

**BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY
Appellate Jurisdiction, New Delhi**

Appeal No. 114 of 2007

Dated this 08th day of May, 2008

**Coram: Hon'ble Mr. A. A. Khan, Technical Member
Hon'ble Mrs. Justice Manju Goel, Judicial Member**

IN THE MATTER OF:

Delhi Metro Rail Corporation Limited

3rd Floor, NBCC Place,
Pragati Vihar, Bhisma Pitamah Marg,
New Delhi – 110 003.

... Appellant

Versus

- 1. Delhi Transco Limited**
Through its Chairman and Managing Director
Shakti Sadan, Kotla Road,
New Delhi – 110 002.
- 2. BSES Rajdhani Power Limited**
Through its CEO
BSES Bhawan,
Nehru Place,
Delhi – 110 019.
- 3. BSES Yamuna Power Limited**
Through its CEO
Shakti Kiran,
Karkardooma,
Delhi – 110 092.

4. North Delhi Power Limited

Through its CEO, Substation Building
Hudson Lines,
Kingsway Camp,
Delhi – 110 009.

5. New Delhi Municipal Council

Through its Secretary
Palika Kendra, parliament Street,
New Dlehi – 110 001.

6. Delhi Electricity Regulatory Commission

Viniyamak Bhawan, C-Block,
Shivalik, Malviya Nagar,
New Delhi – 110 017.

... Respondents

Counsel for the appellant : Mr. M. G. Ramachandran
Mr. Anand K. Ganeshan
Ms. Swapna Seshadri

Counsel for the Respondents: Mr. Amit Kapur,
Mr. Mansoor Ali Shoket,
Ms. Shobhna Masters
Mr. Apoorva Mishra
Mr. Avijeet K. Lala
Mr. Alok Shankar for NDPL, BRPL &
BYPL

Mr. S. B. JUpadhyay, Sr. Adv.
Mr. S. M. Sharma
Mr. Ajay K. Arora, Dy. Director
(Law), DERC
Mr. G. Banerji for Resp. No.6, DERC
Mr. K. M. Verma, JD(Law),DERC

Mr. Gourab Banerji, Sr. Adv.
Mr. Saurav Agarwal and

J U D G M E N T

Ms. Justice Manju Goel, Judicial Member

This appeal is directed against the order of the Delhi Electricity Regulatory Commission, respondent No.6 herein, dated 09th May, 2007, whereby it dismissed the application of the appellant for grant of distribution license.

2) The case of the appellant in brief is as under: The appellant, Delhi Metro Rail Corporation Ltd. (DMRC for short), a joint venture company of the Government of India and the Government of National Capital Territory of Delhi, is in the process of constructing a Mass Transit Rapid System for Delhi and part of the system has already been developed and is operative. Electricity is the only source of energy for operation of the metro system. Any interruption in power supply may have serious repercussions on the safety and security of the system and convenience of the passengers. The power supply on a regular basis is required for running the trains of the metro as well as other purposes like illumination at stations, air conditioning and tunnel ventilation in underground corridors for supply to the kiosks, shops, food mart

etc. as well as for operational requirements and workshops within the appellant's premises. Each metro line is designed to receive power from two or three high voltage supply points to take care of any eventuality of disruption of supply at any point. The appellant, DMRC, will be required to distribute electricity in the metro rail system at different places and has already a distribution system in the DMRC area. The area of operation of appellant (which is a long corridor with the metro railway and stations etc.) is a well defined area. The appellant is required to supply power to all entities who are operating amenities including shops and other establishments in the precincts of the metro railway. Section 6(2) (h) of the DMRC Act 2002 empowers a metro rail administration "*to lay down or place electric supply lines for conveyance and transmission of electricity and to obtain license for that purpose*". Accordingly, the appellant has laid supply lines and has commissioned their own system to effectively distribute power in its own area of operation to vendors and other consumers of power. In the area of operation of DMRC no other person including distribution licensee or transmission licensee or any other authority under the Electricity Act 2003 can either interfere or control the working of the appellant or its power system. The operation and maintenance of power system in DMRC area of operation cannot be left to the distribution licensees or others. On 25th July 2002, the appellant filed an application under the Delhi Electricity Reforms Act 2000 for grant of supply license. The application was taken up for consideration

and vide a letter dated 20.11.02, the Delhi Electricity Regulatory Commission, the Commission for short, called upon the appellant to take steps for public notice. On account of certain negotiations with the already existing transmission and distribution licensees which are respondents 1 to 5, the appellant amended its application for license and asked for grant of license for distribution and supply of electricity restricted to the area of operation and excluded the area outside the metro system which had been given to the appellant for real estate development. While the application for license was pending, the Electricity Act 2003 came into force on 10th June, 2003. The earlier Acts namely the Indian Electricity Act 1910, the Electricity (Supply) Act 1948 and the Electricity Regulatory Commission Act 1998 were repealed. The State enactments including the Delhi Electricity Reforms Act 2000 continued to apply only to the extent it was not inconsistent with the provisions of Electricity Act 2003. As per Section 12, read with Sections 14, 15 of the Electricity Act 2003, license is required for transmission, distribution and trading in electricity whereas the Delhi Electricity Reforms Act only prescribes license for transmission and supply of electricity. The appellant accordingly amended its application for grant of distribution license. As per requirement of the Commission, the appellant also issued public notice for the application of grant of license inviting objections/suggestions. The respondents 2, 3 & 4 as well as Association of Manufacturers filed objections to the application.

However, meanwhile on 23rd March, 2005, the Government of India notified the Distribution of Electricity License (Additional Requirements of Capital Adequacy, Credit Worthiness and Code of Conduct) Rules 2005 hereinafter referred to the Rules under the sixth proviso to Section 14 of the Electricity Act 2003. It is important to mention here that these rules, *inter alia*, prescribed the minimum area requirement according to which in the area of an already existing distribution licensee, another license can be given provided the second licensee is willing to supply electricity to a minimum area which will be equal to the area of a revenue district. The appellant filed its response to the objections raised by the respondents who opposed the application for grant of license. The Commission rejected the application for grant of license vide the impugned order dated 09th May, 2007.

3) The appellant has challenged the impugned order on various grounds. But the principal question that has been raised can be seen from the ‘facts in issue’ culled out by the appellant as under:

“(a) FACTS IN ISSUE:

Whether the area of operation of DMRC as stated in Paragraph 7(32) herein above falls within the area of operation of the existing distribution licensees so as to attract the sixth proviso to Section 14 of the Electricity Act, 2003 notwithstanding that the area of operation of DMRC

is exclusively managed and controlled by DMRC under the provisions of the Delhi Metro Railway (Operation and Maintenance) Act, 2002 and the Rules framed thereunder.”

4) The appellant has cited various legal provisions of the Delhi Metro Railway (Operation & Maintenance) Act 2002 (DMRC Act for short) and claims a right to get a license by virtue of provisions of this Act. Further, the appellant claims that it is eligible to get a license despite the operation of the rules as the appellant cannot be treated as a second licensee on account of certain provisions of DMRC Act. All the claims of the appellant were refuted before the Commission. Even before this Tribunal the Respondents 1 to 5, the transmission & distribution licensees have vehemently opposed the prayer for a distribution license made by the appellant. On the basis of contentions of different parties the Commission framed the following issues:

“I. Whether the instant application for the grant of Distribution and Retail Supply License for electricity is to be considered under the provisions of Delhi Electricity Reform Act, 2000 or the Electricity Act, 2003?”

- II. *Whether the instant application for the grant of Distribution and Retail Supply License for electricity is to be considered under the provisions of Delhi Metro Railway (Operation & Maintenance) Act, 2002 or under provisions of Electricity Act, 2003?*
- III. *Whether the area of operation of the Applicant is an exclusive area and does it overlap the area of supply of other distribution licensees including the deemed licensee?*
- IV. *Whether the Applicant requires a distribution license?*
- V. *Whether the application of DMRC satisfy the condition of minimum area of supply constituting at least a revenue District as laid down in the Distribution of Electricity License (Additional Requirements of Capital Adequacy, Credit Worthiness and Code of Conduct) Rules, 2005, framed under the 6th proviso to Section 14 of the Electricity Act, 2003.”*

5) The Commission held that the Electricity Act 2003 and Rules and Regulations made thereunder will govern the application of the appellant for grant of distribution license and not the Delhi Electricity Act 2000. For coming to this conclusion, the Commission relied upon the provisions of Section 185(3) of the Electricity Act 2003 by which the Delhi

Electricity Reforms Act 2000 has been saved only to the extent the provisions are not inconsistent with the provisions of the Electricity Act 2003. The Commission further observed that the Electricity Act 2003 is a later Act. In the appeal, again this aspect of the case has been reiterated by the appellant.

6) On the second issue, the Commission held that the DMRC Act only enables the appellant to make an application for obtaining a license. The Commission also observed that Section 173 of the Electricity Act 2003 gives over riding effect to the Act and makes an exception only to the three Acts: The Consumer Protection Act 1986, Atomic Energy Act 1962 and the Railways Act 1989. Further the DMRC Act has no provision for dealing with grant of distribution license. The Commission, therefore, concluded that for grant of distribution license, the provision of Electricity Act 2003 and Rules and Regulations made thereunder will have to be applied. The appellant reiterates in the appeal that DMRC has an over riding effect and therefore license cannot be refused to it by application of Electricity Act 2003.

7) Coming to the issue No.3, the Commission held that the area of operation of the appellant, DMRC, for which the DMRC wants a license, is not a distinct area and that the area of operation of the DMRC is a super imposition on the

geographical area of supply of the three distribution licensees and the New Delhi Municipal Corporation

8) On the fourth issue, the Commission held that DMRC cannot be treated as a deemed licensee on account of various provisions of the DMRC Act and therefore it cannot distribute electricity without a license.

9) Coming to the fifth issue, the Commission found that the appellant is not able to satisfy the condition of the minimum area of supply as provided for by the Rules and therefore was not entitled to a license. This aspect of the finding of the Commission is also under challenge in the appeal. The appellant reiterates that on account of the status of the DMRC as given in the DMRC Act, DMRC cannot be treated as falling in the area of supply of any of the distribution licensee and therefore the minimum area of supply condition need not be satisfied by it. In other words, the appellant claims that it cannot be treated as a second licensee in the area of an already existing licensee and hence not liable to fulfill the minimum area criterion.

10) We have heard the learned counsel for the parties in respect to the various pleas raised by them. The parties have also given their written submissions. We have carefully

examined the various pleas given by the parties and have gone through the legal provisions cited by them.

11) The particular provision relied upon by the appellant for claiming to be entitled to a licence is as under:

- “6. **Powers of metro railway administration.**-(1)...
(2) *Without prejudice to the generality of the foregoing provision, such power shall include the power to –*
- (a) ...
 - (b) ...
 - (c) ...
 - (d) ...
 - (e) ...
 - (f) ...
 - (g) ...
 - (h) *lay down or place electric supply lines for conveyance and transmission of energy and to obtain licence for that purpose; and*
 - (i) ...”

12) As against this provision, we encounter the provisions of Section 14 laying down the condition for grant of license. The sixth proviso which is relevant for our purpose is as under:

“Provided also that the Appropriate Commission may grant a licence to two or more persons for distribution of electricity through their own distribution system within the same area, subject to the conditions that the applicant for grant of license within the same area shall, without prejudice to the other conditions or requirements under this Act, comply with the additional requirements relating to the capital adequacy, creditworthiness, or code of conduct as may be prescribed by the Central Government, and no such applicant, who complies with all the requirements for grant of licence, shall be refused grant of licence on the ground that there already exists a licensee in the same area for the same purpose:”

13) Mr. M. G. Ramachandran, learned counsel appearing for the appellant states that if the license is declined by application of the sixth proviso to the Section 14, Section 6 (2)(h) of the DMRC Act will be rendered redundant and therefore no such interpretation of law should be made. He has referred to various authorities in support of his plea on the aspect of interpretation of statute.

14) However, in our opinion there is no area in which there is any conflict between the DMRC Act 2002 and the Electricity Act 2003. Section 6 (2) (h) only deals with the requirement of the Rapid Mass Transport System and makes legal provision, enabling the appellant to fulfill that requirement. One of the requirements is to lay electric supply lines for conveyance and transmission of energy. The Metro Rail runs on the electricity energy only and does not depend upon any other energy or fuel. For establishing the metro tracks as well as for running the metro trains it is essential that the electricity supply lines are laid for conveyance and transmission of energy. The function of distribution of energy within the precincts of the metro rail premises, was not one of the functions stipulated by clause (h) of Section 6 (2) of DMRC Act, 2002. Clause (h) does not refer to distribution of energy. Nor does it refer to the power or obligation regarding the license for the purpose of distribution. Section 6 says that the DMRC would have power to obtain a license. Such a license was for the purpose mentioned in clause (h). The provision was to lay down or place electric supply lines for conveyance and transmission of energy. The license here is for laying down lines. This is not what the DMRC has prayed in the application for license. DMRC has prayed for a distribution license or, in other words, license for supplying to consumers other than the DMRC. Section 6 (2) (h) does not deal with any such situation. We do

not see any reason why we need to go into any question as to whether the DMRC Act or the Electricity Act 2003 has to prevail. The two Acts operates in two distinct spheres of operation. There is no conflict between the two Acts. The Section 6 (2) (h) does not become redundant on account of application of sixth proviso of the Section 14 of the Electricity Act 2003. It may be added here that Section 6 (2) (h) only enables the DMRC to obtain a license. In any case, a license has to be applied for and obtained under the relevant Rules. DMRC Act makes no exception in this regard. Nor does Section 6(2)(h) create a vested right in the DMRC for any license, far less a distribution license.

15) The next question that we may now deal with is whether the application for license has to be considered under the Delhi Electricity Reforms Act 2000 or under the Electricity Act 2003. The contention of the appellant, DMRC, is that it applied for a distribution license before Electricity Act 2003 came into force and before coming into force the Rules in 2005. The appellant's contention is that the application is required to be considered on the basis of the enactment and Rules as was in force as on the day when the application was made. The same question came up for consideration before us in a group of cases being Appeal Nos. 179 of 2005, 188 of 2005, 16 of 2006 and 27 of 2006 in which the question was

whether M/s. Jindal Steel and Power Ltd., the applicant before the Chhattisgarh State Electricity Regulatory Commission, was entitled to a distribution license without adhering to the Rules regarding the minimum area of supply as an application was made before the Rules had come into force. This Tribunal having considered the arguments put forth by the parties in that case relied upon the judgment of the Supreme Court in the case of Howrah Municipal Corporation & Others Vs. Ganges Rope Company & Others 2004 (1) SCC 663 and held that the pending application for license has to be considered under the Rules in force at the time when the application is taken up for consideration and not under the Rules which were in force when the application was filed. We can extract paragraph 47 of our judgment in the case of Jindal Steel & Power Ltd. (supra):

47) The rulings cited by Mr. Shanti Bhushan related to the field of service law and in each of these cases some kind of vested interest has been created when the amended/new provision came into existence. The case of Howrah Municipal Corporation (supra) as also that of Indian Charge Chrome (supra) are actually in the arena of administrative law. Both these judgments have unequivocally ruled that filing of an application before any administrative authority

will not create any vested right. These judgments also hold that the authority has to apply the rules and legal provisions as in force on the date on which the applications are considered. Accordingly on the date when the application for licence under section 14 filed by JSPL was under consideration the Commission was required to apply the regulation then in force which included the rule related to minimum area of supply. Hence, the Commission could not have ignored the rule and grant a license in violation thereof. It may further be added that the rules and regulations do not empower the Commission to make any exception in their application and hence the Commission made a mistake in granting the license by making such an exception. Hence, we have no option but to set aside the grant of license.

The same principle is applicable to the case of the appellant.

16) The appellant contends before this Tribunal that the area of operation of DMRC is exclusive as it is protected by various provisions of DMRC Act 2002. Further it is contended that in view of this protection: (a) no distribution company can enter into the area of operation of DMRC, (b) the area of operation of

DMRC therefore cannot fall within the area of supply of any of the distribution licensees leading to the conclusion that the DMRC cannot be treated as a second licensee in the area of an already existing licensee. In order to assert this the appellant relies upon the following provisions of the DMRC Act:

- “a. Sections 31, 64, 67, 68, 74 etc. of the DMRC Act;*
- b. Chapter X Rules 65 to 80 of the Delhi Metro Railway General Rules, 2002 dealing with power supply and traction arrangement; and*
- c. Chapter X Rules 37 to 41 of the Opening of Delhi metro Railway for Public Carriage of Passengers Rules, 2002 dealing with Design and Inspection of Equipment for Electric Traction.”*

17) We can now proceed to see to what extent these provisions debar any distribution license to enter into the area of operation of DMRC. Section 31 gives power to the DMRC to remove persons from the metro railway and its carriages. Section 64 of the DMRC Act 2002 makes any person entering upon the metro railway without any lawful authority liable to imprisonment and fine. Section 67 makes obstructing running of trains a punishable offence. Section 68 prescribes

that the person who willfully obstructs or prevents any metro railway official in discharge of his duties will be punished with imprisonment and fine. Section 74 deals with malicious wrecking of train or causing sabotage and makes such acts punishable.

18) Rules 65 to 80 of the Delhi Metro Railway General Rules 2002 prescribe rules for working of the power supply and traction system. It is not necessary to quote all the rules in detail. Only the caption of these rules will suffice to understand the scope of these rules which are as under:

- 65. *Switching on, and off, of traction and power supply distribution*
- 66. *Access*
- 67. *Arcing and fire*
- 68. *Inspection of electrical way and works*
- 69. *Issue of Caution Order*
- 70. *Protection of trains in case of overhead equipment failure or breakdown*
- 71. *Permit-to-work on electrical equipment*
- 72. *Work on service buildings and structures in the vicinity of live equipment*
- 73. *Warning to staff and public*
- 74. *Alterations to track*

75. *Tripping of circuit breakers of electrical Multiple Units/Other self-Propelled vehicles neutral sections*
76. *Tower Wagon or Inspection Car*
77. *Working of ladder trollies*
78. *Additional rules for electrified sections*
79. *Sectioning and Siding Switches*
80. *Procedure for preventing admission of electric rolling stock into or over sections of track with dead or earthed overhead lines*

19) We have carefully scrutinized these rules. None of these rules is inconsistent with any of the respondents having distribution license in the area of supply of the DMRC.

20) The 37 – 41 of the Opening of Delhi Metro Railway for Public Carriage Passenger Rules 2002 are contained in Chapter X of these rules which deal with design and inspection of equipments for electric traction. As done in the previous paragraph, we give the subject of each rules as under:

- “37. Design and inspection of equipment for electric traction*
- 38. Display of caution boards and notices*

39. *Protection of private property against inductive effects of AC traction*
40. *Approval of energization of high tension lines*
41. *Procedure for energization of traction installations*

21) None of these rules say that the entry of any distribution company into the area of operation of DMRC is barred. Nor are these provisions inconsistent with the existence of any distribution license other than the DMRC itself.

22) Undoubtedly the DMRC is entitled to protect its area of operation. The law permits the DMRC to remove any unauthorized person who is present in its precincts. Even if the DMRC Act had not made specific provisions for punishing intruders and unauthorized persons in the DMRC's area of operation, the DMRC would have been entitled to remove them by virtue of the general law available in this regard. Such provisions do not automatically make the presence of a distribution licensee unauthorized. Nor does it make it impossible for a distribution licensee to supply/distribute power to DMRC. The DMRC so far has not disallowed the presence of the distribution licensee within its precincts. So far the DMRC has not declared the presence of any employee of the respondents as unauthorized for any reason. Mr.M.G.Ramachandran initially tried to make out a case that

no distribution license has ever been issued for the area of operation of the DMRC. However, when the DMRC started its operation in 2002 the distribution licensees were already in place. The entire Delhi was divided into areas of supply of one distribution licensee or the other or of New Delhi Municipal Committee and the Delhi Cantonment Board. The DMRC is laying tracks through these areas of supply. There is no law which denudes any distribution company of its area of supply the moment the metro tracks are laid by DMRC. Therefore, the DMRC cannot claim that it is not asking for a second license in the area of supply of an already existing distribution licensee.

23) If DMRC is seeking a second license in the area of supply of a distribution licensee, it has to fulfill the conditions of the Rules. Admittedly, it is unable to fulfill the condition of minimum area of supply and hence not entitled to a license.

24) It is contended on behalf of the appellant that the DMRC is a Company of the Central Government and that of the National Territory of Delhi and financially supported by them and that this is sufficient to fulfill the requirement of capital adequacy, creditworthiness provided by the notification. We are unable to agree to this contention of the learned counsel for the appellant. DMRC is a Company just as any other

powerful or rich company in the country. No exception can be carved out for DMRC because the company is entirely owned by the Central Government and the Government of National Capital Territory of Delhi. Neither the DMRC Act 2002 nor the Electricity Act 2003 makes any exception for companies held by the Government.

25) In view of our above analysis, we find that DMRC is not entitled to a distribution license in the area of its operation. The appeal is therefore, dismissed leaving the parties to bear their own costs.

26) Pronounced in open court on this 08th *day of May, 2008.*

(Justice Manju Goel)
Judicial Member

(A. A. Khan)
Technical Member

The End