

**\CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 83/MP/2014**

**Coram:**

**Shri Gireesh B. Pradhan, Chairperson**

**Shri A.K. Singhal, Member**

**Shri A.S. Bakshi, Member**

**Date of Order : 11<sup>th</sup> 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 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 seeking direction from the Commission relating to construction of Edamon-Muvattapuzha (Cochin) 400 kV D/C line section of Thirunelveli- Muvattapuzha (Cochin) 400 kV D/C (Quad) transmission line.

**And**

**In the matter of**

Power Grid Corporation of India Limited  
Saudamini, Plot No.- 2,  
Sector-29, Gurgaon- 1221001.

**....Petitioner**

**Vs**

1. Karnataka Power Transmission Corporation Ltd.  
Cauvery Bhawan, Bangalore-560 009.
2. Chief Secretary Secretariat,  
Government of Kerala, Thriuvanathapuram-695 001.
3. Bangalore Electricity Supply Company Limited  
Corporate office, KR Circle,  
Bangalore-560 001, Karnataka.



4. Gulburga Electricity Supply Company Limited  
State Main Road, Gulburga, Karnataka
5. Hubli Electricity Supply Company Limited  
Navanagar, PB Road, Hubli, Karnataka.
6. Mangalore Electricity Supply Company Limited  
Paradigm Plaza AB Shetty Circle,  
Mangalore-575 001, Karnataka.
7. Chamundeshwari Electricity Supply Company Limited.  
927, LJ Avenue, GF New Kanthraj URS Road,  
Saraswathipuram, Musore-570 009, Karnataka
8. Transmission Corporation of Andhra Pradesh Ltd.  
Vidyut Soudh, Hyderabad-500 049.
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,  
Tripupati-517 501
11. Central Power Distribution Company of Andhra Pradesh Limited  
Mint Compound, Hyderabad-560 063,
12. Northern Power Distribution Company of Andhra Pradesh Limited  
Opp NIT Petrol Pump, Chethanyapuri, Kazipet,  
Warangal-506 004
13. Kerala State Electricity Board  
Vidyuthi Bhavanam,  
Pattom, Thruvananthapuram- 695004
14. Tamil Nadu Generator and Distribution Corporation Ltd.  
NPKRR Maaligai, 800 Anna Salai,  
Chennai-600 002.
15. Electricity Department  
Govt. of Pondicherry,



**Following were present:**

Shri Sanjay Sen, Senior Advocate, PGCIL  
Shri Hemant Singh, Advocate, PGCIL  
Shri Upendra Pande, PGCIL  
Shri R.P. Padhi, PGCIL  
Shri Amit Bhargave, PGCIL  
Ms. Seema Gupta, PGCIL  
Shri K. Venkatesan, PGCIL  
Ms. Manju Gupta, PGCIL  
Shri Amit Bhargava, PGCIL  
Shri Y.K Sehgal, PGCIL  
Shri M.M. Mondal, PGCIL  
Shri Jogy Scarao, Advocate, KSEB  
Shri Reegan S., Advocate, KSEB

**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.

2. The project "Transmission System associated with Kudankulam Atomic Power Project (2X1000 MW)" was identified and approved by the Standing Committee on Transmission Planning in Southern Region in its 18<sup>th</sup> meeting held on 5.3.2004 and by Southern Region Electricity Board in the 134<sup>th</sup> meeting held on 16.3.2004. Government of India, Ministry of Power vide its Memorandum dated 23.3.2004 authorized the petitioner to undertake implementation of the project by issuing the order under Section 68 of the Electricity Act, 2003 (the Act). The investment for the project was approved by Government of India, Ministry of Power vide its Memorandum dated 25.3.2005 at an



estimated cost of ₹1779.29 crore including IDC of ₹71.41 crore (at 4<sup>th</sup> Quarter 2004 price level) and the Revised Cost Estimate of the Project was approved vide Memorandum dated 3.9.2010 at an estimated cost of ₹2159.07 crore including IDC of ₹ 223.42 crore (at 1<sup>st</sup> Quarter 2010 price level). As per the Revised Cost Estimate, the project consists of 18 assets which were scheduled to be completed by March, 2012. Out of 18 assets, 17 assets have been commissioned and only one asset, namely Edamon-Muvattapuzha (Cochin) 400 kV D/C line section of Thirunelveli- Muvattapuzha (Cochin) 400 kV D/C (Quad) transmission line has not been commissioned.

3. The petitioner has submitted that prior to the approval of the project, the State Government of Kerala convened a high level meeting with senior officers of Central Electricity Authority, Kerala State Electricity Board, Nuclear Power Competition of India and Power Grid Corporation of India to finalize the transmission scheme associated with the Kudankulam Atomic Power Project. The route of the transmission lines through the State of Kerala was finalized after examining the different alternatives for transmission corridors in association with KSEB, CEA and others involved in the scheme.

4. The petitioner has submitted that on 30.4.2007, the petitioner invited tender for construction of Edamon Cochin portion of the transmission line. Meanwhile, one of the land owners filed a Writ Petition (Civil) No. 18371 of 2007 before the Hon'ble High Court of Kerala seeking interim stay order to all the tender proceedings in respect of tower package till a decision is taken on alternate route. The Hon'ble High Court of Kerala vide its order dated 26.7.2007 granted interim stay on the tendering process and directed the Principal Secretary, Power Department, Govt. of Kerala to submit a



report in this regard. On the basis of report submitted by the Principal Secretary, Power Department, Govt. of Kerala, the Hon`ble High Court vide its judgment dated 24.10.2007 vacated the stay on opening of the tenders. Thereafter, the contract for the subject line was awarded on 20.3.2008. On 22.5.2008, the Hon`ble Chief Minister of Kerala convened a meeting to sort out the ROW issues in the construction of the Edamon (KSEB)-Muvattapuzha (Cochin) 400 kV D/C line and it was decided that District Collectors would convene meetings with MLAs, other representatives of people, the representatives of local farmers likely to be affected and officials of PGCIL and KSEB to sort out the issues. The petitioner has submitted that though the contract was awarded in March 2008, the work could start only in the month of November, 2008. Despite stiff resistance and obstructions, work continued with all out efforts of the petitioner till June, 2011 when the construction activities were altogether stopped on the advice of State Police Department owing to the obstructions created by land owners.

5. The petitioner has submitted that Government of Kerala has issued the following orders regarding compensation payable for line corridor and tower footing:

(a) Government Order No. 960/2009/RD dated 9.3.2009: It specified the compensation payable for the line corridor and tower footing locations. Further, it provided the damage caused to the Tower location in paddy fields, garden lands and rubber plantations would be 20%, 40% and 50% respectively of the land price finalized by the concerned District Collectors.



(b) Government Order No. 581/2010/RD dated 4.2.2010: It modified its earlier G.O. of March, 2009 and had categorized the land area for tower location into two categories, namely paddy fields and garden area including rubber plantations and enhanced the compensation for the paddy fields and the garden area to 40% and 70% respectively of the land price fixed by the District Collector. It further stipulated that an ex-gratia of 20% of the land value will be paid for the lands covered under the line corridor except the line running in the existing corridor of Kerala State Electricity Board used by the petitioner.

(c) Government Order No. 2674/2010/RD dated 4.6.2010: It sought to modify the earlier Government Orders by stating that the compensation for tower standing (footing) area as well as the ex-gratia for the land below the line corridor would be based on fair value notified by the Government.

(d) Government Order No. 270/2011/RD dated 14.1.2011: It provided for payment of 20% ex-gratia even for the line corridor where the KSEB lines exist.

6. The petitioner has submitted that despite unilateral issuance of said Government Orders enhancing compensation amount to an exorbitant level, work could not proceed. The petitioner has submitted that 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. The petitioner has submitted that it find no way to complete the projects and seeks recovery of expenditure already incurred in a suitable manner.



7. Against the above background, the petitioner has made the following prayers

“(a) Admit the instant petition and issue provisional tariff w.e.f. 1.4.2014 on the expenditure incurred till 31.3.2014 i.e. ₹ 408.40 crore and allow the petitioner to complete the project as and when the ROW issues are resolved and thereafter issue the final tariff on actual cost.

(b) Compensate the petitioner for the loss of return of ₹ 75.96 crore suffered so far 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) Declare the Thirunelveli - Edamon 400 kV D/C (Quad) section (over multi circuit towers) of Thirunelveli - Cochin 400 kV D/C (Quad) transmission line under commercial operation with effect from 1.7.2010 which could not be commissioned due to non completion of Edamon -Cochin 400 kV D/C (Quad) line and to keep it idle charged till utilization of the same in the system in future.”

8. During the course of hearing, learned senior counsel for the petitioner submitted that the present petition has been filed for seeking provisional tariff on the expenditure incurred by the petitioner on construction of Adamon-Muvattapuzha (Cochin) 400 kV D/C (Quad) line till 31.3.2014 and adjudication of dispute between the petitioner and Government of Kerala with regard to compensation determined by the latter in terms of Section 67 (4) of the Electricity Act, 2003. Learned senior counsel for the petitioner further submitted that the petitioner had incurred expenditure of ₹ 2,159.07 crore including IDC of ₹223.42 crore against the initial apportioned cost of ₹ 1,779.29 crore including IDC of ₹ 71.41 crore. Therefore, there has been huge cost overrun. Learned senior counsel submitted that prior to the approval of the project, the transmission scheme was finalized in a high level meeting convened by Govt. of Kerala and route was finalized after carefully examining the different alternatives for transmission



corridors. Subsequently, Government of India accorded investment approval. Learned senior counsel submitted that due to unilateral issuance of fresh Govt. orders enhancing compensation amount to an exorbitant level, by repeating the earlier orders, the work on the transmission line could not proceed further.

9. The petitioner was directed to submit (i) the details of the discussions between the petitioner and Government of Kerala, and (ii) the minutes of meeting to resolve the issue and latest status in this regard. In response, the petitioner vide its affidavit has submitted that PGCIL has at several instances taken up the matter with the State Govt. Authorities/ Central Govt. from time to time about the severe RoW constraints faced by it in implementing the project and to seek their support and co-operation to resolve the issue. The petitioner has submitted that the Hon'ble High Court in its order dated 28.5.2014 in Writ Petition (WP) directed District Collector or Additional District Magistrate of the concerned districts to adjudicate and deal with the removal of obstruction within 4 months for existing applications and within 3 months for fresh application and further directed PGCIL to deposit necessary amount to be paid as compensation to be decided by official of the Land Acquisition Wing or enhanced awards passed by the District Court. On 9.6.2014, PGCIL requested the District Collectors of Ernakulam, Kottayam, Pathanamthitta and Kollam to facilitate resumption of the work.

10. Reply to the petition has been filed by the Kerala State Electricity Board (KSEB) and Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO).





11. KSEB vide its reply has submitted the details of action taken by the Govt. of Kerala and KSEB for early commissioning of the Edmon-Cochin 400 kV D/C line and the cost of compensation suggested by the State Govt. KSEB has further submitted that the petitioner's prayer to grant provisional tariff and compensation for the loss of return for the Edmon-Cochin 400 kV D/C line, which has not been commissioned, would cause financial burden on the beneficiary constituents and their ultimate consumers. KESB has requested to direct PGCIL to start the work of drawing the Edamon-Muvattupuaza 400 kV line in compliance with the Hon`ble High Court of Kerala's judgment dated 28.5.2014 in Writ Petition No. WP (C) No. 22382 of 2013. KSEB has submitted that since the said line form part of the transmission system of Kudamkulam Nuclear Power project, it should be treated as regional asset and the compensation incurred may be treated as Incidental Expense during Construction (IEDC) which may be approved as part of capital cost.

12. TANGEDCO vide its reply has submitted that the loss incurred due to delay and obstruction on executing the project is State specific and line passing through the State of Tamil Nadu has already been constructed. Therefore, the State of Tamil Nadu should not be liable to bear extra cost due to delay in executing the project. TANGEDCO has further submitted that the charges for the transmission line cannot be included in the POC as all DICs cannot be made to bear the charges for a State specific problem. According to TANGEDCO, the petitioner has not exercised powers conferred on it by the Government of India to resolve the issue of continued obstruction



from the landlords and threats to its officers. The petitioner cannot claim transmission charges in respect of a transmission line which is admittedly neither charged nor in regular service. In the instant petition, the petitioner is seeking adjudication of a dispute relating to compensation, which was upheld by the High Court of Kerala.

13. The petitioner has further submitted as under:

(a) Since PGCIL is neither acquiring the land in the tower area nor in the corridor of the line, therefore no compensation can be paid, save and except as provided under the Act. Pursuant to the judgment of High Court dated 28.5.2014, the Government of Kerala has enhanced the compensation amount vide Government order dated 19.8.2014. The compensation amount proposed by the Government of Kerala by various Government orders are contrary to the provisions of the Electricity Act, 2003 (Act) and the Telegraph Act, 1885 and accommodating unduly high amount for compensation would ultimately reflect in the tariff.

(b) PGCIL had proceeded to implement the project and incurred expenditure based on the existing provisions of law. The matter was taken up with the authorities of State Govt. from time to time seeking their support and coordination. However, the Right of Way issue remains unresolved.

(c) The project has already been delayed by more than 4 years and only 7% of the line has been completed till date. The work on the project shall start once



the implementation of the Government order dated 19.8.2014 is completed in all respect.

(d) The delay in the 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 banks and other financial institutions.

14. The Government of Kerala has submitted that the petitioner may be directed to re-start the work of drawing the Edamon-Muvattupuzha 400 kV line in compliance with the direction of the Hon'ble High Court of Kerala dated 28.5.2014 in Writ Petition No. WP (C) No. 22382 of 2013.

15. Learned senior counsel for the petitioner submitted that the Govt. of Kerala has enhanced the compensation through various Government orders. Aggrieved by the said orders, the petitioner filed WP (C) No. 22382 of 2013 before the Hon'ble High Court of Kerala. The Hon'ble High Court of Kerala vide its order dated 28.5.2014 upheld the orders issued by Government of Kerala and directed the petitioner to pay compensation upto Rs. 225 crore. As a result, the cost of the project has gone up significantly, which will have an impact on tariff. The compensation amounts proposed by the Government of Kerala are *ultra vires* the provisions of the Electricity Act, 2003 and Telegraph Act. Learned senior counsel further submitted that PGCIL is unable to complete or commission the project due to reasons beyond its control. However, substantial amounts have been invested in the project and the delay in project would result in



disallowance of ROW for the delayed period. Learned senior counsel relied upon Regulation 4 (3) (ii) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (2014 Tariff Regulations) and submitted that the Commission has power to allow recovery of tariff even in circumstances when the asset is not commissioned. Therefore, even when there is no revenue recognition, the COD is deemed to have been achieved and in principle it is recognized that even through there is no utilization of the assets, COD can be approved by the Commission. Learned senior counsel submitted that 2014 Tariff Regulations do not contemplate the petitioner's situation and therefore, the petitioner is invoking the power of the Commission under Section 79 of the Act. Learned counsel for TANGEDCO submitted that such eventuality can be met by the petitioner through the Power System Development fund which has been raised by the petitioner.

16. The petitioner has also placed on record the minutes of meeting held on 17.11.2014 under the Chairmanship of Secretary (Power), Government of India with the Energy Secretaries of the State wherein the issue of compensation for tower footing and land along the transmission line corridor was discussed. The relevant paras of the minutes of the meeting are extracted as under:

“11. Progress in the few transmission lines in downstream network, passing through Madhuri & Bangalore are in Karnataka State and Krishna & Guntur districts in Andhra Pradesh had been severally affected due to persistent RoW problems. (The major transmission lines, affected by RoW were 400 kV D/C Madhugiri-Yelahanka Transmission line; kV D/C Gooty-Madhugiri Transmission line, 765 kV S/C Madhugiri-Salem Transmission line & 400 kV D/C salem-Somanhalli Transmission line in Karnataka State and 400 kV D/C Vijaywada-Nellore Transmission line in Andhra Pradesh).



12. He {Director (Projects)} further informed that some DCs had issued compensation orders, which provided for compensation for not only the tower footings, but also towards the land along the transmission line corridors, which was not in line with the prevalent practice and guidelines provided in the Electricity Act. Director (Projects) stated that if it is paid at any one place, it may affect the transmission construction works, across the entire country. POWERGRID has already referred the issue to CERC for suitable guidelines in the matter. Secretaries of the Southern States informed that in the present scenario, it had become very difficult to construct transmission lines without payment of the compensation towards diminishing land values under the transmission line corridors. They also informed that they were ready to bear the additional burden towards such additional expenses through transmission tariff.

13. Secretary (Power) pointed out that once the state administration finalizes the compensation and state utilities were agreeable to bear the additional burden, POWERGRID keeping in view the critical nature of the transmission line for power transfer to Southern Region States, should consider payment of compensation in line with the State Government orders and complete the transmission line, as a special case.”

### **Analysis and Decision:**

17. 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 and Section 67 (4) of the Electricity Act, 2003 seeking adjudication of disputes arising with regard to the compensation for ROW issue for execution of transmission project.

18. From the facts of the case, it appears that Thirunelveli-Edamon 400 kV D/C section of Thirunelveli-Cochin 400 kV D/C line has been affected by ROW issues and demand for high compensation. The petitioner is engaged in the business of setting up transmission line 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 Government orders issued by the Govt. of Kerala. The petitioner in its prayer (a) and (b) is seeking grant of provisional tariff of over ₹ 408.40 crore i.e. the expenditure incurred till 1.4.2014 and compensation for the loss of return of ₹ 75.96 crore. The petitioner in its prayer (d) is seeking declaration of COD from 1.7.2010 of Thirunelveli-Edamon 400 kV D/C section of Thirunelveli-Cochin 400 kV D/C line due to non-completion of Edamon-Cochin line. 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.

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

(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) where the transmission line or substation is dedicated for evacuation of power from a particular generating station, the generating company and transmission licensee shall endeavour to commission the generating station and the transmission system simultaneously as far as practicable and shall ensure the same through appropriate Implementation Agreement in accordance with Regulation 12(2) of these Regulations :

(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.”

20. 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, Edamon-Muuvattapuzha (Cochin) 400 kV D/C (Quad) line for which the petitioner is seeking provisional tariff, has not been put into regular service after successful testing and trial run. In fact the transmission line is not even ready for regular service since it has 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 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.

21. As per 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 is unable to commit about the anticipated COD of the subject transmission line as the portion of the transmission line is not complete.

22. 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. In our view, after the asset is completed and commissioned, its tariff will be determined as per the Tariff Regulations and the Petitioner will be entitled to 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 provisions 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 the amendment of the regulations to permit provisional tariff of a transmission system which is still under execution and admittedly its COD is uncertain.

23. The Petitioner in its prayer (c) has prayed for adjudication of the difference or dispute arisen between the Petitioner and Govt. of Kerala with regard to the compensation determined by Govt. of Kerala in terms of Section 67(4) of the Electricity Act, 2003. 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.”

24. 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.

25. It is observed that Govt. of Kerala issued orders dated 9.3.2009, 4.2.2010, 4.6.2010 and 14.1.2011 specifying the rate of compensation payable for the line corridor and the tower footing locations. The said orders were challenged by the Petitioner before the Hon`ble High Court of Kerala. The Hon`ble High Court of Kerala vide its judgment dated 28.5.2014 in Writ Petition No. 22382/2013 upheld the orders issued by Government of Kerala and directed the petitioner to pay compensation amount. The Hon`ble High Court of Kerala further held as under:



“9. Fundamental issue raised in this writ petition pertains to power of the State Government in fixing compensation to the land owners who are affected by drawing transmission line. Section 10 (d) of the Indian Telegraph Act, 1885 confers power on the authority to place and to maintain any telegraph line under or over, along or across, and posts in or upon, any immovable property. Sub section (d) provides that in exercise of such power the telegraph authority shall do as little damage as possible, and when it exercise those powers in respect of any private property other than that referred to in clause (c), shall pay full compensation to all persons interested to the extent of damages sustained by them by reason of exercise of such power. Further, Section 16 (3) of the Indian Telegraph Act provides that if any dispute arises with respect to sufficiency of the compensation on the basis of an application submitted for the said purpose. Therefore, it is evident that the petitioner has an obligation to pay compensation as contemplated under Section 10 (d) and if any persons affected by drawing of the lines feels that the compensation paid is not sufficient, he has got a statutory remedy by way of approaching the District Court seeking determination of just and proper compensation. In the case at hand it is evident that the State Government have authorized the revenue authorities to determine the compensation payable with respect to drawing of the transmission line in question. By virtue of terms of the agreement executed, the petitioner is bound to pay compensation so fixed by the revenue authorities.”

As per the said order, the petitioner is bound to pay compensation fixed by the revenue authorities. If the petitioner is aggrieved, he has the remedy to challenge the said order of the Hon`ble High Court of Kerala before the Hon`ble Supreme Court. The Commission cannot adjudicate the dispute involving the orders of the State Government, particularly when the said orders have been upheld by the Hon`ble High Court of Kerala.

26. It was argued during the hearing that the other States may follow the example of Kerala and fix high compensation rates and indulgence of the Commission was sought for the issue of direction in this regard. In our view, this Commission cannot prescribe any rate for compensation for the line corridor and line facility. It is however noted that



the Ministry of Power, Government of India has issued guidelines to the State Government and Administrators of UTs with regard to the amount of compensation payable for right of way for transmission lines. The same may be kept in view by the Petitioner while paying the compensation. The dispute regarding the compensation between the petitioner and the Govt. of Kerala having been decided by the Hon`ble High Court is not maintainable before this Commission.

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

28. 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

