

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 101 of 2010

Dated: 06 May, 2011

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam,
Chairperson,
Hon'ble Mr. Rakesh Nath, Technical Member,
Hon'ble Mr. Justice P.S Datta,
Judicial Member**

In the matter of

**M/s. Suchi Papers Mills Limited
589/2, Bisrakh Road
Industrial Area, Chapraula
Gautam Budh Nagar-201009 (UP)**

... Appellant(s)

Versus

**1. Uttar Pradesh State Commission
Kisan Mandi Bhawan, IInd floor
Gomti Nagar
Lucknow-226010 (UP)**

**2. M/s Surya Processors Pvt. Ltd.
619, Bissrakh Road, Industrial Area,
Chapraula,
Gautam Budh Nagar-201009 (UP)**

**3. Pachimanchal Vidyut Vitran Nigam Ltd
Victoria Park,
Meerut-250001 (UP)**

**4. The Executive Engineer
Electricity Urban Distribution
Division-V (EUDD-V)
33/11, K.V. Sub-Station,
South Side Industrial Area
Ghaziabad-201009 (UP)**

**5. U.P. Power Corporation Ltd.
Shakti Bhawan, 14, Ashoka Marg
Lucknow -226001 (UP)**

.....Respondents

**Counsel for Appellant(s): Mr. Dhananjay Shahi,
Mr. K.N Mishra,
Mr. Munendra Kumar Singh,
Mr. Ishan Singh,
Mr. Amarjeet Singh,
Mr. Anurag Tripathi,**

**Counsel for Respondent(s): Mr. Vishal Dixit (for R-2)
Mr. Sarvendra Kumar Gupta,
Mr. Daleep Kumar Dhyani
(for R 3 to 5)
Mr. Pradeep Misra (for R 3 to 5)
Mr. Manoj K. Sharma (for R 3 to 5)
Mr. D Vishal,
Mr. Ravindra K. Singh,
Mr. Sashank Pandit,
Mr. Suraj Singh (for 3 to 5)
Mr. Mohd. Rafi**

JUDGMENT

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,
CHAIRPERSON**

M/s. Suchi Papers Mills Limited is the Appellant. M/s. Surya Processors Private Limited is the Second Respondent.

2. The Appellant took the electricity connection from the independent feeder of M/s. Samtel Colour Limited. The Appellant as well as M/s. Samtel Colour Limited are the continuous process units doing manufacturing work round the clock.

3. M/s. Surya Processors Private Limited the second Respondent applied for the independent feeder but due to non availability of corridor, the UP Power Corporation Limited, 5th Respondent proposed to connect M/s. Surya Processors Private Limited with M/s. Samtel Colour Limited's feeder. Under

clause 3.4 (d) (ii) of the supply code, the consent from the independent feeder (original consumer) is mandatory.

Therefore, M/s. Surya Processors Private Limited filed a petition before the State Commission for giving a direction to the distribution licensee to release electricity connection to M/s. Surya Processors Pvt. Limited from the independent feeder of M/s Samtal Colour Ltd. at 33 KV by modifying the provisions of clause 3.4 (d) (ii) of the Supply code.

4. The State Commission without allowing the first prayer relating to the modification of clause 3.4 (d) (ii), has allowed the second prayer by directing to release electricity connection on 33 KV Samtel Colour Limited's feeder in favour of M/s. Surya Processors Pvt Ltd.

5. Aggrieved by this, the Appellant has filed this Appeal. The following are the gist of the contentions urged by the Appellant in this Appeal:

(i) The impugned order is contrary to the provisions of clause 3.4 (d) (ii) of the Supply Code. As per this provision M/s. Surya Processors Pvt Ltd, 2nd Respondent should get consent from the consumer of independent feeder for the electricity connection. This was the reason why M/s Surya Processors Pvt. Ltd. sought for modification of the supply code through the 1st prayer. Without modifying the said provision, 2nd prayer cannot be granted.

(ii) The State Commission wrongly held that there is no need to modify the clause 3.4 (d) (ii) of the Supply Code as M/s. Samtel Colour Limited feeder is not independent feeder since by virtue of the resolution passed by the distribution licensee, M/s Samtel Colour Limited became the industrial feeder and therefore, the State Commission allowed the 2nd prayer of the Respondent for tapping of electricity connection from M/s Samtel Colour Pvt Ltd's feeder.

This finding is against the provision of law as the said resolution cannot take away the powers of the State Commission, which alone is competent to convert the Independent Feeder into Industrial Feeder.

On these grounds, the Appeal was admitted by this Tribunal on 6.7.2010.

6. After the Appeal No.101 of 2010 was admitted by this Tribunal, the 2nd Respondent M/s. Surya Process Private Ltd filed civil Appeal before the Hon'ble Supreme Court challenging the order of the admission of this Appeal on the ground that the Appeal was not maintainable as the Appellant has no locus standi to file that Appeal. Unable to convince the Hon'ble Supreme Court with regard to maintainability of the Appeal, the Respondent sought permission from the Supreme Court to withdraw the said Appeal with a liberty to raise the issue of maintainability before this Tribunal.

7. Accordingly, the Hon'ble Supreme Court by the order dated 2.8.2010, allowed the Respondent to withdraw the said Appeal but directed this Appellant Tribunal to decide all the issues including the question of maintainability comprehensively. The said order is as follows:

“Upon hearing Counsel the Court made the following

O R D E R

Learned Senior Counsel appearing on behalf of the Appellant seeks permission to withdraw this civil appeal. He clarifies that, in the present case, the appellant has raised the issue of maintainability and jurisdiction. Permission is granted to withdraw this Appeal. However, it is made clear that the Appellant Tribunal will decide all issues, including maintainability and jurisdiction, and it will not decide the said issues as preliminary issues.

Subject to above, the civil appeal is dismissed as withdrawn”.

8. Thereupon, the Appeal was taken up for final disposal. On the basis of the permission granted by the Supreme Court to raise the question of maintainability, before this Tribunal, the Respondent, has raised the following grounds as the preliminary

issues questioning the maintainability of the Appeal. They are as follows:

(i) The Respondent filed a Petition before the State Commission praying for 'modification of the clause 3.4 (d) (ii) of the Supply Code which was the function of the State Commission under subordinate jurisdiction. In the present case, the State Commission did not incline to modify the said provisions. As laid down by this Tribunal as well as Supreme Court, the said order refusing to modify the Regulations cannot be questioned by the Appellant in their proceedings before Tribunal.

(ii) The Appellant M/s. Suchi Papers Mills Ltd had no locus-standi to file the present Appeal. The provision of Clause 3.4 (d) (ii) of the Supply Code only apply to the original consumer which is M/s. Samtel Colour Ltd. The Appellant is only a second consumer. M/s.

Samtel Colour Ltd who alone has got a locus-standi to file the Appeal has not filed this Appeal. The Appellant being a second consumer has no right to file the present Appeal. Therefore, this Appeal filed by this Appellant is not maintainable.

9. In addition to the above preliminary issues, the Learned Counsel for the Respondent No. 2 has made the following reply to the grounds of Appeal raised by the Appellant:

(A) As held by the State Commission, the clause 3.4 (d) (ii) of the Supply Code need not be modified since the M/s Samtel Colour Limited's feeder which was initially independent feeder became industrial feeder, according to the resolution passed by the distribution licensee on 19.10.2008.

(B) It is true that the application was filed by the Respondent seeking for a modification of the provision

of clause 3.4 (d) (ii) of the supply code as well as for giving suitable directions on the basis of the said modification. In the meantime, i.e. on 19.10.2008, the Board of Directors of the Licensee passed a resolution deciding to convert the status of the independent feeder which is having more than one consumer into an industrial feeder. Once the independent feeder has been declared as an industrial feeder, as in this case through the resolution, the grievance of the said independent feeder does not survive. If the Appellant who is sub consumer on the feeder of M/s Samtel Colour Limited is aggrieved over the said resolution, the Appellant must have approached the proper forum for quashing the same. But this was not done. Therefore, decision of the Board of Directors of the distribution licensee dated 19.10.2008 through the resolution has become final. In view of the above, the State Commission correctly accepted the resolution and felt the

modification of the clause 3.4 (d) (ii) of the Supply Code becomes unnecessary and accordingly suitable direction had been issued in favour of the Respondent. Therefore, the order passed by the State Commission, does not suffer from any infirmity.

10. Learned Counsel for the Respondents 3 to 5 has argued that the Respondent No. 3 in its meeting dated 19.10.1998 has held that a feeder which is catering more than one consumer will be deemed to be the Industrial Feeder. Thus the independent feeder of M/s Samtel Colour Ltd. from which connection was granted to the Appellant ceases to be an independent feeder since it got converted into industrial feeder. Thus Clause 3.4(d)(ii) of the Supply would not be applicable in the present case.

11. In the light of the rival contentions of the parties, two questions would arise for consideration:

(i) Whether the Appellant has got a locus standi to file this Appeal.

(ii) Whether the State Commission without modifying the clause 3.4 (d) (ii) of the Supply Code could give directions to the licensee to release the electrical load in favour of M/s. Surya Processors Private Limited on 33 KV M/s Samtel Colour Limited independent feeder by acting upon the Resolution passed by the licensee converting the status of the independent feeder into Industrial feeder ?

12. Before dealing with these questions, it would be appropriate to refer to the background of this case which has got a chequered history. The chronological events leading to the filing of this Appeal are given as under:

(i) The Respondent was given electricity connection of 1500 KVA by the authorities of Paschimanchal Vidyut Vitran Nigam Limited on 15.9.2005 through independent feeder at 11 KV originating from 132 KV. Sub-station.

(ii) The Appellant and M/s. Samtel Colour Limited both have continuous process units. The Appellant had obtained no objection from M/s. Samtel Colour Limited for tapping from independent feeder of M/s. Samtel Colour Limited from 33 KV line.

(iii) The connection of Appellant was released by tapping the 33 KV Feeder of M/s. Samtel Colour Limited on 25.6.2007.

(iv) The Surya Processors Private Limited, the Respondent No. 2 on 9.1.2008 got a sanction of 490

KVA additional load in addition to the existing load of 1500 KVA which was being supplied on 11 KV. The Paschimanchal Vidyut Vitran Nigam Limited, the distribution licensee /Respondent No. 3 took a decision that the entire load of 1990 KVA will be released to Respondent No. 2 M/s. Surya Processors Private Limited by tapping the 33 KV Badalpur Village feeder.

(v) In March, 2008, M/S. Surya Processors Private Limited and Paschimanchal Vidyut Vitran Nigam Limited, entered into an agreement for release of 1990 KVA load on 33 KV independent Feeder. Accordingly on 15.4.2008, the supply of 1990 KVA load was released on 33 KV feeder by tapping 33 KV Badalpur Village feeder. This was objected to by the villagers of Badalpur. Therefore, the supply was disconnected at 33 KV and as an interim measure 1500 KVA supply connection was resumed on 11 KV as earlier.

(vi) Only in the month of August, 2009, the Appellant came to know that M/s. Surya Processors Private Limited tried to get the connection by tapping the independent 33 KV feeder of the Appellant and M/s Samtel Colour Ltd.

(vii) On 12.8.2009, the Appellant moved an application before the Managing Director of Paschimanchal Vidyut Vitran Nigam Limited, the licensee objecting to the same. At that stage, on 15.10.09, M/s. Surya Processors Private Limited, the Respondent filed a Petition before the State Commission praying for the modification of the clause 3.4 (b) (ii) of Supply code thereby converting the status of the independent Feeder into Industrial Feeder and to consequently give the suitable directions.

(viii) On 17.11.2009, the State Commission rejected the said Petition holding that the same was not maintainable and directing the Respondent to raise its grievance before the Consumer Grievance Redressal Forum.

(ix) Aggrieved over the said order, M/s. Surya Processors Private Limited filed a Writ Petition before the Lucknow Bench of Allahabad High Court.

(x) On 25.11.2009, the High Court directed the State Commission to proceed with the matter and pass a fresh order on merit instead of directing the Respondent to go before the Consumer Grievance Forum. Accordingly, on 23.2.2010, the State Commission issued notice to the Appellant and directed the Appellant to appear before the State Commission on 17.3.2010.

(xi) In the meantime, the Appellant filed another written objection before the Managing Director of Paschimanchal Vidyut Vitran Nigam Limited contending that as the consumption process of the Appellant and M/s. Surya Processors Private Limited are not the same, the licensee should not release the connection in favour of M/s. Surya Processors Private Limited especially when the issue is pending before the State Commission for the consideration.

At that stage, the Appellant also filed a Writ Petition before the Allahabad Division Bench of the High Court at Allahabad on 16.3.2010 praying that the connection of M/s. Surya Processors Private Limited be not released from feeder of M/s. Samtel Colour Limited and the Appellant. In that Writ Petition, the Division Bench of the Allahabad High Court directed

the State Commission to finalise the matter within 30 days i.e on or before 16.4.2010.

(xii) On 8.4.2010, the State Commission issued notice and informed the parties that the next date of hearing was on 15.4.2010.

(xiii) On 15.4.2010, the Learned Counsel for the Appellant appeared before the State Commission requesting for granting time to file the reply. However, the same was refused. Next day, i.e. on 16.4.2010, the State Commission passed the impugned order and granted the relief to M/s Surya Processors Pvt. Ltd. by giving directions for connection from feeder of M/s Samtel Colour Ltd. without modification of the Supply Code holding that it would become unnecessary in view of the Resolution passed by the Board of Directors of distribution licensee/Respondent No. 3 on 19.10.2008 converting

the Independent Feeder having more than one consumer into Industrial Feeder.

13. From the events quoted above, it is seen that both parties have approached the High Court separately and obtained the orders of High Court giving various directions to the State Commission including the direction that the State Commission should decide the matter within 30 days. In the result, the State Commission was constrained to hurriedly pass the order within the time limit prescribed by the High Court. In the light of the above facts we have to consider the two questions framed and find out whether the State Commission has applied its mind properly and come to the proper conclusion in accordance with law.

14. The First Question relates to the locus standi of the Appellant to file the Appeal.

15. According to the Respondent, Petition was filed by the Respondent both for modification of clause 3.4 (d) (ii) of the Supply code as well as for direction to give connection but the State Commission did not incline to modify Supply code, as it was unnecessary and as such the question as against the finding relating to the modification of Regulations can not be gone into by this Tribunal. It is further stated by the Respondent that provisions of clause 3.4 (d) (ii) of the Supply Code would apply only to the original consumer M/S. Samtel Color Limited and not to the second consumer, the Appellant and therefore, the Appellant has no locus standi to file this Appeal.

16. This objection in our view is quite preposterous. In the present case, the Appellant has not challenged clause 3.4 (d) (ii) of the Supply code nor challenged the refusal of the State Commission to modify the Supply code. On the other hand, the Appellant merely questioned the order of the State Commission allowing the second prayer by directing the licensee to release

the electricity connection on 33 KV Samtel Colour feeder in favour of Respondent M/s. Surya Processors Private Limited, even without allowing the 1st prayer relating to modification of the supply code. Thus, the challenge is not relatable to the finding with regard to the modification of the Regulation of the Supply code but challenge is relating to the grant of consequential relief having decided not to modify the Supply Code. According to the Appellant, in short, without allowing the first prayer relating to modification of the Supply Code, the relief through 2nd prayer for granting the said permission can not be granted in favour of the Respondent. Therefore, it can not be contended that the Appeal is not maintainable.

17. It is the further contention of the Respondent, that the provision of clause 3.4 (d) (ii) of the Supply Code would apply to the original consumer M/s. Samtel Colour Limited being an independent feeder and would not apply to the second consumer, the Appellant herein, and therefore, the Appellant has no locus-standi to file this Appeal.

18. To consider this submission, we have to look into the definition of the term “Independent Feeder”. Clause 2 (ff) of the Supply Code defines the term of ‘Independent’ Feeder as under:

“Independent feeder” in case of 11 KV supply voltage shall mean a feeder emanating from 33 KV or higher voltage substation, and in case of 33 KV supply voltage shall mean a feeder emanating from 132 KV or higher voltage substation for supplying electricity to a single consumer or a group of consumers having similar process, on the same or contiguous premises”

19. The gist of the above definition is that *“an independent feeder means a feeder supplying electricity to a single consumer or a group of consumers having similar process having same or contiguous premises”*

20. The above definition would clearly reveal that a feeder supplying electricity not only a single consumer but even a group of consumers i.e. the consumers having similar process and having same or contiguous premises units could also be considered to be Independent Feeder.

21. Admittedly, the Appellant M/s. Suchi Papers Mills Limited as well as M/s. Samtel Colour Limited are continuous process units getting electricity from an independent feeder. Therefore, the arguments advanced by the Respondent about the provision of clause 3.4 (d) (ii) would apply only to M/s. Samtel Colour Limited and not to the Appellant, is liable to be rejected. Consequently, it has to be held that the Appellant also has the locus standi to file this Appeal. As such the Appeal is maintainable.

22. Now let us see the second Question.

23. This question relates to the validity of the directions issued by the State Commission to the licensee to release the electrical load in favour of M/s. Surya Processors Private Limited without modifying the relevant clause of the Supply Code merely on the basis of the resolution passed by the licensee.

24. It is the contention of the Respondent that the State Commission ordered granting the relief to the Respondent without modification of the Supply Code as Samtel Color feeder was no more an Independent Feeder because Samtel Color feeder had already become Industrial Feeder by the resolution passed by the licensee which has not been challenged.

25. To consider the merits of this contention, we have to analyze the question as to whether the Samtel Color Limited being the independent feeder could be converted into industrial feeder through the resolution passed by the Licensee.

25. For dealing with this question, it is appropriate to refer clause 3.4 (d) (ii) of the Supply Code which is as under:

“The Licensee shall allow tapping of feeders supplying Arc/Induction furnaces, Rolling Mills, Re-rolling Mills and Mini Steel Plants, with either of these plants, and this shall not be construed as change in process. The tapping of the

independent feeder shall be permitted by licensee to other connection having a similar process subject to the following conditions:-

- (i) Construction of separate feeder from the sub-station is not possible on account of non-availability of corridor, right of way and bay at the respective sub-station.
- (ii) Consent of original consumer has been obtained by the prospective consumer for cost sharing of common portion of feeder with the prospective consumer.
- (iii) Quality of supply is not likely to be affected, and technically feasible.
- (iv) The outdoor metering at the tapping point, and

the additional cost due to changes in system shall be done at the cost of prospective consumer. However, the cost credit due to removal of the existing system shall not be given to the consumers.

27. The perusal of this clause would reveal that under this clause, the tapping of the independent feeder can be permitted by the licensee to provide connection to other unit having a similar process unit subject to the conditions as above, one of the conditions being obtaining consent of the original consumer.

28. Admittedly, the Appellant M/s. Suchi Paper Mills Limited as well as M/s. Somtel Color Limited are similar process units. A consumer being similar process can get a connection on the existing independent feeder but only after obtaining the consent of the original consumer and after satisfying other conditions given in Clause 3.4(d)(ii) of the Supply Code. According to the Appellant, the Appellant and Samtel Colour Limited being the continuous process units would fall under independent feeder

category and it can not be converted into any other category by the mere resolution passed the licensee.

29. According to the Respondent the distribution licensee in its meeting dated 19.10.2008 held that the independent feeder which is catering more than one consumer will be deemed to be the industrial feeder and therefore, the question of consent under clause 3.4 (d) (ii) of the Supply Code would not arise and as such the impugned order is valid.

30. In this case, the State Commission has held no amendment is necessary for giving the direction in favour of the Respondent mainly on the reason that the status of the Appellant's independent feeder was converted into an industrial feeder as per the resolution already passed by the Licensee.

31. The question is this: Whether such a direction could be given without amending supply code and whether the State Commission is bound to act upon the mere resolution passed

by the distribution licensee to convert the status of the Independent Feeder of M/s. Samtel Colour Limited into Industrial Feeder?

32. It can not be debated that the original prayer sought for by the Respondent through its Petition, before the State Commission is for amending the Supply Code by converting the status of M/s. Samtel Colour Limited from Independent Feeder into an Industrial Feeder and for giving a consequent direction to the Licensee and M/s. Samtel Colour Limited accordingly. However, the State Commission without amending the said clause of the supply code has blindly accepted the resolution passed by the licensee and gave a direction in favour of the Respondent. In other words, the State Commission without going into the question as to whether licensee has got authority to convert the status of the independent feeder into industrial feeder through its resolution, has simply accepted the Resolution and passed the impugned order.

33. As we observed earlier, Clause 2 (ff) of the Supply Code defines the term as:

“the independent feeder means a feeder for supplying electricity to a single consumer or a group of consumers having similar process on the same or contiguous premises.”

34. Ignoring this supply code definition, the State Commission has taken a view that when there is more than one connection on the independent feeder, such feeder has to be treated as a Industrial Feeder as such it does not require the consent or amendment of the provisions of the supply code as per the resolution of the Licensee.

35. The question is how could a mere resolution passed by the Board of Directors of licensee deciding to convert the status of the independent feeder into an Industrial Feeder compel the State Commission to act upon same without following clause 2 (ff) as well as clause 3.4 (d) (ii) of the Supply Code ?

36. It is mandatory on the part of the State Commission to follow the provisions of Section 3.4 (d) (ii) of the Supply code 2005 for tapping from independent feeder. Without amending the said provisions, the State Commission can not allow any tapping from the independent feeder. That was why the Respondent M/s Surya Process Ltd. sought for the prayer for giving direction to the Licensee for connection after amending the relevant clause of the Supply Code.

37. As indicated above, the essential criteria for tapping of independent feeder under clause 3.4 (d) (ii) is that 'the tapping of the independent feeder can be permitted by the licensee to other connection having a similar process with the consent of original consumer. It is also stated in the definition of independent feeder in clause 2(ff) of the Supply Code that "independent feeder means a feeder supplying electricity to a single consumer or a group of consumers having similar process on the same or contiguous premises."

38. In the instant case, the State Commission has taken a wrong view mainly relying upon the resolution passed by the licensee that when there is more than one connection with one feeder, that feeder will be treated as an industrial feeder and on the basis of the said Resolution that no consent or amendment to the provisions of clause 3.4 (d) (ii) is required. The State Commission instead of following the Supply Code, hastened to follow the resolution passed by the licensee which was contrary to the provisions of Supply Code. It is made clear that the State Commission alone has got the authority to amend the supply code to enable it to give consequential directions in favour of the Respondent and the said power can not be usurped by the licensee through its resolution.

39. It is contended by the Respondent in the absence of the challenge to the said resolution, the decision taken by the licensee has become final. He has cited judgment by the Hon'ble Supreme Court rendered in Civil Appeal No.5789 of 2002 dated 13.12.2007. This decision will not help the

Respondent. In the said decision it has been clearly held that the doctrine of estoppel would apply only in the cases where promise was made to the authorities and the principles of said doctrine would not be applicable where no such promise has been made. There was no such promise in this case. Hence this would not apply to present facts of the case.

40. The question which arises here whether the resolution passed by the licensee would be binding on the State commission so as to ignore the mandatory provisions contained in the clause 2 (ff) and 3.4 (d) (iii) of the Supply code? It shall be emphatically stated that the State Commission alone is authorized to frame the definition of the Independent Feeder provided in the Supply Code. The supply code provides that 'Independent Feeder' means where a single consumer or a group of consumers having similar process on the same or contiguous premises. If such an Independent Feeder who have a group of consumers has to be converted into Industrial Feeder, it can be done only by the State Commission by

amending the supply code and not by the licensee. Thus the State Commission has missed the main point while passing the impugned order which was hurriedly passed.

41. SUMMARY OF OUR FINDINGS

(i) The challenge in this Appeal is not relatable to the findings with regard to the modification of the Regulations of the Supply Code. But challenge is relating to the grant of consequential relief having decided not to modify the Supply Code. The grievance of the Appellant is that without allowing the first prayer seeking for the modification of Supply Code, the relief through the second prayer for granting the permission cannot be granted. In view of this, the Appeal is maintainable.

(ii) The contention of the Respondent, that the provisions of Clause 3.4(d) (ii) of the Supply Code would apply only to the original consumer i.e. M/s Samtel Colour

Limited being Independent Feeder and would not apply to the 2nd consumer the Appellant is not tenable. The definition of the term “Independent Feeder” would indicate that the Independent Feeder means a feeder supplying electricity to a single consumer or a group of consumers having similar process on the same or contiguous premises. Therefore, the Appellant who is the co-member of the group of consumers also shall be construed to be a consumer of the Independent Feeder. Hence the Appellant has got a locus standi to file the Appeal.

(iii) The Appellant M/s Suchi Papers Mills Limited and M/s Samtel Colour Limited are having similar process units having connection on an independent feeder. Tapping on the independent feeder can be given by the licensee to another consumer subject to the conditions under 3.4(d) of the Supply Code, one of the conditions being consent of the original consumer. That was the reason why the Respondent had prayed the State Commission to amend

this Supply Code by converting the status of M/s Samtel Colour Ltd. from Independent Feeder into Industrial Feeder and for issuing consequential direction to the licensee as well as to M/s Samtel Colour Ltd. This consequential direction can be issued by the State Commission only when the Supply Code 3.4(d)(ii) is amended. In this case the Resolution passed by the licensee has been blindly accepted and acted upon by the State Commission by ignoring the provisions of Section 3.4(d)(ii) of Supply Code. In other words the Resolution passed by the Distribution Licensee is not binding on the State Commission. On the other hand, the State Commission is bound by the provision of the Supply Code. Therefore the impugned order giving direction in favour of the Respondent on the strength of resolution passed by the licensee is not valid in law. Therefore, impugned order is liable to set aside.

42. Before parting with this case, it shall be pointed out that it was complained by the Appellant before the State Commission

that a false affidavit had been filed before the State Commission in the name of the Appellant by somebody else to mislead the State Commission and considering the said allegation, the State Commission in the impugned order has given liberty to the Appellant to take appropriate action for the said misconduct of the said person. This liberty is intact and the same is not disturbed.

43. Consequently, the Appeal is allowed and the Impugned order is set aside. No order as to costs.

(Justice P S Datta) **(Rakesh Nath)** **(Justice M. Karpaga Vinayagam)**
Judicial Member **Technical Member** **Chairperson**

Dated: 06 May, 2011

REPORTABLE/NON-REPORTABLE