

CASE NO.:
Appeal (civil) 3996 of 2006

PETITIONER:
Chhattisgarh Vidyut Mandal Abhiyanta Sangh

RESPONDENT:
Chhattisgarh State Electricity Regulatory Commission & Anr

DATE OF JUDGMENT: 19/09/2007

BENCH:
H.K. SEMA & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 3996 OF 2006
(With C.A.No.4268 of 2006 & C.A.No.4529 of 2006)

H.K.SEMA, J

1. Civil Appeal No.3996 of 2006 is filed by Chhattisgarh Vidyut Mandal Abhiyanta Sangh. Civil Appeal No.4268 of 2006 is filed by Chhattisgarh State Electricity Board and Civil Appeal No.4529 of 2006 is filed by M/s Jindal Steel and Power Limited.

2. All these appeals are directed against the common judgment and order of the Tribunal dated 11.5.2006 passed in Appeal Nos. 179 of 2005, 188 of 2005, 16 of 2006 and 27 of 2006 preferred under Section 111 of the Electricity Act, 2003 (in short the Act). In the aforesaid appeals, the appellants have challenged the order dated 29.11.2005 passed by the Chhattisgarh State Electricity Regulatory Commission (in short the Commission)

3. We have heard Mr. Ravi Shankar Prasad, learned senior counsel, appearing on behalf of Chhattisgarh State Electricity Board - appellant in C.A.No.4268 of 2006; Mr. Shanti Bhushan, learned senior counsel, appearing on behalf of M/s Jindal Steel and Power Limited \026 appellant in C.A.No.4529 of 2006 and Mr. Kavin Gulati, learned counsel appearing on behalf of Chhattisgarh Vidyut Mandal Abhiyanta Sangh \026 appellant in C.A.No. 3996 of 2006.

4. Counsel for the appellant in C.A.No.3996 of 2006 has adopted the arguments of Mr. Ravi Shankar Prasad, learned senior counsel, appearing for the appellant in C.A.No.4268 of 2006.

5. In C.A.No.4268 of 2006, the appellant has assailed the order dated 29.11.2005 passed by the Commission, granting license in favour of respondent No.2 herein and the appellant in C.A.No.4529 of 2006.

6. Mr. Ravi Shankar Prasad, learned senior counsel appearing for the appellant, would contend that the impugned order of the Commission granting license to respondent No.2 - M/s Jindal Steel and Power Limited, is contrary to the provisions of Section 14 particularly proviso 6 of the Section. He would also contend that the grant of license is contrary to Section 43, the National Electricity Policy framed under Section 3 particularly 5.4.7. which according to the counsel is statutory in character and sub-rule 2 of Rule 3 of the Code of Conduct Rules, 2005 and explanation thereof. He would also contend that the grant of license in favour of respondent No.2

would also offend the provisions of Section 41 proviso 3 and Section 86(4) of the Act. In this connection, counsel has taken us to the grounds taken in the memo of appeal filed by the appellant. He has also taken us to the entire impugned judgment rendered by the Tribunal. The Tribunal has not at all dealt with the grounds urged by the appellant in the judgment. The Tribunal, however, rejected the grounds in paragraph 38 as under:

"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."

7. M/s Jindal Steel and Power Limited - appellant in C.A.No.4529 of 2006, was aggrieved by the order of the Commission recorded in paragraph 22 of the Order. Paragraph 22 of the Order is in the following terms:-

"The last issue for discussion is the treatment of the period from 1.4.04 till the date of the grant of distribution licence, during which supply of power by the applicant has been without legal authority. As already discussed in para 11 to 13 ante, the applicant did not have the necessary legal authority either under the 1910 Act or under the present Act to supply electricity in his industrial estate. This constitutes a clear contravention of the provisions of Sec.12 of the Act that mandates licence to be obtained for supply of electricity. This act of the applicant is punishable under Sec.142 of the Act. The applicant is clearly liable for penalty under this provision of law. Although no opportunity has specifically been provided to the applicant of being heard in this regard as required and the provision of this section, the elaborate proceedings in this case has provided sufficient opportunity to the applicant to prove that he had not contravened the provision of the Act, in supply of power to his industrial estate. In fact, his main case is that he had the legal authority for his action, which we have not accepted. The Commission, therefore, feels that there is no need for another opportunity

being given to the applicant of being heard in the matter. The Commission directs that the applicant pay a penalty of Rs. One lakh for contravention of the provisions of the Act aforementioned. The amount shall be deposited with the Secretary of the Commission within seven days of this order."

8. Aggrieved by this order M/s Jindal Steel and Power Limited \026 appellant in C.A.No.4529 of 2006 also filed appeal No.27 of 2006 before the Tribunal.

9. The ground taken in the appeal was that 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. After considering the ground of appeal, the Tribunal framed the following issues:-

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?

10. Mr. Shanti Bhushan, learned senior counsel, has taken us through the entire judgment of the Tribunal but the questions so framed were not at all addressed particularly the application of Section 10(2) of the Act.

11. It is in these circumstances, learned senior counsels, appearing for the respective appellants, contended that this is eminently a fit case where this Court should set aside the order of the Tribunal and the matter be remitted to the Tribunal for fresh decision after considering all the grounds raised in the respective appeals. In the facts as alluded above we would also think so.

12. We may also hasten to note that the appeal under Section 111 before the Tribunal is in the nature of first appeal. The Tribunal, therefore, must examine the entire grounds of appeal and record its reasons on each ground while disposing of the appeal.

13. Accordingly, these appeals are allowed. The order dated 11.5.2006 passed in appeals are set aside. The appeals are restored to the file of the Tribunal. The Tribunal shall consider each ground in appeals and dispose of the appeals in accordance with law. We make it clear that we have not expressed any opinion on the merit of the case whatsoever.

14. Having regard the question of public importance of far reaching consequences involved in these appeals, the Chairman of the Tribunal may consider for constituting an appropriate bench for hearing the appeals. With the aforesaid directions/observations these appeals are allowed. No costs.