

Sub: In the matter of clarification and direction for treating the lease hold area of the consumer as its premises under clause 2.1 (z) for installation and under clause 2.1 (z) (ii) for premises under M.P. Electricity Supply Code, 2004

ORDER

(Date of hearing: 1st October,2013)

(Date of order: 8th October,2013)

M/s WCL, Kanhan Area,
Post Dungariya,
Distt. Chhindwara (M.P.)

- Petitioner

M.P. Poorv Kshetra Vidyut Vitaran Co. Ltd., Jabalpur

- Respondent

Shri Vishal Bhatnagar, Advocate and Shri S.K.Shukla, Chief Manager (E&M), WCL appeared on behalf of the petitioner.

Shri R.K.Tiwari, Advocate and Shri A.K.Pandey, CE(Enfo.) appeared on behalf of the respondent.

2. The petitioner, M/s WCL, Distt. Chhindwara has filed this petition seeking clarification and direction for treating the lease hold area of the consumer as its premises under clause 2.1 (z) for installation and under clause 2.1 (z) (ii) for premises under M.P. Electricity Supply Code, 2004.

3. Facts of the case:

(a) The petitioner, M/s WCL is a subsidiary of Coal India Limited. Its unit at Kanhan Area , Distt. Chhindwara is an HT consumer of the respondent with contract demands of 941 kVA at 11 kV at location K-12 and 2300 kVA at 33 kV at location K-19. The supply is being availed under tariff category HV-6.1 at 11 kV and HV-2 at 33 kV. It had started mining work in 1973 under Coal Mines Authority of India in the vicinity of Pench and Kanhan valley region.

(b) Separate lease deeds were executed by the Government of M.P. with the companies which were the owners of the aforesaid mines years before these were nationalized in the year 1973. The roads in question were constructed by the ex-mine owners on their lease-hold property for the public. The petitioner had taken possession of all the aforesaid coal mines and also allowed public to continue to use such roads.

(c) The vigilance team of the respondent imposed heavy penalty under Section 126 of the Electricity Act, 2003 after describing as illegal crossing of the PWD road by the petitioner's electric lines. Hence, this petition.

(d) In light of the above submissions, the petitioner has prayed to the Commission to direct the respondent to treat the premises (lease-hold area) of the WCL as continuous land.

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4. The matter was heard on 01.10.2013. Written submissions from both the petitioner and the respondent were received. During the arguments, counsel for the petitioner referred to circular no. CE(Comm)/HT/1654 dated 07.03.2011 issued by the respondent and averred that the petitioner's case fitted fully within the framework established by this circular. The premises are held by the petitioner on lease and the roads are situated entirely on such lease hold land. The coal mines in the lease area have the approval of the Government and other relevant authorities and do not extend beyond the land held by the petitioner.

5. During the hearing, the respondent submitted that the petitioner had filed two writ petitions nos. 18335/12 and 18336/12 before Hon'ble High Court, Jabalpur against the vigilance checking dated 22.05.2012, which were disposed of with the directions to the respondent to make final assessment of the petitioner as per requirements of Section 126 of the Electricity Act, 2003 and till passing such final order no coercive steps be taken against the petitioner for recovery of the requisite sum. The final order was issued by the respondent on 02.02.2013. The petitioner again filed a writ petition no. 2246/2013 before Hon'ble High Court, Jabalpur against the aforesaid final order, which is still pending. Counsel for the respondent also submitted that a notice dated 22.05.2012 was served to the petitioner for regularizing the enhanced premises for the HT connection at K-12 & K-19. However, Counsel for the petitioner clarified that the above writ petitions were filed against vigilance checking but this petition was filed before the Commission to get clarification whether the old lease hold area may be considered as its premises.

6. Having heard both parties and considering their written submissions, the Commission has noted that the respondent had served the HT connections under the agreements executed before the year 2003 for the complete area under question. The aforesaid HT agreements, therefore, are saved as per Section 185(2)(a) of the Electricity Act, 2003. The Commission also takes into cognizance the circular dated 07.03.2011 issued by the respondent which clarifies that in case a road(s) is (are) passing through premises entirely owned/held on lease by a consumer (including that over which such roads are passing) and also the same road(s) has (have) been allowed to be used by the said consumer for public use for the convenience of public, such premises shall not be considered as divided and it shall be considered as continuous for the purpose of electricity connection for that particular premises.

7. Earlier, the respondent had raised various issues including the area of 'premises' under the agreements executed before enactment of the Electricity Act, 2003. By circular dated 07.03.2011, the respondent had issued clarification on the area of 'premises'.

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8. The Commission has noted with great concern that despite the above clarification dated 07.03.2011 by the respondent company itself to its field officers, cases were registered on the same issue under Section 126 of the Electricity Act, 2003 by its vigilance team. The Commission, therefore, directs the respondent to ensure that in future its officers shall deal with the cases according to the specified procedure and as per the provisions of the Electricity Act, 2003.

9. In the aforesaid circumstances, the Commission has accepted the prayer of the petitioner on the limited issue of area covered under the 'premises' and it is clarified that in view of the provisions of Section 185(2) (a) of the Electricity Act, 2003, the old lease hold area may be considered as one premises. However, the decision of Hon'ble High Court, Jabalpur regarding final assessment in writ petition no. 2246/2013 shall be final and binding on both the parties.

Ordered accordingly.

(Alok Gupta)
Member

(A.B.Bajpai)
Member

(Rakesh Sahni)
Chairman