



**ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION**

4<sup>th</sup> Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

WEDNESDAY, THE EIGHTH DAY OF AUGUST TWO THOUSAND EIGHTEEN

:Present:

**Justice G. Bhavani Prasad, Chairman**  
**Dr. P. Raghu, Member**

**O.P.No.13 of 2018**

**Between:**

Dakaraupu Venkat Rao & another

... **Petitioners**

**A N D**

1. The Chairman & Managing Director, AP Transco
2. The Chief Engineer, AP Transco
3. The Assistant Executive Engineer, 400 KV Constructions
4. The District Collector, West Godavari District

...**Respondents**

This Original Petition has come up for hearing finally on 01-08-2018 in the presence of Sri P. Chengal Reddy, learned counsel for the petitioners and Sri P. Shiva Rao, learned Standing Counsel for the respondents 1 to 3. After carefully considering the material available on record and after hearing the arguments of the learned counsel for both parties, the Commission passed the following:

**ORDER**

A petition under Rule 13 (1) & (2) of the Andhra Pradesh Works of Licensees Rules, 2007 to direct the Collector, West Godavari to fix the compensation to be paid by the Transmission Corporation of Andhra Pradesh Limited to the petitioners towards the loss and damage to their properties.

2. The petitioners' case is that they are the owners of Ac.9-00 cents and Ac.3-50 cents, totalling to Ac.12-50 cents under their respective pattadar pass books and the Transmission Corporation of Andhra Pradesh Limited represented by respondents 1

to 3 proposed to construct a 400 KV Moose Double Circuit Transmission Line from Hinduja Power Plant, Visakhapatnam to the proposed 400 KV / 200 KV sub-station reach 111 to be established at Kamavarapukota Mandal, West Godavari District. On coming to know that the towers and the lines RoW is about 46 square meters across the property, causing immense damage and diminution to the land value, the petitioners submitted a representation dated 22-09-2014 to the Superintending Engineer, Transmission Corporation of Andhra Pradesh Limited, Eluru and sent a legal notice dated 20-04-2015. The Transmission Corporation of Andhra Pradesh Limited was informed that it has a statutory duty to acquire the lands of the petitioners under the Land Acquisition Act, 2013 paying the land value of Rs.25,00,000/- per acre and coconut tree value of Rs.3,000/- per year per tree. The land also has valuable oil palm trees, coconut, lemon, banana, teakwood and other trees giving income to the petitioners, which, if damaged, will deprive the livelihood of the petitioners. The petitioners made several representations upto 2017, the last being a representation to the 4<sup>th</sup> respondent dated 16-10-2017. The 4<sup>th</sup> respondent did not act as per Rules and the petitioners were paid only Rs.1,49,000/- towards all the losses and damages, which is arbitrary. The petitioners were not given any notice or any order during the proceedings. The 4<sup>th</sup> respondent announced on 18-06-2015 that compensation for damaged trees is increased and the Collector to whom the decision was left suggested to increase the tree compensation for which the Transmission Corporation of Andhra Pradesh Limited has agreed. The Andhra Pradesh Works of Licensees Rules, 2007 were withheld from the Collector and the decision of the Collector to fix common compensation for all the damaged trees in the private lands for the entire West Godavari District is not legal. If the Collector does not mention in his proceedings relevant Rules, the power of the Commission to

entertain and decide a revision will be affected. The Transmission Corporation of Andhra Pradesh Limited without following any Rules, carried out the works of installing a tower and drawing lines over the lands of the petitioners. An Award has to be passed in respect of all the losses and damages in Ac.12-50 cents and the construction of towers and lines by the Transmission Corporation of Andhra Pradesh Limited was without due authorization. No permission in writing from the Collector was obtained to have the authority to fix the compensation or to permit construction of any temporary or permanent structures. The petitioners were not given any document or notice or any Government Order. The Collector in his proceedings was not adequately advised. The construction of the tower and laying of lines damaged the entire land of Ac.12-50 cents valued at Rs.55,00,000/- per acre. The process of construction by the Transmission Corporation of Andhra Pradesh Limited was not in accordance with legal procedure. Damaging the entire land including various trees and standing crops, the respondents 1 to 3 representing the Transmission Corporation of Andhra Pradesh Limited did not get any consent from the land owners or permission from the Collector and the damage to the property is violation of the Right to Property under article 300-A. The huge tower and lines made the property unfit for any use. The Commission has powers under Rule 13 to make full compensation for the loss or damage and various precedents upheld the Right to Property. The compensation was not fixed in accordance with law and hence the petitioners who are deprived of full enjoyment of the property desired the Collector to be directed to fix the compensation for the lands in accordance with the Land Acquisition Act, 2013.

**3.** On behalf of respondents 1 to 3, 3<sup>rd</sup> respondent filed a Counter Affidavit stating that in order to augment the transmission system for evacuation of power

from H.N.P.C.L. power plant, Visakhapatnam to Kamavarapukota 400 KV substation, the Transmission Corporation of Andhra Pradesh Limited decided to lay transmission lines covering a distance of 210 kilo meters. The route was surveyed and determined. The approved route is running through the lands of the petitioners in Survey No.237 of I.S. Raghavapuram of Dwaraka Tirumala Mandal, West Godavari District. While the Transmission Corporation of Andhra Pradesh Limited is entitled to erect towers and lay lines, individuals like the petitioners are entitled to compensation for the area occupied by the tower footings and also tree / crop damages. Due procedure was followed by the Transmission Corporation of Andhra Pradesh Limited. Compensation was duly fixed by the Collector. The Transmission Corporation of Andhra Pradesh Limited has no statutory duty to acquire the lands in view of the powers conferred by G.O.Ms.No.115 dated 07-10-2003 conferring power of a Telegraph Authority on the Transmission Corporation of Andhra Pradesh Limited. The Collector, on consideration of several relevant factors, fixed the compensation at Rs.1,49,312/-, which was paid to the petitioners. The petitioners did not come forward to receive the cheques, raised objections against removal of trees etc. The Collector followed the 2007 Rules in fixing the compensation. The present petition is barred by time since the order of compensation under dispute and hence, the respondents 1 to 3 desired the petition to be dismissed.

**4.** The point for consideration is whether the petitioners are entitled to enhanced compensation and if so, in what manner ?

**5.** 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.

6. 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 carry out 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.

7. The petitioners being the owners and possessors of Ac.9-00 cents and Ac.3-50 cents respectively in Survey No.237 of I.S. Raghavapuram is not seriously in dispute with the copies of Pattadar Pass Books being placed on record. The representation of the 1<sup>st</sup> petitioner dated 22-09-2014 and the legal notice dated

20-04-2015, notice under the Right to Information Act, 2005 dated 12-07-2017, the further representations dated 18-01-2017 and 16-10-2017, the news report dated 18-06-2015 etc., show that the petitioners were agitating about the inadequacy of compensation throughout. The statutory notification dated 28-08-2015 shows that the Electricity Act, 2003 is also a statute covered by it to provide for determination of compensation in accordance with the 2013 Act.

**8.** Orders of the Collector dated 13-05-2015 in question herein show that the District Collector, West Godavari District, Eluru was referring to the decisions taken during a meeting with the Director, Projects, the Transmission Corporation of Andhra Pradesh Limited, other Transmission Corporation of Andhra Pradesh Limited officials and revenue officials regarding the fixation of tree / land compensation in this case. The decisions taken were obviously without notice to and without hearing the affected parties, who are never given any opportunity to have their right to compensation agitated and determined in accordance with law. The District Collector proceeded to direct payment of tree / crop compensation at four times the rate fixed as per the Government Order, the compensation for eucalyptus trees at Rs.4,400/- per metric tonne and the *lump sum* land value of Rs.1,28,000/- for tower area. Compensation for trees / crops was contemplated to be in addition and thus for the entire 400 KV transmission line passing through West Godavari District, the District Collector has fixed uniform compensation with reference to a Government Order in respect of trees / crops and without reference to any such basis or any basis in fixing the value of the land in the tower area or the trees / crops in the tower area.

**9.** Thus, no representations of the concerned persons were ever called for or considered. The proceedings do 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. What was the permissible and reasonable rationale for fixing uniform compensation is not known and on what basis or material or data, decisions taken in the meeting referred to in the order were arrived at was neither stated nor intelligible. The proceedings themselves disclose that the District Collector himself did not apply his mind in any manner to the issues involved and the right of each person affected or each person interested to have a reasonable compensation to which he is entitled fixed in accordance with the statute and the statutory rules was thus denied. The word '**determination**' used in Rule 13 obviously implies a reasoned judicious determination on merits in accordance with law by the authorized District Magistrate himself but not a mere adaptation of the decisions taken at an administrative meeting to pay at a flat rate to all the persons affected throughout the West Godavari District due to this work of the licensee. Since the Commission has already held in its earlier four orders on merits that such a matter can be remanded to the Collector for a proper and legal exercise of the quasi judicial jurisdiction by the Collector for determination of a reasonable compensation, the failure of the District Collector, West Godavari District to form his own opinion in his best judgment on the compensation payable to the petitioners, amounts to failure to exercise a jurisdiction vested in him in law, due to which the matter has to be remitted back to the Collector. If any compensation was already received by the petitioners, it can be retained by them to be adjusted in the compensation ultimately arrived at as per law. Even the minutes of the meeting in which the decisions were said to have been taken are not placed before the Commission. The Commission does not wish to express any opinion at this stage on which criteria, the compensation payable under the Andhra Pradesh Works of



Licensees Rules, 2007 has to be arrived at and the applicability of the Right to fair compensation and transparency in land acquisition, rehabilitation and resettlement Act, 2013, as the District Collector, West Godavari District is the competent authority to determine the compensation in accordance with law under the relevant statutes and statutory Rules. Under the circumstances, the impugned order has to be set aside and the matter has to be remanded to the District Collector, West Godavari.

**10.** Therefore, the matter is remitted back to the District Collector, West Godavari District, Eluru for reconsideration of the subject matter of his proceedings in Roc. No.4617/2013/G1 dated 13-05-2015 in respect of the petitioners only and for redetermination of reasonable and full compensation to which each of the petitioners is entitled to by reason of the works of licensees in question, on merits in accordance with law in general and the Andhra Pradesh Works of Licensees Rules, 2007 in particular. The matter may be considered and decided by the District Collector, West Godavari District, Eluru as expeditiously as possible.

**11.** The Original Petition is ordered accordingly. No costs.

This order is corrected and signed on this the **8<sup>th</sup> day of August, 2018.**

**Sd/-**  
**Dr. P. Raghu**  
Member

**Sd/-**  
**Justice G. Bhavani Prasad**  
Chairman