

**central ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 6/MP/2014

- Subject : Petition under section 79 (1) (c) of the Electricity Act, 2003 for cancellation of transmission license dated 9.5.2011 granted by the Commission to M/s Jindal Power Limited for 400 kV D/C Jindal Power Limited, Tamnar-PGCIL, Raipur transmission line and 400/220/33kV Jindal Power Limited Tamnar -Switchyard.
- Date of hearing : 26.8.2014
- Coram : Shri Gireesh B. Pradhan, Chairperson
Shri M. Deena Dayalan, Member
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
- Petitioner : Chhattisgarh State Power Distribution Co. Limited
- Respondents : Jindal Power Limited and others
- Parties present : Ms. Suparna Srivastava, Advocate, CSPDCL
Shri Sanjey Sen, Sr. Advocate, JPL
Shri Amit Jindal, Advocate, JPL
Shri Ranjitha Ramachandran, JPL
Shri Vikas Saksena, JPL
Shri R.C. Gupta, JPL
Shri Sanjay Kaul, JPL
Shri R.V.M.M. Rao, PGCIL
Shri S.S. Barpanda, NLDC
Shri Abilia Zaidi, POSOCO
Shri Dilip Singh, MPPMCL

Record of Proceedings

Learned counsel for the petitioner submitted that the present petition has been filed for cancellation of transmission licence granted to Jindal Power Limited (JPL) for the following reasons:-

- (a) There is a flaw in the process of granting of transmission licence to JPL. The petitioner restricts itself to the situation where the license is yet to be granted. The petitioner's case is that the procedure required under Section 15 of the Electricity Act, 2003 (the Act) has not been complied with. Accordingly, the petitioner is seeking cancellation of licence granted to JPL.

(b) The petitioner is not seeking revocation of licence under Section 19 of the Act. There is a distinction between revocation and cancellation of licence.

(c) Power to grant licence carries with it the power to cancel licence. In this respect, reliance was placed on the judgment of Supreme Court in State of UP and others Vs Maharaja Dharminder Prasad Singh and other [(1989) 2 SCC 505].

(d) While granting licence, the Commission has taken into consideration the recommendation of CTU. It was recommended by CTU that the JPL transmission line should be treated as ISTS. In case of ACBIL, CTU has taken a contradictory stand and has not recommended for grant of licence, though there is no difference between the two cases.

(e) CTU has taken inconsistent stand which has resulted in discriminatory and arbitrary exercise of the statutory power vested in the CTU.

(f) The licence granted to JPL should be cancelled as it has not been issued in accordance with the provisions of the Act.

2. Learned senior counsel for Jindal Power Limited submitted as under:

(a) The present petition is not maintainable under law since it fails to disclose any cause of action and is an abuse of process of law.

(b) The petitioner has sought cancellation of the transmission licence granted to JPL by filing the petition under Section 79 (1) (c) of the Act. The said provision enables regulation of inter-State transmission of electricity, while the powers for revocation of licence are provided under Section 19 of the Act. Hence, any petition/application seeking any revocation or cancellation of a licence has to be filed under Section 19 of the Act and not under any other provision.

(c) In the event the petitioner had any grievance at the stage of grant of licence to JPL, the petitioner could have raised the same either before this Commission or before the appropriate appellate authorities. Having chosen to not pursue the said statutory remedies, the order of this Commission, granting licence to the petitioner, attained finality. Once the licence has been granted, the same can only be revoked under the provisions of Section 19 of the Act read with Regulation 20 of Transmission Licence Regulations.

(d) The judgment relied upon by the learned counsel for the petitioner does not apply to the present case. The above judgment applies in a scenario where there is no separate provision relating to revocation of a grant. However, in the present case, the Act is a complete code in itself, as has been held by the Hon'ble Supreme Court in PTC India Ltd. vs Central Electricity Regulatory

Commission, reported in [(2010) 4 SCC 603]. Since, the Act prescribes separate provisions for grant and revocation of licence, then the requirements of the said provision have to be satisfied for exercising the power to revoke.

(e) The Commission is a statutory body under the Act and has to act in accordance with the statute. Relying on the judgment of the Hon'ble Supreme Court in *Bhavnagar University vs Palitana Sugar Mill Pvt. Ltd and others*, reported in [(2003) 2 SCC 111], learned counsel submitted that when the Act provides for circumstances for revocation of licence, then any other circumstances for revocation or cancellation are necessarily excluded.

(f) Learned senior counsel placed its reliance in the judgment of *Abdul Salam V State of J&K and others, reported in (AIR 1981 J&K 21)*, wherein it was held that the rights which have become final as a result of a judgment delivered by a competent court cannot be washed away by a subsequent interpretation in a different case. Therefore, reliance of the petitioner in *ACB India* case is misplaced.

(g) JPL's transmission line is incidental to inter-State transmission of electricity and therefore, satisfies the definition of ISTS. The transmission licence has been duly granted by the Commission to JPL.

3. After hearing the learned counsel for the petitioner and learned senior counsel for JPL, the Commission directed the petitioner and JPL to file written submissions by 19.9.2014 with copy to each other.
4. The Commission directed that due date of filing the written submissions should be strictly complied with.
5. Subject to above, the Commission reserved order in the petition.

By order of the Commission

**Sd/-
(T. Rout)
Chief (Law)**