

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

Appeal No. 165 of 2005

Dated : 20th November, 2009

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

IN THE MATTER OF :-

1. Madhyanchal Vidyut Vitran Nigam Ltd.

4-A, Gokhale Marg,
Lucknow
Through its Managing Director

2. Executive Engineer

Electricity Distribution Division,
Rahim Nagar,
Lucknow Electricity Supply Administration
Madhyanchal Vidyut Vitran Nigam Ltd.
Lucknow

... Appellant(s)

Versus

1. Uttar Pradesh Electricity Regulatory Commission

Kisan Mandi Bhawan,
Gomti Nagar,
Lucknow
Through its Secretary

2. M/s. Lucknow Alloys Pvt. Ltd.

(Now Tribhuvan Industries Pvt. Ltd.)
Gindan Khera,
Amausi Railway Station Road,
Amausi, Lucknow.

... Respondent(s)

Counsel for the Appellant(s) : Mr. Pradeep Misra,
Mr. Daleep Kumar Dhayani
Mr. T. Mahipal

Counsel for the Respondent(s) : Mr. Sanjay Parikh
Ms. Mamta Saxena
Mr. Suresh Tripathy
Mr. Ghanshyam Yadav
Mr. Jitin Sahni
Mr. Laliet Kumar
Mr. Gaurav Agarwal
Mr. Jitendra Pandey
Mr. Manoj Kulshrestha

Mr. B. K. Shukla, AO
Mr. Rama Shankar Awasthi,
Director, Tribuvan Inds. Ltd.

J U D G M E N T

Justice Manju Goel, Judicial Member

The appeal is directed against the order dated 13.04.05 and the subsequent order dated 23.08.05 passed in petition No. 187 of 2004 by the Uttar Pradesh Electricity Regulatory Commission (Commission for short). The principal ground for challenging these two orders is the lack of jurisdiction to pass the two orders.

02) The respondent No.2, Lucknow Alloys Pvt. Ltd., filed a petition before the Commission being No. 187 of 2004 for quashing bill dated 04.11.03 and 04.12.03 and for direction to revise the bill dated 04.11.03 as well as for certain other direction. The

Commission directed the respondent, vide an order dated 06.08.04, to approach the Consumer Grievance Redressal Forum (CGRF) for Redressal of grievance. On 09.03.05, the Consumer Disputes Redressal Forum allowed the relief only in respect of exclusion of surcharge and rejected the claims of the respondent No.2 and directed the appellant to revise the bills of the respondent No.2 herein excluding the late payment surcharge and adjusting the security deposit against outstanding dues in accordance with rules. The respondent No.2 herein then filed a petition before the Commission praying therein that the order dated 09.03.05 of the CGRF be set aside in respect of prayers which were not granted. It simultaneously prayed for granting of certain reliefs. After a notice to the appellant the Commission passed the impugned order dated 13.04.05. The order is interim in nature. The Commission made the following order:

“26. The Commission without going into the merits of the case, prima facie feels that the billing procedure and consequential activities of the licensee in this regard has been extremely ad-hoc and arbitrary. Further, the grievance settling mechanism of the licensee has not only glaringly failed to resolve the dispute rather they have further convoluted the problem. In view of such arbitrary decisions meted to the consumer and also the un-responsive attitude shown by the licensee, the Commission finds logic in granting

interim relief to the extent of restoration of the power supply at full load provided the petitioner continues to pay his current monthly bills. ...”

03) Subsequently, on 10.05.05, the Commission passed yet another order directing the appellant to comply with the interim order dated 13.04.05 within five days thereof failing which the penal action under section 142 of The Electricity Act 2003 (hereinafter referred to as the Act) was contemplated.

04) The appellant challenged the order in a writ petition, filed on 12.05.05, and obtained an order of stay against any penal action. The writ petition was withdrawn on 19.07.05 with liberty to file a fresh petition. The appellant subsequently filed writ petition No. 4230 of 2005 challenging the interim order dated 13.04.05 and the subsequent proceeding for enforcement of the order. On 12.08.05 the Commission directed the appellant to comply with the interim order dated 13.04.05 and directed the Managing Director to appear before it on 23.08.05. On 23.08.05 the Commission passed an order imposing a fine of Rs.20,000/- on the Executive Engineer and a fine of Rs.5,000/- per day on the appellant for each day of failure to comply with the order dated 13.04.05. The appellant withdrew the writ petition No. 4203 of 2005. The High Court allowed the applicant to approach the appropriate authority. The appellant thereafter moved the Commission on 27.07.07 for dismissal of the petition filed before it as it had no jurisdiction to hear the petition

against the order of the CGRF and seeking a direction on the respondent to file an appeal before the Ombudsman. The Commission vide an order dated 27.05.08 transferred the petition pending before it to the Ombudsman and waived the penalty imposed on the Managing Director and directed expunction of adverse entry, if any, in the service book of the Executive Engineer.

05) The question before us is whether the order dated 13.04.05 and the penalty order dated 23.08.05 are within jurisdiction. The order dated 23.08.05 is passed for non-compliance of the order dated 13.04.05. Therefore, the principal issue is whether the Commission had the jurisdiction to pass the order dated 13.04.05.

06) There is no dispute that the order dated 13.04.05 was passed in a petition challenging the order of CGRF. Therefore, the Commission has exercised appellate jurisdiction over an order of CGRF. There is no dispute that the CGRF which was constituted on 12.05.04 was the right forum which heard the respondent's application regarding the bills raised by the appellant and regarding its prayer for restoration of connection. It is also not disputed that there is no provision either in the Act or in the Regulations framed by the Commission providing for any appeal to the Commission from the order of the CGRF. The learned counsel for the respondent No.2 contends that since there was no Ombudsman the respondent No.2 took up the matter with the Commission. The Ombudsman came into existence on 16.08.05. Admittedly the

Regulation allows an appeal from the order of the CGRF to the Ombudsman. On 13.04.05 when the impugned order was passed by the Commission there was no Ombudsman and, therefore, no appeal from the CGRF could be presented. The simple question is whether in the absence of the Ombudsman the Commission could have assumed the appellate jurisdiction from the order of CGRF.

07) The powers of the Commission are enumerated in section 86 of the Act. One of the powers enumerated therein is the power to adjudicate a dispute between the licensees and generating companies and to refer any dispute to arbitration. There is no power given to the Commission to adjudicate upon disputes between licensees and consumers. The Commission framed the Electricity Supply Code 2005 in exercise of powers conferred by section 50 and section 181, read with sections 43 to 48, 50, 55 to 59 of the Act which was notified on 18.02.05. The Supply Code, inter alia, provided for setting up of CGRF in accordance with UPERC Consumer Grievance Redressal Forum and Ombudsman Regulations 2003 as amended from time to time. This also provides that any consumer aggrieved by non-redressal of his grievance by CGRF may make a representation for the redressal of his grievance to the Ombudsman appointed by the Commission. Earlier to that the Commission had framed UPERC (Consumer Grievance Redressal Forum and Ombudsman Regulation 2003) which came into effect on 09.12.03. These Regulations provided an appeal before the State Regulatory Commission from the order of the

Ombudsman. There was no provision at any point of time for an appeal to the Commission from the CGRF.

08) The Commission cannot assume jurisdiction to hear the appeal from the order of CGRF simply because the Ombudsman had not been established till then. The jurisdiction of the Commission has to be granted by the legislature. The legislature not having granted any such power the Commission could not have assumed such a jurisdiction. The Commission did not have any original jurisdiction to decide the question as section 86 does not give any such power to the Commission.

09) In our earlier judgment, in *M/s. Polyplex Corporation Ltd. Vs. Uttaranchal Power Corporation Ltd. & Ors. in appeal No. 220 of 2006*, this Tribunal held that no petition / appeal / application lies before any Regulatory Commission or this Tribunal in respect of billing matters. We also held that no petition / appeal / application lies to any Regulatory Commission or Appellate Tribunal from an order passed by the Ombudsman or CGRF or any other body like the Appellate Committee. The Hon'ble Supreme Court in the case of *Maharashtra Electricity Regulatory Commission Vs. Reliance Energy Ltd. (2007) 8 SCC 381* held that section 86(1) (f) of The Electricity Act 2003 which prescribes the adjudicatory functions of the State Commission does not encompass within its domain complaints of individual consumers and that it only provides that the Commission can adjudicate upon the disputes between the licensees and the

generating companies and to refer any such dispute to arbitration. The Supreme Court affirmed that this does not include in it a grievance of an individual consumer. The Supreme Court further held that a proper forum for that is section 42(5) and thereafter section 42(6), read with the Regulation, if any, which provide for establishing the CGRF and the Ombudsman.

10) In view of the above discussion, we hold that the order dated 13.04.05 was entirely without jurisdiction. We also hold that the Commission could not have proceeded to impose any penalty for non-compliance with the order dated 13.04.05. Accordingly, both the orders dated 13.04.05 and 23.08.05 are liable to be set aside. Hence, the appeal is allowed and the orders dated 13.04.05 and that of 23.08.05 are set aside.

11) Pronounced in open court on this **20th day of November, 2009.**

(H. L. Bajaj)
Technical Member

(Justice Manju Goel)
Judicial Member

Reportable ✓ / Non-reportable