



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

SATURDAY, THE TWENTY SEVENTH DAY OF OCTOBER
TWO THOUSAND EIGHTEEN

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

O.P.No. 19 of 2018

Between:

Smt. N. Ranamma W/o. Late N. Markonda Reddy
3-1, Chenna Reddy Palli (Village)
Vepanjeri (Post), Gangadhara Nellore (Mandal)
Chittoor (District) Pin: 517 125

... Petitioner

A N D

1. Chairman & Managing Director,
APTRANSCO, 48-12-4/1, Eluru Rd, Gunadala
Vijayawada – 520 008
Krishna District, Andhra Pradesh

2. Executive Engineer / 400 KV / Kadapa,
APTRANSCO, Kadapa Post and District
Andhra Pradesh

3. The Collector and District Magistrate,
Chittoor District, Chittoor (Post) and (District)

... Respondents

This Original Petition has come up for hearing finally on 06-10-2018 in the presence of Sri Y. Surya Sekhar Reddy representing Sri P. Changan Reddy, learned counsel for the petitioner and Sri P. Shiva Rao, learned Standing Counsel for the respondents 1 and 2. After carefully considering the material available on record and after hearing the arguments of the learned counsel, the Commission passed the following:

ORDER

A petition under Rule 13 (1) and (2) of the Andhra Pradesh Works of Licensees Rules, 2007 to direct the Transmission Corporation of Andhra Pradesh Limited (hereinafter referred to as “**APTRANSCO**”), to pay a compensation of Rs.12 lakhs to the petitioner for loss of trees and loss of land value, as fixed by the District Collector, Chittoor on 04-04-2017, with interest, solatium and other appropriate reliefs.

2. The petitioner’s case is that she is the owner of Ac.4-79 cents in Survey No.164-A1A of Chennareddypalli, Vepanjeri, Gangadhara Nellore Mandal, Chittoor District. On coming to know about the construction of a 400 KV transmission tower and line in her land by APTRANSCO, she made a representation to the District Collector, Chittoor and obtained acknowledgment of the complaint cell dated 14-09-2015 claiming compensation to which she is legally entitled. She again submitted a representation on 25-03-2017 and already lines are passing through on the sides of this property. She explained that if new lines are drawn over the middle of her property, the entire property becomes useless for any future development. The petitioner refused to accept the compensation of Rs.30,000/- towards loss of trees, when offered by the Assistant Engineer, APTRANSCO and also a later offer for compensation of Rs.3,00,000/-. As the petitioner incurred debts of Rs.7,00,000/- for the treatment of her husband, she demanded that the compensation be increased, as this land and trees therein are the only source of livelihood for the family. The APTRANSCO and local Mandal Revenue Officer threatened to use force. The Collector, Chittoor made an endorsement on the representation dated 25-03-2017 fixing a compensation of Rs.12 lakhs. The APTRANSCO refused to implement the said orders and called sons of the petitioner for enquiry on

04-04-2017 in the presence of the Revenue Divisional Officer, Mandal Revenue Officer and Sarpanch and the Executive Engineer, APTRANSCO offered Rs.5,00,000/-. A Panchanama was recorded. Again son of the petitioner Gangadhara Reddy represented to the Collector on 04-04-2017 and the Collector endorsed the petition to the Revenue Divisional Officer reiterating that he assured a compensation of Rs.12 lakhs for the 5 Acres, as three lines are going over these lands. The APTRANSCO still refused to pay the compensation and on 04-05-2017 forced the sons of the petitioner Sashidhar Reddy and Gangadhara Reddy to sign on a Panchanama along with Village Revenue Officer and Sarpanch about fixing of compensation of Rs.5,00,000/- by the Executive Engineer, APTRANSCO. The petitioner and her sons refused to give consent under Rule 3 (1) (a) of the Andhra Pradesh Works of Licensees Rules, 2007 and the APTRANSCO did not obtain any permission from the Collector under Rule 3 (2) thereof. The grant of compensation of Rs.12 lakhs by the Collector was under Rule 3 (4). The Executive Engineer cannot unauthorisedly and illegally reduce the compensation contrary to Rules. Southern Power Distribution Company of Andhra Pradesh Limited (hereinafter referred to as "**APSPDCL**") and Andhra Pradesh Electricity Regulatory Commission (hereinafter referred to as "**APERC**") were approached, but in vain. APERC issued instructions on 13-10-2017. Hence, the respondents 1 and 2 representing the APTRANSCO are bound to make payment or are liable as the licensee of APERC to comply with the prescribed procedure and make payment.

3. The respondents 1 and 2 filed a counter stating that the notification for the works, called for representations from the stakeholders and 400 KV line was laid in the agricultural lands in specified mandals in Kadapa and Chittoor Districts. The Assistant Executive Engineer concerned issued notices to the land owners about

the rules in vogue. Agreeing to pay 100% land value for the tower base, the State Government issued G.O.Rt.No.83, Energy, Infrastructure & Investment (Pr.III-A2) Department, dated 20-06-2017. APTRANSCO issued further orders on 07-08-2017 directing payment of compensation at 100% of land value and compensation for diminution of land value towards the Right of Way (RoW) corridor and other restrictions subject to a maximum of 10% of the land value. Due to the powers delegated by Section 164 of the Electricity Act, 2003, the APTRANSCO is executing the works. The compensation fixed by the Collectors of Krishna and Ananthapur were adopted and in a meeting convened by the District Collectors of Ananthapur and West Godavari with the local farmers, it was decided to fix compensation of Rs.1,28,000/- per tower during the erection works. The Chief Engineer issued instructions accordingly and the tower and crop compensation were paid to the concerned land owners accordingly. The compensation towards diminution of land value and Right of Way (RoW) were not adopted, as only 60% of line works were completed by that time. The 400 KV line was completed in all respects and charged on 22-05-2017. The petitioner was explained that no Mango trees will be removed and only a few branches of Mango trees will be damaged. The farmer demanded a compensation of Rs.10,00,000/- and the Executive Engineer addressed the Mandal Revenue Officer to sort out the RoW issue. The 1st respondent addressed a letter to the Collector, Chittoor on 01-04-2017 explaining that the APTRANSCO was authorized to pay only for the damage caused to the crop and fruit bearing trees during the execution of the work and cannot pay any compensation towards land diminution value, as no tower was erected in the land of the petitioner. As the work was getting delayed, the Revenue Divisional Officer, Chittoor was approached on 30-03-2017, who called a meeting on 06-04-2017. The

Revenue Divisional Officer, Chittoor explained the compensation procedures to the farmer and told that the compensation assessment may take damage upto Rs.5,00,000/- only. The farmer accepted the terms explained by the Revenue Divisional Officer, Chittoor and agreed for carrying out the work. As the petitioner again objected on the next date, the stringing of conductor over the petitioner's land was held up for more than two months and was ultimately completed with the help of local police on 06-05-2017. High safety measures were taken to minimize the damage to the branches of Mango trees. The damage was carefully and duly assessed and it came to Rs.1,53,668/- for 73 Mango branches and one Teakwood tree. The petitioner refused to sign the compensation form and demanded Rs.12 lakhs. The endorsement of the Collector cannot be construed as an order in accordance with Rules and hence, the respondents 1 and 2 desired the petition to be dismissed with costs.

4. None entered appearance for the 3rd respondent.

5. The point for consideration is the entitlement of the petitioner to compensation to the extent of the adverse impact of the works of the licensee prejudicially affecting the petitioner's land and the manner of arriving at and paying such compensation in accordance with law.

6. 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.

7. 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.

8. While this is the statutory background, the petitioners relied on *The Kerala State Electricity Board Vs Livisha (2007) Insc 650* wherein the Hon'ble Supreme Court has laid down that the purpose and object of the Act and the methodology laid down therein should be the guiding factor for determining the amount of compensation. The situs of the land, the distance between the high voltage electricity line laid thereover, the extent of the line thereon, whether the high voltage

line passes over a small track of land or through the middle of the land, the value of the land, the loss of substantive right to use the property and similar relevant factors were held by the Hon'ble Supreme Court to be determinative of the matter.

9. The petitioner filed copies of some documents in support of her case and copy of the pattadar pass book in her favour corroborates the claim of the petitioner about her ownership and possession of the land in question. A copy of her Aadhaar card supports her claim of being a resident of the village in question. The copies of her complaints to the Collector's office dated 14-09-2015, 25-03-2017 and 04-04-2017 show that the petitioner and her sons were complaining about the subject work of the licensee both before and after the execution of the work, its adverse impact on the land of the petitioner and their right to a reasonable and adequate compensation in accordance with law. The copy of the representation dated 25-03-2017 appears to have been endorsed by the Collector as "Compensate 12 lakhs". The Panchanama dated 06-04-2017 clearly shows that the petitioner's son specified that the petitioner and her family members were demanding a compensation of Rs.12,00,000/-, while expressing no objection for the execution of the work of the licensee, if such compensation is paid. The Panchanama further shows that the petitioner's son did not express any consent for the estimation of the damage by the Executive Engineer at Rs.5,00,000/- and only stated that he will consult his family and communicate their decision on 07-04-2017. However, even before, the petitioner's son gave a representation dated 04-04-2017 to the Collector, who endorsed on the petition that "I have ordered a compensation of 12 lakhs for the 5 acres, as such, three trans lines are going over these lands". However, another Panchanama again appears to have been conducted on 04-05-2017 with the Executive Engineer, again estimating the damage at Rs.5,00,000/- only upto

which compensation has to be paid and strangely the Panchanama recorded that the petitioner and her two sons agreed for such compensation of Rs.5,00,000/-, which is not in tune with ordinary and natural course of human conduct given the consistent opposition by the petitioner and her sons against the compensation offered. The further representation from sons of the petitioner to this Commission and Chairman & Managing Director, APSPDCL narrating the sequence of events since 2017 and the sufferings which the family had undergone makes the claim about their consenting to any compensation of Rs.5,00,000/- as unnatural, artificial and ex-facie improbable. The very fact that the work was ultimately completed with the help of police on 06-05-2017 speaks for itself.

10. The decisions to pay a compensation of Rs.5,00,000/- or Rs.12,00,000/- were not claimed to have been taken after notice to and after a reasonable opportunity of hearing to the affected parties. Either of the decisions are not shown to be supported by any recorded reasons, no representations of the concerned persons were ever called for consideration and the bald endorsement 'compensate 12 lakhs' does not indicate the manner in which the quantum of compensation was arrived at or the procedure followed therefor or the criteria or factors that were taken into account. Any application of mind either by the Collector or the Executive Engineer are not discernible from the record and the word "Determination" used in Rule 13 of the Andhra Pradesh Works of Licensees Rules, 2007 obviously implies a reasoned judicious determination on merits in accordance with law by the authorized officer and this Commission has already held in five similar cases on merits that it is pre-eminently a reasonable situation for making an order of remand to the Collector. The failure of the Collector to form his own opinion in his best judgment on the compensation payable to the affected persons amounts to failure to

exercise the jurisdiction vested in him in law. The power of the Commission to remand a case back to the Collector exercising its jurisdiction similar to one under order XLI Rule 23 of the Code of Civil Procedure, 1908 was discussed and upheld in the earlier orders of the Commission. Therefore, while the matter has to be remitted back to the Collector, if any compensation was already received by the petitioner, it can be retained by the petitioner, to be adjusted in the compensation ultimately found payable as per law.

11. Therefore, the matter is remitted back to the District Collector, Chittoor for reconsideration of the subject matter of this petition in respect of the petitioner and for redetermination of the reasonable and full compensation to which the petitioner is entitled to by reason of the works of the licensee in question, on merits in accordance with law in general and the Andhra Pradesh Works of Licensees Rules, 2007 in particular. The matter has to be considered and decided by the District Collector, Chittoor as expeditiously as possible.

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

This order is corrected and signed on this the **27th day of October, 2018.**

Sd/-
P. Rama Mohan
Member

Sd/-
Dr. P. Raghu
Member

Sd/-
Justice G. Bhavani Prasad
Chairman