

In the Appellate Tribunal for Electricity,
New Delhi
(Appellate Jurisdiction)

Appeal no. 34 of 2015

Dated: 5th February, 2016

Present: Hon'ble Mr. Justice Surendra Kumar, Judicial Member
Hon'ble Mr. I.J. Kapoor, Technical Member

In the matter of:

M/s. Gautam Ferro Alloys
Unit of M/s. Bihar Foundry & Casting Ltd.
Main Road, P.S. Kotwali Town,
Ranchi – 834 001

...Appellant(s)/
Petitioner

Versus

1. Jharkhand Bijli Vitran Nigam Limited (formerly known as Jharkhand State Electricity Board)
Project Building, HEC, P.O. Dhurwa
P.S. Jagarnathpur,
District Ranchi – 834 004 ...Respondent No.1
2. General Manager cum Chief Engineer
Hazaribag Electric Supply Area
P.O. & P.S. Hazaribagh ...Respondent No.2
3. Electrical Superintending Engineer
Hazaribagh Electric Supply Area
P.O. & P.S. Hazaribagh ...Respondent No.3
4. Electrical Executive Engineer (C&R)
Electric Supply Circle
P.O. & P.S. Hazaribagh ...Respondent No.4

5. Jharkhand State Electricity Regulatory Commission ...Respondent No.5
2nd Floor, Sainik Bhawan, Main Road
P.O. G.P.O. & P.S., Lower Bazar
Distt. Ranchi – 834 001

Counsel for the Appellant : **Mr. Ravi Bharuka**
Mr. Devashish Bharuka
Ms. Arpita Sishnoi

Counsel for the Respondent : **Mr. Himanshu Shekhar and**
Mr. Aabhas Parimal for R.1 to R.4
Mr. Farrukh Rasheed for R.5

JUDGMENT

PER HON'BLE MR. I.J. KAPOOR, TECHNICAL MEMBER

The present Appeal has been filed by M/s. Gautam Ferro Alloys, Ranchi (**hereinafter referred to as “Appellant”**) under Section 111 of the Electricity Act, 2003 against the Impugned Order dated 17.09.2014 passed by the Jharkhand State Electricity Regulatory Commission (**hereinafter referred to as “State Commission”, the Respondent No.5**) in Case No. 01 of 2014.

2. The Appellant's company is engaged in manufacturing of ferro alloys and had sought electricity connection from the Jharkhand Bijli Vitaran Nigam Limited, the Distribution Company in the Jharkhand

State (hereinafter referred to as “Respondent No. 1”). The State Distribution Company, Respondent No. 1 is responsible for distribution of electricity within the State of Jharkhand. The electricity connection sought by the Appellant from the Respondent No.1 for carrying out its operational activities was sanctioned and pursuant to which Agreement was entered into between the Appellant and Respondent No. 1 on 16.11.2013 and the electricity connection was energized on 17.11.2013.

3. The other Respondents in the present Appeal are the functionaries of the Respondent No.1 and are as follows:-
 - (i) General Manager cum Chief Engineer - Respondent No.2
Hazaribag Electric Supply Area
 - (ii) Electrical Superintending Engineer - Respondent No.3
Hazaribagh Electric Supply Area
 - (iii) Electrical Executive Engineer (C&R) - Respondent No.4
Hazaribagh Electric Supply Circle

4. For the supply of electricity to the Appellant for the month of November, 2013, the first energy bill was raised on the Appellant by the Respondent No.1 on 05.12.2013 wherein the monthly demand charges have been levied for the entire month, without

considering prorata reduction in the demand charges for actual supply hours made to the Appellant during the month which, as per the Appellant, was in violation of the agreed terms and conditions.

5. The distribution tariff for the period FY 2012-13 was notified on 01.08.2012 by the State Commission. The Appellant made an application to the Respondent No.1 for an electric connection for a contract demand of 12500 KV at 33 KV power line.

6. The Agreement was entered into between the Appellant and Respondent No.1 for supply of electricity on 16.11.2013. The electricity connection was energized on 17.11.2013.

7. The Appellant was served with the first monthly energy bill for the month of November, 2013 on 05.12.2013 which was objected to by the Appellant on 16.12.2013 pointing out the defects and anomalies in the electricity bills for the electricity supply during the month of November, 2013 which was further followed up by another letter dated 23.12.2013 and in absence of any resolution by Respondent No.1, the Appellant made payment of

Rs.1,32,21,344/- to the Respondent No.1 under protest on 31.12.2013.

8. After lapse of consideration period in resolving the dispute, the Appellant filed petition before the State Commission bearing case no. 01 of 2014 on 28.02.2014.
9. The State Commission passed the Impugned Order dated 17.09.2014 whereby the State Commission on the preliminary issue of jurisdiction/maintainability of the petition, relying upon judgment of Hon'ble Supreme Court in the matter of Maharashtra Electricity Regulatory Commission Vs. Reliance Energy Limited and Others in Civil Appeal No. 2846 of 2006, has directed the Appellant to approach Consumer Grievance Redressal Forum as per Section 42 (5) of the Electricity Act, 2003 .
10. The Appellant is aggrieved by the Impugned Order dated 17.09.2014 passed by the State Commission directing the Appellant to approach the Consumer Grievance Redressal Forum, which as per the Appellant, the State Commission is the competent

Commission as per the Electricity Act, 2003 and instead of asking the Appellant to approach Consumer Grievance Redressal Forum, the State Commission should have decided itself the petition filed by the Appellant.

11. **The only issue involved in the present Appeal is regarding the jurisdiction of the State Commission to decide the question in dispute.**

It is pertinent to examine the Agreement entered into by the Appellant with the Respondent No.1 for supply of electricity to the Appellant's company so as to ascertain whether any violation of the agreed terms and conditions has been done, as alleged by the Appellant.

12. The Appellant's main contention is the Clause 13 of the Agreement has been violated by the Respondent No.1 to 4 by not providing the prorata reduction in demand charge for actual electricity supply hours as admissible under the provisions of Clause 13 of the said Agreement.

Clause 13 of the Agreement dated 16.11.2013 is reproduced below: -

“13. If at any time the consumer is prevented from receiving or using the electric energy to be supplied under this agreement either in whole or in part due to strikes, riots, fire, floods, explosions, act of God or any other case reasonable beyond control or if the Board is prevented from supplying or unable to supply such electrical energy owing to any or all of the causes mentioned above then the demand charge and guaranteed energy charge set out in the Schedule shall be reduced in proportion to the ability of the consumer to take or the Board to supply such power and the decision of the Chief Engineer, Jharkhand State Electricity Board, in this respect shall be final.”

13. As per the Appellant, the State Commission in terms of powers conferred upon it under Electricity Act, 2003 was pleased to hold that the Clause 13 of the Agreement is to be given due weightage and would not be deleted from the Agreement, in terms whereof the

consumer is entitled for prorata reduction in the monthly demand charge to the consumer based on the actual supply of electricity. The Appellant further alleged that it is an admitted position in this case that the Clause 13 of the Agreement which was sought to be deleted at the instance of the Respondents was turned down by the State Commission in the Tariff Order for FY 2012-13 and even the Review petition for the same financial year filed by the Respondents praying for deletion of Clause 13 from the Agreement has also been dismissed by the State Commission vide order dated 06.05.2014. The Appellant's case is based on the provisions of Clause 13 of Agreement which does provide for prorata reduction depending on the actual supply made by the Respondents to the Appellant and the benefit of Clause 13 of the Agreement cannot be denied to the Appellant and the State Commission is sole authority to clarify, interpret and implement its Tariff Order in its true spirit. As per the Appellant, it is the State Commission which has to decide whether the Appellant is eligible for the benefit of Clause 13 of the Agreement as per the Tariff Order 2012-13 rather directing the Appellant to approach the Forum constituted under Section 42 (5) of the Electricity Act, 2003. By not doing so, the State Commission has

erred in declining to exercise their jurisdiction under the Electricity Act, 2003.

14. The Appellant further alleged that the Respondent Nos.1 to 4 are not passing on the benefit admissible to the Appellant under Clause 13 of the Agreement not only for the month of November, 2013 but for the period thereafter also.
15. The Appellant has further submitted that during the pendency of the Appellant's petition, before the State Commission, an order dated 06.05.2014 in Case No. 21 of 2012 was passed by the State Commission reiterating that the Clause 13 of the Agreement ought to be retained in the interest of the consumer.
16. We have heard at length Mr. Devashish Bharuka, learned counsel for the Appellant, Mr. Abhas Parimal, learned counsel for Respondent Nos. 1 to No. 4 and Mr. Farrukh Rasheed, learned counsel for Respondent No.5 and have considered their arguments and written submissions. The following issues have been deliberated during the pleadings before us;

- i) The Appellant raised the question of law whether the Respondent No.5 – State Commission has erred in deciding the issue of jurisdiction without considering the fact that the Tariff Order for FY 2012-13 passed by the State Commission needs clarification, interpretation and implementation in its true spirit?**
- ii) Whether the Consumer Dispute Redressal Forum and the Ombudsman established under Section 42 (5) of the Electricity Act, 2003 for redressing grievances of the consumers only for the adjudication of billing dispute is the right authority for the interpretation, clarification or implementation of the provisions contained in the Tariff Order for the FY 2012-13 issued by the State Commission?**

17. The Appellant referred to Clause 2(e) of the JSERC (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers and Electricity Ombudsman), Regulations, 2011.

The Appellant stated that the term complaint in Clause 2(e) of the JSERC (Guidelines for Establishment of Forum for Redressal of

Grievances of the Consumers and Electricity Ombudsman) Regulations, 2011 which clearly defines the scope of dispute which can be adjudicated by the Consumer Grievances Redressal Forum or the Ombudsman and it nowhere includes the authority for interpretation, clarification or implementation of the Tariff Order published by the State Commission.

18. The Appellant brought our attention to this Tribunal's order dated 22.03.2011 in the matter of Uttar Gujarat Vij Company Ltd. Vs. Gujarat State Electricity Regulatory Commission and Others in Appeal No. 181 of 2010 wherein it has been observed that if a particular entity is of the opinion that it has been wrongly categorized or that there has been wrong application of the Tariff Order because of misunderstanding or misinterpretation, then it is the State Commission that has to clarify the confusion and make the position clear. As per the Appellant, even in the present case, the matter is relating to the misunderstanding or misinterpretation of the Tariff Order for FY 2012-13 which clearly could be dealt with only by the State Commission in its true letter and spirit.

19. The learned counsel for the State Commission stated that the petition filed by the Appellant before the State Commission was with prayers (i) for strict implementation of the Commission's tariff order (ii) quashing the energy bill 05.12.2013 of the petitioner for month of November, 2013 and (iii) directions upon the respondents to raise the monthly energy bills as per the tariff order published by the State Commission and the learned counsel of the Respondents before the State Commission raised the issue of maintainability/jurisdiction of the State Commission as per Section 86(1)(f) of the Electricity Act, 2003 and the State Commission has relied upon the judgment of the Hon'ble Supreme Court in case of Civil Appeal No. 2846 of 2006 of Maharashtra Electricity Regulatory Commission Vs. Reliance Energy Ltd. and others and the relevant order of the judgment is quoted below:-

(13) *"It may be noted from a perusal of Section 86(1)(f) of the Act that the State Commission has only power to adjudicate upon disputes between licensees and generating companies. It follows that the Commission cannot adjudicate disputes relating to grievances of individual consumers. The adjudicatory function of the Commission is thus limited to the matter prescribed in Section 86(1)(f).*

(33) *"As per the aforesaid provision, if any grievance is made by a consumer, then they have a remedy under Section 42(5) of the Act and according to sub-section (5) every distribution licensee*

has to appoint a forum for redressal of grievances of the consumers. In exercise of this power the State has already framed the Maharashtra Electricity Regulatory Commission (Consumer Grievance redressal Forum and Ombudsman) Regulation, 2003 (hereinafter referred to as 'the 2003 Regulations') and created Consumer Grievance Redressal Forum and Ombudsman. Under these 2003 Regulations a proper forum for redressal of the grievances of individual consumers has been created by the Commission. Therefore, now by virtue of sub-section (5) of Section 42 of the Act, all the individual grievances of consumers have to be raised before this forum only. In the face of this statutory provision we fail to understand how could the Commission acquire jurisdiction to decide the matter when a forum has been created under the Act for this purpose. The matter should have been left to the said forum. This question has already been considered and decided by a Division Bench of the Delhi High Court in Suresh Jindal Vrs BSES Rajdhani Power Ltd and Dheeraj Singh Vrs. BSES Yamuna Power Ltd. And we approve of these decisions. It has been held in these decisions that the forum and ombudsman have power to grant interim orders. Thus a complete machinery has been provided in Section 42(5) and 42(6) for redressal of grievances of individual consumers. Hence wherever a forum/ombudsman have been created the consumers can only resort to these bodies for redressal of their grievances. Therefore, not much is required to be discussed on this issue. As the aforesaid two decisions correctly lay down the law when an individual consumer has a grievance he can approach the forum created under sub-section (5) of Section 42 of the Act.

(34)"In this connection, we may also refer to Section 86 of the Act which lays down the functions of the State Commission. Sub-section (1)(f) of the said section lays down the adjudicatory function of the State Commission which does not encompass within its domain complaints of individual consumers. It only provides that the Commission can adjudicate upon the disputes between the licensees and generating companies and to refer any such dispute for arbitration. This does not include in it an individual consumer. The proper forum for that

is Section 42(5) and thereafter Section 42(6) read with the Regulations of 2003 as referred to hereinabove”

The State Commission in light of the above judgment of the Hon'ble Supreme Court opined that it is a consumer grievance and there is a complete mechanism set up under the State Commission's Regulation, 2011 and the Forum is functional in the State of Jharkhand and directed the petitioner to approach the concerned Forum.

20. The learned counsel for the State Commission further stated that as per Section 86 (1) (f) the State Commission is empowered to hear dispute arising between generator and licensees and in the opinion of the State Commission, the petitioner is neither a generator nor a licensee and the petitioner's dispute is not covered by the aforesaid section.

21. The learned counsel for Respondent No.1 to 4 reiterated the stand taken by the State Commission as mentioned above and further stated that the consumers do not come under the purview for remission under the Clause 13 of the Agreement as the said Clause will be applicable only when AMG has been charged and

since there is no provision for charging of AMG to the consumers such as the Appellant, as such the said Clause does not hold good in the present case.

22. The learned counsel for the Respondent No. 1 to 4 further stated that the contention of the Appellant is misguiding and misleading and there is no case on the merit and rightly dealt with by the State Commission and if at all they have a billing dispute, the Appellant could approach the Ombudsman and in view of the same, the present Appeal needs to be dismissed.

23. As per Section 86 of the Electricity Act, 2003, (1) (f) is reproduced below:-

“Section 86. (Functions of State Commission): --- (1) The State Commission shall discharge the following functions, namely: -

(a).....

(b).....

(c).....

(d).....

(e).....

(f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;”

In our opinion, there is no doubt that it is limited to the licensees and generating companies but the case in hand is not of

adjudication rather seeking clarification with respect to the Tariff Order for FY 2012-13 issued by the State Commission read in conjunction with the Clause 13 of the Agreement entered into by the Appellant and Respondent No.1

24. The State Commission's Regulation dated 09.11.2011 notifying therein the Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers and Electricity Ombudsman clearly defines the expression "complaint" which is reproduced below:-

"e) "Complaint" means any grievance, in writing made by a complainant that: -

(i) There exists defect or deficiency in electricity service provided by the licensee;

(ii) An unfair or restrictive trade practice has been adopted by the Distribution licensee in providing electricity services;

(iii) The distribution licensee has charged a rate in excess of that fixed by the Commission, for supply of electricity and related services;

(iv) The Distribution licensee has recovered expenses, in excess of charges approved by the Commission, in providing any electric line or electric plant or electric meter;

(v) The electricity services provided by the distribution licensee is unsafe or hazardous to public life and is in contravention to the provisions of any law in force;"

After examining the above, we find that the non-implementation of Clause 13 of the Agreement if regarded as complaint, and referred to by the State Commission to the Ombudsman, it does not fall within the ambit of the above definition of the complaint as given in the Regulations, 2011 of the State Commission.

25. The State Commission has decided to refer the above case of the Appellant to Redressal Forum and Ombudsman on the basic premise of the judgment of Hon'ble Supreme Court and the relevant portion of the same judgment has already been reproduced above. In our opinion, the present case of the Appellant is not that similar to the case which was under the consideration of the Hon'ble Supreme Court. In that case, the Consumer Grievance Redressal Forum and Ombudsman was already created by the Maharashtra Electricity Regulatory Commission and the issue was relating to Section 86(1)(f) of the Electricity Act, 2003 on the aspect of adjudication by the State Commission in respect of the individual consumer. The Hon'ble Supreme Court stated in the above judgment that the State Commission cannot adjudicate disputes relating to grievances of individual consumers if such Redressal Forum is already in existence and the issue was limited to the individual grievances of

the consumers. However, in the present case it is a distinct from the above in the manner that it is relating to only clarification of some of the provisions of the Tariff Order for the FY 2012-13 issued by the State Commission read in conjunction with Agreement dated 16.11.2013 executed between the Appellant and the Respondent No.1 and the limited issue before the State Commission was to issue the requisite clarification with respect to the implementation of the provisions contained in the Clause 13 of the Agreement executed between the parties.

26. Section 42(5) of the Electricity Act, 2003 states that every Distribution Licensee shall, establish a Forum for Redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

We have already referred to State Commission's Notification dated 09.11.2011 and observed that nowhere any mention has been made about seeking clarification on the applicability of the relevant provisions contained in the Tariff Order issued by the State Commission needs to be referred to Ombudsman or "the Redressal Forum" as constituted under the law.

27. As decided by this Tribunal vide judgment dated 30.07.2007 in Appeal No. 37 of 2007, the matter related to interpretation of the load factor rebates in the Appeal filed by the Jharkhand Induction Furnace Association Vs. Jharkhand State Electricity Regulatory Commission could be entertained by the State Commission and further stated that so far as the plea that it was merely a billing dispute and therefore, the consumer dispute forum should have been approached does not have any merits.

Here in the present Appeal also, the issue is of similar nature and required to be interpreted or clarified which could be judicially done by the State Commission since it is arising out of their own Tariff Order.

28. Even in another case involving Chhattisgarh State Power Holding Co. Ltd Vs. Lanco Amarkantak Power Pvt. Ltd in Appeal No. 176 of 2010, this Tribunal vide its judgment dated 15.03.2011 opined that the issue relating to clarification of applicability of tariff is not merely a billing dispute and the State Commission, which has determined the tariff under Section 86(1)(a) alone has the jurisdiction to give the

clarification of correct applicability of the tariff provisions and in our opinion, the case in the present Appeal is similar one.

29. In another judgment of this Tribunal dated 27.05.2014, this Tribunal upheld the view that if any distribution licensee is found violating the Tariff Order of not complying with it in letter and spirit and is trying to misinterpret it while applying to certain category of consumers, then it is a statutory duty of the State Commission to look into the matter and ensure that the consumers are charged tariff as approved by the State Commission and the case in the present Appeal again is of the similar nature wherein a right interpretation of Tariff Order for the FY 2012-13 issued by the State Commission read in conjunction with Agreement dated 16.11.2013 executed between the parties, ought to have been dealt with by the State Commission itself.

30. In our considered opinion, the State Commission has erred in its Impugned Order dated 17.09.2014 by directing the Appellant to approach the Redressal Forum or Ombudsman and not taking onus on it for a matter which relates to only a clarification on the requisite provisions contained in the Tariff Order for FY 2012-13 read with the Agreement dated 16.11.2013 executed between the parties for

supply of electricity to the Appellant, a consumer. Hence, the Impugned Order is liable to be quashed as it suffers from manifest error of law and the Appeal is liable to be allowed.

ORDER

In light of the above findings, we hereby allow the Appeal and direct the State Commission to decide the matter on merits and the Impugned Order 17.09.2014 is hereby set aside.

No order as to costs.

Pronounced in the Open Court on this **5th day of February, 2016.**

(I.J. Kapoor)
Technical Member

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REPORTABLE/NON-REPORTABLE

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(Justice Surendra Kumar)
Judicial Member