

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 24 of 2004**

**In the matter of**  
**NOC from MSEB to M/s. Bhushan Steel & Strips Ltd. to obtain power from**  
**M/s. Tata Power Company Ltd.**

**Dr Pramod Deo, Chairman**  
**Shri A. Velayutham, Member**

**ORDER**

**Dated: 5<sup>th</sup> October, 2005.**

M/s. Bhushan Steel & Strips Ltd. (BSSL) has filed a Petition dated on October 29, 2004 with the Maharashtra State Electricity Board (MSEB) and M/s. Tata Power Company Ltd (TPC) as Respondents No. 1 and 2 respectively with the following main prayers:

- "(i) It be declared that no permission is required by Respondent No. 2 from Respondent No. 1 for granting electricity to the Applicant Company.*
- (ii) It be declared that the Applicant is entitled to have power supply from Respondent No. 2 without seeking any NOC from Respondent No. 1.*
- (iii) That this Hon'ble Commission may kindly be pleased to order and direct Respondent No. 1 to forthwith issue NOC without any pre-conditions permitting the Applicant Company to get power supply from Respondent No. 2 and may further permit Respondent No. 2 to release power supply to the Applicant without insisting for NOC from Respondent No. 1 subject to fulfilling all other formalities.*
- (iv) That the Respondent No. 1 be restrained by an order of injunction from refusing to issue NOC to the Applicant Company for getting the sanctioned load energized from Respondent No. 2."*

2. According to the Petition, BSSL has a steel manufacturing unit at Village Nifan, Taluka Khalapur, Dist. Raigad engaged in the production of various steel products. The Petitioner envisaged both captive power and grid supply to meet its power requirement. Accordingly, BSSL was granted consent under Section 44 of the erstwhile Electricity (Supply) Act, 1948 by MSEB in the year 2001 to install a 2 x 12 MW Captive Power Plant (CPP), which has since been commissioned.



3. The Petition states that, since the grid supply was required to meet a part of the requirement of the plant, BSSL made an application to the MSEB in January 2001 for grant of electric connection of 5 MW initially. Following exchange of correspondence, under letter dated January 25, 2002, MSEB sanctioned the required load. However, MSEB stated that such power supply would require erection of a transmission line of 3.5 km length and would involve crossing of National/State Highways, which would require right of way permissions, and the process would be time-consuming. MSEB also informed BSSL that the estimated capital cost of the works required for providing power supply to the plant would be around Rs 3.02 crore. Subsequently, vide letter dated October 18, 2002, MSEB revised its estimate to Rs 2.24 crore.

4. According to the Petition, MSEB's letter dated October 18, 2002 spelt out the various pre-requisites for supplying power, which includes right of way clearances and removing obstructions at the Petitioner's cost while erecting the transmission lines. This involved permissions from not only Maharashtra State Road Development Corporation (MSRDC) and the highway authorities but also from 34 farmers who own the land on which the towers would be erected, and many other infrastructure requirements as well as clearances from various authorities. The Petitioner has stated that since compliance of these extensive requirements was not feasible, BSSL approached TPC for power supply since the latter's power supply lines were already passing through the Petitioner's factory premises. The Petitioner wrote to TPC for supply of 5 MW power on August 27, 2003. The BSSL plant has been partly commissioned and is expected to be in full operation soon. Therefore, being in urgent need of power supply, BSSL has stated that it had no option but to search for alternate arrangements for power supply.

5. According to the Petition, under letter dated August 29, 2003 TPC stated that the Petitioner's plant was within the licensed supply area of MSEB, but was also situated in a rural area as envisaged under the Electricity Act (EA), 2003. TPC also sought clarification from the Commission on the matter of TPC supplying power to the Petitioner in MSEB's licence area considering the location of the plant in a rural area. Thereafter, under letter dated October 27, 2003, TPC sanctioned the required load subject to certain terms and conditions with which BSSL is in the process of complying. According to the Petitioner, TPC has not stated whether it has received any clarification from the Commission.

6. The Petitioner has added that, during discussions, TPC also informed BSSL that a No Objection Certificate (NOC) would be required from MSEB for it to be able to supply power to it. The Petition contends that, under EA, 2003, there is no requirement for such a NOC from MSEB since TPC is also a power generation company and distribution licensee in the area. However, in order to avoid delay and future problems, the Petitioner approached the Development Commissioner (Industries) and Chairman, Udyog Mitra, Chairman, MSEB and Secretary (Energy and Environment), Govt. of Maharashtra (GoM), for grant of such NOC. A similar request was made to the Commission vide letter dated March 10, 2004. The Commission replied, inter alia, that the Commission was in the process of formulating Regulations which would govern cases involving open access. (These Regulations have since been notified, and also subsequently revised.)

7. The Petition states that, despite taking up the matter again with MSEB on August 26, 2004, MSEB has neither communicated its 'No Objection' nor informed BSSL of its inability or any legal bar in issuing NOC for sourcing power from TPC. It is in these circumstances that the Petitioner has approached the Commission.

8. In support of BSSL's claim, the Petition refers to the Order of the Kerala State Electricity Regulatory Commission (KSERC) dated January 14, 2004 in the matter of Indian Aluminium Company Ltd. (INDAL) which concluded that:



*"In view of the foregoing discussion, the Commission in accordance with the provisions of sub-section 2(d)(ii) of Section 39 and Sub-section (2) of Section 42 of the Electricity Act, 2003 seeks to allow open access to INDAL for import of 30 MW of power using the transmission system of KSEB on an experimental basis."*

9. The Petition concludes that MSEB cannot withhold grant of NOC considering the following:

- (a) TPC is also a power generating company and distribution licensee in the area of the BSSL plant, and has sanctioned the required load vide letter dated October 27, 2003.
- (b) TPC would not be using any infrastructure or distribution network of MSEB, and would be supplying electricity to BSSL's plant directly from its own transmission lines passing nearby.
- (c) The Petitioner's plant is located in a rural area, for which exemption is provided under EA, 2003.
- (d) BSSL is unable to receive immediate power supply from MSEB in view of various difficulties such as laying of long transmission lines crossing National and State Highways and involving right of way from farmers, installation of transmission towers on private lands, etc., the cost of which would work out to over Rs 5 crore and adversely affect the plant's viability, and which is not included in MSEB's estimate of Rs 2.24 crore. Even if this is pursued, and apart from the heavy additional expenditure, the process would take at least 3 years. Sourcing power from TPC would enable BSSL to avoid such expenditure and the need for obtaining clearances, and save time.
- (e) Under the provisions of Section 42(4), such permission can be granted to any consumer.
- (f) In the present case, no wheeling charges are required to be paid to MSEB since its network will not be used while sourcing power from TPC.
- (g) Grant of permission to BSSL to source power from TPC would meet the object of EA, 2003 inasmuch as the statute is intended to promote measures for supplying electricity to rural areas.

10. MSEB's initial Reply dated December 23, 2004 relates the Petition to the grant of open access and related issues. As a preliminary response, MSEB stated that, under the Distribution Open Access Regulations notified by the Commission on June 10, 2004, the grant of Open Access for not less than 5 MVA would be allowed under Section 42(2) only on April 1, 2005. MSEB has stated that, under these circumstances, the Petition is premature and ought not to be considered by the Commission at this stage. Thereafter, in a more detailed Reply dated December 27, 2004, MSEB has pointed out that, under EA, 2003, no person can transmit, distribute or trade in electricity unless so authorized under Sections 12 and 14 or exempted under Section 13. Since TPC does not hold a licence for the area in which BSSL is located, it is not permitted under the statute to supply electricity in that area. In its Reply, MSEB has pointed out that GoM has not notified the relevant area as a rural area under EA, 2003 nor is there any exemption in favor of TPC as contemplated under Section 13. Thus, TPC is not exempted from the requirement of having a licence to supply at that location. MSEB also pointed out that the National Policy for Rural Electrification and local distribution in rural areas, which is required to be formulated by the Central Govt. in consultation with GoM under Section 5, has not been put in place.

11. With reference to the discussions with TPC cited by the Petitioner, and presuming that TPC's contention that a NOC is required is based on the above statutory provisions, MSEB has submitted that grant of such NOC would be illegal since the statutory provisions cannot be superceded by such acts by one or the other party.



12. Addressing the various points raised in the Petition, MSEB's Reply states that BSSL has neither made payment for the works as required, nor conveyed its inability to resolve the problems of right of way, etc. Further, the MSEB has contended that the decision of the KSERC does not apply to the facts and circumstances of the present case. Moreover, BSSL's contention that TPC is a distribution licensee for the area in which the plant is located is not correct.

13. The matter was heard on January 13, 2005, when Shri R.S. Tripathi, Counsel for BSSL elaborated on the background and arguments set out in the Petition and circulated written submissions on various legal provisions along with certificates dated October 3, 2003 and November 24, 2003 from the Collector, Raigad and the Directorate of Industries, respectively, to the effect that the BSSL plant is located in a rural area. While conceding that no such notification had been issued by GoM under EA, 2003, BSSL Counsel argued that, until such time, those certificates would be valid. To that extent, the provision in EA, 2003 was superfluous. Counsel for BSSL also set out the provisions of the Commission's Distribution Open Access Regulations of 2004 (these have since been superseded by revised Regulations notified on June 21, 2005), particularly Regulations 3.2.1, 3.2.2, 6 and 8.3, to argue that supply of power by TPC to BSSL outside its licence area was permissible, and submitted that Sections 42(2) to (4) set out the various charges that might apply where relevant once open access is allowed. The Regulations specify a time schedule for allowing open access progressively. However, the Regulations also empower the Commission to pre-pone these dates where it considers appropriate, and such discretion can be exercised in BSSL's favour. Counsel also quoted from the KSERC Order annexed to the Petition.

14. As far as the BSSL plant being located in a rural area is concerned, Ms. Deepa Chawan, Counsel for MSEB submitted that a notification (defined in Section 2(46)) has to be made by GoM to define such area for the purposes of EA, 2003, and some other declaration of such area is not relevant for such purposes. This has not been done so far, as admitted by BSSL. Moreover, the 8th proviso to Section 14 also requires certain other conditions to be complied with by entities in notified rural areas to supply electricity without a licence. Otherwise, a licence is required in such cases under Section 12 in the absence of exemption under Section 13. The question of cost and availability of power from MSEB is a quite separate matter from the issue of entitlement to source power directly from TPC, which is admittedly an outside licensee.

15. On behalf of TPC, it was clarified at the hearing by Counsel that the load sanction letter was issued considering the rural area certifications provided by the Directorate of Industries and the Collector, Raigad District.

16. The Commission notes that the Petitioner has essentially sought confirmation that it can source power from TPC. The reasons cited by the Petitioner involve higher capital cost of transmission lines as well as administrative difficulties involved in obtaining right of way permissions for sourcing power from MSEB. The Commission holds that these reasons are not sufficient to enable such direct sourcing of power under the provisions of EA, 2003, by bypassing the existing licensee, and outside the open access dispensation. Although TPC's transmission lines are passing through BSSL's factory premises, TPC is admittedly not licensed to supply power in the area where the plant is located in view of Section 12, and in the absence of applicability of other saving provisions of EA, 2003 in this case. If the Petitioner wishes to avail supply from any supplier other than the local distribution licensee, i.e., MSEB (or its successor entity), such transaction would have to be by way of open access through the facilities of MSEB and subject to the provisions of EA, 2003 under Section 42, etc., and the Distribution Open Access Regulations notified from time to time by the Commission.



Section 2(47) defines "open access" as follows:

*"open access means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission."*

The term "licensee" is used with reference to the area of supply for which the licence is held, and TPC is not a licensee in the BSSL plant area. The proposed direct sourcing of power from TPC, being outside the mechanism of open access, therefore cannot invoke or rely on the statutory provisions relating to open access.

17. At the same time, the Commission notes that currently MSEB is serving its consumers in Kalyan and Ambarnath area using TPC's network, for which necessary wheeling and energy accounting arrangements are already in place. If the infrastructure and other requirements are onerous, as they appear to be in the present case, MSEB may consider a similar arrangement making use of the Commission's Transmission Open Access Regulations in order to lower the costs for consumers in its licence area, such as BSSL.

18. The Petitioner has stated that TPC advised it during discussions to seek NOC from MSEB to enable TPC to supply power to the BSSL plant. The Commission notes that TPC has not responded to the Petition, either confirming or denying the averments made by BSSL. However, MSEB has argued that no such NOC is contemplated in the EA, 2003. Further, MSEB has contended that such NOC, even if, issued by it would be illegal under the scheme of the EA, 2003 as no entity can supply power without a licence from the Commission under Section 14, or unless specifically exempted from the requirement of licence under Section 13. MSEB has concluded that, since TPC is neither licensed to supply electricity nor has it been granted an exemption from such licence to supply in the relevant area, TPC cannot supply power to BSSL. Therefore, there is no question of the Commission directing the MSEB to issue any NOC for the purpose. While MSEB is essentially correct, the Commission also notes that the EA, 2003 provides a dispensation for sourcing power from entities other than the local distribution licensee through the mechanism of open access. However, as pointed out earlier, the present case of BSSL does not involve open access.

19. The Petitioner has argued that since BSSL's plant is located in a rural area, no licence is required for such supply. The 8th proviso to Section 14 reads as follows:

*"Provided also that where a person intends to generate and distribute electricity in a rural area to be notified by the State Government, such person shall not require any licence for such generation and distribution of electricity, but he shall comply with the measures which may be specified by the Authority under Section 53;"*

Thus, the State Government is required to separately notify the rural area for the purpose of this proviso. The factual and admitted position is that no such notification has yet been issued by GoM under the EA, 2003. The Petitioner has relied on certificates issued by the Collector, Raigad District, and by the Directorate of Industries in support of its contention that the BSSL plant is located in a rural area. Such certification may be based on notifications or definitions provided under other enactments or dispensations, and not under EA, 2003. BSSL's argument cannot, therefore, be accepted.



20. BSSL has cited the Order passed by KSERC under Section 42(2) of the EA, 2003 in respect of INDAL. The Commission notes that INDAL had sought open access on the network of the local utility/ licensee in the region whereas, in the present case under consideration, supply is being sought from a licensee other than the licensee of the relevant area, and that too using the former's network/ facilities, and not those of the local licensee. Therefore, the KSERC Order is not relevant to the present Petition.

21. Recently, MSeB has given way to three functional successor entities and a holding company (the distribution function having been vested in the Maharashtra State Distribution Company). However, the term 'MSeB' has been used throughout this Order for convenience.

22. The Commission dismisses the Petition with the above observations and findings.

Sd/-  
(A. Velayutham)  
Member

Sd/-  
(Pramod Deo)  
Chairman



(A. M. Khan)  
Secretary, MERC