

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

LICENCE APPLICATION NO. 1 of 2021

In the matter of:

**Application for Grant of Distribution License in the Area of Mandal Becharaji SIR,
Villages in the Taluka - Mandal, Detroj and Becharaji, District - Ahmedabad and
Mehsana, State - Gujarat.**

Applicant : Torrent Power Limited,
Samanvay, 600, Tapovan,
Ambawadi,
Ahmedabad 380 015.

Represented by : Advocate Ms. Deepa Chawan,
Advocate Ms. Reshmarani Nathani,
Advocate Ms. Ruchi Patil, and
Mr. Chetan Bundela,
Mr. Jignesh Langalia and Ms. Luna Pal

Objector No. 1 : Gujarat Urja Vikas Nigam Limited

Represented by : Sr. Counsel Mr. M. G. Ramachandran,
Advocate Ms. Ranjitha Ramachandran,
Advocate Ms. Srishti Khindaria,
Mr. K. P. Jangid,
and Mr. V. T. Patel

Objector No. 2 : Uttar Gujarat Vij Company Limited

Represented by : Sr. Advocate Mr. M. G. Ramachandran,
Advocate Ms. Ranjitha Ramachandran,
Advocate Ms. Srishti Khindaria,
Mr. P. B. Pandya,
Mr. R. P. Patel, and
Mr. K. B. Chaudhari

CORAM:

Shri Mehul M. Gandhi, Member

Shri S. R. Pandey, Member

Date: 17/08/2021

DAILY ORDER

1. Torrent Power Limited (TPL), is a Company incorporated under the Companies Act, 1956 carrying out the business of generation and distribution of electricity in the State of Gujarat.
 - 1.1. Torrent Power Limited has filed an application before the Commission on 21.05.2021 for grant of Distribution License in the area of Mandal Becharaji Special Investment Region (MBSIR), villages in the Taluka - Mandal, Detroj and Becharaji, District - Ahmedabad and Mehsana, State - Gujarat, under Section 14 of the Electricity Act, 2003 read with Section 20 of the Gujarat Electricity Industry (R&R) Act, 2003.
 - 1.2. The Applicant has submitted an application duly filled in the prescribed format as specified in the GERC (Licensing of Distribution of Electricity) Regulations, 2005.
2. The Commission had, vide letter no. GERC/Legal/2021/0672 dated 02.06.2021, directed the Applicant to comply with the procedures of Public Notice in accordance with the provisions of Section 15 (2) of the Electricity Act, 2003 read with Regulation 5 of the GERC (Licensing of Distribution of Electricity) Regulations, 2005 and invite comments and suggestions from the stakeholders/objectors and also host the application on its website.
 - 2.1. In compliance to aforesaid directives, the Applicant issued a public notice dated 14.06.2021 in Gujarati Newspapers viz. NavGujarat Samay and Sandesh (Ahmedabad editions) and English Newspaper viz. Indian Express (Ahmedabad edition) and also hosted the application on its website for inviting objections/suggestions on their License Application within 30 days.
 - 2.2. In response to the public notice, the Commission received objection/suggestion from Gujarat Urja Vikas Nigam Limited (GUVNL) and Uttar Gujarat Vij Company Limited (UGVCL) on 07.07.2021.
3. The matter was kept for virtual hearing on 11.08.2021 through Video Conferencing by serving notices to the concerned parties.
4. Learned Advocate Ms. Deepa Chawan, on behalf of the applicant, submitted that the present Licence Application has been filed by the applicant for grant of Distribution Licence in the area of Mandal-Becharaji Special Investment Region. Mandal-Becharaji Special Investment Region is an Industrial Township notified under Article 243Q of the Constitution of India vide Notification No. GHU/2012/22/SIR/112012/1276/I dated 24.9.2012 read with Notification No. GHU/2013/16/sir/112012/1276/I dated 14.8.2013.

She referred to Section 29(1) of the Gujarat Special Investment Region Act, 2009 and submitted that the Special Investment Region shall be deemed to be an Industrial Township within the meaning of provisions of clause (1) of Article 243Q of the Constitution of India from the date of Notification by the State Government. Thus, with consideration of aforesaid Notification and Section 29 of The Gujarat Special Investment Region Act, 2009 Mandal-Becharaji Special Investment Region has fulfilled the criteria for the Licence specified under the Electricity Rules, 2005. She further submitted that the Electricity Act, 2003 provides for bringing competition in various segments of electricity, i.e. transmission, generation as well as distribution of electricity. Sixth proviso to Section 14 of the Electricity Act, 2003 provides that the State Commission may grant Licence to two or more persons for distribution of electricity subject to condition that the application for grant of Licence within the same area shall, without prejudice to the other conditions or requirements under the Act, comply with the additional requirements relating to (1) capital adequacy, (2) credit-worthiness, and (3) code of conduct. It is provided that in the Distribution of Electricity Licence (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005 that for grant of licence for distribution of electricity in the area falling within the Municipal Council or a Municipal Corporation as defined in Article 243Q of the Constitution of India or a revenue district shall be the minimum area of supply. Similar provision is also provided in the National Electricity Policy. The said provision says about the minimum area of supply. Mandal-Becharaji Special Investment Region is an Industrial Township within the meaning of Gujarat Special Investment Region Act, 2009 qualifying for minimum area of supply under Article 243Q of the Constitution of India. Article 243Q consists of proviso which states that Industrial Township is deemed Municipal Council/Municipal Corporation within the meaning of Article 243Q of the Constitution of India. She further submitted that the applicant was permitted by Mandal-Becharaji Special Investment Regional Development Authority (MBSIRDA) to create world class power distribution network in the Mandal-Becharaji Special Investment Region. Thus, the authority of the said area has allowed the applicant to establish network for distribution of electricity in the said area. Thus, the applicant has complied with the provisions of the Electricity Act, 2003 read with the Rules notified under the Act. The applicant is engaged in the distribution and generation of electricity and providing the best services in the electricity segment having adequate experience and manpower and also complied with the provisions of the Act and Rules to set up distribution network and supply to the consumers.

5. Learned Sr Counsel Shri M.G. Ramachandran, on behalf of the objectors, GUNVL and UGVCL submitted that Mandal-Becharaji Special Investment Regional Development Authority is not an appropriate authority to select any person/company for distribution of electricity in the area proposed by the applicant and only GERC is empowered to grant distribution licence to any person/company who fulfills the criteria provided under Section 14 of the Act for grant of parallel licence in the area. It is necessary that such entity/person shall comply with the Sixth proviso to Section 14 of the Electricity Act, 2003 read with Electricity Rules, 2005. He further submitted that UGVCL is the existing distribution licensee in the proposed area of supply. He further submitted that there is no

letter of communication for consent or documents of Government of Gujarat with regard to grant of permission to the applicant to carry out distribution of electricity. He submitted that Industrial Township is not qualifying as Municipal Council or Municipal Corporation or Revenue District as specified in the Electricity Rules, 2005 to demonstrate the area of distribution licensee. Merely having status of Industrial Township cannot be qualified as Municipal Council or Municipal Corporation or Revenue District. It is a clear case that the applicant has not fulfilled the aforesaid criteria specified in the Electricity Rules, 2005 and hence, no licence can be granted to the applicant. He referred to Articles 243P(e) and 243Q and submitted that the Municipality defined in Article 243P(e) is different and distinct than the Industrial Township. He submitted that Article 243Q states about Nagar Panchayat, Municipal Council for small urban area, and Municipal Corporation for larger urban areas. The proviso to the aforesaid Article states about the Industrial Township which is in transitional stage from rural to urban area be deemed as Municipality. Merely deemed Municipal Council or Municipal Corporation does not qualify Industrial Township as Municipal Council by deeming proviso of Article 243Q. It is not equated as Municipal Council or Municipal Corporation defined in Article 243P(e) read with Article 243Q of the Constitution of India. He submitted that the Electricity Rules, 2005 has specifically provided that the distribution licence shall be granted to only having minimum area of Municipal Corporation, Municipal Council or Revenue District. The applicant is not fulfilling any of the above criteria. Hence, the applicant has not complied with the aforesaid criteria and not eligible for parallel licence where UGVCL is the existing licensee. He further submitted that the minimum area required for grant of licence also excluded Nagar Panchayat which is stated in Article 243 of the Constitution of India from qualifying for distribution of licence. In such situation, the Industrial Township which is not equated with the Municipal Council or Municipal Corporation or Revenue District is not qualifying for grant of licence. Hence, the applicant is not eligible for grant of licence. In support of above submissions he relied on the following judgment:

(i) MGR Industries Association & Anr. Vs. State of U.P & Ors.

6. In response to the submissions made by learned Sr. Counsel, Shri M.G. Ramachandran, learned Advocate Ms Deepa Chawan on behalf of the applicant submitted that Mandal-Becharaji Special Investment Regional Development Authority is responsible for planning and development in the said area. It is the authority to permit any person to grant amenity in the Special Investment Region. Thus, the permission granted by Regional Development Authority of Mandal-Becharaji Special Investment Region to the applicant to create distribution of electricity network and supply power to the consumers is valid. She further referred to Article 243P which is definition clause consisting of various definitions, specifically Article 243P(d) states about the municipal area and Article 243P(e) states about Municipality. Article 243Q of the Constitution of India states about the Nagar Panchayat, Municipal Council for small urban area and Municipal Corporation for big urban area and the proviso to it provides that an Industrial Township is a deemed Municipality/Municipal Council/Municipal Corporation within the meaning

of Article 243Q of the Constitution of India. The aforesaid proviso is exclusive to the main provision. Hence, it is incorrect to say that the Industrial Township i.e., Mandal-Becharaji Special Investment Region is not qualifying as Municipal Council. The proviso provided in Article 243Q specifically provides that the rural areas which are in transitional stage to urban area through Industrial Township shall be permitted to carry out such activities which are carried out by the Municipality and therefore, they are equated with Municipal Council or Municipal Corporation carrying out the activities in the Industrial Township. It is incorrect to say that the proviso to Article 243Q which qualifies the Industrial Township as a deemed Municipal Council/Municipal Corporation is not qualifying for minimum area specified in the Electricity Rules, 2005. In support of the aforesaid submissions, she relied on the following decisions:

- (i) Saiz Gram Panchayat vs. State of Gujarat & Ors. [(1999) 2 SCC]
- (ii) Dwarka Prased vs. Dwarka Das Saraf

7. Both the learned Advocates, for the applicant and objectors, have requested for 15 days time to file their written submissions with the judgments relied upon by them.
8. Heard the parties. The present application filed by the applicant is for grant of distribution license in the Mandal-Becharaji Special Investment Region under the Gujarat Special Investment Region Act, 2009 by the State Government. It is also an Industrial Township declared vide Notification No. GHU/2012/22/SIR/112012/1276/I dated 24.9.2012 read with Notification No. GHU/2013/16/sir/112012/1276/I dated 14.8.2013 by the State Government.
9. The objectors, GUVNL and UGVCL, have challenged the Licence Application on the ground that the applicant is not fulfilling the criteria for minimum area specified under Section 14 of the Electricity Act, 2003 read with the Distribution of Electricity Licence (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005, specifically as per the aforesaid provision the minimum area for licence shall be (i) Municipal Council, or (ii) Municipal Corporation as defined under Article 243Q of the Constitution of India, or (iii) a Revenue District. The objectors further submitted that the Mandal-Becharaji Special Investment Region is neither a Municipal Corporation, nor a Municipal Council nor a Revenue District. Hence, the applicant is not fulfilling the criteria of minimum area specified in the Electricity Rules, 2005. Therefore, the applicant is not entitled for parallel licence.
10. Per contra, the applicant submitted that Mandal-Becharaji Special Investment Region is an Industrial Township within the meaning of Article 243Q of the Constitution of India with consideration of Section 29 of the Gujarat Special Investment Region Act, 2009 read with Notification No. GHU/2012/22/SIR/112012/1276/I dated 24.9.2012 and Notification No. GHU/2013/16/SIR/112012/1276/I dated 14.08.2013. The applicant further submitted that an Industrial Township is also deemed Municipal Council/Municipal Corporation as per the proviso to Article 243Q read with Articles

243P(d) and 243P(e) of the Constitution of India. Therefore, it is qualified for distribution of electricity licence as it fulfilled the conditions specified in the Electricity Rules, 2005.

11. The objectors have also contended that Mandal-Becharaji Special Investment Regional Development Authority is not the appropriate authority to select the applicant as Distribution Licensee. In contra to above the applicant submitted that Mandal-Becharaji Special Investment Regional Development Authority is responsible for developing various amenities in the Special Investment Region and they are also the authority to select appropriate developers to develop amenities in the Special Investment Region area. Thus, there is a dispute raised by the objectors challenging the authority of Mandal-Becharaji Special Investment Regional Development Authority to allow/permit the applicant to carry out the distribution of electricity licence activities in the Mandal-Becharaji Special Investment Region. The parties are, therefore, directed to submit their submissions on the aforesaid issue.
12. As the objectors have raised preliminary objection with regard to non-fulfilment of criteria for Distribution Licence, we decide that the aforesaid issue be decided first prior to deciding the matter. Both the applicant and objectors have sought time for filing their written submission, 15 days time is granted. The applicant and objectors are directed to file their submissions within 15 days along with supporting documents, if any. The Commission will pass appropriate order on the aforesaid issue after receipt of the same.
13. We order accordingly.
14. The next date of hearing will be intimated separately.

Sd/-

(S. R. PANDEY)
MEMBER

Sd/-

(MEHUL M. GANDHI)
I/C CHAIRMAN & MEMBER

Place : Gandhinagar
Dated: 17/08/2021