

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Appeal No. 42 of 2006

Dated : 23rd December, 2009

**Coram : Hon'ble Ms. Justice Manju Goel, Judicial Member
Hon'ble Mr. H.L. Bajaj, Technical Member**

IN THE MATTER OF :-

- 1. U. P. Power Corporation Ltd.**
Shakti Bhawan,
14, Ashok Marg,
Lucknow
Through its Chairman-cum-Managing Director

- 2. General Manager
Electricity Distribution Circle
U. P. Power corporation Ltd.**
Vidyut Colony,
Govind Nagar,
Kanpur

- 3. The Executive Engineer
Electricity Distribution Division
U. P. Power Corporation ltd.**
Akbarpur
Kanpur (Dehat)

Versus

- 1. M/s. Premier Ispat (Pvt.) Ltd.**
A company registered under -
The Provisions of Companies Act, 1956,
Having its Registered Office at:

122/235, Plot No. 17,
IIIrd Floor,
(Near Lajpat Nagar Telephone Exchange)
Fazal Ganj, Kanpur
Through its Director Shri Amit Jain

2. Shri Amit Jain

S/o Shri P. K. Jain,
R/o H-1/10, Kidwai Nagar,
Kanpur
Director of M/s Premier Ispat (Pvt.) Ltd.

3. U. P. Electricity Regulatory Commission

11th Floor, isan Mandi Bhawan,
Gomati Nagar,
Lucknow, U.P.
Through its Registrar

... Respondent(s)

Counsel for the Appellant(s) : Mr. Pradeep Misra,
Mr. Manoj Kumar Sharma
Mr. Suraj Singh
Mr. Daleep Dhayani
Mr. T. Mahipal
Mr. Rohit Rishi

Counsel for the Respondent(s) : Mr. Sanjay Parikh,
Ms. Mamta Saxena,
Mr. Anish R. Shah
Mr. R. Palaniandavan
Mr. Biji Mathew
Mr. Suresh Tripathy
Mr. Ghanshyam Yadav
Mr. Jitin Sahni
Mr. Lakiet Kumar
Mr. Gaurav Agarwal
Mr. Bidhan Chandra Rai
Mr. Jitendra Kumar Pandey

Mr. B. K. Shukla, AO
Mr. Rama Shanker Awasthi,
Director, Lucknow Alloys (P)
Ltd.

J U D G M E N T

Justice Manju Goel, Judicial Member

The present appeal is directed against the order of the Uttar Pradesh Electricity Regulatory Commission (the Commission for short) in petition No. 148 of 2003 dated 08.09.05 holding that the respondent No.1 was not liable to pay the cost of independent feeder. The appeal revolves round the question whether the Commission had the jurisdiction to pass an order dated 08.09.05. The facts, sans details, relevant to determine the issue of jurisdiction are as under:

02) Vide the order dated 27.02.99, the Uttar Pradesh Electricity Board, the predecessor in interest of the appellant, sanctioned 1000 kVA load to the respondent which is a steel rolling mill. One of the conditions of the sanction was that the respondent No.1 will ensure compliance of the orders issued by the Uttar Pradesh Electricity Board from time to time for release of load through independent feeder. Subsequently, additional load of 500 kVA was also released on 11.08.2000 subject to the compliance of order regarding an

independent feeder. However, load of 1000 kVA feeder was released by tapping trunk line and not through an independent feeder. The respondent No.1 was subsequently directed on 15.09.01 to deposit Rs.21,28,883/- towards cost of an independent feeder. The respondent No.1 did not deposit the cost after several reminders. The supply was disconnected on 17.10.03. A representation was made on 18.10.03 on which a re-connection to supply was made. The respondent filed a petition, being No. 148 of 2003, before the Commission purportedly made under clause 7.27(b) of Uttar Pradesh Electricity Supply Code 2002 formulated under the Uttar Pradesh Electricity Reforms Act 1999 (the Reforms Act for short). The Commission by an interim order stayed the disconnection of supply. After several sittings the Commission finally passed the impugned order dated 08.09.05 allowing the petition filed by the respondent. Hence, the appeal.

03) The contention of the appellant is that the Electricity Act 2003 (the Act for short) repeals the Reforms Act except to the extent its provisions are not inconsistent with the provisions of the Act. It is contended that the Act does not give jurisdiction to the Commission to adjudicate on disputes between a consumer and a licensee and, therefore, the Commission established under the Reforms Act although deemed to be a Commission constituted under the Act ought not to have jurisdiction to adjudicate upon the disputes between the parties in petition No. 148 of 2003. On the side of the

respondent, it is submitted that the Uttar Pradesh Supply Code 2002 was invoked by the respondent and the Code of 2002 was repealed only in the year 2005 when the new Code came into existence and, therefore, the petition No. 148 of 2003 was rightly adjudicated by the Commission.

04) The petition No. 148 of 2003 was purportedly filed under the Uttar Pradesh Electricity Supply Code of 2002. The validity of the Code is not in dispute. Nor has it been argued before us that the petition was incompetent under the Code. We, therefore, proceed with the assumption that Uttar Pradesh Electricity Supply Code 2002 permitted the Commission constituted under the Reforms Act to adjudicate upon a dispute between a licensee and the consumer. Now we can refer to the corresponding provisions of the Act. The functions of the State Commission are enumerated in section 86 of the Act. Clause (f) of section 86 (1) specifically gives power to the State Commission to adjudicate upon disputes between licensee and generating companies. The Act conspicuously deprives the Commission of any power to adjudicate upon a dispute between a consumer and a licensee including a distribution licensee, like the appellant. The Act makes special provisions for adjudication of such disputes. Section 42, inter alia, prescribes that the distribution licensee appoints, within six months of the appointed date (the date when the Act comes into force namely 10th June, 2003) a Forum for redressal of the grievances of the consumers.

The same section requires the State Commission to appoint an Ombudsman to hear representations of a consumer whose grievance have not been redressed by the Consumer Grievance Redressal Forum. Thus the Act makes specific provision regarding the mode of redressal of a grievance of a consumer. Any power given by the Reforms Act to the Commission for redressal of grievance thus becomes inconsistent with the Act. The Reforms Act to that extent is repealed. The Uttar Pradesh Electricity Supply Code 2002 cannot have a force better than the Reforms Act. The Commission, therefore, acting under the Uttar Pradesh Electricity Supply Code 2002, cannot assume any power to adjudicate any disputes between a consumer and a licensee.

05) The plea of the learned counsel for the respondent that the Uttar Pradesh Electricity Supply Code 2002 continued to be in force till it was repealed by a fresh Code in 2005 cannot be accepted in view of the fact that on repeal of the Reforms Act of 1999 the Code formulated under the Reforms Act also cannot survive.

06) The appellant was required to constitute the Consumer Grievance Redressal Forum within six months of the appointed date i.e. 12.05.04. The Commission formed Uttar Pradesh Electricity Supply Code 2005 which came into force on 18.02.2005. As per clause 7.10 of the Uttar Pradesh Electricity Supply Code 2005 such a complaint is entertainable by Consumer Grievance Redressal

Forum. Admittedly, the Consumer Disputes Redressal Forum was in existence when the impugned order was passed. The learned counsel for the appellant, Mr. Misra, says that even if the commission has entertained the petition No. 148 of 2003 on a wrong or right assumption of jurisdiction the petition was required to be transferred to the Consumer Grievance Redressal Forum. The judgment of the Supreme Court in the matter of *New India Insurance Co. Ltd. Vs. Smt Shanti Misra (1975) 2 SCC 840* has been cited in support. In paragraph 5 of the judgment the Supreme Court clearly opined as under. The question before the Supreme Court related to the change of Forum as well as the period of limitation on account of amendment in section 110 of the Motor Vehicles Act. The Supreme Court made the following clear observations in respect of change of Forum by a new law.

“On the plain language of section 110-A and 110-F there should be no difficulty in taking the view that the change in law was merely a change in forum i.e. a change of adjectival or procedural law or substantive law. It is a well established proposition that such a change of law operates retrospectively and the person has to go to the new forum even if his cause of action or right of action accrued prior to the change of forum. He will have a vested right of action but not a vested right of forum.”

07) In view of the above discussion, we have no option but to hold that the Commission did not have the jurisdiction to pass the impugned order. Accordingly, we allow the appeal and set aside the impugned order for having been passed without jurisdiction.

08) Pronounced in open court on this *23rd day of December, 2009*.

(H. L. Bajaj)
Technical Member

(Justice Manju Goel)
Judicial Member

Reportable[✓] / Non-reportable