



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

O.P.No. 51 of 2017
Date: 30-06-2018

Present
Justice G. Bhavani Prasad, Chairman
Dr. P. Raghu, Member
Sri P. Rama Mohan, Member

Between:

Ch. Chandra Mouli & another

... Petitioners

A N D

Mr. Vijayanand & 5 others

... Respondents

This Original Petition has come up for hearing finally on 08-06-2018 in the presence of Sri P. Chengal Reddy, learned counsel for the petitioners and Sri P. Shiva Rao, learned Standing Counsel for the utilities. After carefully considering the material available on record and after hearing the arguments of the learned counsel for both parties, the Commission passed the following:

ORDER

A petition to direct the Collector & District Magistrate, Krishna District, the 4th respondent herein to fix the compensation for loss of crop, loss of land value with interest from 03-02-2009, the date of construction of towers and lines as part of Nunna to Srisailam, VTPS / Lilo, 400 KV Double Circuit High Tension towers and lines, over Ac.0.31 cents of the land of the petitioners in S.No.41/1 of Guntupalli, Krishna District, to award monthly remuneration to both the petitioners from 13-03-2009 towards loss of livelihood, to conduct an inquiry into suppression of the Andhra Pradesh Works of Licensees Rules, 2007 by the respondents 5 & 6 fixing personal responsibility on them for damages and other consequences and other appropriate reliefs.

2. The petitioners' case is that the 1st petitioner is the owner of Ac.0.31 cents in S.No.41/1 of Guntupalli Village, Krishna District and he and his son, the 2nd petitioner

herein are cultivating the land. Transmission Corporation of Andhra Pradesh Limited represented by respondents 1 to 3 proposed to construct Nunna to Srisailam, VTPS / Lilo, 400 KV Double Circuit High Tension towers and lines including over the land of the petitioners without any notice to them. Due to the likely damage to the crops and land, the petitioners submitted representations to the respondents for compensation. As there was no response and as the lines / towers may be illegally constructed, the 2nd petitioner and other land owners of the village filed W.P.No.29161 of 2008 before the Hon'ble High Court of Andhra Pradesh which granted an interim direction against the Transmission Corporation of Andhra Pradesh Limited represented by respondents 1 to 3 therein and the District Collector, Krishna in W.P.M.P.No.38100 of 2008 on 31-12-2008 not to erect poles for laying the lines through the property of the petitioners located at Rayanpadu and Guntupalli, without following the due process of law. By the time of the interim orders of the Hon'ble High Court, the Andhra Pradesh Works of Licensees Rules, 2007 were in force, but the officials of the AP Transco forcibly entered into the land of the petitioners to construct towers and lines on 13-02-2009, without any prior permission or consent from the petitioners or the Collector and without payment of any compensation. The 2nd petitioner objected to the same, on which the Assistant Executive Engineer (AEE) gave a report to the police in Crime No.47 of 2009 of Ibrahimpatnam Police Station alleging obstruction to performance of official duty and stopping the work. The 2nd petitioner was arrested and was in custody for 7 days and had to attend 18 hearings for the criminal case before the IV Addl. Chief Metropolitan Magistrate, Vijayawada in 2009 and 2010. On his Criminal Petition No.2808 of 2010 before the Hon'ble High Court of Andhra Pradesh, the proceedings in CC No.1485 of 2009 were quashed and the 2nd petitioner was acquitted on 31-08-2017. The AP Transco completed the work in

the meanwhile in the land of the petitioners within 10 days by about 24-02-2009. The petitioners suffered mental agony, loss of status and financial loss entitling them to damages and their representations for compensation since 2009 were in vain. The AP Transco apart from not following the Rules, did not make them available even to the District Collectors and suppression of Rules for 9 years is actionable under Section 19 (1) of the Electricity Act, 2003. The proceedings issued by various Collectors were not based on the statutory Rules and thousands of illiterate farmers could not claim compensation due to ignorance of the Rules. Respondents 5 and 6 were the Managing Director and Chief Engineer of AP Transco then and the petition is filed to enforce the personal liability of respondents 5 and 6 also. The respondents are liable to compensate under the statutory Rules apart from taking action regarding the suppression of the Rules.

3. The respondents 1 to 3 filed a counter, while respondents 4 to 6 did not file any separate counter. Respondents 1 to 3 submitted that the Vijayawada Power Transmission Scheme was proposed to reduce EHT losses, improve voltage profiles and meet additional load demand in Nalgonda and Ranga Reddy Districts through the double circuit lines of 400 KV. After the Gazette Notification No.211 dated 17-07-2007, any person interested or aggrieved may make a representation to the Chief Engineer / Construction within 2 months and the AP Transco after making an inquiry, if necessary, will take up the works. The same was published in daily newspapers and the petitioners never represented or raised any objection within the prescribed period. There was no alternate route except the work taken up by dismantling the existing line, after filing a caveat before the Hon'ble High Court on 08-01-2009 and the earlier line was existing since 29-09-1982, the corridor of the dismantled line covering even the land of the petitioners. The work was carried out

in accordance with the interim directions of the Hon'ble High Court, complying with the Electricity Act, 2003 and the Indian Telegraph Act, 1885. The petitioners filed Contempt Case No.807 of 2009 but W.P.M.P.No.38100 of 2008 was disposed of on 27-07-2010, as no further relief can be granted to the petitioners, due to laying of the electrical line already, without prejudice to the Contempt Case. Ultimately W.P.No.29161 of 2008 was dismissed for default on 18-12-2015 along with the miscellaneous petitions. The marking for construction was taken up on 29-12-2008, after serving a notice to all the concerned farmers through registered post and with a notice affixed at Panchayat Office. Later, the officials convened a meeting with the farmers over which the Sub-Collector presided, where the farmers agreed for laying of the line. Still W.P.No.29161 of 2008 was filed by 18 petitioners. The petitioners did not object to the foundation of Tower No.7 in their land in the vacated corridor of dismantled 220 KV line from 22-02-2009 to 07-03-2009. There was no standing crop at that time and hence any tree / crop compensation did not arise. The 2nd petitioner obstructed the Assistant Executive Engineer at the land of Alapati Chinna Sheshaiah at Tower No.11 and a police report was given. Rule 3 of the Andhra Pradesh Works of Licensees Rules, 2007 does not arise in respect of this work, which came up only in the previous 220 KV line corridor in service since 29-09-1982. Payment of compensation with retrospective effect cannot be considered and when the line was commissioned in 2009, there were no guidelines from Central or State Governments for payment of compensation towards diminution of the land value for tower area / right of way area under the line. The 2nd petitioner is habituated to obstructing the transmission works to delay them. Hence, respondents 1 to 3 desired to dismiss the petition with costs.

4. On the above pleadings, the points that arise for consideration and determination are,-----

- (1) Whether the petition is barred by time?;
- (2) Whether the petitioners are entitled to have any compensation determined by the District Collector?;
- (3) Whether the petitioners are entitled to any remuneration for their livelihood?;
- (4) Whether the AP Transco or its officers should be made liable for any consequences for suppression of the Andhra Pradesh Works of Licensees Rules, 2007?;
- (5) To what relief?

Point No.1: The scheme for laying 2 Nos. Double Circuit lines for Loop-in and Loop-out of Nunna – Srisailam / Narasaraopeta 400 KV Double Circuit lines to VTPS (Stage-IV) was claimed to have been notified in Andhra Pradesh Gazette on 17-07-2007 proposed for completion in 2009-10. Representations from interested / aggrieved persons were called for, to be made within 2 months and the same was also published in daily newspapers, Hindu and Vaartha dated 29-05-2007 and 30-05-2007 respectively. It was claimed that no objections were received within the prescribed period including from the petitioners and that there was no alternate route. The respondents described in detail in their counter, the commencement and the progress of the work including over the land of the petitioners, which was already in the corridor of the dismantled 220 KV line in existence since 29-09-1982. The 400 KV Multi Circuit Lilo into VTPS (Stage-IV) was claimed to have been executed in accordance with the interim directions of the Hon'ble High Court dated 31-12-2008 in

W.P.M.P.No.38100 of 2008 in W.P.No.29161 of 2008, duly complying with the rules of the Electricity Act, 2003 and the Indian Telegraph Act, 1885. The respondents claimed that the Writ Petition was disposed on 18-12-2015 for default and the foundation in the agricultural land of the petitioners for the 400 KV Tower No.7 in the vacated corridor of dismantled 220 KV line was laid from 22-02-2009 to 07-03-2009. The First Information Report in Crime No.47 of 2009 of Ibrahimpatnam Police Station filed by the respondents shows that the subject work was claimed to have been in progress as on 13-02-2009. The subject 400 KV line was thus claimed to have been commissioned in 2009 itself as per the counter of the respondents 1 to 3. This petition was filed on 03-11-2017.

While the interim directions given by the Hon'ble High Court in W.P.M.P.No.38100 of 2008 in W.P.No.29161 of 2008 not to erect poles for laying 2 Nos. 400 KV Double Circuit lines through the property of the petitioners (including the 2 petitioners herein), situated at Rayanpadu Village, Vijayawada Rural Mandal and Guntupalli Village of Ibrahimpatnam Mandal, Krishna District, without following due process of law, were in force from 31-12-2008 till the disposal of W.P.No.29161 of 2008 on 18-12-2015, the claim of the petitioners is that due process of law was not followed in laying of the subject electric lines. Crime No.47 of 2009 registered against the 2nd petitioner herein leading to C.C.No.1485 of 2009 on the file of the IV Addl. Chief Metropolitan Magistrate, Vijayawada, came to be quashed by the Hon'ble High Court only on 31-08-2017 in Criminal Petition No.2808 of 2010. The Hon'ble High Court referred to the interim order in W.P.M.P.No.38100 of 2008 in W.P.No.29161 of 2008 and observed the registration of the crime on 13-02-2009 to be more than 42 days after the interim order of the Hon'ble High Court. The Hon'ble High Court upheld the right of private defence of the 2nd petitioner and others in

obstructing the laying of the electric lines as they had an order of the Hon'ble High Court and consequently held the continuation of the criminal proceedings to be an abuse of process. The order of the Hon'ble High Court in the Criminal Petition obviously had become final and hence any work done after the interim directions of the Hon'ble High Court on 31-12-2008 cannot be considered to be duly following due process of law and the pendency of the Writ Petition with the interim orders continuing to be in force till 18-12-2015 and the quashing of the criminal proceedings only on 31-08-2017 may enable the petitioners to seek their remedies in respect of laying of the lines under the Electricity Act, 2003 or Regulations made there under with any period of limitation being counted only from those dates.

What should be the principle governing a proceeding under the Electricity Act, 2003 before a State Electricity Regulatory Commission in respect of limitation has been laid by the Hon'ble Supreme Court in A.P. Power Coordination Committee and others Vs Lanco Kondapalli Power Ltd. and others **AIR 2016 SC 1925**. The Hon'ble Supreme Court observed that in their considered view, a statutory authority like the Commission is also required to determine or decide a claim or dispute either by itself or by referring it to arbitration only in accordance with law and thus Sections 174 and 175 of the Electricity Act assume relevance. Section 174 of the Electricity Act, 2003 gives the Act an overriding effect to the extent provided in Section 173 but otherwise it was stated in Section 175 that the provisions of the Electricity Act are in addition to and not in derogation of any other law for the time being in force.

In this background, the Hon'ble Supreme Court laid down that,---

“Since no separate limitation has been prescribed for exercise of power Under Section 86 (1) (f) nor this adjudicatory power of the Commission has been

enlarged to entertain even the time barred claims, there is no conflict between the provisions of the Electricity Act and Limitation Act to attract the provisions of Section 174 of the Electricity Act. In such a situation on account of provisions in Section 175 of the Electricity Act or even otherwise the power of adjudication and determination or even the power of deciding whether a case requires reference to arbitration must be exercised in a fair manner and in accordance with law. In the absence of any provision in the Electricity Act creating a new right upon a claimant to claim even monies barred by law of limitation, or taking away a right of the other side to take a lawful defence of limitation, we are persuaded to hold that in the light of nature of judicial power conferred on the Commission, claims coming for adjudication before it cannot be entertained or allowed if it is found legally not recoverable in a regular suit or any other regular proceeding such as arbitration, on account of law of limitation. We have taken this view not only because it appears to be more just but also because unlike Labour laws and Industrial Disputes Act, the Electricity Act has no peculiar philosophy or inherent underlying reasons requiring adherence to a contrary view.”

In the light of the principle laid down by the Hon'ble Supreme Court that the Electricity Act, 2003 and the Limitation Act, 1963 are not conflicting but complementing to each other, the principles under the provisions of the Limitation Act, 1963 should enlighten the process of adjudication under the Electricity Act, 2003. Section 5 of the Limitation Act, 1963 enables extension of the prescribed period for making an application, if the applicant specifies that there was sufficient cause for not making application within the prescribed period. Section 14 of the Limitation Act, 1963 excludes the time of proceeding *bona fide* in a court without

jurisdiction. Under Section 15 (1) of the Limitation Act, 1963, the period for which a stay or injunction are in force is excluded. The 2nd petitioner and others had approached the Hon'ble High Court admittedly before the execution of the work in question through the land of the petitioners and the interim directions of the Hon'ble High Court in W.P.M.P.No.38100 of 2008 in W.P.No.29161 of 2008 were in force since then, till 18-12-2015 prohibiting any erection of poles without following due process of law. Similarly, criminal proceedings were pending against the 2nd petitioner from 13-02-2009 till 31-08-2017, the date of quashing by the Hon'ble High Court. The petitioners not pursuing their remedies under the Andhra Pradesh Works of Licensees Rules, 2007 in the meanwhile may be open to be reasonably construed as entitling the petitioners to exclusion of time under Section 14 or Section 15 (1) or for claiming extension of the prescribed period to that extent in view of the sufficient cause for not making an application within the prescribed period.

A Suit for compensation in respect of immovable property could have been brought within 3 years from the date when the right to sue first accrues either under Article 55 treating it as creation of an implied contractual liability from the date of completion of the works or under Article 58 treating it as seeking a declaration of right to compensation or under Article 87 treating it as trespass upon an immovable property or under Article 113 treating it as a residuary right. As the proceeding before the Commission is considered as an application, the same also may be open to be brought under Article 137 as an application without any prescribed period of limitation elsewhere, which can be filed within 3 years when the right to apply accrues. If the period of pendency of the interim directions in the Writ Petition were to be excluded or if the period of pendency of the criminal proceedings were to be excluded from computation and if the work was commenced and completed after the

interim directions of the Hon'ble High Court were granted and in force, the present petition filed on 03-11-2017 was within 3 years from either the disposal of the Writ Petition on 18-12-2015 or quashing of the criminal proceedings on 31-08-2017. If Section 5 of the Limitation Act, 1963 or the principle thereof is considered applicable, the said period can be treated as covered by a sufficient cause to extend the prescribed period of limitation. The Hon'ble Supreme Court in the case of A.P. Power Coordination Committee cited above of-course held that by itself the Limitation Act will not be applicable to the Commission under the Electricity Act, 2003, as the Commission is not a Court stricto sensu and that the Commission being a statutory tribunal, cannot act beyond the four walls of the Electricity Act but took a view that a claim coming before the Commission cannot be entertained or allowed, if it is barred by limitation prescribed for ordinary Suit before a Civil Court but in an appropriate case, a specified period may be excluded on account of the principle underlying statutory provisions like Section 5 or Section 14 of the Limitation Act. The Hon'ble Supreme Court in fact found no difficulty in appreciating the right of the applicant therein to seek exclusion of the period it was pursuing arbitration proceedings before the Hon'ble High Court on the basis of the principles underlying Section 14 of the Limitation Act. The principle laid down by the Hon'ble Supreme Court is squarely and justifiably applicable to the facts of the present case and so either by excluding the period under Section 14 or extending period under Section 5, the present petition can be reasonably brought within the ambit of maintainability, without being hit by the bar of limitation. Therefore, on facts and law, the petition has to be concluded to be not barred by time.

Point No.2: The petitioners claimed that 1st petitioner is the owner of S.No.41/1 of Guntupalli Village, Ibrahimpatnam Mandal, Krishna District of an extent of Ac.0.31

cents, which both the petitioners are cultivating. The subject work of AP Transco was admitted even by the respondents to be passing through the land of the petitioners claiming the land of the petitioners to be already in the corridor of a dismantled 220 KV line from 29-09-1982 and to be the place for 400 KV Tower No.7 for which the foundation was laid in the vacated corridor of dismantled 220 KV line. The petitioners claimed that they had no notice of the proposed work, that they resisted it by W.P.No.29161 of 2008 and through physical objection by the 2nd petitioner, resulting in C.C.No.1485 of 2009, which was quashed by the Hon'ble High Court and that they represented seeking compensation after the works were completed in 2009. The petitioners having failed to get any response, filed this petition primarily to obtain compensation in accordance with law to the extent their property was affected by the work of the licensee. The counter of the respondents 1 to 3 states that as there was no standing crop when the work was laid, no tree / crop compensation need be paid and as there was no standing crop or tree or a building or a structure in the land of the petitioners, there was no damage to be compensated. Respondents 1 to 3 also claimed that there were no guidelines from the Central or State Governments in 2008 and 2009, the relevant years for payment of compensation towards the diminution value of the land under tower area or the land under right of way area. They were also positive that no compensation was ever attempted to be arrived at or paid.

The Electricity Act, 2003 in Section 164 provided for the appropriate Governments conferring upon any licensee the power of a telegraph authority under the Indian Telegraph Act, 1885 with respect to the placing of electric lines or electric plants for the transmission of electricity. Under G.O.Ms.No.115 Energy (PR.III) Department, dated 07-10-2003, the Government of Andhra Pradesh conferred the

powers of a telegraph authority on the AP Transco under this provision. It is settled by the judicial precedent that the AP Transco can proceed, without acquiring the land and without obtaining the consent of the land owner / occupier when an order under Section 164 of the Electricity Act, 2003 was made, the provisions being read with Section 10 of the Indian Telegraph Act, 1885. However, the land owner / occupier was held to be at liberty to claim compensation by seeking remedy as available under law in case any damage caused to the property by the laying of electric lines or electric poles.

Even the Indian Telegraph Act, 1885 which provided the power to place telegraph lines and poles to a telegraph authority provided in Section 10 (d) that the telegraph authority shall do as little damage as possible in exercise of such power and in respect of exercise of such powers in respect of any property other than that of the local authority, the telegraph authority shall pay full compensation to all persons interested for any damage sustained by them by reason of exercise of those powers. Section 16 of the Act of 1885 provided any disputes on the sufficiency of compensation to be paid under Section 10 (d) to be determined by a District Judge which determination shall be final. Thus, even if Section 67 (1) and (2) of the Electricity Act, 2003 and the Works of Licensees Rules made by the Central and State Governments there under do not stand in the way of the AP Transco exercising of powers of a telegraph authority under Section 164 proceeding to place electric lines or electric poles without any land acquisition or without the consent of the land owner / occupier, AP Transco is obliged even under the Indian Telegraph Act, 1885 to compensate. The AP Transco is legally obliged under Section 10 (d) read with Section 16 to pay full compensation to the persons interested in the property for damage sustained by reason of the works of the AP Transco.

Section 67 of the Electricity Act, 2003 incorporating the statutory scheme relating to the works of licensee clearly lays down in sub-section (2) (e) that the appropriate Government may specify by rules made in this behalf, the determination and payment of compensation or rent to the persons affected by works of the licensees. The Works of Licensees Rules, 2006 made by the Central Government and the Andhra Pradesh Works of Licensees Rules, 2007 made by the Government of Andhra Pradesh were rules so made under Section 67 (2) governing all the aspects referred to in Section 67 (2). Section 67 (3) of the Electricity Act, 2003 mandates that in exercise of any of the powers under Section 67 and the rules made there under, a licensee shall 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 anyone employed by him and Section 67 (4) itself confers jurisdiction on the appropriate Commission to determine any difference or dispute including about the amount of compensation arising under this Section.

The Works of Licensees Rules made by the Central and State Governments are identical in every detail and Rule 3 thereof provides for prior consent of the owner / occupier and in case of any objection from him, a permission in writing from the officer authorised by the State Government in this behalf. Rule 3 (4) provides for the authorised officer fixing the compensation or annual rent or both payable by the licensee to the owner / occupier, after considering the representations of the concerned persons. Such order is revisable before the Commission according to Rule 3 (5) and the powers conferred under Section 164 remain unaffected in view of Rule 3 (6) i.e., to the extent of proceeding with the work without waiting for any consent or determining the compensation. Rule 13 provided for the licensee making full compensation for any loss or damage incurred by default in complying with the

rules to the person affected as may be determined by the authorized officer, which again is subject to the determination of any difference or dispute as to the amount of compensation by the Commission. Rule 15 fixed the time limit of 30 days for the Commission to determine all disputes and differences under the rules. As such, under Sections 10 and 16 of the Indian Telegraph Act, 1885 or under Section 67 of the Electricity Act, 2003 read with Andhra Pradesh Works of Licensees Rules, 2007, the owner / occupier of a land or a building is entitled to full compensation from the licensee for any loss or damage or detriment or inconvenience caused or incurred by reason of the work of the licensee. In fact, in addition to the Andhra Pradesh Works of Licensees Rules, 2007, the Government of Andhra Pradesh while appointing the District Collectors as the authorized officers under the Rules, under G.O.Ms.No.6, Energy, Infrastructure & Investment (Power.III) Department, dated 06-03-2017 had mandated that any works of licensees in the State of Andhra Pradesh shall have to be taken up and executed in strict compliance with the Andhra Pradesh Works of Licensees Rules, 2007. In fact, the Government of Andhra Pradesh has also provided by G.O.Rt.No.83, Energy, Infrastructure & Investment (PR.II.A2) Department, dated 20-06-2017 specifically for the guidelines for determining the compensation towards damages stipulated in Sections 67 and 68 of the Electricity Act, 2003 read with Sections 10 and 16 of the Indian Telegraph Act, 1885, which will be in addition to the compensation towards normal crop / tree damages. The guidelines clearly provided for 100% compensation of land value for tower base area, maximum of 10% land value as compensation towards diminution of land value in the width of right of way corridor etc.

Article 300-A of the Constitution of India made the right to property sacrosanct and laid down that no person shall be deprived of his property save by authority of

law and though right to property is not a fundamental right, nonetheless it remains a Constitutional right and any ex-proprietary measure must be construed very strictly. In this background, respondents 1 to 3 cannot be heard to say that the petitioners have agreed for laying of the line, have not filed any objections within the prescribed period from the Gazette and paper notifications, have no trees or crops on the land to be compensated, had the new line laid in the vacated corridor of a dismantled 220 KV line, have no buildings or structures in the land affected and therefore not entitled to compensation. While the claim of the respondents 1 to 3 that there were no guidelines from the Central or State Governments at that time on payment of compensation is ex-facie untrue and untenable in the face of Section 67 of the Electricity Act, 2003 and the Works of Licensees Rules, 2006 and 2007. The petitioners are undoubtedly entitled to compensation for whatever damage or detriment or inconvenience or loss was caused due to the subject work of the licensee in their land, even if it was in the same area in which a dismantled line existed earlier. Hence, the petitioners shall be held entitled to have compensation as per the statute and the statutory rules determined by the District Collector, Krishna District.

Point No.3: The petitioners, in addition to the compensation in respect of the land, also claimed that due to loss of their livelihood during the period, due to the works of the licensees from 13-03-2009 up-to-date, they are entitled to a monthly remuneration. Such a request also may broadly fall within Rule 13 of the Andhra Pradesh Works of Licensees Rules, 2007 as the claim of the petitioners about the loss of their livelihood was due to non-determination and non-payment of compensation for the loss of the value of the land and crop with interest and the same arising due to the licensee not complying with the provisions of the Rules

relating to payment of compensation, more particularly, Section 67 (2) (e) read with Rule 3 (4) and therefore this is also a matter to be decided by the authorized officer, subject to any difference or dispute on such determination coming up before the Commission. While the petitioners are undoubtedly to be compensated in respect of their land, whether they are entitled to any remuneration as they claimed is to be determined on merits in accordance with law after an inquiry by the authorised officer and cannot be pre-determined in this inquiry. Therefore, the claim of the petitioners to any remuneration for their livelihood has to be determined by the authorized officer under Rule 13 of the Rules along with determination of compensation in respect of the land.

Point No.4: The Andhra Pradesh Works of Licensees Rules, 2007 are in effect and substance a replica in verbatim of Works of Licensees Rules, 2006 of Government of India, both the Rules having been made under Section 67 (2) (e) of the Electricity Act, 2003. The Works of Licensees Rules, 2006 were issued by the Ministry of Power, Government of India and were published in the Gazette of India, Extraordinary, Part II dated 18-04-2006 since when they came into force. The Andhra Pradesh Works of Licensees Rules, 2007 were issued by the Energy Department, Government of Andhra Pradesh and published in the Andhra Pradesh Gazette Rules Supplement to Part I, Extraordinary dated 04-04-2007 since when they came into force, as stated in the Rules themselves or even as per the Central or State General Clauses Acts. Judicial precedents have laid down that once there was publication in the official gazette, any plea of lack of awareness is untenable and the enactment of the Rules is presumed to be within the knowledge of the affected persons.

The petitioners alleged herein that even the District Collectors were not made available the Rules and there was deliberate suppression of Rules for 9 years. They claimed that the Rules were not communicated to the land owners and neither the Collectors issued the proceedings under the Rules nor the farmers were granted compensation as per the Rules. They also alleged personal responsibility and liability for respondents 1, 5 and 6 who are sued by name. The claims of the petitioners against these respondents personally were firstly not substantiated by any evidence, oral or documentary and secondly the petitioners did not place any provision or principle before the Commission which makes it a legal or factual duty or obligation of the respondents 1, 5 and 6 personally or in their official capacity to publicise the Andhra Pradesh Works of Licensees Rules, 2007 or communicate or serve copies of the same on all the District Collectors or the authorized officers or the officers of the licensees or the members of the general public. As already stated, publication in the official gazette of the statutory rules raises a legal presumption of sufficient notice to everybody concerned of promulgation and subsistence of such statutory rules. Hence, *ex-facie*, there appears no *prima facie* material to fix up any personal responsibility on respondents 1, 5 and 6 in respect of 2007 Rules or to treat them as proved to have suppressed the said Rules of 2007 with the suppression resulting in damage to the petitioners and others. Therefore, either the AP Transco or its officers cannot be considered to have been proved to have suppressed the 2007 Rules and cannot be made liable for any consequences thereon.

That apart, this is a petition filed under Rule 13 of 2007 Rules and Section 19 of the Electricity Act, 2003. Section 19 relating to revocation of license presupposes making of an inquiry by the Commission and a separate procedure has been prescribed by the provision in respect of such inquiry or the result thereof, like 3

months notice in writing to the licensee under sub-section (3) and the like. Such an inquiry does not appear to be covered by the provisions under which the present petition has been filed and the inquiry under Rule 13 is to be done by the authorized officer in the 1st instance and not by the Commission directly. Even the authorized officer does it only about the consequences of the default in complying with the rules but not the consequences of suppressing the rules or not knowing the rules. As such ex-facie the matter does not appear to be covered by the Section or Rule quoted by the petitioners. At any rate while the Commission did not conduct any inquiry as per Section 19 and the inquiry under Rule 13 is purely about the difference or dispute as to the amount of compensation but not any action against any person for any default or suppression. Even in that view, the request for any action against respondents 1, 5 and 6 does not appear to be within the jurisdiction of this Commission, more so, in this inquiry.

Point No.5: Respondents 1 to 3 in their counter spoke about the compensation with retrospective effect which becomes a precedent for thousands of kilometers length of lines consisting of lakhs of towers erected earlier. Any apprehensions about any claims for compensation arising in respect of past works or their volumes or value cannot deprive the petitioners of their legal rights, if they have any, under any statute and statutory rules. The 2nd petitioner was alleged to be in the habit of obstructing the works of transmission line works and provoking the land owners, but determination of his civil rights does not depend upon his character or past behaviour.

The written submissions of the petitioners filed on 24-02-2018 raised further questions of fact which are not part of the pleadings of the parties and in any view, they have no impact on the determination of the questions in controversy between

the parties as per their pleadings. Similar are some documents accompanying the said written submissions. The petition has to be therefore ordered in tune with the conclusions arrived at on Point Nos.1 to 4 and in the peculiar circumstances of the case, the parties shall be directed to bear their own costs in this Original Petition.

It should also be made clear that the request of the petitioners for any action against any of the respondents or any other officers of the AP Transco in respect of the criminal proceedings against the 2nd petitioner cannot be the subject of the present inquiry under the Works of Licensees Rules and in any view, it may be noted that a public servant as defined in Section 21 of the Indian Penal Code, 1860 covers every person who is in the service or pay of a Government company, contrary to the contentions of the petitioners that officers of the AP Transco are not public servants.

5. Therefore,----

(a) The District Collector, Krishna District being the authorized officer under G.O.Ms.No.6, Energy, Infrastructure & Investment (Power.III) Department, dated 06-03-2017 shall fix, after considering the representations of the concerned persons, if any, the amount of compensation or of an annual rent or of both, which should in his opinion, be paid by the licensee i.e., Transmission Corporation of Andhra Pradesh Limited to the owner / occupier of the land in question i.e., the petitioners in respect of the work of the licensee carried out in an area of Ac.0.31 cents in S.No.41/1 of Guntupalli Village, Ibrahimpatnam Mandal, Krishna District as part of the work of the 2 Double Circuit lines for Loop-in and Loop-out of Nunna – Srisailam / Narasaraopeta 400 KV Double Circuit line to VTPS (Stage-IV) (Tower No.7 and lines) under Rule 3 (4) of the Andhra Pradesh Works of Licensees Rules, 2007 and also determine the full compensation for any

loss or damage incurred by the petitioners by reason of default of Transmission Corporation of Andhra Pradesh Limited in complying with any of the statutory rules under Rule 13 of the said Rules;

(b) Such fixing and determining the compensation under Rule 3 (4) and Rule 13 (1) of the Andhra Pradesh Works of Licensees Rules, 2007 shall be completed by the District Collector, Krishna District as per the prescribed procedure on merits in accordance with law within 6 (six) months from the date of communication of this order;

(c) The Transmission Corporation of Andhra Pradesh Limited shall pay any compensation so fixed and determined by the District Collector, Krishna District within 2 (two) months from the date of communication of the orders of the District Collector, Krishna District to it;

(d) The other prayers of the petitioners for action in respect of the criminal proceedings against the 2nd petitioner or non-communication of the Andhra Pradesh Works of Licensees Rules, 2007 against any of the respondents or officers of the Transmission Corporation of Andhra Pradesh Limited are not granted, due to such reliefs being beyond the scope of the inquiry under the statutory rules herein or the jurisdiction of the Commission there under, apart from the absence of merits;

(e) The parties shall bear their own costs in this Original Petition.

A N D

the Original Petition is ordered accordingly.

This order is corrected and signed on this the **30th day of June, 2018.**

Sd/-
P. Rama Mohan
Member

Sd/-
Dr. P. Raghu
Member

Sd/-
Justice G. Bhavani Prasad
Chairman