

machinery is bound to enforce the law, without requiring the petitioner to approach the government for further directions, for every copyright violation when public performer in any event (that would include a marriage ceremony) reproduces a sound recording without licence from the copyrights society.

**IX. Disposition**

(13) Under the circumstances, the impugned letter in so far as it directs the petitioner-Company to represent to the Government and wait for further direction or notification from the Government is quashed. No fresh notification from Government is necessary nor can the petitioner be compelled to make any representation to the Government in the manner spelt out in the impugned letter. The police is bound to act on legitimate complaints of copyright violations in the manner explained above.

(14) The writ petition is allowed on the above terms.

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**A. AGGARWAL**

*Before K. Kannan, J.*

**KANWAR SINGH,—Petitioner**

*versus*

**UNION OF INDIA AND OTHERS,—Respondents**

**CWP No. 7902 of 2011**

19th July, 2011

*Constitution of India - Art.226/227& 300A - Electricity Act 2003 - Ss. 67,164, 165, 176, 185 - Electricity Act of 1910 - S. 12- Telegraph Act, 1885 - Ss. 10 to 19 - Land Acquisition Act, 1894 - Ss. 40 & 41 - Electricity Rules, 2005 - Electricity Rules, 1952 - Works of Electricity Rules, 2006 - RI.3(b) & 4 - Objection by landowner over laying of high tension wires over their property - Power of licensee under Telegraph Act - Exclude any scope of any objection by land owner - Power to lay transmission lines does not always require requisition of property - Compensation as required shall be in manner provided under Telegraph Act and not under land acquisition act - Action of licensee confirm to law.*

*Held*, That the transmission scheme that is notified under the order dt 9th December 2010 is an intra state transmission line and therefore the appropriate authority is only the State Government. When section 164 allows for the licensee to use the powers under the Telegraph Act, the reference to telegraph lines must be understood as applying for electrical lines and the power to establish and maintain telegraph lines to the central government must be understood in the context to mean the power to establish and maintain electric lines to the state government.

(Para 11)

*Further held*, That there is no ground made that any of the government guidelines have not been followed. As a measure for future guidance, I would direct the State Government to make the provisions for objections and getting details of the transmission scheme meaningful to affected parties by insisting on the licensees to give a local address within the State at the villages or in their vicinity where the transmission lines are laid. As of now, there is no infraction of any of the legal mandate and hence I would not find any reason to hold that the actions of the respondents are vitiated.

(Para 15)

*Further held*, That pre-ponderance of judicial opinions from various High Courts uphold the power of the licensee to layover head transmission lines without prior consent of the landowner and I uphold such reasoning.

(Para 17)

Sanjeev Kodan, Advocate with Jaiveer Yadav and Mr. Gungan Mehta, Advocate, *for the petitioner*.

Maharaj Kumar, Advocate for Ms. Sharmila Sharma, Advocate for Union of India in CWP No.7902 of 2011.

Maharaj Kumar, Advocate for Union of India in C.W.P. Nos.10163 and 10236 of 2011.

Ajay Kaushik, Advocate for Union of India C.W.P. Nos.9267, 9291, 9268 and 11676 of 2011.

O.P. Sharma, Addl. A.G., Haryana.

Mohnish Sharma, Advocate for Narender Hooda, Advocate for respondent Nos.3 and 4.

Ashok Aggarwal, Senior Advocate with Sumeet Goel, Advocate, Ms. Sakya Chaudhary, Advocate for respondent No.5.

**K. KANNAN, J.**

**I. Synopsis**

(1) The above case and the batch of writ petitions are at the instance of landowners who are aggrieved by the action of the 5th respondent, licensee for laying high tension wires under the Electricity Act 2003, over their lands. The grievance is that the installations have been made in violation of the relevant laws and the rules and hence seek through their respective writ petitions that the respondents shall not lay down overhead high transmission power lines of 400 KV without following the due process of law under the Electricity Act, 2003 and the terms and conditions as stipulated in order dated 9.12.2010 issued by the Government of Haryana. The additional prayers are in alternation or addition that full compensation, rent and other incidental damages shall be given for the use of the respective lands for installing overhead transmission lines. The case calls to fore the examination of some of the provisions of the Electricity Act, 2003, Electricity Act of 1910, since repealed by the former Act subject to certain exceptions carved out in section 185, Telegraph Act, 1885, Land Acquisition Act, 1894, Electricity Rules, 2005, Electricity Rules, 1952 and Works of Electricity Rules, 2006. The judgment traverses the requirements of notice, the extent of objections by landowners and the power of the licensee to lay overhead transmission lines, operating under the authority of the State and holds that there exists no violation of the relevant Acts or Rules to found a justification for the writ petitions.

**II. Extent of Power to the licensee**

(2) By an order issued by the Government of Haryana, Power department on 9th December 2010, Jhajjar KT Transco Pvt Ltd, having its office at Gandhinagar, Gujarat, licence to lay transmission lines had been awarded to the 5th respondent. This purports to be an approval under section 68 of the Electricity for the *transmission scheme* between (1) Jhajjar – Kabulpur (Rohtak), (2) Kabulpur – Dipalpur (Sonapat), Loop-in- loop-out circuit of Abdullapur-Bawana. The order states that the scheme includes transmission lines over 100 kms of agricultural lands, crossing over National and State highways, Railway line, Local Authorities Area, etc. The order further states that the licensee shall have all the powers under section

164 of the 2003 Act which the Telegraph Authority possesses under the Telegraph Act. The consent that the order contemplates is the consent of local bodies, Railways, National and State Highways, responsible for constructing transmission scheme and operate the same after approval of the Chief Electrical Inspector as per the provisions of the Electricity Act and the Rules. The approval is for a period of 25 years.

**III. Relevant provisions under the Electricity Act, 2003 that deal with powers of the licensee and the extent of regulating the power by the ‘appropriate government’**

**(a) Rule making power of the Central Government and the subject covered**

(3) The Central Government’s power to lay down rules for the various purposes are governed by Section 176 of the 2003 Act. The language of the section in so far as it is relevant for transmission lines are contained in the following words:

“176(1): The Central Government may, by notification, make rules for carrying out the provisions of this Act.

- (e) the works of licensees affecting the property of owner or occupier under sub-section (2) of Section 67;
- (f) such other cases which may be prescribed under clause (c) of sub-section (2) of Section 68;

The relevant provisions may be reproduced to examine the subject for which the rules could be framed by the Central Government:

Section 67. Provision as to opening up of streets, railways, etc.

- (1) .....
- (2) The Appropriate Government may, by rules made by it in this behalf, specify,—
  - (a) the cases and circumstances in which the consent in writing of the Appropriate Government, local authority, owner or occupier, as the case may be, shall be required for carrying out works;

- (b) the authority which may grant permission in the circumstances where the owner or occupier objects to the carrying out of works;
- (c) the nature and period of notice to be given by the licensee before carrying out works;
- (d) the procedure and manner of consideration of objections and suggestions received in accordance with the notice referred to in clause (c);
- (e) the determination and payment of compensation or rent to the persons affected by works under this section;
- (f) the repairs and works to be carried out when emergency exists;
- (g) the right of the owner or occupier to carry out certain works under this section and the payment of expenses therefore;
- (h) the procedure for carrying out other works near sewers, pipes or other electric lines or works;
- (i) the procedure for alteration of the position of pipes, electric lines, electrical plant, telegraph lines, sewer lines, tunnels, drains, etc;
- (j) the procedure for fencing, guarding, lighting and other safety measures relating to works on streets, railways, tramways, sewers, drains or tunnels and immediate reinstatement thereof;
- (k) the avoidance of public nuisance, environmental damage and unnecessary damage to the public and private property by such works;
- (l) the procedure for undertaking works which are not reparable by the Appropriate Government, licensee or local authority;
- (m) the manner of deposit of amount required for restoration of any railways, tramways, waterways, etc;

- (n) the manner of restoration of property affected by such works and maintenance thereof;
- (o) the procedure for deposit of compensation payable by the licensee and furnishing of security; and
- (p) such other matters as are incidental or consequential to the construction and maintenance of works under this section.

**68. Overhead lines.**—(1) *An overhead line shall, with prior approval of the Appropriate Government, be installed or kept installed above ground in accordance with the provisions of sub-section (2).*

- (2) The provisions contained in sub-section (1) shall not apply—
  - (a) in relation to an electric line which has a nominal voltage not exceeding 11 kilovolts and is used or intended to be used for supplying to a single consumer;
  - (b) in relation to so much of an electric line as is or will be within premises in the occupation or control of the person responsible for its installation; or
  - (c) in such other cases, as may be prescribed.
- (3) The Appropriate Government shall, while granting approval under sub-section (1), impose such conditions (including conditions as to the ownership and operation of the line) as appear to it to be necessary.
- (4) The Appropriate Government may vary or revoke the approval at any time after the end of such period as may be stipulated in the approval granted by it.
- (5) Where any tree standing or lying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead line subsequent to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the placing of such line, interrupts or interferes

with, or is likely to interrupt or interfere with, the conveyance or transmission of electricity or the accessibility of any works, an Executive Magistrate or authority specified by the Appropriate Government may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he or it thinks fit.

- (6) When disposing of an application under sub-section (5), an Executive Magistrate or authority specified under that subsection 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.

**(b) The Rules framed under sections 176(2) read with section 67(2)**

(4) The Central Government has framed Works of Licensees Rules 2006 (called the 2006 Rules) that provides inter alia through Rule 3 (b) that where the owner or occupier of the building or land raises objections in respect of works to be carried out under this rule, the licensee shall obtain permission in writing from the District Magistrate or the Commissioner of Police or any other officer authorized by the State Government in that behalf for carrying out the works. Sub-rule 2 empowers the District Magistrate or a Commissioner of Police to fix compensation after considering the representation of the concerned persons. Sub-rule 4 relieves the licensee from the delimitations contained in 2006 Rules and guides his powers to the extent provided under the order issued under Section 164 of the Act by the words:

*“Nothing contained in this rule shall affect the powers conferred upon any licensee under section 164 of the Act.”*

**(c) Licensee’s power issued under section 164 eclipses the limitations under 2006 Rules**

(5) We have already extracted the order issued by the State Government on 9th December 2010 to the licensee empowering him to lay the transmission lines between specified places. The effect and extent of power could be understood by reference to what section 164 of 2003 Act provides:

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 coordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any, as the Appropriate Government may think fit to impose and to the provisions of the Indian Telegraph Act, 1885, any of the powers which the telegraph authority possesses under that Act with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained.*

**IV. Powers under the Telegraph Act and the exclusion of Electricity Act, 1910**

(6) The Act of 1910 is saved to the extent provided under section 185 of the 2003 Act. To the extent that it is necessary for the transmission lines, the relevant provision is reproduced:

**185. *Repeal and saving.***—(1) *Save as otherwise provided in this Act, the Indian Electricity Act, 1910 (9 of 1910), 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, insofar 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 and rules made thereunder shall have effect until the rules under Sections 67 to 69 of this Act are made;

(7) Section 12 of 1910 Act contains some important protections for the owner of the land to object to the installations and to allow the licensee to enter upon the land of any person. It reads:

**Section 12. Provisions as to the opening and breaking up of streets, railways and tramways**

- (1) .....
- (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, 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 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.

(8) It must be noticed that this section shall be activated only till rules are framed under section 67 of the 2003 Act. We have already seen that the Central Government has framed the 2006 Rules with effect from April 2006 and therefore there is no relevance to the provisions of 1910 Act. Again 2006 Rules themselves cannot be invoked in cases where the power is granted to the licensee under section 164 of 2003 Act, as stated in Rule 3(4) of 2006 Rules. Section 164 empowers the licensee to invoke the same powers as granted under the Telegraph Act. Consequently, it is to the Telegraphs Act that we will have to turn to discern the amplitude of powers of the licensee. Section 12 of the 1910 Act stands completely excluded by the combined reading of the above sections.

**V. Powers of the licensee under the Telegraph Act excludes scope of any objection by landowner**

(9) Section 164 of 2003 Act empowers the licensee to invoke the powers of the Telegraph Authority for laying the transmission lines. Sections 10 to 19 of the Telegraph Act delineates the extent of power and to our purpose section 10 alone is relevant and hence reproduced:

10. Power for telegraph authority to place and maintain *telegraph lines and posts*.—*The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along or across, and posts in or upon, any immovable property:*

Provided that—

- (a) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the Central Government, or to be so established or maintained;
- (b) the [Central Government] shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which the telegraph authority places any telegraph line or post; and

- (c) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority; and
  - (d) in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property other than that referred to in clause (c); shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.
- (a) Reference to Central Government under the Telegraph Act is irrelevant – Rejection of petitioner’s contention, the basis**

(10) The counsel appearing for the petitioners argues that the only incorporation that could be made to the powers of the telegraph authority shall be to substitute the licensee under section 10 but in so far as the section contemplates the works to be established by the Central Government, the licensee has no power to utilize the powers unless the Central Government establishes or maintains the electrical lines. I reject this argument since it makes meaningless the power under the Telegraph Act. Under the Constitutional scheme, the subject of telegraphs falls as entry 31, List 1 and inevitably, the Central Government can alone establish and maintain electricity lines. But the subject of electricity is contained under entry 38 in List 3, which is in the concurrent list and the order under section 164 has been issued by the State Government, which is the appropriate authority under the Act. The term ‘appropriate authority’ is defined as follows:

Section 2. Definitions

- (5) “Appropriate Government” means,—
  - (a) the Central Government,—
    - (i) in respect of a generating company wholly or partly owned by it;

- (ii) in relation to any inter-State generation, transmission, trading or supply of electricity and with respect to any mines, oil-fields, railways, national highways, airports, telegraphs, broadcasting stations and any works of defence, dockyard, nuclear power installations;
  - (iii) in respect of the National Load Despatch Centre and Regional Load Despatch Centre;
  - (iv) in relation to any works or electric installation belonging to it or under its control;
- (b) in any other case, the State Government having jurisdiction under this Act

(11) The transmission scheme that is notified under the order dt 9th December 2010 is an intra state transmission line and therefore the appropriate authority is only the State Government. When section 164 allows for the licensee to use the powers under the Telegraph Act, the reference to telegraph lines must be understood as applying for electrical lines and the power to establish and maintain telegraph lines to the central government must be understood in the context to mean the power to establish and maintain electric lines to the state government. The statutory interpretation as regards the doctrine of incorporation must be carried to its full length in logic as otherwise, it would be absurd to look for central government's sanction for electric lines that it does not establish or maintain with the State.

**VI. The power to lay transmission lines does not always require acquisition of property**

(12) The counsel for the petitioners argue that there is a constitutional protection for property that cannot be acquired except under law, as provided under Article 300A and there could exist no authority for the licensee to enter upon land and make the installations, including erection of platforms and poles in the agricultural lands that has the effect of making unavailable their lands over which installations are made. The counsel refers to section 165 of the 2003 Act to contend that sections 40 and 41 of the Land Acquisition Act are applicable to acquisition of property that is inevitable in situations where overhead transmission lines are made.

The relevant provisions are reproduced to understand the scope of these provisions:

Electricity Act, 2003: 165 Amendment of Sections 40 and 41 *of Act 1 of 1894*.—(1) In Section 40, sub-section (1) of clause (b) and Section 41, sub-section (5) of the Land Acquisition Act, 1894, the term “work” shall be deemed to include electricity supplied or to be supplied by means of the work to be constructed.

- (2) The Appropriate Government may, on recommendation of the Appropriate Commission in this behalf, if it thinks fit, on the application of any person, not being a company desirous of obtaining any land for its purposes, direct that he may acquire such land under the provisions of the Land Acquisition Act, 1894, in the same manner and on the same conditions as it might be acquired if the person were a company.

**Land Acquisition Act: 40. Previous enquiry.**—(1) Such consent shall not be given unless the appropriate Government be satisfied, either on the report of the Collector under Section 5-A, sub-section (2), or by an enquiry held as hereinafter provided,—

- (a) that the purpose of the acquisition is to obtain land for the erection of dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith, or
- (aa) that such acquisition is needed for the construction of some building or work for a Company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, or]
- (b) that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public.]
- (2) Such enquiry shall be held by such officer and at such time and place as the [appropriate Government] shall appoint.

- (3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the [Code of Civil Procedure, 1908] in the case of Civil Court.

**41. Agreement with appropriate Government.**—*If the appropriate Government is satisfied after considering the report, if any, of the Collector under Section 5-A, sub-section (2), or on the report of the officer making an inquiry under Section 40] that the proposed acquisition is for any of the purposes referred to in clause (a) or clause (aa) or clause (b) of sub-section (1) of Section 40], it shall require the Company to enter into an agreement with the [appropriate Government]], providing to the satisfaction of the [appropriate Government] for the following matters, namely,—*

- (1) the [payment to the appropriate Government] of the cost of the acquisition;
- (2) the transfer, on such payment, of the land to the Company;
- (3) the terms on which the land shall be held by the Company;
- (4) where the acquisition is for the purpose of erecting dwelling-houses or the provision of amenities connected therewith, the time within which, the conditions on which and the manner in which the dwelling houses or amenities shall be erected or provided;
- (4-A) where the acquisition is for the construction of any building or work for a Company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, the time within which, and the conditions on which, the building or work shall be constructed or executed; and]
- (5) where the acquisition is for the construction of any other work, the time within which and the conditions on which the work shall be executed and maintained, and the terms on which the public shall be entitled to use the work.]

(13) These provisions must be read as empowering the appropriate government to acquire the property for carrying out works and when such acquisition is undertaken, provisions under section 40 and 41 of the Land Acquisition Act will apply. There could be situations, where along the area over which the transmission lines are laid, the licensee may require large structures and building to be erected, say a sub-station. A facilitative provision such as it is, there is no mandate that any property shall be acquired. To the extent that any damage results to an owner of the land or loss of income by inability to cultivate immediately underneath the overhead wires or in the place where electrical poles or towers or stays or struts are installed, there is a provision for compensation. There is no fundamental right to property after the abrogation of Article 19(f) and Art 300A provides for exercise of the right to property that cannot be deprived except by authority of law. If a law such as the Electricity Act and the Telegraph Act empower an appropriate government and the licensee to make use of the property for establishing electrical lines, there is no more right of an individual to demand of the public authority than a punctilious observance of the statutory provisions. The argument of the learned counsel for the petitioner that the poles for telegraph lines are thinner and/ or small than the towers for electrical lines and hence there could not be a power to install them without acquiring the property is not sound. The installation of the towers are statutorily protected as compulsory license over the lands of persons where the installations are made and there is nothing inherently wrong about such power to install the lines.

**VII. Compensation as required shall be in the manner provided under the Telegraph Act and not under Land Acquisition Act**

(14) The extent of power could be seen through section 16 of the Telegraph Act:

16. Exercise of powers conferred by Section 10, and disputes as to compensation, in case of property other *than that of a local authority*.—(1) If the exercise of the powers mentioned in Section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.

- (2) If, after the making of an order under sub-section (1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence under Section 188 of the Indian Penal Code (45 of 1860).
- (3) If any dispute arises concerning the sufficiency of the compensation to be paid under Section 10, clause (d), it shall, on application for the purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.
- (4) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the Court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.
- (5) Every determination of a dispute by a District Judge under sub-section (3) or sub-section (4) shall be final: Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority, from the person who has received the same.

(15) The right that could be exercised by the respective owner by demanding compensation shall therefore be in the manner provided under the Telegraph Act. The petitioners still have the time to make such claims in the manner provided above. The further objections of the petitioners are that they were not provided with details of the installations and the address given in the public notice gave the address of the licensee at Gujarat, outside the limits of the State and hence they could not effectively make their objections. There is no particular mode of issuance of the notice. If the public notice provides the villages that are affected and it also provides with



information that persons in the village that could be affected could get the diagrams from a specified address and place, that ought to be normally sufficient. However, there is certain merit in the objection that if the licensee has an address outside the State, the Government, while issuing an order under section 164 must impose also a condition that the licensee provides for a local contact address which is easily accessible for any member of public to actually go to the office and collect the details and make objections to be heard by the magistrate. In this case, apart from a complaint that the licensee is outside the State, it is not the contention that when the diagrams were demanded or when a communication was sent requiring details of the installations, the 5th respondent did not comply with the requests. On the other hand, the learned senior counsel appearing for the 5th respondent points out that the government has prescribed a procedure for obtaining authorization under section of the Electricity Act, 2003 that includes: (a) publication of a transmission scheme through a publication in a format (b) address at which the details could be obtained as well as objections could be given for consideration and (c) format for acknowledgment of receipt of copies of documents. There is no ground made that any of the government guidelines have not been followed. As a measure for future guidance, I would direct the State Government to make the provisions for objections and getting details of the transmission scheme meaningful to affected parties by insisting on the licensees to give a local address within the State at the villages or in their vicinity where the transmission lines are laid. As of now, there is no infraction of any of the legal mandate and hence I would not find any reason to hold that the actions of the respondents are vitiated.

**VIII. Objection that the Central Government or the State Government have not filed replies make no difference to benefit the petitioner**

(16) The counsel for the petitioner urges that the respondents 1 to 4 who are the State functionaries have not filed their replies to the contentions raised by the petitioners. I think, it is irrelevant for the person who is licensee is the person who is the affected party for he carries a public duty on behalf of the State and so long as the State does not object to any of the actions of the 5th respondent, the petitioners could have no benefit to canvas for themselves any adverse inference against the State or the licensee by the absence of replies in denial of the petitioners' rights.

**IX. Precedents cited considered**

(17) I have hitherto considered all the issues with reference the statutory provisions and the first principles of law. It is an uncharted path after 2003 Act came into effect as far as this court is concerned. As for the decision of the Supreme Court, an occasion for consideration came in **Managing Director Ramakrishna Poultry Private Limited versus R. Chellappan (1)**, but ultimately the decision came to be rendered on certain agreed lines between parties when the overhead lines were agreed to be raised above a particular height over some poultry sheds so that there was no danger to the livestock and the objections of the owner of the sheds were thus addressed. There are at least two lines of authority on the subject. The Kerala High Court through its judgment in **Bharat Plywood and Timber Products Private Ltd. versus Kerala SEB (2)**, the Andhra Pradesh High Court through its judgment in **G.V.S. Ramakrishna versus Managing Director A.P.Transoco(3)**, the Calcutta High Court in **Ashish Kumar Ghose versus CESC Ltd. (4)**, the Gujarat High Court in **Jayantkumar Bhagubhai Patel versus State of Gujarat (5)**, the Madhya Pradesh High Court in **Rajak versus NTPC (6)**, the Madras High Court in **Chennimalai Gounder versus Government of Tamil Nadu (7)**; **Kanvizhi versus TNEB (8)** the Jharkand High Court in **Ajay Munjal Memorial Trust versus Power Grid Corporation (9)** have upheld the primacy of public interest over private objectors and recognized the authority of the State or its licensee to lay overhead wires irrespective of objections of private landowners and restricted the limit of objections to be governed by the executive function to take a decision on the objection and carry out

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- (1) (2009) 16 SCC 743
  - (2) AIR 1972 Ker (47)(FB)
  - (3) AIR 2009 AP 158
  - (4) AIR 2004 Cal 130
  - (5) AIR 2007 Guj 32
  - (6) AIR 1988 MP 172
  - (7) AIR 2001 Mad 98
  - (8) AIR 2008 NOC 1323
  - (9) AIR 2008 Jha 34

the scheme untrammelled by objections beyond consideration of compensation payable. The Delhi High Court in a decision in **Surat Singh versus Delhi Municipal Corporation (10)** and the Patna High Court in **Power Grid Corporation versus Ram Naresh Singh (11)** have held that overhead lines could not be drawn without the prior consent of the private owners. The Delhi High Court judgment was rendered in the context of a claim for damages for malicious prosecution. The Patna High Court considered the similar objections as raised in the present writ petitions. I hold my view with respect that the decision of the Patna High Court does not commend to me as containing the correct interpretation for the various grounds that I have enumerated in the above paragraphs and would find no reason to repeat them here. The pre-ponderance of judicial opinions from various High Courts uphold the power of the licensee to lay over head transmission lines without prior consent of the landowner and I uphold such reasoning.

**X. Disposition**

(18) All the writ petitions are disposed of holding that the actions of the 5th respondent conform to law and the claims for compensation shall be dealt with independently in the manner provided under the Telegraphs Act referred to above. The interim orders passed in the writ petitions restraining the works of the 5th respondent are vacated. The State Government is directed to lay down appropriate conditions for local address of the licensee within the State at the villages or in reasonable proximity where the landowners could collect details of the transmission scheme as notified, placing their objections, etc as a measure of fair play and to make the public notice more effective in all future transactions and in find, for the present, that there is no infraction of statute, Rules, guidelines or orders to found a valid cause of action for the writ petitions.

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**A. AGG**

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(10) AIR 1989 Del 51

(11) AIR 2011 Pat 83