

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 83 of 2010

Dated: 07th September, 2011

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

In The Matter Of

**Maharashtra State Electricity Transmission
Company Limited.,
Plot No.C-19, 'E' Block, Bandra-Kurla Complex,
Prakashgad, Bandra(East), Mumbai-400 051.Appellant**

Versus

- 1. Shri Vikram Sunderdas Setiya,
Plot No.42, New Friends Co.Op.Society,
Near Bhim Chowk, Jaripatkam
Nagpur (Maharashtra)**
- 2. The Maharashtra Electricity Regulatory Commission,
World Trade Centre I, 13th Floor,
Cuffee Parade, Mumbai-400 005.Respondents**

**Counsel for Appellant: Mr. M.G. Ramachandran,
Ms. Taruna A. Prasad
Ms. Deepa Chauhan
Mr. Zubin Morris,
Ms. Anita Rajora
Ms. Anisha Singh
Mr. Kiran Gandhi,**

Ms. Sneha Venkataramani.
Counsel for Respondent(s): Mr. Buddy A. Ranganadhan for R-2
Mr. Charudatta Mahindrakar,
Mr. Aniruddha P. Mayee for R-1
Mr. Raunak Jain,
Mr. C Mahendra
Mr. Sachin Sharma for R-1
Mr. B.S. Sai.

JUDGMENT

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

1. The short and interesting question which has been raised for consideration in the present Appeal is as follows:-

“Whether the State Commission has got jurisdiction under Section 67(4) of 2003 Act to adjudicate upon the dispute between Transmission Company (Appellant) on whom the powers of Telegraph authority have been conferred under Section 164 of the 2003 Act for placing electric supply lines in the land and the person (1st Respondent) whose land has been used by the said transmission company for placing those electric lines without obtaining his consent?”

2. The order passed by the Maharashtra State Commission dated 7.10.2009 holding that the State Commission has got the jurisdiction to decide the dispute in question notwithstanding the powers of Telegraph authority conferred upon the Appellant under Section 164 of the 2003 Act, is the subject matter of the challenge in this Appeal.

3. The short facts are as follows:-
 - i) Maharashtra State Electricity Transmission Company Limited is the Appellant. Shri Vikram Sunderdas Setiya, the land owner is the 1st Respondent. Maharashtra State Electricity Regulatory Commission (the State Commission) is the 2nd Respondent.
 - ii) The Appellant is the Transmission Licensee as well as the State Transmission Utility. As such it is required to establish the transmission lines, electricity plants, etc throughout the State of Maharashtra.

- iii) On 24.8.2006 the Government of Maharashtra issued a notification under Section 164 of the Electricity Act, 2003 (in short the 2003 Act) conferring the powers of Telegraph Authority upon the Appellant for placing electric lines for the transmission of the electricity in the state. On 7.5.2009 Government of Maharashtra accorded general approval under Section 68 of the Electricity Act 2003 permitting the Appellant to establish overhead lines.
- iv) The Appellant undertook the work of establishing 400 KV Single Circuit line between Koradi and Kapaskhera for the purpose of transmission of electricity. The said scheme was also sanctioned by the State Government by the resolution dated 31.7.2007. The total number 13 towers were required to be placed for the said line. One of the towers (location No. 1) was required to be erected in a land belonging to one Vikram Sunderdas Setiya, the 1st Respondent.

- v) Before taking up the work at this location, the Appellant issued notice on 20.4.2009 to the owner of the land, the 1st Respondent about the proposed construction of transmission tower on his land. The owner of the land (R-1) sent a reply dated 23.5.2009 raising objection for the same. On receipt of reply from the 1st Respondent, the Appellant again informed him, through a letter dated 27.5.2009, stating that it would proceed to lay down the transmission line as it has been conferred with the powers of Telegraph Authority under Section 164 of the 2003 Act.
- vi) Under those circumstances, the 1st Respondent, the land owner filed a petition before the Maharashtra State Commission under Section 67(4) of the 2003 Act challenging the notice issued by the Appellant dated 20.4.2009 and praying for stopping the construction work on the ground that the notice was illegal. Alternatively, the 1st Respondent prayed for

adequate compensation for usage of his land. The State Commission issued notice to the Appellant.

- vii) The Appellant, on receipt of the said notice, appeared before the State Commission and raised an objection to the said petition stating that since the powers of the Telegraph Authority have been conferred under Section 164 of the Act upon the Appellant and he is liable to be covered under Telegraph Act 1885 (In short 1885 Act), the State Commission has no jurisdiction under 67 (4) of the 2003 Act, to adjudicate upon the dispute in question between the Telegraph Authority and the owner of the land.
- viii) The State Commission after hearing the parties, in the impugned order dated 7.10.2009, over ruled the said objection raised by the Appellant and held that it has got jurisdiction to adjudicate on the issue raised by the land owner. However, since the land owner agreed to accept the compensation through the alternative prayer the State Commission directed the Appellant

to fix fair compensation as admissible under law, and pay to the land owner.

4. The crux of the findings in the impugned order dated 7.10.2009 passed by the State Commission are as follows:-

- i) **The State Commission has got jurisdiction to deal with dispute over the act of the Appellant in placing electric supply lines etc. in the land of the owner, who complained that the same had been done without getting his consent and without considering his objection.**
- ii) **Notwithstanding the empowerment of the Appellant as Telegraph authority through the notification under Section 164 of the 2003 Act, the Appellant is required to comply with the provisions of the Section 67 of 2003 Act and Sections 12 to 16 and 18 of the Indian Electricity Act, 1910 in the absence of Works of Licensee Rules framed by the State Government.**

iii) Although the State Commission can adjudicate over the quantum of compensation to be paid to the owner of the land, the Appellant itself can decide about the quantum of the compensation as admissible under law and pay the said amount to the land owner in view of his alternative prayer.

5. Feeling aggrieved over the above findings of the State Commission mainly with regard to the jurisdiction of the State Commission, to pass this order, the Appellant has filed this Appeal.

6. Mr. M.G. Ramachandran, the Learned counsel for the Appellant while assailing the impugned order dated 7.10.2009 has made the following submissions:-

i) Section 164 of the 2003 Act is a provision independent of Sections 67, 68 and 69 of the 2003 Act as well as the Sections 12 to 18 of the Indian Electricity Act, 1910 (in short 1910 Act). Section 164 of the 2003 Act operates in respect of persons namely

Public Officer or a Licensee or person engaged in distribution of electricity who is specifically empowered to exercise the powers of Telegraph Authority under the 1885 Act.

- ii) On such a recognition as Telegraph Authority, the matters relating to the right of the way, right to use the land and related aspects including the compensation payable to the owner of the land are to be governed entirely as per the provisions of 1885 Act and not as per Section of 67 of the 2003 Act nor as per Sections 12 to 18 of the Electricity Act, 1910 till the Works of Licensee Rules are framed by the State Government.
- iii) The purpose of conferring the powers of telegraph authority under Section 164 of the 2003 Act, on the licensee, is to place the licensee on a higher pedestal in view of the public interest involved. The Public interest is that there is a need for placing electric lines, electric plant for maintenance of supply to the consumers at large. Therefore, Sec 164 is a special

provision applicable only to those licensees who are by notification conferred with the powers of the Telegraph Authority under the 1885 Act. Section 67 of the 2003 Act is a general provision applicable to mere licensees who has not been conferred with the powers of Telegraph Authority under Telegraph Act.

- iv) Both Section 67 of 2003 Act and Section 164 of the 2003 Act read with Section 10 and 16 of the 1885 Act(Telegraph) deal with the same aspects namely placing of electric lines or electric plant etc. If the provision of the Section 67 of 2003 Act has to be followed, then there is no need to follow Section 164 of the 2003 Act. Similarly, if Section 164 of the 2003 Act is to be followed, then there is no need to follow Section 67 of the 2003 Act.
- v) In the case of Telegraph Authority, there is no question of obtaining any consent from the land owner unlike in case of non Telegraph authority governed by the provisions of 67 of the 2003 Act and Section 12 to

18 of Indian Electricity Act, 1910. Therefore, the State Commission's finding that it has got jurisdiction, is wrong.

7. In support of the above contention, the Learned Counsel for the Appellant has cited various authorities.
8. Mr. Buddy Ranganathan the learned counsel for the State Commission in reply has made the following submissions:-
 - i) Section 67 (4) of the 2003 Act is an independent statutory provision which confers upon the State Commission to decide the disputes arising under Section 67 of the 2003 Act. In the present case, the work of laying down the electric supply lines undertaken by the Appellant fall within the Section 67(1)(d) of the Act which provides to lay down and place electric supply lines, electric plant and other works. Therefore, the transmission lines being set up by the Appellant would clearly fall within the definition of electric plant, which would squarely be covered

under Section 67(1)(d) of the Act. When such works is covered by 67(1)(d) of the Act, the dispute arising from the laying down of those transmission lines would also be squarely covered by 67(4) of the Act, which confers powers only to the State Commission to decide those disputes.

- ii) Section 67 of the 2003 Act provides for licensee to lay down electric supply lines, etc. Under Section 67(2), the State Government may frame rules specifying the cases in which the consent of the owner shall be required for carrying out works. Under Section 67(4) when any difference of dispute arises under subsection (3) of Section 67 regarding the damage caused to land, matter shall be determined by the State Commission.
- iii) The notification issued under Section 164 of the 2003 Act is only for the limited purpose of being “necessary for the proper coordination of the works”. Hence, a notification under Section 164 cannot have the effect

of abrogating the Section 67(4) of the Act. Even the notification under 164 is issued, only those powers of Telegraph Authority “with respect to the placing Telegraph lines” would alone be available to the Appellant and no other powers of Telegraph Authority.

- iv) The powers of the State Commission under Section 67(4) of the Act were untrammelled either by any rules framed by the State Government under Section 67(2) or the notification issued under Section 164 of the Act. The State Government has not yet framed rules under Section 67(2) of the Act. In the absence of such rules, as per Section 185(2)(b), Sections 12 of Electricity Act, 1910 will continue to apply. Section 12 of 1910 Act provides for the prior consent of the land owner. As such it does not derogate the powers of the State Commission conferred under Section 67 of the Act.
- v) The non-obstante clause, which was there in Section 51 of the Indian Electricity Act, 1910 has been consciously omitted while introducing the analogous

Section 164 of 2003 Act. This is with a specific and obvious purpose namely not to exclude the application of the Section 67 of the Act.

vi) Section 164 of 2003 Act is not intended to take away the jurisdiction, powers and functions of the Appropriate Commission under 67(4) of the Act, even when some powers of Telegraph authority have been conferred upon the Appellant. Hence, the State Commission has got jurisdiction and as such the impugned order is legal.

9. In the light of the rival submissions made by the respective parties, question referred to above would arise for consideration.

10. Let us now quote the main and comprehensive question that arises for consideration.

“Whether the act of the Appellant in laying down the transmission lines, transmission plants etc, as a Transmission Licensee on the land of the 1st

Respondent without his consent is subject to the provisions of 67 of the 2003 Act by which the State Commission is conferred with the powers to decide the dispute notwithstanding the fact that the Appellant was duly empowered to exercise the powers of Telegraph Authority under Section 164 of the 2003 Act?"

11. Considering the importance and complex nature of the above question, we consider it necessary to break it in six simple questions. They are:
 - I. In the event of inconsistency, which of the two Acts, the Telegraph Act 1885 or the Electricity Act 2003, would prevail?
 - II. Whether provisions of Sections 67 and 68 would be applicable to the Appellant, who has been conferred with powers of the Telegraph authority under 1885 Act?

- III. What is the effect of absence of non-obstante clause in Section 164 of the 2003 Act?
 - IV. In the absence of rules under Section 67(2) of 2003 act, whether provisions of Section 12 to 18 of 1910 Act would apply and in particular, whether consent of the land owner would be required in respect of electric line laid by the Appellant who has been conferred with the powers of the telegraph authority under 1885 Act?
 - V. Whether notification under Section 164 of the 2003 Act would mean that the Appellant has become Telegraph Authority under 1885 Act and all his actions would be governed by the Telegraph Act 1885?
12. We would now deal with the above questions one by one. 1st question before us for our consideration is in the event of inconsistency, which of the two Acts namely the Telegraph Act 1885 or the Electricity Act 2003, would prevail ?

13. Before dealing with the above question, it would be proper to take note of the settled cardinal rules of interpretation of Statues, as this case involves the interpretation of Statutes. There are three cardinal rules of interpretation of statutes which would apply to the present case. They are:

- (i) The harmonious rule of construction is that all the parts of the Statute must be given their full meaning and no part of the Statute must be rendered redundant;
- (ii) In the event of an irreconcilable conflict between the provisions of two Statutes, the provisions of the special statute will override the provisions of the general statute;
- (iii) In the event of an irreconcilable conflict between a latter statute and an earlier statute, the provisions of the latter statute shall prevail;

14. These principles have been laid down in the judgement of the Hon'ble Supreme Court reported in Maharashtra Tubes

Ltd Vs State Industrial & Investment Corporation of Maharashtra Ltd and Another reported in (1993) 2 SCC 144.

15. In a recent landmark judgement in Gujarat Urja Vikas Nigam Ltd. Vs Essar Power Ltd, (2008) 4 SCC 735, the Hon'ble Supreme Court has held that *“Section 86(1)(f) of 2003 Act is a special provision and hence will override the general provision in Section 11 of the Arbitration and Conciliation Act 1996 for arbitration of disputes between the licensee and generating companies. It is well settled that special law overrides the general law.”*
16. In the present case, the 2003 Act is a special statute dealing with subject matter of electricity. Section 174 of the Electricity Act 2003 contains a non-obstante clause which provides that if there is any express conflict with any other Act, the provisions of the 2003 Act would prevail. The Telegraph Act 1885 does not contain any such non-obstante clause. Hence, if there is any inconsistency

between 2003 Act and the 1885 Act, the provisions of the 2003 Act shall prevail.

17. That apart, even if the Telegraph Act 1885 contained a non-obstante clause, the 2003 Act being a latter special statute dealing with the field of electricity and electrical works, the 2003 Act alone would prevail over the provisions of the 1885 Act. So, the 1st question is answered accordingly.

18. Next Question before us for our consideration is as to whether provisions of Sections 67 and 68 of Act,2003 would be applicable to the Appellant, who has been conferred with powers of the Telegraph authority under 1885 Act?

19. Sh M G Ramachandran, the Ld. Counsel for the Appellant submitted as follows:-

“Section 164 of the 2003 Act is a provision independent of Sections 67, 68, 69 of the 2003 Act and Sections 12 to 18

of the Indian Electricity Act, 1910. Section 164 of the 2003 Act operates in respect of persons, namely, Public Officer or a Licensee or a person engaged in the distribution of electricity who is specifically empowered to exercise powers of the Telegraph Authority under the 1885 Act. Once such recognition as a Telegraph Authority is notified, the matter relating to the right of way and right to use the land and other related aspects including nature and extent of compensation to the owner are entirely as per the 1885 Act and not as per Sections 67, 68 etc of the 2003 Act or Works of Licensees' Rules to be framed thereunder by the State Government or Sections 12 to 16, 18 and 19 of the Indian Electricity Act, 1910 till the Works of Licensees' Rules are framed by the State Government.”

20. For the purpose of analysing the above submission on the question framed above, it would be necessary to quote the relevant provisions of the **2003 Act, 1910 Act,** and

Telegraph Act **1885**. Let us now quote Section 67 of 2003

Act:-

67. (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 –

(a) ...

(b) ...

(c) ...

(d) to lay down and place electric lines, electrical plant and other works;

(e) to repair, alter or remove the same;

(f) to do all other acts necessary for transmission or supply of electricity.

(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 suggestion 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;

...

(3) A licensee shall, in exercise of any of the powers conferred by or under this Section and the rules made thereunder, cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him.

(4) 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.

(5) The Appropriate Commission, while determining any difference or dispute arising under this Section in addition to any compensation under sub-Section (3),

may impose a penalty not exceeding the amount of compensation payable under that sub-Section.

21. The reading of the the above Section (67 of the 2003 Act)

indicates that it provides the following:-

- a) Section 67(1) provides for a licensee to lay down, interalia, electric supply lines, electric plant and other works and to do all other acts necessary for transmission or supply of electricity.
- b) Under Section 67(2) the Appropriate Government can make rules with regard to the cases and circumstances in which the consent of the owner of the land is required to be given for carrying out those works and also relating to the determination of payment of compensation to the persons affected by the works.
- c) Section 67(3) provides for the licensee to cause as little damage and inconvenience as possible in carrying out the works and to make compensation for the said damage or inconvenience.

- d) Under Section 67(4) where any difference or dispute including the dispute over the amount of compensation arises under sub Section 3, the said dispute shall be enquired into and determined by the Appropriate Commission.
- e) Under Section 67(5), the State Commission while determining the said dispute can direct the licensee to pay compensation and in addition to that it can impose penalty also.

22. Let us now quote relevant portion of the Section 68 of the 2003 Act.

“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) ...

(6) ...

23. The perusal of the Section 68 of the 2003 Act would make it clear that it provides as follows:

I. Section 68(1) provides for mandatory prior approval of the Appropriate Government to erect and kept charged any over head electric line.

II. Section 68(2) provides for exception to requirement of prior permission of the Appropriate Government under section 68(1) in certain cases.

III. Section 68(3) mandates the Appropriate Government to impose certain conditions while granting permission under section 68(1).

24. Let us now quote Section 164 of the 2003 Act.

164. The Appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any, as the Appropriate Government may think fit to impose and to the provisions of the 1885 Act, (13 of 1885) any of the powers which the telegraph authority possesses under that Act with respect to the placing of Telegraph lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained.

25. According to this Section, the Appropriate Government may confer upon any public officer or licensee or any other person engaged in the business of supplying electricity, the powers which Telegraph authority possesses under the

1885 Act with reference to the placing or installation of the telegraph lines and posts for the transmission of electricity.

26. The case of the Appellant is that the Sections 67, 68 and 69 of the 2003 Act are not applicable to him as it has been conferred with powers of the Telegraph authority under 1885 Act by notification by the State Government under Section 164 of the Act. This Contention of the Appellant is completely misplaced.
27. It is admitted by the Appellant that on 7.5.2009, the State Government had accorded general approval to lay various overhead transmission lines at 33 KV and above to the Appellant under section 68 of the 2003 Act.
28. In *Ajay Munjal Memorial Trust Vs Power Grid Corporation of India* [BLJR) 007 (55)(2)], the Hon'ble High Court of Jharkhand, while narrating the facts of the case has recorded that:

“ Respondent No. 1 is a Central Transmission Utility and is a licensee under the 2003 Act (the Licensee for

short). The licensee is required to establish transmission system and to undertake transmission of electricity through inter-state transmission system. Therefore, by a notification, dated 24th December, 2003 issued under section 164 of the 2003 Act, the Ministry of Power, Government of India authorised the licensee to exercise all the powers vested in the Telegraph Authority under part III of the Telegraph Act 1885. Then a scheme for transmission line of about 418 kM was also approved on 14th January 2004 under Section 68 of the 2003 Act.”

29. From the above it is clear that the Appellant (the STU) as well as the Power Grid Corporation (the CTU), both despite being conferred with powers of the Telegraph Authority under 1885 Act by the Appropriate Governments, have been granted permission to establish over head lines as per mandatory requirement under Section 68 of the 2003 Act. Thus it is clear that provisions of Section 68 are binding also on the Appellant notwithstanding the notification under Section 164 of 2003 Act.
30. As regards applicability of Section 67 to the Appellant, the person conferred with powers of the Telegraph authority under the 1885 Act, it is noticed that the Central

Government has framed Works of Licensee Rules, 2006 under Section 67 of the 2003 Act. Rule 3 of these rules, inter alia, deals with prior consent of the land owner. Rule 3 of these rules is reproduced below:

“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) When making an order under sub-rule (1), the District Magistrate or the Commissioner of Police or the officer so authorised, as the case may be, shall fix, after considering the representations of the concerned persons, if any, the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.

(3) Every order made by a District Magistrate or a Commissioner of Police or an authorised officer under sub-rule (1) shall be subject to revision by the Appropriate Commission.

(4) Nothing contained in this rule shall effect the powers conferred upon any licensee under section 164 of the Act.”

31. From the above, it is seen that Sub-rule 4 of this Rule 3 provide that nothing in Rule 3(1) to (3) shall apply to the person conferred with powers of the Telegraph authority under 1885 Act. This explicit provision barring the application of Rule 3(1) to (3) also clarifies that other rules viz., Rule 4 to Rule 16 of Works of Licensee Rules, 2006 framed under Section 67(2) of the 2003 Act would apply to a person who has been conferred with powers of the Telegraph Authority under 1885 Act. Undoubtedly, these rules framed under section 67(2) of 2003 Act can be made applicable only if provisions of Section 67 are applicable to

persons such as the Appellant, who have been conferred with powers of the Telegraph authority under 1885 Act. Thus, the Appellant, being such a person is also liable to be governed by the provisions of Section 67 of the 2003 Act.

32. This position has been clarified in *Ajay Munjal Memorial Trust Vs Power Grid Corporation of India* [BLJR) 007 (55)(2)] referred above. In this case the Respondent, the Power Grid Corporation of India, CTU and transmission licensee, had been empowered to exercise the power of Telegraph Authority under Section 164. The Hon'ble High Court of Jharkhand has held that:

*“6. There appears to be some purpose behind provisions contained in Section 51 of the Indian Electricity Act 1910; Section 164 of the 2003 Act; and sub-rule (4) of Rule 3 of the Rules, 2006. For early completion of important projects, the power has been reserved with the appropriate government, to issue notification vesting powers of Telegraph Authority with the licensee, where the consent is not required, under Section 10 of the Telegraph Act 1885. Section 51 of the Indian Electricity Act 1910 has overriding effect over Section 12 of that Act. **Similarly, Section 164 read with Sub-rule (4) of the Rule 3 of Rules, 2006, has overriding affect over Rule 3(1) to (3)...”***

33. The matter had also been deliberated by High Court of Calcutta in *Calendula Realtors Private Ltd. Vs CESC Ltd.* in Writ Petition being No. 5827(w) of 2009 dated 25.8.2009. In this case the Respondent CESC is distribution licensee in Calcutta. It has been authorised to exercise powers vested in the Telegraph Authority under part III of the Telegraph Act 1885. It had also been permitted to establish an 220 kV over head transmission line under section 68 of the 2003 Act. While dealing with applicability of Section 67(2) and section 164 of the 2003 Act, the Hon'ble High Court observed that:

“42... In terms of sub-section (2) of Section 67, the appropriate Government has been authorized to frame rules in relation to cases and circumstances in which the consent in writing, inter alia, of the owner or occupier of the land shall be required for carrying out works, the nature and period of notice to be given by the licensee before carrying out works, the procedure and manner of consideration of objections and suggestions received in accordance with such notice, the authority which may grant permission in the circumstances where the owner or occupier objects to carrying out of works and determination and payment of compensation to persons affected by works under Section 67. The State Government has framed the W.B. Rules, 2006 in terms of power conferred by Section 67. Rule 3(4)

thereof, however, clearly mentions that nothing contained therein shall affect the powers conferred upon any licensee under Section 164 of the 2003 Act.”

34. It is, therefore, clear without any doubt whatsoever that Rules framed under section 67 (2) of the 2003 Act are applicable to all the licensees irrespective whether such licensee has been empowered to exercise powers of Telegraph Authority under section 164 of 2003 Act or not. Such Rules framed under Section 67(2) can be made applicable only if Section 67 (2) and in fact section 67 is applicable in totality. It cannot be the case that one sub-section of a section is applicable and other sub-sections are not applicable.
35. In view of above discussions it becomes evident that provisions of Section 67 and 68 would be applicable to all the licensees irrespective of whether they are empowered to exercise powers of the Telegraph Authority under section 164 of 2003 Act or not. The second question is answered accordingly.

36. Next question before us as to what is the effect of absence of non-obstante clause in Section 164 of the 2003 Act?
37. According to Appellant, the non-obstante clause in Section 164 of the 2003 Act has been removed since Section 12-18 of the 1910 Act were a comprehensive code and now the position has been left to be decided by the State Government under the Rules framed under Section 67(2) of the 2003 Act.
38. It is also submitted by the Appellant that the non-obstante clause was not incorporated in Section 164 of the 2003 Act because of the corresponding changes in Section 67 of the 2003 Act while incorporating the aspects of Section 12-18 of the Act, 1910 in Sections 67 and 68 etc. of the 2003 Act. The Appellant further states that Section 12-18 of the Act, 1910 contains a complete and comprehensive code including seeking of consent of the land owner but now, the position has been left to be decided by the State

Government by framing the Rules under Section 67 of the 2003 Act.

39. In short, it is the case of the Appellant that in the absence of the comprehensive provisions like in Section 12-18 of the Act, 1910, there is no need for providing a non-obstante clause in Section 164 of the 2003 Act.
40. On the other hand, it is the contention of the State Commission that Section 51 of the Act, 1910 contains non-obstante clause and this has been consciously omitted in Section 164 of the 2003 Act while incorporating the other part of the provisions of the Section 51 of the Act, 2010, there must be a purpose for such omission and that Parliament had intended that Section 164 should not be read in supersession to Section 67, 68 and 69 of the 2003 Act.
41. Section 51 of the Indian Electricity Act 1910 also dealt with the same subject matter as of Section 164 of the 2003 Act

i.e. ‘Exercise of power of Telegraph Authority in certain cases’. In order to appreciate the issue involved, it would be necessary to compare Section 164 of 2003 Act with Section 51 of the repealed Indian Electricity Act, 1910.

42. Section 51 of Act, 1910 is quoted below:-

“51. Exercise in certain cases of powers of telegraph authority – Notwithstanding anything contained in Sections 12 to 16 (both inclusive) and Sections 18 and 19, the Central Government in the case of inter-State transmission system and the State government in the case of intra-State transmission system, as the case may be, may, by order in writing, for placing of electric supply-lines, appliances and apparatus for the transmission of energy or for the purpose of telephonic or telegraphic communication necessary for the proper coordination of works, confer upon any public officer, Central Transmission Utility, State Transmission Utility, licensee, transmission licensee or any other person engaged in the business of transmission or supplying energy to the public under this Act, subject to such conditions and restrictions(if any) as the Central Government or the State Government, as the case may be, may think fit to impose, and to the provisions of the 1885 Act (3 of 1885), any of the powers which the telegraph-authority possesses under the 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.)”

43. As per Section 51 of Act, 1910, the powers have been conferred on the State Government to confer powers to any licensee for placing of electric supply lines, appliances, apparatus for the transmission of energy with the powers which telegraph Authority possesses under 1885 Act notwithstanding anything contained in Section 12 to 16 of the Act 1910, which requires the consent of the owner of the land. However, the new provision i.e. Section 164 of 2003 Act does not contain the said non-obstante clause.

44. Let us now quote Section 164 of the 2003 Act for comparison:

164. The Appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any, as the Appropriate

Government may think fit to impose and to the provisions of the 1885 Act, (13 of 1885) any of the powers which the telegraph authority possesses under that Act with respect to the placing of Telegraph lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained.

45. In the earlier provision namely 51 of the Indian Electricity Act 1910, as indicated above, there was a non-obstante clause. This non-obstante clause viz., *notwithstanding anything contained in Section 12 to 16 of Act, 1910*, gave overriding effect to Section 51 over provisions of sections 12 to 16 and 18 to the person conferred with powers of the telegraph authority under 1885 Act.
46. However, as indicated above, present Section 164 of the 2003 Act does not contain the said non-obstante clause. In such a situation, in the absence of non-obstante clause in Section 164 the question arises “as to whether the notification under Section 164 would have any overriding effect on any other provisions including Section 67 (4) of the 2003 Act?”

47. Let us now quote some decisions with reference to the introduction of non-obstante clause or removal of the same in the latter act.

(i) State of UP Vs Malik Zarid Khalid -1998 1 SCC 145

.....

No doubt, prior to the amendment, only building of which the Government was owner or landlord were excluded from the Act. But the legislature clearly intended a departure from the earlier position. If the intention was merely to extend the benefit to premises owned or let out by public corporations, it could have been achieved by simply adding a reference to such corporations in Section 2 (1) (a) and (b) as they stood earlier. Reading Section 2(1) (a) and (b) as they stood before amendment and the definition in Section 3 (o) side by side, the departure in language is so wide and clear that it is impossible to ignore the same and hold that the new definition was just a re-enactment of the old exemption.

.....

The amendment significantly omitted the crucial words present in the earlier legislation which had the effect of restricting the exclusion to tenancies created by the Government, either as owner or as landlord. Full effect must be given to the new definition in Section 3(0) and to the conscious departure in language in reframing the exclusion”.

.....

It does not explain why the legislature should have, while enacting the 1976 amendment, omitted certain operative words and used certain wider words instead. As we have pointed out earlier, if the idea had only been to add to the exclusion buildings owned or let out by public Section corporations, that result could have been achieved by a minor amendment to Section (2) (1) (a) as it stood earlier. A conscious and glaring departure from the previous language must be given its due significance".

(ii) *Judgement in AIR 1959 SC 586 Western India Theatres Vs Municipal Corpn Poona City*

.....

If the word "modify" is to be read as "reduce", then there could be no point in the 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 an expression of wider connotation so as to include not only reduction but also other kinds of alteration".

.....

"In our opinion the dropping of the word "reduce" and the introduction of the word "modify" in the body of Sec 60 of the Act under consideration clearly indicate an intention on the part of legislature to widen the scope of this Section and the High Court was right in so construing the same".

48. The ratio of these decisions is this:- 1) When the legislature clearly intended a departure from the earlier position, full effect must be given to new position taking note of the conscious departure in the language. 2) The change in the language must have been made with some purpose and the said purpose would be to use an expression of wider connotation. Bearing these principles laid down in the above decisions in mind, we have to deal with this aspect. It cannot be debated that non-obstante clause contained in Section 51 of the 1910 Act has been omitted in Section 164 with some purpose. This would indicate that the primacy has been given to the Rules which may be framed by the State Government. As a matter of fact, in the 'Works of Licensee Rules 2006', the Central Government introduced Rule 3 (iv) with a specific purpose of bringing back the effect of non-obstante clause occurring in Section 51 in order to override the effect of Rule (i) and (iii) which provides for consent of land owners.

49. This aspect had been also deliberated by the Hon'ble High Court of Jharkhand in Ajay Munjal case referred to in para 29 above. In this case Hon'ble High Court has held that "*Section 51 of the Electricity Act, 1910 had overriding effect over Section 12 of that Act. Similarly, Section 164 read*

with Sub-rule (4) of Rule 3 of the Rule, 2006, has overriding effect over Rule 3(1) to (3),”

50. Thus, the Central Government by framing the rules has expressly chosen to give overriding effect of notification under Section 164 over the requirement of the consent of the land owners. Under Section 164 of the 2003 Act, the State Government may accept the powers of the Telegraph Authority under the Telegraph Act subject to the modifications and limitations that may be thought fit. Therefore, it is for the State Government to decide as to what rules are to be framed and to what extent the powers of the Telegraph Authority were to be extended. Thus, it can be concluded that Section 164, as it stands in the absence of the Rules framed by the State Government under Section 67(2) of 2003 Act does not have any overriding effect on any part of Section 67 of the 2003 Act.
51. To appreciate the controversy in a more appropriate perspective, it would be better to compare various

provisions of Sections 12 to 18 of the Indian Electricity Act 1910 with the provisions of Section 67(2) as given in Table 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

52. From the above table, it is clear that all the provisions of Section 12 to 16 of 1910 Act are duly covered under Rule 3 to Rule 9 of Works of Licensee Rules, 2006 framed by the Central Government under Section 67(2) of 2003 Act. Whereas, due to non-obstante clause, Section 51 of 1910 Act had power to override the provisions Sections 12 to 16 of 1910 Act. The absence of non-obstante clause in Section 164 of 2003 Act made it subject to the rules framed

by the appropriate Government under section 67(2) of the 2003 Act. If the intention of law makers was to provide Section 164 with power to override other sections and to have same powers as Section 51 of the Indian Electricity Act 1910, , the Section 164 of the Act would have been worded differently i.e like the following *“Notwithstanding any thing contained in Section 67(2) or rules framed thereunder...”*

53. As we have quoted above, a close reading of the Sections of 67 and 164 of the 2003 Act along with Section 51 of the repealed 1910 Act, would bring out the following aspects:

(i) Unlike the repealed Section 51 of the Indian Electricity Act, 1910, Section 164 does not contain a non-obstante clause.

(ii) If the non-obstante clause appearing in the erstwhile Section 51 of the Act, 1910, was taken away by the legislature while enacting the Section 164 of the Act 2003,

it must be presumed that such omission was deliberately intended by the legislature and there must be some meaning for such omission.

(iii) The absence of non-obstante clause in Sec 164 would make it evident that Section 164 of the 2003 Act and any notification made there under would not have any overriding affect on any other provisions of the 2003 Act.

(iv) Thus, this question is answered by concluding that the provisions including Section 67 (4) of the 2003 Act is not affected by the notification under section 164 of the 2003 Act.

54. Next question for our consideration as to whether, in the absence of rules framed under section 67(2) of 2003 Act, provisions of section 12 to 18 of 1910 Act and in particular whether the consent of land owner under section 12 (2) of the 1910 would be required in respect of transmission line

being laid by the licensee who has been conferred with powers of the telegraph authority under 1885 Act?

55. Ld Counsel for the State Commission submitted that Section 67(2) of the Act provides for Rules to be framed by the State Government, in respect of the Consent of the landowner. Hence it is conceivable that Rules may be framed providing for consent of the landowner or Rules may be framed dispensing with the consent of the landowner. It is not disputed that the State Government has not yet framed Rules under Section 67(2) of the Act. In the absence of any Rules under Section 67(2) of the Act, Section 185(2)(b) must be given its full effect. The effect of Section 185(2)(b) is that Sections 12 to 18 of the Indian Electricity Act 1910 are specifically saved and will continue to apply till such time as Rules are framed under Section 67(2).
56. He further submitted that Section 12 of the Indian Electricity Act specifically provides for consent of the landowner.

There is nothing in Section 12 of the Indian Electricity Act which derogates from Section 67 of the Electricity Act 2003.

57. On the contrary, the Ld Counsel for the Appellant refuted the above contentions of the Respondent and submitted that once such recognition as a Telegraph Authority is notified, the matter relating to the right of way and right to use the land and other related aspects including nature and extent of compensation to the owner are entirely as per the 1885 Act and not as per Sections 67, 68 etc of the 2003 Act or Works of Licensees' Rules to be framed thereunder by the State Government or Sections 12 to 16, 18 and 19 of the Indian Electricity Act, 1910 till the Works of Licensees' Rules are framed by the State Government.

58. According to the Appellant, a licensee upon being notified as a Telegraph Authority for the purpose of placing of electric lines or electric plants for transmission of electricity etc, such a licensee or person will be entirely governed by the provisions of the 1885 Act in regard to such activities of

placing electric lines or electric plants. Powers of Telegraph Authority have been enumerated in Section 10 and 16 of the Telegraph Act 1885. In terms of these Sections, the Telegraph Authority has unfettered right to enter any immovable property to place a telegraphic line and consent of land owner is not required.

59. Let us now refer to Section 185 of 2003 Act. Section 185 is quoted as under:-

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

(2) Notwithstanding such repeal,-

(a) ...

(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.”

60. Thus, Section 185(2)(b) of 2003 Act saves the provisions under Section 12 to 18 of the Electricity Act, 1910 till the rules under Section 67 (2) of 2003 Act are framed by the Government. As indicated above, the Government of Maharashtra, the appropriate Government in the present case, has not yet framed such rules. Accordingly, by virtue of this section, the provisions of section 12 would apply.

61. Now let us examine Section 12 of Electricity Act 1910:

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

(a) ...;

(b) ...;

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

(d)

(2) Nothing contained in sub-Section(1) shall be deemed to authorize or empower to licensee, without the consent of the local authority or of the owner of 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 where under any electric supply-line or work has not already been lawfully laid down or placed by such licensee:

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

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

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

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

(5)...

62. The bare reading of the Section 12 of Act, 1910, as reproduced above, would make it clear that any licensee can lay down or place electric supply lines only with the consent of the owner of the land. If there is any objection on the part of owner, the District Magistrate can direct for removal of the same and impose adequate compensation.

63. Let us now quote Section 10 of 1885 Act:-

“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 purpose 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 posts; 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 or 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.

64. Section 10 of Telegraph Act 1885 confers powers to the Telegraph authority to place and maintain telegraph lines upon any immovable property and pay full compensation to all the persons interested for any damage caused by them by the reason of the exercise of these powers. It is to be noticed that this section by itself does not convey that the prior consent of the land owner would not be required while laying telegraph line. However, Section 16 (1) of the 1885

Act provides that if the exercise of powers under Section 10 is restricted or obstructed, the District Magistrate may by order permit the Telegraph Authority to carry out such works. Relevant portion of section 16 is reproduced below:

“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 the Telegraph Authority shall be permitted to exercise them....”

65. No doubt plain reading of section 10 read with section 16(1) of 1885 Act would suggest that the Telegraph Authority has the right to enter upon the immovable property without prior consent. But, in the absence of non-obstante clause, Section 164 of 2003 Act does not confer such overriding powers to any licensee who has been authorised to exercise powers of Telegraph Authority and the licensee will have to carry out its works within the parameters indicated by the rules framed by the State Government

under Section 67(2) of the 2003 Act. In the absence of such rules, provisions of section 12 of 1910 Act by virtue of section 185(2)(b) would apply. Therefore, in terms of section 12(2) of the Indian Electricity Act 1910, prior consent of land owner would be required.

66. The State Government in the present case has not yet framed the Rules under Section 67 (2) of the Act. Section 67 (2) (a) of the Act provides for Rules to be framed even in respect of the consent of the land owners. As mentioned earlier, in the absence of Rules under Section 67 (2) of the Act, Section 185 (2) (b) shall be given its full effect. The effect of the said Section is that Section 12 of the Act, 1910 is specifically saved and will continue to apply till the rules are framed under Section 67 (2) of the 2003 Act. Section 12 of the Electricity Act, 1910, as quoted above, specifically provides for the consent of the land owner. There is nothing in Section 12 of the Act, 1910 which derogates the powers of the Commission under Section 67 of the 2003 Act.

67. As observed earlier, the provisions of the Section 12 to 18 of the 1910 Act are applicable in terms of Section 185 (2) (b) of the 2003 Act. Therefore, by virtue of Section 174 of the 2003 Act, Section 12 to 18 of the 1910 Act would have the precedence over any other legislation. This would make it clear that assuming that there was a conflict between the provisions of the Telegraph Act and the provisions of the 1910 Act, the latter Act would prevail.
68. According to the Appellant, the purpose of vesting the powers of a Telegraph Authority under Section 164 of the Act is to place the licensee or the person specified in Section 164 in a higher pedestal in view of the public interest involved and Section 164 cannot be interpreted in a manner that a licensee/ person who is vested with the powers of Telegraph Authority gets into onerous position of having to follow both the provisions of the 1885 Act as well as the provisions of Sections 67 of the 2003 Act

69. The above contention of the Appellant even though has some force, cannot not be countenanced in order to take away the jurisdiction of the Commission. As a matter of fact, the remedy lies with the State Government. The State Government may frame appropriate rules to give overriding powers to section 164 and may restore the 'higher status' of the person conferred with powers of the Telegraph authority under 1885 Act. Till such rules are framed by the State Government, provisions of Section 12 to 18 of the Indian Electricity Act 1910 would continue to be followed.

70. Now let us consider the question of consent of the land owner. The relevant provisions as referred to above and the fact situation as explained above in the present case would give the following details:

- (i) As mentioned earlier, the State Government has not framed Rules under Section 67 of the Act.

- (ii) It is to be noticed as indicated above, that Section 67 (2) (a) of the Act provides for Rules to be framed even in respect of the consent of the land owner. Therefore, it is conceivable that relevant rules will be framed either for providing for the consent of the land owner by the State Government or dispensing with the consent of the land owner. In the absence of such rules, Section 185 (2) (b) must be given its full effect. If it is so, Section 12-18 of the Act, 1910 are specifically saved and the same will continue to apply till such time the Rules are framed under Section 67 (2) by the State Government.
- (iii) Section 12 of the Act, 1910 which is saved by the specific clause, specifically provides for the consent of the land owner. If we look at Section 10 and 11 of the Telegraph Act, it is noticed that there is nothing in those Sections to the effect that no consent is required. As such, there is no conflict of the

- (iv) between Section 12 of the Act 1910 and Section 10 and 11 of the Telegraph Act. By way of proper interpretation, both Section 10 of the Telegraph Act and Section 12 of the 1910 Act must be given their full meaning on the principle of harmonious construction.
- (v) If both the sets of provision are given their full meaning, it would mean that the licensee may carryout any of the activities under Section 10 of the Telegraph Act, subject to the consent of the land owner under Section 12 of the Act, 1910.
- (vi) As indicated above, assuming that there is a conflict between Section 10 of the Telegraph Act and Section 12 of the 1910 Act, Section 12 of 1910 Act would prevail. This question is answered accordingly.

71. Next issue before us to be addressed as to Whether notification under Section 164 of the 2003 Act would mean

that the Appellant has become Telegraph Authority under 1885 Act and all his actions would be governed by the Telegraph Act 1885.

72. In the light of our discussions and conclusions referred to above, we feel that this issue has become, somewhat redundant. However, we would like to address it for the sake of completeness.

73. In order to address this issue it would be worthwhile to reproduce relevant portion of section 164 of the 2003 Act.

164. Exercise of powers of Telegraph Authority in certain cases.—*The Appropriate Government may, ... for the placing of electric lines or electrical plant for the transmission of electricity ..., confer upon any ..., licensee ... any of the powers which the telegraph authority possesses under that Act { portions not relevant in present case removed}*

74. Thus, Section 164 confers upon the Appellant powers of the Telegraph Authority. Powers of the Telegraph Authority have enumerated in section 10 of the Telegraph Act 1885. Section 16 of 1885 Act deals with the powers of District Magistrate to permit the Telegraph Authority to exercise

powers granted under section 10 and to adjudicate upon the disputes related to compensation.

75. On going through the relevant provision we are of the view that issuance of notification under Section 164 of 2003 Act conferring powers of Telegraph Authority upon a licensee, would not mean that the entire Telegraph Act 1885 is bodily lifted and incorporated into the Electricity Act 2003. In other words, it can be stated that only the provisions of the Telegraph Act dealing with the powers of a Telegraph Authority namely Section 10 and 11 of the Telegraph Act 1885 thereof may be read as part of the Section 164 of the 2003 Act.

76. Merely because Section 164 empowers State Government to confer on the licensee certain powers which can be exercised by a Telegraph authority under the Indian Telegraph Act, it cannot be construed that all the provisions of the Telegraph Act 1885 are to be incorporated into Indian Electricity Act. In other words, simply because some

of the powers of Telegraph Authority under the Indian Telegraph Act 1885 are conferred on a licensee under the Electricity Act, it does not follow that all the rights of a licensee under the Indian Electricity Act are to be governed under the provisions of the Indian Telegraph Act. To put it shortly, the licensee, under the Electricity Act 2003 cannot be construed to be a Telegraph authority under the Telegraph Act.

77. In this context, it would be appropriate to quote the decision reported in AIR 1970 SC 491 (Patna Electric Supply Co Vs Patna Municipality), cited by the Learned Counsel for the State Commission in order to substantiate his plea that merely because some powers have been conferred under the Telegraph Act on a Transmission Licensee, the said Licensee namely the Appellant cannot be considered to be a Telegraph Authority so as to be governed by the provisions of the Telegraph Act. In this decision, the Hon'ble Supreme Court has rendered two specific findings:

(i) merely because certain powers of the Telegraph Act have been conferred on a Licensee, it does not mean that the Licensee has become a Telegraph Authority as defined in the Telegraph Act and (ii) merely because certain powers of Telegraph Authority are available to a Licensee, it does not mean that all the rights and liabilities of the Licensee would be governed by the Telegraph Act.

78. Let us now quote relevant observations made by the Hon'ble Supreme Court reported in AIR 1970 SC 491. Relevant paragraphs 6 & 8 are reproduced below:

“6. Merely because some of the powers conferred under the Indian Telegraph Act on the Telegraph Authority could be conferred on a licensee under the Indian Electricity Act, it does not follow that all the rights and liabilities of a licensee under the Indian Electricity Act are governed by the provisions of the Indian Telegraph Act”

“8. Before this provision can be called into aid for the determination of any dispute, the dispute must arise between the Telegraph Authority and a local authority. A licensee under the Indian Electricity Act cannot be considered as a Telegraph Authority an expression defined in Sec 3 (6) of the Telegraph Act. Further that

the disputes that can be referred to arbitration under that provision are only those referred to in that Section and no other”.

79. This decision was rendered by the Hon'ble Supreme Court while interpreting Section 51 of the 1910 Act which is parimateria new Section 164 of the 2003 Act.
80. As indicated above, Section 51 contains a non-obstante clause whereas the present Section 164 of the Act 2003 has no such non-obstante clause. The finding of the Hon'ble Supreme Court is that the licensee cannot construe to be a Telegraph Authority even under Section 51 of the 1910 Act. If such were the legal position under Section 51 of the 1910 Act which contains a non-obstante clause, the legal position could be the same even under notification which have been issued under present Section 164 of the 2003 Act which does not contain the said non-obstante clause.
81. The question is answered accordingly.

82. In the above discussion dealing with the questions framed, we have concluded and reiterated as below:

- I. In case of any inconsistency in 2003 Act and 1885 Act, the provisions of 2003 Act, being a special act, would prevail;
- II. Sections 67, 68 and 164 of the 2003 Act are independent sections. The sections 67 and 68 would be applicable to the Appellant as well;
- III. In the absence of non-obstante clause, Section 164 of the 2003 act do not have overriding powers over Section 67 and 68 of 2003 Act;
- IV. Since the State Government has not framed works of licensee rules under Section 67(2) of 2003 Act, provisions of 12 to 18 of 1910 Act would apply. Accordingly, in terms of section 12(2) of 1910 Act, the consent of land owner would be required;

V. Mere notification under section 164 of the 2003 Act does not make the Appellant a Telegraph Authority. As such, the Appellant would continue to be governed by the provisions of 2003 Act.

83. In the light of above conclusion, we would now like to address the main comprehensive question framed by us as to “Whether the State Commission has got jurisdiction under Section 67(4) of 2003 Act to adjudicate upon the dispute between Transmission Company (Appellant) on whom the powers of Telegraph authority have been conferred under Section 164 of the 2003 Act for placing electric supply lines in the land and the person (1st Respondent) whose land has been used by the said transmission company for placing those electric lines without obtaining his consent?”

84. The Appellant has placed reliance on Section 16 of the Telegraph Act 1885 to contend that the State Commission will have no jurisdiction under Section 67(4) of the 2003

Act. As observed earlier, merely because a notification is issued under Section 164 of the 2003 Act, the Appellant cannot be termed as Telegraph authority. If the Appellant is not a Telegraph authority, then Section 16 of the Telegraph Act will have no application. If Section 16 of Act, 1885 does not apply, then there is no conflict between the provisions of the 1885 Act and Sec 67 (4) of the 2003 Act. Even assuming that there is a conflict between Section 16 of the 1885 Act and Section 67 (4) of the 2003 Act, Section 67 (4) of 2003 Act would supersede Section 16 of the Telegraph Act 1885 , by virtue of Section 175 of the 2003 Act.

85. The power of the State Commission to decide any difference or dispute under Section 67 (4) of the Act is not curtailed by the notification issued under Section 164 of the Act. Section 67 (4) of the Act is an independent and stand alone, provision which must be given its full effect.

86. The Appellant has contended that the powers of the Commission under Section 67 (4) of the 2003 Act is limited to decide the question of the compensation alone. This contention has no basis. Perusal of Section 67 (4) would indicate that appropriate Commission will decide the issues including the amount of compensation. It means that the powers of the State Commission under Section 67 (4) of the Act extend to adjudication of all the disputes or all the differences including the quantum of compensation.

87. In this context, we would bear in our mind, two important aspects:

(i) The notification under Section 164 of the 2003 Act does not have the cover of the non-obstante clause of Section 51 of 1910 Act. Hence, the provisions of the powers of the Telegraph Authority, shall have no precedence over Section 12 of the Act, 1910.

(ii) 2003 Act is a special Act pertaining to electricity. It will necessarily over ride the provisions of the Telegraph Act 1885 which is a general Act. Even assuming that Telegraph act 1885 was also a special Act, the 1910 Act being a later special Act, would over ride the 1885 Act.

88. As indicated above, in the absence of the rules framed for works of licensee by State of Maharashtra under section 67(2) of 2003 Act, the State Commission has to necessarily invoke the powers under Section 67 (4) of the Act to deal with the dispute taking into consideration Section 12 of the Act 1910. In other words, Section 67 as a whole would have application of works of licence including establishments of transmission lines by a licensee even though the said licensee has been conferred upon powers of telegraph authority under Section 164 of the Act, 2004.

89. The Learned Counsel for the Appellant has also cited various decisions in support of his contentions. They are as follows:

- (i) *The Judgement of SC reported in Kerala State Electricity Board Vs Livisha and Others (2007) 6 SCC 792;*
- (ii) *The judgement of Andhra Pradesh High Court in GVS Ramakrishna Vs. A.P Transco and Others 2009 ELR (AP) 517;*
- (iii) *The Judgement of Madras High Court in Dr. M. Poonuswamy Vs. Chairman Tamil Nadu Electricity Board (2009) 8 MLJ 803;*
- (iv) *The Judgement of Jharkhand High Court in Ajay Munjal Memorial Trust Vs. Power Grid Corporation of India (2007) 2 BLJR 1798 (Jhar);*
- (v) *The Judgement of Calcutta High Court in Calandula Realtors Vs CESE Ltd & Ors WP No.5827 (W) of 2009 dated 25.8.2009;*
- (vi) *The Judgement of Karnataka High Court in N M Giri Vs AMR Power Private Limited & Ors (2009) 6 Kar LJ 267;*
- (vii) *The Judgement of Madras High Court in T. Naranynan Vs District Magistrate and Others (2008) 4 MLJ 1024;*
- (viii) *The Judgement of Madras High Court in T.S.T. Kazanavi Vs Tamil Nadu Electricity Board & Ors (2008) 2 MLJ 703;*
- (ix) *The Judgement of Madras High Court in P. Balamani Vs District Majistrate (2008) 4 MLJ 22;*
- (x) *The Judgement of MP High Court in Rajendra Prasad Tiwari Vs State of Madhya Pradesh (AIR 2007) MP 115;*

(xi) *The Judgement of Bombay High Court in Maharashtra State Electricity Board Vs. Janandhan Bhagsaheb Desai (1997) 2 MH LJ 462;*

90. These decisions had dealt with various other issues and never dealt with the issue in question. In other words, none of these judgements in anyway would deal with the powers and authority of the State Commission under Section 67 (4) of the 2003 Act.

91. On the other hand, as pointed out by the Learned Counsel for the State Commission, AIR 1970 SC 491 would squarely be applicable in the light of the findings given by the Hon'ble Supreme Court to the effect that merely because of certain powers of the Telegraph Authority are conferred with the Transmission licensee, it does not mean that the said licensee can be considered as a Telegraph Authority so as to govern all the rights and liabilities under the Telegraph Act.

92. As mentioned earlier, the 2003 Act and 1910 Act are special Acts pertaining to the electricity. Telegraph act 1885

is to be treated as a general Act so far as subject matter electricity is concerned. Therefore, provisions of 2003 Act as a special Act will override the provision of the Telegraph Act 1885 being a general Act. Even assuming that 1885 Act is also a special Act, then the 1910 Act being a later Special Act; the provisions of the said Act alone will survive and override the provisions of the 1885 Act.

93. At this stage we would like to clarify one more thing. Prior to enactment of 2003 Act, 1910 Act was in force. Section 51 of this Act had cover of non-obstante clause and had overriding effect on section 12 of that Act. Both section 12 of 1910 Act and section 16 of 1885 Act empowered the District Magistrate to resolve disputes in regard to consent of land owner and compensation payable to him. There was no inconsistency between these two provisions. Thus it did not matter that whether dispute is resolved under 1910 Act or 1885 Act. However, after enactment of 2003 Act, Indian Power Sector is governed by this Act.

94. Section 67(4) confers power upon the Appropriate Commission to resolve disputes between land owner and the licensee. This power is untrammelled and is not impaired by the rules framed under Section 67(2). Rule framed under section 67(2) would govern the working of licensee and not the Commission. For example “Works of Licensee rules, 2006” framed by the Central Government under Section 67(2) of the 2003 Act outlines the functioning of licensee in certain matters. These rules in no way restrict or restrain the powers of the Commission to resolve any difference or dispute arising out of Section 67. Sub-rule (4) of rule 3 of the 2006 rules restricts the operation of sub-rules (1) to (3) of this rule 3. By virtue of this sub-rule (4) prior consent of the land owner would not be required by the person who had been conferred with powers of the telegraph authority under 1885 Act. Even in this case, any dispute arising in regard to compensation would have to be resolved by the State Commission.

65. Summary of Our Findings

- a) The 2003 Act is a special statute dealing with subject matter of electricity. Section 174 of the Electricity Act 2003 contains a non-obstante clause which provides that if there is any express conflict with any other Act, the provisions of the 2003 Act would prevail. The Telegraph Act 1885 does not contain any such non-obstante clause. Hence, if there is any inconsistency between 2003 Act and the 1885 Act, the provisions of the 2003 Act shall prevail.**
- b) Provisions Section 67 and 68 of 2003 Act would be applicable to all the licensees irrespective of whether they are empowered to exercise powers of the Telegraph Authority under section 164 of 2003 Act or not.**
- c) It cannot be debated that non-obstante clause contained in Section 51 of the 1910 Act has been purposely omitted in Section 164 of 2003 Act. This would**

indicate that the primacy has been given to the Rules which may be framed by the State Government. As a matter of fact, in the 'Works of Licensee Rules 2006', the Central Government introduced Rule 3 (4) with a specific purpose of bringing back the effect of non-obstante clause occurring in Section 51 in order to override the effect of sub-rules (1) to (3) of Rule 3 which provides for consent of land owners.

d) Thus, the Central Government by framing the rules has expressly chosen to give overriding effect of notification under Section 164 over the requirement of the consent of the land owners. Under Section 164 of the 2003 Act, the State Government may accept the powers of the Telegraph Authority under the Telegraph Act subject to the modifications and limitations that may be thought fit. Therefore, it is for the State Government to decide as to what rules are

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

e) If the intention of law makers was to provide Section 164 with power to override other sections and to have same powers as Section 51 of the Indian Electricity Act 1910, the Section would have been worded differently and would have started as *“Notwithstanding any thing contained in Section 67(2) or rules framed thereunder...”*

f) The provisions of the Section 12 to 18 of the 1910 Act are applicable in terms of Section 185 (2) (b) of the 2003 Act. Therefore, by virtue of Section 174 of the 2003 Act, Section 12 to 18 of the 1910 Act would have the precedence over any other legislation. This

would make it clear that even assuming that there was a conflict between the provisions of the Telegraph Act, 1885 and the provisions of the 1910 Act, the latter Act would prevail.

g) The State Government may frame appropriate rules to give overriding powers to section 164 and may restore the 'higher status' of the person conferred with powers of the telegraph authority under 1885 Act. Till such rules are framed by the State Government, provisions of Section 12 to 18 of the Indian Electricity Act 1910 would continue to be followed.

h) Merely because certain powers of the Telegraph Act have been conferred on a Licensee, it does not mean that the Licensee has become a Telegraph Authority as defined in the Telegraph Act. Simply because certain powers of Telegraph Authority are available to a Licensee, it does not mean that all the rights and

liabilities of the Licensee would be governed by the Telegraph Act.

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

95. In view of our above findings, we do not find any ground to interfere with the impugned order of Maharashtra Electricity Regulatory Commission dated 7.10.2009, which is perfectly legal.

96. Hence, the Appeal being devoid of merit is dismissed. However, there is no order as to cost.

97. Pronounced in the open court today the 7th Sept, 2011.

(V.J. Talwar)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 07th September, 2011

REPORTABLE/NON-REPORTABLE