

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Diary No. 200/2024

Dated 12.04.2024

Shri Adivappa alias Ashok
S/o Sangappa Gonal
F-153, Ladosarai
Near Hanuman Mandir,
New Delhi-110030

Sir,

Sub.: Writ Petition No. 200910/2024 filed by Basappa @ Chandrasekhar & 4 others before the Hon'ble High Court of Karnataka, Kalaburagi Bench.

Ref.: Order dated 3.4.2024 of the Hon'ble High Court of Karnataka, Kalaburagi Bench

The Writ Petitioners, Basappa @ Chandrasekhar & 4 others (in short 'the Applicants') have filed the Writ Petition No. 200910/2024 before the Hon'ble High Court of Karnataka, Kalaburagi Bench, and the Hon'ble Court, vide its order dated 3.4.2024, has observed the following:

"The petitioners have filed an application under Order I Rule 10(2) of the Code of Civil Procedure to implead the CERC and UOI as respondent Nos. 6 and 7. Shri Sudhir Singh R. Vijapur, learned counsel accepts notice for the proposed Respondent Nos. 6 and 7. Taking note of the fact that the subject matter of Writ Petition is to be decided by considering the views of CERC, application filed by the petitioner is allowed. Learned counsel for the Petitioners is permitted to amend the cause title forthwith and file the amended writ petition. A set of writ petition papers is ordered to be served on Shri Sudhir Singh R. Vijapur, learned counsel, forthwith. Shri Sudhir Singh R. Vijapur, learned counsel is directed to consult the proposed Respondent No. 6. Call this matter again at 1.00 pm. The case is again called out at 1.23 p.m. The learned counsel Shri Sudhir Singh R. Vijapur, in consultation over telephone with the concerned officials of CERC makes a submission that if a proper representation is given by the petitioners to the CERC tomorrow i.e. on 4.4.2024, the same would be considered by the authorities within the shortest possible time and maximum seven working days and suitable communication would be sent to the petitioners. The learned counsel for the petitioners submits that the petitioner would furnish necessary representation by tomorrow itself i.e., on 4.4.2024 itself under acknowledgment. Re-list the matter on 18.4.2024. Till such time no further action/activities be carried out on the lands of the petitioners."

2. In terms of the above order, the Applicants have e-filed a copy of their representation on 9.4.2024, bearing Dy. No. 200/2024. Also, the applicants, through

their learned counsel, Ms. Usha Pandey, Advocate, appeared before this Commission on 10.4.2024 and pointed out that the applicants, in terms of the observations of the Hon'ble High Court in its order dated 3.4.2024, have filed the memorandum of representation, seeking to set aside the order dated 5.2.2024 passed by the Dy. Commissioner and ex-officio District Magistrate, Vijayapura, rejecting the applicants' prayer for shifting /relocating the electric transmission line/tower within the Applicant's land. However, Shri Buddy Ranganathan, Advocate, the learned counsel appearing for Gadag Narendra Transmission Limited, submitted that the applicants are required to confirm whether the said application is in the nature of a revision petition or a mere representation prior to the consideration of the same by the Commission. In response, the learned counsel for the applicants confirmed that the applicants had filed their representation in terms of the Hon'ble Court's order dated 3.4.2024, along with the required filing fees. In terms of this, we examine the Applicants' representation dated 9.4.2024 and dispose of the same, as stated hereunder:

Background facts

3. Gadag Narendra Transmission Limited in short 'GNTL') is a Special Purpose Vehicle owned by ReNew Transmission Ventures Private Limited. GNTL has undertaken the project to establish an Inter-State Transmission System, viz., Transmission Scheme for Solar Energy Zone in Gadag (2500 MW), Karnataka- Part A', which was allotted through a tariff based competitive bidding process by the REC Power Development and Consultancy Limited, which is a bid coordinator, as per notification dated 24.1.2020. The CEA, MOP GOI, vide its letter dated 2.12.2021, had granted prior approval under Section 68(1) of the Electricity Act, 2003 (in short 'the 2003 Act') to GNTL for the overhead line '400 kV D/c Twin HTLS Gadag PS-Narendra (New) Transmission line' covered under the said transmission scheme. Thereafter, the Central Commission, in the exercise of the powers conferred under Section 14 of the 2003 Act, has granted the transmission license to GNTL on 18.7.2022, to establish the said transmission system, subject to the terms and conditions mentioned therein. Subsequently, based on an application submitted by GNTL, the CEA, under Section 164 of the 2003 Act, has conferred all the powers to GNTL for laying the above overhead line, which the telegraph authority possesses under the India Telegraph Act, 1885.

4. The grievance of the Applicants herein, who are joint owners of the agricultural land bearing Survey Nos.17/1 and measuring 6 acres and 2 guntas situated at Village

Kasinakunte, Taluka Nidagundi, in District Vijapur, is that the said transmission line proposed to be laid in Village B. Bagewadi, Niadgundi and Kolhara Talukas of the District Vijayapura, is in the centre portion of the applicant's agricultural land (Point A in site plan), wherein, the graveyard of their parents are situated and that the grown-up teak wood plantations in the land would be affected. According to the applicants, there is a plan to convert the agricultural land into non-agriculture land for the purpose of construction of a charitable hospital in the larger portion of the said land, for the welfare of the society, and the entire land of the applicants would remain barren if the electric tower, as per the proposed plan is permitted. Against this backdrop, the Applicants had raised objections and requested to shift the location of the proposed transmission tower/line from the centre portion to a corner north-west portion (Point 'C' in the site plan), so that minimum damage will be caused to the land of the applicants.

5. The Applicants have stated that though they had raised their grievance/objections as above and requested the Dy. Commissioner and ex-officio District Magistrate, Vijayapura on 28.2.2023 and 27.6.2023 and the Government of Karnataka (vide letter dated 15.7.2023) for shifting of the location of the proposed transmission line, none of the authorities have acted upon the same. However, the Applicants have submitted that pursuant to the filing of the Writ Petition No. 20035/2024 before the Hon'ble High Court of Karnataka, Kalaburagi Bench, and during its pendency, the Dy. Commissioner and ex-officio District Magistrate Vijayapura had called for the reply of the Applicants and, after hearing the parties on 8.1.2024 and 18.1.2024, by order dated 5.2.2024, rejected the application of the Applicants herein, seeking shifting /relocation of the said transmission line, as under :

Order

- (1) Application filed by Shri Basappa @ Chandrasekhar s/o Sangappa Gonal and 4 others objecting for erection of 400 KV Tower in Sy. No 17/1 of Kashinakunte village, Taluka Nidagundi, is hereby rejected.
- (2) In exercise of the powers conferred upon the District Magistrate under section 16 of the Indian Telegraph Act, 1885, it is ordered that the Respondent shall be permitted to exercise the powers of Telegraph Authority mentioned in section 10 of the Indian Telegraph Act, 1885
- (3) Payment of pending compensation to the applicants, if any, in terms of Section 16(1) to Section 16(4) read with Section 10 of the Telegraph Act, 1885, shall be made within two weeks from the date of this order
- (4) Tahsildar, Nidagundi and Circle Police Inspector, Nidagundi are directed to implement this order and take necessary action as provided under Section 16(2) of the Indian Telegraph Act, 1885 and other relevant provisions if any person having control of the

property does not give all facilities to the respondent for their powers being exercised or if any other person resists the exercise of those powers by the respondent conferred under section 10 of the Indian Telegraph Act, 1885

- (5) This order is subject to any interim or final order passed by competent courts of jurisdiction.

Order pronounced in the open court on 5th day of February, 2024.

6. Pursuant to the above order, the Hon'ble High Court, vide its order dated 29.2.2024, had disposed of the said writ petition, being infructuous. However, the Hon'ble High Court, in para 3 of the said order, observed as under:

"3. The remedy for the Petitioners is to approach the Karnataka Electricity Regulatory Commission (KERC)..."

7. Based on the above order, the Applicants herein had approached the KEREC (in OP No. 06/2024) with prayers to set aside the order dated 5.2.2024 of the Dy. Commissioner and ex-officio District Magistrate, Vijayapura and for a direction to the Respondents therein to change the proposed transmission line from the middle of the land to one side of their land. However, KEREC vide its order dated 27.3.2024, rejected the said petition as not maintainable for want of jurisdiction to entertain the dispute involved in the said case. Pursuant to this, the Applicants herein have approached the Hon'ble High Court of Karnataka, Kalaburagi Bench, by filing the writ petition (W.P No. 200910/2024) seeking reliefs, amongst others, to set aside the aforesaid order dated 5.2.2024, and the Hon'ble Court vide its order dated 3.4.2024, has directed the Applicants to file proper representation before this Commission for consideration, as stated in para 1 above.

8. Accordingly, the representation has been filed by the Applicants, seeking to set aside the order dated 5.2.2024 mainly on the grounds that (1) the said order has been passed without considering the correct facts and without due process of law (2) the rejection of the application solely on the ground that the shifting of the proposed location of the transmission line, will result in incurring extra expenses for the company, is arbitrary.

Analysis and Views of the Commission

9. The representation submitted by the Applicants, along with the enclosed documents, have been examined. Admittedly, the Applicants have not indicated the relevant provisions of the 2003 Act or the Rules made thereunder, based on which they have approached this Commission while seeking to set aside the order dated 5.2.2024

of the Dy. Commissioner and ex-officio District Magistrate, Vijayapura. In this regard, we note below some of the provisions of the Indian Telegraph Act of 1885, the 2003 Act, and the Rules made thereunder for ease of reference.

10. Section 67 of the 2003 Act provides as follows:

67.(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) ...

(b) ...

(c) ...

(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 therefore;

(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.

11. In the exercise of the powers under Section 67(2) above, the Central Government has framed the Works of Licensee Rules, 2006. Rule 3 of these rules is 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, where over 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 an 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 officer authorized may by order in writing direct for any such works, 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 affect the powers conferred upon any licensee under section 164 of the Act."

12. Section 68(1) of the 2003 Act provides that an overhead line shall, with the prior approval of the appropriate government be installed or kept installed above the ground in accordance with the provisions of sub-section (2).

13. Section 164 of the 2003 Act provides as under:

164. The Appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any, as the Appropriate Government may think fit to impose and to the provisions of the 1885 Act, (13 of 1885) any of the powers which the telegraph authority possesses under that Act with respect to the placing of Telegraph lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained.

14. The provisions of Section 10, 11 and 16 of the Indian Telegraph Act, 1885 is extracted below:

POWER TO PLACE TELEGRAPH LINES AND POSTS

10. Power for telegraph authority to place and maintain telegraph lines and posts—*The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along or across, and posts in or upon, any immovable property:*

Provided that

(a) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the (Central Government) or to be so

established or maintained;

(b) the (Central Government) shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which the telegraph authority places any telegraph line or post;

(c) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority; and

(d) in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property other than that referred to in clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

11. Power to enter on property in order to repair or remove telegraph lines or posts- The telegraph authority may, at any time, for the purpose of examining, repairing, altering or removing any telegraph line or post, enter on the property under, over, along, across, in or upon which the line or post has been placed. Provisions applicable to property vested in or under the control or management of local authorities

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16. Exercise of powers conferred by section 10 and disputes as to compensation, in case of property other than that of a local authority;

(1) If the exercise of the powers mentioned in section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.

(2) If, after the making of an order under sub-section (1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code (45 of 1860).

(3) If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

(4) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the Court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under sub-section (3) or sub-section (4) shall be final.

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority, from the person who has received the same

15. It is pertinent to mention that GNTL has been granted prior approval under Section 68(1) of the 2003 Act by the CEA on 2.12.2021 for the installation of the overhead transmission line [400 kV D/c Twin HTLS Gadag PS-Narendra (New) Transmission line] included in the transmission scheme. As stated, GNTL was granted an inter-State transmission license on 18.7.2022 by this Commission, in exercise of the powers under Section 14 of the 2003 Act, to establish the proposed transmission system. Section 164 of the 2003 Act deals with the conferment of power by the Appropriate Government on

a public officer or a licensee for the purpose of placing electric lines or electric plants for the transmission of electricity. This conferment is made subject to the conditions and restrictions which the Appropriate Government may think fit to impose and is also subject to the provisions of the Indian Telegraph Act 1885, and the powers which the telegraph authority possesses under the Act. It is an undisputed fact that GNTL had been accorded approval under Section 164 by the Central Government vide order dated 16.9.2022, and in terms of this, GNTL has been authorized with all the relevant powers of the telegraph authority under the Telegraph Act to place the overhead lines etc. Thus, by virtue of GNTL being constituted as a Telegraph Authority, it became entitled to exercise all the powers of the Telegraph Authority under section 10 of the Telegraph Act, including the obligation under section 10(d) to ensure that it causes little damage as possible and to pay compensation to all persons interested, for any damage sustained by them by reason of the exercise of those powers. It appears that in the present case, the Deputy Commissioner and ex-officio District Magistrate, Vijayapura has, in exercise of the powers under Section 10 and Section 16 (1) of the Indian Telegraph Act, 1885, read with Section 164 of the 2003 Act, permitted GNTL (the inter-State Transmission licensee) to exercise the powers of the Telegraph Act and while rejecting the objections of the Applicants, has ordered the payment of compensation to the Applicants herein. In view of this position, in case the Applicants are dissatisfied with the compensation awarded to them by the licensee (GNTL) acting as a Telegraph Authority, they may approach the District Judge, under Section 16 (3) of the Telegraph Act, 1885 and not otherwise.

16. Further, nothing in Rule 3(1) to 3(3) of the Works of Licensee Rules, 2006 (as in para 11 above) shall apply to the person (licensee) conferred with the powers of the Telegraph authority under the Telegraph Act, 1885. This is by virtue of Rule 3(4) of the Works of Licensee Rules, 2006, whereby an exception has been made by providing that nothing contained in this Rule shall affect the powers conferred upon the licensee under Section 164 of the 2003 Act. In other words, GNTL having been conferred the powers of a Telegraph Authority under the Telegraph Act, 1885 for the purpose of laying down the transmission lines, the applicability of Section 67 (1) of the said Act or the Works of Licensees Rules, 2006, made under Section 67 (2) of the 2003 Act, are not attracted.

17. In this regard, the judgment dated 29.11.2013 of the Hon'ble High Court of Madras in W.P. No 16799/2013 (D. Rajendran & ors vs The Chairman, TNEB & 2 ors), as

extracted below, is noteworthy.

78.Having taken into consideration all the relevant provisions of the Electricity Act, 2003, the legal position has been explained that on an analysis of Section 67 and section 164 of the Electricity Act, 2003, it is apparent that whenever an order is passed by the appropriate Government, in exercise of the powers under Section 164 of the Electricity Act, 2003, for placing of electric lines for the transmission of electricity, conferring upon any public officer, licensee or any other person engaged in the business of supplying electricity any of the powers which the telegraph authority possesses under the Indian Telegraph Act, 1885 with respect to the placing of telegraphic lines and posts for the purposes of a telegraph established by the Government, such public officer, licensee or any other person engaged in the business of supplying electricity stands in the same position as regards the exercise of power as the telegraph authority under the Indian Telegraph Act, 1885. However, in the absence of such an order under Section 164 of the Electricity Act, 2003, if a licensee, i.e., a person who has been granted a licence to transmit electricity or to distribute electricity under the Act, proposes to place electric lines, electric plant or other works necessary for transmission or supply of electricity, Section 67 of the Electricity Act, 2003 comes into operation and consequently it is mandatory to obtain the consent of the concerned owner or occupier as required under Section 12 (2) of the Indian Electricity Act, 1910.

18. Also, the Hon'ble Supreme Court in PGCIL v Century Textiles and Industries Limited (2017) 5 SCC 143, has held that once the powers of the Telegraph Authority have been conferred upon the licensee, the Rule 3 of the Works of Licensee Rules 2006, would cease to apply. The relevant portion is extracted below:

20) It is not in dispute that in exercise of powers under the aforesaid provision, the Appropriate Government has conferred the powers of Telegraph Authority vide notification dated December 24, 2003 exercisable under Indian Telegraph Act, 1885 upon the Power Grid. It may also be mentioned that a Central Transmission Utility (CTU) is a deemed licensee under the second proviso to Section 14 of the Electricity Act, 2003. Power Grid is a Central Transmission Utility and is, therefore, a deemed licensee under the Electricity Act, 2003. This coupled with the fact that Power Grid is treated as Authority under the Indian Telegraph Act, 1885, it acquires all such powers which are vested in a Telegraph Authority under the provisions of the Indian Telegraph Act, 1885 including power to eliminate any obstruction in the laying down of power transmission lines. As per the provisions of the Indian Telegraph Act, 1885, unobstructed access to lay down telegraph and/or electricity transmission lines is an imperative in the larger public interest. Electrification of villages all over the country and availability of telegraph lines are the most essential requirements for growth and development of any country, economy and the well-being/progress of the citizens. The legislature has not permitted any kind of impediment/obstruction in achieving this objective and through the scheme of the Indian Telegraph Act, 1885 empowering the licensee to lay telegraph lines, applied the same, as it is, for laying down the electricity transmission lines. Powers of the Telegraph Authority conferred by Sections 10, 15 and 16 of the Indian Telegraph Act, 1885, stand vested in and are enjoyed by the Power Grid.

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22) As Power Grid is given the powers of Telegraph Authority, Rule 3(1) of the Rules, 2006 ceases to apply in the case of Power Grid by virtue of execution clause contained in sub-rule (4) of Rule 3 which reads as under:

‘3(4). - Nothing contained in this rule shall affect the powers conferred upon any licensee under Section 164 of the Act.

23) We, thus, have no hesitation in rejecting the argument of the writ petitioner that the impugned action of the Power Grid was contrary to the provisions of the Electricity Act,

2003”

19. In the light of the above discussions, the Commission is of the considered view that the reliefs prayed for in the representation of the Applicants are not maintainable before this Commission. The filing fees of Rs 25000/- deposited by the Applicants will be refunded separately.

This has the approval of the Commission.

Sd/-
(Harpreet Singh Pruthi)