

ELEVENTH REPORT

STANDING COMMITTEE ON ENERGY (1994-95)

(TENTH LOK SABHA)

THE NEYVELI LIGNITE CORPORATION LIMITED (ACQUISITION AND TRANSFER OF POWER TRANSMISSION SYSTEM) BILL, 1994



*Presented to Lok Sabha on
Laid in Rajya Sabha on*

26 JUL 1994 .

LOK SABHA SECRETARIAT
NEW DELHI

July, 1994/Asadha, 1916 (Saka)

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Corrigenda to the Eleventh Report
of Standing Committee on Energy
(1994-95) on the subject, "The
Neyveli Lignite Corporation Ltd,
(Acquisition and Transfer of Power
Transmission) Bill, 1994.

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Page	Para	Line	For	Read
(iii)	Sl.No.16		Arjun Singh	Arjun Singh Yadav
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2	6	3	classified	clarified
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COMPOSITION OF THE STANDING COMMITTEE ON ENERGY
(1994-95)

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Shri Jaswant Singh

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Lok Sabha

2. **Shri Bhawani Lal Verma**
3. **Shri Murli Deora**
4. **Shri Motilal Singh**
5. **Shri Khelsai Singh**
6. **Shri Khelan Ram Jangde**
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16. **Shri Arjun Singh**
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19. **Prof. Rita Verma**
20. **Shri Ram Tahal Choudhary**
21. **Shri Shankersinh Vaghela**
22. **Shri Keshari Lal**
23. **Shri Rajesh Kumar**
24. **Shri Haradhan Roy**
25. **Shri Anil Basu**
26. **Shri Vijay Kumar Yadav**
27. **Dr. Venkateswara D. Rao**

(iv)

28. Shri Chitta Basu
29. Shri Mohan Singh (Ferozpur)
30. Shrimati Dil Kumari Bhandari

Rajya Sabha

31. Shri Parmeshwar Kumar Agarwalla
32. Shri M.M. Hashim
33. Shri Dipankar Mukherjee
34. Shrimati Ila Panda
35. Shri J.S. Raju
36. Shri Rajni Ranjan Sahu
37. Shri Viren J. Shah
38. Shri Matang Singh
39. Dr. Naunihal Singh
40. Shrimati Kamla Sinha

SECRETARIAT

1. Shri G.R. Juneja – *Deputy Secretary*
2. Shri A.L. Martin – *Assistant Director*

INTRODUCTION

1. the Chairman of Standing Committee on Energy having been authorised by the Committee to present the Report on their behalf, present this Eleventh Report on the Neyveli Lignite Corporation Limited (Acquisition and Transfer of Power Transmission System) Bill, 1994.

2. The Neyveli Lignite Corporation Limited (Acquisition and Transfer of Power Transmission System) Bill, 1994 was introduced in Lok Sabha on 12th May, 1994 and was referred to the Committee by the Speaker on 20th May, 1994 under Rule 331 E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. Clarification on certain points relating the Bill was obtained from the Ministry of Power. Thereafter, the Committee held discussion with the representatives of Ministry of Power, Ministry of Coal, Power Grid Corporation of India Limited and Neyveli Lignite Corporation Limited on 7th July, 1994. The Bill was considered and approved by the Committee at their sitting held on 8th July, 1994.

4. The Committee wish to express their thanks to Ministry of Power and Ministry of Law for placing before them the information they wanted in connection with examination of the Bill. They also wish to thank in particular the representatives of Ministry of Power, Ministry of Coal, Power Grid Corporation of India Limited and Neyveli Lignite Corporation Limited who appeared before the Committee and placed their considered views.

NEW DELHI;
21 July, 1994

30 Asadha, 1916 (Saka)

JASWANT SINGH,
Chairman,
Standing Committee on Energy
(1994-95)

REPORT

The Neyveli Lignite Corporation Ltd. (Acquisition and Transfer of Power Transmission System) Bill, 1994 seeks to provide in the public interest for the acquisition and transfer of the power transmission system of the Neyveli Lignite Corporation Limited and the right, title and interest of the company in the power transmission system to the Power Grid Corporation of India Limited, with a view to developing the National Power Grid to ensure transmission of Power, within and across the different regions of India, on a more scientific, efficient and economic basis and for matters connected therewith or incidental thereto.

2. Considering the fact that both NIC and POWER GRID being Government of India Enterprises, the Committee enquired whether it is not possible and desirable to achieve the objects of the Bill through a Presidential Directive or through an MOU between the two Companies. The Ministry of Power clarified in a written reply that "Presidential Directive is to give directions to Corporations to effect transfer of the assets and MOUs only define principles of transfer of assets/personnel. The passing of Bill is essential for bringing about *de-jure* transfer. In fact Government of India directive was issued by the Ministry of Coal on 17.11.1992 and MOU between NIC and POWER GRID (erstwhile NPTC) was signed on 30.11.1992."

3. According to the Ministry of Power *de-jure* transfer of assets is essential as pending the *de-jure* transfer, the assets value cannot be taken into the Books of Accounts of Powergrid Corporation or deleted from that of the NIC Books of Accounts with consequent repercussions.

4. Certain sections of the Bill shall be deemed to have come into force with effect from 1.4.1992. Enquired whether it is legally possible to give retrospective effect to the Act, the Ministry of Power stated that it is legally permissible to ante-date *de-jure* transfer of assets.

5. The Committee noted that *de-facto* transfer of assets has been made with effect from 1.12.1992 and the Bill under consideration would give *de-jure* status to this transfer of assets with retrospective effect from 1.4.92. Enquired as to why the Bill cannot ante-date the *de-facto* transfer date from 1.12.92 to 1.4.92, the Ministry felt that it would be advisable if the date of *de-facto* transfer is not ante-dated as the transfer of staff on 1.12.92 is a reality and a fact and the same cannot be ante-dated. There may have been staff events between 1.4.92 and 30.11.92 which may not be possible to reverse and as such the *de-facto* ante-dating would result in anomalies which could be painfully embarrassing.

6. Taking note of the fact that NIC had disinvested part of its equity, the Committee desired to know whether the concurrence of shareholders for transfer of assets had been obtained. The Coal Secretary classified during evidence that "it was decided in the extraordinary general body meeting in Dec., 1992 where we had taken the approval of all the shareholders and they ratified it."

7. A question arose in relation to the meaning and purport of clause 10(1) of the said Bill which reads as under:-

"10. (1) On the vesting of the power transmission system of the Company in the Corporation, the associated personnel who have been, immediately on or before the 1st day of December, 1992, employed in the Company and have not already become employees of the Corporation shall become, on and from the commencement of this Act, employees of the Corporation and shall hold office or the service under the Corporation on the terms and conditions which are not in any way less favourable than those which would have been admissible to them *if there had been no such vesting and shall continue to do so unless and until their employment under the Corporation is duly terminated or until their remuneration and other conditions of service are duly altered by the Corporation.*"

8. The Committee expressed apprehensions as to the implications of the latter part of sub-section (1) (which has been underlined) which provides for the termination of employment by the Corporation or alteration of the remuneration of employees and other conditions of service by the Corporation. It may be seen that clause 10 (1) in its opening portion provides for the absorption of the employees in the new Corporation on the same terms and conditions as obtaining before their transfer and expressly stipulates that their terms and conditions shall not be less favourable than those which would have been admissible to them if there had been no such vesting of the transmission system of the Company in the Corporation. In other words, the opening portion provides the continuance of the *status quo* in the matter of terms and conditions of service of the employees. The latter portion (the underlined portion) refers to the future terms and conditions of employment of the employees under the Corporation. Though the latter provision envisages termination of employment under the Corporation or alteration of the terms and conditions of service and remuneration by the Corporation, such termination or alteration can be effected only in accordance with the law governing such termination or alteration. This is ensured by the use of the word "duly" before the words "terminated" and "altered" in clause 10 (1).

9. The Ministry of Law stated that Clause 10 (1) of the Bill is a standard provision which has been incorporated in almost all nationalised legislations starting from the Banking Companies (Acquisition and Transfer of Undertakings)

Act, 1969 (Act 22 of 1969). In the case of H.L. Trehan *versus* Union of India (AIR 1989 SC 568) similar provision contained in section 11 (2) of the Caltex [Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex (India) Limited] Act, 1977 (17 of 1977) was challenged before the Supreme Court *inter alia* as violative of articles 14, 19 and 31 of the Constitution. It was contended that the power given to the Central Government or to the Government company in which the right, title and interest of Caltex (India) in relation to its undertakings in India were transferred and vested under section 5 of that Act was an unguided and arbitrary power and would, therefore, be violative of article 14, Repelling the said contention the Supreme Court held:

“11. One of the contentions that was urged by the respondents Nos. 1 to 4 before the High Court at the hearing of the writ petition, as noticed above, is that unguided and arbitrary power have been vested in the official by sub-section (1) of section 11 for the alteration of the terms and conditions of the service of the employees. It has been observed by the High Court that although the terms and conditions of service could be altered by the Caltex Oil Refining (India) Limited, a Government company, but such alteration has to be made “duly” as provided in sub-section (2) of section 11. The High Court has placed reliance upon the ordinary dictionary meaning of the word “duly” which, according to the Concise Oxford Dictionary, means “rightly, properly, fitly” and according to Stroud’s Judicial Dictionary, Fourth Edition, the word “duly” means “done in the due course and according to law”. In our opinion, the word “duly” is very significant and excludes any arbitrary exercise of power under section 11 (2).”

10. The Ministry of Law pointed out that in view of the above, there is no scope for any apprehension that the interest of the employees of the erstwhile Neyveli Lignite Corporation Limited will be adversely affected by the provisions of clause 10(1) of the Bill even after their absorption in the Powergrid Corporation of India.

11. Having considered the clarifications/explanations given in the preceding paragraphs, the Committee approve the Neyveli Lignite Corporation Limited (Acquisition and Transfer of Power Transmission System) Bill, 1994 without any recommendation for amendment.

NEW DELHI;
21 July, 1994

JASWANT SINGH,
Chairman,
Standing Committee on Energy

30 Asadha, 1916 (Saka)

APPENDIX - I

Minutes of the Fourth Sitting of the Standing Committee on Energy held on Thursday, the 7th July, 1994.

THE COMMITTEE SAT FROM 15.00 hrs. TO 17.00 hrs.

PRESENT

Shri Shiv Charan Mathur – *In the Chair*

MEMBERS

2. Shri Motilal Singh
3. Shri Khelan Ram Jangde
4. Shri Dalbir Singh
5. Shri Virender Singh
6. Shri Arjun Singh Yadav
7. Shri Laxminarain Tripathi
8. Shri Shankersinh Vaghela
9. Shri Kesbari Lal
10. Shri Haradhan Roy
11. Shri Parmeshwar Kumar Agarwalla
12. Shri Dipankar Mukherjee
13. Shri Matang Singh
14. Dr. Naunihal Singh
15. Smt. Kamla Sinha

SECRETARIAT

1. Shri G.R. Juneja – *Deputy Secretary*
2. Shri A.L. Martin — *Under Secretary*

WITNESSES

1. Shri R. Vasudevan, Secretary (Power).
2. Shri P. Abraham, Special Secretary (Power).
3. Shri A.H. Jung, Joint Secretary.
4. Shri S.K. Lall, Secretary, Ministry of Coal.
5. Shri S. Bandopadhyay, Joint Secretary, Ministry of Coal.
6. Shri K. Kosal Ram, Joint Secretary & Financial Adviser, Ministry of Coal.

7. Shri R.K.. Narayan, Chairman and Managing Director, Power Grid Corporation.
8. Shri Amulya Charan, General Manager, P.G.C.
9. Shri Y.P. Gambhir, Chairman, C.E.A.
10. Shri H.C. Mittal, Member (PS), C.E.A.
11. Shri S.P. Verma, Chairman & Managing Director, Neyveli Lignite Corporation Ltd.
12. Shri S.R. Sengupta, Director (Planning & Projects), Neyveli Lignite Corporation Ltd.
13. Shri V. Rajmani, Director (Finance), Neyveli Lignite Corporation Ltd.

2. In the absence of Chairman, the Committee chose Shri Shiv Charan Mathur to act as Chairman for the sitting under Rule 258(3) of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. At the outset, the representatives of Power Grid Corporation India Ltd. made a presentation regarding transmission network transferred from NLC to POWERGRID. Thereafter, explaining the background for establishing a separate public sector undertaking for looking after the transmission network held under different Central generating Companies, the Secretary, Ministry of Power stated that the basic reason was to strengthen the specialised effort that needs to go into an interconnected High Voltage Transmission System. He also explained the need for enacting Neyveli Lignite Corpn. Ltd. (Acquisition and Transfer of Power Transmission System) Bill, 1994. He pointed out that the Committee's endorsement of the proposed legislation would act as a shot in the arm and enable the Powergrid Corporation to effectively play its role towards the empowerment of the economy.

4. Later, the members sought clarification on various points such as the legal position on the questions of giving retrospective effect to the Act, the time lag in bringing forth the Bill, the reasons for gap between the dates of *de-jure* and *de-facto* transfer, concurrence of the NLC shareholders to the transfer of assets and deletion of 3½ lines in Sub-Section (1) of Section 10 which reads as follows : "If there had been no such vesting and shall continue to do so unless and until their employment under the Corporation is duly terminated or until their remuneration and other conditions of service are duly altered by the Corporation." The witnesses clarified/explained their position on various points and assured to furnish written replies on certain points on which doubts still persisted.

The Committee then adjourned

APPENDIX - II

Minutes of the Fifth Sitting of the Standing Committee on Energy held on 8th July, 1994

THE COMMITTEE SAT FROM 11.00 HRS. TO 12.15 HRS.

PRESENT

Shri Shiv Charan Mathur – *In the Chair*

MEMBERS

2. Shri Motilal Singh
3. Shri Khelan Ram Jangde
4. Shri P.C. Chacko
5. Shri Virender Singh
6. Shri Arjun Singh Yadav
7. Shri Laxminarain Tripathi
8. Shri Ram Tahal Chowdhary
9. Shri Keshari Lal
10. Shri Haradhan Roy
11. Shri Anil Basu
12. Dr. Venkateswara D. Rao
13. Shri Parmeshwar Kumar Agarwalla
14. Shri M.M. Hashim
15. Smt. Kamla Sinha

SECRETARIAT

1. Shri G.R. Juneja – *Deputy Secretary*
2. Shri A.L. Martin – *Under Secretary*

2. In the absence of Chairman, the Committee chose Shri Shiv Charan Mathur to act as Chairman for the sitting under Rule 258(3) of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. Thereafter, the Committee took up the Neyveli Lignite Corporation Ltd. (Acquisition and Transfer of Power Transmission System) Bill, 1994 for consideration.

4. The Ministry of Power had finished written replies on certain points on which members had raised apprehensions. The Committee considered the replies

and dwelt at length particularly on the meaning and purpose of the last 3½ lines of clause 10(1) of the said Bill. The Committee noted the clarification furnished by the Ministry of Law which stated that though the provision envisages termination of employment under the Corporation or alteration of the terms and conditions of service and remuneration by the Corporation, such termination or alteration can be effected only in accordance with the law governing such termination or alteration. This is ensured by the use of the word “duly” before the words “terminated” and “altered” in clause 10(1).

5. Clause 10(1) of the Bill is a standard provision which has been incorporated in almost all nationalised legislations starting from the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969 (Act 22 of 1969). In the case of H.L. Trehan versus Union of India (AIR 1989 SC 568) similar provision contained in section 11(2) of the Caltex [Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex (India) Limited] Act, 1977 (17 of 1977) was challenged before the Supreme Court as violative of articles 14, 19 and 31 of the Constitution. Repelling the said contention the Supreme Court held *inter-alia*, that “In our opinion, the word ‘duly’ is very significant and excludes any arbitrary exercise of power under section 11(2).

6. The Committee also noted the clarification of the Ministry of Power that it is legally permissible to *ante-date* the *de-jure* transfer of assets.

7. Satisfied with the explanation provided by the Ministry of Law and by the Ministry of Power on various points, the Committee approved the Bill without any amendment and authorised the Chairman to finalise the report incorporating the clarifications provided by the Ministry and present the same to Parliament.

The Committee then adjourned.