Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 244 of 2006

Dated: 6th January, 2010.

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. H. L. Bajaj, Technical Member

IN THE MATTER OF:

Delhi Development Authority,
Vikas Sadan,
New Delhi ……. Appellant

Versus

1. **Delhi Electricity Regulatory Commission**
   Viniyamak Bhawan, C Block,
   Shivalik, Malviya Nagar,
   New Delhi – 1100017.

2. **B.S.E.S Rajdhani Power Ltd,**
   BSES Bhawan,
   Nehru Place, New Delhi-19.

3. **BSES Yamuna Power Ltd.**
   Shakti Kiran Bhawan,
   Karkardooma, Delhi- 110092.

4. **North Delhi Power Limited,**
   Grid Sub-Station Building,
   Hudson Lines, Kingsway Camp,
   Delhi-110093.

… Respondents

Counsel for the Appellant(s) : Mr. Pawan Mathur with
Mr. Bhattacharjee, XEN, DDA.
Mr. Motwani, XEN, DDA
Mr. Mohd. Yaseen, A.E., DDA

Counsel for the Respondent(s) : **Mr. Amit Kapur,**
Mr. Anupam Verma,
Ms. Poonam Verma for R2, 3 & 4
Mr. Meet Malhotra for R.1
Mr. M.S. Gupta, DD (Law), DERC.
Mr. Swagat Sharma
Mr. A. Buddy Ranganathan
Ms, Shobana Masters.
Mr. Anurag Bansal
Mr. S.S. Chauhan

Per Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson

JUDGMENT

1. The Delhi Development Authority is the Appellant. Challenging the order dated 22.1.2004 passed by the Delhi State Commission this Appeal has been filed. The Appellant is a statutory authority vested with the functions of the planned development of the National Capital Territory of Delhi and selling the appartments, commercial complexes, plots etc. to buyers in terms of the DDA Act, 1957.

2. As against the demand for 50% of the cost of development charges made by the Distribution Companies (the Discoms) viz. Respondents 2, 3 and 4, the Appellant DDA filed a Petition before the Delhi State Commission in Petition No. 26/03 for giving a direction to the Discoms not to demand those charges from the Appellant. This was dismissed on 22/1/04 by the Delhi State Commission, the R1, holding that both the parties have to share electrification

charges in the ratio of 50:50. This Order is under challenge from the DDA in the present Appeal before this Tribunal.

3. The points urged by the Counsel for the Appellant are as follows:

   i. DDA, the Appellant is not a consumer of electricity and as such no demand can be made from it by the Discoms, the Respondents.

   ii. The past practice of DDA being 50% of the electrification charges to the erstwhile Delhi Vidyut Board (DVB) was in pursuance of the agreement existing between the DDA and the DVB. The present Discoms to whom the management control had been transferred, being private parties are no longer Government entities, and therefore, the past practice will not apply to the parties in the present case.

   iii. U/S 42 of the Electricity Act, the Discoms are mandated to develop and maintain an efficient distribution system in their area of operation and supply; under Section 43 the Discoms are obliged to give supply to owners/occupiers of the premises, who shall bear the cost of electricity supplied as well as other expenditure. Therefore, the developers, namely the DDA cannot be asked to pay the cost of development charges. Instead, the Discoms have to collect the charges from consumers.

iv. The Order of the Delhi State Commission, the DERC in continuing the existing practice of sharing electricity charges in the ratio of 50:50 is per se, illegal as it goes against the provisions of the Act.

4. The learned counsel for Respondent in reply would make the following contention:-

"Every Distribution licensee under Section 43 shall supply to such premises on the application filed by the owner for the occupier. Under Section 43 (2) proviso no person shall be entitled to demand from a licensee supply of electricity for any premises having a separate supply, unless the said person has agreed to pay such a price to the licensee as fixed by the appropriate Commission. "In the instant case, the State Commission has fixed the price and that apart it had framed regulations also which mandate the sharing of the cost of providing electricity in the ratio of 50:50. 'Any person' includes DDA also. Therefore, the order impugned by the State Commission is valid in law and perfectly justified".

5. We have heard the learned counsel for both the parties and perused the records including written submissions The issue is "Whether the Respondents are entitled to the payment of 50% from the Appellant by continuing the existing practice of sharing electricity charges in the ratio of 50:50 ?" To deal with this issue we have to refer to the provisions of Section 43(2) which is quite relevant.

As per this Section, no 'person' shall be entitled to demand from a Distribution licensee a separate supply, unless he has agreed to pay him such price as determined by the Appropriate Commission. Therefore, the DDA being a 'person' had agreed to pay the price by way of an agreement with the erstwhile DVB, to pay to the new discoms such a price. Accordingly, the State Commission had determined the price. Therefore, the question as to whether or not, the DDA is a consumer is not germane to the controversy sought to be raised. Moreover, the finding by the State Commission fixing the share of cost of electrification in the ratio of 50:50 is as per the statutory regulations.

6. According to the State Commission, the past practice of sharing the cost on a 50:50 basis is to be continued as this is an existing practice which is mentioned in Section (6) of the Handbook of Commercial Practice 1992 of the Delhi Electricity Supply Undertaking (DESU). As per the Clause 6.1, the electrification of any colony in Delhi is the responsibility of the concerned colonizing agency. As per this Clause, the erstwhile DESU, the predecessor of DVB has undertaken electrification of a colony at the specific request of the concerned sponsoring party against 50% payment towards the cost of HT feeder, sub-station and the LV mains and 100% cost towards street lighting. It is this provision which continues even at present. The reasons are given at page 191-192 of the Impugned Order and the relevant portions are paras 6 and 7 is reproduced here under:

> ***"6. The rival contentions of the parties have been considered. It is well known fact that contribution by consumers in form of development charges and its sharing in the ratio of 50:50 between utility and the development agencies/consumer was in existence at the time of privatization of DVB and the successor entities are on the same footings as far as their rights and liabilities for demanding development charges are concerned. If full development charges are borne by the licensee, i.e. Respondents in this case, these would reflect in the Annual Revenue Requirement (ARR) of the licensee which would mean that the old consumers who had already paid their 50% share would also be loaded for electrification of new areas. On the other hand, if consumer in a new area is asked to pay full development charges, he would be loaded with 50% share of the licensee for old electrified areas. Thus, the existing practice of sharing of electrification charges in the ratio of 50:50 is continued.***
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> ***7. Under the shared facility agreement, the Respondent companies are under obligation to execute the schemes for which the petitioner has already made payments to erstwhile DVB. The work on such schemes, if not executed so far, are to be executed within given 'work schedule'."***

7. It is also pointed out by the Ld. Counsel for the Respondent that the share of electrification costs in the ratio of 50:50 has now been sanctified by the Delhi State Commission by giving it the shape of a Regulation, namely Regulation 30(1) of the Delhi Electricity Supply Code and Performance Standards Regulation 2007.

8. Further, it is held that the past practice involving the sharing of electricity cost in the 50:50 ratio between DDA and the erstwhile DVB is independently conceived under provisions of Section 185 of the EA. It is also pointed out that the said practice has been approved by the tariff order dated 26/6/03 passed by the Delhi State Commission; and as per that tariff order, the development costs

are to be shared in the above-mentioned ratio between the power utilities the Respondents herein, and the Land Development Agency/Agencies i.e. the Appellant DDA.

9. In case the R2 to R4 being Discoms/licensees are made to bear the entire development charges, then those charges would get reflected in the ARRs of these companies. In that event the old consumers of the erstwhile DVB, who had already paid 50% of their share, would also be burdened with the payment of development charges for electrification in the newer areas. Similarly, if a consumer in the newer area is demanded to pay development charges, he will have to bear 50% of the electrification cost in the older areas also. Therefore, the existing practice of sharing electrification charges in the ratio of 50:50 has to be continued.

10. The next question that may arise incidentally is as to whether the DDA would be impacted by payment of 50% of the cost of electrification of the area. It cannot be contended that by making payment towards 50% of the electrification cost, DDA itself has to bear that 50%. On the other hand, DDA can recover the same from its own consumers and prospective buyers. Thus DDA is rarely impacted by this payment. As a matter of fact, the Chief Engineer of DDA himself admitted before the State Commission that the amount deposited by the DDA towards 50% of the electrification charges is being

recovered as electrification charges from the prospective buyers of the plots/flats. In the impugned Order, the said admission has been recorded as follows:

"Shri N.K.Gupta, appearing for the petitioner contended on behalf of the Petitioner that they are a self-financed autonomous body and that they had an agreement with erstwhile DVB, herein after called DVB, where under the DVB had undertaken for laying electricity connections on the land developed by the petitioner. The petitioner were depositing in advance the 50% of the electrification charges as per demand note submitted by DVB... He further clarified that DDA recovered the amount paid to DVB as electrification charges from the prospective buyers of plots/flats…."

With reference to the above admission by the Chief Engineer, of the DDA before the State Commission, the Ld. Counsel for the Appellant has now submitted that this is wrong recording. This is unfortunate. There is no basis for this Statement made by the learned counsel for the Appellant especially when they have not chosen to file an application before the State Commission for expunging those observations, on the ground it was wrongly recorded. Further, this point has never been raised in the grounds of Appeal filed before this Tribunal. So this submission lacks substance. Further, the fallacy in this submission made by the Ld. Counsel for the Appellant is also reflected when we look at the interim Order passed by this Tribunal on 10/1/08. As a matter of fact, at the initial stage, in order to solve the controversy with regard to the question as to who actually has to bear 50% of the cost, the Tribunal directed

the Appellant through different Orders passed on various dates to furnish details of the cost and charges of flats/plots. Admittedly, no particulars had been furnished by the Appellant before this Tribunal. In this situation, the Tribunal passed the interim Order dated 10/1/08 recording the very same statement as contained in the impugned Order to the effect that 50% of the cost of electrification had been recovered from its consumers. The relevant portion of the said interim Order is as follows:

"DDA recovers the 50% of the cost of electrification from its customers in respect of the flats. He says that in case Rs. 100 is the cost of electrification incurred by the respondent and the same is recovered from the allottees.

11. In view of the above Order passed by the Tribunal on 10.1.2008, pending Appeal, the submission of the Ld. Counsel for the Appellant that the statement of Mr. Gupta, the Chief Engineer, DDA recorded by the State Commission in the impugned Order was wrongly recorded is absolutely wrong. Therefore, as admitted by the Chief Engineer DDA, it has to be held that the DDA is the 'person' who represents all the consumers and collects all the amounts from them and as such it is liable to pay 50% of the share to the discoms.

12. As indicated above, the electrification work was being undertaken by the Respondents at the request of DDA in unelectrified areas. DDA had been implementing the sharing of development between the erstwhile DESU, and the

DVB and later the Discoms, the R2 to R4 for the past 32 years since 1977. Having acted upon the scheme of 50:50 cost sharing, the DDA cannot be now allowed to make a plea seeking a reversal thereof. In other words, the DDA is estopped from pleading for the cancellation of the cost sharing arrangement, which would cast additional burden on over 30 lakh consumers of electricity in Delhi from whom the DDA had been all along making profits.

13. The contention of the DDA that the past practice cannot over-ride the provisions of the Electricity Act is misconceived. In fact, all arrangements existing under the DVB were to have been continued and given full effect by the operation of law under the provisions of the transfer scheme, the Reforms Act and the Electricity Act. Another contention has been urged on behalf of the DDA that the Discoms are private companies and they are not on the same footing as that of the erstwhile DVB. This contention also is wrong. This sort of interpretation is against the mandate of Sections 14 to 16 of the Reforms Act, Rule of 10(2) of the transfer Scheme, Section 185(2) of the EA and the conditions of the license issued to the Discoms. The Discoms are merely the licensees to the distribution assets and undertaking of the public utilities being run by them for the period for which they have the license and they are authorized to distribute electricity for a period of 25 years.

14. The Respondents have placed the materials before this Tribunal through their Written Submissions to show that from 17/10/03 to 7/6/04, the DDA on so many dates had sent letters to the Respondent companies requesting for electrification of the various areas on deposit of 50% sharing on that basis, it is pointed out by the Respondents that the DDA, having acquiesced to such a practice by its continuous conduct, cannot now be allowed to go back from its obligation to pay 50% of the Development cost. We find substance in this submission made on behalf of the Respondent Discoms.

15. There are materials which cannot be disputed to show that the DDA is the owner and occupier of the land and it has developed the lands into buildings/flats, institutional buildings, colonies, commercial complexes etc. The sale price of such property includes the cost of civic amenities such as water, electricity etc. Thus, it is clear that the electricity has been consumed by DDA through its contractors, for construction activities as a principle.

16. The tariff Order issued by the State Commission on 26/6/03 also supports the contention of the Respondents. In that Order, the same practice of cost-sharing on a 50:50 between utilities and the development agencies had been approved. This tariff Order is final and binding. As held by the Supreme Court in AIR 2004 SC 760 BSES V. Tata Power Co. Ltd., and AIR 1998 SC 1795 Hyderabad Vanaspati V. A.P.State Electricity Board, once the tariff has

been approved by the State Commission, it has attained finality and the same is binding on both parties and it is not permissible for anyone to claim a different tariff.

17. The State Commission is empowered under the Reforms Act as well as under the Electricity Act to determine the tariff and also take decisions on development costs. It can also frame regulations which include cost-sharing on 50:50 basis. Therefore, the impugned Order passed by the State Commission holding that this practice is to be continued is well within its right, and the same is justified. It is contended by the Appellant that only the Discoms were to bear the expenditure on electrification as per the National Capital Territory of Delhi (NCTD). This is misconceived. This practice is already in existence and the Delhi State Commission endorsed this fact that the cost sharing arrangement in respect of development charges was applicable to the DVB, the predecessors of the Respondent discoms, as well as to the DDA the Appellant herein, through the statutory progression under the transfer scheme.

18. The Discoms are public utilities in the form of a company where management control is with private entities and that too, for a specific period for which they have the license and sanction. On the other hand, it is because of the availability of amenity of electricity the DDA, being a development agency, is able to sell its plots and flats to its customers. Hence, there is a

complementality of their respective functioning, with each supporting the other. Moreover, admittedly the DDA recovers its share of 50% of development costs from its own consumers/allottees of land and flats etc.

19. The main contention of the DDA is that DDA is not a consumer as per the EA. The term consumer is defined in Section 2(15) of the Act. As per this Section, the term 'consumer' means any person, who is supplied with electricity or the person whose premises are being connected for the purpose of receiving electricity. The definition of 'person' is given in Section 2(49). The term 'premises' is defined in Section 2(51). Therefore, Section 2(15) and Section 2(49) of the Act would establish that the DDA would fall within the scope and ambit of being a consumer and in the alternative, a 'person' as contemplated u/S 2(49) of the EA. This apart, Section (6) of the DDA provides for objectives of the DDA, which empower it to carry out building, engineering etc. in connection with the supply of water, electricity etc. Sections 23 and 37 of the DDA Act further empower the DDA to levy and recover betterment charges where the DDA undertakes development. Section 36 provides for the responsibilities of the DDA for maintenance and provision of amenities in the areas developed by it.

20. These provisions would show that the DDA is the owner of the lands developed by it in the NCTD, in which its projects are being executed. The

definition of the term ‘premises’ clearly brings the DDA within the ambit of a ‘consumer’ or in the alternative, in the ambit of a ‘person’. Therefore, it is not correct to contend that a developing agency cannot be termed to be a ‘consumer’ or ‘person’, that too in the light of the facts of the present case.

21. It is contended by the DDA that in view of Sections 42 and 43, the Discoms are only entitled to collect of the development costs from its consumers and not from the DDA as advance. This contention is also mis-conceived. The DDA cannot ignore its statutory mandate of development which in its proper context includes establishment and development of amenities such as water, sewerage, electricity etc. There is absolutely no basis to claim that land development agencies cannot be consumers as defined u/S 2(15) of the EA. When they fall within the ambit of ‘person’ as defined u/S 2(49) of the EA r/w Section 2(51) of the EA, which defines ‘premises’, it is clearly established that DDA is a consumer/person for the purpose under the EA.

22. Therefore, the contention of the Appellant that it is the exclusive duty of the Distribution licensee under Section 42 of the Act to develop and maintain an efficient distribution system and therefore, DDA cannot be called upon to deposit the funds towards the electrification plan of its colonies and projects developed by it cannot be accepted as Section 42 cannot be read in isolation, and it should be read conjointly with Sections 43, 45, 46, 47, 48 and 50 of the

Act and Sections 2, 6, 8(2)(d), 23(1)(b), 36 and 37 of the DDA Act, as indicated in the earlier paragraphs. It is under the above provisions that the DDA is ordained to incur expenditure for the development of areas in the NCTD as well as for the development of infrastructure such as water, sewerage and electricity etc. Moreover, the DDA is entitled to charge its own consumers and allottees for such amenities and infrastructure facilities and accordingly, it can bill such costs in the pricing of its institutional plots. Thus, none of the contentions made on behalf of the Appellant would merit consideration.

23. Before parting with this case, we are constrained to point out one sad feature in this case that despite the fact this Appeal has been filed in 2006 as against the State Commission's order dated 22.1.2004, we were not able to dispose of this Appeal within 180 days as prescribed in Section 111 (5) of the Indian Electricity Act 2003. We are pained to observe that DDA, the Appellant has not given effective cooperation to this Tribunal for the disposal of the Appeal at an early date. Earlier this Tribunal, pending Appeal, gave a direction to the DDA, Appellant to furnish the particulars before the Tribunal the cost of buildings/flats, institutional buildings, colonies, commercial complexes etc. in order to solve the controversy with regard to the question as to who has to bear the 50% cost. Despite the direction, the DDA have never obeyed this direction by giving the particulars as required. Since the particulars required by the Tribunal have not been placed, this Tribunal, which was made to pass the

interim order dated 10.1.2008. This process also took long time. That apart several adjustments were sought on the ground that the Regulations have been challenged before the High Court and the same is pending. Since it was contended that the writ petition will be disposed of at an early date, it was adjourned on several occasions. Ultimately the Tribunal asked the learned counsel for the Appellant to argue the matter on merits so that we can dispose of the matter considering the merits. Accordingly, the arguments were advanced by the parties on several dates. After finishing the arguments, the learned counsel for parties were directed to file the written submissions. For filing the written submissions the Appellant sought adjournment on several days. Ultimately, the written submissions have been filed only recently. That is how we have taken more time to dispose of this appeal.

24. In view of the above discussion, we feel that there is no infirmity in the impugned Order and the same is confirmed. Hence, the appeal is dismissed as devoid of merits. No costs.

(H.L.Bajaj)
Technical Member

(Justice M.Karpaga Vinayagam)
Chairperson

Dated: 6th January 2010
REPORTABLE / NON-REPORTABLE