



Chhattisgarh State Electricity Regulatory Commission

Civil Lines, G.E. Road, Raipur – 492001

Tel: 0771-4073555, Fax-4073553

छत्तीसगढ़ राज्य
विद्युत नियामक आयोग

Petition No.13 of 2007(M)

Applications under section 94 (1)(f) of the Electricity Act, 2003, for review of order dated 20.04.2007 passed in petition No. 22 of 2006 (L)

1. M/s Jindal Steel and Power Ltd. Petitioner in petition No.13 of
Post Box No. 16, Kharsia Road 2007 (M)
Raigarh (C.G)
 2. M/s Nalwa Steel & Power Ltd. Petitioner in petition No.14 of
28, Najafgarh Road 2007 (M)
New Delhi.
- V/s
Chhattisgarh State Electricity Board Respondent
Raipur.

Present: S.K.Misra, Chairman
Sarat Chandra, Member

ORDER

(Passed on 14.8.2007)

M/s. Jindal Steel & Power Ltd (hereinafter 'JSPL' or 'the petitioner') has filed an application under section 94(1)(f) of the Electricity Act, 2003 (hereinafter the Act) for review of the order of this Commission, passed on 20.4.2007, in petition No. 22 of 2006(L). In this order, apart from holding that the petitioner does not require a transmission licence for point to point transmission of power to his own coal washery and to the Jindal industrial park, the Commission has also held that the petitioner's transmission line to the so-called sister concern M/s Nalwa Steel & Power Ltd ('Nalwa Steel' or 'the Second Petitioner', hereinafter) for supply of power by the petitioner to this plant is not in accordance with the Act and hence should be discontinued. This review petition is against this second part of the order. Nalwa Steel has separately submitted a review petition, registered as petition No.14 of 2007 (M), in which it has also sought review of that part of our impugned order by which we have directed JSPL to stop power supply to the petitioner. Since both the review petitions are against the same order and the grounds on which review of our order has been sought are also the same, these are being considered together.

2. The brief facts of this case are that the petitioner held a transmission licence issued in his favour by the Madhya Pradesh Electricity Regulatory Commission vide its order dated 2.2.2000, before Chhattisgarh became a separate State. The petitioner sought renewal of the transmission licence till the Act came into force in the State of Chhattisgarh, and sought cancellation of the licence thereafter on the ground that after coming into force of the Act he does not require a transmission licence for setting up dedicated transmission line from his captive generating plant to his coal washery. The facts relevant to this review petition are that the petitioner has

installed point to point transmission line from his captive power plant at Raigarh to his coal washery situated at village Tamnar. This transmission line has been tapped at two places. The first to supply power to industries in the Jindal Industrial park and the second, to supply power to Nalwa Steel. We have separately in petition No.9 of 2005 held that the tapped line for supply of power to the industrial park is part of the distribution network of the petitioner who has been granted a distribution licence for supply of power to the industries located in the industrial park. With regard to the transmission lines used for supply of power to Nalwa Steel plant we held that this is not permissible under the Act. The only ground on which the petitioner sought to validate this supply was that he had been granted permission by the State Government under section 28(1) and (1A) of the Indian Electricity (Supply) Act, 1910 (the 1910 Act, hereinafter), which is saved under section 185(2) of the Act. In the impugned order we have held inter alia that while the petitioner does not require a transmission licence for his dedicated transmission line from his power plant in Raigarh to its coal washery at village Tamnar as a captive generating plant setting up dedicated transmission line is authorized under section 9 of the Act, we have also held that the transmission line to Nalwa Steel plant is not a part of the dedicated transmission line of a captive power plant and the transmission lines for supply of power to Nalwa Steel is unauthorized as the permission granted by the State Government under section 28(1) and (1A) of the 1910 Act is not saved under section 185(2), as claimed by the petitioner. We have therefore directed that the petitioner shall cease operation of this part of the transmission line used for supply of electricity to Nalwa Steel plant within a period of three months by which time the plant may apply for and obtain power supply from the respondent CSEB, which is the distribution licensee of the area. It is against this part of the order that these two review petitions have been preferred.

3. The grounds on which the two review petitions have been filed are the following:

- (i) That the Commission made an error by confusing between the requirements of a transmission licence and permission to supply electricity to a particular consumer. The issue before the Commission related only to permission to transmit electricity and the transmission licence of the petitioner. By the impugned order the Commission has in effect held the 'valid permission of the State Government to supply power to the Nalwa Steel was also nullified'. Supply of power to Nalwa Steel plant was not an issue in this case. The issues framed by the Commission in paragraph 4 of the order did not include supply of power to Nalwa Steel. Neither Nalwa Steel was a party nor was it issued a show cause notice. Thus the impugned order is against the principles of natural justice.
- (ii) The Commission has erred in holding that the specific permission granted by the State Government to the petitioner vide order dated 6.6.03, under the prevailing provisions of law under section 28 of the 1910 Act would not be saved under section 185 of the Act. The concept and purpose of a saving provision is not for undoing permissions which have already been granted based on which the party has made huge investments. The Commission has not appreciated the scope of saving of provision 185 of the Act and has wrongly interpreted it.

- (iii) The Commission has erred in holding a generating plant can not supply power to a consumer except by taking resort to open access under section 42 of the Act. That any such interpretation would be discriminatory and violative under Article 14 of the Constitution of India. Supply of power can be made under section 10(2) of the Act, and in any case, by obtaining a distribution licence under section 14 of the Act.
- (iv) After the recent amendment to Sec. 9 of the Act and addition of a proviso a captive power plant does not require a licence to supply power to a licensee or a consumer.
- (v) The Commission has erred in holding that the connection by tapping the main transmission line upto Nalwa Steel is not a dedicated transmission line. This line is a dedicated transmission line in that it is only for the use of the petitioner and is an electric supply line for point-to-point transmission.
- (vi) The Commission has erred 'in directing the petitioner to cease supply of power to Nalwa Steel within three months and directing Nalwa Steel to apply and obtain electricity supply from CSEB'. This direction would seriously jeopardize the business interest of the applicant and is prejudicial in larger public interest keeping in view the interest of the plant and workers etc. Presently there is no transmission line of CSEB to Nalwa Steel and setting up a new line may take at least nine months. If the directions of the Commission are to be followed then the Nalwa Steel plant will have to be closed down.

4. In the review petition filed by M/s Nalwa Steel & Power Ltd., more or less the same grounds have been adduced. However, the main ground of the second review petition is failure of the principle of natural justice, since the second petitioner was not a party to the case in which the impugned order was passed and no show cause notice was issued to him while the impugned order deprives him of power supply to his industry.

5. Per contra, the Chhattisgarh State Electricity Board (CSEB or the Board, hereinafter), the respondent in both the petitions, has submitted that there is no error apparent on the face of the record for review of the impugned order. In the meantime CSEB has preferred an appeal before the Hon'ble Appellate Tribunal for Electricity against the impugned order on the ground that the petitioner requires a transmission licence for transmission facility which he has created. In this appeal the matter regarding supply of power by the petitioner to the second petitioner has not been agitated by the CSEB as this Commission in unequivocal terms held that electricity supply to Nalwa Steel was in violation of the terms of licence and the provisions of the Act and has directed the respondent to stop the said supply. If supply to Nalwa Steel plant is restored as has been done by the Commission in its interim order, passed on 7.7.2007, this would undermine the entire premise on which the Commission has held that the petitioner does not require a transmission licence. The Commission has held that the petitioner does not require a transmission licence for installing dedicated transmission line to his own coal washery, restoration of supply to Nalwa Steel, which is admittedly not a captive consumer, will sap the very basis of the order and create an anomalous situation qua the impugned order, the appeal filed against it in the Appellate Tribunal, and this review petition. Secondly, the petitioner can not take shelter behind the amendment of section 9 of the Act which

came into effect on 15.6.2007, by which a captive generating plant has been exempted from any licence for supply of electricity to any licensee and to any consumer subject to the regulations made under section 42(2) of the Act. Apart from the fact that these amendments are effective from 15.6.2007 i.e. after the impugned order was passed and any subsequent change in law can not affect an order passed earlier, the amendment itself makes no change in the position regarding supply of power by a captive generator to a consumer which has to be through open access under Sec. 42(2) of the Act and does not affect the order of this Commission that a generator can supply power to a consumer only through open access permitted under section 42(2) of the Act. The enabling provision of a generator supplying power to a consumer under open access is already available under section 10(2) of the Act. The present amendment of section 9 has only reiterates that existing position and made this applicable to supply of power by captive generating plants. In any case, this matter is a subject matter of adjudication before the Hon'ble Supreme Court in Civil Appeal No.4529 of 2006 filed by the respondent against the order of this Commission granting a distribution licence to the petitioner (JSPL). The matter as to whether a generator can supply electricity directly to a consumer through its own transmission and distribution network is a question of law and it has been raised before the Hon'ble Supreme Court. The permission granted by the State Government for supply of power to Nalwa Steel plant is not saved under Sec. 185(2) of the Act since it is inconsistent with the provision of the Act as has been held by this Commission. The Commission has held that transmission of power by the applicant to Nalwa Steel plant is not only violation of the transmission licence, which the petitioner held, but the supply itself is unauthorized.

6. We have carefully considered the averments of the petitioners as also of the respondent. A review of the impugned order would be warranted only if there are some mistakes or errors apparent on the face of the record. Most of the issues raised by the petitioners do not relate to any apparent error but question the order of this Commission on merit which can only be the subject matter of an appeal. To our mind, the only two issues relevant to these two review petitions are the following:

- (i) Does the transmission line installed by the petitioner for supply of power to the Nalwa Steel plant has any bearing on the matter regarding requirement of transmission licence by the petitioner? Has the Commission erred in considering the matter regarding use of transmission line for supply of power by the petitioner to Nalwa Steel plant as part of the matter regarding the transmission licence?
- (ii) Secondly, has there been a violation of natural justice and to that extent an apparent error in the direction to the petitioner to stop power supply to Nalwa Steel plant?

7. As to the first issue, we are convinced that the matter regarding the transmission line to Nalwa Steel plant for supply of power has a direct bearing on the matter of transmission licence and there has been no error in considering this matter in the impugned order. It is to be noted that the petitioner was granted a transmission licence for installation of transmission line for point-to-point transmission of power from power plant at Tamnar village to his steel plant at Raigarh (Punjipatra). The transmission lines, however, were installed for transmission of power from power plant at Punjipatra to the coal washery at Tamnar i.e. in the reverse direction. We

have held in the impugned order that in doing so the petitioner had violated the conditions of the licence. In that connection we have also held that the transmission line to Nalwa Steel plant for supply of power also constituted a violation of transmission licence notwithstanding the permission granted by the Board on 9.8.02 and the State Government on 6.6.03 under section 28(1) and (1A) of the 1910 Act. We have discussed this issue in paragraph 7 of our order. This is covered under the first issue in the issues listed in paragraph 4 of the impugned order. In fact, we have imposed a penalty of Rs. one lakh on the petitioner, invoking the penal provision of section 142 of the Act, for violation of the provision of licence and contravention of the provisions of the Act. The matter regarding transmission line to Nalwa Steel plant is relevant to the whole question of whether the petitioner misused the transmission licence held by him. We have discussed the matter regarding whether the tapped line to Nalwa Steel plant could be treated as 'dedicated transmission line' within the meaning of section 2(16) of the Act; whether a captive generating plant may supply power through its own transmission line to a non-captive consumer thus justifying the transmission line and other related matters arising out of the main issue of the use of the old transmission licence and the need or otherwise of its continuance.

8. Secondly, we have considered and come to a finding as to why the permission granted by the State Government under section 28(1) and (1A) of the 1910 Act was not saved under section 185(2) of the Act. The permission granted vide notification dated 6.6.2003 was clearly conditional. As per condition 2 of the notification the petitioner was required to approach this Commission for regulation of the transmission line and the permission was subject to the final orders of this Commission. The contention of the petitioner that a generator, including a captive generator, can supply power to a consumer through its own dedicated transmission line is a substantive legal issue and should appropriately be agitated in an appeal and not in a review petition. Nowhere in the order we have held that a generator can not supply power to a consumer, but that it may do so only under the provision of section 42(2) of the Act i.e. through open access. This is the clear legal position in section 10(2) and the last proviso to the section 9 introduced by the recent amendment to the Act. Whether this constitutes a violation of Article 14 of the Constitution would be considered by the Hon'ble Supreme Court before whom this whole issue of supply of power by a generator to a consumer has been agitated by the respondent CSEB. Therefore, we hold that the transmission line to Nalwa Steel plant for supply of electricity is very much germane to the issue of transmission licence and has rightly been considered by us in the impugned order.

9. We would not like to discuss the issues raised in this review petition which seek to question the impugned order on merits. These should appropriately be raised in appeal. The scope of review petition is well settled by various judicial pronouncements, that a review petition is available only when there is an error apparent on face of record and not an erroneous decision and it can not be allowed 'to be an appeal in disguise'. (Smt. Meera Bhanja Vs. Smt. Nirmal Kumar Choudary AIR 1995 SC 455). Hence so far as the issue (i) above is concerned we find no apparent error in the impugned order to warrant a review of the impugned order.

10. The second issue of violation of the principle of natural justice in so far as the second petitioner is concerned. Since we had clearly held that the petitioner can not claim the transmission line upto Nalwa Steel plant as his dedicated transmission line, it could not be delinked from supply of electricity as such to the latter since the

transmission line was installed only for such supply. However, we agree that Nalwa Steel plant, the second petitioner whose interest were adversely affected by the impugned order should have been given an opportunity of being heard. To that extent there has been an error resulting in failure of the principle of natural justice. The impugned order calling stoppage of power to Nalwa Steel plant and granted three months time to him to obtain supply of power from the CSEB, which is the distribution licensee of the area, in our view, can not in itself be faulted but for the fact that this affected party should have been given an opportunity to put forth his case. It has to be, however, noted that the permission for installation of the transmission line for supply of power to Nalwa Steel was sought and obtained by the petitioner, not the second petitioner. The matters considered by us are both the operation of the transmission licence held earlier and whether under the Act the petitioner now requires a transmission licence. We have held that the transmission line to Nalwa Steel plant was illegally operated as it was beyond the scope of the transmission licence and now can not be treated as 'dedicated transmission line' of the petitioner. A transmission line and permission therefore, in any case does not mean authority for supply of power to a consumer. Transmission is not supply. Therefore, there was no legal right of the second petitioner to receive supply nor does the present Act confer any such right. To that extent the second petitioner's rights are not infringed. However, it has to be admitted that the second petitioner was an affected party as the impugned order affected his power supply whether the supply was with legal authority or not.

11. In the light of the above discussion these review petitions are admitted to the extent that there has been a failure of the principle of natural justice in our direction in paragraph 10 of our order to the petitioner to cease operation of that part of the transmission line used for electricity supply to Nalwa Steel within a period of three months and latter to apply and obtain supply from the CSEB within that period. This is the main contention of the second review application and is accepted. The power supply to the second petitioner should not be affected in the interest of justice without ensuring alternative power supply to his industry. It has been pleaded by the second petitioner that presently CSEB has no transmission line in the area for supply of power to him and it will take a minimum of nine months before necessary supply lines are erected and supply is provided. It is, therefore, ordered that the present supply of power to the Nalwa Steel by the petitioner shall continue till the CSEB is in a position to supply power to him. Our direction in paragraph 10 of the impugned order are revised and modified to that extent. The second petitioner however shall make an application in the appropriate form for supply of power to the CSEB within a period of one month and shall complete all the requisite formalities within the timeframe fixed by the CSEB. With these directions the review petition are disposed off.

Sd/-
Member

Sd/-
Chairman