

Before the Appellate Tribunal for Electricity
Appellate Jurisdiction
New Delhi

Appeal No. 30 of 2005, 164 of 2005 and 25 of 2006

Dated this 29th day of March 2006

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

Appeal No. 30 of 2005

Reliance Energy Limited
Reliance Energy Centre, Santacruz-(E), Mumbai 400055Appellant

Versus

1. Maharashtra Electricity Regulatory Commission,
13th Floor, Centre No.1, World Trade Centre
Cuffe Parade, Mumbai-400 005
2. The President, Mumbai Grahak Panchayat
Grahak Bhavan, Sant Dyaneshwar Marg
Behind Cooper Hospital Vile Parle (W)
Mumbai-400056.
3. Prayas, Athawale Corner, Deccan Gymkhana
Karve Road, Pune-411 004
4. The President, Thane Belapur Industries Association,
Plot No.P-14 M.I.D.C. Rabale Village
Post Ghansoli, Navi Mumbai-400071
5. The President, Vidarbha Industries Association
1st Floor, Udyog Bhavan, Civil Lines
Nagpur-440001
6. Maharashtra State Electricity Distribution Company
Limited, Parkashgad, Plot No.G-9, Bandra(East)
Mumbai-400051Respondents

Appeal No.164 of 2005

The Brihan Mumbai Electric Supply
and Transport Undertaking, BEST Bhavan
BEST Marg, Mumbai – 400001

.....Appellant

Versus

1. Maharashtra Electricity Regulatory Commission,
13th Floor, Centre No.1, World Trade Centre
Cuffe Parade, Mumbai-400 005
2. Reliance Energy Limited
Reliance Energy Centre, Santacruz-(E), Mumbai 400055
3. Maharashtra State Electricity Board
Parkashgad, Bandra(E) Mumbai-400051
4. The Tata Power Company Limited
Bombay House, 24, Homi Modi Street
Mumbai 400001
5. The President, Mumbai Grahak Panchayat
Grahak Bhavan, Sant Dyaneshwar Marg
Behind Cooper Hospital Vile Parle (W)
Mumbai-400056.
6. Prayas, Athawale Corner, Karve Road
Deccan Gymkhana, Karve Road, Pune-411 004

.....Respondents

Appeal No.25 of 2006

Mahashtra State Electricity Distribution Company
Limited, Parkashgad, Plot No.G-9, Bandra(East)
Mumbai-400051

.....Appellant

Versus

1. Prayas, Athawale Corner, Deccan Gymkhana
Karve Road, Pune-411 004
2. The President, Mumbai Grahak Panchayat
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Behind Cooper Hospital Vile Parle (W)
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Plot No.P-14 M.I.D.C. Rabale Village
Post Ghansoli, Navi Mumbai-400071

4. Maharashtra Electricity Regulatory Commission,
13th Floor, Centre No.1, World Trade Centre
Cuffe Parade, Mumbai-400 005

.....Respondents

COMMON JUDGMENT

Heard M/s J.J. Bhatt, Sr. Advocate, Anjali Chandurkar, Syed Naqvi and Smieetaa Inna Advocates appearing for appellant. Dr. G.M. Phadke, Mr. Shantanu Dixit appearing in person, M/s Gaurav Joshi, Alpara Dhaka, Shyam Divan, Mr. Rajiv Nanda, Kiran Gandhi, M. G. Ramachandran, Saumya Sharma, Adovates for Respondents in appeal No.30 of 2005.

2. Heard M/s Ramji Srinivasan and Sanand Ramakrishnan Advocates appearing for appellant. M/s M.G.R. Joshi, Kiran Gandhi, Rajiv Nanda, Advocates, M/s J.J.Bhatt, Anjali Chandurkar, Syed Naqvi, Smieetaa Inna, M.G. Ramachandran, Saumya Sharma & Taruna Baghel, Gaurav Joshi, Rajiv Nanda, Kiran Gandhi, Vani Mehta, Advocates, Shyam Divan, Advocate for Respondents in appeal No.164 of 2005.

3. Heard M/s Shyam Divan, Rajiv Nanda, G.R. Joshi, Kiran Gandhi and Nishant Gupta Advocates appearing for appellant. M/s Jawahar Raja, M G Ramachandran, Sr. Advocate and Ms Saumya Sharma, Advocates and Dr. G. M. Padke for Respondents in appeal No.25.

4. Appeal No. 30 of 2005 has been preferred under section 111 of The Electricity Act 2003, challenging the legality and validity of the order dated 23.3.2005 passed by the first Respondent Maharashtra Electricity Regulatory Commission in case No.19 of 2004 in the matter of “Amendment”/”Supplementary” Bills, directing the appellant to withdraw the supplementary / amended bills issued by it between 10.6.2003 and up to notification of supply code and refund amounts collected to the concerned consumers without interest on the basis of estimated or assumed consumption where (i) meters have been replaced as part of replacement programme or (ii) on the presumption of defect but without testing or furnishing a test Report relying on the observed variations in consumption before or after such replacement or without replacement to be withdrawn.

5. In Appeal No.164 of 2005, the appellant M/s BEST Undertaking, challenge the validity and legality of the orders of 23.2.2005 made in case No.19 of 2004 issuing certain directions with regard to the issuance of supplementary bills by the utilities and order dated 29.9.2005 in case No. 2 of 2005 rejecting the review application passed by the first Respondent Maharashtra Electricity Regulatory Commission in case No. 19 of 2004 in the matter of “Amendment”/”Supplementary” Bills.

6. In Appeal No.25 of 2006, the appellant Maharashtra State Electricity Distribution Company challenge the order dated 22.2.2005 passed by The Maharashtra Electricity Regulatory Commission (MERC) and review order in case No. 2 of 2003 – “In the matter of compliance of Tariff orders in respect of Average Billing MSEB” – and issuing directions for the period 1-6-2004 uptill 19-1-2005 not to resort to billing using passing consumption or some related “average” basis for more than a period of three months, etc., and to withdraw the bills issued and / or refund the amounts to the consumer in respect of those offending bills and demands made and already enforced, etc., as set out in para 45 of the impugned order.

7. Appeal No.30 of 2005 and No.164 of 2005 as well have been preferred against the very same order in case No.19 of 2004 dated 23.2.2005 while Appeal No.25 has been preferred against identical order / direction issued in case No.. 2 of 2003 dated 22.2.2005. With the consent of counsel appearing for appellants in the three appeals and counsel appearing for Respondents all the three appeals were consolidated as they involve common questions and common arguments were advanced on various dates. Both the sides in the three appeals submitted written submissions. It would be sufficient to refer to the facts in one of the appeals, as jurisdictional issue has been raised in the three appeals. We do not propose to examine the merits, demerits of respective case, contentions, counter case, factual disputes or contentions advanced on merits by the respective parties in all the three appeals, as it is for the competent forum to decide such grievances or disputes.

8. The points that arise for consideration in these three appeals are:-

- i. Whether the Maharashtra Electricity Regulatory Commission acted without jurisdiction and authority in issuing directions relating to consumer grievances when a special forum has been constituted to redress the grievance relating to Billing?

ii. To what relief, if any?

9. Before taking up the jurisdictional issue raised by appellants, it is essential to set out certain relevant and important dates, which will have a bearing on the issue. The Electricity Act 2003 came into force on 10.6.2003 and enforceable from the said date in the State of Maharashtra, among other States. By virtue of Powers conferred by Section 181 read with Sub-sections (5) to (7) of Sec 42 of The Electricity Act, Maharashtra Electricity Regulatory Commission (MERC for brevity), framed the MERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations 2003, which came into force from 10.12.2003. MERC (Electricity Supply Code and other conditions of Supply) Regulations 2005 was notified under Section 50 of The Electricity Act by the MERC on 20.01.2005 prescribing for recovery of electric charges, intervals for billing, metering, replacing meter, etc. Before the coming into force of The Electricity Act 2003, The Indian Electricity Act 1910, The Electricity Rules 1956 framed thereunder, The Electricity (Supply) Act 1948 and The Electricity Regulatory Commissions Act 1998 were in force, till they came to be repealed in terms of Section 185 of The Electricity Act 2003.

10. The MERC, by its letter dated 3rd August 2004, addressed all Distribution Licensees, which reads thus:

“Several instances have come to the Commission’s notice of so-called “amendment”/“supplementary” or other such bills being raised by some licensees to consumers, often several years latter, on a basis other than the actual meter reading for the relevant period, when large variations in consumption are noticed, or for other reasons. Computerised systems have sometimes been put in place which generates such bills automatically.

2. Wide variations observed in recorded consumption and other such apparent anomalies may be useful for monitoring, checking / testing of meters and for taking corrective action. However, billing on a basis other than recorded consumption, and raising amended bills accordingly (often after several years later, and without giving reasons), is not mandated by law.

3. The electricity statutes (in the past, and at present) provide inter alia that, in case of metered consumers, energy consumption charges have to be billed on the basis of meter readings. Moreover, the licensee, and not the consumer, is responsible for maintaining, rectifying, or having such meters replaced where necessary. Thus, no “amendment” bills of the kind referred to above can be raised, and any additional billing has to follow due process and the provisions of law.

4. In the context of such “amendment” bills, I am directed to ask that the billing practices followed by immediately reviewed and brought into conformity with the statutory provisions. An affidavit stating the corrective action taken (including withdrawal of all such pending bills, and refund through adjustment in energy bills otherwise, of amounts received from consumers on or after 10.6.2003) may be furnished by 3rd September, 2004.”

11. The Discoms submitted their written objections / response or stands. MSEB, the appellant in Appeal No.25 of 2006 set out its Billing practice as set out hereunder:-

- “(i) In case of normal reading status, the recorded consumption is adopted for billing.
- (ii) In case of overflow meters, consumption is calculated after considering the number of digits the meter has, which is fed into the system during the master data compilation or subsequently during the meter change. Based on this consumption, the charges are calculated.
- (iii) In addition, in the LT billing system the last twelve month’s consumption history is maintained. This is used for working out the average consumption, which is the basis for computation of the consumption charges. Such average consumption is calculated in case of (a) faulty meters, (b) locked metes, (c) meter changed, (d) not accessible meters, (e) no meter, and (f) reading not taken. The charges are credited to the consumers in the bill when the actual meter reading becomes available.
- (iv) Supplementary bills are also issued in cases of malpractices and prejudicial use of energy, and when certain issues are noticed by the Audit Section which can be settled through such bills. In a few cases, assessed bills are also issued for cases of CTPT failure, defective meters, etc.”

12. The appellant in Appeal No. 30 of 2005, responded thus:-

“M/s Reliance Energy Ltd. (REL), vide their affidavit dated 20th September, 2004, submitted that amendment / supplementary bills are generated automatically, and that the individual cases are vetted before such bills are raised. REL raise supplementary bills to recover charges for energy supplied for the period in which accurate meter recordings are not available. Although it is the licensee’s obligation to maintain the meters by regular checking, testing and repairing, etc., this is not practicable considering the large number of consumers in today’s conditions. A large number of meters lose their accuracy and even stop recording before the licensee is able to take corrective steps. This requires REL to raise “supplementary bills” for ascertaining the energy actually supplied, and also for certain other reasons, namely:

- (i) **Tariff category debits** – if the consumer of a particular tariff category changes the user of the premises without informing REL, the differential in

the tariff rate actually applicable is recovered for the period of such change of user.

- (ii) **Vigilance Debit** – in case where a consumer is found to have indulged in dishonest abstraction of energy within the meaning of Part XIV of the Electricity Act, 2003.

REL raise Amendment Bills under the following circumstances:

- Reading Correction – Where bills were sent based on over-reading/under-readings, bills in the subsequent months are amended based on actual meter readings.
- Developed Readings-Where meters were inaccessible, pro rata energy bill is sent based on the previous consumption, and the bills are amended as and when actual readings are available.
- Disputed Bills- In case of incorrect billing, the bills are amended as and when the concerned consumers make representations or if any error is detected by REL,”

13. The appellant in Appeal No.164 responded thus:

“With reference to the Commission’s directives to withdraw pending amendment bills, etc. in their affidavit dated 10th September, 2004 the Brihanmumbai Electric Supply and Transport (BEST) Undertaking urged that they should be heard before concluding that such billing is illegal and ought to be withdrawn. BEST have stated that it is not clear whether the Commission’s letter dated 3.8.2004 related to all amendment bills or to only a particular category, but are presuming that the reference is to be one-time exercise undertaken by BEST for recovery in cases where there has been under recording of consumption due to incorrect meters. Elaborating on this exercise, BEST have stated that normally an amendment bill is issued only after due meter verification and pre-audit. However, in order to clear the backlog of pending cases before implementing the on-line computerized information billing system, BEST examined all such consumer accounts in which meters have become defective and were replaced, and are issuing supplementary bills to such consumer so that the electricity actually consumed is charged for. Since doing so manually poses difficulties, a computerized search was done for consumers in respect of whom (a) defective meters had been replaced and (b) a drop in consumption had been found as compared to the meter readings prior to meter replacement. The programme also estimated the consumption that the meter would have registered if it had been working correctly by taking average consumption for one year prior to the drop, and the bills were automatically prepared on this basis. However, in a few cases the programme overlooked some factors, leading to incorrect amendments. Accordingly, BEST are identifying all consumers to whom such bills have been sent but who are not actually liable for payment since no consumption has escaped billing due to a defective meter, and would withdraw such bills accordingly.

BEST have stated further that the second category of consumers to whom such amendment bills have been automatically sent are those whose meters were actually defective and under-recording, and were replaced for that reason. However, in these cases the reasons for the fall in consumption are being ascertained from the inspection report made at the time of replacement to see whether there was a reduction in load, change in usage, etc., resulting in consumption and not merely because the meter was defective and appropriate benefit given to the consumers. The third category of consumers comprises those whose consumption has been found to be under-recorded due to defective meters and who have been issued supplementary bills on the basis of prior consumption as above. BEST contend that this is the fairest and most proper basis for issuing such supplementary bills. Even in such cases, BEST reviews the matter when approached by the consumer where valid reasons for reduction in consumption can be pointed out. This exercise has been carried out to streamline and update the billing process and ensure full recovery of energy consumption. Accordingly, 6582 amendment bills involving Rs.14 crores have been raised subject to the verification of explanations as mentioned above. Pending such detailed verification, BEST would not disconnect any consumer to whom amendment bills have been issued.”

14. Various consumer forums also intervened and submitted their representations and the Commission heard their representatives, so also the Discoms. The MERC, by its order dated 23.02.2005 directed thus:

“46. After considering all these factors and the submissions made, the Commission directs that the supplementary / amendment bills issued in the circumstances g\set out at paras 42 and 43 above from 10th June, 2003 (the date of coming into force of EA, 2003) and up to notification of the Supply Code –

- a) should be withdrawn, if due meter testing has not been done with the results intimated to the consumer;
- b) any amounts collected should be refunded to the concerned consumers (without interest considering the earlier lack of clarity on this matter on the part of the licenses);
- c) where meters have been found to be defective upon subsequent due testing (and the results intimated to the consumer), the bills may be adjusted for up to 3 months prior to the date of testing or meter replacement, whichever is earlier, and any amounts recovered in excess refunded without interest (in the case of ‘stopped’ meters, the analogy of the Supply Code provisions should be applied for assessment);
- d) the above action should be completed by 30th May, 2005, so as to give the licensees more than 3 months’ time in view of the work likely to be involved;

- e) compliance should be submitted on affidavit by 15th June, 2005, with a list of consumers involved, and certifying that no further action remains to be done in terms of this Order.”

15. The appellant in Appeal No. 25/2006 sought for review before MERC, the review was rejected on 22.02.06. All the three appeals have been preferred by the three Discoms aggrieved by the directions issued as well as rejection of review in Appeal No. 25 of 2006.

16. Thus in effect, the directions issued by MERC is referable to the period 10.06.2003, the date of coming into force of the Electricity Act 2003 and upto 20.01.2005 the date of enforcement of Supply Code 2005. The distribution licensees have been directed to withdraw all such supplementary / amendment bills on the premises (i) that meter testing has not been duly carried out and results were not intimated to consumers and therefore Discoms are to refund amounts collected under such “supplementary / amendment” bills without interest (ii) in respect of defective meters wherever tested and results of testing conveyed to consumer, the bills are to be confined up to three months prior to the date of check or meter replacement, whichever is earlier in point, and the excess collection beyond three months to be returned without interest and (iii) in cases where meters have stopped the terms of supply code shall be adopted and assessed. The MERC further directed the distribution licensees to undertake and complete the exercise, refund the excess collection before 30.05.2005 and file compliance report by 15.06.2005 setting out the details of consumers.

17. It is clear that entire initiation or inquiry or issue raised and the direction issued relates to wrong billing or over billing or adopting a wrong method of billing or wrong basis or billing excess or for a longer period than permissible on the alleged defect in meters or test or replacement thereof, are nothing but billing dispute between the licensee on one side and the consumer(s) on the other side. The contention of the Respondents that the dispute relates to tariff or that it relates to implementation of tariff notified is a clear misconception. The entire dispute which were taken up by MERC is a dispute between consumer and Licensee with respect to billing, be it a wrong billing or excess billing or adopting wrong basis or procedure, illegal billing and it has nothing to do with tariff or tariff notification or enforcement thereof.

18. The Supreme Court in BSES Ltd. Vs TATA Power Ltd. Reported in 2004 (1) SCC 195, while considering the provisions of The Electricity Regulatory Commissions Act 1998, with reference to “tariff” and functions of the Regulatory Commission held thus:

“The word “tariff” has not been defined in the Act. “Tariff” is a cartel of commerce and normally it is a book of rates. It will mean a schedule of standard prices or charges provided to the category or categories of customers specified in the tariff. Sub-section (1) of Section 22 clearly lays down that the State Commission shall determine the tariff for electricity (wholesale, bulk, grid or retail) and also for use of transmission facilities. It has also the power to regulate power purchase of the distribution utilities including the price at which the power shall be procured from the generating companies for transmission, sale, distribution and supply in the State. “Utility” has been defined in Section 2(1) of the Act and it means any person or entity engaged in the generation, transmission, sale, distribution or supply, as the case may be, of energy. Section 29 lays down that the tariff for the intra-State transmission of electricity and tariff for supply of electricity – wholesale, bulk or retail – in a State shall be subject to the provisions of the Act and the tariff shall be determined by the State Commission. Sub-section (2) of Section 29 shows that the terms and conditions for fixation of tariff shall be determined by Regulations and while do so, the Commission shall be guided by the factors enumerated in clauses (a) to (g) thereof. The Regulations referred to earlier show that generating companies and utilities have to first approach the Commission for approval of their tariff whether for generation, transmission, distribution or supply and also for terms and conditions of supply. They can charge from their customers only such tariff which has been approved by the Commission. Charging of a tariff which has not been approved by the Commission is an offence which is punishable under Section 45 of the Act. The provisions of the Act and Regulations show that the Commission has the exclusive power to determine the tariff. The tariff approved by the Commission is final and binding and it is not permissible for the licensee, utility or anyone else to charge a different tariff.

The legal position has undergone a complete change with the enforcement of the Electricity Regulatory Commission of the State and a licensee cannot by its unilateral action enhance the charges. The provisions of the Act have an overriding effect by virtue of Section 52 of the Act and, therefore, any provisions of the Electricity (Supply) Act, 1948, which are inconsistent with the Act would cease to apply and consequently, the provisions of the Sixth Schedule of the said Act can have no application now.”

19. There is no change in the said legal position between the 1998 Act and 2003 Act and the same still is the role of the Regulatory Commission. The 2003 Act has prescribed the functions of the MERC and it has to act only in terms of the provisions of the Act. MERC has been constituted under Section 82. Section 86(1) enumerates the “functions of State Commission.” The learned counsel for contesting Respondents relied upon Clauses

(i) & (k) of the said Act to trace the power of the MERC to adjudicate the billing dispute.
Section 86(1) (i) and (k) reads thus:

“86 – Functions of State Commission

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

(a)

(b)

(c)

(d)

(e)

(f)

(g)

(h)

(i) specify or enforce standards with respect to quality, continuity and reliability or service by licensees;

(j)

(k) discharge such other functions as may be assigned to it under this Act.”

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

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

22. The Regulatory Commission, being a quasi judicial authority could exercise jurisdiction, only when the subject matter of adjudication falls within its competence and the order that may be passed is within its authority and not otherwise. On facts and in the light of the statutory provision conferring jurisdiction on the redressal forum and thereafter an appeal to Ombudsman, it follows that the State Regulatory Commission has no

jurisdiction or authority to decide the dispute raised by Respondents 1 & 2, who are consumers or the Consumer Association. Apart from this, certain of the directions issued are not even applied and are in excess of jurisdiction. The Commission has to act within the four corners of The Electricity Act 2003 and the State Act in so far it is saved by Sec 185 of Electricity Act 2003. It is clear from the discussions the State Regulator has no jurisdiction to enter upon, inquire or on any part of the dispute on hand or adjudicate the same.

23. It is also to be pointed out, assuming for purposes of argument that Rules framed under The Electricity Act 1910 is still applicable, even then the MERC is not the authority or successor to exercise the powers of adjudication. The MERC, which has framed the supply code should have confined itself to such exercise of powers as prescribed under Sections 50, 55, 57, 58, 59 and 60, in Part-VI of The Act. The provisions of Part-VII – Tariff in no way supports the contentions advanced by Respondents, as any direction in tariff order / notification has to be confined to the said Part. Section 26(6) of The Electricity Act 1910 has no application to the case on hand as the Indian Electricity Act 1910 stands repealed and Section 185 of The 2003 Act has not saved Section 26(6) so also the limitation of six months prescribed there under. Two years limitation has been prescribed under Section 56(2) of 2003 Act. Mr.M.G. Ramachandran, learned counsel appearing for MERC very anxiously and strenuously contended that MERC has the authority and jurisdiction under section 126; 127; 128; 129 and 130, etc., of the Act to issue the directions. We are unable to sustain the said contention advanced, as the grievances in respect of which MERC has assumed jurisdiction, relate to billing and being a billing dispute, its attempt to invoke those provisions cannot be sustained in law. The special provision in Section 42(5), (6) to (8) govern this and will exclude the applicability of all other provisions in 2003 Act.

24. Mr. M.G. Ramachandran further submitted that directions relate to innumerable number of consumers exceeding several lakhs of consumers and therefore, the MERC is justified in invoking the powers under Sections 129 and 130 of The Act. We are unable to sustain the said persuasive contention advanced. Be it a single or innumerable, with respect to grievance or complaint regarding Billing or Billing dispute, it is the competent authority under the Act, which has to exercise the powers. There cannot be a special

provision or direction merely because consumers are too many. It is not open to the Commission to usurp jurisdiction by pointing out that the disputes are innumerable. That apart, it is impossible for MERC to examine the case of millions of customers which grievances are to be addressed by the forums specially constituted.

25. The reliance placed by Mr. M G Ramachandran on various pronouncements of the Supreme Court and various High Court, are of no avail nor the ratio laid down there apply to the case on hand and it is not necessary to refer to those pronouncements in detail. Mr. M.G. Ramachandran, learned counsel for MERC, vehemently and in his indomitable style pointed that the directions issued fall within the regulatory powers of MERC and therefore, it is not liable to be interfered. In this respect, the learned counsel relied upon three pronouncements of the Supreme Court, where their “Lordships examined the scope and purport of the expression “Regulate”. Those decisions also do not advance the case of Respondent nor it is a ratio decidendi. Those pronouncements cannot be relied upon to exclude the jurisdiction of the authority constituted under Section 42 of the Act, which is a new forum constituted by the Legislature in the 2003 Act. However, laudable the object with which the Commission had taken upon itself and issued direction, in its anxiety, when it is a question of usurpation of jurisdiction, and exclusion of jurisdiction, we are well founded in interfering. The directions, once it is held to be without jurisdiction being a nullity, it will not also serve the cause of consumers at whose instance and for whose cause the MERC had taken up and issued directions.

26. While recording and appreciating the able assistance of Mr. M. G. Ramachandran, learned counsel appearing for MERC, we are not persuaded to sustain various contentions advanced with an anxiety to assert and secure the jurisdiction of MERC.

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

28. In the result, we allow the three appeals and set aside the orders passed by MERC in case No.19 of 2004 in the matter of “Amendment/Supplementary Bills” dated 23.2.2005 and case No.2 of 2003 “Amendment / Supplementary Bills” dated 29.9.2005, while giving liberty to each one of the consumer or the representative consumer associations to workout their remedies before the competent forums.

Pronounced in open court on this 29th day of March 2006.

(Mr.H.L. Bajaj)
Technical member

(Mr. Justice E Padmanabhan)
Judicial Member

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