

BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY
Appellate Jurisdiction, New Delhi

IA No. 62 of 2008 in Appeal No. 34 of 2008

Dated this 09th day of April, 2008

Coram : Hon'ble Mr. H. L. Bajaj, Technical Member
Hon'ble Ms. Justice Manju Goel, Judicial Member

IN THE MATTER OF:

New Delhi Municipal Council
Through its Secretary
Palika Kendra, Sansad Marg,
New Delhi – 110 001

... Appellant

Versus

1. Delhi Electricity Regulatory Commission
Viniyamak Bhawan, 'C' Block,
Shivalik, Malviya Nagar,
New Delhi – 110 017.
2. Secretary (Power)
Govt. of NCT of Delhi,
Delhi Secretariat, I.P. Estate,
New Delhi
3. Chief Executive Officer
BSES Rajdhani Power Ltd.
BSES Bhawan,
Nehru Place, New Delhi – 110 019
4. Chief Executive Officer
BSES Yamuna Power Limited
Shakti Kiran Building,
Karkardooma,

Delhi – 110092.

5. Chief Executive Officer
North Delhi Power Limited,
Sub-Station Building, Hudson Lines,
Kingsway Camp,
Delhi – 110 009.
6. Managing Director
Pragati Power Corporation Ltd. (PPCL)
Himadari, Rajghat Power House,
New Delhi – 110 002.
7. Chairman-cum-Managing
Delhi Transco Limited
Shakti Sadan, Kotla Road,
New Delhi – 110 002.

... Respondents

Counsel for the Appellant : Mr. Jayant Bhushan, Sr. Adv.
Mr. Saurav Agarwal,
Mr. Dinesh Kumar and
Mr. Amit Pawan

For the Respondents : Mr. Rajiv Nayar, Sr. Adv,
Mr. Anuj Berry for BRPL and BYPL
Mr. Sumeet Pushkarna for DTL,
GNCTD with GM (Legal)
Mr. Yogesh Anand for DTL, GNCTD
Mr. H. G. Garg, Director (Law),
DERC
Mr. Ajay Arora, DD (Law), DERC
Mr. Naveen Goel, DD (Tariff-Engg),
DERC

ORDER

Ms. Justice Manju Goel, Judicial Member

1) The New Delhi Municipal Council, appellant herein challenges the order of the Delhi Electricity Regulatory Commission, respondent No.1 herein, and hereinafter referred to as Commission, dated 07.03.08. The impugned order was to come into effect from 01.04.08. The appeal is preferred on 25.03.2008 and was placed before us for preliminary hearing. The appellant also seeks an interim stay of the impugned order vide IA No. 62/2008 now under consideration. We ordered issuance of notice to all the respondents who include the three distribution companies viz BSES Yamuna, BSES Rajdhani and NDPL, the transmission company, Delhi Transco Ltd., the Pragati Power Corporation Ltd. (PPCL) the generating company as well as the Government of the NCT of Delhi.

2) In view of the urgency expressed by the appellant the application for stay was heard on 01st April, 2008, the day on which the notices were returnable. Neither of the respondents were in a position to file any response either to the appeal or to the application for stay. Nonetheless, all the respondents joined the

hearing. We have heard all the counsel present before us and we have given our careful thought to the subject.

3) The impugned order was passed on an application seeking review of the Commission's earlier order dated 31.03.07 which we refer to as the original order. The original order dealt with the issue of reassignment of the Power Purchase Agreements (PPAs) which were held by the erstwhile Delhi Vidyut Board. The original order allocated 350 MW and 50 MW of power from Badarpur Thermal Power Station (BTPS for short) to the appellant and the MES (responsible for supply of electricity to the Delhi Cantonment). All existing PPAs (with the exception of BTPS, Dadri TPS, IPGCL and Pragat Power Plant (PPCL) were allocated amongst the three distribution companies who are respondents herein in a ratio which would be in proportion to the energy drawn by them from the date of unbundling of erstwhile DVB upto February, 2007. For the aforesaid mentioned excepted power plants, only 85% of the capacities was to be allocated to the three Discoms on the same principle.

4) So far as BTPS was concerned, 85% of the capacity left after allocation to the appellant and MES was to be distributed amongst the three Discoms on similar lines. 15% of the capacity of Dadri TPS, IPGCL and PPCL and balance of whatever was left from

Badarpur TPS after allocation to the appellant and MES was to be treated as unallocated share which was left at the disposal of the Government of NCT which could be allotted to such distribution companies whose consumers were likely to face a relatively higher retail tariff on account of the reassignment of PPAs. Further the original order provided that if the allocation results in excess capacity in the hands of any distribution company/agency at anytime such excess capacity would be offered to other distribution utilities in Delhi at the first instance and thereafter it could be offered to others. The appellant filed a review petition, being No. 1 of 2008, asking for reallocation of capacity of 350 MW from three power stations instead of BTPS alone. The Commission accepted the prayer of the appellant for reallocation of 350 MW of power from three stations instead of one. Therefore, BTPS was to provide 125 MW, Dadri Power Plant of NTPC 125 MW and Pragati Power Plant or PPCL 100 MW. The Commission thereafter proceeded to say:

*“The above allocation shall be subject to the condition that 15% of this allocated power would be treated as unallocated share, analogous to what is done already by the Commission in its order dated 31.03.2007 and is also akin to the practice adopted by the Central Govt. in this regard. This unallocated share of 15% would be at the disposal of the Government of NCT of Delhi. **It is***

clarified here that by carving out 15% unallocated share from the allocation of NDMC, the total allocation is not reduced and as and when the NDMC needs more power the same would be available to it but, the only difference would be that NDMC would have to approach the Govt. of NCT of Delhi for allocation of power out of the unallocated share of 15%. NDMC would also be eligible to get allocation from 299 MW of unallocated capacity carved out in the Commission's Order dated 31.03.2007, if required. It is further clarified that the Government of NCT of Delhi may also use the total unallocated share of (299 MW + 53MW) to meet any contingency or force majeure condition that may arise in any particular geographical area in the NCT of Delhi.”

5) The appellant is aggrieved by the condition that 15% of the 350 MW be treated as unallocated share. It is contended by appellant that the actual allocation therefore will be 85% of 350 MW and not 350 MW and that the appellant who had gone to the Commission only for reallocation of the sources of supply of power could not be left worse off by taking away 15% of its original allocation while reallocating the sources.

6) At the present moment this Tribunal cannot go into a detailed examination of all the pleas raised by the appellant. Nor can any detailed study be made of the interest of the respondents as they are yet to file their responses. The application for stay has been heard on the basis of the record placed before us by the appellant alone.

7) Mr. Jayant Bhushan, Sr. Advocate, has drawn our attention to the factors that made the appellant ask for a review. In a meeting taken by Home Secretary on 08.11.07, regarding bulk supply of electricity to NDMC, the observation of Union Home Secretary, Chief Secretary, Delhi, to the effect that in the event of break down or shut down of BTPS the appellant would face serious consequences, was taken note of. Suggestions of the Union Home Secretary was that instead of prescribing only BTPS, Central Power Generating Station, State Power Generating Station, independent power producers, Power Trading Corporation of Central Government and other State and Central Departments etc. may also be allowed as authorised agencies for the supply of power to the appellant. In the meeting, the suggestion accepted was that 350 MW requirement of electricity of the appellant be secured through the three power stations namely BTPS, Dadri and NTPC to the extent of 125 MW, 125 MW and 100 MW respectively. The appellant wrote to the Ministry of Home Affairs on 30.10.07 that it had no problem if power was allocated from more than one source, provided that a

total allocation was not less than the existing allocation. The Government of India wrote to the appellant on 18.12.07 intimating that the BTPS, Dadri power plant and Pragati Power Corporation Ltd. had been prescribed as authorities from which the appellant was to receive electricity in bulk. Eventually the petition for review was filed on 01.02.08 with the following prayer:

- (i) *the order dated 31.03.2007 allocating 350 MW power to NDMC from the Badarpur TPS be suitably modified and the petitioner be reallocated power, in terms of the statutory directions of the Government of India contained in the letter dated 18.12.2007, in following manner:*

<i>S.No.</i>	<i>Source</i>	<i>Power in MW</i>
<i>1.</i>	<i>Badarpur Thermal Power Station of NTPC</i>	<i>125</i>
<i>2.</i>	<i>Dadri Power Plant of NTPC</i>	<i>125</i>
<i>3.</i>	<i>Pragati Power Plant of PPCL</i>	<i>100</i>
	Total	350

8) Although the appellant had written to the Ministry of Home Affairs, vide its letter dated 30.10.07, that it was agreeable to take

power from more than one source provided the total allocation was not reduced, no such predisposition was disclosed in the prayer made in the review petition. The review petition wanted reallocation of the existing 350 MW of power. One of the question before the Commission was whether such reallocation could be done without affecting the quantum of power being made available to the appellant. The consideration of quantity to be allocated to any distribution licensee could not be segregated from the consideration of the sources. If the appellant is given power from the Dadri TPS or from IPGCL or from the Pragati Power Plant of PPCL then the quantity available to the other Discoms will naturally be reduced. Similarly if the appellant does not take 350 MW of power from Badarpur power station which sells power at a tariff of Rs.2.77 will have to be taken by somebody else who will pay for quantity of his requirement at a higher rate. In this situation, the prayer for reallocation from different sources could not be seen in isolation with the amount of electricity to be allocated to the appellant. Further when the appellant gets power from a cheaper source others will have to get power to that extent from a costlier source. As stated earlier the rate of power from BPTS is Rs.2.77 whereas that offered by Dadri TPS is Rs.2.10. Therefore the Commission necessarily was required to take care of the interest of the competitors for the power and to balance the equities.

9) The impugned order shows that the Commission was fully aware of the problem facing the Discoms. On behalf of NDPL, it was submitted that NDPL was as much entitled to buy power from cheaper source as was the appellant. NDPL also submitted that the Discoms had agreed on the issue of transmission of gas from IPGCL to PPCL for getting 22-30 MW extra power which they would not get if the arrangement proposed by the appellant was approved by the Commission. Further, it was submitted on behalf of the Discoms that because of the higher PLF in case of Dadri (97% PLF) as compared to BTPS with 87% PLF the appellant would get 70-80 MUs extra and to that extent the Discoms would suffer if the proposal of the appellant was approved. On behalf of the Government of Delhi a concern had been expressed that consumers of one licensee may not be subsidized at the cost of another licensee. The Commission also found from the data of State Load Despatch Center (SLDC) that the actual consumption of electricity in the area of the appellant had not exceed 286/287 MW and that too for a short duration and there was no justification as to why the appellant needed 350 MW of power. The surplus power had been admittedly sold to others albeit after offering to other Discoms who did not need the same at the time the extra power that was offered. The Commission had asked Mr. S. M. Ali, Director (Com.) of the appellant, to seek instructions from the appellant/appropriate Government on the issue of surrendering extra allocation over and

above the requirement. In this context, the Commission while reallocating sources of power for the appellant directed that the 15% of this be given the same treatment as has been given to the allocated power which could be given to any licensee including the appellant depending upon the need. In this context, we can now read the relevant paragraphs of the impugned order:

“11. The Commission has considered the issues raised by the parties and gone through the minutes of the meeting held in the Ministry of Home Affairs, Govt. of India as also the decisions taken therein. The Commission also appreciates the binding nature of the directions given to NDMC by the MHA in terms of sub-section 1 of Section 201 of the NDMC Act, 1994. The Commission feels that the concern of NDMC to secure reliable power is genuine considering the sensitivity of the area of its supply where many strategically important buildings and offices are located. It is also equally important for the Commission to ensure that the interests of the consumers living in other areas of Delhi are not jeopardized because of review of reassignment order and giving supply to NDMC

from three different plants as proposed by it. It is an admitted fact that tariff from BTPS is relatively higher than the tariff from Dadri and Pragati Power Stations. The argument of DISCOMs that they will not be able to get extra power ranging from 20 to 30 MW due to transfer of gas from IPGCL to PPCL for which they have given their consent already, is not without substance. Similarly, it is also a fact that PLF in the case of Dadri TPS is 97% as compared to BTPS where PLF is 87% which will facilitate NDMC to get higher quantum of energy. The concern of DISCOMs that NDMC should not be treated differently and given preferential treatment at the cost of other consumers cannot be brushed aside. The Commission feels that the Review Petition of NDMC cannot be considered or decided in isolation. The Commission is under statutory obligation to watch the interests of the consumers as well as the electricity sector as a whole in NCT of Delhi. Once the Petitioner has made a request for review of the Reassignment Order, the Commission has to see that such review does

not lead to discrimination or disadvantage and is not detrimental or cause any prejudice to the millions of other consumers residing in the area of other DISCOMs.

12. *While considering the Petition of NDMC the Commission has also gone into the data available with SLDC for last 8-10 months which reveal that the actual consumption of electricity in the NDMC area at no point of time had exceeded 286/287 MW and that too for a very short duration. Infact, the NDMC has not been able to give any justification as to why it needs 350 MW. The experience of about 10 months of scheduling in the intra-State ABT regime in Delhi also brings out this fact. The surplus power available with NDMC in 2007-08 has been disposed of by them which resulted in estimated average power purchase cost to be lower by atleast 50 paisa/kwhr when compared to other Distribution Companies.*

13. *Considering all the above factors and the overall interests of the consumers as well as the*

electricity sector as a whole in NCT of Delhi, Commission allows the Petition of NDMC with some rider, and reallocation power in the following manner:

S. No.	Source	Power in MW
1.	<i>Badarpur Thermal Power Station of NTPC</i>	125
2.	<i>Dadri Power Plant of NTPC</i>	125
3.	<i>Pragati Power Plant of PPCL</i>	100
Total		350

*The above allocation shall be subject to the condition that 15% of this allocated power would be treated as unallocated share, analogous to what is done already by the Commission in its order dated 31.03.2007 and is also akin to the practice adopted by the Central Govt. in this regard. This unallocated share of 15% would be at the disposal of the Government of NCT of Delhi. **It is clarified here that by carving out 15% unallocated share from the allocation of NDMC, the total allocation is not reduced and as and***

when the NDMC needs more power the same would be available to it but, the only difference would be that NDMC would have to approach the Govt. of NCT of Delhi for allocation of power out of the unallocated share of 15%. NDMC would also be eligible to get allocation from 299 MW of unallocated capacity carved out in the Commission's Order dated 31.03.2007, if required. It is further clarified that the Government of NCT of Delhi may also use the total unallocated share of (299 MW + 53 MW) to meet any contingency or force majeure condition that may arise in any particular geographical area in the NCT of Delhi. The revised allocation of capacity is contained in the enclosed Annexure There would be no change in other terms and conditions in the previous order of the Commission dated 31st March, 2007 and the same will continue to apply in the NCT as heretofore.

14. *This order will come into effect from 01st April, 2008.*

15. *Ordered accordingly.*”

10) The appellant has given a tabulated statement showing how the power available to the appellant will be reduced. With the arrangement with BTPS the appellant would have eventually got 261.8 MW of power whereas with the present arrangement after deduction of 15% towards unallocated share the appellant would get 252 MW of power. The appellant has not given any statement on how the other licensees/Discoms are placed in their availability of power. Nor has the appellant given any statement showing the power shortage faced by different licensees/Discoms including itself.

11) From the impugned order it appears to us that the balance of convenience is not in favour of grant of stay. The appellant, as per the assessment of the Commission required only 286/287 MW of power whereas it had been allocated 350 MW of power. Even if 15% of 350 MW is taken away the appellant's requirement would be still met. The appellant has also not been able to make out any case of irreparable loss or injury in case the stay prayed for is not granted. We are therefore, not inclined to stay the impugned order during the hearing of the appeal. The IA No. 62 of 2008 is accordingly dismissed.

12) No opinion expressed in this order is final or will prejudice the parties during the hearing of the appeal.

13) Pronounced in open court on this **09th day of April, 2008**.

(Justice Manju Goel)
Judicial Member

(H. L. Bajaj)
Technical Member