

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 6/MP/2014**

**Coram:**

**Shri Gireesh B Pradhan, Chairperson**

**Shri A.K. Singhal, Member**

**Shri A S Bakshi, Member**

**Date of Order: 9.12.2015**

**In the matter of**

Petition under Section 79 (1) (c) of the Electricity Act, 2003 for cancellation of transmission licence dated 9.5.2011 granted by this Hon'ble Commission to Respondent No 1.

**And**

**In the matter of**

Chhattisgarh State Power Distribution Co Ltd  
VidyutSevaBhava, Danganiya  
Raipur – 492013, Chhattisgarh

**Petitioner**

**Vs**

1. Jindal Power Ltd.  
Tamnar, District Raipur – 496107  
Chhattisgarh
2. Jindal Steel & Power Ltd  
G. E. Road, P. O. MandirHasoud,  
District Raipur – 492001  
Chhattisgarh
3. Power Grid Corporation of India Ltd  
Corporate Office Saudaminin, Plot No 2  
Sector 29, Gurgaon – 122001 (Haryana)
4. Power System Operation Corporation Ltd  
B-9, Qutab Institutional Area,  
KatwariaSarai, New Delhi –110016

**Respondents**

## Parties Present:

1. Ms. SuparnaSrivastava, Advocate, CSPDCL
2. Shri Sanjay Sen, Sr. Advocate, JPL
3. ShriAmit Jindal, Advocate, JPL
4. MsRanjithaRamachandran, JPL
5. ShriVikasSaksena, JPL
6. Shri R.C. Gupta, JPL
7. Shri Sanjay Kaul, JPL
8. Shri R.V.M.M. Rao, PGCIL
9. Shri S.S. Barpanda, NLDC
10. ShriAbiliaZaidi, POSOCO
11. ShriDilip Singh, MPPMCL

## ORDER

In the present petition filed under clause (c) of sub-section (1) of Section 79 of the Electricity Act, 2003 (Electricity Act), the petitioner has made the following prayers, namely –

- “(a) Cancel the transmission licence dated 9.5.2011 granted by this Hon’ble Commission to Respondent No.1 vide Order dated 9.5.2011 in Petition No.105/2010 for 400kV D/C Jindal Power Limited Tamnar-PGCIL, Raipur transmission line and 400/220/33kV Jindal Power Limited Tamnar-Switchyard;*
- (b) Direct that the transmission charges and other incidentals relating to the 400kV D/C Jindal Power Limited Tamnar-PGCIL, Raipur transmission line of Respondent No. 1 such lines are to be settled between Respondent Nos.1 and 2 bilaterally including for the period the transmission licence granted to it has been in force;*
- (c) Direct Respondent No.1 to reimburse to the Petitioner the transmission charges/losses recovered from it during the period the transmission licence granted to it has been in force;*
- (d) Pass such further and other order(s) as this Hon’ble Commission may deem fit and proper in the facts and circumstances of the case.”*

2. The prayer at (a) above is the substantive prayer, whereas those at (b) and (c) are consequential to grant of the substantive prayer.

3. Respondent No 1, Jindal Power Ltd (**JPL**) set up a generating station of 1000 (4x250) MW thermal power plant at Tamnar in Raigarh District of Chhattisgarh State and established a 258-km long 400 kV D/C dedicated transmission line from Tamnar Power Plant to the sub-station at Kumhari in Raipur District of Respondent No 3, Power Grid Corporation of India Limited (**PGCIL**) for further evacuation of power. JPL had proposed to use the dedicated transmission line for evacuation of power generated at the captive power plants established by its holding company, Jindal Steel and Power Ltd (**JSPL**), in addition to power generated at its own power plant, outside the State of Chhattisgarh. Accordingly, JPL made an application before the Commission, registered as Petition No 105/2010, for grant of licence for the transmission line under Sections 14 and 15 of the Electricity Act read with the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2009 (**the transmission licence regulations**).

4. JPL published public notices under sub-section (2) of Section 15 of the Electricity Act in Business Standard and Dainik Bhaskar, both dated 2.4.2010. In response to the public notices, no suggestions or objections were received by the Commission.

5. PGCIL in its capacity as the Central Transmission Utility submitted its recommendation to the Commission under sub-section (3) of Section 15 of the Electricity Act for grant of licence to JPL.

6. Chhattisgarh State Power Holding Company Ltd, along with other constituents of Western Region as its Long Term Transmission Customers were impleaded as party-respondents in compliance with the Commission's order dated 10.12.2010. Neither the respondents filed any reply to the petition nor did they participate in the proceedings before the Commission in any other manner.

7. On consideration of the material available on record and being satisfied that JPL *prima facie* fulfilled the conditions for grant of licence, in its order dated 17.3.2011 the Commission had proposed to grant of transmission licence for 400 kV D/C JPL Tamnar-PGCIL, Raipur transmission line and 400/220/33 kV Switchyard at Tamnar. The Commission accordingly directed publication of notices of its proposal in two daily newspapers inviting suggestions/objections from the public in terms of subsection (5) of section 15 of the Electricity Act, which direction was duly complied with by publication of notices in all editions of Times of India and Dainik Bhaskar on 29.3.2011. Again, no suggestions/objections were received. Accordingly, in its order dated 9.5.2011 the Commission granted the transmission licence to JPL for 400 kV D/C JPL Tamnar-PGCIL, Raipur transmission line and 400/220/33 kV JPL Tamnar Switchyard, subject to the conditions mentioned therein. With the grant of transmission licence, the proceedings in Petition No 105/210 stood concluded.

8. ACB India Limited, another generating company, made an application (Petition No 170/TL/2012) to seek transmission licence for its 55.54 km long 400 kV dedicated transmission line used for evacuation of power from its 270 MW generating station at

Chakabura to PGCIL's sub-station at Bharari, Bilaspur in Western Region on the plea that the transmission line was to be used for inter-State transmission of the surplus capacity as and when available and also power generated by other two generating companies, namely, Spectrum Coal and Power Ltd – a subsidiary of ACB India Ltd - and Maruti Clean Coal and Power Ltd. **(MCCPL)**, also a group company, or any other unidentified project developer.

9. Gujarat Urja Vikas Nigam Ltd. **(GUVNL)** and the petitioner in their replies to the application made by ACB India Ltd opposed grant of inter-State transmission licence on various grounds, reference to which is not considered necessary for the purpose of present order. CEA vide letter 28.2.2013 had stated that the project of MCCPL was surrounded by forest area and there was problem of availability of corridor for laying the transmission line from project to pooling point. It was further stated by CEA that evacuation of power through LILO of the existing transmission line was technically feasible. PGCIL in the capacity of CTU also did not favour grant of transmission licence to ACB India Ltd. In this context, PGCIL's submission considered relevant is extracted below:

*“In the facts and circumstances mentioned above, the lines laid down till the WR pooling station are to be treated as dedicated transmission line and not a part of ISTS system. The transmission charges and other incidentals relating to such lines are to be settled between the above mentioned users bilaterally and the same cannot be indicated in the POC regime. These lines are not used for evacuation or transmission of power of any other person.”*

10. On consideration of the facts on record and in particular the views of CTU, the Commission held that ACB India did not require the transmission licence and the

application made by it was disposed of by order dated 12.8.2013, with certain directions, with regard to scheduling, metering and sharing of transmission charges and losses among ACBIL, MCCPL and SCPL.

11. The petitioner, in support of its prayer for cancellation of the transmission licence granted in favour of JPL has urged that the express representation by JPL that it would be evacuating power from Tamnar switchyard to the beneficiaries in Western Region, who are long term transmission customers of JPL's transmission lines, is completely false. It has been alleged that the beneficiaries in the Western Region are deliberately impleaded by willfully misleading the Commission. The petitioner has alleged that the Commission has applied different yardsticks while granting licence to JPL and refusing the same to ACB India Ltd though they are similarly placed or rather the case of ACB India Ltd was on a better footing since it had identified the long term customers which was not done by JPL. The petitioner has argued that the Commission's decision to not grant licence to ACB India Ltd is correct and the same should have been applied to the application for transmission licence made by JPL. In other words, the petitioner's contention is that JPL should not have been granted the licence. The petitioner has filed the petition for cancellation of JPL's licence since under the extant POC regime of sharing of transmission charges and losses, the constituents of Western Region have to share the transmission charges and losses for the transmission lines owned by JPL, which otherwise were to be borne by JPL and JSPL between themselves.

12. JPL in its reply has submitted that the specific power for revocation of licence is provided under Section 19 of the Electricity Act, laying down the circumstances under

which the Appropriate Commission can revoke a licence. It has been urged that the petitioner's plea for cancellation of the licence granted to JPL does not fall within the scope of Section 19. JPL has further urged that the present petition filed under clause (c) of sub-section (1) of Section 79 of the Electricity Act is not maintainable as it would amount to circumventing the specific requirements prescribed under Section 19 for revocation of licence. According to JPL, the licensed transmission lines is used for evacuation of power from its own generating station and the generating station of JSPL, its holding company, outside the State of Chhattisgarh. Based on this, the transmission line is part and parcel of the inter-State transmission system, being incidental to inter-State transmission of electricity. It has been further urged that the transmission licence having been granted after following the due process of law, cannot be cancelled in the present proceeding at the instance of the petitioner.

13. We have heard the learned counsel for the petitioner and learned senior counsel for JPL. We have also heard the representatives of PGCIL and NLDC/POSOCO. We have carefully perused the written submissions filed after conclusion of the hearing on behalf of the petitioner and JPL.

14. Firstly we consider the petitioner's plea of misrepresentation by the petitioner. According to the petitioner, JPL at the time of making application for grant of licence made a misrepresentation that the long-term customers of Western Region were the beneficiaries of the generating stations being established by JPL and JSPL. The petitioner has not produced any evidence in support of the allegation. PGCIL in its reply dated 29.5.2014 has stated that in August, 2004, JPL had made an application for long-

term access for 500 MW to various beneficiaries in Western Region from the second phase of its 4x250 MW generation project whereby it was informed that from the 1<sup>st</sup> Phase of the generation project, PPA totalling 350 MW was signed with number of industries in the Industrial Estate being developed by JSPL and remaining 100 MW power was proposed to be sold to JSPL to meet JSPL's commitment of sale of power to Chhattisgarh State Electricity Board and Gujarat Electricity Board. It has been further stated that JPL modified the application in December, 2005 indicating the States of Gujarat and Chhattisgarh as the beneficiaries of its generation project. The modified application is stated to have been discussed in the meeting of Western Region constituents held at CEA on 30.09.2006. Based on the discussions in the meeting it was agreed to grant long-term access for 500 MW to JPL. The petitioner has not denied the averment of PGCIL. The petitioner has not pointed out any discrepancy in JPL's statement in the modified application submitted in December 2005. In view of this we do not find any substance in the petitioner's plea that JPL made any misrepresentation that long-term open access customers were the beneficiaries of the generating stations to be established by it and JSPL. It is also worthwhile to state that the constituents of Western Region were impleaded by JPL in the licence application under the directions of the Commission. No *malafides* can be attributed to JPL in impleading the beneficiaries of Western Region.

15. The present petition has been filed under clause (c) of sub-section (1) of Section 79 of the Electricity Act, according to which one of the functions assigned to the Commission is "to regulate the inter-State transmission of electricity". The function "to issue licenses to persons to function as transmission licensee and electricity trader with

respect to their inter-State operations” is assigned to the Commission under clause (e) of sub-section (1) of Section 79 of the Electricity Act. The power to issue licences can be said to include the power to revoke licence. In any case, the detailed procedure for grant of licences and other incidental matters such as amendment of licence, revocation of licence, transfer of undertaking of the licensee etc are contained in Part IV, titled ‘Licensing’, of the Electricity Act. In view of the express provision for revocation of licence made under Section 19 in Part IV of the Electricity Act, the power of revocation of licence cannot be impliedly read into clause (c) of sub-section (1) of Section 79. For this precise reason, the present petition filed under clause (e) of sub-section (1) of Section 79 is not maintainable.

16. According to the petitioner, the transmission licence cannot be granted in respect of a dedicated transmission line. Therefore, the petitioner has argued that JPL was wrongly granted the licence. The submission lacks merit. JPL had made the application for grant of transmission licence under clause (c) of Regulation 6 of the transmission licence regulations. The relevant part of Regulation 6 is extracted below:

***“6. Eligibility for Grant of licence***

*No person shall be eligible for grant of licence unless it is—*

*(a) .....*

*(b) .....*

*(c) a generating company which has established the dedicated transmission line, and intends to use such dedicated transmission line as the main transmission line and part of the inter-State transmission system.”*

17. In terms of clause (c) of Regulation 6 of the transmission licence regulations, a generating company which has constructed the dedicated transmission line and intends to use the said dedicated transmission line as main transmission line and part of inter-State transmission system is eligible for grant of transmission licence. The provision has been made on economic considerations since conversion of the dedicated transmission line into the main transmission line obviates the need for constructing another transmission line and thereby avoids wasteful expenditure. Therefore, grant of licence to JPL to use the dedicated transmission line as the main transmission line cannot be said to be *de hors* the transmission licence regulations as the licence was granted after the Commission was satisfied that the criteria laid down under clause (c) of Regulation 6 were met.

18. The question raised by the petitioner can be looked at from a different angle. The procedure prescribed under the Electricity Act and the transmission licence regulations was duly complied with. JPL published the notice of its application in the local newspapers. The Commission did not receive any objections or suggestions in response to the notice. The constituents of Western Region were specifically impleaded as party-respondents by JPL on the direction of the Commission. The petitioner neither filed a reply before the Commission nor did it participate in the proceeding in any other manner. The Commission's proposal to grant licence to JPL was again published in the local newspapers after the Commission's *prima facie* satisfaction that JPL was entitled to grant of licence. At this stage too the petitioner failed to point out any defect in the Commission's proposal. Having lost so many opportunities to raise objections at the appropriate stage, the petitioner cannot be heard to allege any irregularity in the grant of

licence to JPL. The petitioner has stated that when JPL supplied a copy of the licence application, it did not supply the copies of the orders passed by the Commission prior thereto. The plea seems to have been taken to justify its non-participation in the proceedings before the Commission. In our opinion, the petitioner's plea does not deserve any serious consideration. Once the petitioner became aware of the pendency of the licence application before the Commission, it was its own responsibility to participate in the proceedings.

19. It has been argued on behalf of the petitioner that it has sought cancellation of licence of JPL and not revocation of licence under Section 19 of the Electricity Act since JPL was not entitled to licence in view of the subsequent decision of the Commission on the licence application made by ACB India Ltd. According to **Advanced Law Lexicon by P Ramanatha Aiyer (3<sup>rd</sup> Edition)** the word "revoke" means "to call back; to rescind; to cancel; to annul by recalling or taking back". The Hon'ble Supreme Court in **Hadibandhu Das Vs District Magistrate, Cuttack (AIR 1969 SC 43)**, in the context of revocation of detention order passed under the Preventive Detention Act, held that revocation "includes cancellation of all orders invalid as well as valid." Thus, the words "revoke" and "cancel" are held to be synonymous and revocation of licence under Section 19 of the Electricity Act includes the cancellation of licence. Therefore, the question of cancellation of the licence granted to JPL is to be considered on the touchstone of the statutory prescription of Section 19 of the Electricity Act and Regulation 15 of the transmission licence regulations. As a corollary of the above conclusion, the petitioner cannot invoke clause (c) of sub-section (1) of Section 79 for cancellation of the transmission licence.

20. Under Section 19, the licence can be revoked where the licensee has (a) made willful or prolonged default in doing anything required of him by or under the Electricity Act or the rules and regulations framed thereunder; (b) where the licensee breaks any of the terms and conditions of his licence, the breach of which is expressly declared by such licence to render it liable to revocation; (c) where the licensee fails to show to the satisfaction of the Commission that he is in a position to fully and efficiently discharge the duties and obligations imposed on him by his licence or to make the deposit or furnish the security, or pay the fees or other charges required by his licence; (d) where in the opinion of the Commission the financial position of the licensee is such that he is unable fully and efficiently to discharge the duties and obligations imposed on him by his licence. Regulation 20 of the transmission licence regulations makes certain additional provisions for revocation of licence in sub-clauses (e), (f) and (g) of clause (1) as under:

- (i) where licensee has failed or neglected to undertake transmission in electricity;
- (ii) where the licensee fails to submit the information as required under these regulations;
- (iii) where the licensee breaches any of the terms and conditions of Transmission Service Agreement during the construction or operations phase.

21. There is not even a whisper of any allegation against JPL that it failed to comply with its duties and obligations under the Electricity Act or the transmission licence

regulations or that cancellation of licence is covered under the provisions of Section 19 of the Electricity Act or the tariff licence regulations. Therefore, in our opinion, the case for cancellation or revocation of licence of JPL has not been made out by the petitioner.

22. The petitioner in its written submissions has further relied upon Sections 14 and 21 of the General Clauses Act to urge that the Commission has the power to cancel the licence as it was wrongly granted in the first instance. In our considered opinion Sections 14 and 21 of the General Clauses Act do not even remotely support the petitioner's plea for cancellation of licence. It also bears notice that the provisions of the General Clauses Act are not available to the petitioner since the provisions for cancellation or revocation are made in the Electricity Act and the transmission licence regulations which are special law. Also, we have already held that the grant of transmission licence to JPL was covered under clause (c) of Regulation 6 of the transmission licence regulations.

23. The petitioner has relied upon the Commission's order dated 12.8.2013 in Petition No 170/TL/2012 filed by ACB India Ltd in support of its plea for cancellation of licence of JPL. On the other hand, JPL in its reply before the Commission has urged that subsequent interpretation of law cannot be applied retrospectively and in support of its defence, JPL has relied upon the judgment of J&K High Court in Abdul Salam Vs State of J & K (AIR 1981 J&K 21) and Punjab and Haryana High Court judgment in Ram Chand Vs State of Punjab and others {(1971) ILR 2 Punjab and Haryana 184}. It is not necessary to refer in detail to the observations made in these judgments because the principle is well-settled that a subsequent decision cannot be used to reopen or review

an earlier decision. It is pointed out that cancellation of the licence of JPL in the light of the decision in ACB case would amount to review of the orders passed by the Commission in JPL's licence application. It is trite law that the subsequent order of even the superior court cannot be a ground for review of the earlier judgments/orders, not to speak the orders of the court of original jurisdiction. Therefore, the petitioner cannot invoke the Commission's order dated 12.8.2013 *ibid* in support of its plea for cancellation of JPL's licence. We may, however add that ACB India Ltd was not granted licence in view of the facts and circumstances applicable to that case and on consideration of objections and suggestions of the stakeholders, including the petitioner. It is pointed out that ACB India Ltd was not refused licence on the ground that the licence cannot be granted for the dedicated transmission line when it is proposed to be used as the main transmission line as part of the inter-State transmission system. It is also relevant to state ACBIndia Ltd itself had agreed to settle the issues of scheduling and accounting with MCCPL and there was no need to grant license.

24. The petitioner has urged that JPL be directed to evacuate power up to the inter-connection point with the regional grid by sharing the transmission charges/losses for the same bilaterally with JSPL as has been held by the Commission in the case of ACBIndia Ltd without the petitioner or other constituents of Western Region being liable to share the same and also reimburse all transmission charges/losses already recovered. The petitioner has approached the Commission for cancellation or revocation of licence as it feels aggrieved on account of its liability to share the transmission charges and losses under the prevalent POC regime. In this context it may

be pointed out that the Commission in its order dated 26.9.2012 in Petition No 135/TT/2012 has already determined the provisional transmission charges, which are subject to adjustment after determination of the final tariff, for the licensed transmission line of JPL, sharing of which has to abide the applicable regulations. The petitioner has filed appeal before the Hon'ble Appellate Tribunal for Electricity, being Appeal No 119/2013 against the said order dated 26.9.2012 on various grounds, including its liability to share the provisional transmission charges. The appeal is pending before the Appellate Tribunal for adjudication. For this reason also, the present petition cannot be entertained as the petitioner has to wait for the outcome of its appeal pending before the Appellate Tribunal.

25. In the light of the foregoing discussion, we do not find any merit in the petition and accordingly, the present petition is dismissed.

Sd/-  
**(A. S. Bakshi)**  
Member

sd/-  
**(A. K. Singhal)**  
Member

sd/-  
**(Gireesh B Pradhan)**  
Chairperson