

50,000/-. Aggrieved by this, the appellant has filed this appeal. The facts of the case are as follows:

2. M/s. Capital Homes Private Ltd. requested the BRPL, the appellant herein to shift their electric meter from the front side of their premises to its back side. The Appellant replied that there are heavy dues of Rs. 56 lakhs against the said connection. But since this was a case of wrong billing, the R-2 Capital Homes Pvt. Ltd. sent a letter to the appellant informing of the surrendering of the electric connection and wanted the refund of the security deposit from the appellant. There was no proper response from the appellant. Therefore, the consumer straightaway approached the State Commission asking for relief through refund of security amount and for compensation under Section 142 of the Act. The appellant filed a reply before the Commission, admitting the mistake committed by them. The State Commission imposed a penalty of Rs. 50,000/- and a compensation of Rs. 50,000/-.

3. Even though the Appellant submitted to the jurisdiction of the State Commission, it has filed an Appeal before this Tribunal on the ground that the State Commission has no jurisdiction to pass such orders on the complaint of the consumer.

4. The only point raised by the Counsel for the appellant is that the Respondent Consumer approached the State Commission under Section 142 of the Act without availing the only remedy available to the Consumer to approach the Grievance Cell and the Ombudsman under Sections 42(5) and 42(6) of the Act to get its grievances redressed and not before any other authority including the State Commission.

5. The reply of the Counsel for the Commission is two-fold:

(1) The Appellant admitted before the Commission that it was a case of wrong double billing by submitting to the jurisdiction of State Commission without raising the issue of jurisdiction and on the basis of the admission made by the Appellant, the State Commission passed the impugned order on merits.

(2) Regardless of the remedy available to the consumer under Sections 42(5) and 42(6) of the Act, for approaching the Grievance Cell and Ombudsman, the Commission has been conferred with powers under Sections 16, 50, 57 and 59 of the Act and also Regulations 27 and 42(8) of the Act to provide remedy to the consumer who directly approached the State Commission. Hence the Appeal has no merits.

6. We have heard the Counsel for the parties. We have also given our thoughtful consideration to the rival contentions.

7. The question arises in the light of the facts of this case, whether Consumer Complainant can approach the State Commission to get its grievances redressed while there is a specific remedy available to the consumers to get its grievances redressed through Grievance Cell mechanism under Sections 42(5) and 42(6) of the Act?

8. It is pointed out by the learned counsel for the Appellant that this point has already been decided by this Tribunal as well as the Supreme Court in the following decisions:

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

9. The relevant observations in these decisions are as follows:

- A.** In 2007 Aptel 356, Dakshin Haryana Bijli Vitaran Nigam Ltd. Vs. DLF Services Ltd., the Tribunal has made the following observations:

“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.”

- B.** In 2007 Aptel 764, Dakshin Haryana Bijli Vitaran Nigam Ltd. Vs. Princeton Park Condominium, the Tribunal has made the following observations:

“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.”

- C.** In AIR 2008 SC 1042, MSEDCL Vs. Lloyd Steel Industries Ltd. the Supreme Court has held:

“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”.

10. These observations made by this Tribunal as well as Supreme Court would vindicate the following dictums:

- A.** With regard to the resolution of the disputes over the consumer grievances between the licensee and the consumer, the Grievance Redressal Forum or the Ombudsman alone is a competent authority to deal with the grievances of the consumers and get their grievances redressed. The State Commission cannot usurp either the jurisdiction of the Grievance Redressal Forum or the Ombudsman in respect of those grievances of the consumers.
- B.** The individual consumer can approach only the Grievance Cell to place his grievances under Section 42(5) of the Act and

thereafter before the Ombudsman under Section 42(6) of the Act. The individual consumer cannot approach the State Commission to decide about the disputes between the licensee and the consumer. Even when there is no appeal is provided as against the above order passed by the Ombudsman, the State Commission cannot usurp the jurisdiction of the Grievance Redressal Forum or the Ombudsman by going through the validity of the order passed by the Ombudsman.

- C. The State Commission could exercise jurisdiction only when the subject matter of adjudication falls within its competence and the order that may be passed shall be within its authority and not otherwise on facts and on law. The Commission cannot decide on the basis of the complaint given by the consumer about the dispute between the consumer and the licensee.

11. The above dictums would reveal that the Consumer cannot approach the State Commission and get its grievances redressed as against the distribution licensee especially when such a remedy is available to the Consumers by virtue of Sections 42(5) and 42(6) of the Act to approach the Grievance Cell and the Ombudsman for getting their grievances redressed.

12. It is contended by the counsel for the Commission that the State Commission has got independent powers to punish the licensees in the matter of breach of regulation, regardless of the remedy available for the Consumer through Grievance Cell mechanism constituted under Sections

42(5) and 42(6) of the Act and therefore the Consumer can approach the State Commission to seek their remedy. This contention cannot be countenanced in view of the decision taken by this Tribunal as well as Supreme Court wherein it has specifically been held that the Consumer cannot approach the Commission for Redressal of his grievances as there is specific remedy available for the Consumer to approach the concerned authorities like the Grievance Cell and the Ombudsman whose award is final and against which no appeal will lie with the Commission.

13. Admittedly, in this case the action has been taken by the Commission only on the complaint of the Consumer and passed the order of penalty as well as compensation in order to give relief to the Consumer and to get its grievance redressed. This action by the State Commission, in our view, would amount to usurping the jurisdiction of the Grievance Cell and the Ombudsman. State Commission ought not to have entertained the complaint and ought to have directed the complainant/Consumer to approach the Grievance Cell mechanism which has been especially constituted for this purpose to seek their remedy. As such, the order impugned is against the dictum laid down by this Tribunal and the Hon'ble Supreme Court.

14. Our conclusions are these:

- A.** When a specific remedy is available for the consumer regarding wrong billing under Sections 42(5) and 42(6) of the Act i.e. to approach authorities like the Grievance Cell and Ombudsman and when the award passed by the Ombudsman is final and no appeal is provided against the said award, the complainant cannot approach the State Commission for

the said remedy. Whenever the complainant approached for such a remedy, Commission should have rejected the said complaint and directed the consumer to seek for the said remedy for wrong billing etc. to approach the Grievance Cell mechanism. Without doing this, the State Commission entertained this complaint of the consumer and after hearing the consumer and the licensee passed the impugned order imposing penalty and compensation. This order in our view is not in consonance with the ratio decided by this Tribunal in 2005 Aptel 356 and 2005 Aptel 764 and Supreme Court in AIR 2008 SC 1042.

B. Further in this case, the consumer complainant strangely filed the petition under Section 142 of the Act requesting for compensation. Section 142 of the Act provides the powers for State Commission to punish the licensee only for the violation of the direction issued by the Commission. This is not the case where any particular direction which has been issued by the Commission has been violated by the licensee. Therefore, no question of violation of directions would arise. Further, the Commission not only imposed the penalty on the appellant licensee but also directed for the payment of compensation. This is not provided under Section 142 of the Act.

15. So in view of the above conclusions, we are of the view that the order passed by the Commission is liable to be set aside. We feel that it would be appropriate to remand the matter to the Grievance Cell established by the Appellant to get the grievances of the Consumer redressed. Accordingly, the order impugned is set aside and matter is remanded to Grievance Cell, which shall enquire the matter and pass suitable orders in light of the admitted position of the grievances of the

complainant consumer and also in the light of the stand taken by the licensee before the State Commission. With these observations, the appeal is disposed of.

(A.A. Khan)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 30th March, 2009

Reportable / Non-reportable