



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

WRIT PETITION NO. 4323 OF 2026 (GM-KEB)

BETWEEN:

MR. ROSHAN RAI
S/O SEETHARAMA RAI,
AGED ABOUT 46 YEARS,
R/AT BANNURU KATTE,
BANNURU VILLAGE, PUTTUR TALUK,
D.K. DISTRICT - 574 203.

...PETITIONER

(BY SRI. K RAVISHANKAR., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY ITS SECRETARY TO DEPARTMENT OF ENERGY,
VIKASA SOUDHA, DR. AMBEDKAR ROAD,
BANGALORE - 560 001.
2. THE DISTRICT MAGISTRATE/
DEPUTY COMMISSIONER,
D.K MANGALORE,
D.K. DISTRICT - 575 001.
3. ASSISTANT COMMISSIONER,
BANTWAL SUB DIVISION,
BANTWAL TALUK,
D.K. DISTRICT - 574 211.
4. M/S. STERLITE POWER,
UDUPI - KASARGOD POWER TRANSMISSION LTD.,
F-1, MITRA CORPATE SUIT 1 AND 2
EASHWAR NAGAR, MATHURA ROAD,
NEW DELHI - 110 065,



REG. UNDER ELECTRICITY ACT, 2003,
REP. BY MANAGER.

5. UDUPI - KASARGOD POWER TRANSMISSION LTD.,
REP. BY ITS CHIEF MANAGER
HOUSE NO. 13-131,
OLD NO.7/117 ITI COLONY,
VIDYA NAGAR, KASARGOD,
STATE OF KERALA - 671 123,
THE COMPANIES ACT 2013.

6. UDUPI - KASARGOD POWER TRANSMISSION LTD.,
(UKTL) REP. BY ITS IN CHARGE OFFICER,
SRI VENKATESH POOJARY,
S/O ANIL POOJARY,
AUTHORIZED SIGNATORY,
ABCO TRADE CENTRE,
4TH FLOOR, NH-66,
KOTTARA CHOWKI,
MANGALURU - 575 006.
THE COMPANIES REGISTRED OF
COMPANIES ACT 2013
(NOTE THE RESPONDENT NO.3 TO 5 ARE THE
NECESSARY PARTIES TO THE WRIT PETITION.
HENCE THEY ARE ARRAYED AS PARTY
RESPONDENTS)

...RESPONDENTS

(BY SRI. B T KOLLER, AGA FOR R1 TO R3;
SRI. SRINIVAS RAGHAVAN, SENIOR COUNSEL FOR
SRI. RISHABHA RAJ THAKUR, ADVOCATE FOR R5 & R6)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF
CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF
CERTIORARI AND QUASH THE IMPUGNED ORDER DATED
27/01/2026 PASSED BY THE 2ND RESPONDENT BEARING NO.
MAG(5)CR:47/2025/968884/C6 (PRODUCED VIDE ANNEXURE
M) TO THE WRIT PETITION.



THIS PETITION, COMING ON FOR ORDERS, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MRS. JUSTICE K.S. HEMALEKHA

ORAL ORDER

The present writ petition is filed seeking to quash the impugned order dated 27.01.2026 passed by respondent No.2-Deputy Commissioner, whereby the objection of the petitioner against drawing of 400 KV high tension transmission line through his property has been rejected and permission has been granted to proceed with the project.

Brief facts:

2. The petitioner claims to be the absolute owner of the converted land bearing Survey No.416/4 and 416/6, measuring 2131.64 square meters situated at Vittal Village, Bantwal Taluk, acquired under a registered sale deed dated 15.05.2023. The lands were duly converted for



non-agricultural use and a single site approval plan and building licence have also been obtained and construction of the commercial building has commenced. Subsequently, it is stated that the respondents propose to draw 400 KV overhead transmission lines across his property as part of the Udupi-Kasargod Road project. The petitioner filed objection and suggested alternative alignment through adjacent government land and other available properties. It is stated that earlier in W.P. No.21589/2025, this Court directed the petitioner to participate in the proceedings before the competent authority. Pursuant thereto, the petitioner filed detailed objections and documents before respondent No.2-Deputy Commissioner. However, by the impugned order dated 27.01.2026 the objections were rejected and approval was granted to proceed with the project.

3. Learned counsel for the petitioner contends that the impugned order is contrary to Section 10 (1) (d) and Section 16 of the Indian Telegraph Act, 1885, which



mandate causing minimal damage and considering objections independently. It is submitted that the authority failed to consider a feasible alternative alignment, despite the availability of adjacent government land and the consent of other landowners. Learned counsel submits that respondent No.2-Deputy Commissioner has misdirected himself by relying on the earlier proceedings and wrongfully concluded that the issue stood concluded. Learned counsel further submits that the findings that the towers has already been installed are factually incorrect, as the project has not commenced in the vicinity.

4. In support of his contention, learned counsel has placed reliance on decisions to contend that the respondents are required to strictly adhere to the procedure prescribed under the Indian Telegraph Act, 1885 and obtain adjudication by the competent authority before proceeding further.



i. ***Sri Ramesh and others Vs. Karnataka Power Transmission Corporation Ltd., and another¹*** (*Ramesh*), whereby the writ petitions were disposed of, reserving liberty to the petitioners to approach the KPTCL and directing the authority to proceed in accordance with law under Section 16 of the Indian Telegraph Act.

ii. ***Smt. Khushboo Bansal Vs. The Karnataka Power Transmission Corporation Limited and others²*** (*Khushboo Bansal*) wherein the District Magistrate was directed to consider the request for deviation and pass appropriate orders.

iii. ***S. Kannappa (died) and others Vs. The Commissioner, Tiruvottriyur Municipality, Madras and others³*** (*S. Kannappa*) to contend that under Section 12 (2) of the Indian Electricity Act, 1910, consent of the

¹ W.P. No.17052/2013 c/w W.P. No.31847-31892/2013 D.D. 14.08.2017

² W.P. No.25137/2023 D.D. 28.11.2023

³ 1999 SCC Online Mad 461



landowners is necessary and in the absence of such consent, the action would be illegal.

iv. ***Thirthesh A.S. Vs. The Under Secretary to the Government of Karnataka Department of Power Corporation and others***⁴ (*Thirthesh A.S.*), to contend that in cases of resistance or obstruction, the authority must necessarily seek permission of District Magistrate under Section 16 (1) of the Indian Telegraph Act, 1885.

5. *Per contra*, Sri Srinivas Raghavan, learned senior counsel on behalf of Sri Rishabha Raj Thakur, learned counsel for respondent Nos.5 and 6 would submit that the issue raised in the present writ petition is no longer *res integra* and stands squarely covered by the binding precedents of this Court. Attention of this Court is drawn to paragraph No.10 of the order in the case of ***Smt. Geetha Hegde and another Vs. Union of India***

⁴ ILR 2006 KAR 4164



and others⁵ (*Geetha Hegde*), wherein this Court observed considered similar challenges relating to approval under Section 68, delegation under Section 164 of the Electricity Act, 2003 as well as the laying of transmission lines. The Co-ordinate Bench of this Court also observed the findings recorded in W.A. No.560/2023, wherein the claim of the landowners was rejected. It is submitted that, while arriving at such a conclusion, the Division Bench in W.A. No.560/2023 has taken into account the notification dated 09.06.2023 issued by the Central Government, reiterating that the delegation of powers under the Electricity Act, 2003. It is thus contended that the challenge to the project and alignment stands concluded. Learned senior counsel presses strong reliance on the judgment of the Co-Ordinate Bench of this Court in the case of ***Amaregouda @ Amareshgouda Patil and another Vs. The Karnataka Power Transmission Corporation***

⁵ W.P. No.13921/2023 D.D. 06.08.2024



Limited and another⁶ (*Amaregouda*), wherein it has held that *'the question as to which part of the power transmission line should be adopted cannot be adjudicated by courts, as matters fall within the domain of technical experts'*. It is submitted that unless arbitrariness or *mala fide* is demonstrated, no interference in administrative / technical decision is permitted. Learned senior counsel submits that the Co-Ordinate Bench in **Amaregouda**, after considering and placing reliance upon the decision of the Co-Ordinate Bench of this Court in the cases of **M. S. Harish and others Vs. Deputy Commissioner and the District Magistrate, Mangalore and another**⁷ (*M. S. Harish*) and **Shri Murali Kirshna and another Vs. District Magistrate and another**⁸ (*Murali Kirhsna*), has laid down the same principles, namely,

i. Alignment of transmission line is a technical determination;

⁶ W.P. No.101921-101922/2018 D.D. 23.01.2019

⁷ W.P. Nos.28481-483/2017 D.D. 19.02.2018

⁸ W.P. Nos.39452-39453/2016 D.D. 19.02.2018



ii. Court lacks expertise to adjudicate such matters and

iii. Landowners cannot seek injunction against execution of such projects.

6. It is further contended that by virtue of Section 164 of the Electricity Act, 2003, the respondents are conferred with the powers of the Telegraph Authority and it is further submitted that under Section 10 of the Indian Telegraph Act, the authority is empowered to enter the land, lay transmission line, without requiring consent of the landowners, and the only right of the land owner is to seek compensation under Section 10 (d) of the Telegraph Act. It is further contended that the contention of the petitioner regarding availability of the alternate land is irrelevant and cannot be a ground to interfere with the final alignment, which is fixed based on technical feasibility, safeguard, safety norms, and grid requirements. It is submitted that the present writ petition raises issues already settled by this Court and seeks to re-



agitate the concluded questions and does not disclose any arbitress. Learned senior counsel submits that the writ petition is liable to be dismissed.

7. This Court has carefully considered the rival contentions and perused the material on record. The point that arises for consideration is:

"Whether the petitioner has made out a ground to interfere with the action of the respondent in drawing the transmission line over his property, in light of the power conferred under the Indian Telegraph Act, 1885 and the settled legal possession governing such matters?"

8. At the outset, the contention of the petitioner that the alternative alignment to neighboring lands ought to have been adopted cannot be accepted, as the law on the issue is well settled in the case of **Amaregouda**, wherein this Court has held at paragraph No.13 as under:

"13. This Court finds that the present dispute is covered by the judgment rendered by co-ordinate Bench of this Court in the case of Sri. M.S.Harish &



Ors Vs. Deputy Commissioner and the District Magistrate, Mangalore & another in W.P.Nos.28481-483/2017, the same ratio has been reaffirmed by this court in Shri Murali Krishna & Another Vs District Magistrate & another, in W.P.Nos.39452-39453/2016, the relevant extract is as follows:

*"4. The learned counsel for the Petitioners has contended before the Court that the KPTCL had earlier conducted the survey in **2003** but without any reason they changed the course of the said transmission line in **2009** and the proposed new course is to pass through the land of the present Petitioners and the learned Deputy Commissioner overruled the objections of the Petitioners and despite an injunction granted by the learned Trial Court in **O.S.Nos.228/2009, 212/2009 and 245/2009** in favour of the Petitioners, the Deputy Commissioner has approved the said altered course of the transmission line.*

*5. On the other hand, the learned counsel for the Respondent – Karnataka Power Transmission Corporation Limited contended that the earlier survey of **2003** was not in existence and was not found to be technically*



*feasible and that is why the learned Deputy Commissioner, in exercise of his powers under Section **16(1)** of the **Indian Telegraph Act, 1885** found that the course now approved on the basis of survey report of **2009**, was the only technically approved course for the transmission line.*

6. The learned counsel for the Respondent also explained that the injunction was granted by the learned Trial Court subject to the approval of the said proposal of the transmission line by the competent authority namely Deputy Commissioner. Therefore, the same could not stand in the way of the respondent – KPTCL to draw the said power transmission line, now with the approval of the Deputy Commissioner.

*7. Having heard the learned counsels, this Court is of the opinion that the impugned order does not deserve any interference by this Court under **Article 226** of the **Constitution of India**. The technical aspects of the matter about the course or path of the Electricity Transmission Lines can only be determined by the Technical Experts.*



8. *In view of the various factors and the approval of the survey report conducted in this regard in the year **2009** and there being no earlier survey report of **2003** duly approved, as contended by the learned counsel for the Petitioners and as recorded in the impugned order in **paragraph 10(d)** of the same, the present petitions are found to be devoid of merit.*

9. **Paragraph 10(d)** of the impugned order reads as under:

"d) The survey conducted by KPTCL during the year **2003 is not in existence**. But the survey conducted during the year **2009** is technically approved and is approved in the Karnataka Gazette and is in existence."

10. *These factual aspects of the matter as to which course or path of power transmission line should be adopted by the KPTCL cannot be adjudicated upon by the Courts, who lack the technical knowledge and experience and unless the arbitrariness in the action of the public body or authority is well established, no such interference in the administrative decisions like this can be made by the Courts. The Petitioners' right to be*



compensated in accordance with law, of course is there, but the course or path of power transmission line, cannot be determined by the Courts at all. Therefore, neither the Civil Court nor this Court has the technical expertise to decide such questions.

11. Therefore, the present writ petitions are disposed of with a liberty and direction to the Petitioners to claim compensation in accordance with law in case such power transmission line pass through their lands and they become entitled to such compensation in accordance with law. No costs."

9. The Co-Ordinate Bench, by placing reliance upon the various decisions, has held that:

i. The landowners have no right to obstruct execution of transmission work.

ii. Determination of alignment is within the domain of technical experts and

iii. Courts cannot undertake a roving enquiry into such matters and also observed that the said principle has



been reiterated in **M.S. Harish** and **Murali Kirhsna** cases.

10. It is further relevant to note that in **Geetha Hegde's** case, this Court, arising out of the very same project, the challenge has been negatived and by placing reliance on W.A. No.560/2023, which has upheld the project, taking note of the notification dated 09.06.2023 issued by the Central Government and has held at paragraph No.10 as under:

"10. Aggrieved by the said order passed by the learned Single Judge in W.P.No.20819/2021, respondent No.3 herein filed W.A.No.560/2023, which came to be allowed by the Hon'ble Division Bench vide order dated 27.07.2023 by holding as under:

"This writ appeal is against the order dated 29.03.2023 passed in W.P.No.20819/2021 (GM-KEB) by which learned Single Judge allowed the writ petition filed by the respondents 1 to 40 holding that the order dated 12.02.2015 passed by respondent No.41-Union of India as per Annexure-A insofar as it relates to the respondents 1 to 40 to be unenforceable and also quashed the approval granted by respondent No.42-Central Electricity



Authority under Section 68 of Electricity Act, 2003 in file No.CEA-PS-12-14(20)/1/2018-PSPA-II Division dated 18.01.2019 at Annexure-B insofar as it relates to laying of overhead transmission lines on the land belonging to respondents 1 to 40.

2. Impugned Order dated 12.02.2015 at Annexure-A issued by respondent No.41- Union of India, Ministry of Power delegating the power to grant approval under Sections 68 and 164 of the Electricity Act, 2003 (hereinafter referred to as 'Act, 2003' for short) which was vested with the Joint Secretary (Transmission) Ministry of Power, to the respondent No.42 –Central Electricity Authority(CEA) by its Chairperson. Annexure-B is a communication according prior approval by CEA in favour of the appellant for laying of Udupi (UPCL) Kasargode 400 KV Quad D/C transmission line.

3. The aforesaid writ petition was filed by respondents 1 to 40 herein challenging Annexures A and B contending inter alia that they are the agriculturists and owning certain lands over which a scheme for installation of overhead lines is proposed. That if the overhead lines were installed and project was implemented, the same would adversely affect their livelihood and deprive them of their Right to Property. That Section 68 of the Act, 2003



provides that overhead lines to be installed with prior approval of the Appropriate Government subject to certain terms and conditions. That in the absence of any provision the action of respondent No.41 in delegating the authority to respondent No.42-CEA to grant approval under Section 68 was one without authority. That respondent No.42-CEA could perform the functions as that of the Central Government only when the rules under Section 176(1) of the Act, 2003 were framed and notified and in the absence of any such notification approval granted by respondent No.42 –CEA is without authority. That the impugned order at Annexure-A would be valid only if it was expressed in the name of the President or the Governor as provided under Articles 77(2) and 166(2) of the Constitution of India. Non- compliance with the aforesaid provisions had rendered the entire process without authority of law. That even respondent No.43-KPCTL had objected for implementation of the project. Hence, writ petition was filed seeking quashment of Annexures-A and B.

4. In response to the above, it was contended on behalf of respondents 41 and 42 before the learned Single Judge that a plain reading of provisions of Section 68 of the Act, 2003 indicates that the function of the Central Government granting prior approval is purely administrative in nature



which is a residuary action and the act of delegation of power to another would not denude the power of Central Government. It is merely a transfer of authority from one body to another. That the respondent No.41 had issued impugned order at Annexure-A in exercise of power conferred under Section 73 of the Act, 2003 which contemplates that CEA to perform such functions and duties as the Central Government may prescribe or direct. The delegation of power is traceable to Section 75 of the Act, 2003 which enables the Central Government to issue direction as specified thereunder.

5. On behalf of appellant/respondent No.3 it was contended that the doctrine of eminent domain would prevail and private interest would give way for public purposes and the only remedy available to the respondents 1 to 40 is to seek compensation. The relief sought cannot be entertained under extraordinary writ jurisdiction as the project under execution is one for public purpose. That the prior approval under Section 68 of the Act, 2003 is granted by respondent No.42-CEA which is a statutory body constituted under the Act, 2003 and has become competent authority pursuant to the impugned order dated 12.02.2015 at Annexure-A passed by the respondent No.41 delegating the above function to the Chairperson of CEA. That the



Act, 2003 empowers the Central Government to delegate powers, functions and duties under Sections 2(5), 2(6), 70(1), 70(5) and 73(o).

6. On behalf of respondent No.43-KPTCL it was submitted that there are two sets of functions and duties of respondent No.42 as provided under Section 73 of the Act, 2003. One set of functions and duties to be performed by CEA as may be prescribed or directed by the Central Government and another set is as contained in Section 73(a) to (o). That the first part of Section 73 cannot be read to mean that it excludes Central Government directing CEA to perform functions vested in the Central Government by the statute as no such embargo is forthcoming in the statute. That Section 73 envisages power of implied delegation.

7. On consideration of the submissions made by the counsel for the parties, learned Single Judge framed the following point for his consideration namely:

"Whether the first respondent can delegate power under Sections 68 and 164 of the Act, 2003 and consequently, the prior approval granted by the 2nd respondent is valid?"



8. *While answering the aforesaid question referring to certain provisions of the Act, 2003 learned Single Judge came to the conclusion that prior approval by the respondent No.42 under Section 68 of the Act, 2003 is one without authority of law and accordingly allowed the writ petition granting the prayers as sought for and noted above. Being aggrieved by the impugned order, appellant who was arrayed as respondent No.3 in the writ petition before the learned Single Judge is before this Court by way of this appeal.*

9. *It is the case of the appellant that:*

9.1 *To address severe power shortage in the State of Kerala, it was proposed to install fresh transmission infrastructure between Udupi and Kasargode. The said proposal was conceived upon the request of respondent No.46 –the Kerala State Electricity Board which intended to address the power shortage in the northern parts of State of Kerala. Owing to transmission constraints it was proposed to install a high capacity 400 KV (quad) double circuit (DC) inter state electricity transmission overhead lines between State of Karnataka and Kerala known as Udupi-Kasargode 400 KV(quad) double circuit (DC) inter state line along with various other associated infrastructure, creation and upgrades. That upon completion of the project more*



than 1000 MW power evacuation capability will be added to the southern power grid and Waynad substation will have a line in and line out to Mysore-Kozhikod line. The beneficiaries include not only the people of Kerala but also beneficiaries of Andhra Pradesh, Telegana, Karnataka and Tamil Nadu.

9.2 That the said project was discussed at various meetings of the Standing Committee on Power System Planning in Southern Region which functions under CEA and is technically competent body for such deliberations after considering the alternate use and objections etc. The transmission scheme was agreed in the 35th Meeting of the said Committee held on 04.01.2013 and the project was approved in its 41st Meeting held on 22.09.2017.

9.3 That respondent No.41, Ministry of Power, Government of India also took steps in furtherance to the project and appointed REC Transmission Project Company Pvt. Ltd. – A Government of India Undertaking, as bid process coordinator to select a bidder to undertake the project through tariff based competitive process. Said company had also obtained approvals for the purpose of implementation of the project and incorporated appellant as Special Purpose Vehicle to implement the project. Thus, the appellant was incorporated on



09.11.2018 as a wholly owned subsidiary of REC Transmission Project Company Pvt. Ltd.

9.4 Amongst certain approvals and orders that were required for further implementation of project, "prior approval" under Section 68 of the Act, 2003 is one such approval since it involved installation of overhead lines. Further the implementation of the project required a transmission licence in terms of Section 12 of the Act. Upon grant of licence, entity that undertakes the project is required to be empowered with certain rights and powers in order to physically implement the project which are contained in the Telegraph Act, 1885 and may be conferred on licensee in terms of Section 164 of the Act, 2003.

9.5 That keeping in mind the prevailing circumstances and considering the exigencies of providing effective governance, the powers under Sections 68 and 164 of the Act, 2003 were delegated by respondent No.41-Ministry of Power in favour of respondent No.42 –CEA by an order dated 12.02.2015. Pursuant to this it was CEA that was authorised to grant prior approval under Section 68 of the Act and orders under Section 164 of the Act. The CEA is a statutory body established under



Section 70 of the Act, 2003 consisting of technically skilled members.

9.6 That on 18.01.2019 at the request of REC, respondent No.42-CEA granted prior approval under Section 68 of the Act in favour of the appellant. The appellant was also granted a licence under Section 14 of the Act, 2003 to act as a transmission licensee and thereby implement the project. The said licence was granted on 24.01.2020. Pursuant to grant of licence by the Central Electricity Regulatory Commission, the appellant also sought grant of orders under Section 164 of the Act conferring upon it the powers of telegraph authority under the Telegraph Act, 1885 enabling it to undertake physical implementation of the project. That in the course of the proceedings conducted for consideration of grant of orders under Section 164 of the Act, various paper publications were carried out seeking observation, representations on the proposed transmission route from general public within two months of the publication. Appellant published notice in the local newspapers dated 13.03.2020 in New India Express, Hosa Digantha, Vartha Bharati, Chandrika, Kerala Kamudi. All queries received within time were addressed to the satisfaction of CEA. The respondents 1 to 40 did not file any objections within the time prescribed. However, some baseless and



belated communications were addressed by the respondents 1 to 40 to the Chief Minister, Government of Karnataka and not to the appellant.

9.7 The appellant has also finalized the route and alignment for installation of overhead lines and these were already submitted in relevant proceedings. Various steps towards completion of the project including application to the Central Government under Section 2 of the Forest (Conservation) Act, 1980 for diversion of fresh forest area and proceedings for grant of permission was also initiated.

9.8 That the appellant has incurred significant cost in excess of Rs.418 crores and continues to incur monthly cost of Rs.60 lakhs. That the respondents 1 to 40 being the writ petitioners sought to scuttle the project on the ostensible basis of they being agriculturists in Bantwal Taluk of Dakshina Kannada Taluk and that the project would pass through their lands thereby affecting their rights.

10. Based on the aforesaid facts Sri.Srinivasan Raghavan, learned Senior counsel appearing for the appellant submitted that;

10.1 Power under Section 68 of the Act, 2003 is to grant permission for installation of overhead transmission lines. The power under Section 164 of



the Act, 2003 is to confer the status of "telegraph authority" on licensees under the Act to enable them to take steps to complete the work. Thus, the aforesaid powers as such on their face are executive/administrative in nature and are not powers of legislative in nature as they do not entail any power to frame or enact laws. That the Central Government was not the delegate of power under the Act and CEA is not the sub-delegatee. That the Act, 2003 itself confers power on the Central Government and the power was conferred and not delegated. In any event in terms of Article 73(1)(a) of the Constitution of India, the executive power of the Union (Central Government) extends to all subjects over which Parliament has power to make laws. That the Central Government is entitled to exercise such power under the Act by virtue of its status under the Constitution of India and is not "delegate" of legislature. That the power under Section 164 of the Act, 2003 is entirely ministerial in nature only serves to confer powers under the Telegraph Act, 1885 on a public officer, licensee or electricity supplier, which power in many cases require for physical implementation of the project.

10.2 Alternatively he submitted that even if it is considered the powers under Sections 68 and 164



were decision making power, there was no bar in law to delegate such powers.

10.3 He further submitted that learned Single Judge ought not to have embarked on testing the validity of delegation. That learned Single Judge failed to consider respondent No.42-CEA is established under Section 70 of the Act, 2003 and is consisting of persons with specialised technical qualifications, and their involvement in administrative and ministerial functions such as functions under Sections 68 and 164 of the Act, 2003 would serve the purpose of the Act, 2003. That learned Single Judge failed to note that Section 73 of the Act, 2003 itself permitted the Central Government to direct and assign its functions to CEA and the delegation of powers under Sections 68 and 164 of the Act, 2003 were infact directions well within the scheme of Act and specifically enabled by Section 73 of the Act, 2003. That Sections 68 and 164 are functions provided under the Act and they could have been discharged by CEA. Thus, delegation of powers to CEA were not only expressly provided for by the Act, 2003 but were also well within its scope and object. In support of his submissions learned Senior counsel relied upon the following authorities:



1. *N.G. PROJECTS LTD., V. VINOD KUMAR JAIN (2022) 6 SCC 127, PARA 14, 19, 23*
2. *SIDHARTHA SARAWGI V. BOARD OF TRUSTEES PORT OF KOLKATA (2014) 16 SCC 248*
3. *BARIUM CHEMICALS LTD., V. THE COMPANY LAW BOARD, 1966 SUPP SCR 311*
4. *M. UDAYAKUMAR VS. THE GOVERNMENT OF TAMIL NADU, REPRESENTED BY ITS PRINCIPAL SECRETARY, ENERGY DEPARTMENT, SECRETARIAT, CHENNAI – 600 009.*
5. *GODREJ SARA LEE LTD V. EXCISE AND TAXATION OFFICER CUM ASSESING AUTHORITY AND OTHERS (2023) SCC ONLINE SC 95*
6. *BIRENDRA KUMAR DEORAH V. ASSAM ELECTRICITY GRID CORPORATION LTD AND OTHERS (2020) 1 GAUHATI REPORTS 646*
7. *SAHNI SILK MILLS (P) LTD V. EMPLOYEES STATE INSURANCE CORPORATION (1994) 5 SCC 246 PARA 5*



11. In response Sri. Sridhar Prabhu, learned counsel appearing for respondents 1 to 40/original petitioners submitted that:

11.1 Under Section 68 of the Act, 2003 power vested with the Appropriate Government is statutory in nature and same cannot be delegated, if it is done, the Central Government would be denuded of its power. That the respondent No.42-CEA acted arbitrarily by granting prior approval to the project without giving opportunity of hearing to any of the occupants of the land including the respondents 1 to 40 over which the overhead lines of the project are going to pass through by installation of proposed towers. Thus, he submits there is complete violation of principles of natural justice before granting approval under Section 68 of the Act. In support of the said submission, learned counsel relied upon Judgment of Division Bench of Gujarat High Court in Jaisingh Parshottambhai Patel Vs Essar Power Transmission Company Limited in Special Civil Application No.10284/2013, wherein at paragraph 10(b) it is held that:

“When an application is made to get a licence for laying down the transmission line, the route for transmission lines is to be provided at the time of applying for licence. The public notice is required to be published in the newspaper having



circulation in the area describing the various parcels of the land through which the line is to pass and the map should also be made available to the objector for inspection if any person is so desirous."

11.2 Learned counsel for the respondents 1 to 40 also submitted that even at the stage of proposal at the 35th Meeting of SSCPS held on 04.01.2013 there were opposition by the then Karnataka State Electricity Board who requested to modify the proposal on the issue of feasibility. That even the respondent No.43- KPTCL was asked to examine the proposal and to inform respondent No.42-CEA so that the matter could be taken up for further study and discussion. That without considering the objections raised by the KPTCL and without even considering the alternatives proposed project was approved. Learned counsel taking through the provisions of the Act, 2003 more particularly sub-section (2) of Section 68 of the Act, 2003 submitted that there is no notification published as required under Section 176 of the Act, 2003. That in the absence of any power to delegate, Central Government cannot direct respondent No.42-CEA to perform its functions and duties.



11.3 Learned counsel for the respondents 1 to 40 bringing to the notice to this Court order dated 09.06.2023 issued by the Government of India, Ministry of Power whereby the power for approval under Sections 68 and 164 of the Act, 2003 which was delegated to Chairperson of CEA (as per Annexure-A impugned in the writ petition) has been re-vested with the Joint Secretary (Transmission), Ministry of Power, submitted that in view of the said order all the actions rendered by respondent No.42-CEA have become redundant thus justifying the order passed by the learned Single Judge. Hence, seeks for dismissal of the appeal.

12. Sri.Shanthi Bhushan, learned Deputy Solicitor General of India justifying the order at Annexure-A to the writ petition conferring power with the Chairperson of CEA submitted that such an act is in line with the Government of India (Allocation of Business) Rules 1961. In that referring to paragraph 4 of the order dated 14.01.1961 under the heading "Allocation of Departments among Ministers", it is provided as under:

(3) Notwithstanding anything contained in sub-rule (1) or sub-rule(2), the President may, on the advice of the Prime Minister, -



(a) associate in relation to the business allotted to a Minister under either of the said sub-rules, another Minister or Deputy Minister to perform such functions as may be assigned to him; or

(b) entrust the responsibility for specified items of business affecting any one or more than one Department to a Minister who is in charge of any other Department or to a Minister without Portfolio who is not in charge of any Department.

12.1 He also referred to the said rules at page 141 under the heading "Ministry of Power" wherein at paragraph 4 the powers and functions of the Ministry are mentioned. He also referred to Central Secretarial Manual of Office Procedure and referred to Chapter III under the heading "Structure of the Government of India" and submitted that the concerned Ministry/Department is responsible for formulation of policies of the Government in relation to subjects allocated to it under Allocation of Business Rules. He also referred to the power to issue executive directions that are required for implementation of policies from time to time. Thus,



he submitted that the impugned order at Annexure-A is not a "delegation of power" but merely a "direction" for implementation of provisions and policies which power is vested with the respective Ministry and Department. He also submitted that there is doctrine of "implied delegation" and the word "Direct" found in the provisions of law have to be read and understood as "implied delegation".

13. Ms.Nayantara, learned counsel appearing for respondent No.43 –KPTCL submitted that KPTCL has never opposed the project at any time as contended by the learned counsel for respondents 1 to 40. Drawing attention of this Court to Annexure-Q produced at page No.345 of the appeal memo being a communication dated 20.06.2015 issued by KPTCL to the member (Power Systems) Central Electricity Authority, New Delhi, she submitted that the said document would refer to the decision to implement the impugned project. She also referred to a memo filed by respondent No.43 produced at page No.298 volume IV clarifying the stand of KPTCL and disputing the contention of the respondents 1 to 40 that KPTCL had opposed installation of overhead transmission line. She submitted that Annexure-Q dated 20.06.2015 being relied upon by the respondents 1 to 40 does not support the case of the respondents 1 to 40. She submitted that the views



of DISCOMS set out in Annexure-Q is an appraisal of the flow of power in the event of subject transmission line is erected namely that the Hassan Line will be under utilized and overloading Nagamangala line. That the said stance cannot be construed as opposition to the impugned project. She also referred to summary of propositions placed in the writ petition on behalf of respondent No.43-KPTCL on the points of law. Thus, she seeks for allowing of the appeal.

14. Heard learned counsel for the parties. Perused the records.

15. Though the grievance of respondent Nos.1 to 40 in the writ petition is that they being owners of agricultural land would be deprived of their rights in the event of implementation of the intended project, have incidentally raised the question with regard to validity or otherwise of the exercise of power by respondent No.42-CEA under Sections 68 and 164 of the Act, 2003 contending that there is no provision under the Act, 2003 for delegation of such power by the respondent No.41-Central Government on respondent No.42-CEA. While it is the contention of the appellant that the grievance of the respondents 1 to 40 ought to have been with regard to their right for appropriate compensation under



relevant law for utilization of their land by the authorities for installation of power transmission lines, instead of questioning the process of granting approval by the respondent No.42-CEA under Section 68 of the Act, 2003.

16. In order to appreciate the rival contentions of the parties with regard to legality or otherwise of the impugned order passed by the learned Single Judge it is necessary to refer to the relevant provisions of the Act, 2003 which are at issue, they are extracted hereunder;

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.”

17. Perusal of the aforesaid provision reveal that overhead line shall be installed above the ground with the prior approval of the Appropriate Government. "Appropriate Government" is defined under Section 2(5) of the Act, 2003. In the factual context of the present case, it is the Central Government. Thus, the authority to grant approval under Section 68 of the Act, 2003 even as rightly taken note of by the learned Single Judge is the Central Government.

18. Annexure-A to the writ petition is an order dated 12.02.2015 purporting to delegate the powers of granting approval under Sections 68 and 164 of the Act, 2003 to the Chairperson of CEA. The order is extracted hereunder;

ANNEXURE: A

**No.4/14/2014-PG
Government of India
Ministry of Power
Shram Shakti Bhawan, Rafi Marg,
Tele Fax 01123730264**

ORDER



New Delhi, dated 12th February, 2015

Subject: Delegation of powers for (1) approval under provision of Section 68 and Section 164 of the Electricity Act, 2003; and (ii) approval of transmission schemes to be implemented through Tariff Based Competitive Bidding (TBCB) route.

The undersigned is directed say that the Hon'ble Minister of State for Power (Independent Charge) has approved the delegation of powers for the following:

i) Power for approval under Section 68 of the Electricity Act, 2003, presently vested with Joint Secretary (Transmission), Ministry of Power, is delegated to Chairperson, CEA.

ii) Power for approval under 164 of the Electricity Act, 2003, presently vested with Joint Secretary (Transmission), Ministry of Power, is delegated to Chairperson, CEA.

iii) Power to approve the schemes under tariff based competitive bidding (TBCB) framework, which is presently vested with Chairperson, Central Electricity Authority, will now be exercised by Secretary, Ministry of Power.

(S. Venkateshwarlu)



Under Secretary to the Government of India

19. The primary contention of the respondents 1 to 40 which is accepted by the learned Single Judge is that the Central Government in the absence of any power to delegate could not direct the respondent No.42-CEA to performs its functions and duties under Section 68 of the Act.

20. Learned Single Judge has referred to clause (a) (b) (c) of sub-Section (2) of Section 68, more particularly sub-clause (c) to come to the conclusion that Central Government has not issued a notification published in the Official Gazette dispensing with the provisions contained in sub-Section (1) of Section 68 of the Act, 2003 in the cases other than those enumerated in the clause (a) and (b) of sub-Section (2) of Section 68 of the Act, 2003 as specified under Section 176 (f) of the Act, 2003. Further, learned Single Judge has held that the order dated 12.02.2015 at Annexure-A delegating the power to respondent No.42-CEA to exercise power under Section 68 and 164 of the Act, 2003 is not a notification published in the official gazette by the Central Government under Section 176 of the Act, 2003. Thus in essence, learned Single Judge is of the view that since a notification has not been published in the official gazette by the



Central Government, the delegation of power is inappropriate. This reasoning is based on the definition of term "Notification" defined under Section 2(46) of the Act, 2003 and the term "Prescribed" as defined under Section 2(52) of the Act, 2003 to mean prescribed by rules made by the Appropriate Government under the Act, 2003. Further learned Single Judge has referred to Section 73 of the Act, 2003 and referring to the said provision which specifies that the authority namely, CEA shall perform such functions and duties as the Central Government may prescribe or direct and in particular to "discharge of other functions as may be provided under this Act". Having referred to the aforesaid two terms namely, "Notification" and "Prescribed" and the relevant provision of Section 73 learned Single Judge has made reference to Section 176 of the Act, 2003 which provides the Central Government to make rules and has thus come to the conclusion, that since the term "prescribed" appears in these provisions, the same ought to have been formulated in the form of rules dispensing with the provisions contained in sub-section (1) of Section 68 and duly notified and in the absence of issuance of such notification the delegation of power was illegal.

21. To appreciate the above reasoning of the learned Single Judge it is appropriate to advert to



Sections 70 and 73 of the Act, 2003. Section 70 provides for constitution of Central Electricity Authority which is respondent No.42 herein. Section 73 which defines functions and duties of CEA, impliedly provides for delegation of power and such delegation of power are permissible under law.

Section 70 reads thus:

70. Constitution, etc., of Central Electricity Authority :- (1) *There shall be a body to be called the Central Electricity Authority to exercise such functions and perform such duties as are assigned to it under this Act.*

(2)....

(3)....

(4).....

(5) The Members of the Authority shall be appointed from amongst persons of ability, integrity and standing who have knowledge of, adequate experience and capacity in, dealing with problems relating to engineering, finance, commerce, economics or industrial matters, and at least one Member shall be appointed from each of the following categories, namely.-



(a) engineering with specialisation in design, construction, operation and maintenance of generating stations;

(b) engineering with specialisation in transmission and supply of electricity;

(c) applied research in the field of electricity;

(d) applied economics, accounting, commerce or finance.

Section 73 of the Act, 2003 is extracted hereunder;

"73. Functions and duties of Authority.-

The Authority shall perform such function and duties as the Central Government may prescribe or direct, and in particular to-

(a) advise the Central Government on the matters relating to the national electricity policy, formulate short-term and perspective plans for development of the electricity system and co-ordinate the activities of the planning agencies for the optimal utilisation of resources to sub serve the interests of the national economy and to provide reliable and affordable electricity for all consumers;



(b) specify the technical standards for construction of electrical plants, electric lines and connectivity to the grid;

(c) specify the safety requirements for construction, operation and maintenance of electrical plants and electric lines;

(d) specify the Grid Standards for operation and maintenance of transmission lines;

(e) specify the conditions for installation of meters for transmission and supply of electricity;

(f) promote and assist in the timely completion of schemes and projects for improving and augmenting the electricity system,

(g) promote measures for advancing the skill of persons engaged in the electricity industry;

(h) advise the Central Government on any matter on which its advice is sought or make recommendation to that Government on any matter if in the opinion of the Authority, the recommendation would help in improving the generation, transmission, trading, distribution and utilisation of electricity.



(i) collect and record the data concerning the generation, transmission, trading, distribution and utilisation of electricity and carry out studies relating to cost, efficiency, competitiveness and such like matters;

(j) make public from time to time the information secured under this Act, and provide for the publication of reports and provide for the publication of reports and investigations;

(k) promote research in matters affecting the generation, transmission, distribution and trading of electricity;"

l) carry out, or cause to be carried out, any investigation for the purposes of generating or transmitting or distributing electricity;

m) advise any State Government, licensees or the generating companies on such matters which shall enable them to operate and maintain the electricity system under their ownership or control in an improved manner and where necessary, in co-ordination with any other Government, licensee or the



generating company owning or having the control of another electricity system;

n) advise the Appropriate Government and the Appropriate Commission on all technical matters relating to generation, transmission and distribution of electricity; and;

(0) discharge such other functions as may be provided under this Act".

22. *It may not be out of place to refer to Section 75 of the Act, 2003 which provides for directions to be issued by the Central Government which reads as under:*

*Section 75.- **Directions by Central Government to authority.**-(1)In the discharge of its functions, the authority shall be guided by such directions in matters of policy involving public interest as the Central Government may give to it in writing.*

(2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the Central Government thereon shall be final.



23. The scheme of the Act, 2003 as seen in its preamble is to consolidate the law relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of Electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalisation of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmental benign policies, constitution of Central Electricity Authority, Regulatory Commission and establishment of Appellate Tribunal and matters connected therewith are incidental thereto.

24. A combined reading of the preamble of the Act, 2003 with Sections 70, 73 and 75 makes it clear that the very object of constituting the Central Electricity Authority-respondent No.42 is apart from being in furtherance to the object of the Act, is to assign with the functions and responsibilities in carrying out the object of the Act. It is in this regard Section 73 contemplate respondent No.42-CEA to perform such functions and duties as the Central Government may "prescribe" or "direct". Though several functions have been enumerated therein in the context of the facts of the present case it is necessary to focus on



*functions defined at clause (b) of Section 73 namely, **specify the technical standard for construction of electrical plants, electrical lines and connectivity to the grid** and clause (c) of Section 73 **specify the safety requirement for construction, operation and maintenance of electrical plants and electrical lines** and clause(0) **discharge such other functions as may be provided under this Act.***

25. Thus, by the very scheme of the Act the respondent No.42 –CEA is required to provide advise and specification to the Central Government in respect of the subject referred to in clauses (b) and (c) of Section 73 amongst others.

26. Section 68 of the Act, 2003 confers the Central Government with the power to grant prior approval for installation of overhead lines. This power of granting prior approval for installation of overhead lines which is conferred on the Central Government under the Act, is sought to be assigned by directing the respondent No.42-CEA to perform the same as per Annexure-A dated 12.02.2015.

27. It is also relevant to refer that by order at Annexure-A power for approval under Section 164 of the Act, 2003 is also sought to be delegated to



Chairperson, CEA. Section 164 of the Act, 2003 reads as under:

"Section 164 (Exercise of powers of Telegraph Authority in certain cases):

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 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 lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained."

28. Holistic reading of the aforesaid provisions of the Act leaves no doubt that the respondent No.42-CEA is an integral component of



the entire scheme of the Act, 2003 and rightly Section 73 of the Act provides for a provision for the Central Government to prescribe and direct respondent No.42-CEA to perform such of its functions and duties.

29. It is settled law that the essential functions envisaged under a statute shall be performed and carried out by the authority named thereunder. However, under administrative exigencies ministerial functions which are ancillary to the essential functions may be assigned or directed to be carried out by any officer or authority. In the light of this settled position it is necessary to analyse the nature of functions enumerated in Section 68 and Section 164 of the Act, 2003. In other words whether the functions envisaged thereunder are essential in nature which require to be carried out by the authority named thereunder alone or the said functions are mere executive and ministerial in nature capable of being directed to be carried out by any other authority as in the instant case by respondent No.42-CEA.

30. In the instant case, as the fact reveals that the scheme for installation of fresh transmission infrastructure was conceived upon the request of respondent No.46- Kerala State Electricity Board.



Owing to transmission constraints it was proposed to install a high capacity 400 KV (Quad) Double Circuit (DC) interstate Electricity Transmission overhead lines between State of Karnataka and Kerala known as Udupi Kasargode 400 KV (Quad) Double Circuit (DC) interstate line along with various other associated infrastructure creation and upgrades. The said project has been discussed at various meetings of the Standing Committee on Power System Planning in South Region which is the function of CEA. Respondent No.41 –Ministry of Power, Government of India has appointed REC Transmission Project Company Ltd., a Government of India Undertaking to select a bidder to undertake the project through tariff based competitive process. Said REC Limited incorporated the appellant as Special Purpose Vehicle to implement the project. As could be seen the policy of conceiving the project, its implementation and benefits have been discussed and the appropriate Government namely respondent No.41 has also taken steps in furtherance thereof resulting in incorporation of the appellant being Special Purpose Vehicle. Thus, the essential functions required under the Act, 2003 has been performed by the appropriate Government namely respondent No.41. In furtherance to the said essential function, administrative and executive functions,



which are ancillary to the essential function, namely laying of overhead lines as provided under Section 68 and the activities as required under Section 164 have been directed to be performed by respondent No.42-CEA in terms of Annexure-A.

31. Apposite at this juncture to refer to some of the decisions of the Apex Court on the principles of process of delegation of power in the administrative sphere. In the case of SIDHARTHA SARAWGI V. BOARD OF TRUSTEES PORT OF KOLKATA (2014) 16 SCC 248 the Apex Court at paragraphs 5 to 10 has held as under;

5. Regarding delegation of non-legislative/ administrative powers on a person or a body to do certain things, whether the delegate himself is to perform such functions or whether after taking decision as per the terms of the delegation, the said agency can authorize the implementation of the same on somebody else, is the question to be considered. Once the power is conferred, after exercising the said power, how to implement the decision taken in the process, is a matter of procedure. The Legislature may, after laying down the legislative policy, confer discretion on an administrative



agency as to the execution of the policy and leave it to the agency to work out the details within the framework of that policy[3]. So long as the essential functions of decision making is performed by the delegate, the burden of performing the ancillary and clerical task need not be shouldered by the primary delegate. It is not necessary that the primary delegate himself should perform the ministerial acts as well. In furtherance of the implementation of the decision already taken by the primary delegate as per the delegation, ministerial or clerical tasks may be performed by authorized officers. The complexity of modern day administration and the expansion of functions of the State to the economic and social spheres have made it necessary that the Legislature gives wide powers to various authorities when the situation requires it. Today's governmental functions are a lot more complex and the need for delegation of powers has become more compelling. It cannot be expected that the head of the administrative body performs each and every task himself.

6. The issue was considered by this Court in Jamal Uddin Ahmad v. Abu Saleh



Najmuddin and Another[4] in the context of the procedure for filing of the election petitions under Section 81 of the Representation of Peoples Act, 1951. It was held that the ministerial or administrative functions of the authority on whom the powers are conferred by the statute can be exercised by the authorized officers. It was held that:

"13. The functions discharged by a High Court can be divided broadly into judicial and administrative functions. The judicial functions are to be discharged essentially by the Judges as per the Rules of the Court and cannot be delegated. However, administrative functions need not necessarily be discharged by the Judges by themselves, whether individually or collectively or in a group of two or more, and may be delegated or entrusted by authorization to subordinates unless there be some rule of law restraining such delegation or authorisation. Every High Court consists of some administrative and ministerial staff which is as much a part of the High Court as an institution and is meant to be entrusted with the responsibility of discharging administrative and ministerial functions. There can be "delegation" as also



there can be "authorization" in favour of the Registry and the officials therein by empowering or entrusting them with authority or by permitting a few things to be done by them for and on behalf of the Court so as to aid the Judges in discharge of their judicial functioning. Authorization may take the form of formal conferral or sanction or may be by way of approval or countenance. Such delegation or authorization is not a matter of mere convenience but a necessity at times. The Judges are already overburdened with the task of performing judicial functions and the constraints on their time and energy are so demanding that it is in public interest to allow them to devote time and energy as much as possible in discharging their judicial functions, relieving them of the need for diverting their limited resources of time and energy to such administrative or ministerial functions, which, on any principle of propriety, logic, or necessity are not required necessarily to be performed by the Judges. Receiving a cause or a document and making it presentable to a Judge for the purpose of hearing or trial and many a functions post- decision, which functions are administrative and ministerial



in nature, can be and are generally entrusted or made over to be discharged by the staff of the High Court, often by making a provision in the Rules or under the orders of the Chief Justice or by issuing practice directions, and at times, in the absence of rules, by sheer practice. The practice gathers the strength of law and the older the practice the greater is the strength..."

7. Practical necessities or exigencies of administration require that the decision making authority who has been conferred with statutory power, be able to delegate tasks when the situation so requires. Thus, the maxim delegatus non potest delegare, gives way in the performance of administrative or ministerial tasks by subordinate authorities in furtherance of the exercise of the delegated power by an authority.

8. It would also be useful in this context to refer to the decision of this Court in Barium Chemicals Limited and Another v. The Company Law Board and Another[5] wherein it is held at paragraph 36 as follows:



"...the maxim delegatus non potest delegare must not be pushed too far. The maxim does not embody a rule of law. It indicates a rule of construction of a statute or other instrument conferring an authority. Prima facie, a discretion conferred by a statute on any authority is intended to be exercised by that authority and by no other. But the intention may be negated by any contrary indications in the language, scope or object of the statute. The construction that would best achieve the purpose and object of the statute should be adopted."

9. The Constitution confers power and imposes duty on the Legislature to make laws and the said functions cannot be delegated by the Legislature to the executive. The Legislature is constitutionally required to keep in its own hands the essential legislative functions which consist of the determination of legislative policy and its formulation as a binding rule of conduct. After the performance of the essential legislative function by the Legislature and laying the guiding policy, the Legislature may delegate to the executive or administrative authority, any ancillary or



subordinate powers that are necessary for giving effect to the policy and purposes of the enactment. In construing the scope and extent of delegated power, the difference between the essential and non-essential functions of the delegate should also be borne in mind. While there cannot be sub-delegation of any essential functions, in order to achieve the intended object of the delegation, the non-essential functions can be sub-delegated to be performed under the authority and supervision of the delegate.

10. Sometimes, in the plenary legislation itself, the lawmakers may provide for such sub-delegation. That is what we see under Section 21 and 34 of the Major Port Trusts Act, 1963, which we shall be discussing in more detail at a later part of this judgment.

*In the case of **Barium Chemicals Ltd., vs. The company Law board and others** reported in **1966 Supp. SCR 311** the Apex Court has held as under;*

36. As a general rule, whatever a person has power to do himself, he may do by means of an agent. This broad rule is limited by the operation of the principle that a



delegated authority cannot be re-delegated, delegates non potest delegare. The naming of a delegate to, do an act involving a discretion indicates that the delegate was selected because of his peculiar skill and the confidence reposed in him, and there is a presumption that he is required to do the act himself and cannot re-delegate his authority. As a general rule, "if the, statute directs that certain acts shall be done in a specified manner or by certain persons, their performance in any other manner than that specified or by any other person than one of those name is impliedly prohibited." See Crawford on statutory Construction, 1940 Edn., art. 195, p. 335. Normally, a discretion entrusted by Parliament to an administrative organ must be exercised by that organ itself. If a statute entrusts an administrative function involving the exercise of a discretion to a Board consisting of two or more persons it is to be presumed that each member of the Board should exercise his individual judgment on the matter and all, the members of the Board should act together and arrive at a joint decision. Prima facie, the Board must act as a whole and cannot delegate its function to one of its members.



38. But the maxim "delegatus non potest delegare" must not be pushed too far. The maxim does not embody a rule of law. It indicates a rule of construction of a statute or other instrument conferring an authority. Prima facie, a discretion conferred by a statute, on any authority is intended to be exercised by that authority, and by no other. But the intention may be negated by any contrary indications in the language, scope or object of the statute. The construction that would best achieve the purpose and object of the statute should be adopted".

M. Udayakumar Vs. The Government of Tamil Nadu, Represented by its principle Secretary, Energy Department, Secretariat, Chennai – 600 009 reported in 2017 SCC Online Mad.20143

8. Section 68 of the Indian Electricity Act, 2003, deals with the role of the first respondent in granting administrative approval for electricity high tension lines. Admittedly, such an approval has been granted by the first respondent twice, which are not put into challenge. There is a



difference between an administrative order and an quasi judicial order. There is approval for the scheme already formulated by respondents 2 and 3. Therefore, the contention of the learned Senior Counsel appearing for the petitioner even before the scheme such an approval is required cannot be countenanced as it is only meant for overhead electricity high tension lines. For the petitioners_ lands, the said exercise is yet to be done and therefore, there is no post facto approval as alleged. Hence, the contentions 1 and 2 sought to be raised are hereby rejected. There need not be a separate order for every overhead line.

*In the case of **Sahni Silk Mills (P) Ltd. and anr v. Employees State Insurance Corporation** reported in **(1994) 5 SCC 346** the Apex Court at paragraph 5 has held as under:*

"5. The courts are normally rigorous in requiring the power to be exercised by the persons or the bodies authorised by the statutes. It is essential that the delegated power should be exercised by the authority upon whom it is conferred and by no one else. At the same time, in the present



administrative set-up extreme judicial aversion to delegation cannot be carried to an extreme. A public authority is at liberty to employ agents to exercise its powers. That is why in many statutes, delegation is authorised either expressly or impliedly. Due to the enormous rise in the nature of the activities to be handled by statutory authorities, the maxim delegatus non potest delegare is not being applied specially when there is question of exercise of administrative discretionary power”.

32. *Thus, from the aforesaid legal position what emerges is that under Section 73 of the Act, 2003 Central Government is conferred with power to direct the authority namely CEA to perform such functions and duties including discharge of certain functions as may be provided under the Act. Since granting of prior approval for the purpose of installing the overhead lines is one of the functions to be performed by the Central Government under Section 68 of the Act, 2003, a holistic reading of Section 73 of the Act, 2003 suggest that the Central Government is indeed conferred with power to “direct” CEA to perform its function contemplated under Section 68 of the Act, 2003. As held by the Apex Court in the case of **Siddharta***



***Sarawgi** supra administrative function need not be discharged by the primary delegate and such functions may be entrusted to the concerned/competent authority. As held by the Apex Court in the case of **Barium Chemicals Limited** supra, the maxim delegatus non potest delegare need not be pushed too far in the fact situation of the present case considering the administrative exigencies involved in the matter.*

33. Learned Single Judge has adverted to the issue at hand from the prospective of validity of "delegation of power" by respondent No.41 in favour of respondent No.42 and in that has opined that grant of prior approval under Section 68 of the Act is in the nature of essential legislative power. The reason which persuaded learned Single Judge is requirement of framing of rules under Section 173 of the Act, 2003 in respect of matter prescribed under Clause (c) of sub-section (2) of Section 68 and issuance of notification in the official gazette. This in our considered opinion is incorrect. A reading of sub-section (2) of Section 68 of the Act, 2003 would reveal that an exception is carved out as regards obtaining of prior approval of the Central Government in respect of cases referred to under sub-section (2). Clause (a) of sub-section (2) of Section 68 relates 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. Clause (b) relates to an electric line as is or will be within the premises in occupation or control of person responsible for its installation. Clause (c) refers to the other cases which may be prescribed. Thus, requirement of framing of rules contemplated under clause (f) of sub-section (2) of Section 173 of the Act, 2003 is only in respect of cases to be prescribed under clause (c) of sub-section (2) of Section 68. This cannot be read into sub-section (1) of Section 68 of the Act, 2003 to hold that until rules are framed under Section 176 and same are notified in the notification published in the official gazette, the powers cannot be delegated. This in our considered view is an error in construing the provisions referred to above and findings arrived thereat.

34. It may also be necessary to refer to the Government of India (Allocation of Business) Rules, 1961 wherein Rule 4 under the heading "Allocation of Departments among Ministers" reads as under:

(1) The business of the Government of India allocated to the Cabinet Secretariat is and,



shall always be deemed to have been allotted to the Prime Minister.

(2) Subject to the provisions of sub-rule (1), the President may, on the advice of the Prime Minister, allocate the business of the Government of India among Ministers by assigning one or more departments to the charge of a Minister.

(3) Notwithstanding anything contained in sub-rule (1) or sub-rule(2), the President may, on the advice of the Prime Minister, -

(a) associate in relation to the business allotted to a Minister under either of the said sub-rules, another Minister or Deputy Minister to perform such functions as may be assigned to him; or

(b) entrust the responsibility for specified items of business affecting any one or more than one Department to a Minister who is in charge of any other Department or to a Minister without Portfolio who is not in charge of any Department."

35. At page 196 of the said Rules, 1961 reference is made to Ministry of Power (Vidyut



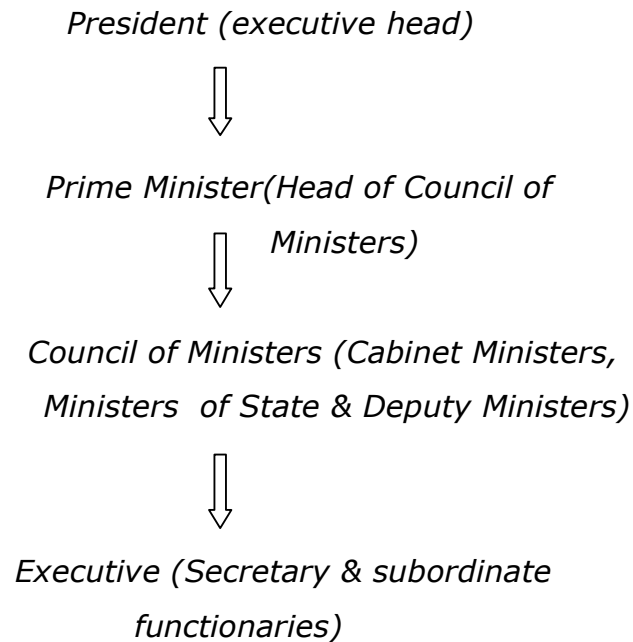
Manthralaya), in that the administration of Electricity Act, 2003 has been conferred with the Ministry of Power.

36. Central Secretarial Manual providing for office procedure in Chapter III under the heading "Structure of Government of India" refers to "Allocation/transaction of Government Business and Ministry/Departments. It is necessary to extract the same which is as under:

CHAPTER III

STRUCTURE OF THE GOVERNMENT OF INDIA

1. Government: *The structure of the Government is as under.*





2. Allocation/Transaction of government business

The Government of India (Allocation of Business) Rules, 1961 hereinafter referred to as AOB Rules (as amended from time to time) allocates the business of government amongst its various Ministries/Departments. The Government of India (Transaction of Business) Rules, 1961 and hereinafter referred to as TOB Rules (as amended from time to time) seeks to define the authority, responsibility and obligations of each Ministry/Department, Cabinet & its Committees and the Prime Minister of India (Rule 12 of TOB). The AOB and TOB rules are available on the website of Cabinet Secretariat www.cabsec.nic.in.

3 Ministry/Department - A Ministry/Department is responsible for formulation of policies of the Government in relation to the subjects allocated to it under AOB rules and also for the execution, monitoring and review of those policies.

(i) Attached Offices provide detailed executive directions required in the implementation of the policies, as laid down from time to time by the Ministry/Department to which they are attached. They also serve as a repository of information



and also advise the department on various aspects of matter dealt with by them (e.g. Central Public Works Department, Central Water Commission, Central Electricity Authority, Directorate General of Foreign Trade, Directorate General of Factory Advice & Labour Institute etc)."

37. Central Electricity Authority is an office attached to the Ministry of Power which deals with the administration of Electricity Act, 2003.

38. Section 73 of Act 2003 which provides for the functions and duties of CEA as already noted confers the power on the Central Government to direct the CEA to perform such of its functions and duties. Thus, the scheme of act inherently envisages the power on the part of the Central Government to direct the respondent No.42-CEA to perform such of its functions and duties which in the instant case is granting of prior approval. Annexure-A is manifestation of execution of such power.

39. As already noted learned counsel for the respondent Nos.1 to 40 at the time of arguments filed a memo dated 14.06.2023 enclosing an order dated 09.06.2023. The said memo reads as under:



"MEMO FILED BY THE RESPONDENTS

- 1. The Hon'ble Single Judge in W.P. No. 20819 of 2021 quashed the Order dated 12th February, 2015 on the ground that the Central Government has no authority under law to delegate its powers conferred under Sections 68 and 164 of Electricity Act, 2003 (hereinafter the Act).*
- 2. In compliance and in obedience of the judgement passed by the Single Judge (Impugned Judgement), the Central Government withdrew its earlier Order dated 12th February, 2015 and passed a fresh Order dated 9th June, 2023 bearing No. 25-10/27/2023-PG. A copy of the fresh Order dated 9th June, 2023 passed by the Ministry of Power, Government of India is produced herein as Annexure-R1.*
- 3. A plain perusal of Order goes to show that the Central Government has accepted that it has no authority to delegate its powers under Section 68 and 164 of the Act.*
- 4. In view of the above Order, the challenge to the Impugned Order passed in W.P. No. 20819 of 2021 has been rendered futile and thus the Writ Appeal has become infructuous.*



WHEREFORE, it is most humbly requested that this Hon'ble Court may be pleased to take the present memo on record in the interest of justice and equity."

40. It is also relevant to extract Annexure-R-1 to the said memo dated 09.06.2023:

ANNEXURE-R-1

*"No. 25-10/27/2023-PG
Government of India
Ministry of Power
Shram Shakti Bhawan, Rafi Marg, New Delhi-110001
Tele: 011-23730264*

New Delhi, dated 09th June, 2023

ORDER

Subject: Delegation of power for approval under provision of Section 68 and Section 164 of the Electricity Act, 2003-Regarding.

The undersigned is directed to refer to this Ministry's Order No.4/14/2014-PG dated 12.02.2015 on the subject cited above and to say that Hon'ble Minister of Power & NRE has approved the delegation of powers as follows:

i. Power for approval under Section 68 of the Electricity Act, 2003 presently vested with



Chairperson, CEA, is delegated to Joint Secretary (Transmission), Ministry of Power.

ii) Power for approval under Section 164 of the Electricity Act, 2003, presently vested with Chairperson, CEA, is delegated to Joint Secretary (Transmission). Ministry of Power.

2. The revised Standard Operating Procedure (SOP) for granting approval under provision of Section 68 & Section 164 of the Electricity Act, 2003 is also enclosed at Annexure-I & II respectively.

Encls: As above

(Deepak Rao)
Director
Tel: 011-23716674

41. Thus, even going by the submission of learned counsel for respondents 1 to 40 the position prior to the order at Annexure-A dated 12.02.2015 and subsequent to order at Annexure-R-1 dated 09.06.2023, extracted hereinabove, is that the power of approval under Section 68 and Section 164 of the Act, 2003 is delegated to an authority be it "Joint Secretary (Transmission), Ministry of Power" or "Chairperson, CEA". In other words an authority is nominated to carry out the functions and duties of the Central Government as prescribed under Section 68 and Section 164 of the Act, 2003.



42. *We in the light of aforesaid factual and legal position of the matter, are of the considered view that there is no requirement of framing of any rules under Section 176 of the Act, 2003 merely because term "prescribed" is used in clause (c) of sub-section (2) of Section 68 of the Act, 2003 more particularly for the reason that sub-section (2) of Section 68 carves out an exception from the application of sub-section (1) of Section 68 which has missed the attention of the learned Single Judge.*

43. *The learned Single Judge has at paragraph 33 of the impugned Judgment has taken note of the settled principles of law that public interest prevails over private interest and acquisition for public interest falls within the ambit of doctrine of eminent domain. Learned Single Judge has further opined that though the project in the instant case is for the public purpose but the action of the Central Government in delegating the authority of granting prior approval to respondent No.42 -CEA under Section 68 of the Act, 2003 is one without authority of law warranting exercise of power of judicial review.*

44. *It is pertinent to note that the primary grievance of the respondent Nos.1 to 40/writ*



*petitioners is the apprehension of they being put to inconvenience/hardship in the event of implementation of the project. In other words they being apprehensive of being deprived of their right to property. Respondent Nos.1 to 40/writ petitioners may have effective alternate remedy. They may not therefore be heard to canvas a case with regard to exercise of powers by respondent No.42-CEA as sought to be done in the instant case merely by making out an arguable case. It is appropriate to refer to enunciation of law by the Apex Court in this context. In the case of **Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority and Others** reported in **(2023) SCC ONLINE SC 95** the Apex Court has held as under:*

4.

A writ petition despite being maintainable may not be entertained by a high court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a high court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional



case has been made out for such entertainment would not be proper.

In BIRENDRA KUMAR DEORAH V. ASSAM ELECTRICITY GRID CORPORATION LTD., AND OTHERS reported in ***(2020) 1 GAUHATI REPORTS 646*** it is held as under:

17. A plain reading of Section 68 of the Act further goes to show that the AEGCL, as a licensee, shall have to obtain prior approval from the appropriate Government, which in this case, is the State Government of Assam, before installing an overhead line for flow of electricity with a voltage exceeding 11 KV. In other words, the licensee cannot install or keep installed any overhead lines without obtaining the prior approval of the appropriate Government. What needs to be noted herein is that the approval is with regard to installation of an overhead line and not for commencement of construction. There is no controversy about the fact that the high voltage overhead line is yet to be installed and/or operationalised in this case. Moreover, the licensee i.e. the AEGCL is a Government of Assam



undertaking. That apart, the Government has already granted approval to the licensee for installation of the overhead line. If there is any omission on the part of the licensee in obtaining prior approval, it would be for the "appropriate government" to take action against the licensee. Therefore, no prejudice can be said to have been caused to the writ petitioner merely because the approval was granted "ex-post facto". Under the circumstances, I am unable to accept the contention of Mr. Mishra that there was no scope for the Government to grant "ex-post facto" approval in the present case.

25. There can hardly be any doubt about the fact that construction of high voltage electrical overhead lines is for the benefit of the public in general. Therefore, even assuming that the location of the Tower No.19 has resulted in some loss and injury to the interest of the petitioner, when there is a conflict between public interest at large and the interest of an individual, private interest must give way to the larger public interest. If the writ petitioners are aggrieved by any action of the respondents or their officials, which are wrongful or are



actuated by malice, aimed at causing wrongful loss and injury to them, then the remedy would lie in bringing in action for damages and compensation for causing wrongful loss and injury.

26. It is settled law that no citizen can claim an indefeasible right to hold any land which is required for public purposes. In the case of Jilubhai Nanbhai Khachar and Ors. Vs. State of Gujarat and Ors. reported in 1995 Supp(1) SCC 596 the Hon'ble Supreme Court has extensively examined the right of the citizen to hold his property and held that such right of the citizen is always subject to the right of the sovereign to take it for a public purpose.

45. Thus, even in the instant case learned Senior counsel for the appellant submitted that the alignment of line for the purpose of installation of overhead lines is yet to be finalised as regards the properties belonging to the respondents 1 to 40/writ petitioners is concerned. Needless to state if in the event, on such alignment, the proposed project is implemented on the land belonging to the respondents 1 to 40/writ petitioners, they would certainly be entitled for such remedy/relief as provided under the relevant provisions of law. The



same is not foreclosed by disposal of the present appeal.

46. The contention of the counsel for respondents 1 to 40/writ petitioners that the project was resisted and opposed by respondent No.43-KPTCL has been refuted and rebutted by learned counsel appearing for respondent No.43-KPTCL by referring to memo filed in the writ petition making its stand clear on this contention of the petitioner. In that view of the matter nothing requires to be adverted to in this regard.

47. For the foregoing reasons and analysis we are of considered view that the appellant has made out grounds warranting interference with the order passed by the learned Single Judge as the same is premised on an incorrect reading of clause (c) of sub-section (2) of Section 68 with clause (f) of sub-section (2) of Section 176. In that view of the matter following:

ORDER

Writ appeal is allowed. Order dated 29.03.2023 passed in W.P.No.20819/2021(GM-KEB) is set aside. Consequently, W.P.No.20819/2021 is dismissed."



11. Similarly in the case of ***Emmanuel Vincent D'Sa and others Vs. Union of India and others***⁹ (*Emmanuel Vincent*), this Court has held that repeated challenge to the very same project was barred by principles of *res judicata* and issuance of notices does not furnish fresh cause of action and has held at paragraph Nos.22, 23, 24, 25, 26, 27, 28 and 29 as under:

"22. From above, it is seen alleging writ petition would be barred by *res-judicata* etc. respondents raised preliminary objections.

23. Petitioners' challenge against Project is, firstly, on ground that Section 38 (2) of Act, mandated submission of proposal for inter-state transmission line by CTU; secondly, on ground of validity of delegation of power under Section 68 of Act to CTU and thirdly, on ground that authorization under Section 164 of Act, could only be issued after finalization of route map for laying transmission lines.

24. Admittedly, grounds of challenge with reference to Sections 68 and 164 of Act, were

⁹ W.P. No.12131/2024 D.D. 16.09.2025



*earlier urged in WP no.20819/2021, which as noted above was dismissed by Division Bench in WA no.560/2023, reserving liberty to avail remedies under provisions of Telegraph Act, in case, after finalization of transmission route over petitioners lands. Even contention about grant of authorization under Section 164 of Act, only after finalization of route and preparation of map based on observations in **Jaisinh's** case (supra) was also urged and deemed rejected. Thus, petitioners' challenge against Project on substantial grounds stood rejected.*

25. When issuance of notices of intention to lay transmission lines over petitioners' lands as per Annexure-C series is only a consequential act, in pursuance of delegation of power, approval granted and authorization issued under provisions of Act, petitioners cannot claim that same had given fresh cause of action to urge very same contentions considered and rejected earlier.

26. Insofar as contention that with promulgation of Indian Telecom Act, 2025, there were two enactments governing same field and therefore, later Act would prevail, thereby annulling approvals/authorizations granted hitherto. A bare perusal of said Act would indicate that, it is enacted



for governing a distinct area and would not overlap or eclipse provisions of Indian Telegraph Act.

27. *Insofar as claim for application of provisions of RFCTLARR even to 'user rights' under provisions of Telegraph Act, it is observed by Hon'ble Supreme Court in **KSEB v. Livisha** reported in (2007) 6 SCC 792, that except right of user, Telegraph Authority would not acquire any right over land. Therefore, damages sustained while laying lines and due to diminution of value of land would require to be compensated. Thus, there would be no need for determination of compensation as per provisions of RFCTLARR. Therefore, said contention would not hold water.*

28. *It is also seen that after filing of this writ petition, petitioners had submitted, in similar writ petition i.e. WP no.13921/2023, this Court had granted interim order against Project. Incidentally, said writ petition was subsequently dismissed on 06.08.2024. Though, WA no.1796/2024 is filed, there is no interim order granted.*

29. *It is also seen that in WA filed against grant of interim order in WP no.13921/2023, Division Bench had observed that only recourse to petitioners, in terms of decision in WA no.560/2023, was to pursue claim for compensation under*



provisions of Telegraph Act. In fact, in WPs no.3186/2023, 19432/2022, 4679/2023 and WP.no.1589/2023, disposed of on 27.10.2023, filed for restraining respondents from implementing Project, this Court has relegated them to avail remedies under Section 10 (d) and 16 (3) of Telegraph Act. Petitioners would not stand on any better footing. "

12. In light of the above binding precedents, the contention regarding availability of an alternative route cannot be a ground for interference.

13. The decisions placed reliance by the learned counsel for the petitioner in the cases of **Ramesh, Thirthesh A.S.,** and **Khushboo Bansal** only laid down that in cases of resistance, recourse may be taken under Section 16 of the Indian Telegraph Act.

14. In the present case, the petitioner has already filed objections. The competent authority has considered the same and orders have been passed permitting execution. The requirement under Section 16 of the



Telegraph Act stands complied with. In view of the powers conferred under Section 164 of the Electricity Act, 2003, the authority is vested with the powers of telegraph authority and the consent of the land owner is not required, and the authority is empowered to lay transmission line, and the only right available to the land owner is to seek compensation.

15. The question as to alignment is to be adopted is a matter of technical evaluation, involving consideration of feasibility, safety and grid requirements, which cannot be substituted by judicial determination. The petitioner has not demonstrated any arbitrariness, *malafides* or violation of any statutory procedure warranting any interference by this Court and accordingly, the point framed for consideration is answered and this Court pass the following:

ORDER

- i. The writ petition is hereby ***dismissed*** as devoid of merits.



- ii. However, it is made clear that the petitioner is at liberty to seek compensation in accordance with Section 10 (d) read with Sections 16 and 17 of the Indian Telegraph Act, 1885.

Sd/-

JUSTICE K.S. HEMALEKHA