

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A. NO.85618 OF 2020

IN

WRIT PETITION (CIVIL) NO.838 OF 2019

M.K. Ranjitsinh & Ors.

..... Petitioner(s)

Versus

Union of India & Ors.

....Respondent(s)

ORDER

1. The writ petition is filed in the nature of public interest seeking to protect two species of birds namely the Great Indian Bustard ('GIB' for short) and the Lesser

Florican, which is on the verge of extinction. The existence of overhead power lines is stated to have become a hazard due to which the said species of birds on collision are getting killed. In the pending writ petition, the application in I.A. No.85618/2020 is filed seeking interim directions to direct the State of Rajasthan (respondents No.5 and 6) and State of Gujarat (respondents No.9 to 11) to ensure predator proof fencing, controlled grazing in the enclosure development and to direct the said respondents not to permit installation of overhead power lines and also not permit further construction of windmills and installation of solar infrastructure in priority and potential habitat as identified by the Wildlife Institute of India. The petitioner is also seeking a direction to the respondents to install divertors for the powerlines which has been listed in the application.

2. The very subject matter indicates that though such directions are sought against the respondents, the litigation is not adversarial in nature as it is community interest. In fact, the petitioners being environmentalists, are seeking to protect the rare birds which are dwindling in number. It is contended that GIB is one of the heaviest flying birds in the

world, about a meter in height and wing span of around seven feet. It has disappeared from 90 per cent of habitat except parts of Rajasthan and Gujarat which is to be protected. According to the petitioners, overhead power lines are the biggest threat to the survival of the GIBs. The Wildlife Institute of India (WII) in its Report “Power Line Mitigation, 2018” has stated that every year 1 lakh birds die due to collision with power lines. The Report concluded that unless power line mortality is mitigated urgently, extinction of GIBs is certain. Surveys conducted by Wildlife Institute of India (WII) in Thar covering 80 km of power lines repeated 7 times over a year found 289 carcasses of around 30 species, including the Great Indian Bustard (GIB). The study estimated 3 bird mortalities/km/month for low-tension lines, 6 bird mortalities/km/month for high-tension lines, and about 1 lakh birds/per year within a 4200 sq.km area in/around Desert National Park, Rajasthan. In terms of GIB, 6 mortalities have been recorded in Thar during 2017-20, all due to high-tension transmission lines – some of them connected to wind turbine. Therefore, petitioner seeks undergrounding all future overhead power lines; selected

power lines in priority GIB habitat and installation of divertors in potential habitat.

3. In fact, it is admitted by the Ministry of Power, Union of India in their affidavit dated 15.03.2021 as follows: -

“The Great Indian Bustard (“GIB”) lacks frontal vision. Due to this, they cannot detect powerlines ahead of them, from far. As they are heavy birds, they are unable to manoeuvre across power lines within close distances. Thus, they are vulnerable to collision with power lines. In case of low voltage lines, electrocution is often the cause of death due to smaller phase to phase separation distance. High voltage lines do not cause death due to electrocution but cause death due to collision.”

4. But, this Court while considering IA Nos.1433 and 1477 of 2005 in the case of **T.N. Godavarman Thirumulpad Vs. Union of India & Ors.** (2012) 3 SCC 277 has observed as hereunder:

“17. Environmental justice could be achieved only if we drift away from the principle of anthropocentric to ecocentric. Many of our principles like sustainable development, polluter-pays principle, intergenerational equity have their roots in anthropocentric principles. Anthropocentrism is always human interest focussed and that non-human has only instrumental value to humans. In other words, humans take precedence and human responsibilities to non-human based benefits to

humans. Ecocentrism is nature-centred where humans are part of nature and non-humans have intrinsic value. In other words, human interest does not take automatic precedence and humans have obligations to non-humans independently of human interest. Ecocentrism is therefore life-centred, nature-centred where nature includes both humans and non-humans. The National Wildlife Action Plan 2002-2012 and the Centrally Sponsored Integrated Development of Wildlife Habitats Scheme, 2009 are centred on the principle of ecocentrism.”

In that context while taking note of the contention of the State relating to lack of funds, reference was made to the Centrally Sponsored Integrated Development of Wildlife Habitats Scheme, 2009 which provides for financial sharing between Centre and State. Though taken note in the context of conservation of wild buffalo the pattern of funding was taken note in para-23 which provides for 100% central assistance in respect of GIB, for both recurring and non-recurring items of expenditure.

5. Further this Court in the case of ***Centre for Environmental Law, World Wide Fund – India Vs. Union of India & Ors.***, (2013) 8 SCC 234 while considering the protection and conservation of endangered

species has observed as hereunder:

“45. We may point out that there has been wide-ranging discussions and deliberations on the international platforms and conferences for rebuilding of certain principles laid down in the earlier conventions on the Principles of Sustainable Development. The United Nations Commission on Environment and Development defined the “sustainable development” as follows:

“Sustainable development is the development that meets the needs of the present without compromising the ability of future generations to meet their own needs.” (World Commission on Economic Development [WCED], 1987 : 43)

46. Sustainable development, it has been argued by various eminent environmentalists, clearly postulates an anthropocentric bias, least concerned with the rights of other species which live on this earth. Anthropocentrism is always human interest focussed thinking that non-human has only instrumental value to humans, in other words, humans take precedence and human responsibilities to non-human are based on benefits to humans. Ecocentrism is nature-centred, where humans are part of nature and non-humans have intrinsic value. In other words, human interest does not take automatic precedence and humans have obligations to non-humans independently of human interest. Ecocentrism is, therefore, life-centred, nature-centred where nature includes both humans and non-humans.”

“48. Article 21 of the Constitution of India protects not only the human rights but also casts an obligation on human beings to protect and preserve a species becoming extinct, conservation and protection of environment is an inseparable part of right to life. In *M.C. Mehta v. Kamal Nath* [(1997) 1 SCC 388] , this Court enunciated the doctrine of “public trust”, the thrust of that theory is that certain common properties such as rivers, seashores, forests and the air are held by the Government in trusteeship for the free and unimpeded use of the general public. The resources like air, sea, waters and the forests have such a great importance to the people as a whole, that it would be totally unjustified to make them a subject of private ownership. The State, as a custodian of the natural resources, has a duty to maintain them not merely for the benefit of the public, but for the best interest of flora and fauna, wildlife and so on. The doctrine of “public trust” has to be addressed in that perspective.

49. We, as human beings, have a duty to prevent the species from going extinct and have to advocate for an effective species protection regimes. NWAP 2002-2016 and the Centrally-sponsored scheme, 2009 indicate that there are many animal species which are close enough to extinction and some of the other species have already disappeared from this earth. No species can survive on the brink of extinction indefinitely and that the continued existence of any species depends upon various factors like human-animal conflict, epidemics, forest fire and other natural calamities, etc.”

The State as well as the Central Government therefore,

have a duty cast to preserve the endangered species and as such the expenses incurred will have to be provided by them either under the schemes available or by earmarking the same in such manner. Needless to mention that in the instant case the preservation is by undergrounding the powerlines and in that context if cost is incurred, it would also be permissible to pass on a portion of such expenses to the ultimate consumer subject to approval of the Competent Regulatory Authority.

6. The respondents though are sensitive to the issue, have contended that the high-voltage lines do not cause GIB deaths due to electrocution but cause death due to collision. It is contended that the underground high-voltage line is not technically feasible due to several factors such as (i) high cost (ii) high downtime to repair any failed cable (iii) non-availability of cables at 765 Kv level and (iv) increase in the number of joints with length of run. The petitioners/applicants in order to controvert the same and contend that the undergrounding of high-

voltage line is not a novel move but has been undertaken in other cases, have referred to the tender notification issued by Power Transmission Corporation of Uttarakhand Limited for 220 KV transmission line and the one issued by Delhi Transport Limited for 220 KV underground cable.

7. In addition, the petitioners have also referred to the invitation of public comments for laying underground cable transmission line of 220 KV by the Government of India, Ministry of Road Transport and Highways. The report published by the Power Grid Corporation is referred to indicate that the undergrounding of 220 KV power line is possible and is being done in India. It is specifically contended that the 10 km long power lines were made underground by GETCO for the safety of Greater Flamingos in the Khadir Region of Kutch. Similar such instances of underground power lines being laid is also referred by Mr. Shyam Divan, learned senior counsel for the petitioner. Ms. Aishwarya Bhati, learned ASG and Dr. Manish Singhvi, learned senior counsel

appearing on behalf of the respondents however sought to indicate that the instances referred, wherein the tender notifications were issued for underground power lines cannot be made comparable in all cases inasmuch as the same would be possible depending on the area, terrain and the distance for which such cable line is to be laid which cannot be of universal application.

8. In that background, keeping in view, the sustainable development concept and on striking a balance the protection of the rare species of birds is essentially to be made, the effort being to save every bird while at the same time allowing transmission of power in an appropriate manner. Even as per the study/survey conducted by the Wildlife Institute of India, it would not be feasible to lay underground power cables in certain areas and the conversion of the already existing cables also cannot be made in certain locations. In such of the locations, it is recommended that 'bird divertors' be installed on the existing power lines and the undergrounding of the new power line wherever technically feasible in the vicinity of the habitats of the

rare species of birds be undertaken.

9. The report dated 11.07.2019 was submitted by the Wildlife Institute before the National Green Tribunal to that effect and para 4.2 of the report reads as hereunder:

“4.2. Mitigate all power transmission lines passing through priority bustard habitats identified by WII (Please refer Annexure 10) by undergrounding cables (where technically/technologically feasible) or installing bird divertors to make them prominent to birds. The priority areas where this intervention is required has been mapped by the Wildlife Institute of India and a technical-cum-financial proposal has been submitted to RVPNL for necessary approvals from Rajasthan Energy Department for mitigation. This action must be expeditiously implemented in the short-term (1-3 years), as power-line mortality is currently the biggest threat to the species.”

10. In addition to the death of the birds due to collision and electrocution, the conservation strategy also requires protecting the eggs of the said species of birds and the same being transferred to breeding centres for the purpose of hatching. In that regard, for conservation, the habitat restoration and for making it predator proof, appropriate fencing is to be provided to the breeding

grounds. In that regard, pictorial representation of the priority and potential area is indicated in Annexure A-7 (page 74) of I.A. No.85618/2020 which is also depicted here below.

11. In the above background, there cannot be disagreement whatsoever that appropriate steps are required to be taken to protect the said species of birds. In that view, insofar as the existing overhead powerlines are concerned the respondents shall take steps forthwith to install divertors and in respect of existing overhead powerlines all future cases of installing the transmission lines a study shall be conducted with regard to the feasibility for the lines to be laid underground. In all such cases where it is feasible, steps shall be taken to lay the transmission line underground. For the lines to be laid in future if as per the technical report the overhead line alone is feasible and the same is ratified by the Committee, in such event the installation of the divertors shall also be a condition attached in the contract to be entered with generating companies. Insofar as, the cost incurred in the said process, the concerned respondents

No. 5 to 8 and 9 to 11 shall work out and provide for the same and the respondents No.1 to 4 aid in this regard. It would be open to them to muster the resources in accordance with law. In cases where the power generators are required to bear the additional amount adding to the cost of production, it would be open to regulate the manner in which the cost would be mitigated in accordance with contractual terms. Irrespective of the cost factor the priority shall be to save the near extinct birds.

12. In fact, a few suggestions were made in the course of arguments, as to how financial resources can be mobilised. One of the options that could be explored, is to invite the attention of each electricity utility engaged in the generation of power, to Section 135 of the Companies Act, 2013, which imposes corporate social responsibility upon companies having a specified net worth or turnover or net profit. Section 166(2) of the Companies Act, 2013 ordains the Director of a Company to act in good faith, not only in the best interest of the Company, its employees, the

shareholders and the community, but also for the protection of environment. The word “environment”, though not defined in the Companies Act, has to be given the meaning assigned to it under the Environment (Protection) Act, 1986. Section 2(a) of the Environment (Protection) Act, 1986, defines the word “environment” to include the *“inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organisms and property”*

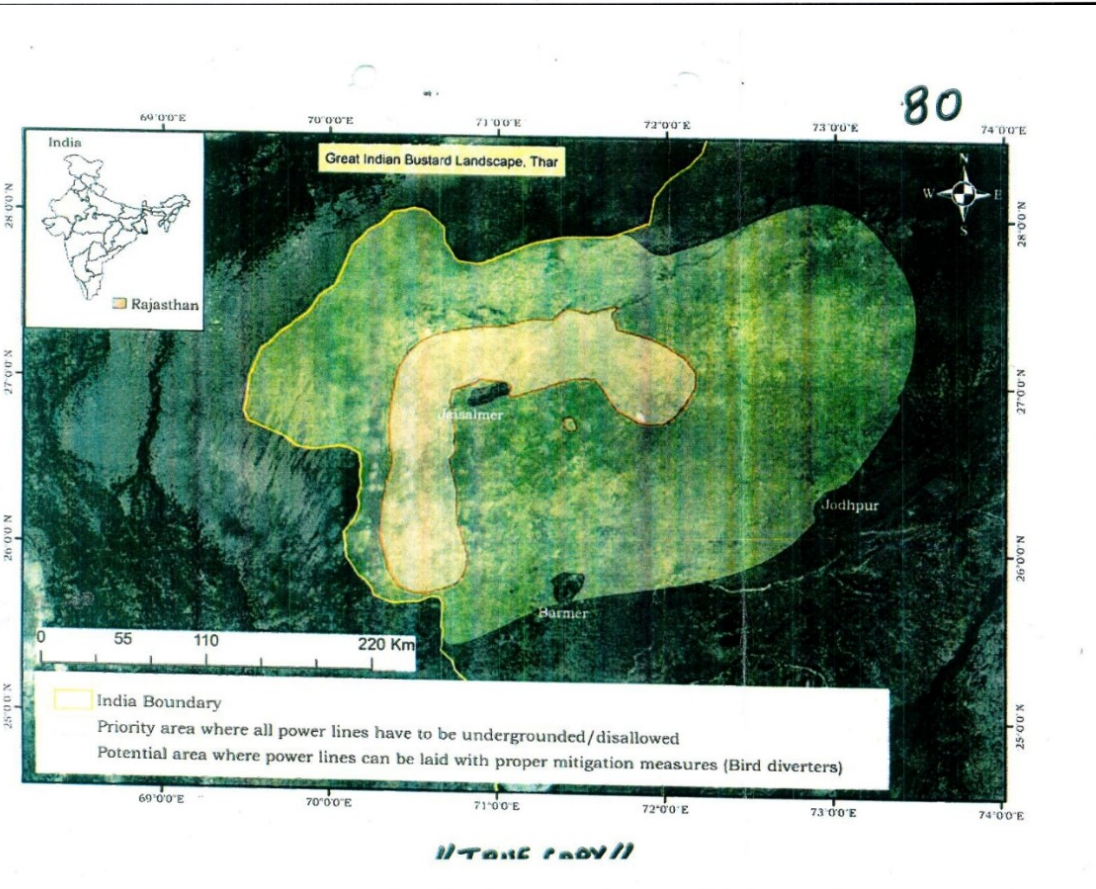
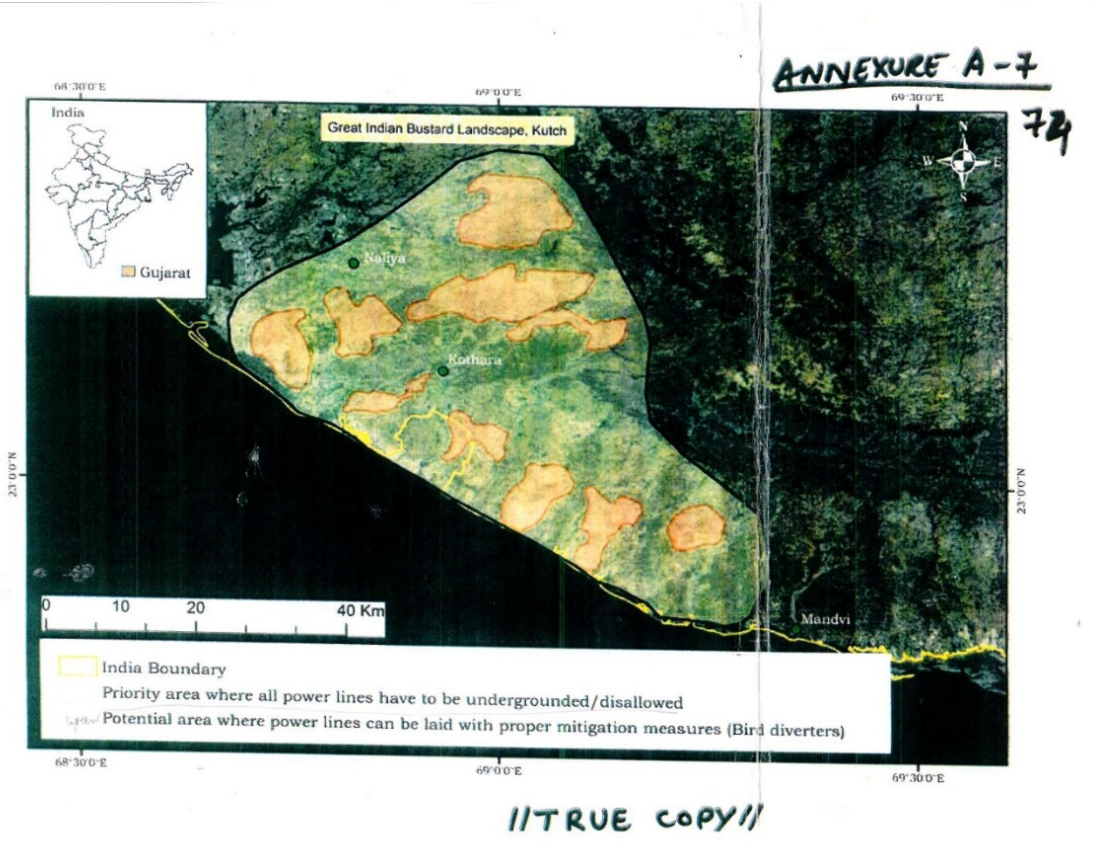
Moreover, with the implementation of the Compensatory Afforestation Fund Act, 2016 (CAF, 2016), substantial funds are available with the National and State Authorities. Sections 4, 5 and 6 of the Act, provide for the utilisation of the fund for measures to mitigate threats to wildlife. The State of Rajasthan has already set up a Compensatory Afforestation Fund Management and Planning Authority (CAMPA) on 12.11.2009. Rule 5(2)(i) of these Rules permit the use of the State Fund for the improvement of wildlife habitat. It appears, according to the petitioners that a sum of Rs.47,436 crores, out of a

total of Rs.54,685 crores CAMPA Fund have been transferred by the Union Environment Ministry to the States for afforestation projects.

13. With regard to the conservation of the habitat to secure the safety of the eggs laid by the birds, the area earmarked and indicated as islands and shown in Annexure-A-7 and in light colour in sketch here below shall be fenced and protected from invasion by predators so that the eggs laid in these areas are protected. The power supply line regarding which underground passage is to be made should also avoid these areas.

14. In the light of the contentions urged on this aspect of the matter, we are conscious that the laying of the underground power line more particularly of high-voltage though not impossible, would require technical evaluation on case-to-case basis and an omnibus conclusion cannot be reached laying down a uniform method and directions cannot be issued unmindful of the fact situation. Though that be the position the consensus shall be that all low voltage powerlines to be laid in the priority and potential habitats of GIB shall in

all cases be laid underground in future. In respect of low voltage overhead powerlines existing presently in the priority and potential habitats of GIB, the same shall be converted into underground powerlines. In respect of high-voltage powerlines in the priority and potential habitats of GIB, more particularly the powerlines referred in the prayer column of I.A. No.85618/2020 and indicated in the operative portion of this order shall be converted into underground power line. The potential and priority area in Kutch and Thar respectively are as per the sketch shown below:



While considering the laying of underground power line the said habitats shall be kept in perspective and steps be taken for the safety of the GIB in the said habitat.

15. As already taken note above, the laying of high-voltage underground power line would require expertise to assess the feasibility of the same. For this specific purpose of assessing the feasibility after taking into consideration all technical details, we deem it proper to constitute a committee consisting of the following members:

- (i) Dr. Rahul Rawat,
Scientist,
Room No.021, Block-14,
Ministry of New and Renewable Energy,
CGO Complex, Lodi Road,
New Delhi.
- (ii) Dr. Sutirtha Dutta,
Scientist,
Wildlife Institute of India,
Dehradun.
- (iii) Dr. Devesh Gadhavi,
Deputy Director,
The Corbett Foundation.

The above committee may also obtain technical reports if need be, from experts in the field of electricity

supply to arrive at their decision. The Government of India shall provide all assistance to the Committee.

16. The details of the powerlines from Kutch for installation of bird divertors is as follows:

a) <u>List of powerlines from Kutch for installation of divertors</u>	<u>Capacity</u>
1) Kukdau to Vingaber (8.86 Km)	Unknown
2) Vingaber to Lala (4.84 Km)	Unknown
3) Agriculture area near highway NH-41 (0.53 KM)	Unknown
4) Agriculture area near highway NH-41 (0.86 KM)	Unknown
5) Khirsara village to Khotara town (3.42 Km)	Unknown
6) Prajau Substation to Prajau Village on road side (2.81 Km)	Unknown
7) Part of Bhamedi to Naliya (4.44 Km)	Unknown
8) Part of Fulay vandh to Naliya-Jakhau Road (10.9 Km)	Unknown
9) Part of Kothara Naliya line (9.1 Km)	Unknown
10) Part of Kothara-Naliya Line (6.90 km)	Unknown
11) Part of Vanku to Fulay Vandh (6.25 km)	Unknown

The details of the powerlines for installation of divertors from Rajasthan are as follows:

b) <u>List of powerlines for installation of divertors from Rajasthan</u>	<u>Capacity</u>
1) Jaisalmer – Ramgarh -1 (40 Km)	132 kv
2) Jaisalmer – Ramgarh -2 (40 Km)	132 kv

3) Askandra (Pokran to Askandra) (30 Km)	132 kv
4) Askandra (Pokran to Askandra) (20 Km)	132 kv
5) Amarsagar – Ramgarh (40 Km)	220 kv
6) Amarsagar – Lilo (8 Km)	220 kv
7) Amarsagar – Phalodi (54 Km)	220 kv
8) Amarsagar – Phalodi (71 Km)	220 kv
9) Ramgarh Dechu (49 Km)	220 kv
10) Ramgarh Dechu (43 Km)	220 kv
11) Ramgarh Dechu (50 Km)	220 kv
12) Akai – Ramgarh (55 Km)	400 kv
13) Tejuva – Kuchadi (138 km)	33 kv
14) Kaladongar (70 Km)	33 kv
15) Mokla – Habur – Sanu (301 km)	33 kv
16) Tejuva – Kuchadi (25 km)	132 kv
17) Kaladongar (47 km)	132/220 kv
18) Mokla – Habur – Sanu (43 km)	132/220 kv
19) Chandan Via Bhagu ka Gaon to Mohangarh (70 km)	33 kv
20) Amarsagar – Ramgarh (40 km)	220 kv
21) Amarsagar – Ludarva (4 km)	33 kv

The details of the powerlines to be converted to underground subject to feasibility, if not, to immediately install divertors;
Lines from Kutch

a) <u>List of powerlines from Kutch for undergrounding</u>	<u>Capacity</u>
1) 220 KV GETCO line next to breeding site 13 cables (3.19 Km)	220 KV
2) Bhachunda GIB habitat to Sandhav River line (2.1 Km)	Unknown
3) Bhanada to Valram Society (6.1 Km)	66 KV
4) GETCO Substation to Dhanawada – Nanawada (9.81 Km)	Unknown

5) GETCO Substation to Kothara-Mothala Road (9.69 Km)	Unknown
6) Jakhau to Prajau road substation (10.9 Km)	Unknown
7) Jakhau to Sindhodi (8.39 Km)	Unknown
8) Jakhau to Sindhodi (8.53 Km)	Unknown
9) Jakhau to Sindhodi (8.57 Km)	Unknown
10) Jakhau-Vanku Road to Prajau Road substation (3.43 Km)	Unknown
11) Kalatalav Khirsara Road (9.0 Km)	Unknown
12) Khirsara Kothara (8.20 Km)	Unknown
13) Khirsara to Kothara River Wastelands (2.24 Km)	Unknown
14) Kunathiya GETCO to Bitta & around Adani Solar (6.65)	220 kv
15) Kunathiya GETCO to Tera (7.32 Km)	66 KV
16) Kunathiya GETCO towards Rava (3.34 km)	66 KV
17) Lala to Jakhau (11.6 Km)	Unknown
18) Line near Khorsara (2.77 Km)	Unknown
19) Line near Lala village (1.45 Km)	Unknown
20) Naliya-Kothara Road (6.58 Km)	Unknown
21) Naliya-Kothara Highway (15.0 Km)	Unknown
22) Naliya-Kothara Highway Line (15.7 km)	Unknown
23) Naliya-Kothara Road to Prajau (9.15 Km)	Unknown
24) Naliya-Kothara Road to Vanku-Lala Road (10.8 km)	66 KV
25) Prajau Road (5.57 Km)	Unknown
26) Prajau to Naliya-Jakhau Road	Unknown
27) Prajau Road line passing through Naliya Grasslands (4.43 km)	Unknown
28) Prajau Road substation to Naliya-Kothara Road substation	Unknown
29) Prajau village to Prajau Road (5.82 Km)	Unknown
30) Part of Bhamedi to Naliya-Jakhau Road (8.19 km)	Unknown
31) Part of Fulay Vandh to Naliya-	Unknown

Jakhau Highway (8.27 Km)	
32) Part of Kothara-Naliya (8.82 Km)	Unknown
33) Part of Kothara-Naliya line (9.36 km)	Unknown
34) Part of Vanku to Fulay Vandh line (1 km)	Unknown
35) Khirsara to Highway River Wastelands (1.59 Km)	Unknown
36) Kunathiya GETCO to Bhanada Village via Agri Farms (12.1 km)	66 KV

Lines from Rajasthan

b)	<u>List of powerlines from Rajasthan for undergrounding</u>	<u>Capacity</u>
1)	Kanoi-Salkha (21 Km)	33 kv
2)	Sam-Dhanana (45 Km)	33 kv
3)	Tejuva-Kuchr (17 Km)	33 kv
4)	Khuchri horizontal-parallel (21 Km)	33 kv

17. The respondents No.5, 6 and 9 to 11 while arranging to lay the powerlines underground in respect of the powerlines, the feasibility of which is not in doubt shall proceed with the work right away. However, in cases where the respondents find that there are issues relating to feasibility, the matter shall be referred to the committee with all relevant material and particulars. The committee shall assess the matter and arrive at a conclusion as to whether the underground powerline is feasible or not. Based on the report to be rendered by the committee the further action shall be taken by the respondent.

18. In all cases where the overhead powerlines exist as on today in the priority and potential GIB area the respondents shall take steps forthwith to install divertors pending consideration of the conversion of the overhead cables into underground powerlines. In all such cases where it is found feasible to convert the overhead cables into underground powerlines the same shall be undertaken and completed within a period of one year and till such time the divertors shall be hung from the existing powerlines.

19. Ordered accordingly.

.....CJI.
(S. A. Bobde)

.....J.
(A.S. Bopanna)

.....J.
(V. Ramasubramanian)

New Delhi,
April 19, 2021