

Before the Appellate Tribunal for Electricity
Appellate Jurisdiction
New Delhi

Appeal No. 11 of 2005

Dated this 26th day of May 2006

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

Reliance Energy Limited

.....Appellant

Versus

1. Sh. K.H. Nadkarni
2. The President, Mumbai Grahak Panchayat
3. Prayas
4. The President, Thane Belapur Industries Association
5. The President, Vidarbha Industries Association
6. Maharashtra Electricity Regulatory Commission

.....Respondents

Counsel for the Appellant Mr. J.J. Bhatt, Sr. Advocate
Ms. Anjali Chandurkar, Advocate
Ms. Syed Naqvi, Advocate and
Ms. Smieeta Inna, Advocate

Counsel for the Respondents Mr. Jawahar Raja, Advocate
Ms. Shubangi Tuli, Advocate
Ms. Ruby Singh Ahuja, Advocate and
Mr. Shantanu Dixit, Advocate

JUDGMENT

1. The present appeal has been preferred by Reliance Energy Limited, the appellant herein, praying this Appellate Tribunal to declare that the methodology adopted by the appellants is the correct methodology and to set aside the Impugned Clarificatory Order dated 25th November, 2004 and the Impugned Order dated 6th June, 2005, passed by the Maharashtra Electricity Regulatory Commission.

2. Heard Mr. J.J. Bhatt, Senior Advocate, appearing along with Ms. Anjali Chandurkar, Mr. Syed Naqvi and Ms. Smieetaa Inna for the appellant and Mr. Jawahar Raja, Advocate, appearing for respondent No.1, Ms. Shubangi Tuli, Advocate, appearing for respondent No.2, Mr. Jawahar Raja, Advocate, appearing for respondent No.3, Ms. Ruby Singh Ahuja for Karanjwala & Co. and Mr. Shantanu Dixit. Apart from submitting arguments, written submissions were also submitted by Mr. Nadkarni written in his own hand as well as by appellant.
3. The brief facts are summarized as under. Initially on 23 August, 2004, Mr. K.H. Nadkarni, one of the respondents, moved the Sixth Respondent Commission, seeking clarification regarding billing procedure by Reliance Energy, a DISCOM. Again on 19th July, 2004, enclosing the bill dated 13.07.2004, the said Mr. Nadkarni, moved the said Commission for clarification in respect of billing difference. Again on 30th July, the said Mr. Nadkarni forwarded a complaint to Vice Chairman of Reliance Energy in respect of the sail billing dispute and to that complaint, there was response from Reliance Energy furnishing details of calculation on 27.07.2004 as well as on 9th August, 2004.
4. On 15th September, 2004, the said Mr. Nadkarni again moved the Maharashtra Electricity Regulatory Commission by his letter to give a ruling in the matter of public interest as according to him, there is patent illegality and error in the billing system as well as charging.
5. After considering the representation made by either side and in particular, the complaint of Mr. Nadkarni, while holding that the billing cycle has been wrongly worked out and the same has to be revised, the Commission passed the following Order on 25.11.2004:

“6. REL were asked vide letter dated 31.8.2004 to furnish their comments, supported by detailed explanation and computation worksheets by 8.9.2004, and were reminded on 21.9.2004 and 7.10.2004. However, no reply has been received.

7. Any plain reading of the Commission’s directives in its Tariff Order would indicate that Shri Nadkarni’s computation is essentially the correct way of applying the revised tariff from 1.7.2004 and segregating the two periods in cases where the bill covers a part of the months of June and July, 2004. However, in the circumstances set out above, the Commission hereby clarifies that, while applying the pre-revised tariff, only the pro-rata consumption for the month of June, 2004 has to be considered to determine which tariff slab will be applicable. For better understanding, the computation principles are annexed to this Order, using some figures from Shri Nadkarni’s own bill.

8. In the circumstances of such cases, when the correct method of computation should have been clear, but also considering the time taken by the Commission to examine the matter raised by Shri Nadkarni and clarify the position so that such billing irregularities are rectified, any over-recovery made should be refunded to the concerned consumers by adjustment through energy bills or by other means by the end of January, 2005, with 12% interest (i.e. the lowest rate chargeable for arrears of payment by consumers).”

6. Thereafter appellant moved a review petition in Case No.18 of 2003, which is the Clarificatory Order passed by the Regulatory Commission on 25th of November, 2004. The Commission, while rejecting the contention advanced by the appellant, disposed of the review petition by Order dated 6th June, 2005 made in Case No.18 of 2002. The material portion in the final order of the review petition reads thus:-

“21. For greater clarity and understanding, the Annexure to this Order sets out the consequent computations, again using Shri Nadkarni’s own case as an example, and taking the number of days as 32 (instead of 33 earlier, considering REL’s clarification at para 14 above).

22. REL had been directed in the Clarificatory Order dated 25th November, 2004 to refund any over-recovery made to the concerned consumers by adjustment through energy bills or other means by the end of January, 2005, with 12% interest (the lowest rate chargeable for arrears of payment by consumers). In its Review Petition, REL had sought a stay on the operation of the Clarificatory Order pending hearing and final disposal. REL essentially reiterated their prayers under letter dated 19th January, 2005 cited at para 5 above. Under letter dated 20th January, 2005, the Commission

made it clear that no stay had been granted. In spite of this and without reference to the Commission's reply, REL reiterated the position under letter dated 23rd January, 2005. At the time of hearing, it was found that REL had admittedly not refunded the amounts of over-recovery. While the approach of the Commission to defaulting stakeholders has never been punitive, such a cavalier attitude cannot be accepted. Nevertheless, the Commission is not inclined to pursue the matter further.

23. Based on the considerations set out at para 20 as illustrated in the computations annexed any over-recovery refunds on this count should be made by 31st July, 2005 with 12% interest from 1st July, 2004. Any refunds made thereafter should be made along with delayed payment charges as well as interest as applicable to delayed payments by REL's consumers @ 18% (applicable to payments made after 6 months) as per the terms set out for such interest on arrears in REL's approved tariff booklet. In any event, all such refunds should be made by 31st August, 2005, and compliance submitted on affidavit by 10th September, 2005.

The Commission disposed of REL's review Petition accordingly.”

7. Challenging the same, the present appeal has been preferred.
8. In this appeal, the Original Clarificatory Order as well as the Review Order are challenged by the appellant. A number of contentions were advanced with respect to the merits of the billing dispute as sought to be claimed by Mr. Nadkarni before the Commission and their learned counsel before us. As we are of the considered view that being a billing dispute, the Regulatory Commission has no jurisdiction, we called upon the counsel on either side to submit on the question of jurisdiction of the Commission and whether it should entertain a complaint relating to billing which is outside the jurisdiction of the Regulatory Commission. On that, the counsel on either side made their submissions. In the nature of dispute, which is a clear being a billing dispute, we also made it clear that we will decide the question of jurisdiction alone at the first instance, as the quantum involved is *de-minimus*.

9. In fact, an identical question was the subject matter of consideration in Appeal No.30 of 2005, 164 of 2005 and 25 of 2006. The said Judgment in our considered view squarely applies to the present appeal.

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

(i) Whether the Maharashtra Electricity Regulatory Commission acted without jurisdiction or authority in issuing directions relating to billing dispute, a consumer grievance, when a special forum has been constituted to redress the grievance relating to billing?

(ii) To what relief, if any?

11. As already pointed out in our Judgment dated 28th March, 2006 made in Appeal No.30 of 200, etc., we have taken the view that such billing dispute has to be agitated only before the Consumer Forum and the Maharashtra Electricity Regulatory Commission has no jurisdiction. In this respect, it has been held thus:-

“19. Section 86(1) enumerates the “functions of State Commission.” The learned counsel for contesting Respondents relied upon Clauses (i) & (k) of the said Act to trace the power of the MERC to adjudicate the billing dispute. Section 86(1) (i) and (k) reads thus:

“86 – Functions of State Commission

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(1) The State Commission shall discharge the following functions, namely:-

- (a)
- (b)
- (c)
- (d)
- (e)

- (f)
- (g)
- (h)
- (i) specify or enforce standards with respect to quality, continuity and reliability or service by licensees;
- (j)
- (k) discharge such other functions as may be assigned to it under this Act.”

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20. On a reading of the said clause, we have no hesitation to reject such a contention, as the two clauses will not take in billing dispute.

21. The relation between a consumer and a distribution licensee is governed by Part VI – Distribution of Electricity. Section 42 (5) to (8) provides with respect to forum for redressal of grievance and the appellate forum as well. When a forum has been constituted for redressal of grievances of consumers by the mandate of Section 42, no other forum or authority has jurisdiction. The MERC, being a regulatory, the highest State level authority under The 2003 Act as well rule making authority has to exercise such functions as provided in the legislative enactment and it shall not usurp the jurisdiction of the consumer redressal forum or that of the Ombudsman. The special provision excludes the general is also well accepted legal position.

22. 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 an appeal to 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 or the Consumer Association. Apart from this, certain of the directions issued are not even applied and are in excess of jurisdiction. The Commission 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 on hand or adjudicate the same.

27. The consumers have a definite forum to remedy the Billing dispute under Section 42(5) and further representation thereof under Section 42(6). Further Section 42(8) also saved the rights of consumer to approach any other forum such as the forums constituted under the Consumer Protection Act 1986 or other courts as may be available. In the circumstances, while making it clear that it is for the consumers to workout the remedies as may be open to them in Law, we hasten to add that we not only declined to examine the merits of the case and counter case of both parties as the issues or controversies are left open to be agitated before competent forum.”

12. Following the above Judgment, the first point is answered against the respondents and in favour of the appellant. As a consequence, on the second point we allow the appeal, set aside the Order passed by the Maharashtra Electricity Regulatory Commission in Case No.18 of 2003 on 25th of November, 2004 as well as the Review Order dated 6th June, 2005 and the complaint of respondents will stand rejected as not maintainable.

13. It is needless to add that it is open to the complainant/ respondent to approach the appropriate forum in respect of the billing dispute, a consumer dispute.

Pronounced in open court on this 26th day of May 2006.

(Mr. H. L. Bajaj)
Technical Member

(Mr. Justice E Padmanabhan)
Judicial Member

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