

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Record of Proceedings

PETITION NO.108/2008 with I.A.NO. 27/2008

Subject: Petition under Section 79 of the Electricity Act, 2003 read with Regulation 26 of CERC (Open Access in Inter-State Transmission) Regulations, 2008

Coram : Dr. Pramod Deo, Chairperson
Shri Bhanu Bhushan, Member
Shri R.Krishnamoorthy, Member
Shri S.Jayaraman, Member

Date of hearing : 18.11.2008

Petitioner : Jindal Stainless Limited, Hisar

Respondent : Orissa Power Transmission Corporation Ltd.,
Bhubaneswar

Parties present : Shri T.R.Andhyarujina, Senior Advocate, JSL
Ms. Shally B. Maheswari, Advocate, JSL
Shri Debu, JSL
Shri Akhil Anand, Advocate, JSL
Shri R.K.Mehta, Advocate, OPTCL
Shri P.Soma Sundram, Advocate, OPTCL

At the outset, Shri Mehta, Advocate for the respondent raised two preliminary objections and urged that the petition was not maintainable. The two objections raised by the learned counsel were - (i) Under Regulation 26 of the Central Electricity Regulatory Commission (Open Access in Inter-State Transmission) Regulations, 2008, the dispute was within the jurisdiction of OERC, and (ii) State of Orissa, though a necessary party had not been impleaded.

2. Learned senior counsel for the petitioner submitted that the petitioner is setting up an integrated steel plant along with 4x125 MW captive generating plant at Duburi in the State of Orissa, out of which 250 MW capacity is already operational. The petitioner owns another stainless steel plant at Hisar, located in the State of Haryana.

3. Learned senior counsel submitted that the petitioner had entered into a Memorandum of Understanding with the State of Orissa, which, *inter alia* provided that surplus power from the captive generating plant, if any, should be offered to GRIDCO or any other Corporation so designated by the State Government at a tariff determined by OERC.

4. Learned senior counsel further submitted that the petitioner proposed to carry 75 MW of power from the captive generating plant in the State of Orissa to its steel plant at Hisar on long-term basis. Accordingly, the petitioner made an application to Power Grid Corporation of India Ltd., as the Central Transmission Utility (CTU) for grant of long-term open access. After detailed deliberations with the constituents of Eastern Region, including the respondent, the CTU has granted sanction of long-term open access by its letter dated 26.2.2008.

5. Learned senior counsel brought out that at the meeting of the Eastern Regional constituents held in June, 2006, it was decided that the strengthening of transmission lines of different STUs, if required, for the transfer of power to the petitioner's steel plant at Hisar would be carried out by the concerned STUs or the petitioner itself. Learned senior counsel submitted that pursuant to the above decision, the petitioner had spent an amount of Rs.69.25 crore for strengthening of Hisar (I-A)-Hisar (BBMB) 220 kV transmission line of Haryana Vidyut Prasaran Nigam Ltd.

6. Learned senior counsel brought to the Commission's notice that it made an application for short-term open access on 21.8.2008 for conveyance of 75 MW of power from its captive generating plant in the State of Orissa to the stainless steel plant at Hisar in Haryana State in the month of September, 2008. However, by the respondent's letter dated 22.8.2008, the concurrence was refused on the following two grounds, viz.

- (a) MoU signed between the petitioner and Govt of Orissa required surplus power from the captive power plant, if any, should be first offered to GRIDCO or any other Corporation so designated by the State Government at a tariff determined by OERC and there was no agreement for wheeling of power by the petitioner to its sister unit at Hisar.
- (b) The SCADA system of above was not functioning for real time monitoring of power injected by the petitioner to OPTCL system.

7. Learned senior counsel argued that reliance by respondents on the provisions of MOU was misplaced. He submitted that under sub-section (2) of Section 9 of the Electricity Act, 2003, the owner of power plant has indefeasible right to take power for its use to any place in India. He submitted that MOU could not override the statutory provision. He clarified that the stainless steel plant at

Hisar was not a sister concern of the petitioner, but was exclusively owned by it. He further submitted that whatever surplus power was available after the use of the petitioner, it would be offered for sale to GRIDCO or the Corporation designated by State Government of Orissa, in accordance with the provisions of MOU. As regards the SCADA system, learned senior counsel explained that the problem was of temporary nature and was since set right. Learned senior counsel relied upon the Commission's order dated 31.12.2007 in the matter involving Nav Bharat Venture Ltd. Vs SLDC, Orissa in support of its prayer that the respondents be directed to give open excess for transfer of electricity to Hisar. He argued that when the Central Transmission Utility had already approved the long-term open access for similar purpose, after consent by the respondent, the petitioner had spent a huge sum of Rs.69.25 crore for strengthening of the transmission line at Hisar and, therefore, respondent was estopped from denying open access.

8. In response to the preliminary objections taken by learned counsel for the respondent at the beginning, learned senior counsel stated that open access regulations provide for dispute resolution by the Central Commission unless the dispute involved intra-State transmission of electricity. He asserted that the dispute related to inter-State transmission, as the electricity was sought to be conveyed from the State of Orissa to the State of Haryana. Therefore, according to the learned senior counsel, the dispute was within the jurisdiction of this Commission. As regards other preliminary objection, learned senior counsel submitted that the dispute involved interpretation of the MOU which has been misconstrued by the respondent. Therefore, it was submitted that the State Government was not a necessary party.

9. Thus, learned senior counsel concluded his arguments.

10. At this stage, Shri Mehta, learned counsel for the respondent requested for short adjournment. Request made was allowed. The matter will be re-notified for hearing on 27.11.2008.

Sd/-
(K.S.Dhingra)
Chief (Legal)