

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

Petition No. 65/2004

Sh. Heera Lal Sharma
General Secretary, DES Workers Union,
RZ- 29, Roshan Mandi,
Najaf Garh, Delhi-43.

.....Petitioner

Sh B. K. Sharma,
General Secretary,
Generation Engineers & Supervisors Association,
J & K 85, Laxmi Nagar,
Delhi-92.

.....Petitioner

VERSUS

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

.... Respondent

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

.... Respondent

North Delhi Power Ltd.
Through : its CEO
Sub-Station Building, Hudson Lines,
Kingsway Camp, Delhi.

.....Respondent

Delhi Transco Ltd.
Through : its Chairman Cum Managing Director
Shakti Sadan, Kotla Road,
New Delhi – 110 002.

.....Respondent

Coram :

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

Appearance :

1. Sh. B.K. Sharma, Gen.Sec. GESA, IPGCL/PPCL.
2. Sh. Hira Lal Sharma, Gens. Secy. GESA.
3. Sh. Vidya Sagar
4. Sh. B.K. Bhardwaj, DSEW Union.
5. Sh. B. Biswal, AM, NDPL
6. Sh.Pankaj Kumar, HOD – Com., NDPL.
7. Sh. V. Singla, HOG (CCM), NDPL.
8. Sh. R.C. Mehta, BSES
9. Sh. M.P. Aggarwal, GM (Com.) DTL.
10. Sh. K.K. Verma, Mgr. (C&R)
11. Sh. A.C. Agrawal, Mgr. (L&B)

ORDER

(Date of Hearing : 27.7.2005)

(Date of Order : 18.4.2006)

1. The Petitioners have brought petitions having identical issues and therefore, are dealt in this common order.

2. The Petitioners have submitted in their petition that the Discoms have been charging "fixed charges" from the employees of the erstwhile Delhi Vidyut Board (DVB), with effect from July 2003. It is stated that the charging of "fixed charges" by the Discoms from the employees of DVB is contrary to the provisions of the Tripartite Agreement.

3. It is stated in the petitions that the workmen of erstwhile DVB were allowed electricity at a concession rate @10 paisa per unit in terms of agreement-dated 19.6.1969. The facility was extended to Class-I employees in addition to the employees of the erstwhile Delhi Electricity Supply Undertaking (DESU) vide an Order No. Admn/R/A&G/C-18/25 dated 28.05.1979. The aforesaid concession continued during the period of DVB as well. At the time when the DVB was privatised, there was a Tripartite Agreement between the Government of NCT of Delhi, the Delhi Vidyut Board and the Employees Unions. The Tripartite agreement was entered into to ensure that the terms and conditions of service of DVB employees are honoured by the successor entities.

4. The Petitioners have relied upon the clause 3 (f) of the Tripartite Agreement that states that " all benefits of the services rendered by the employees in the Board as on the date of restructuring, i.e., the effective date shall be protected and shall be given full effect."

5. The Petitioners have further relied upon clause 3 (j) of the Tripartite Agreement, which states, "*all existing agreements/ settlements and liabilities shall be honoured by the successor entities to the Board and the workmen represented by the recognised union and the association.*"

6. In view of the above two clauses, it is argued that the Discoms have violated the provisions of Tripartite Agreement which till this date is binding upon the Licensees. The Petitioners, therefore, pray for withdrawal of the "fixed charges" levied on the employees of the erstwhile DVB.

7. In a common affidavit submitted by the BSES Rajdhani power Ltd. and the BSES Yamuna Power Ltd., it is stated that the erstwhile DVB employees were eligible for obtaining electricity at a concessional rate in terms of the Office

Order dated 28.5.1979. The Licensees are bound to abide by such Order in accordance with the Tripartite Agreement. It is added that the aforementioned order has a provision for concessional charges for erstwhile DVB employees with respect to energy charges, meter rent and minimum charges. The fixed charges on all consumers including erstwhile DVB employees are charged as per the Tariff Order of the Commission. It is, therefore, submitted that the Licensee has not violated any terms and conditions of the Tripartite Agreement or the Tariff Order of the Commission.

8. The North Delhi Power Ltd. (NDPL), in its reply to the petition has submitted that NDPL has levied the fixed charges as per the provision contained in the Tariff Orders of the Commission. It is added that the Commission has not mentioned any scheme for waiver of fixed charges for the employees of the erstwhile DVB staff in the Tariff Order. It is further submitted that the fixed charges as part of the Tariff is levied so as to cover the fixed cost of the DISCOMS and that these charges are directly proportional to the Sanctioned Load. The DISCOMS need to establish and maintain infrastructure and network corresponding to the Sanctioned Load of the consumers to ensure uninterrupted power supply.

9. NDPL has further submitted that they are continuing to give the DVB staff concession for the energy charges as per the Tripartite Agreement. It has also suggested that the staff concessions on Electricity Tariff available to DVB employees be "monetised". i.e. an amount be determined in lieu of the benefit and such an amount be paid along with monthly salary/pension to the employees. It is suggested that similar steps have been undertaken by the State of Uttranchal.

10. The parties appearing before the Commission have been heard.

11. The documents placed before the Commission, which includes the Tripartite Agreement and the Transfer Scheme, clearly indicate that the terms and conditions of the services of the erstwhile employees will be guaranteed to continue and any modification will be mutually negotiated. This issue is not contested by the parties.

12. The fact that the erstwhile DVB employees were getting concessional tariff @ 12 paisa per unit with a ceiling of 200 units, 150 units or 100 units per month depending upon the pay scale of the employees is also not contested. Further, it is also an established fact that at the time of DVB, there were no fixed charges but there were minimum charge and meter rent, which were subsequently abolished by the Tariff Order of the Commission. It is also established from the

records that the DVB employees were paying minimum charges @ Rs 3 per Kw per month for load less than 5 Kw and Rs 6 per Kw per month for a load more than 5Kw.

13. The documents placed before the Commission have been examined and it is brought out by the Respondents that although there are express provisions in the Tripartite agreement to guarantee the terms and conditions of the services of the erstwhile employees, nowhere it is mentioned that the Tariff as introduced by the Commission would not be applicable to the employees of the erstwhile DVB.

14. The Commission in the exercise of its powers under sections 61 and 62 of the Electricity Act 2003, had passed an Order on the Approval of Annual Revenue Requirements of the Distribution and Retail Supply Licensees. The Licensees in their Annual Revenue Requirements have not made any proposal for creating a separate sub-category to cover the employees of erstwhile DVB. Therefore, no special treatment can be accorded to the employees at this stage. The Commission has observed that the Licensees as far as it relates to the energy charges are concerned, are still maintaining the concessions. On the other hand, the Respondents Discoms have started changing the fixed charges in lines with the Tariff Order.

15. The attention of the Commission is also drawn to the provisions of Clause (r) of section 3 of the Tripartite Agreement between the Government of NCT of Delhi, Delhi Vidyut Board and Joint Action Committee of Workers, Supervisors, engineers and Officers of DVB. The aforesaid clause states, "in event of any dispute/ difference arising out of this Tripartite agreement efforts will be made to resolve it amicably or through the Lt. Governor (Delhi) as an arbitrator or his nominee as appointed by him. Courts at Delhi / New Delhi shall have the jurisdiction in event of litigation." In view of the above provisions of the agreement, the dispute or difference arising out of the agreement are to be settled amicably between the parties failing which the parties have to approach the Lt. Governor (Delhi) for deciding the issue which may be done either by the Lt. Governor by himself or through his nominee, by means of an arbitration process. Further, as per Rule 12 of the Delhi Electricity Reform (Transfer Scheme) Rules 2001, any doubt, dispute/difference or issue arising in regard to transfers under the said Rules is to be decided by the Government.

16. The Petitioners have made their case based on the provisions of the two documents, firstly the Tripartite Agreement between the Government of NCT of Delhi, Delhi Vidyut Board and Joint Action Committee of Workers, Supervisors, engineers and Officers of DVB and secondly, the Delhi Electricity Reform (Transfer

Scheme) Rules 2001. After closely examining the said documents it is very evident that the said documents exclude the jurisdiction of this Commission to entertain any dispute or difference arising out of the said documents. It is clearly made out that the differences or disputes, arising there from, are to be settled by the Lt. Governor (Delhi).

17. In view of the above, the Commission is of the view that under the present circumstances there is no need to issue any Orders with regards to prayers made in the petitions. The parties are at liberty to discuss the issues amongst themselves and reach a mutually acceptable arrangement. In case the difference or dispute persist in regard to the said provisions of the Tripartite agreement, the parties are free to resolve their dispute as per clause (r) of the Tripartite Agreement.

18. The petitions are disposed of accordingly. There shall be no Orders as to cost.

Sd/-
(K. Venugopal)
MEMBER

Sd/-
(R. Krishnamoorthy)
MEMBER