പതിമൂന്നാം കേരള നിയമസഭ

പതിനഞ്ചാം സമ്മേളനം

നക്ഷത്ര ചിഹ്നമിടാത്ത ചോദ്യം :2240 — 08. 12. 2015 ൽ മറുപടിക്ക്

വൈദ്യുതി നിയമത്തിൽ ഭേദഗതി

ചോദ്യം

ശ്രീ.ജി.സുധാകരൻ
"എസ്.ശർമ്മ
"പി.ശ്രീരാമകൃഷ്ണൻ
"കെ.വി.അബ്ദുൾ ഖാദർ

ഉത്തരം

ശ്രീ. ആര്യാടൻ മുഹമ്മദ്
(ഊർജ്ജ വകുപ്പ് മന്ത്രി)

(എ) വൈദ്യുതി നിയമത്തിൽ എന്തെങ്കിലും ഭേദഗതി കൊണ്ടുവരുന്നതുമായി ബന്ധപ്പെട്ട് കേന്ദ്ര സർക്കാർ സംസ്ഥാനത്തിന്റെ അഭിപ്രായം തേടിയിട്ടുണ്ടോ;	(എ) ഉണ്ട്
(ബി) പ്രസ്തുത ഭേദഗതി പ്രകാരം വൈദ്യുതി വിതരണ മേഖല വിഭജിക്കുന്നതിന് നിർദ്ദേശമുള്ളതായി ശ്രദ്ധയിൽപ്പെട്ടിട്ടുണ്ടോ;	(ബി) ഉണ്ട്
(സി) എങ്കിൽ ഇക്കാര്യത്തിൽ സംസ്ഥാന സർക്കാരിന്റെ അഭിപ്രായം കേന്ദ്ര സർക്കാരിനെ അറിയിച്ചിട്ടുണ്ടോ; വിശദമാക്കാമോ?	(സി) ഉണ്ട്, ഇലക്ട്രിസിറ്റി നിയമം 2003 ഭേദഗതി ചെയ്യുന്നതിനു മുന്നോടിയായി 19.12.2014-ൽ ഇലക്ട്രിസിറ്റി (ഭേദഗതി) ബിൽ, 2014 ലോകസഭയിൽ അവതരിപ്പിക്കുകയും തുടർന്ന് സ്റ്റാൻഡിംഗ് കമ്മിറ്റി (ഊർജ്ജം)- യുടെ പരിശോധനയ്ക്കും റിപ്പോർട്ടിനുമായി സമർപ്പിക്കുകയും ചെയ്തു. സ്റ്റാൻഡിംഗ് കമ്മിറ്റിയുടെ നിരീക്ഷണത്തിന്റെയും/ ശുപാർശകളുടെയും തുടർന്നുള്ള ചർച്ചകളുടെയും അടിസ്ഥാനത്തിൽ പുതുക്കിയ (revised) കരട് ഭേദഗതി ശുപാർശ (draft Electricity (Amendment) Bill, 2014) സംസ്ഥാന സർക്കാരുകളുടെ അഭിപ്രായത്തിനായി കേന്ദ്ര ഊർജ്ജ മന്ത്രാലയം

	ലഭ്യമാക്കിയിരുന്നു. കരട് ബില്ലിന്മേലുള്ള സംസ്ഥാന സർക്കാരിന്റെ അഭിപ്രായം കേന്ദ്ര സർക്കാരിനെ അറിയിച്ചിട്ടുണ്ട്. പകർപ്പ് അനുബന്ധമായി ചേർത്തിരിക്കുന്നു.

സെക്ഷൻ ഓഫീസർ

GOVERNMENT OF KERALA

No.7007/A1/15/PD

Power (A) Department,
Thiruvananthapuram,
Date:13/10/2015.

From

Secretary to Government.

To

The Secretary,
Ministry of Power,
Government of India,
Shram Shakthi Bhawan, Rafi Marg,
New Delhi.

Sir,

Sub: Revised proposal for amendment in Electricity Act, 2003 - Electricity (Amendment Bill), 2014 - reg.

Ref:- D.O.No.42/6/2011-P&R (Vol-VIII) dtd.15.9.2015 from Ministry of Power, Government of India.

I am to invite your attention to the reference cited. The reservations of the State Government on the separation of distribution and supply functions and related proposals have already been presented before the Ministry as well as the Parliamentary standing committee on Energy which examined the Electricity (Amendment) Bill, 2014. The State still holds the firm view that the proposals are premature and are likely to deepen the problems confronting the sector, which is vastly varying across our country. We happily note that some of the major concerns raised by the State are sought to be addressed through the revised draft of the amendment bill. In particular, the proposal to give freedom to State Governments to decide on the road map, manner and phases of the reform process is a welcome step.

At the same time the State still holds the considered view that the proposals that implicitly enable cherry picking of profitable sections and areas within each State by private players without making any commensurate investments in the infrastructure is not the right way to address the multiple problems faced by the sector. In this background the following suggestions are put forth which are necessarily to be incorporated to address the serious concerns of the State.

1. Sections 2(35B), 51A, 51B(3), 62, 86(1)(g), 131, 176 contains provisions related with Intermediary company. Kind attention is invited to the reservation of the Parliamentary standing committee on Energy on the matter of creation of intermediary company under paragraph 7 of chapter 10 of the report. It is suggested that the proposal for creation of an intermediary company may be dropped so that avoidable complexities due to interference in existing power purchase contracts can be obviated. It is also felt that the stipulation that the intermediary companies shall function as prescribed by central government is a significant intervention into the powers of the respective state governments, which is against the principles of federal governance. The state government strongly disagrees to the proposal for assigning the rights regarding its hydel power generating capacities as well as its exclusive power procurement portfolio to subsequent private supply licensees through the intermediary company.

It may be noted that the number of layers for delivering the single product viz electricity to a consumer is getting multiplied with the proposal for segregating various functional areas under different companies resulting in increased overheads and administrative complexities. It is thus suggested that the functions envisaged for the intermediary company may be assigned to the state owned distribution companies, thus obviating the need for creation of more companies and overheads. This is also important in view of increasing tendency among generators as witnessed during the last couple of years in dishonouring concluded contracts. In this background it is apprehended that transfer of PPAs towards new entities which do not hold assets and assured cash flows could lead to increased litigations and contract failures. Thus it is suggested that the distribution companies shall continue to hold on to the existing power purchase agreements and assign the same among various supply companies operating in the area in a fair and transparent manner under the overall supervision of the state regulatory commissions. Thus the State Governments shall have the authority to entrust the entire functions envisaged for the intermediary companies with the state owned distribution companies.

2. Proviso to Section 14 allows all SEZs to continue to have both distribution and supply licenses. Also Railways, metro rail, mono rail etc are allowed to carry out all the licensed activities simultaneously. There is no mandatory provision barring existing private distribution licensees who are not successor entities to erstwhile SEBs, in continuing as both distribution and supply licensees. Entities like Damodar Valley Corprporation are allowed to continue as integrated utilities dealing with transmission, distribution and supply functions. In this background the 15th proviso of section 14 barring successor entities of SEBs alone from engaging in both distribution and supply functions is highly discriminatory. It is thus suggested to delete the 15th proviso to section 14.

3. It is noted that supply licensees are allowed to operate through franchisees. As pointed out above, administrators always strive for reducing the number of layers involved in delivering any product in an economy to reduce costs and improve efficiencies. The proposal to separate distribution and supply functions in itself goes against this principle and the revised proposal to allow the separated supply function to operate through franchisees does not bring in any value. It can only compound the problems of consumers with the need to run among different agencies for getting service of the single product viz electricity. Thus the proposed amendment to proviso 17 of section 14 may be dropped.

4. The amendment proposed to Section 23 is not clear as the original words "transmits or distribution" proposed to be substituted with the word "supply' is not available in the original section.

5. The proposal under section 42 to exempt railways from payment of cross subsidy surcharge while availing power under open access will adversely impact the financial position of all the distribution and supply licensees in the country. The proposal under section 79 stipulates that CERC shall determine the tariff for power procured by railways. Such a tariff determination without taking into account the annual revenue requirements of individual state utilities could be contentious. Eventhough these proposals slightly affect the commercial interests of the state utilities, in the larger interest of providing viable mass public transport systems, the State

welcomes the same for introduction in a phased manner.

6. As a result of proposed modification in section 51B, subsequent supply licensees will also have universal supply obligation in its area of supply. The modification helps to inhibit cherry picking to some extent. In this regard the observation of the Parliamentary standing committee on Energy under paragraphs 2 and 4 under chapter 10 of the report is bought to the kind attention of the ministry. It recommends that the choice of area of supply for the subsequent supply licensees shall not be left entirely to those seeking supply license so as to dispel apprehensions on cherry picking. It is common knowledge that urban areas within a state will be the creamy layer with higher per unit revenue realisation for the power sold. This will be in sharp contrast with rural areas where realisation rates will be poor and the effort of the licensees be manifold. Thus the areas in which subsequent supply licensees are allowed shall contain an appropriate mix of different areas. The identification of such mix shall ideally be left to the State Governments. The areas in which subsequent supply licensees shall be allowed shall thus be in accordance with the phases and manner of reform process undertaken in each State in accordance with section 51A. This is all the more important considering the technical prerequisites for hassle free operation of multiple supply licensees in an area, such as state-of-the-art energy metering with real time communication for all points of energy transaction, putting in place proper mechanisms for energy accounting among multiple supply licensees, putting in place foolproof systems for real time scheduling of power by multiple supply licensees etc. Such progressive introduction of multiple licensees is in tune with the approach of piloting new systems, learning and extending the perfected system in phases etc. It is relevant to point out here that the World Bank in its report titled "More Power to India: The challenges in Power Distribution" which was undertaken at the instance of the Central Government has recommended implementation of separation of carriage and content on a pilot project basis only, in the present Indian context as well as considering the emerging scenarios.

The consumer mix of different supply licensees is bound to vary depending on the business strategies and tariff plans rolled out by individual supply licensees. Such offers by supply licensees shall be on the strength of ingenious power purchase portfolios and rationalisation of internal costs and shall not be by offloading cross subsidy content in the ceiling tariff specified by the regulatory commission. To inhibit cherry picking by offloading cross subsidy content in the offered tariff plan, a framework consisting of Universal Supply Obligation (USO) fund, determination of element of cross-subsidy in the ceiling tariff of each category of consumers by regulatory commission and the operation of USO fund whenever explicit or implicit cherry picking is noticed etc are suggested. Clear definition for often used terms like cherry picking, cross subsidy support etc are also required. Section 62 of the Act may be modified to make the appropriate commission responsible for inhibiting cherry picking through the operation of a USO fund.

7. While redrafting section 51D it appears that the provision banning discrimination of consumers by supply companies is inadvertently deleted. Similarly the section requiring the supply licensees to publish their tariff for different categories of consumers is also seen deleted. Since the supply licensees are dealing with a public utility service, the ingredients of non-discriminatory nature of service and transparency regarding levy of charges are indispensable. The provisions may be retained.

8. Under first proviso to section 62 (1) (e) the words "subject to sub-section (3)" seems to be incorrect as subsection 3 does not relate to the matter. The same may be got examined.

9. While the modification to section 51A is most welcome, it needs to be pointed out that section 131(4A) in the amendment bill lacks harmony with the new proposal. Accordingly, it is suggested to insert the words "specifying the manner and phases" after the words "draw up a transfer scheme" in section 131 (4A)(a).

10. Section 176 (u) stipulates that central government shall prescribe the appellate authority under section 127(1). However, section 62 stipulates that the Ombudsman of the concerned area shall also be the appellate authority under section 127(1). This inconsistency may be got examined. Similarly under section 176, the sub-sections (ab) and (ua) is repetition and may be got examined.

It is requested that the above suggestions may kindly be considered for incorporation in the revised proposal for amendment of Electricity Act, 2003 in true spirit of democratic conventions and the federal governance enshrined in our constitution.

Warm regards,

Yours faithfully,

P.P.SAMITHA,
Additional Secretary & Secretary (i/c)