

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 174 of 2010

Dated: 15th Sept. 2011

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

In The Matter Of

1. Patel Parsottambhai Lalibhai
K-34, Jalaramnagar Society
Mehsana -384 002.
Gujarat.

2. Patel Laljibhai Harabhai
K-34, Jalaramnagar Society
Mehsana – 384 002
Gujarat.

Appellant(s)

Versus

1. Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building
Janpath, New Delhi – 110 001.

2. Adani Power Limited
Sikhar, 9th Floor, Near Mithakhali Six Roads,
Navrangpura, Ahmedabad – 380 009

3. District Collector,
Collector's Office
Multi Storeyed Building
Mehsana – 384 002.

**Counsel for Appellant(s): Mr. M.G. Ramachandran,
Mr. Anand K. Ganesan
Ms. Ranjeetha R.**

**Counsel for Respondent(s): Mr. Saurabh Mishra for R-1
Mr. Sugam Seth for R-1
Mr. Sanjay Sen for R-2
Mr. Neil Hildreth for R-2
Mr. Sunil Sharma for R-2**

JUDGMENT

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

1. The District Magistrate passed the order in favour of the owners of the land by directing the Generating Company to remove the transmission line laid down by it from their land. This order was set aside by the Central Commission in the Revision filed by the Generating Company. Aggrieved by that, the land owners have filed this Appeal.
2. The Appellants are the owners of the land situated in Mehsana district of Gujarat. The Central Electricity Regulatory Commission (Central Commission) is the 1st Respondent. M/s Adani Power Ltd, a Generating

Company having setup an Ultra Mega Thermal Power Project at Mundra in Gujarat is the 2nd Respondent. District Collector/District Magistrate of Mehsana district in Gujarat is the 3rd Respondent.

3. The Generating Company(R-2) had laid a 400 kV line over the agricultural land of the Appellants without their consent. Aggrieved by that, the Appellants filed a complaint before the District Magistrate(R-3) stating that since the transmission line was laid down by the Generating Company(R-2) over their land using local police force , without their consent they prayed for initiation of legal action as against the Generating Company(R-2). The District Magistrate(R-3) ultimately allowed the complaint in favour of the Appellants and directed Generating Company(R-2) to remove the transmission line from the Appellant's land and restore the property of the Appellants to the same condition at its own cost.

4. On being aggrieved over this order, the Generating Company(R-2) filed a Revision Petition before the Central Commission, which in turn passed the impugned order setting aside the order of the District Magistrate in favour of the Generating Company(R-2) mainly on the ground that the Generating Company(R-2) is not a licensee; and therefore Works of Licensee Rules are not applicable to it.
5. Challenging this order, the Appellants, the owners of the land have filed the present Appeal.
6. The short facts leading to the filing of this Appeal are as follows:-
 - i) Adani Power Ltd, the Generating Company(R-2) laid down 400 KV dedicated transmission lines from Mundra to Dehgam for evacuating the electricity generated from its Thermal Plant at Mundra in Kutch for the purpose of connecting its generating stations with the transmission system of the Central Transmission Utility.

ii) For the construction for the said dedicated transmission line, the Generating Company (R-2) obtained prior approval from the Central Government under Section 68(1) of the Electricity Act, 2003 (in short 2003 Act) on 10.01.2007. This approval dated 10.01.2007 was subject to the compliance of the conditions in accordance with the provisions of 2003 Act, Rules and Regulations framed thereunder and the relevant provisions of Indian Electricity Rules, 1956. The three conditions mentioned in the approval are:-

- a) The commencement of the construction of the project shall be within three years.
- b) The said approval may be withdrawn before the expiry of the period of three years after giving one month's notice.

- c) The Adani Power Limited shall also abide by the provisions of 2003 Act concerning electricity trade.
- iii) Upon receiving the approval of Government of India under Section 68(1) of 2003 Act, the Generating Company(R-2) started constructing the 400 kV double circuit line between Mundra and Dehgam. One portion of the line passes over the land of the Appellants. The Generating Company(R-2) did not obtain consent of the Appellants before laying the transmission line over their land.
- iv) On being aggrieved over the act of the Generating Company(R-2), the Appellants on 24.2.2009 filed a complaint before the District Magistrate complaining about the installation of the transmission line passing over their lands without their consent of thereby causing loss to them.

- v) On 27.2.2009 the Appellants made the representations before (i) Principal Secretary, Energy and Petrochemical Department, Government of Gujarat, (ii) District Collector, Mehsana (iii) District Magistrate, Mehsana, (iv) Superintendent of Police, Mehsana and (v) Secretary, Ministry of Power, Government of India. In these representations the Appellants requested that appropriate action may be taken against the Generating Company(R-2).
- vi) On 02.3.2009, the Appellants also filed writ petition before the High Court of Gujarat praying for compensation in accordance with law.
- vii) However, by the order dated 6.3.2009, the High Court was pleased to dispose of the said writ petition taking note of the Appellant's representations dated 24.2.2009 and 27.2.2009 made to the authorities and directing them to consider the said representations in accordance

with law and as per the relevant Rules framed under the 2003 Act.

- viii) Thereupon, the Appellants preferred their application on 18.3.2009 under Rule-3 of Works of Licensee Rules,2006 before the District Magistrate for the initiation of legal proceedings against 2nd Respondent Generating Company as well as for compensation as per valuation report and to allow the same in the interest of justice.
- ix) At that stage, on 13.4.2009 Ministry of Power, Government of India vide its letter dated 13.4.2009 advised the Appellants to approach the District Magistrate as the issue pertained to payment of compensation.
- x) In pursuance of the application dated 18.3.2009, opportunity of being heard was given to the parties by the District Magistrate on 26.3.2009, 13.4.2009, 7.5.2009, 14.5.2009 and 2.7.2009.

The District Magistrate ultimately by an order dated 8.7.2009 allowed the prayer of the Appellants and directed the Generating Company(R-2) to remove the transmission lines from their lands holding that the act of the licensee Adani Power Limited in laying down the overhead transmission line on the land of the Appellants without their consent is illegal under the Works of licensee Rules, 2006.

- xi) Initially this order was challenged by the Generating Company(R-2) before the Gujarat State Commission. However, Gujarat Commission by an order dated 9.9.2009 dismissed the Petition filed by the Generating Company holding that since the line was inter-state transmission line, it has no jurisdiction and the jurisdiction vests only with the Central Commission. Accordingly, Adani Power Limited (R-2) filed a Revision Petition under

Rule 3(3) of Works of Licensee Rules, 2006 before the Central Commission challenging the order of the District Magistrate dated 8.7.2009.

xii) After hearing the parties, the Central Commission passed the impugned order dated 9.4.2010 allowing the Revision Petition filed by the Generating Company(R-2) and setting aside the order of the District Magistrate holding that the District Magistrate has no jurisdiction to issue such direction as the Works of Licensee Rule, 2006 would not apply to a Generating Company which is a non licensee.

xiii) Being aggrieved by this impugned order of the Central Commission dated 9.4.2010, the Appellants, the owners of the land have preferred this present Appeal.

7. The learned Counsel for the Appellants has urged the following contentions challenging the impugned order passed by the Central Commission:-

- (i) The right of the land owner is sacrosanct as provided under Article 300A of the Constitution of India. Except by the authority of law, Generating Company(R-2) cannot interfere with the possession of the land by the Appellant.
- (ii) In the absence of the specific statutory provisions, it is not open to the Generating Company (R-2) to lay down overhead lines above the land of the Appellants without their consent.
- (iii) The reference to Sub Section 2, contained in Section 68 (1) of Act is a legislative oversight. In fact, the said reference of Sub Section 2 in Section 68 (1) should be taken to mean that it is the Sub Section 2 of Section 67 and not 68(2) of the Act. If it is so, the Works of Licensee Rules would apply to the appellant.
- (iv) Both Section 67 and 68 of the Act, 2003 deal with the interference with the rights of owners of

the land for laying down electricity lines. Therefore, the Licensee Rules framed under section 67 (2) of 2003 Act should be held applicable for laying down overhead lines as per Section 68 of the Act, 2003.

- (v) In the alternative, it was argued that even assuming that the Rules framed under Section 67(2) will not apply to the Appellant, in the absence of any Rules framed under Section 68 of 2003 Act, the provision of Section 12 to 18 of the Indian Electricity Act, 1910 would be applicable as provided under section 185(2) (b) of 2003 Act. In that event, the consent of the land owner of the land is required to be obtained.

8. In reply to the above contentions, the learned counsel for the both Generating Company as well as Central Commission have made the following submissions:-

- i) Under original constitution scheme, the right to property was a fundamental right. This right was incorporated in article 19(1) (f) under part-3 of the Constitution of India. Subsequently, by the 44th Amendment Act, the said fundamental right to property was amended and made a part of a citizen's legal/constitutional rights. Thus the provision of the Constitution including Article 300-A would apply to the actions of the executives only in respect of acquisition of property of the citizen and not otherwise.
- ii) Section 68 (1) is a Statutory Provision which envisages securing prior approval of the Central Government before establishing a overhead line. Section 68 (1) to (6) are a complete code as such, it regulates the installation and operation of overhead lines subject to the Rules framed under the Indian Electricity Rules,1956.

- iii) Section 68 (1) expressly provides that a overhead line shall be installed with prior approval of the appropriate Government. Section 68(2) is in the nature of the exception to Section 68(1). This exception provides consideration under which the requirement of prior approval under Section 68(1) is dispensed with.
- iv) Section 68(2) (c) delegates the powers to the Government to frame Rules on overhead lines. Apart from this, there is Section 68(2) (a) and (b) for exemption in seeking prior approval. Section 68(3) authorises the Government to impose conditions as it feels necessary for granting the approval under Section 68(1). Therefore, the conditions are being imposed in the approval given under Section 68(1). There is no need to provide for a separate set of Rules.

- v) Section 67 and 68 are distinct from each other. Section 67 deals with the laying down the electrical supply lines by a licensee. Section 68 is limited to overhead lines that are installed above the ground. The non licensee can only place overhead lines in the manner envisaged in Section 68 (1).
- vi) Section 185 (2)(b) of the Electricity Act,2003 is not a source for dedicated legislation. It is a default in Section. The provision of Section 2 to 18 of the Act 1910 shall have effect only to the extent that the Rules have not been framed under Section 67 to 69 of the Act. In the present case, Rules have been framed under Section 67(2). The Rules framed under Section 67(2) i.e. works of licensee Rules 2006 will not apply to an activity under Section 68. Therefore, Section 185 (2)(b) has no application in the present case.

9. In the light of the rival contentions, the following questions would arise for consideration:
- I. Whether Sub-Section (2) referred to in Sub-Section (1) of Section 68 is in the context of Sub-Section (2) of Section 67 of the 2003 Act?
 - II. Whether the provisions of Section 67 of the 2003 Act and Works of Licensee Rules framed under Section 67(2) have no application to a Generating Company?
 - III. Whether in the absence of the application of Works of Licensee Rules, 2006 framed under Section 67(2) of the 2003 Act to Generating Companies, the provisions of Section 12 to 18 of the Indian Electricity Act 1910 would be applicable by virtue of Section 185(2)(b) of the 2003 Act?
 - IV. Whether the District Magistrate's Order dated 8.7.2009 is in accordance with the provisions of law?

10. On these questions elaborate submissions were made by the learned Counsel for the parties, which we have considered carefully.
11. We shall now deal with each of the above questions one by one. The first question for our consideration is “as to whether sub-Section (2) referred to in sub-Section (1) of Section 68 is in the context of sub-Section (2) of Section 67 of the 2003 Act?”
12. The Appellant’s main plea rests on wordings contained in Section 68 of the Act which is reproduced below:

“68. (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....”*

13. According to Appellant, the words “in accordance with provisions of sub Section (2)” referred to in Section 68 (1) are related to sub Section (2) of Section 67 only and not Sub-Section (2) of 68. In other words, it is the plea of the Appellant, that Section 68 (1) should be read as:

“68. (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) of Section 67 of this Act”.

14. In short, it is the contention of the Appellant that the words “in accordance with provisions of sub Section (2)” in Sec 68 (1) have been wrongly referred to instead of referring to 67(2) of the Act. He referred

this reference as 'legislative oversight' or 'legislative error'.

15. It is further submitted by the Appellants, that prior to the introduction of the Electricity Bill before the Parliament; Section 67 and 68 were part of one Section only in the Electricity Bill; during passage of time, while a final approval from the Parliament was obtained in the year 2003, the single Section was split in two separate Sections and that was how the words "in accordance with provisions of sub Section (2) of 68" got wrongly placed.

16. On a careful consideration, we find that this submission is not only unsound but also is factually incorrect. In fact, both the Sections were separate Sections in the draft Electricity Bill 2000 also. Section 67 of the Act, 2003 was numbered as Section 66 in the draft bill and Section 68 of 2003 was numbered as Section 68 in the Bill. Section 66

and 68 of the Draft bill along with Section 67 and 68 of the Act, 2003 are reproduced below for comparison:

Provisions of Electricity Bill 2000	Provisions of Electricity Act 2003
<p>66. (1) A licensee may from time to time and subject to the Rules made by the Central Government-</p> <p>(a) open and break up the soil and pavement of any street, highway, railway or tramway;</p> <p>(b) open and break up any sewer, drain or tunnel in or under any street, highway, railway or tramway;</p> <p>(c) alter the position of any pipes, not being a main sewer pipe, or of any line;</p> <p>(d) lay down and place electric lines, electrical plant and other works or repair, alter or remove the same; and</p> <p>(e) do all other Acts necessary for the due supply of electricity.</p>	<p>67. Provision as to opening up of streets, railways, etc.-(1) A licensee may, from time to time but subject always to the terms and conditions of his licence, within his area of supply or transmission or when permitted by the terms of his licence to lay down or place electric supply lines without the area of supply, without that area carry out works such as-</p> <p>(a) to open and break up the soil and pavement of any street, railway or tramway;</p> <p>(b) to open and break up any sewer, drain or tunnel in or under any street, highway, railway or tramway;</p> <p>(c) to alter the position of any line or works or pipes, other than a main sewer pipe;</p> <p>(d) to lay down and place electric lines, electrical plant and other works;</p> <p>(e) to repair, alter or remove the same;</p> <p>(f) to do all other Acts necessary for transmission of supply of electricity.</p>
<p>(2) A licensee may from time to time, and subject to the Rules made by the Central Government, carry out works in connection with or incidental to the acquisition or utilisation of water rights for hydro-electric stations.</p>	<p>{omitted}</p>

<p>(3) The Rules referred to in sub-Sections (1 and (2) may, inter alia, provide for-</p> <p>(a)the cases and circumstances in which the consent of the Competent Government, local authority, owner or occupier, as the case may be, shall be required for carrying out works;</p> <p>(b).....</p> <p>(p).....</p>	<p>(2) The Appropriate Government may, by Rules made by it in this behalf, specify,-</p> <p>a)the cases and circumstances in which the consent of the Competent Government, local authority, owner or occupier, as the case may be, shall be required for carrying out works;</p> <p>(b).....</p> <p>(p).....</p>
<p>(4) A licensee shall, in exercise of any of the powers conferred by or under this Act and the Rules made there under, 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.</p>	<p>(3) A licensee shall, in exercise of any of the powers conferred by or under this Section and the Rules made there under, 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.</p>
<p>(5) Where any difference or dispute arises under this Section, the matter shall be determined by arbitration by the Competent Commission.</p>	<p>(4) Where any difference or dispute {including amount of compensation under sub-Section (3)} arises under this Section, the matter shall be determined by the Appropriate Commission.</p>
<p>68. (1) Subject to sub-Section (2), an overhead line shall not be installed or kept installed above ground except in accordance with a consent granted by the competent Government.</p>	<p>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).</p>
<p>(2) Sub Section (1) shall not apply-</p> <p>(a)in relation to an electric line which has a nominal voltage not exceeding 33 Kilovolts and is used or intended to be used for supplying a single consumer;</p> <p>(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</p>	<p>(2) The provisions contained in Sub Section (1) shall not apply-</p> <p>(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 a single consumer;</p> <p>(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</p>

(c)in such other cases as may be prescribed	(c)in such other cases as may be prescribed
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17. From the comparison of these Sections, it is clear that there has been a marked difference between the wordings contained in the Section 68 of the Electricity Bill, 2000 and Section 68 of the Act, 2003. The opening words of Section 68 (1) of the Bill word provide "subject to sub Section (2)". But in the 68 (1) of the Act, 2003, those words have been replaced by the words "in accordance with provisions of sub Section (2)". Therefore, the reference to sub-Section (2) in sub Section 68 (1) would relate to Section 68(2) only and not 67(2). As such, it cannot be said to be a 'legislative oversight but it is the considered opinion of the Parliament. 1st Question is answered accordingly.
18. Next question for our consideration as to whether the provisions of Section 67 of the 2003 Act and Works of Licensee Rules framed under Section 67(2) have no application to a Generating Company?

19. On perusal of the Appellant's 3 representations sent to the authorities and the writ petition filed before the High Court, it is noticed that the Appellants had taken a specific stand that the Generating Company(R-2) is a licensee of the Central Government. It appears that the Appellant carried this impression because of the approval of Central Government under Section 68(1) of the 2003 Act. District Magistrate also had this impression that the Generating Company is a 'licensee' in terms of the Electricity Act, 2003. On that ground the District Magistrate gave a findings that the 'Works of licensee Rules' would be applicable to the Generating Company. This finding is patently wrong.

20. The term 'licensee' has been defined in Section 2(39) of 2003 Act as under:

"licensee" means a person who has been granted a licence under Section 14;

21. Under Section 14 of 2003 Act, a Licence can be granted only to the person (a) to transmit electricity as a transmission licensee (b) to distribute electricity as a distribution licensee (c) to undertake trading in electricity as an electricity trader. Therefore, Generating Company cannot be termed as a licensee under the 2003 Act.

22. Sh M G Ramachandran, the Learned Counsel for the Appellant contended that in the previous Acts, the Licensees, Generating Companies as well as Electricity Boards were all subjected to same provisions and there is nothing to show that the parliament decided to make any departure for Generating Companies.

23. This contention of the Appellant is also misconceived. Let us examine the provisions of previous Acts.

24. Prior to enactment of 2003 Act, there were three Acts in force viz., (1) Indian Electricity Act, 1910, (2)

Electricity (Supply) Act 1948 and (3) Electricity Regulatory Commission Act, 1998. The first two Acts are relevant for the present case.

25. The 1910 Act deal with the activities of the licensee. 1948 Act deals with the functions of the State Electricity Boards and Generating Companies. The term 'licensee' has been defined in 1948 Act as:

*“licensee” means a person licensed under Part II of the Indian Electricity Act, 1910 (9 of 1910) to supply energy or a person who has obtained sanction under Section 28 of that Act to engage in the business of supplying energy **but, the provisions of Section 26, or 26A of this Act notwithstanding, does not include the Board or a Generating Company;***

26. Thus Generating Company was not a licensee even under 1948 Act. Under Section 26 of 1948 Act, the Boards were given powers of a licensee but they were not a licensees nor the deemed licensees under 1910 Act.

27. Let us examine the relevant provisions related to Generating Companies in 1948 Act to find out as to whether there has been any change in scheme in relation to requirement of consent of land owner as contended by the Appellant.

28. Section 18A of 1948 Act provide duties of Generating Company and read as under:

18A. Duties of Generating Company.—(1) *Subject to the provisions of this Act, a Generating Company shall be charged with the following duties, namely:—*

(a) to establish, operate and maintain such generating stations and tie-lines, sub-stations and main transmission lines connected therewith, as may be required to be established by the competent Government or Governments in relation to the Generating Company;

(b) to operate and maintain in the most efficient and economical manner the generating stations, tie-lines, sub-stations and main transmission lines, assigned to it by the competent Government or Governments in co-ordination with the Board or Boards, as the case may be, and the Government or agency having control over the power system, if any, connected therewith; and

(c) to carry out, subject to the provisions of Section 21, detailed investigations and prepare schemes, in co-ordination with the Board or

Boards, as the case may be, for establishing generating stations and tie-lines, sub-stations and transmission lines connected therewith, in such manner as may be specified by the Authority.

29. This Section prescribed the duties of a Generating Company. Such duties include establishment, operation and maintenance of main transmission lines, tie lines and substations. Provisions of this Section are akin to provisions of Section 10 of 2003 Act.

30. Let us now quote Section 26A of 1948 Act.

“26A. Applicability of the provisions of Act 9 of 1910 to Generating Company.—(1) Notwithstanding anything contained in sub-Section (2), nothing in the Indian Electricity Act, 1910, shall be deemed to require a Generating Company to take out a licence under that Act, or to obtain sanction of the State Government for the purpose of carrying on any of its Activities.

(2) Subject to the provisions of this Act, Sections 12 to 19 (both inclusive) of the Indian Electricity Act, 1910 ... shall, as far as may be, apply in relation to a Generating Company as they apply in relation to a licensee under that Act”

31. This Section 26A of 1948 Act provides that provisions of Sections 12 to 19 of 1910 Act shall also apply on a Generating Company as if it were a licensee under 1910 Act. Accordingly, in terms of Section 12 (2), a Generating Company would require prior consent of land owner for establishing a transmission line over his land. However, there was another provision in 1948 Act viz., sub-section (2) of Section 42. This section empowers the Generating Company to exercise the all the powers of Telegraph Authority vested with such authority under Indian Telegraph Act 1885. Section 42 of 1948 Act is reproduced below:

“42. Powers to Board for placing wires, poles, etc.—(1) Notwithstanding anything contained in Sections 12 to 16 and 18 and 19 of the Indian Electricity Act, 1910 (9 of 1910) but without prejudice to the requirements of Section 17 of that Act where provision in such behalf is made in a sanctioned scheme, the Board shall have, for the placing of any wires, poles, wall-brackets, stays apparatus and appliances for the transmission and distribution of electricity, or for the transmission of telegraphic or telephonic communications necessary for the proper co-ordination of the works of the Board, all the

powers which the telegraph authority possesses under Part III of the Indian Telegraph Act, 1885 (13 of 1885) with regard to a telegraph established or maintained by the Government or to be so established or maintained:

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

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

32. Bare reading of this Section would reveal that both the Board and the Generating Company were empowered to exercise all the powers of Telegraph authority under Indian Telegraph Act 1885. Under Section 10 of 1885 Act read with Section 16 of that Act, consent of land owner is not required. It is to be noted that the scope of this Section is wider than that of Section 51 of the 1910 Act. A notification was

required under Section 51 of the 1910 Act, no such notification is required under Section 42 of 1948 Act. Further, appropriate Government could impose any restriction on licensee in exercise of such powers under Section 51 of 1910 Act; whereas no such restriction is imposed on Generating Company under Section 42 of 1948 Act. The only requirement to exercise the powers of Telegraph authority by the Board or the Generating Company was to make provision to this effect in the sanctioned scheme. Both the Boards and Generating Companies were empowered to sanction their schemes under Section 28 of the 1948 Act. No approval from the Government was required to sanction the scheme.

33. Once the Generating Company sanction the scheme making provisions in regard to non-application of Section 12 to 18 of 1910 Act, such Generating Company was conferred upon all the powers of the Telegraph authority under 1885 Act and no consent

of land owner was required to lay transmission line over,
on or under his land.

34. Presently under the scheme of 2003 Act, prior approval of the Appropriate Government is required under Section 68 (1) in 2003 Act. Once such approval is granted, Generating Company does not require any other consent. Thus there is no departure from the scheme of previous Acts.

35. It is not disputed that the line is a dedicated transmission line in terms as defined in Sec 2 (16) of the 2003 Act. Section 10 of the 2003 Act casts a duty upon the Generating Company to maintain the dedicated transmission lines. In the present case, the Appellant Generating Company has obtained prior approval of the Central Government under Section 68 of the Act to lay down the dedicated transmission lines.

36. In order to understand the real import of prior approval of Section 68 of 2003 Act we have to compare

between the provisions dealing with overhead lines that existed prior to 2003 Act and the provision under 2003 Act. Section 18 of 1948 Act dealt with the overhead lines. Similarly Section 68 of 2003 Act deals with the overhead lines. Let us now compare both the Sections i.e. 18 of 1910 Act and Section 68 of the 2003 Act:

Indian Electricity Act, 1910	Indian Electricity Act, 2003
<p>18. Overhead lines-(1) Same as provided in Section 13, sub Section (3), nothing in this Part shall be deemed to authorise or empower a licensee to place any overhead line along or across any street, railway, tramway, canal or waterway unless and until the State Government has communicated to him a general approval in writing of the methods of construction which he proposes to adopt:</p> <p>Provided that the communication of such approval shall in no way relieve the licensee of his obligations with respect to any other consent required by or under this Act.</p>	<p>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).</p> <p>(2) The provisions contained in sub-Section (1) shall not apply-</p> <p>(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;</p>

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

<p>(3) Where any tree standing or laying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead line subsequent to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of energy or the accessibility of any works a Magistrate of the first class or, in a presidency-town, the Commissioner of Police, may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he thinks fit.</p> <p>(4) When disposing of any application under sub-Section (3), the Magistrate or Commissioner of Police, as the case may be, shall, in the case of any tree in existence before the placing of the 1 {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.</p> <p>Explanation- For the purposes of this Section, the expression</p>	<p>(5) Where any tree standing or laying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead line subsequent to 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 a Magistrate or the 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 or it thinks fit.</p> <p>(6) When disposing of any application under sub-Section (5), an Executive Magistrate or Authority specified under that sub Section 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.</p> <p>Explanation- For the purposes of this Section, the expression</p>
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“tree” shall be deemed to include any shrub, hedge, jungle growth or other plant	“tree” shall be deemed to include any shrub, hedge, jungle growth or other plant
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37. The comparison of these two sections would reveal the following aspects reflecting the marked difference:-

- i) In 1910 Act section 18 explicitly provides that prior approval of the Appropriate Government would not relieve licensee from getting consent required under that Act. But 2003 Act is silent on this issue. Thus the provision of 18(2) of Section 1910 Act has been deliberately omitted by legislature in Section 68 of 2003 Act. This omission has to have a meaning.
- ii) This Sub Section 2 of 18 of 1910 Act would provide that State Government may require the licensee to remove the overhead line if it is

found that the licensee has breached the provisions of sub section 1. This sub section 2 of 18 of 1910 Act has been omitted. Probably, looking into the practical difficulties in removing the transmission line which is already transmitting power catering to the need of consumers, the Government might have thought it fit to omit this sub section.

- iii) New provision has been introduced in section 68(3). This sub section 3 empowers the Appropriate Government to impose such conditions as may appear to be necessary. One of such conditions could be the requirement of consent of land owner or occupier. This new provision was not available in 18(3) of 1910 Act.
- iv) Sub Section 3 and 4 of Section 18 of 1910 Act have been renumbered as sub section 5 and 6 of 68 of 2003 Act without any change. These differences would indicate that in respect of

overhead lines the licensee shall get the prior approval only from the Appropriate Government under section 68(1) of 2003 Act and there is no reference about the obligation with respect to any other consent required under 1910 Act. The reason for the omission could be that the Government would have visualised that it would be impossible to construct a line with the prior consent of each and every land owner enroute and only on that reason the legislature must have decided to omit provisions relating to the consent of the owner enacting the section 68 of 2003 Act.

38. Let us now examine the issue at hand from yet another angle. The Appellant has contended that under previous Acts the licensee, the Boards and Generating Companies were all subjected to same provisions i.e. Section 12(2) of the 1910 Act and

there is nothing to show that the Parliament decided to make any such departure for the Generating Companies. As mentioned above, by virtue of Section 26A of the 1948 Act, provisions of Section 12(2) of 1910 Act were made applicable to Generating Companies. Thus, there was a specific provision in 1948 Act to make the provisions of Section 12(2) applicable to the Generating Companies. But there is no such provision in 2003 Act. In fact the provision of Section 26A had been omitted in the 2003 Act.

39. It is well established principle of law that, when an alteration is made to existing provision, the alteration must be considered to have been made deliberately and for a specific purpose. Hon'ble Supreme Court in K C Deo Bhanj v Raghunath Misra (AIR 1959 SC 586) observed that

“In the marginal note, however, the word “reduce” was not substituted by the word “modify”, apparently through inadvertence. If the

word “modify” is to be read as “reduce”, then there could be no point in provincial legislature substituting the word “reduce” by the word “modify”. This change must have been made with some purpose and the purpose could only have been to use the expression of wider connotation so to include not only reduction but also other kinds of alteration... In our opinion the dropping of the word “reduce” and introduction of the word “modify” in the body of Section 60 of the Act under consideration clearly indicate an intention on part of legislature to widen the scope of this Section...

In State of UP Vs Malik Zarid Khalid –[1998 1 SCC 145] the hon’ble Supreme Court has held that “ A conscious and glaring departure from the previous language must be given its due significance”.

40. From the above discussions it is abundantly clear that firstly, there is no departure in scheme in 2003 Act viz-a-viz previous laws. Secondly, if there is any departure, then such departure was intended by the Parliament.

41. Therefore, it has to be held that 2nd Respondent being a Generating Company is a non-licensee and as such Works of Licensee Rules, 2006 would not apply to it.
42. As mentioned above, a Generating Company is duty bound under Section 10 of the Act to construct, operate and maintain dedicated transmission lines. If a generating station constructing a transmission line is required to obtain the consent of each and every land owner falling en route of his line, it would be virtually impossible to construct any line. In the present case, a 400 KV line is on average 300-400 Kms long. There could be thousands of land owners on whose land the line would be passing. Getting consent of each and every land owner would be an impossible task. Further, each land owner would ask for compensation. This would increase the cost and ultimately the consumer would have to pay. Therefore, works of licensee Rules are not made applicable to the Non Licensee(R-2) The 2nd question is answered accordingly.

43. Next question before us for our consideration as to Whether in the absence of the application of Works of Licensee Rules, 2006 framed under Section 67(2) of the 2003 Act to Generating Companies, the provisions of Section 12 to 18 of the Indian Electricity Act 1910 would be applicable by virtue of Section 185(2)(b) of the 2003 Act.?
44. Though in view of the above discussions and findings this question has become redundant, we would like to deal with this questions for sake of completeness.
45. Let us now refer to Section 185(2)(b) of 2003 Act. The same is quoted as under:-

*“185. Repeal and saving –(1) ...
(2) Notwithstanding such repeal,-*

(a) ...

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

46. Thus, Section 185(2)(b) of 2003 Act saves the provisions under Section 12 to 18 of the Old Electricity Act, 1910 till the Rules under Section 67 (2) of 2003 Act are framed by the Government. Section 176 (2) (e) and (f) empowers the Central Government to make Rules under Section 67(2) and 68(2)(c). Admittedly, the Central Government has framed Works of Licensee Rules, 2006 under Section 67(2) of the 2003 Act. In the forgoing paragraphs, it is decided that these Rules are not applicable to Generating Company. Close scrutiny of these 2006 Rules would reveal that all the provisions contained in Section 12 to 16 of 1910 Act are covered in these Rules as per table given below:

Indian Electricity Act 1910	Electricity Act 2003
Section 51: Exercise in certain cases of powers of telegraph authority (with non-obstante clause)	Section 164: Exercise of powers of Telegraph Authority in certain cases (without non-obstante clause)
Section 12 (1)	Section 67 (1)
Provisions of IE Act 1910 relating to works	Works of Licensee Rules issued under Section 67 (2) of the Act by Central Government
Section 12 (2)	Rule 3 (1)
Section 12 (3)	Rule 3 (2)

Section 12 (4)	Rule 3 (3)
Section 12 (5)	Rule 8
Section 13 (1) & (2)	Rule 4
Section 13 (3)	Rule 5
Section 14	Rule 7
Section 15	Rule 6
Section 16	Rule 9
Section 17	Section 69 of Electricity Act 2003
Section 18	Section 68 of Electricity Act 2003

47. Admittedly, Central Government has not framed

Rules under Section 68(2)(c) of 2003 Act. Section 68(2) deals with the cases where prior approval of Government would not be required. Therefore, Rules to be framed under clause (c) of sub-Section (2) of Section 68 would be related to exemption only. It cannot be related to consent of land owner as claimed by the Appellant. In fact Rule 5 of 2006 Rules provide that in case emergency, licensee may install an overhead line without prior approval. Thus in a way it can be construed that rules under Section 68(2)(c) have also been framed.

48. In short, the Rules under Section 67(2) having been framed, Section 12 to 16 of 1910 Act read with Section 185(2) (b) of 2003 Act have no application in

the present case. This question is answered as above.

49. Next question for our consideration is whether the District Magistrate's Order dated 8.7.2009 is in accordance with the provisions of law?

50. In order to analyse the validity of the District Magistrate's order dated 8.7.2009, it is necessary to examine the contents of representations of the Appellant dated 24.2.2009, 27.2.2009 and 18.3.2009 filed before authorities and the statement filed before Gujarat Commission as referred to in its order dated 9.9.2009 and writ petition dated 2.3.2009 filed before High Court. Relevant extracts of these are reproduced below:

51. Excerpts of the Appellant's application dated 24.2.2009 before the District Magistrate.

"It is humbly requested to initiate immediate proceeding and to give justice to us. In this matter to hear us personally, to give justice as per law and being our Head of District to consider our representation sympathetically."

52. Excerpts of the Appellant's representation dated 27.2.2009 to the District Magistrate, District collector, ministry of Power etc.

"...I state that 400 KV electricity line is going above the aforesaid block no. 1081 which has been laid down by the Adani Power Limited for dedicated transmission line for Mundra APL and the same permission has been given by Central Government under sub-Section (1) of Section 68 of the Electricity Act, 2003. Thus the Adani Power Limited is the licensee approved by the Central Government...

...that the said 400 kV electricity line has been laid down by the licensee is a overhead line passing above the said block no 1081 and the same has been laid down without prior permission or without intimating the owner ... The said electricity line is causing damage to the land, crops, trees and other plants which are situated in the vicinity of the said block and also the owners rights to enjoy his land without any interference or hindrance is being violated. Further it is stated that damage was done at the time of laying down the said line and at present also the situation has not changed till date and for the same we are not yet compensated....

...Thus, also in the interest of the affected owner of the land appropriate steps may be taken and to see that fair justice is done with the aggrieved...

...It is stated that I am not against any development of the State, Socio-economic infrastructure but I have raised objection against the atrocity of the executive Government official who come in the influence of elite class people and forget their statutory duties as well as moral duties. Thus, it is requested to the above addressed authorities that kindly do the needful to the owner of the said block no. 1081 in accordance with law and also to those other farmers has the same grievance against the licensee..”.

53. Relevant extract of the Appellant’s application dated 18.3.2009 to the District Magistrate.

“... to initiate further proceedings against the Company under the Rules of Electricity Act to award damage compensation amount as per appended valuation report from Adani Power limited”

54. Now let us examine the prayer made by the Appellant in writ petition before the High Court.

“...this Hon’ble Court may be pleased to direct the respondents herein to initiate appropriate proceedings in accordance with Rule by way of assessment of damages and making payment of compensation to the petitioner in accordance with law” .

55. In its Order dated 9.9.2009, the Gujarat Electricity Regulatory Commission has recorded the following statement of Appellant:

“[5] Shri Parsottambhai Patel on behalf of Respondent no. 1 and 2 submitted that his land over which the line is laid down the petitioner is only 3 km away from city of Mehsana. Prices of land are increasing day by day. If he converts his land to non-agricultural land (NA), its value would be much more. But due to overhead transmission line, no body will purchase this land and therefore, he will suffer damages of Rs 37,43,000/-. He has submitted the valuation report also in this regard...However, he admitted that no electric poles are erected on his field, but only overhead transmission line is passing over his field...”

56. From the above statements of Appellant submitted before various forums, three aspects would emerge viz.:

- a. The Appellant was under impression that the 2nd Respondent Generating Company was a licensee of Central Government.

- b. The Appellant's main interest was for compensation as per valuation report as reflected in his representations/ applications and writ petition.
- c. Nowhere in any of his representations the Appellant had demanded for the removal of the line. In fact in one of his representation dated 27.2.2009, he had expressed his feelings that he was not against any development of the State, Socio-economic infrastructure but he had raised objection against the atrocity of the executive Government officials who come under the influence of elite class people and forget their statutory duties as well as moral duties.

57. Let us now refer to the findings of the District Magistrate recorded in his order dated 8.7.2009. Relevant extracts of DM's order are quoted below:

“On the adjournment dated 14/5/2009 on behalf of the applicant written submission is made, in which their main submission is that, License for

laying Electric Transmission Line between Mundra – Dahegam is being granted to the opponent by the Central Government..... by making breach of Section 3 without informing them or prior consent, by entering the said fields illegally, misused the Police force **and laid the electric poles**..... It is prayed to pass order against the opponent, that they can recover amount of Rs. 37,43,000/- from the opponent.

...

... It is the say of the applicant that in their land opponent Power Ltd has laid electric line unauthorisedly by using police force. ... As the electric line is already laid, and said electric line is laid without their permission, requested to remove the same.

...

ORDER:-

It is hereby ordered to grant application of the applicant of this case filed under Rule 3 of Works of Licensee Rules, 2006 on the basis of above observations and opponent Adani Power Ltd, Ahmedabad is hereby ordered that, within a period of one month from date of this order opponent Adani Power Ltd has to remove the Electric Supply Line by the opponent at their costs... ”

58. From the perusal of the order of the District Magistrate 3 aspects are made clear:

- a. District Magistrate, was under wrong impression that the 2nd Respondent was a licensee under the 2003 Act.
- b. The Appellant had demanded a compensation of Rs 37,43,000/- only as per valuation report.
- c. Poles were erected on the land of the Appellant.
- d. For the first time the Appellant has requested, in oral hearing, for removal of the line.

59. Now let us quote Rule 3 of Works of Licensee Rules 2006.

“3. Licensee to carry out works.—(1) A licensee may—

(a) carry out works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, wherever or whereunder any electric supply-line or works has not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land;

(b) fix any support of overhead line or any stay or strut required for the purpose of securing in position any support of an overhead line on any building or land or having been so fixed, may alter such support: Provided that in case 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 authorised by the State Government in this behalf, for carrying out the works: Provided further that if at any time, the owner or occupier of any building or **land on which any works have been carried out or any support of an overhead line, stay or strut has been fixed **shows sufficient cause**, the District Magistrate or the Commissioner of Police, or the officer authorised may by order in writing direct for any such works, support, stay or strut to be removed or altered.***

(2) ...

(3)

(4)

60. Rule 3(1) empowers licensee to carry any work **on, over or under any land** with prior permission of land owner. 1st proviso to Rule 3(1) requires that in case of objections from land owner, the licensee has to get written permission from District Magistrate or Commissioner of Police for carrying out such works. 2nd proviso empowers the District Magistrate to order for removal of such works **laid on the land** if the

land owner or occupier has shown sufficient cause. It is important to note that while words used in Rule 3(1)(a) are ‘ **on, over or under any land**’, words used in 2nd proviso are ‘**on land**’. Words ‘over or under’ are missing in 2nd proviso.

61. Thus, there are two essential requirements to be met before works are ordered to be removed. These are (i) works should be on the land and (ii) land owner has to show the sufficient cause.
62. In the present case, the Appellant has stated in all his statements made before various authorities that transmission line has been passing over his land. It is not his case that the pole or tower was erected on his land. Admittedly the line was ‘over his land’ and not ‘on his land’. Secondly, the Land owner has not shown sufficient cause for removal of line. In fact he had not prayed for removal of the line in any of his representations made before the authorities. His interest was limited to adequate compensation. In view of the above, the following of the District Magistrate that the Generating Company laid the electric poles on the lad is factually incorrect.

63. Let us now come to the impugned order of Central Commission. The findings rendered by the Central Commission while setting aside the order of District Magistrate, are as follows:-

“The impugned order dated July 8, 2009 passed by the Learned District magistrate, has been passed on an application made under Rule 3 of the Works of Licensee Rules,2006 by the first two Respondents herein on 18.3.2009 to the learned district Magistrate. In his order the learned District Magistrate has taken into account the submission that the Petitioner herein had breached the provisions of Rule 3 of the said Rules by not intimating the first two Respondents and by not obtaining their prior consent and by trespassing on their land for installing electric poles on the land belonging to the first two Respondents herein. Learned District Magistrate has also recorded in his order that the Petitioner breached the

conditions of Licence No.11/4/07 approved by the Government vide order dated 10.10.2007. Learned District Magistrate has held that the present Petitioner has illegally laid electric line for electric supply on the land belonging to the first two Respondents herein without obtaining their prior permission. However, learned District Magistrate has proceeded on the premise that the present Petitioner is a licensee. This is clear from the following words appearing in the impugned order.

“The opponent, who is licensee approved by the Energy Department of the Central Government, is also bound to implement the provisions of the Works of Licensee Rules”

The Commission is of the view that Learned District Magistrate proceeded on a wrong basis. There is nothing contained in Section 67(2) or the Works of Licensees Rules, 2006 that suggests that

the aforesaid applies to non-licensees. The present petitioner is not a licensee under the EA 2003. Thus, on plain reading Section 67(2) and the Works of Licensees Rules, 1006 the same cannot be applied to him. One cannot read words into a statute. Consequently, the impugned order dated July 8, 2009 passed by the District Magistrate, is bad in law, illegal, void ab initio, liable to be interfered with and set aside. The impugned order is therefore hereby set aside.”

64. The above portion of the impugned order would clearly indicate that the Central Commission has given a clear findings that the District Magistrate has wrongly passed an order in favour of the Appellants on an application made under Rule-3 under the Works of Licensee Rules,2006 merely on the ground that the Generating Company is a licensee approved by the Energy Department of Central Government but whereas the Generating Company is not

a licensee under the Act,2003 and therefore the Works of Licensee Rules,1006 would not apply to Generating Company. On the basis of this findings, the Central Commission has held correctly that no consent of the owner of the land is necessary especially when the Generating Company had obtained the approval under Section 68 of the Act from the Central Government. This conclusion of the Central Commission in the impugned order in our view perfectly legal and justified.

65. SUMMARY OF OUR FINDINGS

- I. There has been a marked difference between the wordings of the Section 68 of the Electricity Bill, 2000 and Section 68 of the 2003 Act. The opening words of Section 68 (1) of the 2000 Bill were “subject to sub Section (2)” but in the 68 (1) of the 2003 Act, those words have been replaced by the words “in accordance with provisions of Sub section (2)”.**

Therefore, the reference to sub-Section (2) in sub Section 68 (1) would relate to 68(2) only and not 67(2). Hence it cannot be said to be a 'legislative oversight' but it is the considered opinion of the Parliament.

II. The 2nd Respondent being a generating station is a non-licensee and Works of Licensee Rules, 2006 would not be applicable to him. Further, since The Rules under Section 67(2) have already been framed, Section 12 to 18 of 1910 Act read with Section 185(2)(b) of 2003 Act have no application in the present case.

III. There are two essential requirements to be met before the lines could be ordered to be removed under 2nd proviso to Rule 3(1) of Works of Licensee Rules 2006. These are (i) works should be on the land and (ii) land owner has to show

sufficient cause. In the present case, the Appellants have admitted in his various representations that line is passing over his land and they have never stated that pole or tower was erected on their land. Further, the Land owners had not shown sufficient cause for removal of the line. In fact they had not prayed for removal of the line in any of their representations. Their interest was confined only to adequate compensation and not removal of line. Thus, both the requirements, as listed above, have not been satisfied. In the light of these findings, we are of the view that District Magistrate's order was illegal and bad in law and the Central Commission has correctly set aside the said order with valid reasonings.

66. In view of our above findings, we do not find any ground to interfere with the impugned order of the

Central Commission dated 9.4.2010. Hence, the Appeal is dismissed as devoid of merits. However, there is no order as to costs.

67. Pronounced in the open court today the 15th Sept, 2011.

(V J Talwar)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 15th Sept. 2011

REPORTABLE/NON-REPORTABLE