

Introduction to Law on Electricity
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Lecture No. 12
License

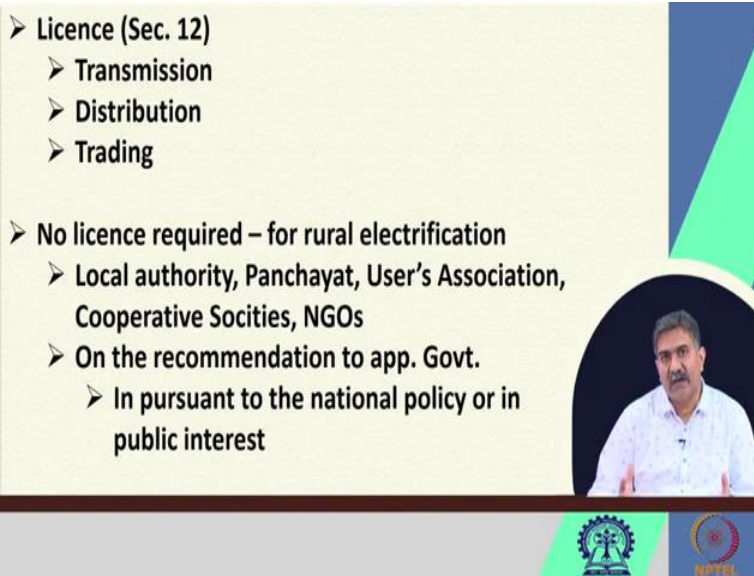
Welcome back to all the learners. As we have discussed in the last session that in order to promote generating units and to augment the generation of electricity in this country, the lawmakers have decided to delicense the generation segment of the power sector. Now in this session, we will be studying about the license that which all activities are being licensed under the Act and what are the conditions, what are the procedures laid down for granting of the license. That is what, we will be studying in this session.

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Now these are the two concepts which we will be covering. One is license and other is deemed licensee.

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➤ Licence (Sec. 12)

- Transmission
- Distribution
- Trading

➤ No licence required – for rural electrification

- Local authority, Panchayat, User's Association, Cooperative Societies, NGOs
- On the recommendation to app. Govt.
 - In pursuant to the national policy or in public interest

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If you recall, I have elaborated upon this very facet that how sudden activities are being delicensed under the 2003 Act and how sudden activities are being licensed. Meaning thereby that no individual, no entity shall be allowed to engage into such activities unless and until he applies for, or the entity applies for the license and it is given by the appropriate commission. Now as per the Act, there are three activities for which there is a need to apply for the license, and only the licensed activities are allowed in this sector.

Now one is transmission. In order to engage into the business of transmission of electricity, license is required. License is required to engage into the business of distribution of electricity and third one for trading also, it is required to take the license. And we have already studied generation, and where we have learned that no license is required. And after this, we will be studying that what are the laws related to transmission, which is a licensed activity under the Act.

Now when you look at the law, you would find that license is not required for rural electrification and local authority, panchayats, cooperative societies, user's association, NGOs, they need not apply for license if they aim to provide electricity in rural areas. In fact, this is in the larger interest of ensuring electrification, the larger interest of people so that, for availability of electricity in remote areas of this country, we can invite, we can attract more players. And as I have said that electricity is not only needed for running the manufacturing units; electricity is also needed for better living.

So, this very exemption in the law addresses that, where it says that if you have an interest in entering into this business in rural areas, okay, license is not required, you come forward and engage into the business. But then, it is certainly suggested that let the appropriate government recommend the same, and it is to be recommended only when it is in pursuant to the national policy or when it has been done in public interest.

Now when I say so, obviously, what I mean to say, what I mean to highlight, that it is for the government to assess that to what extent they can allow these kinds of entities to carry on business in rural areas. Because obviously, there will be an issue of grid compatibility, and there will be an issue of reliable supply of electricity because the larger goal should always be to supply electricity which is reliable, which is grid-connected or which is certainly a quality supply.

And perhaps, when you go for these entities to engage into the business in rural areas, to some extent, that may not be ensured. And that is why, the appropriate government is brought into play that let the appropriate government recommend. Because if the government has made the plan and putting up necessary infrastructure for laying down the infrastructure to supply reliable electricity in remote areas, then accordingly, they need not again invite participants of this category.

Appropriate government, what does it mean here? It certainly the state government or the central government that is what is the meaning here.

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- **Grant of Licence (sec. 14)**
 - **App. Commission**
- **Deemed Licensee**
 - **Already in the business of transmission and supply of electricity – One Year (First Proviso)**
 - **CTU and STU – shall be deemed to transmission licensee (Second Proviso)**



Now, section 14 talks about grant of license. An appropriate commission is authorized to give the license. Again, appropriate commission, what does it mean, is either the State Electricity Regulatory Commission or Central Electricity Regulatory Commission or in some cases, it could also be Joint Electricity Regulatory Commission.

So, the authority to grant license lies with the regulatory commission, and the benefit is that the way the regulatory commission has been visualized under this Act, it is an independent autonomous body. And therefore, the regulatory commission will take a decision as per the requirement of the market, as per the need of the power sector, what is desirable to ensure the growth of this sector, that is what it says.

Now 2003 Act, in a way, has taken the threat from the previous laws and ensuring continuation of that. And therefore, the law has provided for deemed licensee. Now what do you mean by deemed licensee? In law, we read that there is a legal friction which is created. What is that legal friction created? That the requirement of law is not been met, but still, for all purposes, it is to be considered that the law has been complied with.

And that is why this word deemed means. Even though the license is not needed or license is not required for certain set of entities, for the purpose of this Act, it is to be presumed that license is obtained under the 2003 Act. And because the 2003 Act has repealed earlier laws, this kind of provisions for ensuring continuity in the sector was very much desirable. And in continuation of that, in furtherance of that, we have a very long list of provisos under section 14.

One, what it says? The first one is that the entity which is already in business of transmission and supply of electricity, they need not apply for license. They need not go for a license for the first year. So, obviously, they need to be follow the rules and regulations, but they need not go and get the license with the enactment 2003 Act. They need to apply for license if they intend to carry on, if they intend to be part of this business in future.

So, this exemption is given only for interim period so that there shall be no disruption in the market; there shall be no undue disturbances or undue kind of breakage in the chain because of the applicability of the law or because of any particular provision, in this case, the licensee.

And similarly, for central transmission utility and state transmission utility, it has been suggested that they shall be deemed to be transmission licensee. So again, the central transmission utility and state transmission utility, they need not apply for license to enter into the business of transmission. They shall be presumed to be having a license for all purposes.

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➤ **Appropriate Government engages in transmission, distribution or trading – not to obtain license (Third Proviso)**

➤ **Damodar Valley Corporation – not require licence (Fourth proviso)**

➤ **Government Company or the company referred u/s 131 (2) (Fifth Proviso)**

➤ **Parallel Licensee in Distribution – through their own distribution system (Sixth Proviso)**

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And as we have studied that central transmission utility and state transmission utility has come into existence prior to the 2003 Act. So, this provision has been provided to continue with the status, what CTU and STU were enjoying before the Act came into existence. Now another important point, what it says is that the appropriate government engages in distribution, transmission, or trading, they need not again obtain license, they also not needed to get the license.

The reason being, again, because at the end of the day, it has been thought that if appropriate government thinks of ensuring the reach of electricity to its population and if they want to continue their activities, if they want to continue to make their presence in the sector. Let them continue that, let the law facilitate the same, and for that, they need not apply to obtain license under section 14 of the Act.

Now certain entities were very much into business and they were contributing in a big way in the nation's growth. Damodar Valley Corporation is one of such entities which came into existence for generation of electricity in the Eastern part of the country, particularly when you look at Bihar, Jharkhand, and West Bengal. So, for Damodar Valley Corporation also, it has been suggested that they need not again apply for license under section 14 of the Act.

Now it further said that if some government company is being formed by unbundling of state electricity boards, then they also need not obtain a fresh license. If you can recall, we discussed it in the session while we are discussing about the functioning of electricity boards. That electricity boards became a liability, and they were not standing up to the expectations of the consumer. And therefore, it was decided to introduce reform in the electricity boards.

And the reform was on the line of unbundling of the boards and segregating the three separate activities; generation, transmission and distribution. Now one of the ways of unbundling is handing over the responsibility of the board to the government company or to a company incorporated under the Companies Act as it has been envisaged under section 131 (2).

So, if such company has come into existence as a result of unbundling, then they also need not obtain the license. And then you have a provision which is very path-breaking I would say, where it has been suggested that parallel licensee in distribution sector is also allowed. And they can very well lay down their own distribution system, and for that also, no separate license is required. Obviously, it has to do with the geography, that if a distribution licensee has got a permission, has got a license to operate in one particular area, and then, if there is another distribution licensee already operating in that area, the new licensee can also very well supply the electricity, they can have their own distribution system.

So, this is like having more than one player in the distribution segment. Parallel licensee has its own advantages and disadvantages. I will be discussing about it, when I will discuss distribution

in detail. But then, as I said, this provision is really path-breaking because, in a way, it provides choice to the consumer that from whom the consumer wants to buy electricity. So, this is what is the intent. And obviously, if you have a choice, then it will promote competition. And that certain lead to economic tariff, competitive tariff which will ultimately benefit the consumer.

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- Franchisee – Distribution licensee authorising another person (Seventh Proviso)
- Distributed Generation (Generation and Distribution in rural areas) – Licence not needed (Eight Proviso)
- Distribution Licensee – can engage into trading without licence

If the distribution licensee engages another entity to supply the electricity in the area which is demarcated, which is given under that licensee, then that entity need not again go for a fresh license. So, that is what we also call a distribution licensee, identifying a franchisee in its area, and that franchisee need not obtain a license, that is also has been provided. That if the distribution licensee is fulfilled, it ropes in entity for supply of electricity in the area which has been assigned to the distribution licensee; that entity need not obtain license, and that entity need not apply for license. And that entity can be called as franchisee under the Act.

Now in order to facilitate rural electrification, in order to promote rural electrification, it has also been provided that an entity which is into generation and distribution need not obtain a license, what we also call it as distributed generation. We will be also discussing about it, when we will be discussing about distribution in detail.

Distributed generation promises a big-time reform in the rural sectors wherein the interested players need not unnecessarily get into the process of approvals. They can go, they can very well establish their setup. And you can very well visualize that what has been visualized in this manner, what has been attempted is that, in a smaller scale, we can have generation facility. And through that, there can be distribution of electricity in a very small scale, in a very small area. That is what is indicated under this. Obviously, we will be studying in detail, as I said, while taking up distribution.

Distribution licensee also is not needed to take a separate license if distribution licensee wants to engage into trading. While discussing salient features of the 2003 Act, I recall, I have discussed this with you, that trading is now a distinct activity. Trading is acknowledged as a distinct activity for promoting the market. And in order to achieve that goal, it has been suggested that let the distribution licensee very well enter into the trading business and let them participate if they can bring in the necessary impetus, if they can really contribute to the growth of electricity market.

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➤ **Procedure to Grant Licence (Sec. 15)**

- **Applicant need to publish a notice of his application within seven days of making the application**
- **If any objection, need to considered**
- **Areas like cantonment, aerodrome, fortress, arsenal or place in the occupation defence forces – NOC from the CG**

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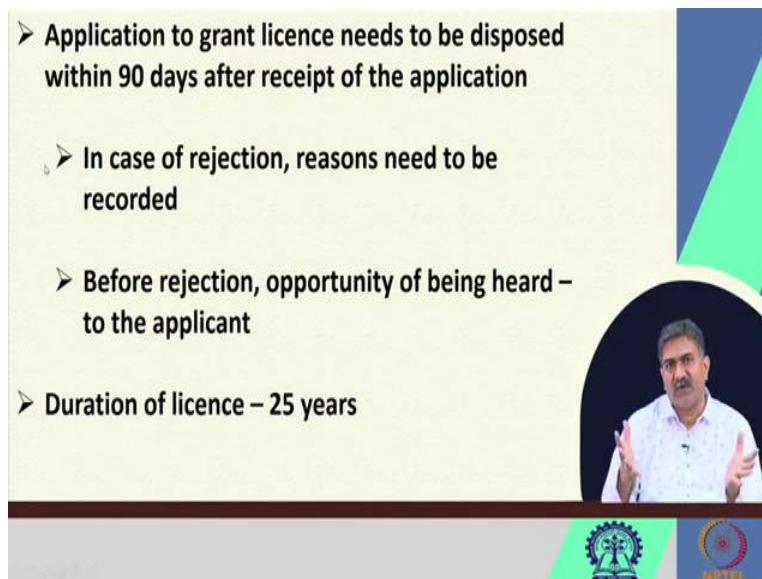
Now section 15 talks about the procedure to grant license, that is what it says. Where it says that, if there is an applicant who is interested to obtain license for all three activities, then the applicant needs to submit an application and that has to be published, that is what it says. So, publication is needed within 7 days of making of the application. And if there is any objection, then that has to be considered by the appropriate commission. And only after consideration of the objection, this license is to be issued.

The rationale is that because this sector is one where a lot of technical requirements are to be made, one has to see the compatibility of the infrastructure. And this needs to be assessed very scientifically; this needs to be assessed in a very meticulous way. And that is why, this has been suggested that let the objection be there from the interested parties that why this application should not be accepted.

Or one reason of inviting the objection also could be that to understand that what is the financial health of the applicant. Because we know very well that electricity is a very cost-intensive industry. And unless and until, there is a good financial health of the participants, there would be high risk in allowing that participant to participate in this power market. And that is why it has been suggested that there are certain factors which are to be taken into account for giving the license.

So, the idea is, let the application be notified that such and such person has shown interest, and let there be public scrutiny of that application. If application has been meant for certain areas, like cantonment, aerodrome or something which is under the occupation of defense forces, then no objection is required from the central government. I mean, this is for very obvious reason; this is what has been provided.

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- Application to grant licence needs to be disposed within 90 days after receipt of the application
- In case of rejection, reasons need to be recorded
- Before rejection, opportunity of being heard – to the applicant
- Duration of licence – 25 years

Now, the law clearly spells out the timeline within which the license has to be granted, or the application must be decided in one or the other way, and that timeline is 90 days. That appropriate commission can either accept the application or reject the application, and that has to be done within that 90 days.

If the application is rejected, then the appropriate commission is duty-bound to give an opportunity to the applicant to present his case. So that, he can satisfy, the applicant can satisfy on the reasons which are being presented by the commission for rejection. Now, this very

provision becomes very prominent in law. It ensures that appropriate commission shall not be allowed to decide anything based on whims and fancies. Appropriate commission must act as per the rule of law. And any decision contrary to this idea can very well be challenged before the appellate tribunal or even before the court of law.

So, in order to ensure that, the commission carries out his function in fair manner, in judicious manner, these kinds of conditions are laid down. And also, let me inform you that the option of hearing the parties, the applicant is at two stages. One is when I made this point that when notice has been issued and then when objection has been assigned, this is what, at this stage.

When you find that if objection is there, then also one has to go back to the applicant and say these are the objections, what are your takes on it. And then, it is also needed that when the application is rejected by the commission, commission finds that the applicant does not fulfill the criteria to get the license, then also the opportunity should be given to the applicant. So, it is to be given at two stages, that is what. And if the appropriate commission refuses to give this opportunity at either occasion, the whole process will be fatal.

So, that is what is the significance of laying down the procedure under the law. And that, in a way, binds the authority to follow the law, binds the authority to adhere to the norms. And that is why, we say very clearly that these provisions in infrastructure laws, in general or in electricity act, in particular, very well communicates a sense of trust and confidence to the players of the market. Duration of the license which has been provided in the Act, it says that it can be 25 years, so that is what it can do.

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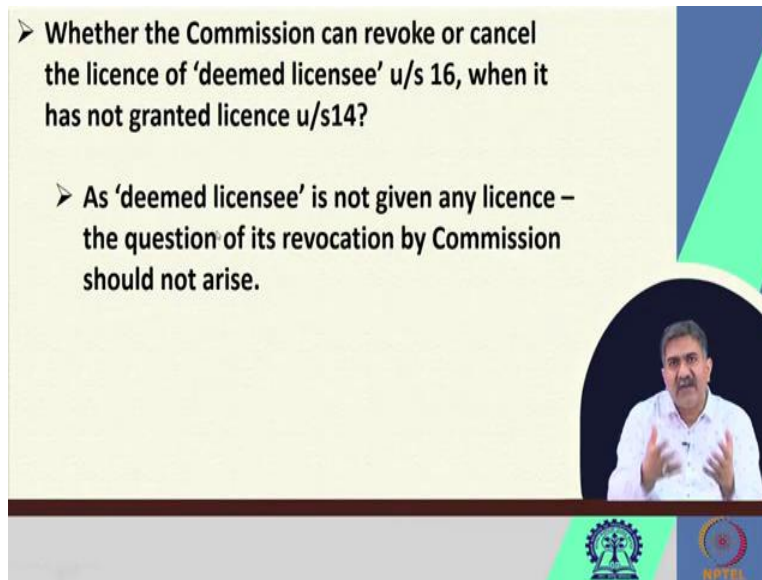
- **Conditions may be specified by app. Commission (Sec. 16)**
 - For deemed licensee – prescribe the condition after expiry of one year from the commencement of the Act
- **No licensee, without prior approval of app. Commission, shall (Sec. 17)**
 - Acquire by purchase or takeover the utility of other licensee
 - Merge his utility with utility of any other licensee
 - No approval – transaction related to other state

And, appropriate commission can very well lay down, can very well prescribe terms and conditions. And as I said that, there is a provision of deemed licensee for those players who are already there in the market. So that they can continue to be in the business without any disruption. So, for them also, it has been suggested in section 16 that sudden conditions can be imposed after the expiry of one year of the commencement of the Act.

And then, once the license has been obtained, once the entity is allowed to participate in power sector, it does not mean that appropriate commission will have no role whatsoever after that. Because constant monitoring is needed for the purpose of meeting the requirements of public interest, constant monitoring is needed in order to ensure that unnecessary monopoly should not be brought in, in this sector. Constant scrutiny monitoring is needed to ensure that the terms and conditions laid down for giving the license properly maintain, it has been adequately followed.

And that is why, section 17 categorically says that if the licensee wants to acquire, either by purchase or takeover utility of other licensee, then they need to check prior approval of the appropriate commission. Again, appropriate commission here would mean CERC or SERC as the case may be. If the licensee wants to merge his utility with the utility of other licensee, then approval is again needed if it is within that state. If it is in another state, then approval is not needed.

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➤ Whether the Commission can revoke or cancel the licence of 'deemed licensee' u/s 16, when it has not granted licence u/s14?

➤ As 'deemed licensee' is not given any licence – the question of its revocation by Commission should not arise.

Now in this, an important question can be raised that, can the commission revoke the license of the deemed licensee? Whether it would be allowed, can they very well say that okay, you are deemed licensee as per section 14, but then we are canceling or revoking your license.

Now, one way of reading it is that if the deemed licensee reaches the terms and conditions, if deemed license causes disruption in the market, perhaps, certain punitive actions can be taken by the commission. But then, technically speaking, because there is no license which has been given by the appropriate commission, there is no question of cancellation of, revocation of license of deemed licensee.

Because deemed licensees are not getting any license, they are not applying under section 15. They have been given the license to operate by virtue of the law. Law gives the status of deemed licensee to the entities at hand. And therefore, if the appropriate commission has not decided on the very aspect of participation, if they have not looked into the application, the financial viability, the creditworthiness. Then obviously, they should not be asked, they should not be given this authority to decide on the license that whether it should be revoked or it should be canceled.

So, this is an important legal question. Important legal question why? Because how do you read the power of the commission, where sudden aspect of the activity is authorized by the law. How do we read the power of the commission? So that is what question to be looked at.

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- **No licensee shall assign his licence or transfer his utility by sale, lease, exchange or otherwise without prior approval**
- **Any agreement contrary to the condition of prior approval – void**
- **On the application of licensee or otherwise – app. Commission can alter or amend conditions – in the public interest**
 - Consent of the licensee is needed
 - Publication of proposed alteration or modification – in both the cases

Then, when you move further, you find that, again, licensee shall not be allowed to assign his license. He cannot simply pull in third parties; that is not allowed. He cannot simply transfer his utility by sale or lease or exchange again to the third parties without obtaining the approval. So, you can very well imagine, how the appropriate commission is involved at every step.

So, the idea is to lay down the rules of the game. The moment, the player attempts to breach that rule, the umpire comes in. And umpire raises the red flag, says that see, what you are doing is not what we have agreed upon, for what you have been authorized to do. So, that is what is the idea of creating an independent body in the form of regulatory commission. And if the body goes for, if the utility, if the licensee decides to sign an agreement, it would be doing at its own peril. Because the same would be void.

And as a law student, we very well know the implication of the term void, that is nullity. It has the effect of no ness; it does not have any legal effect in the eyes of law, that is what it says. And then further, it says that on the application of licensee or otherwise, the appropriate commission can very well alter or amend the conditions. And that can be done in the public interest.

So, if the load factor has increased, for which the distribution licensee wants to upgrade, very well, the conditions can be altered or modified. The licensee can also approach the appropriate commission to get that condition altered or modified. That is what is also possible. In such a

situation, you have to also say that there is a consent which has been obtained. But here again, if you look at it, you will find that it is required to publish the proposed amendment.

Why? Because again, if that proposed amendment brings in disbalance in the market, if it favors unduly any player, then there can be challenge to the same. So, that is what is the idea to have a public scrutiny. In fact, in this kind of regulatory laws, these kinds of scrutinies play a significant role, where it is not only the institution which is playing the role of monitoring agencies; even this kind of constant monitoring through the public participation also ensured.

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➤ **Revocation of licence – (Sec. 19)**

➤ **App. Commission - after making inquiry – in public interest may revoke licence on following grounds –**

- **Undue delay**
- **Breach of the terms**
- **Unable to discharge the duties efficiently**
- **Poor financial health**

➤ **Licensee needs to be given three months' notice – stating the grounds for proposed revocation**

And then, what you find under the law is that, that the appropriate commission has been given the authority to revoke the license. That is what is also given. That, at any point of time if the appropriate commission finds that the terms and conditions which has been presented, which has been asked the licensee to meet with, if there is an undue delay, if the licensee is not following the terms and condition, violating the terms and condition or is unable to discharge. It has committed something, the licensee has committed something but then later on realize, it is not possible for me. If it has been brought to the notice of the appropriate commission that licensee does not have very sound financial health, then in all these conditions revocation is possible.

And licensee in such a situation to be given three months' time. So that, licensee can very well present the case. And if there is any misinformation on which the appropriate commission is

acting up, that can be adequately addressed. That is what it says. So, section 19 talks about revocation.

Now revocation, cancellation, you can very well visualize that these two are important power which has been interested upon the commission. Commission can very well cancel or commission can very well revoke. Legally speaking, you can very well understand this that in case of cancellation, it is all about not complying with something which could have been the case right from day one.

Revocation on the day of application, perhaps, you have satisfied the criteria, but later on, it has been found that whatever you have promised is something which is not working. It is appearing to be a case of unworkable proposition from the licensee side. And therefore, appropriate commission can step in, in the public interest and very well revoke the license.

So, all these provisions take to this point that how we should see electricity as a commodity. This is not only between buyer and seller. This is also about public, maybe in the form of retail consumers, maybe in the form of industrial consumer.

So, with this, we have discussed that what are the conditions to grant the license, under what circumstances, license can be canceled, what are the conditions on which the license can be modified or altered by the appropriate commission. And then also, the situation in which appropriate commission can revoke the license.

Now with this, we conclude today's session. And in the next session, we will be studying that what are the powers of the appropriate commission to deal with the licensees again, given in this part of the electricity act. And we will also discuss sudden case laws. Thank you.