

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai- 400005.
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Case No. 16 of 2011

In the matter of
Petition filed by Maharashtra Airport Development Company Limited for taking on
record its Distribution Licensee status for Multi Product Special Economic Zone at Mihan,
Nagpur.

Shri V.P. Raja, Chairman

Shri Vijay L Sonavane, Member

Maharashtra Airport Development Company Ltd,
8th Floor, World Trade Centre,
Cuffe Parade,
Mumbai - 400 005

..... Petitioner

ORDER

Dated: August 3, 2012

1. Maharashtra Airport Development Company Limited (hereinafter referred to as the Petitioner) submitted a Petition under affidavit dated on February 2, 2011, under Sections 16 and 181 of the Electricity Act 2003 (hereinafter referred to as “2003 Act” or “EA 2003”), and under Maharashtra Electricity Regulatory Commission (MERC) (General Conditions of Distribution Licensee) Regulations, 2006 for taking on record the Distribution Licensee status of the Petitioner, MADC Limited for Multi Product Special Economic Zone (SEZ) at Mihan, Nagpur.

2. The Petitioner in its Petition has prayed as under: -

- “a. Take on record the status of MADC as a deemed Distribution Licensee under Section 14 the Electricity Act, 2003 in terms of the notification dated 03/03/2010 issued by the Government of India for the area of operation notified by the Government under Section 4 (1)of the SEZ Act.*
- b. Pass such Orders as the Hon’ble Commission may deem fit in the facts of the present case.”*

3. The facts of the case are as follows :-

- a. MADC Limited (the Petitioner) is a Company incorporated under the provisions of Companies Act, 1956. The Company was incorporated in FY 2001-02, by the Government of Maharashtra (entire equity invested by GOM), as a special purpose company for developing the MIHAN project which included up-gradation of the Nagpur Airport into a Multimodal Hub Airport and development of Special Economic Zone (SEZ).
- b. The Petitioner is developing the Multimodal International Hub Airport Project at Nagpur over an area of 4,354 Hectares which includes Information Technology, Health care and Manufacturing Units. The Ministry of Commerce and Industry, Government of India recognised the Petitioner as SEZ developer and granted a formal approval dated November 6, 2006 to set up the SEZ over an area of 2,086 Hectares at MIHAN at Nagpur.
- c. The Petitioner in this Petition has requested the Commission to take on record the status of MADC as a deemed distribution licensee under Section 14 of the Electricity Act, 2003 in terms of the notification dated 03/03/2010 issued by the Government of India for the area of operation notified by the Government under Section 4 (1) of the SEZ Act.
- d. The Petitioner in this Petition has also requested the Commission to make specific conditions of Distribution Licence for the Petitioner under Section 16 of 2003 Act.
4. The Commission vide notice dated February 15, 2011 fixed a hearing in the matter on March 4, 2011 and directed the Petitioner to serve a copy of the Petition on the Authorized Consumer Representative. The Commission further conducted three more hearings on July 27, 2011; October 31, 2011 and July 9, 2012, to allow the Petitioner to

make submissions on various issues raised during the hearings and also to present its replies to the queries raised by the Commission.

5. The Commission is of the view that the first issue for consideration is whether to take on record the status of MADC as a deemed distribution licensee under Section 14 of the EA 2003.
6. The Petitioner submitted that out of the total area of 2,086 hectares, 1,597.16 hectares has already been notified as Special Economic Zone vide Notifications dated 29/05/2007, 24/01/2008 and 27/07/2009 by the Ministry of Commerce and Industry (Department of Commerce), Government of India under Section 4 (1) of the Special Economic Zones Act, 2005 (SEZ Act). For the balance area, the process of land acquisition, taking possession of land, registering MADC as owner of land, etc., is in progress and formal notification can be issued thereafter. The Petitioner further submitted that the map showing the SEZ area existing as on the date of filing of this petition with demarcation is yet to be notified.
7. During the hearing, the Commission enquired as to whether the Petitioner want a licence for a specific geographical area of MIHAN. The Petitioner submitted as follows:-

*“Out of the total approved area of 2,086 hectares, approximately 1,597.16 hectares has already been notified as Special Economic Zone vide notifications dated 29/05/2007, 24/01/2008 and 27/07/2009 by the Ministry of Commerce and Industry (Department of Commerce), Government of India under Section 4 (1) of the Special Economic Zone Act, 2005 (SEZ Act). For the balance area, the process of land acquisition, taking possession of land, registering MADC as owner of land, etc. is in progress and formal notification can be issued thereafter. The survey numbers comprising the notified area have been attached in annexure of the petition submitted by MADC. **The Hon’ble Commission may issue a license for the area notified till date. As and when the area notified changes, MADC would approach the Hon’ble Commission for modification of the license.**”*Emphasis added**

8. The Commission notes that the Ministry of Commerce and Industry (Department of Commerce), Government of India under Section 4 (1) of the Special Economic Zone Act, 2005 (SEZ Act) has issued notifications dated May 29, 2007, January 24, 2008 and July 27, 2009 as under:

| S.No. | GOI Notification reference No. | Date of Notification | Area (in Hectares) |
|--------------|--------------------------------|----------------------|--------------------|
| 1 | S.O.845 (E) | May 29, 2007 | 1511.51 |
| 2 | S.O.144 (E) | January 24, 2008 | 66.90 |
| 3 | S.O.1842 (E) | July 27, 2009 | 18.75 |
| Total | | | 1597.16 |

9. The Commission further notes that the in the above mentioned notifications the details provided comprise of survey numbers and area (village name, Khasra No. and Area in hectares).
10. The Petitioner submitted that it has applied for de-notification of 323.57 hectares and the GOI notification on the same is awaited.
11. The Commission also notes that Government of India, Ministry of Commerce and Industry has issued a Notification being S.O. 528 (E) dated 03/03/2010, as under:

“In exercise of powers conferred by clause (b) of sub-section (1) of section 49 of the Special Economic Zones Act, 2005 (28 of 2005), the Central Government hereby notifies that the provisions of clause (b) of Section 14 of the Electricity Act, 2003, (36 of 2003), shall apply to all Special Economic Zones notified under sub-section (1) of Section 4 of the Special Economic Zones Act, 2005, subject to the following modifications, namely:-

In clause (b) of section 14 of Electricity Act, 2003 (36 of 2003), the following proviso shall be inserted, namely:-

*“Provided that the Developer of a Special Economic Zone **notified under sub-section (1) of Section 4** of the Special Economic Zones Act, 2005, shall be deemed to be a licensee for the purpose of this clause, with effect from the date of notification of such Special Economic Zone” (F. No. D.6/12/2009.SEZ) **Emphasis added***

12. Hence, the Petitioner who is a developer of SEZ for notified 1597.16 hectares in Mihan, District Nagpur, State of Maharashtra vide notifications dated 29/05/2007, 24/01/2008 and 27/07/2009 issued by the Ministry of Commerce and Industry (Department of Commerce), Government of India under Section 4 (1) of the Special Economic Zone Act, is a deemed Distribution Licensee under Section 14 of Electricity Act 2003 for the notified SEZ area.

13. The Commission also notes that the Petitioner has applied for de-notification of 323.57 hectares of Special Economic Zone, for which GOI notification is still awaited. Hence, as and when the changes in SEZ area gets notified, the deemed licensee status of the Petitioner will also get restricted to the area for which it is notified as SEZ Developer.

14. As regards, making specific conditions of Distribution Licence for the Petitioner under Section 16 of the 2003 Act, the same cannot be made under this Order as Section 16 of the 2003 Act requires specific conditions of license to be notified by regulations under Section 181. The matter of making specific conditions of licence is however under consideration of the Commission for which a separate process may be initiated. In the meanwhile, the Petitioner will adhere to the following:-

(1) The 2003 Act;

(2) Rule 5A of SEZ Rules, 2006 which provides as follows:

“5A. INFRASTRUCTURE REQUIREMENTS RELATING TO INFORMATION TECHNOLOGY

a) In case of a Special Economic Zone relating to information technology, the following facilities shall be ensured, namely:-

b) Twenty four hours uninterrupted power supply at stable frequency in the Zone;

c) Reliable connectivity for uninterrupted and secure data transmission;

d) Provision for central air-conditioning system; and

e) A ready to use, furnished plug and pay facility for end users”

(3) The Regulations notified by the Commission from time to time including the following to the extent of their applicability :

(1) Maharashtra Electricity Regulatory Commission (General Conditions of Distribution Licence) Regulations, 2006;

(2) Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005

(3) Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005;

- (4) Maharashtra Electricity Regulatory Commission (State Grid Code) Regulations, 2006;
- (5) Maharashtra Electricity Regulatory Commission (Fees and Charges) Regulations, 2004;
- (6) Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations, 2005 as amended from time to time
- (7) Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006”.
- (8) Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2011.

15. In view of the above, the Commission directs its Secretariat to initiate the process of preparing draft specific conditions of licence Regulations for the Petitioner.

With the above, Case No. 16 of 2011 stands disposed of.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman