

M. P. ELECTRICITY REGULATORY COMMISSION

4th & 5th Floor, Metro Plaza, E-5 Arera Colony, Bittan Market, Bhopal -16

**SUB: IN THE MATTER OF INITIATING FRESH PROCEEDINGS TO
EVALUATE THE VALIDITY OF THE LICENSE OF THE SOCIETIES
IN ACCORDANCE WITH THE RELEVANT SECTIONS OF THE ACT.**

ORDER

(As passed on this day of 31st January 2008.)

- | | | |
|--|--------|-------------------|
| Energy Department,
Govt. of Madhya Pradesh,
Mantralaya, Vallabh Bhawan,
Bhopal | - | Petitioner |
| V/s | | |
| 1. Gramin Vidyut Sehkari Samiti, Manawar | - | Respondent No. 1 |
| 2. Gramin Vidyut Sehkari Samiti, Multai | - | Respondent No. 2 |
| 3. Gramin Vidyut Sehkari Samiti, Nowgaon | - | Respondent No. 3 |
| 4. Gramin Vidyut Sehkari Samiti, Amarpatan | - | Respondent No. 4 |
| 5. The C.M.D
M.P.Paschim Kshetra Vidyut Vitaran Co.Ltd.,
G.P.H. Compound, Polo Ground, Indore | - | Respondent No. 5 |
| 6. The C.M.D
M.P.Madhya Kshetra Vidyut Vitaran Co.Ltd.,
Nishta Parisar, Govindpura, Bhopal - 462 023 | - | Respondent No. 6 |
| 7. The C.M.D
M.P.Poorv Kshetra Vidyut Vitaran Co.Ltd.,
Rampur, Jabalpur | - | Respondent No. 7 |
| 8. The Registrar Cooperative Societies &
Liquidator, Vindhyaachal Bhavan, Bhopal | - | Respondent No. 8 |
| 9. Liquidator Gramin Vidyut Sehkari Samiti,
Manawar | - | Respondent No. 9 |
| 10. Liquidator Gramin Vidyut Sehkari Samiti,
Multai | - | Respondent No. 10 |
| 11. Chetram Choubey, Gram Sukva, Shailendra
Khare, Hanuman Toriya, Vindravan Mishra,
Dairy Road, Aganwadi Marg and Devki Nandan
Vishwakarma Basari Darvaja Ghusayana Mohlla
Distt. Chhatarapur | }
} | Objectors |

During the last date of the hearing on 31.12.07 Shri. P.N. Shukla Advocate on behalf of the objectors residing in the area of Nowgaon, G.V.S.S appeared and submitted the reply. Shri. C.S. Yadav, Dy. Secretary on behalf of the petitioner appeared. None appeared on behalf of G.V.S.S, Nowgaon. Having heard both the parties on 31.12.07 the Commission decided to close the petition in respect of G.V.S.S, Nowgaon. The Commission had already passed the final order in respect of the G.V.S.S of Manawar, Multai and Amarpatan.

The facts of the case are as follows:

2. The Petitioner, Energy Department of GoMP filed this petition through Shri. C.S. Yadav, Deputy Secretary on 06/11/2006 in the matter of initiating fresh proceeding to evaluate the validity of the licence of the Societies in accordance with the relevant sections of the Act under section 18(1)(b) of the MP Vidyut Sudhar Adhiniyam 2000 (VSA). The petitioner had submitted that the Hon'ble High Court, Jabalpur vide order dated 09/10/2006 in Misc. Appeal No. 2148/2002 has set aside the Commission's order dated 20/02/2002 in Petition No. 47/2001 to the extent of revocation of licence of the Respondents No. 1 to No. 4, viz. Gramin Vidyut Sehkari Samiti, Manawar, Multai, Nowgaon and Amarpatan. Hon'ble High Court had held in its order that the Commission did not enquire into the functioning of the licensee. Societies in carrying out the obligations under the Act or regulations of their terms and conditions of the licence on receipt of the reference petition from the State Government. The Hon'ble High Court had also stated that the Commission had also failed to form its opinion about the existence of public interest in ordering for revocation of the licence as required under Section 18(2) of the VSA. Before ordering for revocation of licence, the Commission had failed to issue the 30 days' show cause notice in writing to the societies stating therein the ground on which revocation of licence was proposed. Hon'ble High Court had further directed that setting aside of the impugned order would not come in the way of the State Government and of the Commission to initiate fresh proceedings in conformity with Section 18 of VSA. Therefore, the petitioner had prayed to the Commission to initiate fresh proceedings by giving notices to all the concerned parties and evaluate the validity of the licence of the Societies in accordance with the relevant sections of the Act.

3. During the course of motion hearing on 4th May 2007, the petitioner had submitted additional information stating that the Nowgaon Society is still functioning. The petitioner had also submitted the required information regarding G.V.S.S, Nowgaon as follows in additional submission:-

(a) The date of issue of licence and its validity for the above society are as under:

S.No	Name of Society	Reference of license and date	Validity	Whether extended or not?
1.	Nowgaon	F-7/1 XIII/81 dtd. 03/04/82	20 years	Not extended

(b) Financial Status of the Nowgaon Society:-

					Rs. in lakh
S.No	Name of Society	Status as on	Assets	Liability	Profit and Loss
1.	Nowgaon	31.03.2006	6394.00	17371.17	(-) 10977.17

							Rs. in lakh
S.No	Name of Society	Share capital State Government	MPEB Share Capital	REC dues	Consumer Share Capital	Outstanding HT bill dues	
1.	Nowgaon	10.00	97.49	222.84	87.17	10399.40	

(c) Status of payment of subsidies

It was submitted that the Government had already cleared the claimed amount of the societies vide order No. 8369/4/3/13/2001 dated 06/12/2001 for Rs. 50.55 Crore. The Govt. had also cleared the claims of the subsidies for societies after that period and now no claim is pending with GoMP for societies as on 31/03/2007.

4. The Commission would like to point out that the Government of India has enacted the Electricity Act 2003 (36 of 2003) which is effective from 10/06/2003 after the M.P. Vidyut Sudhar Adhiniyam 2000, came into force on 3rd July 2001. As per section 185 (3) of the Electricity Act, 2003, the provision of the enactments specified in the schedule (which includes the M.P. Vidyut Sudhar Adhiniyam, 2000) not inconsistent with the Electricity Act 2003, shall apply to the States in which such enactments are applicable. The Commission is of the opinion that the provision of section 18 (4) of the Vidyut Sudhar Adhiniyam 2000 is inconsistent with the provision of section 19 (3) of the Electricity Act 2003. Hence the provision of Section 19 of the Electricity Act 2003 should be applicable now in this case.

5. As per the provisions of section 19 (3) of the Electricity Act 2003, the Commission had issued notice to all the above four mentioned respondent Gramin Vidyut Sehkari Societies including G.V.S.S, Nawgaon allowing three

months time for reply as to why their licence may not be revoked. A public notice had also been issued inviting objections from the public and stakeholders of the areas of the above societies on the fresh proceedings of revocation of licence of the societies. Notices have also been served to all the CMDs of the Discoms, the Registrar of Co-operative Societies and the MD of the Apex Body and appellants who have appealed before the Hon'ble High Court against the Commission's order dated 20/02/2002 in petition No. 47/2001.

6. During the prescribed period of 3 months, All Union Employees and others have filed objections stating that Gramin Vidyut Sehkari Society, Nowgaon is functioning properly and the consumers are satisfied with its services. However, if the Commission decides to revoke the licence, in that case the share capital may be refunded to the shareholders immediately. The G.V.S.S, Nawgaon had submitted reply subsequently on 28/12/07, stating that due to poor financial condition, the society does not have funds even to purchase any equipments for repairs and proper maintenance and to meet out its statutory obligations. Giving details of assets and liabilities, the M.D. of G.V.S.S, Nawgaon had submitted that the assets and liabilities of Nowgaon Society as on 31/03/2007 were Rs. 5277.37 Lacs and Rs. 13222.08 Lacs respectively. The amount of outstanding HT bills dues was Rs. 15184 Lacs. From the above data, it is just and proper in public interest that the society be dissolved and licensee be revoked by the Commission. The same may be handed over to MPSEB/MPPKVCo. for smooth and proper working, functioning and distribution of power in the interest of justice.

7. However, Shri P.N. Shukla Advocate on behalf of the objectors, in their additional submission, had stated that the G.V.S.S Nawgaon had been granted licence of Electricity Distribution by the GoMP, Energy Department on 03/04/1982 for 20 years. The society had requested to extend the period of licence for further 10 years on 07/05/2007. From the beginning, the MPEB had supplied electricity to the society at the rate of 12 Paisa per unit, but at present the purchase rate of electricity had been increased upto Rs. 2.60 per unit, whereas the average sale rate is only Rs. 1.44 per unit. Due to abnormal hike in tariff, the society is running in heavy losses. Moreover, the East Discom is charging surcharge on outstanding H.T bill dues. The amount of surcharge has increased upto Rs 8657.92 Lacs. The amount of subsidy on pumps and single point connection is due to be received from the Government. The M.D of the society is on deputation from the respondent company and he is not working efficiently. In case of revocation of licence, the future of the employees of the society will be in dark. In view of the reasons mentioned above, the respondents requested that the petition be rejected. The objection had also enclosed a list of amounts of H.T bills and amount of unpaid amounts, copy of balance sheet of FY 2005-06 and 2006-07 and the copies of correspondence with the MPSEB and the Registrar Co-operative Societies.

8. Considering the objections made by the objectors, the Commission is of the view that the above mentioned objections are not sustainable. The Nowgaon Society was supplied electricity by the Board at the rate of 12 paisa per unit almost for the whole period of licence i.e. 20 years. The rate was revised upto Rs.1.50 per unit from FY 2001-02. Then too the outstanding H.T bills due was Rs. 729.99 Lacs on December 2001. The contention of the objectors that the MPSEB / East Discom had charged the surcharge on outstanding dues can not be accepted. The Board /Discom are entitled to recover surcharge on unpaid amounts. The future of employees will be decided by the Successor and the Registrar of Co-operative Societies. The amount of outstanding bill dues was Rs. 15184 Lacs on 31/03/2007. It shows that this society was not functioning efficiently and was running in losses before the first order of the Commission dated 20.02.02.

9. During the course of hearing, the petitioner submitted that G.V.S.S society, Nowgaon had been granted a licence of distribution and supply of electricity vide order dated 03/04/82. No, extension to the licence was granted. The status of assets and liabilities of this society on 13/06/06 was Rs. 6394.00 and Rs. 13371.17 lacs, respectively. The status of overdue R.E.C Loan and outstanding H.T bills dues was Rs. 222.84 and Rs. 10399.40 lacs respectively. The licence period of 20 years expired on 03/04/2002. This society is still functioning without having a valid licensee. The petitioner further submitted that looking to the outstanding H.T bills due, it is difficult to allow functioning of the society and carrying out the development and reforms work as per provision of the Electricity Act 2003. As the Hon'ble High Court had set aside the Commission's order, the petitioner had prayed to the Commission to initiate fresh proceedings and evaluate the financial viability of this society.

10. The G.V.S.S, Nawgaon was given a notice for cancellation of licence allowing three months to submit reply under section 19(3) of the Electricity Act 2003. No reply had been received from the society till the date of hearing on 29/10/07. No authorized representative had appeared before the Commission on the date of hearing on 29/10/07. Subsequently, the M.D of G.V.S.S, Nowgaon had submitted reply on 28/12/07 as mentioned in the foregoing paras.

11. The Commission observes that the period of licence of G.V.S.S, Nowgaon expired on 03/04/2002 and no further renewal or extension was granted by the GoMP. The society has not submitted any application before the Commission under Section 14 of the Electricity Act 2003. Huge amount of outstanding H.T Bills is due to the MPSEB/MPPKVVCL. The first proviso to section 14 of the Electricity Act 2003 provides 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 the Electricity Act, 2003 shall apply to such business.

12. The respondent Nowgaon Society had not applied for distribution licence under the provisions of the Electricity Act 2003. The Commission is of the opinion that this society cannot be allowed to continue the business of distribution of electricity for an indefinite period without having valid licence. It is obvious that the above society at present is engaged in the business of supply and distribution of electricity but not as per the provisions of the Electricity Act 2003. Looking at the poor financial condition of the society, it is evident that, it would not be prudent to grant a licence under the provisions of the Act. Due to the poor financial condition, it is totally unable to carry out the development and reforms works under the provisions of the Act and prescribed Regulation on the terms and conditions of licence. Accordingly, as per sub section (5) of Section 19 of the Electricity Act, 2003, the Commission hereby revokes the licence under which the Gramin Vidyut Sehkari Samiti, Nowgaon was engaged in the business of distribution of electricity (though not in accordance with the provisions of the Electricity Act 2003) and fixes 1st June 2008 as the date on which the revocation shall take effect. The Commission directs that the provisions of section 20 of the Electricity Act 2003 shall become applicable and the Commission, in due course, shall invite applications for acquiring the electricity distribution activities of the Gramin Vidyut Sehkari Samiti, Nowgaon. However, in terms of section 20(1) (d) of the Electricity Act, 2003, the Commission, to protect the interest of the consumers of the area of operation of the society shall appoint a Task Force and shall direct them to take over the distribution of electricity to the consumers till further orders with effect from 1st June 2008 on "as is where is" basis subject to the following Terms and Conditions. The CMD of East Discom will be duly consulted while constituting the Task Force.

- a) The Task Force shall ensure regular supply and distribution of electricity to the consumers. Till further orders, the regular employees of the society shall be paid their remuneration by the Task Force on the same terms and conditions as is existing in the society out of the revenues of the Society.
- b) As regards daily wages employees of the Society, the Task Force will continue to pay the salaries/wages to these employees till further order out of the revenues of the Society.

- c) The Task Force and the Society shall issue a joint notice in the newspapers that on and from 1st June 2008, the consumers of the Society shall be served by the Task Force, Jabalpur till further order of the MPERC. Such notice shall be published at least 15 days in advance of the proposed date of take over.
- d) The Task Force of the Gramin Vidyut Sehkari Samiti, Nawgaon shall arrange to prepare the profit and loss account for the period ending 31st May 2008 and the balance sheet within a period of four months from 01/06/2006 and submit the same to the Registrar of Cooperative Societies and also to the Commission.
- e) The Registrar, Cooperative Societies shall take further appropriate action for the future of the G.V.S. Samiti, Nowgaon, whose distribution licence stands withdrawn with effect from 1st June 2008.

13. The Commission directs the Commission Secretary to prepare a draft inviting applications for acquiring the electricity distribution activities of the Gramin Vidyut Sehkari Samiti, Nawgaon in consultation with a senior Advocate and put up the same to the Commission for approval.

Ordered accordingly.

(R.Natarajan)
(Member (Econ.))

(Dr. J.L.Bose)
Chairman