Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal Nos. 125, 126 & 127 of 2006

Dated the 28th November, 2006,

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

Appeal No. 125/06
Chhattisgarh State Electricity Board **Appellant/s**
Raipur

Versus

1. **Raghuvir Ferro Alloys Ltd.** **Respondents**
   Raipur
2. **Chhattisgarh State Electricity Regulatory Commission**
   Raipur

Appeal No. 126/06
Chhattisgarh State Electricity Board **Appellant/s**
Raipur

Versus

1. **Srinivasa Ferro Alloys Ltd.** **Respondents**
   Visakhapatnam
2. **Chhattisgarh State Electricity Regulatory Commission**
   Raipur

Appeal No. 127/06
Chhattisgarh State Electricity Board **Appellant/s**
Raipur

Versus

1. **Sai Chemicals Pvt. Ltd** **Respondents**
   Bhilai, Durg.
2. **Chhattisgarh State Electricity Regulatory Commission**
   Raipur

For Appellant : Mr. K. Gopal Chaudhary, Advocate &
Ms. Suparna Srivastava, Advocate for CSEB
in all appeals

For Respondent No. 1 : Mr. Sanjay Sen & Mr. Vishal Anand, Advocates
in all appeals

For Respondent No. 2 : Mr. M.G. Ramachandran with
Ms.Taruna Singh Baghel &
Mr. Anand K. Ganesan, Advocates for CSERC
in all appeals

C O M M O N J U D G M E N T

1. As the three appeals by Chhattisgarh State Electricity Board (CSEB), namely, Appeal No. 125 of 2006, Appeal No. 126 of 2006 and Appeal No. 127 of 2006 are directed against the order dated 23rd May, 2006, of the Chhattisgarh State Electricity Regulatory Commission (CSERC) on identical issues, we will be justified in taking up these together. We will take up Appeal No. 125 of 2006 and the principle decided in this case will be equally applicable to the other two appeals as well as they are identical in all respects.

2. Facts of the case leading to the present appeal, briefly stated, are as under:-

i) By an order dated 15th June, 2005 in Petition No. 5/2005, the Commission determined the Annual Revenue Requirement and the Retail Supply Tariff for FY 2005-2006 to remain in force till 31st March, 2006

or till the next tariff order of the Commission, whichever is later. The said tariff order provides, *inter alia*, for "Supply arranging charges" under Item No. 16 of the Schedule of Miscellaneous and General Charges appended to the said order. By a notification dated 14th September, 2005, the Regulatory Commission framed the Chhattisgarh State Electricity Supply Code 2005, in exercise of powers conferred by Sec 43(1) read with Sec 181(1), 44, and 46 of The Electricity Act, 2003 to govern the distribution and supply of electricity and the procedures thereof such as the systems of billing, modality of payment of bills, the powers, functions and obligations of the distribution licensees and the rights and obligations of consumers, etc., Chapter 7 of the said Code relates to contract demand, agreement and security deposit.

ii) The 1st Respondent (also as "RFAL" for short) is a company registered under the Companies Act, 1956, and is said to have a sponge iron factory with a connected load of 10,000 kVA. On the ground of adverse market conditions, the 1st Respondents reduced its contracted demand from 10,000 kVA to 7,000 kVA; and it was again reduced from 7,000 kVA to 60 kVA with effect from October, 2005. By an application dated 6th January, 2006, the 1st Respondent sought enhancement of load from 60 kVA to 7000 kVA. By letter dated 2nd February, 2006, the 1st Respondent

requested the appellant to convey the supply arranging charges for enhancement of load from 60 kVA to 7000 kVA. The appellant furnished to the 1st Respondent the tariff schedule according to which the 'Supply arranging charges" for the enhancement sought by the 2nd Respondent would be Rs. 650/- per kVA of contract demand.

iii) The 1st Respondent filed a petition in March, 2006 before the 2nd Respondent Regulatory Commission contending that the electricity connection is already existing and that the required infrastructure for 10 MVA is already available and that no expenditure is likely to be incurred by the Appellant, and that they are ready to bear any actual expenditure required by the Board for meeting the required load of 7 MVA. It was prayed that the Commission may consider restoration of contract demand on actual cost basis instead of Rs. 650/- per kVA, so that the 1st Respondent can revive its sick unit.

iv) By an interim order dated 5th April, 2006, the Commission directed that the appellant Board shall immediately provide the additional load of 6940 kVA on payment of 25% of the supply arranging charges. The said interim order was received by the Board on 10th April, 2006 and the same was received in the office of the Chief Engineer (Commercial) on 18th April, 2006. Meanwhile, pursuant to the approval for sanction of

additional demand of 6940 kVA on 12th April, 2006, the appellant Board sent letter dated 13th April, 2006, in the normal course intimating that the 1st Respondent would be required to pay Rs. 45,11,000/- towards supply arranging charges @ Rs.650/- per kVA for additional load of 6940 kVA applied for. Construing the said letter dated 13th April, 2006 as non-compliance of its orders, the Commission made an order dated 27th April, 2006, taking cognizance u/s 142 of the Act and provisionally deciding to impose a penalty of Rs. 25,000/- and called for explanation of the Board. The Board submitted its explanation by letter dated 5th May, 2006.

v) The appellant Board filed a reply dated 29th April, 2006, to the Petition submitting that the Petition is not maintainable before the Commission as it has no jurisdiction. It was also submitted that the 1st Respondent had never paid any supply arranging charges to the Board for the various previous enhancements of the contracted demand to 7000 kVA on 31st May, 2003, and subsequently to 8000 kVA, and further from 8000 kVA to 10,000 kVA on 27th December, 2004, as these enhancements were done according to a special package extended by the appellant Board by proceedings dated 28th March, 2002 for the revival of closed ferro alloy units in the State. It was submitted by the appellant that no special

disposition was available to any consumer in regard to exemption from payment of supply arranging charges after coming into force of the Supply Code.

vi) The Commission passed the impugned common order on 23rd May, 2006 in the petitions filed by the 1st Respondent herein and in the separate petitions filed by two other ferro alloy units (who are respondent No. 1 in Appeal No. 126 & 127 of 2006).

Being aggrieved by the said impugned orders, the appellant has come forward with Appeal No. 125 of 2006 and the connected Appeal No. 126 & 127 of 2006.

Appellant has sought the following reliefs.:-

(a) to set aside the common order dated 23rd May, 2006 passed by the Chhattisgarh State Electricity Regulatory Commission in Petition No. 9 of 2006 (M); and

(b) to declare that the supply arranging charges shall be payable in accordance with the established tariff on the additional contracted demand sought for by the consumers; and/or

(c) to declare that the Appellant is entitled to demand and recover the balance of the supply arranging charges as per the tariff from the 1st Respondent;

(d) and/or pass such other order as this Hon'ble Tribunal may deem fit and proper so that justice may be done.

2)(A) It is contended on behalf of the appellant that the impugned order dated 23rd May, 2006 passed by the Chhattisgarh State Electricity Regulatory Commission in Petition No. 9 of 2006(M) and batch is without authority and jurisdiction, erroneous, contrary to law and irrational. The Commission erred in entertaining and deciding the Petition filed by the 1st Respondent. The Commission ought to have seen that the perceived grievance of the 1st Respondent and the consequent dispute raised by the 1st Respondent was between the consumer and the Appellant with regard to the liability to pay the supply arranging charges under Supply Code and tariff order and/or the interpretation of the Supply Code and tariff. The Commission ought to have noted the objection that it is not vested with the function, power or jurisdiction to entertain and adjudicate upon disputes between a consumer and a licensee, or to interpret the Supply Code Regulations or the Tariff Order for such dispute or otherwise. The Commission ought to have rejected the Petition as one without jurisdiction and not maintainable before it.

2)(B) It is contended that the question of maintainability was raised by the Appellant but was not adverted to or considered by the Commission in the impugned order. The Commission grievously erred in the interpretation of the

provisions of The Chhattisgard State Electricity Supply Code 2005 and the provisions of the Schedule of Miscellaneous and General Charges prescribed by the Tariff Order 2005-2006.

2)(C) The appellant contended that the Commission erred in construing the terms “if any” in Clause 7.4(c) of and “if applicable” in Clause 7.6(c) of the Supply Code as not mandating that the supply arranging charges have to be paid for enhancement of load. The Commission ought to have seen and held that the aforesaid terms are to be applied with reference to, and according to, the provisions of the Tariff Order or other orders or Regulations providing for the same.

2)(D) The appellant also contended that the Commission, having observed that the aforesaid provisions are applicable to enhancement of load and to a consumer who is presently not connected for supply to the extent of the enhanced load sought, erred in carving out as a different category consumers who have a connection “for supply of a particular load but for whatever reason now uses a lower load while the connection for higher load continues” and in construing that additional infrastructure may not be required in such cases, and in drawing incorrect inferences therefrom. The Commission’s observation that the present provisions of the Supply Code appeared to be wide enough in scope to cover this category also, even while noticing that the Supply Code as it is

today does not specifically provide for the category carved out by the Commission in the impugned order is neither justifiable nor reasonable nor rational.

2)(E) It is further contended by the appellant that the Commission erred in taking the view that in cases where the connection for a higher load exists and supply arranging charges had been paid for earlier, enhancement/restoration of load up to that limit subsequently should not attract supply arranging charges. The Commission erred in interpreting Item No. 16 of the Schedule of Miscellaneous and General Charges in the Tariff Order 2005-2006 as meant for new connections. The Commission erred in interpreting and construing that the provision in the Supply Code is applicable only where there is major investment in infrastructure in arranging dedicated supply including enhancement of load to a single consumer. The Commission failed to see and appreciate that the supply arranging charges specified in the Tariff Order was on per kVA of contracted demand basis, the said charges were necessarily and invariably to be applied for every new or additional kVA of contracted demand, on a Uniform basis and without discrimination, to all consumers. The Commission ought not to, and could not, carve out exceptions by interpretation or construction, whether in purported adjudication of disputes between

consumers and licensee or howsoever otherwise when no such exception is provided in the Statutory Supply Code.

2)(F) The appellant also contended that the Commission failed to note and hold that when a consumer reduces his contracted demand with the Board, there is a permanent severance in respect of the demand reduced, and there could be no question of any connection for higher load continuing, and that any enhancements from the reduced contracted demand will have to be treated in the same manner as for additional demand applying the provisions of the tariff accordingly.

2)(G) It is also pointed out by the appellant that while the Commission observed the difficulties arising out of variations in contracted demand frequently, it failed to properly appreciate and give effect to the difficulties and losses suffered by the Appellant in such cases. The Commission failed to consider that the frequent variations of contracted demand, more particularly in respect of large consumers, leads to stranding of substantial assets and fixed costs, and there would be substantial under recovery of fixed cost.

2)(H) The appellant further contended that the Commission failed to see and appreciate that in the facts and in circumstances of the instant case, the 1st Respondent had reduced the contracted demand to a mere 60 kVA in order to avoid paying minimum charges on the ground of adverse market conditions,

and that the appellant was thereby denied recovery of fixed costs, and that the restoration of contracted demand was sought within a period of three months, and that the assets remain stranded during this period, and that there was permanent severance of contract in respect of the demand reduced, and that therefore, the 1st Respondent is required to pay the "supply arranging charges" for enhancement of contracted demand in accordance with the tariff. The Commission also failed to see and advert to the fact that the 1st Respondent had earlier enhanced contracted demand without paying any supply arranging charges in view of the enhancement being done under a special package, which has since ceased to subsist.

2)(I) It is also the contention that the Commission erred in directing that only the actual cost of restoration of load shall be recovered from the 1st Respondent instead of the supply arranging charges required to be paid according to the subsisting tariff, and in directing the Appellant to adjust the 25% amount deposited in terms of the interim order of the Commission against the actual cost and future energy bills. The Commission ought to have held that the balance of the supply arranging charges for the additional contracted demand as per the tariff shall be paid by the 1st Respondent.

3. Per contra it is contended by the 1st Respondent that the Commission has the requisite powers and jurisdiction to entertain its petition as it has the powers

to prevent violation of the provisions of The Electricity Act, 2003, Supply Code and Tariff Order by a licensee. It is further contended that the licensee under the Act is entitled to charge only the tariff that has been approved and nothing more. As the licensee was acting contrary to the Supply Code and Tariff Orders, to the detriment of a particular class of consumers, CSERC will certainly have the jurisdiction to entertain the petition against the appellant Board.

4. The learned Counsel, on behalf of the 1st Respondent further contended that the Commission has correctly construed the terms as given in the Supply Code. The present case relates to restoration of supply of the load and does not relate to new connection or enhancement of load in previous connection having low load than sought for. The learned Counsel for respondent further reiterated that restoration of load does not entail any additional expenditure.

5. The learned Counsel further contended that since no extra cost is required to restore the load to the 1st Respondent, the claim of the Board is both burdensome and illegal. The supply arranging charges are compensatory and cannot become a source of extra revenue for the Board and that the respondent Commission is right in directing the respondent number one to pay only the actual charges in the present case as the Respondent has already paid all charges as required in the past to secure its contract load of 10,000 kVA.

6. We have heard rival contentions advanced on either side. It is clear that the entire issue relates to complaint lodged by the 1st Respondent before the 2nd Respondent Commission regarding alleged excessive charging of the "Supply arranging charges" by the Appellant. Concedingly, the 2nd Respondent Commission has taken upon itself to address the grievance of the consumer against the licensee vide its order passed on 23rd May, 2006.

7. Before proceeding further to discuss the merits of the contentions, we consider it appropriate to decide 'in limine' the jurisdictional issue which has been vehementally challenged by the appellant Board in these three appeals.

8. At this point, it will be pertinent to advert to Part VI of the Act, 2003, which governs relationship between a consumer and the licensee. Section 42(5) to (8) provides forum "for redressal of grievance" and the "appellate forum" as well. Factually, a forum for redressal of grievance of consumers as mandated by Section 42 has since been set up in the State of Chhattisgarh. In view of this no other authority has the jurisdiction for redressal of consumer grievance. In this context, the decision of this Appellate Tribunal decided in Appeal No. 30 of 2005, Appeal No. 164 of 2005 and Appeal No. 25 of 2006 on 29th March, 2006 is rightly relied upon by the learned Counsel for appellant. In the said judgment, it has been laid thus:-

"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 and 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 The 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 circumstance, while making it clear that 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."

9. The above judgment squarely applies to the facts of the present appeals.

10. In view of the above judgment on the jurisdictional issue and adverting to the averments made by the rival sides, we decide that the Commission has no jurisdiction or authority to adjudicate on the consumer dispute, viz., alleged excessive demand "of supply arranging charges" by the appellant Board. Therefore, in the result, we allow the three appeals and set aside the order dated 23rd May, 2006 passed by CSERC while giving liberty to each one of the consumer to work out their remedies before the competent forums. We make it clear that we have not gone into merits of various contentions advanced by either side in other respect, and, therefore, our decision on the jurisdictional

issue should not prejudice any further course of action that may be pursued by the 1st Respondent in these three appeals.

11. In the result, all the three appeals are allowed and the common order passed by the Chhattisgarh State Electricity Regulatory commission on 23rd May, 2006 in the matter of application of supply arranging charges to enhancement/restoration of load by licensee and communicated in P No – 09/2006(M)2006/704 is set aside as one without jurisdiction and the consequences will follow automatically. The parties shall bear their respective cost.

Pronounced in open court on the 28th day of November, 2006

(Mr. H.L. Bajaj)
Technical Member

(Mr. Justice E. Padmanabhan)
Judicial Member

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