

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

F.11(491)/DERC/2008-09

**In the matter of:** Application under Section 142 of the Electricity Act, 2003 for violation of the Act in the matter of BRPL Vs. MCD & Ors.

**In the matter of:**

North Delhi Power Ltd.  
Through: its **CEO**  
Sub-Station Building,  
Hudson Lines, Kingsway Camp,  
Delhi-110 009.

...**Petitioner**

**Versus**

Municipal Corporation of Delhi  
Through its: Commissioner,  
Town Hall,  
New Delhi – 110 006.

...**Respondent**

**Coram:**

**Sh. Berjinder Singh, Chairman, Sh. Shyam Wadhera, Member &  
Sh. Subhash R. Sethi, Member.**

Appearance:

1. Sh. Manish Srivastava, Advocate, NDPL;
2. Sh. Vivek Singla, GM, NDPL;
3. Sh. Ajay Kapoor, CEO, NDPL;
4. Sh. Anurag Bansal, HoG-Corp. Legal, NDPL;
5. Sh. R. K. Sharma, C.E. (Electrical), MCD;
6. Sh. Jagdish Baboo, Ex. Engineer (E), MCD;
7. Sh. Vikas Jain, EEE.

**ORDER**

(Date of Hearing: 18.02.2010)  
(Date of Order: 21.04.2010)

1. The Complainant, NDPL, through this application under Section 142 of the Electricity Act, 2003 sought the following:
  - (a) Issue notice on the present application and pass an appropriate Order punishing the Respondent no. 1 (MCD) for non-compliance of the Order and directions passed by the Commission in its Order dated 03.11.2008;
  - (b) Pass such other or further orders as the Commission may deem fit and proper in the facts and circumstances of the present case.

2. Sh. Manish Srivastava, Ld. Counsel for NDPL, submitted that the present application arises out of the Commission's Order dated 03.11.2008 passed in the present proceedings initiated by the Petitioner (BRPL), which proceedings the Complainant/Applicant (NDPL) has subsequently joined. The Petition had been filed inter alia for determination of maintenance charges including the cost of material utilised during the maintenance of streetlights by the DISCOMs.
3. It is further submitted that the Petitioner (BRPL) as well as the Applicant (NDPL) had made written and oral submissions before the Commission during the proceedings in relation to the present Petition no. 55/2007.
4. **The last hearing on the present Petition took place before this Commission on 07.10.2008 and an interim Order was passed on 03.11.2008.**
5. The Commission passed an interim Order dated 03.11.2008 in Petition no. 55/2007. The Commission in its interim Order observed that it requires more information and documents to arrive at a decision. The Commission directed Respondent no. 3 (DDA) to furnish a copy of Office Order regarding handing over of streetlights to Respondent no. 1 (MCD). A copy of the same to be served on DISCOMs also. The Commission further directed MCD to take-up the matter of service tax on maintenance charges with the concerned authorities for exemption. However, in the meantime, the Respondent no. 1 (MCD) was directed to make the payment provisionally to the DISCOMs and claim for refund once the Government allows the exemption on service tax of streetlights maintenance. The Commission directed the Respondent no. 1 (MCD) to place on record a copy of the contract Agreement executed between the contractor and the MCD for installation and maintenance of streetlights in selected area of Delhi. Further, the parties to the Petition were directed to place on record a copy of the Agreement, if any, executed between the DISCOMs and the land owning agencies on the scope of work as agreed mutually. It was further directed that all the points/streetlight connections be metered at the earliest and a compliance report be submitted to the Commission within two weeks from the date of issue of the Order.
6. Sh. Srivastava submitted that in view of the levy of service tax on the maintenance of streetlights, a separate component of charge is liable to be added to the maintenance costs/charges payable to the DISCOMs, which relates to the service tax element levied on the maintenance charges themselves, which is normally payable by the service providers i.e. the DISCOMs. Sh. Srivastava further submitted that they were facing a demand from service tax

Authorities and they have raised the bill for service tax from June, 2005 to July, 2007 for an amount of Rs. 2,15,94,880/- only.

7. Sh. Srivastava, further submitted that in terms of the Order dated 03.11.2008, MCD is bound and obliged to make payment of service tax charges inter alia to the Applicant (NDPL). However, the MCD has deliberately and wilfully, failed, refused and neglected to make payment of the service tax charges even after the aforesaid order and direction of the Commission. Further, till date they have not received any intimation from the Respondent no. 1, MCD regarding its efforts to obtain any exemption from levy of service tax on streetlight maintenance.
8. Sh. R. K. Sharma, Chief Engineer (Electrical), MCD vehemently opposed the arguments advanced on behalf of NDPL. Sh. Sharma submitted that MCD does not have any statutory obligations to pay service tax as being alleged by the NDPL. Contrary thereto MCD is not paying any service tax on the "Transferred Functions" and is not liable to pay the same under any provision of law. The service tax is an indirect tax and the liability for its recovery and payment to the Government has been cast upon the provider of taxable service, who in-turn can recover the service tax from the recipient of taxable service. The recipient of taxable service in this matter are DISCOMs in view of Section 511 A and B of Delhi Municipal Corporation Act, 1957.
9. Sh. Sharma further submitted that neither the provisions of Delhi Electricity Reforms Act, 2000 nor the provisions of the Electricity Act, 2003 provide any enabling power to the Commission to adjudicate and decide the issue of service tax and, therefore, the MCD cannot be burdened with a tax liability which otherwise not being imposed upon it under any statute, rules or regulations. Thus, the averments of the NDPL with regard to service tax are wholly unjust, unwarranted, illegal and without any basis.
10. The Commission heard the Applicant, NDPL and MCD at length. The Commission also perused the record placed before it in this matter and the relevant provisions of the Electricity Act, 2003.
11. The Commission examined Section 86 of the Electricity Act, 2003 which provides that:

**"86. Functions of State Commission**

- (1) *The State Commission shall discharge the following functions, namely:--*
  - (a) *determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State:*

PROVIDED that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

- (b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;
  - (c) facilitate intra-State transmission and wheeling of electricity;
  - (d) issue licences to persons seeking to act as transmission licensees, distribution licensees and electricity traders with respect to their operations within the State;
  - (e) promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;
  - (f) adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration;
  - (g) levy fee for the purposes of this Act;
  - (h) specify State Grid Code consistent with the Grid Code specified under clause (h) of sub-section (1) of section 79;
  - (i) specify or enforce standards with respect to quality, continuity and reliability of service by licensees;
  - (j) fix the trading margin in the intra-State trading of electricity, if considered, necessary;
  - (k) discharge such other functions as may be assigned to it under this Act.
- (2) The State Commission shall advise the State Government on all or any of the following matters, namely:--
- (i) promotion of competition, efficiency and economy in activities of the electricity industry;
  - (ii) promotion of investment in electricity industry;
  - (iii) reorganisation and restructuring of electricity industry in the State;
  - (iv) matters concerning generation, transmission, distribution and trading of electricity or any other matter referred to the State Commission by that Government."

12. The Commission observed that there is no provision in Section 86 of the Electricity Act, 2003 which exhaustively defines the functions of the Commission, which gives power to the Commission to adjudicate upon the dispute in question between the Petitioner and MCD. Accordingly, the Commission dismisses the present application of NDPL.
13. Ordered accordingly.

Sd/-  
(Subhash R. Sethi)  
MEMBER

Sd/-  
(Shyam Wadhera)  
MEMBER

Sd/-  
(Berjinder Singh)  
CHAIRMAN