

BEFORE THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

**Quorum**

Shri Desh Deepak Verma, Chairman

Shri I. B. Pandey, Member

**In the matter of:**

**Sub:** Admissibility of recall application for Petition No. 954/2014, 955/2014, 956/2014, 957/2014 and 958/2014 on the matter of compensation.

1. Shri Om Prakash S/o Latoor, Resident of Village Lukadarhi, Tehsil Rampur Maniharan, District Saharanpur.
2. Shri Jogendra S/o Naqli, Resident of Village Kachrai, Tehsil Rampur Maniharan, District Saharanpur.
3. Shri Satish Kumar S/o Shri Rajbal, Resident of Village Nanhera Kalan, Tehsil Rampur Maniharan, District Saharanpur.
4. Shri Bijendra S/o Badloo, Resident of Village Kachrai, Tehsil Rampur Maniharan, District Saharanpur.
5. Smt. Sita W/o Sri Mukesh, R/o Village Katla, Tehsil Rampur Maniharan, District Saharanpur.

-----Petitioners

Versus

1. State of U.P. through Secretary (Urja) Uttar Pradesh Shashan at Lucknow.
2. Managing Director, Uttar Pradesh Power Transmission Corporation Ltd., 14, Ashok Marg, Shakti Bhawan, Lucknow (UP).
3. Executive Engineer, U.P. Transmission Corporation, Saharanpur.

-----Respondents

**ORDER**

(Hearing on 16.10.2015)

The petitioner has filed the petition for the compensation because of erection of multi-legged High Voltage Transmission Tower in the field of the petitioner at Village Kachrai, Pargana and Tehsil Rampur, Maniharna, District Saharanpur. A line of 132 KVA of the High Tension wire is passing through and above the field of the petitioner, in which apart from normal crops like Wheat, Paddy and Sugarcane are grown up in a year time.

The petitioner has annexed the judgment of Hon'ble High Court in Writ – C No. – 18091 of 2014. The operative part of the order is as follows:

“In the present case, remedy is available to the petitioners as provided in Section 67(4), we grant liberty to the petitioners to espouse the remedy. If the petitioners submit a claim to the Appropriate Commission within a period of one month from today, we direct that the claim may be dealt with in accordance with law as expeditiously as is possible.

The writ petition is, accordingly, disposed of.”

In view of above order the petitioner has approached the Commission.

The Commission issued notice to the petitioner and respondent to hear the petition on the point of admissibility.

During the hearing on 3.2.2015 the Commission enquired the petitioner whether he has received any compensation. The petitioner replied that he has received meagre amount as compensation. The respondent submitted that the amount of compensation has been paid for the crop as decided by the District Agriculture Officer.

The Commission further enquired the petitioner that under what provision of the Act he has approached the Commission regarding inadequacy of the compensation.

The petitioner replied that he has approached under section 67 (4) of Electricity Act.

The Commission directed the petitioner to refer the works of licensees rules, 2006. Ministry of Power, Notification No. G.S.R. 217(E), dated April 18, 2006, published in the Gazette of India, Extra., Part II, Section 3(i) dated 18<sup>th</sup> April 2006.pp. 11-17, No. 154.

The clause 3(2) & 3(3) works of licensees rules, 2006 runs as follows:

(2) When making an order under sub-rule (1), the District Magistrate or the Commissioner of Police, or the officer authorized, 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 the Commissioner of Police, or an authorized officer under sub-rule (1) shall be subject to revision by the Appropriate Commission.

The Commission finds that in the matter of “Kerla Electricity Board Vs. Livisha, 2007 (3KL1(SC))” the Apex Court has held as follows:

“The Telegraph Act, 1885 provides for the manner in which the amount of compensation is to be computed therefore. Section 10 of the Act empowers the authority to place and maintain a telegraph line under, over, along or across, or posts in or upon any immovable property. Section 11 empowers the officers to enter on property in order to repair or remove telegraph lines or posts. Section 12 empowers the authority to grant permission for laying down such lines to a local authority in terms of clauses (c) & (d) of the proviso to Section 10 of the Act subject to reasonable conditions as it may think fit. Section 16 of the said Act reads as under :-

“16. Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority.-

(1) If the exercise of the powers mentioned in section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.

(2) If, after the making of an order under section (1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code, 1860 (45 of 1860).

(3) If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

(4) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under sub-section (3), or sub-section (4) shall be final:

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority, from the persons who has received the same."

The Commission finds that petition no. 954/2014, 955/2014, 956/2014, 957/2014 and 958/2014 are of similar nature. The Commission enquired the petitioner and the respondent whether they have any objections if the above petitions are clubbed. They replied that they had no objection. So the Commission decided to club them together.

The Commission further enquired the petitioner that whether he has gone threw the provisions relating to overhead lines provided under section 68 of the Electricity Act 2003. The petitioner requested to grant some time to reply.

The Commission once again asked the petitioner to clarify that under which provision he has approached the Commission for inadequacy of compensation because the provisions of section 67 (4) does not apply to overhead lines. The Commission desires that since it is a matter of far reaching consequences, UPPTCL should appoint a counsel to represent the case on their behalf.

The Commission's order dated 11.5.2015 is as follows:-

"The case was called on 7.4.2015. The petitioner did not appear. The Commission adjourned the hearing and directed for listing case on 7.5.2015 at 15:00 hrs. The case was called on 7.5.2015 and again the petitioner did not appear. Shri A. S. Rakhra, Advocate appeared on behalf of the respondent. The Commission finds that the petitioner is not serious to prosecute his case.

The petition is disposed off for non prosecution."

The petitioner filed the recall application on 10.6.2015 submitting the following:-

The deponents and their counsel could not be informed in time regarding fixation of the dates on 7<sup>th</sup> of April and, 7<sup>th</sup> of May 2015. There has been no deliberate carelessness on the part of the petitioners or their counsel that this dismissal has occurred. Due to some unfortunate misunderstanding, the counsel of the petitioners could not attend the last two dates and the cases were dismissed in default by the Hon'ble Commission.

The Commission issued notice no. 285 dated 1.10.2015 scheduling the date of hearing of admissibility of review petition.

The case was called on 16.10.2015. Shri Pradeep Kumar Verma, Advocate appeared on behalf of the petitioners and Shri Puneet Chandra, Advocate appeared on behalf of the respondents.

The Commission enquired the petitioner counsel that under what provisions of the Act, regulation & rules he has approached the Commission for inadequacy of compensation? He replied that he has approached the Commission as per the directions of the Hon'ble High Court and powers conferred upon the Commission under clause 86 (k) of the Electricity Act 2003.

Shri Puneet Chandra, Advocate for respondent submitted that the recall application is not maintainable. The counsel for the petitioner submitted that as per the principle of Law laid down by Hon'ble Supreme Court laid for review which is as follows:-

"Where the error is apparent on the face of record. Error must be such as would be apparent on mere looking of the record without requiring any long drawn process of reasoning. Re-

appraisal of entire evidence on record for finding the error would amount to exercise of appellate jurisdiction which is not permissible in case of review”.

The Commission directs the petitioner to submit the written arguments regarding admissibility of the case before the Commission?

List on 18.11.2015 at 15:00 hrs.

(I. B. Pandey)  
Member

(Desh Deepak Verma)  
Chairman

Dated: 29.10.2015