

Sub: In the matter of representation in compliance to the directions of Hon'ble High Court, Jabalpur in Writ Petition no. 21268/2013

ORDER

(Date of hearing: 12th March, 2015)

(Date of order: 30th March, 2015)

Shri Ashok Kumar Sable, S/o Shri Anand Rao Sable, R/o near Gas Godown, Mordongri Road, Sarni, District Betul (M.P.)	-	Petitioner
M/s Kalpataru Satpura Transco Pvt. Ltd. 101, Part-III, G.I.D.C. Estate, Sector-28, Gandhinagar (Gujarat)- 382028	-	Respondent No.1
M.P. Power Transmission Co. Ltd., Jabalpur	-	Respondent No.2
The Principal Secretary, Energy Department, Govt. of M.P., Mantralaya, Vallabh Bhawan, Bhopal	-	Respondent No.3
The Collector and District Magistrate, Collectorate, Betul- 460001	-	Respondent No.4

Shri Ashok Sable, petitioner appeared in person and Shri Suyash Thakur, Advocate appeared on behalf of the petitioner.

Shri R.K.Mishra, Dy. Manager, Shri R.C.Mishra, Advocate and Shri D. Kumar, Consultant appeared on behalf of the respondent no.1.

Shri D.P.Badkur, SE and Shri G.D.Patil, EE appeared on behalf of the respondent no.2.

Shri S.S.Agrawal, SE appeared on behalf of the respondent no.3.

None appeared on behalf of the respondent no.4.

2. The petitioner, Shri Ashok Sable has submitted a representation through Shri Sankalp Kocher, Advocate in compliance to the directions of the Hon'ble High Court, Jabalpur issued in the order dated 20.01.2014 passed in Writ Petition no. 21268/2013.

3. The petitioner has stated that:

(i) M/s Kalpataru Satpura Transco Pvt. Ltd. has illegally changed the over crossing of the HT line which was approved between Tower no. 307-R and Tower no. 308-R, thus including his land.

(ii) The petitioner has requested the Commission that his land may be excluded from the project as it has been illegally included by altering the approved and sanctioned route.

4. The matter was heard on 18.02.2014. The written submissions of the petitioner and

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the respondents have been brought on record. During the hearing, the petitioner, by and large, reiterated what has been stated in the petition. The respondent no.1&2 in their arguments stated that no diversion was done in the approved line route annexed with the Transmission License. After hearing all the parties and considering the written submissions made, the Commission had directed the petitioner and the respondent no. 1&2 to approach the Collector and District Magistrate, District Betul and kept the case pending till the matter is resolved by the Collector and District Magistrate, District Betul. On receipt of the copy of the order dated 30.12.2014 passed by the Collector and District Magistrate, District Betul, the next date of hearing was fixed for 27.01.2015, which was adjourned to 10.02.2015 on the request of the petitioner.

5. During the hearing on 10.02.2015, the petitioner has filed a rejoinder and stated that Respondent no. 1 deviated the notified route and laid the line over its land. In its argument, the respondent no.1 stated that the line was laid in accordance with the notified route and no diversion was done. On the request of the respondent no.1, the Commission allowed him to file the reply to the rejoinder by 20.02.2015 and the next date of hearing was fixed for 24.02.2015.

6. During the hearing on 24.02.2015, the respondent no.1 filed the reply and some time was allowed to the petitioner for arguments in the matter on the request of the petitioner. The next date of hearing was fixed for 12.03.2015.

7. During the hearing on 12.03.2015, the petitioner reiterated the contents of the written submission and stated that:

- (a) None of the mandatory provisions enshrined in Section 2(1)(b)(i) of the Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013 have been complied with by the respondents for acquiring the land of the petitioner.
- (b) The alteration of the route was undertaken by the respondent no.1 without obtaining sanctions as provided in Section 69(1)(b) of the Electricity Act, 2003 and Section 13 of the Indian Telegraph Act, 1885.
- (c) The tower no. 307 R of the 132 kV transmission line stands in the petitioner's land.
- (d) By virtue of Article 300A of the Constitution of India "No person shall be deprived of his property save by authority of law." Respondent no.1 without issuing any show cause notice or opportunity of hearing and without obtaining appropriate sanctions from the authorities, laid the transmission line through the petitioner's land. Due to this transmission line, a substantial portion of the petitioner's property has been rendered unfit for use. The registered valuer has assessed the fair market value of this property as Rs. 1,50,12,000.
- (e) Respondent no. 4 passed its order dated 30.12.2014 in compliance to the directions issued by the Commission. The findings recorded by the respondent no.4 is perverse and misconceived for it has failed to enquire and investigate upon the real issues that are in conflict and instead has dealt upon issues which have no bearing in the case along with recoded following incorrect findings:

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- (i) In its findings, the respondent no.4 has not ascertained whether appropriate statutory and mandatory conditions were complied with while laying down the transmission line, whether proper sanctions from appropriate authorities were received or not and whether there was any alteration in the proposed route as compared to the actual route of the transmission line.
 - (ii) The work of laying down transmission line was undertaken in complete derogation of the order dated 20.01.2014 issued by the Hon'ble High Court.
 - (iii) The finding that no objection was raised by the petitioner after the notification dated 09.08.2013 was published, is false, frivolous and incorrect in so far as the petitioner immediately raised serious objections when the survey was undertaken before the respondent no.1&2 along with a copy to the Commission.
 - (iv) Respondent no.4 has completely failed to appreciate that the petitioner had the intention to built the L.P.G. godown well before the notification came in place, which is evident from a bare perusal of para 9 of the order dated 06.07.2012 passed in Civil Suit no. 26-A/2012 by the Learned Civil Judge Class-II, District Betul and letter dated 05.01.2012 of the petitioner addressed to the Municipal Corporation, Betul.
 - (v) The condition no. 7&8 of the order dated 25.07.2013 bearing no. 5425/2013 passed by the respondent no.3 is blatantly violated by the respondent no.1 which is arbitrary, illegal and contrary to law. According to the map in lieu of the notification, the transmission line had to cross between Tower no. 307 and Tower no. 308 of the existing 132 kV line but the respondent no.1 changed the route by laying down the transmission line between Tower no. 307 and Tower no. 306.
 - (vi) A complaint dated 02.09.2014 bearing no. 16626 was registered with the respondent no.4, but no heed was paid.
- (f) The petitioner further prayed for the following relief:
- (i) The mandatory statutory conditions were not fulfilled by the respondent no.1, thereby rendering the entire process of laying of the transmission line illegal and hence the notification dated 09.08.2013 deserves to be set aside.
 - (ii) Alternatively, the transmission line must pass over as per the initial map in lieu of the notification dated 09.08.2013 and not otherwise in the interest of justice.
 - (iii) The order dated 30.12.2014 passed by the respondent no.4 deserves to be quashed and a fresh inquiry to be conducted by the respondent no.4 based upon the issues framed by the Commission.

8. During the hearing, the respondent no.1 reiterated the contents of its written submission and stated that:

- (a) After hearing the arguments advanced by the parties concerned, the respondent no.4 passed the speaking and reasoned order dated 30.12.2014 in light of all the documents produced before them and finally rejected the objection raised by the petitioner being devoid of any merit in the eye of law.
- (b) The aforesaid order denotes that the allegation of illegal deviation or alteration of

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approved and sanctioned route of 400 kV Satpura Ashta Transmission line are infructuous.

- (c) As per the map produced before the Fourth Civil Judge, Class II, Betul by the respondent in Civil Court case no. 26A/2012 to show the situation of old and new 132 kV Sarni-Chhindwada Transmission line. In that Civil Suit, the petitioner wanted a relief of perpetual injunction against the respondent no.2. Finally the suit was rejected and the new 132 kV Sarni-Chhindwada Transmission line was installed after the order passed by the respondent no.4 in another representation of the applicant bearing case no. 1B/12/12-13.
- (d) At the time of notification dated 09.08.2013, only the new 132 kV Sarni-Chhindwada Transmission line bearing Tower no. 306 R and Tower no. 307 R was in existence. The old line particularly the Tower no. 307 and Tower no. 308 were demolished. One Tower was reduced and as a result only Tower no. 306 R and Tower no. 307 R remained at the time of notification dated 09.08.2013. No deviation or alteration in route of 400 kV Satpura Ashta Transmission line was caused. The route is existing as per sanctioned route alignment.
- (e) The respondent no.1 is empowered by the Government of Madhya Pradesh under Section 164 of the Electricity Act, 2003 to exercise all the powers conferred by the Indian Telegraph Act, 1885. If any grievance is arising to the petitioner, the provision of remedy is very well laid down in the said Act. The additional representation regarding damages cause by the respondent no.1 is to be decided in proper forum.
- (f) Under the above facts and circumstances, the petition deserves to be dismissed.

9. In its written submission dated 17.02.2014, the respondent no. 3 submitted that:

- (a) As per the powers vested under Section 68 of the Electricity Act, 2003, the State Government issued order no. 5424/13/13 dated 29.07.2013 in respect of laying of 400 kV overhead transmission line from Satpura TPS Sarni to 400 kV sub-station Ashta by M/s Kalpataru Satpura Transco Private Limited under Public Private Partnership mode.
- (b) As per the provisions of Section 164 of the Electricity Act, 2003, the State Government issued another order no. 8311/2013/13 dated 18.11.2013 imposing certain terms and conditions in respect of laying of aforesaid line by M/s Kalpataru Satpura Transco Pvt. Ltd. Condition no. 9 of the aforesaid order is as follows:

“ For any dispute between the Applicant and Owners of private land on which the line passes the matter will be referred to District Magistrate and the Applicant will pay compensation to land owner as may be decided by the District Magistrate.”

As such, the aforesaid issue agitated by the petitioner may be decided by the District Magistrate upon being referred to him.

10. The aforesaid case was heard in compliance to the directions of the Hon'ble High Court, Jabalpur in Writ Petition no. 21268/2013. Having heard the petitioner and the respondents and considering the written submissions made, the Commission has noted that:

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- (a) The issue agitated by the petitioner before the Commission relates to the laying of 400 kV Satpura Ashta Transmission line over his land by the respondent no.1 without paying him proper compensation. This issue falls under the category of dispute between the petitioner and the respondent no.1.
- (b) The State Government has accorded permission under Section 68 of the Electricity Act, 2003 for laying /construction of overhead Transmission line from 400 kV Switchyard of Satpura Thermal Power Station at Sarni to 400 kV Sub-station of M.P. Power Transmission Company Ltd. at Ashta (as per route shown in the map) subject to some terms and conditions.
- (c) As per Section 86(1)(f) of the Electricity Act, 2003, the State Commission shall adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration. In the instant case, the petitioner is not a generating company and therefore the Commission is not empowered to adjudicate the aforesaid dispute between the petitioner and the respondent no.1 (a transmission licensee).
- (d) In its order dated 18.11.2013, the State Government had already provided that the District Magistrate shall decide the amount of compensation to be paid to the land owner in aforesaid disputes.

11. In view of the above, the Commission directs the petitioner to approach appropriate authority in accordance with the orders issued by the State Government for settlement of the dispute. Also, the Commission does not express any opinion on the merits of the claim of the petitioner. With the above direction, this petition stands disposed of.

Ordered accordingly.

Sd/-
(Alok Gupta)
Member

Sd/-
(A.B.Bajpai)
Member

Sd/-
(Dr. Dev Raj Birdi)
Chairman