

Chhattisgarh State Electricity Regulatory Commission

Petition No.22 of 2007(L)

In the matter of grant of transmission licence to M.s Jindal Steel & Power Limited

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

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Applicant

Present:

**S.K.Misra, Chairman
B.K.Sharma, Member**

**Counsels : Applicant : Shri Jayant Bhushan
CSEB : Smt. Suparna Shrivastava**

ORDER

(Passed on 22.5.2008)

M/s Jindal Steel & Power Ltd ('JSPL', for short) submitted an application for a transmission licence, first as one for revival and renewal of an expired licence and subsequently for a new licence, under section 15 of the Electricity Act, 2003 ('the Act', for short). The applicant published a notice of his application, as required under sub-section (2) of section 15 of the Act and clause 8 of the CSEB (Licence) Regulations, 2004 ('Licence Regulations' hereinafter), in three local newspapers. The applicant also forwarded a copy of this application to the Chhattisgarh State Electricity Board ('CSEB' or 'the Board' hereinafter), the State transmission utility (STU), under sub-section (3) of section 15 of the Act. In response CSEB, as STU, submitted certain objections. These objections were considered and the Commission decided vide order passed in this case on 27.2.2008, in favour of grant of a transmission licence to the applicant for the operation of the following two transmission lines:

- (i) 220 KV double circuit JSPL–O.P.Jindal Industrial park : 23.7 km
- (ii) 220 KV double circuit OP Jindal Industrial park–Jindal Power Ltd:19.5 km

As required under sub-section (5) of section 15 of the Act, the Commission published this decision in two local newspapers i.e. Dainik Bhasker and Nai Duniya on 29.02.2008 and the STU was given another opportunity to submit its recommendations and objections, if any, to the proposed grant of transmission licence. In response the Board, as STU, submitted certain objections on 14.3.2008 in pursuance of the provision of section 15(5) of the Act. Although this provision of the Act does not require hearing on the objections and suggestions filed by the STU and only requires this Commission to consider such suggestions/objections before the grant of licence, in view of the nature of the objections raised, the Commission decided on 18.3.2008 to hear the STU and the applicant again. In the meantime, the Chhattisgarh Vidyut Mandal Abhiyanta Sangh filed an application on 25.3.2008 to intervene in the case and submitted certain objections on 26.4.2008. Since the application for intervention, as also the objections, were submitted long after 30 days of the date of publication of the notice under section 15(2) of the Act, their application were rejected.

2. The Commission has heard the Board as also the applicant. Both have made written submissions before the Commission which have been considered.

3. The applicant has raised a procedural issue which needs to be addressed at the outset. The applicant has contended that CSEB, as STU, had filed certain objections in response to the notice published by the applicant in pursuance of the provisions of section 15(2) of the Act and these had already been considered and rejected by the Commission by order dated 27.2.2008 aforementioned. The learned counsel for the applicant has argued that the Act does not envisage a two-stage procedure for inviting objections on an application for licence, which would oblige the Commission to consider the objections of the STU twice. Section 15(5) only mandates the Commission to consider all suggestions/ objections and recommendations, if any, of STU before grant of the licence. The learned counsel for the Board, on the other hand, argued that section 15 provides for inviting suggestions/objections in two stages, once under the provision of section 15(2) and the second, specifically from the STU, under section 15(4) of the Act. It has been argued that the first stage of objections/recommendations are with respect to the application seeking a licence and the second stage with respect to the Commission's proposal to grant the licence applied for after considering all the objections received by it in the first stage. This scheme of two-stage objections thus addresses two distinct situations namely, consideration of the application and secondly, prescribing terms and conditions on which the licence is proposed to be granted. According to the Board, there is, therefore, no overlapping of objections as has been alleged by the applicant. For proper appreciation of the issue it would be necessary to have a close look at the provisions in section 15 of the Act, which are reproduced below:

“15. Procedure for grant of licence - (1) Every application under Sec. 14 shall be made in such form and in such manner as may be specified by the Appropriate Commission and shall be accompanied by such fee as may be prescribed.

(2) Any person who has made an application for grant of a licence shall, within seven days after making such application, publish a notice of his application with such particulars and in such manner as may be specified and a licence shall not be granted –

- (i) until the objections, if any, received by the Appropriate Commission in response to publication of the application have been considered by it:

Provided that no objection shall be so considered unless it is received before the expiration of thirty days from the date of publication of the notice as aforesaid;

- (ii) until, in the case of an application for a licence for an area including the whole or any part of an cantonment, aerodrome, fortress, arsenal, dockyard or camp or any building or place in the occupation of the Government for defence purposes, the Appropriate Commission has ascertained that there is no objection to the grant of the licence on the part of the Central Government.

(3) A person intending to act as a transmission licensee shall, immediately on making the application, forward a copy of such application to the Central Transmission Utility or the State Transmission Utility, as the case may be.

(4) The Central Transmission Utility or the State Transmission Utility, as the case may be, shall within thirty days after the receipt of the copy of the application referred to in sub-sec. (3), send its recommendations, if any, to the Appropriate Commission:

Provided that such recommendations shall not be binding on the Commission.

(5) Before granting a licence under Sec. 14, the Appropriate Commission shall-

- (a) publish a notice in two such daily newspapers, as that Commission may consider necessary, stating the name and address so the person to whom it proposes to issue the licence;
- (b) consider all suggestions or objections and the recommendations, if any of the Central Transmission Utility or the State Transmission Utility, as the case may be.

(6) Where a person makes an application under sub-sec. (1) of Sec. 14 to act as a licence, the Appropriate Commission shall, as far as practicable, within 90 days after receipt of such application,-

- (a) issue a licence subject to the provisions of this Act and the rules and regulations made thereunder; or
- (b) reject the application for reasons to be recorded in writing if such application does not conform to the provisions of this Act or the rules and regulations made thereunder or the provisions of any other law for the time being in force:

Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard.

(7) The Appropriate Commission shall, immediately after issue of a licence, forward a copy of the licence to the Appropriate Government, Authority, local authority, and to such other person as the Appropriate Commission considers necessary.

(8) A licence shall continue to be in force for a period of 25 years unless such licence is revoked.”

It may be seen that sub-section (2) of section 15 requires publication of a notice of application for licence and stipulates that “a licence shall not be granted until the objections, if any, received by the appropriate Commission in response to publication of the application, have been considered by it”. Sub-section (3) requires the applicant to forward a copy of his application to the Central Transmission Utility or the State transmission utility, as the case may be. Sub-section (4) of this section provides that the CTU/STU shall within 30 days after the receipt of the application, as above, send its recommendation, if any, to the Commission; and further provides that such recommendations shall not be binding on the Commission. Sub-section (5) requires that before granting a licence under section 14, the Commission shall publish a notice and ‘consider all suggestions and objections and the recommendations, if any, of the CTU/STU, as the case may be’. Thus sub-section (2) refers to the procedure preceding the grant of licence as does sub-section (5). If inviting suggestions and objections were envisaged in two stages in the Act, these would have been clearly laid down. From the scheme of this section the events in sequence are appear to be: publication of the application and forwarding a copy of the application to CTU/STU; receipt of objections, if any, in response to publication of the application within 30 days and receipt of recommendations of the CTU/STU on receipt of the copy within 30 days. Sub-section (5) lays down that the Commission shall consider all suggestions and objections received in response to the

publication of the application under sub-section (2) and the recommendations, if any, of the CTU/STU under sub-section (4) and take a decision regarding the grant of licence. The use of the words “a licence shall not be granted” in sub-section (2) and “before granting a licence under section 14” in sub-section (5) has led to certain lack of clarity. However, a careful reading of the provisions of section 15 would reveal that a two-stage hearing of objections is not envisaged under section 15. The publication of notice in daily newspapers by the Commission as envisaged under sub-section (5), is clearly not a stage following consideration of all objections in response to the notice of application published by the applicant. In fact, the Act provides for only recommendations, if any, by the CTU/STU which also ‘shall not be binding on the Commission’. The provision in sub-sections (3) and (4), moreover, relate only to transmission licence and not to other licences. There is no provision for seeking recommendation of the CTU/STU on application for other licences such as, distribution or trading licence. Therefore, the consideration of recommendations, if any, of CTU/STU in sub-section (5) would appear to relate only to transmission licence. We are, therefore, of the view that the logical interpretation of the provisions of this section would indicate that the sequence of events leading to the grant of licence has been envisaged as follows: publication of application within 7 days; forwarding copy of application to CTU/STU; receipt of suggestions and objections in response to the publication of application and recommendations of the CTU/STU within 30 days; in the meantime examination of the application and if found in order publication of notice in two newspapers. The publication of notice by the Commission envisaged in sub-section (5) is only after a decision has been taken for grant of licence and it is for information of the public and not for inviting suggestions and recommendations again. The Licence Regulations of the Commission does not provide for two-stage hearing of objections and the publication of notice by the Commission is only publication of the grant of licence. In view of the above, we are of the view that section 15 of the Act does not envisage a two-stage process of inviting objections and suggestions. If such a procedure was envisaged a time limit of 90 days for disposal of application from the date of its receipt, as required under sub-section (6) would not be practicable. In the present case, we have, while publishing the proposal to grant licence, invited objections and recommendations again which was not required under section 15. However, since this has been done and the Board as the STU raised certain objections we have given full opportunity to the STU and the applicant to put forth their case and would like to consider their contentions.

4. The objections raised by the Board as STU are more or less the same as raised earlier. The first is that the grant of transmission licence has not been proposed for an area but with respect to specific transmission lines; section 14 requires that a licence has to be for an area. Section 14 of the Act reads as under:

“**14. Grant of licence** - The appropriate Commission may on an application made to it under Sec. 15, grant a licence to any person –

- (a) to transmit electricity as a transmission licensee; or
- (b) to distribute electricity as a distribution licensee; or
- (c) to undertake trading in electricity as an electricity trader, in any area as may be specified in the licence. (Emphasis added)

However, while it is possible to specify an area for a distribution licence or a trading license, it may not always be practicable to do so in case of a transmission licence. A transmission licence by the very nature of transmission lines may have to be for specific transmission lines also. The Act makes a clear distinction between an STU and a transmission licensee. The STU has jurisdiction over the whole State and has its transmission network spread over the State. A transmission licensee, on the other hand, may require a licence for its specific transmission lines. ‘Transmission licensee’ has been defined in Sec. 2(73) of the Act as under:

“Transmission licensee” means a licensee authorized to establish or operate transmission lines;

‘Transmission lines’ has been defined in Sec. 2(72) as under:

“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 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, and such building or part thereof as may be required to accommodate such transformers, switch-gears and other works.

In these provisions there is no bar to transmission licensee operating specific transmission lines. A harmonious reading of these provisions would indicate that a transmission licence may be granted for specific transmission lines also. In case of a transmission licence the area may have to be interpreted as the area covered by the transmission lines. This is the interpretation on the basis of which the Central Electricity Regulatory Commission also has issued transmission licences and we do not find any illegality in such a view.

5. It has been contended that the proposed licence includes a distribution line in the transmission network. A reference has been made to the 33 KV supply line from the sub-station of the generating unit of JPL to the applicant’s coal washery which it is argued that a distribution line connecting the installation of a consumer. Since the coal washery is a JSPL’s property and it cannot be the captive load of JPL. We have proposed the grant of a licence in respect of two transmission lines as mentioned in para 1 above.

There is no proposal to include any distribution line of 33 KV in the licence, therefore, there is no substance in the objection of the STU in this regard.

6. The third objection raised by the STU is that since the applicant is a distribution licensee it cannot be granted a transmission licence. The logic of this contention runs as follows: The last proviso to section 41 of the Act prohibits a transmission licensee from entering into any contract or otherwise engaging in the business of trading in electricity. The last proviso to section 14 permits a distribution licensee to undertake trading without obtaining a separate licence for the same. This provision has been made because distribution is an activity involves trading in electricity. JSPL is in the business of trading as a distribution licensee and therefore it can not be granted a transmission licence as per the provision of section 41.

The last proviso to section 14 is as under:-

“Provided also that a distribution licensee shall not require a licence to undertake trading in electricity.”

JSPL holds a distribution licence for distribution of electricity in a limited area of an industrial park and in two villages in which the industrial park is located, may not require a trading licence for trading of electricity under this provision. Section 41 specifically prohibits a transmission licensee enter into trading business. However, we are unable to agree with this contention of the Board. There is no specific provision in the Act which prohibits a distribution licensee from obtaining a transmission licence and undertaking transmission of electricity. The last proviso of section 14 has a specific purpose. Such a provision is necessary because of the very nature of the distribution business. A distribution licensee has to purchase electricity from a generator and sell it to the consumers of his area for supply. Trading has been defined in section 2(71) as under:

“Trading” means purchase of electricity for resale thereof and the expression ‘trade’ shall be construed accordingly.

Distribution business involves ‘trading’ as the Board has argued. JSPL may purchase electricity from any source as a distribution licensee for resale to its consumers. However, the

last proviso to section 14 in our view is only an enabling provision. A distribution licensee has specific duties and trading in electricity is not one of them. A distribution licensee has been defined in the Act as under:-

Section 2(17): A “**Distribution Licensee**” means a licensee authorized to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply.

Thus a distribution licensee’s task is to supply electricity to its consumers in his area of supply and not trading in electricity as such. Since such supply involves an element of trading an enabling provision has become necessary in the Act. It is only because of the nature of the business of distribution and the definition of trading in the Act that an enabling provision has been inserted in the Act. Therefore, the logic that distribution means trading and a transmission licensee can not do trading and therefore distribution licensee can not hold a transmission licence is logic not supported by the provisions of the Act.

6. The next objection of the STU is that section 14 of the Act contemplates grant of ‘a’ licence to ‘any’ person and does not contemplate in any manner whatsoever multiple entities should operate jointly under a single licence. This objection has been sought to be buttressed by the fact that one of the transmission lines proposed to be included in the licence is a line erected by JPL for which the State Government has granted specific permission for erection under certain conditions. JSPL has claimed that the ownership of this line has been transferred to JSPL but which the Board feels is inconsequential in the absence of any documentary evidence. The applicant has contested this objection on the ground that there is no joint licence sought. JPL has transferred its transmission lines to the applicant for its management. So as long as JSPL manages the transmission lines for which a licence has been sought, we see no logic in the Board’s contention that the application is for a joint licence. This objection is, therefore without substance and is rejected.

7. In view of the above discussions we reiterate our earlier proposal and decide to grant a transmission licence to the applicant under section 14 for transmission lines as given at para 1 above, subject to the provisions of the Act and the standard terms and conditions, as laid down in the Licence Regulations. A copy of the licence shall be forwarded to the State Government of Chhattisgarh, the Central Electricity Authority and the Collector, Raigarh district, as required under sub-section (7) of Section 15.

**Sd/-
Member**

**sd/-
Chairman**

True Copy

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