

Before the Appellate Tribunal for Electricity  
(Appellate Jurisdiction)

Appeal No. 180 of 2008

**Dated: 30<sup>th</sup> March, 2009**

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson  
Hon'ble Mr. A.A. Khan, Technical Member**

IN THE MATTER OF:

BSES Rajdhani Power Ltd. .... Appellants

Versus

Delhi Electricity Regulatory Commission & Anr. .... Respondents

**Counsel for the Appellant(s): Mr.Amit Kapur with Srivenketesh &  
Mr.Mohit Jolly, Mr.Anupam Verma**

**Counsel for the Respondent(s): Mr.Meet Malhotra with Mr.Ravi S.S.Chauhan  
Mr.Swagat Sharma  
Mr.Deepak Rathi & Mr.Ajay K.Arora, Deputy  
Director for Respondent No.1**

## **JUDGMENT**

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

1. BSES Rajdhani Power Ltd. is the Appellant herein.
2. By the order dated 26/8/08, the State Commission of Delhi directed the Appellant to pay a compensation of Rs. 30,000/- to the consumer, R-2 herein. Aggrieved by this Order, the Appellant has filed this Appeal. Short facts of the case are as follows:

3. Smt. Rekha Rathi, Respondent No.2 herein, on 8/5/04 sent a complaint to the BSES Rajdhani Power Ltd. (BRPL), the Appellant distribution company alleging that she received a bill in her name in respect of the old meter, even though the same was not installed in her premises and requesting the Appellant to rectify the mistakes by withdrawing the said wrong bill. In spite of the receipt of the complaint, there was no response. Thereafter a reminder was sent to the Appellant. Even then, there was no action. Therefore, on 26/5/04 the complainant consumer filed a complaint before the Consumer Grievance Cell of the Appellant. The Grievance Cell after hearing the parties passed an order on 10/8/06 holding that the billing was wrong and as such, the Appellant is responsible for wrong billing. Despite this order, no corrective action was taken by the Appellant to rectify the mistakes. Hence the consumer, R-2 herein filed an Appeal before the Ombudsman.

4. The Ombudsman enquired into the matter and passed a final order dated 3/1/07 holding that there has been wrong billing and directed the Appellant to pay a penalty of Rs. 11,000/- for 22 wrong bills @ Rs. 500/- per wrong bill. The Ombudsman, thereupon sent a Report to the State Commission of Delhi, reporting that there is a complete violation of the DERC Regulations and the licensing conditions in the instant case and due to that, the complainant consumer had to run from pillar to post to seek justice, and underwent a lot of harassment.

5. On receipt of this report, the State Commission took cognizance of the alleged violations and issued a show cause notice

to the Appellant. The Appellant appeared before the State Commission and filed a statement admitting therein that it is a case of wrong billing. On the basis of the materials available on record and also on the basis of the Statement of admission made by the licensee, the State Commission passed the final order dated 26/8/02 directing the Appellant to pay the compensation of Rs.30,000/- to the consumer, R-2 herein. Aggrieved over this order, the Appellant has filed this Appeal, questioning the jurisdiction of the Commission to pass the said order, even though the Appellant submitted to the jurisdiction of the State Commission and filed an affidavit, admitting the violations as well as wrong billing.

6. The crux of the point raised in the Appeal by this Appellant is the following:

**The grievance of consumers regarding the billing can be redressed only by the Grievance Redressal Forum under Section 42(5) and thereafter, by the Ombudsman on the Appeal under Section 42(6). Against the order of the Ombudsman which is final, no Appeal is provided before any forum either under the Act or under the Regulations. Even then, the State Commission without any jurisdiction awarded the compensation through the impugned order which is illegal.**

7. In elaboration of the above point, Shri Amit Kapoor, the Learned Counsel for the Appellant has highlighted two aspects of the matter:

A. "As per Section 42(5) and 42(6), the power to resolve the disputes between the licensee and the consumers has been vested only with

the Grievance Cell and the Ombudsman and not with any other authority. The order of the Ombudsman is final. Therefore, the order of the State Commission invoking the powers of Appeal to redress the Grievance of the consumer would amount to usurpation of the powers of the Grievance Cell and Ombudsman.”

B. “Under Section 86 of the Act, State Commission can resolve the disputes only between the licensees and the generating companies and not the dispute between the licensee and the consumer. In this case, the State Commission has exceeded its jurisdiction by deciding the dispute between the Licensee and the Consumer”.

8. In order to substantiate the above contentions, Shri Amit Kapoor, the Learned Counsel for the Appellant has cited the following decisions:

1. 2007 Aptel 356, Dakshin Haryana Bijli Vitaran Nigam Ltd. Vs. DLF Services Ltd.
2. 2007 Aptel 764, Dakshin Haryana Bijli Vitaran Nigam Ltd. Vs. Princeton Park Condominiums Ltd.
3. AIR 2008 SC 1042, Maharashtra State Electricity Distribution Co. Ltd. Vs. Lloyd Steel Ltd.

In these cases, it has been held that grievances of the consumers can be redressed only by the Grievance Cell and the Ombudsman, and there is no further Appeal.

9. Refuting the above contention, Shri Malhotra, the Learned Counsel for the State Commission would make the following reply submissions:

- A. The Appellant admittedly submitted to the jurisdiction before the Commission on receipt of the Show Cause Notice issued by the Commission, and the Appellant admitted its violations by stating that it was a case of wrong billing. When such was the stand of the Appellant before the Commission, the Appellant cannot turn round and say now before the Tribunal that the State Commission has no jurisdiction to pass the order impugned.
- B. Even though the consumer, R-2 herein has been given the right to approach the Grievance Cell under Section 42(5) and then to file an Appeal before the Ombudsman under Section 42(6) of the Act to get the grievance redressed, it cannot be said that those rights would straightaway oust the jurisdiction of the State Commission to pass such orders to punish the licensee for the violations by invoking powers conferred under the various provisions of the Act, Regulations etc. In this case, the State Commission has not invoked any powers conferred on the Grievance Cell or on the Ombudsman to impose compensation. On the other hand, the Commission on receipt of report from the Ombudsman, invoked suo moto and inherent powers conferred under the Act and Regulations, and imposed compensation on the Licensee on the basis of the violations established. Those

powers are envisaged in Sections 16, 57, 86(1) and 128 of the Act, Rule 7 of Electricity Rules, Rule 27 of the Regulations, 2003 and Clause 19(8) and 22(7) of the Licensing Conditions. Hence, the State Commission is well within its powers to direct the Licensee to pay compensation.

10. In support of the above contentions, the Learned Counsel for the State Commission has cited 2007 8 SCC 381, Maharashtra Electricity Regulatory Commission Vs. Reliance Energy Ltd. wherein it is held that the Commission has full powers to pull up any of its licensees to see that the rules and Regulations are properly complied with, and pass such orders so that the public is not harassed by invoking the powers under Section 45(5), 52, 55(2), 57, 62, 86, 128, 129 and 181 of the Act.

11. We have heard the Learned Counsel for both parties we have given our anxious consideration to their respective contentions.

12. The Learned Counsel for the Appellant submits that the Commission has no jurisdiction to pass the order impugned. The Learned Counsel for the Commission contends that the Commission has jurisdiction to pass such orders. In the light of the above rival contentions, the question that arises for consideration is this: "when there is a remedy available to the consumers for approaching the Grievance Cell and Ombudsman under Sections 42(5) and 42(6) of the Act for getting their grievances redressed and when there is no Appeal provided against these orders, can the State Commission impose the punishment of compensation by

usurping the jurisdiction of the said authorities, namely the Grievance Cell and Ombudsman?

13. The Learned Counsel for the Appellant mainly relies upon the decision of this Tribunal and the Supreme Court in support of his plea. The following are the authorities:

- i. 2007 Aptel 356
- ii. 2007 Aptel 764
- iii. AIR 2008 SC 1042

Let us now refer to the relevant observations in the above Judgments, in order to see as to how this point has been dealt with:

- i. 2007 Aptel 356, Dakshin Haryana Bijli Vitaran Nigam Ltd. Vs. DLF Services Ltd.; wherein the relevant observations made by the Tribunal are as follows:

**“The State Commission in law cannot usurp either the jurisdiction of the Grievance Redressal Forum or the Ombudsman. In respect of the grievance of the consumers, the specific forum of redressal and representation to a higher authority are provided and the regulatory commission has no jurisdiction apart from the fact that it is either the appointing authority or the authority conferred with the powers to frame Regulations, and not even an Appeal power has been conferred on the State Commission with respect to consumer grievance.”**

ii. Relevant observations in 2007 Aptel 764, Dakshin Haryana Bijli Vitaran Nigam Ltd. Vs. Princeton Park Condominium is as follows:

**“The regulatory commission 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 law. All these statutory provisions conferring jurisdiction on the redressal forum, thereafter to approach the Ombudsman, it follows that the State Commission has no jurisdiction to decide the dispute raised by the consumers.”**

iii. Relevant observations in AIR 2008 SC 1042, MSEDCL Vs. Lloyd Steel Industries Ltd. are as follows:

**“The basic question is whether the individual consumer can approach the State Commission under the Act or not. By virtue of Section 42(5), all the individual grievances of the consumers have to be raised before the Grievance Redressal Forum and the Ombudsman only. The Commission cannot decide about the disputes between the licensees and the consumers”.**

14. On going through the Judgments referred to above and also the provisions under Sections 42(5) and 42(6) of the Act, it is clear that there cannot be any controversy with regard to the position of law which has already been settled to the effect that the consumer has got the remedy to get the grievance redressed by filing a complaint before the Grievance Cell and thereafter by filing the



Appeal before the Ombudsman which is final and no Appeal could be filed before the State Commission.

15. Now the real question is whether this settled position of law would apply to the present facts of this case? Admittedly, the consumer/complainant never approached the State Commission by way of filing of a complaint with the prayer to adjudicate upon the dispute between the consumer and the distribution licensee. In this case, the consumer approached the Grievance Cell only. Admittedly, after the order was passed by the Grievance Cell, the consumer filed the Appeal only before the Ombudsman and obtained the orders and thereafter, she never filed any Appeal before the State Commission as against the said orders.

16. It is the specific stand of the Learned Counsel for the Commission that the State Commission did not invoke the powers under Section 42(5) and 42(6) of the Act and it only invoked its inherent, independent, suo moto powers on the basis of the Ombudsman's report and passed the impugned order, and when such being the case, the question of usurping the powers of the Grievance Cell and Ombudsman does not at all arise and as such, the authorities cited by the Learned Counsel for the Appellant would not apply to the present facts of this case.

17. In the light of the above stand taken by the Learned Counsel for the Commission, we are to examine the only question which is relevant is this: whether or not the State Commission is vested with the independent and inherent powers to initiate suo moto

proceedings as against the Appellant licensee on the basis of the Report of the Ombudsman complaining about violation of the licensing conditions and Regulations, and to punish the said licensee by way of imposing compensation, irrespective of the other remedies available to consumers to take action against the Licensees through the Grievance Cell mechanism provided under Section 42(5) and 42(6) of the Act?

18. To find out the answer for this question, it is appropriate to refer to the relevant observations made by the Supreme Court in 2007 8 SCC 381, MSEDCL Vs. Reliance Energy Ltd. and the same is contained in para 18, which is as follows:

**“There can be no manner of doubt that the Commission has full powers to pull up any of its licensee 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), 52, 55(2), 57, 62, 86, 128, 129, 181 and other provisions of the Act to ensure that the public is not harassed .....**”

The above observation would clearly indicate that the Supreme Court endorses the power of the State Commission to pull up the licensee/distribution company and punish them, whenever the Commission finds that there are violations of rules and Regulations, and licensing conditions framed by the State Commission. It is further mandated by the Supreme Court that it is the duty of the State Commission to take action against the distribution licensees who harass the consumer public, by violating

the rules and conditions under the powers conferred under the Sections 45, 52, 55, 57, 62, 86, 128, 129 and 181 of the Act. In other words, the Supreme Court gives clear indication about the existence of the independent powers of the State Commission to deal with breach of licensing conditions and Regulations by the distribution licensees to protect the interest of the public.

19. If we go through the above provisions of the Act as referred to in the Supreme Court Judgment, it would clearly indicate that whenever the licensees fail to perform according to the standards prescribed by the Commission and whenever they violate the rules and Regulations, the Appropriate Commission has got the independent full power to take such action so as to pull up and punish the licensee for the said violation. In other words, the Supreme Court in the above decision has nowhere held that once the consumer avails of remedies through the Grievance Cell and the Ombudsman, the independent powers of the Commission in respect of imposing compensation or punishment for breach of Regulations etc. on the licensee stand extinguished. So, the ratio decided by the Supreme Court is that “the Appropriate Commission is well within its power to punish the distribution licensee who has harassed the public as his consumers, by imposing compensation.

20. Now let us refer to the relevant provisions contained in the Rules and Regulations and Licensing Conditions with reference to the independent and suo moto powers of the Appropriate Commission to deal with violations committed by the licensees, as pointed out by the Learned Counsel for the State Commission.

21. Under Section 16 of the Act, the Appropriate Commission may specify conditions of license which shall apply to a licensee. The said rule is as under:

**Section 16. Conditions of License**

**“The Appropriate Commission may specify any general or specific conditions which shall apply either to a licensee or class of licensees and such conditions shall be deemed to be conditions of such license....”**

22. Under Section 57 of the Act, the Commission shall specify the standards of performance of a licensee and if the Commission finds that the standards have not been complied with, the Commission can order payment of compensation directing the licensee to pay the same to the affected person without prejudice to any penalty which may be imposed on the licensee under other provisions. The said Section is as under:

**Section 57. Standards of performance of licensee.-**

- (1) **“The Appropriate Commission may, after consultation with the licensees and persons likely to be affected, specify standards of performance of a licensee or a class of licensees.”**
  
- (2) **If a licensee fails to meet the standards specified under sub-section (1), without prejudice to any penalty which may be imposed or prosecution be initiated, he shall be liable to pay such compensation to the person affected as may be determined by the Appropriate Commission :**

**Provided that before determination of compensation, the concerned licensee shall be given a reasonable opportunity of being heard.**

23. Rule 7 of the Electricity Rules provides for establishment of a Grievance Cell Forum by the licensee and the appointment of an Ombudsman. Under this rule, the Ombudsman after passing the award, shall prepare a report periodically, with reference to the compliance of the standards of performance by the licensee, as specified by the Commission under Section 57 and send the same to the State Commission. The said rule is as under:

**Rule 7 of the Electricity Rules:-**

- (1) **“The distribution licensees shall establish a forum for redressal of grievances of consumer under sub-section (5) of Section 42 which shall consist of officers of the licensee.**
- (2) **The Ombudsman to be appointed or designated by the State Commission under sub-section (6) of Section 42 of the Act shall be such person as the State Commission may decide from time to time.**
- (3) **The Ombudsman shall consider the representations of the consumers consistent with the provisions of the Act, the Rules and Regulations made hereunder or general orders or directions given by the Appropriate Government or the Appropriate Commission in this regard before settling their grievances.**
- (4) (a) **The Ombudsman shall prepare a report on a six monthly basis giving details of the nature of the grievances of the consumer dealt by the Ombudsman, the response of the Licensees in the redressal of the grievances and the opinion of the Ombudsman on the licensee’s compliance of the standards of**

**performance as specified by the Commission under Section 57 of the Act during the preceding six months.....”**

24. Under Rule 27 of the Regulations, 2003, the State Commission is conferred with the inherent powers to make such orders as may be necessary to secure the ends of justice. The said rule is as under:

**“Rule 27. Inherent powers of the Commission**

**Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent powers of the Commission to make such orders as may be necessary for ends of justice or to prevent the abuse of process of the Commission.”**

25. Under Regulation 11 of the Delhi Electricity Regulatory State Commission (Conduct of Business) Regulations 2001, the State Commission may initiate suo moto proceedings against any licensee violating the conditions. The said rule is as under:

**“Rule 11. Initiation of Proceedings**

**(i) The commission may initiate any Proceedings suo-motu or on a petition filed by any affected or interested person.”**

26. Under Regulation 57, the State Commission can use the inherent powers to pass such orders so as to secure the ends of justice. The said Regulation is as under:

**“Regulation 57. Saving of inherent power of the Commission**

**(i) Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as**

may be necessary for ends of justice or to prevent the abuse of the process of the Commission.

- (ii) **Nothing in these Regulations shall bar the Commission from adopting in conformity with the provisions of the Act a procedure, which is at variance with any of the provisions of these Regulations, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient for dealing with such a matter or class of matters.**
  
- (iii) **Nothing in these Regulations shall, expressly or impliedly bar the Commission to deal with any matter or exercise any power under the Act for which no Regulations have been framed, and the Commission may deal with such matters, powers and functions in a manner it thinks fit”.**

27. Under Clause 22(7), the violation of license conditions also would entail punishment. Under Clause 22(7) of the license conditions, if the licensee fails to comply with any of the Regulations then the State Commission can direct the licensee to directly pay the compensation to the consumer. The said Clause is as under:

**“Clause 22.7**

**If the Licensee fails to adhere to or comply with any Regulations framed by the Commission, without prejudice to any other liability or action that the Licensee may suffer on that count, it shall be liable to pay to the Consumer such compensation as may be determined by the Commission. The Commission may also require the Licensee to pay directly to the Consumers concerned the compensation amount and file a statement thereof with the**

**Commission. The Commission may issue directions and pass orders to give effect to the above”.**

28. A reading of all these provisions would reveal that the State Commission has got the following powers which are independent and inherent to pull up the distribution licensee in order to protect the interest of the consumers or the public on finding that there has been a violation of license conditions and Regulations:

- a. **The Appropriate Commission may specify the conditions of license and standards of performance of a licensee.**
- b. **If the licensee fails to perform to the said standards and fails to comply with Licensing Conditions, the licensee shall be liable to pay an amount of compensation determined by the Appropriate Commission to the person affected. This imposition of compensation by the Commission is without prejudice to any other penalty which may be imposed on a licensee under any other provision.**
- c. **The Ombudsman, on coming to know the grievance of the consumer through their representation or Appeal against the orders of Grievance Cell, regarding violation of the license conditions and Regulations, shall redress the said grievances. Thereupon, he shall send a Report to the State Commission periodically, giving the details of the nature of grievances; particulars of the redressal of grievance and his opinion on the licensee’s conduct in the matter or the compliance of the standards of performance.**



- d. **As per Rule 27 of the Regulations 2003 and Regulation 57 of the Delhi Electricity Regulatory State Commission (Conduct of Business) Regulations 2001, the State Commission has got inherent powers to make such orders so as to meet the ends of justice and the said powers cannot be barred and limited by any other Regulations.**
  
- e. **Under licensing conditions, Clause 22(7) confers powers on the State Commission to direct the licensee to make the payment of compensation, if the licensee fails to comply with any Regulations, directly to the affected consumer. This power of the State Commission is without prejudice to any other liability or action that the licensee may suffer on that count.**

29. These powers referred to above, which are vested with the Commission would enshrine its duty to prescribe the standards of the licensee and if the standards are not followed, the State Commission is duty bound to take appropriate action against the licensee either by cancelling the license or by imposing the compensation to safeguard and protect the interest of the consumers. This power cannot be barred or limited by any other Regulations. This power is without prejudice to any other penalty which may be imposed on the Licensee and without prejudice to any other liability that the Licensee may suffer on that count. Nowhere in the statutory scheme of the Act it is stated that the said jurisdiction of the Commission is ousted with reference to the above duties of punishing the distribution licensee for breach of license conditions, rules and Regulations merely because a

consumer has got a remedy before the other forums constituted under Sections 42(5) and 42(6) of the Act.

30. In this case, the consumer resorted to the remedy available under Section 42(5) and 42(6), got her grievance redressed through the Grievance Cell and the Ombudsman. Thereupon, the Ombudsman sent a report giving his opinion about the conduct of the licensee due to which the consumer was harassed. Only then, the Commission invoked suo moto powers under Regulation 11 of the Delhi Electricity Regulatory (State Commission) Comprehensive Regulations 2001 and inherent powers under Rule 57 and Rule 27 of the Electricity Rules and issued show cause notice to the Licensee, who admitted his violation and thereafter, the Commission imposed compensation on the licensee under Clause 22(7) and 57 of the Act.

31. In the light of the above facts in the present case, where the State Commission did not go into the validity of the award passed by the Ombudsman, on entertaining any Appeal from the Complainant/Consumer, it can be safely held that the State Commission has not usurped the jurisdiction of the authorities under Sections 42(5) and 42(6) of the Act, but the Commission has used its independent and inherent powers to order compensation under powers conferred by Regulation 57, Clause 22(7) of the Licensing Conditions, and also under Section 57 of the Act. Therefore, it has to be stated that the authorities cited by the Counsel for the Appellant in which it is held that the consumer cannot go to the Commission by way of an Appeal as against the

orders of the Ombudsman and the Grievance Cell would not apply to the present facts of the case, as in this case, the Commission passed the Order of compensation on the licensee not on an Appeal filed by the Consumer, but on the Report sent by the Ombudsman complaining about the conduct of the licensee, and as such, the action of the Commission in this case cannot at all be faulted for the reasons mentioned above.

32. Both the Learned Counsel for the parties referred to various other decisions of the Supreme Court with reference to the mode of interpretations of the sections and the definition of the word “Regulation” and the manner of exercise of the inherent powers. Those decisions need not be referred to here as in our view the core issue relating to jurisdiction has not been dealt with in those cases.

33. To sum up:

- a. The powers of the Commission as referred to in the Regulation and Licensing Conditions, to punish the licensee for breach of those conditions are independent and inherent without prejudice to the right of the consumer to approach the Grievance Cell and Ombudsman. Even when the penalty is imposed by the Ombudsman, the Commission has got suo moto powers which are independent of the powers conferred to the other authorities, for pulling up and punishing the licensee by way of imposing compensation, in order to protect and safeguard the interest of the consumers.

- b. In this case, the Consumer approached only the Grievance Cell under Sections 42(5) of the Act by filing a complaint and thereafter, approached the Ombudsman by filing an Appeal under Section 42(6) of the Act and got her grievances redressed. No further Appeal was filed by the consumer before the State Commission as it is not provided under the Act. Thus it is evident that the action was not taken by the State Commission against the licensee, was on the basis of the complaint or appeal filed by the Consumer.
  
- c. The Commission only on receipt of the Report of the Ombudsman complaining about the conduct of the licensee who violated the Regulations, rules and licensing conditions due to which the consumer was subjected to a lot of harassment, initiated suo moto proceedings by issuing a show cause notice to the licensee and enquired into the matter after giving opportunity to the licensee to file its reply. Only after considering the said reply filed by the licensee admitting its conduct and mistake, the State Commission imposed compensation under the powers conferred on it.
  
- d. Thus our conclusion is that the order of the State Commission does not suffer from the lack of jurisdiction.

34. In view of the foregoing discussions and conclusion, we see no merit in this Appeal. Accordingly, the Appeal is dismissed. No costs.

**( A.A. Khan )  
Technical Member**

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

**Dated: 30<sup>th</sup> March, 2009.**

REPORTABLE / NON - REPORTABLE