

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 151 of 2015

Dated: 16 September, 2016

**CORAM: Shri Azeez M. Khan, Member
Shri Deepak Lad, Member**

**In the matter of
Petition of Reliance Infrastructure Ltd. (Distribution) seeking directions against the
Tata Power Company Limited (Distribution) for contravening the decision and
directions of the Commission issued in the Interim Order dated 9 November, 2015 in
Case No. 182 of 2014**

Reliance Infrastructure Ltd.-Distribution (RInfra)Petitioner

V/s.

The Tata Power Co. Ltd.- Distribution (TPC)Respondent

Appearance:

Representative for the Petitioner : Ms. J.J. Bhat (Advocate)

Representative for the Respondent : Shri Amit Kapoor (Advocate)

Daily Order

Heard the Advocates of the Petitioner and the Respondent.

1. Advocate for RInfra stated that

- i. In terms of para. 61 of ATE Judgment dated 28 November, 2014 in Appeal No. 246 of 2012, no new network can be laid by TPC till approval of the network

rollout plan of TPC. Also, switchover of RInfra's existing consumers by TPC is not permitted till such time.

- ii. As mentioned at para. 64 of the Interim Order dated 9 November, 2015 in Case No. 182 of 2014, the Commission has emphasized on the changeover mechanism for dealing with the consumers' requests for supply.
 - iii. TPC has admitted that some consumers of RInfra (D) switched over to it.
2. RInfra requested the Commission to initiate proceedings under Section 142 of the Electricity Act 2003 for the above violations and contempt of the directions of the Commission by TPC.
 3. Responding to the above, TPC stated that
 - i. RInfra has filed an Appeal No. 296 of 2015 challenging the interim Order of the Commission dated 9.11.2015 on the ground that the Order permits TPC to selectively lay down its network. On the other hand, RInfra has filed the present Petition alleging that the same Order has put a restriction on TPC from laying any network or on switchover of any consumers.
 - ii. These contrary submissions by RInfra indicate that it has interpreted the Interim Order in two different ways as per its convenience. A Contempt Petition may not be filed in respect of an Order where there are interpretation issues and the Order needs to have clear directions. A Contempt Petition can be considered only if there are clear violations of such directions. Also, substantial reliefs cannot be sought under contempt Petitions.
 - iii. The ATE Judgment did not stay the operations of TPC in terms of laying of network and connecting consumers. Rather, it allowed TPC to commission and capitalize the investments made by it as per the Commission's directions in Case No. 151 of 2011 to feed the consumers where considerable investment was already made.
 - iv. Although the ATE has directed the Commission to evolve a switchover protocol but at no point has ATE prohibited switchover. It may be noted that ATE has directed to devise a changeover protocol and at the same time directed that changeover consumers can continue to get supply from TPC.
 - v. The words 'as decided by the Commission' in para. 59 of ATE Judgment should not be read as 'to be decided by the Commission'.
 - vi. Switchover activities are not prohibited, and only some restrictions are imposed. Restrictions are only for areas where TPC does not have its network.
 4. Responding to a query from the Commission, TPC clarified that the switchover has been carried out in 11 clusters as a part of meeting its USO obligations as directed by the Commission in Case No. 151 of 2011. Further, TPC stated that there are no restrictions for the areas where TPC already had an existing network and also the 11 clusters areas.

5. The Commission observed that it had appointed a Committee to look into the operational specifics of the Network Rollout Plan of TPC and other related issues and was separately dealing with them in Case No. 182 of 2014. TPC responded that there are no restrictions imposed by the Interim Order in that Case and the Rollout Plan is for new areas where TPC has no network. TPC has laid only service lines and /or last mile connectivity to meet consumers' requests for supply and no backbone network has been created.
6. RInfra refuted TPC's claims and stated that
 - i. RInfra has not made contrary submissions. Appeal No. 296 of 2015 has been filed on the issues that, while the Commission was yet to examine the locations /areas which are completely covered by both the Licensees, the Order mentioned that switchover is permitted under such scenarios.
 - ii. TPC has not been allowed to capitalize the investment made in the entire area of 11 clusters. Only where considerable investment has been made within the 11 clusters is such capitalization permitted.
 - iii. Existence of TPC's network as on the date of ATE's Judgment, where subsequent switchover has taken place, is questionable. Even if it had existed, approval of the Commission was necessary.
 - iv. If TPC's interpretations are accepted, the proceedings in Case No. 182 of 2014 and in Case No. 40 of 2015 would be rendered infructuous.
 - v. The present Petition is not a contempt Petition but is seeking directions under Section 142 of EA 2003 and other related reliefs.
7. TPC responded that, while changeover had taken place as per the approved changeover protocol, there had been many switchovers in the past, even in absence of switchover protocol.

Having heard the parties, the Commission stated that it would seek further information from the parties, if necessary.

Case is reserved for Order subject to the above.

Sd/-
(Deepak Lad)
Member

Sd/-
(Azeez M. Khan)
Member