



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH, NAGPUR.**

**WRIT PETITION NO. 469 OF 2019**

**PETITIONER :**  
**(Ori. Non-applicant)**

Maharashtra Eastern Grid Power Transmission Company Ltd., Ward No.61, House No.34, Plot No.8, Redhi Sindhi Nagar, Akola, through its authorized signatory Shri Amarnath Thiyagarajan, aged about 45 years, Occ.: Service, R/o. Presently at Nagpur.

**-VERSUS-**

**RESPONDENTS :**

1. Collector of Buldhana (Revenue), Collectorate Office, Civil Lines, Buldana, Dist.Buldana.
2. Sub-Divisional Officer, Sindhkhedraja, Sub-Divisional Office Sindhkhedraja, Dist. Buldana.
3. Tahasildar, Deulgaoraja, Tahsildar Karyalaya, Tal. Deulgaoraja, Dist.Buldana.
4. Dilip Bikaji Dhete, R/oDeulgao Mahi, Deulgaoraja. Near Water Tank, Buldana, Dist.Buldana.
5. Maharashtra Electricity Regulatory Commission, Through its Secretary, 13<sup>th</sup> Floor, Center No.1, World Trade Center, Cuffe Parade, Culaba Mumbai-05.

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Mr.D.V.Chauhan, counsel for the petitioner.  
Mr.B. M. Lonare, AGP for the respondents-State.  
Mr.J.H.Kothari, counsel for the respondent No.4.  
None for the respondent No.5.  
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**CORAM : AVINASH G. GHAROTE, J.**

**DATE : 7<sup>TH</sup> DECEMBER, 2023**

### **ORAL JUDGMENT**

Rule. Rule made returnable forthwith.

2. Heard Mr.Chauhan, learned counsel for the petitioner, learned AGP for the respondent Nos.1 to 3 and Mr. Kothari, learned counsel for the respondent No.4 finally. None appears for the respondent No.5-MERC though served as per the endorsement in the farad-sheet dated 06/12/2023.

3. On 06/12/2023, the following position was recorded.

3.1 The petition questions order dated 05/09/2018 (pg.153) passed by the Sub-Divisional Officer, Sindkhedraja exercising powers under the GR dated 27/01/2017 (pg.193) whereby compensation for the use of the land of the respondent No.4 for the purpose of laying the electricity transmission line has been determined.

3.2. Mr.Chauhan, learned counsel for the petitioner, submits that the learned SDO did not have the jurisdiction to do so for the reason that the petitioner has been constituted as a Telegraph Authority as defined in section 2(6) of the Indian Telegraph Act, 1885 (hereinafter referred to as “Telegraph Act”) and therefore was alone empowered and authorized to determine the compensation for laying down the line in exercise of the power under section 10(d) of the Telegraph Act challenge to which could only be laid before the District Judge under section 16(3) of the Telegraph Act. He further contends that the public notice dated 14/10/2010 indicates that the petitioner has been appointed as a licensee under Licence No.1/2010 by the Maharashtra State Electricity Regulatory Commission (MERC) to establish and operate the transmission lines, substations, bays and equipment and related infrastructure for several transmission lines one of them being Akola-II Aurangabad 765 in which the field of the respondent No.4 falls (pg.29). He further invites my attention to the order dated 13/06/2011 (pg.41) by which in exercise of the powers conferred under section 164 of the Electricity Act 2003 and section 10 of the Telegraph Act, 1885, the petitioner/licensee has been conferred the powers of the Telegraph Authority as defined under the Telegraph Act and therefore, would be the Authority to determine the compensation for the laying of the electric line under section 10(d) of the Telegraph

Act. It is therefore, contended that since in exercise of the power under section 164 of the Electricity Act, the petitioner/licensee has been constituted as a Telegraph Authority, it is only the petitioner/licensee who would have the power, as flowing from section 10(d) of the Telegraph Act to determine the compensation and no other authority for the transmission line indicated above on account of which the impugned order passed by the SDO claiming to have jurisdiction in light of the GR dated 01/11/2010, or for that matter the GR dated 31/05/2017 (pg.193) would be without jurisdiction. It is contended that all other general circulars issued by the State cannot override the constitution of the petitioner/licensee as an appropriate Authority for the particular section where the transmission line has been directed to be erected. He further invites my attention in this context to the Maharashtra Electricity Work of Licensee Rules, 2012 (for short "MEWL Rules" hereinafter) in which by virtue of Rule 3(4) thereof 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 Electricity Act. In that view of the matter, it is submitted that since the SDO, Sindkhedraja was not conferred any jurisdiction or authority to act as a Telegraph Authority for the above stated stretch of the transmission line, any power which may have been conferred upon him by a

general circular, would not take away the authority of the petitioner/ licensee as available to it under section.10(d) of the Telegraph Act on account of which the impugned order is without jurisdiction.

3.3. Mr.Kothari, learned counsel for the respondent No.4, while supporting the impugned order, submits that the conferment of the power upon the petitioner as a Telegraph Authority by the order dated 13/06/2011 is subject to exceptions as contained in the GR dated 01/11/2010 (pg.182) and therefore, the SDO, under the said GR in conjunction with the powers conferred by the Maharashtra Electricity Work of Licensee Rules, 2012 and the subsequent GR dated 31/05/2017 (pg.193) was empowered to determine the compensation and therefore, the impugned order is liable to be sustained. He also relies upon the judgment of this Court in **Kishor Ravindra Zope v. State of Maharashtra**, reported in **2013 (1) Mh.L.J. 683**.

3.4. Learned AGP supports the order.

4. Today, Mr. Chauhan, learned counsel for the petitioner, invites my attention, to the definition of a 'distribution licensee' as contained in section 2(17); a 'transmission line' as contained in section 2 (72); and 'transmission licensee' as contained in section 2(73) of the Electricity Act, 2003. He also relies upon section 14 of the Electricity Act, 2003 to contend that a licence is permissible to be

granted for the purpose of either transmission, distribution or trading of electricity and in the instant case the licence for transmission was granted to the petitioner. He further contends that section 67(1)(a) to (f) contemplate the works which are permissible to be carried out for which compensation under section 67(3) is permissible to be given by the licensee and in case of any difference or dispute therein, the appropriate Commission is granted to the authority to determine such dispute under section 67(4). It is his contention that the provision of section 67(3) and (4) of the Electricity Act would only be attracted in respect of exercise of power under section 67(1)(a) to (f) and not otherwise. According to him, in the instant case, the petitioner has exercised the powers under section 10 of the Telegraph Act and therefore, the question of applicability of section 67(3) and (4) of the Electricity Act did not arise at all. Section 68(5) and (6) are also pointed out for the same purpose. Relying upon the language of section 69 of the Electricity Act, it is contended that section 69(1)(b) requires a notice in writing to be given to the Telegraph Authority which according to him would indicate that licensee exercising powers under section 67 of the Electricity Act is a different and distinct entity from a licensee exercising power as an appropriate authority under section 10 of the Telegraph Act. Further inviting attention to section 86 of the Electricity Act, it is contended that none of the functions

permissible to be exercised under section 86(1)(a) to (j) thereof indicate any right to the authority to determine compensation. Section 86(1)(k) according to him, is a residual power and only restricts and could only be related to right to determine compensation under section 67(4) which situation would arise only if the power is exercised by the licensee under section 67(1)(a) to (f) of the Electricity Act. It is therefore, contended that since section 164 of the Electricity Act specifically constitutes a licensee as an Appropriate Authority to exercise powers, which the Telegraph Authority possesses under the Telegraph Act, it would only be the District Judge under section 16(3) of the Telegraph Act, who would have jurisdiction to entertain a claim in case a dispute is raised on account of the efficacy of the quantum of compensation and therefore, the SDO would not have any jurisdiction at all to determine the compensation, considering which the impugned order cannot be sustained and would be required to be quashed and set aside. Reliance is placed by him upon **Prem pal v. State of U.P.** reported in (2011) SCC OnLine All 370, which according to him ,considers a similar situation as is extant in the present matter. He also relies upon **Power Grid Corporation of India Limited v. Century Textiles and Industries Ltd.** Reported in (2017) 5 SCC 143 (paras 18 to 27) in support of his contentions and so also on **Tapan Kumar Mondal v. Union of India** reported in (2023) SCC

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5. Mr. Kothari, learned counsel for the respondent No.4, by referring to section 16(3) of the Telegraph Act, contends that since it uses the expression “either of the disputing parties” that would support his contention that the Telegraph Authority under section 10(d) is conferred with the power only to pay the compensation and not to determine it and for determining the compensation, it is only the MERC under section 67(4) which would be entitled to do so in conjunction with the power conferred upon it by virtue of section 3(3) of the MEWL Rules. He also contends that since the order dated 19/12/2016 of the MERC (Pg.129) which directed the Collector to determine the compensation was not challenged, it has attained finality and therefore, it is only the Collector who would be entitled to determine the compensation and therefore the determination of compensation by the delegate of the Collector namely the SDO in this matter, would be correct and proper.

6. The petition thus needs to be determined in light of the above contentions. It is necessary to note that Mr.Kothari, learned counsel for the respondent No.4, does not dispute that the petitioner is a transmission licensee in terms of section 14 of the Electricity Act. This position is also spelt out from the public notice dated 14/10/2010 (pg.29), which indicates that the petitioner has been granted a



transmission license No.1/2010 by the MERC under section 14 of the Electricity Act to establish and operate amongst others a transmission line, sub-stations, bays and equipment and related infrastructure for the transmission line from Akola-II to Aurangabad 765 KV. The said public notice also in para-3 thereof discloses the intent of the licensor for the purpose of carrying out the work of transmission licensee, to apply to the Government of Maharashtra to confer upon it, all the powers under section 164 of the Electricity Act, 2003 for placing of electric lines or electric plant for the transmission of electricity and so also all the powers which a Telegraph Authority possesses under the Telegraph Act with respect to the placing of telegraph lines and post for the said purpose. It is also necessary to note that the public notice dated 14/10/2010 invites objections from one and all as is indicated from the penultimate paragraph of the same at page 32.

7. By an order dated 13/06/2011, the State of Maharashtra in exercise of the powers under section 164 of the Electricity Act, 2003 and section 10 of the Telegraph Act conferred powers of a 'Telegraph Authority' upon the petitioner in respect of the various transmission lines, including the one indicated above. Thus, the constitution of the petitioner as a 'Telegraph Authority' under the Telegraph Act by virtue of the aforesaid order dated 13/06/2011, would be an undisputed position. That being so, by virtue of the petitioner being constituted

as a Telegraph Authority, it became entitled to exercise all the powers of Telegraph Authority under section 10 of the Telegraph Act, including the power under section 10(d) to pay compensation to all persons interested for any damage sustained by them by reason of exercise of those powers. The contention of Mr.Kothari, learned counsel for the respondent No.4 that section 10(d) of the Telegraph Act only contemplates a power to pay and not to determine the compensation and the compensation has to be determined by the District Collector, in my considered opinion is misconceived for the reason that the power to pay compensation as indicated by section 10(d) of the Telegraph Act would include the power to determine compensation also, for the reason that without determination of such compensation, there cannot be any payment. Had it been a position that the District Collector would be the authority to determine the compensation, which could only be done under section 67(3) of the Electricity Act, section 10(d) of the Telegraph Act, would have contained such a provision. However there is total absence of such a provision therein, in view of which the contention in that regard cannot be sustained. So also in view of the petitioner, having been constituted as a 'Telegraph Authority' under the Telegraph Act, for the purpose of laying down the transmission lines, the applicability of section 67 of the Electricity Act, 2003, also stands ruled out.

8. The further contention of Mr.Kothari, learned counsel for the respondent No.4 that the construction and operation of the transmission line is subject to the provisions of the Government Resolution No.MISC-0210/CR-29/NRG-4 dated 01/11/2010 (pg.182) would only mean that while determining the compensation, the appropriate authority/transmission licensee would have to take into consideration the factors indicated therein and not otherwise.

9. Though much reliance has been placed upon the MEWL Rules, 2012 to contend that it is the District Collector or the officer authorized by him who has the power to determine the compensation, it is however necessary to note that Rule 3(4) of the MEWL Rules, 2012 preserves the rights and powers conferred upon the licensee under section 164 of the Electricity Act, which would indicate that the powers of the Telegraph Authority as conferred upon the licensee which would include powers under section 10(d) of the Telegraph Act stand preserved, in which view of the matter, it would be permissible for the petitioner as of transmission licensee in its capacity as a Telegraph Authority to determine and pay the compensation as determined by it, meaning thereby that any challenge thereto, could only be raised by the person dissatisfied with the same, before the District Judge under section 16(3) of the Telegraph Act and no other authority would have any jurisdiction to do so. It is also necessary to

note that the jurisdiction conferred upon the licensee by virtue of section 164 of the Electricity Act by conferring the powers of the Telegraph Authority upon it and consequently by section 10(d) of the Telegraph Act is statutory in nature and therefore would prevail upon any jurisdiction created in any other authority, be it the District Magistrate or the Collector by way of any Rules, as it cannot be disputed that the Rules are always subservient to a Statutory provision. It is a settled position of law as held in **Secretary A.P.D. Jain Pathshala and others v. Shivaji Bhagwat More and others** reported in **(2011) 13 SCC 99** (para-23 and 24) that apart from constitutional provisions, tribunals with adjudicatory powers can be created only by statutes and cannot depend upon the discretion of the executive but should be governed and regulated by appropriate law enacted by a legislature. Even otherwise, as indicated above, it would be apparent that while framing the MEWL Rules, 2012, the State was aware of the provisions of section 164 of the Electricity Act, 2003 and therefore had made an according provision in sub-rule (4) of Rule 3 thereof to save and preserve the powers of Telegraph Authority to be conferred upon the licensee by virtue of section 164 of the Electricity Act, inviolate. This would clearly indicate that once the licensee as appointed under section 14 of the Electricity Act is constituted as a Telegraph Authority by virtue of the exercise of powers under section 164 of the Electricity

Act, 2003, the erection and maintenance of the transmission line will be governed by the provisions of the Telegraph Act and not by the Electricity Act, 2003. In view of this position, in case a person is dissatisfied with the compensation awarded to him by the licensee acting as a Telegraph Authority, the same can only be questioned by approaching the District Judge under section 16 (3) of the Telegraphic Act and not otherwise.

10. A similar position, fell for consideration before the learned Division Bench of the Allahabad High Court in ***Prem Pal*** (supra) wherein after considering the provisions of the Electricity Act 2003, the Telegraphic Act, the Works of Licensees Rules, 2006, which are not disputed to the *pari materia* with the MEWL Rules, 2012, it was held that it would be the Telegraph Authority under Section 10(d) of the Telegraphic Act which would be entitled to determine the compensation and a person aggrieved by such determination could move the District Judge under section 16(3) of the Telegraph Act. In ***Power Grid Corporation of India Limited*** (supra) while considering the empowerment of the District Magistrate for determining the compensation under Rule 3(2) of the Works of Licensee Rules, 2006, sub-rule (4) of Rule 3 which is identically worded with sub-rule (4) of Rule 3 of the MEWL Rules, 2012 was considered and it was held that once the powers of the Telegraph Authority were conferred upon the

licensee any Rules framed in light of the language of sub-rule (4) of Rule 3 would cease to apply. This would clearly indicate, considering the language of sub-rule (4) of Rule 3 of the MEWL Rules that the said Rules would not be applicable to a transmission licensee who has been conferred with the powers of the Telegraph Authority under section 164 of the Electricity Act, 2003.

11. ***Kishor Ravindra Zope*** (supra) relied upon by Mr. Kothari, counsel for respondent No.4 was a case in which the transmission company was conferred the powers of a Telegraph Authority under section 164 of the Electricity Act and though it has been held that MERC would also be a forum, it has also been held that the invocation of the jurisdiction of the District Judge under section 16 (3) of the Telegraph Act was correct and proper and could not be faulted with. It is however, also necessary to note that the saving of the powers of the transmission licensee as that of a Telegraph Authority by virtue of sub-rule (4) of Rule 3 of the Works of Licensees Rules, 2006 or for that matter the MEWL Rules, 2012 do not appear to have been considered by the Court which decided **Kishor Ravindra Zope** (supra), considering which, in view of what has been held by the Hon'ble Apex Court in **Power Grid Corporation of India Limited** (supra), it would be the District Judge alone, who would have power to decide a dispute as to adequacy of compensation under section 16 (3) of the Telegraph

Act, once the compensation has been determined by the Telegraph Authority in exercise of the powers under section 10(d) of the Telegraph Act and, if a party is aggrieved by the same.

12. That takes me to the contention of Mr.Kothari, learned counsel for the respondent No.4 that since there was no challenge to the order of the MERC dated 19/12/2016, the exercise of jurisdiction by the SDO by virtue of the impugned order cannot be faulted with. In my considered opinion, this contention is only required to be mentioned to be rejected for the reason that exercise of jurisdiction, would always be relatable to the statutory provision. In light of what has been held above, since it was only the District Judge under section 16(3) of the Telegraph Act who had jurisdiction to decide any dispute vis-a-vis the compensation determined and paid by the Telegraph Authority in exercise of its powers under section 10(d) of the Telegraph Act, any order passed by the MERC would clearly be *non est* and would not benefit the respondent No.4 as such an order, cannot be held to be something which would create jurisdiction in the SDO or the Collector which the Statute did not confer upon him.

13. In that light of the matter, the impugned order dated 05/09/2018 passed by the learned SDO (pg.153) will have to be quashed and set aside as being without jurisdiction and is accordingly be so done. In view of this, the proceeding bearing MERC/Case

No.359 of 2018/0757 filed by the respondent No.4 before the MERC will also have to be held to be one without jurisdiction. The petition is accordingly allowed in the above terms.

14. Needless to mention that in case the respondent No.4 chooses to approach the District Judge by invoking the provisions under section 16(3) of the Telegraph Act any application filed for that purpose shall be decided by him on its own merits taking into consideration all contentions which may be raised therein by the rival parties. In the circumstance, there shall be no order as to costs.

15. At this stage, Mr.Kothari, learned counsel for the respondent No.4, seeks stay to the present judgment in order to approach the Hon'ble Apex Court. The request is declined for the reason that the order of the SDO has been held to be without jurisdiction.

**JUDGE**