

**Appellate Tribunal for Electricity**  
**(Appellate Jurisdiction)**

**Dated: 2<sup>nd</sup> December, 2013**

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam,**  
**Chairperson**  
**Hon'ble Mr. V J Talwar, Technical Member**

**APPEAL No.139 of 2013**

**IN THE MATTER OF**

**North Karanpura Transmission Co. Ltd**  
**12<sup>th</sup> Floor, Building No.10B, DLF Cyber, DLF Phase-II**  
**Gurgaon 122009.**

**..... Appellant(s)**

**Versus**

1 The Secretary  
Central Electricity Regulatory Commission  
3rd & 4th Floor,  
Chandarlok Building, 36, Janpath,  
New Delhi - 110 001

2 Chief Engineer (PP),  
Maharashtra State Electricity Distribution Co. Ltd  
(MSEDCL)  
"Prakash Garh" ,Anant Kanekar marg  
Bandra (East),  
Mumbai – 400 051, Maharashtra

3 Managing Director

Dakshin Gujarat Vij Co. Ltd.  
Manavarachha Road,  
Kapodara, Surat -395006, Gujarat

4 Managing Director  
Madhya Gujarat Vij Co. Ltd.  
Sardar Patel Vidhyut Bhavan,  
Race Course, Vadodara – 390007, Gujarat

5 Managing Director  
Paschim Gujarat Vij Co. Ltd.  
Laxminagar, Nanmava Main Road,  
Rajkot-360004, Gujarat

6 GM (Commercial),  
Gujarat Urja Vikas Nigam Ltd (GUVNL),  
Sardar Patel Vidyut Bhavan, Race Course,  
Vadodara – 390007, Gujarat

7 Managing Director  
Uttar Gujarat Vij Co. Ltd.  
Vishnagar Road, Mehsana -384001, Gujarat

8 Chief General Manager (Comml),  
Madhya Pradesh Power Trading Company Ltd.  
(MPPTCL),  
Block No 2, Ground Floor  
Shakti Bhavan, Rampur  
Jabalpur-482008, (MP)

9 Managing Director  
M.P. Poorva Keshtra Vidhyut Vitran Company  
Block No. 7, Shakti Bhavan, Jabalpur MP

10 Managing Director  
M.P. Paschim Keshtra Vidhyut Vitran Company

G.P.H. Compound, Pologround, Indore – 452015,  
MP

11 Managing Director  
M.P. Madhya Keshtra Vidhyut Vitran Company  
Bijali Nagar Colony, Nishtha Parisar,  
Govindpura, Bhopal – 462023 MP

12 Managing Director  
Madhya Pradesh Audyokik Kendra Vikas Nigam  
Ltd. (MPAKVNL),  
Free Press House,  
1st Floor, 3/54 – Press Complex, A.B. Road,  
Indore – 452008, (MP)

13 Chairman  
Chattisgarh State Power Distribution Company Ltd.  
Vidyut Sewa Bhawan Parisar,  
Dangania, Raipur, - 492013, Chattisgarh

14 Chief Electrical Engineer,  
Goa State Electricity Department,  
Govt. of Goa, Vidyut Bhawan,  
Panaji, Goa – 403001

15 Exec Engineer,  
Electricity Department,  
UT of Daman & Diu  
Sachivalaya, Moti Daman, Via Vapi, Daman –  
396210

16 Exec Engineer,  
Electricity Department,  
Administration of Dadra Nagar Haveli, Dadra  
Nagar Haveli U.T., Silvassa -396230

17 Chairman  
Heavy Water Project,  
Department of Atomic Energy,  
Heavy Water Board, Vikram Sarabhai Bhawan,  
Anushakti Nagar, Mumbai – 400094

18 Managing Director,  
Jindal Power Limited,  
Jindal Centre,  
12, Bhikaiji Cama Place,  
New Delhi 110 066, India

19 Executive Director,  
Torrent Power Limited,  
Torrent House, Off Ashram Road,  
Ahmedabad - 380009, Gujarat

20 CMD,  
PTC India Limited  
2nd Floor, NBCC Tower  
15 Bhikaji Cama Place, New Delhi - 110066

22 CEO (Power),  
Adani Power Limited,  
Adani House, Plot No 83, Sector 32,  
Institutional Area, Gurgaon – 122001

23 SE (RDPPC)  
Rajasthan Power Procurement Centre  
Shed No.5/6, Vidyut Bhawan,  
Janpath, Jyoti Nagar,  
Jaipur - 302005, Rajasthan

24 Managing Director

Jodhpur Vidyut Vitran Nigam Limited  
New Power House, Industrial Area, Jodhpur-  
342003

25 Chairman & Managing Director  
Jaipur Vidyut Vitran Nigam Limited  
Vidyut Bhawan, Janpath, Jyotinagar  
Jaipur 302005

26 Managing Director  
Ajmer Vidyut Vitran Nigam Limited  
Old Power House , Hathi Bhatta  
Jaipur Road, Ajmer-305001

27 CEO,  
BSES Yamuna Power Ltd (BYPL)  
Shakti Kiran Building,  
Karkardooma, Delhi- 110092

28 CEO,  
BSES Rajdhani Power Ltd (BRPL)  
BSES Bhawan, Nehru Place, New Delhi – 110019

29 CEO  
North Delhi Power Ltd. (NDPL)  
CENNET Building, 33 KV Substation Building,  
Hudson Lines, Kingsway Camp, Delhi- 110009

30 Director (Comml. & Power),  
New Delhi Municipal Council (NDMC)  
Palika Kendra Building, Opposite Jantar Mantar,  
Parliament Street, New Delhi- 110001

31 Chief General Manager,  
Uttarakhand Power Corporation Ltd.

Urja Bhawan, Kanwali Road,  
Dehradun – 248001, Uttarakhand

32 CMD

Uttar Pradesh Power Corporation Ltd. (UPPCL)  
Shakti Bhawan, 14, Ashok Marg,  
Lucknow – 226001, UP

33 Managing Director

Paschimachal Vidyut Vitran Nigam Ltd.  
Victoria Park, Meerut- 250001, UP

34 Superintending Engineer,

Poorvanchal Vidyut Vitran Nigam Ltd,  
Poorvanchal Vidyut Bhavan,  
Vidyut Nagar,Hydel Colony, Bhikaripur,  
DLW, Varanasi -221004, UP

35 Superintending Engineer (Tech),

Dakshinanchal Vidyut Vitran Nigam Ltd.  
Urja Bhavan,NH-2, (Agra-Delhi Bypass Road),  
Sikandra,  
Agra - 282007, UP

36 Managing Director,

Madhyanchal Vidyut Vitran Nigam Ltd.  
4A, Gokhale Marg, Lucknow - 226001, UP

37 Chief Engineer,

Kanpur Electricity Supply Company Limited  
(KESCO),  
14/71, Civil Lines, Kanpur – 208 001, UP

38 Chief Electrical Distribution Engineer,

North Central Railway,  
Head Quarter Office, Subedarganj

Allahabad - 211033, UP

39 CMD

Uttar Haryana Bijli Vitran Nigam Ltd.  
Vidyut Sadan, C-16, Sector -6,  
Panchkula, Haryana

40 CMD

Dakshin Haryana Bijli Vitran Nigam Ltd.  
Vidyut Sadan, Vidyut Nagar,  
Hissar – 125005, Haryana

41 Dy. Chief Engineer,  
Punjab State Power Corporation Ltd.,  
Old PSEB Headquarter Building, The Mall Road,  
Patiala -147001, Punjab

42 Principal Secretary to J & K Govt, PDD Civil  
Secretariat  
Srinagar - 190 001.

43 CMD,  
Himachal Pradesh State Electricity Board  
Vidyut Bhawan, Shimla - 171004

44 Superintending Engineer,  
Electricity Department  
5th Floor, UT Secretariat Building, Sector-9,  
Chandigarh – 160019

45 ED (Commercial),  
Power Grid Corporation of India Ltd.  
Saudamini, Plot No.2, Sector 29, Near IFFCO  
Chowk,  
Gurgaon (Haryana) - 122001, INDIA

**....Respondent(s)**

**Counsel for Appellant(s):**

Mr. J.J. Bhatt, Sr. Adv.  
Mr. Buddy A. Ranganadhan  
Mr. Arijit Maitra

**Counsel for Respondent(s):**

Mr. M.G. Ramachandran  
Ms. Swapna Seshadri  
Mr. Anand K. Ganesan  
Ms. Swagatika sahuo(GUVNL)  
Mr. Shubham Srivastava R-2,  
Mr. Saik for MSEDCL  
Mr. Rajiv Srivastava for R-31  
Mr. P.J.Jani(Rep)  
Mr. Samir Malik  
Mr. T.P.S. Bawa  
Mr. Padamjeet Singh  
Ms. Suparna Srivastava for PGCIL  
Mr. Alok Shankar for R-28.

**APPEAL No.140 of 2013**

**IN THE MATTER OF**

**Talcher-II Transmission Co.Ltd**

**..... Appellant(s)**

**Versus**

1 The Secretary  
Central Electricity Regulatory Commission

3rd & 4th Floor,  
Chandarlok Building, 36, Janpath,  
New Delhi - 110 001

- 2 Chief Engineer (Transmission)  
Tamil Nadu State Electricity Board  
6th Floor Western Wing  
144, Anna Saalai, Chennai-600002
- 3 CGM/ RA, Comml & PP  
Eastern Power Distribution Company of Andhra  
Pradesh Limited (APEPDCL),  
P&T Colony, Seethammadhara,  
Visakhapatnam -530020, AP
- 4 Chairman & Managing Director  
Southern Power Distribution Co of AP Ltd  
Srinivasa Kalyana Mandapam,  
Backside, Tiruchanoor Road Kesavayana gunta  
Tirupati- 517501, Chittor District, AP
- 5 Director (Commercial)  
Central Power Distribution Company of Andhra  
Pradesh Limited (APCPDCL)  
6-1-50, Corporate Office,  
Mint Compound, Hyderabad –500004, AP
- 6 Chief General Manager (Op, Comml & IPC)  
Northern Power Distribution Company of Andhra  
Pradesh Limited  
Vidyut Bhavan , APNPDCL  
Nakkalagutta, Hanamakonda  
Warangal Dist 506001

- 7 Chairman and Managing Director  
Power Company of Karnataka Ltd.  
Room No. 501, 5th Floor, KPTCL Building, Kaveri  
Bhavan, Bangalore-560 009
- 8 General Manager (Electical)  
Bangalore Electricity Supply Co. Ltd.  
Power Purchase, BESCOM  
2nd Floor Corporate Office  
K.R. Circle, Bangalore -560001
- 9 Chief Engineer (Electrical)  
Gulbarga Electricity Supply Co. Ltd. (GESCOM)  
Station Main Road, Gulbarga 585102, Karnataka
- 10 General Manager (Tech/Admin & HRD)  
Hubli Electricity Supply Co. Ltd.  
Corporate Office, Navanagar, P B Road, Hubli  
580025
- 11 Managing Director  
Mangalore Electricity Supply Co. Ltd.  
Corporate Office, Paradigm Plaza, A B Shetty  
Circle  
Mangalore 575 001
- 12 Superintending Engineer (Comml)  
Chamundeshwari Electricity Supply Co. Ltd.  
Corporate Office  
927, L J Avenue,  
New Kantharaj Urs Road,  
Saraswathipuram, Mysore-570009
- 13 Chief Engineer (Commercial & Tariff)  
Kerala State Electricity Board

Vydyuthi Bhavan ,  
Pattom,  
Thiruvananthapuram- 695004

- 14 Superintending Engineer  
Puducherry Electricity Department  
137, Netaji Subash Chandra Bose Road,  
Puducherry – 605001
- 15 Director (Commercial)  
Grid Corporation of Orissa (GRIDCO)  
Janpath, Bhubaneswar – 751022,  
Orissa
- 16 Chairman  
Central Electric Supply Unit (CESU),  
2nd floor, IDCO Tower  
Janpath, Bhubaneshwar (Rupali Square),  
Orissa
- 17 Chairman  
Western Electricity Supply Co. Ltd (WESCO)  
BURLA, Sambalpur- 768017,  
Orissa
- 18 Chairman  
Southern Electricity Supply Co. Ltd (SOUTHCO)  
Behrampur, Ganjam - 760004, Orissa
- 19 Chairman  
Northern Electricity Supply Co. Ltd (NESCO)  
Januganj, Balasore- 756019, Orissa

20 ED (Commercial)  
Power Grid Corporation of India Ltd.  
Saudamini, Plot No.2, Sector 29, Near IFFCO  
Chowk,  
Gurgaon (Haryana) - 122001, INDIA

**....Respondent(s)**

**Counsel for Appellant(s):** Mr. J.J. Bhatt, Sr. Adv.  
Mr. Buddy A. Ranganadhan  
Mr. Arijit Maitra

**Counsel for Respondent(s):** Mr. Vallinayagam for R-2 to  
R-6, R-7 to R-12.  
Mr. M.T. George  
Ms. Suparna Srivastava for  
R-20  
Mr. R.B. Sharma for R.15.  
Mr. Kavitha for R-13

**JUDGMENT**

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,  
CHAIRPERSON**

1. North Karanpura Transmission Co. Ltd is the Appellant in Appeal No.139 of 2013. Talcher-II Transmission Co. Ltd the Appellant in Appeal No.140 of 2013.
2. The Appellants in both these Appeals have challenged different impugned order dated 9.5.2013 passed by Central Commission in Petition No.169/MP/2011 and Petition

No.170/MP/2011 filed by the Appellants by which the claim of the Appellants for setting off the alleged adverse effect in time and costs overruns in implementing the two Transmission Projects had been disallowed by the Central Commission. Since the issue is common, the common judgment is delivered in both these Appeals.

3. The short facts leading to both the Appeals are as follows:-
  - a) Both the Appellants are owned by the Reliance Power Transmission Ltd. The Appellants were incorporated on 23.4.2007 as Special Purpose Vehicles by the Rural Electrification Corporation. This is the Nodal Agency for establishment of the Projects as they are wholly owned subsidiary to implement the Transmission System.
  - b) REC Transmission Projects Company Limited invited bids on 6.10.2008 in accordance with the Tariff Based Competitive Bidding Guidelines for Transmission Service issued by the Government of India.
  - c) While the bid process was under way, REC Transmission Projects Company Limited was granted approval by Ministry of Power on 08.12.2008 under Section 68 of the Electricity Act.

- d) Thereupon, on 10.9.2009, both the Appellants have entered into Transmission Service Agreements with various Respondents-beneficiaries in the two Appeals for building, owning and maintaining the Projects and for providing transmission services to them on long term basis.
- e) The Reliance Power Transmission Ltd. has been selected as a successful bidder for acquiring the Appellants' companies and for implementing the Projects in tariff based competitive bidding processes initiated by Rural Electrification Corporation on 18.12.2009. The letter of intent was issued on the same day.
- f) On 13.4.2010 the original notified procedure dated 26.3.2009 for obtaining authorization under section 164 of Electricity Act was amended and notified by the Ministry of Power.
- g) The Reliance Power Transmission Ltd on 17.5.2010 furnished Contract Performance Guarantee to the Beneficiaries.
- h) On 27.4.2010 and 20.5.2010 respectively, 100% equity of the Appellants had been transferred and vested from

Rural Electrification Corporation in Reliance Power Transmission Ltd. with the obligation to establish the Projects as per the terms of the tender and other documents.

- i) The Appellants have filed Petitions on 3.6.2010 and on 5.5.2010 respectively before the Central Commission for the grant of transmission licence under the provisions of the Electricity Act,2003 for the Projects and also for adoption of transmission charges as per terms of tender and conditions.
- j) As per the procedure, the Appellants published Public Notices of the proposed inter-State transmission scheme in the newspapers on 09.7.2010. Similarly, Appellants published the Public Notices in the Gazette of India as required for grant of authorization under Section 164 of the Electricity Act on 07.8.2010.
- k) Thereupon, the Appellants requested the Ministry of Power in writing on 9.11.2010 for grant of the authorization under Section 164 of the Electricity Act along with requisite documents.

- l) Ultimately, the Central Commission granted the Transmission licences to the Appellants by the order dated 22.12.2010 and 4.11.2010 respectively.
- m) On 29.12.2010 the Appellants informed the Ministry of Power in writing regarding grant of Transmission License by the Central Commission with a request to expedite the grant of authorization under Section 164 of the Electricity Act.
- n) Thereupon, the Appellants by the letters dated 12.1.2011 and 17.1.2011 requested the CEA Chief Engineer to intervene for early issuance of authorization under Section 164 of the Act for the Projects to enable the Appellant to commence the work without delay.
- o) Again on 15.4.2011 the Appellants again requested the Ministry of Power to expedite the authorization under Section 164 of the Act.
- p) The Ministry of Power directed the Appellant on 26.5.2011 to furnish an affidavit regarding non-receipt of objections on the route alignment selected for the proposed transmission lines.

- q) Accordingly, the Appellant submitted the required affidavit to Ministry of Power on 22.6.2011.
- r) At that stage, the Appellants have filed the petitions on 8.8.2011 before the Central Commission in Petition NO.169 of 2011 and 170 of 2011 seeking extension of the commercial operation date of the project on the ground that the delay in the completion of projects in time was due to the absence of requisite permission under section 164 of the 2003 Act seeking remedy owing to force majeure.
- s) At that stage, the Ministry of Power granted authorization under Section 164 of the Act on 11.8.2011.
- t) This was published in the Official Gazette on 12.8.2011.
- u) The Appellant, thereupon on 3.9.2011 made a request to the Ministry of Power to extend the approval under section 68 of the Electricity Act, as the approval which was granted on 8.12.2008 by Ministry of Power was transferred to Reliance Power transmission Ltd and this virtually came into effect for Project implementation only from 20.5.2010.

- v) Ultimately, the Central Commission passed the impugned orders dated 09.5.2013 in both the Applications rejecting the claim for extension as claimed by the Appellants on the ground of force majeure.
- 4. Aggrieved by these orders, the Appellants have now filed these two Appeals.
- 5. The Appellants have raised a fundamental question in these Appeals. The issue is:
  - I. Whether the authorisation under Section 164 of the 2033 Act by the appropriate government to a Transmission Licensee conferring powers of the Telegraph Authority under Indian Telegraph Act 1985 for laying a Transmission Line is a necessary requirement, and failure of the appropriate government to issue such authorisation would amount to force majeure?.
- 6. The learned Senior Counsel for the Appellants has made very detailed submissions on this issue. The crux of his submissions are set out below:
  - a) The authorisation under section 164 of the Act is necessary for the reason that every transmission line at

voltage above 132 kV is required to carry telegraphic signals also. Accordingly, the said transmission lines are also necessarily telegraph lines. As per the provisions of Telegraph Act 1885, only Telegraph Authority is authorised to lay a telegraph line in the light of the following aspects.

- i. Sec 164 is the only section in the Electricity Act, 2003 that stipulates the placing of electric lines or electrical plant for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works.
- ii. Hence, if such is the nature of the transmission lines, then it would be Section 164 that would get triggered requiring the vesting of the powers which the telegraph authority possesses under the Indian Telegraph Act, 1885, 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.
- iii. As per Clause 4.1.(b) of the Transmission Service Agreement (TSA), the Appellant is obligated to comply with the CEA (Technical Standards for

construction, operation and maintenance of Electrical Plants and Electric Lines) Regulation, 2010.

- iv. The CEA Regulations,2010 make it necessary to comply with Power Line Carrier Communication facility for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works consequently making the grant of authorization under Section 164 imperative for the exercise of powers of a telegraph authority by the Transmission Licensee.
- v. Clause 43(4)(e) of the above CEA regulation notified in 2010 provides, inter alia, that:-

***“Power Line Carrier Communication (PLCC)- Power line carrier communication (PLCC) equipment complete for speech transmission, line protection, and data channels shall be provided on each transmission line of voltage rating 132 kV and higher. The protection system for 440 kV and higher voltage transmission line and the line compensating equipment shall have one hundred percent back up communication channels. Each 765 kV or 400 kV or 220kV line shall be provided with two protection channels in addition to one speech plus data channels for each direction in case of 220kV or 132kV lines, the speech and data***

*channels can also be used for protection wherever possible. The generating company and the transmission licensee shall coordinate with each other and ensure the compatibility of PLCC equipment at their respective ends. Optionally, the above functionality may be achieved using wide band communication based on optical ground wire (OPGW) or any other technology.”*

- vi. Since the transmission lines are of the voltage class 400 kV and 765kV, it is mandatory for the Appellant to implement the lines compliant with the specified PLCC facility, where the same lines are going to carry voice/ data communication.
- vii. Thus, the transmission lines carrying voice or data essentially becomes telegraph lines for the purpose of the Telegraph Act. Accordingly, the Appellant can implement these Telegraph lines only if vested with the powers of a “Telegraph Authority” under clause 4(2) of Telegraph Act.
- viii. The Section 67 (2) of the Act,2003 and the Works of Licensee Rules, 2006 notified by the Central Government under this Section do not cover the laying of telegraph lines.

- ix. Definition of “Works” in Section 2(77) of the Act,2003 only includes electric line, and any building, plant, machinery, apparatus and any other thing of whatever description required to transmit, distribute or supply electricity to the public. The term Electricity has been defined in Section 2(23) as electrical energy (a) generated, transmitted, supplied or traded for any purpose; or (b) used for any purpose except the transmission of a message;
- x. Thus, transmission of message over a line is not covered under the term “Works” as defined in the Section 2(77) of the Act and accordingly cannot be covered under works of Licensee Rules 2006.
- xi. Therefore, even Clause 2.14.2.2 of the Request for Proposal (RfP) document mentioned about the requirement of the Bidders to familiarize inter alia with the **“the Indian Telegraph Act 1885....”**
- xii. The Central Commission in its earlier order dated 31.12.2010 in case no. 296/10 has categorically held that the approval under Section 164 is necessary for the purpose of placing the telephonic or telegraphic communication necessary for the proper coordination

of work on the transmission line and accordingly extended the CoD of the project. The Central Commission did not give any reason for disowning its its earlier decision exactly in the same circumstances.

- xiii. The CERC (Procedure, Terms & Conditions for grant of Transmission License and Other Related Matters) Regulations, 2009 stipulates grant of license in regard to a “project” consisting of an element or elements of the inter-State transmission system included in the transmission plan.
- xiv. Accordingly, the Central Commission grants transmission license in respect of identified transmission lines, sub-station and other assets after considering inter alia the line length, capacity, estimated completion cost, commissioning schedule in respect of each transmission line/sub-station.
- xv. The transmission license was granted to the Appellant by the Central Commission on 22<sup>nd</sup> December 2010 to establish and operate specific transmission lines described in the schedule attached to the transmission license.

- xvi. The said schedule attached to the transmission license specifically describes the project for which the license had been granted comprising of the following elements of the inter-State Transmission System, as under:-

(a) "Transmission lines:

Sl. No.	Name(end points location)	Length (Kms.)	Type (S/C Or D/C)	Completion Target (months)
(i)	765 kV Sipat/Korba (Pooling) Seoni Transmission Lines	334	S/C	36
(ii)	765 kV Lucknow-Bareilly Transmission Lines	220	S/C	42
(iii)	765 kV Bareilly-Meerut Transmission Lines	240	S/C	42
(iv)	400 kV Agra-Gurgaon (ITP) Transmission Lines	220	D/C	30
(v)	400 kV Gurgaon-Gurgaon Transmission Lines	20	D/C	30

(b) Sub-stations:

..”

- xvii. Section 67(1) of the Electricity Act, 2003 enables the Appellant licensee to lay down and place electric lines, electrical plant and other works and to do all other acts necessary for transmission of electricity but subject always to the terms and conditions of the license.
- xviii. Section 67(1) of the Act,2003 is an enabling provision and does not grant any special rights to a licensee in case of refusal to grant consent by the owner or occupier of the land through which each of the transmission lines mentioned in the transmission license is to traverse. The Transmission Line covered in the project is supposed to transit for more than 1000 km through 23 Districts comprising 2648 villages across 4 States, i.e. Uttar Pradesh, Madhra Pradesh, Chattisgarh and Haryana.
- xix. In the event even one owner or one occupier of the land through which any of the transmission lines mentioned in the schedule to the Appellant’s transmission license refuses to grant consent to the Appellant to carry out the works pertaining to the laying of transmission line through the land of the said owner or occupier, then in that event the Appellant will have to

change the alignment of the transmission line. No such re-alignment is possible under the terms of the license which specifies the length of each line as also the time for completion.

- xx. Therefore any realignment of any of the lines would be in violation of the current license and would require an amendment of the license.
- xxi. Any such refusal to grant consent by an owner or occupier of land may put the completion schedule to total uncertainty against a specified completion target in the transmission license with respect to each and every transmission line for which the transmission license has been granted. In that event, the Appellant will need to seek an amendment to its transmission license as the refusal of the owner or occupier of the land would require the Appellant to re-route the specific transmission line for meeting the end purpose. On the re-routed line there is no certainty that the owners shall agree and if there is another objection it shall call for further amendments. This would result in a situation of endless reiterations and total uncertainty over project implementation as well as length of each element.

- xxii. This Tribunal in its judgement dated 15th Sept. 2011 in Appeal No. 174 of 2010, has recognized the practical impossibility to obtain consent from owners and occupiers of land, as follows:-

*“42. As mentioned above, a Generating Company is duty bound under Section 10 of the Act to construct, operate and maintain dedicated transmission lines. If a generating station constructing a transmission line is required to obtain the consent of each and every land owner falling en route of his line, it would be virtually impossible to construct any line. In the present case, a 400 KV line is on average 300-400 Kms long. There could be thousands of land owners on whose land the line would be passing. Getting consent of each and every land owner would be an impossible task. Further, each land owner would ask for compensation. This would increase the cost and ultimately the consumer would have to pay. Therefore, works of licensee Rules are not made applicable to the Non Licensee(R-2) The 2nd question is answered accordingly.”*

- xxiii. The implementation of the transmission lines under section 67(1) passing through 2648 number of villages will result in:

- (1) Default on the part of the Appellant to lay down any of the transmission lines as specified in the transmission license granted to the Appellant;
- (2) To obviate the possibility of such a default as aforesaid, the Appellant will be constrained to move the Central Commission to seek an amendment to the transmission license granted to it each and every time any owner or occupier of land (howsoever big or small) refuses consent, for re-routing any of the elements of the transmission lines or sub-station identified in the transmission license;
- (3) Default on the part of the Appellant to lay down any of the transmission lines within the completion target stated in the transmission license granted to the Appellant;
- (4) To obviate the possibility of such a default as aforesaid, the Appellant will be constrained to move the Central Commission to seek an amendment to the transmission license granted to it each and every time any owner or occupier of land (howsoever big or small) for seeking a

change to the completion target stated in the transmission license.

- xxiv. The aforesaid circumstances will cascade into a physical impossibility unless the grant of an order under section 164 is interpreted to be as necessity. The “*Procedure for obtaining authorization U/s 164 of the Electricity Act, 2003 as notified by the Central Govt*”, enables the Transmission Licensee to consider laying down the lines / substations etc by “***finalizing the optimal route alignment***” / “***select[ing] route alignment of the transmission lines***” under the said Central Govt procedure.
- xxv. The fact that prior public consultation is specified under the aforesaid Procedure for obtaining authorization U/s 164 of the Electricity Act, 2003 as notified by the Central Government eliciting suggestions / objections on the proposed route for each transmission line element indicate that a Sec 164 approval procedure obviates any post facto objections / refusal to grant consent by owners and occupiers of land. The aforesaid circumstances also show that if an order under section 164 is not granted then in that event the

holder of an inter-state transmission license will not be able to implement the terms of the license so granted and any refusal to grant consent by any one of the hundreds of owners/occupiers of land will automatically result in default on the part of the transmission licensee or make the transmission project impracticable to implement if the transmission licensee is to seek an amendment to its transmission license each and every time the laying of any of the identified transmission lines is to be re-routed, etc.

- xxvi. In view of the above, the present Appellant is faced with a physical impossibility, and not just a mere “inconvenience” to implement and execute the transmission lines for which the transmission license has been granted within the timelines as mentioned in the transmission license owing to the delay in the grant of the order under section 164 of the 2003 Act.
- xxvii. Hence, the Central Commission has rendered an incorrect finding that the delay in grant of authorization/time taken for granting the authorization under section 164 of the 2003 Act has not affected the

obligation to implement/perform the terms of the Transmission Services Agreement.

- xxviii. The finding of the Central Commission that authorization under section 164 is required at the time of erection of towers and stringing of lines strikes at the very root of the completion targets specified in the schedule to the license granted to the Appellant as the erection of towers and stringing of lines is an integral essential part of the core activities of implementing a transmission system as part of the transmission license granted to the Appellant.
- xxix. The Hon'ble High Court of Judicature at Bombay Nagpur bench by its order and judgement dated 22nd March, 2012 in Writ Petition No. 256 OF 2012 has held that once an authorization has been granted to a licensee under Section 164 of the Electricity Act, 2003, no consent or permission of the owners and occupiers are required to be obtained. Hon'ble High Court held that it is obvious that after such authorization under Section 164 of the Act 2003, the Transmission Company is bound to exercise the powers of a Telegraph Authority with respect of placing of telegraph

lines and posts for the purpose of placing of an electric line for the transmission of electricity. These powers are found in Part III of the Indian Telegraph Act, 1885 vide Sections 10 to 16. None of these provisions provide for obtaining consent of an owner or occupier of the land.

7. Mr M G Ramachandran, the learned Counsel for Respondent no.6 in Appeal No. 139 of 2013 has made the following reply submissions.

a) The Appellant has contended that under the conditions of its transmission license and the Transmission Services Agreement, the Appellant is mandated to follow the provisions of the Central Electricity Authority (Technical Standard for Construction of Electrical Plant and Electric Lines) Regulations, 2010. The Appellant has relied on Regulation 43 (4) of the above Regulations.

The Appellant has relied on Section 2(23) of the Electricity Act, and Section 4 of the Indian Telegraph Act, 1885.

b) The contention of the Appellant leads to the implication that the term "Works" used in Section 67 and Works of the Licensees Rules, 2006 and defined under Section 2 of the Act does not include within its scope the "*Power Line Carrier*

*Communication (PLCC) equipment* required to be installed and maintained as per the above quoted Regulations of the Central Electricity Authority.

The fallacy in the above submissions of the Appellant is clear from the following salient aspects:

A. Section 2 (23) defines 'Electricity' as meaning 'Electrical Energy', inter alia, used for any purpose **'except transmission of message'**. The term 'Electrical Energy' is not defined. However, the term 'Electricity' as can be seen from the definition has been dealt in two parts namely,

(a) electrical energy itself being generated, transmitted, supplied or traded for any purpose in Sub-clause (a) and

(b) electricity energy being used for any purpose other than transmission of message.

Thus, the electricity has been dealt both in the context of the electrical energy itself being dealt with as electrical energy and also where electrical energy being used for any other purpose.

B. There was a similar provision in the Indian Electricity Act, 1910 defining 'Energy' as under:

(g) **energy** means electrical energy –

(i) generated, transmitted or supplied for any purpose, or

(ii) used for any purpose except the transmission of a message.

C. The question arises is why the Electricity, had while defining 'electricity' or 'Energy' has excluded transmission of message by use of electrical energy. The answer is simple. The Indian Telegraph Act, 1885 was enacted prior to the Indian Electricity Act, 1910, dealing with the electricity. The Indian Telegraph Act defines the term 'Telegraph' as under:

(1) '**telegraph**' means any appliance, instrument, material or apparatus used or capable of use for transmission of reception of signs, signals, writing, images, and sounds or intelligence of any nature by wire, visual or other electro-magnetic emissions, Radio waves or Hertzian waves, galvanic, electric or magnetic means

- D. The telegraph namely transmission or reception of signs, signals, writing, images and sounds (broadly voice and data) by wires, was principally using the electro-magnetic emission which involves the use of electrical energy. In other words, the electrical energy was used for the purpose of transmission of voice and data for the purpose of telecommunication i.e. telegraph communication. In order to have such use, a telegraph line was set up but electrical energy was used for transmission of voice and data. The above can be explained with reference to Landline telephone connections such as MTNL or BSNL, wherein Electrical Energy is used for transmission of message. There is however to transmission of electrical energy for the purpose of Utilising the electricity. The purpose in such Landline Connection is the transfer of voice and data.
- E. Under the Electricity Act, if the term `Electricity', as defined does not exclude 'transmission of message' through the use of electrical energy, it would mean that the use of electricity energy for the purpose of transmission of message would amount to electricity for the purposes of Electricity Act, 2003 and the same would require a licence or authorisation under the

Electricity Act in terms of Sections 12 and 14 of the Electricity Act, 2003.

- F. In view of the above, if the term 'Transmission of Message' through the use of electrical energy is not excluded, then the entire telecommunication activities will get governed by the provisions of the Electricity Act, 2003. This would lead to an anomalous result.
- G. Accordingly, Section 2 (23) of the Electricity Act, 2003 specifically exclude 'Transmission of Message'. The very fact that such exclusion is contained in the definition clause means that such exclusion is wherever the context so admits as appearing in the opening part of Section 2. This provision reads as under. **In this Act unless the context otherwise requires:-**
- H. Accordingly the above definition of Electricity proceeds on the basis that transmission of message could be part of the Electricity activities but should not be considered as Electricity unless the context otherwise require.
- I. The reference made by the Appellant to Section 4 of the Indian Telegraph Act, 1883 dealing with the exercise privilege of the Central Government and

transmission of voice and data does not necessarily imply that transmission of message is not covered under the Electricity Act, 2003 even in regard to transmission of message related to electricity related activities.

- J. The electrical energy generated, transmitted, supplied or traded for any purpose is within the scope of the definition of section 2 (23) of the Electricity Act. If anything is required to be done in relation to such function as incidental, ancillary, consequential etc, the same would be covered by the definition of the term `Works' contained in Section 2 (77). The term "works" is a defined term. Section 2 (77) reads as under:

***"2(77) - works includes electric line, and any building, plant, machinery, apparatus and any other thing of whatever description required to transmit, distribute or supply electricity to the public and to carry into effect the objects of a license or sanction granted under this Act or any other law for the time being in force."***

The scope of the definition of the term `Works' as including anything which is required to carry into effect the transmission work will not be excluded merely because it involves transmission of message. All that it

means is that the transmission of message through the use of electrical energy will not be subject to any tariff under the Electricity Act or other regulatory control, if such transmission of message is the core or main business. If transmission of message is required for carrying out the main electricity related work, the same would be governed by the Electricity Act, 2003.

- K. Quite apart from the above, it is important to note that the power line carrier communication equipment (PLCC) is not installed on the transmission lines or towers for which a right of way is required under the provisions of section 67 of the Electricity Act, 2003. These equipments are placed in the substations to which the service lines are connected. No right of way is required for placement of communication equipment. The right of way is restricted to the transmission towers to be installed at a periodic distance and laying down of the overhead lines on such towers. Accordingly, the power line carrier communication equipment can be placed by the Appellant at any of its substations without the necessity of getting the right of way. As regards transmission of message, as mentioned herein above, the same electrical line is used which carries electrical

energy also for transmission of message. There is no independent line necessary for undertaking transmission of message.

- L. In view of the above, the contention of the Appellant that it could not have placed the power line, carrier communication equipment without the right of way under section 164 of the Act is without any basis.
  
- M. In addition to the above, it is also important that once a right of way has been taken under Section 67 of the Electricity Act, 2003 for installation of the towers and the electric supply line/transmission line connecting the towers as overhead line, there is no further approval required for placement of any telegraph line. Such telegraph line, even if it is independent of the electric supply line, can be placed as an additional line on the same transmission towers along with the electric supply line without the need to obtain such approval. This is also recognised under sections 41 and 51 of the Electricity Act where the electrical installation can be used for other businesses. These include telecommunication business by use of the transmission towers and supply line.

- N. It is also important to note that once the right of way under Section 67 of the Electricity Act, 2003 is taken for installation of towers, support and laying down Electrical line, there is no necessity to take separately another right of way for even another electric line much less a telecommunication line.
- O. The installation of Power Line carrier communication is within the Scope of Section 67 of the Electricity Act, 2003 read with the definition of the term “Works”. This is clear from the bare reading of the relevant provisions as under:

***Part VIII - WORKS***

***“Section 67 - Provision 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 distribution or 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-**

.....

**(d) to lay down and place electric lines, electrical plant and other works;**

.....

**(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,--*

.....

**(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;**

.....

**(p) such other matters as are incidental or consequential to the construction and maintenance of works under this section.”**

P. The Works of Licensees Rules 2006 notified by the Central Government under section 67(2) of the Act

provides a complete code for laying down the transmission system and works

- Q. In terms of the above provisions the transmission licensee is entitled to undertake works and for undertaking such works notification as Telegraph Authority is not a precondition or otherwise required. The procedure and process specified under section 67 read with the Works of the Licensees rules, 2006 is adequate.
- R. The term works (quoted above) has been defined in a wide manner which includes 'any thing of whatever description' required to transmit electricity and to carry into effect the objects of a license etc. The Appellant has pleaded that the Appellant is required to establish the Power Line Carrier Communication (PLCC) equipment, as per the Regulations of the Central Electricity Authority (CEA). The Appellant is, therefore, required to follow the above mandate of the CEA in terms of the Electricity Act, Transmission Licence and the Transmission Services Agreement. If so, the above definition of works necessarily includes the data and voice communication equipment and accessories

required to be installed for performing all obligations of the Transmission Licensee.

- S. The Power Line Carrier Communication (PLCC) equipment and SCADA another communication system are integrally related to Electricity activities. While Power Line carrier communication is basically a protection system, the SCADA is the real time communication system. These are for real time operation and for communication relating to scheduling, dispatch, grid security, grid planning etc. activities which are provided under the Electricity Act.
- T. The perusal of the above provisions with reference to the definition of the term “works” clearly show that the Power Line Carrier Communication (PLCC) equipment and SCADA being an equipment related to protective system, real time operation, scheduling and dispatch is connected to transmission and, therefore form an integral part and is within the scope of “Works” under the Electricity Act.
- U The term '*works*' is defined in an inclusive manner and has been interpreted by the Courts to mean anything of whatever description required to supply energy to the

public. It is also pertinent to mention that Power Line Carrier Communication (PLCC) equipment and SCADA are to be installed with reference to activities directly connected to electricity, namely,( in the present case) transmission of electricity. The above equipment is not for any other business such as telecommunication, internet etc. As and when the Appellant decides to undertake such other distinct business, the Electricity Act also envisages process as provided in Section 41 of the Act. In so far as the transmission licence is granted to the Appellant, it only deals with such equipment for electricity activities and the same will, therefore, be related to functions of the transmission licensee.

- V The Work of Licensee Rules, 2006 obviously includes carrying out of the above works, namely, installing the transmission line and any equipment of whatever nature required to transmit the electricity to public. Clause 4.1(b) of the Transmission Service Agreement read with the CEA (Technical Standard for Construction, Operation and Maintenance of Electrical Plants and Electric Lines) Regulations, 2008 can, therefore, be carried out by the Appellant even by

obtaining or proceeding under Section 67 of the Electricity Act, 2003.

- W It is, therefore, wrong to contend that the non-grant of a authorization under Section 164 would have rendered it impossible for the Appellant to perform the Transmission Services Agreement.
- X Further, the transmission project was awarded to the bidder based on the tariff based competitive bidding. The terms and conditions of the bid are sacrosanct as decided by the Tribunal in Essar Power Limited –v- Uttar Pradesh Electricity Commission and another 2012 ELR (APTEL) 182. Neither the Request for Proposal (RFP) nor the Request for Qualification (RFQ) i.e. the bidding documents even referred to the Section 164 authorization to be a precondition for the bidding. The Appellant was fully aware of the bid documents and participated in the competitive bidding, quoted a low tariff, hedged out the other competitors and came to be awarded the contract for construction of the transmission line. If the Transmission Services Agreement was impossible to perform without the Section 164 authorization, the bid document would

have provided for Section 164 to be a precondition to the bid.

- Y Significantly in the pre-bid conference, the bidder Reliance Transmission which now controls the Appellant specifically raised the issue of Section 164 authorization, namely that any delay in approval under Section 164 should be considered for extension of the project completion date. This was not accepted. The bidder was put on notice that Section 164 permission is not a pre-condition for commencing and implementing the contract. The Transmission Services Agreement was made available to the bidder which included Clause 4.1 (b). If it was impossible for the bidder to fulfill the Transmission Services Agreement without Section 164 permission, there was no reason for the bidder to enter into an agreement. The bidder was well aware of the time lines stipulated in the bid for construction and commercial operation of the transmission line and willingly participated in the bidding and signed the Transmission Services Agreement. Having accepted the bid terms and having submitted and gotten selected on that basis, it is not now open to the Appellant to take a different stand.

Z The Appellant has contended that under Section 67 of the Act, the works can only be carried out '*within the area of supply or transmission*' and not '*without the area of supply*' and, therefore, Section 67 has no application to a Transmission Licensee. This is patently erroneous as Section 67 specifically refers to area of transmission. As far as the transmission licensee is concerned, there is no application of '*without the area*'. A transmission license by its very nature is awarded for completion of a transmission line which should be able to carry the electricity from one place to another.

AA The arguments of the Appellant raised during the hearing are after thought and an attempt to improve its case in Appeal. In fact, there is no reference either about Clause 4.1(b) of the Transmission Service Agreement or Regulations including Power Line Carrier Communication equipment in the petition of the Appellant before the Central Commission or in the Memorandum of Appeal before the Hon'ble Tribunal. These have been raised for the first time in the Written Submission handed over at the hearing on 24.09.2013, and thereafter during the hearing on 1.10.2013 after being confronted with the contention of the

Respondents that there can be no plea of force majeure for delay or want of Section 164 notification as Telegraph Authority when the Appellant had the avenue to undertake the work under the procedure of section 67 of the Act read with the Work of The Licensees Rules, 2006.

8. Mr R B Sharma the learned Counsel for the Respondent No. 15 in Appeal No. 140 of 2013 has made the following reply.
  - a. The Central Commission in the impugned order has clearly brought out that the authorization under Section 164 of the Electricity Act, 2003 was not a condition precedent for execution of the project under TSA as the licensee can execute the works of laying the transmission lines in accordance with the Works of Licensee Rules, 2006 framed under Section 67(2) of the Electricity Act, 2003. Thus, it can not be said that in the absence of an authorization under Section 164 of the Electricity Act, 2003 a licensee is without any legal authority to lay the transmission line.
  - b. The Appellant served the notice to the answering respondent under Clause 11.5 (Force Majeure) and Clause 12.3 (Change in Law) of the TSA on

14.06.2011. To claim any relief under the TSA, the service of the notice is a condition precedent. It is also noted from this communication that the event of force majeure occurred on or around 14.06.2011 as the affected party has to give notice to the other party of any event of force majeure as soon as reasonably practicable, but not later than seven (7) days after the date of the event of force majeure as per Clause 11.5 of the TSA. However, the alleged notice dated 14.6.2011 refers to the events which are as back as 9.11.2010 related to the force majeure and, therefore, this communication strictly in legal sense can not be treated as notice of force majeure event to the party especially when serving the notice to claim relief under the TSA is condition precedent.

- c. It is also submitted that the affected party has to give a notice to the other party of the **cessation of the relevant event of force majeure** under Clause 11.5.2 of the TSA which is reproduced below;

*“The Affected Party shall give notice to the other party of (i) the cessation of the relevant event of force majeure: and (ii) the cessation of the effect of such events of force majeure on the*

*performance of its rights or obligations under this agreements, as soon as practicable after becoming aware of each of these cessation.”*

No such notice of cessation of the relevant event of Force Majeure even after the receipt of the authorization under Section 164 of the Electricity Act, 2003 from the Ministry of Power on 11.8.2011.

- d. The affected party is expected to use its reasonable efforts to mitigate the effect of any event of Force Majeure under Clause 11.6 of the TSA which is reproduced below;

*“11.6 Duty to perform and duty to mitigate*

*To the extent not prevented by a Force Majeure Event, the Affected Party shall continue to perform its obligations as provided in this agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any event of Force Majeure as soon as practicable.”*

Nothing has been mentioned by the Appellant about his part of the obligations under the TSA

- e. The Appellant has also cited the Order dated 31.12.2010 in Petition No. 296 of 2010 in support of the alleged claim and stated that the decision in the said

Order dated 31.12.2010 in similar facts and circumstances as dealt within the impugned Order. The contention of the Appellant is not correct as the facts and circumstances of the present case have a distinguishable feature with that in Petition No. 296 of 2010. In the Order dated 31.12.2010 in Petition No. 296 of 2010, the 'Financial Closure' was contingent upon the receipt of approval under section 164 of the Electricity Act, 2003 whereas in the present case, the 'Financial Closure' has been achieved on 25.10.2010 without any such conditions. The 2<sup>nd</sup> point which has been emphasized and also quoted from Order dated 31.12.2010 in Petition No. 296 of 2010 by the Appellant is reproduced below;

*“13.....We agree with the petitioners that the approval under Section 164 is necessary for the purpose of placing the telephonic or telegraphic communication necessary for the proper co-ordination of work on the transmission line.”*

The above order of the Central Commission is required to be examined as this is purely a technical issue. The Central Commission has agreed with the Petitioner that the approval under Section 164 is necessary for the purpose of placing the telephonic or telegraphic

communication for the proper co-ordination of work on the transmission line. The next point for consideration is at which stage of the construction of the transmission line, such co-ordination between the Communication network and transmission network is necessary? The straight answer to this question is not at any time before the stringing of the Conductor and the ground wire. Thus, the issue of the authorization 14 months before the COD of the project was well timely as it did not affect the execution of the project in any manner.

- f. The approval under Section 164 of the Electricity Act, 2003 was neither condition precedent nor the time taken for authorization under Section 164 of the said Act is a force majeure event and hence the appellant is not liable to grant relief on this account.
9. The learned Counsel for the other Respondents supported the submissions made by Mr M G Ramachandran and Mr R B Sharma.
10. Before we proceed further, let us refer to the historical background.
11. Originally, 1910 Act had provision for only distribution licensee. There was no provision relating to the

Transmission licensee in the 1910 Act. Section 12 to 18 of 1910 Act dealt with works of licensee. It would be interesting to note that the Power Grid Corporation of India, a Central Transmission Utility and Inter-State Transmission Licensee was initially incorporated as a generating company, because the 1910 Act did not have provision of a Transmission Licensee. Concept of Separate Transmission Licensee was introduced much later during 1996.

12. Powers of a telegraph authority could have been conferred upon a licensee or a person engaged in supply of electricity under original Section 51 of 1910 Act. State Electricity Boards were established under Electricity (Supply) Act 1948. Full powers of telegraph authority under the Telegraph Act 1885 were given to the Electricity Boards under Section 42 of Supply Act, 1948. The 1998 Supply Act was amended in the year 1976 to incorporate the provisions relating to generating companies and sub-section 2 to section 42 of 1998 Act was added giving full powers of a telegraph authority to the generating company. Section 42 of 1998 Supply Act is reproduced below:

**42. Powers to Board for placing wires, poles, etc.—**  
*(1) Notwithstanding anything contained in sections 12 to 16 and 18 and 19 of the Indian Electricity Act, 1910*

*(9 of 1910) but without prejudice to the requirements of section 17 of that Act where provision in such behalf is made in a sanctioned scheme, the Board shall have, **for the placing of any wires, poles, wall-brackets, stays apparatus and appliances for the transmission and distribution of electricity, or for the transmission of telegraphic or telephonic communications necessary for the proper co-ordination of the works of the Board, all the powers which the telegraph authority possesses under Part III of the Indian Telegraph Act, 1885 (13 of 1885) with regard to a telegraph established or maintained by the Government or to be so established or maintained:***

*Provided that where a sanctioned scheme does not make such provision as aforesaid, all the provisions of sections 12 to 19 of the first-mentioned Act shall apply to the works of the Board.*

*(2) A Generating Company may, for the placing of wires, poles, wall brackets, stays apparatus and appliances for the transmission of electricity, or for the transmission of telegraphic or telephonic communications necessary for the proper co-ordination of the works of the Generating Company, exercise **all or any of the powers which the Board may exercise under subsection (1)** and subject to the conditions referred to therein.”*

13. Thus, power of a telegraph authority could be conferred upon a licensee by the Government by virtue of Section 51 of 1910 Act and the State Electricity Boards and generating

Companies had such powers under Section 42 of the 1998 Supply Act.

14. The 1910 Act was also amended in the year 1959 to incorporate Section 51(A) giving powers of a licensee to the State Government indulged in the business of supply of electricity. Section 51(A) of 1910 Act is quoted below:

***“51A. State Government to have powers and obligations of a licensee under this Act.—***  
*Where the State Government engages in the business of supplying energy to the public, it shall have all the powers and obligations of a licensee under this Act:*

*Provided that nothing in sections 3 to 11 (both inclusive), section 21, sub-sections (2) and (3), sections 22 and 27 or in clauses I to V (both inclusive), clause VII and clauses IX to XII (both inclusive) of the Schedule relating to the duties and obligations of a licensee shall apply to the State Government:*

*Provided further that the provisions of clause VI of the Schedule shall apply to the State Government in respect of that area only where distribution mains have been laid by the State Government and the supply of energy through any of them has commenced.”*

15. Thus, every entity indulged in the business of supply of electricity was given powers of a telegraph authority to lay

transmission lines. It was necessary for development of transmission system in the country. Today virtually every transmission line in the country at 132 kV and above has been laid under the powers of a telegraph authority.

16. The basic difference between powers of a licensee under Section 67 of 2003 Act (akin to section 12 of 1910 Act) and that of a telegraph authority under Section 10 of the Telegraph Act 1885 is the requirement of prior consent from a land owner and amount of compensation to be paid to such land owner. Whereas Section 67 of 2003 Act provides for prior consent of the land owner, no such prior consent is required under Telegraph Act 1885. There is also some difference in amount of compensation to be paid to the land owner. 1885 Act provides compensation for damage only, Section 67(3) of 2003 Act provides compensation for damage, detriment and inconvenience.
17. In the light of the above historical background and rival submissions, the issue framed above, arises in this Appeal. The same is quoted again.

**“Whether the authorisation under Section 164 of the 2033 Act by the appropriate government to a Transmission Licensee conferring powers of the**

**Telegraph Authority under Indian Telegraph Act 1985 for laying a Transmission Line is a necessary requirement, and failure of the appropriate government to issue such authorisation would amount to force majeure?”**

18. Before discussing the issue, it would be worthwhile to refer to the impugned finding in the order passed by the Central Commission. They are as follows:-

*“20. Now we come to the petitioner’s claim on merits as to whether it is a fit case to invoke the Force Majeure clause to extend the period for construction on account of the time taken by the Ministry in granting the authorisation. We briefly recapitulate the facts relating to grant of the authorisation. The petitioner was issued Letter of Intent on 18.12.2009 and prior thereto, the petitioner had executed the TSA. The petitioner was acquired by Reliance Power Transmission Ltd on 27.4.2010 after completion of the necessary procedural requirements and thereby became a its wholly owned subsidiary. The petitioner published the Public Notices in the newspapers on 19.6.2010. The Public Notice was published in the Gazette of India on 3.7.2010 with a gap of two weeks. The petitioner submitted the necessary documents to CEA on 15.9.2010. The request to the Ministry for grant of the authorisation was sent on 9.11.2010. The request was followed up by the petitioner’s letter dated 29.12.2010 under which it*

*informed the Ministry of grant of transmission licence by this Commission by order dated 8.11.2010. The Ministry under its letter dated 26.5.2011 advised the petitioner to file an affidavit which was submitted on 22.6.2011. The authorisation was granted by the Ministry by its notification dated 11.8.2011, published in the Official Gazette on 12.8.2011. Ministry of Power has submitted that the approval under section 164 was issued within a reasonable period of the petitioner meeting all procedural requirements for such approval.*

*21. We have considered the submissions of the parties including Ministry of Power. The question to be decided is whether it is a condition precedent for execution of the project under TSA, non-fulfilment of which has resulted in force majeure. Perusal of the RfP and TSA does not reveal that approval under section 164 of the Act is a condition precedent for execution of the project. Section 164 of the Act reads as under:*

***“Section 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.”*

*Thus this section enables the appropriate Government to confer powers of telegraphic authority for the purpose of placing the electrical lines and electrical plants for transmission of electricity on any public officer or any other person engaged in the supply of electricity under the Act in addition to any licensee. ‘Any other person engaged in the business of supplying electricity under the Act’ may include a generating company which intends to lay its own dedicated transmission lines or any of the categories under section 15 of the Act such as any local authority, Panchayat institutions, users’ associations, co-operative societies, non-governmental organisations or franchisees if they are exempted by the appropriate Commission on the recommendations of the appropriate Government to seek licence. However, in case of the licensees, section 67(2) of the Act enables the appropriate Government to make rules to enable them to lay the electric supply lines. Section 67(2) to (5) of the Act is extracted as under:*

*(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 therefor;*

*(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;*

*(1) 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.*

*The Central Government has notified the Works of Licensee Rules, 2006 on 18.4.2006. Any licensee can execute the works of laying the transmission lines in accordance with these Rules. No doubt, an authorisation 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 authorisation under section 164 of the Act, a licensee is without any legal authority lay the transmission lines as the Works of Licensee Rules, 2006 enables a licensee to lay the transmission lines through the lands and buildings of public authorities and private individuals after obtaining their consents through the prescribed procedure. We also find that an approval under section 68 of the Act which pertains to installing of overhead lines, is a condition precedent to be fulfilled under the TSA whereas an authorisation under section 164 is not a condition precedent either for award of the project or execution of the project. This may be due to the fact*

*that the licensees are authorised under the Works of Licensee Rules, 2006 to lay the transmission lines over the lands and buildings of public authorities and private persons.”*

19. The main Contention of the Appellant revolves around two aspects viz., (i) CEA Regulations mandates that every Transmission line is required to transmit voice message and data. Accordingly, the transmission line becomes a telegraph line. As per the provisions of the Indian Telegraph Act 1885, only Telegraph Authority can lay a telegraph line. Therefore, the Power of the Telegraph Authority to the Appellant is a must. The Central Commission had acknowledged this fact in its earlier order dated 31.12.2010. However, the Central Commission has failed to give any reason for deviating from its earlier stand.(ii) It would be practically impossible to lay 1000 kM long line under Section 67(2) of the Act read with the Works of Licensee Rules which mandates seeking prior consent of every owner of land. The Appellant has relied upon Tribunal’s judgment in Appeal No. 174 of 2010.
20. The crux of the Respondents contention is that the provisions 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

licensee including laying of transmission lines. The Appellant could have started the work under the power given by this Section. The facility to use the line for transmitting messages and data is covered within the definition of 'works' and fall within the scope of Electricity Act 2003. PLCC equipment is used for protection of the line and is installed at the substation and, therefore, it is not the part of transmission line.

21. Let us examine the provision of Section 164 of the Act,2003 quoted below:

***“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 (13 of 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.”*

22. The key words in this section for the present case are **“for the purpose of telephonic or telegraphic communication necessary for the proper co-ordination of works.”** This portion of the section was not necessary for laying of a transmission line for transmitting electricity only. The question arises that why the legislature chose to add these words in the section. There must be some purpose. The Respondents have not addressed this aspect of the issue at all. Mr. M G Ramachandran, the learned Counsel for the Respondent has categorically submitted that transmission of message or data over transmission line is within the definition of Works under the Act. If this was the case, why this phrase was included in the section? It is to be noted that this phrase was also present in the corresponding Section 51 of 1910 Act as reproduced below:

***“51. Exercise in certain cases of powers of telegraph authority.—Notwithstanding anything contained in sections 12 to 16 (both inclusive) and sections 18 and 19, the Central Government in the case of inter-State transmission system and the State Government in the case of intra-State transmission system, as the case may be, may, by order in writing, for placing of electric supply-lines, appliances and apparatus for the transmission of***

*energy or for the purpose of telephonic or telegraphic communication necessary for the proper co-ordination of works, confer upon any public officer, Central Transmission Utility, State Transmission Utility, licensee, transmission licensee or any other person engaged in the business of transmission or supplying energy to the public under this Act, subject to such conditions and restrictions (if any) as the Central Government or the State Government, as the case may be, may think fit to impose, and to the provisions of the Indian Telegraph Act, 1885 (3 of 1885), any of the powers which the telegraph-authority possesses under the 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 establishment or maintained.”*

23. Answer to the question lies in the fact that transmission lines were also used for transmitting messages and operational data. Thus, the transmission lines also played the role of telegraph lines.
24. Requirement of providing PLCC equipment on transmission line has not been introduced by the CEA Regulations. Transmission lines had been used for transmitting voice messages or data over same conductors carrying electricity. CEA Regulations have been made it mandatory. PLCC

stands for Power Line Carrier Communication i.e. the Power Line is used as a carrier for communication purpose. Why it was required at first place? Message communications could be done over telephonic lines, telegraph lines etc. Voice or data is converted in to electrical energy and transmitted over a conducting material (conductor) to other places. Transmission lines also uses conductor for transmitting electrical power. So it was thought prudent and necessary to utilise electrical conductor for the purpose of telephony (sending voice message) or telegraphy (sending data messages). This would ensure reliability and would be economical. Electrical energy is transmitted at 50 Hz. PLCC equipment at one end of line modulates the telephonic or telegraphic messages to some predetermined high frequency and sends the modulated signal on the same conductor to other end of line. PLCC equipment at the other end demodulates the messages to their original voice or data frequency and sends it to receivers. The process involves is sending the telephonic or telegraphic messages over a power line conductor. Thus, the power line is used as a telegraphic line.

25. The Indian Telegraphic Act, 1885, permits only Telegraph Authority to lay and operate a telegraph line. Since, 1910 Act

was enacted after the Telegraph Act, the inclusion of phrase became necessary for usage of a transmission line as telegraph line. Without this phrase no transmission line in the country could be used for transmitting message for proper coordination of works.

26. The contention of the Respondents that the PLCC equipment is used for protection is not correct. It is true that protection signals are also transmitted over line through PLCC. It is one function and perhaps most essential function of PLCC. When a fault is developed on a line, the line is required to be tripped from both ends within 3 to 5 cycles i.e. within 60 to 100 milliseconds. The relays provided at one end sends signal to other end to trip the breaker at that end also to isolate the fault. This message cannot be sent through other modes of communication. It has to be necessarily sent over the concerned transmission line itself through PLCC. But, it involves sending of data message i.e. use of telegraphy. Thus, PLCC is an equipment to send messages and not protection equipment.
27. The other contention of the Respondent that PLCC equipment is installed at substations and therefore is part of substation is also incorrect. PLCC equipment is hung to one

of the conductors at first and last tower of a transmission line. Never the less data is transferred over the power line. PLCC equipment is only modulating /demodulating equipment. Transmission line is used as a telegraph line.

28. The Appellant has also relied upon the Central Commission's earlier order dated 31.12.2010 wherein the Central Commission has categorically held that the approval under Section 164 is necessary for the purpose of placing the telephonic or telegraphic communication necessary for the proper coordination of work on the transmission line. The relevant extract of Commission's order dated 31.10.2012 is quoted below:

*"13. The Central Government has notified the Works of Licensee Rules, 2006 under Section 67(2) read with Section 176(2)(e) of the Act which enables a licensee to carry out the works, lay down or place electricity supply line or fix any support of overhead line among other things. The petitioners after obtaining the licence from the Commission were authorized to carry out the works under Works of Licensee Rules, 2006. It is, however, noticed that the petitioners were granted the approval by Ministry of Power, Govt. of India under Section 68 of the Act to lay the overhead lines only on 19.3.2009. Therefore, the petitioners after obtaining the transmission licences and approval under section 68 of*

*the Electricity Act, 2003 were authorized under Act to carry out the work of laying the transmission line after 19.3.2009. **The petitioners did not start the work till the notification for authorization of the petitioners under section 164 was issued on 17.7.2009. We agree with the petitioners that the approval under Section 164 is necessary for the purpose of placing the telephonic or telegraphic communication necessary for the proper coordination of work on the transmission line.** The Ministry of Power, Govt. of India also realizing the importance of the approval under Section 164 of the Act for the transmission licensees proceeded to lay down a procedure for processing the cases for grant of approval under Section 164 which delayed the notification authorizing the petitioners to exercise the power of telegraph authority for the purpose of laying the electric lines and other works. The petitioners received the approval under Section 68 of the Act on 19.3.2009 and the approval under Section 164 of the Act on 17.7.2009. Effectively there is a delay of four months on account of the approval under Section 164 of the Act.*

*14. As regards the heavy downpour of rain from September to November, 2009 in Maharashtra, it is observed from the data placed on record by the petitioner that the percentage departure in rainfall from Long Period Average of 50 years from 1941 to 1991 was much higher (up to 554%) during November, 2009 compared to the rainfall during September and October, 2009. The work of the petitioners on account of rainfall*

*has been affected for a period of one month. In view of the above, we find that the petitioners have a case for extension of RCOD for a period of eight months in case of Project B and six months in case of Project C as the reasons for the delay were beyond the control of the petitioners.”*

29. The Central Commission did not give any reason for deviating from their own earlier decision in allowing extension of CoD on account of delay in getting powers of telegraph authority under section 164 of the 2003 Act. The Respondents in this Appeal also did not satisfactorily address this issue. The Respondents have merely stated that facts in the both cases were different such as the Period of delay which in earlier case was only 5 month and 7 months or the Appellants in that case achieved the financial closure etc. They did not address the main issue as to how the powers under 164 were necessary in that case and are not necessary in the present case. The facts, so far as the issue of necessity of powers under 164 is concerned, are the same.
30. The Appellant has also relied upon this Tribunal’s judgment in Appeal No. 174 of 2010 judgement dated 15th Sept. 2011 wherein the Tribunal has recognized the practical impossibility to obtain consent from owners and occupiers of land, which is as follows:-

*“42. As mentioned above, a Generating Company is duty bound under Section 10 of the Act to construct, operate and maintain dedicated transmission lines. **If a generating station constructing a transmission line is required to obtain the consent of each and every land owner falling en route of his line, it would be virtually impossible to construct any line. In the present case, a 400 KV line is on average 300-400 Kms long. There could be thousands of land owners on whose land the line would be passing. Getting consent of each and every land owner would be an impossible task.** Further, each land owner would ask for compensation. This would increase the cost and ultimately the consumer would have to pay. Therefore, works of licensee Rules are not made applicable to the Non Licensee(R-2) The 2nd question is answered accordingly.”*

31. In the present case, the line length is more than 1000 kMs. Getting consent of every land owner enroute and commission the works within fixed time frame of 30 to 42 month would be herculean task if not impossible.
32. None of the Respondents have responded to this aspect. The Respondent No. 6 in Appeal No. 139 of 2013 (GUVNL) in its written statement has just brushed aside as obiter dicta.

33. The basic question which arises is this: “ if it was possible to erect a long transmission line, transversing over several kilometers over lands of thousands of persons, under Section 12 of 1910 Act or Section 67 of 2003 Act, then why did the legislature chose to provide Section 51 in 1910 Act or Section 42 in 1948 Act or Section 164 in 2003 Act to give power of a telegraph authority to a licensee or Board or generating company?. As per the cardinal principle of interpretation, each word, each Section provided in any statue must have some purpose.
34. Close scrutiny of the Section 51 of 1910 Act or Section 164 of 2003 Act would reveal that the powers of a telegraph authority can be conferred only for laying transmission line and not for distribution lines or mains. The legislature recognised the need for transfer of power from one part of the country to other parts. This was possible only by laying strong transmission system in the country (national grid) in quickest possible manner. Getting prior consent of each every land owner would only delay the process. In the larger public interest the legislature passed the Section 51 of 1910 Act, Section 42 of 1948 Act and Section 164 of 2003 Act. The issue of compensation to land owners has been addressed in these enactments.

35. The Respondent No. 6 in Appeal No. 139 of 2013 has relied upon a recent judgment of Gujarat High Court. According to the Respondent, the Gujarat High Court has settled the issue by holding that the Section 164 of 2003 Act is an alternative method of laying any transmission line. We have examined the above judgment of Gujarat High Court. The facts of this case were entirely different from the present case. In Gujarat Case, the utility viz., GETCO had been given powers under Section 164 of the Act and the Gujarat Government did not notify the Works of Licensee Rules required under Section 67(2) of the Act. In the present case the facts are different. The Central Government has notified the Works of Licensee Rules, 2005 under Section 67(2) of the Act, but delayed the conferment of powers under Section 164 of the Act. The Gujarat High Court has held that in the absence of Works of Licensee Rules, the provisions under Section 12 to 18 of 1910 Act would be applicable to the utility despite having conferred upon the powers of the telegraph authority. The Gujarat High Court had no occasion to address the present issue as to whether the authorisation under Section 164 of the Act was necessary to lay a transmission line especially in the context of line carrying telephonic or telegraphic messages.

36. **To sum up: In the light of above discussion, we are of the view that the power of Telegraph Authority under 164 of the 2003 Act is essential for laying transmission line both from prior consent of land owner as well as from telephonic or telegraph message point of views. Hence, the delay in obtaining the Central Government's approval in conferring power of the Telegraph Authority is to be construed to be a force majeure.**
37. In view of the above, the impugned orders are set aside. Both the Appeals are allowed. However, there is no order as to costs.

**(V J Talwar)**  
**Technical Member**

**(Justice M. Karpaga Vinayagam)**  
**Chairperson**

Dated: 2<sup>nd</sup> December, 2013

√REPORTABLE/~~NON-REPORTABLE~~