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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 11.10.2018

+ W.P.(C) 7108/2015

ANIL DUTT SHARMA

..... Petitioner

Through: Mr. Sameer Bhatnagar, Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through:

Mr. Vikram Jetly, CGSC for R-1

Mr. Sudhir Nandrajog with

Mr. Ashish Pundir, Adv. for R-4/
TPDDL

Mr. Sanjy Ghose, ASC with

Mr. Shwetank Singh & Mr. Gaganjyot
Singh, Advs. for GNCTD

Ms. Pratima K. Gupta, Standing
Counsel, DERC

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

RAJENDRA MENON, CHIEF JUSTICE (ORAL)

1. Petitioner has filed this public interest litigation and the prayers made read as under:-

“(a) Issue writ, order or direction in nature of mandamus or any other appropriate writ, order or direction to the respondent as per Article 226 of the Constitution of India.

(b) To give direction with regards to compliance of Section 14 for granting of licence.

(c) To give direction to the electricity departments to give competitive rates by using two or more licensee in any area.

(d) To give direction, Electricity to be supplied in economic and competitive manner and commercial principal, so that the general public can have better service.

- (e) *To issue direction that the special courts should be formed and the functionality and purpose must be seen within the ambit of the purpose for which the courts were established.*
- (f) *The rate of written mention which is @16% on paid up capital is quite unreasonable and the same should be eliminated so that cheaper electricity may be provided.*
- (g) *Any other order as the Hon'ble Court may deem fit and proper in the facts and circumstances of the case be also passed in favour of the petitioner in the interest of justice.*
- (h) *Cost of the present petition be also allowed in favour of the petitioner and against the respondent."*

2. The primary contention of the petitioner is that an appropriate direction be issued commanding respondents to provide sufficient number of licences under Section 14 of the Electricity Act, 2003 so that competitiveness is increased and monopoly is not created in the matter of supply of electricity by issuance of limited licences to certain categories or groups of companies only. Section 14 of the Electricity Act, 2003 reads as under:

"14. Grant of licence.- *The Appropriate Commission may, on an application made to it under section 15, grant a licence to any person--*

- (a) *to transmit electricity as a transmission licensee; or*
- (b) *to distribute electricity as a distribution licensee; or*
- (c) *to undertake trading in electricity as an electricity trader, in any area as may be specified in the licence:*

Provided that any person engaged in the business of transmission or supply of electricity under the provisions of the repealed laws or any Act specified in the Schedule on or before the appointed date shall be deemed to be a licensee under this Act for such period as may be stipulated in the licence,

clearance or approval granted to him under the repealed laws or such Act specified in the Schedule, and the provisions of the repealed laws or such Act specified in the Schedule in respect of such licence shall apply for a period of one year from the date of commencement of this Act or such earlier period as may be specified, at the request of the licensee, by the Appropriate Commission and thereafter the provisions of this Act shall apply to such business:

Provided further that the Central Transmission Utility or the State Transmission Utility shall be deemed to be a transmission licensee under this Act:

Provided also that in case an Appropriate Government transmits electricity or distributes electricity or undertakes trading in electricity, whether before or after the commencement of this Act, such Government shall be deemed to be a licensee under this Act, but shall not be required to obtain a licence under this Act:

Provided also that the Damodar Valley Corporation, established under sub-section (1) of section 3 of the Damodar Valley Corporation Act, 1948, shall be deemed to be a licensee under this Act but shall not be required to obtain a licence under this Act and the provisions of the Damodar Valley Corporation Act, 1948, insofar as they are not inconsistent with the provisions of this Act, shall continue to apply to that Corporation:

Provided also that the Government company or the company referred to in subsection (2) of section 131 of this Act and the company or companies created in pursuance of the Acts specified in the Schedule, shall be deemed to be a licensee under this Act:

Provided also that the Appropriate Commission may grant a licence to two or more persons for distribution of electricity through their own distribution system within the same area, subject to the conditions that the applicant for grant

of licence within the same area shall, without prejudice to the other conditions or requirements under this Act, comply with the additional requirements (relating to the capital adequacy, Credit worthiness or code of conduct) as may be prescribed by the Central Government, and no such applicant, who complies with all the requirements for grant of licence, shall be refused grant of licence on the ground that there already exists a licensee in the same area for the same purpose:

Provided also that in a case where a distribution licensee proposes to undertake distribution of electricity for a specified area within his area of supply through another person, that person shall not be required to obtain any separate licence from the concerned State Commission and such distribution licensee shall be responsible for distribution of electricity in his area of supply:

Provided also that where a person intends to generate and distribute electricity in a rural area to be notified by the State Government, such person shall not require any licence for such generation and distribution of electricity, but he shall comply with the measures which may be specified by the Authority under section 53:

Provided also that a distribution licensee shall not require a licence to undertake trading in electricity.”

3. From the aforesaid it is clear that it is the discretion of the Government to provide licence based on various factors. The factors necessary for establishment of an electrical transmission or generation company are various based on technical evaluation and various other factors technical in nature. That being so, this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India cannot issue *mandamus* commanding the respondents to issue more licences. The question of issuance of licences is an administrative discretionary matter

based on various policies and technical considerations and therefore it is not appropriate for this Court to interfere in such matter.

4. Section 14 of the Electricity Act, 2003 gives a discretion to the Government in the matter of grant of licence and once the discretion available to the Government merely because the petitioner feels that sufficient number of licenses are not being given, as a result the competitiveness in the matter of distribution and supply of electricity is reduced, cannot be a sole criteria for issuing the direction as prayed for.

5. During the course of hearing of the matter, the petitioner indicated an example regarding a telecom Labtech and it is made clear that there is no such system in the matter of granting license under the Electricity Act, 2003. The consideration for grant of telecom licences or any other licence is different. Every work for which the license is to be granted, is based on various factors and a common parameter or factor cannot be a ground for issuing a *mandamus*.

6. Finding no ground for making any indulgence into the matter, the writ petition stands dismissed.

CHIEF JUSTICE

V. KAMESWAR RAO, J

OCTOBER 11, 2018

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