

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
APPELLATE JURISDICTION, NEW DELHI**

**Appeal No. 104 of 2005**

Dated this 29<sup>th</sup> day of March 2006

**Present :** **Hon'ble Mr. justice E. Padmanabhan, Judicial Member**  
**Hon'ble Mr. H. L. Bajaj, Technical Member**

**Appeal No. 104/05 :**

Dakshin Haryana Bijli Vitran Nigam Ltd.(DHBVNL) by its Managing  
Director  
General Manager, (Commercial), DHBVNL  
Chief Engineer (Operation), DHBVNL  
Sub-Divisional Officer, OCC, Maruti Sub-Division, DHBVNL  
... Appellants

Vs.

DLF Services Ltd.  
DLF Universal Ltd.  
Managing Director, Haryana Vidyut Prasaran Nigam Ltd. (HPVNL)  
... Respondents

Counsel for the Appellants : Mr. Neeraj Kumar Jain, Advocate  
Counsel for the Respondents : Mr. Ajay Siwach, Adv.,  
Mr. Vijay Nair, Adv.,  
Mr. Debasish Mohapatra, Adv.  
and Mr. Sundeep Cecil, Adv.

**JUDGMENT**

The appeal No. 104 /05 has been preferred challenging the order dated 15.07.05 passed by Haryana Electricity Regulatory Commission in Case No. HERC/PRO-10 of 2004.

2. Heard Mr. Neeraj Kumar Jain the learned counsel appearing for the appellants and Mr. Vijay Nair learned counsel appearing for Respondents 1 & 2. Mr. Ajay Siwach for respondent No.4.

3. The above appeal was heard along with batch appeals namely, appeal No. 105 to 112 and Appeal No. 141 to 149 of 2005, as in all these appeals, appellants primarily challenged the jurisdiction and authority of the Haryana Electricity Regulatory Commission in entertaining the complaint of contesting Respondents and also challenged the order passed by Commission on merits in individual appeal as well. In respect of jurisdiction and authority of the Regulatory Commission common arguments were advanced and written submissions were also submitted. The grievances urged by contesting Respondents are identical except difference as to value of various claims. Hence it would be sufficient to refer to relevant factual matrix in one of the appeals, which would enable us to decide the jurisdictional issue.

4. The Respondents 1 & 2 submitted a complaint dated 29.10.2004 before the Haryana Electricity Regulatory Commission under Sec 42 & 43 of The Electricity Act 2003 complaining non release of bulk supply (non domestic) Electricity connection for 36187 acres "City Centre Gurgaon" applied on 22.01.2002 for 3200 KW load. The complaint was lodged under Sec 42 & 43 of The Electricity Act 2003 read with condition No. 19.1 of The Distribution and Retail Supply license, framed under the HERC (conditions of License for Distribution and Retail Supply Business) Regulation 2004, regulation 26 & 27 of HERC (conduct of Business) Regulations 2004. The appellants filed their reply / objections and response in detail. The contesting Respondents by its further representation dated 11.04.2005 raised certain additional issues while acknowledging that pending the proceedings, appellants have already released service connection. The Respondents sought for refund of Rs. 26,00,000/= deposited as share cost and Rs. 16,00,000/= towards F.S.C. The appellants submitted a rejoinder on 04.05.2005 disputing the entirety of claim and setting out their stand and version. Again on 20.05.2005 the contesting Respondents submitted reply to the said rejoinder, disputing the MoU, affixing of signatures thereof and challenged the validity and binding nature of MoU. The contesting

Respondents also submitted response on 20.06.2005 to the letter submitted by appellants on 16.06.2005 and reiterated its claim for refund of share cost. The appellants filed copy of all the above, apart from producing copy of the Agreement dated 11.03.1999, which agreement is being challenged and disputed by contesting Respondents.

5. We do not propose to deal with the details and merits of the complaint and counter complaint as it may be taken or suggested that we have expressed ourselves on merits of the case and counter case, which we anxiously avoid in the interest of both parties. Before we take up the jurisdictional issue it is but essential to refer to the findings recorded by HERC and summarise the order / directions issued by the said commissions, as reflected in its order.

6. The contesting Respondents prayed for the following reliefs :

- a) Issue appropriate directions to the Respondents for release of the aforesaid electricity connection under non-domestic bulk supply category forthwith for the property City Centre.
- b) Issue appropriate directions against the respondents to pay interest on the ACD equivalent to Rs. 4,93,000/= deposited by the Petitioner on 22.01.2002 at the rate of 24% per annum calculated from the date of its deposit, up to the date of release of the connection / or pass any other order / directions.
- c) Issue any other orders / directions as it may deem fit in the facts and circumstances of the case.
- d) As the Respondents have failed to supply electricity within the premises specified in sub-section (1) of Section 43 of Electricity Act 2003, necessary action as deemed fit may be taken against the respondents.
- e) The petitioners also prayed to issue appropriate directions in the matters submitted vide their rejoinder dated 11.04.2005.

7. Before the Regulatory Commission petitions after petitions, replies after replies, rejoinders after rejoinders etc. were filed by both parties and the proceedings had a chequered career before the Commission commencing from 04.11.2004 on which date the complaint was received by it ending with 15.07.2005 apart from innumerable hearings and

meeting. It is appropriate to extract the salient features of the Regulatory Commissions and its views are required to be set out in its language :

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“ 14.1.7 : It is evident that the explanation and arguments given by the respondents for not releasing the connection of the petitioners until 21.02.2005 are unreasonable and unjustified. It gets corroborated from the fact that they released the connection of the petitioners within four months after the filing of the petition (by them) before the Commission, which otherwise was kept pending for about 3 years after the acceptance of their application.

Since the connection of the petitioners has now been released by the respondents, the grievance of the petitioners in this regard stands redressed. However, the Commission directs the respondents to make arrangement within three months of issue of this order, for the release of the additional load of the petitioners (without charging any share cost of the substation), equivalent to the load of the other consumers (3.6 MVA) fed by the respondents from 66/11 KV, 16 MVA transformers (T-1 & T-2), installed by the petitioners at 66 KV, Q-Block sub-station.”

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“14.3.3 : Since the petitioners have deposited Rs. 16,00,000/= as Service Connection charges and also erected the 11 KV feeder, the respondents are directed to refund the Service Connection charges or cost of feeder erected by the petitioners, which ever is less, within one month of issue of the order. In case of shifting of the feeding arrangement of the electricity connection at a later date from 220 KV Sector 52-A substation to the proposed 66 KV substation in DLF Phase – V, Gurgaon to be erected by the petitioners, the cost of such shifting will be borne by the petitioners as already agreed to by them in their filing dated 20<sup>th</sup> May, 2005.”

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“However, the respondent No. 1 (HVPNL), since taking over the possession of the 66 KV Dundahera S/Stn. From the petitioners, free of cost, in 1999, has neither conveyed to the petitioners, the procurement of necessary certificate from the Govt. of Haryana for exemption of the stamp duty nor intimated their willingness to pay the required stamp duty, which was a pre-requisite for transfer of the title of the said property in the name of the respondents. Apparently, the respondents have failed in getting the title of the land transferred in their name.

As such, the onus for non-compliance of the clause 1.03 of the agreement lies with the respondents themselves and it is totally

improper to put blame on the petitioners and withhold the refund of share cost of Dundahera substation on this account.”

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“We have further noted that in the MoU dated 09.01.2002, which was not eventually signed by the two parties, it has been mentioned with reference to construction of residential buildings by the petitioners that – “DLF agreed to construct these buildings after receipt of approved drawing layout”.

It clearly indicates that the petitioners even on 09.01.2002 i.e. after about 3 years of shifting of their load from Dundahera substation, were ready to make the compliance of the clause 1.02 of agreement dated 11.03.1999 (construction of the residential buildings for staff of respondents), provided the approved drawings, which were to be supplied by the respondents, were received by the petitioners. In the draft MoU dated 09.01.2002, referred by the respondents in their filing, it is nowhere mentioned that any action was lacking on the part of the petitioners regarding drawings of the residential accommodation.

If the drawings supplied by the petitioners to the respondents did not meet the requirement of the respondents, and if, the modifications required were too many, the respondents could have supplied their standard drawings for two-room and three-room residential quarters (adopted at Dundahera substation or at any other place in the State) to the petitioners for execution of the work. The lack of keenness on the part of respondents to get the residential quarters constructed is obvious from the fact that they have failed to supply the requisite drawings to the petitioners for execution of the work even after lapse of a long period of over 6 years of signing of the agreement dated 11.03.1999.

The petitioners can only be held responsible for non-compliance of the clause 1.02 of the agreement if they had refused or conveyed their reluctance to construct the residential quarters in accordance with any of the drawings supplied by the respondents.

Evidently the petitioners could not make compliance of the clause 1.02 of the agreement for want of final drawings of the residential quarters which were to be supplied by the respondents to the petitioners. In view of the above facts we are of the opinion that the petitioners can not be held responsible for non-compliance of clause 1.02 of the agreement as there had been grave and unjustifiable lapse on the part of respondents themselves in supplying the final drawings to the petitioners which were an essential pre-requisite for compliance of the provision 1.02 of the agreement by the petitioners. Not only this, the respondents

subsequently installed capacitor banks over the land which was to be used for construction of residential accommodations.

Moreover as far compliance of other provisions of the agreement is concerned, the respondents have also grossly violated the stipulations of the clause 1.05 of the agreement dated 11.03.1999 and discriminated against the petitioners with regard to release of connections to the loads of the petitioners as brought out at para 14.1.1 above.

14.4.7. : In view of the above we find it against natural justice to link the issue of refund of share cost of Dundahera substation with the non-compliance of clause 1.02 and 1.03 of the agreement dated 11.03.1999.

14.4.8 : We direct the respondents to first shift the capacitor banks, as offered by them in their filing, to make the land available for construction of the residential buildings. The issue of finalization of the drawings for construction of the 4 Nos. 3 room and 4 Nos. 2 room residential buildings should then be sorted out with the petitioners, to facilitate construction of these residences by the petitioners at the 1.25 acre, 66 KV, Q block substation.

As per the clause 5.01 of the agreement dated 11.03.1999 the respondents were required to refund the full amount of the share cost of 66 KV Dundahera substation deposited by the petitioners after they stopped drawing power from this substation which they stopped w.e.f. April, 1999. Therefore, we direct the respondents to refund to the petitioners the share cost amounting to Rs. 79.3 lac of Dundahera substation deposited by them within one month of issue of this order.”

8. It is to be pointed out that a host of the directions issued by the Regulatory Commission do not form part of the initial complaint nor they will fall under the purview of Sec 42/43 of The Electricity Act 2003 and they are clear embellishments which developed for reasons known to the Commission.

9. At this stage it is also relevant to point out that one of the Members of the Regulatory Commission dissented with respect to refund of share cost of Rs. 79.3 Lakhs of 66 KV Dundahera Substation.

10. All these views and conclusions recorded by the Regulatory Commission revolve around very many disputed questions, very many disputed facts, disputed MoU, breach of contract etc. with respect to which we also make it a point not to express ourselves one way or other.

11. The appellants have challenged all the directions issued by Regulatory Commission, which according to the appellants are without jurisdiction and beyond the scope of the proceedings as well as the statutory provisions of The Electricity Act 2003 and the Regulations framed there under, from being without jurisdiction.

12. The learned counsel for the appellant while raising various grounds on merits, mainly contended that the order of HERC is (i) wholly without jurisdiction and authority; (ii) the reliefs sought for by the Respondents for a direction to appellants to release additional loads etc. or to pay the amounts or interest are not maintainable and (iii) the powers conferred and functions enumerated under Sec 86 of The Electricity Act 2003 do not envisage the adjudication of dispute between the parties. Arguments were addressed by both sides apart from written submissions submitted by Respondents.

13. The points that arise for consideration in this appeal are :

(1) whether the Haryana Electricity Regulatory Commission has the jurisdiction and authority to decide a complaint filed under Sec 42(5) of The Electricity Act 2003 ?

(2) Whether the Regulatory Commission has acted without jurisdiction in issuing various directions in favour of contesting Respondents against the appellants?

(3) To what relief, if any ?

14. Both the points involving the same jurisdictional issue could be considered together. Concedingly the grievance or complaint of the

contesting Respondent is one falling under Part-VI : Distribution of Electricity of The Electricity Act 2003 and in particular under Sec 42 (5) of The Electricity Act 2003, as the gravamen of allegations being failure to supply electricity against the distribution license (Discom for brevity). Sec 43 (1) and (2) mandates that it shall be the duty of every Discom to give electric supply within one month after receipt of the application and it is for such licensee to provide, if required, electric plant or line for giving supply to the premises applied for. Sub Section (3) of Sec 43 provides for consequences, namely, levy of penalty which may extend to one thousand rupees for each day of default. Sec 44 provides an exception to Sec 43, which is not the case here. Sec 45 provides for recovery of price to be charged by a distribution licensee for supply. Sec 46 provides for recovery of expenditure in providing electrical line or plant subject to regulations to be framed. Sec 50 provides for a supply code being specified.

15. Part VI – “Distribution of Electricity” prescribes the forum for redressal of grievances under this Part. Sub Section (5), Sec 42 mandates every distribution licensee to establish a forum for redressal of grievances of the consumers in accordance with guidelines as may be specified by the State Commission. Hence it follows that the State Commission is the authority to frame guidelines and it cannot constitute itself to be the forum for redressal of consumers grievance. Sub sec (6) of Sec 42 provides for representation being made to an authority known as “Ombudsman” if the consumer is aggrieved by non redressal of his grievance by the authority constituted under sub sec (5) of Sec 42. Such ombudsman shall settle the grievance of the consumer within such time and in such manner, as may be specified by the State Commission. In terms of Sub sec (5) and (7), the State Commission’s role is to frame guidelines or manner of settlement of grievance and it is a delegated rule making authority according to the said provisions. It has to lay down guidelines or regulation apart from it being the authority to appoint or designate OMBUDSMAN. When such is the statutory provision, the State



Commission in law cannot usurp the jurisdiction of either the grievance redressal forum or the ombudsman. Thus it is clear that in respect of grievances of the consumers specific forum of redressal and representation to a higher authority are provided and the Regulatory Commission has no jurisdiction apart from the fact that it is either the appointing authority or authority conferred with power to frame regulation / guideline. Not even an appeal power has been conferred on the State Commission with respect to consumer grievances. The State Commission is not the authority to impose penalty under Sub sec (3) of Sec 43. Thus gleaned from any angle the State Commission has neither the jurisdiction nor authority with respect to redressal of grievances of consumers, which may arise under part VI of the Act.

16. It is also not in dispute that the Electric supply code framed in terms of Sec 50, confer no power of supervision even on the State Commission, while on the other hand the Commission is the authority to frame The supply code. That apart no provision of supply code has been shown to us providing such authority or conferring such authority on the State Regulatory Commission. Sec 181 which provides for framing Regulations, will not all spell out conferment of power on the State Commission in respect of matters falling under part VI of the Act. That apart in the teeth of Sec. 42(5), no such power could be or could have been conferred on the State Regulatory Commission.

17. The learned counsel appearing for the contesting Respondents as well as Regulatory Commission referred to Sec 57(1) and Sec 86 and contended that authority of the State Commission is traceable to said two provisions. Sec 57 enables the appropriate Commission to specify standards of performance of a licensee or class of licensees. If the licensee fails to meet the standards specified, penalty could be imposed, apart from fastening the liability to compensate the person affected, as may be determined. The case on hand, will not fall either under Sec 57(1) or Sec 57(2) of the Act.

18. Sec 86(a) to (k) enumerates the functions of the State Commission. The redressal of grievance or complaint do not fall under any one of the functions enumerated by Section 82. 86(k) also will not come to the rescue of the Respondents as it refers or relate to such function as may be assigned to the Commission under the Act. No other provision in the Act has been pointed out by Respondents conferring such power or authority or jurisdiction on the commission, not even by implication.

19. That apart Sub sec (8) of Sec 42 makes it abundantly clear that the consumer may have the right to approach any other forum or authority apart from the authority constituted under Sub Sec (4) or (5) such as the Consumer Redressal Forum constituted under The Consumer Protection Act 1986, as saved by Sec 173 or Civil Court. It is rightly pointed out that the jurisdiction of Civil Court in this respect has not been excluded by Sec 145 of the Act, as it excludes only the jurisdiction of Civil Court with respect to orders falling under Sec 126 or 127 or adjudicating officer and not in respect of the consumer disputes.

20. The Regulatory Commission and contesting respondents realizing the legal position placed reliance on Sec 54 of The Haryana Electricity Reforms Act 1997, read with Para 7 and 8 of the Distribution & Retail Supply Regulations framed by it. It is also contended that the said provisions are still in force, as the said Act has been saved by Sec 185(3) of The Electricity Act 2003.

21. This contention advanced on behalf of Respondents is born out of frustration and it is a misconception and a misreading of Sec 185(3) of The Electricity Act. The Haryana Electricity Reforms Act 1997 is one of the enactments included in the schedule to the Electricity Act 2003. In terms of Sub sec (3) of 185, the Provisions of the Haryana Electricity Reforms Act shall continue to apply to the State of Haryana in so far as it is not inconsistent with the provisions of the 2003 Act. Sub sec (3) of Sec 185 reads thus:

“(3) The provisions of the enactments specified in the schedule, not inconsistent with the provisions of this Act, shall apply to the states in which such enactments are applicable”.

22. Apparently Sec 54 of Haryana Electricity Reforms Act 1997 and Para 7 etc. of the Distribution and Retail Supply Regulations framed by the State Commission, are inconsistent with Part IV of the 2003 Act and in particular to Sec 42(5) to (8) of the 2003 Act. Hence in our considered view, assuming such a power is available, it is no longer available on and after 10.06.2003 as the said provisions do stand repealed.

23. That apart Sec 54 of State Act is the rule making provision and it has no provision parallel to the provisions of 2003 Act. Further Sec 11(1) (b) is relied upon by Respondents. Sec 11(1) enumerates the functions of the State Commission in general terms and redressal of grievances of consumer or resolution of dispute between a license and consumer has not been conferred on the State Commission, much less by implication. Per Contra Sec 33 of the State Act provides for framing regulations. Sec 33 of the State Act reads thus :

- 33.(1) The Commission may, after consultation with (a) holders of supply licences, (b) other persons or bodies appearing to the Commission to be representative of persons and categories of person likely to be affected and (c) the Commission Advisory Committee, frame regulations prescribing:-
- (a) the circumstances in which such licensees are to inform customers of their rights;
  - (b) the standards of performance in relation to any duty arising under sub-section (a) above or otherwise in connection with the electricity supply to the consumers; and
  - (c) the circumstances in which licensees are to be exempted from any requirements of the regulations or this section and may make different provision for different licensees.
- (2) Nothing in this or other provisions of this Act shall in any way prejudice or affect the rights and privileges of the Consumers under other laws including but not limited to the Consumer Protection Act, 1986.”

24. It is not the claim or case of respondents that Regulations have been framed under Sec 33. Even if it is so, it is too late to plead that the Commission has authority or jurisdiction, as the same would run counter to Sec 42 (4) and (5) of 2003 Act. Standards of performance, will not take in the power to redress the grievance of consumers.

25. It was also contended that no Consumer Forum or Ombudsman have been set up and therefore the State Commission has the authority. Factually the Haryana Electricity Regulatory Commission (Guidelines for forum for redressal of grievances of the consumers) and (Electricity ombudsman) Regulation 2004 have been framed and notified on 12.04.2004 in exercise of powers conferred by Sec. 42 (5) to (8) read with Sec 181 of the Central Act. The said Regulations came into force on 12.04.2004. It is true that for some time the said forums have not been set up. This necessitated suomotu action by this Appellate Forum. Sub Sec (6) of Sec 42 confers power on the State Commission to appoint ombudsman. The Commission and Discom have already constituted the forums and submitted compliance report. Having failed to appoint or allowed the said office to fall vacant, it is not open to the State Commission to claim authority or jurisdiction. Such a plea is against well settled legal position. For the failure to constitute redressal forum by the Distribution licensee, the commission could have taken appropriate action calling upon the licensee to constitute the redressal forum. There is omission on the part of State Commission.

26. It should not be lost sight of the fact that the complaint by contesting Respondents was lodged on 29.10.2004, which is much after the commencement of the said Regulations on 12.04.2004. One other contention advanced being that HERC is the apex authority in the State and in its wisdom it entertained the complaint. This contention is legally unsustainable, as it is well settled law that no authority however high or supreme authority it be, it shall not usurp the jurisdiction of statutory authority constituted specially for the purpose. In other words it is the

specific provision which excludes the general provision as has been laid down in Venkateswara Vs State of AP, reported in A.I.R. 1966 SC 828.

27. The Regulatory Commission being a quasi judicial authority could exercise jurisdiction, only when the subject matter of adjudication falls within its competence and the order that may be passed is within its authority and not otherwise. On facts and in the light of the statutory provision conferring jurisdiction on the redressal forum and thereafter to approach ombudsman, it follows that the State Regulatory Commission has no jurisdiction or authority to decide the dispute raised by Respondents 1 & 2, who are consumers.

28. Apart from this, it is rightly pointed out by appellants that certain of the directions issued are not even applied and they are in excess of jurisdiction. The Commission has no jurisdiction to decide truth or validity of the contract or breach thereof and award compensation as it has to act within the four corners of The Electricity Act 2003 and the State Act in so far it is saved by Sec 185 of Electricity Act 2003. It is clear from the discussions, the State Regulator has no jurisdiction to enter upon, inquire or on any part of the dispute or adjudicate the same.

29. In Chetkar Vs Viswanath reported in AIR 1970 S.C. 1334, it has been held that no authority can exceed the power given to it and any action by it in excess of its power is invalid. It is settled law that orders made without jurisdiction are nullity (Sec AIR 1983 S.C. 643 = 1983 (3) S.C.C. 437). In Budhia Swain & Others Vs Gopinath Deb & Others, reported in 1999 (4) S.C.C. 396 a distinction has been drawn between lack of jurisdiction and mere error in exercise of jurisdiction. The former strikes at the very root of the exercise and want of jurisdiction may vitiate the proceedings rendering them and the order passed thereon a nullity.

30. The plea of jurisdiction can be raised at any stages as has been held in *Suresh Kumar Bhikamchand Jain v. Pandey Ajay Bhushan*, (1998) 1 SCC 205. It is also the settled law that no statutory authority or tribunal can assume jurisdiction in respect of subject matter which the statute does not confer on it and if by deciding erroneously the fact on which jurisdiction depends, the court or tribunal exercises the jurisdiction then the order is vitiated. Error or jurisdictional fact renders the order ultra vires and bad as has been laid in *Shrisht dhawan (Smt) v. Shaw Bros.*, (1992) 1 SCC 534 : AIR 1992 SC 1555. In the light of the above discussions the first two points are answered against Respondents and in favour of appellants in the appeal.

31. It is a matter of record that connection applied for by all Respondents has already been given and they have no grievance with respect to the same. Liberty is given to the contesting Respondents to work out their remedies in other respect under Sec 42 (5) of the Act or before the authorities constituted under the Consumer Protections Act 1986 or before any other competent forum.

32. In the result the appeal is allowed setting aside the order dated 15.07.2005 passed by the Haryana Electricity Regulatory Commission, Panchkula in Case No. HERC/PRO-6 of 2004. The parties shall bear their respective cost throughout.

Dated this 29<sup>th</sup> day of March, 2006

**( Mr. H. L. Bajaj )**  
**Technical Member**

**( Mr. Justice E. Padmanabhan )**  
**Judicial Member**