

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

**Dated: 14<sup>th</sup> November, 2013**

**Present: MR. JUSTICE KARPAGA VINAYAGAM, CHAIRPERSON**  
**MR. V J TALWAR, TECHNICAL MEMBER,**

**Appeal No. 135 of 2012**

**IN THE MATTER OF:**

Vidya Sagar Garg  
23, Indra Sagar Apartments  
Civil Lines, Nagpur

Appellant

**VERSUS**

1. Shri Surender Singh,  
Executive Engineer,  
Lines Construction Division,  
Yamunanagar.

2. Shri Subhash Chand,  
AEE, Lines Construction Sub – Division,  
Yamunanagar.

3. Shri Ashok Verma,  
AAE, Lines Construction Sub-Division  
Yamunanagar.

4. M/s K. Rajinder Rao,  
Transmission & Project Pvt. Ltd.,  
through the Managing Director, Praveen Chambers,  
Khairatabad, Hyderabad.

5. Haryana Electricity Regulatory Commission  
Bay No. 33 -36, Sector 4,  
Panchkula

Respondents

Counsel for the Appellant

Mr. Devashish Bharuka

Counsel for the Respondent

Mr. Paradeep Dahiya

## **JUDGMENT**

### **Per Mr. V J Talwar, Technical Member**

1. The Appellant, Vidhya Sagar Garg is a land owner in the state of Haryana. Respondent No. 1 to 3 are the officers of the Haryana Vidhyut Parasaran Nigam Limited (HVPNL), a State Transmission Utility and deemed Transmission Licensee. Respondent No. 4 is a electrical contractor for erecting transmission lines for HVPNL. Haryana State Commission is 5<sup>th</sup> Respondent.
2. Aggrieved by the State Commissions' impugned order dated 24.4.2012, the Appellant has filed this Appeal.
3. The facts of the case in brief are as follows:-
  - (i) The State Transmission Utility of Haryana, HVPNL proposed to construct a 220 kV substation at Rampur Kamboyan in Yamuna Nagar to meet the growing load demand of the area. The proposed substation was to be fed from Yamuna Nagar Thermal Power Station through Loop In Loop Out (LILO) of DCRTPP - Abdullapur line. One of the towers of the proposed LILO arrangement was to be erected in the land of the petitioner.
  - (ii) On 9.11.2011 Respondent No. 1 approached the District Magistrate for police help to execute the works as the representatives of Appellant were hindering the work.

Accordingly, the District Magistrate by order dated 18.11.2011 provided police help to the Respondents.

- (iii) At this stage, the Appellant filed a petition on 17.11.2011 under section-67 (4) of the Electricity Act, 2003 before the Haryana Commission praying for restraining the Transmission Licensee HVPNL from entering his land and for stoppage of any work related to erection of a Transmission line tower in his land. Through this petition, the Appellant requested the State Commission to grant ad interim ex-parte protection by directing the respondents not to take any coercive action and not to enter the land of the Appellant or carry on any work what so ever till the State Commission takes final decision in the said petition.
- (iv) However the State Commission, in view the fact that tower has already been erected on the land in question, declined to grant interim relief in its interim order dated 28.12.2011.
- (v) Ultimately the State Commission passed the Impugned Order on 24.12.2012 directing the Appellant to approach the District Magistrate Yamuna Nagar for compensation.
- (vi) Aggrieved by Impugned Order of the State Commission, the Appellant has filed the present Appeal.

- 4. The main grievance of the Appellant is that though the State Commission had acknowledged the fact that it has powers under section 67(4) of the 2003 Act to adjudicate upon the issue, the State Commission declined to address the issue of compensation and directed the Appellant to approach the District Magistrate Yamuna Nagar for the remedy under Section 12(2) and 12(3) of

the 1910 Act. The crux of the submissions made by the learned Counsel for the Appellant are as under:

- (i). Since the Government of Haryana has not notified the Works of Licensee Rules as per the requirement of Section 67(2) of the Act the consent of land owner is mandatory in accordance with Section 185(2) of the Act read with Section 12 of the 1910 Act.
  - (ii). District Magistrates order dated 18.11.2011, obtained by the Respondents under Section 16 of the Indian Telegraph act 1885, cannot be held to be an order under Section 12(2) of Indian Electricity Act 1910.
  - (iii). The facts of the present case are exactly similar to the facts of the case decided by this Tribunal in Appeal No. 83 of 2010. Accordingly, the ratio laid down by this Tribunal in the said Appeal would be applicable to the present case also.
5. Refuting these contentions of the Appellant, the learned Counsel for the Respondents raised the basic issue of maintainability of the Appeal on the ground that the Respondent Nos. 1 to 3 are mere employees of the Transmission Company and as such they could not have been made party to the dispute and to this Appeal and that the Appellant should have made the Transmission Company as the Respondent, which they have failed to do. Apart from the issue of maintainability of the Appeal, the learned Counsel for the Respondents made following submissions:
- (i). The ratio of this Tribunal's judgment in Appeal No. 83 of 2010 would not be applicable to the present case for the

reason that the HVPNL had been established under Section 13 of the Haryana Electricity Reforms Act, 1997 (1997 Act) and was granted transmission license under Section 15 of the 1997 Act.

- (ii). By virtue of Section 10(10) of the 1997 Act, which starts with non-obstante clause, similar to Section 51 of the 1910 Act, the Haryana commission had conferred all the powers for the placing of appliances and apparatus for Transmission that a telegraph authority possess under the Indian Telegraph Act, 1885 notwithstanding anything contained in Sections 12 to 16 and Sections 18 to 19 of the 1910 Act.
- (iii). HVPNL became deemed transmission licensee in accordance with Section 14 of the 2003 Act. The Provisions of 1997 Act, being not inconsistent with the 2003 Act, have been saved under Section 185(2) of the 2003 Act.
- (iv). Thus, the consent of the land owner was not required as Section 12 of 1910 Act would not be applicable in this case.
- (v). This Tribunal in the said Judgment proceeded on the basis that there was the absence of non-obstante clause in Section 164 of the Act, whereas in the case of HVPNL, the non-obstante clause exists in Section 10 (10) of the Haryana Electricity Reform Act, 1997 and the action of HVPNL are saved by Section 185(2)(a) of the Act read with Section 185(3) of the Act.
- (vi). Further, this Tribunal had no occasion to deal with the import, applicability and consistency of similar provisions like

Section 10 (10) of the Haryana Electricity Reform Act, 1997 along with Sections 12 and 51 of the Indian Electricity Act, 1910 read with 67(2) (a), 185(2)(a), 185(2)(b) and 185(3) of the Act.

6. Having regard to the rival contentions urged by the learned Counsel for the parties, the following questions may arise for our consideration:

- I. Whether the Appeal is maintainable for its failure to make necessary parties being impleaded in this Appeal?
- II. Whether the provisions of Section 10(10) of the Haryana Electricity Reforms Act 1997 read with Section 185(2) and 185(3) of the 2003 Act are not inconsistent with the provisions of the 2003 Act?
- III. Whether any action taken by the HVPNL, a deemed transmission licensee, under the provisions of Haryana Electricity Reforms Act 1997 are valid and legal under 2003 Act?
- IV. Whether the ratio laid down by this Tribunal in Appeal No. 83 of 2011 would be applicable to the facts of present case?
- V. Whether the Haryana Commission's direction to the Appellant to approach the District Magistrate for relief or compensation is correct – Legal approach?

7. We shall now take up each of the above questions one by one. The first question before us for consideration is related to maintainability of the Appeal.

8. The learned Counsel for the Respondents has submitted that the Respondents are merely employees of the transmission licensee (HVPNL) and they could not have been made Respondent and the Appellant should have made the HVPNL as Respondent and not the employees of the HVPNL.
9. The learned Counsel for the Appellant on the contrary submitted that the very same persons had been made as Respondents before the State Commission and the Respondents did not raise this objection before the State Commission and since the Respondents in the present case were the Respondents before the State Commission, the objection on maintainability is liable to be rejected. We agree with the contention of the Appellant. The parties to the Appeal have to be necessarily be the parties before the State Commission. That apart, the present Respondents contested the petition before the State Commission on behalf of the Transmission Company. Hence we hold that the Appeal is maintainable.
10. The second question for consideration is as to whether the provisions of Section 10(10) of the Haryana Electricity Reforms Act 1997 read with Section 185(2) and 185(3) of the 2003 Act are not inconsistent with the provisions of the 2003 Act?
11. The learned counsel for the Appellant submitted that the Respondents are raising this plea for the first time before this Tribunal and the same was not raised before the State Commission. The perusal of the Impugned Order of the State Commission also indicates that the Respondents had taken a stand before the Commission that they had been conferred the

powers of telegraph authority under Section 164 of the Act. There was no whisper of applicability of Section 10(10) of the Haryana Reforms Act 1997 before the Commission. Nevertheless, since the issue raised by the Respondents is an important question of law, we shall deal with the said issue in accordance with the provisions of the Act.

12. The learned Counsel for the Respondents has relied upon Section 10(10) of the 1997 Act and Sections 185(2) and Section 185(3) of the 2003 Act. Let us quote these provisions. Section 10(10) of the 1997 Act is extracted below:

*“10.(10) Notwithstanding anything contained in sections 12 to 16 (both inclusive) and sections 18 and 19 of the Indian Electricity Act, 1910, for the placing of the electric supply lines, appliances and apparatus for transmission, distribution and supply of energy, **the Commission may**, by order in writing, confer upon licensees or any other person engaged in the business of transmission distribution or supply of energy to the public under the Act, subject to such conditions and restrictions as the Commission may provide, any of the powers which the telegraph authority possess under the Indian Telegraph Act, 1885 with respect to placing of telegraph lines and post.”*

13. Section 185 of the 2003 Act is extracted below:

*“**185. Repeal and saving.**—(1) Save as otherwise provided in this Act, the Indian Electricity Act, 1910 (9 of 1910), the Electricity (Supply) Act, 1948 (54 of 1948) and the Electricity Regulatory Commissions Act, 1998 (14 of 1998) are hereby repealed.*

*(2) Notwithstanding such repeal,—*

*(a) anything done or any action taken or purported to have been done or taken including any rule, notification,*



*inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;*

*(b) the provisions contained in sections 12 to 18 of the Indian Electricity Act, 1910 (9 of 1910) and rules made thereunder shall have effect until the rules under sections 67 to 69 of this Act are made;*

...

*(3) The provisions of the enactments specified in the Schedule, not inconsistent with the provisions of this Act, shall apply to the States in which such enactments are applicable.*

...”

14. As per Section 185(3) the provisions of Haryana Electricity Reforms Act 1997 which are not inconsistent with the provisions of 2003 Act would apply to the State of Haryana. According to the Respondent, provisions of Section 10(10) of the 1997 Act are not inconsistent with the provisions of 2003 Act and has, therefore, been saved. Let us examine this proposition. Section 164 of 2003 Act dealing with conferment of power of telegraph authority is 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.”*

15. Bare reading of the above would indicate that whereas the 2003 Act has empowered the State Government to confer the powers of the Telegraph Authority, the Haryana Reforms Act has given this power to the State Commission. Clearly there is inconsistency between the two provisions. Accordingly, the provision of 1997 Act has not been saved by Section 185(3) of the 2003 Act.
16. The claim of the Respondents has no merits due to the fact that the Government of Haryana, by notification dated 21.12.2009 conferred the powers of the Telegraph Authority on the HVPNL under Section 164 of the 2003 Act.
17. Learned counsel for Respondents again relies upon Section 185(2)(b) as well as on 185(3). This itself is inconsistent and contradictory. Section 185(2)(b) saved any action taken under repealed laws (1910 Act, 19148 Act and 1998 Act) and not the enactments saved under Section 185(3). If the Contention of the Respondent is that 1997 Act had been repealed under Section 185(1) of the 2003 Act, then it cannot take the shelter of saving clause of Section 185(3).
18. Accordingly, the second question is answered as against the Respondents.

19. The third question for our consideration is this - “whether any action taken by the HVPNL, a deemed transmission licensee, under the provisions of Haryana Electricity Reforms Act 1997 are valid and legal under 2003 Act? ”
20. The learned Counsel for the Respondent submitted that any action taken by the HVPNL, a deemed licensee under Section 14 of the 2003 Act, under 1997 Act is valid in the eyes of the law.
21. Let us examine this contention of the Respondent in the light of Section 14 of the 2003 Act reproduced below:

*“14. Grant of licence.—The Appropriate Commission may, on an application made to it under section 15, grant a licence to any person—*

- (a) to transmit electricity as a transmission licensee; or*  
*(b) to distribute electricity as a distribution licensee; or*  
*(c) to undertake trading in electricity as an electricity trader, in any area as may be specified in the licence:*

*Provided that any person engaged in the business of transmission or supply of electricity under the provisions of the repealed laws or any Act specified in the Schedule on or before the appointed date shall be deemed to be a licensee under this Act for such period as may be stipulated in the licence, clearance or approval granted to him under the repealed laws or such Act specified in the Schedule, and the provisions of the repealed laws or **such Act specified in the Schedule in respect of such licence shall apply for a period of one year from the date of commencement of this Act** or such earlier period as may be specified, at the request of the licensee, by the Appropriate Commission and thereafter the provisions of this Act shall apply to such business:*

*Provided further that the Central Transmission Utility or the State Transmission Utility shall be deemed to be a transmission licensee under this Act:*

22. Undoubtedly, HVPNL is a deemed transmission licensee under the 2003 Act being in the business of transmission in the State of Haryana on the appointed date i.e. 10.6.2003 as per 1<sup>st</sup> proviso to Section 14 and the provisions of Haryana Reforms Act 1997 would apply for a period of one year from the appointed date i.e. upto 10.6.2004, thereafter the provisions of the 2003 Act would apply to such deemed licensee.
23. Thus, HVPNL would also be bound by the provisions of 2003 Act after 10.6.2004 and provisions of 1997 Act, so far duties and functions of a licensee are concerned would have no application.
24. The third question is also answered as against the Respondents.
25. Fourth question for consideration is this - “whether the ratio laid down by this Tribunal in Appeal No. 83 of 2010 would be applicable to the facts of present case?”
26. The facts of the matter before this Tribunal in Appeal No. 83 of 2010 are similar to the present case before us. In that case too, the Transmission Licensee had been conferred the powers of the Telegraph Authority under Section 164 of the 2003 Act. The Transmission Licensee did not take the prior consent of the land owner for erection of a tower on the land. The Government of Maharashtra did not notify the Works of Licensee Rules under Section 67(2) of the 2003 Act. In appeal No. 83 of 2010 this Tribunal had laid down the following principles:

**“65. Summary of Our Findings**

- a) The 2003 Act is a special statute dealing with subject matter of electricity. Section 174 of the***

***Electricity Act 2003 contains a non-obstante clause which provides that if there is any express conflict with any other Act, the provisions of the 2003 Act would prevail. The Telegraph Act 1885 does not contain any such non-obstante clause. Hence, if there is any inconsistency between 2003 Act and the 1885 Act, the provisions of the 2003 Act shall prevail.***

- b) Provisions Section 67 and 68 of 2003 Act would be applicable to all the licensees irrespective of whether they are empowered to exercise powers of the Telegraph Authority under section 164 of 2003 Act or not.***
- c) It cannot be debated that non-obstante clause contained in Section 51 of the 1910 Act has been purposely omitted in Section 164 of 2003 Act. This would indicate that the primacy has been given to the Rules which may be framed by the State Government. As a matter of fact, in the 'Works of Licensee Rules 2006', the Central Government introduced Rule 3 (4) with a specific purpose of bringing back the effect of non-obstante clause occurring in Section 51 in order to override the effect of sub-rules (1) to (3) of Rule 3 which provides for consent of land owners.***
- d) Thus, the Central Government by framing the rules has expressly chosen to give overriding effect of notification under Section 164 over the requirement of the consent of the land owners. Under Section 164 of the 2003 Act, the State Government may accept the powers of the Telegraph Authority under the Telegraph Act subject to the modifications and limitations that may be thought fit. Therefore, it is for the State Government to decide as to what rules are to be framed and to***

***what extent the powers of the Telegraph Authority were to be extended. Thus, it can be concluded that Section 164 as it stands in the absence of the Rules framed by the State Government does not have any overriding effect on any part of Section 67 of the 2003 Act.***

- e) If the intention of law makers was to provide Section 164 with power to override other sections and to have same powers as Section 51 of the Indian Electricity Act 1910, the Section would have been worded differently and would have started as “Notwithstanding any thing contained in Section 67(2) or rules framed thereunder...”***
- f) The provisions of the Section 12 to 18 of the 1910 Act are applicable in terms of Section 185 (2) (b) of the 2003 Act. Therefore, by virtue of Section 174 of the 2003 Act, Section 12 to 18 of the 1910 Act would have the precedence over any other legislation. This would make it clear that even assuming that there was a conflict between the provisions of the Telegraph Act, 1885 and the provisions of the 1910 Act, the latter Act would prevail.***
- g) The State Government may frame appropriate rules to give overriding powers to section 164 and may restore the ‘higher status’ of the person conferred with powers of the telegraph authority under 1885 Act. Till such rules are framed by the State Government, provisions of Section 12 to 18 of the Indian Electricity Act 1910 would continue to be followed.***
- h) Merely because certain powers of the Telegraph Act have been conferred on a Licensee, it does not mean that the Licensee has become a Telegraph Authority as defined in the Telegraph Act. Simply***

***because certain powers of Telegraph Authority are available to a Licensee, it does not mean that all the rights and liabilities of the Licensee would be governed by the Telegraph Act.***

***i) After enactment of 2003 Act, Indian Power Sector is governed by this Act. Section 67(4) confers power upon the Appropriate Commission to resolve disputes between land owner and the licensee. This power is untrammelled and is not impaired by the rules framed under Section 67(2). Rules framed under section 67(2) would govern the working of licensee and not the Commission.***

27. As pointed out above, the facts of the present case before us fits squarely in to the facts of the earlier case in Appeal No. 83 of 2010, the ratio laid down by this Tribunal in said matter would also apply to the present case before us.
28. This question is also answered in favour of the Appellant.
29. The fifth and last question before us for consideration is this - "whether the Haryana Commission's direction to the Appellant to approach the District Magistrate for relief is correct in legal approach?"
30. Let us examine the Commission's findings in the Impugned Order extracted below:

***"3.0 Commission's Order***

*We have heard the counsel for the petitioner at length and have also gone through the documents placed on record. We have also considered submissions made by the counsel for the respondents in earlier hearing held on 02.12.2011. The main contention of the counsel of the petitioner in the present case is that the respondents have not followed the procedure*

*as laid down in section 12 of the Indian Electricity Act, 1910 and that order dated 18.11.2011 obtained from District Magistrate, Yamuna Nagar is not in accordance with the provision of this Act.*

***The Commission takes note of following provisions in the Acts / Notifications***

*i) Section-67 (1) of the Electricity Act, 2003 states the provision with regard to opening up of streets, railways etc by the licensees. Section-67 (2) of the Electricity Act provides that the appropriate Govt. may make work of licensees rules. Section-67 (3) provides that 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. Section-67 (4) provides that 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 Government. As per provision of Section – 67 (5), the Appropriate Commission, while determining any difference of 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.*

*ii) Section-185 (b) of the Electricity Act, 2003 contains the following provisions*

***“Section-185 Repeal and saving***

*(2) Notwithstanding such repeal:*

*(b) the provisions contained in Sections-12 to 18 of the Indian Electricity Act, 1910 (9 of 1910) and rules made there under shall have effect until the rules under section-67 to 69 of this Act are made.”*



*(3) The Indian Electricity Act, 1910 (9 of 1910) under section-12 contains the following provision*

*INDIAN ELECTRICITY ACT, 1910*

***12 Provisions as to the opening and breaking up of streets, railways and tramways:-***

*(1) Any licensee may, from time to time but subject always to the terms and conditions of his license, within the area of supply, or when permitted by the terms of his license to lay down or place electric supply-lines without the area of supply, without that area-*

*(a) Open and break up the soil and pavement of any street, railway or tramway;*

*(b) Open and break up any sewer, drain or tunnel in or under any street, railway or tramway;*

*(c) Lay down and place electric supply – lines and other works;*

*(d) Repair, alter or remove the same; and*

*(e) Do all other acts necessary for the due supply of energy.*

*(2) Nothing contained in sub – section (1) shall be deemed to authorize or empower a licensee, **without the consent of the** local authority or of the **owner** or occupier concerned, as the case may be, **to lay down or place any electric supply – line or other work in**, through or against any building, or on, **over or under any land** not dedicated to public use whereon, where over or where under any electric supply – line or work has not already been lawfully laid down or placed by such licensee:*

*Provided that any support of an overhead line or any stay or strut required for the sole purpose of securing in position any support of an overhead line may be fixed on any building or land or, having been so fixed, may be altered, notwithstanding the objection of the owner or occupier of*

**such building or land, if the District Magistrate or, in a presidency – town, the Commissioner of Police, by order in writing so directs:**

*Provided, also, that, if at any time the owner or occupier of any building or land on which any such support, stay or strut has been fixed shows sufficient cause, the District Magistrate or, in a presidency-town, the Commissioner of Police may by order in writing direct any such support, stay or strut to be removed or altered.”*

*(3) When making an order under sub-section (2), the District Magistrate or the Commissioner of Police, as the case may be, shall fix the amount of compensation or the annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.*

*(4) Every order made by a District Magistrate or a Commissioner of Police under subsection (2) shall be subject to revision by the State Government.*

*iii) In exercise of powers granted under Section-164 of the Electricity Act, 2003 (36 of 2003), the Governor of Haryana conferred the HVPNL with all the powers possessed by the telegraph authority under Part-III of the Indian Telegraph Act, 1885 (12 of 1885), in respect of electrical lines and electrical plant established or maintained, or to be so established or maintained for the transmission of electricity or for the purpose of telephonic or telegraphic communication necessary for the proper coordination of the works.*

*The above conferment is subject to compliance by the HVPNL of the requirements of the provisions of the Electricity Act, 2003 (36 of 2003) and the rules made thereunder. The Commission further notes that the respondents have not submitted any document with regard to framing of Works of licensees rules by the State Government as required under Section-67 to 69 of the Electricity Act, 2003. As such as per Section-185 (2) (b) of the Electricity Act, 2003, the provisions contained in Section-*

*12 to 18 of the Indian Electricity Act, 1910 (9 of 1910) and rules made thereunder shall have effect until the rules under Section-67 to 69 of this Act are made.*

***In view of above referred provisions and as per powers conferred under section-67 (4) of the Electricity Act, 2003, this Commission decides that the petitioner should take up the matter with the District Magistrate Yamuna Nagar as per remedy available to him under section-12 (2) and section-12 (3) of the Indian Electricity Act, 1910 which are applicable in the present case.***

31. The Haryana Commission's findings that in the absence of Works of Licensees Rules to be framed by the State Government as required under Section-67 to 69 of the Electricity Act, 2003 the provisions contained in Section-12 to 18 of the Indian Electricity Act, 1910 shall have effect is in line with this Tribunal's judgment in the Appeal No. 83 of 2010. The finding of the Haryana Commission that it has jurisdiction under section 67(4) of the 2003 Act to adjudicate in the matter is also in line with this Tribunal's judgment in the said Appeal. However, the Haryana Commission has in fact deviated from the said judgment by giving directions to the Appellant to approach the District Magistrate for remedy. Let us analyze the scheme under Sections 12, 18 & 19 of 1910 Act which are applicable in the present case. Relevant portions of these sections are extracted below:

***“12. Provision as to the opening and breaking up of streets, railways and tramways.—(1) Any licensee may, from time to time but subject always to the terms and conditions of his license, within the area of supply, or, when permitted by the terms of his license to lay down or place electric supply-lines without the area of supply, without that area—***

- (a) open and break up the soil and pavement of any street, railway or tramway;*
- (b) open and break up any sewer, drain or tunnel in or under any street, railway or tramway;*
- (c) lay down and place electric supply-lines and other works;*
- (d) repair, alter or remove the same; and*
- (e) do all other acts necessary for the due supply of energy.*

*(2) Nothing contained in sub-section (1) shall be deemed to authorise or empower a licensee, without the consent of the local authority or of the owner or occupier concerned, as the case may be, to lay down or place any electric supply-line, or other work in, through or against any building, or on, over or under any land not dedicated to public use whereon, wherever or whereunder any electric supply-line or work has not already been lawfully laid down or placed by such licensee:*

*Provided that any support of an overhead line or any stay or strut required for the sole purpose of securing in position any support of an overhead line may be fixed on any building or land or, having been so fixed, may be altered, notwithstanding the objection of owner or occupier of such building or land, if the District Magistrate or, in a Presidency-town, the Commissioner of Police by order in writing so directs:*

*Provided also, that if at any time the owner or occupier of any building or land on which any such support, stay or strut has been fixed shows sufficient cause, the District Magistrate or, in a Presidency-town, the Commissioner of Police may by order in writing direct any such support, stay or strut to be removed or altered.*

*(3) When making an order under sub-section (2), the District Magistrate or the Commissioner of Police, as*

*the case may be, shall fix the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.*

*(4) Every order made by a District Magistrate or a Commissioner of Police under sub-section (2) shall be subject to revision by the State Government.*

....

**“18. Overhead lines.—***(1) Save as provided in section 13, sub-section (3), nothing in this Part shall be deemed to authorise or empower a licensee to place any overhead line along or across any street, railway, tramway, canal or waterway unless and until the State Government has communicated to him a general approval in writing of the methods of construction which he proposes to adopt:*

*Provided that the communication of such approval shall in no way relieve the licensee of his obligations with respect to any other consent required by or under this Act.*

*(2) Where any overhead line has been placed or maintained by a licensee in breach of the provisions of sub-section (1), the State Government may require the licensee forthwith to remove the same, or may cause the same to be removed, and recover from the licensee the expenses incurred in such removal.*

*(3) Where any tree standing or laying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead line subsequently to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of energy or the accessibility of any works a Magistrate of the first class or, in a presidency-town, the Commissioner of Police, may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he thinks fit.*

*(4) When disposing of an application under sub-section (3), the Magistrate or Commissioner of Police, as the case may be, shall, in the case of any tree in existence before the placing of the overhead line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.*

*Explanation.—For the purposes of this section, the expression “tree” shall be deemed to include any shrub, hedge, jungle-growth or other plant.*

**19. Compensation for damage.**—*(1) A licensee shall, in exercise of any of the powers conferred by or under this Act, 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.*

*(2) Save in the case provided for in section 12, sub-section (3), where any difference or dispute arises as to the amount or the application of such compensation the matter shall be determined by arbitration.”*

32. The aforesaid shows that as per Section 12 any licensee may lay down electricity supply lines as per Sub-section (1) of Section 12, but such was not permitted without consent of the local authority or the owner or occupier concerned in view of Section 12(2) of the Act. However, it was also provided that if there is any objection by the owner or the occupier of such building of the land, the District Magistrate or the Commissioner of Police in the residential town may pass the order in writing permitting such work, but before the District Magistrate passes such an order under proviso to Section 12(2), as provided under Section 12(3), he has to fix the amount of compensation or annual rent or both. It also provided that the order of the District Magistrate or Commissioner of Police was subject to the revision by the State Government.

33. As per the above referred Section 18 for putting up Overhead Line, approval of the State Government was required, but with the further proviso that such approval would not relieve the licensee of his obligation to get the consent required by or under the Act of the owner or occupier, as the case may be.
34. The aforesaid Section 19 provides that the licensee shall exercise the power in a particular manner and should make full compensation for any damage or detriment or inconvenience caused to the owner or the occupier, as the case may be. It also provides for the adjudication of the further dispute in respect of compensation through the arbitration, but subject to the power under Section 12(3) of the Act of the District Magistrate to pass the order authorizing the licensee to undertake the work and fixing of compensation by the District Magistrate to be paid to the owner or occupier by the licensee. Whereas Sections 12-18 of 1910 Act have been made applicable under Section 185 (2)(b) of 2003 Act application of Section 19 has been left out. Thus, the District Magistrate has no power to adjudicate.
35. In other words, if one had to exercise the power under the Act of 1910 Sections 12 to 16 read with Sections 18 to 19 provided for a particular mode or mechanism for laying down of any electricity line, which required; **(1)** consent of the owner or occupier; **(2)** paying of compensation; **(3)** in case of objection raised by the owner or occupier, for making of an application to the District Magistrate; **(4)** order by the District Magistrate for permitting such work, but simultaneously with the fixation of the amount of compensation, subject to the revisional power of the State Government.

36. If the power is to be exercised under Section 12 of the 1910 Act at the first instance the consent of the owner or the occupier is the requirement for exercise of power. There is a thin line of distinction between getting consent of the owner or occupier and enabling power of the owner or occupier to resist or obstruct any work. Consent would presuppose an action after meeting of two minds and arriving at an unanimous decision, whereas in a case where the owner or the occupier has a right to resist or obstruct would mean that one (licensee) may proceed to undertake the work by intimation to the owner or occupier and if there is no resistance or obstruction, the work may be started or proceeded with until the same is resisted or obstructed. The moment there is resistance or obstruction by the owner or occupier, the authority of licensee to undertake the work would end.
37. In exercise of power under Section 12 of the 1910 Act when no consent is given by the owner or occupier, the licensee has to make application to the District Magistrate or the Commissioner of Police or the Officer so authorized for such purpose for getting order permitting to undertake the work and the District Magistrate or the Commissioner of Police or the Officer so authorized has to simultaneously fix the amount of compensation or annual rent or both to be paid by the licensee to the owner or occupier.
38. The order of the District Magistrate or the Police Commissioner or the Officer, as the case may be, under Section 12 of the Act is subject to revision by appropriate Commission.
39. Thus, the role of District Magistrate to issue order comes in to existence immediately when the owner has not given consent. The



District Judge has to give permission to the licensee along with fixation of Compensation. In the present case the District Magistrate has given orders without compensation. The said order of the District Judge cannot be said to be the order under Section 12 (2) of the 1910 Act.

40. Section 67(3) of the Act provides that the licensee shall, in exercise of any of the powers conferred by or under Section 67 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. It is to be noted that whereas Section 12(2) of 1910 Act provides for compensation only, Section 67(3) of the 2003 Act provide the compensation for damage, detriment or inconvenience caused by the licensee. Thus the term compensation in Section 67(3) is much wider than the 'compensation in Section 12(2) of the 1910 Act. The Section 67(4) of 2003 Act provides that where any difference or dispute including amount of compensation under sub-section (3) of section 67 arises under section 67, the matter shall be determined by the Appropriate Commission. As brought out in Para 34 above, applicability of Section 19 has been left out. Thus, District Magistrate has no power to adjudicate the disputes between Licensees and Land Owner 2003 Act gives this power to the Commission.
41. Power to adjudicate, which was available under Section 19 to the District Magistrate have been withdrawn and have been given to the Commission under Section 67(4) of the 2003 Act. Once having observed that it had powers to adjudicate under Section

67(4) of the 2003 Act, the Haryana Commission should have decided the issue including the compensation.

42. This question is decided in favor of the Appellant.

43. **Summary of our Findings:**

- a) **The parties to the Appeal have to be necessarily the parties before the Commission. Since the present Respondents are the parties to the proceedings in the State Commission, this Appeal is maintainable. The question is answered in favour of the Appellant.**
  
- b) **Bare reading of the Section 164 of 2003 Act and Section 10(10) of 1997 Act would indicate that whereas the 2003 Act has empowered the State Government to confer the powers of the Telegraph Authority, the Haryana Reforms Act has given this power to the State Commission. Clearly there is inconsistency between the two provisions and the provision of 1997 Act has not been saved by Section 185(3) of the 2003 Act. The claim of the respondents has no merit due to the fact that the Government of Haryana, by notification dated 21.12.2009 conferred the powers of the Telegraph Authority on the HVPNL under Section 164 of the 2003 Act.**
  
- c) **Undoubtedly, HVPNL is a deemed transmission licensee under the 2003 Act being in the business of transmission in the State of Haryana on the appointed date i.e. 10.6.2003 and the provisions of Haryana Reforms Act 1997 would apply for a period of one year**

from the appointed date i.e. up to 10.6.2004, thereafter the provisions of the 2003 Act would apply to such deemed licensee. Thus, HVPNL would also bound by the provisions of 2003 Act after 10.6.2004 and provisions of 1997 Act, so far duties and functions of a licensee is concerned, have no application.

- d) As pointed out above, the facts of the present case before us fits squarely in to the facts of the earlier case in Appeal No. 83 of 2010, the ratio laid down by this Tribunal in said matter would also apply to the present case before us.
- e) It is to be noted that whereas Section 12(2) of 1910 Act provides for compensation only, Section 67(3) of the 2003 Act provide the compensation for damage, detriment or inconvenience caused by the licensee. Thus the term compensation in Section 67(3) is much wider than the 'compensation in Section 12(2) of the 1910 Act. The Section 67(4) of 2003 Act provides that where any difference or dispute including amount of compensation under sub-section (3) of section 67 arises under section 67, the matter shall be determined by the Appropriate Commission. Once having observed that it had powers to adjudicate under Section 67(4) of the 2003 Act, the Haryana Commission should have decided the issue including the compensation.

44. In view of our findings above, the impugned order is set aside. Consequently we direct the Haryana State Commission to

adjudicate upon the dispute between the parties and decide the issue of compensation under Section 67(4) of the Act.

45. The Appeal is allowed. However, there is no order as to costs.

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

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

Dated: 14<sup>th</sup> Nov, 2013

REPORTABLE/~~NON-REPORTABLE~~