

In the matter of
Open Access Users Association
Vs
State of Haryana, through Principal Secretary,
Power Department & Others

SYNOPSIS

FACTS OF THE CASE:

The members of the petitioner have been availing short term open access from November 2011 onwards on month to month basis. However, suddenly on 06.05.2014, several members received a letter from the Respondent as:

"..... As per HERC Regulation No. HERC/25/2012, any use of Intra-state Transmission and distribution system for a period exceeding 3 months shall be covered under Medium term Open Access. As such, if you want to avail open access for a period exceeding 3 months, you should apply for medium term open access as per HERC open access Regulation.

Accordingly your application for short term open access is not feasible for acceptance."

However, some of the members had challenged the communication dated 06.05.2014 before this Hon'ble Court and Hon'ble Commission. The State Commission, however, directed the concerned SLDC to allow NOC to open access consumers and withholding or restricting such right to open access is strictly beyond the scope and object of the Electricity Act, 2003. The State Commission also ordered to take serious action under Section 142 of the Act if the concerned SLDC do not issue NOC within 3 days from the date of application.

The Respondent then issued a notification dated 14.05.2014 under Section 37 of Electricity Act, 2003 restricting the short term open access within the state for import of power.

The Petitioner has also come to know that the notification dated 14.05.2014 had been challenged by some of the industries before HERC and vide order dated 20.05.2014, the Commission has stayed the notification dated 14.05.2014 and all subsequent actions of the Respondent State.

Thus, it can be inferred that the exercise of powers under Section 37 of Electricity Act, 2003 by the Govt. of Haryana in the form of notification dated 14.05.2014 is illegal, untenable, contrary to law, a colourable exercise and is liable to be set aside.

Hence the present petition.

MAIN GROUNDS:

- The notification dated 14.05.2014 issued by the govt. of Haryana is contrary to the very scheme, object and scope of Electricity Act, 2003 and had been issued as a colourable legislation to defeat the right of the consumers from taking supply of electricity through short term open access.
- The perversity in the impugned notification (i.e. notification dated 14.05.2014) issued by the State Government is evident from the fact that the reason given for blocking short term open access for import of power is the alleged transmission constraints in 765 KV Agra-Gwalior line, which neither comes within the jurisdiction of the SLDC nor fall otherwise within the state of Haryana for the State Govt. to assume jurisdiction and issue directions.
- The SLDC under Section 32 of the Act is responsible for scheduling and dispatch of electricity within the state and not for matters falling outside it. The Open Access sought for procurement through power exchange is inter-state open access governed and regulated by CERC. In such circumstance, the reason provided is clearly a colourable exercise to prevent competition for procurement of electricity through open access consumers.
- The SLDC took the decision to stop all open access applications filed by consumers, though in terms of the State Open Access Regulations and Central Open Access Regulations, the disposal of the open access applications was to be in a time-bound manner. The State Commission, in spite of issuing directions to SLDC, did not issue NOC or grant of open access. Thus the

desired object of blocking all short term open access is clearly contrary to the provisions of the Electricity Act, 2003.

- The impugned order is perverse and bad in law as it is evident from the fact that while transmission constraint outside the state is given as a reason to block all short term open access , no such constraint would affect medium term open access being availed by the consumers in the state even as per the version of the State Govt. There is no intelligible differentia in the above distinction sought to be made by the Govt. as a constraint does not mean that it is possible for consumers taking supply of electricity through open access for 3 months or more but not less than 3 months. The Constraint does not depend on the time period for which the electricity is to be conveyed through open access.

CURRENT SCENARIO:

Civil Writ Petition under Article 226 and 227 of Constitution of India was filed in the nature of Certiorari to quash and set aside the impugned Notification. In addition to it, Civil Writ Petition in the name of Prohibition was filed restraining the Respondents for taking action in blocking short term open access contrary to the provisions of Electricity Act, 2003. Further, Civil Writ Petition in the name of Mandamus was filed directing the Respondent to consider and dispose of open access applications of the Petitioner strictly in terms of State Regulations and Central Regulations.

The Present petition has been disposed of on 31.07.2015 and this Hon'ble Court has ruled in favour of the Petitioner due to the fact that the Respondent has withdrawn the case which expressly rules the case in favour of the Petitioner.