tripura Power Company (OTPC) situated at Pallatana in Tripura. A part of this line namely, Byrnihat-Bongaigaon section, is passing through Myllieum Reserve Forest of 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.

5. The petitioner has submitted that in order to undertake the construction of the aforesaid transmission lines, a survey of the area was undertaken in the year 2006, wherein it was found that a part of the said transmission line was to pass through land falling within the Myllieum Reserve Forest of Meghalaya. On 27.2.2010, Ministry of Environment and Forests, Government of India granted

stage-I forest clearance to the petitioner for diversion of 114.0156 Ha of forest land in Myllem Reserve Forest of Meghalaya. Subsequently, on 30.4.2012, Ministry of Environment and Forest accorded final clearance for diversion of forest land.

6. The petitioner along with their project consultant i.e. the Respondent No. 3, found that the route alignment of the aforesaid transmission line between AP No.177-178 was passing through the area which was claimed to be part of campus of the engineering college. Respondent No. 3 by its letter dated 17.7.2012 requested Respondent No.1 to re-orient its plan and allow construction of the line as per the approved alignment. Respondent No.1 vide its letter dated 18.7.2012 raised objections regarding construction of the transmission line through its premises.

7. The petitioner approached the Deputy Commissioner, District Ri Bhoi under Rule 3 of the Works of Licensees Rules, 2006 seeking support for the construction of the transmission line. On 22.3.2013, Deputy Commissioner issued a public notice in this regard. On 4.4.2013, Respondent No.1 filed Writ Petition No.(SH) 69 of 2013 before the Hon`ble High Court of Meghalaya. Hon`ble High Court vide its order dated 5.4.2013 disposed of the petition with directions the parties to approach the appropriate Commission and till the dispute is settled by the appropriate Commission, suspended construction of the transmission line. Pursuant to the said order, the record of the Writ Petition was transferred to the Meghalaya Electricity Regulatory Commission (MeERC) and the said Commission declined to pass any order noting that the dispute involved inter-State transmission of electricity and this Commission had the jurisdiction to resolve the dispute between the parties. The petitioner has submitted that Respondent No.1 is

deliberately not approaching this Commission for adjudication of the disputes raised it and is enjoying the interim relief granted to it by the Hon'ble High Court. Against this background, the petitioner has filed this petition seeking appropriate directions to enable the petitioner to construct the 400 kV D/C Byrinihat to Bongaigaon section of Palatana-Bongaigaon transmission line as per the approved route alignment.

8. The petitioner in its affidavit dated 16.8.2013 has submitted that the survey of Byrinihat to Bongaigaon section of 400 kV D/C Palatana-Bongaigaon transmission line was conducted in the year 2006. The route alignment was finalized during the survey considering the points such as ensuring minimum line length, minimum power line crossing, minimum number of highway crossing, avoiding reserve forests, ensuring safe towers footings in hills, avoiding settlement area, oil wells, defence and other restricted areas and keeping minimum angle points. During the survey, alternative routes were examined and the shortest route was selected for applying for forest clearance. The petitioner has submitted that the Regional Institute of Science and Technology of the Respondent No.1 came into existence on 12.6.2009 and was affiliated on 2.7.2009 after finalization of route alignment of the transmission line. The petitioner has submitted that the chosen route is about 2.43 km (approx.) which is a part of 10.914 km of route passing through forest involving 50.21 hectares of forest area. Out of the length of 2.43 km of the chosen route, only 350 meters length passes through the Institute of Respondent No.1. The petitioner has submitted that 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 highs of 8.84 meter over the ground as per the relevant rules. The alternative route from location No. 176D/0 to 177B/2 is 3.1 km in length and involves 10 towers and cannot be adopted at this stage on account of forest clearance involved which may delay the completion of the line by two years which is not in national interest. It also leads to increase of cost of the project.

9. The petitioner has further submitted that the alternate route cannot be adopted at this stage as it will have the following major adverse effects on the project:

- (i) Involvement of fresh area of 14.26 hectares, which may involve cutting of more trees.
- (ii) Fresh proposal for forest clearance for 3.1 km (14.26 hectares) may take considerable time;
- (iii) The line length between the locations 177D/0 to 177B/2 will increase from 2.43 km to 3.1 km. Since the line has to be routed through 3.1 km of new area, the issues regarding the fresh Right of Way may arise and there will be an increase of 4 no. of towers.
- (iv) One foundation already casted will have to be discarded.
- (v) Additional cost of approximately Rs. 4.33 crore due to increase in number of towers and discarding one foundation/ dismantling of erected tower.

(vi) Additional payment to the tune of Rs. one crore shall be payable to forest department due to fresh involvement of 3.1 km in forest area.

10. Respondent No.1 (ERDF) vide its reply dated 27.9.2013 has submitted as under:-

(a) The present petition is not maintainable as per the provisions of law and facts. Respondent No.1 has submitted that as per Rule 3(3) of the Works of Licensee Rules, 2006, every order passed by a District Magistrate or a Commissioner of Police or an authorized officer under sub-Rule(1) shall be subject to revision by appropriate Commission. Respondent No.1 has submitted that no such order is available for challenge and the petitioner has interpreted and misguided the Commission that the public notice issued by the Deputy Commissioner is an order for the purpose of challenge.

(b) The petitioner has failed to issue any notice or letter for obtaining the consent from the respondent who is the owner and occupier of the land and building and without having the due process of law, the petitioner decided to start the work to lay down and place electric lines, electrical plant and other works which is arbitrary and illegal.

(c) Respondent No. 3 (PGCIL) sent a letter dated 17.7.2012 to Respondent No. 1 which was replied vide order dated 17.7.2012 conveying the objections of Respondent No. 1 for construction of the transmission line to the land and building of the institute and requesting the petitioner to realign its plan to construct the transmission line far from its institutional building. Thereafter, Respondent No. 1 sent a letter dated 23.1.2013 to

the Deputy Commissioner against the activities of Respondent No. 3 and subsequently filed the writ petition before the High Court of Meghalaya. After the Hon'ble High Court directed the Respondent No. 1 to approach the Appropriate Commission, the Respondent No. 1 filed a petition before the MeERC which was disposed with direction to approach this Commission. Respondent No. 1 has submitted that after the said order of the MeERC, certain mediation efforts started between the parties to settle the disputes/issues amicably and without reaching the finality of the said attempt, the petitioner has approached this Commission by way of revision petition.

(d) The North Eastern States have been declared as earthquake prone zone and as such all the constructions in these areas have to be planned without the destruction of building and lives of the people. The proposed electrical line of the petitioner is dangerous to the students studying in the institution and staying in the hostel respectively. The petitioner and Respondent No. 3 failed to assess the situation before making the plan for installation of 400 kV Electrical line and plant.

(e) Respondent No. 1 has developed a helipad in the premises of the institution to facilitate the VIPs to visit the campus. The helipad will be of no use if the power line is allowed to pass through the campus.

11. The petitioner in its rejoinder dated 15.10.2013 has submitted that the revision petition is clearly maintainable as the petitioner is an inter-State transmission licensee and any dispute with regard to the right of way in laying

transmission lines falls within the jurisdiction of this Commission. The petitioner has further submitted that the observations and directions of the Hon'ble High Court in para 6 of the order dated 5.4.2013 in Writ Petition (C) No. (SH) 69 of 2013 clearly show that the parties before the Hon'ble High Court had agreed that the notification issued by Respondent No. 2 (Deputy Commissioner, Ri Bhoi District) is amenable to the jurisdiction of the Appropriate Commission under Section 67 of the Act and therefore, the contention of Respondent No.1 that the notification issued by Respondent No. 2 is not amenable to the revisional jurisdiction of this Commission is erroneous. As regards the allegation of failure of the petitioner to take the consent of Respondent No.1, the petitioner has submitted that the petitioner had written a letter to Respondent No.1 on 17.7.2012 which contained reference to the petitioner's meeting with Respondent No.1 on 14.7.2012 and joint inspection of the site on 16.7.2012. After the Respondent No. 1 vide its letter dated 18.7.2012 objected to the laying of the transmission line, the petitioner approached the Deputy Commissioner (Respondent No. 2) in accordance with the first proviso to Rule 3 (1) of the Works of Licensees Rules to seek permission. Respondent No. 2 in its notification/order dated 22.3.2013 informed all concerned not to create obstruction/hindrance in the construction of the transmission line. It is only after the notification was issued, the Respondent No. 1 filed the Writ Petition in the High Court of Meghalaya. The petitioner has submitted that the contention of Respondent No. 1 that the Deputy Commissioner has not passed the order under Works of Licensees Rules, 2006 is clearly erroneous. As regards the right of the land owner, the petitioner has submitted that the provisions of the Act as well as the Works of Licensees Rules provides that in the event the owner of land refuses to allow the line to be laid, it is appropriate for the licensees to take

permission from the Competent Authority and to lay the lines with such compensation to be paid to the owner for any detriment to the land as may be awarded by the Competent Authority. As regards the issue of the institute being located in an earthquake area, the petitioner has submitted that the transmission towers and its components are designed in accordance with the National Standards and Safety Standards prescribed for the design of transmission lines. The entire State of Meghalaya is earthquake prone and the objection of the respondent is suggestive that the State should not have transmission line at all. As regards the helipad, the petitioner has submitted that respondent has not placed any document or material on record to show that the transmission line proposed by the petitioner will cause any hazard to the operation of the helipad. Moreover, the petitioner has submitted that it has already been granted aviation clearance by the Airport Authority of India vide its letter dated 29.4.2010. The petitioner has confirmed that the transmission line will be passing through the Institute at a height of 33 meters over the ground as against the requirement of 8.84 meters ground clearance of live wire of 400 kV transmission line as provided in Clause 58 of the Central Electricity Authority (Measures relating to safety and Electric Supply) Regulations, 2010.

12. The matter was heard on 29.10.2013. Learned counsel for the petitioner and the Respondent No. 1 reiterated their submissions as discussed above. Considering the importance of the project and timeline available for implementation of the project, the Commission decided to seek expert opinion on the route alignment over the campus of ERDF and accordingly directed the Central Electricity Authority to examine the issues after conducting a site

inspection. CEA vide its letter dated 20.1.2014 has submitted the report to the Commission which has been discussed in the later part of this order.

Analysis and Decision:

13. Learned Counsel for the Respondent No. 1 has taken a preliminary objection that the petition is not maintainable since no order has been issued by the District Magistrate or any Authorized Officer against which the petitioner can approach the Commission under Rule 3(3) of Works of Licensees Rules, 2006. Learned Counsel for the petitioner submitted that the respondent had approached the High Court of Meghalaya seeking restraint on the petitioner to give effect to the letter dated 17.7.2012 and the Deputy Commissioner's notice dated 22.3.2013. However, the High Court of Meghalaya in its order dated 5.4.2013 after noting the submission of learned counsel for both the parties came to the conclusion that dispute between the petitioner and the Respondent No. 1 should be determined by the Appropriate Commission under Section 67 of the Act and accordingly, directed the parties to approach the Appropriate Commission and suspended the construction of the transmission line till the matter in dispute is settled by the Appropriate Commission. Learned Counsel further submitted that the despite having the knowledge that the petitioner is an inter-State transmission licensee and this Commission has the jurisdiction over the matter, Respondent No. 1 approached MeERC in Petition No. 1/2013 and MeERC in its order dated 7.5.2013 directed the parties to approach this Commission as early as possible. Since the Respondent No. 1 did not approach this Commission and the work on the project was stalled on account of the stay

granted by the High Court, the petitioner has approached the Commission by way of the present revision petition.

14. We have considered the submissions of the parties on the issue of maintainability. Section 67 of the Act empowers the Appropriate Government to specify by rules the cases and circumstances in which the consent of the Appropriate Government, local authority, owner or occupier shall be required for carrying out the work; the authority competent to grant permission where the owner or occupier objects to the carrying of works; the nature and a period of notice to be given by the licensee before carrying out the works; the procedure and manner of consideration of objections and suggestions received in accordance with the notice; and the determination and payment of compensation or rent to the persons affected by the works of the licensees, among other things. The Central Government in accordance with the said provisions has prescribed the Works of Licensee Rules, 2006. Rule 3 of the Works of Licensees Rules provides as under:-

"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 any 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 authorized 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 office authorized may by order in writing direct for any such work, 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 authorized, 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 authorized 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."

15. In accordance with the above provision, a licensee has been authorized to lay down or place electric supply line or other works in, though or against any building or on, over or under any land with the prior consent of the owner or occupier of any building or land. Where the owner or occupier of building or land raises objection in respect of the works to be carried out under Rule 3, the licensee is required to obtain permission in writing from the District Magistrate or Commissioner Police or any other officer authorized by the State Government in this behalf. While making such order, the District Magistrate or Commissioner Police or the authorized officer after considering the representation of the concerned persons, shall fix the amount of compensation or of annual rent or of both which should be paid by the licensee to the owner or occupier. The order passed by the District Magistrate or Commissioner Police or an authorized officer shall be subject to the revision by the Appropriate Commission. In the present case, the petitioner has been granted a licence by this Commission for construction and operation of 400 kV transmission line from Pallatana in Tripura to Bongaigaon in Assam for evacuation of electricity from the Gas Based Power Plant of the ONGC Tripura Power Company (OTPC) having a capacity of 726

MW situated at Pallatana in Tripura. The petitioner is executing the project through Respondent No. 3. While executing the project, the petitioner and Respondent No. 3 found that the line route alignment of the transmission line between AP No. 117-178 was passing through the campus of Respondent No. 1. Respondent No. 3, after discussion with Respondent No.1 in the latter's office on 4.7.2012 and a joint inspection of the site on 16.7.2012, had written a letter dated 17.7.2012 to Respondent No. 1 requesting for re-orientation of the building plan to facilitate construction of the line in the approved route realignment. Respondent No.1 in its letter dated 18.7.2012 addressed to Respondent No.3 raised objections to construction of the transmission line over its campus and requested to construct the proposed transmission line greatly far off from the RITS campus. The petitioner approached the Deputy Commissioner, Ri Bhoi District under Rule 3 of the Works of Licence Rules seeking his support for construction of the transmission line. Respondent No.1 also wrote a letter dated 23.1.2013 to the Deputy Commissioner, Ri Bhoi District seeking his intervention in the matter. District Commissioner, Ri Bhoi District issued a notice on 22.3.2013 as under:-

"NOTICE

This is to bring to the notice of landowner concerned that the construction of 400 kV D/C Pallatana-Bongaigaon Transmission Line is scheduled for completion within June 2013. In larger public and national interest the remaining work will have to be completed immediately and any objection/clarification may be had from NETC and Powergrid Officials. Any obstruction/ hindrance will be dealt with as per provision of the law. Further, all matter relating to the same will be settled as per the Indian Electricity Act, 2003".

In this case, the landowner is the Respondent No.1. In our view, the notice issued by the Deputy Commissioner is a permission of the competent authority to the licensee under first proviso to Rule 3(1) of the Works of Licensee Rules for

carrying out the works on the transmission line and direction to the landowner concerned not to create any obstruction or hindrance in the construction of the transmission line. If the Respondent No.1 was aggrieved by the order of Deputy Commissioner, it had the option to file a revision petition before this Commission under Rule 3(3) of the Works of Licensee Rules. However, the Respondent No.1 chose to approach the Hon'ble High Court of Meghalaya in Writ Petition No. W.P. (C) No. (SH) 69 of 2013. In para 16 of the Writ Petition, the Respondent No.1 had submitted that "the respondent No.4&5 (NETCL & Chief Manager, PGCIL) have acted arbitrarily in unilaterally deciding to draw the overhead high tension electricity line across the land and building of the petitioners without following the relevant provisions contained in Electricity Act, 2003 and Rules framed thereunder." The High Court in its order dated 5.4.2013 disposed of the petition as under:

"5. The Deputy Commissioner, RI Bhoi District, Nongpoh, issued a Notification dated 22.3.2013 that the obstruction or hindrance of the construction of the 400 kV D/C Pallatana-Bongaigaon Transmission Line, will be dealt with as per the provisions of law and further all matters relating to the same will be settled as per the Indian Electricity Act, 2003. In view of the above if there is a dispute between the petitioners on one side and the respondent Nos. 2 to 5 on the other side regarding the issue whether the said construction of the line passed through the campus of the petitioners or through the Reserve Forest the same has to be settled as per the Indian Electricity Act, 2003.

6. The Deputy Commissioner, RI Bhoi District, Nongpoh, already notified that any obstruction or hindrance will be dealt with as per the provisions of law. The learned counsel appearing for the parties had referred to Section 67 of the Electricity Act, 2003, and contended that any differences or disputes between the parties should be determined by the "Appropriate Commission" defined under Clause (4) of Section 2 of the Electricity Act, 2003. From the submissions of learned counsels it appears that the differences between the petitions on one side and the respondent Nos. 2 to 5 on the other side has not been settled or decided or determined by the "Appropriate Commission". In view of the above facts, the court is of the considered view that in the interest of the public the matter in dispute between the petitions on one side and the respondents on the other side shall be determined by the "Appropriate Commission" as soon as possible. In the interest of Justice, the appropriate Commission is directed to settle the matter in dispute between the parties within a period of 4 weeks from the date of receipt of a certified copy of this order. The parties are directed to approach the said "Appropriate Commission". However, till the matter in dispute

between the parties is settled by the "Appropriate Commission" the construction of the 400 kV D/C Pallatana-Bongaigaon Transmission Line passing through the campus of the petitioners shall remain suspended".

16. In accordance with the above order of the High Court, the parties were directed to approach the "Appropriate Commission". In section 2(5) of the Act, Appropriate Commission has been defined as "the Central Electricity Regulatory Commission referred to in sub-section (1) of section 76 or the State Electricity Regulatory Commission referred to in section 82 or the Joint Commission referred to in section 83, as the case may be." Section 76(1) specifies that there shall be a Commission known as the Central Electricity Regulatory Commission to exercise the powers conferred on, and discharge the functions assigned to it under the Act". Section 79 of the Act enumerates the functions of the Central Commission which among others consist of the following:

"(1) The Central Commission shall discharge the following functions, namely:-

xxxx

(c) to regulate inter-State transmission of electricity;

xxxx

(e) To issue licences to persons to function as Transmission Licensees and electricity trader with respect to their inter-State operation.

xxxx

It is apparent from the above that this Commission has been entrusted with the function to regulate inter-State transmission of electricity and to issue transmission licence for inter-State operation. In the present case, the proposed transmission line is an inter-State line which is passing through the State of Tripura, Meghalaya and Assam. This Commission has granted the licence to the petitioner. Therefore, any dispute between a landowner and the licensee under

section 67(2) read with Works of Licensee Rules will fall under the jurisdiction of this Commission. The Respondent No.1 had misdirected itself by approaching MeERC for resolution of the dispute between the petitioner and Respondent No.1. MeERC in its order dated 7.5.2013 has held that "in the present case, the matter is related to the construction of transmission line involving the territories in the States of Tripura, Assam and Meghalaya and therefore, would qualify as an inter-State transmission coming within the jurisdiction of the Central Electricity Regulatory Commission". MeERC has disposed of the petition as not maintainable before it and has directed the parties to approach this Commission as early as possible. It is noted that Respondent No.1 did not approach this Commission as directed by the High Court of Meghalaya and MeERC. In para 10 of its reply dated 27.9.2013, Respondent No.1 has stated as under:

"That it is submitted that, immediately thereafter the answering respondent has approached the Ld. State Electricity Regulatory Commission, Meghalaya as per the advice and knowledge in compliance of the Hon'ble High Court order dated 5.4.2013 in W.P. (C) No. (SH) 69/2013. The Ld. State Commission has disposed off the said petition with a direction to the parties to approach the Hon'ble CERC, the appropriate Commission. After the said order of the Ld. State Commission certain mediation effort has started between the parties to settle the disputes/issues amicably. Without reaching the finality of the said attempt the petitioner approached this Hon'ble Commission by way of this Revision petition and the notice was accepted by the answering respondent and made appearance on 24.9.2013 as directed by this Hon'ble Commission. With the said facts and circumstances, the answering respondent is filing a petition before this Hon'ble Commission for appropriate direction".

Though, Respondent No. 1 has submitted that after the order of MeERC, certain mediation efforts had started between the parties to settle the disputes/issues amicably, no documentary evidence has been placed on record to that effect. Moreover, Respondent No. 1 has not filed any petition before this Commission for appropriate direction in accordance with its submission as quoted above. The present petition has been filed by the petitioner on 16.8.2013 i.e. after a period of three months of the order of MeERC. It appears to us that since the

construction work of the 400 kV D/C Pallatana-Bongaigaon Transmission Line passing through the campus of Respondent No.1 has been suspended by the order of the Hon'ble High court till the dispute is settled by the Appropriate Commission, the Respondent No.1 has deliberately delayed filing of the petition before this Commission whereas it filed the petition promptly within one month before MeERC of the order of the High Court. Under the circumstances, the petitioner is justified in approaching this Commission by way of the present petition. It is pertinent to mention that both High Court and MeERC had directed the parties to approach the Appropriate Commission for resolution of the dispute. Therefore, the petitioner who is a party to the dispute is within its right to approach this Commission in the present petition. Moreover, the Respondent No.1 is aggrieved by the PGCIL's letter dated 17.7.2012 and the Deputy Commissioner's notice dated 22.3.2013. The interest of the Respondent No.1 has not been prejudiced as Respondent No.1 has availed the opportunity to make its submissions and participate in the proceedings before the Commission with regard to its dispute with the petitioner. In our view, the present petition is maintainable under Rule 3(3) of the Works of Licensee Rules, 2006.

17. The petition has been filed under Rule 3(3) of the Works of Licensee Rules, 2006 which specifies that the order issued by a District Magistrate or a Commissioner of Police or an authorized officer under Rule 3(1) shall be subject to revision by Appropriate Commission. The notice has been issued by the Deputy Commissioner, Ri Bhoi District, who is the competent authority under Rule 3(1) of the Works of Licensee Rules, 2006 to grant permission in the cases where the owner or occupier of building or land raises objections with regard to the works of the transmission line. The notice which is meant for "the landowner

concerned" is in the nature of an order passed by the Deputy Commissioner, Ri Bhoi District under Rule 3(1) of Works of Licensee Rules, 2006 in response to the application of the petitioner granting permission to execute the work. We are of the view that the notice has been issued by Deputy Commissioner, Ri Bhoi District in accordance with the provisions of Works of Licensee Rules, 2006 and accordingly, we uphold the same.

18. The main objection of Respondent No.1 is that the proposed electrical line of the petitioner is dangerous to the students studying in the Institute and the students staying in the hostel. The other objection is that the Institute has developed a helipad to facilitate the VVIPs to visit the campus of Institute which will be of no use after the line is allowed to pass through the campus. The petitioner has submitted that only 350 meters of line passes through the said institute of the Respondent No. 1. Further, no tower location falls in the campus of the Institute and the power carrying conductor when connected between locations which are both located outside the campus shall pass at a safe height of about 33 meters instead of minimum height 8.84 meter over ground required in relevant Rules. The petitioner has also submitted the details of alternative route, which avoids passing of transmission line through ERDF but the line length increases to 3.1 km (from 2.43 km) and since the line has to be routed through 3.1 km of new area, the issues regarding the fresh forest clearance, Right of way arise and there will be an increase of 4 no. of towers. As the line is passing through the forest and change in the alignment would call for fresh forest clearance which is a time consuming process as is generally known and also evident from the fact that it took approximately 4 years in getting the forest clearance for the line covered in the instant petition.

19. The Commission had directed Central Electricity Authority vide Record of Proceedings for the hearing dated 29.10.2013 to examine the following after site inspection and submit its report:

(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.

20. Central Electricity Authority (CEA) constituted a team of two officers namely, Shri L.B. Muanthang, Superintending Engineer, Regional Inspection Organization (North-East), CEA, Shillong, and Shri C.N. Devarajan, Assistant Director, System Engineering & Technology Development Division, CEA, New Delhi. The team of officers conducted site visit on 27.12.2013 at Regional Institute of Science and Technology District Ri Bhoi, Meghalaya and had detailed discussion with the representatives of the petitioner, Respondent No. 1 and Respondent No. 3. The report of the team has been forwarded by CEA vide its letter dated 20.1.2014. The relevant portion of the report is extracted as under:

"The tower for the subject transmission line, at location no. 177A/0, has been erected Tower at location no. 177B/0 has not been erected. POWERGRID/METC officials informed that the location of tower number 177B/0 is proposed to be shifted and the present span between tower no. 177A/0 is 407m instead of 444m. It has been observed that the tower at location no. 177A/0 is on the western side and location no. 177B/0 is on the eastern side of the campus and the line is passing through the middle area of the campus. From West to East the line is passing above the existing Academic block of Assam type (sloped roof with only ground floor), a play ground, an academic building under construction, proposed auditorium and roads within the campus.

In the northern side about 50 mts from the line, few buildings like boys hostel with (G+4) stories, another building G+3 stories and an auditorium cum academic block are existing. The under construction academic building falling below the proposed line is being at present constructed as G+3 storied (building plan provided to the team). In future they are proposing this as G+5 storied building (declaration to this effect has been submitted to the team by RIST). In the Southern side of the line about 50mts from the proposed line a leveled ground has been constructed at higher elevation as a helipad. It has been informed that helipad is in use. On enquiry, whether any permission to construct the helipad has been obtained from Civil Aviation/Air port Authority, the chairman of the Institute said being a private Institute, it is not required. However, they are taking consultancy from the experts for safe utilization including disaster management as proposed by Deputy Commissioner. In the Southern side of the campus, few gardens have been developed and a girls hostel of sloped roof (ground floor) has been constructed. Chairman, RIST has informed the team that they can provide land required to divert the line to the Southern side of the campus (declaration to this effect has been given by RIST). Also they agreed to pass the line in the northern most side of their campus as an alternative. The student communities of the Institute, inhabitants of the Kling Village, Syiem Raid, Raid Marwet-Baridua, Ri-Bhoi District and Headman of the locality have also submitted representation to the team for diversion of the line by avoiding the Institute Campus. The students in their representation mentioned that they will not hesitate to take resort to any kind of agitational programs, in case favorable action is not taken for the interest of the institute.

As per clause 14.1.1 of IS 5613 (Part 3 / section 1): 1989, minimum ground clearance from lowest point of power conductor shall be $8.840\text{m} + 0.150$ (for creep and undulation in terrain) equal to 8.9990m is required. In the present case, the following clearances are available.

- 1) Lowest conductor to the existing Academic Block top of Assam type building = 34.8m.
- 2) Lowest conductor to the playground =38.2m.
- 3) Lowest conductor to the Academic building under construction =41.70m.

However, the building under construction is now proposed for Ground +3 storied. The future plan is for Ground +5 storied. If ground +5 storied building is considered, the height of the building would be around 20 metres. The faculty and student community of the Institute have expressed that the proposed line will perturb all HI-tech electronic educational facilities available in the campus apart from turning this technology into a health hazardous zone, due to electro-magnetic interference from the 400 kV transmissions line.

Further, clause 5.1 (d) of IS 5613 (Part 3/ section 1) 1989 stipulates that "Good farming areas, uneven terrains, religious places, civil and defence installations, industries, aerodromes and their approach and take-off funnels, public and private premises, ponds, tanks, lakes, gardens and plantations should be avoided as far as practicable: in the choice of the transmission line route.

It is viewed that in case of failure of any one of these towers 177A/0 or 177B/0 due to any reason, there could be human casualties in the campus as the line is passing over the academic block under construction, and intensively used human habitat.

Re-routing of the transmission line within the campus by erecting a tower on the Southern side within the campus (RIST ready to provide area to construct a tower) by retaining the towers 177A/0 and 177B/0 is not technically feasible as the angle of deviation of the proposed new tower and location no. 177B/0 may pass near the building under construction on the eastern side of helipad. Angle of deviation above 60° is not permitted. The best possible diversion of the line is to erect a tower on the southern side within the campus and connect the same with the tower no. new 3 (DD+6) and tower no. new 6 (DC+6) of the alternate route proposed by NETC in the map given under Annexure 6 of the document."

21. Now, we proceed to examine the safety aspect of the proposed transmission line in the light of expert opinion submitted by CEA. In the CEA report, it has been stated that the clearances available between lowest conductor to existing academic Block, playground and academic building under construction are 34.8m, 38.2m and 41.7m respectively as compared to 8.840m+0.15m as per IS 5613. Keeping in view the fact that the clearance available in respect of the segment of transmission line passing through institute is approximately 34.8m to 41.7m and even with the proposed increase in respect of building under construction from (G+3) storied to (G+5) storied, a clearance of around 20m above the building would still be available, which is almost 2.2 times the clearance specified in Indian Standards 5613. Therefore, the safety requirement as per Indian Standards would be complied with by the petitioner while planning and executing the transmission line over the campus of the Respondent No. 1.

22. As regards re-routing of the transmission line within the campus which could be quickly implemented, CEA report says that by erecting a tower on the Southern side within the campus (RIST ready to provide area to construct a tower) by retaining the towers 177A/0 and 177B/0 is not technically feasible.

Since the angle of deviation of the proposed new tower and location No. 177B/0 may pass near the building under construction on the Eastern side of helipad. Angle of deviation above 60° is not permitted. The best possible diversion of the line is to erect a tower on the Southern side within the campus and connect the same with the tower no. new 3 (DD+6) and tower no. new 6 (DC+6) of the alternate route proposed by the petitioner. We are of the view that the proposed route being different from the one for which the petitioner has obtained forest clearance and ROW, the proposed re-routing will require fresh forest clearance which may result in delay in completion of transmission line. It is to be noted that the second unit (363.3 MW) of Pallatana gas based project is likely to be commissioned shortly and in case of any delay in execution of the transmission line, the consumers in the North-Eastern region will be deprived of much needed power.

23. CEA report also mentions that in case of failure of any one of the towers (177A/0 and 177B/0) due to any reason, there could be human casualties in the campus as the line is passing over the academic block under construction and intensively used human habitat. In order to address the apprehension regarding human casualties, we direct the petitioner to (a) ensure that the towers have adequate strength to resist failures, and (b) in view of the fact that higher electrical clearance available, the conductors can be strung with lower tension than the usual to increase the margin available in the strength of the conductors, insulators, hardware and towers, thereby ensuring higher reliability of the transmission line within the campus.

24. In the report submitted by CEA it is mentioned that the faculty and student community of the institute have expressed that the proposed line will disturb all Hi-Tech electronic educational facilities available in the campus apart from turning this technocity into a health hazardous zone, due to electro-magnetic interference from the 400 kV transmission line. It is noted that only 350m length of the overhead 400 kV D/C line passes over the compound of the institute at a minimum height of 41.7m above ground level in relation to academic building under construction, in place of the requirement of 8.84m+0.150m minimum. The stipulated minimum 8.990m clearance as per clause 14.1.1 of IS 5613 for the 400 kV transmission lines has already been taken care of. Since, a large network of 400 kV transmission lines are in operation in the country for the last 30 years and with the height at which the proposed transmission line passes through the campus of institute, the electric field is expected to be within the acceptable limits, more so within the building due to shielding effect of walls and roofs.

25. In view of the above and the fact that the timely completion of this transmission line is in larger public interest of electricity consumers of North-Eastern Region, we are of the view that the petitioner should continue with the construction of transmission line through ERDF campus as planned. In case Respondent No.1 has certain apprehensions, it may relocate the proposed academic building under construction in the campus instead of erecting a new tower on south side of the campus as it would require forest clearance and would deprive the consumers in the North-Eastern Region from availing power. As some construction work is reported to have been carried out for the said building, the expenditure already incurred by Respondent No.1 on construction at the location which is falling under the transmission line shall be compensated

by the petitioner. If any dispute arises regarding the amount of compensation to be paid, the same shall be decided by the Deputy Commissioner in terms of Rule 3 (2) of the Works of Licensees Rules.

26. The petition is disposed of with the above.

sd/-
(A.K. Singhal)
Member

sd/-
(M. Deena Dayalan)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson