

**JOINT ELECTRICITY REGULATORY COMMISSION FOR
THE STATE OF GOA AND UNION TERRITORIES
GURGAON**

O.C.
31/5/13

Coram
Dr. V.K. Garg, Chairperson
Sh. S.K. Chaturvedi, Member
Petition No. 36/2011

In the matter of /497-98

Request for exemption under proviso 8 of section 14 of the Electricity Act, 2003.

And in the matter of

Collector & Development Commissioner and Secretary (Power), UT of Lakshadweep,
Kavaratti.Petitioner

Order

Dated 27.05.2013

1. In exercise of the powers conferred by Section 83 of the Electricity Act, 2003 the Central Government constituted a two member (including Chairperson) Joint Electricity Regulatory Commission for all Union Territories except Delhi to be known as "Joint Electricity Regulatory Commission for Union Territories" with Headquarters at Delhi as notified vide notification no. 23/52/2003- R&R dated 2nd May, 2005. Later with the joining of the state of Goa, the Commission came to be known as "Joint Electricity Regulatory Commission for the State of Goa and Union Territories" as notified on 30th May, 2008. The Joint Electricity Regulatory Commission (for the State of Goa and Union Territories) started functioning with effect from August 2008 in the district town of Gurgaon, Haryana.
2. The Chairperson, Joint Electricity Regulatory Commission for the State of Goa and Union Territories (herein after referred as the Commission) received a DO Letter No. 67/2/3-Ele-2011/1066 dated 28.03.2011 from Dr. N. Vasanthakumar, Collector & Development Commissioner, Administration of UT of Lakshadweep stating that whole of the UT of Lakshadweep falls under Rural Category as per Seventy Third Amendment Act of 1992 by notification of Lakshadweep Panchayats Regulation 1994. Therefore the Electricity Department, Lakshadweep is entitled for exemption mentioned in 8th proviso of Section 14 of the Electricity Act 2003 and prayed that Electricity Department, Lakshadweep may be exempted from all the obligations of a licensee except which are mentioned therein.
3. On receipt of the DO letter the Commission directed the Lakshadweep administration to file a Petition as per JERC (conduct of Business) Regulations, 2009. The Administration of UT, Lakshadweep through mail submitted Petition dated 16.11.2011 as per the JERC (Conduct of Business) Regulations, 2009. The pleadings of the administration of UT, Lakshadweep are found in line with the (Conduct of Business) Regulations, 2009.

On receipt of the petition it was numbered 36/2011. The Commission sent a public hearing notice to be held on 18.05.2012 at Commission's headquarters.

5. The Commission received objections from Dr. P.P. Koya, Ex Member of Parliament, UT of Lakshadweep and Panchayat Members of Kavarati Island. The relevant part of objections filed by Dr. P.P. Koya, Ex Member of Parliament, UT of Lakshadweep runs as under:

Quote

"The Lakshadweep Panchayat Regulation of 1994 was promulgated in continuation to the process of establishing Panchayat institutions in this area following 73rd Constitution Amendment. As Panchayat bodies are meant for rural area therein it is mentioned like that.

Whereas as per the 2011 Census six out of the 11 inhabited Lakshadweep Islands are classified as urban. The classification of urban or rural nature of a given area is based on the Census findings and it forms basis for all further references. This being the fact there is no justification on the part of the Electricity Department Lakshadweep to find shelter under a regulation issued before 18 years to seek exemption from the regulatory control of the Joint Electricity Regulatory Commission established by the Union Government for the State of Goa and Union Territories."

Unquote

6. The relevant objections filed by Panchayat Members of Kavarati Island runs as under:-

Quote

"Whereas as Electricity is an essential requirement for all facets of life and it has been recognized as a basic need. It is the key to acceleration economic growth, generation of employment, elimination of poverty and human development specially in rural areas as per the Electricity Policy, it is fundamental responsibility of a Government in backward areas such as Lakshadweep the Administration to generate and distribute electricity as under the Electricity Act, 2003.

Lakshadweep Electricity Department is a deemed licensee under Section 14 proviso 3 of the Act. There is no scheme prescribed in the Electricity Act for a Government already a licensee to get rid of regulatory obligations. Hence the petition of the opposite party is against the Act and fit to be dismissed prima facie."

Unquote

7. The Commission held public hearing on 18.05.2012 at Commission's headquarters at Gurgaon.
8. The Commission sent letters no. 15/1/2011-JERC/5328-29 dated 3.9.2012, 20.09.2012, 23.11.2012, 24.01.2013 and 23.04.2013 to the Secretary (Power), Electricity Department, UT of Lakshadweep, Kavarati directing the petitioner to file replies to the objections of Dr. P.P. Koya, Ex Member of Parliament and Panchayat Members of Kavarati Island. But the petitioner has failed to file reply to the objections of Dr. P.P. Koya, Ex Member of Parliament and Panchayat Members of Kavarati Island.
9. The Commission passed order on 8.07.2011 as under:-

Quote

"The petitioner has filed an affidavit requesting postponement of the hearing on the matter to last week of July or first week of August 2011, on account of unavoidable reservation of their standing Counsel.

The request granted."

Unquote

10. The Commission on **23.08.2011** passed the following order:-

Quote

"Shri S. Radhakrishanan Standing Counsel Lakshadweep" appeared before the Commission on behalf of Lakshadweep. The Commission observed that the petitioner while acting under 8th proviso of section 14 of the Act, has to ensure that, in the process, they do not violate any of the provisions of the Act and Rural Electrification Policy of Government of India. Notification of rural area only, may not be enough.

While appreciating the observations of the Commission, learned Counsel for Lakshadweep, submitted that they shall examine the issue in totality and make a resubmission by 10.10.2011. If approved by the Commission. The Commission allowed their request.

The matter shall be heard on 18.10.11."

Unquote

11. The Commission passed following order on **18.10.2011**:

Quote

"1. Dr. N. Vasanthakumar, IAS, S/o Namasivayam (aged 36 years), Collector & Development Commissioner and Secretary (Power), U.T. of Lakshadweep, residing at Govt. Quarters, Kavaratti, has filed an Affidavit requesting for adjournment of the case on the ground that Standing Counsel of UTL Administration representing Lakshadweep Administration is incapable of coming over to Delhi due to certain unavoidable family rituals and religious functions. Request allowed.

2. In terms of Order dated 23/8/2011, the Petitioners were required to file resubmission by 10/10/2011. Last and final opportunity is granted to file resubmission/additional affidavit by 16th November, 2011.

The matter shall be heard on 25.11.2011."

Unquote

12. The Commission on dated **25.11.2011** passed the following order:-

Quote

"The petitioner have filed the reply. The Counsel for the petitioner is heard at length and was allowed to file further clarification, if any, by 12.12.2011."

Unquote

13. The Commission on dated **18.05.2012** passed the following order:-

Quote

"Representative of the Electricity Department, U.T. of Lakshadweep orally submitted that they have sent letters to the Ministry of Home Affairs, Ministry of Law and Ministry of Power, Government of India for seeking interpretation of proviso 8 of Section 14 of the Electricity Act, 2003 and Rural Electrification Policy.

The Commission directed Petitioner to file Petition for approval of ARR and Tariff determination for FY 2012-13 at the earliest so that the directions issued by the Hon'ble APTEL in O.P. No. 1 of 2011 can be complied (the correspondence of the petitioner with Ministry of Home Affairs, Ministry of Law and Ministry of Power may go in parallel and the decision, as and when received, will be implemented prospectively) Representative of the Petitioner requested 4 weeks time for preparing and submitting Petition for approval of ARR and Tariff determination for FY 2012-13. Request of the Petitioner acceded.

Post for hearing on 26.06.2012 at 11.00 A.M."

14. The petitioner on 31.07.2012 filed petition no. 85/2012 for determination of Tariff and approval of Annual Revenue Requirement for FY 2012-13. The Commission issued final order on 31.10.2012 and determined tariff and also approved Annual Revenue Requirement for FY 2012-13 of ED- Lakshadweep.
15. The petitioner also filed petition no. 101/2013 on 9.04.2013 for determination of Tariff and approval of Annual Revenue Requirement for FY 2013-14 and after public hearing on 3.05.2013 at Kavarrati also sent letter no. 67/2/2/El-2012 dated 10.05.2013 with a request for considering rebate for advance payment and permission for commencing collection of payment through franchisee. The Commission has issued final order on 22.05.2013 and determined tariff and also approved Annual Revenue Requirement for FY 2013-14 of ED- Lakshadweep.
16. The petitioner has filed the present petition for seeking exemption under proviso 8 of section 14 of the Act. It is, therefore, pertinent to mention the provisions of proviso 8 of section 14 of the Act. Which runs as under:

Section 14 proviso 8 of the EA, 2003

Quote

"PROVIDED ALSO that where a person intends to generate and distribute electricity in a Rural Area to be notified by the State Government, such person shall not require any licence for such generation and distribution of electricity, but he shall comply with the measures which may be specified by the Authority under section 53."

Unquote

17. From reading of 8th Proviso of Section 14 of the Electricity Act, it is clear that where a person intends to generate and distribute electricity in a rural area notified by the state Government such person does not require any licence for generation and distribution of electricity but he shall comply with the measures which may be specified by the authority Under Section 53 of the Act.
18. It is also worthwhile to reproduce Para No. 2 of Affidavit of Dr. N. Vasanthakumar, Collector & Development Commissioner, Kavaratti, Lakshadweep dated 16.11.2011.

Quote

"Now, the Lakshadweep Administration has considered and proposed a scheme of maintaining uninterrupted power supply in Lakshadweep. As per the scheme, the generation and transmission of electricity will be under the electricity department and

the distribution of electricity will be entrusted to an independent agency known as Lakshadweep Energy Development Agency (LEDA)."

Unquote

19. From reading of the above para, it is clear that as per the proposed scheme:
- (i) Generation and transmission of Electricity will be under the Electricity Department, Lakshadweep.
 - (ii) Distribution of Electricity will be entrusted to an independent agency known as Lakshadweep Energy Development Agency (LEDA).
20. In the above situation it is clear that as per the proposed scheme generation and transmission of Electricity will be with Electricity Department- Lakshadweep for which a licence is required u/s 14 (a) of the EA, 2003.
21. Whereas as per the proposed scheme the distribution of Electricity will be handed over to an independent agency known as Lakshadweep Energy Development Agency (LEDA) for which also licence is required u/s 14 (b) of EA, 2003.
22. In the light of above facts and provisions of 8th Proviso of Section 14 of the Electricity Act it can easily be said that a person who intends to generate and distribute electricity in a rural area notified by the State Government shall not require any licence for such generation and distribution of electricity but he shall comply all measures which may be specified by the authority Under Section 53 of the Act. But as per averments made in Para No. 2 of the affidavit dated 16.11.2011 of the petitioner generation and transmission of electricity will be under the Electricity Department, Lakshadweep and distribution of electricity will be entrusted to an independent agency known as LEDA. So the Electricity Department, Lakshadweep does not qualify the terms and conditions provided under 8th Proviso of Section 14 of the Electricity Act that when a person intends to generate and distribute electricity in a rural area notified by the State Government such person will not require any licence for such generation and distribution of electricity. But according to Petitioner generation and transmission will remain with Electricity Department, Lakshadweep and distribution of electricity will be entrusted to an independent agency know as LEDA for which separate licensees are required u/s 14 (a) and 14 (b) of EA, 2003. So the Petition does not fall within the ambit of 8th proviso of Section 14 of the Electricity Act.
23. It is also for the petitioner to prove that whole of territory of Union Territory of Lakshadweep is rural area. Dr. P.P. Koya, Ex Member of Parliament in his objections has submitted that as per 2011 Census six out of the 11 inhabited Lakshadweep Islands are classified as urban. The Commission asked the petitioner to submit reply to the objections of Dr. P.P. Koya. But the petitioner failed to file reply to the objections of Dr. P.P. Koya. The Commission for seeking compliance of directions of the Commission sent letters no. 15/1/2011-JERC/5328-29 dated 3.9.2012, 20.09.2012, 23.11.2012, 24.01.2013 and 23.04.2013 to the Secretary (Power), Electricity Department, UT of Lakshadweep, Kavarati directing the petitioner to file reply to the objections of Dr. P.P. Koya. But the petitioner has failed to comply directions of the Commission and file reply to the objections of Dr. P.P. Koya.

Hence, it can easily be inferred that the petitioner is to say nothing in this regard and can be held that the petitioner failed to prove that whole of the territory of UT Lakshadweep is rural area.

24. The petitioner after filing the present petition has also filed petition no. 85/2012 on 31.07.2012 for determination of Tariff and approval of Annual Revenue Requirement for FY 2012-13 and petition no. 101/2013 on 9.04.2013 for determination of Tariff and approval of Annual Revenue Requirement for FY 2013-14. The Commission has already determined tariff and approved ARR for FY 2012-13 in petition no. 85/2012 vide order dated 31.10.2012 and for FY 2013-14 in petition no. 101/2013 vide order dated 22.05.2013.
25. By virtue of happening of events in para no. 23 the petition has become infructuous.
26. In the light of above facts, proviso 8 of section 14 of EA, 2003, discussion and observations it is clear that for seeking exemption under proviso 8 of section 14 of the EA, 2003 the petitioner is firstly required to prove that whole of territory of UT Lakshadweep is rural area. Secondly the petitioner shall generate and distribute Electricity. But in the instant case the petitioner firstly failed to prove that whole of territory of UT Lakshadweep is rural area and secondly failed to prove that the petitioner shall generate and distribute Electricity as from reading of para no. 2 of affidavit of Dr. N. Vasanthakumar, Collector & Development Commissioner, Kavaratti, Lakshadweep dated 16.11.2011 it is clear that as per the proposed scheme of Govt. of UT of Lakshadweep generation and transmission of Electricity will be under the Electricity Department, Lakshadweep and distribution of Electricity will be entrusted to an independent agency known as Lakshadweep Energy Development Agency (LEDA). Therefore, the petitioner has failed to prove any of the two ingredients required to be proved for seeking exemption under proviso 8 of section 14 of the EA, 2003 i.e. (i) rural area (ii) generation and distribution will be by the same person. Hence, the petitioner has failed to prove that the petitioner is entitled for exemption provided under proviso 8 the section 14 of EA, 2003.
27. Resultantly the petition fails and is hereby dismissed.

Sd/-
(S.K. Chaturvedi)
Member

Sd/-
(Dr. V.K. Garg)
Chairman

Certified Copy


(R.K. Malik)
Secretary

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