

**IN THE JHARKHAND STATE ELECTRICITY REGULATORY COMMISSION AT
RANCHI**

Case No. 16 of 2022

M/s Rungta Mines Ltd..... Petitioner

Versus

Jharkhand Urja Vikas Nigam Ltd. &Ors..... Respondents

**CORAM: HON'BLE JUSTICE MR. AMITAV KUMAR GUPTA, CHAIRPERSON
HON'BLE MR. MAHENDRA PRASAD, MEMBER (LAW)
HON'BLE MR. ATUL KUMAR, MEMBER (TECH)**

For the Petitioner :Mr. Indrajit Sinha, Mr. Saket Upadhyay, Advocates

For the Respondent:Mr. Mrinal Kanti Roy, Advocate

Date – 20th February, 2024

1. The Petitioner- M/s Rungta Mines Ltd. has filed the petition under section 86 of the Electricity Act, 2003 read along with Clause 10.6, 39.1 and 41.1 of the JSERC (Terms and Conditions for Intra-State Open Access) Regulations, 2016 seeking necessary direction by the Hon'ble Commission to the Distribution Licensee namely, JBVNL (Jharkhand Bijli Vitran Nigam Ltd) for granting a no objection certificate regarding sale of power/energy by the petitioner in an open market regulated by CERC (Central Electricity Regulatory Commission) and administered by NOAR (National Open Access Registry) .
2. Accordingly, the petitioner has sought and prayed for the followingreliefs: -
 - (a) For quashing and setting aside letter no. 1594/ (C&R) dated 07.11.22 issued by JBVNL wherein the permission for sale of energy/ power under open access has not been allowed to the petitioner and no objection certificate (NOC) has notbeen grantedon the application of the petitioner.
 - (b) For grant of permission to sale of energy/ power under open access to the petitioner in exercise of powers under 2016 Regulation read with the Electricity Act 2003.
 - (c) For direction upon the respondent-JBVNL for taking necessary steps, within reasonable time frame, to consider the case of the petitioner for grant of no objection in connection with sale of power/energy in an open market regulated by CERC and administered by NOAR.
 - (d) For such direction(s), order(s) as the Commission may deem fit and proper for imparting complete and substantial justice to the petitioner.

Submissions of the Petitioner

3. Learned Counsel for the Petitioner hassubmitted that the petitioner is a company with an integrated steel plant and captive generation plant

situated in the State of Jharkhand. It is seeking permission to sell surplus power of 13 MW through open access. They have a captive power plant with an approved capacity of 138 MW and installed capacity of 140 MW, of which the captive consumption is 125 MW, which leaves a surplus power of 13 MW. The plant is connected to the grid through a 132 KV double circuit transmission line with double feeders at 220/132/33 KV Ulijhari JUSNL Grid substation, Chaibasa.

4. It was submitted that the petitioner entered into an HTS Agreement with JBVNL, on 18.06.21 with a contract demand of 20010 kVA. The petitioner argues that the excess power of 13 MW can be sold through open access as provided under the Electricity Act, 2003 and the JSERC (Terms and Conditions for Intra-State Open Access) Regulations, 2016. It is stressed that despite having surplus power, the distribution licensee has denied permission to sell power through open access on the ground that the petitioner needs to terminate the existing HT Agreement and execute a fresh CPP Agreement.
5. It was argued that Section 2(47) of the Electricity Act, 2003, allows consumers engaged in power generation to utilize open access. It is emphasized that the JSERC (Terms and Conditions for Intra-State Open Access) Regulations, 2016, does not mandate any conditions for availing Open-access beyond the eligibility criteria specified by the Regulations. Thus JBVNL's pretext for denying No Objection Certificate (NOC) for open-access, on the ground that the Petitioner being a CPP is under an HT Agreement is devoid of merit.
6. It was further stated that the respondent-JBVNL vide letter 1594/(C&R) dated 07.11.22 denied permission to the petitioner for selling power and did not grant NOC, rather JBVNL directed the petitioner to terminate the existing HT agreement and thereafter execute a fresh CPP agreement on the ground that the resale of energy by the consumer under clause 8.2.21 of JSERC (Electricity Supply Code) Regulations, 2015 is to be sanctioned by the Commission or by the State Government and not by the Distribution Licensee.
7. Learned counsel for the petitioner has highlighted that respondent-JBVNL insists that as an HT (High Tension) consumer, the petitioner cannot resale energy. In this context, the petitioner clarifies that its intention is to sell surplus power generated through the Captive Generation Plant (CGP) and not to resale energy supplied by JBVNL. It is submitted that during sale of power, the energy is transmitted through the same grid of JUSNL from which the power is being imported. Therefore, in normal circumstances the export and import of energy is practically not possible through same transmission line with the same grid. Consequently, there is no resale of energy by the petitioner and JBVNL has incorrectly interpreted clause 8.2.21 regarding resale of energy in the present case.
8. It was emphasized that the necessity of selling surplus power is to optimize plant utilization, pointing out that energy, being non-storable, must be sold to avoid losses. It was stated that JBVNL's demand to terminate the existing HT (High Tension) Agreement and enter a new Captive Power Plant (CPP) Agreement is not legally required as it would impose financial burdens.

9. It was pointed out that the petitioner wants to sell surplus power of 13 MW generated from its Captive Generation Plant (CGP). It was argued that due to the volatility of the steel market, their steel-making facility is operating at reduced capacity, resulting in surplus power. The petitioner has cited relevant clauses of the JSERC (Terms and Conditions for Intra-State Open Access) Regulations, 2016, emphasizing their eligibility for open access and the absence of a legal requirement for a Power Purchase Agreement (PPA) with JBVNL for selling surplus power.
10. It was contended that the termination of the CPP agreement in 2021 and the execution of the HT agreement were necessitated by increased power consumption, not to hinder the sale of surplus power. The petitioner has stressed in the technical impossibility of reselling energy drawn from JBVNL and asserts that the energy intended for sale is the surplus energy and not the energy supplied by the licensee. The Petitioner has pointed out the economic viability of open access, legal entitlement, and the absence of financial loss to the state. The petitioner has urged that JBVNL's conception is misplaced the legal relationship, stating that the petitioner is only an HT consumer and they seek open access permission. They have emphasized regarding the role of SLDC as the nodal agency for short-term open access and to reject JBVNL's interpretation regarding the necessity of a PPA.
11. It was mentioned that if energy is drawn at CPP Mode then the emergency power is restricted only to a maximum of 1008 hours per annum (maximum of 42 days in a calendar year) and if excess power is drawn then, the rate is enhanced to 1.5 times by the distribution licensee. In such eventuality, the petitioner shall be imposed with heavy financial burden in the form of energy charges and contract demand charges which cannot be economically viable for the petitioner's industry. Therefore, the petitioner cannot be compelled to terminate existing HTS Agreement and enter fresh CPP agreement with JBVNL.
12. It was contended that the JSERC (Utilization of Surplus Capacity of Captive Power Plants based on Conventional fuel) Regulations, 2010, is not applicable to the present case, as it pertains to CPPs agreeing to supply surplus power to the licensee within the state. The petitioner intends to sale Surplus power after meeting its own consumption and the surplus power will be sold from CGP through Indian Energy Exchange (IEX) on open access mechanism through JUSNL grid and transmission line. It is necessary to apprise that even the petitioner does not have the knowledge as to who will purchase the power since it is operated in an open market regulated by CERC and administered by NOAR.
13. It was pointed out that clause A15 of the Regulation speaks of the Nodal agency and not about the requirement of agreement. In the present case for short term the Nodal agency for Intra State Transmission, is SLDC as provided under clause 15.3. It is necessary to mention that the Regulation regarding short term open access involving Inter State Transmission system is to be in accordance with CERC (Open access in Inter State Transmission) Regulation, 2008. JBVNL cannot misinterpret the regulation permitting open access for sale of energy and go beyond the regulations prescribed by

the CERC.

14. It is contended that the conspectus enumerated above reveals that there is no requirement of a Captive user to enter into a Power Purchase Agreement with JBVNL prior to availing of open access for selling of surplus power anywhere through open access mechanism. Thus, the condition imposed for entering into a Power Purchase Agreement with JBVNL is not necessary under the Act and the regulation framed thereunder.
15. It was contended that the JSERC (Utilization of Surplus Capacity of Captive Power Plants based on conventional fuel) Regulations, 2010, reveals that
 - a) If Captive Power Plant is agreeable and willing to sell the surplus power to a Licensee within the state then the Captive Power Plant shall be required to enter into a Power Purchase Agreement with the Licensee under the JSERC (Utilization of Surplus Capacity of Captive Power Plants based on conventional fuel) Regulations, 2010
 - b) the Captive Power Plant must have surplus power on long term basis to fulfill the contracted demand as per the Power Purchase Agreement and not on short term basis.
16. It was highlighted that provision to enter into a Power Purchase Agreement with JBVNL is optional and it solely depends upon the Captive Generating Plant to enter into a Power Purchase Agreement or not. Moreover, under the JSERC (Utilization of Surplus Capacity of Captive Power Plants based on conventional fuel) Regulations, 2010, a Captive user has to supply the surplus power as per the Power Purchase Agreement with JBVNL on long term basis whereas under the provision of the CERC (Open Access in Inter-State Transmission) Regulation, 2008 read with the JSERC (Terms and Conditions for Intra-State Open Access) Regulations, 2016, the petitioner intends to avail the open access for Short Term Open Access to sale the surplus power generated from the Captive Generation Plant (CGP) through open access mechanism. The short term open access means for a period upto one (1) month at a time and not on yearly basis/long term basis.

It is submitted that both the regulations have different scope and ambit in respect of sale of power through open access and thereby JBVNL cannot compel the petitioner to opt for the JSERC (Utilization of Surplus Capacity of Captive Power Plants based on conventional fuel) Regulations, 2010 in the given facts and circumstances of the petitioner's case.

17. It was pointed out that the first right of refusal by the licensee does not put any legal restriction upon the petitioner to sell the power through open access. The facility of power drawl of 1008 hours for 42 days and energy rate at 1.5 times of normal HT Tariff is provided whereas the petitioner will be in economical loss by such prerogative of entering into a fresh CPP agreement with JBVNL.

Replies of the Respondent

18. Learned Counsel for the respondent has submitted that the petitioner is an HTS Consumer of JBVNL and not a Generator or Licensee, therefore, grant

of no objection in connection with sale of power/energy in an open market regulated by CERC and administered by NOAR, as a consumer, grant of no objection in connection with sale of power/energy in open market cannot be allowed.

19. It was pointed out that the petitioner had signed a CPP agreement on 03.04.2019 with JBVNL for supply of surplus power under the JSERC (Utilization of Surplus Capacity of Captive Power Plants based on conventional fuel) Regulation, 2010 which has been terminated vide letter no. 478 dated 09.06.2021 and subsequent letter no. 488 dated 14.06.2021 of JBVNL on request of the petitioner vide their letter no. 2874 dated 20.10.2020. As of now, captive plant of the petitioner has no legal relation with the respondent and the petitioner is only a HTS consumer of the respondent.
20. It was pointed out that the then General Manager Commercial, JBVNL vide letter No. 1594 dated 07.11.2022 (**Annexure-4 to main petition**) has put following terms and condition for processing the request of the petitioner.
 - Termination of Existing HT Consumer agreement
 - Enter into a fresh CPP Agreement as per JSERC CPP Regulation
 - Feasibility of Transmission System of STU/CTU
 - Consent of JUSNL/SLDC/ERLDC
 - Approval from appropriate authority
21. The Learned counsel for the respondent referred to clause 10.3, 10.6, 10.7, 10.8 of JSERC (Terms and Conditions for Intra State Open Access) Regulations, 2016 which clarifies that open access allows consumer for availing power and not to sell to others. If a person with a captive generating plant chooses open access, it's for carrying electricity to their intended destination for personal use, rather than for selling it to others through the open access mechanism.
22. The Respondent has also referred to clause 8.2.21 of JSERC (Electricity Supply Code) Regulations, 2015 which states as under

"the consumer shall not supply any energy supplied to him by the Distribution Licensee to another person or other premises unless he holds a suitable sanction or license or distribution and sale of energy granted by the Commission/State Government or has been exempted from obtaining the license or has been appointed as a franchisee".
23. It was highlighted that the request for a No Objection Certificate (NOC) to sell power through open access is considered unlawful under JSERC (Electricity Supply Code) Regulations 2015, as consumers are prohibited from reselling power supplied by the distribution licensee. As a captive generator, the petitioner is required to first enter into a Captive Power Plant (CPP) agreement with JBVNL for power exchange (import and export), as per JSERC (Utilization of Surplus Capacity of Captive Power Plants based on conventional fuel) Regulations, 2010, if they intend to sell surplus power.
24. Learned Counsel for the Respondent has stressed that JSERC (Terms and Conditions for Intra-State Open Access) Regulations, 2016, clarifies that

open access is intended for consumers to avail power, not for selling it. However, JSERC (Utilization of Surplus Capacity of Captive Power Plants based on conventional fuel) Regulations, 2010, permits a Captive Power Plant to sell its surplus power anywhere, provided that if the Licensee within the State fails to enter into a Power Purchase Agreement within 60 days of invoking the first right of refusal.

25. It was stated that for any power sale through open access, the petitioner must first establish a CPP agreement and comply with the regulations, including obtaining a NOC from JBVNL, if required.
26. Learned Counsel for the respondent-JUSNL has submitted that the petitioner has Grid Connectivity through 132 kV D/C at 220/132/33 kV Ulijhari Grid station of JUSNL, however, no such correspondence has been done by the petitioner towards consent of feasibility for the power sale through open access or any other mode with JUSNL.

Commission's observation and findings

27. The Commission has taken note of the submissions of the parties and perused the materials available on records.
28. It is evident that at present, M/s Rungta Mines Ltd., the Petitioner, is registered as a High Tension (HT) Consumer with Respondent-JBVNL, with a capacity of 20010 kVA bearing consumer number 7010/HT 130 and it has Captive Power plant of Capacity 138 MW.
29. As per contention of the petitioner, amidst reduced demand at its steel facility, the petitioner seeks authorization to sell excess power of 13 MW through IEX and accordingly, the petitioner has applied for a NOC from JBVNL to facilitate the sale of surplus power generated from the Captive Generation Plant (CGP) through exchange under the Short-Term Open Access (STOA) mechanism.
30. The petitioner asserts that the fluctuating nature of the steel market necessitates the intermittent generation of surplus power by the petitioner's company, and this is not a case of making profit through energy resale.
31. The Commission finds that the then General Manager Commercial, JBVNL vide letter No. 1594 dated 07.11.2022 (***Annexure-4 to main petition***) has put following terms and condition for processing the request of the petitioner:
 - Termination of Existing HT Consumer agreement
 - Enter into a fresh CPP Agreement as per JSERC CPP Regulation
 - Feasibility of Transmission System of STU/CTU
 - Consent of JUSNL/SLDC/ERLDC
 - Approval from appropriate authority
32. On going through Clauses 10.3, 10.6, 10.7, and 10.8 of the JSERC (Terms and Conditions for Intra-State Open Access) Regulations, 2016, the Commission observes that the Regulation specify that open access enables consumers to access power. If a person with a captive generating plant chooses open access, it's for carrying electricity to their intended destination for personal use, and not for selling it to others through the open access mechanism.

33. Considering the provision of the Act and the clauses of the Regulations, the Commission is of the view that it is not disputed that M/S Rungta Mines, which possesses a Captive Power plant, falls outside the purview of JSERC (Intra State Open Access) Regulation 2016, rather it is subject to JSERC (Utilization of Surplus Capacity of Captive Power Plants based on Conventional Fuel) Regulation, 2023. As the petitioner-M/S Rungta Mines intends to sell power via exchange without a designated buyer, indicating their intention to sell surplus power through exchange, which comes within the purview of trading of power.

34. In the result, it is ordered as;

ORDER

35. In view of the discussion made herein above and considering the facts and circumstances of the case, it is ordered as below,

- a) Termination of HTS agreement is not required for executing CPP agreement.
- b) If the petitioner, operating as a captive generator, intends to sell their intermittent surplus energy through the open access mechanism, they must initially propose an agreement with the licensee in accordance with the JSERC (Utilization of Surplus Capacity of Captive Power Plants based on conventional fuel) Regulations, 2023. In the event the Respondent-JBVNL does not finalize a CPP Agreement within 60 days of the petitioner invoking their first right of refusal, the captive power plant will be authorized to sell its surplus capacity to any entity through the open access mechanism.
- c) In the event JBVNL fails to enter into a CPP agreement for the intermittent surplus energy, then it is required to issue a No Objection Certificate (NOC) to the petitioner for the sale of surplus power in the open market through short-term open access mechanism.

36. The petition is disposed off, accordingly.

Sd/-
Member (T)

Sd/-
Member (L)

Sd/-
Chairperson