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Petition No. 816 of 2012

**BEFORE**  
**THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION**  
**LUCKNOW**

**Date of Order : 16.07.2015**

**PRESENT:**

1. Hon'ble Sri Desh Deepak Verma, Chairman
2. Hon'ble Smt. Meenakshi Singh, Member
3. Hon'ble Sri Indu Bhushan Pandey, Member

**IN THE MATTER OF:** Investigate and to take appropriate action against M/s Torrent and further to cancel the license of DVVNL

**BETWEEN**

Sri Rama Shankar Awasthi,  
Village Rithari, Post Kurara, Hamirpur  
and present residence  
301, Surbhi Deluxe Apartment,  
6/7 Dali Bagh, Lucknow.

----- **Petitioner**

**AND**

1. U.P.Power Corporation Limited  
(through its Chairman)  
Shakti Bhawan, Ashok Marg, Lucknow
2. Managing Director,  
Dakshinanchal Vidyut Vitran Nigam Ltd.(DVVNL),  
Urja Bhawan, 220 KV Sub-station, Agra.
3. M/s Torrent Power Limited,  
Torrent House, Suresh Plaza Market,  
M.G. Road, Agra (UP)

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**The following were presents:**

1. Shri Praful Thakker, G.M. (Legal), Torrent Power Ltd.
2. Shri Harish Kundu, Manager (Legal), Torrent Power Ltd.
3. Ms Deepa Chawan, Counsel, Torrent Power Ltd.
4. Ms R. Nathani, Counsel, Torrent Power Ltd.
5. Shri R.P.Prasad, S.E.,UPPCL
6. Shri R. S. Awasthi, Petitioner
7. Shri A.S.Rakhra, Advocate, UPPCL/DVVNL

**ORDER**

**(Hearing Date 07.05.2015)**

1. The petition has been filed by Shri R.S. Awasthi with the request to the Commission to investigate the conduct of UPPCL / DVVNL who have appointed M/s Torrent Power Limited as a 'Franchisee' for distribution of electricity in the urban area of Agra. The Agreement was signed on 18.5.2009 and its supplementary agreement on 17.3.2010. The petitioner has raised the issue that the inventory has been transferred to Franchisee without approval of the Commission as per section 17 of the Electricity Act, 2003. It has also been stated that the licensee may appoint Franchisee only in rural areas as per section 13 of the Act and the provisions of National Electricity Policy.
2. M/s Torrent Power Ltd. (TPL), vide their submissions dated 13.6.2014, 28.7.2014 & 12.8.2014, raised the jurisdictional/maintainability issues and submitted that the Hon'ble Commission may not entertain the present petition because of the pendency of similar / identical petitions pending before the Hon'ble High Court Allahabad in PIL no. 49974 of 2009 and 30385 of 2012. TPL further submitted that the petitions on similar issues filed in Hon'ble Supreme Court (SC No. 361 of 2009) and in Hon'ble High Court Lucknow bench (petition no. 2463 of 2014) were dismissed. M/s Torrent Power Ltd. also referred Hon'ble APTEL's order dated 18.11.2013 in the subject matters.

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DVVNL raised the issues of locus standi of the petitioner and maintainability through their submission filed in July, 2014.

3. The Commission, vide order dated 12.5.2014, observed that through its order dated 18.11.2013, Hon'ble APTEL mandated this Commission to pass the consequential orders. Hence the Commission decided to proceed further in the present petition. Accordingly, DVVNL and TPL were directed to file their point wise reply and data on certain issues. DVVNL did not make any point wise submission whereas TPL submitted its reply on 2.9.2014. The matter was heard in length by the Commission on 12.8.2014 and 2.9.2014. As no reply was filed by DVVNL even after a laps of about eight months, the Commission decided to call another hearing on 2.3.15 so that one more chance may be given to the respondents for putting their submissions which were very much required for taking the final view by the Commission.
4. Vide order dated 4.3.15, the Commission found it proper to seek the authority of UPPCL and DVVNL on affidavit or vakalatnama clearly and separately as the issue concerns and affects UPPCL and DVVNL both and during the hearing it could not be explained by the Advocate present that whether he was representing DVVNL or UPPCL or both. It was also directed to UPPCL and DVVNL to file their replies by 31.03.2015. Shri R.S. Awasthi was directed to file written argument on the status of DVVNL being a licensee / deemed licensee. Torrent Power Limited was also directed to file their written submissions on same, if they so desire.
5. In the hearing on 7.4.15, Shri A. S. Rakhra, Advocate, DVVNL submitted that he has been representing DVVNL as well as UPPCL. Shri Rakhra submitted that they do not intend to file any additional submission on behalf of DVVNL however, requested 15 days time for filing of UPPCL's reply. The requisite authority and affidavit was submitted by him subsequently. Sri R.S.Awasthi filed his written arguments dated 7.4.15, in which he has requested the



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Commission to appoint an appropriate Committee for investigation of the affairs in the subject matter.

6. During the hearing on 7.5.15, Shri A. S. Rakhra, Advocate, UPPCL / DVVNL submitted that agreeing with the reply filed by DVVNL, UPPCL does not intend to file any separate reply and also that both do not have any additional submission to make before the Hon'ble Commission. Sri R.S.Awasthi requested for an early disposal. The Commission concluded that the submissions and hearing has been concluded and reserved its order.
7. To proceed for orders in the subject matter, the Commission considers that the matter is required to be settled in two parts (i) issues of the jurisdictional/maintainability (ii) and issues of investigation of conduct.
8. **Issues of the jurisdictional/maintainability:**
  - i. The Electricity Act, 2003 section 2(27) defines that :  
'Franchisee' means a person authorized by the distribution licensee to distribute electricity on its behalf in particular area within his area of supply.
  - ii. Section 14 proviso 7 mentions that:  
Provided also that in a case where a distribution licensee proposes to undertake distribution of electricity for a specified area within his area of supply through another person, then the person shall not be required to obtain any separate license from the concerned State Commission and such distribution licensee shall be responsible for distribution of electricity in his area of supply;
  - iii. Under the provisions of section 14, DVVNL was a deemed licensee when the agreement was signed. This has also been recognized by

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Hon'ble High Court Allahabad in writ petitions [2008(6) ADJ 660 (DB)] which were decided on 18.7.2008 as follows:

*“The proviso does not talk of a ‘Government Company’ which has already been licensed under any provision or under any statute but the mere fact that it is a Government Company is sufficient to qualify it to be a ‘deemed licensee’ under proviso to Section 14 of the Act, 2003. Rest of the things are not relevant at all. Deeming provision made in a statute is intended to cover a situation which otherwise does not exist and therefore unless there is some restriction provided in the statute itself, expressly or by necessary implication, deeming provision has to be given full effect.”*

- iv. The issue of deemed licensee and urban franchisee has further been settled by Hon'ble High Court Bombay [2008 (110) Bom L R 598] on 12.2.2008.
- v. In view of above provisions, it is established that at the time of signing the Agreement, DVVNL was a deemed licensee and they were authorized to sign such agreement with its franchisee TPL for the urban area of Agra. The provision of section 5 of the Act does not restrain DVVNL from entering into franchisee agreement in urban area with TPL as it only facilitates franchisee in rural area. It does not bar franchisee in urban areas which has been facilitated in section 2 (27) and seventh proviso of section 14 of the Act. DVVNL was further granted license on 21.1.2010 by this Commission.
- vi. As far as the issue of transfer of inventory by DVVNL to the Franchisee, without approval of the Commission as per section 17 of the Electricity Act, 2003, is concerned it is sufficiently evident from the above provisions that the franchisee agreement does not fall under the purview of section 17.

- vii. The issue of lack of jurisdictional and maintainability of this petition has been raised by DVVNL and TPL. Although the submissions made in this reference are primarily based on certain pending PILs before the Hon'ble High Court, Allahabad but in view of Hon'ble APTEL's specific directions to pass the consequential orders and also as there is no stay order from any superior Court, the Commission concluded that the petition is maintainable and therefore, decided to proceed with the matter. The Commission's jurisdiction is further reinforced in a similar case by the Hon'ble High Court Bombay order dated 12.2.2008 [2008 (110) Bom L R 598] through which the MERC was given mandate to judge the facts and figures, discounting factor and stipulations etc., taken in the agreement.

**9. Issue of investigation of conduct:**

The franchisee has been allowed under the provisions of the Act with the primary object of facilitating reduction of Distribution losses and improvement in Collection efficiency. There is no doubt that the concept of franchisee has been promoted in the Act to ensure better quality of supply and services to the consumer. The Agreement must have been entered with these motives only. As now about five years have passed, which is a substantial period to show the improvements in efficiencies, the question would arise as to whether the objectives have been met and whether the trend of improvements are visible.

As the Commission has already concluded that the petition was maintainable and well within its jurisdiction, it becomes incumbent upon the Commission to further asses the benefits of such franchisee for the Discoms as also for general public. With this view, for preliminary examination, vide order dated 12.5.2014 reply and data on certain points were sought from DVVNL and TPL. DVVNL has not made submissions on this stating that they do not want to



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make any additional submission. UPPCL has seconded this. Although TPL has made submissions but insufficient. As the matter has already prolonged for more than two years and about five years have lapsed since the agreement has become effective, the Commission decides to form a Committee with the specific purpose to ascertain the answers to the following questions:

- (i) What has been the yearly reduction in loss levels since 2009-10 to till date?
- (ii) What has been improvement in the collection efficiency from 2009-10 level?
- (iii) How much arrears have been recovered from the due amount of 2009-10?
- (iv) Have the benefits of such improvements, if any, have been passed on to the consumer and if yes, how?

Apart from above specific questions the Committee would also examine the yearwise technical and commercial performance of TPL. The Committee would be at liberty to investigate and examine any sort of data and accounts so as to assess the performance of TPL. The work shall be completed within two months of this order.

10. The Committee shall consists of

- (1) Sri Arun, Retired Ombudsman and Director, UPPCL
- (2) Sri Sandeep Das, Chartered Accountant, Park Road, Lucknow.

(Indu Bhushan Pandey)  
Member

(Meenakshi Singh)  
Member

(Desh Deepak Verma)  
Chairman

Place : Lucknow  
Dated: 16.07.2015