

Chhattisgarh State Electricity Vs. the Chhattisgarh State

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Court : Appellate Tribunal for Electricity APTEL

Decided On : May-11-2006

Reported in : (2006)LCAPTEL645

Judge : B T H.L., E Padmanabhan

Appellant : Chhattisgarh State Electricity

Respondent : The Chhattisgarh State

Judgement :

1. The first of the Appeals, namely Appeal No. 179 of 2005 has been preferred by The Chhattisgarh State Electricity Board challenging the Order passed by the first Respondent Chhattisgarh State Electricity Regulatory Commission on 29th September, 2005 in Petition No. 3 of 2005 in deciding to grant distribution license to the second Respondent M/s Jindal Steel and Power Ltd. and prayed for setting aside the said order.

2. Appeal No. 188 of 2005 has been preferred by Chhattisgarh Vidyut Mandal Abhiyanta Sangh represented by its General Secretary praying this Appellate Tribunal (i) to quash the Order dated 29th September, 2005 passed by the Chhattisgarh State Electricity Regulatory Commission containing decision to grant the distribution license under Section 15(6)(b) of the Electricity Act, 2003 (ii) to order confiscation of illegal distribution network of power lines created by Jindal Steel and Power Ltd. by the Govt. of Chhattisgarh and to transfer to CSEB for supply of power to existing customers of Jindal Industrial Project and (iii) to impose

proper punishment on Jindal Steel and Power Ltd. for supplying power without any legal authority from 1st April, 2004 and till date.

3. Appeal No. 16 of 2006 has been preferred by Chhattisgarh State Electricity Board challenging the Order passed by the Chhattisgarh Electricity Regulatory Commission in Petition No. 30 of 2005 and issuing license in favour of M/s. Jindal Steel and Power Ltd. on 29th November, 2005 in ref. No. 1295/CSERC/2005 for distribution of electricity in the area of Jindal Industrial Park, in villages Tumdih and Punjipathra of Gharghoda Tahsil of Raigarh District of Chhattisgarh State and prayed for quashing the license issued in terms of Section 14 of the Electricity Act, 2003.

4. Appeal No. 27 of 2006 has been preferred by M/s Jindal Steel & Power Ltd. under Section 111 of the Electricity Act, 2003 against the Order of the Chhattisgarh State Electricity Regulatory Commission dated 29th September, 2005 (i) in so far as the said Commission rejected the Appellants plea that it is not liable to obtain a license to supply electricity to consumers within the industrial estate so long as it does not require open access by virtue of the provisions of Section 10(2) of the Act (ii) in so far as the Commission negatived the plea of the Appellant that the permission granted by the State Government amounted to grant of a license under Section 28 of The Indian Electricity Act, 1910, (iii) in so far as the Regulatory Commission held the Appellant guilty of contravention of Section 12 of the Electricity Act, 2003 for supplying Electricity in the Industrial Estate as one without the necessary legal authority and imposed a penalty of Rs. One Lakh for the said violation and prayed to set aside the said Order dated 29th September, 2005 in so far as it is against the Appellant in respect of the said three aspects.

5. As the three appeal Nos. 179 and 188 of 2005 and 27 of 2006 arose out of the one and the same order of Chhattisgarh Electricity Regulatory Commission dated 29th September, 2005 and Appeal No. 16 of 2006 arose out of the consequential grant of Distribution license by the said Commission, all the four appeals were consolidated together along with interlocutory applications preferred by Appellant and an interlocutory application moved by the industries who located their industry

in the said Jindal Industrial Estate seeking for vacation of interim direction granted by this Appellate Tribunal in IA No. 27 of 2006, IA No. 41 of 2006 and 46 of 2006. As these are appeals and counter appeals, to avoid confusion the parties to the appeals will be referred by their description in the cause title and as abbreviated herein. The Chhattisgarh Electricity Board, which is the Appellant in Appeal No. 179 of 2005 and Appellant in 16 of 2006, which is also one of the Respondents in Appeal No. 188 of 2005 and Appeal No. 27 of 2006, shall be referred as "the Electricity Board". The Chhattisgarh State Electricity Regulatory Commission which is the first Respondent in all the four appeals will be referred as "the Regulatory Commission". The Appellant Chhattisgarh Vidyut Mandal Abhiyanta Sangh in Appeal No. 188 of 2005 shall be referred as the "Vidyut Sangh". M/s Jindal Steel and Power Ltd. which is the Appellant in Appeal No. 27 of 2006 which is also one of the Respondents in the three other appeals shall be referred as "Jindal Power" for convenience.

7. Heard Mr. Valmiki Mehta, Sr. Counsel along with Ms. Suparna Srivastav learned Counsel appearing on behalf of the Electricity Board in all the appeals, Mr. M.G. Ramachandran & Ms. Saumya Sharma & Ms.

Taruna S. Baghel for the Electricity Regulatory Commission in all the appeals, Mr. Shanti Bhushan, Sr. Advocate along with Mr. Jayant Bhushan, Sr. Advocate, Ms. Gauri Rasgotra for M/s Jindal Power Ltd. in Appeal No. 179 of 2005, 27 of 2006, 188 of 2006 as well as Mr. Mukul Rohtagi, Sr. Advocate along with Ms. Gauri Rasgotra & Mr. Manish Bishnoi in Appeal No. 16 of 2006 and 188 of 2006 for M/s Jindal Power Ltd. appearing for Commission. Excepting Mr. M.G. Ramachandran who made his submissions remaining Counsel addressed arguments for days together persistently. However, we were constrained to hear the appeals just to satisfy the parties and out of respect for the learned Senior Counsel.

We also would like to point out that M/s Vidyut Sangh, except merely preferring the appeal had not taken part in the hearing.

M/s. Jindal Power moved the Regulatory Commission for a distribution license under Section 14 of the Electricity Act, 2003 read with Regulation 3(1) of CSERC (License) Regulations, 2004 for supply of electricity to industries located in its

industrial estate known as Jindal Industrial Park in villages Tumdih and Punjipathra of Gharghoda Tahsil of Raigarh District. The said Jindal Power is engaged in the manufacture of sponge iron, ferro-alloys and various steel products in its manufacturing unit at Raigarh. The said company has also set up a captive power plant comprising three units with a total generating capacity of 265.70 mW. The Jindal Power also proposed to locate the "Jindal Industrial Park (JIP)" in an area of 750 acres to accommodate 70 industrial units and to supply 400 m VA (300 mW) to the said park. Jindal Power proposed to supply 120 m VA (90 mW) initially from its captive power plant at Raigarh and another 280 m VA (210 mW) from its proposed 1000 mW capacity power plant which is being put up.

9. The Regulatory Commission on receipt of the application for grant of license published a notice in the prescribed format in two local dailies. There were three objectors which includes Chhattisgarh Vidyut Mandal Abhiyanta Sangh and Electricity Board. The Applicant Jindal Power and the said two objectors submitted written objections and arguments before the Commission.

10. Electricity Board claimed that it is a deemed Licensee in terms of Section 122 of the Electricity Act and, therefore, its interest should not be adversely effected by the grant of a 2nd distribution license in the part of the same area. The Electricity Board relied upon National Electricity Policy (NEP) for brevity, as published and the same has been relied upon by the Electricity Board to object the grant. It was also pointed out by the Board that the policy imposes an area restriction for a second license, within the area of an existing Licensee and if at all such a second license can be granted for a minimum area of Revenue District or a Municipal Corporation or a Municipal Council and it has obligation to distribute power to all consumers who make demand in terms of Section 43 of the Electricity Act, 2003. There were other objections advanced by the objectors, which we shall consider at the appropriate point.

11. It is seen from the correspondence; Jindal Power submitted a proposal to State Government to set up an industrial estate by way of setting up an industrial estate through public-private participation.

The State Government seems to have agreed to provide 500 acres for the said purpose. The State Government informed Jindal Power with respect to sale of power to the units proposed to be set up in the Industrial Park and laying of transmission lines necessary action for grant of license by the Energy Department. Jindal Power prepared a project report and forwarded the same to the State Government. An MoU was signed between Chhattisgarh State Industrial Development Corporation and Jindal Power to provide all assistance, incentives and facilitate clearance necessary for setting up of industrial estate. It was also agreed that the land required would be acquired by the State Government. Clause 4 of the MoU provides for Jindal Power being allowed to draw power through transmission lines from its existing captive power plant at Raigarh or from its proposed independent power plant to the proposed industrial estate and to directly sell power to the industrial units proposed to be set up as per terms and conditions to be mutually agreed between the entrepreneurs and Jindal Power.

12. The Energy Department of the Government of Chhattisgarh by its letter dated 29th January, 2003 conveyed "No Objection" to supply power by Jindal Power from its captive power plant to the proposed industries. In the said letter "No Objection" granted by the State Government imposed certain conditions and they are: (i) JSPL was permitted to sell electricity only to those new HT consumers who may come up in the industrial estate, after obtaining permission of the Government under Section 28 of the Electricity Act, 1910 (1910 Act, for short). Secondly, these industries should not be the consumers of the Board.

(ii) The company shall comply with all legal and other essential conditions under prevalent rules and regulations, in supply of power directly to industries.

(iii) The company was not permitted to sell power to an industrial unit which was previously the consumer of the Board but after closure shifts to the proposed estate.

(iv) The company shall comply with the provisions of 1910 Act, the Electricity (Supply) Act, 1948 (the 1948 Act, for short) and the Indian Electricity Rules, 1956.

13. The Electricity Board in fact granted permission/ No Objection on 31st May, 2003 to Jindal Power for laying transmission and distribution lines for supply of power to prospective units being set up in the said industrial park from its captive power plant on the basis of the application moved by the said Jindal Power on 12th February, 2003 before the Electricity Board. The State Government of Chhattisgarh by its communication dated 28th February, 2004 permitted Jindal Power to lay transmission and distribution lines in the JIP under Section 68(1) and 68(3) of the Electricity Act, 2003 in the first phase. The said permission has been accorded on the recommendations of the Chief Electrical Inspector. While granting the permission to lay transmission and distribution lines the State Government stipulated that Jindal Power has to secure necessary license for transmission and distribution of electricity to the industries from the Competent Authority such as the State Electricity Regulatory Commission.

14. The State Government also made it clear that laying of line should not be construed as permission to grant of license. By another letter of even dated the Energy Department had conveyed its "No Objection" to Jindal Power, supplying electricity to the industrial units in JIP, which letter was in response to Jindal Power's application dated 6th October, 2003. The State Government has referred to the conditions imposed in its letter dated 28th February, 2004 and intimated Jindal Power that the Electricity Act, 1910 has been repealed and the 2003 Act has come into force and any person may transmit and distribute electricity under Section 12 to 14 of the Act after securing required permission/license from the Regulatory Commission.

15. It is an admitted fact that by then the Regulatory Commission has not been constituted for the State of Chhattisgarh. However the State Government has conveyed "no objection" to the Jindal Power with a condition that the said Jindal Power shall approach the Regulatory Commission for license/permission as soon as it is constituted and in case the permission is negated, No Objection letter would lapse automatically.

16. Concedingly, Jindal Power without moving further for license or waiting for grant of license, commenced distribution of electricity to the industrial units with

effect from 1st March, 2004. Thereafter on 15th September, 2004 sought for a license to be valid from 28th February, 2004 by its application dated 15th September, 2004. In other words six months after commencement of distribution of electricity, application has been moved for grant of license but not in the prescribed format. The Regulatory Commission returned the application and there after it was completed by the Applicant by submission of application in the prescribed format on 25th January, 2005. Before the Regulatory Commission one of the main contentious issues was whether Jindal Power should have awaited the grant of license before commencing distribution on 1st March, 2004.

17. The objectors raised the following objections before the Regulatory Commission: 1. There is no provision in the Electricity Act to distribute power to third parties directly and the State Government's captive power policy of 12th July, 2002 does not permit such sale; and that the NEP also speaks of sale of power by captive power plants to licensees; 2. In any case, the "no objection" issued by the State Government on 28th February, 2004 can not be construed as a license and does not entitle Jindal Power to distribute power which they have been doing.

3. No subsequent distribution license can be granted for supply of electricity to an industrial estate in view of the area restriction imposed in para 5.4.7 of the National Electricity Policy.

4. The issue of grant of distribution a distribution license to a particular class of consumers in a locality will be violation of Electricity Act, 2003 as well as para 5.4.7 of National Electricity Policy.

5. The conduct of Jindal Power is also being challenged as it sells power @ Rs. 2.32 per unit while their cost of production is much lower and no electricity duty is being paid by Jindal Power for the units to be sold to the industries and has been transmitting and distributing electricity without a valid license which is illegal.

(i) The CSEB is fully capable of supplying electricity to industrial and domestic consumers in the area for which necessary transmission and distribution network had been created in Raigarh area.

(ii) The State Government had given only a conditional "no objection". The company was never granted any permission either by the CSEB or by the State Government to supply electricity to industries. The captive power plant, in any case, cannot supply electricity to third parties.

(iii) The declared industrial policy of the State Government is that private industrial estate could be set up and allowed to install captive power plant to generate and distribute electricity within the industrial estate. This is not a case of that nature.

(iv) The CSEB as the sole distribution licensee in the State carries the social responsibilities of developing electrical network for supply of power to rural consumers and weaker Sections of the society and the cross subsidy element is met mainly by the Tariff of industrial consumers. The grant of license to JSPL will deprive the Board of this cross subsidy. In their second application of 29th March, 2005, (O-2/2) CSEB reiterated its stand that they were in a position to supply qualify power to these industries. A third submission on 23rd April, 2005 (O-2/3) objected to the grant of license on the ground that it is contrary to para 5.4.7 of the NEP.19. Before the Regulatory Commission Mr. Shanti Bhushan, Senior Counsel appeared for Jindal Power and advanced various contentions and some of them being: (i) Jindal Power should be treated as a deemed licensee under 2003 Act by virtue of the provisions of Section 172(b) and 185(2)(a) as State Government's letter dated 29th January, 2003 has already accorded license to supply electricity to the units in the industrial estate under Section 28 of the Electricity Act, 1910.

(ii) Jindal Power does not require the license for supply of electricity as in terms of Section 10(2) of the Act as a generating company, it is competent to supply electricity to any person without using the transmission lines of the Electricity Board.

Alternatively, it is contended that Regulatory Commission should consider the application and grant license as it is eminently fit case. On behalf of the Electricity Board Mr. Valmiki Mehta learned Senior Advocate had appeared before the Regulatory Commission and contended that conditional No Objection issued by the State Government on 29th January, 2003 cannot be treated or deemed as a license, with a validity of the No Objection of 28th February, 2004 is impressible

as the 2003 Act has already come into force and only State Regulatory Commission, if at all grant license for distribution. At any rate Jindal's plea for a license with retrospective effect on the basis of "No Objection" issued on 28th February, 2004, will not confer right to distribute electricity on the said basis. It was also pointed out by Mr. Mehta that the Jindal Power has concedingly stated in its letter that it does not require license in its favour.

20. In the light of the stand taken by parties, the Electricity Regulatory Commission framed the following issues for its consideration: (i) Does JSPL requires a distribution license at all in the presence of the provision of Section 10(2) of the Act? (ii) Should the "no objection" of the State Government dated 29th January, 2003 be treated as grant of permission under Section 28 of the 1910 Act? (iii) What would be the implications of refusal of license in view of the history of the case? (iv) If a license is to be granted, should it be only for an industrial area? It would violate the provision of the NEP. (v) If a license is to be granted, what should be the conditionalities? Some of the relevant conditions are: (a) Should a cross subsidy surcharge be imposed on the consumers because of the loss of subsidizing consumers of an existing licensee? (b) Does JSPL require a transmission license for transmission of electricity to the industrial area? (vi) How should the period from 1st March, 2004 till the disposal of this application, during which distribution of electricity has been carried on without a valid license under the Act, be viewed and treated? 21. On the above points the Regulatory Commission after considering the case, counter case and their respective arguments advanced answered the issues. The first issue was answered against the Jindal Power Ltd. The second issue was also answered against the JP holding that the "no objection", cannot be treated as grant of permission under Section 128 of the Electricity Act of 2003. On the third issue, the Regulatory Commission held, that distribution of electricity to industries in the Industrial Park by Jindal Power is illegal and without legal authority.

The correspondence relied upon by Jindal Power did not confer any right on the JPL to supply or distribute of electricity. On the fourth point the Regulatory Commission ordered grant of a license to the Applicant JPL under Section 14 of the Act subject to conditions set out in para 23 of its Order. On the fifth point the

Commission held, that no cross subsidy surcharge would be leviable on consumers of JPL under issue No.V(a).

22. On the issue whether the JPL requires a transmission license held, that the "no objection" conveyed vide letter dated 29th January, 2003 cannot be deemed to be a license under Section 14 of the act. On the issue No. v(b) the Regulatory Commission took the view that a permission has already been granted for laying distribution of lines in favour of JPL. On the 6th issue the Regulatory Commission imposed a penalty of Rs. 1 lac, as in its view Jindal Power has contravened Section 12 of the Act which is punishable under Section 142. In that view of the matter, penalty of Rs. 1 lac was imposed by the commission against Jindal Power.

23. Consequent to the said Order passed on 29th September, 2005 JPL applied for grant of license under Section 14 of the Electricity Act for supply of power to the consumers in the Industrial Park. By order dated 30th September, 2005 the commission called upon all concerned parties to submit objections, if any, to the grant of license to JPL.

The Electricity Board submitted its objection on 13th October, 2005 in writing contending that Jindal Power is not entitled to grant of license applied for. After affording opportunities of hearing and submitting the written arguments as well as filing objections, the Commission by Order 29th November, 2005 in exercise of power vested under Section 14 of the Act granted the license to JPL for distribution of electricity in JIP subject to the condition set out there in. Being aggrieved by order dated 29th November, 2005 Electricity Board has preferred appeal No. 16 of 2006.

24. Being aggrieved by the Order dated 29th September, 2005 the Electricity Board as well as Jindal Power filed separate appeals, namely, Appeal No. 179 of 2005, 27 of 2006. In so far as the said order has negated the respective claims of the Electricity Board as well as JPL the present appeals have been preferred. As against the same order the Chhattisgarh Vidyut Mandal Abhiyanta Sangh has also preferred Appeal No. 188 of 2005 in so far the Commission has concluded to grant distribution license in favour of Jindal Power under Section 15(6)(b) of the Electricity Act of 2003 and the other consequential directions.

As already pointed out the parties filed Interlocutory Applications in the respective appeals seeking for orders.

25. The points that arise for consideration in this batch of appeals are: 1. Whether Jindal Power was licensed to distribute electricity at any time? Without securing a license is it permissible for Jindal Power to distribute Power? 2. Whether Jindal Power could claim that it is a deemed licensee entitled to distribute power after coming into force of the Electricity Act, 2003? 3. Whether the imposition of penalty of Rs. 1 lac on JPL by the Commission on Jindal Power is illegal and liable to be interfered? 4. Whether the license granted by the Regulatory Commission in favour of Jindal Power to distribute is liable to be interfered in Appeal No. 16 of 2006? 5. To what relief the Appellant in Appeal No. 179 of 2005 is entitled to? 6. To what relief the Appellant in Appeal No. 188 of 2006 is entitled to? 7. To what relief the Appellant in Appeal No. 27 of 2006 is entitled to? 26. Before taking up the points for consideration and to begin with, it is necessary to set out certain material dates and facts which are not in controversy.

(i) 13th August, 2003: The Chhattisgarh State Government in exercise of powers conferred by Clause (d) of Section 172 of the Electricity Act, 2003 declared that all the provisions of the Electricity Act, 2003 shall not apply in the State for a period of six months from the appointed date, i.e., 10th June, 2003.

(ii) 23rd August, 2002: By Notification dated 3rd October, 2001 in exercise of powers conferred by Sub-sections (1)(3) of Section 17 of the Electricity Regulatory Commission's Act of 1998, the State Government established the Chhattisgarh Electricity Regulatory Commission with effect from 3rd October, 2001.

(iii) 11th May, 2003: The Government of Chhattisgarh issued a Notification to the effect that the Chhattisgarh State Electricity Regulatory Commission established by Notification dated 23rd August, 2002 with effect from 3rd October, 2001 shall be deemed to have been established under Section 82 of the Electricity Act of 2003.

(iv) 10th June, 2004: The State Government appointed the first Chairman and the Member of Chhattisgarh State Electricity Regulatory Commission.

(v) 1st July, 2004: The Chairman and the Member of the Commission assumed office.

Now coming to the application submitted by Jindal Power, we note down material date and correspondence (i) 28th December, 2001: Jindal Power submitted proposal for permission to set up private Industrial Estate at Raigarh to the Private Secretary, Government of Chhattisgarh.

(ii) 9th April, 2002: Jindal Power once again sought permission to establish Industrial Estate and addressed Principal Secretary, Government of Chhattisgarh.

(iii) 26th April, 2002: The Joint Secretary, Commerce & Industry, Department Chhattisgarh Government responded that the Government will provide facilities as applicable to new industrial policy and the Energy Department is taking action to grant permission for sale of power and lay transmission lines to various units being established in the private Industrial Park.

(iv) 14th August, 2002: Chhattisgarh Government required Jindal Power to take various actions for setting up the Industrial Park while informing that the Electricity Board has the sole control and application is to be submitted through the State Electricity Board and Chief Electrical Inspector for transmission for according approval of the State Government for transmission, distribution and supply of power in private sector.

(v) 4th September, 2002: Jindal Power made submissions to the Secretary (Energy) Chhattisgarh Government with respect to setting up of private industrial park.

(vi) 23rd October, 2002: Memorandum of Understanding was entered between Chhattisgarh State Industrial Development Corporation and Jindal Power to locate industrial estate at Raigarh. One of the Clause in the memorandum being that Jindal Power shall be allowed to draw power transmission lines from its existing power plant or from the proposed industrial power plant to the proposed industrial estate and to directly sell power to industrial units to be set up in the proposed estate as per provisions of power policy of the Government, on terms and

conditions to be mutually agreed between the entrepreneur and Jindal Power.

(vii) 29th January, 2003: The Chhattisgarh Energy Department addressed Jindal Power and conveyed "no objection" to supply of power to industrial units from the captive power plant directly on terms and conditions set out there in for high tension consumers after accord of approval under Section 28 of I.E. Act. Government also made clear that it is mandatory for the Jindal Power to comply with the Electricity Act, 1910, the Electricity Act, 1948 and Indian Electricity Rules, 1956.

(viii) 31st May, 2003: Chhattisgarh State Electricity Board with reference to application dated 12th February, 2003 submitted by Jindal Power for permission for laying 220 KV line to the industrial park by tapping 220 KV JSPL CPP to Tamnar line for which permission has already been granted along with permission for laying distribution line within the proposed industrial estate. The Board accorded approval under Section 27(D)(4) of the Indian Electricity Act, 1910 subject to conditions set out there in. The Board also added that since Regulatory Commission has not yet started functioning, the State Government's permission under Section 28 of the Electricity Act, 1910 is required for transmitting and wheeling power.

(ix) 28th February, 2004: The Energy Department of Chhattisgarh Government conveyed its "No Objection" to Jindal Power. Following two conditions were imposed: The Applicant company shall submit application for license/ permission from State Electricity Regulatory Commission as per provisions of Electricity Act, 2003 immediately on constitution of State Electricity Regulatory Commission.

In case the State Regulatory Commission does not grant license/ permission for direct power supply to new industries being set up in the Private Industrial Estate of the Applicant, the No Objection of State Government will automatically be treated as cancelled.

For supplying 299 mW power to 43 new units being set up in the industrial estate Jindal Power shall submit applications for license/ permission from State Electricity Regulatory Commission as per provisions of Electricity Act, 2003 as and when

constituted.

(x) 28th February, 2004: The Chhattisgarh Government, Energy Department ordered that the State Government is Competent Authority to grant permission for construction of transmission and distribution lines and accorded permission under Section 68(1) and 68(3) of the Electricity Act, 2003. The Government imposed the following conditions: After construction of power transmission and distribution line, the Applicant company before starting supply of power to industrial units to be set up as per proposal shall obtain permission for transmission and distribution of power from the Competent Authority such as State Electricity Regulatory Commission. The approval issued for construction of power lines be not treated as recommendation to procure license.

In case of Applicant not discharging the liabilities with regard to Captive Power Plant provided under Electricity Act, 2003 or not complying with the instructions issued by the State Government and other Competent Authority/authorities, this permission shall automatically be cancelled.

28. On the basis of the above referred communication the learned Senior Counsel appearing for M/s. Jindal Power sought to contend that it has been accorded permission to construct transmission lines as well as licensed to distribute power to the units in the industrial estate. It is also their further plea that such permission to distribute, having already been accorded, long prior to commencement of Electricity Act, 2003 Jindal Power is a deemed Licensee entitled to distribute power to the industrial estate in terms of Section 172 of the Electricity Act, 2003, as it is an existing Licensee even before 9th December, 2003, on which date the Electricity Act, 2003 has been made applicable to the State.

29. We have already noticed the date from which the Electricity Act, 2003 has been made applicable as well as the constitution of the Regulatory Commission both under the Electricity Regulatory Commission Act of 1988 as well as the Electricity Act of 2003. The material papers placed before us, as has been held by the Regulatory Commission, would at the maximum support Jindal Power with respect to grant of permission to construct transmission lines and the requisite "No Objection" for the same by the Electricity Board as well as the State Government.

By no stretch of imagination Jindal Power could claim that it was granted a license to distribute power to the private industrial estate. The over anxiety and hurry with which Jindal Power acted and also the hasty responses by the State authorities exhibits their anxiety for setting up the industrial estate but neither there has been application of mind nor there has been a grant of license for distribution of power either before the commencement of the Electricity Act, 2003 or after the application of the Act or at any point of time.

30. The learned Senior Counsel appearing for Jindal Power relied upon various pronouncements of Supreme Court to show that in the absence of Regulatory Commission or in the interregnum before the constitution of Regulatory Commission, the State Government is the Competent Authority to grant license. In our considered view it is not necessary to refer to those pronouncements since at no point of time, as already pointed out, license has been granted by the Competent Authority much less above State Government for distribution of electricity in the private industrial estate in favour of Jindal Power. Therefore, it is not necessary to refer to the pronouncements relied upon by the learned Senior Counsel.

31. The Electricity Board conveyed its "no objection" for grant of permission for drawing the transmission lines, and on that basis the permission was granted to construct transmission lines by Jindal Power from its CPP to industrial park. Having conveyed "No Objection" unequivocally it is not for the Electricity Board to turn around and contend that the Appellant has no permission to put up transmission lines or without permission transmission lines have been drawn by Jindal Power. We do not appreciate the inconsistent stand taken by the Electricity Board with respect to transmission lines. Therefore, it follows that without securing a license from the Competent Authority Jindal Power has commenced distribution of power with effect from 1st March, 2004. There is no escape except to hold that Jindal Power has acted illegally and violated the statutory provisions of the Electricity Act, 2003 as well as rules framed there under. The Regulatory Commission has rightly held, that Jindal Power without appropriate legal authority has commenced supply/distribution to various industrial units in the industrial park. No exception could be taken to the finding, which is supported by reasons.

32. The findings recorded by the Commission in this respect are fair and we do not see any illegality or error warranting interference with the said findings. The findings recorded reads thus: The "no objection" could be interpreted as no objection to commence supply and approach the Regulatory Commission in due course; it can also be interpreted as State Government's recognition of the need for supply and recommendation enabling the Petitioner to approach the Regulatory Commission for license. In view of the history of the case, the Commission would consider the latter interpretation as logical, considering that the first letter gives permission for laying transmission and distribution lines, and the second, for supply of electricity to industries which may be set up in the industrial estate in due course. The State Government could not have assumed that industries had already been set up, that transmission lines had already been laid and that supply could commence immediately w.e.f. 1st March, 2004. As has already been mentioned, there is no provision in the Act for the State Government to exercise the powers of the Commission in the latter's absence. The Government's directive to the Petitioner was clearly to await the grant of distribution license by the Commission. The various letters of the State Government conferred no clear right on the Petitioner to commence distribution of power to the industries set up in his industrial estate; and after the Act came in to force no such authority could have been given except under the provisions of the Act, and through a license granted by the Commission. Therefore, as on date, distribution of electricity to industries by the Applicant is without legal authority.

33. While concurring with the finding of the Regulatory Commission we also on a perusal of the material papers relied upon by the learned Senior Counsel appearing for Jindal Power arrive at the same findings as recorded by Commission which are fair and we do not find any error or perversity in its findings Hence we affirm the finding that the Jindal Power had neither license nor legal authority to distribute electricity to various industrial units in the industrial estate either before the commencement or after the application of the Electricity Act, 2003.

34. On the first point we negative the contentions and hold that Jindal Power cannot claim to be licensee nor it could claim that it is a deemed licensee after the commencement of the Electricity Act, 2003 entitled to distribute power. The Jindal

Power has contravened the provisions of the Electricity Act, 2003 and there is no escape. We also answer points 1 and 2 against Jindal Power. On Point No. 3 we hold that without securing a license there could be no distribution of power by Jindal Power and it is not permissible in law we do not find any illegality in the imposition of penalty by the Regulator. We hasten to add that the Regulator had taken a lenient view, while imposing penalty.

35. The learned Counsel for the Appellant incidentally contended that in terms of Section 9, the Appellant is entitled to construct, maintain or operate a captive generating plant and dedicated transmission lines and, therefore, there is no requirement to secure permission for drawing dedicated transmission lines. As we have already concluded that the Jindal Power has secured necessary permission before the commencement of the Electricity Act, 2003 for constructing and drawing transmission lines, it is not necessary to consider this aspect any further. If it is a mere captive transmission for own use as defined by a captive generator, then there may not be any difficulty but in this case it is not so.

36. Section 2(8) defines an expression Captive Generating Plant. The definition reads thus: Captive generating plant" means a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any co-operative society or association of persons for generating electricity primarily for use of members of such co-operative society or association; But in this case, the generating plant both CPP and IPP are being set up by Jindal Power for the private industrial estate, where very many industries are being proposed to be located. Therefore, the construction placed on Clause (8) of Sub-section 2 by the learned Counsel for Jindal Power is of no avail to the Appellant.

37. It is rightly pointed by the Counsel for the Appellant that the Electricity Board that in the application submitted by Jindal Power it has been nowhere mentioned that it had a license and in fact the Jindal Power has clearly stated that it is not having a license. It may not be necessary to examine the other aspects in respect of first two issues.

As there is no clinching material to show that a license was granted to the Jindal Power for distribution at any point of time. It follows that Jindal Power has acted

illegally in distributing power without securing a license. Accordingly point No. 1 is answered against Jindal Power. In the light of the answer to point No. 1 it follows automatically that Jindal Power cannot claim that it is a deemed licensee after the Electricity Act, 2003 came into effect. Such a contention has no basis and it has no legs to stand.

38. Taking up the third point, there is no doubt that Jindal Power did not have a necessary license nor any legal authority either under the Electricity Act, 1910 or under the Electricity Act, 2003 to supply or distribute electricity in the private industrial estate. This is a clear violation of Section 12 of the Act, which mandates the requirement of a license to supply or distribution of power. Such a violation is per se punishable under Section 142 of the Electricity Act, 2003. For the violation of Section 12 the Commission has already rightly imposed a penalty of Rs. 1 Lac and we do not find any illegality or arbitrariness or error in the imposition of penalty under Section 142 of The Act. Concedingly, Jindal Power has been distributing power and that too without a license. At the risk of repetition we point out that the correspondences were solely relied upon by the learned Senior Counsel appearing for Jindal Power to establish a distribution license. None of the letters or communications could show that their distribution license was ever granted. The letters relied upon do not advance the case of Jindal power. If there had been an issue of license under Electricity Act, 1910 Jindal Power would have placed the license issued by licensing authority for distribution of power. Much could be said against Jindal Power in this respect as it has acted for reasons best known in distributing power without a license. This is presumably because of its big brotherly attitude or support of or proximity to someone in Power. This conduct we are unable to appreciate and there cannot be an obvious breach of the statutory provision how so ever high the person may be and there should be a strict compliance of statutory provision. The Chhattisgarh government had also made it clear that Jindal Power has to secure license. Yet without securing the license Jindal Power commenced distribution of power. This attitude of Jindal Power has been rightly found fault and the Regulatory Commission has rightly imposed a penalty. On the third point we hold that the imposition of Rs. 1 lac on Jindal Power is warranted and no interference is called for. Third point is answered against the Appellant.

39. Taking up the fourth point, concedingly after coming into force of the Electricity Act, 2003 the Jindal Power has submitted an application for grant of distribution license under Section 12 of the Act. Section 14 of the Act provides for the grant of license. Section 15 of the Act prescribes procedure for grant of license. Though the Electricity Board has raised an objection, it is a clear after thought presumably because of change or shifting of personalities in power, and such shifting stand had been adopted. The objections raised by Electricity Board are devoid of merits. The Regulatory Commission has considered the request of Jindal Power and directed issue of distribution license. We do not find any illegality or error in the grant of license as Jindal Power do possess all the requirements for the grant.

40. The grievance of the Electricity Board as already pointed out is an after thought and objections raised in this behalf are without merits.

Concedingly, Jindal Power has already laid the dedicated transmission lines apart from completing its captive plant and IPP of 1000 mW. All these things have been done presumably because the State Government has given a green signal for Jindal Power so also the Electricity Board. In the industrial estate it has proposed to locate 70 industries as per the plan. Already 18 industries have been set up (as per written arguments dated 27th August, 2005) and 12 are under construction. Spur of approximately 6.4 kms of line has already been executed and line has been drawn. The distribution network in the industrial area including sub station has been completed. Electricity Board which has conveyed "no objection" for laying and distribution of power as early as May 2003 and Jindal Power proceeded further with its program as a green signal has been given by the State Electricity Board and State Government who also conveyed its "no objection". Substantial investment has already been made by Jindal Power.

41. Concedingly, even as on date the Electricity Board has not provided distribution lines in two villages nor it is ready to supply power in the two villages where the industrial park has been set up by Jindal Power. Even during the hearing to a question posed the learned Counsel appearing for the Electricity Board answered in the negative, as to whether it is in a position to supply power forthwith. Having expressed no objection at the material point of time it is not open

to the Electricity Board to raise objections. In fact the Regulatory Commission rightly recorded a finding that at no time the Electricity Board opposed the proposal of Jindal Power either on the ground that it is in a position to supply power in the area or it has already arranged necessary infrastructure in the area in question. By grant of distribution license the Electricity Board is in no way prejudiced nor is it deprived of its consumers in its area. The balance of convenience is in favour of Jindal Power and a positive view has been taken by Regulatory Commission after being satisfied with the requirements already made, such as investments, standards etc. with respect to grant of distribution license to Jindal Power.

42. The finding that Jindal Power has got the eligibility criteria for grant of license is a well considered one and there is no doubt in this respect. Since Jindal Power is not seeking for open access and it has its transmission as well as distribution lines there can be no objection for grant of license for distribution to the specified area.

43. With respect to distribution license granted to Jindal Power, it is needless to point out that the Regulatory Commission has to enforce provisions of the Electricity Act, 2003 as well as the Regulations framed by Regulatory Commission. It is for the Regulatory Commission to enforce the terms of license as well as fix the Tariff in future or act according to the provisions of the Electricity Act, 2003 and Tariff Regulations framed in this respect, if any. Hence, on point No. 4 we hold that no interference is called for with respect to the grant of license in favour of Jindal Power for distribution in the private industrial estate by the Commission. However we make it clear and direct the Regulatory Commission to forthwith enforce such of those provisions of the Electricity Act, 2003 and relevant regulations as are applicable to the license granted by it to Jindal Power.

(iii) On point No. 5 and 6 we hold that that Appeal No. 179, 188 and 16 are liable to be dismissed and accordingly they are dismissed.

(iv) On point No. 7 we hold that the Appellant in Appeal No. 27 of 2006 is not entitled to any relief and Appeal No. 27 of 2006 is dismissed and (v) As a result of the Judgment in the appeals, IA No. 27 of 2006, IA No. 41 of 2006 and 46 of 2005

are closed as no order or direction is called for.

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