

Appellate Tribunal for Electricity  
(Appellate Jurisdiction)

Appeal No.149 of 2010

Dated: 04<sup>th</sup> April, 2012

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson,  
Hon'ble Mr.Rakesh Nath, Technical Member

In the Matter of:

**Brihanmumbai Electricity Supply and  
Transport Undertaking  
BEST Bhawan  
BEST Marg, Post Box No.192,  
Mumbai-400 001**

.....Appellant

**Versus**

- 1. Maharashtra Electricity Regulatory  
Commission  
World Trade Centre, Centre No.1  
13<sup>th</sup> Floor, Cuffe Parade  
Mumbai-400 005**
- 2. Tata Power Company Limited  
Bombay House 24,  
Modi Street  
Mumbai-400 001**
- 3. Shri Guruprasad C. Shetty  
1, Durga Niwas  
Opp Lower Parel Station  
Mumbai-400 013**

- 4. Metro Entertainment (Bom) Pvt Ltd.  
Metro House, 2<sup>nd</sup> Floor  
Mumbai-400 020**
  
- 5. Automatic Electric Ltd. of Mumbai  
Rectifier House,  
570, Naigaon Cross Road,  
Near Royal 1/E,  
Wadala, Mumbai-400 031**
  
- 6. Minerva Premises Co-operative  
Society Limited,  
Minerva Estates,  
Bunder Road Sewri (East)  
Mumbai-400 015**
  
- 7. M/s. Aldowiet Engineering Co.  
1<sup>st</sup> Floor, Minerva Movietone Compound,  
Near Digvijay Cement  
Bunder Road, Sewree (East)  
Mumbai-400 015**
  
- 8. Smt. Anila Gupta  
Opp. H.B. Building,  
No.29, Abhyudaya Nagar,  
Kalachowky,  
Mumbai-400 023**
  
- 9. Reliance Infrastructures Ltd.  
Reliance Energy Centre,  
Santacruz (East)  
Mumbai-400 055**

.....Respondents

**Counsel for the Appellant(s) : Mr. Hardinder Toor,  
Mr. Mukesh Kumar  
Ms. Meenakshi  
Ms. Pallavi Mohan  
Mr. T S Sidhu  
Mr. Tanu Priya Gupta**

**Counsel for the Respondent(s): Mr.T.R. Andhyarujina,Sr.Adv. for  
R -1  
Mr. Buddy A Ranganadhan for R-1  
Ms. Richa Bharadwaja for R-1  
Mr. Arijit Maitra for R-1  
Mr. Sugam Seth for R-1  
Mr. Sitiesh Mukherjee for R-2  
Mr. Avijeet Lala for R-2  
Mr. Sakya Singha Chaudhari for R-2  
Mr. Vishal Anand for R-2  
Mr. Anand Srivastava for R-2  
Mr. Siddhartha Chowdhury for R-3  
Mr. P. S Sharda for R-6  
Mr. Akhil Sibal for R-9  
Mr. Shiv K Suri for R-9  
Mr. Hasan Murtaza for R-9  
Ms. Junaira Rahman for R-9  
Mr. Rakesh Pal  
(For Caveator)**

## **JUDGEMENT**

**Per Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson**

1. There are two major questions raised in this Appeal. They are:

(a) Whether the State Commission has the jurisdiction to issue the impugned directions on the petitions filed by the

consumers as against the Tata Power Company, the Distribution Licensee?

- (b) Whether Tata Power Company could be prevented from laying their own distribution network in the area of supply of BEST, being the local authority, in order to supply power to its consumer in its area of supply to comply with the universal service obligations under Section 43 of the Electricity Act, 2003?

2. This Appeal has got a chequered history.
3. BEST (Brihan Mumbai Electric Supply & Transport Undertaking) is the Appellant herein. Maharashtra State Commission is the 1<sup>st</sup> Respondent. Tata Power Company is the 2<sup>nd</sup> Respondent. Guruprasad C. Shetty, who is the consumer of the BEST is the 3<sup>rd</sup> Respondent.
4. Shri Guruprasad C Shetty, (R3), herein is a consumer of the electricity whose premises are situated within the area of supply of BEST and Tata Power Company. On being aggrieved over the refusal of the Tata Power Company, (R2) to supply power to him, for want of no objection certificate from BEST, the consumer filed a case in case No.60 of 2009 before the Maharashtra Electricity Regulatory Commission as against the Tata Power Company seeking

for appropriate directions to Tata power Company to supply power to him under section 43 of the Act,2003.

5. The State Commission after hearing the parties passed the impugned order dated 22.2.2010 directing the Tata Power Company (R-2) being the distribution licensee to provide electricity supply to Shri Guruprasad C Shetty, (R-3), the consumer of the BEST by laying down its own distribution network within its own area of supply by way of discharging its obligation U/S 43 of the Act, 2003.
  
6. Aggrieved over this order, BEST (the Brihanmumbai Electricity Supply and Transport Undertaking), has filed Appeal No.149 of 2010 before this Tribunal challenging the said order on the ground of lack of jurisdiction on the part of the State Commission to go into the dispute between the consumer and the distribution licensee and also on the ground that the issuance of the direction to Tata Power Company to supply power through its distribution network in the area of supply of BEST to Shri Guruprasad C Shetty, the consumer who switched over from the BEST to the Tata Power Company is not valid in law.

7. This Tribunal after hearing both the parties dismissed this Appeal filed by the BEST by the Judgment dated 14.2.2011 by confirming the impugned order dated 22.2.2010 passed by the State Commission. Aggrieved over the said judgement dated 14.2.2011 rendered by this Tribunal, the BEST filed a statutory civil Appeal before the Hon'ble Supreme Court.
  
8. The Hon'ble Supreme Court after hearing the parties remanded the matter directing the Tribunal to hear the parties again and decide the matter afresh on all the issues. As directed, this Tribunal has taken up this Appeal and heard the learned Counsel for the parties again both on the question of jurisdiction as well as on the validity of directions issued by the State Commission.
  
9. The short facts are as under:
  - (a) The Appellant, BEST (Brihanmumbai Electric Supply and Transport Undertaking) is the distribution licensee. It has been providing two essential services in the City of Mumbai, namely, (i) Mass public transportation in the city of Mumbai as well as its extended suburbs, and (ii) Distribution and retail supply of electricity in the Island City of Mumbai.

- (b) BEST was earlier a “licensee” under the erstwhile Indian Electricity Act, 1903 and erstwhile Indian Electricity Act, 1910 and was licensed to supply electricity under the Bombay Electric Licence, 1905.
- (c) BEST is currently a distribution licensee under the present Act, 2003.
- (d) The Appellant under the Maharashtra Electricity Regulatory Commission (Specific Conditions of Distribution Licence applicable to Brihan Mumbai Electric Supply & Transport Undertaking of the Municipal Corporation of Greater Mumbai) Regulations, 2007 is authorised to distribute electricity in the area of supply specified therein in accordance with the provisions of the Electricity Act, 2003 and Rules and Regulations made there under.
- (e) BEST, being a Local authority, a statutory undertaking of the Bombay Municipal Corporation is also encompassed by the definition of the Section 2 (41) of the Electricity Act, 2003.
- (f) Tata Power Company Limited (R-2) was earlier a licensee under the erstwhile Electricity Act, 1903 and erstwhile Indian Electricity Act, 1910. The area of supply by Tata Power Company(R2) under those licenses overlapped the area of supply of BEST, the Appellant.

- (g) Tata Power Company is currently a distribution licensee under the present Act, 2003. Under Regulation, 2008 framed by the Maharashtra State Commission, Tata Power Company is authorised to distribute electricity in the area of supply specified therein under the Electricity Act,2003 as well as under the Rules and Regulations made there under.
- (h) Mr. Guruprasad C Shetty (R-3) is one of the consumers of the Appellant, BEST (LT-II Category). His premises are situated within the area of supply of BEST. The said consumer wanted to switch over from the Appellant to Tata Power Company (R-2), another distribution licensee in the Mumbai as its tariff rate was lower than the Appellant's tariff rate. Therefore, the consumer Shri Guruiprasad C Shetty (R-3), approached Tata Power Company (R-2) on 23.4.2009 and made a request to supply electricity to him as he wanted to switch over from the Appellant to Tata Power Company.
- (i) On 8.7.2009, the Tata Power Company (R-2) advised the consumer (R-3) to approach the Appellant and to obtain the Appellant's no objection certificate for use of its distribution network by the Tata Power Company so that the Tata Power Company could supply electricity to him through the said distribution network.



- (j) In response to the aforesaid advice, the consumer (R-3) approached the Appellant and requested to grant its permission to get the supply from Tata Power Company (R-2) by using the distribution network of the Appellant. However, the Appellant refused to grant such permission to the consumer (R-3). Hence, the consumer (R-3) again approached the Tata power Company (R-2) for supply of electricity informing it about the refusal of 'No Objection Certificate' by the Appellant. However, Tata Power Company (R-2) expressed its inability to supply the electricity to the consumer in the absence of such No Objection Certificate issued by the Appellant to use its distribution network.
10. Under those circumstances, on 25.9.2009, Guru Prasad C. Shetty, the consumer (R-3) filed a Petition before the State Commission U/S 43 of the Act, 2003 praying for the direction to the Tata Power Company to provide electricity supply to his premises either by using the network of BEST or by extending its own network and in case of failure, the licence of the Tata Power Company be cancelled and Tata Power Company (R-2) be directed to pay compensation. The prayer made by the consumer Shri Guruprasad C. Shetty under the case No.60 of 2009 is as follows:

“(i) that this Hon’ble Commission may be pleased to direct TPC to provide electricity supply to the Petitioner and make such supply available as early as possible, either on BEST network or by extending its own network, as may be necessary, failing, TPC’s distribution licence should be cancelled by this Hon’ble Commission,

(ii) that Hon’ble Commission may be pleased to direct the Respondent to pay compensation to the Petitioner under Regulation 3.2 & 12 of Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, period for giving supply and determination of compensation) Regulations, 2005”.

11. Subsequently, five other similarly placed consumers of the BEST(other Respondents) who wanted to switch over to Tata Power Company also filed their respective Petitions before the State Commission raising the same grievance and sought for similar directions. All these petitions were clubbed together and common proceedings were held before the State Commission in which all the necessary parties including the Appellant had participated and made their submissions.
12. The State Commission after hearing all the parties passed the impugned order dated 22.2.2010 holding that the Tata Power Company has to operate in terms of its latest licence conditions which enjoin the Tata Power Company to lay its

own distribution system within its entire area of supply and consequently directing the Tata Power Company to supply electricity to the consumers in its licensed area of supply including consumers who wish to switchover from BEST to TPC in terms of Regulation 4.7 of the Maharashtra Electricity Regulatory Commission Regulations, 2005, through its own distribution system.

13. On being aggrieved over this order, permitting the consumers of the Appellant to get the supply from Tata Power (R-2) by switching over from the Appellant to Tata Power (R-2), BEST has filed the present Appeal.
14. The Learned Counsel for the Appellant raised the contentions in this Appeal questioning the jurisdiction of the State Commission to enquire into the complaints filed by the consumers as against the distribution licensees as well as the validity of the directions of the State Commission asking the Tata Power Company to set-up its own network in the area of supply of Appellant to the consumers of the Appellant.

15. As indicated above, this Tribunal, heard the said Appeal No.149 of 2010 both on the question of jurisdiction as well as on the merits and ultimately dismissed the Appeal filed by the BEST by the judgment dated 14.2.2011.
16. BEST, the Appellant aggrieved over by the said judgement dated 14.2.2011 passed by this Tribunal filed a Statutory Civil Appeal No.2458 of 2011 before the Hon'ble Supreme Court and sought for setting aside the order passed by the State Commission as well as the judgment rendered by this Tribunal.
17. The Hon'ble Supreme Court after hearing the parties passed the final order on 21.10.2011 remanding the matter to this Tribunal giving a direction to this Tribunal to hear the matter afresh. The relevant portion of the order of the Hon'ble Supreme Court is as under:

*“Having heard learned Counsel on both sides, we are of the view that, in the interest of justice, both on the question of preliminary jurisdiction as well as on the merits, the Tribunal should hear the parties and decide the matter in it's entirety afresh in accordance with law. Since the matter is likely to recur, we request the Tribunal to expeditiously hear and dispose of the matter, preferably within three months from today.*

*All rights and contentions of all parties are kept open.  
We express no opinion on the merits of the case.*

*The Civil Appeal is, accordingly, disposed of.*

*No order as to costs.”*

18. In pursuance of this order, we have taken up the Appeal and heard all the parties concerned again for deciding the matter afresh as directed by the Hon'ble Supreme Court.
19. The Learned Counsel for the Appellant has now urged the following contentions:
  - (a) The dispute by consumers against distribution licensees for open access or for laying of distribution system or for payment of compensation are not maintainable before the State Commission. The complaints regarding the billing disputes encompassed by definition of "Grievance" under Clause (c) of Regulation 2.1 of Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006 would lie only before the Internal Grievance Redressal Cell established by the distribution licensee and thereafter before the Consumer Grievance

Redressal Forum and lastly before the Ombudsman. This is borne out from the provisions of Section 42 (5) to 42 (7) of the Act, 2003 read with Rule 7 of the Electricity Rules, 2005 and under Regulations of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006. So, the complaint by the Consumers of the Appellant raising the dispute against the other distribution licensee before the State Commission was not maintainable. This principle has been laid down by the Hon'ble Supreme Court in (2007) 8 SCC 381, Maharashtra Electricity Regulatory Commission v/s Reliance Energy Ltd and Others.

- (b) Even though this complaint was filed by the consumer invoking Section 43 of the Act, the said Section does not empower the State Commission to adjudicate any dispute between the consumer and the distribution licensee. The State Commission cannot rely upon Section 128, 129 and 130 of the Electricity Act, 2003 as these sections can be invoked only after complying with

procedural requirements specified under those Sections. In the present case, the said procedure under Section 128 or 129 and 130 had not been followed.

- (c) The distribution system of the Tata Power Company cannot be allowed to be laid or extended within the area of supply of BEST, in the light of continuation by the State Commission of the exclusions as specified in the erstwhile licenses of Tata Power Company.
- (d) Bare reading of the relevant Sections of the Electricity (Supply) Act 1948 and the Indian Electricity Act, 1910 would disclose that the Tata Power Company under its erstwhile licenses was only a bulk licensee as Tata Power Company would be entitled to make bulk supply only to bulk licensees as erstwhile licenses of Tata Power Company disclose exclusion of clauses IV, V, VI, VII, VIII and XII as specified in the licenses.
- (e) The State Commission has continued to exclude the Tata Power Company from laying down its

own distribution system to supply electricity in retail. As such, the Tata Power Company cannot now be permitted to extend its distribution system within the area of supply of BEST especially when the BEST was declared to be the local authority engaged in the business of distribution of electricity, in the entire area of supply even before the appointed date namely 10.6.2003 on which date the Electricity Act, 2003 came into force. A local authority is placed on a separate and special pedestal compared to ordinary licensees under the Indian Electricity Act, 1910 as well as under Electricity (Supply) Act, 1948.

- (f) On the other hand, the legislature under the Act, 2003 has not granted any special status to the other normal distribution licensees for carrying on a business of distribution of electricity after the appointed date i.e on 10.6.2003. Admittedly, the BEST was declared as a local authority even before the appointed date.
- (g) A local authority engaged in the business of distribution of electricity before the appointed date



is specially placed under the special pedestal under Section 2 (4) and 42(3) of the Electricity Act, 2003 read with Regulation 19 of the Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations, 2005. These provisions would clearly provide that open access is exempted in the area of supply of a local authority engaged in the business of distribution of electricity before the appointed date. Therefore, the extension or permission to a parallel licensee for setting up its own distribution system in the area of supply of the BEST, being a local authority, is not permissible under law as it is detrimental or prejudicial to the electricity distribution business of the BEST. That apart, it would cause irreparable harm to the general public interest as well. So, the impugned order passed by the State Commission is not valid in law.

20. In reply to these issues, the Learned Senior Counsel appearing for the State Commission as well as the other Learned Counsel appearing for the other Respondents

submitted in detail that the dispute was not between the consumers and the distribution licensee on the billing dispute but the State Commission in the present case was being called upon to go into the allegation of the violations and non compliance of the licensing conditions by the Tata Power Company, a distribution licensee, and this dispute cannot be decided by the Grievance Redressal Forum and the State Commission alone is competent under Section 43 of the Act to give appropriate directions to the distribution licensee so as to ensure proper compliance of the provisions of the Act as well as Licensing conditions of the Distribution Licensee by the Distribution Licensee and hence the complaint was maintainable.

21. It was also further contended by the Respondents that even assuming that the BEST was declared as a local authority even before the appointed date, Tata Power Company being another parallel licensee, cannot be prevented from laying their own distribution network when the Tata Power was constrained to do so to comply with the Universal Service obligations under Section 43 of the Act, 2003 by supplying to the consumers in the area of supply which are common to both the licensees.

22. In the light of the above rival contentions, the following questions may arise for consideration:

(a) Whether the State Commission has the jurisdiction to go into the dispute raised in the complaint filed by the consumers against the distribution licensee by referring to Section 43 of the Electricity Act, 2003 when the remedy lies before the Forum for Redressal of the Grievances of the consumers and Ombudsman under Section 42 (5) to 42(7) of the Electricity Act?

(b) Whether the State Commission was in error in holding that Tata Power Company (R-2) can extend or set up its own distribution network to supply electricity to consumer (R-3) in the area of supply of the Appellant being a local authority when the consumer of the Appellant wishes to change over from the Appellant to Tata Power Company?

23. On these questions lengthy arguments were advanced by the Learned Counsel for the parties during the hearings which held on number of days. We have also given opportunity to all the parties including the parties like the

Reliance Company and other complainant consumers, who were impleaded to make their elaborate submissions. We have also given sufficient time to all the parties to file their respective written submissions.

24. As a matter of fact, the Hon'ble Supreme Court passed the order on 21.10.2011 directing the Tribunal to dispose of the Appeal within the time frame. Accordingly, the hearing started on 2.12.2011. The Learned Counsel for both the parties made their elaborate and lengthy submissions on several hearings posted on several dates such as on 9.12.2011, 6.1.2012, 13.1.2012, 20.1.2012, 25.1.2012, 3.2.2012, 15.2.2010 and lastly on 19.3.2012. Ultimately, after allowing them to file their respective written submissions, the judgement was reserved on 19.3.2012. That is how, it has taken some time for disposal of this Appeal.
25. Now let us consider the issues one by one.
26. The **first issue relates to the jurisdiction of the State Commission** in dealing with complaint which has been filed by the consumer as against the distribution licensee. The grievance of the consumer before the State Commission was essentially that the consumer even though had applied to Tata Power Company, the parallel distribution licensee, for supply of electricity in its area of supply as he wanted to

switch over from the Appellant, the same was not given by the Tata Power Company to the consumer on the ground that no objection certificate for using its distribution system was not obtained from the Appellant as the supply has to be given to the consumer only through the distribution system of the Appellant. Accordingly, the Consumer approached the Appellant. However, no objection certificate was not issued by the Appellant. Again he contacted the Tata Power Company, and informed him about his inability to get the certificate and requested it to make supply through its own network. Even then, the Tata Power Company did not incline to accede to his request. Therefore, the Complainant Consumer(R3) was constrained to approach the State Commission and file the Petition under Section 43 of the Act, 2003 with the following prayers:

- “(i) *that the Hon’ble Commission may be pleased to direct TPC to provide electricity supply to the Petitioner and make such supply available as early as possible, either on BEST network or by extending its own network, as may be necessary, failing, TPC’s distribution licence should be cancelled by this Hon’ble Commission,*
- (ii) that Hon’ble Commission may be pleased to direct the Respondent to pay compensation to the Petitioner under Regulation 3.2 & 12 of Maharashtra Electricity Regulatory Commission*

*(Standards of Performance of Distribution Licensees, period for giving supply and determination of compensation) Regulations, 2005”.*

27. In this Petition since the consumer asked for the direction to Tata Power Company to provide electricity supply **either through BEST network or by extension of its own network**, the notice was issued to both the Appellant , the BEST as well as the Tata Power Company(R2). After hearing the parties, the State Commission has issued the following impugned directions.

*“In view of the above TPC has to operate in terms of its latest license conditions which enjoin it to lay its distribution system or network within its entire area of supply.*

*(5) With respect to the requisition of supply by the Petitioners, TPC has stated that “...the connection to the Petitioner’s premises has to be established by TPC within a period of one year as provided in the Standards of Performance Regulations since it involves installation of sub-stations. Therefore, the prescribed time period for providing such connection has clearly not expired”. It has been stated that thus it is unreasonable for the Petitioner to expect that supply of electricity to its premises can be effected within a period thirty days as the nearest infrastructure of TPC for providing supply to the Petitioner is the 22kV sub-station about 350 mtrs to 1000 mtrs in each case away from the Petitioner’s premises and effecting supply to*

*the Petitioner would require TPC to put up a 440 Volt sub-station along with other ancillary equipment and wires. TPC has also stated that “Tata Power did not refuse to provide supply of electricity to the Petitioner as is sought to be projected by the Petitioner”.*

*In view of the above there is no requirement to issue a direction in regard to the Petitioner’s claim of compensation under Regulations 3.2 and 12 of the MERC SOP Regulations. However, TPC is bound by Regulation 4.7 of MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005 in terms of the timelines as mentioned in the said Regulation. Time has started ticking from the date of receipt of applications by TPC from the petitioners who have requisitioned for electricity supply. TPC will have to adhere to the timelines specified in the regulations.”*

28. The directions given in the above order would indicate that Tata Power Company is bound by the Regulations 4.7 of the MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005 to supply electricity to the consumer in its area of supply in which he is a distribution licensee. As a matter of fact, during the course of proceedings before the State Commission, the Tata Power Company agreed to supply electricity to the consumer by extending its own network. Therefore, the State Commission did not think it fit to give direction to the BEST

to share its distribution system with Tata Power Company as prayed for but directed the Tata Power Company to supply power to the consumer through its distribution network.

29. Thus, in the impugned order, the State Commission has given a general direction to Tata Power Company to perform its universal service obligation and to comply with the provisions of the Act and the Regulations by giving supply to the consumers, whosoever, approached for the same. As mentioned above, the said direction was issued only against the Tata Power Company in the interest of the consumers generally and not against the Appellant.
30. The point which has been canvassed by the Appellant is that the petition filed before the State Commission by the consumer against the distribution licensees to provide electricity supply and payment of compensation was not maintainable and as such the said direction is not within the jurisdiction of the State Commission.
31. In fact, the State Commission has passed the impugned order in the proceedings initiated before the State Commission on a spate of complaints from consumers



against both the distribution licensees namely BEST and Tata Power Company (R-2) complaining that both the distribution licensees are arbitrarily hindering the right of exercise of choice of supplier by consumers and essentially seeking directions against the Tata Power Company to supply electricity to the consumers by way of compliance under Section 43 of the Act read with concerned Regulations of the State Commission. In these proceedings, no billing dispute was raised.

32. We will now refer to Section 43 of the Electricity Act under which the complaint was filed by the consumer. Section 43 of the Act reads as under:

*“43. (1) Every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply;*

*Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission or within such period as may be specified by the Appropriate Commission.”*

33. The above Section enjoins on the distribution licensee the obligation to provide electric supply to the owner or occupier of any premises within the time stipulated under this section. This shows that the distribution licensee shall supply to the owner or occupier of the premises on the request within one month and if the said licensee did not comply with this obligation within the time limit so stipulated, the State Commission would be empowered to intervene and rectify the deficiency or default by the distribution licensee. This is a case where the consumer of one licensee wanted to switch over to the second licensee either through the network of the first licensee or directly from the network of the second licensee and the same was being denied.
34. When the distribution licensee is mandatorily required to supply the power to the owner or occupier of the premises in his area of supply and it does not supply, the consumer is entitled to complain the same to the State Commission. When such a complaint is received, the State Commission shall intervene and correct the position by ensuring the proper compliance of the said mandatory provisions.
35. The interpretation of Section 43 as projected by the Appellant would render the time limit prescribed in the said

section redundant. In other words, the Appellant cannot contend that the State Commission is not empowered to ensure compliance of the provisions of the Act and Regulations by the licensees despite the receipt of the complaints of non compliance of these mandatory provisions. This is against the spirit of the Act.

36. It is contended by the Appellant that the powers of Section 129 and 130 have not been properly exercised in this case. Section 129 of the Act is the general power of the Commission to issue directions for the compliance with the Act and Regulations. Section 129 of the Act reads as under:

*“129 (1) Where the Appropriate Commission, on the basis of material in its possession, is satisfied that a licensee is contravening, or is likely to contravene, any of the conditions mentioned in his licence or conditions for grant of exemption or the licensee or the generating company has contravened or is likely to contravene any of the provisions of this Act, it shall, by an order, give such directions as may be necessary for the purpose of securing compliance with that condition or provision.*

*(2) While giving direction under sub-section (1), the Appropriate Commission shall have due regard to the extent to which any person is likely to sustain loss or damage due to such contravention.”*

*130. The Appropriate Commission, before issuing any direction under section 129, shall-*

- (a) serve notice in the manner as may be specified to the concerned licensee or the generating company;*
- (b) publish the notice in the manner as may be specified for the purpose of bringing the matters to the attention of persons, likely to be affected, or affected;*
- (c) consider suggestions and objections from the concerned licensee or generating company and the persons, likely to be affected, or affected.*

37. The bare reading of the above provisions would show that the State Commission has unhindered powers to pass directions against licensees either to prevent the non compliance or to ensure compliance with the Act, the Regulations and conditions of the licence by following the procedures.

38. The complaints in the present case filed before the State Commission by the specific Consumers under section 43 of the Act with specific allegations bringing to the notice of the State Commission to a situation where two distribution licensees namely BEST and Tata Power Company

operating in the same area of supply are not co-operating with consumers who wish to exercise their choice of supplier. This is not a suo moto proceeding. Giving choice of supplier to the consumers and protecting their interest is the main thrust of the Electricity Act, 2003. In fact this Act, 2003 has repealed three other statutes bringing in the new provisions for the betterment of the power sector in the country.

39. According to the complaints of the Consumers before the State Commission, the BEST (the Appellant) is taking an undue advantage of its alleged protection purportedly under Sub section (3) of Section 42 of the Electricity Act, 2003 to hinder the right of exercise of choice by the complainant consumer by not letting them to switch over to Tata Power Company for availing supply at lower tariffs using the wires of BEST.
40. It is also complained that Tata Power Company has also refused to supply electricity to the consumer through its distribution system even though it is statutorily required under Section 43 of the Act to give supply on an application and to lay its own distribution system under sub section (1)

of Section 42 and to supply to the consumers in the area of supply.

41. These aspects can only be adjudicated upon by the State Commission under the provision of 43 and sub section (1) of 42.
42. Interestingly, Tata Power Company against whom the directions had been issued by the State Commission is not aggrieved by the directions. Strangely, the BEST, the Appellant against which no direction had been issued claims to be aggrieved contending that the State Commission is directing another licensee to comply with its obligations under the Act, Regulations and Licence.
43. The Appellant has sought to rely upon the judgement of Hon'ble Supreme Court in Maharashtra Electricity Regulatory Commission Vs Reliance Energy Limited (2007) 8 SCC 381.
44. In the above judgement the Hon'ble Supreme Court had held with regard to billing disputes/disputed electricity bills the Commission could not give the blanket direction to all the distribution licensees of the State without undertaking an

investigation and that consumers should approach the consumer grievance redressal forums established by the distribution licensees to raise their grievances with regard to billing disputes/disputed electricity bills/discrepancy in the bills/bills raised without meter reading/bills raised after a long period of time, etc. This judgment would not apply to the facts of the present case, where no billing dispute is raised.

45. The judgment relied upon by the Appellant in Maharashtra Electricity Regulatory Commission Vs Reliance Energy Ltd – (2007) 8 SCC 381, is required to be read in light of the facts arising in the case before the Respondent Commission and the law applicable in that regard based on which the impugned order was passed.
46. The said Judgment dealt with two distinct Appeals. One of the appeals dealt with the individual grievances of an individual consumer. In that regard the Supreme Court found in para 33 that :

*“Therefore, now by virtue of sub-section(5) of Section 42 of the Act, all the individual grievances of consumers have to be raised before this forum only. In the fact of this statutory provision we fail to understand how could the Commission acquire jurisdiction to*

*decide the matter when a forum has been created under the Act for this purpose”.*

47. The aforesaid passage refers to the powers of the Commission in respect of the individual grievances of an individual consumer and does not pertain to the powers of the Commission in respect of consumers generally.
48. Thus, it is clear in the above judgement that the Hon'ble Supreme Court has held with regard to billing disputes/disputed electricity bills, the consumers have to approach the Consumer Grievance Redressal Cells established by the distribution licensees to raise their grievances and in respect of other disputes, they have to approach the Commission, who has got all powers to pull up the distribution licensee. But in this case as mentioned above, no billing dispute was raised.
49. On the other hand, this is a case where the specific complaints were received by the State Commission by the consumers against both the distribution licensees complaining that they are arbitrarily hindering the rights of exercise of choice of supplier and not on billing dispute.



50. Apart from the fact that disputes like this between two distribution licensees cannot be settled by the Grievance Redressal Cells, further question would arise as to which licensee's grievance redressal Cell could be approached to settle this dispute relating to the conduct of both the distribution licensees; either to the BEST Forum or Tata Power Company's Grievance Forum. Admittedly, the complainant is the consumer of the BEST. We asked a question as to whether the consumer of the BEST could approach the Grievance Cell established by the BEST with the prayer sought for by the consumer before the State Commission i.e. issuance of directions to Tata Power. This is not clarified by the Learned Counsel for the Appellant.
51. Further as indicated above, the prayer contemplated in the complaints filed by the consumers with reference to the dispute between the two distribution licensees and the non-compliance of the mandatory provisions by the Tata Power, the parallel licensee. As mentioned earlier, the judgment in Maharashtra Electricity Regulatory Commission Vs Reliance Energy Ltd (2007) 8 SCC 381 the Hon'ble Supreme Court held that only billing disputes have to be decided by the Consumers Forum but the State Commissions alone have got the jurisdiction to deal with the other situations where the

non-compliance of the condition of licence or Rules and Regulations by licensees are reported. The relevant observations are as follows:

*“14. A comprehensive reading of all these provisions leaves no manner of doubt that the Commission is empowered with all powers right from granting licence and laying down the conditions of licence and to frame regulations and to see that the same are properly enforced and also power to enforce the conditions of licence under sub section (6) of Section 128.*

*15. Thus, insofar as the first contention of the Learned Counsel for the Respondents that the Commission has no power is concerned, we are of the view that the same is wrong. In this behalf the provisions of the Electricity Act, 2003 are quite clear and categorical and Section 128 (6) empowers the Commission to get the conditions of licence enforced. But the question is whether the said power under Section 128 (6) has been rightly exercised by the Commission or not. After clearing the first hurdle, that the Commission has power to issue directions, we shall now examine whether the direction given by the Commission in the present case is correct or not.*

*16. When the Commission received a spate of complaints from consumers against its licensees/distribution companies that they are arbitrarily issuing supplementary/amended bills and charging excess amounts for supply of electricity, it felt persuaded to invoke its general power to supervise the licensees/distribution companies and in that connection issued notice dated 3.8.2004. There can be no*

*manner of doubt that the Commission has full powers to pull up any of its licensee or distribution company to see that the Rules and Regulations laid down by the Commission are properly complied with. After all, it is the duty of the Commission under Sections 45 (5), 55(2), 57, 62, 86, 128, 129, 181 and other provisions of the Act to ensure that the public is not harassed.”*

52. It is clear from the above Judgment that the Hon'ble Supreme Court upheld the power of the State Commission to ensure compliance and the provisions of the Act, Regulations and Licence Condition. However, the Hon'ble Supreme Court in that matter found as a point of the fact that the direction given by the State Commission in that matter were not the result of the proper investigation U/S 128 and thereby the Hon'ble Supreme Court was pleased to set aside the same. In other words the Hon'ble Supreme court has held that there can be no manner of doubt that the State Commission has got full powers to pull-up any of its licensee and distribution Company to ensure that the Rules and Regulations are properly complied with.
53. As indicated above, in this case, direction had been given while dealing with the complaint U/S 43 of the Act as such the powers U/S 43 of the Act cannot be questioned. Section 43 of the Act which embodies the principle of

Universal Supply Obligation is *pari materia* to Section 22 of the Electricity Act, 1910 (now repealed). The Hon'ble Supreme Court in the case of Punjab State Electricity Board Limited Vs Zora Singh and Ors, AIR 2006 SC 182 which was passed in the context of Section 22 of 1910 Act has given apposite exposition to this concept of Universal Obligation. The relevant extracts of the judgement are reproduced below:

*“3. Section 22 of the Indian Electricity Act, 1910 impose a statutory obligation on the licensee to supply the electrical energy in the following term:*

*“Where energy is supplied by a licensee, every person within the area of supply shall, except in so far as is otherwise provided by the terms and conditions of the license be entitled, on application, to a supply on the same terms as those on which any other person in the same area is entitled in similar circumstances to a corresponding supply”.*

*4. Electrical undertakings acquire the character of public utilities by reason of their virtually monopolistic position and their profession to serve the public. The State in exercise of its legislative power had a right to compel the licensees to render service efficiently, promptly and impartially to the members of the public, as has been done by enacting Section 22 of the said Act. Even in common law such public utilities having obtained a licence under a statute are under an automatic obligation by reason of the fact that the property of a public utility is dedicated to public service*

*and impressed with public interest to serve the public and any such statutory obligation is in effect and substance a declaration of the common law.*

*5. Upon the dedication of public utility to public use and in return for the grant to it of a public franchise, the public utility is under a legal obligation to render adequate and reasonably efficient service, without unjust discrimination and at reasonable rates to all the members of the public to whom its use and scope of operation extend and who apply for such service and comply with reasonable rules and regulations of the public utility. Although Section 22 of the Indian Electricity Act, 1910 per se does not apply to Board in view of the provisions of the Electricity (Supply ) Act, 1948, the provisions contained therein indicate that the Board has also a duty to render such services”.*

54. In the present case, the State Commission did not direct the Appellant to share its distribution system, for supply by Tata Power Company. On the other hand, the State Commission held that Tata Power Company Limited, (R2) was obliged under the Act, 2003 to develop and maintain its own Distribution System in its area of supply to supply power to the consumers. Accordingly, a specific direction had been issued by the State Commission only to Tata Power Company Limited to supply electricity to its consumers situated in the common area of supply of Tata Power Company Limited and BEST as per the Licensing Conditions by laying down its own new Distribution Network.

55. It is quite appropriate in this context to refer to the relevant portions of the impugned order on this aspect:

*“The Commission in its aforesaid Order dated 15.6.2009 had also stated “Hence, incurrence of capex cannot be a condition for meeting the Licensee’s obligations to all the consumers. In fact, the capital costs should be incurred only when there is no better optimal solution”.*

*The above recommendation of the Commission does not dilute TPC’s statutory duty under Section 42 (1) of the Act to develop and maintain an efficient, co-ordinated and economical distribution system in its area of supply and to supply electricity in accordance with the provisions contained in the Act. TPC will, therefore, need to make arrangements towards fulfilling its statutory duty on a continuous basis. Shri Shetty has stated that TPC already has its own distribution network within BEST’s area of supply. This has not been disputed by TPC. The question is only to extend it to connect it to the premises of the Petitioners”.*

56. Therefore it has to be held that the State Commission has got the jurisdiction to deal with a complaint under Section 43 of the Act read with Section 129 to issue impugned direction to the distribution licensee namely Tata Power Company for ensuring the compliance of the provision of the Act as well as the Regulations in view of the fact that the State Commission alone is competent to issue the

impugned directions as this dispute does not involve the billing dispute. It was also not a simple case of delay in providing supply to a consumer by the distribution licensee but the case of existing consumers of the licensee being denied the exercise of choice of supply from the other parallel licensee, which could only be decided by the State Commission and as such the State Commission has the jurisdiction to decide the dispute in question.

57. Learned Counsel for the Appellant has argued that in the present case the procedure under Sections 128, 129 and 130 had not been followed. Section 128 envisages a direction to a person to investigate into the affairs of a licensee, on the Commission being satisfied that the licensee has failed to comply with any of the conditions of licensee or failure to comply with any of the provisions of the Act or the rules or regulations made thereunder. Section 130 envisages the service of notice to the concerned licensee and the affected persons and consideration of their suggestions and objections. In this case notice was served to both the distribution licensees viz the BEST and the Tata Power Company and they were heard by the Commission. Tata Power Company offered to set up its own distribution system in order to supply to the complainant consumers. Thus, in our opinion there was no occasion or need to

appoint an investigating authority as envisaged under section 128 to assist the Commission. The Commission has also noted in the impugned order that “in view of admissions made by the Tata Power Company in its reply there is no need to issue directions on this account to Tata Power Company with respect to specific cases of requisition for electricity supply”. Thus, the contention of the Appellant regarding the failure to follow the procedure would fail.

58. Consequently, the **First contention** regarding jurisdiction raised by the Appellant is rejected.
59. The next issue relates to the validity of the directions issued by the State Commission to the Tata Power Company (R-2) to set up its own distribution network and to supply electricity to consumers in the area of supply of the Appellant, even though, the Appellant is local authority having a special status.
60. According to the Appellant, the BEST being a local authority is placed on a special pedestal as compared to any other normal distribution licensees and hence no other distribution licensee like the Tata Power Company could be permitted to lay its own network in the area of supply of the Appellant to



supply power to the consumers of the Appellant. It is further contended by the Appellant that the analogy of Section 42(3) by which a local authority being a distribution licensee is exempted from granting open access to its system ought to be extended to Section 43 as well and hence the opening words of Section 43 would include a restriction that another distribution licensee's universal service obligation would be subject to the right of the Appellant namely local authority to keep out such distribution licensee from its area of supply.

61. The Appellant has further contended that even under the Electricity Act, 2003, the Open Access cannot be allowed and the Distribution system of the parallel licensee like Tata Power cannot be extended within the area of supply of BEST in the light of due recognition and protection given to the special category of licensee, being declared as a local authority engaged in the business of Distribution of Electricity before the appointed date on a special pedestal compared to the ordinary distribution licensees under Section 2 (47) and 42 (3) of the Electricity Act, 2003 read with Regulation 19 of the Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations, 2005 which provide that the open access is exempted in the area

of supply of a local authority engaged in the business of distribution of electricity before the appointed date and therefore, the impugned order passed by the State Commission directing the Tata Power to extend its own distribution system and to supply the power to the consumers of the Appellant in its area of supply is wrong.

62. We have carefully considered these submissions.

63. While dealing with this issue, it would be appropriate to refer to the relevant provisions empowering the State Commission to grant parallel license to the two or more persons. From the conspectus of the entire provisions of the Act, 2003 it is noticed that one of the prominent features of the Act, 2003 is that it provides for multiple distribution licensees in the same area of supply. The 6<sup>th</sup> proviso to Section 14 of the Act, in fact allows the State Commission to grant license to two or more persons for distribution of electricity through their own distribution system within the same area of supply. 6<sup>th</sup> Proviso to Section 14 provides as under:

*“Provided also that the Appropriate Commission may grant a license to **two or more persons for distribution of electricity through their own distribution system within the same area, subject to***

*the conditions that the Applicant for grant of licence within the same area shall, without prejudice to the other conditions or requirements under this act, comply with the additional requirements (including the capital adequacy, credit-worthiness, or code of conduct) as may be prescribed by the Central Government and no such applicant who complies with all the requirements for grant of licence, shall be refused grant of licence on the ground that there already exists a licensee in the same area for the same purpose”.*

64. The bare perusal of the above proviso would make it evidently clear that the Act does not put any restriction or qualification on the grant of parallel license in an area where the other licensee happens to be a local authority. In other words, the Act does not make any distinction or provide special dispensation with respect to supply of electricity in the areas where the other distribution licensee happens to be a local authority.
65. Section 43 of the Act mandates that the every distribution licensee, who holds a license under the provisions of the Act, shall give electricity supply to any owner or occupier of the premises situated within its license area of supply upon an application made for such purpose. The Universal Supply Obligation Under section 43 is cast indiscriminately amongst all the distribution licensees operating in the same area of supply. It does not in any manner subdue the

responsibility of the distribution licensee who operates along with the local authority in a common area of supply. The failure to comply with this compulsory obligation in fact, attracts penal consequences for the concerned distribution licensee which liability does not abate merely on the ground that the other distribution licensee in the same area of supply happens to be a local authority.

66. Similarly, the consumer's right to choose a supplier of its choice and demand electricity supply from such distribution licensee, which is enshrined in Section 43 is not extinguished on account of the presence of a local authority as one of the distribution licensees.
67. Bearing the same in mind, let us now again look into Section 43 which is quoted below:

**“43. Duty to supply on Request-**

*(1) Save as otherwise provided in this Act, every distribution licensee, shall on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply;*

*Provided that where such supply requires extension of distribution mains, or commissioning of new substations, the distribution licensee shall supply the*

*electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission:*

*Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.*

*Explanation- For the purposes of this sub-section, "application" means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.*

- (2) *It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub section (1):*

*Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.*

- (3) *If a distribution licensee fails to supply the electricity within the period specified in sub section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default".*

68. The close reading of the above section would clearly indicate that the statutory duty imposed upon the Tata

Power (R-2) U/S 43 which is a parallel licensee in the South Mumbai area and which area is also served by the Appellant as the local authority, to supply electricity to any consumer who wishes to receive electricity supply from Tata Power in the area of supply. This is not restricted by the presence of a local authority as the parallel licensee in the area of supply in view of Section 43 (2) which mandates that it shall be the duty of other distribution licensee to provide if required electric supply to the consumers whose premises are situated in its area of supply. Therefore, u/s 43 (2) of the Act,2003, Tata Power Company is entitled to lay down its own electric plant or electric line for giving electric supply to the premises in respect of which the Tata Power received applications demanding electric supply. As mentioned earlier, the presence of a local authority as a parallel licensee has absolutely no bearing on Universal Supply Obligation imposed upon the distribution licensee under Section 43. Therefore, the Appellant's status of local authority cannot in any manner restrict or constrict the Tata Power Company to supply electricity to the consumers situated in the common license area of South Mumbai.

69. If Tata Power is denied the right to connect and supply to the consumers situated in the BEST (Appellant's) area by

laying its own network, then it would mean that the distribution license granted to Tata Power which is for entire city of Mumbai including South Mumbai is devoid of any effect in the area of South Mumbai despite the fact that Tata Power's license permits the Tata Power both for laying its network as well as for making its retail supply.

70. The Appellant contended that U/S 42 (3) of the Act, 2003, the Appellant in its capacity as a local authority is conferred with exclusive right to supply electricity to the consumers situated in its licensed area of supply. Let us now quote Section 42 (3) of the Act which reads as under:

*“Where any person, whose premises are situated within the area of supply of a distribution licensee, (not being a local authority engaged in the business of distribution of electricity before the appointed date) requires a supply of electricity from a generating company or any licensee other than such distribution licensee, such person may, by notice, require the distribution licensee for wheeling such electricity in accordance with regulations made by the State Commission and the duties of the distribution licensee with respect to such supply shall be of a common carrier providing non-discriminatory open access”.*

71. Section 42 of the Act is limited to the issue of grant of Open access and Section 42 (3) implies to a situation where any person whose premises are situated within the area of

supply of any distribution licensee requires supply of electricity from a generating company or licensee other than the distribution licensee operating in that area.

72. As per Section 42 (3) a distribution licensee is mandatorily obliged to give non-discriminatory open access to its distribution network and wheel electricity to the premises of a person who is situated in the license area seeks to receive supply. The only exception to this mandatory rule is that a local authority which is engaged in the business of distribution of electricity is not obliged to provide such open access to a consumer on its network to receive the supply from a third party source from outside the area.
73. Merely because Section 42 (3) of the act purports to exempt a local authority from granting open access to the 3<sup>rd</sup> party from outside the area cannot mean that 42 (3) must automatically include within its ambit a restriction that no other licensee can also lay out its own distribution network in such area.
74. In other words, the mere fact that Section 42 (3) purports to lay such restriction would not apply to Section 43. The



power of the State Commission to introduce open access u/s 42 is very wide.

75. On the other hand, Section 42 (3) deals with the specific form of open access. This means that local authorities have been exempted from providing open access u/s 42 (3) to prevent generating Companies or licensees of any other area from luring away the consumers situated in the areas of local authority by supplying through open access. This will not apply to the other distribution licensee who is a parallel licensee.
76. In the present proceedings Tata Power as a parallel distribution licensee has the obligation to supply to all the consumers situated in the area of supply of the BEST. The mechanism for open access under Section 42 (3) has been provided for the contracts under Section 49 of the Act. However, Section 42 (3) of the act will not apply to the parallel licensee which involves supply of electricity to changeover consumers situated in the BEST area of supply at regulated distribution tariff.
77. The mere fact under Section 43 opens with the words “save as otherwise provided in this act” is immaterial unless

such restriction were specifically found elsewhere in the Act. Undisputedly there is no such restriction anywhere else in the Act.

78. The exemption carved out for local authority under Section 42 (3) cannot be read into Section 43 or other functions of the distribution licensee under the Act when no such exemption has been expressly provided by the legislature to bestow the local authority with the monopoly to supply electricity to the consumers situated in its license area.
79. In law, the State Commission would always be empowered to grant second license for the area of distribution of local authority engaged in the distribution of electricity. There was no restriction of any kind against the same in the 6<sup>th</sup> proviso of Section 14. If the contention of the Appellant is accepted, it would amount to adding to the words to the 6<sup>th</sup> Proviso of section 14 of the Act, 2003 “except in the area of supply of local authority which is a distribution licensee”. Wherever the legislature thought it fit to grant a special status to local authority it has specifically made a provision thereof such as Section 42 (3) and 51 of the Act etc. If there is no such similar expression or special provision in either Section 43 or Section 14 6<sup>th</sup> proviso, then, no such

expression or provisions can be inserted in to the Section by such wrong interpretation.

80. The impugned directions do not direct the Appellant to provide its network to Tata Power nor the impugned directions direct the BEST to grant open access. Therefore, the question as to whether the Appellant can legally refuse to open access under Section 42 (3) of the Act does not arise in the present proceedings.

81. The Appellant has relied upon the MERC (Specific Conditions of Distribution Licence applicable to the Tata Power Company Ltd) Regulations, 2008. The Appellant relies upon the last line of Regulation 4.1. which reads as “...subject to such conditions and exclusions as specified in the said TPC licensee”. The Appellant contends that such line have an effect of bringing back one of the clauses of the original TPC licences of 1907 in clause No.6 (II) thereof. The clause No.6 provides that the licensee (Tata Power) shall not supply energy for lighting purposes except by agreement with the BEST. The said clause namely clause 6 (II) does not appear to form part of the TPC licence after 1978. Hence question of BEST relying on the conditions of

licence of 1907 quoting 6 (II) to support its case would not arise.

82. As a matter of fact, the last line of Regulation 4.1 of the aforesaid specific conditions refers only to the exclusions and conditions in the area of supply as contained in the TPC licence. This is clear from the fact that the Regulation 4.2 of the said Specific conditions which deals with “purpose of supply” does not have any such restriction. Regulation 4.2. is reproduced below:

“4.2 The Distribution Licensee is authorized to supply electricity to the public for all purposes in accordance with the provisions of the Act.”

83. The MERC Specific Conditions of License Regulations adverts to the exclusions in the area of supply in the License of TPC. The exclusion does not imply saving those clauses in Tata Power License.
84. Even in such clause such as “ purpose of supply clause 6 (II)” were still in existence, under the first proviso to Section 14 as also Section 172 (b) of the Act, the provisions of the Electricity Act, 2003 would apply after one year of the appointed date namely the date on which the Act came into

force to the business of distribution licensee notwithstanding any condition of the licence. Hence such condition even if it is there, could not operate subsequent to 10.6.2004 i.e. after one year, because a distribution licensee is not required under the Act, 2003 to seek permission from any other distribution licensee to lay its distribution system/network.

85. The issue relating to the entitlement of the Tata Power to supply electricity to even to the retail consumers was conclusively dealt with by the Hon'ble High Court in the matter of Tata Power Co Ltd v. Reliance Energy Ltd (2008) 10 SCC 321. The Hon'ble Supreme Court while deciding the right of the Tata Power to supply electricity in retail directly to its consumers situated in its license area has made the following observations:

*“.....Having regard to the above and the terms and conditions of the licences held by Tata Power, we have no hesitation in holding that the Appellate Tribunal for Electricity erred in coming to a finding that under its licences Tata Power was entitled to supply energy only in bulk and not for general purposes and in retail to all consumers, irrespective of their demand, except for those consumers indicated in Sub-clause (1) of Clause 5 of the several licenses held by Tata Power.*

.....

*.....We quash the orders passed both by MERC and the Appellate Tribunal for Electricity and allow all these three appeals upon holding that under the terms and conditions of the licenses held by it, Tata Power Company Ltd. Is entitled to effect supply of electrical energy in retail directly to consumers, whose maximum demand is less than 1000 KVA, apart from its entitlement to supply energy to other licensees for their own purposes and in bulk, within its area of supply as stipulated in its licences and also subject to the constraints indicated in relation to Sub Clause (1) of Clause 5 in relation to factories and the Railways.”*

86. By this judgement, as indicated above, the right of Tata Power to supply electricity in retail directly to consumers situated in its license area has been upheld. Thus, it is clear that the Tata Power is entitled to supply electricity directly to consumers in its license area which includes the license area of the Appellant.
87. There was no dispute in the fact that the Tata Power has been issued a distribution licenses in the year 1907, 1919, 1921 and 1953 permitting them to supply electricity to consumers in the city of Mumbai consisting of South Mumbai which overlaps with the Appellant's area of supply and the sub-urban Mumbai. These licenses are referred to as erstwhile licenses. The Government of Maharashtra on 12.7.2001 transferred the erstwhile licenses to Tata Power Company. Accordingly, Tata Power Company from

12.7.2001 onwards came to hold the erstwhile licenses on the basis of which the Tata Power Company has been selling, supplying and distributing electricity not only to other licensees, like the Appellant but also to direct consumers of electricity.

88. Clause 4 of Erstwhile Licenses specifically provided for the exclusion of certain areas and premises from the area of supply such as Cantonment, Fortress, Arsenal, Factory, Dockyard, Camp, Building or other place in the occupation of Government of India or Bombay for naval or military purposes.
89. On 7.12.1978, an amendment was effected to the Erstwhile Licenses held by Tata Power by which it was indicated that with effect from 01.7.1980, the distributing rights in respect of several areas would stand transferred from Tata Power to the Maharashtra State Electricity Board.
90. After the coming into force of the Act, 2003 from 10.6.2003, the Maharashtra Electricity Regulatory Commission has notified the MERC (General Conditions of Distribution Licence) Regulations, 2006. Subsequently, the State Commission has issued the MERC (Specific Conditions of

Distribution Licence applicable to the Tata Power Company Limited) Regulations, 2008 (Specific License Conditions) in accordance with Section 16 read with Section 172 (b) of the Act.

91. Regulation 4 of the Specific License Conditions, which specifies the area of supply within which Tata Power is authorised to supply electricity as per the license granted under the new Act, reads as under:

**“4. Area of Supply**

4.1 The Area of Supply within which the Distribution Licensee is authorised to supply electricity shall be the whole of the area as described in (1) The Bombay (Hydro-Electric) License, 1907; (2) The Andhra Valley (Hydro-Electric) License, 1919; (3) The Nila Mula Valley (Hydro-Electric) License, 1921; (4) The Trombay Thermal Power Electric License, 1953 (collectively referred to as “TPC Licenses”) subject to such conditions and exclusions as specified in the said TPC Licenses.

4.2. The Distribution Licensee is authorised to supply electricity to the public for all purposes in accordance with the provisions of the Act”.

92. That the above Regulation 4 embodies the principle contained in Section 14 read with Section 2 (3) of the Act that a distribution license can be granted only with reference



to a specified area of supply. Therefore, the reference to the words “exclusions as specified in the said TPC Licenses” in the above Regulation has to be read in the context of ascertaining the Tata Power’s area of Supply where it can undertake supply and distribution of electricity.

93. In view of the above, the exclusions referred in Regulation 4 are directly relatable to Clause 4 of the erstwhile licenses and it essentially relates to exclusions of such premises and areas namely Cantonment, Fortress, etc. under the occupation of Government of India or Bombay as well as the areas in respect of which the Tata Power’s distribution rights were transferred to State Electricity Board.
  
94. This principle of contextual interpretation requires that the expression cannot be interpreted without taking surrounding terms into account and also to read the entire statute in full in deciding as to how the term should be defined. In order to substantiate these principles, the Learned Counsel for the Tata Power has cited the judgement of Hon’ble Supreme Court in the matter of Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd & Ors., (1987) 1 SCC 424 as under:

*“Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.....”*

95. In view of the above ratio, it may not be proper to construe Regulation 4 of the Specific License Conditions in a manner so as to render express provisions of the Act and the General License Conditions nugatory. Therefore, the exclusions referred to in Regulation 4 of the Specific License Conditions are limited to the area of supply exclusions mentioned in the erstwhile licensees and not the entire license.

96. As mentioned earlier, the Act 2003 mandates that a distribution licensee is under obligation to supply electricity to every consumer within its licensed area of supply. As per Section 43 of the Act if the owner or occupier of any premises situated in the license area of the distribution licensee demands supply then the licensee is statutorily compelled to give connection and release the supply to such an applicant within the stipulated time period. Such obligation of a licensee under the Act cannot be taken away in any manner by reading into it a condition from erstwhile licenses suggesting that Tata Power is required to take prior permission from BEST to connect and supply to consumers situated in its license area which is common with the Appellant.
97. The Appellant has sought to rely upon the conditions contained in erstwhile Licenses held by Tata Power in order to contend that Tata Power cannot supply electricity to consumers in South Mumabai area without obtaining prior permission of the Appellant. This contention is totally erroneous.

98. The license terms relied upon by the Appellant and those referred to in the judgement of the Hon'ble Supreme Court in the License Case relate to the license held by the Tata Power under the erstwhile statutes i.e. Indian Electricity Act, 1910 and Electricity Supply Act, 1948. Admittedly, such statutes stand repealed by the Electricity Act, 2003.
99. That apart, the State Commission in exercise of its powers u/s 16 of the Act, 2003 has notified the general and special conditions of licence applicable to Tata Power as a distribution licensee. These conditions do not provide any restrictions on the rights of the Tata Power to supply electricity in the BEST area of supply. The terms and conditions of the licence granted to Tata Power by the State Government under the repealed Statutes stand superseded by the general and special conditions notified by the State Commission under Section 16 of the Act. Therefore, the Appellant cannot rely upon the earlier terms and conditions and restrictions contained in the Tata Power Licence as they are no more in force.
100. Lastly, it is contended by the Appellant that the Tata Power is not a parallel licensee for the area of supply of the Appellant because he did not comply with the provisions of

the 6<sup>th</sup> proviso to Section 14 of the Act. This contention has never been raised before the State Commission. Apart from that, the contention raised by the appellant as against the Tata Power in our view, is quite strange and misconceived. As a matter fact, Tata Power is a distribution licensee under the provision of the Electricity Act, 2003 and the same has been well settled by the judgment rendered by this Tribunal and the Hon'ble Supreme Court of India.

101. As indicated above, the first proviso to Section 14 of the Act provides for deemed licensees. It states that any person engaged in the business of transmission or supply of electricity under the provisions of the repealed laws or any Act specified in the Schedule on or before the appointed date shall be deemed to be a licensee under the new Act. It further lays down that such deemed license shall remain force for one year period after which the provisions of Act, 2003 shall apply to such business.

102. The erstwhile licenses were granted to Tata Power under the 1910 Act and at the time of coming into force of the new Act i.e. on 10.6.2003, the Tata Power was acting as distribution licensee for the city of Mumbai and suburbs in terms of the erstwhile Licenses so granted. Thereupon,

coming into force of the Act, Tata Power has held to be deemed licensee in terms of the first proviso to Section 14 of the act, and as such the Tata Power was not required to apply afresh for grant of license.

103. As per the terms and conditions, the licenses granted to Tata Power for supplying electricity is valid up to 15<sup>th</sup> August, 2014. Accordingly, in the specific license conditions issued by the State Commission under Section 16 of the Act it is provided that the Tata Power's distribution license shall remain in force till 15<sup>th</sup> August, 2014. So, till that remaining period, the Tata Power shall remain to be a distribution licensee under the Act.

104. That apart, this Tribunal has acknowledged the fact that Tata Power is a deemed distribution licensee as provided in the Specific License conditions issued by the State Commission under the first proviso of Section 14 of the Act in various judgement. Therefore, the Appellant's contention has no basis.

105. It is a specific stand of BEST that it is a local authority having exclusive territorial jurisdiction to supply electricity to the residents within its area and that therefore Tata Power

Company can not supply electricity within this area. On the basis of this stand the BEST was not permitting its competitors including Tata Power Company to lay their own distribution network for supply of electricity in the given license area. This act of BEST leads to a situation of basically denying the operation of parallel licence granted to other parties in the licensed area. Thus BEST is neither allowing supply of electricity through its own network nor it is allowing other distribution licensee to develop its own network which practically results in non-existence of any competitors in that area. This act of BEST is highly discriminative and denial of rights to the consumers in choosing the supplier of their choice based on the quality of service and the price of the power supply by the electricity distributor.

106. Tata Power Company is currently distributing licensee under the present Electricity Act, 2003. In fact Tata Power Company under Regulation 4 of the Maharashtra Electricity Regulatory Commission (Specific Conditions of Distribution License applicable to Tata Power Company) Regulations,2008 has been authorised and required to distribute the electricity in the area of supply specified

therein, in accordance with the provisions of the Electricity Act,2003.

107. It is argued by the BEST that provisions of Section 42(3) of the Electricity Act,2003 and the Regulations framed by the State Commission have patently placed a local authority in the business of distribution of electricity such as BEST on a different and separate footing compared to ordinary distribution licensee. It is further contended that the legislature in its wisdom has thought it fit to place a local authority engaged in business of distribution of electricity on a special pedestal compared to ordinary distribution licensee in the light of public character and public duties discharged by local authority. In this context, it is essential to examine the following question:-

Do the provisions of the Electricity Act,2003, exempt a local authority such as BEST to provide non-discriminatory open access to others?

108. To deal this question we will again refer to Section 42(3) of Act,2003 which reads as under:

*“where any person, whose premises are situated within the area of supply of a distribution licensee,(not being a local authority engaged in the business of distribution of electricity before the appointed date) requires a supply of electricity from a generating company or any*



*licensee other than such distribution licensee, such person may be, notice, require the distribution licensee for wheeling such electricity in accordance with regulations made by the State Commission and the duties of the distribution licensee with respect of such supply shall be of a common carrier providing non-discriminatory open access.”*

109. On a careful perusal of the above provision, it is evident that the interpretation made by the Appellant is mis-placed. The above section says that if a distribution licensee is a local authority, it is not obliged to provide open access through its network to a generating company or any licensee other than such distribution licensee. If the consumers required supply of electricity from a generating company or a distribution licensee other than such a distribution licensee i.e. BEST on the network of BEST, the change over was not possible as the BEST being a local authority was not obliged to supply the same to the consumer but the condition being local authority will not apply in the case of supply by the other existing distribution licensees in that particular area through its own network. It means that if a person namely consumer requires the electricity supply from other than existing distribution licensees then the condition of being local authority would apply. Thus, Section 42(3) does not prohibit in any manner, the Tata Power Company to supply electricity to the

consumer of the Appellant on the pretext that BEST is a local authority. Only on this basis the State Commission in the impugned order dated 22.2.2010 has held that Tata Power Company has to operate in terms of its latest license conditions which enjoins Tata Power Company to lay its distribution system on network within its entire area of supply and that Tata Power Company is bound to supply electricity to any and all the consumers in its licensed area of supply, including the consumers who wish to change from BEST to Tata Power Company.

110. The claim of the BEST that it has exclusive right of supply and distribution of electricity in the licensed area and therefore other licensees should take prior permission from them to supply electricity, is not correct as this conduct is creating huge entry barriers, driving the existing competitors out of market and resulting in foreclosure of competition in the relevant market. Thus, by not providing supply of electricity to its consumers either through its own network or network of Tata Power Company, the BEST, the Appellant has indulged in limiting and restricting the provision of services and denying market access to its competitors in its area of operation. In fact, it would have been in the interest of the Appellant and the consumers that the Appellant could have provided access to its network for supply by Tata Power Company. In that event, it would have avoided the capital expenditure on the additional network and at the same time provided return to the Appellant on its network costs.

111. The contention of the Appellant that the occupiers of the premises situated within the area of supply of local authority can not be supplied electricity by the generating company or any other licensee such as Tata Power Company is not only fallacious but is a gross mis-interpretation of the relevant legal provisions. Section 42(3) of Electricity Act,2003 exempts the local authority to wheel electricity from generating company or any other licensee other than such as local authority and exempts local authority being a common carrier providing non-discriminatory open access to any person whose premises are situated within the area of supply of such local authority required supply of electricity from a generating company or any licensee other than such local authority but as indicated above, aforesaid section does not bar the existing distribution licensee such as Tata Power Company to lay its own distribution system in the area of supply of local authority especially when 42(1) of Act,2003 makes it mandatory on distribution licensee like Tata Power Company to develop a distribution system in its area of supply and to supply to consumers.

112. Admittedly, the area of supply of Tata Power Company and BEST are common area of supply in the sense that both

area distribution licensees having common area of supply. In Mumbai Island city of South Mumbai Area, the Tata Power Company and BEST of Mumbai Municipal Corporation are authorised under respective licences to distribute electricity to the consumers. It is mandatory on a distribution licensee as such Tata Power Company to give supply of electricity in time bound manner in terms of section 43 of the Electricity Act, 2003. The exemption to wheel electricity to a local authority under Section 42(3) of Electricity Act, 2003, does not act as a bar to other distribution licensees such as Tata Power Company to operate and maintain their distribution system of wires and associated facilities between the delivery points on the transmission lines or generating station and the point of connection of the installation of the consumer for supplying electricity to the consumers in its area of supply.

113. The stand of the BEST debarring Tata Power Company from supplying electricity to the consumers in its area of supply and from developing distribution network in its area of supply cuts at the root of legislation which provides “An Act....for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all

areas.....”. In light of the above legislation and its purpose and objective, the stand of the BEST is not only deserved to be rejected but needs to be severely deprecated.

114. A distribution licensee’s duty to supply electricity is of public character and public duty and in this regard there is no special status can be claimed by the Appellant to prohibit or bar or hinder entry of other distribution licensees to supply electricity and build their distribution network in furtherance to public duties. The statutory exemption to a local authority is only to wheeling of electricity and nothing else.

115. Therefore, it has to be held that the Tata Power is entitled to supply electricity in retail directly to the consumers situated in its area of supply which includes Appellant’s area of supply. Accordingly, the second issue is also decided as against the Appellant.

116. **SUMMARY OF THE FINDINGS**

- i) **The state Commission has jurisdiction to issue directions referred to in the impugned order to Tata Power Company, the second licensee in South Mumbai area relating to its obligation to supply under Section 43(1) of the Electricity Act.**

- ii) **The State Commission has correctly decided that the Tata Power Company, the second licensee, has to set up its own distribution network to supply electricity to the Respondent consumers of the Appellant who wish to change over supply from the Appellant to Tata Power Company. The status of the Appellant as local authority engaged in the business of supply of electricity can not in any way hinder right of exercise of choice of supplier by the consumers to switch over to Tata Power Company the second licensee of the area.**

117. In view of the above findings, we do not find any infirmity in the impugned order passed by the State Commission. Hence, the Appeal is liable to be dismissed and accordingly the same is dismissed.

118. However, there is no order as to costs.

**(Rakesh Nath)**  
Technical Member

**(Justice M. Karpaga Vinayagam)**  
Chairperson

Dated: 04<sup>th</sup> April, 2012

✓ ~~REPORTABLE/NON-REPORTABLE~~