

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No. 1, 13th Floor, Cuffe Parade, Mumbai - 400005

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Case No. 02 of 2010

In the matter of
Petition of M/S Abhijeet MADC Nagpur Energy Pvt. Ltd. seeking clarification
regarding non – requirement of Transmission Licence for laying Dedicated
transmission Line by a Generating Company

Shri V. P. Raja, Chairman

Shri S. B. Kulkarni, Member

Shri V. L. Sonavane, Member

M/s Abhijeet MADC Nagpur Energy Pvt. Ltd.

..... Petitioner

V/S

Secretary, Energy Department, Government of Maharashtra

..... Respondent

ORDER

Dated: July 10, 2010

M/s Abhijeet MADC Nagpur Energy Pvt. Ltd. (AMNEPL), the Petitioner herein filed a Petition on affidavit, under Section 86 of the Electricity Act, 2003, seeking certain clarification from the Commission on the issue whether a Transmission License is required to for laying Dedicated Transmission Line and seeking to invoke the powers of the Commission to advise the GoM on the issue inter-alia in the interest of the promotion of competition, efficiency and economy in the activities of the electricity industry.



2. The Petitioner in the Petition has prayed as under:

“

- a. *Pease clarify that there is no necessity to obtain transmission Licence for the said dedicated transmission Line;*
- b. *Please exercise the advisory powers as contemplated u/s 86 of the electricity Act in the interest of the promotion of competition, efficiency and economy in the activities of the electricity industries, as the matter is concerning to the generation of electricity;*
- c. *Condone any inadvertent omissions / errors / shortcomings and permit AMNEPL to add/change/modify/alter this filing and make further submissions as may be required at a future date;*
- d. *Pass such further and other Orders, as the Hon'ble Commission may deem fit and proper, keeping in view the facts and circumstances of the case.”*

3. The Petitioner in its Petition has submitted that the Petitioner is a joint venture between Maharashtra Airport Development Company Ltd. (MADC) and the Abhijeet Group. The Government of India (Ministry of Commerce) has vide Notification No. 845(E), dated 29th May, 2007, notified the MIHAN SEZ at Nagpur. The MADC is the developer for the said MIHAN –SEZ.

4. It has been further submitted that the Petitioner is a special purpose vehicle promoted by MADC and Abhijeet Group, for construction of Power Plant at village Khairi Khurd, to cater to the power requirement of the various units established in the MIHAN-SEZ area. Accordingly, the Petitioner is constructing a power plant which is situated at a distance of about 10 KM from MIHAN – SEZ and to connect the said Power Plant with the MIHAN – SEZ, the Petitioner is constructing a 220 KV dedicated Transmission Line.

5. The Petitioner has further averred that it had applied to the Respondent, Government of Maharashtra (GoM) under Section 68 of the Electricity Act, 2003 (“EA, 2003”) seeking permission to construct the said 220 KV dedicated transmission line, and had also requested the GoM to confer upon the Petitioner, the powers of the telegraph authority under Section 164 of the EA, 2003, which the telegraph authority possess under the



provisions of the Indian Telegraph Act, 1885, with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained. The Respondent vide its letter dated 17th September, 2009 permitted the construction of the said dedicated 220 KV Line under Section 68 of the EA, 2003. However, on the requisition of the Petitioner to confer upon it the powers of a telegraph authority, the Respondent vide its letter dated 22nd February, 2010 informed the Petitioner that it would be required to obtain a Transmission License from the Commission, if the powers of a telegraph authority were to be conferred upon it.

6. Aggrieved with the Respondent's letter dated 22nd February, 2010, alongwith the above facts, as averred in the Petition and as per the correspondences annexed therewith, the Petitioner has filed the present Petition seeking clarification that there is no necessity to obtain transmission License for the said dedicated transmission line being constructed by the Petitioner. The Petitioner has also requested that the Commission should exercise the advisory powers under section 86(2) of the EA, 2003 to advise the GoM in the interest of the promotion of competition, efficiency and economy in the activities of the electricity industry.

7. The Commission vide its Notice dated 17th April, 2010, scheduled an admissibility hearing in the matter, on 25th May, 2010. The Commission also directed the Respondent, GoM to file their para-wise reply to the Petition accompanied by a duly notarized affidavit, before the date of hearing. Subsequently, the Commission vide its Notice dated 26th April, 2010, postponed the admissibility hearing to 23rd June, 2010. Till the date of hearing no such reply was filed by the Respondent.

8. During the admissibility hearing Shri Milind Deoghare represented the Petitioner and Shri Zanzane, Section Officer, Energy Dept was present on behalf of the Respondent GoM. The Petitioner reiterated the facts and submissions made in its Petition. The Petitioner submitted that it is constructing a dedicated transmission line as defined under Section 2(16) of the EA, 2003 and that a license is not required to be obtained for constructing a dedicated transmission line in accordance with the Electricity (Removal of Difficulty) Fifth Order, 2005, in terms whereof a Generating Company is not required to



obtain a license under the Act for establishing, operating or maintaining a dedicated transmission line if such Generating Company complies with the Grid Code and the Standards of Grid Connectivity. The Petitioner further submitted that it had approached the GoM under Section 164 of the EA, 2003, for conferment upon it the powers which a telegraph authority possess under the provisions of the Indian Telegraph Act, 1885. However, the GoM has asked the Petitioner to first obtain a transmission license from the Commission before such powers could be conferred upon it. On questioning of the Commission, the representative of the Respondent submitted that there is no need of a transmission license from the Commission for laying a Dedicated Transmission Line.

9. Having heard the parties and considering all the materials placed on record, the Commission is of the view that the fact in issue in the present matter is that the Petitioner has been informed by the Respondent that in order to lay a dedicated transmission line, it is mandatory to obtain a transmission license from the Commission and only after such approval of the Commission the powers of a telegraph authority under the Indian Telegraph Act, 1885 could be conferred upon the Petitioner. The questions of law arising here for the Commission's consideration is whether the Petitioner is at all required to obtain a Transmission license for laying a dedicated transmission line and whether on such approval only the powers of a telegraph authority could be conferred upon the Petitioner. The other question of law which primarily arises here is whether the Commission has the jurisdiction to interfere with the prior approval granted by the Respondent under Section 68 and any decision or Order given by the Respondent under Section 164 of the EA, 2003.

10. In the above context it is relevant to quote the Order No. 2 of the Electricity (Removal of Difficulty) Fifth Order, 2005:

“2. Establishment, operation or maintenance of dedicated transmission lines – A generating company or a person setting up a captive generating plant shall not be required to obtain license under the Act for establishing, operating or maintaining a dedicated transmission line if such company or person complies with the following:-

- (a) Grid code and standards of grid connectivity;*
- (b) Technical standards for construction of electrical lines;*



(c) System of operation of such a dedicated transmission line as per the norms of system operation the concerned State Load Despatch Centre (SLDC) or Regional Load Despatch Centre (RLDC);

(d) Directions of concerned SLDC or RLDC regarding operation of the dedicated transmission line.”

The Commission is of the view that the above Order is apparently clear and requires no interpretation that a generating company or a person setting up a captive generating plant is not required to obtain any license under the EA, 2003, for establishing, operating or maintaining a dedicated transmission line, subject to the compliance of the four pre-requisites from (a) to (d) as mentioned in the above Order.

The Petitioner in the present case had approached the Respondent for grant of prior approval for laying overhead lines. The Commission has taken note of the fact that the Respondent has vide its letter dated 17th September, 2009 already granted approval to the Petitioner to lay down dedicated transmission line, under Section 68 of the EA, 2003. However, the powers of a telegraph authority under Section 164 of the EA, 2003, was not conferred upon the Petitioner. Under the provisions of Section 68 of the EA, 2003 any person laying an over head line is required to obtain a prior approval of the Government. Similarly, Section 164 of the EA, 2003, vests the discretionary power on the Government, to confer upon any public officer, licensee or any other person engaged in the business of supplying electricity, any of the powers which the telegraph authority possesses under the Indian Telegraph Act, 1885. Both the said provisions empower the Respondent to perform its functions as mandated. The Commission has no intervening role to play in the merits or demerits of any approval granted by the Respondent under Section 68 or on any Orders issued or any decision taken by the Respondent under Section 164 of the EA, 2003. Consequently, the Commission cannot interfere with the fact that the Petitioner has already been granted approval by the Respondent to lay a Dedicated Transmission Line, under Section 68 of the EA, 2003. The Commission also cannot interfere with the decisions made by the Respondent under Section 164 of the EA, 2003. These facts are solely for the Respondent to decide as per jurisdiction conferred upon it by the EA, 2003,



the Rules and the various Orders made by the Central Government, particularly the Electricity (Removal of Difficulty) Fifth Order, 2005.

11. In the above context and the prayers made by the Petitioner, the Commission is of the view that it can only reiterate the clear provisions of the Electricity (Removal of Difficulty), Fifth Order that no license is required to be obtained from the Commission, under the EA, 2003, by the Petitioner, for laying down a Dedicated Transmission Line, subject to the compliance of the four pre-requisites from (a) to (d) of para 2 of Order 2 of the Electricity (Removal of Difficulty) Fifth Order, 2005. The Petitioner is always at liberty to approach the Respondent for reconsideration of its application made to the Petitioner, under Section 164 of the EA, 2003, in view of the observations made by the Commission in the preceding paragraphs. On such application the power would vest with the Respondent under law, to inter alia satisfy themselves, in consultation with the Maharashtra State Electricity Transmission Co. Ltd., whether the Transmission line laid down by the Petitioner, forms a part of the Intra State Transmission System or not and also whether the pre-requisites from (a) to (d) of Order 2 of the Electricity (Removal of Difficulty), Fifth Order, 2005, has been complied with by the Petitioner.

With the above observation the Commission disposes of the Petition filed by M/s Abhijeet MADC Nagpur Energy Pvt. Ltd. in Case No. 2 of 2010.

Sd/-
(V. L. Sonavane)
Member

Sd/-
(S.B.Kulkarni)
Member

Sd/-
(V.P.Raja)
Chairman



(K. N. Khawarey)
Secretary, MERC