

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 114/MP/2014

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K Singhal, Member

Shri A.S. Bakshi, Member

Date of Order : 18th of April, 2017

In the matter of

Petition under Section 79 (1) (c) of the Electricity Act, 2003 read with Regulation 54 "Power to Relax" and Regulation 55 "Power to Remove Difficulty" of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 and Regulation 24 read with Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and Section 67 (4) of the Electricity Act, 2003 to adjudicate the difference or dispute arisen with regard to the compensation, as detailed in the petition and seeking direction from this Hon'ble Commission relating to construction of 400/220 kV Yelahanka sub-station and LILO of Neelamangla-Hoody 400 kV S/C (Quad) line at 400/220 kV Yelahanka sub-station under System Strengthening in Southern Region-XIII and construction of Madhugiri Yelahanka 400 kV D/C(Quad) line under System Strengthening in Southern Region XIII.

And

In the matter of

Power Grid Corporation of India Limited

B-9, Qutub Institutional Area,

Katwaria Sarai, New Delhi- 110016

....Petitioner

Vs

1. Bangalore Electricity Supply Company Limited

Corporate office, K.R. Circle,

Bangalore- 560001, Karnataka

2. Government of Karnataka

Secretariat, Bangalore-560001

3. Karnataka Power Transmission Corporation Limited
Cauvery Bhavan, Bangalore- 560009
4. Gulbarga Electricity Supply Company Limited
Station Main Road, Gulbarga, Karnataka
5. Hubli Electricity Supply Company Limited
Navanagar, PB Road, Hubli, Karnataka
6. Mangalore Electricity Supply Company Limited
Paradigm Plaza AbShetty Circle,
Mangalore- 575001, Karnataka
7. Chamundeshwari Electricity Supply Corporation Limited
927, LJ Avenue, GF New Kanthraj URS Road,
Saraswathipuram, Mysore- 570009, Karnataka
8. Transmission Corporation of Andhra Pradesh Limited
Vidyut Soudha, Hyderabad- 500049
9. Eastern Power Distribution Company of Andhra Pradesh Limited
P&T colony, Seethammadhara,
Visakhapatnam, Andhra Pradesh
10. Southern Power Distribution Company of Andhra Pradesh Limited
Srinivasa Kalyana Mandapam Backside,
Tiruchanoor Road, Kesvayana Gunta,
Tirupati- 517501, Chittoor District, Andhra Pradesh
11. Central Power Distribution Company of Andhra Pradesh Limited
Mint Compond, Hyderabad-500063, Andhra Pradesh
12. Northern Power Distribution Company of Andhra Pradesh Limited
Opp NIT petrol pump, Chethanyapuri, Kazipet,
Warangal, Andhra Pradesh- 500063
13. Kerala State Electricity Board
Vaidyuthi Bhavanam,
Pattom, Thiruvananthapuram- 695004
14. Tamil Nadu Generation and Distribution Corporation Limited
NPKRR Maaligai, 800, Anna Salai, Chennai- 600002
15. Electricity Department
Government of Pondicherry
Pondicherry- 605001

....Respondents

Following were present:

Shri Sanjey Sen, Senior Advocate, PGCIL
Shri Hemant Singh, Advocate, PGCIL
Shri Manju Gupta, PGCIL
Shri M.M. Mondal, PGCIL
Shri S. Kalyana Venkatesan, PGCIL
Shri Y.K. Sehgal, PGCIL
Shri Upendra Pande, PGCIL
Shri Amit Bhargava, PGCIL
Shri S. Vallinayagam, Advocate, TANGEDCO

ORDER

The petitioner, Power Grid Corporation of India Limited, has filed the present petition under Regulations 54 and 55 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 read with Section 67 of the Electricity Act, 2003 (Act).

2. The System Strengthening Scheme (Transmission Scheme) in Southern Region-XII was identified and approved in 27th Standing Committee Meeting on Power System Planning of Southern Region held on 3.3.2009. The Ministry of Power, Government of India vide its Memorandum dated 26.3.2009 authorized the Petitioner to undertake implementation of the project by issuing order under Section 68 of the Electricity Act, 2003. The investment approval for the transmission scheme was accorded by the Board of Directors of Power Grid vide its Memorandum No. C/CP/SR-XII dated 26.2.2010 at an estimated cost of ₹ 232.34 crore including IDC of ₹ 18.47 crore (at 3rd quarter 2009 price level). The transmission scheme was scheduled to be completed within 28 months i.e. July, 2012. The scope of the project is as under:

Transmission Line:

- a) LILO of Neelamangla-Hoody 400 kV S/C line at Yelahanka 400/220 kV sub-station; and
- b) LILO of Somanhally-Hoody 400 kV S/C line at Yelahanka 400/220 kV sub-station;

Sub-station:

Establishment of new 400/220 kV GIS sub-station at Yelahanka with 2X500MVA transformers (400 kV portion as Gas insulated sub-station and 220 kV portion as Air insulated sub-station).

3. The petitioner has submitted that the following facts have led to filing of this petition:

(a) In the 28th Standing Committee Meeting on Power System Planning of Southern Region held on 15.6.2009, Madhugiri-Yelahanka 400 kV D/C (quad) line to be terminated at 400 kV Yelahanka sub-station under System Strengthening Scheme in Southern Region-XIII was entrusted to the Petitioner for execution for which investment approval was accorded by the Board of Directors of Power Grid vide its letter dated 27.10.2011 with a completion schedule of 32 months for the project i.e. June, 2014. Accordingly, the re-configuration of Bangalore 400 kV Ring for Yelahanka 400 kV sub-station was discussed and finalized in 34th Standing Committee meeting held on 16.4.2012.

(b) Due to severe Right of Way (ROW) problem and to further optimize the corridor, in the 35th Standing Committee meeting held on 4.1.2013, it was decided that instead of LILO of both circuits of Neelamangla-Hoody DC line, only one circuit would be LILoed using one D/C of the Multi-circuit towers and the balance D/C would be used for the 400 kV Madhugiri-Yelahanka DC (Quad) line using high ampacity conductor in the Multi-circuit portion. Subsequently, the

Ministry of Power, Government of India vide its letter dated 7.8.2013 approved the revised scope under the System-Strengthening in Southern Region-XII and XIII.

(c) On the persistent request to the Deputy Commissioner to resolve the severe ROW problem, on 12.1.2012, the Deputy Commissioner convened a meeting with land owners and officials of PGCIL in which the Deputy Commissioner directed the Thasildar, Yelahanka to work out the compensation payable to the land owners for damaging the land due to tower location and transmission line corridor. Subsequently, the Deputy Commissioner vide its order dated 26.3.2012 directed the Thasildar to list out the affected land owners and calculate the compensation payable. Accordingly, the Thalisdar, vide its letter dated 27.3.2012 furnished the list of affected land owners and the land damage compensation payable for the tower footing to the petitioner. In compliance with the said order dated 26.3.2012, PGCIL paid a sum of Rs. 1,28,06,250 to the land owners for the land covered under tower/tower footing area at 100% of the land cost at market rate. Despite the payment of the aforesaid compensation, the land owners again started to obstruct the construction activities of the project and demanded compensation for the line corridor. The Deputy Commissioner, based on the report of the Thasildar dated 19.7.2012, vide order dated 20.7.2012 directed PGCIL to pay Rs. 12.80 crore for line corridor's compensation to the land owners. PGCIL vide letter dated 29.8.2012 informed the Deputy Commissioner that payment of land compensation at the market value for the line corridor is

contrary to the provisions of the Electricity Act, 2003 and Indian Telegraph Act, 1885.

(d) The matter was discussed with the Chief Secretary, Government of Karnataka on 7.9.2012 and the Chief Secretary was apprised with the letter dated 3.8.2012 addressed by the Hon`ble Minister of Power, Government of India to the Chief Minister of Karnataka to render necessary support for completion of the project. The petitioner vide its letters dated 7.9.2012 and 8.9.2012 informed the Chief Secretary, Government of Karnataka and the Chief Minister of Karnataka respectively that compensation, if any, could be paid only in line with the provisions of the Indian Telegraph Act, 1885 and requested to direct the local administration to resolve the issue at the earliest. The Chief Minister of Karnataka convened a meeting on 28.11.2012 with the Principal Secretary, Energy, Managing Director (KPTCL), Deputy Commissioner, Thasildar and other officials of PGCIL. In the said meeting, Chief Minister directed the Deputy Commissioner to make efforts to convince the land owners regarding the need of the transmission line and the inability to pay land damage compensation and to take suitable action as per the Telegraph Act and to get the work completed. However, despite unilateral issuance of repeated Government orders enhancing compensation amount to an exorbitant level, work of the project could not be preceded.

(e) On 17.4.2013, PGCIL filed a Writ Petition before the Hon`ble High Court of Karnataka seeking direction to the Government of Karnataka to remove the

obstruction and ensure completion of the project. The Hon'ble High Court vide its interim order dated 31.7.2013 in Writ Petition Nos. 18110-18111/2013 directed the petitioner to deposit Rs.6 crore which was deposited by PGCIL with District and Session Court, Bangalore. Subsequently, the Hon'ble High Court vide its final order dated 21.11.2013 further directed the petitioner to deposit Rs. 3 crore and directed all concerned to remove obstructions and provide necessary assistance for the completion of the project and the same was deposited by PGCIL on 4.12.2013.

(f) After sustained follow up, the work of the project was allowed to be carried out from 3.1.2014 to 27.1.2014 and 1.15 km of stringing could be completed. However, the work on the transmission line had come to a standstill with effect from 21.1.2014 due to obstruction by the land owners. All works relating to Yelahanka sub-station are completed and the sub-station is ready for energization. However, due to continued obstructions by the land owners and failure of the local administration in providing necessary protection despite the High Court orders, stringing in 4.99 km is held up and no resolution in the stalemate could be anticipated in near future. Besides the payment of crop compensation, huge demand for tower footing and corridors would create severe ROW problems, affecting the progress of other ongoing/upcoming transmission projects in whole country and it would increase the transmission charges.

(g) Delay in the transmission lines are causing serious constraints on import of power to Southern Region through recently commissioned Raichur-Sholapur 765kV link and also causing serious constraints in meeting loads of Bangalore

and Western part of Tamil Nadu in S2 area on account of critical loadings on Bellary TPS-Hiriyur-Neelamangla 400kV corridors, especially when there is high wind conditions in Hiriyur area of Karnataka. The present status of the project is as under:

S.No.	Element	Status
1	400/220 kV Yelahanka Substation with 2x500 MVA ICTs and 1x63 MVAR Bus Reactor under System Strengthening in Southern Region - XII	Completed and ready for energisation since April, 2012
2	LILO of Neelamangla-Hoody 400 kV S/C (Quad) line at 400/220kV Yelahanka Substation under System Strengthening in Southern Region - XII	<ul style="list-style-type: none"> • 100% Foundation & Tower Erection (25nos.) completed; • 47% stringing (4.425/9.415 km) completed. Work stalled due to severe ROW issues since January, 2014.
3	400kV D/C Madhugiri-Yelahanka line under System Strengthening in Southern Region- XIII (excluding 9.415kms on Multi-Circuit Towers)	<ul style="list-style-type: none"> • 54% Foundation (96/177 nos.) completed; • 14% Tower Erection (25/177 nos.) Completed; • Work stalled due to severe ROW issues since June, 2013.

(h) Under the circumstances, the Petitioner finds no way to complete the project and seeks recovery of expenditure of Rs 306.73 crore as on 31.3.2014 in a suitable manner.

4. Against the above background, the petitioner has made the following prayers:

(a) Admit the instant petition and issue:

(i) The provisional tariff w.e.f. 01.04.2014 for System Strengthening in Southern Region- XII on the expenditure incurred till 31.03.14 i.e. Rs. 220.07 Crore and allow the petitioner to complete the project as & when the ROW issues are resolved and thereafter issue the final tariff on actual cost.

(ii) The provisional tariff w.e.f. 01.06.2014 for Madhugiri-Yelahanka 400kV D/C (Quad) line under System Strengthening in Southern Region - XIII on the expenditure incurred till 31.03.14 i.e. Rs. 86.66 Crore and allow the petitioner to complete the project as & when the ROW issues are resolved and thereafter issue the final tariff on actual cost.

(b) Compensate the petitioner for the loss of return (ROE) of Rs. 25.89 Crore on System Strengthening in Southern Region- XII suffered so far, as deemed fit by the Hon'ble Commission from any source or through Tariff under POC mechanism;

(c) In terms of 67(4) of the Electricity Act, 2003, adjudicate the difference or dispute arisen between the Petitioner and the Respondent No. 2 with regard to the compensation determined by the Respondent No. 2;

(d) Direct/ advise the State Administration to provide necessary protection/ security and assistance for laying the Transmission lines, as also directed by the Hon'ble High Court of Karnataka; and

(e) Pass such other order as deem fit.”

5. Notice was issued to the respondents to file their replies. Reply to the petition has been filed by Karnataka Power Transmission Company Limited (KPTCL).

6. KPTCL, vide its reply has submitted that the tariff cannot be claimed for an asset which has neither been put into commercial service nor has no use to the beneficiaries. The issues arising in the implementation of the project has to be dealt with by the petitioner and the burden of cost cannot be put on the beneficiaries by way of tariff either provisional or final. KPTCL has further submitted that PGCIL has not acted with alacrity as there is substantial time lag in follow up action and meetings with authorities. In any event, the RoW issues do not grant any right on the petitioner for grant of provisional tariff in terms of the 2014 Tariff Regulations. Since, PGCIL is recognized as a Telegraph Authority under Section 164 of the Electricity Act, there is no question of obtaining any consent from the land owner. KPTCL has submitted that in terms of Section 164 of the Telegraph Authority, PGCIL has unfettered right to enter any immovable property to place a telegraphic line and consent of land owner is not required. Therefore, it is misconceived that petitioner cannot complete project due to

RoW issues. KPTCL has submitted that the 2014 Tariff Regulations provide for fixation of tariff including all elements including the Return on Equity from the date of commercial operation and not during the construction period. KPTCL has submitted that the Petitioner has to take the risk of blocked investment as it is a commercial risk which should be borne by the Petitioner. Therefore, the Petitioner cannot seek relaxation of the Regulations. It is not just and equitable to burden the respondent for PGCIL's losses in not being able to put its transmission assets under commercial operation. KPTCL has submitted that the provisions of the 2014 Tariff Regulations are not an insulation to the Petitioner that whatever amounts would be spent by it, the same would be a pass through in tariff without there being corresponding assets.

7. The petitioner in its rejoinder has submitted as under:

(a) PGCIL has spent an amount of Rs.306.73 crore as on 31.3.2014 to complete the project in terms of its original project schedule which has been blocked, without any recovery of either the interest portion or the equity portion. The present petition is limited to recognition of this expenditure prior to commissioning of the project so as to enable recovery of blocked cost. The petitioner cannot be expected to suffer financially on account of delay in completion of project considering the RoW issues in completing the project.

(b) The Petitioner had approached the Government of Karnataka to resolve the ROW issue and to render necessary support in securing ROW for development of transmission corridor across the country. Despite complying with

the direction of the Hon'ble High Court, necessary assistance/protection from the State Government is not forthcoming to complete the line.

(c) As per direction of the Hon'ble High Court dated 31.7.2013, the Petitioner deposited Rs. 9 crore resulting which the cost of the project has significantly gone up. Therefore, the original cost of the project is likely to undergo severe changes due to the intervention of the Government of Karnataka and the High Court of Karnataka. By virtue of the High Court's order, PGCIL is in a position to estimate the timeline within which the project would be commissioned.

(d) As per Regulation 3 (12) (c) of the 2009 Tariff Regulations and Regulation 4 (3)(ii) of the 2014 Tariff Regulations, the licensee is entitled to recover tariff even in circumstances when the asset/ element is not commissioned. However, the present facts are distinguishable from the language/ text of the said regulations. In the present case, the licensee has admittedly taken all steps for completion and commissioning of the project. However, due to reasons beyond control of PGCIL, it is unable to complete or commission the project.

(e) 2009 Tariff Regulations and 2014 Tariff Regulations are silent about allowing costs of an asset which is yet to be commissioned. However, as per Regulation 12(c) of the 2009 Tariff Regulations and Regulation 4(3)(ii) of the 2014 Tariff Regulations, the Commission is empowered to allow costs of the line which cannot be operationalised on account of non-readiness of the intervening lines. Therefore, when Section 61 does not stand in the way of allowing costs for a project which has not been put into regular service, the same principle can be

used to acknowledge the present asset, and to allow provisional tariff as well as the loss of return.

(f) PGCIL being a cost plus entity, does not have ability to absorb the additional costs. The delay in project, which would result in disallowance of ROE for the delayed period, would reduce the net return over the project life cycle to a large extent which may be below the interest rates allowed by the Banks/ other financial institutions. PGCIL has infused the equity into the project so that earnings can be ploughed back for funding the new Transmission Schemes. However, such blocked investment without any return shall not only destabilize the financial condition of the organization but could impact the operation of the existing assets as well.

Analysis and Decision:

8. We have considered the submissions of the Petitioner and the Respondents. The Petitioner has filed the petition under Regulation 54 (Power to Relax) and Regulation 55 (Power to Remove Difficulty) of the 2014 Tariff Regulations read Section 67(4) of the Electricity Act, 2003 seeking adjudication of disputes with regard to compensation for ROW for execution of transmission project.

9. From the facts of the case, it appears that the transmission scheme has been affected by ROW issues and demand for high compensation. The Petitioner is engaged in the business of setting up the transmission lines for which transmission charges are to be paid by the beneficiaries using the transmission line. In the present case, the

execution of the transmission project has come to standstill on account of the stalemate on the issue of additional compensation due to various orders issued by the Deputy Commissioner of Karnataka from time to time. The petitioner in its prayers (a) and (b) is seeking provisional tariff of over Rs. 220.07 crore and Rs. 86.66 crore i.e. the expenditure incurred till 1.4.2014 and 1.6.2014, and compensation for the loss of return of Rs.25.89 crore. The petitioner in its prayer (c) is seeking adjudication of dispute arisen between the Petitioner and Government of Karnataka with regard to the compensation determined by Government of Karnataka and in its prayer (d) the Petitioner has prayed to direct the State Administration to provide necessary protection for laying the transmission line as per direction of the Hon`ble High Court of Karnataka. These prayers being co-related have been dealt with together. Learned senior counsel for the petitioner submitted that the Commission has power to allow recovery of tariff even in circumstances when the asset is not commissioned. Learned counsel for KPTCL submitted that the petitioner cannot claim tariff for an asset which has not been put into use. 2014 Tariff Regulations do not provide for a situation where the tariff is applicable to the users of the transmission system before COD of the transmission asset.

10. Regulation 4(3) of the 2014 Tariff Regulations provides as under:

“4(3) Date of commercial operation in relation to a transmission system shall mean the date declared by the transmission licensee from 0000 hour of which an element of the transmission system is in regular service after successful trial operation for transmitting electricity and communication signal from sending end to receiving end:

Provided that:

(i).....

(ii) in case a transmission system or an element thereof is prevented from regular service for reasons not attributable to the transmission licensee or its supplier or its contractors but is on account of the delay in commissioning of the concerned generating station or in commissioning of the upstream or downstream transmission system, the transmission licensee shall approach the Commission through an appropriate application for approval of the date of commercial operation of such transmission system or an element thereof.”

11. Perusal of the above proviso reveals that this provision can be invoked only when a transmission element is ready for regular service but is prevented from providing such service for the reasons not attributable to the transmission licensee. In the present case, system strengthening in Southern Region-XII and Madhugiri-Yelhanka 400 kV D/C (Quad) line for which the petitioner is seeking provisional tariff, have not been put into regular service after successful testing and trial run. In fact, the transmission lines are not even ready for regular service since they have been partially completed. As per Regulation 4(3), a transmission element, which is in regular service after successful charging and trial operation can be declared under commercial operation. The subject transmission line cannot be test charged and neither its trial operation can be undertaken nor it is ready for regular service. The Hon'ble Appellate Tribunal for Electricity vide its judgment dated 2.7.2012 in Appeal No. 123 of 2011 has settled the issue as to whether on idle charging of a new transmission line could be declared as having achieved the COD for recovery of transmission charges from the beneficiaries. The relevant portion of the said judgment dated 2.7.2012 is extracted as under:

“20. According to Tariff Regulations, the COD of a transmission line shall be achieved when the following conditions are met.

i) The line has been charged successfully,

- ii) its trial operation has been successfully carried out, and
- iii) it is in regular service.

The above conditions in the case of 400 kV Barh-Balia line were not fulfilled on 01.07.2010, the date on which COD was declared by the Respondent no.1. Merely charging of the line from one end without the switchgear, protection and metering arrangements being ready at the other end, even if not in the scope of works of the transmission license, would not entitle the line for declaration of commercial operation.”

The above judgment was also upheld by the Hon`ble Supreme Court. The relevant portion of the Hon`ble Supreme Court Judgment dated 3.3.2016 in Civil Appeal No. 9193 of 2012 with Civil Appeal No. 9302 of 2012 is extracted as under :

“11. From the above definition, it is clear that switchgear and other works are part of transmission lines. In our opinion, Regulation 3 (12) of the Regulations, 2009 cannot be interpreted against the spirit of the definition of “transmission lines” given in the statute. It is evident from record that it is not a disputed fact that switchgear at Barh end of Barh-Balia line for protection and metering were to be installed by NTPC and the same was not done by it when transmission line was completed by the appellant. As such the appellant might have suffered due to delay on the part of NTPC in completing the transmission lines for some period. But beneficiaries, including respondent No. 1, cannot be made liable to pay for this delay w.e.f. 01.07.2010 as the energy supply line had not started on said date.”

As per the above judgment, unless the entire transmission line along with switchgear, protection and metering arrangements at both ends are completed, the subject transmission line can neither be test charged nor its trial operation can be undertaken. Consequently, the transmission line cannot be ready for regular service. Therefore, the transmission line cannot be declared under commercial operation in exercise of power under Regulation 4 (3) of the 2014 Tariff Regulations.

12. As per Regulation 6 of the 2014 Tariff Regulations, tariff can be granted to an asset completed or projected to be completed within six months from the date of application. However, the petitioner has not mentioned anything about anticipated COD of the subject transmission line as the portion of the transmission line is not complete.

13. The petitioner has sought invocation of power to relax and power to remove difficulty under Regulations 54 and 55 of the 2014 Tariff Regulations to relax the requirement of the regulation and grant provisional tariff before the commissioning of the transmission lines. The case of the petitioner is that it has invested a huge amount on the transmission line and on account of ROW problem and issues regarding compensation, the transmission line cannot be completed and commissioned and as a result the petitioner is not getting any return on its investment. It appears that there is no certainty of completion of the transmission line. Therefore, provisional tariff cannot be granted for the subject transmission line. It is noted that the provisional tariff for LILO's and GIS sub-station at Yelahanka was issued on 29.3.2012 (Petition No 88/TT/2012). Subsequently, the assets were removed from PoC in December, 2013, as the assets were not commissioned. Therefore, without commissioning of the assets, the same cannot be included in PoC calculation. In our view, after the asset is completed and commissioned, its tariff will be determined as per the provisions of the Tariff Regulations and the petitioner shall be entitled for IDC and IEDC if it is proved that delay in execution of the project is not on account of the Petitioner or its Contractor. Therefore, the interest of the Petitioner is protected. There is no provision in the regulation to allow tariff on the assets under execution on the ground that delay for non-completion is not attributable to the Petitioner. In our view, the power to remove difficulty or power to relax cannot be exercised in this case as it will amount to the amendment of the Regulations to permit provisional tariff of a transmission scheme which is still under execution and admittedly its COD is uncertain.

14. The Petitioner in its prayer (c) has prayed for adjudication of the difference or dispute arisen between the Petitioner and Government of Karnataka with regard to the compensation determined by Government of Karnataka in terms of Section 67(4) of the Electricity Act, 2003. The Petitioner in its prayer (d) has prayed to direct the State Administration to provide necessary protection for laying the transmission line as per direction of the High Court. Section 67 of the Electricity Act provides as under:

“Section 67. (Provisions as to opening up of streets, railways, etc): - (1) A licensee may, from time to time but subject always to the terms and conditions of his licence, within his area of supply or transmission or when permitted by the terms of his licence to lay down or place electric supply lines without the area of supply, without that area carry out works such as –

- (a) to open and break up the soil and pavement of any street, railway or tramway;
- (b) to open and break up any sewer, drain or tunnel in or under any street, railway or tramway;
- (c) to alter the position of any line or works or pipes, other than a main sewer pipe;
- (d) to lay down and place electric lines, electrical plant and other works;
- (e) to repair, alter or remove the same;
- (f) to do all other acts necessary for transmission or supply of electricity.

(2) The Appropriate Government may, by rules made by it in this behalf, specify, -

(a) the cases and circumstances in which the consent in writing of the Appropriate Government, local authority, owner or occupier, as the case may be, shall be required for carrying out works;

(b) the authority which may grant permission in the circumstances where the owner or occupier objects to the carrying out of works;

(c) the nature and period of notice to be given by the licensee before carrying out works;

(d) the procedure and manner of consideration of objections and suggestion received in accordance with the notice referred to in clause (c);

(e) the determination and payment of compensation or rent to the persons affected by works under this section;

(f) the repairs and works to be carried out when emergency exists;

(g) the right of the owner or occupier to carry out certain works under this section and the payment of expenses therefor;

(h) the procedure for carrying out other works near sewers, pipes or other electric lines or works;

(i) the procedure for alteration of the position of pipes, electric lines, electrical plant, telegraph lines, sewer lines, tunnels, drains, etc.;

(j) the procedure for fencing, guarding, lighting and other safety measures relating to works on streets, railways, tramways, sewers, drains or tunnels and immediate reinstatement thereof;

- (k) the avoidance of public nuisance, environmental damage and unnecessary damage to the public and private property by such works;
- (l) the procedure for undertaking works which are not repairable by the Appropriate Government, licensee or local authority;
- (m) the manner of deposit of amount required for restoration of any railways, tramways, waterways, etc.;
- (n) the manner of restoration of property affected by such works and maintenance thereof;
- (o) the procedure for deposit of compensation payable by the licensee and furnishing of security; and
- (p) such other matters as are incidental or consequential to the construction and maintenance of works under this section.

(3) A licensee shall, in exercise of any of the powers conferred by or under this section and the rules made thereunder, cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him.

(4) Where any difference or dispute [including amount of compensation under sub-section (3)] arises under this section, the matter shall be determined by the Appropriate Commission.

(5) The Appropriate Commission, while determining any difference or dispute arising under this section in addition to any compensation under sub-section (3), may impose a penalty not exceeding the amount of compensation payable under that sub-section.”

15. It is seen that the Appropriate Government is required by rules to specify among other things the determination and payment of compensation or rent to the persons affected by works under said section. In exercise of the said powers, the Central Government has made Works Licensee Rules, 2006, under which the District Magistrate, Commissioner of Police or Officer designated by the State Government has to determine the compensation for the land or including land for the transmission line. Section 67 (4) provides that when any difference or dispute including amount of compensation under sub-section 3 arises, the matter shall be determined by the Commission. Under the said provisions read with Works of Licensee Rules, 2006, Revision Petition with regard to compensation can be filed by an aggrieved party against the order of the District Collector or Superintendent of Police or designated

officer. No such order has been challenged by the Petitioner in the present proceedings and therefore, the petition under Section 67 (4) is not maintainable.

16. It is observed that due to non-cooperation of State Administration to provide assistance for completion of the transmission project, the Petitioner filed Writ Petition before the Hon`ble High Court of Karnataka. The High Court of Karnataka vide its interim order dated 31.7.2013 in Writ Petition No. 18110-18111/2013 directed the State Administration to provide necessary protection and assistance in the execution of the project. Subsequently, the Hon`ble High Court vide its final order dated 21.11.2013 directed the Petitioner to deposit Rs. 3 crore and directed all concerned to remove obstructions and to provide necessary assistance for completion of the project. The Hon`ble High Court of Karnataka held as under:

“19. Therefore, keeping open the contentions urged on merits regarding the determination of the compensation, these writ petitions are disposed of in the following terms:

(i).....

(vii). Respondents 2 and 3 are directed to extend all possible protection immediately for laying the transmission lines so as to facilitate the execution of the project work.”

17. As per the High Court order, the State Government is bound to provide necessary right of way to the Petitioner to complete its project. Since, the High Court has already directed the State Government to provide necessary assistance to execute the project, the order of the Hon`ble High Court holds the field and has to be implemented by the State Government. If the Petitioner is aggrieved, it has the remedy to again approach the High Court for ensuring compliance of the directions of the Hon`ble High Court by the State Government.

18. The Petitioner is directed to take steps for completion of transmission line at the earliest.

19. The petition is disposed of in terms of the above.

Sd/-
(A.S. Bakshi)
Member

sd/-
(A. K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson