

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

O.P.No.11 of 2017
Date: 24-03-2018

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

Between:

Sri R. Rammurthy Naidu
GP of Smt. Rekha Ramamurthy Naidu
Land Owner Flat No.501, Sri Srinivasa Royal Residency
New Military Colony, Extension AK Nagar
Nellore – 524 004

... Petitioner

A N D

1. Chairman & Managing Director
APTRANSCO, Vidyut Soudha, Erramanzil
Khairatabad, Hyderabad
2. Chief Engineer 400 KV Lines
APTRANSCO, Vidyut Soudha, Erramanzil
Khairatabad, Hyderabad
3. Superintending Engineer 400 KV Lines
L & S Circle, AP Transco, Padamata
Vijayawada
4. Executive Engineer, 400 KV Division
AP Transco, Ambapuram, Kothuru
Nellore Post
5. Asst. Executive Engineer
400 KV/SD-2/Krishnapatnam AP Transco
Nellore
6. The Dist. Collector & Magistrate
Sri Potti Sriramulu Dist
Nellore Post

.... Respondents

This Original Petition has come up for hearing finally on 24-02-2018 in the presence of Sri P. Changal Reddy, learned counsel for the petitioner and Sri P. Shiva Rao, learned Standing Counsel for the AP Transco / 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

Petition for determination of full compensation for the losses and damages to the trees, land and property of the petitioner and for directing payment of the same with interest from the date of eligibility till payment and other appropriate reliefs.

2. The petitioner's case is that he is the owner of Ac.22-72 Cents in Survey No.9/1 of Pandluru Village, Naidupeta Mandal, Sri Potti Sriramulu Nellore District and there are Mango, Sapota, Coconut, Teakwood and Red Sandal trees in the land since 1991, apart from six open wells with electric motors and pipelines for regular water supply to the trees. The land is enclosed by a fencing with iron gates and the land has internal roads with lighting arrangements. The fruit bearing trees are giving good yield and the land / garden is within one kilometer on Chennai – Kolkata National Highway, NH-16. Meenakuru special economic zone with a developed large industrial estate in 4,500 acres is in proximity and educational institutions, godowns, houses, a sugar factory with a crushing capacity 250 metric-tones and a distillery are located nearby and a large Sponge Iron factory is within one kilometer. The Assistant Executive Engineer of Transmission Corporation of Andhra Pradesh Limited entered the land in August, 2012 and dug two pits and again on 06-09-2012, he entered the land but was resisted. On 13-09-2012, the petitioner was informed by the Assistant Executive Engineer about the construction of towers and lines in the land. He was issued notice on 18-09-2012 about 400 KV electric line from Krishnapatnam to Chittoor being constructed as per the provisions of the Indian Telegraph Act, 1885. The petitioner issued registered letter dated 18-09-2012 seeking the details of the works and methodology of compensation and objected to the works being continued without his consent. The Assistant Executive Engineer replied on 11-10-2012 stating that the petitioner cannot object and that they will

execute the work with police protection. The petitioner was also informed that he will be paid compensation for the damage based on the rates fixed by the Department of Horticulture. The judgment of the Hon'ble High Court of Andhra Pradesh in W.P.No.860 of 2009 was quoted to contend that no land acquisition and no consent of the owner / occupier are necessary. The petitioner again objected on 23-10-2012 through a letter for which, a vague reply was given on 08-11-2012. The petitioner filed W.P.No.35258 of 2012 before the Hon'ble High Court and the Transmission Corporation of Andhra Pradesh Limited filed a counter affidavit, which is contrary to the Andhra Pradesh Works of Licensees Rule, 2007. If the land owner does not consent, the licensee has to approach the District Collector. The petitioner was misled to withdraw the writ petition on an assurance of payment of compensation as per the departmental procedure. But, he was paid only Rs.7,80,000/- over a period of two years for two towers. The petitioner lost about 27 Mango and Sapota trees aged about 21 years and lost an area of 549 meters length and 52 meters width, which comes to 7.13 acres. For the uprooted trees, Rs.25,000/- per tree has to be paid and an acre costs Rs.50,00,000/- and the petitioner has to be paid land value of Rs.3,50,90,000/-. The criminal trespass caused mental agony and loss of social status. The petitioner referred to the Andhra Pradesh Works of Licensees Rules, 2007 and the decisions of the Constitutional Courts in support of his claim of violation of rules and entitlement to compensation. The land now cannot be used as desired by the land owner though the ownership still remains with him and the Hon'ble Supreme Court repeatedly held that the prescribed procedure should be followed, the diminutive land value has to be paid and the potentiality for development has to be taken into account. The Transmission Corporation of Andhra Pradesh Limited is only a company having no powers under Section 164 of the

Electricity Act, 2003 and hence the petition under Rule 13 (2) of the Andhra Pradesh Works of Licensees Rules, 2007 for implementation of the rules and payment of full compensation with interest from the date of eligibility.

3. The respondents 1 to 5 / AP Transco and its officers filed a counter contending that the District Collector was not approached by the petitioner for appropriate compensation to enable him to file any appeal before the Commission. While the right to lay lines even without the consent of the owner / occupier was upheld by the Hon'ble High Court, AP Transco was claimed to have been paying compensation to the effected land owners including for diminution of land value and crop value. The petitioner was given notice well in advance about laying lines and in fact at the request of the petitioner, the AP Transco revised the check survey and relocated two 400 KV towers, to avoid cutting of Mango trees. Still the petitioner filed W.P.No.35258 of 2012 before the Hon'ble High Court. AP Transco filed a counter requesting the petitioner to withdraw his case on being informed that compensation will be paid as per the actual damages. These works were executed with prior notice to the petitioner and the petitioner was paid compensation through cheques. Rs.1,68,000/- and Rs.1,56,000/- on 03-08-2013, Rs.1,82,000/- and Rs.1,94,000/- on 02-08-2014 and Rs.80,000/- on 31-03-2015 were paid and total amount paid by AP Transco was Rs.7,00,000/- for both towers and Rs.80,000/- for the damage to the trees. The licensee did not acquire any land of the petitioner and in spite of being convinced with the explanations of the AP Transco officials, the petitioner was still resisting the AP Transco on the land. The petitioner himself wrote a letter to his Advocate in W.P.No.35258 of 2012 that he decided to cooperate with the AP Transco for the construction work and hence he requested to withdraw the writ petition. In fact laying of lines and towers were revised at the request of the petitioner

for safeguarding the Mango orchard and the clearance was 15 to 20 meters above the ground level and 5 meters above the Mango orchard in the corridor. The total compensation of Rs.7,80,000/- was paid for the land and damage to the trees. Crop compensation was also paid for the damage during construction at the rates approved by the District Collector. A Gazette Notification was issued much before the construction work and all the claims made by the petitioner are contrary to the facts. Hence, the respondents 1 to 5 desired the petition to be dismissed with costs.

4. The 6th respondent did not file any separate counter and the petitioner did not file any rejoinder.

5. The petitioner filed a number of documents, most of which were again filed along with written submissions dated 06-01-2018.

6. The point for consideration is whether the petitioner is entitled to have the compensation to which he is entitled with consequential reliefs determined by this Commission or in any other manner in accordance with law ?

7. A close perusal of the pleadings and the documents shows that the petitioner was paid compensation of Rs.7,80,000/- either towards the land value or the damage to the trees by the AP Transco and obviously that compensation was paid in tune with the proceedings of the Collector and District Magistrate, Sri Potti Sriramulu Nellore District dated 24-08-2013. The proceedings show that in connection with the construction of 400 KV Quad Moose Double Circuit Power line from Krishnapatnam 400 KV station to Manubolu 400 KV substation through agricultural fields, fish / prawn ponds and lands containing Teakwood trees and Coconut trees of Muthukur, Venkatachalam and Manubolu Mandals, the District Collector, Sri Potti Sriramulu

Nellore District was approached by the AP Transco the Power Grid Corporation of India Limited which was entrusted with the work and the associations of farmers and others about the right of way problems and assessment of compensation. The District Collector appears to have held a meeting on 11-07-2013 with “concerned” and after discussions, all the officers agreed on the diminution of the land value involved and assessment of crop loss. Who are “concerned” with whom the meeting was conducted and who are all the “officers” who agreed for the value fixed is not stated in the proceedings themselves and it is clear from the list of persons to whom these proceedings were marked by the Collector that none of the individual owner / occupier / farmers of the effected lands was given any copies of the proceedings which is suggestive that they might not have had notice of the meeting, its deliberations and its conclusions. The market value of the land was estimated on the basis of their being near high ways or in remote areas or in far remote areas. The proceedings themselves noted that though the tower actually occupies Ac.0-12 Cents, the entire field where the tower is erected lost its sale value as there would be no buyers for the land. While on market value per acre, the value of Ac.0-12 Cents was calculated, in assessing the norms the average per acre yield was assessed at 12 quintals and net profit per season was assessed at Rs.33,630/- and above. The average crop loss for each tower area was arrived at Rs.90,000/- per tower and the total compensation payable to a farmer / land owner per tower for market value of the tower location and the crop loss per tower location was thus calculated at Rs.3,50,000/-. The proceedings of the Collector directed payment of such compensation to the farmers / land owners for “all ongoing and forthcoming projects of 400 / 765 KV Transmission lines in Sri Potti Sriramulu Nellore District”.

8. Section 67 of the Electricity Act, 2003 in sub-section (2) (e) provides for appropriate Government making rules for determination and payment of compensation or rent to the persons affected by the works of the licensees. Section 67 (3) of the Electricity Act, 2003 provides that a licensee shall cause as little damage, detriment and inconvenience as may be in exercise of its powers under Section 67 or the Rules made there under and shall make full compensation for any damage, detriment or inconvenience caused by him or any one employed by him. Section 68 (6) of the Electricity Act, 2003 provides for award of reasonable compensation to the person interested in any tree in existence before the placing of the overhead line, which can be recovered from the licensee. While appropriate Government may confer the powers of a Telegraph Authority under the Indian Telegraph Act, 1885 on any public officer or licensee or supplier of electricity for placing of electric lines or electrical plant for transmission of electricity, such powers of Telegraph Authority under Section 164 of the Electricity Act, 2003 conferred by the appropriate Government shall have to be so exercised as to be in consonance with the determination and payment of compensation under Section 67 (2) (e) and Section 68 (6) of the Electricity Act, 2003 in tune with the accepted principle that all the provisions of a statute must be read together and given effect to.

9. The Government of India made Works of Licensees Rules, 2006 under Section 67 (2), while the Government of Andhra Pradesh made the Andhra Pradesh Works of Licensees Rules, 2007 under Section 67 (2) read with Section 180 (2) (b) of the Electricity Act, 2003. Both the Rules almost are verbatim replicas of each other in their content and substance. Rule 3 of the State Rules which authorizes the licensee to carryout works, states in sub-rule (4) that the District Magistrate authorized by the State Government in this behalf shall, after considering the

representations of the concerned persons, fix the amount of compensation or of annual rent or both, which should in his opinion be paid by the licensee to the owner or occupier of a building or land on which any works have been carried out. Full compensation for any loss or damage by reason of carrying out any works is the underlying theme under all the Rules and Rule 13 provides for determination and payment of compensation to affected persons for any loss or damage incurred due to any such works or non-compliance with the Rules. The determination shall be by the District Magistrate authorized by the State Government in this behalf, if not mutually agreed between the parties and any difference or dispute arising as to the amount of compensation determined by the District Magistrate, shall be determined by the State Commission. The Government of Andhra Pradesh appointed the District Collector to exercise the powers and perform the functions and duties under the Andhra Pradesh Works of Licensees Rules, 2007 and directed that any works of licensees in the State of Andhra Pradesh shall have to be taken up and executed in strict compliance of the said statutory Rules as per G.O.Ms.No.6, Energy, Infrastructure & Investment (Power-III) Department, dated 06-03-2017. The guidelines for payment of compensation towards damages in regard to Right of Way for transmission lines issued by the Ministry of Power, Government of India on 15-10-2015 were initially not accepted by the State of Andhra Pradesh regarding the compensation for the corridor while it opined that 100% land value should be paid for the tower base. However, in G.O.Rt.No.83, Energy, Infrastructure & Investment (Pr.II.A2) Department, dated 20-06-2017, the Government of Andhra Pradesh laid down the guidelines for payment of compensation towards diminution of land value in the width of the Right of Way Corridor with effect from the date of Government Orders.

10. With this statutory background, it is thus seen that the District Collector, who is the officer authorized in this behalf shall have to fix the amount of compensation or of an annual rent or of both which in his opinion be paid by the licensee to the owner / occupier of the effected building or land after considering the representations of the concerned persons. As already stated, the proceedings of the Collector in question do not indicate any information or notices to the concerned persons at any time before the Collector issued the proceedings and they did not in any manner participate in the meeting where the issue was discussed and the decisions were taken. The Collector did not specify that he formed any opinion on the payment of compensation but merely stated that all the officers agreed to recommend the value which was specified. He did not even state whether he was among the officers who agreed for such compensation and it was just because some officers have agreed on the value of the land to be recommended or the crop loss to be compensated, the Collector mechanically followed the same in directing payment of compensation. A close reading of the rules in question indicates that every owner / occupier of a building or land can raise objections, has to be heard with reference to his objections and then Collector has to fix the compensation in performance of the duty entrusted to him by the statutory rules. Absolutely nothing of that sort happened here and Rule 13 in particular clearly states that the licensee shall have to make full compensation for any loss or damage incurred as may be determined by the authorized officer and except the proceedings dated 24-08-2013, there appears to be no other proceedings or order or communication throwing light on the compensation payable to the petitioner under the statutory rules of 2007. Any effort to apply his mind by the Collector does not even remotely appear from the proceedings in question. There were no representations or objections from the farmers in question which he can

claim to have considered. Section 67 (2) (e) or Section 68 (6) of the Electricity Act, 2003 or the Andhra Pradesh Works of Licensees Rules, 2007 do not appear to contemplate a composite omnibus order for all the ongoing and forthcoming projects of the entire district. In fact the basic thrust is on the right to have reasonable compensation to which he is entitled, fixed in accordance with the statute and the statutory rules in respect of each person affected and each person interested. A reasoned judicious determination on merits in accordance with law of the compensation payable under the statute and the statutory rules by the Collector and payment thereof to the owner / occupier is an essential prerequisite. Hence, this Commission which is conferred with the power of revision by the rules and the power of determination of any difference or dispute as to the amount of compensation under the rules has to necessarily intervene and as a quasi judicial authority conferred with such powers akin to an Appellate Court or a Revisional Court under the Code of Civil Procedure, 1908, the Commission can remand the case back to the Collector exercising its jurisdiction similar to one under Order XLI Rule 23 of the Code of Civil Procedure, 1908. The present case falls within the limited class of cases where the power of remand be exercised and the various documents filed by the petitioner and the pleadings of the parties raised various other questions but expression of any opinion on the same will prejudice the determination of the matter on merits by the Collector on remand and hence, the Commission refrains from expressing any such opinion. As the Collector failed to exercise the jurisdiction vested in him in accordance with law, the Commission has to interfere and if the Commission itself ventures in determination of such compensation, the petitioner will be deprived of an opportunity of approaching a higher Forum against any wrong determination, while there is a right to approach this Commission against any wrong

determination by the Collector. While the compensation already received by the petitioner will remain unaffected, the petition has to be ordered accordingly.

11. Therefore, the matter is accordingly remitted back to the Collector, Sri Potti Sriramulu Nellore District for reconsideration of the subject matter of the proceedings in Rc.D3.2959/2011 dated 24-08-2013 in so far as the petitioner is concerned and for determination of full and reasonable compensation to which the petitioner is entitled by reason of works of the licensee in his land, in accordance with the Andhra Pradesh Works of Licensees Rules, 2007.

12. The Original Petition is allowed accordingly. No costs.

This order is corrected and signed on this the **24th day of March, 2018.**

Sd/-
P. Rama Mohan
Member

Sd/-
Dr. P. Raghu
Member

Sd/-
Justice G. Bhavani Prasad
Chairman