

Delhi Electricity Regulatory Commission
Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 17

Petition No. 04/2005

In the matter of: Petition for Disallowing Cable TV Operators & MTNL from using NDPL Poles Unauthorisedly and for paying usage charges per pole basis, wherever Authorised.

AND

In the matter of:

North Delhi Power Ltd.
Through: its **Managing Director**
Sub-Station Building,
Hudson Lines, Kingsway Camp,
Delhi-110009.

.....**Petitioner**

VERSUS

M.T.N.L.
Jeevan Bharti Bldg. Tower -1,
12th Floor, 124 Connaught Circus,
New Delhi-110001.

....Respondent No. 1.

Zee Telefilms Limited
Corporate Office
Chintamani Plaza,
Adheri Kurla Road, Andheri (E),
Mumbai-400099.

.....Respondent No. 2.

Zee Telefilms Limited
Regional Office,
AJ-27, South Extension Part -I,
New Delhi-110049

.....Respondent No. 3.

Siticable Network Limited
B-10, Essel House,
Industrial Area,
Lawrence Road,
New Delhi-110035.

...Respondent No. 4.

WIN Cable & Datacom Pvt. Ltd.
AB-12, Safdarjung Enclave,
New Delhi-110029.

....Respondent No. 5.

BSES Rajdhani power Ltd.
Through its. CEO
BSES Bhawan, Nehru Place,
New Delhi-110019.

.....Respondent No. 6.

BSES Yamuna Power Ltd.
Through its: CEO
Shakti Kiran Building,
Karkardooma,
Delhi-110092.

.....Respondent No. 7.

Coram:

Sh. K. Venugopal, Member & Sh. R. Krishnamoorthy, Member.

Appearance:-

1. Mr. Amit Bhatia, ZEE Tele Film Ltd.
2. Mr. I.M. Singh, Dy. Company Secretary, NDPL.
3. Mr. Ajay Kalsie, Manager, Legal, NDPL.
4. Mr. Pankaj Kumar, HOD (Commercial).
5. Mr. Piyush Goyal, HOG (Corporate).
6. Mr. Vibhu Srivastav, Advocate, Win Cable.
7. Capt. I.P.S. Bajaj, Mgr. (Admn.) Win Cable.
8. Mr. R.C. Mehta, BSES.
9. Mr. Vikram Dogra, Advocate for MTNL.
10. Mr. V. Suresh Kumar, Sr. Manager.
11. Mr. Anil Goel, Advocate for R. 2, 3 & 4.

ORDER

(Date of Order : 06.10.2006)

1. The North Delhi Power Ltd., one of the Distribution Companies of Delhi, (hereinafter referred as 'Petitioner'), has brought a brief petition before this Commission stating that the electricity poles owned by the Petitioner are being unauthorisedly used by the cable operators for laying cable TV wires and taking them up to the consumer's premises without any permission from the Licensee. It is added that the safety norms of clearance from the live wires have not been adopted and that the wires/boxes and other fittings are hanging from the utility poles without credence to safety and operating needs of the Licensee.

2. It has been submitted that the cable operators have been illegally, arbitrarily and unauthorisedly using the electricity poles including the High Tension (HT) poles and the Central Verge owned by the Licensee for laying their cable TV wires. It is stated that the usage of HT Poles and Central Verge by Cable operators is in contravention of Rules 86 and 87 of Indian Electricity Rules, 1956.

3. The Petitioner has relied upon the Order of the Hon'ble High Court of Delhi dated 16.10.1996 in Writ Petition (Civil) No. 2107/95 titled as R. C. Dubey versus Cable TV matters. While relying on the said Order, the Petitioner has submitted that the HT Poles shall not be used for laying the cable lines and further the use of Central Verge by cable operators, even for a limited purpose of crossing from one colony to another colony, was not permissible.

4. It is stated by the Licensee that the HT poles and poles on Central Verge are being illegally used by the cable operators and it poses a serious and constant security hazard which may lead to serious accidents due to short

circuiting etc. It is also added that the manner in which the cable operators are misusing the utility's assets, they are causing severe impediments in the maintenance of the lines and the cables of the Utility.

5. While submitting their petition before this Commission, the Licensee has urged that the Commission should intervene in this matter and give direction so that the cable operators reorganise their network and that safety is not compromised. The Licensee has relied upon an erstwhile DVB circular and the subsequent upholding of the same by the Hon'ble High Court that all cable operators were required to pay an amount of Rs. 500/- per year (in the year 1995) per pole for using these poles with an escalation of 10% per annum. In view of the observation of the Hon'ble High Court, the Licensee prays that the cable operators be directed to submit with the Licensee, a sum of Rs. 1,179/- per pole per annum for using the LT poles for laying the cables as per the erstwhile DVB order.

6. It is also stated by the Licensee that the Cable Association had filed a Writ Petition in the High Court of Delhi No. 4731 of 1996, titled Cable Network Association Versus Govt. of NCTD/MCD challenging the said DVB Policy for charging the cable operators. The Hon'ble Court had dismissed the petition stating that it found nothing that was unfair in the scheme. Further, the Hon'ble High Court was also of the view that the sum of Rs. 500/- per pole per annum could not be said to be exorbitant and arbitrary.

7. The Licensee has also quoted that in the cities in the United States – like Seattle etc., the Municipal Electric Utility has been charging @ US \$7 per pole per month from such cable operators. It is added that the Utilities in Andhra Pradesh and Tamil Nadu have been charging from M/s. BG Broad Band Network India Pvt. Ltd. for usage of poles for Optical Fibre Cables.

8. The Commission while dealing with this petition, observed that since the matter involves common interest, the other three Licensees namely BSES Rajdhani Power Ltd. and BSES Yamuna Power Ltd. and NDMC may also be impleaded as necessary parties in this case. The Commission conducted a technical session with the Licensees and the issues raised by the NDPL in this petition were discussed.

9. During the technical session, the representative of the NDMC stated that most of the electricity network laid down in the NDMC area is underground and

wherever the cable operators are using street lighting poles, the NDMC has been removing such cables. It is submitted by the NDMC that they have a separate department which takes care of removal of such lines from the street light poles.

10. The Officers of the BSES Rajdhani Power Ltd. and BSES Yamuna Power Ltd. had submitted that the method to charge TV operators for using of distribution poles was started at the initiative of the erstwhile DVB. Due to the unorganised and unregulated market of cable operators, it was not only difficult to control/regulate the use of electricity poles by the cable operators, but also it was totally impractical to collect and calculate revenue generated from this small sector. It was the opinion of the BSES that the amount of revenue to be collected from the cable operators was not substantial enough to undertake the exercise. It was, however, emphasised by the representatives of the BSES that safety was their primary concern, as well.

11. The Representative of the BSES added that the Licensee had full authority to remove any encroachment upon the distribution assets, and as such even today nothing bars the Licensee from removing the cables which were being placed on electricity poles. An example has been quoted from Nainital in Uttranchal, where in consonance with the District Administration, the cables were removed from the electricity poles and that there was no protest from the cable operators. However, it was admitted by BSES that such an exercise was also resource consuming.

12. The BSES was of the opinion that instead of going into the merits of the case, they would presently like to concentrate on their primary business i.e., electricity distribution. As and when the market forces mature, the operators of cable TV networks could be asked to pay charges for the use of electricity poles. However, it was also submitted that if the Commission issued any directions on this subject, the BSES would issue a public notice to remove the cables from their electricity poles. However, it was added that such steps might invite law and order problems in certain areas.

13. After the matter was discussed in the technical session, the Licensees were directed to serve a copy of the petition to the various cable operators including MTNL. In pursuance to the said technical session, notices were served to the cable operators and other necessary parties.

14. The Commission has carefully gone through the provisions of the Rules 86 and 87 of the Indian Electricity Rules, 1956, which are reproduced as under :-

86. Conditions to apply where telecommunication lines and power lines are carried on same supports.

(1) Every overhead telecommunication line erected on supports carrying a power line shall consist of conductors each having a breaking strength of not less than 270kg.

(2) Every telephone used on a telecommunication line erected on supports carrying a power line shall be suitably guarded against lightening and shall be protected by cut-outs.

(3) Where a telecommunication line is erected on supports carrying a high or extra-high voltage power line arrangement shall be made to safeguard any person using the telephone against injury resulting from contact, leakage or induction between such power and telecommunication lines.

87. Lines crossing or approaching each other.

(1) Where an overhead line crosses or is in proximity to any telecommunication line, whoever lays his line later, shall arrange to provide for protective devices or guarding arrangements, in a manner laid down in the Code of Practice or the guidelines prepared by the Power and Telecommunication Coordination Committee and subject to the provisions of the following sub-rules:-

(2) When it is intended to erect a telecommunication line or an overhead line which will cross or be in proximity to an overhead line or a telecommunication line, as the case may be, the person proposing to erect such line shall give one month's notice of his intention so to do alongwith the relevant details of protection and drawings to the owner of the existing line.

¹[(3) Where an overhead line crosses or is in proximity to another overhead line, guarding arrangements shall be provided so as to guard against the possibility of their coming into contact with each other.

Where an overhead line crosses another overhead line, clearances shall be as under:-

²[Minimum clearances in metres between lines crossing each other.

Sl. No.	Nominal System Voltage	11-66 KV	110-132 KV	220 KV	400 KV	800 KV
1.	Low & Medium	2.44	3.05	4.58	5.49	7.94
2.	11-66KV	2.44	3.05	4.58	5.49	7.94
3.	110-132 KV	3.05	3.05	4.58	5.49	7.94
4.	220 KV	4.58	4.58	4.58	5.49	7.94
5.	400 KV	5.49	5.49	5.49	5.49	7.94
6.	800 KV	7.94	7.94	7.94	7.94	7.94

Provided that no guardings are required when an extra high voltage line crosses over another extra-high voltage, high voltage, medium or low voltage line or a road or a tram subject to the condition that adequate clearances are provided between the lowest conductor of the extra-high voltage line and the top most conductor of the overhead line crossing underneath the extra-high voltage line and the clearances as stipulated in rule 77 from the topmost surface of the road is maintained.]

(4) A person erecting or proposing to erect a line which may cross or be in proximity with an existing line, may normally provide guarding arrangements on his own line or require the owner of the other overhead line to provide guarding arrangements as referred to in sub-rule (3).

(5) In all cases referred to in the preceding sub-rules the expenses of providing the guarding arrangements or protective devices shall be borne by the person whose line was last erected.

(6) Where two lines cross, the crossing shall be made as nearly at right angles as the nature of the case admits and as near the support of the line as practicable, and the support of the lower line shall not be erected below the upper line.

(7) The guarding arrangements shall ordinarily be carried out by the owner of the supports on which it is made and he shall be responsible for its efficient maintenance.

All work required to be done by or under this rule shall be carried out to the satisfaction of the Inspector.

15. Further, the Commission's attention has been drawn to an Order of the Hon'ble High Court of Delhi in Writ Petition (Civil) No. 4731 of 1996, wherein the petition challenged the scheme relating to use of electricity poles for supporting cable TV network. The contention was that there is no statutory provision authorising (erstwhile) DESU to formulate any policy/scheme to lease out its poles for cable TV network and that the Rules 86 and 87 of the Indian Electricity Rules, 1956, do not vest such powers to the DESU to approve such a scheme. The Hon'ble High Court in this matter observed that:

“We find no statutory bar in the Indian Electricity Act and the Rules, thereunder, prohibiting DESU for leasing out its poles for supporting cable TV network. Rules 86 and 87 show that electricity poles can be used for placing on them telecommunication lines. Section 44 of the Indian Electricity Act, 1910 pressed into service by learned counsel for the

petitioner in support of the contention that it rather contains prohibition for use of such poles has no applicability. No connecting work as envisaged in the Act is involved in the leasing out of the poles and therefore, Section 44(b) is not relevant for the present purpose". The Hon'ble Court further upheld that "...it is not for this court to lay down as to what amount should be charged for leasing out of the poles. The sum of Rs.500/- per pole cannot be said to be exorbitant and thereby arbitrary. The scheme also takes into account the safety aspects involved in the matter..."

"...We only refer to the decision of the Supreme Court in the case of Sher Singh Versus Union of India and others J.T. 1995(8) Supreme Court 323 on the aspect of interference by the Court in the matter of Policy/scheme. The Supreme Court had held that as a matter of fact the Courts would be slow in interfering the matter of the Governemnt Policy except where there is shown that the decision is unfair, malafide or contrary to any statutory direction. There will be no justification for the court to interfere with the policy of the Government merely on the ground of change in policy ..."

16. The attention of the Commission is also drawn to the Order dated 16.10.1996 of the same High Court in RC Dubey and other Cable TV matters in Civil Writ Petition No. 2107/95. The Hon'ble High Court had held that in case High Tension poles are being used by the Cable Operators, the cables shall be removed forthwith. As far as the Central Verge were concerned, even if it is was being used for a limited purpose of crossing from one colony to another colony, same was not permissible under Rules. The Court gave instruction to remove all such TV cables from Central Verge.

17. The Commission has also gone through the Orders of the Maharashtra Electricity Regulatory Commission (MERC) in case No. 42 of 2005 wherein an application of Sh. B.M. Kanitkar regarding use of electricity distribution system of MSEDCL for purpose other than the electricity under Section 51 of the Electricity Act, 2003 has been discussed. After hearing the parties the MERC held that:-

"allowing MSEDCL to use its poles for carrying the TV/Video cable network of cable operators would provide an opportunity to MSEDCL to earn additional revenue, which in turn, could result in reduction of the overall tariff that the consumers of MSEDCL have to pay. However, the Commission observes that it is a major safety hazard to allow such use. The Commission also observes that MSEDCL's consumers may have to

face power disruptions and outages if use of poles is allowed for supporting the cables that carry TV/Video signals from cable TV operating companies. Weighing the pros and cons of allowing the use of MSEDCL poles for use of cable operators, the Commission has come to the conclusion that it would not be in the interest of the consumers of MSEDCL to allow the use of MSEDCL poles for supporting the cable TV/Video network of cable operators. The Commission, therefore, cannot allow MSEDCL to use its poles for carrying/supporting the cable TV/Video network of the cable operators.

Since MSEDCL by its own admission has said that its poles are being used by cable operators for running cable TV/Video networks at various places, the Commission, hereby directs MSEDCL to remove all encroachments on its poles from the cable operators immediately and avoid any untoward incidents due to it."

18. During the course of hearing, the BSES Rajdhani Power Ltd. and BSES Yamuna Power Ltd. have stated it is not mandatory on the part of the Licensee to provide right of use of its assets by the Cable TV operators/MTNL; rather it is the Licensee's prerogative to use its assets optimally without approval by this Commission. The Licensees have also maintained that the use of HT Poles for laying telecommunication network is in contravention of the Indian Electricity Rules 1956.

19. Section 53 of the Electricity Act, 2003, inter-alia requires the Central Authority to make Regulations with consultation of the State Government regarding protecting the public from dangers arising from generation, transmission or distribution or trading of electricity or use of electricity supplied/installation/maintaining or use of any electric line or electric plant. The said Section also provides for the action to be taken in relation to any electric line or electric plant or any electric appliance under the control of the consumer for the purpose of eliminating or reducing a risk of personal injury or damage of property or interference with its use.

20. The Licensees have also maintained that any claim of the Licensee arising from any losses incurred to its network and or any third party liability resulting from the use of Licensee's infrastructure by the Cable Operator, shall be on the account of such cable TV operators. It is further stated that the laying of the cable by the cable TV operator may result in excess load on the pole, thus

resulting in a serious accident. It was also highlighted that Rule 86 of the Indian Electricity Rules 1956, provides that the electric poles should have a breaking strength of 270 kg. for common lines on power line support. The Licensee further states that even if the use of poles by cable TV operators are authorised, it would be difficult to enforce any such regulations, considering the large number of local cable network operators in densely populated areas of the city.

21. After considering all the aspect of this petition including the opinion and the issues raised by the Licensees, it was observed that the cable operators have made a very lukewarm participation in the entire proceedings. However, the Commission has examined the issue in absence of such active participation.

22. The Electricity Act 2003, which is now in vogue, does not expressly prohibit the use of electricity poles for laying the telecommunication lines. In fact, there is no explicit provision under the Electricity Act 2003, which deals with such use. The Electricity Act 2003, saves under Section 185(2)(c), the Indian Electricity Rules, 1956, (since repealed) till such time the Rules are made by the Central Authority (Central Electricity Authority) under Section 53 of the Electricity Act, 2003.

23. By reading of these provisions of the Act, it makes amply clear that this Commission is not vested with jurisdiction to make any Regulations which would cover the aspects of determining technical standards of the laying of electricity poles, HT Poles and Central Verge or wiring thereon, which shall otherwise be the prerogative of the Central Electricity Authority.

24. Under Section 185(2)(c) of the Electricity Act, 2003, the Indian Electricity Rules, 1956, have been saved as on date and the Rules 86 and 87 are still the guiding principle for this Commission for the issues in hand. Rule 86 and 87 provides certain conditions for safety standards to be observed while laying telecommunication cables/wires on the electricity poles. The Commission is of the view that these Rules be observed in letter and spirit till such time new set of Rules are made by the CEA, and the Licensee is to take appropriate action accordingly.

25. The Commission feels that the aforesaid Rules do not expressly prohibit the use of the electricity poles for placing the telecommunication line as also been observed by the Hon'ble High Court in WP(C) 4731/96. However, the Hon'ble Court in R.C. Dubey matter has also observed that the Central Verge pole will

not be used for the purpose of laying the cable TV network. In view of this, the Licensees are directed to take immediate action to remove all cable network from such Central Verge Poles.

26. Under the Transfer Scheme Rules, 2001, all the electricity poles etc. have been transferred to the Distribution Licensees and the Delhi Transco Ltd. as their assets. Section 51 of the Electricity Act, 2003 provides that the Licensees have the mandate to optimally utilise their assets. The Licensees can utilise their assets for other business as well subject to the Regulations framed by the Commission. However, Section 51 provides that revenues from other business of the Licensee can be utilised for reducing the charges for wheeling of electricity. The said provision empowers the Licensee, in unambiguous terms, to use the assets subject to the provisions of law. Therefore, the Commission is of the firm opinion that the Licensees are at liberty to use their assets including the electricity poles for other business like cable TV network.

27. The Commission though seized of the Order issued by the Maharashtra Electricity Regulatory Commission still holds the opinion that subject to safety standards imposed by the Indian Electricity Rules and the Order of the Hon'ble High Court, the Licensees are within their rights to use their assets for other businesses for earning additional revenues subject to Regulations framed by the Commission.

28. The Commission has framed the Regulations under Section 51 read with Section 181 of Electricity Act 2003, by the name of the Delhi Electricity Regulatory Commission (Treatment of income from other business of Transmission Licensee and Distribution Licensee) Regulations 2005, which provides the manner in which the income from the other business of the Licensee can be treated to reduce wheeling charges. The Commission is of the opinion that the Licensees have their right of choosing the optimal utilisation of such assets subject to the provisions of the Electricity Act 2003, Rules framed there under, Policy Directions and the Regulations framed by the Commission. The Licensees have expressed their concern about the manner in which such revenue is to be calculated and the method of regulating the small operators in densely populated areas in the city. The Commission is of the opinion that though this would require a painstaking effort reorganise the cable TV operators, rights lie with the Licensee to enter into independent agreement with such cable operators and they can lease their assets subject to the provisions of the safety norms under Electricity Rules 1956 or such Regulations prepared by CEA under

Section 53 of Electricity Act, 2003 and Commission's Regulations on Treatment of Income from Other Business.

29. The Commission is therefore, of the opinion that the poles other than the Central Verge and the HT Poles can be used for laying the cable TV network and such usage can be done by way of an agreement between the cable operator and the Licensee. Any revenue generated thereto shall be subject to the Regulations made by the Commission on the Treatment of Income from Other Business.

30. The Commission while dealing with this matter is also aware that the Central Electricity Authority is under process of framing the safety Regulations under Section 53 of the Act in consultation with the State Governments. The Distribution Licensee may refer their case to the Central Electricity Authority regarding the safety related issues of leasing electricity poles to the Cable TV operators etc. and if the Central Authority deems it appropriate, it may incorporate the same in the Regulations.

31. In view of the above, the petition is disposed of and ordered accordingly.

Sd/-
(K. Venugopal)
MEMBER

Sd/-
(R. Krishnamoorthy)
MEMBER