

**Before the Appellate Tribunal of Electricity  
(Appellate Jurisdiction)**

**Appeal No. 81 of 2012**

**Dated : 9<sup>th</sup> April, 2013**

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson  
Hon'ble Mr. Rakesh Nath, Technical Member**

**In the matter of :**

**M/s. Enercon (I) Infrastructure Pvt. Ltd. ... Appellant(s)  
Enercon Tower, A-9  
Veera Industrial Estate  
Veera Desai Road  
Andheri (West)  
Mumbai – 400 053  
Versus**

- 1. Rajasthan Electricity Regulatory Commission ...Respondent(s)  
Vidyut Viniyamak Bhawan  
Sahkar Marg, Near State Motor Garage  
Jaipur – 302 005**
- 2. Rajasthan Vidyut Prasaran Nigam Ltd.  
Vidyut Bhawan, Jyoti Nagar  
Jaipur**
- 3. Mr. G.L. Sharma  
H. No. 3552, Rasta Govind Rajiyon Ka  
Purani Basti  
Jaipur**

**4. Rajasthan Vidyut Vikas Sanstha  
D-70, Ram Marg  
Hanuman Nagar  
Vashali Nagar  
Jaipur**

**Counsel for the Appellant(s) : Mr. Anand K. Ganesan  
Ms. Swapna Seshadri**

**Counsel for the Respondent (s) : Mr. C.K. Rai with  
Mr. Ravin Dubey (Rep.) for R-1  
Mr. G.L. Sharma (Rep.) for R-3  
Mr. Rajendra Shalani with  
Ms. Priyadarshini Verma and  
Mr. R.G. Gupta (Rep.) for R-4**

## **JUDGMENT**

**MR. RAKESH NATH, TECHNICAL MEMBER**

“Whether a company nominated by some generating companies to establish, operate and maintain the transmission system for evacuation of power from their generating units and other wind energy generators in the vicinity could be granted a transmission license?” This is the main question being raised in this Appeal.

2. The Appellant is a special purpose vehicle created by a wind generating company for acting as a transmission licensee. The Appellant has been nominated by two generating companies to establish, operate and maintain transmission system for evacuation of power from their wind generating units and to obtain a transmission licence from the State Commission for the said purpose so that the transmission system could also be used by other wind energy projects who may require the use of the transmission system at a future point of time. Accordingly, the Appellant filed petition before the State Commission seeking for the transmission licence. But the same was rejected. Hence, the Appellant being aggrieved by the order dated 22.2.2012 passed by Rajasthan Electricity Regulatory Commission (“State Commission”) rejecting

the application of the Appellant for grant of transmission licence, has filed this Appeal.

3. The State Commission is the Respondent No. 1. Rajasthan Vidyut Prasaran Nigam Limited, the State Transmission Utility (“STU”) and the Transmission Licensee is the Respondent No. 2. The Respondent No. 3 and 4 are the Consumer representatives who were objectors before the State Commission.

4. The brief facts of the case are as under :-

- 4.1 The Appellant is a company established as a separate legal entity with the object of engaging in the business of transmission of electricity and for the purpose of establishing, operating and maintaining transmission system. The Appellant is also 100% subsidiary of M/S Enercon (India) Ltd. a generating company in the business of establishing wind energy

projects. M/s. VWIL is also a subsidiary of M/s Enercon and is also in the business of establishing wind energy projects.

4.2 According to the Appellant, the wind energy generating companies namely, M/s Enercon (India) Ltd. and M/s VWIL, proposed that the Appellant should establish the transmission lines from the pooling station of the generating units to the sub-station of the State Transmission Licensee/STU (R-2) with adequate capacity to cater to the proposed wind energy capacity of the generating units to be established in Jaisalmer and Banswara regions of the State of Rajasthan after obtaining the transmission licence from the State Commission.

4.3 For the above purpose, the Appellant filed an application before the State Commission for grant of

transmission licence for a number of 220 kV transmission lines from pooling sub-station to the grid sub-stating of the State Transmission licensee (R-1), a number of 33/220 kVpooling sub-stations for pooling the power of the wind energy generators and 33 kV transmission system from wind mills to be taken up in lands allocated for wind farms to respective pooling stations.

4.4 By its order dated 22.2.2012, the State Commission dismissed the application filed by the Appellant for grant of transmission licence inter alia, on the ground that the transmission lines for which a licensee was sought for was not a part of the planned transmission system of the STU licensee and also on ground that competitive bidding under Section 63 of the Electricity Act was essential for grant of transmission licence to a private company.

4.5 Aggrieved by the order dated 22.2.2012, the Appellant has filed this appeal.

5. Learned Counsel for the Appellant submitted that pursuant to the impugned order of the State Commission, since the generating units were being commissioned and establishment of the evacuation lines had become essential, the lines in issue had been established by the generating companies as their dedicated transmission system. The issue that survives now is whether the transmission licence for operation and maintenance of the lines established by the generating companies as dedicated transmission system could be granted to the Appellant so that other wind generating companies also could utilize the spare capacity available on the dedicated transmission system for evacuation of their power.

6. According to the Learned Counsel of the Appellant, the Appellant being a special purpose vehicle nominated by two generating companies, was eligible for grant of transmission licence as there is no restriction or qualification provided in the Electricity Act or the Regulations framed by the State Commission for an applicant applying for the grant of transmission licence, the State Commission is required to consider the technical and financial credentials of the applicant on merits and the application of the applicant could not be dismissed on its locus merely because the Appellant is a special purpose vehicle or nominee of two generators.

7. Learned Counsel of the Appellant has further argued that according to the Regulations, the wind energy developer is responsible for the development of



dedicated transmission system up to pooling station and the transmission licensee is responsible for development of evacuation system beyond pooling station till the nearest grid sub-station; alternatively, if wind energy developer wants to develop the evacuation system beyond the pooling station up to grid sub-station, the State Commission has to separately determine the transmission changes for the same, on case to case basis; if the line from a pooling station to grid sub-station of the transmission licensee is established by a generating company, a separate cost plus transmission tariff will be determined by the State Commission for the line to be paid by the distribution licensee and ultimately by the consumers; however, in this case other generating stations will not be able to use the surplus capacity available on the transmission system of the generating company; and that if a licence is given to the Appellant for the power evacuation lines,

the surplus capacity of the transmission system can be utilized for evacuation of power from other wind energy generators which will result in saving of infrastructure cost and reduction in transmission charges.

8. According to the Learned Counsel for the Appellant, the State Commission was also not correct in holding that transmission licence could not be issued unless the transmission system in question falls within the Five Year Plan of the State Transmission Utility; there is no such requirement for grant of licence under the provisions of the Electricity Act, 2003; further in this case, the State Transmission Utility has granted no objection to the development of the transmission system by the Appellant; the State Commission has also erred in holding that competitive bidding is mandatory for grant of transmission licence and that it

is a settled position of law that competitive bidding and cost plus methods are alternatives which could be adopted in the light of facts of each case.

9. The transmission licensee/STU, the Respondent No. 2 herein, has made the following submissions :-

(a) The Appellant is not a wind power plant developer and also not a person who has been selected as a successful bidder through competitive bidding process for grant of transmission licence for execution of transmission system.

(b) The works intended to be undertaken by the Appellant have been conceived as dedicated lines in the detailed project reports submitted by the developers with the nodal State Renewal Energy agency, namely Rajasthan Renewable Energy Corporation. The evacuation

system has been approved accordingly by the State Transmission Utility. The Appellant has applied for a transmission licence for the dedicated lines for which no licence is required as per the Electricity Act, 2003.

10. We have heard the learned Counsel for the Appellant and the Respondent No. 2. We have also heard the learned counsel for the State Commission who made submission at length in support of the findings of the State Commission. We also heard the Respondent nos. 3 and 4 who were objectors before the State Commission who made detailed submissions in support of the findings of the State Commission.
  
11. After examining the rival contentions of the parties, the questions that would arise before us for consideration are :

**a) Whether a company nominated by some generating companies to establish, operate and maintain transmission system for evacuation of power from their generating units and other wind energy generators in the vicinity could be granted transmission licence for the said purpose?**

**b) Whether a company nominated by some generating companies to operate & maintain the dedicated transmission system set up by them for evacuation of power from their wind energy generators could be granted transmission licence for the said transmission system so that the surplus capacity available on the transmission system could be utilized by other generating companies coming up in the vicinity?**

Both these issues are inter-related and therefore being dealt with together.

12. Let us first examine the Tariff Regulations for wind energy generators. The relevant regulation of Tariff Regulation, 2009 is reproduced below :

*“Base Capital Cost: Base Capital cost at the beginning of Control Period (i.e. as on 01- 04-2009) shall be Rs. 525 lakh/MW towards power plant, of which Rs. 2 lakh per MW is for connectivity charges payable to Rajasthan Rajya Vidyut Prasaran Nigam Ltd.*

*Base Capital Cost shall include Rs 15 lakh/MW towards cost of wind energy evacuation upto and including pooling station and Rs 2 lakh/MW payable to RVPN for interconnection. Wind Energy Developer shall be responsible for development of evacuation and*

*dedicated transmission arrangement upto pooling station. RVPN/transmission licensee be responsible for development of evacuation system beyond pooling stations till the nearest Grid sub-station. Alternatively if Wind Energy Developer wants to develop the evacuation system beyond Pooling Station upto Grid Substation, the Commission separately determine the transmission tariff for the same on case-to-case basis”.*

13. According to the above Regulation, the cost of the dedicated transmission line up to the pooling station has been included in the capital cost of the wind energy generator and the wind energy developer will be responsible for the development of the dedicated transmission system up to the pooling station. The transmission licensee/RVPN is responsible for development of evacuation system beyond pooling station till the nearest grid sub-station. However, if wind

energy developer wants to develop the evacuation system beyond pooling station up to grid sub- station the same is permissible and in that case the Commission would separately determine the transmission tariff on case to case basis.

14. Thus according to the above Regulations, wind energy developer is responsible for the development of the dedicated transmission system up to the pooling station and if so desired, it could also develop the transmission system from pooling station up to grid sub-station for evacuation of its power. The Appellant is not a wind energy developer and, therefore, it could not be given the responsibility of establishment, operation and maintenance of the dedicated transmission system.



15. We notice that transmission system for which licence has been sought by the Appellant would fall under three categories, namely,

(a) 220 kV transmission lines from pooling sub-station of wind energy projects to grid sub-station of Transmission licensee/STU.

(b) 33/220 kV pooling sub-stations which pool the power generated by various wind energy generators.

(c) 33 kV transmission lines from some proposed wind energy generators to the respective pooling sub-stations.

Item (c) above is the dedicated transmission system and could be developed by the generating company.

Item (a) above has to be developed either by a transmission licensee (R-2) or by a wind energy generating company as per the Tariff Regulations.

16. Let us now examine the findings of the State Commission in the impugned order :

*“The applicant is a separate legal entity and is seeking licence for taking up works as transmission licensee, which would indeed be required considering that the applicant intends to set up the transmission system and operate them. The applicant in its application has proposed to take up a number of new lines/sub stations as well as the transmission system already constructed by the generating companies. However the transmission systems already constructed by generating company and being in operation fall within the purview of dedicated line under section 2(16) of the*

*Act and cannot be assigned to another entity on its own for seeking transmission license. The transmission system would need to be planned and developed selected in a manner as is being discussed later in this order instead of generating companies appropriating this function on their own.”*

*“It may be clarified that as per Regulation, developer is also competent to develop evacuation system beyond pooling stations up to grid substation. However, in the instant case, the applicant is clearly not a developer”*

*“As the applicant has indicated the transmission lines as well as Sub-stations along with the licence application form, two questions arise on this. The first is the basis for assuming the need and justification for the said works. The second question related to the right, if any, accruing on the applicant to execute the indicated*

*works, investment on which would ultimately become the basis for determination of transmission tariff.”*

*“Coming to the first question of requirement of transmission system envisaged in the transmission licence application; the applicant has said that they propose to take up the transmission works for evacuation of wind energy of 2 companies viz. M/s Enercon India Ltd. (EIL) and M/S VWIL. The applicant has said in para 6(ii) of the reply to the objection of Shri G.L. Sharma that the transmission system is envisaged for the said two companies and other wind developers have the option to develop such works or to avail “open access” from the transmission licensee.”*

*“As tariff based on investment in transmission system would ultimately fall on the users, the transmission network has to be planned in a manner that it is efficient*

*and economical. Sec 39 of the Electricity Act already allocated the functions of planning and coordination relating to intra-state transmission system to the State Transmission Utility (STU) Sub-Sec 2(c) of Sec. 39 further visualizes that STU has to ensure development of an efficient, coordinated and economical system of intra-state transmission lines. As per chapter V of RERC (Grid Code) Regulations, 2008 (Grid Code), STU has to prepare a transmission plan and all the users have to furnish the desire planning data to STU to formulate and finalize the plan for next five years. Not only this, even the National Electricity Policy (NEP) visualizes that transmission network plan would have to be prepared.”*

*“As per National Electricity Policy, the Govt. of India has issued guidelines for encouraging competition in development of transmission project. The guidelines*

*issued by GOI specify that if any developer propose to construct a transmission line, not being a dedicated transmission line (as defined in the Electricity Act 2003) and not included in the Network Plan, the same will be constructed after being included in the Network Plan on the basis of necessary data such as required load flow study and other relevant studies.”*

*“From what has been discussed above, it is obvious that applicant merely on account of having been nominated by two companies (EIL and VWIL) cannot plan the transmission network indicated in the application form.”*

*“Next question arises that if a particular transmission system is to be developed in an area, who could undertake the work and operate that as transmission licensee. It has been strongly argued by M/s Rajasthan*

*Vidyut Vikas Sansthan that a private transmission investor should get selected only through transparent bidding as per National Tariff Policy. It has further been stated by the said stakeholder that Central Government's latest notification dated 8<sup>th</sup> July, 2011 reiterated the requirement of competitive bidding."*

*"On the above issue, it may be stated that National Tariff Policy clearly lays down that developer for investment in transmission has to be selected through competitive bids. With a view to encourage competition in development of transmission projects, the State Govt. has already constituted a State Level Empowered Committee to identify the projects to be developed through private sector participation. The State Govt. has also constituted Bid Process Coordinator (BPC) for competitive bidding in development of transmission network. The bidding process is already underway in*

*the State wherein transmission investor envisages to be selected through outcome of the bid who in turn seeks transmission licence as envisaged in competitive bidding guidelines.”*

*“In the light of the said position, Commission would like to state categorically that there seems no reason as to why competitive bidding should not be preferred even if the Commission is competent to determine tariff under Sec. 62 of the Act on cost-plus methodology. As is well-known competitive bidding is the widely accepted mode of selecting parties for investment or determining price of a proposed service and there is nothing in the transmission works envisaged to be taken up by the applicant wherein there would be any merit in adopting tariff on a cost plus basis under Sec. 62 of the Act.”*



*“Considering the above, we do not accept the argument of the learned counsel of the applicant that licence be given to the applicant and decision on investment/tariff as regards applying competitive bidding mode may be taken later as and when such occasion arises. We are of the view that a private transmission developer, if required, has to be selected through competitive bidding and that too for the transmission works identified by the State level Empowered Committee referred to in para 32 of this order.”*

*“The transmission system envisages to be taken up are neither part of the transmission network plan, nor the applicant has any pre-emptive right to take up these works. The application seeking licence for specified lines, obviously is devoid of any basis or justification.*

17. The crux of the findings of the State Commission referred to above are summarized as under :-

- (a) The applicant in its application has proposed to take up a number of new lines/sub stations as well as the transmission system already constructed by the generating companies. However the transmission systems already constructed by generating company and being in operation fall within the purview of dedicated transmission line and cannot be assigned to another entity on its own seeking transmission licence.
  
- (b) The wind energy developer could also develop evacuation system beyond pooling station up to grid sub-station according to the Regulations. However, the applicant is not a wind energy developer.

- (c) Section 39 of the Electricity Act allocates the function of planning and coordination relating to intra-State Transmission System to State Transmission Utility. The STU has to also ensure the development of an efficient, coordinated and economical intra-state transmission system. The STU has also to prepare transmission plan as per the grid code. According to the guidelines issued by the Government of India for development of transmission system, if any developer proposed to construct a transmission line, not being a dedicated transmission line and not included in the Network Plan, the same will be constructed after being included in the Network Plan. Therefore, the applicant merely on account of having been nominated by two generating companies cannot plan a transmission network indicated in the application.

- (d) National Tariff Policy stipulates that the developer for investment in transmission has to be selected through competitive bidding. With a view to encourage competition in development of transmission projects, the State Govt. has already constituted a State Level Empowered Committee to identify the transmission projects for development through private sector participation. Even though the Commission is competent to determine tariff under Section 62 of the Electricity Act on cost plus basis, it would like the participation of private sector in transmission or selection through a competitive bidding process only.
- (e) The transmission system proposed to be taken up through licence by the applicant is neither part of

transmission network plan nor the applicant has any pre-emptive right to take up these works.

18. We find that the State Commission has given a detailed reasons in the impugned order dismissing the application of the Appellant for grant of transmission licence. We are in agreement with the findings of the State Commission.

19. According to Section 39(2) of the Electricity Act, the State Transmission Utility has to discharge all functions of planning and coordination relating to intra-State transmission system with the generating companies, licensees, etc., and has to ensure the development of efficient, co-ordinated and economical system of intra-State transmission lines for smooth flow of electricity from a generating station to the load centers. Therefore, the intra-State transmission system planned by the STU

could only be constructed by the transmission licensees.

20. For development of transmission system in private sector, the State Government has already constituted a State Level Empowered Committee to identify the transmission projects to be developed through private sector participation following a competitive bidding process. If the State Commission has decided to develop the transmission system in private sector following a competitive bidding process, it is perfectly legal and it cannot be forced to follow the route available under Section 62 for development of the transmission system in private sector. Therefore, a company nominated by some generating companies could not plan and establish the intra-State transmission system on their own and seek licence for the same.

21. Similarly, the generating company under Section 10(1) of the Electricity Act, 2003 has duty to establish, operate and maintain tie lines, sub-stations and dedicated transmission lines besides the generating station. According to Electricity (Removal of Difficulty) Fifth Order, 2005 no licence is required to be obtained by a generating company for establishing, operating and maintaining its dedicated transmission system. Accordingly, the wind energy generators in the State have constructed dedicated transmission system for evacuation of power from their wind energy generators. The Appellant cannot now be allowed to take up the function of operation and maintenance of the dedicated transmission lines established by the wind energy generators as a transmission licensee.

22. The Appellant has stated that if a line is constructed by a generating company as its dedicated transmission system, the spare capacity available on the line could not be utilized by another generating company for evacuation of its power. Therefore, if the appellant is given a licence for such dedicated lines, it would result in reduction in cost of infrastructure.
23. This Tribunal has already held in its judgment dated 21.1.2013 in Appeal no. 81 of 2011 in the matter of Allain Duhangan Hydro Power Ltd. Vs. Everest Power Pvt. Ltd. & Ors. that it is perfectly legal for two generating companies to plan in coordination with the planning entities and construct and operate and maintain their common dedicated transmission system for optimum utilization of transmission corridor with a view to minimize cost of point to point transmission of electricity and minimize the requirement of transmission



corridor, as long as the dedicated transmission system is used exclusively for evacuation of point to point transmission of power of their generating stations.

24. Thus, both the questions raised in this appeal are answered in the negative.

**25. Summary of findings :-**

**i) The Appellant could not be allowed to take up the function of operation and maintenance of the dedicated transmission system established by the wind energy generating companies as a transmission licensee.**

**ii) As per the Section 39(2) of the Act, the STU has to discharge all the functions of planning and coordination relating to intra-State transmission system with generating companies, licensees, etc.,**

**and has to ensure the development of efficient, coordinated and economical system of intra-State transmission lines for smooth flow of electricity from a generating station to the load centres. For development of intra-State transmission system in private sector, the State Government has already constituted an Empowered Committee to identify the transmission projects to be developed through following a competitive bidding process. The stand taken by the State Commission to develop intra-State transmission system in private sector following competitive bidding process is perfectly legal. Therefore, the Appellant could not be allowed to plan and develop the transmission system for evacuation of power for a number of wind energy projects on its own as a transmission licensee.**

**26. In view of above, the appeal is dismissed devoid of any merits. No order as to costs.**

**27. Pronounced in the open court on this 9<sup>th</sup> day of  
April, 2013.**

**(Rakesh Nath)  
Technical Member**

**(Justice M. Karpaga Vinayagam)  
Chairperson**

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**REPORTABLE/~~NON-REPORTABLE~~**

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