



Chhattisgarh State Electricity Regulatory Commission

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

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Petition No.22 of 2006(L)

In the matter of transmission licence held by M.s Jindal Steel & Power Limited

M/s Jindal Steel and Power Limited Petitioner
Post Box No. 16, Kharsia Road
Raigarh(C.G)

V/s

Chhattisgarh State Electricity Board Respondent
Raipur.

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

ORDER

(Passed on 20/4/2007)

This case is regarding a transmission licence held by M/s Jindal Steel & Power Ltd (JSPL, for short) as successor of M/s Jindal Strips Ltd (JSL, for short) to whom a transmission licence was issued by the Madhya Pradesh Electricity Regulatory Commission (MPERC) by their order dated 2/2/2000 in petition No.6 of 1999. This case was started on this Commission's suo motu cognizance of the default in payment of the annual licence fee by JSPL required to be paid by a licensee as per the provision of CSERC (Fee and Charges) Regulations. By the order dated 2/2/2000 aforementioned the MPERC had directed issue of the licence subject to the condition *inter alia* that the licensee shall provisionally pay fee of Rs.1.50 lakh within one month of the completion of every year to the Commission. This Commission being the successor to MPERC in the State of Chhattisgarh, in which the transmission licence is being operated, asked the petitioner to pay the requisite fee. This simple notice of the Commission opened up a number of issues relating to the licence and the petitioner sought a renewal of the licence. A case was, therefore, registered. The Chhattisgarh State Electricity Board (CSEB or the Board, for short), which is the State transmission utility (STU) for the whole State of Chhattisgarh by virtue of the provision of Sec. 172 of the Electricity Act, 2003 (the Act, for short) was made respondent in this case.

2. First, the factual matrix of the case. JSL, a company registered under the Companies Act, 1956, applied to the MPERC for the grant of a transmission licence which was initially submitted to the State Government of Madhya Pradesh and was subsequently given over to the Commission for disposal under Sec. 27(D) of the Indian Electricity Act, 1910 (1910 Act, for short). The transmission licence was granted by order dated 2/2/2000 by the Commission (Ex.P-1) "for transmitting the power generated by its (the petitioner's) captive power plant at village Tamnar to its

steel plant at Raigarh by laying its own 220KV transmission line”, subject to certain conditions. The important conditions were that the transmission line “shall be on point to point basis from 110MW generating plant at Tamnar to the steel plant at Patrapalli (Raigarh)”. Another condition was that the “transmission of power should be exclusively for the licensee’s (petitioner’s) use. The power shall not be supplied or sold to any one else nor shall be utilized for any other purpose”. Other conditions included certain technical requirements. The licence did not specify the period for which it shall be valid. One requirement was payment of the annual fee aforementioned. It transpires that by the time the order was passed on 2/2/2000, JSL had ceased to exist with effect from 2/4/1998 by the order of the Punjab and Haryana High Court passed on 25/2/1999 (Ex.P-2) by which a scheme of arrangement (Ex.P-3) under Sec. 391(1) to Sec. 394 of the Companies Act, 1956 was approved. By this order the Raigarh and Raipur divisions of JSL were transferred to JSPL with effect from 2/4/1998. Admittedly, the power plant was not set up at village Tamnar but in Raigarh only and the transmission line laid between Raigarh and Tamnar came to be and is being used for transmission of power from the power plant at Raigarh to the company’s coal washery at Tamnar. The company obtained permission from the State Government of Chhattisgarh for supply of 2 MW power to M/s Nalwa Sponge Iron Pvt. Ltd., said to be a sister concern in village Taraimal of Raigarh district by laying dedicated 220KV line tapping the transmission line set up in terms of the transmission licence, vide State Govt. notification No.2401/lfpo/Åfo/2003 dated 6/6/03 (Ex.P-4). The State Government notification followed the permission for the same granted by CSEB by their letter No. CE (Comm.)/1170 dated 9/8/02 (Ex.P-5). This notification was issued by the State Government under Sec. 28(1) and (1A) of the 1910 Act. In the meantime, with the permission of the State Government, the petitioner set up an industrial park in village Punjipatra and Tumdih of the same district and obtained ‘No Objection Certificate’ from the State Government on 28/2/2004 for supply of power from its captive power plant to the industries being set up in the industrial park. The transmission line was tapped again and a 6.4 km line laid for supply of power to the industrial area. The petitioner paid the licence fee for the transmission licence as required under orders of MPERC aforementioned till January, 2003, on 3/2/03, to the Chief Electrical Inspector of the State Government of Chhattisgarh. In the petition in this case JSPL seeks (i) renewal of the transmission licence till the Act came into force in this State i.e. 9/12/2003; and (ii) cancellation of the licence thereafter since the company does not require a transmission licence for setting up dedicated transmission line for its own use under the Act.

3. Thus the admitted factual position in this case is as follows:

- (i) JSL applied for and obtained a transmission licence under Sec. 28(D) of 1910 Act when by the order of the Hon’ble High Court of Punjab and Haryana, the industries located in Raigarh had already passed on to JSPL. The petitioner’s plea is that the licence automatically passed on from JSL to JSPL by the operation of this order.
- (ii) The licence was obtained for transmission of power from power plant at Tamnar to the steel plant at Punjipatra (Raigarh) but the transmission line was, and is being, used for transmission of electricity from the power plant set up at Punjipatra (Raigarh) to the coal washery at Tamnar. Thus the

transmission is in the reverse flow. The petitioner's plea is that the reverse flow is only a technical fault; the transmission line is from point to point and all provisions of the licence have been complied with. The plea is for renewal of the licence according to actual use.

- (iii) The licence was granted for point to point transmission. It has been tapped at two points i.e. the first, for supply of power to M/s Nalwa Sponge Iron Pvt. Ltd (Nalwa plant) and the second, for supply to the Jindal Industrial park. The petitioner's plea is that for supply to Nalwa plant he has obtained permission from the State Government as also the CSEB; and the line connecting the transmission line and the industrial park has been treated as part of the distribution network for supply of electricity to the industries located in the industrial park in the distribution licence granted by the Commission vide order dated 29/9/05.

4. The issues for consideration in this petition are as follows:

- (1) Has JSPL operated the transmission licence as per the conditions of the licence?
- (2) If not, what action should be taken now in respect of the past period?
- (3) Does the petitioner require a transmission licence under the Act for the transmission lines set up and being used in terms of the licence obtained in the year 2000?

5. We have heard the petitioner at length and obtained the requisite information regarding the operation of the licence. We have also heard the Board in whose area of operation as STU this licence is being operated. To the question as to whether the licence has been operated in compliance with the conditions under which it was issued, the answer is clearly in the negative. The petitioner has not given any plausible reason why an application for transmission licence was submitted to the MPERC by JSL when it was no longer concerned with industries in Raigarh. The only explanation offered is that the local office at Bhopal, which was unaware of the 'Scheme of Arrangement' between JSL and JSPL had filed the application and pursued it till the licence was issued. The company apparently presumed that the licence automatically passed on to JSPL by operation of the High Court order. By the order of the Punjab and Haryana High Court dated 25/2/1999, the Raigarh and Raipur divisions of JSL were transferred to JSPL with effect from 2/4/1998. Under the "Scheme of Arrangement" which was approved, all assets, operations, rights, liabilities, industrial and other licence etc. of JSL for its Raipur and Raigarh division, including those applied for or which JSPL may obtain thereafter, stood transferred in the name of the JSPL pursuant to the provision of Sec. 394(2) of the Companies Act, 1956. This position is not controverted. But the petitioner has failed to give any reasonable explanation why the name of the applicant could not be changed during the pendency of the application in MPERC. The petitioner has pleaded that this was clearly an oversight and that in any case he received no undue benefit by not changing the name of the licensee. We have no option but to go by the petitioner's contention that it was a *bonafide* mistake on the part of the company's local office at Bhopal which was subsequently closed. The petitioner's other contention that the licence was transferred to JSPL under the orders of the High Court has to be accepted.

6. Non-compliance with the conditions of the licence is a more serious issue. As already mentioned the licence was granted subject to the specific condition that the transmission lines proposed to be set up would be for point to point transmission of power from the power plant at Tamnar to the steel plant at Punjipatra (Raigarh). Supply to coal washery was not mentioned in the licence and is a subsequent development. The use of the transmission lines for the reverse flow cannot be treated only as a technical fault as pleaded by the petitioner. The petitioner has requested in his submission dated 25/4/06 (EX.P-6) that the licence be amended to incorporate the change in the direction of the flow of the electricity in the transmission network covered by the licence. The respondent Board has contended that the action of the petitioner constituted a clear violation of the conditions of the licence and hence the petitioner is not entitled to renewal of the licence. Apart from the reverse flow, the licensee has also failed to pay the requisite fee to CSERC, being the successor to MPERC, for the year 2003-04 onwards. As already stated, the reverse flow cannot be treated only as a technical mistake. The company has failed to explain why this modification could not be brought to the notice of the MPERC and subsequently this Commission and the transmission licence modified. At the same time, it is also true that the permission for supply of power to coal washery and the Nalwa plant granted by the CSEB on 9/8/02 took cognizance of the EHT transmission line from Raigarh to Tamnar and as did the notification of the State Government dated 6/6/03. One of the conditions of the licence was that the licensee shall 'operate and maintain the transmission system under the directions, control and supervision of the State transmission utility i.e. MPEB'; the CSEB being the successor. The CSEB could have taken to the actual operation of the license. The petitioner has also pleaded that the transmission system is from point to point and the reverse flow has not created any technical problem. There has been no unauthorized gain or any *mala fide* in the operation of the licence.

7. The point-to-point transmission line has been tapped as mentioned before, for supply of power to the Nalwa plant and to the industrial park. So far as supply to the industrial park is concerned we have treated the connection from the transmission line to the industrial park as part of the distribution network. In para 20 of the order dated 29/9/2005 passed in petition No.3 of 2005, (Ex. P-7) this Commission has approved grant of a distribution licence in favour of the petitioner for supply of power to the industries set up in its industrial park. We have also in that order taken cognizance of the existence of the transmission line covered under the transmission licence. However, so far as the connection from the transmission line to the Nalwa plant is concerned, it prima facie constitutes a violation of provisions of the transmission licence notwithstanding the permission granted by the Board on 9.8.2002 and the State Government on 6/6/03 under Sec. 28(1) and (1A) of the 1910 Act. A condition of the licence very specifically was that the transmission of power 'shall be exclusively for the licensee (petitioner's) use and that the power shall not be supplied or sold to any one else nor shall be utilized for any other purpose'. It is relevant that the State Government's permission dated 6/6/03 mentions that the petitioner shall obtain necessary permission from the State Electricity Regulatory Commission and that the orders of the Commission in this regard, if any, shall be automatically applicable. The petitioner never approached this Commission in pursuance of this stipulation by the State Government. This Commission became functional with effect from 1/7/2004. In fact, as already mentioned, only when this Commission raised the issue of payment of annual licence fee that the petitioner

came up with an application for renewal of licence and for payment of annual licence fee. The permission granted by the State Government under Sec. 28(1) and 28(1A) of the 1910 Act is not saved under Sec. 185(2) of the Act as we have discussed later in this order. Thus while the petitioner obtained a transmission licence from the appropriate legal authority and the licence is no doubt saved under Sec. 185(2) of the Act, the licence was operated in violation of the conditions of the licence and hence without legal authority, and without payment of fees prescribed in the order, after 2002-03. The violation of the provisions of the licence constitutes contravention of the provisions of the Act which is punishable under Sec. 142 of the Act. No purpose would be served at this point of time in revocation of the licence for non-compliance with its conditions. We, therefore, impose a penalty of Rs. one lakh on the petitioner invoking the penal provision of Sec. 142 of the Act. We also direct that the petitioner shall pay the annual fee of Rs.1.50 lakhs, as prescribed in the order of MPERC, for the period 2003-04 and we direct that the licence be regularized till 10.12.2003, that is the date on which the Act came into force in this State, whereafter the licence shall stand cancelled. We have held below that thereafter a licence is not required.

8. As to the third issue whether the petitioner requires a transmission licence for the transmission lines already set up and being used in terms of the licence, the petitioner has pleaded that he does not require a licence, on the following grounds:

- (i) he operates a dedicated transmission line connecting his generating plant at Raigarh to his coal washery at Tamnar carrying electricity for his own use which is permissible under Sec. 9(2) of the Act. The provision of Section 9(1) of the Act is as under:

“Notwithstanding anything contained in this Act, a person may construct, maintain or operates a captive generating plant and dedicated transmission lines”.

- (ii) As to supply of electricity to the industries in the Jindal Industrial Park the petitioner has already been granted a distribution licence and the tapped line of 220 KV of approximately 6.4 km from the generating plant to the industrial park has been treated by this Commission ‘as part of the distribution network only’. Supply to Nalwa plant for which the State Government granted permission under Sec. 28 of the 1910 Act is saved under Sec. 185(2) of the Act in terms of the clarification issued by the Govt. of India on 8/6/05. (iii) Alternatively, it has been pleaded that a generating company can establish, operate and maintain dedicated transmission line under the provision of Sec. 10(1) for his own use of electricity which includes supply to the industrial park as also to the Nalwa plant. Per contra the Board has contended that the transmission line of the petitioner comprises of not only point-to-point transmission line from the captive power plant to the coal washery but has also been tapped at two intermediate points for supply to the Nalwa plant and the industrial park. The transmission configuration as submitted by the petitioner is nothing but a ‘grid’ as defined in the Act consisting of interconnected transmission lines, sub-stations and generating plant. The plea of the same being dedicated transmission line is, therefore, misplaced and cannot be accepted. An interconnected network cannot be broken up or segregated into separate transmission lines to avoid a transmission licence. It

has been further contended by the Board that the permission granted by the State Government for supplying power to Nalwa plant is supply of power by a non-licensee as per the provisions of Sec. 28 of the now repealed 1910 Act. This being inconsistent with the provision of the present Act is not saved under Sec. 185(2) of the Act. The Nalwa plant is not covered in the area of the distribution licence held by the petitioner. It has also been contended that the interconnection between the transmission lines and the EHV sub-station at the Jindal Industrial Park which has been declared a part of the distribution network does not fall within the purview of the definition 'distribution system' given in Sec. 2(19) of the Act when read with the definition of 'transmission lines' given in Sec. 2 (72). This issue has been agitated by the Board before the Hon'ble Supreme Court in Civil appeal No.4268 of 2006. The petitioner, therefore, has to obtain a transmission licence even after the 2003 Act came into existence.

9. That the petitioner can maintain and operate dedicated transmission line to supply power to his coal washery is not controverted. 'Dedicated transmission line' has been defined in Sec. 2(16) of the Act as under:

'(16) "Dedicated transmission lines" means any electric supply-line for point to point transmission which are required for the purpose of connecting electric lines or electric plants of a captive generating plant referred to in Sec. 9 or generating station referred to in Sec. 10 to any transmission lines or sub-stations or generating stations or the load center, as the case may be'.

'Transmission lines' is defined in Sec. 2(72) as under:-

'(72) "Transmission lines" means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station to another generating station or a sub-station, together with any step-up and step-down transformers, switch-gear and other works necessary to and used for the control of such cables or overhead lines, as such building or part thereof as may be required to accommodate such transformers, switch-gears and other works'.

'Grid' is defined in Sec. 2(32) as under:

'(32) "Grid" means the high voltage backbone system of inter-connected transmission lines, sub-station and generating plants'.

So far as the transmission line between Raigarh (captive generating plant) and the coal washery (captive user) is concerned, this is clearly a dedicated transmission line in terms of the definition quoted above. Grid is a larger network being the high voltage backbone system of the inter-connected transmission lines. Only because of the two spurs the point-to-point transmission line of the petitioner cannot be treated as a grid. The lines of the petitioner are not general transmission lines which can be used by any person. They originate and end at the establishments of the petitioner and for use of the petitioner. Therefore, the requirements of the definition of the dedicated transmission lines are satisfied in this case. The petitioner has obtained all necessary permissions and has complied with all the safety and technical standards as required under the Act. The Board has not averred anything to the contrary. It is pertinent that the Central Government in

Ministry of Power has notified the Electricity (Removal of Difficulty) (Fifth) Order, 2005 in which it is clarified that: "A generating company or a person setting up a captive generating plant shall not be required to obtain licence under the Act for establishing, operating or maintaining a dedicated transmission line if such company or person complies with" Grid Code, grid standards, technical standards etc. We, therefore, hold that the petitioner does not require a transmission licence under the Act for operating his dedicated transmission line. 10. Two connections provided tapping the transmission line, however, on a different footing and may not be treated as part of the dedicated transmission line. As already stated, the connectivity with the EHV sub-station in the industrial park has been treated by this Commission as part of the distribution network. The order of this Commission has been upheld by the Appellate Tribunal for Electricity in their judgement dated 11/5/2006 passed in appeal No. 179 of 2005. Unless the Hon'ble Supreme Court holds to the contrary we shall go by our order of 29/9/2005. So far as the connection to the Nalwa plant is concerned, however, we are not convinced that the permission granted by the State Government under Sec. 28(1) and (1A) of the 1910 Act is saved under Sec. 185(2) of the Act. Sec. 28(1) and (1A) read as under:

*'28. **Sanction required by non-licensees in certain cases** – (1) No person, other than a licensee, shall engage in the business of supplying energy to the public except with the previous sanction of the State Government and in accordance with such conditions as the State Government may fix in this behalf, and any agreement to the contrary shall be void.*

(1A) The State Government shall not give any sanction under sub-section (1a) except after consulting the State Electricity Board; xxxx xxxx'.

The provision under which permission has been granted by the State Government to the Nalwa plant relates to supply of electricity to an industry by a non-licensee. There is no provision in the Act of 2003 for supply of power by a generating company to a consumer except through open access. The provision in Sec. 10, recourse to which has been sought by the petitioner, is as under:

*'10. **Duties of generating companies** – (1) Subject to the provisions of this Act, the duties of a generating company shall be to establish, operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made thereunder.*

(2) A generating company may supply electricity to any licensee in accordance with this Act and the rules and regulations made thereunder and may, subject to the regulations made under sub-sec.(2) of Sec. 42, supply electricity to any consumer'.

The provisions of Sec. 42(2), referred to above, relate to introduction of open access by the State Commission. Thus supply of electricity by a generating company to a consumer has to be under open access only and through the wires of a transmission licensee. There is no provision in the present Act akin to Sec. 43(A) of the Electricity (Supply) Act, 1948 for sale of electricity by a generating company to any consumer. On the other hand, Sec. 12 of the 2003 Act is quite specific that no

person shall distribute electricity except through a licence issued under Sec. 14. The provision of Sec. 12 is as under:

*'12. **Authorised persons to transmit, supply, etc., electricity** – No person shall-*

- (a) transmit electricity; or*
- (b) distribute electricity; or*
- (c) undertake trading in electricity,*

unless he is authorized to do so by a licence issued under Sec. 14, or is exempt under Sec. 13'.

The petitioner does not come under the exempt category. The plea of the petitioner that the dedicated transmission line which a generation company is authorized to lay under the provision of sub-Section (1) of Sec.10 of the Act can be for no purpose other than supply of electricity, is not tenable. Clearly this provision of dedicated transmission line is for evacuation of power from a generating plant and not for supply to consumers. Appropriate provision of supply of electricity to consumer is sub-section (2) of Sec. 10 under which open access is mandatory. The reference to connecting electric lines to load centre in the definition of 'Dedicated transmission lines' relates to captive generating plant. The definition of 'consumer' in Sec. 2 (15) of the Act further clarifies the position. '**Consumer**' has been defined as a "*person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force*". The petitioner is not a licensee nor is he engaged in the business of supplying electricity. Therefore, Nalwa plant cannot be a consumer of the petitioner through a so-called 'dedicated transmission line'. The permission granted by the State Govt. under Sec. 28(1) and (1A) of the 1910 Act is not consistent with the provisions of the 2003 Act and can not be saved under Section 185 (2) of the Act. The scheme of the present Act, as already mentioned, does not envisage or permit supply of power by any generator to a consumer except through a licensee or through open access. This has been held by the Bombay High Court in Writ Petition No.882 of 2005 in the case of Maharashtra State Electricity Board versus M/s Bhushan Steel and Strips & others. The matter for consideration before the Hon'ble Court was whether a captive generating plant can sell its surplus power to another industry. The Hon'ble High Court held that "there is no need to read anything more into Sections 12 to 15 than the fact that such licences are mandatory to the CPPs, the moment there is an element of sale to third party, as observed by the Apex court in the case of A.P. Gas Power Corpn. Ltd". The order of the Hon'ble High Court has been upheld by the Hon'ble Supreme Court in their order dated 12/5/2005 passed in Appeal (Civil) No.10881 of 2005 in the case of M/s Bhushan Steel and Strips Ltd V/s MSEB and others. The supply of power by JSPL to Nalwa plant is nothing but sale of power to third party. It is not the case of the petitioner that Nalwa plant is a captive consumer. In the light of the discussion above, we conclude that the permission for supply of power to Nalwa granted by the State Government under Sec. 28(1) and (1A) is not saved under Sec. 185(2) of the Act being inconsistent with the provisions of the Act.

10. In conclusion, while we hold that no licence is required by the petitioner for his dedicated transmission line for carrying power to his coal washery and to the industrial park, lines for supply of power to Nalwa plant cannot be treated as part of the dedicated transmission line under the Act. We, therefore, direct that the petitioner shall cease operation of this part of the transmission line used for supply of electricity to the Nalwa plant within a period of three months by which time the plant may apply for and obtain supply from the Board which is the distribution licensee of the area.

**Sd/-
Member**

**Sd/-
Chairman**

True Copy

**(N.K. Rupwani)
Secretary**