**BEFORE THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION,LUCKNOW**

**Petition No.: 1131/2016**

**Quorum**

1. Shri Desh Deepak Verma, Chairman

2. Shri S K Agarwal, Member

**IN THE MATTER OF:**

A writ order or direction before the High Court ,in the nature of certiorari quashing the impugned order dated 25.4.2016 passed by the District Magistrate, Sonebhadra regarding construction/erection of transmission line of 400 KVA Double Circuit DD line ‘B’ – ‘D’ constructed by, UPPTCL/Anpara Thermal Power Project which is possible through the residential/agricultural premises of the petitioners.

**Petitioners**

1. Shri Ram Preet, S/o Shri Golhar, Village Kuldomri (Tola- Mamuar/Dibulganj) Tehsil Dudhi, Pargana Singrauli Distt. Sonebhadra U.P.
2. Shri Dalsingar Shukla S/o Late Santdhari, Village Kuldomri (Tola- Mamuar/Dibulganj) Tehsil Dudhi, Pargana Singrauli Distt. Sonebhadra U.P.
3. Shri RambanshShukla S/o Late Santdhari, Village Kuldomri (Tola- Mamuar/Dibulganj) Tehsil Dudhi, Pargana SingrauliDistt. Sonebhadra.
4. Shri Banarsi Prasad S/o Late Badri Prasad, Village Kuldomri (Tola- Mamuar/Dibulganj) Tehsil Dudhi, ParganaSingrauliDistt. Sonebhadra U.P.
5. Shri Tulsi Ram S/o Bahoran, Village Kuldomri (Tola- Mamuar/Dibulganj) Tehsil Dudhi, ParganaSingrauliDistt. Sonebhadra U.P.
6. Shri Ram S/o ShriNoharBharti, Village Kuldomri (Tola- Mamuar/Dibulganj) Tehsil Dudhi, ParganaSingrauliDistt. Sonebhadra U.P.
7. Shri Ram JiyawanShukla S/o Late SantdhariShukla, Village Kuldomri (Tola- Mamuar/Dibulganj) Tehsil Dudhi, ParganaSingrauliDistt. Sonebhadra U.P.
8. Shri ShankhLalBharti S/o ShriLalman, Village Kuldomri (Tola- Mamuar/Dibulganj) Tehsil Dudhi, ParganaSingrauliDistt. Sonebhadra U.P.
9. Shri Prem Chandra Bharti S/o Shri Ball Ram Bharti, Village Kuldomri (Tola- Mamuar/Dibulganj) Tehsil Dudhi, ParganaSingrauliDistt. Sonebhadra.
10. Shri Chinta Ram S/o ShriGolhar, Village Kuldomri (Tola- Mamuar/Dibulganj) Tehsil Dudhi, ParganaSingrauliDistt. Sonebhadra U.P.
11. Smt. Sugamati W/o Shri Ram Charan,VillageKuldomri (Tola- Mamuar/Dibulganj) Tehsil Dudhi, ParganaSingrauliDistt. Sonebhadra U.P.
12. Shri Ram RatanBharti S/o ShriLolar, Village Kuldomri (Tola- Mamuar/Dibulganj) Tehsil Dudhi, ParganaSingrauliDistt. Sonebhadra U.P.
13. Shri Ahutosh S/o Dr. R. N. Sharma, Village Kuldomri (Tola- Mamuar/Dibulganj) Tehsil Dudhi, ParganaSingrauliDistt. Sonebhadra U.P.
14. Shri Rambilash S/o Shri Bali Ram Bharti, Village Kuldomri (Tola- Mamuar/Dibulganj) Tehsil Dudhi, ParganaSingrauliDistt. Sonebhadra U.P.
15. Shri Lalji S/o ShriBahoran, Village Kuldomri (Tola- Mamuar/Dibulganj) Tehsil Dudhi, ParganaSingrauliDistt. Sonebhadra, U.P.

Versus

**Respondents**

1. Secretary (Power), Union of India, Ministry of Power, Govt. of India.
2. Chief Secretary, State of U.P., Govt. of Uttar Pradesh, Civil Secretariat, Lucknow.
3. Principal Secretary (Power), State of U.P., Govt. of Uttar Pradesh, Civil Secretariat, Lucknow.
4. Managing Director, Uttar Pradesh Power Corporation Ltd.
5. Chief General Manager, Anpara Thermal Power Project, Anpara.
6. Managing Director, Uttar Pradesh Power Transmission Corporation Ltd.
7. District Magistrate, Sonebhadra.

 **ORDER**

**(Date of Hearing: July 04, 2017)**

The Petitioners Shri Ram Preet & Others, Residents of Gramsabha Kuldomri Tola, Dibulganj Pargana Singrauli, Tehsil Dudhi, District Sonbhadra have filed Petition No.1131/2016 before the Commission being affected from construction work of transmission line of 400 KVA Double Circuit DD line ‘B’ – ‘D’ constructed by, UPPTCL/Anpara Thermal Power Project which is passing through the residential/agricultural area of the petitioners, as directed by Hon’ble High Court in its order dated 22.7.2016 in Writ Petition No. 33382 of 2016.

 The Hon’ble High Court order dated 22.7.2016 is as follows:

“In view of the above, we are of the considered opinion that once there is a full-fledged mechanism provided for whereby the petitioners have got efficacious alternative remedy to approach the appropriate Commission as per the provisions contained under Section 67(4) of the Electricity Act, 2003, this Court has no reason or occasion to entertain this writ petition. The relief that has been so prayed by the petitioners in this writ petition cannot be accorded by this Court in the writ jurisdiction. The petitioners may approach the appropriate commission for redressal of their grievance.

Accordingly, the writ petition was **disposed of.**

In view of the above orders of the Hon’ble High Court the Petitioners filed a Petition No. 1131/2016 dated 2.9.2016 before the Commission.

During the hearing on 07.12.2016, being the first hearing in the above matter, the Petitioners Shri Ram Preet & Others represented by their Advocate prayed before the Commission for the enhancement of their Compensation, as they are not provided with adequate compensation and only crop compensation is given to them which is unjustified.

The Commission directed the Petitioners to submit the survey plan of all the 15 Petitioners premises clearly showing the impact of laying of transmission line giving exact details of land and crop affected so as to decide the issue after considering the impact on each petitioner.

The Commission further directed the Petitioners to give a copy of the survey to Uttar Pradesh Power Transmission Corporation Ltd & Anpara TPS within 2 weeks and directed the respondents to file the Counter in next 2 weeks from receiving the survey.

During the hearing on 30.5.2017 the respondent counsel submitted that by Govt. of India / Ministry of Power guidelines regarding compensation have not been followed by the respondent while granting the compensation and further submitted that respondents may be directed to pay the compensation in regard to right of way for transmission lines as per guidelines issued by Govt. of India / Ministry of Power dated 15.10.2015 and the provision of sub-section (e) of Section 67 (2) of the Electricity Act, 2003. The petitioners further submitted that as per the judgement of Hon’ble Apex Court in Kerala State Electricity Board Vs. LIVISHA, (SLP (C) 6451/06) it has been held that the owner of a land would be entitled to claim compensation on the basis of various factors and also clarifies regarding amount of compensation for the trees cut and removed and agricultural crop damages which should be paid by authorities depending upon the facts and circumstances of each case and to determine compensation payable to the party on the basis of the yield from the trees by applying 8 years’ multiplier.

The Commission directed the petitioners to calculate and submit the computation of amount of compensation in light of the guidelines dated 15.10.2015 issued by Govt. of India / Ministry of Power within 15 days with a copy to the respondent to file the Counter / WS in the next 15 days with a copy to the petitioner.

During the hearing on 4.7.2017 the petitioner submitted the calculation of the amount of compensation in the light of guidelines issued on 15.10.2015 by Govt. of India / Ministry of Power.

The Commission finds that the guidelines issued by Ministry of Power, GoI on 15.10.2015 for payment of compensation in regard to right of way for transmission line are aimed to resolve the right of way issues in laying the transmission lines and also provide reasonable and appropriate compensation to the landowners as they suffer on account of such erection of lines on their land. The Commission observed that Principal Secretary, GoUP was part of the Committee, constituted for the purpose of making recommendation in this regard and the recommendation of this Committee have been annexed to these guidelines dated 15.10.2015.

It may be mentioned here that during the proceedings of the said Committee, Principal Secretary Uttar Pradesh had submitted as follows:-

“The state was ready to pay the compensation as decided by the district authority and hence suggested there should be a mechanism so that such compensation be pass through as project cost.”

At the end of the recommendation, the discussions with various State Governments have been summarised and the view of various States have been classified in four categories as indicated below:

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| --- | --- |
| Category | Name of States |
| Category – I: States agreeing for payment of compensation for tower base and part compensation for RoW corridor  | Odisha (#), Maharashtra(#), Uttarkhand, Punjab |
| Category – II: States agreeing for payment of compensation for tower base and no compensation for RoW corridor | Telangana, Andhra Pradesh |
| Category – III: States suggesting that decision should be left with State Govt. to decide | Madhya Pradesh, Gujrat, Uttar Pradesh. |
| Category – IV: State to inform later | Meghalaya, Nagaland |

Ever since, the matter is pending decision in U.P. Here, it would be worthwhile to go through the important paras of the guidelines dated 15.10.2015 which are as follows:

**Quote**

“The Recommendations made by the Committee are hereby formulated in the form of following guidelines for determining the compensation towards “damages” as stipulated in section 67 and 68 of the Electricity Act, 2003 read with Section 10 and 16 of Indian Telegraph Act, 1885 which will be in addition to the compensation towards normal crop and tree damages. This amount will be payable only for transmission lines supported by a tower base of 66 KV and above, and not for sub-transmission and distribution lines below 66 KV.

1. Compensation @ 85% of land value as determined by District Magistrate or any other authority based on Circle rate / Guideline value / Stamp Act rates for bower base area (between four legs) impacted severely due to installation of tower/pylon structure.
2. Compensation towards diminution of land value in the width of Right of Way (RoW) Corridor due to laying of transmission line and imposing certain restriction would be decided by the States as per categorization/type of land in different places of States, subject to a maximum of 15% of land value as determined based on circle rate/Guideline value/Stamp Act rates.
3. In areas where land owner/owners have been offered/ accepted alternate mode of compensation by concerned corporation / Municipality under Transfer Development Rights (TDR) policy of State, the licensee/Utility shall deposit compensation amount as per (i) & (ii) above with the concerned Corporation/ Municipality/ Local Body or the State Government.
4. For this purpose, the width of Row corridor shall not be more than that prescribed in the table at Annex-2 and shall not be less than the width directly below the conductors.

Necessary action may kindly be taken accordingly. These guidelines may not only facilitate an early resolution of RoW issues and also facilitate completion of the vital transmission lines through active support of State/UT administration.

All the States/UTs etc. are requested to take suitable decision regarding adoption of the guidelines considering that acquisition of land is a State subject.”

**unquote**

It seems that while several States (Odisha, Maharashtra, Uttarkahand, Punjab, West Bengal, Bihar, Karnataka, Kerala, Jharkhand) have already adopted these guidelines, U.P. inspite of agreeing in the meeting with the underlying principles, has still not adopted the guidelines or issued any other consequential order. The matter, therefore hangs in balance while the farmers whose land has been taken away continue to suffer. Obviously, this is not a desirable situation. How could a farmer who is deprived of his rightful authority to till, cultivate or use his land for his whatever purposes, may also be deprived of the compensation for this. The land which is covered by tower base of an electric tower obviously cannot be used for any useful purpose and therefore the owner deserves the compensation.

In view of the above the Commission directs the Secretary, UPERC to write a letter to Chairman, UPPTCL / Principal Secretary, Department of Energy, Govt. of U.P to take up the matter with State Govt. to decide for payment of compensation in regard to right of way for transmission line taking into account the guidelines for payment of compensation towards damages to right of way for transmission lines, preferably within 30 days.

List in second half of September, 2017.

(S. K. Agarwal) (Desh Deepak Verma)

 Member Chairman

Place: Lucknow

Dated: 09.08.2017