

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY**  
(Appellate Jurisdiction)

**APPEAL Nos. 210 & 279 of 2016**

Dated : 2<sup>nd</sup> December, 2024

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member  
Hon'ble Mr. Virender Bhat, Judicial Member

**In the matter of:**

**APPEAL No. 210 OF 2016**

**Chhattisgarh State Power Distribution Co. Ltd.**

Vidyut Seva Bhavan, Danganiya,  
Raipur – 492013, Chhattisgarh

... Appellant

*Versus*

- 1. Central Electricity Regulatory Commission**  
4<sup>th</sup> Floor, Chanderlok Building,  
36, Janpath, New Delhi - 110001
- 2. Jindal Power Limited**  
Registered Office at:  
Tamnar, Distt. Raigarh – 496107  
Chhattisgarh
- 3. Jindal Steel & Power Ltd.**  
G.E. Road, P.O. Mandir Hasoud,  
Distt. Raipur – 492001  
Chhattisgarh
- 4. Power Grid Corporation of India Limited**  
Corporate Office: Saudamini, Plot No. 2,  
Sector 29, Gurgaon – 122001 (Haryana)

5. **Power System Operation Corporation Ltd.**  
B-9, Qutab Institutional Area,  
Katwaria Sarai, New Delhi – 110016 ... Respondent (s)

Counsel for the Appellant(s) : Apoorv Kurup  
Akhil Asija for App.

Counsel for the Respondent(s) : Sethu Ramalingam for Res. 1  
Sitesh Mukherjee Ld. Sr. Counsel  
Divya Chaturvedi for Res. 2  
Sitesh Mukherjee Ld. Sr. Counsel  
Divya Chaturvedi for Res. 3

**APPEAL No. 279 OF 2016**

**Chhattisgarh State Power Distribution Co. Ltd.**  
Vidyut Seva Bhavan, Danganiya,  
Raipur – 492013, Chhattisgarh,  
Through its Additional Chief Engineer (RAC) ... Appellant

*Versus*

1. **Central Electricity Regulatory Commission**  
3<sup>rd</sup> & 4<sup>th</sup> Floor, Chanderlok Building,  
36, Janpath, New Delhi – 110001,  
Through its Secretary
2. **Jindal Power Limited**  
Registered Office at:  
Tamnar, Distt. Raigarh – 496107,  
Chhattisgarh

**3. Jindal Steel & Power Ltd.**  
G.E. Road, P.O. Mandir Hasoud,  
Distt. Raipur – 492001,  
Chhattisgarh

**4. Power Grid Corporation of India Limited**  
Western Region – I,  
Sampriti Nagar, Nari Ring Road,  
P.O. Uppalwadi, Nagpur – 440026  
Maharashtra

... Respondents

Counsel for the Appellant(s) : Apoorv Kurup  
Akhil Asija For App.

Counsel for the Respondent(s) : Sethu Ramalingam for Res. 1  
  
Sitesh Mukherjee Ld. Sr. Counsel  
Divya Chaturvedi for Res. 2  
  
Sitesh Mukherjee Ld. Sr. Counsel  
Divya Chaturvedi for Res. 3  
  
Pallav Mongia  
Mridul Chakravarty for Res. 4

## **J U D G M E N T**

**PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER**

1. Both the Appeals arise out of identical facts and circumstances and also concern the same transmission line i.e. 400KV D/C Jindal Power Limited (JPL) Tamnar – PGCIL, Raipur Transmission line as

well as 400/220/33 KV JPL Tamnar-switchyard. Accordingly, both are being disposed of by this common judgement.

2. In Appeal No. 210 of 2016, the Appellant has assailed the order dated 9<sup>th</sup> December, 2015 passed by 1<sup>st</sup> Respondent - Central Electricity Regulatory Commission (in short "Commission") in Appellant's Petition No. 6/MP/2014 seeking cancellation of the transmission licence granted to 2<sup>nd</sup> Respondent – Jindal Power Limited (in short "JPL") on 9<sup>th</sup> May, 2011 in respect of above noted transmission line and switchyard.

3. In Appeal No. 279 of 2016, the Appellant has challenged the order dated 18<sup>th</sup> December, 2015 passed by 1<sup>st</sup> Respondent – Commission in Petition No. 135/TT/2012 filed by 2<sup>nd</sup> Respondent – JPL seeking determination of annual fixed charges and tariff for the said transmission line as well as switchyard for financial years 2011-2012 to 2013-2014.

4. The Appellant – Chhattisgarh State Power Distribution Co. Ltd. (in short "CSPDCL") is the successor of erstwhile Chhattisgarh State Electricity Board and came into existence upon unbundling of the Electricity Board into different companies w.e.f. 1<sup>st</sup> January, 2009 by virtue of Chhattisgarh State Electricity Board Transfer Scheme

Rules, 2008 and 2010 notified by the State Government under Section 131 of Electricity Act, 2003. Since then, the Appellant has been functioning as the Distribution Licencee in the State of Chhattisgarh and is performing all the functions as well as duties related to the distribution of electricity in the State.

5. The 2<sup>nd</sup> Respondent – JPL is an independent power producer and has set up a generating station having aggregate capacity of 1000 MW at Village Tamnar District, Raigarh, Chhattisgarh. It has also established a 258 km long 400 KV double circuit dedicated transmission line from its power plant at Tamnar to the sub-station of Respondent No. 4 Power Grid Corporation of India Limited (in short “PGCIL”) at Kumhari, Raipur, Chhattisgarh for evacuation of power from the place of generation to the inter-connection point of 4<sup>th</sup> Respondent for onward inter-state transmission, which line is known as 400 KV Jindal Power Limited Tamnar-PGCIL Raipur Transmission line. This line is a subject matter of both the appeals.

6. The 2<sup>nd</sup> Respondent, JPL is stated to be subsidiary and a group of company of Respondent No. 3 - Jindal Steel and Power Limited, which is engaged in the business of manufacture of steel and steel products with manufacturing facility in District Rajgarh near the

facilities of Respondent No. 2. The 3<sup>rd</sup> Respondent has also established the captive power plant at Rajgarh for an aggregate capacity of 358 MW. The 2<sup>nd</sup> Respondent – JPL proposed to use the dedicated transmission line for evacuation of power generated at the captive power plants established by 3<sup>rd</sup> Respondent-JSPL in addition to the power generated at its own power plant. Accordingly, it made an application before the 1<sup>st</sup> Respondent – Commission by way of Petition No. 105 of 2010 for grant of licence for the transmission line under Section 14 & 15 of the Electricity Act 2003 read with Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2009 (hereinafter referred to as “2009 Transmission Licence Regulations”).

7. The Commission, vide its order dated 9<sup>th</sup> May, 2011 passed in the said petition, granted Transmission Licence to 2<sup>nd</sup> Respondent – JPL for the said 400 KV BC JPL Tamnar-PGCIL Raipur Transmission Line and 400-220-33 KV JPL Tamnar Switchyard subject to the conditions mentioned therein.

8. In the year 2014, Petition No. 6/MP/2014 came to be filed by the Appellant herein under Section 79(1)(c) of the Electricity Act,

2003 seeking cancellation of the Transmission Licence dated 9<sup>th</sup> Mary, 2011 granted by the Commission to the 2<sup>nd</sup> Respondent – JPL. The petition has been dismissed by the Commission vide order dated 9<sup>th</sup> December, 2015 which has been impugned in the appeal No. 210 of 2016.

9. Meanwhile, JPL also had filed Petition No. 135/TT/2012 before the Commission seeking determination of transmission tariff for the said transmission line and switchyard for the period 2009-14. The Petition has been disposed of by the Commission vide order dated 18<sup>th</sup> December, 2015 thereby determining the transmission tariff for the said transmission line and switchyard. The said order dated 18<sup>th</sup> December, 2015 has been assailed in Appeal No. 279 of 2016.

10. We shall at first take up the Appeal No. 210 of 2016.

**Appeal No. 210 of 2016**

11. In this appeal, the Appellant is aggrieved by the order dated 9<sup>th</sup> December, 2015 of the Commission vide which its petition No. 6/MP/2014 has been dismissed. Following prayers had been made by the Appellant in the Petition :-

*“(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."*

12. The main contention of the Appellant in the petition was that the 2<sup>nd</sup> Respondent – JPL had obtained the transmission licence by misrepresentation and the transmission licence could not be granted in respect of dedicated transmission line. It was contended that Transmission Licence has been wrongly granted to JPL. Thus, the Appellant sought to challenge the very correctness and legality of the order dated 9<sup>th</sup> December, 2011 of the Commission vide which it had granted transmission licence to JPL for the said transmission line as well as switchyard.

13. Concededly, the Appellant has not assailed the said order dated 9<sup>th</sup> May, 2011 of the Commission before any Court/forum including this Tribunal so far.



14. It is elementary that an order passed by any Electricity Regulatory Commission (Central or State) can be assailed only by way of Appeal before this Tribunal as envisaged under Section 111 of the Electricity Act, 2003. The aggrieved party may also approach the Commission itself by way of Review Petition to seek a review of the order on the grounds envisaged under Order 47 CPC. Therefore, we are unable to discern the wisdom of the Appellant in approaching the Commission in the year 2014 by way of a petition under Section 79(1) (c) of the Electricity Act, 2003 seeking cancellation of the transmission licence dated 9<sup>th</sup> May, 2011 granted by the Commission to the 2<sup>nd</sup> Respondent – JPL.

15. Undisputedly, the petition filed by the Appellant was not a Review Petition under Order 47 CPC for review of the order dated 9<sup>th</sup> May, 2011 of the Commission granting transmission licence in favour of JPL. Throughout the lengthy arguments advanced by Learned Counsel for the Appellant, he has failed to point out any provision in the Electricity Act or any rules/regulations made thereunder empowering the Commission to examine the correctness, validity and legality of its own order.

16. As rightly pointed out by Learned Senior Counsel appearing for 2<sup>nd</sup> and 3<sup>rd</sup> Respondent, part IV of the Electricity Act, 2003 comprising of Section 12 to 24 related to Licensing. Section 12 states that no person shall be authorized to transmit/distribute/trade in electricity unless authorized to do so by a licensee issued under Section 14 or is exempt under Section 13. The appropriate Commission is authorized under Section 13 to exempt any local authority, Panchayat Institution, users' association, co-operative societies, non-governmental organizations, or franchisees from the provisions of Section 12 upon such conditions and restrictions, if any, and for such period or periods, as may be specified.

17. Section 14 authorised the Appropriate Commission i.e. State Commission or Central Commission as the case may be, to grant licence to any person to transmit/distribute electricity and to undertake trading in the electricity in any specified area. Section 15 describes the procedure for applying for and grant of such licence.

18. Section 19 authorises the Commission to revoke such licence granted to any person/entity in case it is satisfied that the public interest so requires and in any of the following cases :-

- (a) *where the licensee, in the opinion of the Appropriate Commission, makes wilful and prolonged default in doing anything required of him by or under this Act or the rules or regulations made thereunder;*
- (b) *where the licensee breaks any of the terms or 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, within the period fixed in this behalf by his licence, or any longer period which the Appropriate Commission may have granted therefor –*
  - (i) *to show, to the satisfaction of the Appropriate Commission, that he is in a position fully and efficiently to discharge the duties and obligations imposed on him by his licence; or*
  - (ii) *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 Appropriate 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.”*

19. Sub-Section 3 of Section 19 requires giving of at least three months' notice to the licensee before proceeding to revoke the licence. Sub-Section 4 provides that instead of revoking the licence, the Commission may permit it to remain in force subject to further terms and conditions which shall be binding upon the licensee as if they were contained in the licence itself.

20. Thus, the transmission licence once granted to a person or entity can be revoked by the Commission only in the cases

enumerated in sub-section 1 of Section 19 and upon following the procedure laid down in sub-section 3 of the said Section. It is manifest that a licence can be revoked only when the licensee commits willful default as well as breach of any of the terms or conditions of the licence or fails to discharge his duties/obligations under the licence or to deposit the security as required under the licence or is unable to discharge the duties/obligations imposed under the licence due to financial constraints. In other words, the licence can be revoked only on account of some subsequent acts of default committed by the licensee after the issuance of licence.

21. In the petition before the Commission, the Appellant had not complained about any such default of the 2<sup>nd</sup> Respondent-JPL committed subsequent to issue of license dated 9<sup>th</sup> May, 2011 to it. The contentions of the Appellant before the Commission was that licence has been wrongly granted to JPL and the order dated 9<sup>th</sup> May, 2011 is not legally valid. This is not a ground for revocation of a licence under Section 19 of the Electricity Act, 2003. In order to challenge the legality and validity of the order dated 9<sup>th</sup> May, 2011 of the Commission, vide which transmission licence granted to JPL, the Appellant had to approach this

Tribunal by way of an appeal under Section 111 of the electricity Act, 2003. It has not done so. Evidently, therefore, the petition assailing the validity of the order dated 9<sup>th</sup> May, 2011 of the Commission was not maintainable before the Commission itself.

22. It was sought to be argued on behalf of the Appellant that it has not approached the Commission for revocation of the licence granted to JPL and had only sought cancellation of the transmission licence granted to it. The argument has been noted only to be rejected. There is no provision in the entire Electricity, Act, 2003 authorising the Commission to cancel the licence granted to any person or entity under Section 14 of the Electricity Act, 2003. It is for the reason that the words “Revocation” and “Cancellation” are synonyms and the revocation of license envisaged under Section 19 means and includes cancellation of licence as well. As per Collins Dictionary, “Revocation” means (a) the act of revoking or the state of being revoked; Cancellation and (b) the cancellation or annulment of a legal instrument etc. In the same dictionary, the meaning of word “Cancellation” has been given as (a) the fact or an instance of cancelling (b) something that has been cancelled. The New Shorter Oxford Dictionary gives the meaning of

word “Revocation” as (a) the action of canceling a law or something and (b) the action of revoking or annulling something; cancellation of a decree etc. In the same dictionary the meaning of cancellation is given as (a) the action of or an instance of cancelling and (b) the action or an instance of cancelling the reservation of a seat, room etc. Upon perusal of the meaning of these two words “Revocation” and “Cancellation” given in these two renowned English dictionaries, it is evident that Cancellation is inherent and included in Revocation and there is no distinction between the act of Revocation and the act of Cancellation. The Hon’ble Supreme Court also has held in Hadibandhu Das Vs District Magistrate, Cuttark (AIR 1969 SC 43) that revocation includes cancellation of all orders invalid as well as valid. This was in the context of revocation of detention order passed under the Preventive Detention Act. Hence, the Commission has rightly observed in the impugned order that the prayer for cancellation of transmission licence dated 9<sup>th</sup> May, 2011 granted to JPL is to be considered on the touchstone of the statutory provisions i.e. Section 19 of the Electricity Act as well as Regulation 15 of the 2009 Transmission Licence Regulations.

23. Once the Appellant chose not to assail the order dated 9<sup>th</sup> May, 2011 of the Commission, vide which Transmission Licence was granted to JPL, before this Tribunal by way of Appeal under Section 111 of the Electricity Act, 2003, it was not open for it to approach the Commission by way of petition under Section 79 seeking cancellation of the said transmission licence. Section 79 of the Electricity Act, 2003 enumerates the functions to be discharged by the Central Commission and one of which is to regulate the inter-State transmission of electricity as stated in clause (c) of sub-section (1) of this Section. By no stretch of imagination can it be said that Section 79(1)(c) empowers the Central Commission to cancel the transmission licence granted to a person or entity. Regulation of inter-State transmission of electricity cannot be taken to include power to cancel the transmission licence. The Central Commission as well as State Commission have been authorized to revoke the transmission licence of a person or entity under Section 19 of the Act, which we have already discussed herein above. The petition filed by the Appellant before the Commission appears to be a classic illustration of ingenuity of drafting. The Appellant was conscious

that in the year 2014, it cannot assail the order dated 9<sup>th</sup> May, 2011 by way of appeal before this Tribunal and even the Review Petition could not be filed before the Commission against the said order due to long lapse of time. At the same time, the Appellant was apparently conscious that no ground is available to it for seeking revocation of transmission licence of JPL as specified under Section 19 of the Act. Therefore, the Appellant cleverly drafted the petition by captioning it to be a petition for cancellation of transmission licence of JPL under Section 79(1)(c) of the Act and filed the same before the Commission. The petition was nothing but an intentional attempt to mis-lead the Commission as well as to camouflage the legal process. We are of the considered opinion that a person cannot be permitted to, by resorting to ingenuity in drafting, to seek what he otherwise is prohibited in law to seek. Manifestly, the petition was not maintainable and has been rightly dismissed by the Commission. We find no ground to interfere in the said impugned order of the Commission. Accordingly, the Appeal No. 210 of 2016 fails.

24. We may also note that the challenge of the Appellant to the transmission licence dated 9<sup>th</sup> May, 2011 granted to JPL has even



otherwise also become infructuous for the reason that the Appellant has admittedly started using the said transmission line and Switchyard in question since 20<sup>th</sup> October, 2023.

**Appeal No. 279 of 2016**

25. In this appeal, the Appellant has assailed the order dated 18<sup>th</sup> December, 2015 of the Commission passed in Petition No. 135/TT/2012 of 2<sup>nd</sup> Respondent – JPL thereby determining the annual fixed charges and transmission tariff for the transmission line and Switchyard in question for the period 2011 to 2014.

26. The only submission made in this appeal on behalf of the Appellant is that since the Appellant has been using the transmission line w.e.f. 20<sup>th</sup> October, 2023, it would be just and equitable to hold it liable for transmission charges for the same only from the said date and not for any prior period.

27. It is not disputed on behalf of the 2<sup>nd</sup> Respondent and 3<sup>rd</sup> Respondent that the Appellant has been using the transmission line in question w.e.f. 20<sup>th</sup> October, 2023 only. No justification has been given on behalf of the Respondents as to why the Appellant should be burdened with transmission charges for the said transmission line for any period prior to 20<sup>th</sup> October, 2023. We

also feel it justified and equitable to hold the Appellant liable for payment of transmission charges in regard of the said transmission line & switchyard w.e.f. from the said date i.e. 20<sup>th</sup> October, 2023 only.

28. Hence, the Appeal No. 279 of 2016 deserves to be partly allowed to the above extent.

### **Conclusion**

29. We do not find any ground to interfere with order dated 9<sup>th</sup> December, 2015 of the Commission passed in petition No. 6/MP/2014 and accordingly, the Appeal No. 210 of 2016 is hereby dismissed.

30. Appeal No. 279 of 2016 stands partly allowed to the extent that the transmission charges for the transmission line and switchyard in question shall be levied from the Appellant w.e.f. 20<sup>th</sup> October, 2023 only.

Pronounced in the open court on this 2<sup>nd</sup> day of December, 2024.

(Virender Bhat)  
Judicial Member

(Sandesh Kumar Sharma)  
Technical Member (Electricity)

*js*