

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

IA No. 174 of 2013 in DFR No. 413 of 2013

Dated: 13th May, 2014

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member**

In the matter of:

**Shri Ganpat Khanderao Farande
Shri Subhash Khanderao Farande
Ozarde, Taluka Wai
Distt. Satara, Maharashtra
Pincode – 412 803**

**...Applicant(s)/
Appellant(s)**

Versus

- 1. The Executive Engineer
Maharashtra State Electricity
Transmission Co. Ltd.
EHV Construction-cum-O & M Zone,
Viswhrambag, Sangli – 411 005,
Maharashtra**
- 2. The Dy. Executive Engineer
Maharashtra State Electricity
Transmission Co. Ltd.
EHVT Construction Line Sub-Division,
Krishnanagar, Distt. Satara
Maharashtra – 415 110**
- 3. Divisional Magistrate
Division Wai, Satara
Distt. Satara, Maharashtra – 412 803**

...Respondent(s)

4. **Maharashtra Electricity Regulatory Commission**
13th Floor, Centre no. 1, World Trade Centre
Cuffee Parade, Colaba
Mumbai – 400 005 (M.S.)

Counsel for the Applicant(s)/: **Ms. Anagha S. Desai**
Appellant (s) **Mr. Somanath Padhan**
Mr. Satyajit Desai
Mr. S. Kumar

Counsel for the Respondent(s): **Mr. M.Y. Deshmukh**
Mr. Jagtap
Mr. Yatin
Mr. Buddy A. Ranganadhan,
Amicus Curiae
Mr. Raunak Jain

ORDER

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

The Appellants are the land owners in their village Ozarde
in Maharashtra State.

2. The Respondent nos. 1 and 2 are the officers of the
Transmission Licensee.

3. This Appeal has been filed by the Applicants to challenge the impugned order dated 31.7.2012 passed by the Maharashtra State Commission dismissing their Petition to restrain the transmission licensee from putting transmission line over their land.
4. Short facts are these:
5. The Transmission Licensee proposed to put up a transmission line over the lands situated in the village including that of the Applicants. Since there was objection from some of the land owners, the Transmission Licensee approached the District Magistrate and sought for protection as against the people who were opposing the construction of towers of transmission line work and prayed for restraining the land owners including the Applicants from doing the same.

6. The District Magistrate after hearing the parties, passed the order dated 31.12.2011 allowing their petition to remove the obstruction for putting up the transmission line.

7. Challenging this order dated 31.12.2011, the Applicants filed petition before the Maharashtra State Commission under Section 67(4) of the Electricity Act, 2003 seeking to set aside the orders passed by the District Magistrate. The State Commission after hearing both the parties passed the impugned order dated 31.7.2012 dismissing the petition filed by the Applicants thereby upholding the order passed by the District Magistrate.

8. On being dissatisfied with the aforesaid impugned order dated 31.7.2012, the Applicants have filed this Appeal in DFR No. 413 of 2013.

9. In filing this Appeal there was a delay of 204 days. After scrutiny, the Registry pointed out some defects and asked the Applicants to rectify the defects and to refile the same within the time frame. After rectifying the defects, the Appeal was refiled after 36 days delay. Hence, the Applicants filed the petition in IA no. 141 of 2013 and IA no. 142 of 2013 for condonation of delay of 36 days in refiling the Appeal and for condonation of delay of 204 days in filing the Appeal. Both the Applications were listed on 30.4.2013 for hearing. The Learned Counsel for the Applicants were absent. Again it was adjourned to 2.5.2013 for giving further opportunity for the Applicants to make their submissions by their appearance. Again none appeared for the Applicants. The matter was again adjourned to the next day for orders. On that day also, none appeared. Ultimately, on 3.5.2013 the Tribunal, after going through the Applications passed the order dismissing both the Applications holding that there is no satisfactory explanation both for the delay in filing the

Appeal as well as for refiling the Appeal, thereby rejecting the Appeal at the DFR stage itself.

10. On coming to know about this order dated 3.5.2013, the Learned Counsel for Applicants filed IA no. 165 of 2013 for restoration of DFR no. 413 of 2013.

11. This Application for restoration came up for hearing and, the Learned Counsel for the Applicants was heard. When we pointed out to the Learned Counsel for the Applicants, that this Application for restoration is not maintainable since the order dated 3.5.2013 was passed dismissing the Applications to condone the delay after considering the merits of the explanation for the delay referred to in their Applications. Sensing the difficulty to maintain this Application no. 165 of 2013 for restoration, the Learned Counsel for the Applicants got time for getting further instructions in the matter.

12. Thereafter, the Learned Counsel for the Applicants filed a fresh Application in IA no. 174 of 2013 seeking for the Review of the order passed on 3.5.2013 as there were errors committed by this Tribunal by not considering the relevant aspects of the explanation for condonation of delay.

13. Both Applications IA no. 165 of 2013 for restoration and IA no. 174 of 2013 for Review came up for hearing on 10.7.2013. On that day the Learned Counsel for the Applicants sought permission for withdrawal of Application for restoration in IA no. 165 of 2013. Accordingly, we dismissed the said Application as withdrawn. Then, in the Application for Review in IA no. 174 of 2013, we issued notice to the Respondents.

14. During the pendency of this Application IA no. 174 of 2013, the Learned Counsel for the Applicants was asked to make submissions with regard to maintainability of the

Review Petition as well as on the grounds raised in the Review. By the order dated 25.9.2013, we appointed Mr. Buddy A. Ranganadhan as an Amicus Curiae Counsel to assist the Tribunal, since question of law is involved.

15. On receipt of the notice, Mr. Deshmukh, the Learned Counsel for the Respondent no. 1 and 2 for Transmission licensee appeared and filed their replies.
16. During the course of hearing, we permitted the parties to argue both on maintainability as well as the merits of the matter. Accordingly, both the parties have filed the affidavits and the additional affidavits with regard to the question of maintainability as well as merits of the matter.
17. After hearing the Learned Counsel for the Applicants and the contesting parties, we have heard the Learned Counsel for the Amicus Curiae also. We directed the Learned Amicus Curiae Counsel to file note with regard to

the maintainability of the Review Petition as well as the merits of the Appeal. Accordingly the Amicus Curiae Counsel filed his written notes.

18. We have heard the detailed submissions made by the parties at length on several dates. We have given several opportunities to both the Learned Counsel for the Applicants as well as the Learned Counsel for the Transmission Licensee in order to find out any ground for Review as well as merits in Appeal.
19. We have given our thoughtful consideration to the contentions urged by the parties.
20. As mentioned above, this case has got a chequered history. To understand the core issue, it would be appropriate to narrate the chronological events in detail which resulted in filing of this Appeal.

21. The Applicants claiming themselves to be the owners of the land situated in Orzade village in Satara District are engaged in the running business of jaggery unit with the said land and its workers living in the premises situated in the land.

22. In April 2011, the Applicants came to know that Transmission Licensee proposed to construct the tower and lay transmission line for evacuating the transfer of electricity from the sugar factory by laying down the transmission line across the lands including that of the Applicants. The Applicants filed civil suit before the Civil Court Satara challenging the action of the Transmission Licensee. However there was no stay.

23. At that stage, the Transmission Licensee filed a petition before the District Magistrate contending that the Applicants and others were obstructing the progress of the transmission line work and prayed for protection. The

District Magistrate after hearing both the parties allowed the Application by order dated 30.9.2011 for removal of the obstruction.

24. Despite this order, there was continued obstruction. Hence, the Transmission Licensee filed another Application before the District Magistrate as against the action of the Applicants obstructing the progress of LILO work. The District Magistrate after hearing both sides again allowed the Application by the order 31.12.2011 for removal of the obstruction.
25. Challenging this order dated 31.12.2011 passed by the District Magistrate, the Applicants filed a petition in case no. 25 of 2012 on 28.2.2012 under Section 67(4) of the Electricity Act 2013 before the Maharashtra State Commission to set aside the same. The State Commission after hearing both the parties passed impugned order dated 31.7.2012 dismissing the petition filed by the

Applicants thereby upholding the order dated 31.12.2011 passed by the District Magistrate.

26. On being aggrieved over the impugned order dated 31.7.2012 passed by the State Commission, the Applicants have filed this Appeal on 25.2.2013 before this Tribunal challenging the impugned order with some delay.

27. On noticing that there were some defects in the Appeal, the Registry sent the defect notice to the Applicants asking them for rectification of those defects. After rectification, the Appeal was refiled with delay. Since there was some delay both in filing the Appeal as well as in refiling of the Appeal, the Applicants filed Applications in IA no. 141 of 2013 for condonation of delay of 36 days in refiling the delay and IA no. 142 of 2013 for condonation of delay of 204 days in filing the Appeal.

28. As narrated above, the Applications for condonation of delay came up before this Tribunal for admission on 30.4.2013. On that day none appeared on behalf of the Applicants. Therefore, the matter was adjourned to give further opportunity to the Applicants. The matter was taken up on 2.5.2013. Again none appeared for the Applicants. Hence, the matter was posted to 3.5.2013 for passing orders. Even on 3.5.2013 nobody appeared. Therefore, this Tribunal passed the orders on 3.5.2013 dismissing both the Applications for condonation of delay in filing the Appeal as well as in refiling the Appeal holding that there was no satisfactory explanation for the said delay. Consequently, the Appeal was also rejected by this Tribunal.

29. Thereupon, the Applicants filed IA no. 165 of 2013 for restoration of the Appeal. On realizing that Application for restoration is not maintainable, the Learned Counsel for the Applicants withdrew the above petition and filed a

fresh Application that is IA no. 174 of 2013 seeking for the Review of the order passed by the Tribunal dated 3.5.2013. In that Application, we issued notice to all the parties concerned. Since the mistake has been committed by the Learned Counsel appearing for the Applicants by not being present on all these days of hearing, we thought that it would be better to get the assistance of an Amicus Curiae Counsel in order to find out whether anything could be done to redress the grievances of the Applicants as per law: Accordingly Mr. Buddy A. Ranganadhan was requested to assist this Tribunal by acting as Amicus Curiae Counsel. We also issued notice to all the Respondents.

30. Thereafter, the Learned Counsel for the Applicants filed several additional affidavits giving further explanation for delay and additional grounds for Review. Similarly, the Learned Counsel for the contesting Respondent no.1 and 2 appeared and filed their detailed reply opposing the

prayer of the Applicants. In the light of above facts we are called upon to decide the following two questions:-

- I. Whether any ground is made out for Review of the order dated 3.5.2013, passed by the Tribunal.
 - II. Even assuming that the Review Petition could be entertained in the facts and circumstances of the case, whether any prima facie case is made out in the Appeal with regard to the merits of the matter?
-
31. We have heard both the Learned Counsel for both the parties as well as the Amicus Curiae Counsel on various dates of hearings between 8.8.2013 and 23.4.2014 on which day the order was reserved.
 32. The Application for Review under Section 120 (2)(h) has been filed by the Applicants to review our order dated 3.5.2013. As mentioned above, in the meantime, the Application was filed for restoration in IA no. 165 of 2013,

and the same was dismissed as withdrawn on 10.7.2013.
Now, we shall see whether any ground is made out for
Review of our order.

33. The Learned Counsel for the Applicants has raised various grounds seeking for setting aside the order dated 3.5.2013 by way of Review by contending that there was apparent error in the said order. Before dealing with those grounds, let us now refer to the order passed by this Tribunal on 3.5.2013

- "1. Shri Ganpat Khanderao Farande and Shri Subhash Khanderao Farande are the Appellants/Applicants herein.*
- 2. They filed this Appeal as against the order of the Maharashtra State Commission passed on 31st July,2012.*
- 3. This Appeal had been filed on 25th Feb.2013 with a delay of 204 days. Along with the Appeal, they filed an Application in I.A. No.142/2013 to condone the delay of the said delay of 204 days in filing the Appeal.*
- 4. The Registry, on noticing that there were some defects, issued defect notice to the Appellants asking*

the Appellants to rectify the defects and to re-file the Appeal within 7 days.

5. *However, the same was not refilled within the time. There is a delay of 36 days in re-filing the Appeal. Hence, the Applicants filed another Application in I.A. No.141/2013 to condone this delay of re-filing.*
6. *Both the Applications came up for hearing on 30th April,2013. When the matter was called, neither the Applicants nor their Counsel were present. Therefore, we adjourned the matter to 2.5.2013.*
7. *When the matter came up on 2.5.2013 again, the Counsel as well as the Applicants were absent. Therefore, we have gone through both the Applications for condoning the delay and passed the following order:-*

The explanation given by the Applicants to condone the delay of 204 days if filing the Appeal is as follows:- a) The main order was passed by the State Commission on 31.7.2012.

- b) *The Appellants/Applicants being poor farmers doing business of jaggery took some time to consult local lawyers who suggested that the Appeal would lie before the Appellate Tribunal at New Delhi. Therefore, the Appellants/Applicants came to Delhi and submitted the papers to the lawyer in Delhi. It took some time for translation of documents from Marathi to English.*
- c) *The Hon'ble Supreme Court has held that the expression "sufficient cause" used in the section has to be elastic enough to enable the Courts to apply the law in meaningful manner in order to serve the ends*

of justice. Due to the financial constraints and lack of appropriate contacts at a far off place i.e. Delhi, the delay of 204 days had occurred. The said delay is beyond the control of the Appellants/Applicants. Therefore, the same may be condoned."

8. *Now let us see the explanation given for the delay occurred in re-filing the Appeal.*

"The delay has occurred because of the circumstances beyond the control of the Appellants/Applicants. After receiving the letter from Registry regarding the defects, the Counsel for the Appellants/Applicants, cured the defects in papers and contacted the Appellants/Applicants for obtaining the signature of the Appellants/Applicants. It took considerable time because the Appellants/Applicants are residing in a very remote place in Maharashtra. Under these circumstances the learned Counsel re-filed the Appeal after a delay of 36 days."

9. *We have carefully gone through the records, Applications and the affidavit filed by the Appellants/Applicants. At the outset, it has to be stated that the Applicants as well as their Counsel have not been diligent through out in filing the Appeal even though the main order was passed on 31.7.2012. The Appellants/Applicants filed the Appeal along with an Application to condone the delay of 204 days only on 25.2.2013. There are no details with regard to long delay that is between 31.7.2012 and 25.2.2013 excepting to state that the delay was occurred due to financial constraints.*
10. *Similarly, the explanation given for the delay in re-filing also does not show convincing reasons for such a delay. It is true that the Hon'ble Supreme Court has*

held that Courts have to be liberal in the matter of condonation of delay so as to serve the ends of justice. But the Hon'ble Supreme Court in the very same decisions, has clearly laid down that if the parties are negligent and the explanation for the inordinate delay is not acceptable, the said inordinate delay cannot be condoned.

11. *In this case, there is not only inordinate delay but also Counsel for the Appellants/Applicants have been absent both on 30th April, 2013 and on 2.5.2013. Therefore, we are not inclined to condone the delay both in filing the Appeal as well as re-filing the Appeal in the absence of the satisfactory explanation.*
12. *Thus, these Applications are dismissed. Consequently, the Appeal also is rejected."*

34. Seeking to set aside this order by way of Review, the Learned Counsel for the Applicants has given various reasons as to why the Learned Counsel for the Applicants did not appear on the dates on 30.4.2013, 2.5.2013 and 3.5.2013. According to her, the mistake had been committed by the clerk of the Learned Counsel by wrongly noting the date of posting as 30.5.2013 instead of 30.4.2013, therefore, the Learned Counsel was under the wrong impression that the matter would be posted on

30.5.2013 and that, therefore, she did not appear for hearing on 30.4.2013, 2.5.2013 and 3.5.2013.

35. Apart from these reasons, for not appearing before this Tribunal on these dates, the Learned Counsel for the Applicants has given some more explanations in the petition for Review for delay that was caused in filing the Appeal as well as in refiling of the Appeal. According to the Learned Counsel, the Applicants being agriculturists are poor farmers and could not come to Delhi in time and delay was due to that reason and hence the said delay could be condoned in the light of the decision of the Hon'ble Supreme Court in which it has been held that the term "sufficient cause" to be elastic enough to enable the courts to apply the law in meaningful manner which serves the ends of justice.

36. The Learned Counsel for the Applicants was also given further opportunity to file better affidavit giving further

details. Accordingly additional affidavit has been filed. In these affidavits also the Applicants gave the details of the reasons for the delay as mentioned in earlier Applications stating that the Applicants/Appellants were unable to arrange requisite funds and they were busy in the harvesting work and 204 days delay cannot be termed as inordinate delay in the circumstances. In this affidavit the Applicants have quoted the following decisions of the Hon'ble Supreme Court giving the guidelines in the matter of condonation of delay.

- (1). *"N. Balakrishnan v. M. Krishnamurthy (1998) 7 SCC 123,*
- (2). *Vedabai alias Vijayantabai Baburao Patil vs. Shantaram Baburao Patil & Ors. (2001) 9 SCC 106*
- (3). *Magistrate, Land Acquisition, Anantnag & Anr. vs. Mst. Katiji & Ors. (1987) 2 SCC 107"*

37. In fact, in this affidavit, the Applicants reiterated what was stated in earlier affidavits apart from putting the blame on the counsel's clerk who noted the wrong date of hearing.

38. The prayer for Review and for condonation of delay made by the Applicants is stoutly opposed by the Learned Counsel for the Respondents 1 and 2. According to the Respondents, the Applicants have not made out a case for Review of the order dated 3.5.2013 particularly when there is no mistake or apparent error which is prima facie visible in the order dated 3.5.2013.

39. According to the Learned Counsel for the Respondents, this Tribunal has already considered the explanation given in the Application to condone the delay and ultimately concluded that the Applicants and their Counsel have not been diligent throughout in filing the Appeal and in refiling the Appeal and thus the order passed on 3.5.2013 does not call for Review. The Learned Counsel for the Respondents further stated that Hon'ble Supreme Court had held in various decisions that though the courts have to adopt liberal approach in dealing with the Application for condonation of delay, yet inordinate delay cannot be

condoned if the parties are negligent and the explanation for the said delay is not satisfactory and, as such, liberal approach in considering the term 'sufficient cause' for the delay should not override substantial law of limitation. The Learned Counsel for Respondents have cited the following decisions.

- I. Lanka Venkateswarlu v. State of A.P., AIR 2011 SC 1199: (2011) 4 SCC 363*
- II. Hindustan Petroleum Corpn. Ltd. v. Yashwant Gajanan Joshi, AIR 1991 SC 933: 1991 Supp (2) SCC 592; State of Punjab v. Raj Kumar, 1992 Supp (2) SCC 128 and State of U.P. v. Vinod Prakash Tayal, 1995 Supp (4) SCC 412*
- III. Pundlik Jalam Patil v. Jalgaon Medium Project, (@008) 17 SCC 448"*

We have perused all the decisions cited by both the parties. The question of law decided in these cases is not disputed, we are to consider in this case as to whether any ground is made out for Review in the light of the fresh explanation given now.

40. As correctly pointed out by the Respondents, even in the fresh explanation given in the additional affidavits filed in IA no. 174 of 2013 for condonation of delay would not show any other new details which was not mentioned in the earlier Affidavits to condone the delay. In other words, these affidavits now as additional affidavits filed by the Applicants is nothing but a reiteration of the explanation contained in the earlier affidavits filed by the Applicants in the Applications to condone the delay in filing the Appeal as well as to condone the delay in refiling of the Appeal, which we have already considered and rejected.

41. The only new fact which has been referred to in the fresh affidavits relating to the explanation for the non-appearance of the Learned Counsel for the Applicants on 30.4.2013, 2.5.2013 and 3.5.2013. The said explanation for the same is that her clerk has committed error by noting down the wrong date of hearing in the diary as 30.5.2013 instead of 30.4.2013. By this explanation the

Learned Counsel for the Applicants wants to show the grave error was committed only by her clerk and not by her. This may be the explanation for condoning her absence on the dates of hearing. This cannot be the ground for the Review of our order passed on merits.

42. We are not concerned with the error committed by the Counsel or her clerk. In this Review Petition we are concerned only with the question whether we have committed any apparent error in our order dated 3.5.2013. The Learned Counsel for the Applicants is unable to show anything to indicate that any apparent error has been committed by this Tribunal. On the other hand this Tribunal in the order dated 3.5.2013, examined the explanation offered by the Applicants in each of the Applications in detail and gave reasonings as to why the explanation cannot be accepted. Of course, it is settled law that the courts have to be liberal in the matter of condoning the delay. It is noticed that in these

proceedings there is inordinate delay not only in filing the Appeal but also in refiling of the Appeal. In our order, we have discussed merits of the explanation and held that parties have been negligent and they failed to explain the delay by not providing satisfactory explanation. We have also pointed out in the said order that the fact that the parties are at remote places and they were poor farmers and they were engaged in agricultural operations and they were busy with the agriculture cannot be construed to be 'sufficient cause' to condone the delay.

43. It is well settled law that once there is delay in filing the Appeal the right accrues to the opposite party. The said right cannot be disturbed lightly. This means the Tribunal would help only those who are vigilant and not those who slumber over their rights.

44. When this Tribunal refused to condone the inordinate delay both in filing the Appeal as well as in refiling the

Appeal holding that there was no satisfactory explanation for the delay and there was the negligence on the part of the Applicants, the Learned Counsel for the Applicants cannot now contend that the Applicants are vigilant and, therefore, the case for Review is made out.

45. As indicated above, we have given several opportunities by adjourning the Application to various dates. But those opportunities have not been availed of by the Learned Counsel. Since, none appeared on behalf of the Applicants in all the 3 hearing dates there was no other alternative for the Tribunal to dispose of these Applications for condonation of delay on merits. Accordingly, we have passed the orders rejecting the condonation of delay by giving appropriate reasons which are in our view, valid.

46. The Learned Counsel for the Applicants cannot reagitate in this Tribunal by stating that those reasons are not valid

in the Review Petition. We have already indicated that there was negligence of the parties in prosecuting the matter diligently. Therefore, the explanation which is now offered in the additional affidavit is nothing but the repetition of the earlier explanation which cannot be said to be satisfactory explanation that too in the Review Petition. As such we find that there is no ground made out for Review. Consequently, Review Petition is liable to be rejected. The 1st issue is answered accordingly.

47. We now may come to the 2nd issue. This relates to question that even assuming that the Review could be entertained, whether there is any merit in the Appeal.

48. Though, we have decided the 1st question as against the Applicants, we are inclined to go into merits as we have already permitted the parties to argue on merits also.

49. The Learned Counsel for both the parties made their elaborate submissions with regard to the merits of the Appeal against the impugned order dated 31.7.2012 passed by the State Commission. Let us now consider the same.

50. The Learned Counsel for the Applicants made following submissions questioning the impugned order dated 31.7.2012 passed by the State Commission.

(a) The State Commission failed to appreciate that the work of tower line of high tension wires for the purpose of evacuation of electricity from sugar factory, is quite contrary to the original sanctioned map. The said transmission line/tower no. 31 was not supposed to transgress Gat no. 489 at village Ozarde. The high tension wires of tower 30 and 31 go over the house of the land of the Applicants.

(b) The State Commission did not appreciate that the District Magistrate/Divisional Magistrate failed to consider that as per the original map the transmission line did not go through the land of the Applicants but now the HT wires are running over the Jaggery unit of the Applicants. District Magistrate while granting permission to the Transmission Licensee to complete their construction work and restraining the Applicants not to obstruct, has directed the Transmission Licensee to pay compensation if required in future for the loss of crops and other damages to the land owners eligible for damages. However, no compensation has been paid to the Applicants till date.

(c) The State Commission has failed to follow the ratio decided by this Tribunal in Appeal no. 83 of 2010 which has already decided the issue in question. Without considering the said decision, the State

Commission simply confirmed the order of the District Magistrate on the basis that the authorisation under Section 164 granted to the Transmission Licensee would empower the Transmission Licensee to carry out the activity of laying transmission line and the towers in question.

- (d) The Respondents in their reply have admitted that the tower no. 31 was moved to the edge of Gate no. 483 to save trees and crops. However, they allowed to pass it over the land of the Applicants which is a non-agricultural land having huge commercial land. If the dangerous high tension wires are allowed to pass through the land it will lose the commercial value as it is not viable and conducive.

51. Refuting these grounds, the Learned Counsel for the Respondents made elaborate submissions justifying the

order passed by the District Magistrate as well as the State Commission.

52. We shall now consider whether District Magistrate as well as State Commission have taken into consideration the relevant aspects while coming to the conclusion that the Appellants were not entitled to the relief sought for by them. Let us first refer to the order dated 31.12.2011 passed by the District Magistrate in the Application filed by the Transmission Licensee. The relevant portion of the order dated 31.12.2011 is as under:-

“The applicant has filed the documentary proof on record to the effect that in view of the powers conferred under Section 164 of the Electricity Act, 2003, the Government of Maharashtra vide Government Gazette dated 24/08/2006 has given the necessary rights to the applicant Company for laying necessary electric wires, erecting power stations and proper management of the work for transmission of electricity. Similarly as per Sections 163, 164 of the Electricity Distribution Act, 2003, the provisions of the Indian Telegram Act being applicable to this State Electricity Company for the public works, if the respondents create obstructions in the public work of the applicant, this Court has power under Section 16/1 of the

Indian Telegram Act to obviate the said obstructions. The applicant has contended this in its argument. The applicant in its oral argument stated that no any stay order on Exhibit-5 has been given by the Hon'ble Civil Court, Senior Division, Satara in RCS No. 499/11 filed by the Respondents. The respondents have not filed the documentary proof before me if there is any such stay order granted. The subject matter regarding Jaggery House and houses in their lands stated by the respondents in their argument being an issue pending the appeal filed before the Hon'ble Civil Court and the orders passed therein being binding on the concerned, it shall not be proper to discuss the said issue. The contentions of the respondents have the effect of creating obstruction in the public work of the applicant, therefore, their contention is liable to be rejected subject to the orders likely to be passed by the Hon'ble Court, similarly it is necessary for the applicant to lay electric wires with proper caution so that there should not cause damage to the crops in the fields of the respondents or threat of life or any other sort of loss in future. However, while laying electric wires, there causes damages to the crops/fruit trees, in that event it is necessary to do the procedure regarding payment of compensation after drawing due Panchnama to that effect and calculating the valuation of the damages caused from the competent authority. Similarly it will be proper in the interest of principles of natural justice, law and development of the public to remove the obstruction in the public work."

53. In this order, it has been specifically stated by the District Magistrate that the issue regarding Jaggery house and house in their lands is pending in the Civil Suit before the

Civil Court filed by the land lords. In that suit, no stay has been obtained by the land owners. The Transmission Licensee produced the documentary proof with regard to the grant of permission under Section 164 of the Electricity Act 2003 by the Government of Maharashtra conferring the rights to the Transmission Licensee for laying necessary electric wires, etc.

54. Thus, the Transmission Licensee was permitted to lay electric wire with proper caution so that there should not be any damage to the crops in the field of the land owners or threat of life or any damages to the crops. The Transmission Licensee may follow the procedure with regard to payment of compensation after calculation of the valuation of damage cost. This is the crux of the order of the District Magistrate.

55. Being not satisfied with the order dated 31.12.2011 passed by the District Magistrate, the Applicants, filed

petition challenging the same before the State Commission in case no. 25 of 2012 on 28.2.2012. The State Commission after hearing the parties dismissed the petition filed by the Applicants holding that the order was validly passed by the District Magistrate after taking into all the various arguments advanced by both the parties as well as all the relevant aspects of the matter. Let us now refer to the finding of the State Commission in its order dated 31.7.2012.

“16. On the grounds made in the Petition the Petitioners state that the impugned Order passed by the Divisional Magistrate is bad in law, erroneous, bad on facts, inequitable, etc. The Petitioners state that the Divisional Magistrate failed to consider that as per the original map of MSETCL the tower line did not go through the land of the Petitioners. The Petitioners states that it is not possible for high tension wires of tower no. 30 and 31 to go from the house of the Petitioners since the house is only 598 metres from the highway and tower nos. 30 and 31 is 3.25 km away from the highway. The Respondents No.1 and 2 in their reply state that the Petition relates to LILO work on 132 kV Lonand to Wai EHV line for Kisanveer Co Gen (Bhuinj). This line is stated to be already erected and charged. The Respondents No.1 and 2 state that the Petitioners do not have locus standi as neither any transmission tower is situated in

the Petitioners land nor the Petitioners were affected in any way due to the erection of the transmission line. According to the Respondents, the contentions of the Petitioners are on false premise and do not have any merit. Hence, MSETCL had to approach the sub-divisional magistrate to stop the Petitioners and their frivolous objections. The Respondents deny any ulterior motive for changing the route of the electric line which is stated to have been done to save trees and crop and to cause minimum damage to the farmers land. It is stated that the original route map was not at all changed. A route map is indicative of the route and is not even metre perfect. It is just a rough sketch of the route. Only change in the transmission line is the moving of tower no. 31 from middle of Gat No. 483 to its border and as a consequence moving of tower no. 30 eastwards. tower no. 31 was moved to the edge of Gat No. 483 to save crops and trees. Any change in the positions of tower nos. 29 to 34 has been denied. The overhead line does not pass through Gat No 488B/1 which is a NA plot. It is stated that MSETCL has acted according to the powers conferred on by Section 164 of EA 2003 and Section 10 (d) of the 1885 Act. As regards the regular Civil Suit No. 112 of 2011 filed by the Petitioners, it is stated that the said matter is pending but has become infructuous as MSETCL has already constructed the transmission line with the permission of the district magistrate and the line is operationalised. It is also stated that MSETCL has issued a public notice of the erection of transmission line on 6 November, 2009.

- 17. The Commission has examined the impugned order passed by the Divisional Magistrate. The divisional magistrate has considered the objections raised by the Petitioners regarding the laying of transmission*

line not being in accordance with the original sanctioned plan. MSETCL has denied the existence of the factum of the tower and the line passing over the house of the Petitioners. The divisional magistrate was of the opinion that the authorisation under Section 164 to MSETCL to exercise the powers of a telegraph authority empowered it to carry out the activity of laying of transmission lines and the towers in question. The Divisional Magistrate was also of the opinion that in public interest it should not be obstructed. The Divisional Magistrate directed that all precautions should be taken by MSETCL towards damage to crops, property etc and if required compensation should be granted. The Divisional Magistrate was also of the view that natural justice requires allowing MSETCL to lay transmission lines and erect the towers in question.

- 18. On a perusal of the impugned Order, the Commission is of the view that MSETCL being a transmission licensee having powers of the telegraph authority under Section 164 and also being the state transmission utility were entitled to change the transmission line by moving of tower no. 31 from middle of Gat No. 483 to its border and as a consequence moving of tower no. 30 eastwards. Tower no. 31 was moved to the edge of Gat No. 483 in order to save crop and tress. The Petitioners have not shown any illegality in this regard. Moreover, the divisional magistrate has directed MSETCL to pay compensation for any destruction of crop and trees. The Petitioners have themselves admitted in their Petition that the divisional magistrate while passing the impugned Order has heard both the sides and perused all the evidence on record. So, there is no question of violation of natural justice. The Commission does not find that there is any violation*

of any statutory provision or any binding precedent or that the impugned Order suffers from misreading of evidence or has omitted to consider any relevant evidence. It is not as if the impugned Order take a view that no reasonable person would arrive at. On the other hand, the district magistrate has ensured by its Order that least damage, detriment or inconvenience is caused and that compensation is determined and paid for any damage, etc. The Commission is of the view that the said directions in the impugned Order are in line with the onus cast upon the licensee under Sub-section 3 of Section 67 of the Electricity Act, 2003.

- 19. The Commission is of the view that the directions of the District Magistrate to have the amount of compensation determined and paid to the land owners is in accordance with the powers vested under the Maharashtra Electricity Works of Licensees Rules, 2012.*
- 20. The impugned Order also reveals that the Respondent No. 3 has followed the principles of natural justice while conducting the hearings and while passing the impugned Order. All the parties were given opportunity to file their submissions and to present their case.*
- 21. After going through the impugned Order, it cannot be held that the District Magistrate has acted in the exercise of jurisdiction illegally or with any material irregularity.*
- 22. In view of the above findings, the Commission does not find any merit in this Petition and finds it necessary to dismiss it.”*

56. Perusal of the above impugned order would show that the State Commission has dealt with the issue in question and held that Transmission Licensee having powers of the Telegraph Authority under Section 164 and also being the State Transmission Utility was entitled to change their transmission line by moving the tower no. 31 from Gat no. 483 and as such there was no illegality in the order of the District Magistrate. The State Commission further pointed out that in the impugned order that the petitioners themselves admitted that the District Magistrate before passing the impugned order, had heard both the parties and passed the order after perusing all the materials available on record.

57. On this basis, the State Commission has concluded that there cannot be any question of violation of principles of justice or violation of any statutory provision or any binding precedent. Thus, the careful perusal of both the orders of

District Magistrate as well as the State Commission would clearly indicate that all the relevant aspects have been considered by both the authorities and accordingly the impugned order had been passed allowing the Transmission Licensee to finish the transmission work. It is also noticed from both orders, direction had been issued to Transmission Licensee to commence the procedure with reference to the payment of compensation if it is established that there was any loss or damage caused to the land due to the transmission work carried on by the transmission licensee.

58. In the light of the above findings which are valid, we are constrained to make the following observations:-

59. The issue with regard to the damage, the Applicants have already filed suit in respect of these issues in the Civil Court and the same is still pending. The District Magistrate

already passed the order to the fact that the said order would be subject to the outcome of the Civil Suit.

60. In that situation, we are unable to understand as to how the findings given by the District Magistrate and the State Commission could be said to be against law. The mere fact that there was a change in tower can not itself be shown to be wrong or unlawful unless the Applicants are in a position to make a plea and prove that shifting was unlawful.

61. The findings of the State Commission is that the District Magistrate had followed the principle of natural justice while passing its order and that there is nothing to indicate that such an order passed by the a District Magistrate was either beyond its jurisdiction or suffer from any material irregularity.

62. It is contended by the Learned Counsel for the Applicants before the State Commission as well as before the Tribunal that the judgment of this Tribunal in Appeal no. 83 of 2010 in the case of Maharashtra State Electricity Transmission Company Limited. Vs. Shri Vikram Sunderdas Setiya and Anr. ought to have been followed.
63. On going through the said judgment, it is evident that this judgment would not apply to the present case since the said judgment in Appeal no. 83 of 2010 was delivered in a scenario when the State of Maharashtra had not framed rules under Section 67 of the Act. Now the State of Maharashtra framed such rules under the Section 67 of the Act in the year 2012.
64. Furthermore notification dated 24.8.2006 had been issued by the Government of Maharashtra under Section 164 of the Electricity Act 2003 empowering the Transmission Licensee to exercise the powers of a Telegraph Authority

for the purpose of laying down electric wires, erecting power stations etc. This notification issued under Section 164 also cannot be challenged before this Tribunal.

65. According to the Applicants, the work of tower line of high tension wires by the transmission company for the purpose of evacuation of electricity from the sugar factory is contrary to be original sanctioned map and that the high tension wires passes over the house of the Applicants. The contention is refuted by the Respondents by stating that neither any transmission tower is situated in the land of the Applicants nor the Applicants were affected in any way due to erection of transmission line. There is no material placed by the Applicants to dispute the same.

66. As stated above, the Applicants have already filed civil suit on the said issue which is still pending. In the meantime, the Transmission Licensee has completed the construction of the transmission line on the basis of the

order of the District Magistrate which has been confirmed by the State Commission. We also concur with the detailed reasons given in the order passed by the State Commission. In these circumstances, it is for the Civil Court where the Civil Suit filed by the Applicants is pending, to decide with regard to the further course of action.

67. In view of our above discussion and conclusion, we find that there is no merit in the Appeal as well as in Review Petition.
68. Before parting with this case, we would like to record our appreciation for the services rendered by Mr. Buddy A. Ranganadhan, Amicus Curiae Counsel who assisted in this case and filed the detailed written notes.
69. **Summary of our findings:**
 - (a) No ground has been made out for Review.

(b) Even otherwise, no infirmity is pointed out in the order of the State Commission which warrants interference in the impugned order which is a well reasoned one.

70. In view of above findings, both Petitions for Review as well as the Appeal are dismissed. However, there is no order as to costs.

71. Pronounced in the open court on this **13th day of May, 2014.**

(Rakesh Nath)
Technical Member

√

(Justice M. Karpaga Vinayagam)
Chairperson

REPORTABLE/NON-REPORTABLE

mk