

1478-1491

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

Coram*
Shri S.K.Chaturvedi, Member
Petition No. 11/2010
Suo-moto
Date of Order 29.10.2013

In the matter of

Establishment of Consumer Grievance Redressal Forums under Section 42 (5) of the Electricity Act, 2003 and Joint Electricity Regulatory Commission for State of Goa and UTs (Establishment of Forum for Redressal of Grievances of Consumers) Regulations, 2009.

And in the matter of

Compliance of order dated 9.10.2009 of the Hon'ble APTEL in review Petition no. 5/2009 in appeal no. 181/2008

And in the matter of:

1. Secretary (Power), Govt. of Goa
2. Secretary (Power), UT of Andaman & Nicobar
3. Secretary (Power), UT of Chandigarh
4. Secretary (Power), UT of Dadra and Nagar Haveli
5. Secretary (Power), UT of Daman & Diu
6. Secretary (Power), UT of Lakshadweep
7. Secretary (Power), UT of Puducherry

..... Respondents

Order

The Commission framed JERC (Establishment of Forum for Redressal of Grievances of Consumers) Regulations, 2009 as provided u/s 42 (5) of EA, 2003 and as per Regulation 3 (3) of the said Regulations, the Licensee is required to appoint one chairperson and one Member of the forum and one Member of the Forum is to be appointed by the Commission.

Hon'ble APTEL in order dated 9.10.2009 passed in Review Petition No. 5/2009 in appeal No. 181/2008 issued following directions:-

"that the earlier direction given by this Tribunal by the Order dated 29.5.2009 has not been fully complied with, the respective State Commissions are directed that they shall ensure the compliance of the Order by constituting the consumer Grievance Redressal Forum and also by filling up the vacant posts without any further delay. This has to be complied with within one month from the date of receipt of this Order. The Secretary to the Forum of Regulators shall ensure the compliance of these directions by getting the progress verified and file the report of the same before the Tribunal".

In compliance of order dated 9.10.2009 of Hon'ble APTEL in review Petition no. 5/2009 in appeal no. 181/2008 the Commission initiated Suo- Moto hearings in Petition No. 11/2010 for establishment of CGRF by all Licensees as provided under Section 42 (5) of EA, 2003 and JERC (Establishment of Forum for Redressal of Grievances of Consumers) Regulations, 2009.

Hon'ble APTEL vide order dated 11.02.2010 in Review Petition No. 5/2009 in appeal No. 181/2008 again showed anguish for not filling of post of Member, CGRF by the licensee- ED- Lakshadweep and directed that at any rate the vacancy of Member CGRF ED- Lakshadweep be filled up in one month from receipt of this order.

Hon'ble APTEL again in order dated 15.04.2010 in Review Petition No. 5/2009 in appeal No. 181/2008 gave following directions:-

"With regard to the direction for the constitution, appointment and to ensure to make CGRF functional, it is noticed that the vacancies remain to be filled up by the CGRF by the distribution licensee Lakshadweep. It is stated in the report that there is no response to the advertisement. Therefore, the follow up action has to be taken to see that the Lakshadweep CGRF vacancies are filled up in the quickest possible time and the Secretary of the Forum of Regulators has to ensure the same. In fact, under Section 42 (5) of the Act, it is for the distribution Licensees to ensure that CGRF Members are appointed and since this has not been done, the distribution Licensees are also directed to see that Lakshadweep CGRF vacancies is filled up without any further delay. Similarly, we also deem it appropriate to direct the Chairpersons of all State Electricity Regulatory Commissions to ensure that the vacancies of CGRF in their respective states are filled up by the distribution Licensees without any delay and the Compliance report be sent to the Secretary for Forum of Regulators as well as to this Tribunal before the next date of hearing."

ED- Lakshadweep - Licensee vide letter no. 66/14/2009-Ele./224 dated 8.1.2011 submitted to the Commission that Administration of Lakshadweep has appointed One Chairperson and the Commission has also appointed One Member of the Forum and requested the Commission to permit the licensee to continue to function with One Chairperson and One Member appointed by the Commission.

The Commission vide order dated 8.07.2011 in Petition no. 11/2010 directed the licensee ED- Lakshadweep to fill up One post of Member, CGRF. But the licensee has not appointed Member, CGRF and the post of Member, CGRF is still lying vacant despite the fact the licensee was required to appoint One Member of the Forum within six months from the appointed date as per EA, 2003 or date of grant of licence whichever is earlier. The default continued subsequently also. The licensee has not appointed a Member, CGRF within one month from the order dated 9.10.2009 or within one month from the order dated 11.02.2010 or without any delay as per the order dated 15.04.2010 passed by Hon'ble APTEL in review petition 5/2009 in appeal no. 181/2008.

The Commission came to the conclusion that the licensee ED- Lakshadweep is not intentionally complying with directions/ orders issued by this Commission, Hon'ble APTEL and provisions of Section 42 (5) of EA, 2003 and JERC (Establishment of Forum for Redressal of Grievances of Consumers) Regulations, 2009), therefore, a Show Cause notice dated 16.05.2013 was sent to the licensee as to why proceedings u/s 142 of the EA, 2003 should not be initiated against the licensee ED- Lakshadweep for non- compliance of the orders/directions dated 9.10.2009, 11.02.2010 and 15.04.2010 issued by the Hon'ble APTEL in Review Petition No. 5/2009 in Appeal No. 181/2008 and orders/ directions issued by this Commission vide order dated 8.07.2011 in Petition No. 11/2010 and provisions of Section 42 (5) of the EA, 2003 and JERC (Establishment of Forum for Redressal of Grievances of Consumers) Regulations, 2009 with direction to submit reply by 27.06.2013 of the Show Cause notice dated 16.05.2013, otherwise it shall be presumed that the licensee is to say nothing in this matter. But the licensee did not submit reply of the Show Cause notice by 27.06.2013. Therefore, the Show Cause notice was again sent to the licensee through e-mail on 17.07.2013 directing them to submit the reply immediately.

But the licensee again did not send reply of the notice dated 16.05.2013 and sent a letter dated 17.07.2013 requesting to allow the licensee one month more time to give reply of the Show Cause notice.

The licensee again failed to submit reply of the Show Cause notice dated 16.05.2013 even in one month after 17.07.2013 and by 30.08.2013. Therefore, the Commission on 2.09.2013 decided to proceed against the licensee under Section 142 of EA, 2003.

The Commission, therefore, sent a Show Cause notice No. 18/1/2010-JERC in Petition no. 11/2010 dated 9.09.2013 to the Secretary Power, ED- Lakshadweep (Deemed Licensee) directing him to appear in the Commission on 29.10.2013 in person and explain that why action should not be taken against him for non- compliance of the orders/directions dated 9.10.2009, 11.02.2010 and 15.04.2010 issued by the Hon'ble APTEL in Review Petition No. 5/2009 in Appeal No. 181/2008 and orders/ directions issued by this Commission vide order dated 8.07.2011 in Petition No. 11/2010 and provisions of Section 42 (5) of the EA, 2003 and JERC (Establishment of Forum for Redressal of Grievances of Consumers) Regulations, 2009.

Later on reply dated 16.08.2013 of the Show Cause notice dated 16.05.2013 submitted by Secretary Power, ED- Lakshadweep (Deemed Licensee) was received in the Commission. The Commission on 16.09.2013 decided that the reply will be considered in the Hearing already fixed. The licensee- Secretary (Power), did not submit reply to the notice dated 9.09.2013. The Secretary (Power)- ED Lakshadweep in reply dated 16.08.2013 has submitted that the licensee has appointed Chairperson and Commission has also appointed One Member of the CGRF ED Lakshadweep. The CGRF ED- Lakshadweep is functional by Chairperson and One Member only. It is also submitted that only 26 complaints were received by the CGRF, ED- Lakshadweep. The

CGRF has already disposed of 25 complaints out of 26. ED- Lakshadweep has already spent a sum of Rs. 64,55,078/- towards maintaining CGRF ED- Lakshadweep. These expenses of CGRF are carried forward in tariff thereby increase in tariff. Therefore, ED- Lakshadweep may be permitted to function with two Members (Chairman & Nominee Member of JERC) only.

The Commission has gone through the provisions of Section 42 (5) of the EA, 2003 orders/directions dated 9.10.2009, 11.02.2010 and 15.04.2010 issued by the Hon'ble APTEL in Review Petition No. 5/2009 in Appeal No. 181/2008 and orders/ directions issued by this Commission vide order dated 8.07.2011 in Petition No. 11/2010 and JERC (Establishment of Forum for Redressal of Grievances of Consumers) Regulations, 2009.

According to Section 42 (5) of EA, 2003 the licensees are required to establish a forum for Redressal of Grievance of the consumers in accordance with the guidelines as may be specified by the Commission. The Commission in JERC (Establishment of Forum for Redressal of Grievances of Consumers) Regulations, 2009 (JERC Regulations) has specified guidelines for establishment of CGRF and as per Regulation 3 of JERC Regulations the forum shall consist of three Members including Chairperson. The licensee shall appoint the Chairperson and one Member and the Commission shall nominate one independent Member of the forum. The licensee ED- Lakshadweep has appointed Chairperson and the Commission has nominated one independent Member of CGRF ED- Lakshadweep.

The Hon'ble APTEL in orders dated 9.10.2009, 11.02.2010 and 15.04.2010 issued in Review Petition No. 5/2009 in Appeal No. 181/2008 and orders/ directions issued by this Commission vide order dated 8.07.2011 in Petition No. 11/2010 and provisions of Section 42 (5) of the EA, 2003 and JERC (Establishment of Forum for Redressal of Grievances of Consumers) Regulations, 2009 directed the licensee ED- Lakshadweep to fill up post of the Member CGRF also. But the licensee time and again showed its inability to fill up the post of Member CGRF and pleaded to the Commission that persons with the qualification specified in the JERC(Establishment of Forum for Redressal of Grievances of Consumers) Regulations, 2009 for appointment of Member CGRF, ED- Lakshadweep are not available. They also pleaded that the licensee has appointed Chairperson and Commission has also nominated One Member of the CGRF ED Lakshadweep. The CGRF ED- Lakshadweep is functional with Chairperson and One Member only. It is also submitted that only 26 complaints are received by now by the CGRF, ED- Lakshadweep. The CGRF has already disposed of 25 complaints out of 26. ED- Lakshadweep has already spent a sum of Rs. 64,55,078/- towards maintaining CGRF ED- Lakshadweep. These expenses of CGRF are carried forward in tariff and will result into increase in tariff. Therefore, ED- Lakshadweep may be permitted to function with two Members (Chairman & Nominee Member of JERC) only.

The Commission under Regulation 5 of (Establishment of Forum for Redressal of Grievances of Consumers) Regulations, 2009 is competent to remove difficulty arising in

implementation of JERC Regulations. The Commission from the submissions made by the licensee/ ED- Lakshadweep is satisfied that the licensee is facing great difficulty in appointing Member CGRF ED- Lakshadweep. The CGRF- ED- Lakshadweep is functional with Chairperson appointed by the licensee and one Member nominated by the Commission. The CGRF ED- Lakshadweep has received few complaints and the licensee ED- Lakshadweep has spent huge amount of Rs. 64,55,078/- towards maintaining CGRF ED- Lakshadweep. These expenses of CGRF are carried forward in tariff and will certainly result in increase in tariff. Therefore, the Commission while exercising powers vested in it under Section 42 (5) of the EA, 2003 and Regulation 5 of (Establishment of Forum for Redressal of Grievances of Consumers) Regulations, 2009 permits the Licensee ED- Lakshadweep to function CGRF ED-Lakshadweep with one Chairperson appointed by the licensee and one Member nominated by the Commission till further orders, keeping in view the above facts and circumstances as well as difficulties faced by the licensee.

Accordingly, the proceedings under Section 142 of the EA, 2003 initiated against the respondent- Secretary (Power)- UT- Lakshadweep - Licensee are dropped and the present Petition no. 11/2010 stands disposed off.

Sd/-

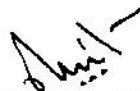
(S.K.Chaturvedi)

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.

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(Rajeev Amit)

Secretary