

ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN,
UNIT – VIII, BHUBANESWAR – 751 012

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Present : Shri S. P Nanda, Chairperson
Shri S. P. Swain, Member
Shri D. K. Das, Member

Case No. 57/ 2011

M/s. Mahanadi Coalfield Limited**Petitioner**
Vrs.
GRIDCO & Others**Respondents**

In the matter of: An application for grant of Transmission Licensee in the State of Odisha.

For the Petitioner: Shri. Manoj Thapliyal, GM, MCL

For the Respondents: Shri L. R.Dash, GM, GRIDCO
Shri L. N.Mohapatra, Advocate on behalf of OPTCL
Shri R. C. Mishra, GM (Fin.) OPTCL
Shri B. P. Mishra, CGM (RT &C), OPTCL
Shri P. K. Mishra, DGM, SLDC.

Nobody is present on behalf of DoE, GoO, CESU, WESCO,
NESCO & SOUTHCO.

ORDER

Date of hearing: 13.06.2014

Date of order:20.09.2014

1. The petitioner M/s. MCL, a public limited company has applied for Intra State Transmission License for 220 KV DC line running between Budhipadar Grid and Basundhara Mine of MCL along with sub-station at Basundhara covering a distance of 38.84 km. The said line and 220/132 KV sub-station were being constructed by the then OSEB on deposit work basis on behalf of the Petitioner. Due to reform in the power sector and consequent creation of the State Transmission Utility OPTCL had taken over the said construction of line and sub-station. The Petitioner submitted that they had engaged OSEB / OPTCL as EPC contractor of approximately Rs.50 cr. worth of work and once the line was charged they would have employed O&M contractor. Since OPTCL is EPC contractor it is to hand over the line to the principal employer.
2. M/s. MCL further submitted that the Petitioner can be deemed to be a licensee by virtue of the fifth proviso to Section 14 of the Electricity Act, 2003 and that OERC has to

recognise this effect and define the area of operations. Further, M/s. MCL has given all details regarding the expertise and experience to obtain the licence. Unless participation in the transmission sector is allowed the existing monopolies can't be broken. In any event, without prejudice to the aforesaid fact they have submitted that the applicant already operates and maintains two dedicated 132 kV transmission lines and two EHT sub-stations.

3. OPTCL submitted that it is the successor of transmission business of GRIDCO/OSEB w.e.f. 01.04.2005 in pursuance to the Orissa Electricity Reform Act, 1995 and Electricity Act, 2003. Hence OPTCL can't be treated as the EPC contractor engaged by the M/s. MCL. Rather the project under consideration is being constructed by OPTCL on deposit work basis. OPTCL as the STU is authorized to undertake the business of transmission of electricity throughout the state. On the other hand the Petitioner is unable to fulfil the criteria for obtaining transmission licence as defined under Section 2 (72) & 2 (73) under which a transmission licence can only be granted to any person who establish and operate transmission lines to transmit electricity from generating station to another generating station or a substation. Presently M/s. MCL is connected with OPTCL network as a consumer, therefore, can't qualify as a transmission licensee. Moreover the Petitioner is dearth of experience to handle transmission business as is mandatorily required under SL 9 under Appendix-3B (form of application for grant of transmission licence prescribed by OERC) of OERC Conduct of Business Regulation, 2004. The lines over which the Petitioner claims to have experienced is owned, operated and maintained by OPTCL.
4. OPTCL further submitted that the transmission lines for which M/s. MCL seeks transmission licence was legally belonged to OSEB and by effect of law is presently owned by OPTCL though the cost of construction was borne by the Petitioner in view of the following the provision of Regulation 27 of OERC (Distribution Conditions of Supply) Code, 2004

“27. The entire service line, notwithstanding that whole or portion thereof has been paid for by the consumer, shall be the property of the licensee and shall be maintained by the licensee who shall always have the right to use it for supply of energy to any other person unless the line has been provided for the exclusive use of the consumer through any arrangement agreed to in writing”

5. M/s. MCL in its rejoinder submitted that the applicant can enter into any other business other than its core business in view of provisions of Memorandum of Association of the Company. The Electricity Act, 2003 envisage and has also ample provision to allow new entrant to electricity transmission and generation business. Regarding ownership of the impugned transmission line M/s. MCL submitted that a transmission assets can't be created at the cost of a consumer. There is no provision of Chapter-V of the Electricity Act, 2003 that permits OPTCL to create an asset at the cost of the applicant. However, u/S. 45 & 46 a distribution company has the authority to recover hard cost from a consumer requiring supply of electricity in pursuance to the Section 43 of the Electricity Act, 2003. Hence the claim of OPTCL made in the present case regarding ownership is without any basis and OPTCL does not and can't own a transmission line at the cost of the applicant. Further, the said line can't be classified as a service line either under the provisions of Electricity Act, 1910 or the OERC (Conditions of Supply) Code, 2004 as claimed by OPTCL.
6. Heard the parties at length. The present dispute involves two issues for grant of transmission licence. They are as follows:
 - a. Whether the assets created under the contribution of the consumer such as present petitioner belongs to transmission licensee.
 - b. Whether Section 14 Proviso 5 guarantees a Govt. owned company to undertake transmission business in a State.
7. Regarding ownership of the assets relating to transmission line we observed that the Petitioner had applied to the erstwhile OSEB for construction of the said line under deposit scheme and the said line was entirely planned and constructed by the erstwhile OSEB and its successor with payment by the Petitioner for such construction. The right of way, forest clearance, PTCC clearances have been arranged by OPTCL for construction of 220 KV line. OPTCL being the owner of line has applied to Chief Electrical Inspector (T&D), Govt. of Odisha and obtained the permission for anti-theft charging of the line with due publication in newspaper. OSEB and its successor OPTCL have always acted on a principle basis at all times with regard to the construction of the line and are not EPC contractor. OPTCL also brought to our notice the Annual Report 2012-13 of MCL where MCL has shown the line and substation for which transmission licence is sought to have been constructed by the Respondent OPTCL on deposit work basis. Even OPTCL has shown the line in its work-in progress and completion report as

on 31.03.2012 as an asset created under deposit work. As per scheme of the reform in electricity sector the EHT consumers are consumers of DISCOMs though they avail power supply through the transmission system of OPTCL. Therefore, in view of extant provision of Regulation 27 of OERC Supply Code the transmission line between Budhipadar Grid Sub-station and Basundhara Mines (220 KV DC line) is a service line constructed by OPTCL on deposit work basis. Accordingly, viewed from any angle it can be concluded that the line and substation for which transmission licence is sought for belongs to OPTCL though the cost of construction have been entirely borne by the Petitioner. Once the ownership is established the Petitioner M/s MCL can't seek licence for transmission property which it does not own without the consent of its owner which has already got licence to operate all the intra-State transmission lines under its ownership.

8. Next we shall come to the second issue on deemed licensee status of a Govt. company. In view of 5th Proviso in Section 14 of the Act. Deemed license is not automatically granted to any Govt. company. To get that status the Govt. company has to fulfil other provisions and Regulations made under this Act. The Petitioner has not fulfilled any of the criteria such as experience, ownership etc. The Govt. company to be declared as deemed licensee does not undergo the rigours of Section 15 of Act, which deals with the procedure of granting licence; otherwise it has to fulfil the other qualifying criterion. The transmission license carries heavy responsibility on the licensee and while granting it the Commission has to examine all the stipulated parameters as per law. This is not the case here.
9. Therefore, we are not inclined to issue transmission licence to the applicant merely on the basis of claim alone and hence the petition is dismissed.
10. Accordingly, the case is disposed of.

Sd/-
(A. K. Das)
Member

Sd/-
(S. P. Swain)
Member

Sd/-
(S. P. Nanda)
Chairperson

