



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

O.P.No. 5 of 2018
Date: 30-06-2018

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

Between:

Karrothu Laxmi & 25 others

... Petitioners

A N D

Transmission Corporation of Andhra Pradesh & 5 others

.... Respondents

This Original Petition has come up for hearing finally on 14-06-2018 in the presence of Sri A. Jagannadha Rao, 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 declare the proceedings of the District Collector, Vizianagaram, the 6th respondent herein dated 05-08-2015 in Lr.No.46/2015/CC and the consequential proceedings of the Chief Engineer (Construction), AP Transco, the 2nd respondent herein dated 16-02-2016 and 13-07-2016 as illegal, arbitrary and contrary to the Andhra Pradesh Works of Licensees Rules, 2007 and to set aside the same and further direct the District Collector, Vizianagaram, the 6th respondent herein to determine the compensation payable to the petitioners in respect of the subject work as per the Andhra Pradesh Works of Licensees Rules, 2007 and to consequentially direct the Transmission Corporation of Andhra Pradesh Limited, the 1st respondent herein to pay the said compensation.

2. The petitioners' case is that the 1st respondent took up the work of erection of a 220 KV DC line from 220 KV Garividi SS to 220/132 KV SS at Bobbili growth centre. The farmers / owners of lands through which the line is passing demanded compensation towards the land cost and cost of trees / crops on which the 6th respondent issued the subject proceedings dated 05-08-2015, adopting the proceedings of the District Collector, Visakhapatnam, sanctioning Rs.1,60,000/- compensation per tower in respect of some other work by proceedings dated 25-05-2015. Sanction by the 6th respondent was in respect of 400 KV and 400 / 220 KV line works from Kalpaka to Maradam. The 6th respondent has also decided that payment of tree / crop compensation should be as per the rates fixed by G.O.Ms.No.357, Revenue (LA) Department, dated 23-03-2006 and for the Eucalyptus trees at Rs.4,400/- per MT. The 2nd respondent by a Memo dated 16-02-2016 accorded approval for 220 and 132 KV towers on pro-rata basis fixing diminution of land value per tower of 220 KV at Rs.99,500/- and 132 KV at Rs.55,000/- respectively and tree / crop compensation as fixed by the 6th respondent. The 1st respondent laid 129 towers but paid compensation to the land owners of 67 erected towers only. When the petitioners represented for award of similar compensation, the 4th respondent informed by a letter dated 03-01-2018 that the compensated 67 land owners are those, in whose lands, towers were erected after the 6th respondent's order dated 05-08-2015 and the petitioners in whose lands, towers were erected much before the orders of the 6th respondent, are not entitled to any compensation. The 1st respondent paid a meagre amount without proper assessment towards the lands or crops and the 6th respondent did not take any action on the representations of the petitioners. The petitioners claimed the 6th respondent's order to be not in conformity with Rule 3 (4) of the Andhra Pradesh

Works of Licensees Rules, 2007 and the determination of compensation to be not on merits in accordance with law. Each case should have been considered independently for determining the compensation without adopting the proceedings of the District Collector, Visakhapatnam dated 25-05-2015. The pro-rata fixation of compensation by the 2nd respondent is contrary to the Rules and the order of the 2nd respondent denying compensation to the petitioners is illegal and without jurisdiction. The petitioners are small farmers eking out their livelihood from cultivation and are similarly situated as other 67 land owners who were compensated. Discrimination on the basis of dates of erection of towers has no justification and denial of the same benefit to all the land owners is in clear violation of the Article 14 of the Constitution of India. Hence, the petition.

3. The 6th respondent did not enter appearance before the Commission and did not file any counter in spite of service of notice of the petition on him.

4. The 4th and 5th respondents filed a counter on behalf of respondents 1 to 5 contending that the claims are barred by law of limitation and the petitioners never objected against the laying of the line through their fields. The work was awarded to M/s. Variegate Projects Private Limited in 2011 but it could not complete the work in time. The balance work was awarded to M/s. Chandra Reddy and Company by a letter dated 01-10-2015. The authorities of the 1st respondent determined the compensation as per the procedure in respect of the petitioners who did not object to the notification of the route for laying the line and the foundations of 62 towers were laid well before 16-05-2003 (?). The amounts were paid to the petitioners 2, 7 and 14 in 2014 itself and subsequent proceedings by the District Collector, Visakhapatnam in respect of 400 KV line on 25-05-2015 and the orders of the District Collector,

Vizianagaram following the same were followed by the 2nd respondent in issuing the orders dated 16-02-2016. M/s. Variegate Projects Private Limited have laid foundations for 62 towers from October, 2011 to 2013 and stopped their works. M/s. Chandra Reddy & Company was awarded the balance work in 2015 and payment of compensation to 67 tower locations caused an uproar from the farmers / land owners of three years old 62 towers. Their grievance was submitted to the 1st respondent to clarify that payment of compensation towards land value diminution does not apply to 62 towers with foundations prior to the orders of the District Collector. The lines will pass aerially over the fields and farmers are not restrained from doing cultivation. The 1st respondent is conferred with the power of laying electric lines or plants for transmission under the Indian Telegraph Act, 1885 by virtue of G.O.Ms.No.115 dated 07-10-2003. As compensation due to the land owners was paid by the 1st respondent, application of Rule 3 (5) of the statutory rules does not arise and the compensation having been already paid as per law, the petition be dismissed with costs.

5. On the above pleadings, the points that arise for consideration and determination of the questions in controversy between the parties are, ----

- (1) Whether the claim of the petitioners is barred by time? ;
- (2) Whether the petitioners by not objecting to the laying of the lines lost the right to compensation? ;
- (3) Whether the petitioners are entitled to be referred to the District Collector for determination of compensation to which they are entitled under the statutory rules and be paid the same by the 1st respondent? ;
- (4) To what relief?

Point No.1: The Electricity Act, 2003 or the Andhra Pradesh Electricity Reform Act, 1998 or the Rules or Regulations made there-under did not prescribe any period of limitation for causes arising under the Andhra Pradesh Works of Licensees Rules, 2007 or the related statutory provisions. The Andhra Pradesh Works of Licensees Rules, 2007 which provided for determination and payment of compensation to the affected persons in Rule 13 and the determination of dispute or difference by the Commission under Rule 15 did not prescribe any time limits for the affected person/s to approach the District Collector or the Commission respectively for the purpose. If the parties have to revert back to the Limitation Act, 1963 for the purpose, the nature of the claim herein may fall within the residuary Article 113 which gives a period of three years for filing of a suit from the date when the right to sue accrues or the other residuary Article 137 which prescribes a period of three years from the date of accrual of the right to apply in respect of an application. In the present case, the present application has been filed on 20-02-2018 claiming the limitation to have commenced from 03-01-2018 when the 4th respondent rejected their request for compensation. Their earlier representation to the 6th respondent was on 18-12-2017 and the proceedings of the 6th respondent on which the claim of the petitioners is based are dated 05-08-2015. From 05-08-2015 or the subsequent representations, the petition has been filed within a period of three years. Even the counter of respondents 4 and 5 did not specify under what provision or principle, the claim is barred by limitation and the request of the petitioners to be treated on par with 67 other farmers / land owners given the benefit of the proceedings of the District Collector, Vizianagaram, the 6th respondent herein dated 05-08-2015 in respect of the same work was rejected only on 03-01-2018 making it open for consideration to

treat either 05-08-2015 or 03-01-2018 as the dates when the right to sue accrued though the works were carried out in part much earlier.

6. A perusal of the Articles of the Limitation Act, 1963 shows that any Article which can be construed as applicable to the recovery of compensation in respect of a property has a similar period of limitation prescribed as three years from the date of accrual of the right to sue or apply. Therefore, even if the foundations for 62 towers were laid after 2011 when the project was awarded to M/s. Variegate Projects Private Limited and before the proceedings of the District Collector, Vizianagaram dated 05-08-2015, the cause of action for the right to sue or right to apply can only be considered to have arisen after the District Collector's proceedings dated 05-08-2015 entitling the farmers / land owners to compensation fixed by him in respect of the same work / project. Hence, ex-facie the claim of the petitioners does not appear to be barred by time.

Point No.2: The Andhra Pradesh Works of Licensees Rules, 2007, in Rule 3 enable a licensee to carry out works etc., in, through, or against any building, or on, over or under any land with prior consent of the owner / occupier of any building or land. If he raises any objection, 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. Rule 3 did not affect the power of a licensee under Section 164 of the Electricity Act, 2003. Section 164 of the Electricity Act, 2003 is only an enabling provision which empowers the appropriate Government to confer the powers of a telegraph authority on a licensee under the Indian Telegraph Act, Central Act 13 of 1885 in respect of placing of telegraph lines and posts. The State Government of the erstwhile State of Andhra

Pradesh issued G.O.Ms.No.115 Energy (PR.II) Department, dated 07-10-2003 conferring the powers of a telegraph authority on the Transmission Corporation of Andhra Pradesh Limited due to which the works could have been executed without waiting for the consent of the owner / occupier of the property. However, that will not totally discharge the AP Transco from the obligation of carrying out the works either with the prior consent of the owner or occupier or if he raises objections, with the permission in writing of the authorized officer. Even if it were to be assumed that such consent or permission are not necessary for commencement or carrying out of the work, in view of the power conferred under the Indian Telegraph Act, 1885, the obligation of the District Magistrate or Commissioner of Police or authorized officer to fix the amount of compensation or of an annual rent or of both which should be in his opinion paid by the licensee to the owner or occupier remains intact. Such order shall be revisable by the Commission under Rule 3 (5). The clarity given by Rule (3) of sub-rule (6) that any powers conferred under Section 164 of the Electricity Act will not be affected will thus show that the conferment of power under Section 164 is to enable the work to be carried out irrespective of the consent but the compensation has to be awarded in every case in accordance with the rules. Even under the Indian Telegraph Act, 1885, the exclusive privilege conferred under Section 4 or the power of a telegraph authority to place and maintain telegraph lines and posts under Section 10 are subject to the District Judge being given the power of adjudication of any dispute concerning the sufficiency of compensation to be paid, under Section 16. Section 10 (d) specifically prohibits the telegraph authority from doing any damage than can be possibly restricted and made the telegraph authority liable for full compensation to all the persons interested for any damage sustained by them. Thus, the Indian Telegraph Act, 1885 only enables the work to be carried out

unhindered irrespective of any consent or compensation but the liability to pay and the right to receive reasonable compensation remained unaffected in any event and is reinforced by Section 67 (2) (e) of the Electricity Act, 2003 read with Rule 3 of the Andhra Pradesh Works of Licensees Rules, 2007. The Rules specifically prescribe full compensation for loss or any damage incurred by the person affected either as agreed mutually between the parties or as determined by the authorized officer or as determined by the Commission, if the matter is brought before it. The above factual and legal position will show that the consent of the owner / occupier makes a difference only to the manner of payment of compensation but not the right to compensation itself. Even if the owner / occupier consented or did not object for the work, right to compensation is intact and hence the petitioners cannot be considered to have lost their right to compensation merely because they have not objected to the notification of the route or laying of the foundations or erection of the towers.

Point No.3: The narration in the counter itself shows that the farmers / owners were representing their grievance about the compensation throughout and the Rules clearly postulate that they have a right to have the difference or dispute determined by the Commission. However, in the present case the determination of compensation by the District Collector, Vizianagaram in his proceedings dated 05-08-2015 was also not on application of his mind and he simply adopted the rate fixed by the District Collector, Visakhapatnam in respect of some other work. The adoption of such rate to this work for the lands in Vizianagaram District cannot be considered to be an acceptable mode or method of determination of compensation and the matter has to be remitted back to the District Collector, Vizianagaram for determining the compensation as per rules in respect of each individual owner / farmer concerning his property. Therefore, these petitioners are entitled to be

referred to the District Collector, Vizianagaram for determination of compensation which is liable to be paid by the 1st respondent as per the statutory provision and rules.

Point No.4: In view of the findings on Point Nos.1 to 3, the petitioners have to succeed, but in the peculiar circumstances of the case, the parties shall bear their own costs. Accordingly, ----

(a) proceedings of the 6th respondent in Lr.No.46/2015/CC dated 05-08-2015 and the consequential proceedings of the 2nd respondent passed in Memo No.CPT230/SE/PM/ROW/Vizianagaram Dist/D.No.108/2016 dated 16-02-2016 and CPT230/SEPM/F.Garividi-Bobbili works/D.No.556/2016 dated 13-07-2016 are declared illegal and are set aside;

(b) the matter is remitted back to the 6th respondent to determine the compensation payable to each of the petitioners due to erection of towers in their lands for the erection of 220 KV DC line from 220 KV Garividi SS to 220/132 KV SS at Bobbili Growth Centre, Vizianagaram District in accordance with the Andhra Pradesh Works of Licensees Rules, 2007;

(c) the compensation so determined by the 6th respondent has to be paid by the 1st respondent to each of the petitioners expeditiously; and

(d) the parties shall bear their own costs.

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