

**JOINT ELECTRICITY REGULATORY COMMISSION FOR  
THE STATE OF GOA AND UNION TERRITORIES  
GURGAON**

Coram\*

Shri S.K. Chaturvedi, Member  
Petition No. 81/2012

**In the matter of**

Petition U/s 86 read with Sec. 61(d) of the Electricity Act, 2003, praying for use of inherent powers by the Commission under Regulation 11.7 of the Joint Electricity Regulatory Commission (Electricity Supply Code) Regulations 2010 and review U/s 94 of the Electricity Act, 2003 for reviewing tariff order dated 13.09.2011 for FY 2011-12 of ED- DNH and to permit LT, HT and EHT consumers to continue to avail connection on the basis of Bank Guarantee as security deposit instead of submitting draft as security deposit as prescribed under regulation 6.10 of the Joint Electricity Regulatory Commission (Electricity Supply Code) Regulations 2010.

**And in the matter of**

The Silvassa Industries Association, through its President, Mr. Sanjeev Kapoor, Plot No. 55, Vanwati Park Society, Marat Road, Samarvani, DNH, Silvassa. ....Petitioner

**Versus**

Electricity Department through Executive Engineer In- Charge, Electricity Office, Opp. Secretariat Building Amli Road, UT of DNH, Silvassa. ....Respondent

**Present for Petitioner**

1. Shri Sunil Ijari, Executive Committee Member of SIMA

**Present for Respondent**

1. Shri R.B. Chaubal, Deputy Engineer, ED- Dadra and Nagar Haveli
2. Shri Surbhi Sharma, Advocate, ED- Dadra and Nagar Haveli.

**ORDER**

**Date 13.08.2013**

1. In exercise of the powers conferred by Section 83 of the Electricity Act, 2003 the Central Government constituted a two member (including Chairperson) Joint Electricity Regulatory Commission for all Union Territories except Delhi to be known as "Joint Electricity Regulatory Commission for Union Territories" with Headquarters at Delhi as notified vide notification no. 23/52/2003- R&R dated 2nd May, 2005. Later with the joining of the state of Goa, the Commission came to be known as "Joint Electricity Regulatory Commission for the State of Goa and Union Territories" as notified on 30th May, 2008. The Joint Electricity Regulatory Commission (for the State of Goa and Union Territories) started functioning with effect from August 2008 in the district town of Gurgaon, Haryana.

2. The Silvassa Industries Association through its president, Sanjeev Kapoor, herein the petitioner, has filed the present petition u/s 86 and 61 (d) of Electricity Act, 2003 and Regulation 11.7 of Joint Electricity Regulatory Commission (Electricity Supply Code) Regulations 2010 read with Section 94 of Electricity Act, 2003 for review of Tariff order dated 13.09.2011 passed in petition no. 32/2011 for approval of ARR and Tariff Determination for ED- UT of Dadra and Nagar Haveli for FY 2011-12 and to permit LT, HT and EHT consumers to continue to avail connection on the basis of Bank Guarantee as security deposit instead of submitting draft as security deposit prescribed under Regulation 6.10 of the Joint Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2010.

3. The brief facts as stated are that ED- UT Dadra and Nagar Haveli – licensee herein respondent has been accepting Bank Guarantee as security deposit from LT, HT and EHT consumers. The petitioner is an Association of Industries at Silvassa since 1973 having more than 500 members. They are all Electricity Consumers of the respondent. Hence, the present petition is filed in representative capacity on behalf of all LT, HT and EHT consumers of ED-DNH. The Commission on 19.05.2010 prescribed JERC (Electricity Supply Code) Regulations 2010 to Govern Supply of Electricity by the licensees. The powers, functions and obligations of the licensees as well as rights and obligations of the consumers and other matters are also Governed by the Supply Code. The Regulation 6.10 of JERC (Electricity Supply Code) Regulations, 2010 deals with the security deposit which runs as under:-

**Quote**

*"1. The licensee may take a security deposit from the consumers for consumption equivalent to the estimated consumption for a specific period as indicated in the table below or as otherwise provided in Terms and Conditions of Supply in force.*

S. No.	Nature of Consumer	No. of months	Remarks
1.	Agricultural	Three	Annual average to be estimated / considered
2.	Seasonal	Two	Consumption during the season of operation to be estimated considered
3.	Other consumers	Two	Annual average to be estimated / considered

*(2) Consumer shall have the option to make advance payment and in such an event security amount shall be proportionately fixed. The procedure for determination of security deposit, for different categories of consumers, shall be determined by the licensee and approved by*

the Commission. The deposit shall be accepted in the form of cash, Cheque or draft in case of LT consumers and in the form of draft or banker's Cheque in case of HT/EHT consumers. The Licensee shall maintain separate head of account of such security deposits. On termination of the agreement, the security deposit will be refunded to the consumer after adjustment of the amount, if any, remaining payable by him.

(3) The amount of the security deposit obtained from the consumer will be reviewed by the licensee, annually on the basis of consumption during the previous 12 months for LT consumers, and half-yearly on the basis of consumption during the previous six months for HT/EHT consumers. The consumer shall be required to pay an additional security deposit / shall be refunded based on his average consumption during the period concerned and the tariff applicable etc. if it exceeds / is lower than the amount of the security deposit held by the licensee, by 20%.

(4) In the case of consumers who were sanctioned additional load, the additional security deposit shall be calculated for the additional load treating it as a new service.

(5) On the consumer's request, the licensee may allow the consumer to pay additional security deposit in maximum three installments.

(7) The licensee shall serve a notice of at least one month to deposit the additional security deposit. If the consumer fails to pay the additional security deposit as per the notice, the licensee is entitled to refuse or discontinue the supply of electricity so long as such failure continue. The consumer will be liable to pay delayed payment surcharge on reducing balance in case of installment system if he delays payment of security deposit.

(8) The distribution licensee shall pay interest, at the bank rate notified by the Reserve Bank of India from time to time on such security deposits taken from the consumer. In this regard it shall be the responsibility of the licensee to keep a watch on the bank rate from time to time. The interest amount of previous financial year shall be adjusted in the energy bill issued in May / June of each financial year depending on billing cycle.

(9) The security deposit along with interest thereon, if any, shall be returned to the consumer, upon termination of the agreement and after adjustment of all dues, within 60 days of completion of formalities by the consumer. In case of delay beyond 60 days period, additional interest at the rate mentioned in regulation 6.10(7) above shall be payable to the consumer as approved by the Commission.

(10) The distribution licensee shall not take security deposit if the person requiring the supply is prepared to take the supply through a pre-paid meter".

## Unquote

4. The case of the petitioner further is that respondent has been accepting Bank Guarantee as security deposit from its LT, HT and EHT consumers and Bank Guarantee has to be reviewed year to year. The respondent is unique in comparison to other states and union territories in India. The industrial electricity consumers constitute a very substantial bulk of consumption of total electricity in the region. The total electricity consumption of the Industries is about 97% of the total consumption of electricity in the region and the remaining 3% electricity is consumed by domestic and agricultural consumers. Therefore, cases of default in payment of electricity bills are rare. Even otherwise the respondent takes prompt action in case of default in payment of electricity bills and if bills are not paid in time the respondent disconnect electricity connection and get the amount realized through bank guarantee.
5. Therefore, if Regulation 6.10 of JERC (Electricity Supply Code) Regulations 2010 is implemented the same will reduce the working liquidity of the already cash strapped industries and as per rough approximation switching over from bank guarantee to cash resulting into blocking of about Rs. 250 Cr. of working capital in Silvassa. The economy of UT- DNH is industry based and such shortage of working capital may create demise of many projects. Therefore, it will not be prudent to block such a huge amount of money in bank for small interest rather than being put to productive use in the industry. Even otherwise as per National Electricity Policy the regulation and tariff determination need to be consumer friendly. The Regulation 11.7 of JERC (Electricity Supply Code) Regulations 2010 empowers this Commission to adopt any other method at variance with provisions of the regulations if the Commission is of the view that special circumstances exist not to apply any of the provisions to a class of consumers on case to case basis. The regulation 11.7 of JERC (Electricity Supply Code) Regulations 2010 runs as under:-

## Quote

“(i) Nothing in these regulations shall be deemed to limit or otherwise restrict the inherent power of the Commission to make such orders as may be necessary to meet the ends of justice to the consumers at large.

(ii) Nothing in these regulations shall bar the Commission from adopting in conformity with the provisions of the Act a procedure, which is at variance with any of the provisions of these regulations, if the Commission, in view of the special circumstances of a case or class of cases and for reasons, to be recorded in writing, deems it necessary or expedient for dealing with such a case or class of cases, based on merits.

(iii) Nothing in these regulations shall, expressly or impliedly, bar the Commission in dealing with any matter or exercising any power under the Act for which regulations have not been framed, and the Commission shall deal with such matters, and in a manner it thinks fit".

#### **Unquote**

6. The case of the petitioner further is that even the data furnished by the respondent does not suggest that there are many cases of non- payment of bills and the total bad debt is not more than 1% and in any case the bank guarantee of any consumer could be encashed by the department on failure of consumer to stick to the timely payments of the bill raised by the respondent. Hence the present petition for exemption of LT, HT and EHT consumers from furnishing security on cash basis and allow them to avail existing system of security by way of bank guarantee.
7. Silvassa Industries & Manufacturers Association (SIMA) was also allowed to join the proceedings/ hearings by the Commission in the present review petition. The Silvassa Industries & Manufacturers Association in written submission has prayed that in case of Micro, Small and Medium Entrepreneurs (MSME) Consumers the licensee has been accepting security deposit in the form of Fixed Deposit in favour of Department since long. Therefore, they be allowed to continue to avail practice of security deposit in the form of fixed deposit.
8. Notice of the petition was given to the respondent. The respondent appeared and filed reply while admitting that the respondent has been accepting bank guarantee as well as FD as security deposit from HT and EHT consumers and FD from LT consumers for minimum validity period of two years and reviewing it on continuous basis from time to time. It is further asserted that the Commission during public hearing of ARR and Tariff Determination for the Union Territory of Dadra and Nagar Haveli Petition for FY 2012-13 held on 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> May, 2012 at Silvassa directed the respondent to replace all existing bank guarantee with fixed deposit and continue to take FD from new consumers now onwards, therefore, the respondent has already issued a circular to replace the bank guarantee with FD and prayed that the Commission may pass an order as deem fit.
9. The Commission after hearing dismissed the petition vide order dated 27.12.2012 while observing that the Commission has already framed JERC (Electricity Supply Code) Regulations, 2010 as per section 47 of Electricity Act, 2003. The directions issued by the Commission in para no. 7.1.10 at page no. 64 of order dated 13.09.2011 passed in petition no. 32/2011 for approval of ARR and Tariff Determination for the UT of Dadra and Nagar Haveli for FY 2011-12 are as per section 47 of the Electricity Act, 2003 and regulation 6.10 of JERC (Electricity Supply

Code) Regulations, 2010. There is no illegality in the order under review so there is no merit in the petition and the same fails and is hereby dismissed.

10. The petitioner against the order dated 27.12.2012 of the Commission filed appeal no. 40/2013 in Hon'ble APTEL. The Hon'ble APTEL vide order dated 10.05.2013 disposed of the appeal no. 40/2013. The Hon'ble APTEL in the order dated 10.05.2013 gave following directions:

**Quote**

*"The Joint Electricity Regulatory Commission is directed to deal with the said question and find out whether a case is made out for relaxation of the prevailing Regulation after hearing both the parties and pass the order in accordance with law as expeditiously as possible."*

**Unquote**

11. The Commission on receipt of the order dated 10.05.2013 restored the review petition no. 81/2012.
12. The Commission heard representative of the parties at length on 30.05.2013, 3.07.2013 and 13.08.2013. The Commission has also gone through the order dated 13.09.2011 of the Commission and order dated 10.05.2013 of the Hon'ble APTEL and record carefully and thoroughly and has applied mind on the facts and circumstances of the petition and law as well as JERC Regulations on the point.
13. The only prayer of the petitioner is to review order dated 13.09.2011 of the Commission and allow the petitioner and other LT, HT and EHT consumers of ED- DNH-licensee to continue to avail connection on the basis of Bank Guarantee as security deposit instead of submitting draft as security deposit prescribed under regulation 6.10 of the Joint Electricity Regulatory Commission (Electricity Supply Code) Regulations 2010.
14. The Hon'ble APTEL in the order dated 10.05.2013 has given directions to the Commission to find out whether a case is made out for relaxation of the prevailing Regulations and to pass order in accordance with law.
15. Before proceeding further it is worthwhile to reproduce the directions of the Commission issued in para no. 7.1.10 at page no. 64 of order dated 13.09.2011 in petition no. 32/2011 for approval of ARR and Tariff Determination for the UT Dadra and Nagar Haveli for FY 2011-12 which runs as under:-

**Quote**

*"The Commission directs that the ED- DNH should follow the provisions of Regulation 6.10 of JERC (Electricity Supply Code) Regulations, 2010. Wherever existing mode of deposit i.e. bank guarantee, fixed deposit etc. is different from those provided in the Regulation, the*

same be replaced by those as specified therein, as per section 47(1) of Electricity Act, 2003 and pay interest as per section 47(4) of Electricity Act, 2003”.

#### Unquote

16. The representative of the petitioner submitted that the respondent is releasing electricity connection on FD, cash, banker's cheque and demand draft as security. The situation of consumption of electricity in UT of Dadra and Nagar Haveli is different from other states and Union Territories in India. The consumption of electricity in industrial hub of Silvassa UT- DNH is 97% and remaining 3% consumption of electricity is by domestic and agriculture consumers. The economy of UT – DNH is also industrial based and if the petitioners are directed to replace bank guarantee from FD, cash, banker's cheque and demand draft as security for existing electricity connections and release of new electricity connections an amount of about Rs. 250 Cr. will block and the petitioner as well as economy of UT- DNH will be adversely effected, therefore, it is in the interest of justice to allow to continue FD, cash, banker's cheque and demand draft as security on existing connections and for release of new electricity connections and the order under review may kindly be reviewed accordingly.
17. The provision for deposit of security for release of electricity connection is provided under section 47 of the Electricity Act, 2003. Before proceeding further it is worthwhile to reproduce provision of section 47 of Electricity Act, 2003 which reads as under:-

#### Quote

##### **Section 47. Power to require security:-**

*“(1) Subject to the provisions of this section, a distribution licensee may require any person, who requires a supply of electricity in pursuance of section 43, to give him reasonable security, as may be determined by regulations, for the payment to him of all monies which may become due to him-*

*(a) in respect of the electricity supplied to such person; or*

*(b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to such person, in respect of the provision of such line or plant or meter,*

*and if that person fails to give such security, the distribution licensee may, if he thinks fit, refuse to give the supply of electricity or to provide the line or plant or meter for the period during which the failure continues.*

*(2) Where any person has not given such security as is mentioned in sub-section (1) or the security given by any person has become invalid or insufficient, the distribution licensee may, by notice, require that person, within thirty days after the service of the notice, to give him reasonable security for the payment of all monies which may become*

*due to him in respect of the supply of electricity or provision of such line or plant or meter.*

*(3) If the person referred to in sub-section (2) fails to give such security, the distribution licensee may, if he thinks fit, discontinue the supply of electricity for the period during which the failure continues.*

*(4) The distribution licensee shall pay interest equivalent to the bank rate or more, as may be specified by the concerned State Commission, on the security referred to in sub-section (1) and refund such security on the request of the person who gave such security.*

*(5) A distribution licensee shall not be entitled to require security in pursuance of clause (a) of sub-section (1) if the person requiring the supply is prepared to take the supply through a pre-payment meter”.*

#### **Unquote**

18. From bare reading of provisions of section 47 of Electricity Act, 2003 and Regulation 11.7 of JERC (Electricity Supply Code) Regulations, 2010 it is clear that the respondent can require reasonable security as may be determined by regulation for continuation of electricity supply on an existing electricity connection and for releasing electricity on a new connection according to the regulations. The Commission in compliance of section 47 of the Electricity Act, 2003 has notified JERC (Electricity Supply Code) Regulations, 2010 and as per regulation 6.10 of JERC (Electricity Supply Code) Regulations, 2010 the respondent can ask for security for existing electric connections and new connections.

19. There is no dispute with the submissions of representative of the petitioner that under regulation 11.7 of JERC (Electricity Supply Code) Regulations, 2010 the Commission can use inherent powers to meet ends of justice and adopt an opinion inconformity with the provisions of Electricity Act, 2003 and variance of the provisions of the regulations for reasons to be recorded in writing. The Commission can also deal with any matter under the Electricity Act, 2003 for which no regulation has been framed.

20. It is also highlighting that under regulation 74 of JERC (Conduct of Business) Regulations, 2009 the Commission is empowered to review its decisions, directions and orders. The provisions of regulation 74 of JERC (Conduct of Business) Regulations, 2009 runs as under:-

#### **Quote**

*(a) The Commission may at any time on its own motion or on the application of any of the persons or parties concerned, within 45 days of the making of any decision, direction or order, review such decisions, directions or orders and pass such appropriate orders as the Commission thinks fit:*

*(b) An application for such review shall be filed in the same manner as a petition under Chapter II of these regulations.*



## Unquote

21. The Commission under regulation 74 of JERC (Conduct of Business) Regulations, 2009 is also empowered to review its directions and orders on its own or on application of any party. The petitioner has filed the present petition for review of the order dated 13.09.2011 passed in petition no. 32/2011 for approval of ARR and Tariff Determination for the UT of Dadra and Nagar Haveli for FY 2011-12.
22. The Commission has gone through the Regulations framed by Electricity Regulatory Commissions of States of West Bengal, Gujarat, Maharashtra, Andhra and Tripura etc. These Commissions are allowing the consumers to deposit security as Bank Guarantee also for existing and new connections.
23. The respondent ED- DNH in reply has admitted that earlier ED- DNH was allowing security as Bank Guarantee and fixed deposit. They in the reply have not objected review of the order dated 13.09.2011 to the extent of allowing security in the form of Bank Guarantee to LT, HT and EHT consumers. Many other Commissions are also allowing security in the form of Bank Guarantee and fixed deposit. There is nothing on the record to show that if, the respondent is allowed to take security in the form of Bank Guarantee and fixed deposit from consumers either the petitioner or the respondent shall suffer any loss or injury. The Commission under section 94 of the EA, 2003 has power to review its own order and under regulation 11.7 of JERC (Electricity Supply Code) Regulations, 2010 has inherent powers to meet ends of justice and adopt an opinion inconformity with the provisions of Electricity Act, 2003 and variance of the provisions of the regulations for reasons to be recorded in writing.
24. The Commission after hearing, going through the petition and reply carefully and thoroughly and application of mind on the facts and circumstance of the petition and law on the point as well as JERC Regulations is of the confirm opinion that no one is going to suffer any loss or injury if the respondent is allowed to take security in the form of Bank Guarantee and fixed deposit also and allow relaxation in Regulation 6.10 of the Joint Electricity Regulatory Commission (Electricity Supply Code) Regulations 2010 to this extent and it is fit case where the Commission should exercise its inherent powers to meet ends of justice and adopt an opinion inconformity with the provisions of Electricity Act, 2003 and variance of the provisions of the regulations for reasons to be recorded in writing and under section 94 of the Electricity Act, 2003.
25. Therefore, in opinion of the Commission it is fit case for relaxation of the prevailing Regulation 6.10 of the Joint Electricity Regulatory Commission (Electricity Supply Code) Regulations 2010 and the respondent ED- DNH- licensee should allow security in the form of Bank Guarantee and fixed deposit also for LT, HT, EHT and Micro, Small and Medium

Entrepreneurs Consumers (MSME) to existing and new connections of consumers. Therefore, the findings of this Commission in para no. 7.1.10 at page no. 64 of order dated 13.09.2011 in petition no. 32/2011 for approval of ARR and Tariff Determination for the UT Dadra and Nagar Haveli for FY 2011-12 require review and reviewed accordingly it is also a fit case for grant of relaxation in Regulation 6.10 of JERC (Electricity Supply Code) Regulations, 2010. Therefore, observation and finding as well as directions of the Commission in para no. 7.1.10 at page no. 64 of order dated 13.09.2011 in petition no. 32/2011 for approval of ARR and Tariff Determination for the UT Dadra and Nagar Haveli for FY 2011-12 are deleted and replaced by "the respondent Electricity Department – Dadra and Nagar Haveli should allow security in the form of Bank Guarantee and fixed deposit also to LT, HT, EHT and Micro, Small and Medium Entrepreneurs Consumers (MSME) consumers".

26. Resultantly the petition succeeds and in hereby allowed.

27. The Commission is of the opinion that Regulation 6.10 of JERC (Electricity Supply Code) Regulations 2010 requires amendment. Therefore, the secretary of the Commission is directed to put up a comprehensive note for amendment in Regulation 6.10 of JERC (Electricity Supply Code) Regulations 2010.

Sd/-

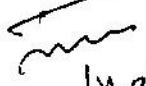
(S.K.Chaturvedi)

Member

**Chairperson (Vacant)**

\* Post of the Chairperson is vacant. As per proviso of Regulation 9 (II) of JERC (Conduct of Business) Regulations, 2009 for review of its own orders "Coram is all Members". Whereas according to provisions of Section 93 of the Electricity Act, 2003 no act or proceedings of the appropriate Commission shall be questioned or invalidated merely on the ground of existence of any vacancy or defect in the Constitution of the appropriate Commission. So the Member only constitute a valid quorum.

Certified Copy

  
14/08/13  
(R.K. Malik)

Secretary