



Madhya Pradesh Electricity Regulatory Commission

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Petition No. 34 of 2006

SUB: PETITION UNDER SECTION 9 OF VIDYUT SUDHAR ADHINIYAM 2001 READ WITH RULE 11.15 OF M.P. ELECTRICITY SUPPLY CODE 2004.

ORDER

(As passed on this date of 4th July 2006)

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Lokendra Bhammani, Adult, S/o Shri Arjun Bhammani, R/o - 29, Yashvant Nivas Road, Starlet Tower, Indore	-	Petitioner
V/s M.P. Paschim Kshetra Vidhyut Vitaran Co.Ltd, Indore	-	Respondent No. 1
Executive Engineer, MP Paschim KVVCL Indore	-	Respondent No. 2
M/s. Shri Nakoda Construction Co.Ltd., 17/1, Lodhipura, Indore	-	Respondent No. 3
M/s. Starlit Tower Building Maintenance Society, Indore	-	Respondent No. 4

Shri Rakesh Jain, Partner, Shri Umesh Nigam, Advocate, Shri Shri Sumit Kapur, Advocate and Shri Santosh Saini, Advocate appear on behalf of the Petitioner

Shri D.K Ojha, Addl.S.E. O/o CMD (WZ) appears on behalf of the M.P. Paschim Kshetra Vidhyut Vitaran Co. Ltd., Indore.

Shri Ajay Porwal, Consultant appears on behalf of M/s. Shri Nakoda Construction Co. Ltd.

Shri S.K. Sancheti and Smt. Bhakti Vyas appear on behalf of M/s. Starlit Tower Building Maintenance Society.

2. Petition is filed under section 9 of Vidhyut Sudhar Adhinyam 2001 read with Rule 11.15 of M.P. Electricity Supply Code 2004.

3. During the course of last hearing Commission directed Respondent No. 3 and 4 to submit the details of the petition filed in the High Court by the petitioner and a copy of the agreement between Respondent No. 1 and 4. Commission also directed Respondent No. 1 to release LT connection to the petitioner and submit compliance report. The Commission also directed CMD, MP Paschim KVVCL, Indore to submit the list of similar cases where single point supply HT connection covering a group of consumers of different categories have been served by the licensees.

4. In today's hearing the Respondent submitted a copy of petition filed by the Petitioner in High court, copy of agreement between the Respondent No. 1 & 4 and list of similar cases.

5. The Respondent No. 1 in its additional submission submits that the petitioner had complaint to it in March 2006 that Respondent No. 4 is charging tariff as per rate schedule HV 3 that is more than the applicable as per the tariff schedule of the Commission. The petitioner had been availing supply since January 2004 from the Respondent No. 4. In compliance to the direction given by the Commission in its last hearing the Respondent No. 1 informed that a new LT connection has been served to the petitioner on 29/06/2006. Further the Respondent No. 1 submitted that only one more HT connection to a society namely M/s. DM Towers has been served in addition to M/s. Starlit Tower Building Maintenance Society.

6. Respondent No. 4 in its reply submits that the society was formed immediately after completion of building under section 18 of M.P. Swamitva Adhinyam, 2000 in the name of Starlit Tower Condominium, which was later on renamed as Starlit Tower Building Maintenance Society. The Respondent No. 4 has further mentioned that a copy of first HT agreement submitted by the petitioner is fraudulent document. The Respondent No. 4 further submitted that the HT connection was served to M/s Nakoda Construction Company Ltd. initially which was subsequently transferred in the name of M/s starlit Tower Building Maintenance Society Indore. Also, the Respondent No. 4 alleged that since December 2005 Petitioner had stopped making payment to respondent No.4 of all electricity and building maintenance charges inspite of repeated reminders consequently the Respondent No. 4 was forced to disconnect the electricity supply of Petitioner in March 2006 under section 14 of M.P. Prakoshta Adhinyam 2000. Respondent No. 4 therefore prays to the Commission to direct the petitioner to pay dues of the society both for electricity distribution services and other services.

7. The Commission heard the Petitioner and Respondents. Having considered the facts and circumstances of the case Commission clarifies that M.P. Prakoshta Adhinyam authorizes Respondent No. 4 to exercise power and functions regarding administration and management of property and maintenance and up keeping of the common areas and facilities and common services such as water supply, electricity, lift maintenance, security etc but it does not in any way authorize the Respondent No.4 for distribution of power. The Commission also does not agree with the argument of the Respondent No. 4 that under the 7th proviso of Section 14 of the Electricity Act 2003. Distribution licensee can undertake distribution of electricity through another person and such person shall not be required to obtain any separate licence. During the last hearing it has already been made clear that for claiming the benefit of 7th proviso of Section 14 of the Electricity Act 2003 licensee must submit before the Commission the formal demarcation of the specified area where the Distribution Licensee proposes to undertake distribution of electricity in its area of supply through such another person. The Respondent did not submit any such proposal before the Commission.

8. The Commission is of the view that Respondent No. 3 and 4 are neither exemptees under section 13 nor franchisees under 7th proviso of section 14 of the EA 2003, the following in Section (b) of the HT agreement executed on 31st October 2003 is illegal ab initio.

“ I(b) The Consumer is permitted to distribute the electric energy taken under sub-clause (a) subject to the condition that there is no contravention to the provision of the Indian Electricity Act 1910 and Electricity Act 2003”.

9. The Commission is further of the view that the Distribution Licensee cannot authorize any HT consumer to distribute electricity to non domestic consumers. The Commission has observed that Respondent No. 3 & 4 have neither sought the permission from the State Government under Indian Electricity Act 1910 nor from the Commission under Electricity Act 2003 to under take distribution of electricity to non-domestic consumer of its society, therefore HT connection served to the Respondent 3 & 4 for under taking distribution of electricity to the non domestic consumer is illegal. The Commission warns the Respondent No. 1 not to repeat such mistake in future and make necessary arrangements to serve individual LT connections to all the members of the maintenance society as per the applicable regulations. The Commission also directs Respondent No. 1 to take similar action in case of connection served to M/s. D.M. Towers as mentioned in the Affidavit.

10. The Commission during the hearing has noticed that Respondent No. 4 is charging the members of the society at rate higher than the than the tariff applicable under following heads :-

(i) TOD charges for peak demand @15% on 50% of the total consumption recorded by consumer irrespective of the fact whether electricity is used during peak load hours or not. Whereas as per tariff order the respondent No. 4 is being billed TOD surcharge and rebate on the consumption recorded during peak load hours or off peak hours respectively by the West Discom. The TOD rebate received by the Respondent NO. 4 is not being given to the consumers

(ii) Electricity duty is being charged on TOD charge also whereas as per tariff order the TOD surcharge should have been charged from the consumers and no electricity duty is payable.

(iii) Service charge @5.5% is being charged on total per unit cost on account of service provided by the respondent No. 4 towards fuse of call, O&M cost and other services. Whereas the rates as per the tariff order, are inclusive of cost incurred for fuse off calls, O&M cost etc.

10. The Commission would like to mention here that the Ministry of Power had issued a clarification to facilitate distribution of power under cooperative housing society under section 183 of the Electricity Act 2003. The instant case of single point HT supply to a society for further distribution of electricity to in its members for non-domestic purpose does not fall in the frame work of provision of EA 2003. The Commission further mention that it has referred the matter to the Ministry of Power for seeking advise to serve single point HT connection to a society for further distribution of electricity to its members for non domestic purposes. The Commission directs that pending clarification for MoP, Individual connection for non-domestic purpose should be served by the Distribution Licensee only. The Commission further directs that any amount charged over and above the applicable tariff by the Respondent No. 4 from the petitioner and other consumers should be refunded by the Respondent NO. 1 to the consumers through adjustment in the subsequent bills to be issued by the Respondent No. 1. A Compliance report be submitted to the Commission within the period of one month of this order.

11. On the request of Respondent No. 4 to direct the petitioner and other members of the society to pay the dues of the society, the Commission clarifies that they are not deciding the disputes which arises between the society and its members for which the respondent No.4 may approach to the appropriate forum.

12. With the directions aforesaid, Commission directs to close this petition.

Ordered accordingly.

(D. Roybardhan)
Member (Engg.)

(P.K. Mehrotra)
Chairman