

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 15 of 2010

In the matter of
Petition of The Tata Power Company Ltd. regarding dispute in grant of excavation
rights for laying of HT (Electrical) Cables

Shri V. P. Raja, Chairman
Shri V. L. Sonavane, Member

The Tata Power Company Ltd. Petitioner

Versus

The Municipal Commissioner,
Municipal Corporation of Greater Mumbai Respondent

ORDER

Date: July 19, 2010

M/s. The Tata Power Co Ltd (“TPC”) submitted a Petition under affidavit on May 14, 2010 under Section 67(4) of the Electricity Act, 2003 (“EA 2003”), read with Rule 4(2) of the Works of Licensees Rules, 2006 referring a dispute with the Respondent in respect of grant of excavation rights for laying of LT and HT (electric) cables.

2. The Petitioner has prayed as under:

i. To admit the Petition;



- ii. *To issue necessary orders / directions allowing the Petitioner to excavate and lay LT & HT cables in the areas indicated in its application dated 19.04.2010 to allow it to extend its distribution network and provide connection to the applicant consumers.”*

3. TPC in its Petition submitted as follows:

- a) Being a Distribution Licensee it is a statutory duty of TPC under Section 42(1) of the EA 2003 to develop and maintain an efficient distribution network in its area of supply. The laying of distribution network requires carrying out of excavation work. Section 67(1) of the EA 2003 empowers TPC to carry out excavation work for laying of electric supply lines in its area of supply.
- b) Under Section 43 of the EA 2003 TPC is bound to provide supply of electricity to any person residing in its area of supply who has applied for the same. TPC has further submitted that, it has received an application from Shri. Guruprasad Shetty for supply of electricity to ‘Hotel Status’ located at Lower Parel, Mumbai for which TPC has to lay down electrical cables so that electric supply can be given to the said applicant.
- c) As laying of cables involve excavation work, TPC vide letter dated March 17, 2010 requested the Assistant Commissioner, G / South Ward, Municipal Corporation of Greater Mumbai (MCGM) to permit the excavation work at three different places. However, the Assistant Engineer (Maint), G/South Ward vide letter dated April 11, 2010 did not accede to the request for excavation.
- d) Laying of cable is essential for providing electricity to the applicant therefore TPC vide letter dated April 19, 2010 requested the Assistant Commissioner, G / South Ward to permit the excavation work as per Rule 4(1) of the ‘Work of Licensees Rules, 2006’. Assistant Commissioner, G / South Ward vide letter dated May 10, 2010 replied as follows:

“as per Honorable Municipal Commissioner’s directives, the excavation permission for cable laying can be considered in the fair season starting from 01/10/2010”



- e) In this case TPC is not able to provide connection to the applicant in a timely manner on account of MCGM stand of allowing excavation only after October 1, 2010, because of which, TPC may be required to pay compensation to the applicant as provided in the Regulation 3.2 read with Regulation 12 of the MERC (Standard of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005.

4. The Commission, vide its Notice dated June 1, 2010, fixed the hearing in the matter on July 1, 2010 and directed TPC to serve a copy of its petition to the Respondent and to the authorized consumer representatives.

5. In the hearing held on July 1, 2010, Shri Avijeet Lala, Advocate and Shri. V. H. Wagale, appeared on behalf of the Petitioner. Shri K. N. Gaikwad, Advocate, appeared on behalf of MCGM. The Petitioner submitted that due to disallowing excavation works till October 1, 2010 by MCGM, TPC is not able to meet its statutory obligations of providing power supply to the applicant within the statutory time limit and hence requested the Commission to issue a direction under Rule 4 (2) of 'Works of Licensees Rules, 2006' to MCGM for allowing excavation work to be carried out by TPC.

6. On behalf of MCGM it has been submitted that excavation work cannot be permitted till October 1, 2010 as this is based on the guidelines issued by MCGM for Trenching Activity on November 17, 2007. The relevant portion of the said guidelines is reproduced below:

"Part B – Laying / replacing of services:

1. *Permission for laying / augmentation of the utility pipelines / cables shall be granted only during the fair season starting from 1st October till 15th April. For trench exclusively on footpath / paverblocks, the permission shall be granted upto 30th April."*

7. Having heard the Parties and after considering the material placed on record, the Commission is of the view as under:

- i) As regards TPC's prayer of issuing necessary Order / direction under Rule 4 (2) of 'Work of Licensees Rules, 2006' to MCGM for allowing excavation work to be



ii) carried out by TPC, it is necessary to refer to the said Rule which is reproduced below:

*“(2) If the repairing authority intimates to the licensee that it **disapproves** of such works, section or plan giving reasons for disapproval, or **approves thereof subject to amendment**, the licensee may, unless settled by an agreement, appeal to the Appropriate Commission within one week of receiving such intimation, whose decision, after considering the reasons given by the repairing authority for its action, shall be final.”*

The Commission is of the view that, in the present matter, it is clear from the documents available on record that MCGM has by an Order *simpliciter* deferred the permission for excavation work till October 1, 2010 and in fact has not disapproved of the proposed works. This clearly has been done by MCGM in the larger public interest of Monsoon management.

iii) As regards of TPC’s apprehension that there may be a claim of compensation by the applicant due to the delay caused owing to MCGM deferring excavation work till October 1, 2010, since it is an apprehension and not an actual claim the Commission is not inclined to give any kind of advance ruling on the same to allay fears.

With the above observations, the Petition stands disposed off.

Sd/-
(V. L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman



(K. N. Khawarey)
Secretary, MERC