

DELHI ELECTRICITY REGULATORY COMMISSION

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

F.11(354)/DERC/2007-08/

In the matter of:

M/s. Pooja Electricals
Praveen Choudhary,
J-41A, Bhagat Singh Park,
Siraspur, Delhi-44.

...Petitioner

VERSUS

North Delhi Power Ltd.
Through: its **CEO**
Sub-Station Building,
Hudson Lines, Kingsway Camp,
Delhi-110009.

...Respondent

Coram:

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

Appearance:

1. Sh. Praveen Chaudhary, Petitioner;
2. Sh. Sanjeev Kumar, Advocate for Petitioner;
3. Sh. Krisnendu Datta, Advocate, NDPL.

ORDER

(Date of Hearing: 09.09.2008)

(Date of Order: 19.09.2008)

1. The present Petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 read with Section 158 of the Electricity Act, 2003. The gist of the matter is that the Petitioner was stated to be a single point delivery electricity contractor of the Respondent Licensee i.e. NDPL. He was awarded a contract to supply electricity in Shalimar Bagh and Badli area of Delhi under an Agreement with the then DVB for providing maintenance, distribution and revenue collection of electricity supplied by the then DVB.
2. In terms of Clause 11 of the additional terms and conditions of the said contract the dispute, if any, was required to be referred to the sole arbitrator to be appointed by the owner or his nominee as the sole arbitrator. The Petitioner has submitted that the dispute arose on certain factual aspects and the Respondent DISCOM appointed the sole

arbitrator on their own. The Petitioner expressed their concern regarding the impartiality of the arbitrator appointed by the Licensee. However, in the meantime, the sole arbitrator appointed by the Respondent Licensee passed the award on 22.12.2005 with the following conclusions:

- (i) The claimant is not entitled to seek benefit of any AT&C losses from the respondent beyond a Commission of 25% as allowed at present on the bills raised on HT meter plus a further discount of 2% on account of transformation loss.
 - (ii) The claimant is not entitled to get Rs.12,55,948/- from the respondent as this amount has been calculated by him taking into account the AT&C Losses.
 - (iii) The claimant is liable to make the payment for power supplied to him as per the reading recorded in the HT meter provided by the respondent.
 - (iv) The claimant is liable to pay a sum of Rs.41,32,278/- to the respondent together with future interest @10% per annum from the date of this award and till payment thereof.
3. The Petitioner approached the Hon'ble High Court of Delhi for getting the award of sole arbitrator set aside by filing an OMP no. 112 of 2006. The same is stated to be still pending before the Hon'ble High Court.
4. Sh. Sanjeev Kumar, Counsel for the Petitioner, submitted before the Commission that the Agreement executed between the then DVB and the Petitioner has been terminated illegally without affording an opportunity of hearing to the Petitioner. He has further submitted that in terms of Section 28 of the Indian Electricity Act, 1910, they are the Licensees as they were engaged in the business of supply of electricity by the then DVB. Moreover, the award of contract by which they were assigned the job of distribution of electricity also contain the word "Licensee" for them. Therefore, they are the Licensee and are entitled to maintain the present Petition before the Commission in terms of Section 158 read with Section 86 (1)(f) of the Electricity Act, 2003.
5. Sh. Krishnendu Datta, Counsel for the Respondent, submitted that the Petition is not maintainable before the Commission as the arbitrator had

already been appointed in this case who even passed the award vide Order dated 22.12.2005. Sh. Datta heavily relied on various judgments of the Hon'ble High Court which have been annexed with their reply. Sh. Datta submitted that in FAO (OS) 250/2007 titled Raj Electricals Vs. BRPL, the Hon'ble High Court vide its judgment dated 02.11.2007 held that the SPD Contractors are not the Licensees in terms of Section 28 of the Indian Electricity Act, 1910. He further submitted that the contract was purely commercial in nature whereby, a commercial arrangement was made by the then DVB with the SPD Contractors for supplying electricity in their area of supply.

6. It has been observed in the instant case that the arbitrator has already passed the award on 22.12.2005 and the Appeal is pending before the Hon'ble High Court. Further, the present Petition is fully covered by the Commission's Orders dated 14.08.2008 and 22.08.2008 in similar cases viz United Electricals Engineering Company and others Vs. BSES Rajdhani Power Ltd. (Petition No. 33, 34, 37 to 51 of 2008) and Single Point Agency Holders Association Vs. DISCOMs (Petition No. 36 of 2008) where the Commission has already taken the view that SPD Contractors are not the Licensees hence, not entitled to maintain such Petitions before the Commission (The Orders dated 14.08.08 and 22.08.08 are available on the Commission's website www.derc.gov.in).
7. In view of the above, the present Petition is dismissed.
8. Ordered accordingly.

Sd/-
(K. Venugopal)
MEMBER

Sd/-
(Berjinder Singh)
CHAIRMAN