

Rajasthan Electricity Regulatory Commission

Petition No. RERC-1569/19

Petition filed under Section 19 and 20 of the Electricity Act, 2003 for initiation of proceedings for revocation of Transmission Licence.

Coram:

Shri Shreemat Pandey, Chairman
Shri S.C. Dinkar, Member
Shri Prithvi Raj, Member

Petitioners : 1. Ajmer Vidyut Vitran Nigam Ltd.
2. Rajasthan Rajya Vidyut Prasaran Nigam Ltd.

Respondent : M/s Shekhawati Transmission Service Company Ltd.

Necessary Party : Jaipur Vidyut Vitran Nigam Ltd.
Jodhpur Vidyut Vitran Nigam Ltd.

Date of hearing : 18.12.2019, 12.02.2020 and 22.10.2020

Present : Ms. Tanya Sareen, Advocate for Petitioners

Order Date:

14.12.2020

ORDER

1. Petitioners, Ajmer Vidyut Vitran Nigam Ltd. (AVVNL) (represented through Rajasthan Urja Vikas Nigam Ltd. (RUVN)) and Rajasthan Rajya Vidyut Prasaran Nigam Limited (RVPN) have filed this petition on 17.10.2019 under Section 19 and 20 of the Electricity Act, 2003 for initiation of proceedings for revocation of the Transmission Licence granted to M/s Shekhawati Transmission Service Company Limited (STSCCL).

2. Notice dated 21.10.2019 and 01.11.2019 were issued to the Respondent for filing the reply on the petition but could not be delivered through post. Petitioners, therefore, were advised for 'Dasti' service to the Respondent vide letter dated 02.12.2019.
3. The matter was heard on 18.12.2019, wherein authorised representative of Petitioners requested for time as notice could not be served to the Respondent. Commission directed Petitioners to serve notice by 'Dasti' or by affixing it on some conspicuous part of the premises as per Section 171 of the Electricity Act, 2003.
4. Petitioners vide affidavit dated 30.01.2020 submitted that copy of the petition sent at the registered address of M/s Shekhawati Transmission Services Company Ltd. and to M/s Emco Ltd. was undelivered and returned. Soft copy of the petition was also served to the registered email id of Respondent however no acknowledgment of mail was received. The Petitioner further submitted that on 22.01.2020 notice has been affixed at two places of premise of the Respondent as per Commission's directions dated 18.12.2019. In spite of the notices served upon the Respondent no one appeared before the Commission.
5. The matter was heard on 12.02.2020, the Commission in the hearing observed that Respondent is neither appearing before the Commission nor filing reply to the petition. The annual license fee for previous year was also not deposited by the Respondent. Commission, therefore, noticing the inability of the Respondent to efficiently discharge the duties and obligations as per Transmission Licence, directed to issue notice to the Respondent for revocation of license under Section 19 of the Electricity Act, 2003.

6. Accordingly, in terms of sub-section 3 of Section 19 of the Electricity Act, 2003, a three month's notice was issued on 02.03.2020, to the licensee M/s Shekhawati Transmission Service Company Limited, as to why its Licence be not revoked.

7. Show cause notice was also got published in the following news papers:

Sr. No.	Name of News Paper	Date of publishing
(i)	Dainik Navjyoti	24.06.2020
(ii)	Dainik Bhaskar	24.06.2020
(iii)	Times of India	24.06.2020

8. Matter was finally heard on 22.10.2020. Ms. Tanya Sareen, Advocate appeared for Petitioners and none appeared for Respondent.

9. Petitioner in the Petition and during hearing has submitted as under:

9.1 The Petitioner No. 1 and Necessary Party 1 and 2 herein are distribution companies in the State of Rajasthan. The Petitioner No. 2 is the Transmission Company in the State of Rajasthan. The Petitioner No. 2 is also a State Transmission Utility in the State.

9.2 Respondent M/s Shekhawati Transmission Service Company Limited (STSCCL) is a Company incorporated under the provisions of Companies Act, 1956 and is a Transmission Licensee to lay down the transmission system comprising of the following:

(a) Transmission Lines – (i) 20 km 220kV S/C Sikar (400 kV GSS) – Nawalgarh Line; (ii) 40 km 220 kV S/C NawalgarhJhunjhunu

(b) Sub Station – 1 X 100 MVA, 220/132 kV Transformer at Nawalgarh

(c) Feeder bays from RVPN connection in addition to standard GSS lay-out shall be 5 nos of 132 kv Side

(d) PLCC equipment at RVPN GSSs to which TSP's Transmission Line is connected shall be provided by TSP and these equipment be installed by RVPN

- 9.3 The Respondent was established as the Special Purpose Vehicle (SPV) to undertake laying down of the above transmission system. The Promoter of Respondent, M/s EMCO Limited was selected through a Competitive Bid Process initiated by RVPN. Upon the selection of the Promoter through the Competitive Bid Process, 100% of the shareholding in the Respondent SPV was transferred to the Promoter – M/s EMCO Limited. Thereafter, the Transmission Service Agreement (TSA) dated 25.02.2013 was entered into between the Respondent and the Distribution Companies. The Share Purchase Agreement (SPA) dated 01.02.2013 was entered into between RVPN and M/s EMCO Limited.
- 9.4 The Respondent was granted a Transmission Licence by the Commission vide order dated 8.10.2013. The grant of Transmission Licence to the Respondent was however, made subject to the fulfillment of certain conditions throughout the period of Licence including the following:
*“(k) Where the transmission licensee fails, omits or neglects to undertake transmission in electricity, the transmission licence shall be subject to revocation in accordance with the provisions of the Act;
(l) The transmission licensee shall comply with the conditions agreed in Transmission Service Agreement;”*
- 9.5 In terms of the TSA, the Respondent was required to undertake the establishment of transmission system within a time frame of 24 months from the effective date and achieve commercial operation by Scheduled Commercial Operation Date, i.e., 25.02.2015.
- 9.6 The Respondent failed to complete the above transmission system within the scheduled commercial operation date and even thereafter for a sufficiently long time.
- 9.7 The Respondent then sought for extension of time from RUVNL which was refused on grounds of being contrary to TSA.

- 9.8 The Respondent herein thereafter filed a Petition bearing No. 1252/2017 before the Commission alleging that it could not commission the transmission system within the time on account of Force Majeure reasons and sought for extension of time. The Respondent herein also sought waiver from payment of Liquidated Damages as provided in the TSA.
- 9.9 The Commission vide its Order dated 22.02.2018 rejected the petition and held that the STSCL is liable to pay Liquidated Damages to Distribution Licensee for the delay in the establishment of the transmission system.
- 9.10 Aggrieved by the Order dated 22.02.2018 of the Commission, the STSCL filed an appeal bearing No. 127 of 2018 before the Hon'ble Appellate Tribunal for Electricity (APTEL). In the said appeal, the STSCL, sought for interim orders for stay on the order dated 22.02.2018 of the Commission. The STSCL also sought for stay on the encashment of the Bank Guarantee furnished by it and appropriation of the amount towards Liquidated Damages payable to the Petitioners.
- 9.11 In the meanwhile, on 03.04.2018, RUVNL (on behalf of Distribution Licensees) sent a Preliminary Termination Notice for termination of TSA in terms of Article 13.3 of the TSA being Long Term Transmission Customers. A copy of the said notice was also forwarded to the Commission as per the said provision.
- 9.12 After expiry of the consultation period of 60 days and as there was no agreement reached between the parties in regard to the events of default mentioned in the Long Term Customers' Preliminary Termination Notice dated 03.04.2018, the RUVNL (on behalf of the Distribution Licensees), on 05.06.2018 sent a Long Term Transmission Customers'

Termination Notice of 30 days for termination of TSA as per Article 13.3 (d) of the TSA.

- 9.13 On the expiry of 30 days of the service of the Termination Notice on 05.06.2018, the Transmission Service Agreement dated 25.02.2013 stood terminated as per Article 6.4.2 of TSA. The STSCL is also liable to pay the Liquidated Damages as per Article 6.4.1 of TSA.
- 9.14 By Notice dated 06.07.2018, RUVNL called upon the STSCL to pay the Liquidated Damages in terms of the provisions of the TSA and for encashment of the guarantee given by the Respondent in favour of the Distribution Licensees.
- 9.15 APTEL vide its Order dated 30.07.2018 rejected the application filed by the Respondent for stay. Thereafter, the Distribution Licensees proceeded with the encashment of the Bank Guarantee and recovered a sum of Rs 3.61 crore. The Petitioners are also required to recover the balance amount from the STSCL.
- 9.16 Without prejudice to the rights of the Distribution Licensees to recover the Liquidated Damages, upon the termination of TSA as mentioned above, the following are the consequences:
- (a) In terms of Article 13.3 (d), the Petitioner No. 1 is required to approach the Commission for revocation of the transmission Licence;
 - (b) In terms of Share Purchase Agreement (SPA), the Petitioner No. 2 is entitled to terminate the SPA and require the Promoter of the Respondent - EMCO Limited to sell the entire shareholding to it if the Petitioner No. 2 opts for the same;
 - (c) In terms of the provisions of Sections 19, 20, 21 and 24 of the Electricity Act, 2003, the Petitioners can file a Petition before the Commission for –

- (i) Revocation of Licence;
- (ii) Sale of utility of Respondent and vesting of the utility in any Purchaser who is willing to purchase the Utility;
- (iii) Receipt of the consideration for such sale from the Purchaser and to deal with the appropriation of such consideration;
- (iv) For interim directions provided under Section 20 read with section 94 of the Electricity Act, 2003.

9.17 Petitioner No. 2 is not opting for acquiring the shares of EMCO Limited in the STSCL.

9.18 The Petitioners therefore have requested the Commission to initiate a proceeding under Section 19 of the Electricity Act, 2003 for revocation of Licence of the STSCL. The Commission may also pass an appropriate direction under Section 94 of the Electricity Act for preservation of the property of the Transmission Undertaking of the Respondent pending the process initiated for revocation of Licence including if need be, by appointment of an appropriate Administrator or Receiver.

9.19 The transmission Licence granted to the Respondent is liable to be revoked in terms of section 19 (1) (a), (b) and (d) of the Electricity Act, 2003.

9.20 The Petition for revocation of Licence is in terms of the provisions of the TSA. The revocation is for reasons attributable to STSCL, namely, the failure on the part of STSCL to fulfill the conditions of the Licence. The Petitioners are not seeking any redressal/relief in favour of the Petitioners and is acting only to place the issue of revocation of Licence as per the provisions of the TSA for consideration of the Commission.

9.21 Copy of the petition sent at the registered address of M/s Shekhawati Transmission Services Company Ltd. and to M/s Emco Ltd. was undelivered and returned. Soft copy of the petition was also served to

the registered email id of STSCL however no acknowledgment of mail was received.

9.22 The Petitioners thereafter affixed the notice on 22.01.2020 at two places of premise of the Respondent as per Commission's directions dated 18.12.2019. Show Cause notice dated 02.03.2020 issued by the Commission to the Respondent was also published in two daily newspapers of Hindi language and one newspaper of English language.

9.23 It has come to the knowledge of Petitioners that M/s Emco Ltd., i.e., the promoter company of M/s Shekhawati Transmission Company Ltd. is currently undergoing insolvency proceedings before the National Company Law Tribunal (NCLT), Mumbai Bench. Sh. Sudarshan Bhatt has been appointed as the Resolution Professional to resolve the matter of M/s Emco Ltd. under Section 9 of the Insolvency & Bankruptcy Code. A copy of petition was also served to the address of Sh. Sudarshan Bhatt and sent via email also.

9.24 In view of above Petitioners have prayed to

- (a) initiate a proceeding under Section 19 of the Electricity Act, 2003 for revocation of the transmission Licence dated 08.10.2013 granted by Commission to the STSCL;
- (b) initiate proceedings under Section 20 of the Electricity Act, 2003 for sale of the transmission utility of the Respondent;
- (c) pass an interim order for preservation of the undertaking of the transmission utility pending the process of revocation;
- (d) waive the payment of Court Fees for the Petition

Commission's view

10. Commission has carefully considered the submissions made by Petitioners.
11. Petitioners have alleged that in terms of the TSA, the STSCL was required to undertake the establishment of transmission system within a time frame of 24 months from the effective date and achieve commercial operation by Scheduled Commercial Operation Date, i.e., 25.02.2015 but the Respondent has failed to complete the transmission system within the scheduled commercial operation date and even thereafter for a sufficiently long time. Respondent therefore has violated the terms and conditions of the Licence.
12. The Petitioners therefore have filed this petition under Section 19 of the Electricity Act, 2003 for initiation of proceedings for revocation of the Transmission Licence given to M/s Shekhawati Transmission Service Company Limited. Petitioners have also prayed to take up the proceedings under Section 20 of the Electricity Act, 2003 for sale of the transmission utility of the Respondent.
13. Commission observe that the notice dated 21.10.2019 and 01.11.2019 issued to Respondent for filing the reply on the petition had returned back, thereafter notice was affixed on the premises of the Respondent as per Section 171 of the Electricity Act, 2003. However, Respondent neither replied to any of the notices of the Commission nor appeared before the Commission to clarify its position.
14. It is also noted that Respondent has not deposited the annual licence fees for FY 2019-20 and FY 2020-21 in the Commission inspite of various reminder letters from Commission, which is violation of Licence condition and relevant provisions of Regulations.

15. The Commission after considering the continued breach of the conditions of Transmission Licence decided to issue notice to the Respondent for revocation of Licence. Accordingly, in terms of sub-section 3 of Section 19 of the Electricity Act, 2003, a three month's notice was issued by the Commission, on 02.03.2020, to the licensee M/s Shekhawati Transmission Service Company Limited, as to why its Licence be not revoked.
16. Show cause notice was also published in the two Hindi and one English daily news papers on 24.06.2020 but even then Respondent not submitted its response.
17. Notice dated 15.10.2020 was issued for hearing to be held on 22.10.2020, however said notice also returned back. Matter was finally heard on 22.10.2020 in which none appeared on behalf of Respondent and no reply whatsoever was received from the Respondent.
18. Now therefore, Commission after considering the material on record and noticing continued failure and non-compliance on the part of licensee in laying down and commissioning of the transmission system as per terms and conditions of the Transmission Licence, is satisfied that revocation of Licence is warranted under Section 19 of the Electricity Act, 2003 and clause 7 of the Licence. Accordingly, the Commission resolves to revoke the Transmission Licence No. RERC/ Transmission Licence/10 dated 8th October, 2013 issued to the M/s Shekhawati Transmission Service Company Limited and this revocation would be effective from on 01st Jan 2021.
19. As regards the prayer to take up proceedings under Section 20 of the Electricity Act, 2003 for sale of the transmission utility of the Respondent,

Commission observes that TSA has ceased to exist on expiry of 30 days of the service of the Termination Notice dated 05.06.2018.

20. It is also noted from the provisions of SPA that in the event of termination of TSA by Long Term Transmission Customer(s) in accordance with provisions thereof, RVPN shall have a right to terminate the SPA forthwith by giving a written notice to the other parties. Further, RVPN shall have the unfettered right to cause the selected Bidder to transfer the Shares to RVPN or to any other entity as instructed by RVPN, in consideration of the Buyback Price. Relevant part of SPA is as under:

“Termination

If...(iii) due to termination of the TSA by the Long Term Transmission Customer(s) in accordance with provisions thereof, RVPN shall have a right to terminate this Agreement forthwith by giving a written notice to the other parties hereto. Provided that if RVPN terminates this agreement upon occurrence of the event mentioned in (iii) above, RVPN have the unfettered right to cause the selected Bidder to transfer the Sales Shares to RVPN or to any other entity as instructed by RVPN, in consideration of the Buyback Price.”

21. In view of above, the Commission does not find it appropriate to initiate the proceedings under Section 20 of the Electricity Act, 2003 for sale of the transmission utility of the Respondent rather find it just and proper to direct RVPN to acquire the entire shareholding of M/s Shekhawati Transmission Service Company Limited from the promoter M/s Emco Ltd. as per the provisions of SPA.
22. The petition is disposed of accordingly.

(Prithvi Raj)
Member

(S.C. Dinkar)
Member

(Shreemat Pandey)
Chairman