

**Before the  
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION  
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**CASE No. 43 of 2016**

**Petition of The Brihan Mumbai Electric Supply & Transport Undertaking (BEST Undertaking) seeking investigation of Tata Power Company under Section 128 of the Electricity Act, 2003**

**And**

**MA No. 6 of 2017 in Case No. 43 of 2016**

**Miscellaneous Application of BEST to expedite the hearing in Case No. 43 of 2016**

**Dated: 20 July, 2017**

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

BEST Undertaking .....Petitioner

V/s.

The Tata Power Company Ltd. (TPC) .....Respondent No.1  
Reliance Infrastructure Ltd. (RInfra) .....Respondent No. 2

Representative for Petitioner : Shri Harindar Toor (Adv.)  
Representative for Respondent No. 1 : Ms. Deepa Chavan (Adv.)  
Representative for Respondent No. 2 : Shri Ghanshyam Thakkar (Rep.)

**Daily Order**

Heard the Advocates/ Representative for the Petitioner and Respondent.

1. Advocate for BEST Undertaking stated that:-
  - i. BEST is seeking investigation of TPC under Section 128 of Electricity Act, 2003 (EA, 2003) as it has failed to comply with the Specific Conditions of its Distribution Licence and other provisions of EA, 2003.
  - ii. In spite of pending switch-over protocol approval, TPC is switching over consumers in an arbitrary manner. While doing so, TPC has breached provisions of Sections 15(6), 16, 43

and 45 of the EA, 2003 by giving assurances of waiver of certain charges, which is not permitted under the Act.

- iii. In accordance with Clause 6.4 of its Distribution Licence, TPC is entitled to recover Tariff and charges only in accordance with the Orders passed by the Commission. Further, Clause 8 of the Licence provides that TPC shall not show any undue preference to any person while undertaking distribution and supply of electricity.
- iv. TPC has continued to indulge in cherry picking of high end consumers such as Taj Wellington, Taj Mahal Hotel and ITC Maratha Hotel by laying its network in a selective manner during pendency of approval of the rollout plan in Case No. 182 of 2014 and approval of switchover protocol in Case No. 40 of 2015.
- v. In its reply, TPC has stated that migration of consumers is driven by differential Tariffs. However, such migration should be in accordance the approved switchover protocol. TPC has admitted that it has not laid any backbone network. This shows that TPC has laid its network in a selective manner to connect these high end consumers.
- vi. Two applicants, viz. M/s Omkar Realtors & Developers and M/s. GRS Shelters had initially approached BEST for connections for plots being developed by them. BEST proceeded with the related activities such as drawing/scheme preparations, plan approval, execution of lease agreement, substation civil work and cable laying work. These developers subsequently informed BEST that they have decided to get supply from TPC. BEST has incurred expenditure, manpower and time for developing infrastructure in these two cases and should not be denied the opportunity to supply to them.
- vii. To a query of the Commission regarding why Reliance Infrastructure (RInfra) has been made a Respondent, BEST stated that TPC's Licence area overlaps both BEST's as well as RInfra's Licence areas and RInfra has been made a formal party to ensure that there is no legal issue while seeking relief.

2. In response, TPC stated that:

- i. In its first prayer, BEST has sought admission of the Petition under Section 128 of EA, 2003 which could not be decided by the Commission without serving notice to TPC. BEST's second prayer is a specific prayer seeking directions to TPC restraining it from rolling out its distribution network and providing electric supply till finalization of the Order in the Case No. 182 of 2014. However, as the Commission vide its Order dated 12 June, 2017 has disposed of Case No. 182 of 2014, this prayer has become infructuous.
  - ii. Bombay High Court, in its Judgment in WP No. 2641 of 2014, has made its observations on the issue of cherry picking.
3. The Commission observed that the main issue is whether or not TPC was entitled to lay its network and release connections to consumers in BEST's area of supply during pendency of approval of the rollout plan and switchover protocol.

4. TPC stated that :

- i. ATE, in its Judgment in Appeal No. 246 of 2012, had directed the Commission to approve a switchover protocol. However, BEST's submission in Case No. 40 of 2015 was that the above Judgment is not applicable to it.

- ii. TPC's obligation under Section 43 of the Act is not curtailed due to the ATE Judgment. The Supreme Court in its Judgment dated 8 May 2014 in C.A. No. 4223 of 2012 has held that another Distribution Licensee can operate in BEST's area of supply.
  - iii. TPC has not selectively chosen only the high end consumers, but it has provided supply to all categories of consumers who had approached it. BEST is highlighting only the connections released to high end consumers.
  - iv. Apart from Section 43 and its Licence Conditions, the Supreme Court Judgment in Appeal No. 4223 of 2012 also mandated TPC to release connections to consumers as per their requests. Also, the Commission has accorded in principle approval to its DPR for carrying out the distribution activities in the Mumbai island city Area for FY 2015-16 and FY 2016-17, and there is no Order/ Judgment which restricts TPC in BEST's area of supply.
  - v. Moreover, these consumers were connected by TPC only after BEST disconnected their electricity supply.
  - vi. Since the present Petition has become infructuous, BEST may initiate separate proceedings if it has any grievance regarding any particular connection released by TPC.
5. BEST responded to TPC's arguments and stated that:
- i. BEST is seeking investigation under Section 128 of EA, 2003 to investigate the manner in which the connections were released by TPC during the period between grant of Licence to TPC and issuance of the Order by the Commission in Case No. 182 of 2014.
  - ii. The Bombay High Court Judgment was on a different issue, and hence is not relevant to the present matter.
  - iii. During pendency of the switchover protocol, TPC was not entitled to release any connection. To a query of the Commission, BEST responded that, for any power supply application, TPC should have sought BEST's permission pending approval of the rollout plan and switchover protocol rather than releasing the connections unilaterally.
6. The Commission observed that in the past i.e. both before and after the grant of fresh Licence, switchovers have been taking place in the absence of a switchover protocol. For switchover, BEST has been disconnecting its supply and, therefore, cannot contend that TPC has switched over BEST's consumers in a unilateral manner. Also, if TPC's contention about its obligation under Section 43 is accepted, then the question of any adjudication by the Commission, including rollout plan approval, would not arise. TPC may show any Order issued by the Commission or ATE Judgment which allowed TPC to lay its network and switch over consumers during pendency of its rollout plan approval.
7. The Commission also asked BEST as to what is its understanding on the issue of not resorting to cherry picking.

**The Case is reserved for Order.**

**Sd/-  
(Deepak Lad)  
Member**

**Sd/-  
(Azeez M. Khan)  
Member**