

**DELHI ELECTRICITY REGULATORY COMMISSION**  
**Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi –110017**

F.11(352)/DERC/2007-08/

**In the matter of:**

**Petition No.- 33/2008**

1. United Electricals Engineering Company,  
L-10, Masjid Khalilulah,  
Batla House, Okhla,  
New Delhi.

**Petition No.- 34/2008**

2. Vishwakarma Electrical Regd.  
2, Meethapur Extn.,  
Near Molar Band School Road,  
Badarpur,  
New Delhi-44.

**Petition No.- 37/2008**

3. M/s Radha Ballabh Electricals  
Ekta Vihar, Meethapur,  
Badarpur, New Delhi-44.

**Petition No.- 38/2008**

4. Sanjay Kumar Singhal  
G Block, Molar Band,  
Badarpur, New Delhi-44.

**Petition No.- 39/2008**

5. Dev Raj  
B-Block, Ekta Vihar,  
Jaitpur, Badarpur,  
New Delhi -44.

**Petition No.- 40/2008**

6. M/s Hindustan Electrical Services  
Main Nafiz Road,  
Batla House,  
Near Masjid Alnoor,  
New Delhi-25.

**Petition No.- 41/2008**

7. Mohan Baba Electric Suppliers,  
H.No. F-33 A, Harsh Vihar,  
Hari Nagar, Extn. 3,  
Badarpur, New Delhi-44.

**Petition No.- 42/2008**

8. Anil Kumar Singhal  
Mohan Baba Nagar,  
Badarpur, New Delhi-44.

**Petition No.- 43/2008**

9. Bharat Electricals Engineering Company  
O -3, Batla House, Jamia Nagar,  
New Delhi-25.

**Petition No.- 44/2008**

10. Manoj Kr. Saha  
J -167 A, Arpan Vihar,  
Jaitpur Extn., Badarpur,  
New Delhi-44.

**Petition No.- 45/2008**

11. Pramod Kumar Singhal  
Sai Nagar,  
Lakhpur Colony, Pt.-II,  
Badarpur,  
New Delhi-44.

**Petition No.- 46/2008**

12. Anil Kumar & Anil Kr. Saxena,  
Sudarshan Park,  
Meethapur, Badarpur,  
New Delhi-44.

**Petition No.- 47/2008**

13. Om Prakash,  
IIT Nagar Welfare Association,  
2630 A, Punarvas Colony,  
Bakarwala,  
Delhi-41.

**Petition No.- 48/2008**

14. Shah Nawaz Ali  
M/s India Electrical Services,  
K-84/K-98,  
Abul Fazal Enclave,  
Okhla, New Delhi.

**Petition No.- 49/2008**

15. S Sultan Khan  
M/s India Electrical Services,  
K-84, Abul Fazal Enclave,  
Okhla, New Delhi.

**Petition No.- 50/2008**

16. Azaz Ali  
M/s India Electrical Services,  
K-84/K-98,  
Abul Fazal Enclave,  
Okhla, New Delhi.

**Petition No.- 51/2008**

17. Raj Electricals  
Sindhu Farm, Main Road,  
Near Durga Builder Gate,  
Meethapur Extn.  
Badarpur, New Delhi-44.

**...Petitioners**

**VERSUS**

BSES Rajdhani Power Ltd.  
Through its: **CEO**  
BSES Bhawan, Nehru Place  
New Delhi – 110019.

**...Respondent**

**Coram:**

**Sh. Berjinder Singh, Chairman & Sh. K. Venugopal, Member**

**Appearance:**

1. Ms. Gunita Pahwa, Advocate for Petitioners(17 SPD Contractors);
2. M/s. Vishkarma Electricals, SPD Contractor;
3. M/s. Raj Electricals, SPD Contractor;
4. Sh. Mansoor Ali Shoket, Advocate for BRPL;
5. Sh. Rahul, Advocate, for BRPL;
6. Sh. Pankaj Kumar, L.R., BRPL;
7. Sh. R. R. Panda, BM, BRPL;

**ORDER**

(Date of Hearing: 31.07.2008)

(Date of Order: 14.08.2008)

1. The Commission received 17 No. of Petitions from various SPD contractors seeking the appointment of sole arbitrators in terms of Section 158 of the Electricity Act, 2003 for adjudication of dispute between the Petitioners and the DISCOM. There is a common issue involved in all these Petitions, therefore, the Commission vide its Order dated 15.10.2007 ordered to hear these Petitions together.
2. The Petitioners are relying upon the agreements executed between the then DVB and the Petitioners for distribution of electricity in unelectrified areas and unauthorised colonies through single point delivery connection. These agreements were bi-partite agreements between the erstwhile DVB and the SPD Contractors. The SPD contractors were working as an agent of the DVB for the purpose of distribution of electricity in un-electrified

areas as well as unauthorised colonies. Subsequent to unbundling of the DVB in the year 2002, its successors i.e. the present DISCOMs continued with the same system. Now, the DISCOMs have served notices upon the contractors for termination of the agreement.

3. In terms of Annexure I of the additional terms and conditions of the contract, the disputes between the parties were to be settled by mutual discussions failing which it was required to be referred for sole Arbitration. The relevant clause 11 of the said agreements is reproduced herein below:-

***“Dispute and Arbitration:***

*Disputes under the agreement shall be settled by mutual discussion. Failing this the disputes will be referred to sole arbitration by the owner or his nominee as Sole Arbitrator. The agency shall have no objection if the nominee is an employee of DVB. The parties to the agreement shall continue to fulfil their obligations under the agreement during arbitration proceedings and no payment shall be withheld on this account unless it is a subject matter of the dispute.”*

4. The Petitioners have submitted that after executing the contract with the erstwhile DVB, they had laid down electrical network for distribution of electricity and incurred huge expenses for maintaining and upgrading the same. It was further submitted that they were solely authorised distributor of electricity within their area of operation as mentioned in their respective agreements. The Agreements were initially executed for a period of 7 years subject to renewal with the consent of both parties. The Petitioners further submitted that they had supplied electricity to the consumers falling within their area to the utmost satisfaction of the consumers. As per the Petitioners, the erstwhile DVB was desirous of getting done from the contractors the following:
  - a) DVB is desirous of getting the job of revenue realization from persons using electricity from its source in the designated unauthorized colonies or *Bastis* carried out through an Agency.
  - b) DVB is agreeable to make payment of Commission for the services thus rendered by the Agency.
5. It was submitted that the Petitioners have been regularly making payments to erstwhile DVB and its successors for the last so many years.

Therefore, the DISCOMs have no right to prematurely discontinue the arrangements as they are bound to honour the provisions of the respective agreements.

6. The DISCOMs submitted that the present applications are not maintainable under Section 158 of the Electricity Act, 2003. According to the relevant provisions of Section 158, the arbitrator can only be appointed when there is a matter by or under the Electricity Act, 2003 directed to be determined by arbitration. Further, it was submitted that the Hon'ble Commission is a creation of statute and its powers flow from statute. The powers which are not provided for in the statute cannot be exercised by the Hon'ble Commission. The present Section 158 of the Act does not confer the power upon the Commission to appoint the arbitrator to adjudicate the present Petition.
7. The DISCOMs have submitted that on receiving several complaints from the consumers of the said area regarding low voltage, flickering, fluctuation and over all poor quality of the supply of electric energy by the Petitioners, they have issued notice to the Petitioners for termination of their contract. They have also referred to a judgment of Hon'ble High Court of Delhi passed on 02.11.2007 in FAO (05) No. 250/2007 titled as Raj Electricals Vs. BRPL whereby one of the Petitions was dismissed having the same issues in question. The relevant para of the same is reproduced hereinbelow:

*"Suffice it to say that the claim made by the appellants that the agreements executed between them and the erstwhile DVB have a statutory flavour and may be interpreted to constitute licences in their favour under Part II of the Indian Electricity Act, 1910 has no juristic basis. A sanction order was necessary in view of the prohibition contained under Section 28 of the Act against any one engaging in the business of supplying energy to the public except with the previous sanction of the State Government and in accordance with such condition as the State Government may fix in that behalf. The grant of sanction by the Government to the Single Point Delivery System on the terms and conditions stipulated by the Government, therefore, did not constitute a licence in favour of the appellants. The relationship between the erstwhile DVB and the respondents who stepped into its shoes remained contractual in nature. This implied that the contract could be terminated by the Respondent company without any limitation on its powers to do so. It would also mean that the contract was a commercial contract in which the sub-contractor or the agent had undertaken an activity for a monetary consideration. If the termination was, for any reason, illegal,*

*unjustified and incompetent, the remedy of the appellants would lie by way of a claim for payment of damages as compensation for the loss, if any suffered by them."*

8. DISCOMs have further submitted that the agreement/contract was commercial in nature in which the sub-contractor or the Agent had undertaken an activity for monetary consideration. They have further submitted that termination of such a contract which is purely commercial, whether legal, unjustified or incompetent, the remedy would be by way of a claim for payment of damages as compensation for the loss, if any, suffered by the Petitioners.
9. The Respondent DISCOM was directed by the Commission vide order dated 07.04.2008 to file the written submissions. Accordingly, the DISCOM has filed written submissions in one of the Petitions Raj Electricals Vs. BRPL wherein, the Respondents have reiterated their stand that the present Petitions are not maintainable under Section 158 of the Electricity Act, 2003. They have submitted that the conjoint reading of Section 86 (1)(f) and 158 show that only those matters/disputes can be adjudicated upon and/or referred to the arbitration under Section 158 by this Hon'ble Commission which arise between the Licensee and the generating companies and in the present cases the Petitioners are neither the Licensee, nor the generating company. They have also referred to a recent judgment of the Hon'ble Supreme Court titled Gujrat Urja Vikas Nigam Ltd. Vs Essar Power Ltd. Wherein, the provisions of Section 11(5), and Section 11(6) of the Arbitration and Conciliation Act, 1996 have been elaborated and discussed in context with Section 86, 158, 173 and 174 of the Electricity Act, 2003 and it was held that:

*"Section 86 (1)(f) is a special provision and hence will override the general provision in Section 11 of the Arbitration and Conciliation Act, 1996 for arbitration of disputes between the licensee and generating companies. It is well settled that the special law overrides the general law. Hence, in our opinion, Section 11 of the Arbitration and Conciliation Act, 1996 has no application to the question who can adjudicate/arbitrate disputes between licensees and generating companies, and only Section 86 (1)(f) shall apply in such a situation."*

10. Parties were heard at length.
11. Ms. Gunita Pahwa, Advocate, appeared on behalf of the Petitioners and submitted that in terms of Section 185 (2) of the Electricity Act, 2003

certain provisions of the Indian Electricity Act, 1910 and rules made therein have been retained till the rules under Sections 67 to 69 of the Indian Electricity Act, 1910 are made and further, Electricity Rules, 1956 have also been retained till the Regulations under Section 53 of the Electricity Act, 2003 are made by the Central Electricity Authority (CEA). She further submitted that in terms of Section 2(17) "Distribution Licensee" means a Licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply. As per the Ld. Counsel, the Petitioners have installed their own system by installation of poles and other necessary installations for the purpose of the distribution of electricity hence, they are Licensees and are entitled to maintain the present application before this Commission. Ms. Pahwa also relied on the provisions of Section 19(3) of the Electricity Act, 2003, whereby the License cannot be revoked under sub-section (1) of Section 19 of the Electricity Act, 2003 unless the Commission has given to the Licensee not less than three months notice in writing stating the grounds on which it is proposed to revoke their license and has considered any cause shown by the Licensee within the period of that notice against the proposed revocation. In the present case, the agreement executed between the parties have been terminated by the Respondent and not by the Commission. She further submitted that in terms of Section 158 read with Section 86(1)(f) of the Electricity Act, 2003, the Commission is empowered to appoint/adjudicate upon the dispute.

12. Sh. Mansoor Ali Shoket, Advocate for BRPL, submitted that the present application is not at all maintainable before the Commission as the provisions of Section 158 cannot be read independently. It has to be read with the other provisions of the Act as the opening line of Section 158 reveal that where any matter is, by or under this Act, directed to be determined by the arbitrator the matter shall be determined by such person or persons as the appropriate Commission may nominate in that behalf on the application of either party. Meaning thereby, Section 158 derives its force from various other provisions of the Act wherever the Commission is empowered/directed to adjudicate upon the disputes and in the present cases the Petitioners are neither Licensees nor generating companies, therefore, are not entitled to invoke the provisions of Section 158. Sh. M. A. Shoket heavily relied upon the judgment passed by the Hon'ble Supreme Court in Gujrat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd.

13. The Commission on the last date of hearing had observed that the Petitioners have to satisfy this Commission on the issue of jurisdiction at the threshold.
14. The Commission is of the view that the present petitions moved by the SPD contractors are not maintainable before this Commission as they are neither the licensees under the Electricity Act, 2003 nor under the previous Electricity laws enforceable at the relevant time. They were assigned the business of distribution of electricity for certain areas by way of an agreement. This was a mutual commercial arrangement between the parties. The similar view has also been taken by the Hon'ble High Court of Delhi in the matter of Raj Electricals Vs. BRPL as referred above. The relevant paras of the same are reproduced herein below:

*"We have given our careful consideration to the submissions made at the bar and perused the record. It is common ground that no licenses, formal or otherwise, have been issued in favour of the appellants by any authority at any stage. Mr. Chauhan was unable to spell out how a licence could be assumed in their favour. All that was contended by him was that since the government had issued a sanction in terms of Section 28 of the Indian Electricity Act, 1910, the same must be construed to create a licence in favour of the appellants. We do not think so. The reasons are not far to seek. The term 'licensee' has been defined by Section 2(h) thus: "licensee" means any person licensed under Part II to supply energy. Part II of the Act inter alia envisages grant of licenses by the State Government on applications made in the prescribed format and on payment of the prescribed fee, if any, to any person for supplying energy in any specific area. Any such license can, in turn, be granted only after consulting the State Electricity Board. The procedure to be followed is set out in detail in the provision of the Section 3 of the Act appearing in Part II thereof. Sub section 3 (2) (f) of the Act inter alia provides that the provisions contained in the schedule to the Act shall be deemed to be incorporated with and to form part of every license granted under Part II save in so far as they are expressly added to varied or excepted by the license. The provision reads as under:*



*"The provisions contained in the Schedule shall be deemed to be incorporated with, and to form part of, every license granted under part ii, so far as not added to, varied or excepted by the license, and shall, subject to any such additions, variations or exceptions which the State Government is hereby empowered to make, apply to the undertaking authorised by the license.*

*Provided that where a license is granted in accordance with the provisions of clause IX of the Schedule for the supply of energy to other licensees for distribution by them, then in so far as such license relates to such supply, the provision of clauses IV, V, VI, VII, VIII and XII of the Schedule shall not be deemed to be incorporated with the license".*

*It is evident from the above that the provisions of the Schedule upon which great reliance was placed by Mr. Chauhan are deemed to be incorporated only and insofar as they are not expressly added to varied or excepted by the licenses. This is evident even from the Schedule, which has a rather long title that may be extracted for easy reference.*

*"PROVISIONS TO BE DEEMED TO BE INCORPORATED WITH, AND TO FORM PART OF, EVERY LICENSE GRANTED UNDER PART II, SO FAR AS NOT ADDED TO, VARIED OR EXCEPTED BY THE LICENSE".*

*A conjoint reading of Section 3(2)(6) & the schedule would leave no manner of doubt that a reference to the later would be permissible only in cases where the license has been issued by the State Government in terms of Section 3 of the Act. No such license has, admittedly, been issued to the appellants or any one of them in the case at hand. There is, therefore, no question of the terms, contained in the schedule, applying to any such license by incorporation."*

Further, under Section 158 of the Electricity Act, 2003, it is only the Licensee/Generating Companies who can approach this Commission for the appointment of the arbitrator and none else. Moreover, Section 86(1)(f) further clarifies that only the disputes between the Licensees and the generating companies can be referred for arbitration. The Petitioners

in the instant case are neither Licensees nor generating companies and nor the dispute is between a Licensee and a generating company. In the present cases there is a clear provision in the bipartite agreements between the Petitioners and the erstwhile DVB regarding reference of disputes to arbitration, which can be invoked by the Petitioners. Under this provision, an arbitrator is to be appointed by the owner i.e. DVB or its successors.

15. The Ld. Counsel failed to satisfy the Commission as under which provision of law the Commission can entertain the present petitions apart from Section 158 under which these cases do not fall.
16. In view of the above, the present Petitions are dismissed.
17. Ordered accordingly.

Sd/-  
(K. Venugopal)  
MEMBER

Sd/-  
(Berjinder Singh)  
CHAIRMAN