



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION**  
5<sup>th</sup> Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500 004

**O. P. No. 17 of 2023**

**Dated 27.03.2024**

**Present**

Sri. T. Sriranga Rao, Chairman  
Sri. M. D. Manohar Raju, Member (Technical)  
Sri. Bandaru Krishnaiah, Member (Finance)

Between:

Garrison Engineer (I) R&D RCI,  
P.O. Vignayanakarcha,  
Hyderabad 500 069.

... Petitioner

AND

1. Transmission Corporation of Telangana Limited,  
Vidyut Soudha, Khairatabad,  
Hyderabad, 500 082.
2. Southern Power Distribution Company of Telangana Limited,  
Corporate Office, # 6-1-50, Mint Compound,  
Hyderabad 500 063.

... Respondents.

(The respondent Nos.1 and 2 are added to the petition by the Commission)

The petition came up for hearing on 21.08.2023, 21.09.2023, 15.11.2023, 14.12.2023, 11.01.2024 and 25.01.2024. Sri M.A.Dubey, Director (E/M) along with Sri Vimal Kumar Bendwal, AE(E/M) for petitioner appeared on 21.08.2023, Sri Vimal Kumar Bendwal, AE(E/M) for petitioner has appeared on 14.12.2023, Sri M.A.Dubey, Director (E/M) along with Sri Abhishek Sharma, GE(I)RCI for petitioner appeared on 11.01.2024 and 25.01.2024, but there is no representation for petitioner on 21.09.2023 and 15.11.2023. Sr Mohammad Bande Ali, Law Attaché for respondents has appeared on 21.09.2023, 15.11.2023, 14.12.2023, 11.01.2024 and 25.01.2024. The matter having been heard and having stood over for consideration to this day, the Commission passed the following:

## ORDER

Garrison Engineer (I) R&D RCI (petitioner) has filed a petition under Section 14 and 42 of the Electricity Act, 2003 (Act, 2003) seeking orders for handing over of connected Assets to MES created from defence funds at RCI, Hyderabad to establish direct grid connectivity being a deemed licensee to enable MES to operate as deemed distribution licensee in the state of Telangana. The averments in the petition are extracted below:

- a. It is stated that the Military Engineer Services (MES) is a deemed licensee under third proviso to Section 14 of the Act, 2003, which is reproduced below:

*‘Provided also that in case an Appropriate Government transmits electricity or distributes electricity or undertakes trading in electricity, whether before or after the commencement of this Act, such Government shall be deemed to be a licensee under this Act, but shall not be required to obtain a licence under this Act.’*
- b. It is stated that Ministry of Power (MoP, Government of India (GoI) in consultation with Ministry of Law vide letter No.25/19/2004 – R&R dated 26.07.2004 has acknowledged MES as deemed licensee under third proviso to Section 14 of the Act, 2003. The letter was issued by the MoP to MES being Central Government department under Ministry of Defence (MoD) considering MES as an Appropriate Government as per the Act, 2003, engaging in distribution of electricity.
- c. It is stated that MES is responsible for erection, operation and maintenance of defence services installations and distribution system as per paragraph 865, Section 52 of the Regulations for Military Engineer Services (RMES), 1968, MES at RCI, Hyderabad, being a deemed licensee under third proviso to Section 14 of the Act, 2003, is undertaking all responsibilities and duties of a deemed licensee by erecting and maintaining an efficient, coordinated and economical distribution system as per Section 42 of the Act, 2003 except maintaining direct grid connectivity, further, DRDO office complex, guest rooms and residential complex are consumers of MES and installation of meters, billing of individual defence consumers and realization is being done by MES at RCI, Hyderabad.
- d. It is stated that MES at Delhi Cantonment is operating as deemed distribution licensee since 01.04.2007 duly recognized by the Delhi Electricity Regulatory

Commission (DERC) and purchasing power directly from power generating companies and Indian Energy Exchange (IEX).

- e. It is stated that form of regulators in 56<sup>th</sup> meeting confirmed that Delhi, Tamil Nadu, Telangana, Rajasthan and Uttarakhand States have accorded deemed distribution licensee status to MES.
- f. It is stated that regulatory affairs division of Central Electricity Authority (CEA), MoP, GoI issued list of deemed licensees under SERCS/JERCs in the country as on 01.01.2021 under which MES is listed as deemed licensee by DERC, HERC and KSERC.
- g. It is stated that the Telangana State Electricity Regulatory Commission in its order dated 20.11.2015 in O.P.No.1 of 2015 in the matter of MES Vs TSSPDCL confirmed that MES is a deemed licensee and issued deemed licensee status to MES in Telangana.
- h. It is stated that MES under MoD provides MES cover to various strategic establishments PAN India including army, navy, air force, DRDO, Coast Guard etc. Presently, MES at DRDO complex, C V Raman Nagar is distributing electricity to its DRDO complex establishment at RCI, Hyderabad and is being supplied by TSSPDCL vide RJN 211 No connection with contracted maximum demand (CMD) of 15.6 MVA at phase I and phase III as bulk consumer in tariff category.
- i. It is stated that MES at RCI, Hyderabad is having its own setup for distribution of electric supply to its consumers.
- j. It is stated that MES at RCI, Hyderabad RJN 211 directly connected with State Transmission Utility (STU) i.e., TSTRANSCO at 132 kV grid through 132 kV feeder. The 132 kV substation is being maintained by MES. The 132 kV overhead line from MES 132 kV MRS to Chandryangutta, TSTRANSCO grid was created from defence funds through deposit work. However, the said line is being maintained by concerned DISCOM that is TSTRANSCO. The said 132 kV line needs to be handed over to MES from TSTRANSCO to establish direct grid connectivity being deemed licensee and to operate as deemed distribution licensee at RCI Hyderabad. Further, MES shall maintain all assets up to TSTRANSCO deemed licensee. Accordingly, the following assets need to be

handed over to MES from TSTRANSCO to establish direct grid connectivity.

(a) 132 kV from MES grid to TSTRANSCO.

k. = It is stated that HQ E-in-C's branch, IHQ of MoD (Army) has already submitted an application elaborating all details along with all relevant documents before the Commission on 06.06.2022.

l. In view of the aforesaid facts and in the interest of justice, it is prayed the following reliefs in the petition.

(a) Admit the present petition.

(b) Pass appropriate orders for handing over of connected assets to MES created from defence funds at RCI, Hyderabad to establish direct grid connectivity being deemed licensee to enable MES to operate as deemed distribution licensee in Telangana State.

2. The respondent No.1 has filed its counter affidavit as below:

a. It is stated that the petitioner is a consumer of the respondent-2 with service connection number RJN-211 with a CMD of 15.6 MVA and is being fed from 220 kV Chandrayanagutta substation of respondent No.1 through a dedicated service line (feeder) which is being maintained by respondent No.1.

b. It is stated that the APERC Regulation (Licensees Duty for Supply of Electricity) No.4 of 2013 adopted by the Commission vide Regulation No.1 of 2014 defines 'dedicated feeder' as follows: -

*"Dedicated Feeder means feeder emanating from substation where transformation to the required voltage takes place and feeds power to a single consumer having contracted capacity of minimum fifty percent of line capacity or more. The consumer shall bear the full line cost, including take off arrangements at substation end of the licensee. In such cases the billing meter shall be provided at the licensee's sub-station."*

c. It is stated that General Terms and Conditions of Supply (GTCS) approved by the Commission defines 'Service Line' as follows.

*"Service line means an electric supply line through which energy is supplied, or is intended to be supplied by the company from a distributing main to a single or group of consumers from the same point of the distributing main."*

d. It is stated that it thus become clear from the above definitions of dedicated feeder and service line that the feeder/supply line, which is feeding/supplying power to a particular consumer fall under service line. Whereas, an electric line of transmission/distribution system, which is connected to the substation for the

purpose of transformation of power exclusively, does not fall under the definition of service line.

- e. It is stated that in reply to the contention of the petitioner to hand over the connected assets to MES, it is stated that the clause 5.3.2 of GTCS approved by the Commission specifies about service line charges as follows: -

**5.3.2. Service Line Charges**

**5.3.2.1** *The service line charges payable by the consumers for release of new connection/additional load under both LT and HT categories shall be levied at the rates notified by the company in accordance with regulations/orders issued by the Commission from time to time. These charges shall be paid by the consumer in advance failing which the work for extension or supply shall not be taken up. These charges are not refundable.*

*Provided that where any applicant withdraws his requisition before the Company takes up the work for erection of the service line, the company may refund the amount paid by the consumer after deducting 10% of the cost of the sanctioned scheme towards establishment and general charges. No interest shall be payable on the amount so refunded.*

**5.3.2.2.** *Notwithstanding the fact that a portion or full cost of the service line has been paid for by the consumer, the service line shall be the property of the company, which shall maintain it at its own cost. The company shall also have the right to use the service line for supply of energy to any other person(s)".*

- f. It is stated that it becomes very much clear from the perusal of clause 5.3.2.2 that notwithstanding the fact that a portion or full cost of the service line has been paid for by the consumer, the service line shall be the property of the respondent No.1 or 2, which shall maintain it at its own cost, therefore, the claim of the petitioner to hand over the assets to MES that were created from defence funds at RCI, Hyderabad does not hold any water and hence becomes untenable.
- g. It is stated that the Commission vide its order dated 20.11.2015 in O.P.No.1 of 2015 held that MES is a deemed licensee and conferred the status of deemed licensee. The present petitioner has to file an application before this Commission to get itself identified as the deemed licensee as per the Regulation No.4 of 2016 and shall also comply with the Distribution of Electricity licensee (Additional Requirements of Adequacy, Credit Worthiness and Code of Conduct) Rules, 2005 issued by the Gol.
- h. It is further stated that on attaining the deemed licensee status, the petitioner



has to obtain grid connectivity from the STU/respondent No.1 for availing power under open access as a deemed licensee either by laying new service line or by paying the present cost of the dedicated service line as determined by the Commission for usage of the line of this respondent.

- i. It is also stated that in case the petitioner attains the deemed licensee status, it can no longer be treated as a consumer of the DISCOM. Therefore, the petitioner has to get its service connection with the DISCOM dismantled/cancelled. In such case the petitioner shall have to be treated as a distribution licensee on par with TSDISCOMs. Pursuant thereto, the metering is to be provided as interface metering between two different licensees that is TSTRANSCO/respondent No.1 and the petitioner. As per clause 7(1)B of CEA Metering Regulations, 2006, meters are to be installed at both ends of the line and are treated as main meters of the respective licensee.
- j. It is stated that as per clause 6(1)(c) of CEA Metering Regulations-2006, the meters shall be owned by the respective licensees. In such view of the matter, if the petitioner is to be treated as deemed distribution licensee, it has to procure, install and maintain their own boundary meters.
- k. It is stated that as per clause 35 (Power Procurement Procedure) of Regulation No.4 of 2016, the licensee has to purchase electricity from generators, traders or others as consented by the Commission and shall not purchase power without authorization of the Commission. The petitioner does not have long-term Power Purchase Agreements (PPAs) with generators similar to respondent No.2 for a fixed contracted capacity approved by the Commission for which they are liable to pay transmission charges to the respondent No.1 for the approved contracted capacity as determined by the Commission from time to time for usage of the transmission network for availing power under open access.
- l. It is stated that the averment that they have enclosed power supply agreement with respondent No.1 or 2 which is not correct. What they have enclosed is only HT supply service connection agreement with the DISCOM.
- m. It is stated that in the circumstances mentioned above, it becomes very much clear that the petitioner is not entitled to claim handing over of the said 132 kV

line from the respondents since the said line is the property of the respondents in view of clause 5.3.2.2 of GTCS. It is, therefore, prayed the Commission to dismiss the petition.

3. The respondent No.2 has filed its counter affidavit as below:
  - a. It is stated that the petitioner is a consumer of the respondent No.2 with service connection number RJN-211 with a CMD of 15.6 MVA and is being fed from 220 kV Chandrayanagutta substation of the respondent No.1 through a dedicated service line which is being maintained by the respondent No.1. In view of the line of the petitioner at 132 kV connected to 220 kV dedicated service substation maintained by the respondent No.1, it is stated that the clause 5.3.2.2 of GTCS is applicable to respondent Nos.1 and 2 also.
  - b. It is stated that the dedicated feeder has been defined in Regulation No.4 of 2013 issued by the then Commission (APERC) which came into force from 29.07.2013 and the same is extracted in the counter affidavit of respondent No.1.
  - c. It is stated that GTCS defines service line and the same is extracted in the counter affidavit of respondent No.1.
  - d. It is stated that it thus become clear from the above definitions of dedicated feeder and service line, the feeder/supply line which is feeding/supplying power to a particular consumer fall under service line. However, an electric line of transmission/distribution system which is connected to the substation for the purpose of transformation of power exclusively, does not fall under the definition of service line.
  - e. It is stated that as far as handing over of the dedicated line assets, it is submitted that, as per clause 5.3.2 of the GTCS approved by the then Commission (APERC) vide proceedings No.Secy/01/2006, dated 06.01.2006 being the GTCS as adopted by the Commission vide Regulation No.1 of 2014, the service line charges is defined as is extracted in the counter affidavit of respondent No.1.
  - f. It is stated that in view of clause 5.3.2.2 notwithstanding the fact that a portion or full cost of the service line has been paid for by the consumer, the service

line shall be the property of the company which shall maintain it at its own cost, the claim of the petitioner to hand over the assets to MES that were created from defence funds at RCI, Hyderabad does not hold any water and hence becomes untenable.

- g. It is stated that the Commission vide its order dated 20.11.2015 in O.P.No.1 of 2015 held that MES is a deemed licensee and conferred the status of deemed licensee. It is stated that the present petitioner has to file an application before this Commission to get identified as the deemed licensee as per the Regulation No.4 of 2016 and shall also comply with the "*Distribution of Electricity licensee (additional requirements of adequacy, credit worthiness and code of conduct) Rules, 2005*" issued the GoI. It is pertinent to mention here that Garrison Engineer (MES) has not tied up with any generator for purchase of power on long term basis and in such view of the matter, it may propose to procure power from IEX etc., through open access mode.
- h. It is further stated that on attaining the deemed licensee status, the petitioner has to obtain grid connectivity from the STU / respondent No.1 for availing power under open access as a deemed licensee either by laying new service line or by paying the present cost of the dedicated service line as determined by the Commission for usage of the line of this respondent.
- i. It is also stated that in case the petitioner attains the deemed licensee status, it can no longer be treated as a consumer of the respondent No.2. Therefore, the petitioner has to get its service connection with the respondent No.2 dismantled/cancelled. In such case the petitioner shall have to be treated as a distribution licensee on par with TSDISCOMS. Pursuant thereto, the metering is to be provided as interface metering between two different licensees that is respondent No.1 and the petitioner. As per clause 7(1)B of CEA Metering Regulations, 2006, meters are to be installed at both ends of the line and are treated as main meters of the respective licensee.
- j. It is further stated that as per clause 6(1)(c) of CEA Metering Regulations-2006, the meters shall be owned by the respective licensees. In such view of the matter, if the petitioner is to be treated as deemed distribution licensee, it has to procure, install and maintain their own boundary meters.



- k. It is stated that in the circumstances mentioned above, it becomes very much clear that the petitioner is not entitled to claim handing over of the said 132 kV line from the respondents since the said line is the property of the respondents in view of clause 5.3.2.2 of GTCS. It is therefore prayed that the Commission may be pleased to dismiss the petition.
4. The petitioner has filed rejoinder to the counter affidavit of the respondent Nos.1 and 2 as below:
- a. It is stated that 132 kV service line/dedicated feeder was established for MES by respondent No.1 from 220 kV Chandrayanagutta substation to 132 kV MES substation and being maintained by TSTRANSCO considering MES as a consumer. The present claim of MES to hand over the connected assets from respondent No.1 to MES is as deemed licensee and not as a consumer and the assets were created from deemed licensee's funds only. The MES requested to hand over connected assets to establish grid connectivity with STU/ respondent No.1. However, MES has no problem in case STU/respondent No.1 is ready to maintain the line as before but for MES (deemed licensee) on payment of maintenance charges as per transmission tariff order issued by the Commission. The MES will pay wheeling/transmission charges to STU after finalization of bulk power transmission agreement with respondent No.1 (STU).
- b. It is stated that the present petition is filed before the Commission to identify MES as deemed licensee to enable MES to execute PPA directly with power generator/power trader and to execute bulk power transmission agreement with respondent No.1 (STU). MES shall comply with the Distribution of Electricity Licensee (additional requirements of adequacy, credit worthiness and code of conduct) Rules, 2005" issued by the GoI. Further, MES will surrender its service connection with the DISCOM after implementation of deemed licensee status.
- c. It is stated that the MES will obtain long term open access (LTOA) as deemed licensee from STU once identified as deemed licensee by the Commission and after finalization of bulk power transmission agreement with respondent No.1 (STU). The 132 kV dedicated feeder established for MES from respondent No.1's 220 kV Chandrayanagutta substation to MES 132 kV substation will be used by MES (deemed licensee) as direct grid connectivity and respondent

No.1 may continue to maintain the line as presently being maintained by respondent No.1 for the respondent No.2. The MES will pay maintenance charges as per transmission tariff order issued by the Commission in addition to the payment of transmission charges to STU. Hence, the matter of payment of service line charges does not arise.

- d. It is stated that new ABT meters as per CEA Metering Regulations, 2006 shall be installed by MES, if required with the permission of respondent No.1, if existing ABT meters of the respondent No.2 installed at the 132 kV line does not fit the purpose.
- e. It is stated that the MES will enter into new long term PPA directly with power generator/power trader and to execute bulk power transmission agreement with respondent No.1 (STU) and will pay transmission charges for a fixed contracted capacity similar to other State DISCOMs.
- f. In view of the above submission, it is prayed the Commission to identify MES as deemed licensee to enable MES to execute PPA directly with power generator/trader and to execute power transmission agreement with respondent No.1 (STU) and may pass such other order as the Commission deems fit and proper in the circumstances of the case.

5. The petitioner has also filed reply to the counter affidavits of respondents Nos.1 and 2 as below:

- a. It is stated that the petitioner has already filed an application before this Commission to get itself identified as the deemed licensee in the state of Telangana on the date 23.07.2022.
- b. It is stated that as per the clause 5.3.2.2 of GTCS, petitioner's power transmission line is a dedicated feeder exclusively supplying power. The existing 132 kV RCI transmission line is a dedicated feeder created from the defence funds in 1987. The existing 132 kV RCI line is already there to have necessary grid connectivity on attaining the identification of distribution licensee. Hence no question arises of laying new transmission line or paying again for the same dedicated feeder line arises between respondent No.1's 220 kV Chandrayangutta substation to 132 kV MRS at RCI DRDO Hyderabad.

- c. The maintenance charges if any shall be paid, as decided by the Commission, by the petitioner till the conclusion of PPAs from various power generators. The bay maintenance charges of interconnecting bay of petitioner's line at respondent No.1's 220 kV Chandrayangutta substation shall be paid by the petitioner after getting the identification of distribution licensee from the Commission. The petitioner is ready to pay the existing line maintenance charges to the respondent No.1, that is to say TSTRANSCO on getting the identification of distribution licensee.
  - d. It is stated that the petitioner is the natural owner of the existing 132 kV RCI transmission line from respondent No.1's 220 kV substation to 132 kV MRS RCI, since the line is a dedicated feeder and not at all a service line. It is, therefore prayed the Commission to allow the petition.
6. The respondent No.1 has filed reply to the rejoinder as below:
- a. It is stated that at present, the petitioner is a consumer of respondent No.2 with service connection number RJN-211 with a CMD of 15.6 MVA and is being fed from 220 kV Chandrayanagutta substation of the respondent No.1 through a dedicated service line which is being maintained by the respondent No.1. The Commission vide its orders dated 20.11.2015 in O.P.No.1 of 2015 and O.P.No.8 of 2015 conferred the status of deemed licensee to the MES at Dundigal and Hakimpet locations only. Similarly, the present petitioner has to file an application before the Commission to get itself identified as the deemed licensee in the State of Telangana as per the Regulation No.4 of 2016. Till such time, the petitioner will be treated as a consumer only.
  - b. It is stated that, pursuant to clause 5.3.2.2 of GTCS, the existing service line of the petitioner is deemed to be the property of respondent No.1. Hence, on attaining the deemed licensee status, the petitioner has to obtain grid connectivity from the respondent No.1 for availing power under open access as a deemed licensee either by laying new service line or by paying the present cost of the dedicated service line as determined by the Commission for usage of the line of this respondent.
  - c. It is stated that the contention of the petitioner that even after attaining deemed licensee status, respondent No.1 may continue to maintain the line and they

are ready to pay the maintenance charges is not acceptable. The service line feeding the petitioner's unit is being maintained by the respondent No.1 treating the petitioner as a consumer. In case the petitioner attains the deemed licensee status, it can no longer be treated as a consumer of the respondent No.2. Therefore, the petitioner has to get its service connection with the respondent No.2 dismantled/cancelled and the petitioner shall be treated as a distribution licensee on par with TSDISCOMS. In such a case, the issue of maintenance of line owned by one licensee by another licensee does not arise. The interconnecting bay of the petitioner's line at the respondent's substation will be maintained by the respondent No.1 on payment of bay maintenance charges whereas the line has to be maintained by the petitioner.

- d. It is stated that in view of the above submissions, the petitioner is not entitled to claim handing over of the said 132 kV line from the respondents since the said line is the property of the respondents in view of clause 5.3.2.2 of GTCS. Further, the petitioner has to follow the procedures laid down in the Regulation No.4 of 2016 to get itself identified as deemed distribution licensee in the State of Telangana.
- e. It is stated that the averments and allegations made by the petitioner which are not specifically admitted or denied may be deemed to have been denied by the respondent No.1. It is, therefore, prayed the Commission may be pleased to dismiss the petition.

7. The Commission has heard the parties to the petition and also considered the material available on record. The submissions on various dates are noticed below, which are extracted for ready reference.

Record of proceedings dated 21.08.2023:

*"...The matter is coming for hearing for the first time. The representatives of the respondents sought time for filing counter affidavit in the matter. In view of the same, the matter is adjourned."*

Record of proceedings dated 21.09.2023:

*"...The representative of the respondents has sought time for filing counter affidavit. He also stated that the petitioner has not made the transmission and distribution licensee as party to the petition, to which the Commission has observed that apart from the status of the deemed licensee being sought, it also sought transfer of assets and that therefore, the Commission required the transmission and distribution licensees to be as necessary parties to the*



*petition. Considering the request of the representative of the respondents, the matter is adjourned with a direction to the respondents to file counter affidavit by serving a copy of the same to the petitioner on or before the date of hearing.”*

*Record of proceedings dated 15.11.2023:*

*“...The representative of the respondents sought further time for filing counter affidavit. Considering the request of the representative of the respondents, the matter is adjourned.”*

*Record of proceedings dated 14.12.2023:*

*“...The representative of the petitioner sought time for filing rejoinder as also taking further instructions from the senior officers on the need to engage an advocate. The representative of the respondents has no objection. Accordingly, the matter is adjourned.”*

*Record of proceedings dated 11.01.2024:*

*“...The representative of the petitioner stated that the petition is filed for declaration of MES as a deemed licensee and also to handover the assets relating to distribution within the area of operation. At present the petitioner is drawing power at 132 kV directly from the transmission system and distributing the same within the area under its control. The intention of the petitioner is to avail power directly from the generation sources. It intends to avail long term open accession for the purpose. The petitioner also intends to avail the bulk transmission agreement with TSTRANSCO.*

*He stated that for purpose of availing LTOA it is ready to install ABT based metering and also enter into long term PPA with generation sources. Under the policy of the Government of India notification, the petitioner is a deemed licensee and as such entitled to avail power supply from any sources. The transmission and distribution network falling within the area under its control may be directed to be handed over to it for use of MES as deemed licensee for direct grid connectivity. However, TSTRANSCO may continue to maintain the asset for which the petitioner is willing to pay the necessary charges for maintenance.*

*The representative of the respondents stated that the petitioner has filed the petition for handing over the assets relating to transmission and distribution within the area under its control for operationalizing deemed licensee status. However, the petitioner has not filed an application for the said purpose and obtained orders of the Commission till date. Unless the petition is declared as deemed licensee by the Commission, the subsequent events would not arise. It is also stated that as per the prevailing general terms and conditions of supply, the lines cannot be handed over to the petitioner even though it has paid for the same. The respondents have no notice that the petitioner is claiming status of deemed licensee by way of this petition. In any case, he has no instructions and have to obtain the same insofar as the prayer is made in the petition by the petitioner. Thus, he requested for time in the matter. In view of the request of the representative of the respondent, the matter is adjourned.”*

*Record of proceedings dated 25.01.2024:*

*“... The representative of the petitioner stated that the petitioner has applied for not only transfer of assets but the status of deemed licensee. The submissions have been made in writing with regard to transfer of assets and would like to*



reiterate the submissions made earlier in the matter. The Commission may consider according the prayer sought for in the petition.

The representative of the respondents stated that there is no application for grant of deemed licensee status. Unless the Commission declares the petitioner to be a deemed licensee, there is no case for transfer of assets as sought by the petitioner. The petition has not filed any application with regard to deemed licensee status. In terms of GTCS the line once established becomes part of the property of the licensee and cannot be claimed by anybody. Such lines and equipment though paid for by the petitioner as consumer cannot be handed over to the consumer itself unless the status has changed. Even in those circumstances also, the lines will not be handed over to another licensee and the other licensee has to lay its own lines.

The representative of the respondents further stated that the maintenance of lines in favour of another licensee also would not arise even if the amount is paid. For transmitting power, the petitioner has to avail open access both for transmission and distribution networks and pay the necessary tariff as determined by the Commission. Thus, the petitioner is not entitled to any relief including the purported request for deemed licensee status. ... ”

8. Before adverting to the rival contentions having examined the material on record, it is trite to notice the correspondence that have been undertaken between the petitioner and the Commission. The said correspondence is reproduced below:

a. Garrison Engineer Letter No.4010/DL/04/E4 dated 17.12.2020.

- “2. It is intimated that as per Ministry of Power, Govt of India Order No.25/19/2004–R&R dated 26 Jul 2004, Military Engineer Services meets the requirement as provided in third proviso to Section 14 of the Electricity Act, 2003 of a Appropriate Government engaging in distribution of electricity and as such qualified to be deemed licensee under the said provision of the Act.
3. We, Garrison Engineer (I) R&D RCI are providing services for DRDO. Presently we are having 132 kV connection and our CMD requirement is 14.00 MVA which likely to be increased to 22.80 MVA within next three years. Our main receiving station is connected with Chandrayangutta 220 kV Sub Station.
4. As such it is requested to provide us license as DEEMED LICENCEE so that we can purchase power directly as per availability and norms.
5. Necessary formalities will be followed according as directed.

b. The Commission Lr. No. S/R.O.44 / 1 / Secy / 2021-01 / D. No. 28 / 2021 Dt.12.1.2021

- “2. The Commission considers that you have raised two issues in your letter addressed to the Commission. Insofar as procurement of power directly under short term open access, the Commission had issued Regulation No.2 of 2005 as adopted by it in 2014, wherein the State Load Despatch Centre is the nodal agency for short term procurement and as a consumer of the licensee, you

have to approach the said centre for the above said purpose.

3. *Insofar as treating you as deemed distribution licensee, you are required to file a proper petition in accordance with the Electricity Act, 2003, Conduct of Business Regulation, 2015 read with Levy of Fee Regulation, 2016. Upon such filing of the said petition, the same will be processed separately.”*

c. Letter No.4060 /B / / E4 dated 27 May 2022

2. *It is requested to issue us a letter stating current fee amount towards application for obtaining Deemed distribution Licensee.*

d. Lr.No.S/R.O.44 /1 / JD (Law)-2 / D. No. 284 / 2022 dated 01.06.2022.

- “2. *Insofar as treating you as deemed distribution licensee, you are required to file a proper petition in accordance with the Electricity Act, 2003, Conduct of Business Regulation, 2015 read with Levy of Fee Regulation, 2016. Upon such filing of the said petition, the same will be processed separately. Further for filing such petition, you are required to pay a fee of Rs. 30,000/- and there is no change in the fee structure from the letter 2<sup>nd</sup> cited above.”*

e. No.62888/NTPC/E-4 (U-4) dated 07.06.2022

- “1. *Military Engineer Services (MES) is a Deemed Licensee under third proviso to Section 14 of the Electricity Act, 2003 (Copy enclosed as Appx ‘A’). Further, Ministry of Power Govt of India in consultation with ministry of Law vide Letter No 25/19/2004-R&R dated 26 Jul 2004 has acknowledged MES as Deemed Licensee engaged in distribution of electricity under third proviso to Section 14 of the Electricity Act, 2003 (Copy enclosed as Appx ‘B’). Defence establishments are located at various pockets like RCI, DRDO Kanchanbagh, Secunderabad Cantonment, Dundigal, Hakimpet, Golkunda in different voltage levels varying from 11 kV to 132 kV. However, Garrison Engineer (I) R&D RCI Hyderabad is receiving electricity at 132 kV level in DRDO RCI, Kanchanbagh complex with maximum demand around 15 megawatt to meet the demand of important DRDO labs and residential complex of scientists.*
2. *MES is responsible for erection, operation and maintenance of Defence Services installation and distribution system, under Section 52 of the Regulations for Military Engineer Services (RMES), 1968 (copy enclosed as Appx ‘C’). MES (DRDO complex) at RCI Hyderabad, Being a Deemed Licensee under third proviso to Section 14 of the Electricity Act, 2003 is undertaking all responsibilities and duties of a Deemed Licensee by erecting and maintaining an efficient, co-ordinate and economical distribution system as per Section 42 of the Electricity Act, 2003 and complying all the provisions of the Electricity Act, 2003 and Telangana Electricity Regulatory Commission (TSERC) Regulations except maintaining direct grid connectivity.*
3. *MES at DRDO Complex RCI Hyderabad station is directly connected with state Transmission Utility i.e., TSTRANSCO at 220/132kV Grid through 132 kV feeder. The 132 kV substation is*

being maintained by MES. The 132 kV underground/overhead line from MES 132 kV MRS to TSTRANSCO grid was created from Defence funds through deposit work. However, the said line is being maintained by TSTRANSCO and billed by TSSPDCL. The said 132 kV line needs to be handed over to MES from TSTRANSCO to establish direct grid connectivity being Deemed Licensee and to operate as Deemed Distribution Licensee at DRDO complex RCI Hyderabad.

4. For reference, MES at Delhi Cantt is operating as Deemed Distribution Licensee since 01.04.2007, duly recognized by Delhi Electricity Regulatory Commission (DERC) and purchasing power directly from Power Generating and Indian Energy Exchange (IEX). Copy of Delhi Electricity Regulatory Commission order dated 03.03.2007 is enclosed as Appx 'D' for ready reference please. It is also submitted MES Delhi Cantt is maintaining all the grid connecting feeders in 3 places by commissioning ABT meters at both ends.
  5. It is highlighted that the Hon'ble Commission has already recognized MES Dundigal as Deemed Licensee vide order No.8 of 2015 dated 02.11.2015 (copy enclosed as Appx 'E'). Further, Forum of Regulators in its 56<sup>th</sup> meeting confirmed that Delhi, Tamil Nadu, Telangana, Rajasthan and Uttarakhand States have accorded Deemed Distribution Licensee status of MES (copy of minutes enclosed as Appx 'F'). Regulatory Affairs Division of Central Electricity Authority, Ministry of Power, Govt of India issued list of Deemed Licensees under SERCs/JERCs in the country as on 1<sup>st</sup> Jan 2021 under which MES is listed as Deemed Licensee by DERC, HERC, KSERC and TSERC.
  6. In view of the above, Hon'ble Commission is requested to kindly allow MES at DRDO RCI complex to operate as Deemed Distribution Licensee at RCI, Hyderabad and direct TSTRANSCO to hand over the 132 kV overhead line created from defence funds to MES being Deemed licensee. Further, MES shall maintain all assets upto TSTRANSCO as Deemed Licensee, by installing and commissioning ABT meters, SCADA at suitable locations.
  7. An early kind action is requested in this regard.”
- f. S/R. O. 44 / 1 / JD(Law)-3 / D. No. 327 / 2022 dated 17.06.2022.
- “2. In the reference 1<sup>st</sup> cited, you had addressed a letter to the Commission for grant of deemed distribution licensee status. In the reference 2<sup>nd</sup> cited, the Commission had required you to comply with certain aspects by following the regulations of the Commission. There was no action on your part till date in this regard. Further, in the reference 3<sup>rd</sup> cited, you have sought to know the application fee to be payable for making an application on the subject. The Commission gave you a reply in the reference 4<sup>th</sup> cited.
  3. The request made by you in the reference 5<sup>th</sup> cited cannot be considered based on a letter. You are required to file a proper and



*appropriate application and petition along with the application fee and necessary copies of the same. You are also required to follow the procedure as may be set out and directed by the Commission for consideration of the application.*

4. *You have mentioned in the letter that you require deemed distribution license as also handing over 132 kV overhead line created from defence funds. Both the aspects have to be dealt with separately by filing separate petitions and cannot be clubbed in one petition or application. Also, it has to be informed that the petitions other than distribution license application attract a separate fee and for that purpose, you need to identify under which provision, you are filing the other petitions and pay appropriate fee thereon. The applications and petitions should be filed in six copies, for each of the petition or application alongwith all the enclosures tagged to the respective petition or application for all the copies. Wherever necessary, the copies to be sent to the other parties, shall be in addition to the six copies mentioned above.*
5. *Please find enclosed the relevant regulations being the Conduct of Business Regulation, 2015, Levy of Fee Regulation, 2016 and Distribution Licensee Regulation, 2016.”*

*g. S/R.O.44 / 1 / JD(Law)-3 / D. No. 398 / 2022 dated 21.07.2022*

- “2. *Upon further scrutiny of the petition filed in the reference 5<sup>th</sup> cited above, it is noticed that the application is filed without the attestation made for verifying affidavit. Further, eventhough payment appears to have been made, the details of the payment made, are not enclosed towards fee. The application is filed in a single copy, whereas the Conduct of Business Regulation required along with its copies in (6) Nos. comprising of all the annexures and documents relied upon.*
3. *Therefore, the application along with enclosures are returned herewith. You are required to comply with the same for initiating further action in the matter by the Commission.”*

*h. No.4010/26/E4 dated 23.07.2022*

- “1. *Ref Your letter No. S/R.O. /1/JD (Law)-3/D.No.398/2022 dated 21.07.2022.*
2. *Para wise replies to observation raised above cited letter as follows:*

*Para 2: Now duly attestation of verifying affidavit, payment details and six sets of application along with petition are enclosed herewith.*
3. *It is requested to issue the deemed distribution licensee at earliest please.”*

*i. S/R.O.44 / 1 / RO-4 / D. No. 565 / 2022 dated 17.10.2022*

- “2. *Upon examination of the petition by the Commission, the following aspects are noticed, where the information furnished is insufficient or incomplete. Therefore, you are required to file the*

information as enumerated below for enabling the Commission to take further steps in the matter.

1. The petitioner has not confirmed the source of power for their utilization.
  2. It has not submitted any power supply agreement or power purchase agreement.
  3. The petitioner has to submit the transmission service agreement.
  4. The petitioner has to place on record the details like authorized signatory, organisational and managerial capability and organisation structure for distribution activity.
  5. The petitioner has to place the details of sub-transmission network and distribution network in the proposed area.
  6. The petitioner has to place the details of five year business plan, annual load forecasts of costs, sales and revenue projections and project financing.
  7. The petitioner has to furnish the details of persons to whom electricity is intended to be distributed with full details of categories of persons.
  8. The petitioner has to furnish the details of funding arrangements for maintenance, operation etc.
  9. The petitioner has to furnish the details of equity invested by the petitioner.
  10. The petitioner has to file the documents in respect of -
    - a) CV of senior management.
    - b) Cadre strength for different categories, technical and nontechnical.
    - c) Financial details.
3. After receipt of the above information only, the Commission will proceed further and intimate you the necessary steps to be taken in the matter.”

j. No.4010/DL/34/E4 dated 09.01.2023

- “1. Our source of power is Indian Energy Exchange and other power generating companies of India.
2. Our existing power supply agreement is with TSSPDCL/ TSTRANSCO. A copy is enclosed herewith for your ready reference.
3. Our power supply agreement is also transmission service agreement as our voltage level is 132 kV which comes under TSTRANSCO from 220 kV Chandrayangutta TSTRANSCO substation.
4. The authorized signatory is the consumer himself in whose name the existing service RJN 211 has been in operation since 1987-88 i.e., Shri Abhishek Sharma, IDSE, Garrison Engineer (I) R&D RCI, P.O Vignayanakancha, Hyderabad -69. Garrison Engineer



*(I) R&D RCI is consisting of detailed required organizational staff and infrastructure like Auditor, Bills, revenue and legal section.*

5. *The schematic diagram/single line diagram of our 132 kV main receiving station MRS/Main Step Down station, and other 11 kV/0.433 kV distribution substation copier also submitted herewith GE(I) R&D, RCI.*
6. *Military Engineer Services (MES) is a Govt of India department under Ministry of Defence does not have business plan, sales and revenue projection/project financing. This office deals with Engineering services to all the defence/Armed forces Air force, Navy and R&D. It is to state that MES is not a revenue generating body.*
7. *As per Para 6.*
8. *Not applicable.*
9. *MES is a Govt of India department under Ministry of Defence does not have equity invested.*
10. *MES is a Govt of India department under Ministry of Defence. MES works under Engineer in Chief. There are technical expertise officer at different levels as per government establishment. Cadre strength of department is as per establishment sanctioned by Ministry of defence at different levels. MES department is a Government department of non-revenue government body. So, no financial details required.”*

9. From the correspondence extracted above, it is noticed that the petitioner is not diligent in prosecuting the case properly for the relief sought by it. Inasmuch as, at every stage, the office of the Commission had to pinpoint the deficiencies to take up the matter for consideration. There were long time lags by the petitioner in complying with the requirement as suggested by the office of the Commission.

10. Even while considering the petition finally, the information was required to be filed by the petitioner, but the petitioner had replied in its letter dated 09.01.2023 as extracted above, which is vague and inappropriate.

11. Also, it is relevant to state that the material placed before the Commission states that earlier, the Commission had passed orders in favour of the sister units of MES represented by Garrison Engineer, AIR Force Academy, Dundigal, Hyderabad and Garrison Engineer, AIR Force Station, Hakeempet, Hyderabad in O.P.Nos.1 & 8 of 2015. The relevant portions are extracted below:

O.P.No.1 of 2015.

“11. *Having regard to the facts and circumstances obtaining in this petition, the petitioner qualifies for deemed licensee status. The same is issued. In view of the authoritative pronouncement of the Hon’ble Appellate*

*Tribunal for Electricity Laws in Appeal No.1/2008, in the matter of MILITARY ENGINEERING SERVICE, PUNJAB 6 vs. PUNJAB STATE ELECTRICITY REGULATORY COMMISSION, this Commission cannot concede to the request of the petitioner for separate, preferential and concessional tariff. The petitioner is purchasing power from DISCOM only, hence, will be treated as consumer and will be met with the same treatment in terms of tariff extended to any other consumer in such category. At this stage, when tariff is already fixed, this Commission will not be in a position to reopen the tariff at the fag end of the financial year. Any revision to the tariff can be made only during the next tariff revision based on the ARR of the respondent DISCOM. The petitioner can present their case before the Commission during the tariff revision process.”*

O.P.No.8 of 2015.

*“11. Having regard to the facts and circumstances obtaining in this petition, the petitioner qualifies for deemed licensee status. The same is issued. In view of the authoritative pronouncement of the Hon’ble Appellate Tribunal for Electricity Laws in 6 Appeal No.1/2008, in the matter of MILITARY ENGINEERING SERVICE, PUNJAB vs. PUNJAB STATE ELECTRICITY REGULATORY COMMISSION, this Commission cannot concede to the request of the petitioner for separate, preferential and concessional tariff. The petitioner is purchasing power from DISCOM only, hence, will be treated as consumer and will be met with the same treatment in terms of tariff extended to any other consumer in such category. At this stage, when tariff is already fixed, this Commission will not be in a position to reopen the tariff at the fag end of the financial year. Any revision to the tariff can be made only during the next tariff revision based on the ARR of the respondent DISCOM. The petitioner can present their case before the Commission during the tariff revision process.”*

The said orders came to be passed on the basis of the interpretation provided by the Hon’ble Appellate Tribunal for Electricity in Appeal No.1 of 2008 in the matter of Military Engineering Service, Punjab vs. Punjab State Electricity Regulatory Commission. The observations made by the Hon’ble APTEL are also extracted herein:

*“... . Though, the appellant claims to be a deemed licensee it does not purchase power from a generator, it procures power from a distributor in the bulk like other bulk purchasers from distribution company for supply to the end consumers. The picture is clear in this that the appellant receives electrical energy at a single point from a distributor and not from a generator and then distributes power to its officers. Therefore, the position of the appellant vis-à-vis the respondent No.2 cannot be qualitatively distinguished from a position of a bulk purchaser and bulk consumer. In fact, it is a bulk consumer vis-à-vis the respondent No.2. The function contemplated of an appropriate government within the meaning of Section 2(5) of the Act requiring no licensee in accordance with the third proviso to Section 14 is really not the same function which is being carried out by the appellant in its dealing with the Punjab State*

*Electricity Board. Much is talked about annexure A-1 the government of India's letter dated 26.7.2003 addressed to the Secretaries of the State commissions saying that the appellant qualifies to be deemed licensee under the provisions of the Act. The question arises as to the legal position of this letter. This is a letter by Director of Ministry of Power, Government of India. It is not necessary for the disposal of the appeal to examine in detail the question as to whether the appellant is a deemed licensee or not. Only it can be said that it cannot be argued that by this letter the status of the deemed licensee can be conferred upon the appellant in a way different from what is contemplated in the third proviso to Section 14 read with Section 2(5) and Section 2(17) of the Act.*

... ..

*The letter has not said that the appellant would be considered to be deemed licensee vis-à-vis respondent No.2 when it purchases its power from a distribution licensee for internal distribution to its own officers and also that a special category of tariff structure should be determined for it for that purpose. Therefore, it cannot be said that the appellant requires a differential treatment in such circumstances. The respondent No.2 is a commercial establishment and tariff for the consumers payable to the respondent No.2 has to be on commercial principle and unless the respondent No.2 is compensated for, there cannot be any differential treatment in respect of the appellant. All equals have to be treated equally; likewise all unequals deserve to be treated unequally. A bulk consumer of electricity has to pay a tariff to be determined by the Commission, and if the appellant fulfils the character of a bulk consumer it deserves to be treated in the same manner and if the government does have an intention to give any preferential treatment in such circumstances to the appellant category of consumers then the law has to take care of the situation by enactment or modification or amendment; but so far as the law now stands we cannot say that the Commission committed any illegality."*

The earlier orders of the Commission have two components, which were decided by the Commission. The prayers therein were that the units of the MES required specific category tariff by treating them as deemed licensees. As such, while accepting that it satisfies the status of deemed licensee, the other prayer with regard to the category of tariff was refused. In fact, the reliance placed on the said judgment cannot be sustained in the teeth of the fact that the Hon'ble APTEL itself had specifically observed as below:

*"... .. Much is talked about annexure A-1 the government of India's letter dated 26.7.2003 addressed to the Secretaries of the State commissions saying that the appellant qualifies to be deemed licensee under the provisions of the Act. The question arises as to the legal position of this letter. This is a letter by Director of Ministry of Power, Government of India. It is not necessary for the disposal of the appeal to examine in detail the question as to whether the appellant is a deemed licensee or*



*not. Only it can be said that it cannot be argued that by this letter the status of the deemed licensee can be conferred upon the appellant in a way different from what is contemplated in the third proviso to Section 14 read with Section 2(5) and Section 2(17) of the Act.*

... ..

*If the letter has intended to follow the third proviso then there ends the matter. It is necessary to point out that a HT consumer or EHT consumer when it receives power at or about the same voltage installs its own transformer and by that it cannot be said that the appellant or for that matter a HT or EHT category of consumer undertakes the business of transmission. The letter has not said that the appellant would be considered to be deemed licensee vis-à-vis respondent no.2 when it purchases its power from a distribution licensee for internal distribution to its own officers and also that a special category of tariff structure should be determined for it for that purpose. Therefore, it cannot be said that the appellant requires a differential treatment in such circumstances.”*

In fact, the question in issue that were under consideration before the Hon'ble APTEL in the said appeal were as follows.

- “a) Whether the Commission was justified in fixing tariff for FY 2007-08 applicable to the appellant at par with other bulk supply consumers.*
- b) Whether the Commission was justified in saddling the appellant, said to be a deemed licensee, with the component of cross subsidy when a deemed licensee is not a consumer.”*

Thus, the petitioner could not have relied upon the findings in the earlier matters insofar as the prayer now sought by it. However, the said unit subsequently never followed the provisions of the Act, 2003 and the regulations made by the Commission to comply with the status of deemed distribution licensee. As such, it is dysfunctional, so no reliance can be placed on the said order.

12. Reference has been made to discussion regarding allowing the licensee status to the petitioner's units by the Forum of Regulators on 30.09.2016. The said forum had observed and recorded as below.

*“The Forum noted that status accorded to MES in different States and observed that WBERC may refer to these practices and exercise its powers under the Electricity Act, 2003 for suitable action.”*

This does not constitute any binding, direction or observation on the Commission for consideration of the prayer of the petitioner. Moreover, the West Bengal Electricity Regulatory Commission's query is being answered and no view is being taken therein.

13. The petitioner also stated that several Commissions have accorded the status of deemed licensee to the petitioner's sister units. It has to be stated here that granting

the relief or otherwise by this Commission is not dependent on any other coordinate Commissions granting or otherwise of the relief to the sister units of the petitioner. The Commission would emphasize that it would be at liberty to decide the matter independently as the decisions of other Commissions do not constitute a binding precedent. Therefore, also no relief can be considered at this state to the petitioner.

14. Emphasis is made by the petitioner on the communication issued by the MoP, Gol with regard to the status of the petitioner's unit and its sister units. Before examining this aspect, it is necessary to reproduce the contents of the letter dated 26.07.2004 addressed to the State Commissions.

*“The Electricity Act, 2003 has been enacted and the provisions of the Act have been brought into force from 10<sup>th</sup> June, 2003. Since the enactment of the Act requests have been received from various stakeholders for issuing necessary clarifications on certain issues. One of such issues relates to recognition of Military Engineering Service (MES), a subordinate organisation of the Ministry of Defence as a deemed licensee under the Electricity Act, 2003.*

2. *The issue of MES as a deemed licensee under the Act has been considered in this Ministry in consultation with the Ministry of Law and accordingly it is clarified that MES, which is a subordinate organisation of the Ministry of Defence entrusted with and consequently engaging in supply of electric power meets the requirement as provided in third proviso to Section 14 of the Electricity act, 2003 – of an Appropriate Government engaging in distribution of electricity and as such qualifies to be deemed licensee under the said provision of the Act.”*

15. In order to appreciate the letter of the MoP, the following provisions are required to be examined. The Act, 2003 in Section 14 provides for licensing, transmission, distribution and trading in electricity subject to certain provisos included therein. It is also relevant to notice that Section 184 of the Act, 2003 enables the Government of India to notify certain organizations to be exempt from the provisions of the Act, 2003. The above said provisions to the extent they are relevant are reproduced below.

*“Section 14. Grant of licence:- The Appropriate Commission may, on an application made to it under Section 15, grant a licence to any person -*

- (a) *to transmit electricity as a transmission licensee; or*
- (b) *to distribute electricity as a distribution licensee; or*
- (c) *to undertake trading in electricity as an electricity trader, in any area as may be specified in the licence:*

*Provided that any person engaged in the business of transmission or supply of electricity under the provisions of the repealed laws or any Act specified in the Schedule on or before the appointed date shall be deemed to be a licensee under this Act for such period as may be*



*stipulated in the licence, clearance or approval granted to him under the repealed laws or such Act specified in the Schedule, and the provisions of the repealed laws or such Act specified in the Schedule in respect of such licence shall apply for a period of one year from the date of commencement of this Act or such earlier period as may be specified, at the request of the licensee, by the Appropriate Commission and thereafter the provisions of this Act shall apply to such business:*

*Provided further that the Central Transmission Utility or the State Transmission Utility shall be deemed to be a transmission licensee under this Act:*

*Provided also that in case an Appropriate Government transmits electricity or distributes electricity or undertakes trading in electricity, whether before or after the commencement of this Act, such Government shall be deemed to be a licensee under this Act, but shall not be required to obtain a licence under this Act:*

... ..”

**“Section 184. Provisions of the Act not to apply in certain cases:-** The provisions of this Act shall not apply to the Ministry or Department of the Central Government dealing with Defence, Atomic Energy or such other similar Ministries or Departments or undertakings or Boards or institutions under the control of such Ministries or Departments as may be notified by the Central Government.”

16. It is seen from the above provisions that the person, who intends to undertake transmission, distribution or trading in electricity, is required to obtain licence from the Commission. The exceptions being a person, who has a licence under the repealed laws at that time, the Central and State Transmission Utilities as notified under Electricity Regulatory Commissions Act, 1998 and the Appropriate Government which has been undertaking any of those activities, is exempted from obtaining the licence. In respect of the instant case, it cannot be said that the organization and its unit are undertaking any of those activities as stated above, even though it may be part of the government or an extension of the Government. Thus, the petitioner’s organization has to specifically obtain licence or deemed licence as the case may be subject to the provisions of the Act, 2003 and regulations thereof.

17. Further, Section 184 of the Act, 2003 requires the Gol to notify such of the departments and organizations to be exempted from the provisions of the Act, 2003. It has to be emphatically stated that no such notification has not been placed before the Commission in this regard. Though reliance is placed on the letter of the MoP, the letter would not constitute or authorize the enforcement of the status of the deemed licensee as it was not issued invoking any of the powers conferred on the Government

under the Act, 2003. Thus, the petitioner cannot claim the status of the deemed licensee and the Commission is constrained to accept the same in the absence of proper authoritative notification under the Act, 2003.

18. The Commission had an occasion to consider these aspects in the matter of M/s. Heavy Water Project (Munuguru) and also in respect of Indian Railways seeking to avail deemed distribution status. The Commission had observed as follows in the respective orders. The relevant observations are extracted below.

“Order in O.P.(SR) No.23 of 2021 filed by M/s Heavy Water Project (Munuguru):

....

29. *Applying the above principle, it is appropriate to interpret the provisions of the Act, 2003, more particularly Section 184 thereof. The said provision cannot be read in isolation or the part thereof which is relevant to the petitioner. As has been held by the Hon’ble Supreme Court, the provision has to be read in toto and the various provisions of the Act, 2003 itself on the combined reading. The petitioner sought to canvas that Section 184 of the Act, 2003 exempts the petitioner and that exemption is pursuant to it being a department of Government of India as mentioned in the said provision. Such narrow construction cannot be resorted to as it would amount to uncalled for consequences as specific and unambiguous authority has been created and specific functions have been assigned to this Commission coupled with powers enumerated therein. The Commission would have to discharge several functions and exercise several powers under the various provisions of the Act, 2003. Therefore, any exemption or relaxation cannot be inferred by merely reading a particular provision, but has to be seen in the text and the context as has been observed by the Hon’ble Supreme Court. Applying the said principle, the petitioner is bound to follow the decisions of this Commission. Thus, the contentions raised in the present petition is a figment of imagination and contrary to the settled law.”*

“Order in O.P.No.2 of 2021 filed by Indian Railways:

....

33. *Lastly, the petitioner sought prayer in the petition as if it had already been granted licence albeit deemed by invoking the provisions of the Railway Act, 1989 and the Act, 2003. The petitioner having not been recognized as such by this Commission, this Commission cannot proceed to grant such a relief in view of the discussion set out in the earlier paragraphs. It is also noticed that the prayers through interrelated cannot happen unless the petitioner has at first instance complied with the Act, 2003 and the regulations thereof. As such, the Commission is constrained not to accept the reasoning set out by the petitioner and would lean towards the submissions of the respondents. The petitioner is supposed to follow the procedures laid down in the Regulation No.4 of 2016 to get itself identified as deemed distribution licensee. Therefore, the petitioner has no case to get any relief.”*

The Commission is on record to state that unless proper notification is given and authority is conferred in exercise of the provisions of the Act, 2003, mere communication would not entitle any organization to claim the deemed licensee status. The Act, 2003 as has been observed in the above cases by the Commission has to be read comprehensively and not isolatedly by picking and choosing the provision suitable to them. The petitioner could not have been declared it self as deemed licensee on the basis of a communication from the MoP, because the said communication does not invoke any of the provisions of the Act, 2003.

19. In the instant case, the petitioner sought to claim right of deemed licensee status by virtue of laying lines and drawing power without reference to any power purchase agreements or availing of open access. The petitioner has been availing power supply as a consumer of the respondent No.1 and not otherwise, even though, it has claimed that it had established the necessary infrastructure by the costs and thus, such infrastructure belongs to it. The petitioner sought to rely on regulations made towards its functioning by their competent authority originally in 1968. Emphasis is laid on clause 859 of the Defence Services Regulations relied by the petitioner, which is extracted below:

*“859. The provision of internal electrical installation at unit/private expense in buildings owned or otherwise temporarily appropriated by the Defence Services is authorised, subject to the acceptance in writing by the OC unit, owner or occupant, as the case may be of the conditions laid down in IAFW-2155. The sanctioning authority is the GE subject to the approval of the CFA as for deposit works.*

*Funds to meet the estimated cost of the work will be paid into the nearest treasury before work is begun. Departmental charges will be levied as laid down in Table ‘H’.*

*In the case of Government owned buildings, where the OC Unit/ Occupant forgoes all his right, title and interests in respect of such installations, vide note 8 of Table ‘H’, the installation on completion will be entered in the Register of Buildings and maintained at Government expense. The rent will be reassessed on the increased capital cost.*

... ..  
*865. The MES are responsible, except as provided below, for the erection, operation, and maintenance of all Defence Services installations for the supply of electricity and water, for air-conditioning and refrigeration, for sewage disposal and for incineration of bio-medical waste.”*

The clauses in the said regulations are neither binding nor applicable to the Commission or the utilities licensed under the Act, 2003.

20. It is trite to state that the provisions of the Act, 2003 override all other enactments, as is provided thereof. Reference is made to Sections 174 and 175 of the Act, 2003, which are extracted below:

*“174. Act to have overriding effect:- Save as otherwise provided in Section 173, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.*

*175. Provisions of this Act to be in addition to and not in derogation of other laws:- The provisions of this Act are in addition to and not in derogation of any other law for the time being in force.”*

It is clear from the provisions extracted that the Act, 2003 has overriding effect over any other law for the time being in force. Regulations or rules which are inconsistent to the provisions of the Act, 2003 shall have to pave way to the provisions of the Act, 2003. Thus, the regulation of the petitioner regarding electrical installation is of no consequence in the matter.

21. The petitioner sought to claim that the line(feeder) has been laid from the substation to its location at its cost and it has right to claim such property as its own and not of the existing distribution licensee. It is appropriate to state that while releasing the power supply the distribution licensee would levy and collect the service line charges and development charges and lay lines. Once line has been erected even though it may be undertaken by the petitioner at its own costs, as rightly claimed by the respondent No.1, the same becomes their property. In support of such claim, the respondent No.1 has relied upon clause 5.3.2 of the GTCS.

22. This leads the Commission to the interpretation required to be taken in the case of third proviso of Section 14 of the Act, 2003. The Hon'ble APTEL had occasion to consider this aspect in the matter of Railways which has similar dispensation of the MoP. The Hon'ble APTEL had, by its order dated 22.10.2020 in Appeal No.301 of 2018 and batch in the matter of Indian Railways vs. Tata Power Company Limited (Distribution), observed as below:

*“... .. It is also not in dispute that the Indian Railways are deemed distribution licensee and do not require any license under Section 14 of the Electricity Act, 2003. It is, however, contended by the Respondents that the Indian Railways is in the business of transporting commuters/goods for which it recovers a charge covering all heads of expenditure including Electricity tariff just like any other distribution*



*licensee supplying electricity to its consumers. Further, as per Section 61 of the Electricity Act, the generation, transmission, distribution and supply of electricity are conducted on commercial principles and hence the charges payable by Indian Railways cannot be absorbed by other distribution licensee in Mumbai region. We find force in these contentions of the learned counsel for Respondents.*

... ..  
*For the foregoing reasons stated supra, we are of the considered opinion that the issues raised in the instant Appeal Nos. 301 of 2018 and 26 of 2019 are devoid of merits and hence the Appeals are rejected. The impugned orders dated 23.03.2018 in Case No.53 of 2017 and 12.09.2018 in Case No.195 of 2017 passed by the Maharashtra Electricity Regulatory Commission are hereby upheld.”*

The Hon'ble APTEL was dealing with status of the distribution licensee availing power supply and open access. Hence, it did not dwell into the main question of the interpretation of the third proviso of Section 14 of the Act, 2003. Subsequently, the Hon'ble APTEL in another batch of appeal had considered the aspect of the deemed licensee status to Railways as well as other unit of the petitioner. In this regard, the judgment rendered by the Hon'ble APTEL in Appeal No.276 of 2015 and batch on 12.02.2024 is extracted below to the extent required as the judgment is very exhaustive.

**CONCLUSION:**

*For the reasons afore mentioned, it is held that Indian Railways is not a deemed distribution licensee falling within the ambit of the third proviso to Section 14 of the Electricity Act as it does not distribute/supply electricity (i.e., sell electricity to consumers for a price) as required of a distribution licensee under the Electricity Act; and, even otherwise, as the entire electricity which it receives from the Grid is completely consumed by it and its constituents, it is required to pay additional/cross-subsidy surcharge to different distribution licenses under Section 42 of the Electricity Act, if it chooses to procure electricity from sources other than the concerned distribution licensees within whose area of supply it is situated. Appeal No.276 of 2015, filed by the West Bengal State Electricity Distribution Company Ltd against the Order passed by the Central Electricity Regulatory Commission in Petition No.197/MP/2015 dated 05.11.2015, and (2) Appeal No.320 OF 2018 filed by the Punjab State*

*Power Corporation Ltd against the Order passed by the Punjab State Electricity Regulatory Commission in Petition No.3 of 2017 dated 28.02.2018, are allowed to the extent indicated in this Order.”*

Hence, the petitioner has no case made out so as to accept the prayer made in the petition.

23. Thus, that leaves the Commission with the last point regarding application of



GTCS as contended by the rival parties. The provision as extracted by the parties would amply demonstrate that the petitioner cannot claim right over the line and plant erected for supplying power to it, even though, it has been executed with their funds. It is primary understanding that if the consumer seeks power supply, then all the charges that are incurred by the distribution-cum-retail supply licensee have to pay to it for extending supply. In certain circumstances, the distribution licensee may allow the consumer to erect the plant and line at its own cost by collecting only supervision charges and notifying the estimated cost to the consumer. That being the case, the petitioner cannot claim that since it had erected the 132 kV line and bay extension, such assets should be transferred to it by virtue of its claim of being deemed distribution licensee. Even though, the plant and line are erected either by the distribution licensee or by the consumer, the said equipment becomes the property of the distribution licensee as it has to maintain the line and supply of power.

24. It is appropriate to notice that Sections 43, 45 and 46 of the Act, 2003 in this context. The same are reproduced below:

“43. Duty to supply on request: -

(1) *Every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:*

*Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission.*

*Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.*

Explanation: - *For the purposes of this sub-section, “application” means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.*

(2) *It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1):*

*Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the*

licensee to pay to him such price as determined by the Appropriate Commission.

- (3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.

45. Power to recover charges: -

- (1) Subject to the provisions of this Section, the prices to be charged by a distribution licensee for the supply of electricity by him in pursuance of Section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his licence.
- (2) The charges for electricity supplied by a distribution licensee shall be –
- (a) fixed in accordance with the methods and the principles as may be specified by the concerned State Commission.
- (b) published in such manner so as to give adequate publicity for such charges and prices.
- (3) The charges for electricity supplied by a distribution licensee may include –
- (a) a fixed charge in addition to the charge for the actual electricity supplied.
- (b) a rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee.
- (4) Subject to the provisions of Section 62, in fixing charges under this Section a distribution licensee shall not show undue preference to any person or class of persons or discrimination against any person or class of persons.
- (5) The charges fixed by the distribution licensee shall be in accordance with the provisions of this Act and the regulations made in this behalf by the concerned State Commission.

46. Power to recover expenditure: - Power to recover expenditure 46. The State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of Section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.”

It is clear from the above provisions that the consumer who intends to avail power supply has to bear all the cost that is incurred by the distribution licensee.

25. Further, the Commission also appreciates that the GTCS had been held to be statutory in nature and binding on the consumers. In a decision rendered in the matter of M/s Hyderabad Vanaspathi Limited Vs. Andhra Pradesh Electricity Board reported in AIR 1998 SC 1715, the Hon’ble Supreme Court had held as below:

- “IV NATURE OF AGREEMENT - STATUTORY OF CONTRACTUAL
20. We have already seen that Section 49 of the Supply Act empowers the Board to prescribe such terms and conditions as it thinks fit for supplying electricity to any person other than a licensee. The Section empowers

*the Board also to frame uniform tariffs for such supply. Under Section 79(j) the Board could have made regulation therefore but admittedly no regulation has so far been made by the Board. The Terms and Conditions of Supply were notified in H.P.Ms.No.690 dated 17.09.1975 in exercise of the powers conferred by Section 49 of the Supply Act. They came into effect from 20.10.1975. They were made applicable to all consumers availing supply of Electricity from the Board. The Section in the Act does not require the Board to enter into a contract with individual consumer. Even in the absence of an individual contract, the Terms and Conditions of Supply notified by the Board will be applicable to the consumer and he will be bound by them. Probably in order to avoid any possible plea by the consumer that he had no knowledge of the Terms and Conditions of Supply, agreements in writing are entered with each consumer. That will not make the terms purely contractual. The Board in performance of a statutory duty supplied energy on certain specific terms and conditions framed in exercise of a statutory power. Undoubtedly the terms and conditions are statutory in character and they cannot be said to be purely contractual.” emphasis supplied*

Thus, the petitioner cannot claim right over the dedicated feeder though it was erected by it, which is now the property of the distribution licensee.

26. In these circumstances and for the decisions and provisions set out herein, the issue of handing over the connected assets to MES as sought by the petitioner shall raise only after identifying the petitioner as a deemed licensee. Since the Commission so far has not identified the petitioner as a deemed distribution licensee the relief sought by the petitioner cannot be ordered. As such, the petitioner will continue to be a bulk consumer and if it requires power supply from any other source other than the distribution licensee in the area of its operation, then it has to apply to nodal agency viz., STU/TSTransco for long-term open access (LTOA) and State Load Despatch Centre (SLDC) for short-term open access (STOA).

27. In the result, the petition is devoid of merits and is liable to be rejected and is accordingly dismissed, but in the circumstances without costs.

**This Order is corrected and signed on this the 27<sup>th</sup> day of March, 2024.**

<b>Sd/-</b> (BANDARU KRISHNAIAH) MEMBER	<b>Sd/-</b> (M. D. MANOHAR RAJU) MEMBER	<b>Sd/-</b> (T. SRIRANGA RAO) CHAIRMAN
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