

OFFICE OF SHRI GOOLAM E VAHANVATI
ATTORNEY GENERAL FOR INDIA
SUPREME COURT
NEW DELHI 110 001

FTS No. 168/11-LS



1. I have seen the detailed note of the Adviser to the Deputy Chairman, Planning Commission dated 12.01.2011. At the forefront of this note it has been pointed out that the first proviso to Section 42(2) has been amended with effect from 15 January 2007. In my opinion dated 7 December 2010 I had quoted the unamended proviso. The unamended proviso uses the word, "may," whereas the amended proviso uses the word, "shall." In my opinion, the note rightly points out that the amended proviso has done away with the option of providing open access prior to the elimination of cross subsidies. This, read with the Fifth Proviso to Section 42(2) makes special provision for consumers who require supply of electricity with the maximum power to be made available at any time in excess of 1 MW. For such consumers, the State Commission is obliged to provide open access.
2. The reference in my earlier opinion to Section 42(2) (on the basis of the contentions of the Department of Power) does not appear to have been appropriate to the issue of open access for consumers who require the supply of electricity of 1 MW and above. The better view appears to be that Section 42(2) read with the First and Fifth Proviso is a self contained code with regard to consumers who require the supply of electricity of 1 MW and above.
3. In the premises, I reconsider my opinion dated 7 December 2010 and answer the query as follows:

Q. Whether a state regulatory commission can continue to regulate the tariff for supply of electricity to any consumer of 1 MW above.

Ans. No, for the reasons set out hereinabove.

Goolam E Vahanvati
Goolam E Vahanvati
Attorney General for India
31 March 2011

Mr MK Sharma
JS&LA, ~~CSA~~

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RE
31.3.11
A/c LIA (RSS)