



## **Delhi Electricity Regulatory Commission**

Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi- 110017

**F.11(1761)/DERC/2019-20**

### **Petition No. 09/2021**

Suo-motu action against NDMC under Section 142 of The Electricity Act, 2003

#### **In the matter of:**

New Delhi Municipal Council  
Through its Secretary,  
Palika Kendra, Sansad Marg,  
New Delhi -110001

.....**Licensee**

#### **CORAM:**

**Hon'ble Shri Justice Shabihul Hasnain 'Shastri', Chairperson**

**Hon'ble Sh. A.K. Ambasht, Member**

#### **Appearance:**

Sh Tushar Sannu, Advocate for NDMC

### **ORDER**

(Date of Order: 06.01.2023)

1. The instant matter was taken up suo-moto by the Commission under Section 142 of The Electricity Act, 2003 for non-payment of license fee by the NDMC as the Accountant General (Audit) on 08.03.2019 had made an audit observation that New Delhi Municipal Council (NDMC) is a deemed Licensee to supply electricity in the area under its Jurisdiction. It is also observed that NDMC being a deemed distribution Licensee under The Electricity Act, 2003 is liable to pay 0.05 per cent of annual amount billed from the year 2003-04 onwards and interest @ 1 per cent per month on the delayed payment.
2. Sh. Tushar Sannu had put in appearance on behalf of NDMC. The matter was heard at length and after considering the submissions and arguments put forth

by Sh. Tushar Sannu, Counsel for NDMC, the Commission reserved its judgement vide its Interim Order dated 25.08.2022.

3. **Respondent Submissions:**

- a) The very power of imposing License Fee has been derived from the statute called Delhi Electricity Regulatory Commission Comprehensive (Conduct and Business) Regulations, 2001 (hereinafter called "DERC Regulations, 2001"). However, what is relevant herein is that the said 2001 Regulations in itself vide Clause 1(4) of the DERC Regulations, 2001 exempts the NDMC from any duties/conditions/ obligations arising out of DERC Regulations, 2001. The said Clause 1(4) of the DERC Regulations, 2001 is reproduced below:

*"the Regulation is extended to the whole of the National Capital Territory of Delhi except the area covered by NDMC & Delhi cantonment Board"*

The Commission in exercise of the powers conferred under Section 61 of Delhi Electricity Reforms Act, 2000 (DERA) has framed Delhi Electricity Regulatory Commission Comprehensive (Conduct and Business) Regulations 2001. The relevant part of the Section 61 is extracted below:

*" The Commission may by notification in the official gazette , make regulation consistent with this Act and the rules made thereunder to carry out the purposes of this Act."*

The Delhi Electricity Reforms Act, 2000 under which Delhi Electricity Regulatory Commission Comprehensive (Conduct and Business) Regulations, 2001 were framed is an enactment in the schedule to The Electricity Act, 2003. Regulation 1(4) of the DERC Regulations, 2001 is saved by virtue of Section 185 (3) of The Electricity Act, 2003, and therefore, the DERC Regulations, 2001 (including provisions relating to License Fee) do not extend to the NDMC. The said Section 185 (3) of The Electricity Act, 2003 is reproduced as follows:

*"(3) The provisions of the enactments specified in the Schedule, not inconsistent with the provisions of this Act, shall apply to the States in which such enactments are applicable."*

- b) NDMC being under the direct control of Central Government is a Government body thereby meaning that NDMC being a Government is a deemed licensee

and therefore, there is no requirement for NDMC to pay distribution license fee to obtain a license in order to distribute electricity as per Section 14 proviso 3 of The Electricity Act, 2003.

- c) Under section 14 proviso 3 of The Electricity Act 2003, appropriate government is deemed licensee and not required to obtain license. Section 14 proviso 3 of The Electricity Act 2003 is reproduced as follows: -

*“Provided also that in case an Appropriate Government transmits electricity or distributes electricity or undertakes trading in electricity, whether before or after the commencement of this Act, such Government shall be deemed to be a licensee under this Act, but shall not be required to obtain a licence under this Act”*

- d) A mere reading of the proviso to Section 197 of New Delhi Municipal Council Act, 1994 makes its amply clear that duties and obligations of a licensee shall not apply to NDMC. The Proviso to Section 197 New Delhi Municipal Council Act, 1994 is reproduced herein below:

*“Subject to the provision of this Act the Council shall in respect of the New Delhi areas under its jurisdiction have all the powers and obligations of a licensee under the Electricity Act, 1910, and this Chapter shall be deemed to be the licence of the Council for the purposes of that Act:”*

*Provided that nothing in sections 3 to 12 of, or in clauses I to IX of the Schedule to, that Act relating to the duties and obligations of a licensee shall apply to the Council.”*

- e) The observation of Commission that NDMC like other Discoms has to pay Distribution License Fee is wholly misconstrued and untenable. That the Discoms are enterprises involved in power generation, infrastructure, construction and so on. However, one of the statutory and mandatory functions of the NDMC is only distribution of electricity under its jurisdiction which cannot be said to be at par with other Discoms.

### **Commission's Analysis**

4. The first limb of argument of NDMC is that under Section 197 of New Delhi Municipal Council Act 1994, NDMC is a deemed licensee under the old Act. Therefore, they continue to be deemed licensee and are not required to take

license under Section 14 of The Electricity Act 2003. Section 197 of the NDMC Act, 1994 stipulates as follows:

*“Council to have powers and obligation of licensee under Act 9 of 1910. – Subject to the provisions of this Act the Council shall in respect of New Delhi areas under its jurisdiction have all the powers and obligations of a licensee under the Electricity Act, 1910, and this Chapter shall be deemed to be the licence of the Council for the purposes of that Act:*

*Provided that nothing in section 3 to 12 of, or in clauses 1 to IX of the Schedule to, that Act relating to the duties and obligations of a licensee shall apply to the Council.”*

It is observed that by enactment of The Electricity Act, 2003 the earlier Electricity Act, 1910 has been repealed. Section 14 of The Electricity Act, 2003 deals with grant of license. The first proviso of Section 14 of The Electricity Act, 2003 provides as follows:

*“Provided that any person engaged in the business of transmission or supply of electricity under the provisions of the repealed laws or any Act specified in the Schedule on or before the appointed date shall be deemed to be a licensee under this Act for such period as may be stipulated in the licence, clearance or approval granted to him under the repealed laws or such Act specified in the Schedule, and the provisions of the repealed laws or such Act specified in the Schedule in respect of such licence shall apply for a period of one year from the date of commencement of this Act or such earlier period as may be specified, at the request of the licensee, by the Appropriate Commission and thereafter the provisions of this Act shall apply to such business:”*

The third proviso of Section 14 of The Electricity Act, 2003 provides as follows:

*“Provided also that in case an Appropriate Government transmits electricity or distributes electricity or undertakes trading in electricity, whether before or after the commencement of this Act, such Government shall be deemed to be licensee under this Act, but shall not be required to obtain a licence under this licensee under this Act.”*

5. Section 184 of The Electricity Act, 2003 deals with the Provision of Act not to apply in certain cases and reads as follows:

*“The provisions of this Act shall not apply to the Ministry or Department of the Central Government dealing with Defence, Atomic Energy or such other similar Ministries or Departments or undertakings or Boards or institutions under the control of such Ministries or Departments as may be notified by the Central Government.*

6. Section 185 of The Electricity Act, 2003 deals with the Repeal and saving provision. Under the said provision DERA, 2000 has been repealed to the extent its provisions are inconsistent with the provisions of The Electricity Act, 2003. Sub section (3) of Section 185 of The Electricity Act, 2003 stipulates as follows;

“The provisions of the enactments specified in the Schedule, not inconsistent with the provisions of the Act, shall apply to the States in which such enactments are applicable.

THE SCHEDULE

ENACTMENTS

[See sub-section (3) of section 185]

- 1.....
- 2.....
- 3.....
- 4.....
- 5.....
- 6.....
- 7. The Delhi Electricity Reforms Act, 2000 (Delhi Act No. 2 of 2001)
- 8.....
- 9..... “

7. Accordingly, based on the above provision it is viewed that NDMC is a deemed licensee under Section 14 of The Electricity Act, 2003 and is not required to obtain a licence under the new Act.

8. The second limb of arguments of the NDMC is that Section 1(2) of Delhi Electricity Reforms Act, 2000 (DERA 2000) as well as provision 1(4) of the Delhi Electricity Regulatory Commission Comprehensive (Conduct of Business) Regulations, 2001 exclude area covered by NDMC.

9. It may be mentioned that licence to BRPL, BYPL and TPDDL has been granted by DERC in line with Delhi Electricity Reforms Act, 2000 (DERA). The licence conditions of DISCOMs (BRPL, BYPL and TPDDL) Clause 12, of Terms and Conditions of licence fees *interalia* stipulates as follows:

*“12.1 Within 60 days or such further period as the Commission may allow after the coming into force of this Licence, the Licensee shall pay to the Commission a fee equivalent to 0.05% of the amount billed during the previous financial year in the area of supply of the Licensee, and annually in each subsequent year during the validity of the license by similar calculation or such other amount as may be notified by the Commission from time to time.*

12.2 For as long as this Licence remains in force, the Licensee shall, by the 10th of April of every year, or such further period as the Commission may allow, pay to the Commission the annual licence fee as mentioned hereinabove:

12.3 Where the Licensee fails to pay to the Commission any of the fees due under Clauses 12.1 or 12.2 by the due dates:

a. without prejudice to other obligations, the Licensee shall be liable to pay interest on the outstanding amount at a simple interest rate of one percent per month or any other rate that may be prescribed by the Commission from time to time, the interest being payable for the period beginning on the day after which the amount became due, and ending on the day on which the payment is made in cleared funds."

10. Section 21 of the DERA, 2000 provides grant of license for transmission and supply of electricity. The relevant part of Section 21 of the DERA, 2000 is reproduced below;

" The Commission may by order grant exemption from the requirement to have a supply licence, but subject to compliance with such conditions, if any, as may be specified in the order:

Provided that the Commission shall not under any such order, grant any exemption except with the consent -

- (i) of the local authority, if any, constituted in the area where energy is to be supplied;
- (ii) in any case where energy is to be supplied in any area forming part of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or any building or place in the occupation of the Central Government for defence purposes, of the Central Government;
- (iii) in any area falling within the area of supply of a licensee, of that licensee:

Provided further that except in a case falling under sub-clause (ii), no such consent shall be necessary if the Commission is satisfied that such consent has been unreasonably withheld."

11. Further Regulation 49 and 50 of DERC Comprehensive (Conduct of Business) Regulations, 2001 stipulates the manner of fee payable by licensee. The Regulations 49 and 50 are given hereunder:

*"49. Fees on applications or petitions - (i) Every petition, application or complaint made to the Commission shall be made by payment of the appropriate fees specified in the Schedule to these regulations.*

*(ii) The fees payable under these regulations shall be paid by means of bank draft or pay order, drawn in favour of the Secretary, Delhi Electricity Regulatory Commission, payable at New Delhi.*

*(iii) The fees received by the Secretary of the Commission under these regulations shall be deposited in a bank account to be maintained by the Commission at such bank and in such Branches as the Commission may direct from time to time or in Govt. Account under relevant head of account.*

*50. Fees payable on licence - (i) The Commission may while granting a licence or an Exemption to undertake the business of transmission or supply of electricity including bulk supply of electricity or any other order granting any privilege to*

*any person may specify the fee payable at the time of the grant of licence or privilege and thereafter on an annual or such periodic basis as the Commission may specify in the order granting license or privilege or in a separate order that may be passed by the Commission."*

*(ii) The existing licensee or exempt holder shall pay; the annual fee for the; financial year 2001-2002 onwards as specified in the Schedule and shall not be required to pay any initial fees or fee for financial year upto 2000-2001.*

*(iii) Until otherwise specified, the fees payable for grant of license or exemption, shall be as specified in the schedule to these Regulations.*

*(iv) The fees shall be payable and the amount shall be deposited in the same manner as specified in regulation 49."*

12. The Schedule of fees under Delhi Electricity Reforms Act, 2000 specifies the amount of fees payable by the licensee. Also, The Electricity Act 2003 doesn't differentiate amongst NDMC and other licensee to whom licence has been granted in the state of NCT of Delhi in regard to the payment of license/ annual fee. Further, The Electricity Act, 2003 nowhere mentions that deemed licensee is not liable to pay license fee.

13. Further, the main objective of enactment of Delhi Electricity Reforms Act, 2000 is for unbundling/corporatization of State Electricity Board and for the constitution of an Electricity Regulatory Commission and restructuring of the electricity industry, increasing avenues for participation of private sector in the electricity industry and generally for taking measures conducive to the development and management of the electricity industry in an efficient, commercial, economic and competitive manner in the National Capital Territory of Delhi and for matters connected therewith or incidental thereto. The Electricity Act, 2003 also reaffirms the aforesaid objectives at the country level.

14. The Part V of DERA, 2000 deals with the manner of reorganisation of electricity industry and incorporation of companies for the purpose of generation, transmission or distribution of electricity. In exercise of the powers conferred by section 60 read with sections 15 and 16 of the Delhi Electricity Reform Act, 2000, the Government of the National Capital Territory of Delhi, made the rules relating to the transfer and vesting of assets, liabilities, proceedings and personnel of the Delhi Vidyut Board in the successor entities and for determining the terms and conditions on which such transfer or vesting shall take effect. Therefore, it is clear that the purpose of enactment of the DERA, 2000 is for

unbundling/corporatization of State Electricity Board and restructuring of electricity industry.

15. On the issue of applicability of provisions of DERA, 2000 protected under Section 185 (3) of The Electricity Act 2003, it is to be noted that only those provisions of Delhi Electricity Reforms Act, 2000 are protected under Section 185 (3) of Electricity Act 2003, which are not inconsistent with the provisions of The Electricity Act, 2003. Further, Section 86 of The Electricity Act, 2003 provides that the State Commission shall discharge its functions within the State. The provision about exclusion of NDMC as contained in DERA, 2000 cannot get shelter of section 185(3) of The Electricity Act, 2003. Thus, after coming into force of the enactment of The Electricity Act, 2003, the argument of the NDMC that it is not required to pay license fee loses ground and has no merits.
16. Section 12 of The Electricity Act 2003, provides that no person shall distribute electricity unless he is authorized to do so by a license issued under Section 14 of The Electricity Act, 2003 or is exempted under Section 13 of The Electricity Act 2003. NDMC is not exempted under Section 13 of The Electricity Act 2003, it has to distribute the electricity under a license, whether obtained on application or as a deemed license.
17. It is also observed that the Commission determines the tariff of NDMC and true up of respective year annually in terms of the provisions of The Electricity Act, 2003. The Electricity Act, 2003 does not prohibit the Commission to levy licence fee. The Commission has to have a non-discriminatory approach for the DISCOMs viz NDMC, BRPL, BYPL and TPDDL.
18. A licensee whose ARR/tariff is being determined by the Commission including such deemed licensee under any of the provisos to Section 14 of The Electricity Act, 2003, is liable to pay license fee as directed by the Commission. Even if no regulations have been specified in this regard that does not make the direction of imposition of license fee *ipso facto* bad in law. Accordingly, it is concluded that NDMC being a deemed licensee, the provisions of licence fee and interest on delayed payment of licence fee shall also be applicable to NDMC in order to create level playing field for NDMC vis a vis BRPL, BYPL, TPPDL.



19. Therefore, it is held that NDMC being a deemed distribution Licensee, is, after coming into force of The Electricity Act, 2003 liable to pay annual/license fee @0.05% annual amount billed with effect from F.Y. 2003-04 onwards along with accrued interest @ 1% per month on account of delayed payment upto the date of 31.12.2022.

20. NDMC is directed to comply accordingly within a period of three months from the date of passing of this Order.

21. Ordered accordingly.

**Sd/-**  
**(Dr. A.K. Ambasht)**  
**Member**

**Sd/-**  
**(Justice Shabihul Hasnain 'Shastri')**  
**Chairperson**