

**BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY  
COMMISSION SHIMLA**

In the matter of :-

Sh. Bal Krishan Sharma thro' Sh. Manoj Sharma  
under the GPA of Sh. Bal Krishan Sharma  
R/o Village Charoli, PO Anandpur,  
Tehsil & Distt. Shimla **.....Applicant/Petitioner**

Versus

1. The Managing Director,  
HPSEBL, Shimla-171004
2. The Director (Tech.)  
HPSEBL, Shimla-171004
3. The H.P. State Electricity Board Ltd. thro' its  
Chief Engineer (Commercial)  
Vidyut Bhawan, Shimla-171004
4. The Chief Engineer ES,  
HPSEBL, Hamirpur, HP-177001
5. The Dy. Chief Engineer ES Circle,  
HPSEBL, Totu-171011
6. The Superintending Engineer (Design)  
ES, Hamirpur, HP- 177001
7. The Sr. Executive Engineer,  
ES Division, HPSEBL, Totu-171011.
8. The Assistant Engineer,  
132 kV, S/Stn., S/Division, Jutogh,  
Shimla-171011
9. The ACS (MPP& Power)  
Govt. of HP, Shimla-171002
10. The Deputy Commissioner  
Distt. Shimla-171001
11. The Superintending of Police  
Distt. Shimla-171001
12. The Sub-Division Magistrate (Rural)  
Shimla-171001
13. The Land Acquisition Collector,  
HPPTCL. BCS , Shimla-171009
14. The Land Acquisition Collector,  
HPSEBL/HPPCL, Uttam Bhawan, Shimla-171005
15. The Station House Officer  
Boileauganj, Shimla-171005
16. M/s Power Trans. Engineer  
738 Guru Teg Bahadur Nagar,  
Jalandhar, Punjab-144002 **.....Respondents**

Petition No. 54 of 2019

**(Decided on 11<sup>th</sup> July, 2019)**

**CORAM**

**S.K.B.S NEGI**

**CHAIRMAN**

**BHANU PRATAP SINGH**

**MEMBER**

Counsels: -

|                               |                                |
|-------------------------------|--------------------------------|
| for Applicant/petitioner:     | Sh. Manoj Sharma (GPA)         |
| for Respondents Nos. 1 to 9   | Sh. Surinder Saklani, Advocate |
| for Respondents Nos. 10 & 12  | ADA, Shimla                    |
| for Respondents Nos. 11 & 15  | Sh. Prakash Thakur, Dy. D.A.   |
| for Respondent Nos. 13,14 &16 | ---None----                    |

**ORDER**

(Last heard on 15.06.2019 and Orders reserved)

Sh. Bal Krishan Sharma S/o Late Sh. Surat Ram (hereinafter referred as “the petitioner”) is the owner of land/property situated at Village Charoli, PO Anandpur, Tehsil and Distt. Shimla(HP). The Himachal Pradesh State Electricity Board Ltd. Shimla (hereinafter referred as “the Respondent Board” or “the Respondent No.3”) acquired 00-01-90 Hectares of land, comprised in Khasra No. 644/1, belonging to the petitioner at Village Charoli, PO Anandpur, Tehsil and Distt. Shimla for erection of Tower No. 30 of 132 kV DC transmission line from Jubbar Hatti (Jathia Devi ) to 132/33 kV Sub-station at Malyana, under Award 669 dated 12.04.2013 and mutated in the name of the Respondent Board on 29.05.2016. The land/property comprised in Khasra No. 644/2 measuring 0-07-90 hectors, which is not acquired by the Respondent Board, continues to be under the ownership of the petitioner.

2. RFA/291/2016, relating to Khasra No. 644/1 (5 Bishwa under Award No. 669) is still pending for decision before the Hon’ble High Court of HP and suit for permanent injunction /9005241/2015 relating to Khasra No. 664/2 is pending for decision before the Court of the Ld. Civil Judge (Snr.-Division) Shimla.

3. The petitioner submits that the Respondent Board and its Officers/Contractors are continuously encroaching and are committing defaults and gross negligence in relation to the property, not acquired by the Respondent Board, comprised in Khasra No. 644/2. With a view to stop such contravention and abuse of power by the acts of omissions or

commissions of all the concerned Officers/Contractors, they have been approached by the petitioner many times or occasions to raise the issues and made requests to avoid such contraventions on the said land, but to no avail or no hearing and such unlawful actions continued by them. It is alleged that the Respondent Board and its Officers, directly and intentionally, are trying to breach his Constitutional right, as provided under Article 300-A of the Constitution of India, and put pressure by filing frivolous police complaints and continue the work on the site of Tower No. 30 without authorization, permission of required authorities and as per applicable law.

4. According to the petitioner the violations of various provisions of the Electricity Act, 2003 and contravention of the Works of Licensees (Himachal Pradesh) Rules, 2014, which happened and persist from past 4 to 5 years on various occasions, are as follows:-

- “(i) **Contravention of Rule 3 (1) (a):** No prior consent of land owner is taken by HPSEBL officials before starting any work on Khasra No 644/2 at site Village Charoli PO Anandpur related to erection or construction work of Tower 30.
- (ii) **Contravention of Rule 3 (1)(b):** No written permission is taken from Distt. Commissioner related to any work or erection of Tower 30 on property comprised under Khasra No. 644/2.
- (iii) **Contravention of Rule 3(2):** No representation of lawful owner heard or considered prior to any permission is given or taken at all on property comprised under Khasra No. 644/2.
- (iv) **Contravention of Rules 10 (1) and (2) and violation of section 68(1), (5) and (6):** Prior approval of Government is not taken and if taken no information is provided even when demanded many times before or after starting any work on property comprised under Khasra No. 644/2 and also till now. And also cut down tree (Cheel) which also required statutory permission of Magistrate first class on application by Licensee no information provided even when demanded many times.
- (v) **Contravention of Rule 12 and Violation of section 67(2)(a), (b), (c), (d), (e), (k) and (3):** No steps at all taken to avoid environment damage and damage to public and private property (specifically comprised under Khasra No. 644/2).

*These objections or issues are being raised many times from past 5 to 6 years before various Authorities or Government Departments, but to no avail at all. Notice, under sections 67 and 68, dated 10.09.2018 duly replied on 28.09.2018 and various issues or objections are raised but to no avail. Demarcations are also done 2 times or more within past 4 to 5 years.”*

5. With above background, the petitioner has moved this petition, under section 67(4) and (5) and various other provisions of the Electricity Act, 2003, for the intervention of this Commission to restrain the respondents from contravening or

violating the provisions of regulations and rules applicable and related to carrying out the erection and construction of works of Tower 30 beyond the boundary of Khasra No. 644/1 and specifically to stop any unauthorized works on Khasra No. 644/2, except in lawful manner, proper conduct and with tenable legal procedures and approvals as applicable or applied or required from time to time.

6. The Respondent Board on behalf of Respondents 1 to 9, has filed the response to the petition stating-

- (a) that this Commission has no jurisdiction to entertain the present dispute because question of title is involved in it and which is required to be decided by the Civil Court. That the present petition is not maintainable in the eyes of law as the petitioner has already filed Civil Suit against the replying respondents, which is pending before the Civil Judge, Sr. Division Court No.1, Shimla;
- (b) that there exists no cause of action in favour of the petitioner and against the replying respondents as they have not violated any provisions of Electricity Act, 2003 or the Works of Licensee (HP) Rules, 2014 framed thereunder. It is rather the petitioner who has obstructed to the answering respondents in order to raise the Tower upon the land which the respondents have acquired from the petitioner and requisite compensation has been given to the petitioner. In view of these submissions the petitioner has no cause of action to redresses his grievances by filing of the present petition before this Commission;
- (c) that the petitioner has suppressed material facts from this Commission and as such has not approached this Commission with clean hands;
- (d) that the petitioner has misrepresented to this Commission by presenting the petition on wrong facts, whereas the petitioner has already filed Civil Suit regarding the same and similar dispute against the answering respondents. As per the provisions of law this Commission cannot sit upon the decision of the Civil Court. As the Civil Court No. 4 Shimla through its detailed and reasoned Order has already dismissed the application under Order 39 Rules 1 and 2 of the CPC by which the petitioner had sought stay against the answering respondents from raising the electricity tower upon the acquired land. The respondents have acquired 5 bishwa of land from the petitioner for construction of electricity tower through compulsory acquisition vide Award No. 699,

dated 12.04.2013 for laying the construction work of tower for setting up 132kV Sub-station for the benefit of entire Shimla Distt. and route map of which has already been prepared and cannot be changed now. When the application under Order 39 Rules 1 and 2 read with section 151 of CPC filed by the petitioner against the respondent was dismissed, the answering respondents thereafter started to lay the electricity tower upon khasra No. 644/1. The petitioner not only threatened the officers/officials of the answering respondents but also stopped them from laying the electricity tower upon the khasra No. 644/1. During the proceedings in the Civil Suit filed by the petitioner the Ld. Civil Judge, Sr. Division Court No.1, Shimla directed to demarcate the land and as per the direction given by the Ld. Court the land was again demarcated in the presence of the petitioner as well as the officers of the answering respondents. During the course of demarcation the petitioner admitted that he is ready to give and transfer the land if found in excess than that of transferred land in favour of respondents on the basis of present market value. When the matter was again heard by the Ld. Civil Judge, Sr. Division Court No.1, Shimla the petitioner refused to transfer the land in favour of the respondents on the basis of present market value. As submitted supra the land has been acquired by the answering respondents for the purpose of development and construction of the electricity towers for setting up 132 kV Sub-station for the benefit of entire Shimla District. The low voltage problem will be solved after laying the present line. The answering respondents have also completed all codal formalities for setting up 132 kV Sub-station for the benefit of entire Shimla District and public at large. The whole line from Jathiadevi to Malyana has almost been completed but due to the obstruction created by the petitioner the line could not be completed well in time. The answering respondents cannot be said to have acted contrary to course of law, as section 164 of the Indian Electricity Act, 2003 and Section 10 of the Telegraph Act, 1885 recognizes the absolute power of telegraph authority. In **GVS Rama Krishna and others Vs. A.P. Transco, Rep. by its Managing Director, Vidyuth Soudhna & others, AIR 2009 AP 158**, it was observed that under the aforesaid provision of law, the power of the Authority are absolute and neither any acquisition of land is necessary nor consent of owner is

required to be taken, however, if during this course, damage is sustained by the owner by means of such erection, the owner would be entitled to claim compensation. In **SDO & another Vs. Dhian Singh & another, 2010 (1) Him. L.R. 121**, the Hon'ble High Court of HP has observed that when the transmission line is required to be set up in larger public interest, no consent is required to be obtained from the owner for laying the poles or construction of any electricity tower as the same is done under the authority and in accordance with law. The answering respondents have categorically submitted in the written statement filed before the Ld. Civil Judge, Sr. Division Court No.1, Shimla in a case which has been filed by the petitioner against the answering respondents that in case any encroachment is found to be made by the answering respondents, the answering respondents would compensate the applicant for the same. Despite of this fact the petitioner is unnecessarily putting the respondents under pressure due to which the respondent could not complete the aforesaid line well in time as desired by the Govt. of HP. The present petition filed by the petitioner is not maintainable in the eyes of law and moreover, this Commission has no jurisdiction to entertain the present petition as the matter is still pending before the Civil Judge Sr. Division Court No.1, Shimla and the petitioner is delaying intentionally the proceedings of the case by not producing his evidence in that case. Moreover, since in the present case question of title is involved which is required to be decided by a court of competent jurisdiction and a Civil Suit is already pending to this effect before the Civil Court. The applicant suppressed all these material facts from this Commission and as such the petition of the petitioner deserves to be dismissed by imposing heavy cost upon the petitioner;

- (e) that the answering respondents advised the petitioner to settle the matter amicably but the petitioner refused to settle the dispute with the answering respondents;
- (f) as per the law cited hereinbefore the petitioner has liberty to file suit for damages before a Civil Court in case any damage is sustained to the property of the petitioner during the course of laying electricity tower line. The petitioner has failed to adopt this remedy and filed the present

petition before this Commission by concealing the material facts from this Commission;

- (g) that it is true and correct that the Ld. Additional District Magistrate had directed the S.P. Shimla to provide police assistance to the answering respondents so that the answering respondents can lay the transmission line. It is pertinent to mention here that the answering respondents have erected the electricity tower upon the land which was purchased by the respondents from the petitioner. The contravention of rules is specifically denied as the answering respondents have not violated any of these rules. In the present case the answering respondent first represented to the District Magistrate Shimla as per the Electricity Act and District Magistrate has forwarded his representation to the Additional Distt. Magistrate (Law and Order) Shimla to look into the matter. When the petitioner did not agree to settle the dispute amicably thereafter the matter was referred to the SHO, P.S. Boileaganj and accordingly S.H.O. P.S. Boileaganj had provided police assistance to the answering respondents to lay the electricity tower. The answering respondents have not caused any damage to the property of the petitioner and, therefore, there is no contravention of any rules committed by the answering respondents. Moreover, the rules quoted by the petitioner are not applicable to the case of the petitioner because the replying respondents have adopted the proper procedure as is provided in these rules and in the Electricity Act, 2003 and this being so the petition of the petitioner is not maintainable and same is liable to be dismissed in view of the case law cited supra;
- (h) that the petitioner has not raised such objection/issues prior to the filing of the present petition before this Commission. It is evident as per the Order dated 28.02.2018 passed by the Civil Judge, Jr. Division Court No.4, Shimla, HP, that the petitioner is not entitled for any relief because the petitioner is refusing to settle the dispute amicably as per his statement given by him on the spot during demarcation;
- (i) that the balance of convenience does not lie in favour of applicant/petitioner. The Civil Court has also given finding in its Order dated 28.02.2018 that balance of convenience does not lie in favour of the applicant and similarly there exists no prima facie case in favour of the applicant and against the answering respondents and the Ld. Civil Court

after appreciating all the documents of both the parties has rightly dismissed the application of the petitioner;

- (j) that this Commission has no jurisdiction to pass interim Order in favour of petitioner and against the respondents as the Civil Court has already declined the interim relief to the petitioner and this Commission cannot sit upon the decision of the Civil Court. Moreover, the petitioner has not assailed the interim order dated 28.02.2018 before any Appellate Court and as such it has attained finality and, therefore, this Commission has no jurisdiction to entertain the present petition as the same is pending before the Civil Court and as such this Commission may dismiss the petition of the petitioner by imposing heavy cost.

7. Shri Prakash Thakur, Dy. Distt. Attorney, appearing on behalf of the S.P. Shimla (Respondent No.11) and the SHO Boileauganj, Shimla (Respondent No.15) submits that the issue involved and the relief sought in this petition relates to the Respondent Board as such he prays that the notice against S.P. Shimla/SHO Boileauganj may be withdrawn. We, after taking in to consideration the report of Station House Officer P.S. Boileauganj Distt. Shimla HP, are convinced that the Additional District Magistrate directed the S.P. Shimla to provide police assistance to the Respondent Board and its officers, to lay the transmission line, and the SHO P.S. Boileauganj provided police assistance. As such no cause of action ever accrued to the petitioner to file the present petition against them and hence the notice against S.P. Shimla/SHO, Boileauganj was withdrawn.

8. In response to the petition the Deputy Commissioner Shimla (Respondent No.10) and the Sub-Division Magistrate (Rural), Shimla (Respondent No.12) have stated that the land bearing Khasra No. 644/2, measuring 0.07-90 hectors at Mauza Charoli, District Shimla (Rural) is in the ownership of the petitioner and Khasra No.644/1 area measuring 0.1-90 hectares is in the ownership of the State Govt. and in possession of the HPSEBL. Some part of tower has been installed on the land in question.

9. The Respondent No. 13 i.e. Land Acquisition Collector HPPTCL, the Respondent No. 14, Land Acquisition Collector HPSEBL/HPPCL and Respondent No. 16, i.e. M/s Power Trans. Engineer, 738 Guru Teg Bahadur Nagar, Jallender (Punjab), have neither put in their appearance, nor have filed their response to the petition.



10. The petitioner, has been given the opportunity to file the rejoinder to the replies/submissions made by the respondents, but he has chosen not to avail this opportunity to file the same.

11. The key issue that arises for consideration is whether the Respondent Board requires the consent of the owner/occupiers of the lands affected by the laying of the said transmission line/tower?

12. In order to appreciate the contentions of the petitioner, it is necessary to have a glimpse of the provisions of the Electricity Act, 2003 as well as the Rules, on which the reliance has been placed by the petitioner and the respondents.

13. The Sections 67 and 68 of the Electricity Act, 2003, may be extracted hereunder:-

***“67. Provisions as to opening up of streets, railways, etc.: --- (1) A licensee may, from time to time but subject always to the terms and conditions of his licence, within his area of supply or transmission or when permitted by the terms of his licence to lay down or place electric supply lines without the area of supply, without that area carry out works such as -***

- (a) to open and break up the soil and pavement of any street, railway or tramway;*
- (b) to open and break up any sewer, drain or tunnel in or under any street, railway or tramway;*
- (c) to alter the position of any line or works or pipes, other than a main sewer pipe;*
- (d) to lay down and place electric lines, electrical plant and other works;*
- (e) to repair, alter or remove the same;*
- (f) to do all other acts necessary for transmission or supply of electricity.*

*(2) The Appropriate Government may, by rules made by it in this behalf, specify -*

- (a) the cases and circumstances in which the consent in writing of the Appropriate Government, local authority, owner or occupier, as the case may be, shall be required for carrying out works;*
- (b) the authority which may grant permission in the circumstances where the owner or occupier objects to the carrying out of works;*
- (c) the nature and period of notice to be given by the licensee before carrying out works;*
- (d) the procedure and manner of consideration of objections and suggestion received in accordance with the notice referred to in clause (c);*
- (e) the determination and payment of compensation or rent to the persons affected by works under this section;*
- (f) the repairs and works to be carried out when emergency exists;*
- (g) the right of the owner or occupier to carry out certain works under this section and the payment of expenses thereof;*
- (h) the procedure for carrying out other works near sewers, pipes or other electric lines or works;*
- (i) the procedure for alteration of the position of pipes, electric lines, electrical plant, telegraph lines, sewer lines, tunnels, drains, etc.;*

- (j) *the procedure for fencing, guarding, lighting and other safety measures relating to works on streets, railways, tramways, sewers, drains or tunnels and immediate reinstatement thereof;*
- (k) *the avoidance of public nuisance, environmental damage and unnecessary damage to the public and private property by such works;*
- (l) *the procedure for undertaking works which are not repairable by the Appropriate Government, licensee or local authority;*
- (m) *the manner of deposit of amount required for restoration of any railways, tramways, waterways, etc.;*
- (n) *the manner of restoration of property affected by such works and maintenance thereof;*
- (o) *the procedure for deposit of compensation payable by the licensee and furnishing of security; and*
- (p) *such other matters as are incidental or consequential to the construction and maintenance of works under this section.*

(3) *A licensee shall, in exercise of any of the powers conferred by or under this section and the rules made thereunder, cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him.*

(4) *Where any difference or dispute [including amount of compensation under sub-section (3)] arises under this section, the matter shall be determined by the Appropriate Commission.*

(5) *The Appropriate Commission, while determining any difference or dispute arising under this section in addition to any compensation under sub-section (3), may impose a penalty not exceeding the amount of compensation payable under that sub-section.*

*Provisions relating to Overhead lines:*

**68. Overhead lines.-** (1) *An overhead line shall, with prior approval of the Appropriate Government, be installed or kept installed above ground in accordance with the provisions of sub-section (2).*

(2) *The provisions contained in sub-section (1) shall not apply-*

- (a) *in relation to an electric line which has a nominal voltage not exceeding 11 kilovolts and is used or intended to be used for supplying to a single consumer;*
- (b) *in relation to so much of an electric line as is or will be within premises in the occupation or control of the person responsible for its installation; or*
- (c) *in such other cases, as may be prescribed.*

(3) *The Appropriate Government shall, while granting approval under subsection (1), impose such conditions (including conditions as to the ownership and operation of the line) as appear to it to be necessary.*

(4) *The Appropriate Government may vary or revoke the approval at any time after the end of such period as may be stipulated in the approval granted by it.*

(5) *Where any tree standing or lying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead line subsequent to the placing of such line, interrupts or interferes with, or is*

*likely to interrupt or interfere with, the conveyance or transmission of electricity or the accessibility of any works, an Executive Magistrate or authority specified by the Appropriate Government may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he or it thinks fit.*

*(6) When disposing of an application under sub-section (5), an Executive Magistrate or authority specified under that sub-section shall, in the case of any tree in existence before the placing of the overhead line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.*

*Explanation - For the purposes of this section, the expression "tree" shall be deemed to include any shrub, hedge, jungle growth or other plant.*

14. The State Govt. has notified on 11<sup>th</sup> Feb., 2014, in the Rajpatra, Himachal Pradesh, the Works of Licensees (Himachal Pradesh) Rules, 2014, framed under sections 67 and 68 of the Electricity Act, 2003. Any licensee, therefore, can execute the works of laying the transmission lines in accordance, with these Rules. No doubt, an authorization under section 164 of the Act facilitates the licensee to lay the transmission lines over the public land or land and buildings of the private parties. However, it cannot be said that in the absence of an authorization under section 164 of the Act, a licensee is without any legal authority to lay the transmission lines as the works of Licensee (HP) Rules, 2014, enables a licensee to lay the transmission lines through lands and buildings of the public authorities and private individuals after obtaining their consents through the prescribed procedure. The provision of section 164 of the Act is an alternative method of laying transmission line. It is in addition to section 67 of the Act, which is the main provision regulating the works of the licensee, including the laying of transmission /erections of Towers.

15. Section 164 of the Act, reads as under:-

*“ 164. Exercise of powers of Telegraph Authority in certain cases- 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 Indian Telegraph Act, 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”.*

16. 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 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.

17. We may usefully refer to some decisions relevant to the context.

18. In the case **G.V.S. Rama Krishna and others Vs. APTRANSCO, 2009 ELR (AP) 517**. *the AP High Court has observed in paras 28 to 32 as under-*

“28. *In the instant case section 164 of the Electricity Act, 2003 has admittedly been invoked and in exercise of the powers conferred thereunder the Government of A.P. conferred on the A.P. Transco the powers which the telegraph authority possess under the Indian Telegraph Act, 1885. Consequently, section 12 of the Indian Electricity Act, 1910 has no application and the A.P. Transco, for the purpose of placing the electric supply lines in the private lands, is competent to exercise all the powers possessed by the telegraph authority under the Indian Telegraph Act, 1885.*

29. *Section 10 of the Indian Telegraph Act, 1885 which deals with the power of the telegraph authority to place and maintain telegraph lines and posts runs as under:-*

***Section 10 Power of telegraph authority to place and maintain telegraph lines and posts.-***

*The telegraph authority may, from time to time, place and maintain in 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 (Subs, by the A.O. 1937, for “Government”). Central Government’, or to be so established or maintained;*

- (b) *the(Subs, by the A.O. 1937, for “Government”) 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; and*
  - (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.*
30. *As could be seen, section 10 of the Indian Telegraph Act, 1885 empowers the telegraph authorities to place and maintain the telegraph lines under, over, along or across and posts in or upon any immovable property. However, the said power shall not be exercised in respect of any property vested in or under the control or management of any local authority without the permission of that authority. The proviso (d) to section 10 of Indian Telegraph Act, 1885 further made it clear that while exercising powers conferred under section 10 the Telegraph authority shall do as little damage as possible and when it has exercised those powers in respect of any property other than the property under the control or management of local authority shall pay full compensation to all the persons interested for any damage sustained by them by reason of exercise of the said powers. It is also relevant to note that as per proviso (b) of section 10 of Indian Telegraph Act, 1885, 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 lines or posts.*
31. *Thus, is clear that the powers under section 10 of the India Telegraph Act, 1885 can be exercised without acquiring the land in question, however, the only right that can be exercised is the right of user in the property and for the purposes mentioned in that section.*
32. *For the aforesaid reasons, I am of the opinion that section 164 of the Electricity Act, 2003 read with section 10 of the Indian Telegraph Act, 1885 recognized the absolute power of the A.P. Transco to proceed with placing of electric supply lines or electric posts for the transmission on or over the private lands subject to the right of the owner/occupier to claim compensation if any damage is sustained by him by reason of placing of such electric supply lines, in other words, neither the acquisition of the lands is necessary nor there is any need for consent of the owner or occupier”.*

19. It would be appropriate to quote para 11 of the subsequent decision dated 02.04.2013 of the Hon'ble **High Court of Andhra Pradesh rendered WP. No. 16017 of 2012 in Devisetty Ramaswamy Vs. Chief Engineer, 400 kV Line A.P. Tramsceo (APSDCL) Hydrabad & others, 2013ELR (HC) 1033, which reads as under:**

*“11. The learned Judge pointed out that it had been clarified even in **G.V.S. Rama Krishna AIR 2009 AP 158(1)** that section 67(1) of the Act of 2003, as well as the Rules made under section 67(2) thereof, would govern the field only in the absence of an order under section 164 of the Act of 2003 and consequently, in a case where an order passed by the appropriate Government in exercise of powers under section 164 of the Act of 2003, the authorised licensee would be competent to exercise such powers which a telegraph authority possessed under the Act of 1885 with respect to placing of lines and poles. The learned Judge further observed that as powers under section 10 of the Act of 1885 could be exercised without acquiring the land, the same would be the position with a licensee conferred with such powers under section 164 of the Act of 2003.*

*On facts, the learned Judge found that the laying of electric lines in that case was pursuant to a Notification invoking section 164 of the Act of 2003 and therefore section 67 (1) of the Act of 2003 and the Rules of 2006 were not attracted. The learned Judge consequently held that there was no necessity for the APTRANSCO to obtain the consent of the owner/occupier who was affected by the laying of such lines.*

*Insofar as the issue of compensation is concerned, the judgment of the **Supreme Court in Kerala State Electricity Board Vs. Livisha (2007) 6 SCC 792** makes it clear that the owner of a land would be entitled to claim compensation on the basis of various factors. In this regard, the Supreme Court observed as under:*

*“9. Both telegraph lines and electrical lines are required to be drawn over the agricultural lands and /or other properties belonging to third parties. In drawing such lines, the entire land cannot be acquired but the effect thereof would be diminution of value of the property over which such line is drawn. The Telegraph Act, 1885 provides for the manner in which the amount of compensation is to be computed therefor.....*

*10. The situs of land, the distance between the high voltage electricity line laid there over, the extent of the line thereon as also the fact as to whether the high voltage line passes over a small tract of land or through the middle of the land and other similar relevant factors in our opinion would be determinative. The value of the land would also be a relevant factor. The owner of the land furthermore, in a given situation may lose his substantive right to use the property for the purpose for which the same was meant to be used.”*

*This principle was again reiterated by the **Supreme Court in Kerala State Electricity Board Vs. Chinamma Antony (2008) 11 SCC 476**. Presently,*

*the issue is whether the petitioner can stall the subject scheme on the ground that he was not given prior notice or an opportunity of hearing. The judgments of this Court in **G.V.S. Rama Krishna AIR 2009 AP 158(1) and in K. Subba Raju 2010(4) ALD 358** speak against the petitioner insofar as this aspect is concerned. As pointed out in **G.V.S. Rama Krishna AIR 2009 AP 158(1)**, it was not even necessary for the APTRANSCO to issue a Notification setting out the details of the scheme and calling for objections as the provisions in the Act of 1948 requiring the said procedure stood repealed by the Act of 2003. The procedure envisaged by the Rules of 2006 read with section 67 of the Act of 2003 had no application to the case, once section 164 was pressed into service. Section 68 of the Act 2003 also has no application to the case on hand as the said provision, dealing with overhead lines, also figures in Part VIII relating to works of licensees and was in continuation of section 67.*

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*On the above analysis, this Court finds that there is no provision in the Act of 1885 which mandates prior notice or an opportunity of hearing to be provided to the owner/occupier of a premises affected by the laying of lines or posts and therefore, there is no question of such owner/occupier being put on notice or demanding an opportunity of hearing before the grounding of the scheme. Section 17 postulates that such a right would arise only after laying of the lines or posts and upon the failure of the authority concerned to act upon a requisition to remove or relocate such lines or posts etc.*

*Insofar as section 164 of the Act 2003 is concerned, the judgments of this Court in **G.V.S. Rama Krishna AIR 2009 AP 158(1) and K. Subba Raju 2010 (4) ALD 358** put it beyond doubt that while exercising powers hereunder, the APTRANSCO would not be required to either initiate acquisition of land or obtain consent from the owner. It was also held that in such a situation, section 67 of the Act of 2003 and the Rules of 2006 framed hereunder would have no application. This Court respectfully agrees. Viewed from any angle, the petitioner failed to establish any failure on the part of the APTRANSCO in following the due procedure in the case on hand. The issue of the petitioner's entitlement to compensation would arise only at a later date and it cannot therefore be a ground at this stage to hinder the completion of the scheme".*

20. The High Court of Himachal Pradesh in its judgment dated 06.05.2009 in RSA No. 496 of 1998- **Lachmi Devi V/s HPSB and others- AIR 2009 HP 66**, considered the power of the Electricity Board to construct tower for transmission of electricity and laying of power line. In that case the petitioner was the owner in possession of land comprised in Khasra No. 64 measuring 1-0-8 bigha Muhal Kangu, Illaqua Dehar, Tehsil Sundernagar, Distt. Mandi. The respondents without any right had started laying

132 K.V. power line over Khasra No. 64 in which house, orchard of the appellant were situated. The said 132 kV line would pass over the house of the appellant and would be constant threat to the appellant and her family members. The respondents were asked not to carry out any work of the power line over the land of appellant but they refused to oblige the appellant. On those facts, the appellant filed the suit. The respondents contested the suit and took preliminary objections i.e. statutory notice was given inviting objections against the construction of 132 kV transmission line from Larji to Gagaj, the appellant did not raise any objections, hence, now appellant could not agitate for laying of 132 kV transmission line. She was estopped from questioning the laying of the power line. The 132 kV transmission line was sanctioned by the Govt. of India at a cost of Rs. 16068/- lacs. A notification under section 29 of the Indian Electricity (Supply) Act, 1948 was issued on 17.11.1986. The Board under section 22 of the Electricity Act, 1910 had all the powers which the Telegraph Authority possessed under Part-III of the Indian Telegraph Act, 1885. The respondent No. 1 being a public utility organization was under legal obligation to install electricity appliances, apparatus and towers for the transmission of electricity. The respondents had proceeded under the statute for laying 132 kV transmission line in public interest. In addition to above objections of locus standi, non-joinder of necessary parties, jurisdiction of the Court and maintainability of the suit were raised. On merits, the respondents denied the case of the appellant. In view of the provisions of Part-III of the Indian Telegraph Act, 1885, the Hon'ble High Court of Himachal Pradesh held that the Board had all powers to lay transmission line in question, the Board had exercised the statutory powers and no injunction could be granted to stop the exercise of the statutory powers.

21. In a subsequent decision rendered in **SDO and others V/s Dhian Singh and another, 2010(1) Him. L.R. 121**, the Hon'ble High Court of Himachal Pradesh has observed that when the transmission line is required to be set up in larger public interest, no consent is required to be obtained from the owner for laying the poles or construction of any electricity tower as the same is done under the authority and in accordance with law.

22. These issues have also come up for consideration before the some other High Courts. The Bombay High Court in CWP No. 256 of 2012 -**Sh. Vivek Brajendra Singh Vs. State Govt. of Maharashtra, decided on 22.03.2013**, the Madras High Court in **T. Bhuvanswari Vs. Distt. Collector in CWP No. 18548 of 2013, decided on 29.11.2013**; in **T.S.T. Kamznavi V/s Tamil Nadu Electricity Board and others**



**decided on 28.01.2008 AIR 2008(NoC) 1323 (Mad); in Minor Vignesh Kannioyaram V/s Power Grid Corporation of India and others decided on 04.04.2008 AIR 2008 (NoC) Mad 2038 and in R. Kannam V/s Power Grid Corporation Ltd. and others decided on 04/04/2008 AIR 2008 (NoC) 2660 Mad; the Chhatisgarh High Court in Century Textiles and Industries Ltd. Mumbai V/s Power Grid Corporation of India Ltd. and others decided on 11.03.2008 AIR 2008(NoC) 2035 Chh; and the Orrisa High Court in Monoranjan Sa and others V/s State of Odisa, AIR 2019, Orissa 85.** Now it is settled law that sections 10 and 16(1) of the Telegraph Act, 1885, contain the powers to lay down overhead lines on private lands, and thereunder no consent is required to be obtained from the land owner and acquisition is not necessary as no damage of permanent nature could be caused to the land. However, the licensee is to cause a little damage, detriment and inconvenience as may be, and is to make full compensation for any damage, detriment and inconvenience caused by him or by any one employed by him.

23. This Commission also had an occasion to interpret and deal with the scope of the power conferred under section 67(5) of the Electricity Act, 2003, in two petitions bearing Nos. 114 & 115 of 2012- **Sh. Jeet Singh and Sh. Mangal Singh Sons of Sh. Sita Ram of Village Reru (Jhiriwals) Pargana Plassi, Tehsil Nalagarh, Distt. Solan (HP) Vs. HP State Electricity Board Ltd. and others decided on 31.08.2012.** In that case the petitioners were seeking directions to the HPSEBL and its officers to make them payment of compensation for causing loss, damage and detriment sustained by them on account of the acts of the Respondent Board for laying over and across their land and houses, 400 kV overhead transmission line for implementation of scheme for strengthening EAV System in Nalagarh and Baddi area for providing 22/66 kV 2x100 MVA Sub-station at Nalagarh (BYAL) in Solan Distt. (HP), alongwith interest @ 12% w.e.f. December, 2009 till date under section 67(5) of the Electricity Act, 2003. The contention of the petitioners in that case was that sub-section (2) of section 67 of the Electricity Act, 2003 empowers the Appropriate Government to frame rules specifying several matters listed in clauses (a) to (p). Sub-section (3) of the said section obliges the licensee to grant compensation for any damage, detriment or inconvenience caused by him while exercising any of the powers conferred by this section, Sub-section (4) provides for the reference of any dispute, arising under that section, to the Appropriate Commission and sub-section (5) empowers the Appropriate Commission to impose a penalty, in addition to any compensation. Sub-section (5) of the section 68 of the Act

empowers the Executive Magistrate or authority specified by the Appropriate Government to cause the tree/structure/other object removed, where such object interrupts/interferes or is likely to interrupt/interfere with transmission/conveyance of electricity or the accessibility of any works. The Executive Magistrate/specified authority may award compensation to be paid by the licensee to the person interested in the tree (or property) if such tree (or property) existed before placing the overhead line. After taking into consideration the fact that under Section 164 of 2003 Act, the Appropriate Government may confer upon any Public Officer, licensee or any person engaged in the business of supplying electricity, any of the powers possessed by the Telegraph Authority under the Indian Telegraph Act, 1885, for the purpose of placing electric lines or electric plant for the transmission of electricity. Section 10 of the Telegraph Act, 1885 empowers the Telegraph Authority to place and maintain a telegraph line under, over, along or across and posts in or upon any immovable property. Section 11 of the Act empowers the Telegraph Authority to enter upon any property for the purpose of examining, repairing, altering or removing any telegraph line or post. Under section 16(1), the District Magistrate is empowered to pass an order permitting the Telegraph Authority to exercise the powers conferred by section 10, if there is any resistance or obstruction from anyone, for the exercise of the powers by the Telegraph Authority under section 10. Sub-sections (3) and (4) of section 16 provides for resolution of disputes with regard to the compensation payable for the damage caused to the property, by the Telegraph Authority while exercising powers under section 10, this Commission concluded that-

*“A combined reading of clauses (a) to (d) of sub-section (1) of section 67, section 164 and section 185(2)(b) of 2003 Act and sections 10 and 16 of the Telegraph Act, 1885, would lead to the conclusion that, in the absence of the rules under Section 67(2) of 2003 Act, section 12(2) of the 1910 Act, will continue to be in force. If the owner or occupier refuses to give consent and raises, objections, the licensee may obtain permission in writing from the District Magistrate or the Commissioner of Police. When making an order, the Distt Magistrate or the Commissioner of Police, as the case may be, shall fix the amount of compensation or the annual rent, or both, which should in his opinion be paid by the licensee to the owner or the occupier”.*

24. Now, we also like to point out that the State Govt. of HP, vide its notification No. MPP-A(3)-3/2003-1 dated 18.09.2008 has conferred power under section 164 of the Electricity Act, 2003 is the Officers of the HPSEB within their jurisdiction, the power for placing of electrical lines or electrical plants for the transmission supply and distribution

of electricity which the telegraph authority possesses under the Indian Telegraph Act, 1885. Further the HPSEB has also clearly informed on 10.09.2018 the petitioner that in the instant case, the HPSEBL has been entrusted with the work of 132 kV/DC transmission line from Jathia Devi to proposed 132/33 kV Sub-station at Maliana, for ensuring 24x7 reliable power supply to Shimla Town and notice, regarding taking up the execution of erection of Tower No.30 and stringing and sagging of conductor under construction 132kV D/C transmission line from Jathia Devi to Maliana, under section 13 of Indian Electricity Act 1910 was published in the newspapers on 13.04.2010. Further, the land measuring 0.01.90 hac, had been acquired, vide award No.699 dated 12.04.2013, from the land comprising in khasra No. 551 old and 644 new village Charoli, PO Anandpur, Tehsil Shimla (Rural) Distt. Shimla (HP). Further, in exercise of the power conferred under sections 67 and 68 of Electricity Act, 2003, read with Rule-3 of works of Licensees (HP) Rules, 2014 notified vide MPP & Power Department notification No. MPP-A(3)-3/2003-II dated 3<sup>rd</sup> February, 2014, a notice was given stating that Tower No. 30 of 132 kV Double circuit line from Jathia Devi to Maliana (under construction) for providing 24x7 quality power supply to Shimla Town, shall be placed on a portion of the land comprising in Khasra No. 551 old and 664 new Village Charoli, PO Anandpur, Tehsil Shimla (Rural) Distt. Shimla (HP), as per sketch attached therewith. It was also made clear that while due care will be taken to minimize the damage likely to occur during the construction/erection of the transmission line. The crop damaged/trees cut during construction of line may be taken over by the owner or his authorized representative. Reasonable compensation for the damages will be paid as per the assessment of the Revenue/Horticulture/Forest Department, Government of Himachal Pradesh.

25. After having glimpse of the statutory provisions of the Electricity Act, 2003 and Rules framed thereunder, the provisions of the Telegraph Act, 1885 and the various judicial pronouncements made by the Hon'ble Apex Court and various High Courts as referred to in the preceding paras of this Order and the factual matrix of the case as set out in the preceding para 24 of this Order, we find that in such a situation sections 67 and 68 of the Electricity Act, 2003 and the Rules of 2006 framed thereunder have no application. Section 164 of the Electricity Act, 2003, read with sections 10 and 16(1) of the Telegraph Act, 1885, contains the powers to lay down overhead lines on private lands, and thereunder no consent is required to be obtained from the land owner and acquisition is not necessary. However, the licensee is to cause a little damage, detriment

and inconvenience as may be, and is to make full compensation for any damage, detriment and inconvenience caused by him or by any one employed by him. The petitioner has failed to establish any failure and contravention on the part of the HPSEBL in this case.

In view of the above findings, we conclude that there is no merit in this petition, as we do not find any infirmity in the action of the Respondent Board. Consequently, the petition is liable to be dismissed.

Accordingly, the petition as being devoid of merits is dismissed, of course with the liberty to the petitioner to approach the concerned authorities for determination and payment of the appropriate compensation to which he may be entitled under the provisions of law.

There is no order as to costs.

--Sd/--  
**(Bhanu Pratap Singh)**  
**Member**

---Sd/-  
**(S.K.B.S. Negi)**  
**Chairman**