

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

Petition No. 09/2005 & Petition No. 10/2005

In the matter of : Review of the Order dated 06.12.2004 passed in the
Petition No 8/2004.

AND

1. NDMC Electrical Engineers' Association (Regd.)
Through: Er. Naresh Verma, General Secretary,
11 KV NDMC Electric Sub-Station,
Nirman Bhawan,
New Delhi-110001.Review Petitioner
2. NDMC Electrical Junior Engineers Association (Regd.)
Through: Er. Ajay Kumar Tyagi, General Secretary,
Sub-Station No. 3, Harish Chandra Mathur Lane,
Janpath, New Delhi.Review Petitioner

Versus

M/s Reliance Energy Ltd. (Formerly BSES Ltd.)
Through : **Sh. J.P. Chalsani, Director (Business Development),**
Reliance Energy Centre,
Santa Cruz (East),
Mumbai-400055.Applicant/Respondent

Coram :

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

Appearance :

1. Sh. O.P. Gupta, NDMC Electrical Engineer Asso.
2. Sh. Naresh Verma, NDMC Electrical Engineer Asso.
3. Sh. Ajay Kumar Tyagi, NDMC Electrical Jr. Engineer Asso.
4. Sh. U.U. Lalit, Sr. Advocate, for Petitioner.
5. Sh. Rudreshwar Singh, Advocate, for Petitioner.
6. Sh. Amol Chitak, Advocate, for Petitioner.
7. Sh. Nitin Sangla, Advocate, for Petitioner.
8. Sh. T.M. Singh, Advocate for NDMC
9. Sh. Amit Pawan, Advocate
10. Sh. Saurav Agrawal, Advocate.
11. Sh. S.H. Rao, Advocate.
12. Sh. Joydeep Mazumdar, Advocate.
13. Sh. Rajnish Pal, Advocate.
14. Sh. Sami Ali Khan, Advocate.
15. Sh. Shishir Pinakai, Advocate.
16. Sh. Amit Kapoor, Advocate for Respondent.
17. Sh. Virender Shukla, Sr. Engineer, REL.
18. Sh. Akshay Nagpal, Advocate, REL.

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ORDER

(Date of Hearing: 10.8.2005)

(Date of Order : 16.8.2005)

The Petitioners have brought identical review petitions before this Commission and therefore, are taken up for hearing together on the question of admissibility.

Sh. U.U. Lalit, Senior Advocate, appearing on behalf of the Petitioner has submitted that at the threshold he would like to bring to the notice of this Commission that there are prima-facie errors in the Order of the Commission dated 6.12.2004, which would render the aforesaid Order for reconsideration by virtue of this review petition.

The Ld. Counsel has submitted that the New Delhi Municipal Council has a very special status, as it is the only Municipal Council in the country under the direct administrative control of the Ministry of Home Affairs. Further, it is added that the NDMC area houses various Ministries, government buildings of importance, Embassies etc. that makes it a special area and for this reason it is under the direct administrative control of Ministry of Home Affairs. It is added that because of these reasons, the objections of the Ministry of Home Affairs should have been considered at the time of passing the Order of 6.12.2004.

The Ld. Counsel has also submitted that the Commission, while issuing the Order of 6.12.2004, should have considered that the 6th proviso of Section 14 lays mandatory restrictions that the Appropriate Commission, while granting a license to two or more persons for distribution of electricity within the same area, shall subject the applicant to the conditions of the additional requirements, including that of the capital adequacy, credit worthiness or code of conduct as may be prescribed by Central Government. And it is highlighted that, at that anterior in time, there were no such 'additional requirements' specified by the Central Government.

The Ld. Counsel, also submitted that the 'No Objection Certificate' issued by the Ministry of Defence on 1.9.2004, under Section 15(2)(ii) of the

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Electricity Act, 2003, is not an appropriate certificate for the purpose of issue of a parallel distribution license in the New Delhi Municipal Council area. Emphasis is laid on the subsequent letter issued by the Ministry of Defence dated 27.12.2004, wherein, it was stated that the issue of letter of 1.9.2004 was in no way the clearance from Government of India for grant of license to M/s Reliance Energy Ltd. The Ld. Counsel for the Petitioners, has also laid emphasis that the Government of India "Allocation of Business Rules", mandates that the administration of the Electricity Act, 2003, vests with the Ministry of Power and that the 'No Objection Certificate' under Section 15(2)(ii) of the Act, should have come from the Ministry of Power instead of the Ministry of Defence.

The Ld. Counsel for the Petitioners has also made prayers that the delay in filing these instant review petitions may be condoned as the Petitioners were not aware of the development regarding the subsequent letter written by the Ministry of Defence dated 27.12.2004 and that they filed this review immediately when they came to know about the aforesaid development.

Sh. Amit Kapoor, Counsel for the Reliance Energy Ltd., has submitted that the 'No Objection Certificate' dated 1.9.2004 issued by the Ministry of Defence has been issued under Section 15(2)(ii) of the Act and as such, there is no apparent error in the Commission's Order of the 6.12.2004. The Counsel has also made objection that the application for review petition was delayed by as much as 98 days and hence, the Petitioner has to account for each days delay.

Contesting the arguments placed by the Counsel for the Petitioners, the Ld. Counsel for the Respondent has submitted that the provisions of Electricity Act, 2003, do not mention that there has to be a separate 'no objection' from the Ministry of Home Affairs, Ministry of Defence and Ministry of Power. What is required under the provisions of Section 15 (2)(ii) of the Act is that the Appropriate Commission shall ascertain itself that there is no objection to the grant of the license on the part of the Central Government in case the application for a license for an area includes any part of cantonment, aerodrome, fortress etc.

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As far as the issue of additional requirements to be prescribed by the Central Government under section 14, 6th Proviso, is concerned, the Counsel for Respondent submits that the provisions of the Statute cannot be frustrated by the absence of requirements which is a delegated power provided under the principal Statute. The Counsel relies on Supreme Court cases of AIR 1985 SC 883 and AIR 1968 SC 464, wherein, it has been held that the absence of delegated legislation cannot discourage the operation of the main provisions of the Act/ Statute.

Sh. Amit Kapoor, Counsel for Reliance Energy Ltd., has further submitted that he would like that these petitions are not argued on technicalities. The issues raised in these petitions are similar to those raised in the review petition filed by the New Delhi Municipal Council, which stands admitted and is to be listed for hearing on merits. It would be preferred that these petitions are tagged together with the review petition filed by the New Delhi Municipal Council and, in all earnest, these petitions should be heard and disposed of at the earliest.

The parties have been heard in detail.

The Counsels for petitioners, as well as, the Respondent, have submitted that the issues raised in these petitions are akin to those raised in the review petition filed by NDMC and since the review petition filed by NDMC has been admitted and is to be listed for hearing on merits, this petition be listed along with the petition filed by NDMC. In view of the submissions made by the parties, these two Review Petitions are admitted. The delay in filing the review petitions is also condoned in the interest of justice.

Let these two petitions be listed along with the Review Petition No 05/2005 in petition No 08/2004, filed by New Delhi Municipal Council.

Sd/-
(K. Venugopal)
MEMBER

Sd/-
(R. Krishnamoorthy)
MEMBER