

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

Ref: F.12 (6)/DERC/2003-04/

In the matter of: Grant of Licence for Distribution and Retail Supply of Electricity.

AND

In the matter of:

1. M/s. Vishwakarma Electrical Services (Regd.),
Through: Sh. Mukesh Kumar Panchal,
2, Mithapur Extension,
Badarpur,
New Delhi-110 044.
 2. M/s. Raj Electricals (Regd.)
Through: Sh. Raj Kumar Thakur,
Sindhu Farm Road,
Near Durga Builder Gate,
Meethapur Extension, Badarpur,
New Delhi-110 044.
 3. M/s. Radha Ballabh Electricals
Through: Sh. Pramod Kumar,
103, Nehru Colony,
Badarpur,
New Delhi-110 044.
 4. M/s. Shri Ganesh Power Distributor,
Through: Sh. Sanjay Kumar Singhal,
H. No.103, Nehru Market,
Badarpur,
New Delhi-110 044.
 5. M/s. Sai Site Electrical Power-Supply Pvt. Limited.
Through: Shri Vinod Kumar
23, Tyag Raj Market,
New Delhi-110 003.
-Applicants

Coram:

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

Appearance:

1. Sh. Dev Raj Sharma, for Petitioner No. 1.
2. Sh. Raj Kumar, Petitioner No. 2.
3. Sh. Vikas Kumar, Representative on behalf of Petitioner No. 3 & 4.
4. Sh. Vinod Bangwal, Representative on behalf of Petitioner No. 5.
5. Sh. K. L. Gujnani, Consultant on behalf of Applicants.

ORDER

(Date of Hearing: 08.02.2007)

(Date of Order: 08.03.2007)

1. The above named five applicants have filed applications for grant of Distribution and Retail Supply License in their respective areas. The issues raised by the applicants are identical, therefore, their applications were heard together.
2. The area of supply mentioned in their respective applications is reproduced herein under:

S.No.	Name of the Applicant	Area of Supply
1.	M/s. Vishwakarma Electrical Services (Regd.)	Shakti Vihar, Om Nagar A,B,C,D,E Block, Gagan Vihar, Harsh Vihar, Harsh Vihar - F Block, Hari Nagar Part –II F Block, Hari Nagar – II, C,D,E,F Block, Hari Nagar Part –II A,B Block, Hari Nagar Extn.-I Block, Hari Nagar Extn. R-Block, Shakti Vihar –II, Hari Nagar Village, Senior Secondary School Molarband & Shashiwala in Badarpur Constituency, New Delhi-110044.
2.	M/s. Raj Electricals (Regd.)	Manbhari Kunj, Shivpuri, A-Block Meethapur extn., Sindhu Farm Road, Jaitpur Extn. E, F, G, H Block, Ekta Vihar A, B, C Block, Jaitpur Extn. B, C, D, I Block, Jaitpur Extn., A,J,K,L Block, Jaitpur Extn.-II A,B,C Block, Jaipur Extn. Part –II, Beyond D- Block, Hari Nagar Extn. N & O Block, Hari Nagar Extn., A,B,C,D,E, F Block, Hari Nagar Extn. H Block, Hari Nagar Extn. J,K,L, M Block & Jaitpur Village in Badarpur Constituency, New Delhi-110044,
3.	M/s. Radha Ballabh Electricals	Ekta Vihar, Lakhpat Colony Part –II, Sai Nagar, Sudarshan Park, Lakhpat Colony Part –I, Sri Colony, Meethapur Village, Meethapur Extn., Part –III & Harijan Basti in Badarpur Constituency, New Delhi-110044.
4.	M/s. Shree Ganesh Power Distributors	G Block 17 feet Road, 1 st 60 feet Road Molarband Extn.; D, D 1 Block Badarpur Extn., F-Block Mohan Baba Nagar, Budh Vihar, J.J. Cluster Prasad Nagar, Jaitpur Morh Tajpur Pahari, Budh Vihar, Badarpur Border; Molaband Extn. Areas fed from substation No. 1 to substation No. 8, Tajpur Pahari Street Light, Tajpur Parhari; Shamshan Ghat Molaband Extn, Subji Mandi Molaband Extn. & Tajpur Village in Badarpur Constituency, New Delhi.
5.	M/s. Sai Site Electrical Power Supply (P) Ltd.	Rural areas/unauthorised colonies/J.J. Cluster Madanpur Khadar Extn., situated in Badarpur Constituency, New Delhi-110044,

3. The issue before this Commission is the grant of a second Distribution and Retail Supply License in an area of supply already being serviced by the incumbent licensee. The applications of the above mentioned applicants were received under the provision of Section 14 of Electricity Act, 2003.

4. The 6th proviso of Section 14 of Electricity Act, 2003 lays down certain principles wherein two or more persons can be granted a license for Distribution of Electricity through their own distribution system within the same area of supply. The said proviso reads as under:

"Provided also that the Appropriate Commission shall grant license to two or more persons for distribution of electricity through their own distribution system within the same area, subject to the conditions that the applicant for the grant of license within the same area shall, without prejudice to the other conditions or requirements under this Act, comply with Additional Requirements (relating to the Capital Adequacy, Creditworthiness or Code of Conduct) as may be prescribed by the Central Government, and no such applicant who complies with all the requirements for grant of license, shall be refused grant of license on the ground that there already exists a licensee in the same area for the same purpose."

5. By virtue of the said provision, a notification of 23.03.2005 was issued, publishing the Rules called Distribution of Electricity License (Additional Requirements, Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005, wherein the Central Government prescribed, inter-alia, the requirement of the Capital Adequacy, Creditworthiness and Code of Conduct mandatory for the Second Distribution Licensee in the same area of supply.
6. The applicants were supplied with a copy of the said notification and were directed to submit their comments on various provisions of the aforementioned Rules. The applicants were heard on 12.12.2006 and again on 08.02.2007. They have again made a request for submitting their written submissions on the aforesaid Rules.
7. The applicants have given their submissions which are similar in nature. It is stated that as a Single Point Delivery Contractors they have executed an agreement with the erstwhile DVB with a clear understanding that the individual plot holders within their areas shall not be entitled to get any independent connection from DVB. This would mean that they had exclusive right to supply electricity in their area of supply. They have submitted that they were appointed as a Distribution Licensee as per Clause 5 of their Agreement.
8. It is also stated by the applicants that the agreement with the erstwhile DVB gave them a status of the First Licensee in the area of supply. The agreement was in terms of Section 28 read with Schedule IX of Indian Electricity Act, 1910, and also in accordance with Clause 49(d) of Electricity Supply Act, 1948. It is further stated that as per Section 28 of Electricity Act, 1910, as long as the applicant was contributing the minimum annual sum to DVB, the bulk licensee had no right to disconnect the supply. It is further added that under the provision of Section 28 of Indian Electricity Act, 1910, the State Government shall not give any license except with the consent of the licensee supplying electricity in the area of supply. It is, therefore, stated that granting of license to BSES Rajdhani Power Ltd., was incorrect to the extent that the consents of the applicants were not taken before the issue of the said license.
9. The applicants have been heard.
10. It has been observed that the averments made by the applicants are erroneous and misdirected. Their reliance on provisions of the agreement

executed by the applicants with the erstwhile DVB and Section 28 of the Indian Electricity Act, 1910, is devoid of any justification. A plain reading of the text of the agreement suggests that the agreement between the applicant and the erstwhile DVB was that of a 'Principal' and an 'Agent'. There is no indication in terms of the agreement that they had been given any status of a licensee. Section 28 of Indian Electricity Act, 1910, merely gives a provision for sanction required by a non-licensee in certain cases to distribute electricity to general public after the previous sanction of the Government. Such sanction is to be accorded in consultation with the State Electricity Board. By no means, the said agreement can be construed as a license for supply of electricity under the Indian Electricity Act, 1910. The status of the applicant under the agreement is that of an 'agent' rather than a licensee.

11. The Commission has also gone through the notification of 23.03.2005 issued by the Central Government called the Distribution of Electricity License (Additional Requirement of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005. The aforesaid Rules provide certain pre-conditions which are to be examined at the first instance. The explanation to Rule 3 of the said notification reads as follows:

"For the grant of license for Distribution of Electricity within the same area in terms of 6th proviso to Section 14 of the Act, the area falling within the Municipal Council of a Municipal Corporation as defined in the article 243(Q) of the Constitution of India or a revenue district shall be minimum area of supply."

12. The aforesaid provision lays the first requirement for any applicant to fulfil before any further steps can be taken for granting of the Second Distribution License in the same area of supply. The provision very categorically reads that the applicant has to cover a minimum area of supply which would consist of either a Municipal Council area, or area under Municipal Corporation as defined under Article 243(Q) of the Constitution of India, or an area which would constitute a Revenue District (emphasis laid).
13. The present applicants have shown in their applications that they are confined to supply of electricity, as an agency of erstwhile DVB, in very small pockets. These pockets are far short of any of the minimum area which has been prescribed under the aforementioned Electricity Rules of 2005. The intention of the above said Rule is to provide that the area of supply to be covered by the Second Distribution Licensee should be vast enough to cover the minimum area as aforesaid. However, while considering these applications, it is felt that the applicants do not fulfil the basic conditions laid down under these Rules. It is admitted by the applicants that they do not cover the entire area either under the Municipal Corporation or the Municipal Council or a Revenue District. In view of the situation, since the applicants are not able to fulfil the basic condition for application of Second Distribution Licensee, the Commission has not considered any further requirement regarding the Capital Adequacy, Creditworthiness and Code of Conduct or the technical aspects of these applications. The Commission feels that once the applicants are able to fulfil the threshold / basic conditions of covering at least an area of a Municipal Council or a Municipal Corporation or the Revenue District, their applications would be scrutinised on other aspects as well.
14. In view of the above, the present applications are dismissed. The applicant may, however, file fresh applications if they are able to fulfil the condition mentioned above and those prescribed under the Distribution

of Electricity License (Additional Requirement of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005.

15. Ordered accordingly.

Sd/-
(K. Venugopal)
MEMBER

Sd/-
(Berjinder Singh)
CHAIRMAN