

**HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**WRIT PETITION NO.7793 OF 2021**

**ORDER:**

This petition is filed under Article 226 of the Constitution of India, seeking the following relief:-

*“.....to issue a Writ, Order or direction particularly one in the nature of Writ of Mandamus, declaring the action of the respondents in trying to lay the Transmission Lines through the 1<sup>st</sup> petitioner's land situated in Sy.No. 368 of Kuchivaripalli Village, Rajampet Mandal, Kadapa District is illegal, arbitrary and in violation of Articles 14 and 300-A of the Constitution of India and also contrary to the Andhra Pradesh Works of Licensees Rules, 2007 as enumerated in G.O.Ms.No.24, Energy (PR-II), Department, dated 27.02.2007 apart from violation of principles of natural justice and consequently direct the respondents to lay the proposed transmission line through the 2<sup>nd</sup> petitioner's land situated in Sy.No. 369 of Kuchivaripalli Village, Rajampet Mandal, Kadapa District.”*

2. The 1<sup>st</sup> petitioner is the owner of the agriculture land to an extent of Ac. 5.60 cents, situated in Sy.No. 368 and in various survey numbers of Kuchivaripalli Village, Rajampet Mandal, Kadapa District. The 2<sup>nd</sup> petitioner, who is none other than the wife of the 1<sup>st</sup> petitioner is the owner of the agriculture land situated in Sy.No. 369 to an extent of Ac. 9.58 cents of Kuchivaripalli Village, Rajampet Mandal, Kadapa District. In order to develop the said land, the 1<sup>st</sup> petitioner made an application to the competent authority to convert his land from agriculture to non-agriculture. The competent authority i.e Revenue Divisional Officer, Rajampet, asked the 1<sup>st</sup> petitioner to pay conversion fees. Accordingly, he paid the fee and the land was converted into non-agriculture, petitioners intended to develop the said land. While so, the 5<sup>th</sup> respondent proposed to lay the transmission line from 220 KV SS-Rajampeta to 132 KV SS C.Orampadu, through the land of the 1<sup>st</sup> petitioner and tag the lines,

when the 1<sup>st</sup> petitioner objected the proposed action of the respondents, the 5<sup>th</sup> respondent has issued notice dated 01.03.2021 to the 1<sup>st</sup> petitioner under Section 68 and 164 of Electricity Act, 2003. It is specifically contended that the highhanded act of the respondents is illegal, arbitrary and contrary to the Andhra Pradesh Works of Licensees Rules, 2007 (for short 'the Rules') rules framed by the 1<sup>st</sup> respondent through G.O.Ms.No.24, dated 27.02.2007, which reads as:

**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, where over or where under 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.*

*(2) 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 office authorized by the State Government in this behalf, for carrying out the works.*

*(3) 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 authorized may by order in writing direct for any such works, support, stay or strut to be removed or altered.*

*(4) 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 occupier.*

*(5) 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 Commission.*

*(6) Nothing contained in this rule shall affect the powers conferred upon any licensee under Section 164 of the Act.*

3. A reading of the above rule, it is clear that when the owner or occupier of the land raised any objection in respect of the works to be carried out, the licensee shall obtain permission in writing from the District Magistrate or the Commissioner of Police or any other officer authorized by the State Government in this behalf, but no such permission was obtained by the respondents, which is highly illegal, arbitrary and in violation of principles of natural justice, though, the respondents herein proposed to transmit the High Tension Line through the land of the 1<sup>st</sup> petitioner.

4. On receipt of the notice from the 5<sup>th</sup> respondent, the 1<sup>st</sup> petitioner himself and 2<sup>nd</sup> petitioner i.e wife of the 1<sup>st</sup> petitioner, who is the owner of the land in Sy.No. 369 have requested the 4<sup>th</sup> respondent to lay the proposed transmission line through the land of the 2<sup>nd</sup> petitioner, which is adjacent to the land of the 1<sup>st</sup> petitioner, for which the 5<sup>th</sup> respondent has expressed his inability. Immediately, the petitioners approached the 3<sup>rd</sup> respondent and requested to change the alignment of transmission line through the land of the 2<sup>nd</sup> petitioner, but in vain. In similar set of circumstances, the Hon'ble High Court of Telangana had considered the same issue in W.P.No.4503 of 2019 and 5873 of 2019, dated

22.04.2019, wherein it was held that the licensee should follow the rule of law, while laying the transmission lines i.e issue of notice and due procedure to be followed. In view of similar facts and circumstances of the present case, the petitioners herein are seeking the same relief in this Writ Petition. Contrary to the order passed in the above matter by the High Court of Telangana, the respondents without following due procedure are trying to lay the line from the land of the 1<sup>st</sup> petitioner, as such, the act of the 5<sup>th</sup> respondent is illegal, arbitrary and violative of article 300-A of the Constitution of India and requested to issue a direction as claimed by the petitioners.

5. The respondents filed counter admitting about the proposal for laying line across through the land of the 1<sup>st</sup> petitioner situated in Sy.No. 368 of Kuchivaripalli Village, Rajampet Mandal, Kadapa District and notice issued by the 5<sup>th</sup> respondent under Section 68 of and 164 of Electricity Act, 2003. While contending that in exercise of the power conferred under Section 164 of the Electricity Act, 2003 (Central Act No. 36 of 2003), the Government of A.P vide G.O.Ms.No.115, Energy Department, dated 07.10.2003 conferred upon the Transmission Corporation of A.P Limited, the Transmission and Bulk Supply License in the State of A.P, the powers for placing of the electric supply lines or electric plant for the transmission of the electricity or for the purpose of Telephonic or Telegraphic Communications necessary for the proper co-ordination of works that a Telegraphic Authority possessed under the provisions of the Indian Telegraphic Act, 1885 (Central Act No.13 of 1885). The APTRANSCO accorded administrative approval for erection of 132/33 KV Sub Station at Chinna Orampadu and 132 KV DC/SC Line from

220/132 KV SS Rajampeta to proposed 132/33 KV SS Chinna Orampadu on 03.04.2013. The scheme was published in A.P. Gazette dated 29.01.2015 and also in Daily News papers dated 29.10.2014, inviting objections to the proposed lines. No objections were received from anybody, including the petitioners herein for the said work. Thereafter, the alignment was fixed and total 99 towers were proposed for the said line. In that process, only one tower is erecting in the 1<sup>st</sup> petitioner's land i.e Tower No.9 at Rajampeta Village and Mandal, Kadapa District. Almost 90 towers out of 99 towers were already installed, including line works.

6. The Indian Electricity Act was repealed and in its place, new statute i.e The Electricity Act, 2003 was enacted and there is no provision to obtain prior consent even from the owners of the private property for laying electricity lines. In fact, this Hon'ble Court in a decision reported in 2013(4) ALD-88, held that the APTRANSCO would not be required to either initiate proceedings for acquisition of land or to obtain consent from the owner for erecting tower or laying the lines and the entitlement of Land Owners to compensation would arise only at a later date and it cannot be a ground to hinder the implementation of the scheme. The Apex Court in a decision reported in 2007(6) SCC 792 and 2008(11) SCC 476 held that both telegraphic lines and electric lines are required to be drawn over the agriculture lands or other property belonging to the private parties and in drawing such lines the entire land cannot be acquired, but the effect thereof could be diminution of value of the property, over which, such lines are drawn and the Telegraphic Act, 1885 provides for the manner in which the amount of compensation is to be computed. The latest Judgment of the Apex Court in 2017(5) SCC

143 also supports the power of the electricity companies to erect towers and lines without prior consent of the owners. The law in this regard is already settled by this Court in several cases in favour of the power utilities and the issue is no longer '*res integra*'. In fact, the petitioners have no manner of right to oppose the laying of lines and erection of towers in Government land. Based on the law laid down by the Apex Court, the Writ Petition is liable to be dismissed.

7. The respondents while admitting the notice issued on 01.03.2021 by the 5<sup>th</sup> respondent, duly intimating the proposed action of the respondents with regard to work of laying the lines and denied various allegations of the petitioners. It is further contended that the respondents are entitled to lay the electric lines, even without obtaining consent and / or acquiring the property or without initiating the Land Acquisition Proceedings and thereby the petition lacks merits and prayed for dismissal of the Writ Petition.

8. During hearing, Sri V.V.N.Narayana Rao, learned counsel for the petitioner vehemently contended that the Rules notified in G.O.Ms.No.24, dated 27.02.2007 are not being followed by the respondents to erect the electrical lines by 5<sup>th</sup> respondent. Non-compliance of the rules made thereunder, disentitled the respondents to lay electrical lines over the agriculture land of the 1<sup>st</sup> petitioner. He also further contends that in the common order passed by the combined High Court in W.P.No.4503 and 5873 of 2019, dated 22.04.2019, wherein it was held that the respondents are bound to follow the procedure prescribed under the Rules, but the respondents are not following the guidelines and the action of the respondents is illegal and arbitrary.

9. Whereas, Sri Y. Nagi Reddy, learned Standing Counsel for the Respondents 2 to 5 mainly contended that the issue involved in the Writ Petition is no more 'res integra'. In view of the decision of the Single Judge of High Court of A.P in **Devisetty Ramaswamy Vs. The Chief Engineer, 400 KV Line, A.P Transco (APSPDCL) Hyderabad<sup>1</sup>** and another **M. Umadevi Vs. State of Andhra Pradesh and Others<sup>2</sup>** and also decisions of the Apex Court in **The Power Grid Corporation of India Limited Vs. Century Textiles and Industries Limited and Others<sup>3</sup>** and finally the Apex Court Judgment in **Century Rayon Limited Vs. IVP Limited and Others<sup>4</sup>**. Based on the principle laid down in the above Judgments, the learned standing counsel for the respondents sought to dismiss the Writ Petition filed by the petitioners. Learned counsel for the respondents would contend that the Rules made in G.O.Ms.No.24, dated 27.02.2007 were duly considered and therefore the decisions relied on by the learned counsel for the petitioners are not applicable as claimed.

10. Considering rival contentions and on perusal of the material available on record, the question which has to be answered is:

***“Whether the respondents/ licensee are required to obtain permission in writing from the District Magistrate or the Commissioner of Police or any other officer authorized by the State Government to carry out the works in compliance of the Rule 3(2) of A.P. Works of Licensees Rules, 2007, vide G.O.Ms.No.24, dated 27.02.2007? If no permission is obtained, whether the action of the 5<sup>th</sup> respondent be declared as illegal and arbitrary and a direction be issued to the 5<sup>th</sup> respondent not to lay any electrical lines through the land of the 1<sup>st</sup> petitioner?*”**

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<sup>1</sup> 2013(4) ALT 616

<sup>2</sup> MANU/AP/0271/2020

<sup>3</sup> 2017(5) SCC 143

<sup>4</sup> 2020(2) SCJ 746

11. It is an undisputed fact that the work was sanctioned and approved for laying electrical lines by erecting 99 towers and out of this only one tower is proposed to be laid in the land of the 1<sup>st</sup> petitioner, but the 1<sup>st</sup> petitioner objected for laying tower in the land of the 1<sup>st</sup> petitioner. A request was also made to erect a tower and line in the land of the 2<sup>nd</sup> petitioner, who is none other than wife of the 1<sup>st</sup> petitioner. The 2<sup>nd</sup> petitioner also gave consent for laying electrical line and erecting a tower in her land, but the contention of the 1<sup>st</sup> petitioner is that when the 1<sup>st</sup> petitioner objected such erection and laying electrical line through the land of the 1<sup>st</sup> petitioner, the procedure prescribed under Rule 3 of G.O.Ms.No. 24, dated 27.02.2007 shall be strictly followed.

12. Rule 3 of G.O.Ms.No. 24, dated 27.02.2007, contemplates that 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, where over or where under 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 office authorized by the State Government in this behalf, for carrying out the works. Provided further that if at any time, the owner or occupier or 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 authorized may by order in writing direct for any such works, support, stay or strut to be removed or altered. 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. 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 Commission. Nothing contained in this rule shall affect the powers conferred upon any licensee under Section 164 of the Act.

13. Therefore, based on Rule-3 of The Rules, the respondents by exercising power under Section 164 of the Electricity Act, 2003, proposed to lay the line erecting tower in the land of the 1<sup>st</sup> petitioner and issued notice dated 01.03.2021 under Sections 68 and 164 of Electricity Act, 2003 as admitted in Para 4 of the Writ Affidavit. Thus, the respondents are invoking the power under Section 164 of Electricity Act, 2003. Section 164 of the Electricity Act, 2003 reads as:

*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 provisions of the Indian Telegraph Act, 1885 (13 of 1885), any of the powers which the telegraph authority possesses under that Act with respect to the placing of 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.*

14. In view of Section 164 of the Act, the licensee/ respondents can follow the procedure laid down in Indian Telegraph Act, 1885. When an exception is carved out in the Rule 3, Sub-Rule (i) to (v) and in rule-VI, invocation of the powers by the respondents under Section 68 and 164 of Electricity Act, 2003, cannot be said to be illegal, since it is an exception as prescribed under Sub Rule (i) to (v) of the Rule-3 of the Rules.

15. However, an identical issue came up before the common High Court of A.P in **Devisetty Ramaswamy's** case referred supra, wherein the learned Single Judge adverted to Sections 67 and 164 of the Electricity Act, 2003 including the rules and while referring the decision in the case of **K. Subba Raju Vs. Executive Engineer, TLC Division, A.P. Transco, Visakhapatnam District**<sup>5</sup> and the decision in **G.V.S.Rama Krishna's**<sup>6</sup> case concluded that when the licensee intends to lay the electrical lines by erecting any polls etc., invoking Section 164 of the Electricity Act, 2003, the licensee would not be required to either initiate acquisition proceedings or obtain consent from the owner as required under Rule-3 referred above.

*In K. Subba Raju's case referred supra, the learned Single Judge had an occasion to deal with these*

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<sup>5</sup> 2010(4) ALD 358

<sup>6</sup> 2009 AIR AP 158(1)

provisions. The subject matter of the Writ Petition is laying of electric lines by the A.P. Transco and it was the contention of the petitioner therein that the procedure laid down in the relevant rules had not been followed. It was brought to the notice of the learned Judge that in exercise of the power conferred by Section 67(2) of the Electricity Act, 2003, the 'Works of licensees Rules, 2006' had been promulgated dealing with the procedure to be followed by a licensee while undertaking works in accordance with Section 67(1) of the Electricity Act, 2003. It was contended by the learned Judge that the earlier judgment in **G.V.S.Rama Krishna's** case referred supra, would not come to the aid of the A.P. TRANSCO, as these Rules were not taken into account therein. The learned Judge was however disinclined to agree, as it was made clear even in the earlier judgment that consent of the owner/occupier was necessary only in the absence of an order under section 164 of the Act of 2003 and that legal position remained unaltered. The learned Judge observed that the Rules of 2006 made under Section 67(2) of the Act of 2003 were in pari materia to Section 12 of the repealed Act of 1910 and that the said Rules would be applicable only where the works were taken up by a licensee under Section 67(1) of the Act of 2003.

The learned Judge pointed out that it had been clarified even in G.V.S.Rama Krishna's Case referred above that Section 67(1) of the Act of 2003, as well as the Rules made under Section 67(2) thereof, would govern the field only in the absence of an order under Section 164 of the Act of 2003 and consequently, in a case where an order was passed by the appropriate Government in exercise of powers under Section 164 of the Act of 2003, the authorized licensee would be competent to exercise such powers which a telegraph authority possessed under the Act of 1885 with respect to placing of lines and poles. The learned Judge further observed that as powers under Section 10 of the Act of 1885 could be exercised

*without acquiring the land, the same would be the position with a licensee conferred with such powers under Section 164 of the Act of 2003.*

16. On facts, the learned Judge found that the laying of electric lines in that case was pursuant to a notification invoking Section 164 of the Act of 2003 and therefore, Section 67(1) of the Act of 2003 and the Rules of 2006 were not attracted. The learned Judge consequently held that there was no necessity for the APTRANSCO to obtain the consent of the owner/ occupier who was affected by the laying of such lines.

17. The similar issue came up before the Apex Court in the case of ***Kerala State Electricity Board Vs. Chinamma Antony***<sup>7</sup> wherein it was made it clear that the owner of the land would be entitled to claim compensation on the basis of various factors. In this regard, the Supreme Court observed as under:

*“9. Both Telegraph lines and electrical lines are required to be drawn over the agricultural lands and/ or other properties belonging to third parties. In drawing such lines, the entire land cannot be acquired but the effect thereof would be diminution of value of the property over which such line is drawn. The Telegraph Act, 1885 provides for the manner in which the amount of compensation is to be computed therefor.....*

*10. The situs of the land, the distance between the high voltage electricity line laid there over, the extent of the line thereon as also the fact as to whether the high voltage line passes over a small tract of land or through the middle of the land and other similar relevant factors in our opinion would be determinative. The value of the land would also be a relevant factor. The owner of the land furthermore, in a given situation may lose his substantive*

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<sup>7</sup> 2008(11) SCC 476

*right to use the property for the purpose for which the same was meant to be used.”*

18. Following the law laid down by the Apex Court and other courts in catena of judgments, the learned Single Judge concluded that the A.P.TRANSCO proposed to lay lines and electric poles by invoking the power conferred under Section 164 of Electricity Act, 2003 by obtaining permission from the appropriate Government, the procedure as contemplated under Sub-Rule (i) to (v) of Rule-3 need not be followed.

19. Learned counsel for the respondents further placed reliance on the Judgment of the Apex Court in **Kerala State Electricity Board Vs. Chinamma Antony**<sup>8</sup>, the question in the cited case was regarding enhancement of compensation for loss on account of the drawal of electric lines over the property. The trial Judge enhanced the compensation. The Revision Petition filed by the Electricity Board was dismissed by the High Court, relying on a full bench decision in **Kumba Amma Vs. Kerala State Electricity Board**<sup>9</sup>. The Apex Court while allowing the Civil Appeal had remitted the matter to High Court for fresh consideration. The same has no direct application to the present facts of the case.

20. In **The Power Grid Corporation of India Limited Vs. Century Textiles and Industries Limited and Others**, the Apex Court held as follows:

*“that Power Grid had obtained prior approval of Central Government under Section 68(1) of the Electricity Act, 2003. In exercise of powers of Telegraph Authority vide notification dated 24<sup>th</sup> December, 2003 exercisable under Indian Telegraphic Act, 1885 upon Power Grid. A Central*

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<sup>8</sup> 2008 AIR SC 3265

<sup>9</sup> 2000 AIR Ker 215

*Transmission Utility (CTU) is a deemed licensee under second proviso to Section 14 of Electricity Act, 2003. Power Grid is a Central Transmission Utility and is, therefore, a deemed licensee under Electricity Act, 2003. This coupled with fact that Power Grid being treated as Authority under Indian Telegraph Act, 1885, it acquires all such powers which are vested in a Telegraph Authority under provisions of Indian Telegraph Act, 1885 including power to eliminate any obstruction in laying down of power transmission lines. As per provisions of Indian Telegraph Act, 1885, unobstructed access to lay down telegraph and/ or electricity transmission lines is an imperative in larger public interest. Electrification of villages all over the country and availability of telegraph lines are most essential requirements for growth and development of any country, economy and the well-being/ progress of the citizens. Legislature has not permitted any kind of impediment/ obstruction in achieving this objective and through scheme of the Indian Telegraph Act, 1885 empowering the licensee to lay telegraph lines, applied the same, as it is, for laying down the electricity transmission lines. Section 10 of Indian Telegraph Act, 1885 empowers Telegraph Authority to place and maintain a telegraph line under, over, along or across and posts in or upon any immovable property. Provision of Section 10(b) of Indian Telegraph Act, 1885 makes it abundantly clear that while acquiring power to lay down telegraph lines, Central Government does not acquire any right other than that of user in property. Further, Section 10(d) of Indian Telegraph Act, 1885 obliges Telegraph Authority to ensure that it causes as little damage as possible and that Telegraph Authority shall also be obliged to pay full compensation to all person interested for any damage sustained by them by reason of the exercise of those powers. As Power Grid is given powers of Telegraph Authority, Rule 3(1) of Works of Licensees Rules, 2006 ceases to apply in case of Power Grid by virtue of execution Clause contained in Sub-rule (4) of Rule 3. impugned action of Power Grid was not contrary to provisions of Electricity Act, 2003. Action of Power Grid, in given circumstances, by not shifting the transmission lines was not arbitrary. Not only it was unfeasible to change alignment as almost entire work had already been completed by time the Writ Petitioner started protesting against this move, even otherwise, the Power Grid has given sufficient explanation to point out that all relevant*

*factors/ aspects were kept in mind while laying down the impugned transmission lines. Such transmission lines had to be in straight line to the extent possible for eliminating loss of transmission. Electricity transmission is usually laid or crossed over agricultural land where minimum extent of land gets utilized for erecting towers and where agricultural activities are not prejudiced/ obstructed in any manner. Purpose is to avoid buildings, religious places, ponds etc., while laying down these transmission lines, it is only when it becomes inevitable that towers are placed on the private lines to the minimum and least extent possible. No blasting is permissible within 300 mts. From the 400 KV line (already existing) or the tower structure. Mining of limestone can be taken up by adopting the methods other than use of explosive/ blasting-without damage to tower foundation/ tower structure or line, which can be accomplished by using jack hammer/ pneumatic hammer with compressor so as to avoid any damage to the line or tower”.*

21. The issue involved in the present Writ Petition is directly covered by the Judgment of the Apex Court in ***The Power Grid Corporation of India Limited*** case referred supra, wherein, the Apex Court considered the scope of Section 68 and 69 of the Electricity Act, 2003, which read as under:

*“Section 68 and 69 of the Electricity Act, 2003 fall in Part VIII with the caption ‘WORKS’. These two provisions directly deal with the overhead lines. As per Section 68, an overhead line can be installed or kept installed above ground ‘with prior approval of the Appropriate Government’. ‘Appropriate Government’ is defined under Section 2(5) of the Electricity Act, 2003 and it is not in dispute that in the instant case, it would be the Central Government as it is the Central Government which is Appropriate Government in respect of generating company wholly or partly owned by it and Power Grid is a company which is owned by the Central Government. The argument was that no such prior approval from the Central Government was obtained in terms of the aforesaid provision.*

22. Similar view was expressed by Hon'ble Apex Court in the case of **Century Rayon Limited Vs. IVP Limited and Others**<sup>10</sup> and the division bench of Apex Court reiterated the principle laid down in **The Power Grid Corporation of India Limited Vs. Century Textiles and Industries Limited and Others**. The law laid down by the High Court of Judicature at Hyderabad for the State of Telangana and Andhra Pradesh in W.P.No.4503 and 5873 of 2019, dated 22.04.2019 has no application to the facts of this Writ Petition. Moreover, it is only the Judgment of a High Court which is of persuasive value, but not binding precedent on this Court, apart from that the learned Single Judge did not consider the exception carved out to clause (i) to (v) of Rule 3 by Clause-(vi).

23. The major contention before this Court is that the Rules enumerated in G.O.Ms.No.24, dated 27.02.2007 were not considered in all the above referred Judgments. No doubt, there is no direct reference to the rules made in G.O.Ms.No.24, dated 27.02.2007. Even if these rules are considered, in the present Writ Petition, Sub-rule (i) to (v) of Rule 3 have no application, since the respondents invoked the powers under Section 167 and 168 of the Electricity Act, 2003 which is an exception to the general procedure contained in Sub-rule (i) to (v) of Rule 3. Hence, in the facts of the case, as the respondents invoked the powers under Section 164 and 168 of the Electricity Act, 2003, the procedure prescribed under Sub-Rule (i) to (v) of Rule-3 need not be followed to lay electricity lines and to erect towers in the land of the 1<sup>st</sup> petitioner. Therefore, the act of the respondents is strictly in accordance with law and not against Rule

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<sup>10</sup> 2020 AIR SC 1923



3(i) to (v) of the Rules, in view of the exception carved out in sub-rule (vi) of Rule-3 of The Rules.

24. Hence, the act of the respondents, proposing to lay over head line, erecting tower in terms of Section 164, 167 and 168 of The Electricity Act, 2003 subject to passing an order by the appropriate Government cannot be faulted. If the appropriate Government passes any order in writing for placing the electric lines for transmission of electricity or other purposes, the act of the respondents cannot be faulted. At the same time, subject to passing appropriate order in writing by appropriate Government, the proposed action of the respondents to lay electricity lines over the land of the 1<sup>st</sup> petitioner by erecting towers by issuing notice under Section 164 of the Electricity Act, 2003 cannot be declared as illegal and arbitrary. Hence, I find no merit in the contention of the learned counsel for the petitioners and the decisions relied by Sri V.V.N. Narayana Rao, learned counsel for the petitioners is not a binding precedent, except persuasive value. Hence the Writ Petition is liable to be dismissed.

25. In view of the foregoing reasons, I find that the 5<sup>th</sup> respondent is not required to obtain permission from the District Magistrate or the Commissioner of Police or the officer so authorised as contemplated under Sub Rule (i) to (v) of Rule-3 of The Rules, as the respondents invoked the power under Section 164 of the Electricity Act, 2003, which is an exception to sub-rule (i) to (v) of Rule-3 of The Rules. Accordingly, the point is answered against the petitioners and in favour of the respondents.

26. In the result, this Writ Petition is dismissed. There shall be no order as to costs.

The miscellaneous applications pending, if any, shall also stand closed.

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**JUSTICE M. SATYANARAYANA MURTHY**

Date: 03.05.2021

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**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

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