

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

Petition No. 05/2005

In the matter of : Review of the Order dated 06.12.2004 passed by
the Hon'ble Commission in Petition No. 8/2004.

AND

New Delhi Municipal Council,
Through : **Sh. U.K. Worah – Secretary,**
Palika Kendra, Sansad Marg,
New Delhi-110001.

.....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.

ORDER

(Date of Order : 15.4.2005)

The Respondent has filed a counter in the Review Petition filed by the New Delhi Municipal Council on 21.3.2005 and the Petitioner has filed a re-joinder thereon on 6.4.2005. Alongwith the rejoinder the Petitioner has also made an application for condonation of delay in filing the instant Review Petition. The above filings are taken into record.

The Petitioner in his application for condonation of delay has prayed for condoning the delay in filing of the instant review petition on the grounds that they had received the Order, under review, on 13.12.2004. Thereafter, the Petitioner sought legal opinion for further course of action and the Counsel, vide their opinion dated 28.12.2004 opined that the statute provides for a remedy of appeal. However, keeping in mind the facts of the present case, the Petitioner would prefer

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a review. Further, it is submitted that an important evidence came to the knowledge of the Petitioner on 7.1.2005, when the Petitioner received the letter of the Ministry of Defence dated 27.12.2004. The Petitioner has stated that the delay is not intentional or wilful and in the interest of justice keeping in mind the important questions raised in the petition and in public interest, the Commission may consider condoning the delay.

Keeping in view the submissions made by the Petitioner, the Commission condones the delay in filing this review petition.

It is the Petitioner's contention that the 'No Objection' issued by the Ministry of Defence vide its letter dated 1.9.2004, does not fulfil the requirements of Section 15(2)(ii) of the Electricity Act, 2003. The Respondent on the other hand contends that the language of the 'No Objection Certificate' substantially indicates that it fulfils the requisites of Section 15(2)(ii) of the Electricity Act, 2003.

The provision of the Electricity Act, 2003 envisages that the Commission has to satisfy itself that the Central Government has issued the No Objection Certificate in terms of Section 15(2)(ii). In the instant case, the very genesis, i.e. the No Objection Certificate of 1.9.2004, based on which the Order of 6th December, 2004, was issued, is contested. The subsequent letter of the Ministry of Defence dated 27.12.2004, which has been brought on record by the Petitioner, indicates a change in the stand taken by the Ministry of Defence on the 'No Objection Certificate' of 1.9.2004. The Petitioner has also placed before the Commission, Government of India (Allocation of Business) Rules 1961, wherein it has been indicated that the administration of provisions of Electricity Act, 2003 has been assigned to Ministry of Power under item 4 of the aforesaid Rules, concerning Ministry of Power. At this stage, the Petitioner has made out a prima-facie case and the 'No Objection Certificate' issued by the Ministry of Defence should be re-examined. The Commission, therefore, admits the review petition filed by the Petitioner and the same will be subsequently heard on merits.

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It is the considered view of the Commission that it would be appropriate at this stage, to implead the Central Government in this matter through the Secretary, Ministry of Defence, Secretary, Ministry of Power and Secretary, Ministry of Home Affairs to arrive at a just decision in the matter. Notice may be served upon them for filing their replies and for appearance.

The Petitioner and the Respondent herein are directed to serve a copy of their pleadings to the Central Government through the respective Secretaries of Ministry of Defence, Ministry of Power and Ministry of Home Affairs, within 7 days of receipt of this Order and file the proof of compliance before the Commission within 7 days of such service.

The Ministry of Defence, Ministry of Power and Ministry of Home Affairs may file their replies on the submissions made by the Petitioner and the Respondent, within one month of receipt of the copies of the petition and the replies as above mentioned.

The matter will be listed after such filings.

Sd/-
(K. Venugopal)
Member

Sd/-
(R. Krishnamoorthy)
Member