



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5TH FLOOR, SINGARENI BHAVAN, RED HILLS, HYDERABAD-500004

O. P. No. 8 of 2015

Dated: 20.11.2015

Present

Sri Ismail Ali Khan, Chairman
Sri H.Srinivasulu, Member
Sri L.Manohar Reddy, Member

Between:

Military Engineer Services
(Under GOI Defence Services)
Garrison Engineer, AIR Force Academy,
Dundigal, Hyderabad

... Petitioner

AND

Southern Power Distribution Co., of Telangana Ltd.
Mint Compound, HYDERABAD - 500 063

... Respondent

This petition has come up for hearing on 28.01.2015, 13.04.2015, 22.06.2015, 03.08.2015, 25.08.2015, 08.09.2015 and 04.11.2015. Sri. S. S. Rawat Nayak Subedar appeared on 28.01.2015. Sri. S. K. Tiwari CWE (AF) attended hearing on 13.04.2015. Sri. S. Khaleel AE appeared on 22.06.2015. Sri. B. Krishna Mohan Advocate and Central Government Standing Counsel appeared on 03.08.2015, 25.08.2015, 08.09.2015 and 02.11.2015 apart from Sri. S. P. Banerji Garrison Engineer 08.09.2015. Sri P Shiva Rao advocate appeared for the respondent on 27.01.2015 and 28.01.2015. Sri. Y. Rama Rao Advocate appeared for respondent on remaining days. The Commission passed the following:

ORDER:

1. The petition has been filed on 20.1.2014 before the APERC. The state of AP was bifurcated by an Act of Parliament, consequent to which, a separate TSERC was

constituted in the month of November, 2015. As the petition pertained to territory of Telangana, the petition stood transferred and renumbered as OP.8 /2015.

2. The Petition is filed seeking deemed licensee status for the petitioner and to introduce a separate tariff for MES Garrison Engineer, Air Force Station, Hakimpet till they get tariff fixed on licensee basis.

3. It is the submission of the petitioner that as per Section.14 of Electricity Act, 2003, the petitioner's service shall be treated as deemed licensee under the Act. Further, as per Para-5(b) of Appendix "N" to regulation of MES (RMES) issued by GOI clearly states that Government of India represented by MES shall be licensee under Indian Electricity Act.

4. It is the further contention of the petitioner that the load structure of MES is entirely different from other normal consumers who are classified under various categories. As also the nature of duty of defence personnel compel them to move on duty for defence operations on short notices causing a sudden drop in maximum demand of power. Further, there is no profit element of commercial business in defence stations served by MES. Therefore, there is full justification for deciding a separate tariff for MES till they get the tariff fixed on licensee basis. The petition shall be allowed in toto.

5. The respondent DISCOM has filed objections opposing the claim of the petitioners. The counsel submits that the petitioners proposal of the distribution licensee is not justified on which grounds the license is sought and the benefits that accrue to the petitioner or to the consumers at large in the spirit of the Act. It appears the petitioner's request for grant of license is on mere ground to claim concessional tariff. They have used Sec.14 as a veil to avail subsidized tariff which is improper and incorrect.

6. It is the further contention of the counsel that the issue of providing a separate tariff to the deemed distribution licensee has been dealt in depth by the Appellate Tribunal for Electricity in Appeal No.1/2008 in the matter of **MILITARY ENGINEERING SERVICE, PUNJAB VS. PUNJAB STATE ELECTRICITY REGULATORY COMMISSION**. In view of this authoritative pronouncement, the

petitioner's request for separate and concessional tariff, cannot be allowed. Even if we presume that the petitioner is eligible for providing deemed licensee status, the deemed licensee status does not guarantee or provide any tariff relief as claimed by the petitioner.

In reply to the objections of the Respondent – DISCOMs, the Petitioner submit that the Delhi Electricity Regulatory Commission and certain other state Commissions have already accepted the Licensee status and availing saving in energy charges as per the respective state tariff structure.

It is further submitted that the Tamil Nadu Electricity Regulatory Commission has issued Licensee status the Petitioner is also entitled for the same relief.

7. Heard both sides. Perused the material on record.

8. The Ministry of Power vide letter No.25/19/2004-R&R dt.26.7.2004 has clarified the issue of MES as deemed licensee under the Act has been considered by Ministry of Power in consultation with the Ministry of Law and accordingly, it is clarified that MES is a subordinate organization of Ministry of Defence entrusted with and consequently engaging in supply of electric power meets the requirement as provided in the third proviso to Sec.14 of the Electricity Act of 2003 of an appropriate Government engaging in distribution of Electricity and as such qualifies to be a deemed licensee under the provisions of the Act.

9. As clarified by the Ministry of Power, Government of India, vide letter referred to in above, Military Engineering Service under Sec.14, third Proviso shall be deemed to be a licensee, but shall not be required to obtain a license under the provisions of Electricity Act of 2003. The status of deemed licensee authorizes the petitioner to carry out supply works within their jurisdiction. The petitioner has admitted that their source of power is the Respondent DISCOM 11 KV and the quantum of electricity handled in last 12 months is 1.60 MW demand and 77.5 MU energy. The voltage of supply is 11 KV charging 85% colonies and 15% official training buildings. We unhesitatingly hold that the petitioner is a deemed licensee under the provisions of Electricity Act of 2003.

We have perused and considered the orders passed by the Delhi Electricity Regulatory Commission as well as the orders of Tamil Nadu Electricity Regulatory Commission.

10. Now coming to the next point of preferential and concessional separate tariff in procuring supply from TSSPDCL as a bulk consumer/purchaser. It would be appropriate to refer to the judgment of the Appellate Tribunal, Electricity Laws rendered in Appeal No.1 of 2008 in the matter of **MILITARY ENGINEERING SERVICE, PUNJAB VS. PUNJAB STATE ELECTRCITY REGULATORY COMMISSION**, which reads as follows:

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*Though, the appellant claims to be a deemed licensee it does not purchase power from a generator, it procures power from a distributor in the bulk like other bulk purchasers from distribution company for supply to the end consumers. The picture is clear in this that the appellant receives electrical energy at a single point from a distributor and not from a generator and then distributes power to its officers. **Therefore, the position of the appellant vis-à-vis the respondent No.2 cannot be qualitatively distinguished from a position of a bulk purchaser and bulk consumer.** In fact, it is a bulk consumer vis-à-vis the respondent No.2. The function contemplated of an appropriate government within the meaning of Section 2(5) of the Act requiring no licensee in accordance with the third proviso to section 14 is really not the same function which is being carried out by the appellant in its dealing with the Punjab State Electricity Board. Much is talked about annexure A-1 the government of India's letter dated 26.7.2003 addressed to the Secretaries of the State commissions saying that the appellant qualifies to be deemed licensee under the provisions of the Act. The question arises as to the legal position of this letter. This is a letter by Director of Ministry of Power, Government of India. It is not necessary for the disposal of the appeal to examine*

in detail the question as to whether the appellant is a deemed licensee or not. Only it can be said that it cannot be argued that by this letter the status of the deemed licensee can be conferred upon the appellant in a way different from what is contemplated in the third proviso to section 14 read with section 2(5) and section 2(17) of the Act.

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*The letter has not said that the appellant would be considered to be deemed licensee vis-à-vis respondent No.2 when it purchases its power from a distribution licensee for internal distribution to its own officers and also that a special category of tariff structure should be determined for it for that purpose. **Therefore, it cannot be said that the appellant requires a differential treatment in such circumstances.** The respondent No.2 is a commercial establishment and tariff for the consumers payable to the respondent No.2 has to be on commercial principle and unless the respondent No.2 is compensated for, there cannot be any differential treatment in respect of the appellant. All equals have to be treated equally; likewise all unequals deserve to be treated unequally. A bulk consumer of electricity has to pay a tariff to be determined by the Commission, and if the appellant fulfils the character of a bulk consumer it deserves to be treated in the same manner and **if the government does have an intention to give any preferential treatment in such circumstances to the appellant category of consumers then the law has to take care of the situation by enactment or modification or amendment; but so far as the law now stands we cannot say that the Commission committed any illegality.**"*

11. Having regard to the facts and circumstances obtaining in this petition, the petitioner qualifies for deemed licensee status. The same is issued. In view of the authoritative pronouncement of the Hon'ble Appellate Tribunal for Electricity Laws in

Appeal No.1/2008, in the matter of **MILITARY ENGINEERING SERVICE, PUNJAB vs. PUNJAB STATE ELECTRICITY REGULATORY COMMISSION,** this Commission cannot concede to the request of the petitioner for separate, preferential and concessional tariff. The petitioner is purchasing power from DISCOM only, hence, will be treated as consumer and will be met with the same treatment in terms of tariff extended to any other consumer in such category. At this stage, when tariff is already fixed, this Commission will not be in a position to reopen the tariff at the fag end of the financial year. Any revision to the tariff can be made only during the next tariff revision based on the ARR of the respondent DISCOM. The petitioner can present their case before the Commission during the tariff revision process.

12. Further, the petitioner can request the State Government to allocate a quota from T.S. GENCO Station as being done in Delhi NCT area and the petitioner will be treated as an open access consumer and will have to pay transmission and wheeling charges. This Commission has no jurisdiction to allocate a quota from T.S. GENCO Station.

13. The petition is accordingly, disposed of.

This order is corrected and signed on this 20th day of November, 2015

Sd/-
(L. MANOHAR REDDY)
MEMBER

Sd/-
(H. SRINIVASULU)
MEMBER

Sd/-
(ISMAIL ALI KHAN)
CHAIRMAN

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