

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
APPELLATE JURISDICTION, NEW DELHI**

**Appeal No. 105 to 112 of 2005**

**&**

**Appeal No. 141 to 149 of 2005**

Dated this 29<sup>th</sup> day of March 2006

**Present : Hon'ble Mr. justice E. Padmanabhan, Judicial Member  
Hon'ble Mr. H. L. Bajaj, Technical Member**

**Appeal No. 105/05 :**

1. Dakshin Haryana Bijli Vitran Nigam Ltd.(DHBVNL) by its Managing Director
2. General Manager (Commercial), DHBVNL
3. Chief Engineer (Operation), DHBVNL
4. Sub-Divisional Officer, OCC, Maruti Sub-Division, DHBVNL  
... Appellants

Vs.

1. Princeton Estate Condominium Association
2. DLF Universal Ltd.
3. Managing Director, Haryana Vidyut Prasaran Nigam Ltd.(HPVNL)
4. Haryana Electricity Regulatory Commission ... Respondents

**Appeal No. 106/05 :**

1. Dakshin Haryana Bijli Vitran Nigam Ltd.(DHBVNL) by its Managing Director
2. General Manager (Commercial),DHBVNL
3. Chief Engineer (Operation), OCC, Maruti Sub-Division, DHBVNL
4. Sub-Divisional Officer, OCC, Maruti Sub-Division, DHBVNL  
... Appellants

Vs.

1. Belvedere tower Condominium Association
2. DLF Universal Ltd.
3. Managing Director, Haryana Vidyut Prasaran Nigam Ltd.(HPVNL)
4. Haryana Electricity Regulatory Commission ...Respondents

**Appeal No. 107/05 :**

1. Dakshin Haryana Bijli Vitran Nigam Ltd.(DHBVNL) by its Managing Director
2. General Manager (Commercial), DHBVNL
3. Chief Engineer (Operation), DHBVNL
4. Sub-Divisional Officer, OCC Maruti Sub-Division, DHBVNL  
... Appellants

Vs.

1. Wellington Estate Condominium Association
2. DLF Universal Ltd.
3. HPVNL by its Managing Director ... Respondents

**Appeal No. 108/05**

1. Managing Director, Dakshin Haryana Bijli Vitran Nigam Ltd. (DHBVNL)
2. General Manager (Commercial), DHBVNL
3. Chief Engineer (Operation), DHBVNL
4. Sub-Divisional Officer, OCC, Maruti Sub-Division, DHBVNL ... Appellants

Vs.

1. Galleria Property Management Services (P) Ltd.
2. DLF Universal Ltd.
3. Managing Director, HPVNL
4. Haryana Electricity Regulatory Commission ... Respondents

**Appeal No. 109/05:**

1. Managing Director, Dakshin Haryana Bijli Vitran Nigam Ltd. (DHBVNL)
2. General Manager (Commercial), DHBVNL
3. Chief Engineer (Operation), DHBVNL
4. Sub-Divisional Officer, OCC, Maruti Sub-Division, DHBVNL ... Appellants

Vs.

1. DLF Services Ltd.
2. DLF Universal Ltd.
3. Managing Director, HPVNL
4. Haryana Electricity Regulatory Commission ... Respondents

**Appeal No. 110/05:**

1. Managing Director, Dakshin Haryana Bijli Vitran Nigam Ltd. (DHBVNL)
2. General Manager (Commercial), DHBVNL
3. Chief Engineer (Operation), DHBVNL
4. Sub-Divisional Officer, OCC, Maruti Sub-Division, DHBVNL ... Appellants

Vs.

1. Belvedere Park Condominium Association
2. DLF Universal Ltd.
3. Managing Director , HPVNL
4. Haryana Electricity Regulatory Commission ... Respondents

**Appeal No. 111/05:**

1. Managing Director, Dakshin Haryana Bijli Vitran Nigam Ltd. (DHBVNL)

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2. General Manager (Commercial), DHBVNL
3. Chief Engineer (Operation), DHBVNL
4. Sub-Divisional Officer, OCC, Maruti Sub-Division, DHBVNL  
... Appellants

Vs.

1. DLF Services Ltd.
2. DLF Universal Ltd.
3. Managing Director, HPVNL
4. Haryana Electricity Regulatory Commission ... Respondents

**Appeal No. 112/05:**

1. Managing Director, Dakshin Haryana Bijli Vitran Nigam Ltd.  
(DHBVNL)
2. General Manager (Commercial), DHBVNL
3. Chief Engineer (Operation), DHBVNL
4. Sub-Divisional Officer, OCC, Maruti Sub-Division, DHBVNL  
... Appellants

Vs.

1. DLF Services Ltd.
2. DLF Universal Ltd.
3. Managing Director, HPVNL
4. Haryana Electricity Regulatory Commission ... Respondents

**Appeal No. 141/05:**

H.V.P.N.L.

Through Superintending Engineer (Planning & Reforms),  
Sec-6, Panchkula, Haryana ... Appellant

Vs.

1. Wellington Estate Condominium Association
2. DLF Universal Ltd.
3. Managing Director, Dakshin Haryana Bijli Vitran Nigam Ltd.  
(DHBVNL)
4. Superintending Engineer (Operation), DHBVNL
5. Sub-Divisional Officer, OCC (DHBVNL)
6. Haryana Electricity Regulatory Commission ... Respondents

**Appeal No. 142/05 :**

H.V.P.N.L.

Through Superintending Engineer (Planning & Reforms),  
Sec-6, Panchkula, Haryana ... Appellant

Vs.

1. Princeton Estate Condominium Association
2. DLF Universal Ltd.

3. Managing Director, Dakshin Haryana Bijli Vitran Nigam Ltd.  
(DHBVNL)
4. Superintending Engineer (Operation), DHBVNL
5. Sub-Divisional Officer, OCC (DHBVNL)
6. Haryana Electricity Regulatory Commission ... Respondents

**Appeal No. 143/05:**

H.V.P.N.L.  
Through Superintending Engineer (Planning & Reforms),  
Sec-6, Panchkula, Haryana ... Appellant

Vs.

1. Belvedere Park Condominium Association
2. DLF Universal Ltd.
3. Managing Director, Dakshin Haryana Bijli Vitran Nigam Ltd.  
(DHBVNL)
4. Superintending Engineer (Operation), DHBVNL
5. Sub-Divisional Officer, OCC (DHBVNL)
6. Haryana Electricity Regulatory Commission ... Respondents

**Appeal No. 144/05:**

H.V.P.N.L.  
Through Superintending Engineer (Planning & Reforms),  
Sec-6, Panchkula, Haryana ... Appellant

Vs.

1. DLF Services Ltd.
2. DLF Universal Ltd.
3. Managing Director, Dakshin Haryana Bijli Vitran Nigam Ltd.  
(DHBVNL)
4. Superintending Engineer (Operation), DHBVNL
5. Sub-Divisional Officer , OCC DHBVNL)
6. Haryana Electricity Regulatory Commission ... Respondents

**Appeal No. 145/05:**

H.V.P.N.L.  
Through Superintending Engineer (Planning & Reforms),  
Sec-6, Panchkula, Haryana ... Appellant

Vs.

1. DLF Services Ltd.
2. DLF Universal Ltd.
3. Managing Director, Dakshin Haryana Bijli Vitran Nigam Ltd.  
(DHBVNL)
4. Chief Engineer (Operation), DHBVNL
5. Sub-Divisional Officer, Maruti Subdivision (DHBVNL)
6. Haryana Electricity Regulatory Commission ... Respondents

**Appeal No. 146/05:**

H.V.P.N.L.

Through Superintending Engineer (Planning & Reforms),  
Sec-6, Panchkula, Haryana ... Appellant

Vs.

1. Belvedere Tower Condominium Association
2. DLF Universal Ltd.
3. Managing Director, Dakshin Haryana Bijli Vitran Nigam Ltd.  
(DHBVNL)
4. Superintending Engineer (Operation), DHBVNL
5. Sub-Divisional Officer, Maruti Subdivision (DHBVNL)
6. Haryana Electricity Regulatory Commission ... Respondents

**Appeal No. 147/05:**

H.V.P.N.L.

Through Superintending Engineer (Planning & Reforms),  
Sec-6, Panchkula, Haryana ... Appellant

Vs.

1. DLF Services Ltd.
2. DLF Universal Ltd.
3. Managing Director, Dakshin Haryana Bijli Vitran Nigam Ltd.  
(DHBVNL)
4. Chief Engineer (Operation), DHBVNL
5. Sub-Divisional Officer, OCC, Maruti Subdivision (DHBVNL)
6. Haryana Electricity Regulatory Commission ... Respondents

**Appeal No. 148/05:**

H.V.P.N.L.

Through Superintending Engineer (Planning & Reforms),  
Sec-6, Panchkula, Haryana ... Appellant

Vs.

1. Galleria Property Management Services Pvt. Ltd.
2. DLF Universal Ltd.
3. Managing Director, Dakshin Haryana Bijli Vitran Nigam Ltd.  
(DHBVNL)
4. General Director (Commercial), DHBVNL
5. Chief Engineer (Operation), DHBVNL
6. Sub-Divisional Officer, OCC, Maruti Subdivision (DHBVNL)
7. Haryana Electricity Regulatory Commission ... Respondents

**Appeal No. 149/05:**

H.V.P.N.L.

Through Superintending Engineer (Planning & Reforms),  
Sec-6, Panchkula, Haryana

... Appellant

Vs.

1. DLF Services Ltd.

2. DLF Universal Ltd.

3. Managing Director, Dakshin Haryana Bijli Vitran Nigam Ltd.  
(DHBVNL)

4. Chief Engineer (Operation), DHBVNL

5. Sub-Divisional Officer (DHBVNL)

6. Haryana Electricity Regulatory Commission

... Respondents

**In Appeal Nos. 104 to 112 of 2005 :**

Counsel for the Appellants : Mr. Neeraj Kumar Jain, Adv.

Counsel for the Respondents : Mr. Vijay Nair, Adv.,  
Mr. Debasish Mohapatra, Adv.  
Mr. Ajay Siwach, Adv. And  
Mr. Ashwani Talwar, Adv.

**In Appeal Nos. 141 to 149 of 2005 :**

Counsel for the Appellants : Mr. Ajay Siwach, Adv. and  
Mr. Pradeep Dahiya, Adv.

Counsel for the Respondents : Mr. Vijay Nair, Adv.,  
Mr. Debasish Mohapatra, Adv.  
and Mr. Ashwani Talwar, Adv

**COMMON JUDGMENT**

1. This batch of appeals, namely, appeal Nos. 105 to 112 and Appeal nos. 141 to 149 of 2005 were heard along with Appeal No. 104 of 2005 as in all these appeals, appellants primarily challenged the Jurisdiction and authority of the Haryana Electricity Regulatory Commission in entertaining the complaint of contesting Respondents and also challenged the order passed by Commission on merits in individual appeal as well. In respect of jurisdiction and authority of the Regulatory Commission common arguments were advanced and

written submissions were also submitted. The grievances urged by contesting Respondents are identical except difference as to value of various claims.

2. (i) Appeal No. 105/05 has been preferred challenging the order dated 15.07.2005 passed by the Haryana Electricity Regulatory Commission, Panchkula in Case No. HERC/PRO-9 of 2004.

(ii) Appeal No. 106/05 has been preferred challenging the order dated 15.07.2005 passed by the Haryana Electricity Regulatory Commission, Panchkula in Case No. HERC/PRO-7 of 2004.

(iii) Appeal No. 107/05 has been preferred challenging the order dated 15.07.2005 passed by the Haryana Electricity Regulatory Commission, Panchkula in Case No. HERC/PRO-10 of 2004.

(iv) Appeal No. 108/05 has been preferred challenging the order dated 15.07.2005 passed by the Haryana Electricity Regulatory Commission, Panchkula in Case No. HERC/PRO-5 of 2004.

(v) Appeal No. 109/05 has been preferred challenging the order dated 15.07.2005 passed by the Haryana Electricity Regulatory Commission, Panchkula in Case No. HERC/PRO-8 of 2004.

(vi) Appeal No. 110/05 has been preferred challenging the order dated 15.07.2005 passed by the Haryana Electricity Regulatory Commission, Panchkula in Case No. HERC/PRO-11 of 2004.

(vii) Appeal No. 111/05 has been preferred challenging the order dated 15.07.2005 passed by the Haryana Electricity Regulatory Commission, Panchkula in Case No. HERC/PRO-13 of 2004.

(viii) Appeal No. 112/05 has been preferred challenging the order dated 15.07.2005 passed by the Haryana Electricity Regulatory Commission, Panchkula in Case No. HERC/PRO-12 of 2004.

(ix) Appeal No. 141/05 has been preferred challenging the order dated 15.07.2005 passed by the Haryana Electricity Regulatory Commission, in Case No. HERC/PRO-10 of 2004.

(x) Appeal Nos. 142/05 has been preferred challenging the order dated 15.07.2005 passed by the Haryana Electricity Regulatory Commission, in Case No. HERC/PRO-9 of 2004.

(xi) Appeal No. 143/05 has been preferred challenging the order dated 15.07.2005 passed by the Haryana Electricity Regulatory Commission, in Case No. HERC/PRO-11 of 2004.

(xii) Appeal No. 144/05 has been preferred challenging the order dated 15.07.2005 passed by the Haryana Electricity Regulatory Commission, in Case No. HERC/PRO-12 of 2004.

(xiii) Appeal No. 145/05 has been preferred challenging the order dated 15.07.2005 passed by the Haryana Electricity Regulatory Commission, in Case No. HERC/PRO-13 of 2004.

(xiv) Appeal No. 146/05 to 112/05 has been preferred challenging the order dated 15.07.2005 passed by the Haryana Electricity Regulatory Commission, in Case No. HERC/PRO-7 of 2004.

(xv) Appeal No. 147/05 has been preferred challenging the order dated 15.07.2005 passed by the Haryana Electricity Regulatory Commission, in Case No. HERC/PRO-8 of 2004.

(xvi) Appeal No. 148/05 has been preferred challenging the order dated 15.07.2005 passed by the Haryana Electricity Regulatory Commission, in Case No. HERC/PRO-5 of 2004.



(xvii) Appeal No. 149/05 has been preferred challenging the order dated 15.07.2005 passed by the Haryana Electricity Regulatory Commission, in Case No. HERC/PRO-6 of 2004.

3. Appeal No. 104 to 112 of 2005 have been preferred by D.H.B.V.N.L. represented by its Managing Director and its subordinates while Appeal No. 141 to 149 of 2005 have been preferred by the HVPNL through its Superintending Engineer. These appeals arise out of identical orders passed by The Haryana Electricity Regulatory Commission. These two set of appeals have been preferred by DHBVNL and HVPNL against eight different proceedings which are identical in nature.

4. Today by a separate order after setting out the case and counter case in detail, we allowed Appeal no. 104 of 2005. In the appeals preferred by HVPNL, an additional point arises for consideration, while in all the other seventeen appeals the first two points for consideration are one and the same. We are not setting out the case and counter case of the parties in these seventeen appeals, since we have detailed the identical factual matrix and pleas in Appeal No. 104 of 2005. The factual matrix in all the eighteen appeals are identical and therefore it is unnecessary to reproduce the same in this common Judgment.

5. In these appeals the following points arise for consideration:

(1) whether the Haryana Electricity Regulatory Commission has the jurisdiction and authority to decide a complaint filed under Sec 42(5) of The Electricity Act 2003 ?

(2) Whether the Regulatory Commission has acted without jurisdiction in issuing various directions in favour of contesting Respondents against the appellants?

(3) Whether order / direction could be issued against HVPNL after the formation of DHBVNL? Whether respondent could maintain an action against HVPNL?

(4) To what relief, if any ?

6. The first two points involving the same jurisdictional issue could be considered together. Concededly the grievance or complaint of the contesting Respondent is one falling under Part-VI : Distribution of Electricity of The Electricity Act 2003 and in particular under Sec 42 (5) of The Electricity Act 2003, as the gravamen of allegations being failure to supply electricity against the distribution license (Discom for brevity). Sec 43 (1) and (2) mandates that it shall be the duty of every Discom to give electric supply within one month after receipt of the application and it is for such licensee to provide, if required, electric plant or line for giving supply to the premises applied for. Sub Section (3) of Sec 43 provides for consequences, namely, levy of penalty which may extend to one thousand rupees for each day of default. Sec 44 provides an exception to Sec 43, which is not the case here. Sec 45 provides for recovery of price to be charged by a distribution licensee for supply. Sec 46 provides for recovery of expenditure in providing electrical line or plant subject to regulations to be framed. Sec 50 provides for a supply code being specified.

7. Part VI – “Distribution of Electricity” prescribes the forum for redressal of grievances under this Part. Sub Section (5), Sec 42 mandates every distribution licensee to establish a forum for redressal of grievances of the consumers in accordance with guidelines as may be specified by the State Commission. Hence it follows that the State Commission is the authority to frame guidelines and it cannot constitute itself to be the forum for redressal of consumers grievance. Sub sec (6) of Sec 42 provides for representation being made to an authority known as “Ombudsman” if the consumer is aggrieved by non redressal of his grievance by the authority constituted under sub sec (5) of Sec 42. Such ombudsman shall settle the grievance of the consumer within such time and in such manner, as may be specified

by the State Commission. In terms of Sub sec (5) and (7), the State Commission's role is to frame guidelines or manner of settlement of grievance and it is a delegated rule making authority according to the said provisions. It has to lay down guidelines or regulation apart from it being the authority to appoint or designate OMBUDSMAN. When such is the statutory provision, the State Commission in law cannot usurp the jurisdiction of either the grievance redressal forum or the ombudsman. Thus it is clear that in respect of grievances of the consumers specific forum of redressal and representation to a higher authority are provided and the Regulatory Commission has no jurisdiction apart from the fact that it is either the appointing authority or authority conferred with power to frame regulation / guideline. Not even an appeal power has been conferred on the State Commission with respect to consumer grievances. The State Commission is not the authority to impose penalty under Sub sec (3) of Sec 43. Thus gleaned from any angle the State Commission has neither the jurisdiction nor authority with respect to redressal of grievances of consumers, which may arise under part VI of the Act.

8. It is also not in dispute that the Electric supply code framed in terms of Sec 50, confer no power of supervision even on the State Commission, while on the other hand the Commission is the authority to frame The supply code. That apart no provision of supply code has been shown to us providing such authority or conferring such authority on the State Regulatory Commission. Sec 181 which provides for framing Regulations, will not all spell out conferment of power on the State Commission in respect of matters falling under part VI of the Act. That apart in the teeth of Sec. 42(5), no such power could be or could have been conferred on the State Regulatory Commission.

9. The learned counsel appearing for the contesting Respondents as well as Regulatory Commission referred to Sec 57(1) and Sec 86 and contended that authority of the State Commission is

traceable to said two provisions. Sec 57 enables the appropriate Commission to specify standards of performance of a licensee or class of licensees. If the licensee fails to meet the standards specified, penalty could be imposed, apart from fastening the liability to compensate the person affected, as may be determined. The case on hand, will not fall either under Sec 57(1) or Sec 57(2) of the Act.

10. Sec 86(a) to (k) enumerates the functions of the State Commission. The redressal of grievance or complaint do not fall under any one of the functions enumerated by Section 82. 86(k) also will not come to the rescue of the Respondents as it refers or relate to such function as may be assigned to the Commission under the Act. No other provision in the Act has been pointed out by Respondents conferring such power or authority or jurisdiction on the commission, not even by implication.

11. That apart Sub sec (8) of Sec 42 makes it abundantly clear that the consumer may have the right to approach any other forum or authority apart from the authority constituted under Sub Sec (4) or (5) such as the Consumer Redressal Forum constituted under The Consumer Protection Act 1986, as saved by Sec 173 or Civil Court. It is rightly pointed out that the jurisdiction of Civil Court in this respect has not been excluded by Sec 145 of the Act, as it excludes only the jurisdiction of Civil Court with respect to orders falling under Sec 126 or 127 or adjudicating officer and not in respect of the consumer disputes.

12. The Regulatory Commission and contesting respondents realizing the legal position placed reliance on Sec 54 of The Haryana Electricity Reforms Act 1997, read with Para 7 and 8 of the Distribution & Retail Supply Regulations framed by it. It is also contended that the said provisions are still in force, as the said Act has been saved by Sec 185(3) of The Electricity Act 2003.

13. This contention advanced on behalf of Respondents is born out of frustration and it is a misconception and a misreading of Sec 185(3) of The Electricity Act. The Haryana Electricity Reforms Act 1997 is one of the enactments included in the schedule to the Electricity Act 2003. In terms of Sub sec (3) of 185, the Provisions of the Haryana Electricity Reforms Act shall continue to apply to the State of Haryana in so far as it is not inconsistent with the provisions of the 2003 Act. Sub sec (3) of Sec 185 reads thus:

“(3) The provisions of the enactments specified in the schedule, not inconsistent with the provisions of this Act, shall apply to the states in which such enactments are applicable”.

14. Apparently Sec 54 of Haryana Electricity Reforms Act 1997 and Para 7 etc. of the Distribution and Retail Supply Regulations framed by the State Commission, are inconsistent with Part IV of the 2003 Act and in particular to Sec 42(5) to (8) of the 2003 Act. Hence in our considered view, assuming such a power is available, it is no longer available on and after 10.06.2003 as the said provisions do stand repealed.

15. That apart Sec 54 of State Act is the rule making provision and it has no provision parallel to the provisions of 2003 Act. Further Sec 11(1) (b) is relied upon by Respondents. Sec 11(1) enumerates the functions of the State Commission in general terms and redressal of grievances of consumer or resolution of dispute between a license and consumer has not been conferred on the State Commission, much less by implication. Per Contra Sec 33 of the State Act provides for framing regulations. Sec 33 of the State Act reads thus :

33.(1) The Commission may, after consultation with (a) holders of supply licences, (b) other persons or bodies appearing to the Commission to be representative of persons and categories of person likely to be affected and (c) the Commission Advisory Committee, frame regulations prescribing:-

(a) the circumstances in which such licensees are to inform customers of their rights;

- (b) the standards of performance in relation to any duty arising under sub-section (a) above or otherwise in connection with the electricity supply to the consumers; and
  - (c) the circumstances in which licensees are to be exempted from any requirements of the regulations or this section and may make different provision for different licensees.
- (2) Nothing in this or other provisions of this Act shall in any way prejudice or affect the rights and privileges of the Consumers under other laws including but not limited to the Consumer Protection Act, 1986.”

16. It is not the claim or case of respondents that Regulations have been framed under Sec 33. Even if it is so, it is too late to plead that the Commission has authority or jurisdiction, as the same would run counter to Sec 42 (4) and (5) of 2003 Act. Standards of performance, will not take in the power to redress the grievance of consumers.

17. It was also contended that no Consumer Forum or Ombudsman have been set up and therefore the State Commission has the authority. Factually the Haryana Electricity Regulatory Commission (Guidelines for forum for redressal of grievances of the consumers) and (Electricity ombudsman) Regulation 2004 have been framed and notified on 12.04.2004 in exercise of powers conferred by Sec. 42 (5) to (8) read with Sec 181 of the Central Act. The said Regulations came into force on 12.04.2004. It is true that for some time the said forums have not been set up. This necessitated suomotu action by this Appellate Forum. Sub Sec (6) of Sec 42 confers power on the State Commission to appoint ombudsman. The Commission and Discom have already constituted the forums and submitted compliance report. Having failed to appoint or allowed the said office to fall vacant, it is not open to the State Commission to claim authority or jurisdiction. Such a plea is against well settled legal position. For the failure to constitute redressal forum by the Distribution licensee, the commission could have taken appropriate action calling upon the licensee to constitute the redressal forum. There is omission on the part of State Commission.

18. It should not be lost sight of the fact that the complaint by contesting Respondents was lodged on 29.10.2004, which is much after the commencement of the said Regulations on 12.04.2004. One other contention advanced being that HERC is the apex authority in the State and in its wisdom it entertained the complaint. This contention is legally unsustainable, as it is well settled law that no authority however high or supreme authority it be, it shall not usurp the jurisdiction of statutory authority constituted specially for the purpose. In other words it is the specific provision which excludes the general provision. It is also the settled law that special provision excludes the general provision as laid down in Venkateswar Vs State of A.P., reported in A.I.R. 1966 SC 828.

19. 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 to approach 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.

20. Apart from this, it is rightly pointed out by appellants that certain of the directions issued are not even applied and they are in excess of jurisdiction. The Commission has no jurisdiction to decide truth or validity of the contract or breach thereof and award compensation as it 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 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 or adjudicate the same.

21. In Chetkar Vs Viswanath reported in AIR 1970 S.C. 1334, it has been held that no authority can exceed the power given to it and any

action by it in excess of its power is invalid. It is settled law that orders made without jurisdiction are nullity (Sec AIR 1983 S.C. 643 = 1983 (3) S.C.C. 437). In *Budhia Swain & Others Vs Gopinath Deb & Others*, reported in 1999 (4) S.C.C. 396 a distinction has been drawn between lack of jurisdiction and mere error in exercise of jurisdiction. The former strikes at the very root of the exercise and want of jurisdiction may vitiate the proceedings rendering them and the order passed thereon a nullity.

22. The plea of jurisdiction can be raised at any stages as has been held in *Suresh Kumar Bhikamchand Jain v. Pandey Ajay Bhushan*, (1998) 1 SCC 205. It is also the settled law that no statutory authority or tribunal can assume jurisdiction in respect of subject matter which the statute does not confer on it and if by deciding erroneously the fact on which jurisdiction depends, the court or tribunal exercises the jurisdiction then the order is vitiated. Error or jurisdictional fact renders the order ultra vires and bad as has been laid in *Shrisht dhawan (Smt) v. Shaw Bros.*, (1992) 1 SCC 534 : AIR 1992 SC 1555. In the light of the above discussions the first two points are answered against Respondents and in favour of appellants in all the seventeen appeal.

23. Taking up the third point for consideration, there is no controversy that the DHBVNL is the area distributing licensee and HVPNL on reorganization no longer could be proceeded by the contesting Respondents. Legally, action, if at all, could be only against DHBVNL and not against HVPNL. HVPNL is no longer the Discom and no action is maintainable against it. On this short ground the contesting Respondents cannot maintain an action against HVPNL. The third point is answered in favour of appellants in appeal No. 141 to 149 of 2005.

24. It is a matter of record that connection applied for by all Respondents has already been given and they have no grievance with



respect to the same. Liberty is given to the contesting Respondents to work out their remedies in other respect under Sec 42 (5) of the Act or before the authorities constituted under the Consumer Protections Act 1986 or before any other competent forum.

25. In the result the appeals No. 105 to 112 of 2005 and 141 to 149 of 2005 are allowed, setting aside the orders dated 15.07.2005 passed by the Haryana Electricity Regulatory Commission, Panchkula respectively in Case No. (1) HERC/PRO-6 of 2004 dated 15.07.05, (2) HERC/PRO-9 of 2004 dated 15.07.05, (3) HERC/PRO-7 of 2004 dated 15.07.05 (4) HERC/PRO-10 of 2004 dated 15.07.05, (5) HERC/PRO-5 of 2004 dated 15.07.05, (6) HERC/PRO-8 of 2004 dated 15.07.05, (7) HERC/PRO-11 of 2004 dated 15.07.05, (8) HERC/PRO-13 of 2004 dated 15.07.05, (9) HERC/PRO-12 of 2004 dated 15.07.05, (10) HERC/PRO-10 of 2004 dated 15.07.05, (11) HERC/PRO-9 of 2004 dated 15.07.05, (12) HERC/PRO-11 of 2004 dated 15.07.05 (13) HERC/PRO-12 of 2004 dated 15.07.05 (14) HERC/PRO-13 of 2004 dated 15.07.05 (15) HERC/PRO-7 of 2004 dated 15.07.05 (16) HERC/PRO-8 of 2004 dated 15.07.05, (17) HERC/PRO-5 of 2004 dated 15.07.05 and (18) HERC/PRO-6 of 2004 15.07.05. The parties shall bear their respective costs throughout.

Dated this                      day of March, 2006

**( Mr. H. L. Bajaj )**  
**Technical Member**

**( Mr. Justice E. Padmanabhan )**  
**Judicial Member**