

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI
[APPELLATE JURISDICTION]**

APPEAL NO. 50 OF 2017

Dated: 15th March, 2019

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. S.D. Dubey, Technical Member**

IN THE MATTER OF:

**NEW USHANAGAR CO-OPERATIVE
HOUSING SOCIETY LTD.**

Opposite Bright High School Village Road,
Khandelwal Marg, Bhandup West,
Mumbai- 400 078

...APPELLANT

VERSUS

**1. MAHARASHTRA ELECTRICITY
REGULATORY COMMISSION**

World Trade Centre No.1,
13th Floor, Cuff Parade,
Colaba, Mumbai – 400 001

**2. TATA POWER COMPANY LTD.
4th Floor, A-Block,**

Corporate Centre, Sant Tukaram Road,
Carnac Bunder,
Mumbai-400 009

3. COMMISSIONER OF POLICE

Having its office at office of the
Commissioner of Police,
D.N. Road, Opposite Crawford Market,
Mumbai- 400001

...RESPONDENTS

Counsel for the Appellant

:

Mr. Anank K. Ganesan
Ms. Swapna Seshadri
Ms. Parichita Choudhary

Ms. Neha Garg

Counsel for the Respondent(s) : Mr. Amit Kapur
Mr. Vishrov Mukherjee
Ms. Raveena Dhamija
Mr. Malcolm Desai
Mr. Abhishek Munot for R-2

J U D G M E N T

PER HON'BLE MR. S.D. DUBEY, TECHNICAL MEMBER

1. The Appellant, New Ushanagar Co-Operative Housing Society Ltd. filed the Appeal under Section 111 of the Electricity Act, 2003 against the Impugned Order dated 5th May, 2015 passed by the Maharashtra Electricity Regulatory Commission (“MERC”/“Respondent No.1”) wherein the Respondent No.1 upheld the Order of the Commissioner of Police (“Police”/“Respondent No. 3”) dated 11th September, 2014 (“Police Commissioner Order”) granting permission to Tata Power Company Limited (“TATA”/“Respondent No. 2”) to lay transmission tower bearing 220 KV transmission lines in the Society Premises of the Appellant in the interest of the public at large.

BRIEF FACTS OF THE CASE:-

2. The Appellant is a Co-operative Housing Society registered under The Maharashtra Co-operatives Societies Act, 1960 bearing registration No.: BOM/HSG/3699/1972 dated September 2, 1972 (“Society”), it has four

(4) wings of commercial and residential units and contains about three thousand (3000) residents (“Society Premises”). The Plot of land bearing Survey No. 38,48 and 49 situated at Village Road, Bhandup (West) Mumbai – 400078 (“Plot of land”) is owned by Arun Kumar and Company, the ownership of which have not been conveyed to the said Society till date, but the order for deemed conveyance has been passed by Deputy District Registrar of Co-operative Housing Society Maharashtra.

- 2.1 Respondent No. 1 viz. Maharashtra Electricity Regulatory Commission is body corporate established under the Electricity Commission Act, 1998, to inter-alia ‘regulate the work of Licensees’ and other persons authorized or permitted to engage in the electricity industry in the State of Maharashtra and to promote their working in an efficient, economical and equitable manner.
- 2.2 Respondent No. 2 viz. Tata Power Company Limited is a public utility company and is in the business of generation, transmission and distribution of electric power to Mumbai Metropolis.
- 2.3 Respondent No. 3 is the Commissioner of Police in Mumbai, whose registered office address is at D.N. Road, Opposite Crawford Market, Mumbai- 400001. Respondent No.3 by virtue of powers conferred upon him via Section 16(1) read with Section 34 of the Indian Telegraph Act

1885 (“Telegraph Act”) is authorised to adjudicate matters pertaining to place and maintain telegraph lines and posts in case of property other than that of a local authority.

- 2.4 On February 17, 2007, Maharashtra State Electricity Transmission Company Limited (“MSETCL”) granted permission to Respondent No.2 for reinforcement of the transmission network of 220 KV between Trombay-Salsette-Dharavi. The said permission further stated that, the reinforcement of the Transmission Project would be governed by the State Grid Code Regulation, 2006; Indian Electricity Grid Code 2005; and EA 2003.
- 2.5 On May 9, 2007, the Respondent No. 1 granted its In-Principal Clearance of the investment scheme for the Transmission Project. As per the said In-Principal Clearance, the scope of work amongst others, inter alia, included dismantling of 2x110 KV circuits between Trombay-Dharavi-Salsette and to construct new 4x220 KV circuits between Trombay-Dharavi-Salsette (25 kms). The Transmission Project was to be completed within a period of about thirty six (36) months w.e.f. January 2007 (i.e. by January, 2010).
- 2.6 The Respondent No.2 vide its letter dated November 26, 2009 wrote to the Appellant that they propose to replace the existing Extra High

Voltage (“EHV”) Transmission Tower under existing Right of Way (“ROW”) in Bhandup area. The Respondent No. 2 in the said letter further stated that the existing tower which is in the Society Premises and had outlived its life and therefore, will be replaced with new tower in the alignment of existing locations. It was further proposed that the Respondent No. 2 will remove the old tower after shifting of conductors on new tower. Such towers were being set up to increase the existing transmission capacity from 110 KV to 220 KV.

2.7 Thereafter, the Respondent No. 2 vide its letter dated December 29, 2009 to the Appellant further requested for the ROW for replacement of existing EHV lines and also provided a record of the details of the meeting held between members of the Society of the Appellant and engineers of Respondent No.2 on December 25, 2009.

2.8 The Appellant vide its letter dated January 6, 2010 replied to Respondent No. 2 stating that the ROW of the present line is for the existing parameters such as clearance from the building, height, power load, etc. However, for the enhanced parameters, if any, the Appellant called upon the Respondent No. 2 to produce the copies of approval from the statutory authorities. The Appellant in the said letter further called upon the Respondent No. 2 to furnish details of the stipulated electric clearance

in relation to the adverse effects to the health of the residents of the Society.

2.9 The Respondent No. 2 vide its letter dated March 9, 2010 stated that it proposes to construct a new tower in the garden area in the Society Premises. However, said letter was confusing as it also stated “*in place of existing tower*”. The relevant para 3 of the said letter is reproduced as under:

“3. We propose to construct a new tower inside your garden in place of existing tower situated in your premises near Railway Tracks.”

2.10 The Respondent No. 2 in various letters proposed to replace the existing tower in the Society Premises of the Appellant, however, there is no existing tower of the proposed/disputed transmission line of the Respondent No. 2 in the Society Premises of the Appellant.

2.11 After the above correspondences, the Respondent No. 2 filed an Application on October 25, 2011 (“Application”), before the Respondent No.3 for granting orders to enter the Society of the Appellant and grant permission to replace the existing transmission lines within the premises of the Society. The relevant paragraph from the said Application reads thus:

“....

Owing to increase in demand of electricity by the city of Mumbai, the supply of electricity needs to be accordingly increased

necessitating enhancement of the present capacity of our existing old transmission lines. The existing old transmission lines are required to be replaced by installing new tower(s) in place of the existing ones. This would enable us to supply reliable and uninterrupted power with enhanced capacity.”

2.12 The Respondent No. 2 in the said Application in un-numbered para on page 4 of 7 stated the following:

“The New Ushanagar Co- Operative Housing Society Ltd. have constructed their building, leaving inside the adequate / safe distance transmission line and keeping the open space below the transmission line as RG area and built up a wall leaving the old existing lower in their land now occupied by hutment dwellers but keeping it outside boundary although the land belongs to new Ushanagar CHS. The new tower now essential to be Installed in the existing alignment (Centre line) of Transmission line, prior to removal of old tower, has to be, technically installed in the open space below the line in the RO area closer to the boundary wall but inside the compound (without disturbing the New Ushanagar CHS). The new tower and 220 kv line still remains away from the building and keeps adequate and safe distance. This is shown on the enclosed drawing (please refer sheet 1.2 and 3 of Annex 5)”.

2.13 The relief sought by the Respondent No.2 in the said Application was as under:

“Relief

(A) To pass appropriate orders allowing us, our agent or our representatives to enter the premises and undertake the replacement of the existing transmission lines on the land / premises occupied by New Ushanagar Co-operative Housing Society, Bhandup (W) Mumbai- 400078.

(B) To pass appropriate order directing New Ushanagar Co-operative Housing Society, Bhandup (W) Mumbai 400 078 to allow to go ahead the transmission lines as mentioned in this representation.

(C)To pass appropriate direction to the Additional Commissioner of Police, East region, Chembur, also to the Dy. Commissioner of Police, Mulund (West), Mumbai and also to the Senior Inspector, Bhandup (West) area for providing necessary protection to work force, machinery, and the contractors during execution of the Tata Power job at New Ushanagar Co-operative Housing Society, Bhandup (W), Mumbai 400 078.”

2.14 The aforementioned relief sought by the Respondent No.2, proposes to replace the transmission lines with 220 KV lines however in reality, it is to build a new tower to lay the new additional transmission lines of 220 KV in place of the low voltage lines. Further, the Respondent No. 2 has not sought relief regarding the construction of new proposed tower in the Society Premises.

2.15 The Special General Body Meeting of the Society dated January 3, 2012 (“SGBM”) resolved not to grant permission to Respondent No.2 to erect any new tower within the Society. Thereafter, the Appellant and Respondent No.2 had meetings in the office of Respondent No.3 on November 22, 2012 and December 1, 2012 thereafter the Appellant filed two (2) letters before the Senior Inspector of Police, Bhandup Police Station on December 6, 2012 and April 20, 2013 conveying the refusal of permission to the Respondent No.2 to erect a new tower for the proposed transmission lines within Society Premises. Admittedly, such refusal was on various grounds including but not limited to acts of Respondent No. 2

in changing plans at its whims and fancies, non-provision of sanctioned drawings and approvals and other options available to Respondent No. 2 without putting Appellant to any inconvenience or their potential redevelopment in jeopardy. A similar letter dated March 9, 2013 was written by the Appellant to the Deputy Commissioner of Police, Mulund.

2.16 The then Commissioner of Police, Mr. Satyapal Singh vide its letter dated June 24, 2013 stated that the Respondent No. 2 along with the Appellant and the land lord viz. Arun Kumar and Company to attend the hearing on June 26, 2013 to solve the matter in dispute. The Appellant vide its letter dated July 3, 2013 to Commissioner of Police, Greater Mumbai office, Crawford market, informed that as per the SGBM, the Society and the owner of the Society Premises are not willing to give the Respondent No. 2 the ROW for erecting a new tower in the Society Premises of the Appellant.

2.17 It is the apprehension of the Appellant Society that the erection of transmission towers having capacity of 220KV within the Society Premises can be hazardous as well as dangerous to the 3000 (three thousand) residents of the Society, since the transmission towers will be within a radius of 10 (ten) metres from 'A' wing of the building. The wires for the transmission towers will pass through the garden area and also the erection of the tower therein shall prove hazardous and

dangerous to the children of the Society. Further, that the new tower with HT lines so constructed in the garden area of the Society Premises, produces increased power load of the electromagnetic radiation which will lead to a lot of risk factor for the members of the Society which in no manner will be compensated by the terms of money.

2.18 On September 10, 2013 the Additional Commissioner of Police visited the Society Premises i.e. the site of the proposed new Tower No. 88 within the garden of the Appellant Society Premises to carry out onsite inspection. There were certain queries that were raised by the Additional Commissioner of Police which were replied by the Respondent No. 2 vide its letter dated September 12, 2013. Since the then Commissioner of Police was unsatisfied by the replies of Respondent No. 2, Respondent No. 3 vide its letter dated September 28, 2013 to the Director of IIT Bombay assigned the task of carrying out feasibility study of the transmission lines and proposed tower at the Society Premises of the Appellant. Thereafter Respondent No. 2 vide its letter dated December 17, 2013 to Professor Dr. S. V. Kulkarni, Electrical Engineering Department of IIT Bombay communicated all the technical data.

2.19 Professor Dr. S. V. Kulkarni and Professor A. M. Kulkarni, Electrical Engineering Department of IIT Bombay vide their letter dated January 2, 2014 apprised the Commissioner of Police with their opinion regarding

the adequacy of clearances from HV lines. The letter of Professor Dr. S. V. Kulkarni and Professor A. M. Kulkarni, Electrical Engineering Department of IIT Bombay to the Commissioner of Police was not furnished to the Appellant.

2.20 Mr. Prasanna M. Mujumdar, IIT Bombay vide its letter dated January 3, 2014 to Commissioner of Police stated that the views expressed were the opinion of the Professors and the same is not the opinion of the IIT Bombay. The relevant paragraphs are reproduced herein below:

“ ...

The contents of the enclosed note are purely technical/scientific and non-legal in nature and based on the information/facts disclosed by Tata Power Company and information in public domain. In any event, the enclosed note may not be construed as a legal document, certificate or endorsement.

Please note that as a policy, IIT Bombay takes up such requests as consultancy projects based on expertise available and interest of faculty members in the Institute. Such projects entail in general certain costs based on the efforts and expenditure involved, and are charged to the external party.”

2.21 Respondent No. 3 pronounced the Police Commissioner Order dated September 11, 2014 wherein the Respondent No. 2's Application was allowed and the Respondent No. 2 was granted the permission to erect the new transmission tower in the Society Premises of the Appellant. The Police Commissioner, in its Order dated September 11, 2014 have relied upon the response of Professor Dr. S. V. Kulkarni and Professor A. M.

Kulkarni, Electrical Engineering Department of IIT Bombay. The Appellant alleges that no such report was given to the Appellant at the time of the proceedings before the Commissioner of Police.

2.22 The another fact is that the all the hearings/ meetings, discussions were held before Dr. Satya Pal Singh, then Commissioner of Police i.e. when application was filed by Respondent No. 2. However, the Police Commission Order was pronounced by Mr. Rakesh Maria who was later appointed as the Commissioner of Police on January 1, 2014. Mr. Rakesh Maria did not conduct any rehearing in the matter and the Appellant was not called upon to submit its case before pronouncement of Police Commissioner Order.

2.23 Aggrieved by the Police Commissioner Order, the Appellant then approached the High Court of Bombay on September 20, 2014 vide W.P. 8775 of 2014, however the said Writ Petition was withdrawn by the Appellant on September 23, 2014. Thereafter the Appellant approached Respondent No. 1 on September 24, 2014 requesting for an urgent interim relief. There were various submissions made by the Appellant and the Respondent No. 2 before Respondent No. 1. The said matter was heard at length by Respondent No. 1 on October 28, 2014 and December 11, 2014. The Respondent No. 1 vide Impugned Order dated May 5, 2015

in Case No. 168 of 2015, states that Respondent No.3 had taken due consideration in examination of all the documents put forth before him.

2.24 Aggrieved by the said Impugned Order, the Appellant sought relief before the Hon'ble High Court of Bombay vide W.P. 2544 of 2015 wherein the HC suggested that there exists an alternate remedy and hence the Appeal before this Tribunal.

3. **QUESTION OF LAW:-**

The Appellant has raised following questions of law for adjudication by this Tribunal:-

- A. Whether the Police Commissioner was right in granting Respondent No. 2 the right to erect transmission tower in the Society Premise of the Appellant for which no tower exists at present?
- B. Whether the Police Commissioner had the right to fix the place/position of the new tower?
- C. Whether the Police Commissioner was right in taking into consideration the IIT submissions when the same were not legally binding?

- D. Whether the Respondent No. 1 was right in upholding the Police Commissioner Order dated September 11, 2014 in allowing the Respondent No. 2 to erect the transmission tower in the garden of the Society Premise?
- E. Whether there exists an old tower of disputed transmission line of Respondent No. 2 in the Society of the Appellant?
- F. Whether the Respondent No. 2 has the ROW and the authority to erect the Proposed New Tower No. 88 in the Society Premise of the Appellant?
- G. Whether the Proposed New Tower No. 88 has any health hazards to the members of the Society?
- H. Whether Respondent No. 1 is right in permitting Respondent No. 2 to construct tower in Appellant's premises on the basis of unapproved drawings?
- I. Whether Respondent No.2 can seek permission to construct tower in Appellant's premises on the basis of different drawings which are not approved by the authorities in accordance with applicable laws?

4. **Shri Anand K. Ganesan, the learned counsel appearing for the Appellant has filed his written submission as under:-**

A. ***The order of the Commissioner of police was passed in gross violation of the principles of natural justice.***

4.1 The Order has been passed by the Commissioner of Police who did not hear the matter. The matter was heard by the Commissioner of Police on 22/11/2012 and 01/12/2012, and arguments were advanced on behalf of the Appellant. Mr. Satya Pal Singh was the Commissioner of Police who heard the matter. However, he was transferred and Mr. Rakesh Maria was appointed as the new Commissioner of Police on 01/01/2014.

4.2 After the appointment of the new Commissioner of Police, there was no hearing held in the matter. By the order dated 11/09/2014, the matter was decided by the Commissioner of Police. The order, in fact, reads as under:

“(9) After hearing all the concerned parties and considering the relevant documents on record, I conclude that the resistance or obstruction by the respondents is not justified. The petitioner is entitled to the relief as prayed for.

4.3 The above is ex-facie wrong as there was no hearing by the new Commissioner of Police. The matter was heard by a different person, and the new Commissioner of Police did not hear the matter. This fact is not disputed. The above, namely, hearing held by a different person and the decision being taken by a different person, has been held to be contrary to

the fundamental principles of natural justice. The fundamental principle of law is that one who hears must decide. In this regard, the following decisions of the Hon'ble Supreme Court are relevant:

- (a) Gullapalli Nageswara Rao & Ors v. Andhra Pradesh State Road Transport Corporation, 1959 Supp (1) SCR 319

*“31. The second objection is that while the Act and the Rules framed thereunder impose a duty on the State Government to give a personal hearing, the procedure prescribed by the Rules imposes a duty on the Secretary to hear and the Chief Minister to decide. **This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing.** Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear up his doubts during the course of arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view. **If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure.**”*

- (b) Union of India v. Shiv Raj and Others, (2014) 6 SCC 564

“17. This Court in Gullapalli Nageswara Rao [Gullapalli Nageswara Rao v. A.P. SRTC, AIR 1959 SC 308] , held: (AIR p. 327, para 31)

“31. ... Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We

therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure.”

(emphasis added)

18. *This Court in Rasid Javed v. State of U.P. [(2010) 7 SCC 781 : AIR 2010 SC 2275] following the judgment in Gullapalli Nageswara Rao[Gullapalli Nageswara Rao v. A.P. SRTC, AIR 1959 SC 308] , held that: (Rasid Javed case [(2010) 7 SCC 781 : AIR 2010 SC 2275], SCC p. 796, para 51)*

“51. ... a person who hears must decide and that divided responsibility is destructive of the concept of judicial hearing is too fundamental a proposition to be doubted.”

19. *A similar view has been reiterated by this Court in Automotive Tyre Manufacturers Assn. v. Designated Authority [(2011) 2 SCC 258] , wherein this Court dealt with a case wherein the designated authority (DA) under the relevant statute passed the final order on the material collected by his predecessor-in-office who had also accorded the hearing to the parties concerned. This Court held that the order stood vitiated as it offended the basic principles of natural justice.*

20. *In view of the above, the law on the issue can be summarised to the effect that the very person/officer, who accords the hearing to the objector must also submit the report/take decision on the objection and in case his successor decides the case without giving a fresh hearing, the order would stand vitiated having been passed in violation of the principles of natural justice.”*

4.4 This Tribunal has also in the case of Global Energy Private Ltd v. Karnataka Electricity Regulatory Commission & Ors, Appeal No. 233 of 2016 dated 04/10/2016 held that when all the persons who hear the matter do not decide, the order is bad in law and is liable to be set aside

on this ground alone. This is on the same principle that one who hears has to decide.

- 4.5 In the circumstances mentioned above, the order dated 11/09/2014 of the Commissioner of Police is bad in law and is liable to be set aside on this ground alone. The above ground of challenge was specifically raised by the Appellant before the State Commission. The State Commission has however not decided the issue. On the contrary, the impugned order records as under:

“17.The CP’s Order records that the parties put forth their contentions and were “heard at length.....”

- 4.6 In the circumstances, the impugned order and the order of the Commissioner of Police are liable to be set aside on this ground alone and the matter is to be heard afresh in accordance with law.

B. The Commissioner of Police has applied the works of the Licensee Rules, 2006 which was not applicable to the present case.

- 4.7 When the application was filed by Tata Power before the Commissioner of Police, there were no rules framed by the Government of Maharashtra under Section 67(2) of the Electricity Act, 2003. Though, Tata Power was notified with powers under Section 164 of the Electricity Act, in the absence of Rules under Section 67(2) providing for over-riding powers of a Telegraph Authority, a licensee is not entitled to enter upon premises

without consent. This has been held by the Tribunal in the case of Maharashtra State Electricity Transmission Co Ltd v. Shri Vikram Sunderdas Setiya, Appeal No. 83 of 2010 dated 07/09/2011. The Commissioner of Police however applied and sought to exercise powers under the provisions of the Works of Licensee Rules, 2006.

4.8 The Works of Licensee Rules, 2006 are framed by the Central Government for inter-state lines. The line in question is an intra-state line, which is to be governed by the Rules framed by the State Government under Section 67(2) of the Electricity Act.

4.9 This is a gross error on the part of the Commissioner of Police in applying Rules which were inapplicable. The State Commission in the impugned order notes the error committed by the Commissioner of Police in applying the Works of Licensee Rules, 2006. Despite the above, the State Commission has proceeded to uphold the findings of the Commissioner of Police. As such, the order of the Commissioner of Police in deciding the case of the Tata Power based on the Works of Licensee Rules, 2006 is erroneous and is liable to be set aside on this ground alone.

4.10 The contention of Tata Power that since the revision petition was filed by the Appellant under the Works of the Licensee Rules, 2006, the objection on this account cannot be raised is misconceived. Firstly, the Appellant

had challenged the order of the Commissioner of Police by way of writ petition before the Hon'ble High Court. Since there is a provision for filing a revision petition, the Hon'ble High Court did not interfere and in the circumstances the Appellant withdrew the writ petition with liberty to approach the State Commission.

4.11 The reliance by Tata Power on the judgment of the Hon'ble Supreme Court in the case of Power Grid Corporation of India Limited v. Century Textiles & Industries Limited & Ors, (2017) 5 SCC 143 is also misconceived to the present case. The said judgment is on the basis of the Works of Licensee Rules, 2006 which applies to Powergrid as an inter-state transmission licensee.

C. There has been no application of mind in the present case, the alignment was proposed which has proved to be technically impossible.

And

D. The report of two Professors of IIT, Mumbai was without even verifying the site, without application of mind on the alignment.

4.12 There has even otherwise been no consideration of facts by the Commissioner of Police and the State Commission in the present case.

This is evident from the following:

- (a) The case was put up by Tata Power that there is no other alignment possible and the towers have to come up at the proposed site only (Tower No. 88 within the Appellant's premises). The tower was proposed in the garden of the Appellant's society premises.
- (b) Tata Power merely filed an abstract sketch of the alignment, which was not to scale, which was without the upstream/downstream towers, was not even certified by Tata Power itself. The sketch was obtained by the Appellant through RTI from the office of the Commissioner of Police and handed over during the proceedings before the Tribunal.
- (c) Tata Power did not even take the approval of Railways, when line between Tower 87 and 88 needs to cross the Railway line. In terms of Railway Rules, the distance between the two towers cannot exceed 300 m.
- (d) In terms of the alignment proposed by the Tata Power, the distance between Tower 87 and 88 was more than 300 m. This was not even brought out by Tata Power and the Commissioner of Police has approved the alignment on the basis that no other option is available, without even examining as to whether the proposal of Tata Power was technically possible or not.

- (e) In view of Tata Power subsequently realizing that the proposal is not even technically feasible, Tower No. 88A has been built. Further, Tata Power has now proposed Tower No. 87A for which it has not yet received either consent or approval from the owners or occupiers of the premises affected, nor the technical feasibility and approval of the Railways for the same.
- (f) Without Tower No. 87A being erected with necessary approvals, the question of erecting Tower No. 88 does not arise.

4.13 It is shocking that Tata Power did not have any firm plan and approvals in place before approaching the Appellant. The location of the proposed tower kept changing arbitrarily according to the whims and fancies of Tata Power. The suggested changes would have completely disrupted the free space in the premises of the Appellant Society and also adversely affecting the redevelopment plans of the Appellant.

4.14 The Commissioner of Police had referred the matter to IIT, Mumbai for their opinion on the matter. Two professors of IIT, Mumbai gave the opinion in terms of the proposal of Tata Power, stating that no other alignment was possible than what was proposed by Tata Power and the tower had to come up at the site as proposed by Tata Power.

4.15 IIT, Mumbai in response to RTI queries stated that the opinion was the personal opinions of the individual professors and not opinion of IIT, Mumbai to whom the matter was referred to by the Commissioner of Police.

4.16 The IIT faculty members also did not even bother to check whether the proposed alignment and tower locations are feasible, technically possible. Without such verification, the opinion was given. It has now transpired that the tower locations as proposed and alignment is not even possible on account of Railway approvals. The Commissioner of Police has also merely relied on the report of the IIT faculty members.

E. Even if the tower is to be erected within the society premises, full compensation is payable for the land and the right of way.

And

F. Tata Power is only seeking to avoid paying adequate compensation by relying on the 2010 circular of the Government of Maharashtra, which is neither under Section 67 or under the rules framed under the Electricity Act.

4.17 The basic principle of law is that when the title or enjoyment of property rights are affected, compensation is to be paid. The Electricity Act, in Section 67(3) provides that full compensation shall be paid for any damage, detriment or inconvenience caused, as under:

“(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.”

4.18 For a transmission line and tower, the land for the tower is acquired for which compensation is payable. Further, the right of way under the transmission line is also a detriment and inconvenience as no construction can be made under such Right of Way. For this also, full compensation is payable under Section 67(3).

4.19 In the present case, Tata Power has not offered any compensation whatsoever for the right of way, and only meagre compensation for the land for the transmission tower. Tata Power has only relied on the Government of Maharashtra Resolution dated 01/11/2010 to limit the compensation only to the land acquired, and that too only to 65% of the cost of land.

4.20 The above Resolution is only a guideline and is not a statutory Regulation under the Electricity Act. Section 67(3) provides for full compensation, which is the statutory prescription. Further, the Rules are to be framed by the Appropriate Government under Section 67(2), including on the determination and payment of compensation. The determination of

compensation is also by the State Commission under Section 67(4) and not by any other authority.

4.21 The Electricity Act does not provide for any other means for determination of compensation, much less by a Government Resolution.

It is well settled that when the statute provides for a particular thing to be done in a particular manner, it has to be done in that manner or not done at all.

4.22 The reliance by Tata Power on the legal validity of Government Resolutions of circulars on the basis of executive powers under Article 162 of the Constitution of India is misconceived. The executive powers provided in the Constitution is when there are no laws framed on the subject. In the present case, the Electricity Act is in force, which in Section 67(3) provides for full compensation, provides the right of adjudication to the State Commission and in Section 67(2) provides for Rules to be framed.

4.23 When Electricity Act is in force providing for the terms and conditions based on which transmission lines are to be installed, the compensation is also governed by the provisions of the Electricity Act. The Government Resolution are only guidelines at best. Therefore, it is not correct for Tata Power to deny full compensation to the Appellant, citing a Government

Resolution which is not under the Electricity Act and does not have statutory force.

4.24 The Government of Maharashtra has also on 31/05/2017 revised its circular for compensation package the entire state except the City of Mumbai and its suburbs. As per this, the compensation for land occupied for transmission tower will be 200% of ready reckoner value and for ROW it will be 15% of ready reckoner value. The process of recommending the compensation for urban areas is under consideration and will be decided in due course.

4.25 The compensation for the city of Mumbai will obviously be at much higher rates, considering the price of land and the scarcity in the city of Mumbai. In any event, even as per the Government Resolution dated May 31, 2017, the compensation would work out to Rs. 1,34,75,412.28/- (Rupees One Crore Thirty-Four Lakhs Seventy-Five Thousand Four Hundred and Twelve and Twenty-Eight Paise Only), which the Appellant had agreed as a part of the settlement. This is despite the fact that when the revised compensation for Mumbai is notified, it would obviously be much higher. However, even this term for settlement of the issues has not been accepted by Tata Power.

- 4.26 The contention of Tata Power on the claim of Rs. 6 crores by the Appellant is not correct. The said claim was made based on abstract estimate based on the new compensation policy. It was itself reduced to Rs. 3 crores subsequently by the Appellant and thereafter to the amounts actually calculated, which is Rs. 1.34 crores.
- 4.27 The Appellant has acted in a bona fide manner. The Appellant has, without prejudice to its rights, also sought for settling the issues, at the compensation with reference to the circular of Government of Maharashtra, even though when the circular is issued for Mumbai the compensation would be much higher.
- 4.28 However, Tata Power has not been willing to settle the issues. The only ground raised by Tata Power is that the Government of Maharashtra circular is binding on the issue of compensation, which is incorrect. The only binding provision is Section 67(3) which provides for full compensation. There was also no Rules framed on the issue of compensation at that stage.
- 4.29 Further, the contention of Tata Power that the compensation paid at Rs. 1.34 crores would not be allowed by the State Commission in the Revenue Requirements and therefore cannot be paid is also

misconceived. Further, any order passed by the Ld. Commission on the issue of compensation would have binding effect on all the parties.

4.30 In the circumstances mentioned above, it is respectfully submitted that the present appeal is liable to be allowed.

5. **Shri Amit Kapur, the learned counsel appearing for the Respondent No.1 has filed his written submission as under:-**

5.1 The Maharashtra Commission in the Impugned Order *inter alia*, held that:

(a) The locational and other alternatives put forward by New Ushanagar during the proceedings in Case No.168 of 2014, before it, were not technically viable, considering the constraints in opting for them. Moreover, most of the works at either end of the disputed section is either completed or is on the verge of completion.

(b) The Order dated 11.09.2014 passed by the Commissioner of Police is a reasoned and speaking Order. A plain reading of the said Order shows that the Commissioner of Police permitted erection of Transmission Tower No.88 (tower in dispute), after due diligence, considering various documents and material placed on record by all the parties.

- (c) Tata Power has to comply with all prevailing Rules and Regulations framed by the Central Electricity Authority (“CEA”) and the Indian Railways qua planning, designing and constructing Extra High Voltage (“EHV”) Transmission Lines. Furthermore, *the location of the Transmission Tower No.88 in question is also constrained by Municipal planning and other regulations.*
- (d) *The present Transmission Project* undertaken by Tata Power is intended to meet the increasing electricity demand of Mumbai by augmenting existing transmission capacity and easing transmission constraints and *is hence in larger public interest.*
- (e) New Ushanagar is *free to take up the issue of compensation appropriately with the concerned authority, if it so desires.*

5.2 On 27.03.2017, with a view to get an amicable solution, this Tribunal directed the parties to explore the possibility of arriving at a mutually agreed settlement. After various meetings/ discussions between the parties during November 2017 to March 2018 under the aegis of this Tribunal, a mutually acceptable location (considering all statutory clearances) for constructing Transmission Tower No.88 within New Ushanagar’s premises was agreed upon. However, New Ushanagar continued to claim compensation over and above its entitlement in terms

of the Government Resolution No. Misc.0210/P.No.29/Energy-4 dated 01.11.2010 issued by Government of Maharashtra, Industries, Energy & Labour Department (“GoM Resolution dated 01.11.2010”).As such, the dispute could not be amicably resolved and the instant Appeal was admitted by this Tribunal on 28.03.2018.

5.3 Issues for Adjudication

The only issues involved in the present Appeal are:

- (a) Whether New Ushanagar can obstruct Tata Power from constructing Transmission Tower No.88 of the 220 kV Trombay-Salsette-Dharavi Transmission Line within the Society premises in the facts and circumstances of the case?
- (b) As a sequitur, whether New Ushanagar’s can lawfully claim a quantum of compensation over and above its entitlement in terms of GoM Resolution dated 01.11.2010?

5.4 Erroneous statements made by New Ushanagar during hearings before this Tribunal.

New Ushanagar has made the following erroneous statements before this Tribunal:-

- (a) Tata Power had filed Application dated 25.10.2011 before the Commissioner of Police in terms of the Works of Licensees Rules

2006 (Central Rules), which were not applicable in the State of Maharashtra.

- (b) The Commissioner of Police granted permission to Tata Power to construct Transmission Tower No.88 within the Society premises based on application of the said wrong Rules, i.e., Works of Licensees Rules 2006.
- (c) The Commissioner of Police did not give any opportunity of hearing prior to passing the Order dated 11.09.2014.
- (d) Till such time the State Government frames rules under Section 67(2) of the Electricity Act, 2003 ("Electricity Act"), compensation is to be determined by the Maharashtra Commission under Section 67(3) and not by the Commissioner of Police. Therefore, the Maharashtra Commission could not have in the Impugned Order held that the Commissioner of Police was required to determine compensation under Section 67(3) of the Electricity Act.
- (e) GoM Resolution dated 01.11.2010:
 - (i) Is applicable only to Maharashtra State Electricity Transmission Company Ltd. (MSETCL) and does not apply to Tata Power, who seeks to pay compensation in terms thereof.

- (ii) Has no Statutory force, since the same has not been issued under any specific provision of the Electricity Act.
- (f) The Transmission Licensee acquires the area of land where the base of the Transmission Tower is constructed.
- (g) Compensation ought to be paid to New Ushanagar (for the area beneath the Transmission Tower and the land below the overhead wires under the Right of Way), in terms of the Government Resolution No. Policy-2016/M.N.520/Energy-4 dated 31.05.2017 issued by the Govt. of Maharashtra, Industry, Energy & Labor Department (“GoM Resolution dated 31.05.2017”).
- (h) Tata Power has changed the alignment of the 220 kV Trombay-Salsette-Dharavi Transmission Line since it could not get permission from the Railway Authorities and the Storm Water Drainage Department of Municipal Corporation of Greater Mumbai (“M.C.G.M”). Transmission Tower No.88A was never part of the original alignment and has been proposed recently in 2018.
- (i) Tata Power proposes to construct Transmission Tower No.88 within the Society premises and thereafter seek permission/ consent of the Railway Authority, which may or may not be granted.

5.5 **Brief factual matrix of the Transmission Project**

5.6 The power generated by Tata Power, *inter alia*, from its Trombay Thermal Power Plant at Mumbai, is evacuated to its various receiving stations in Mumbai through its age-old transmission network. To maintain uninterrupted power supply and to meet the ever-increasing energy demand/ load growth, transmission and distribution networks require periodic upgradation/ augmentation. Noting the constraints in the North Mumbai transmission network, in 2008-2009 with all necessary statutory approvals and clearances, Tata Power undertook a scheme to upgrade its 110 kV transmission network (existing since 1956) between Trombay – Salsette - Dharavi (“**Transmission Project**”).

5.7 This Transmission Project involves, installation of Transmission Lines of over 25 kilometers on approx. 106 multi-circuit Transmission Towers of greater height to replace the existing 2x110 kV circuits. The instant Transmission Project utilizes the existing Right of Way (“**RoW**”)/ alignment of the existing 110 kV Transmission Lines. In this regard, it is pertinent to note that, the existing 110 kV Transmission Lines even as on date passes through New Ushanagar Society’s premises (which undisputedly came into existence in 1969 i.e., 14 years after construction of the 110 kV lines). As on date, more than 97% of the works of the Transmission Project has been completed (i.e., over 100 out of 106

Transmission Towers have been constructed during 2009-2018). It is also pertinent to highlight that, on 29.01.2018, the Principal Secretary (Energy) - Government of Maharashtra and Ld. Maharashtra Commission directed Tata Power to complete the entire Transmission Project by FY 2018-19 (i.e., by March 2019), since there has been considerable time overrun.

5.8 The said scheme of augmenting the existing 2x110 kV transmission lines to 4x220 kV transmission lines, is to cater to the additional demand of the city of Mumbai and specifically the increasing energy demand growth at Dharavi, Salsette, Saki and surrounding areas including the Airport, by doubling the corridor capacity. Furthermore, the addition of 220 kV transmission lines will help in strengthening the continuity of power supply to South Mumbai under exigency of low generation at Trombay Thermal Power Plant and also reduce the wheeling of power through MSETCL's network. Transmission of power at 220 kV voltage level will further reduce system loss as compared to 110 kV transmission lines and also reduce the probability of faults.

5.9 To meet the various Statutory requirements (Railway Crossing norms and Municipal clearances for Storm Water Drains, etc.), Tata Power is required to dismantle the existing 110 kV Transmission Tower located adjacent to the Central Railways' tracks and constrained to build a new

tower (220 kV Transmission Tower No.88 – under dispute) within New Ushanagar’s premises.

Powers of a Telegraph Authority conferred upon Tata Power

- 5.10 The Appellant has contended that mere grant of powers of a Telegraph Authority under Section 164 of the Electricity Act does not empower Tata Power to enter upon New Ushanagar’s premises without its prior consent, in the absence of Rules framed by the Government of Maharashtra under Section 67(2) of the Electricity Act.
- 5.11 New Ushanagar’s aforesaid contention is wrong and contrary to the extant statutory framework and the law laid down by the Hon’ble Supreme Court of India. The special privileges [akin to those granted to the Telegraph Authority in terms of the Indian Telegraph Act, 1885 (“**Telegraph Act**”)] have been vested upon licensees like Tata Power, whereby the ‘Right of Way’ or right to use the land, for carrying out works or for augmentation of an existing transmission network, by a Transmission Licensee are governed by the relevant provisions of the Indian Electricity Act, 1910 (“**1910 Act**”) [Section 51], Electricity Act, 2003 (“**Electricity Act**”) [Section 164 and 185(1)] and the Telegraph Act [Section 10-19A and 34].

5.12 The Government of Maharashtra (PWD) vide Gazette Notification No. LTT-2154 dated 21.04.1955, in terms of powers conferred upon it under Section 51 of the 1910 Act, conferred upon Tata Power the powers of the Telegraph Authority as prescribed under Sections 10 to 19A of the Telegraph Act for placing, augmenting of electricity supply lines, appliances and apparatus for transmission of power. In terms of Section 164 read with Section 185 of the Electricity Act, the powers conferred upon Tata Power under the 1910 Act, survive under the current regime (i.e., the Electricity Act, 2003).

5.13 Section 51 of the 1910 Act, read with Section 164 of the Electricity Act and Sections 10 to 19A of the Telegraph Act, confer special rights and privileges upon Utilities (like Tata Power) for laying telegraph/ transmission lines/ towers, without seeking sanction of the owner or occupier of the land/ premises on which such towers/ lines are to be laid, to enable the Utility to smoothly carry out its operations. These powers are further substantiated by Rule 3(4) Maharashtra Electricity Works of Licensees Rules, 2012 (“**Maharashtra Works of Licensees Rules, 2012**”).

5.14 The Hon’ble Supreme Court in its Judgment dated 14.12.2016 in the matter of *The Power Grid Corporation of India Ltd. vs. Century Textiles & Industries Limited & Ors.*, reported as (2017) 5 SCC 143, has

categorically held that, cases where a Transmission Licensee has obtained approval under Section 164 of the Electricity Act (i.e., powers of a Telegraph Authority), there is no legal requirement to obtain prior consent of the owner/ occupier of any land for placing of transmission towers and lines.

5.15 In light of the foregoing, New Ushanagar's contention that Tata Power requires to obtain prior consent of the owner/ occupier of any land for placing of transmission towers and lines, is erroneous and cannot be sustained in light of the extant statutory provisions and the law settled by the Hon'ble Supreme Court and this Tribunal.

Requirement of erecting Transmission Tower No.88 within New Ushanagar's premises & changed circumstances post the Impugned Order which strengthens Tata Power's case.

5.16 The Appellant has alleged that the alignment of the Transmission Project has been changed as Tata Power failed to obtain permission from the Storm Water Drains Dept. of M.C.G.M and the Railway Authorities. For this reason, it has now decided to construct Transmission Tower Nos. 87A and 88A, which were not part of the original alignment. In the event Tata Power constructs Transmission Tower No.87A, there is no requirement for constructing Transmission Tower No.88 within the Society premises. Tata Power proposes to construct Transmission Tower

No.88 within the Society premises and thereafter seek permission/ consent of the Railway Authority, which may or may not be granted

5.17 Tata Power has to dismantle the existing 110 kV Transmission Tower located adjacent to the Central Railway tracks (in the hutment area) to augment network capacity to 220 kV to meet the system constraints with enhanced load and build a new tower (220 kV Transmission Tower No.88) within New Ushanagar's premises:-

(a) The Transmission Tower No.88 will have a height of approximately 67 metres and a footprint / foundation base of 9.43 metres x 9.43 metres (considering safe electrical clearances).

(b) Regulation 12.2 of the Regulations for Power Line Crossings of Railway Tracks, 1987 ("Railway Regulations, 1987") provides that:

"12.2 The minimum distance of the structures (supporting the crossing span) from the center of the nearest railway track shall be equal to the height of the structure in metres above normal ground level plus 6 metres....."

As such, the nearest location of Tower No. 88 would be 73 metres (i.e., 67m + 6m) from the nearest railway track.

(c) This distance of 73 metres from the centre of the nearest railway track falls near/ close to the boundary wall of New Ushanagar's

premises, which runs adjacent to a Nallah i.e., a storm water drain (which is approx. 14 metres in width at the relevant location).

- (d) Regulation 16(b) of the Development Control Regulations for Greater Mumbai, 1991, (“DC Regulations”) provides that, no land shall be used as a site for construction, if the site is within 9 metres from the edge of the water mark of a Minor water course (i.e., the Nallah in the present case), unless arrangements to the satisfaction of the Commissioner are made to drain the flow of the water course. Furthermore, as per the Guidelines of the Storm Water Drainage Department of M.C.G.M, no structures are permitted to be installed in any Nallah, as it would likely cause obstruction of flow of storm water, which may result in flooding of adjoining areas.
- (e) Further, Regulation 12.3 of the Railway Regulations, 1987 provides that, *“The crossing span shall be restricted to 300 m or to 80% of the normal span for which the structures are designed, whichever is less.”*
- (f) The span/ distance between proposed Transmission Tower No.87A (on the other side of the Railway Tracks) and the existing Transmission Tower No.88A (beyond New Ushanagar’s premises)

is **318 metres**, i.e., more than that permissible under Regulation 12.3 of the Railway Regulations, 1987 (i.e., maximum 300 metres).

5.18 In light of the above, Tata Power has to construct Transmission Tower No.88 within New Ushanagar's premises. The distance between proposed Tower Nos. 87A and 88 (within New Ushanagar's premises at the location mutually agreed) will be 283 metres, thereby meeting all applicable regulations and directions of the appropriate authorities. Each of the aforesaid regulations/ guidelines were duly considered by Ld. Maharashtra Commission while passing the Impugned Order, pursuant to which it had rightly held that, the location of Transmission Tower No.88 has to be within New Ushanagar's premises in view of various geo-technical and locational issues. The facts of the case are virtually identical to those considered by the Hon'ble Supreme Court in *PGCIL v. Century Textiles (2017) 5 SCC 143*.

5.19 As such, it is clear that New Ushanagar's contention during the hearing on 02.01.2019 that, if Transmission Tower No.87A is constructed, there is no necessity for Tower No.88 within its premises is false and misleading. It is reiterated that, the distance between proposed Tower No.87A and existing Tower No.88A (beyond New Ushanagar's premises) is approx. 318 metres, which shall not be in compliance with the Railway Regulations and hence will not be permitted.

5.20 New Ushanagar and its Society Members understood and acknowledged this fact situation on 15.11.2017. During the said discussions, it was mutually agreed to locate/ construct the proposed Transmission Tower No.88 within the New Ushanagar's premises approximately 5 mtrs. away from the Society's boundary wall towards the existing Transmission Tower No.88A (i.e., on the opposite side of the Nallah). In light of the M.C.G.M's directions to shift the Transmission Tower No.88, 9 meters away from the Nallah into New Ushanagar's premises and New Ushanagar's request during the meeting held on 15.11.2017 to shift the location of the proposed Tower towards the opposite side of the Nallah, i.e., towards Tower No.88A, Tata Power decided to construct Transmission Tower No. 87A, between the existing Transmission Tower No.87 and proposed Transmission Tower No.88, so as to comply with Regulation 12.3 of the Railway Regulations, 1987 which provides that, the crossing span shall be restricted to 300 m or to 80% of the normal span for which the structures are designed, whichever is less.

5.21 Further, once the exact location within New Ushanagar's premises is finalized, Tata Power shall prepare a final drawing and submit the same to the Railway Authorities for verification and its approval, based on which an agreement will be signed between Tata Power and the Railways for permitting works on the Railway Crossing Towers, in terms of the

Railway Regulations. It is further submitted that, prior to energizing the transmission lines (crossing the railway tracks), Tata Power will require permission of the Railways Authorities, which shall be granted only if all statutory requirements are met (i.e., height clearance and the span between the railway crossing towers). Therefore, New Ushanagar concerns qua the distance between the Railway Crossing Towers shall be duly protected by the rules/ regulations itself.

5.22 Since, almost 97% of the transmission related works of the instant Project is already completed, it is imperative to construct the said Transmission Tower No. 88 to complete the Project within FY 2018-19, as necessitated by the authorities and create the necessary transmission infrastructure, which is for the benefit of the city of Mumbai at large.

Compensation payable to New Ushanagar

5.23 New Ushanagar has wrongly assumed that it is entitled to full compensation in terms of Section 67 of the Electricity Act. The GoM Resolution dated 31.05.2017 provides for higher compensation for the land occupied by the base of the transmission tower, as well as the area beneath the wires, i.e., along the Right of Way. New Ushanagar is seeking payment of compensation for the additional area of land utilized by the overhead wires (i.e., due to augmentation from 110 kV to 220 kV)

5.24 New Ushanagar had never agitated the issue of compensation either before the Commissioner of Police or before Ld. Maharashtra Commission. In fact, Para 20 of the Impugned Order categorically records the same and grants New Ushanagar liberty to approach the appropriate authority for determination of the quantum of compensation, if it so desires. It is therefore wrong on part of New Ushanagar to now contend that Ld. Maharashtra Commission ought to have determined the quantum of compensation, without there being any demand whatsoever.

5.25 On 13.11.2017, New Ushanagar for the first time during the hearing before this Tribunal raked up the issue of compensation and sought compensation in terms of the GoM Resolution dated 31.05.2017. The GoM Resolution dated 31.05.2017 is not applicable to the City of Mumbai *and therefore, New Ushanagar in the present case.* In this regard, Para 5 of the said GoM Resolution dated 31.05.2017 categorically states as under:

“5) ***This Policy shall be applicable to all other areas in the State excluding the area of Brihanmumbai Municipal Corporation and suburban areas. For payment of compensation for the lands in the urban areas, over which high voltage cables are being laid, the Central Govt. has, vide its letter dated 11/08/2016, constituted a Committee at the Central Govt. level. Upon guidelines being received from the said Committee, the new policy shall be made applicable to Brihanmumbai Municipal Corporation and suburban areas.***”

[Emphasis supplied]

5.26 Thereafter, by way of its letter dated 26.02.2018, New Ushanagar sought an ad-hoc sum of Rs.6 Crores as compensation (for land, ROW, landscaping and improvement steps) towards construction of Transmission Tower No.88 within its premises. This sum was later revised by New Ushanagar to Rs. 3 Crores during negotiations with Tata Power on 21.03.2018. In fact, the sum of Rs. 3 Crores is not in terms of the GoM Resolution dated 31.05.2017 sought to be relied upon by New Ushanagar. In fact, the said sum is inflated by 10 times and has no legal basis whatsoever.

5.27 The GoM Resolution dated 01.11.2010 issued by the Government of Maharashtra establishes the principles for payment of compensation to be paid for erection of Transmission Towers on land, inter alia, by MSETCL and Private Utilities. Para 3 of the said Resolution categorically provides that, “This decision will also be applicable to a private company as also to Power Grid Corporation in regard to the land occupied by them for erection of towers.” This compensation is computed as a percentage of the market rates of the particular piece of land shown in the Ready Reckoner of the respective area categorized among Classes A, B, C & D. For non-agricultural land (urban land) compensation is computed @ 65% of the value of such land. Undisputedly the applicable Stamp Duty Ready

Reckoner Rate for New Ushanagar's premises is Rs. 56,000/- per Sq. Mts.

- 5.28 Considering the footprint of the proposed Transmission Tower No.88 (9.43 x 9.43 Mts. with RCC column), as was agreed to by New Ushanagar during the site visit held on 15.11.2017, the compensation payable to New Ushanagar in terms of the Government Resolution dated 01.11.2010 is **Rs. 32,36,866/-**.
- 5.29 The power of the State Government to issue Executive Orders and their validity in law has been well settled by the Hon'ble Supreme Court in its Judgment passed in the case of *Rai Sahib Ram Jawaya Kapur v. State of Punjab*, reported as (1955) 2 SCR 225 : AIR 1955 SC 549 and again in *Energy Watchdog v. CERC (2017) 14 SCC 80*.
- 5.30 As regards payment of compensation in terms of the GoM Resolution dated 31.05.2017, it is submitted that, without prejudice and even assuming that New Ushanagar submission that it has computed/ estimated the quantum of compensation by relying on the GoM Resolution dated 31.05.2017, the same cannot by any stretch of imagination amount/ total to Rs.3 Crores. In this regard, it is pertinent to note that, in terms of the GoM Resolution dated 31.05.2017:

- (a) Compensation for the land occupied by the base of the Transmission Tower No.88 would be Rs.99,59,589/- (i.e., 88.9249 Sq. Mts. x Rs. 56,000 x 2 = 99,59,589).
- (b) Compensation for the land under the ROW of the transmission wires, in terms of Clause 9 of the Government Resolution would be approx. Rs.35,15,813.28/- (i.e., 117.57 x 3.56 x 0.15 x 56,000 = 35,15,813.28).

Note: *Clause 9 of the said GoM Resolution dated 31.05.2017, provides that, "If the capacity of the existing cables is to be increased and to be renovated, compensation shall be paid only for the additional area occupied by the Tower and additional area under the cable wire."*

5.31 In view of the foregoing, Tata Power submits:

- (a) The Government of Maharashtra has specifically not made the GoM Resolution dated 31.05.2017 applicable to the City of Mumbai and its Suburban areas, as admitted by New Ushanagar as well.
- (b) As on date, the Government Resolution dated 01.11.2010 is in force and New Ushanagar is legally entitled to a sum of Rs.32,36,866/- only.
- (c) New Ushanagar's claim for a sum of Rs.6 Crores / Rs.3 Crores as compensation towards land, ROW, landscaping and improvement steps, in its letter dated 26.02.2018 is inflated by 20/ 10 times respectively and has no legal basis whatsoever. New Ushanagar has failed to provide the basis of any such calculations, even assuming the same were legally payable.

- (d) The existing 110 kV transmission network (passing through New Ushanagar) is in place since 1955-56, i.e. 14 years prior to New Ushanagar's Society coming into existence (in 1969). As such, the area under the ROW of the transmission wires/ lines is not new and New Ushanagar cannot seek compensation for the entire area under the said wires/ lines (even if the GoM Resolution dated 31.05.2017 were applicable). This position is clarified in Clause 9 of the said GoM Resolution dated 31.05.2017.

Application to Commissioner of Police made under the Indian Telegraph Act, 1885

- 5.32 It is the contention of the New Ushanagar that the Order dated 11.09.2014 passed by the Commissioner of Police is not sustainable, as Tata Power had filed the Application and the Order has been consequently passed under the Works of Licensees Rules, 2006 (Central Rules), which are not applicable in the State of Maharashtra.
- 5.33 As a matter of fact, for the first time during the hearing before this Tribunal on 02.01.2019 and 03.01.2019, New Ushanagar contended that, the Order dated 11.09.2014 passed by the Commissioner of Police cannot be sustained as the Application was wrongly filed by Tata Power under the Works of Licensees Rules, 2006 and the Commissioner's said Order is passed under the said 2006 Rules, which were not applicable to the State of Maharashtra.

5.34 A bare perusal of the Application dated 25.10.2011 filed by Tata Power before the Commissioner of Police and the Commissioner of Police's Order dated 11.09.2014 clearly evidences that the said Application and Order were made and passed respectively under the provisions of the Indian Telegraph Act, which Tata Power had invoked, being a Telegraph Authority.

5.35 Neither had Tata Power relied on the Works of Licensees Rules, 2006 nor has the Order of the Commissioner of Police been passed in terms thereof. New Ushanagar's aforesaid contention has been raised for the first time during oral arguments and does not form part of any of its pleadings before the Maharashtra Commission and/ or this Tribunal. New Ushanagar cannot be permitted to raise new issues at this belated stage.

5.36 Violation of principles of natural justice

5.37 It is alleged by the Appellant that the Commissioner of Police had not given New Ushanagar an opportunity of hearing, thereby violating the principles of natural justice. Additionally, Maharashtra Commission in the Impugned Order has failed to consider the submissions made by New Ushanagar.

5.38 The Commissioner of Police has not violated any principles of natural justice by allegedly not giving New Ushanagar an opportunity of hearing.

It is submitted that, the Order dated 11.09.2014 passed by the Commissioner of Police and the Impugned Order passed by Ld. Maharashtra Commission are both speaking orders, in as much as, they contain details of all the issues/ contentions/ objections raised by New Ushanagar and various oral/ written submissions made by the parties. Furthermore, the Impugned Order and the Order of the Commissioner of Police clearly lists out the various findings on which its conclusions are based and as such, are *per se*, a reasoned order and hence, have been passed in accordance with law.

5.39 The powers of the Commissioner of Police under the Telegraph Act are that of a statutory authority and are not inherent powers of adjudication. The Commissioner of Police performs these statutory duties within the four corners of the statute or rules. The Telegraph Act provides that, in case the owner or occupier of a building or land raises objection with respect to the works to be carried out, the Licensee may by an application obtain permission in writing from the authorized officer (Commissioner of Police in the present case). Upon receiving such an application, the Commissioner of Police may either grant permission or reject the same. It is submitted that, no adjudication procedure has been prescribed under the Telegraph Act and as such if the Commissioner of Police upon investigation is satisfied that the transmission licensee is within the

statutory ambit of laying transmission towers /lines, it shall grant permission for such works. In case of any specific objections being raised, the onus of proof is on the objector to demonstrate why such permission should not be granted.

5.40 The Hon'ble Supreme Court in *K.B. Ramachandra Raje v. State of Karnataka*, reported as (2016) 3 SCC 422 (Para 34), has held that, "in granting relief at the end of a protracted litigation, as in the present case, the Court cannot be unmindful of facts and events that may have occurred during the pendency of the litigation. It may, at times, become necessary to balance the equities having regard to the fact situation and accordingly mould the relief(s). How the relief is to be moulded, in the light of all the relevant facts, essentially lies in the realm of the discretion of the courts whose ultimate duty is to uphold and further the mandate of law. It is submitted that, the court can mould relief, if it is satisfied that, taking note of subsequent changes or changed circumstances would shorten litigation and enable complete justice being done to the parties." The Hon'ble Supreme Court in many cases considering the larger interest of public has moulded the reliefs and instead of quashing the proceedings, has issued appropriate directions. In this regard, the following Judgments are noteworthy:

- (a) *Nidhi v. Ram Kripal Sharma (Dead) Through Legal Representatives*, reported as (2017) 5 SCC 640 (Para 16).
- (b) *Sheshambal (dead) through L.Rs. v. Chelur Corporation Chelur Building and Ors.*, reported as (2010) 3 SCC 470 (Para 19).
- (c) *State of Punjab and Ors. v. Rafiq Masih*, reported as (2014) 8 SCC 863 (Para 12).
- (d) *Virendra Singh and Ors. vs. State of Rajasthan and Ors.* reported as 2016 (2) CDR 911 (Raj).

5.41 In view of the above, Tata Power most respectfully prays that the present Appeal filed by New Ushanagar deserves to be dismissed with costs and the Impugned Order passed by Ld. Maharashtra Commission be made absolute.

6. **We have heard learned counsel appearing for the Appellant and learned counsel appearing for the Respondents at considerable length of time and we have considered carefully their written submissions/arguments and also taken note of the relevant material available on records during the proceedings. On the basis of the pleadings and submissions available, the following principal issues emerge in the instant Appeal for our consideration:-**

Issue No. 1: Whether the State Commission was right in upholding the Order of the Police Commissioner allowing the Tata Power Company Ltd. to erect 220 KV transmission tower in the premises of the applicant's Society and the impugned order is in violation of the principles of natural justice?

Issue No.2: Whether the Appellant is obligated to provide ROW for the transmission line under the statute and entitled to the adequate compensation in lieu of the same?

OUR FINDINGS AND ANALYSIS:-

6.1 **Issue No. 1:-**

6.2 Learned counsel Mr. Anand K. Ganesan for the Appellant submitted that the Commissioner of Police who did not hear the matter passed the order dated 11.09.2014. The matter was earlier heard by the then Commissioner of Police who was transferred and the new Commissioner did not assign any opportunity to the Appellant to be heard in the matter and simply passed the order. The State Commission without proper adjudication upheld the order of the Police Commissioner and passed the impugned order dated 5th May, 2015 entirely based on the observations and findings contained in Commissioner of Police order dated 11.09.2014 which allowed Tata Power Company Ltd. to erect 220 KV transmission tower within the Appellant's premises without its consent. Learned counsel further submitted that the said action on the part of the new Police Commissioner was wrong due the fact that the matter was heard by a different person and order was passed by different person which is contrary to the principles of natural justice.

6.3 Learned counsel to substantiate his submissions relied upon the judgment of the Hon'ble Supreme Court in *(a) Gullapalli Nageswara Rao & Ors v. Andhra Pradesh State Road Transport Corporation, 1959 Supp (1) SCR 319 and (b) Union of India v. Shiv Raj and Others, (2014) 6 SCC 564*. In case (a) it was held that “If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure.” The relevant extract in case (b) is reproduced as under:-

“20. In view of the above, the law on the issue can be summarised to the effect that the very person/officer, who accords the hearing to the objector must also submit the report/take decision on the objection and in case his successor decides the case without giving a fresh hearing, the order would stand vitiated having been passed in violation of the principles of natural justice.”

6.4 Learned counsel further cited the case of *Global Energy Private Ltd v. Karnataka Electricity Regulatory Commission & Ors, Appeal No. 233 of 2016 dated 04/10/2016* in which this Tribunal held that when all the persons who hear the matter do not decide, the order is bad in law and is liable to be set aside on this ground alone. Learned counsel was quick to point out that the above ground of challenge was specifically raised by the Appellant before the State Commission but the State Commission has however not decided the issue.

6.5 Learned counsel advancing his arguments further contended that when the application was filed by the Tata Power Company Ltd. before the Commissioner of Police, there were no rules framed by the Government of Maharashtra under Section 67(2) of the Electricity Act, 2003. Though, Tata Power was notified with powers under Section 164 of the Electricity Act, in the absence of Rules under Section 67(2) providing for overriding powers of a Telegraph Authority, a licensee is not entitled to enter into premises without consent. In this regard, learned counsel relied on the judgment of this Tribunal in the case of *Maharashtra State Electricity Transmission Co Ltd v. Shri Vikram Sunderdas Setiya, Appeal No. 83 of 2010 dated 07/09/2011*.

6.6 Learned counsel vehemently submitted that Commissioner of Police applied and sought to exercise powers under the provisions of the Works of Licensee Rules, 2006 which are framed by the Central Government for inter-state lines whereas the line in question is an intra-state line, which is to be governed by the Rules framed by the State Government under Section 67(2) of the Electricity Act. He submitted that this was a gross error on the part of the Commissioner of Police in applying Rules which were not applicable.

- 6.7 Learned counsel further contended that the reliance placed by the Tata Power Company Ltd. on the judgment of Hon'ble Supreme Court in the case of '*Power Grid Corporation of India Limited v. Century Textiles & Industries Limited & Ors, (2017) 5 SCC 143*' is also misconceived to the present case, due to the fact that the said judgment is on the basis of the Works of Licensee Rules, 2006 which applies to Powergrid as an inter-state transmission licensee.
- 6.8 Learned counsel for the Appellant further submitted that in the present case there has been no application of mind by the Commissioner of Police as well as the State Commission as the proposed alignment proved to be technically impossible. Besides, the Report of two professors of IIT, Mumbai was without even verifying the site of proposed alignment which was considered to be main basis for decision by the Commissioner of Police. It was discovered by the Appellant that the report of IIT professors was in personal capacity and not that of the Institute as confirmed later on by the Institute itself in response to a RTI application of the Appellant.
- 6.9 Learned counsel pointed out that Tata Power Company Limited did not take approval of Railways for proposed alignment of the line and after realizing that the proposal is not even technically feasible, Tower No. 88A has been built and further proposed Tower No. 87A for which it has

not yet received either consent or approval from the owners or occupiers of the premises affected.

6.10 Learned counsel alleged that with proper planning and alignment, the premises of New Ushanagar Housing Society could have been spared for location of proposed 220 KV towers and lines which would pose an electrical hazard to the occupants of the society due to electromagnetic radiation, etc.

6.11 **Per contra** learned counsel Mr. Amit Kapur appearing on behalf of Respondent No.1, Tata Power Company Limited, at the outset refuted the contentions and allegations of the learned counsel for the Appellant and submitted that the order dated 11.09.2014 passed by the Commissioner of Police as well as the impugned order of State Commission are reasoned and speaking orders of which a plain reading itself shows that erection of Transmission Tower No. 88 has been permitted after due diligence, considering various documents and material placed on record by all the parties.

6.12 Learned counsel further submitted that a transmission licensee has to comply with all prevailing Rules and Regulations framed by the various statutory Authorities including the Indian Railways, CEA and local Authorities. Learned counsel was quick to point out that after various

meetings and discussions between the parties during November, 2017 to March, 2018 under the aegis of this Tribunal, a mutually acceptable location (considering all statutory clearances) for constructing Transmission Tower No.88 within New Ushanagar's premises was agreed upon.

6.13 Learned counsel vehemently submitted that a bare perusal of the Application dated 25.10.2011 filed by Tata Power before the Commissioner of Police and its Order dated 11.09.2014 clearly evidences that the said Application and Order were made and passed respectively under the provisions of the Indian Telegraph Act, which Tata Power had invoked, being a transmission licensee and mandated to avail the facilities under the Indian Telegraph Act. Neither had the Tata Power Company Limited relied on the Works of Licensees Rules, 2006 nor order of the Commissioner of Police being passed in terms thereof.

6.14 Learned counsel contended that New Ushanagar's aforesaid contention has been raised for the first time before this Tribunal and does not form part of any of its pleadings before the State Commission. As such the Appellant cannot be permitted to raise new issues at this belated stage. Further, impugned orders of the Commissioner of Police and the State Commission are both speaking orders, in as much as, they contain details of all the issues/ contentions/ objections raised by the Appellant and

various oral/ written submissions made by the parties. Furthermore, the Orders impugned clearly lists out the various findings on which its conclusions are based and as such, are *per se*, a reasoned order and hence, have been passed in accordance with law and in no way violate the principles of natural justice.

6.15 Regarding the contentions of the Appellant that mere grant of powers of a Telegraph Authority under Section 164 of the Electricity Act does not empower Tata Power to enter upon the premises of the Appellant without its prior consent, learned counsel submitted that in terms of the Indian Telegraph Act, 1885 (“**Telegraph Act**”)] Tata Power Company Ltd. being a transmission licensee has the legitimate authority for getting ‘Right of Way’ or right to use the land, for carrying out works or for augmentation of an existing transmission network which are duly governed by the relevant provisions of the Electricity Act as well as and the Telegraph Act.

6.16 To strengthen his arguments, learned counsel placed reliance on the judgment of the Hon'ble Supreme Court dated 14.12.2016 in the matter of *The Power Grid Corporation of India Ltd. vs. Century Textiles & Industries Limited & Ors., reported as (2017) 5 SCC 143*, which has categorically held that, cases where a Transmission Licensee has obtained approval under Section 164 of the Electricity Act, there is no legal

requirement to obtain prior consent of the owner/occupier of any land for placing of transmission towers and lines. As such the Tata Power Company Limited has been well within its mandate to erect 220 KV towers in the premises of the Appellant after getting due permission from the competent authority i.e. Commissioner of Police in the instant case.

OUR CONSIDERATION & FINDINGS

6.17 We have carefully gone through the rival contentions of both the parties and also took note of the orders passed by Commissioner of Police as well as the State Commission. Admittedly, the Tata Power Company Ltd. being a transmission licensee has been mandated under the Act to plan and construct transmission lines for carrying electricity for the ultimate use and benefit of the public/consumers at large and in the process, it also enjoys the privileges provided under the Indian Telegraph Act relating to Right of Way for laying the transmission lines. It was only when the Appellant's society objected to install the transmission tower in its premises, Tata Power Company Ltd. approached the Commissioner of Police who is provided with the powers of a statutory authority for adjudication of disputes between the parties concerned. After receipt of the application and hearing both the parties and also after taking technical consultation with the two professors of IIT, Mumbai, the Commissioner of Police finalized its views for pronouncement of order. However, before

pronouncement of the order, the then Commissioner of Police was transferred and a new Commissioner of Police took over the charge and after going through the report finalized by the former Commissioner of Police, the said order dated 11.09.2014 was passed. In fact, we opine that before passing the said order, the new Commissioner of Police ought to have invited both the parties for rehearing and then only pass the order in accordance with the settled principle of law on which the Appellant is now agitating. We further opine that even if the same order as drafted/finalized by previous Police Commissioner was to be passed on, it could have been proper and justifiable to assign rehearing by the new Commissioner.

6.18 Regarding location of the tower in the premises of the Appellant, we notice that the transmission licensee has to comply with a number of statutory clearance/provisions as such safety regulations of CEA, Railway Regulations, 1987, DC Regulations, 1991 of Mumbai etc. relating to the location, clearances and other associated provisions. As such, the towers would need to be located after consideration of all such factors and have to be installed wherever it becomes technically feasible and also, taking into account least inconvenience and distress to owners of the area/premises involved.

6.19 We do not find force in the contentions of the learned counsel for the Appellant that these lines would pose the health hazard to the members of the society due to electromagnetic radiation because of the fact that adequate horizontal and vertical clearances ensure, in the safety regulations specified by CEA, to nullify the effect of EMR whatsoever. Accordingly, we hold that location of towers has been decided meticulously by Tata Power Company Ltd. considering all the associated factors stated supra.

6.20 We also take note of the judgment of the Apex Court in “**K.B. Ramachandra Raje v. State of Karnataka, reported as (2016) 3 SCC 422**” which has categorically held as under:-

“in granting relief at the end of a protracted litigation, as in the present case, the Court cannot be unmindful of facts and events that may have occurred during the pendency of the litigation. It may, at times, become necessary to balance the equities having regard to the fact situation and accordingly mould the relief(s). How the relief is to be moulded, in the light of all the relevant facts, essentially lies in the realm of the discretion of the courts whose ultimate duty is to uphold and further the mandate of law. It is submitted that, the court can mould relief, if it is satisfied that, taking note of subsequent changes or changed circumstances would shorten litigation and enable complete justice being done to the parties.”

6.21 In view of the above facts, we are of the opinion that the orders passed by the Commissioner of Police and the State Commission contain cogent

reasoning and have been passed in accordance with law without violating the principles of natural justice.

ISSUE NO. 2

- 6.22 Learned counsel for the Appellant submitted that Tata Power Company Ltd. when establishing that no other alignment of line is possible decided and proposed the reference tower in the Appellant premises. Learned counsel further contended that if Tata Power Company Ltd. would have obtained approval of railways and other local authorities, the location of 220 KV tower in the premises of the Appellant could have been avoided. To substantiate his arguments, learned counsel further advanced his arguments as stated in the above mentioned paragraphs which are not being repeated here as the same have been duly deliberated and analyzed.
- 6.23 Learned counsel vehemently submitted that even if the tower is to be erected within society premises, full compensation is payable for the towers and the Right of Way. He was quick to point out that Tata Power Company Ltd. is only seeking to avoid paying adequate compensation by relying on the 2010 circular of the Government of Maharashtra, which is neither under Section 67 nor under the rules framed under the Electricity Act.

6.24 Learned counsel invited reference to the provisions of Section 67 (3) which provides that full compensation shall be paid for any damage, detriment or inconvenience caused. The Section 67 (3) reads thus:-

*“(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.**”*

6.25 Learned counsel further contended that in the present case, Tata Power has not offered any compensation whatsoever for the right of way, and only meager compensation for the land for the transmission tower based on the Government of Maharashtra Resolution dated 01/11/2010 to limit the compensation only to the land acquired, and that too to only 65% of the cost of land.

6.26 Learned counsel for the Appellant submitted that the Government of Maharashtra has also on 31/05/2017 revised its circular for compensation package for the entire state except the City of Mumbai and its suburbs. As per this, the the compensation for land occupied for transmission tower will be 200% of ready reckoner value and for ROW it will be 15% of ready reckoner value. He was quick to point out that the compensation for the City of Mumbai will obviously be much more and in any event, the Tata Power Company Ltd. is obligated to pay the compensation as per the Government Resolution dated 31.05.2017. He alleged that Tata Power

Company Ltd. Is erroneously projecting that the claim of Rs. 6 Crores or Rs. 3 Crores has been claimed by the Appellant which is squarely refuted. Learned counsel further clarified that the Appellant has now confirmed to Tata Power Company Ltd. that the compensation as admissible vide Government of Maharashtra Resolution dated 31.05.2017 would be acceptable to them.

6.27 **Per contra**, learned counsel for the Respondent submits that the Appellant had never raised the issue of compensation either before the Commissioner of Police or before State Commission and in fact, Para 20 of the Impugned Order categorically records the same and grants New Ushanagar liberty to approach the appropriate authority for determination of the quantum of compensation. It was only for the first time that the Appellant on 13.11.2017, raked up the issue of compensation as per the GoM Resolution dated 31.05.2017 which in fact is not applicable to the City of Mumbai and therefore to the present case. In this regard, Para 5 of the said GoM Resolution dated 31.05.2017 categorically states as under:

“5) **This Policy shall be applicable to all other areas in the State excluding the area of Brihanmumbai Municipal Corporation and suburban areas.** For payment of compensation for the lands in the urban areas, over which high voltage cables are being laid, the Central Govt. has, vide its letter dated 11/08/2016, constituted a Committee at the Central Govt. level. Upon guidelines being received from the said Committee, the new policy shall be made applicable to Brihanmumbai Municipal Corporation and suburban areas.”

[*Emphasis supplied*]

- 6.28 Learned counsel further submitted that the GoM Resolution dated 01.11.2010 establishes the principles for payment of compensation to be paid for erection of Transmission Towers on land, inter alia, by MSETCL and Private Utilities. As per the said resolution for non-agricultural land (urban land) compensation is computed @ 65% of the value of such land and the compensation shall be payable for the footprint of the transmission tower No. 88 having (9.43 x 9.43 Mts. with RCC).
- 6.29 Learned counsel relied upon the judgment of the Hon'ble Supreme Court which has set the powers of the State Government to issue Executive Orders in case of *Rai Sahib Ram Jawaya Kapur v. State of Punjab*, reported as (1955) 2 SCR 225 : AIR 1955 SC 549 and again in *Energy Watchdog v. CERC (2017) 14 SCC 80*.
- 6.30 Learned counsel further pointed out that even considering GoM Resolution dated 31.05.2017, the total compensation payable to the Appellant in no case by any stretch of imagination would amount to Rs.3 Crores as being claimed by the Appellant.
- 6.31 Learned counsel further submitted that Clause 9 of the said GoM Resolution dated 31.05.2017, provides that, "If the capacity of the existing cables is to be increased and to be renovated, compensation shall

be paid only for the additional area occupied by the Tower and additional area under the cable wire.”

OUR FINDINGS:-

6.32 We have considered and analyzed the contentions of the learned counsel for the Appellant as well as learned counsel for the Respondents on the issue. It is not in dispute that the transmission lines are to be constructed for conveyance of electricity from one end to another for the ultimate benefit of consumers and Right of Way for the same has to be provided by the owners/occupants of the land/area through which the transmission lines have to pass through. With the increasing demand as in the instant case, the transmission licensee has to lay the towers and conductors for the 220 KV transmission lines of which a small stretch incidentally falls under the premises of the Appellant’s society. Specifically, one tower has to be erected in the area of Appellant’s society and some length of ROW also falls therein. While, as a matter of fact, the ROW cannot be denied/prevented but at the same time the transmission route has to be meticulously planned so as to minimize the inconvenience/distress to be caused to the persons concerned and additionally, adequate compensation has to be paid as per the prevailing rates provided under the Government notification/resolution. Section 67 (3) of the Act provides that full compensation is payable for any damages, detriment or inconvenience

caused in laying of the transmission lines. To facilitate the application of compensation in line with the provisions of the Act, the State Governments as well as the Central Government have been empowered to bring out specific notifications to cover such compensations arising due to construction of intra-state lines and inter-state lines, respectively.

6.33 Once a general consensus in the case has been reached between the Appellant and the Respondent Tata Power Company Ltd., the only issue remaining to be decided is quantum of compensation on which the Appellant and the Respondent have divergent contentions. While learned counsel for the Appellant contends that the full compensation as per Section 67 (3) is payable in line with GoM Resolution dated 31.05.2017, the learned counsel for the Tata Power Company Ltd. submits to limit the same as per GoM notifications dated 01.11.2010. It is relevant to note that both the notification/resolutions of GoM have been notified in two different periods and are aimed to provide compensation for the distress being caused in laying out the transmission lines. However, major difference in the first notification and the second notification is not only of the rates of compensation but also, in the first Resolution, there is no provision for compensation towards ROW arising out of lying of conductors. As per the prevailing practice under the guidelines issued by the Central Government for inter-state lines, the affected party has to be

compensated not only for tower footprint but also for the area under ROW. In view of these facts, we are of the opinion that in the facts and circumstances of the case, the GoM resolution dated 31.05.2017 provides distinct rationale and a balanced solution for application to overcome the prevailing impediment in the construction of the transmission lines.

6.34 As submitted by learned counsel for the Tata Power Company Ltd., most of the works (about 97%) have been completed and thus, the matter requires to be settled expeditiously for the ultimate benefit of all the stakeholders. We are therefore, of the considered opinion that the Appellant has to facilitate the installation of transmission lines in its premises by providing ROW for which it is entitled for the compensation as admissible under the GoM resolution dated 31.05.2017.

SUMMARY OF OUR FINDINGS

6.35 In light of the above deliberations, analysis and findings, we are of the opinion that the orders of the Commissioner of Police, Mumbai dated 11.09.2014 and the State Commission dated 05.05.2015 (excepting some procedural lapses) have been passed in accordance with law without violation of principles of natural justice. Further, we hold that the Appellant is entitled for the full compensation in accordance with Section 67 (3) of the Act as per the GoM resolution dated 31.05.2017 for the

footprint/foundation area of the towers as well as ROW area spread under the overhead conductors. Thus, some issues raised in the Appeal have merits and hence, the instant Appeal deserves to be allowed partly.

ORDER

In the light of above, we are of the considered view that some of the issues raised in the Appeal have merits and accordingly, the Appeal is partly allowed. The impugned order dated 5th May, 2015 passed by Maharashtra State Electricity Regulatory Commission is hereby set aside to the extent of our findings stated in Para 6.35. The State Commission is directed to pass consequential orders for the compensation to the Appellant accordingly.

No order as to costs.

Pronounced in the Open Court on this **15th day of March, 2019.**

S.D. Dubey
[Technical Member]

Justice Manjula Chellur
[Chairperson]

√ **REPORTABLE/~~NON-REPORTABLE~~**