

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

Appeal No. 149 of 2010

Dated: 14th February, 2011

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam,
Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member**

In the matter of:

**Brihanmumbai Electricity Supply and
Transport Undertaking
BEST Bhawan
BEST Marg, Post Box No.192
Mumbai-400001**

.....Appellant(s)

Versus

- 1. Maharashtra Electricity Regulatory
Commission
World Trade Centre, Centre No.1
13th floor, Cuffe Parade
Mumbai-400005**
- 2. Tata Power Company Limited
Bombay House 24, Modi Street
Mumbai-400001**

- 3. Shri Guruprasad C. Shetty
1, Durga Niwas
Opp. Lower Parel Station
Lower Parel
Mumbai-400013**
- 4. Metro Entertainment (Bom) Pvt.Ltd.
Metro House, 2nd floor
Mumbai-400020**
- 5. Automatic Electric Ltd. of Mumbai
Rectifier House, 570,
Naigaon Cross Road, Near Royal 1/E Wadala
Mumbai-400031**
- 6. Minerva Premises Co-operative
Society Limited
Minerva Estates
Bunder Road Sewri (East)
Mumbai-400015**
- 7. M/s Aldowiet Engineering Co.
1st floor, Minerva Movietone
Compound, Near Digvijay Cement
Bunder Road Sewree(East)
Mumbai-400015**
- 8. Smt. Anila Gupta
Opp. H.B. Building
No. 29, Abhyudaya Nagar
Kalachowky
Mumbai-400023**

**9. Reliance Infrastructures Ltd.
Reliance Energy Centre
Santacruz (East)
Mumbai-400055**

....Respondents

Counsel for the Appellant (s) : Mr.Hardinder Toor,
Mr. Mukesh Kumar
Meenakshi

Counsel for the Respondent(s) : Mr. Jayant Bhushan Sr.Adv.
Mr. Shiv K. Suri,
Mr. Hassan Murtuza &
Ms. Junaira Rahman for
Resp. 9
Mr. M.G. Ramachandran
Mr.Buddy A.Ranganadhan
for R-1
Mr. Vishal Anand for R.2
Mr.Siddhartha Chowdhury
for R.3
Mr.Sitesh Mukherjee
Mr.Avijeet Lala
Mr. Amit Kapur
Mr.Rakesh Pal
(for Caveator)

JUDGMENT

**PER HON'BLE JUSTICE M. KARPAGA VINAYAGAM,
CHAIRPERSON**

Brihanmumbai Electric Supply and Transport Undertaking (BEST) is the Appellant herein.

2. Aggrieved by the order dated 22.02.2010 passed by the Maharashtra Electricity Regulatory Commission (State Commission) allowing prayer made in the Petition, filed by Mr. Guruprasad C. Shetty, Respondent No.3 for directing the Tata Power Company Limited (Respondent No.2), another Distribution Licensee, to provide electricity supply to the Respondent No.3, the Appellant the distribution licensee in whose area the premises of the Respondent No.3 is situated, has filed this Appeal.

3. The short facts are as follows:

4. The Appellant (BEST) is the Distribution Licensee which provides mass public transport service through its buses and supplies electricity in the city of Mumbai as well as in Greater Mumbai.

5. Mr. Guruprasad C. Shetty, the Respondent No.3 is the consumer of the Appellant (LT-II Category), whose premises are situated within the area of supply of the Appellant. Tata Power Company Limited, Respondent No.2 is another Distribution Licensee in Mumbai.

6. The consumer, Respondent No.3 wanted to switch over from Appellant to Respondent No.2-Tata Power Company Limited as its tariff rate was lesser than the Appellant's rate. Therefore, the consumer, Respondent No.3 approached Respondent No.2, Tata Power Company

Limited on 23-4-2009 and made a request to supply electricity to him as he wanted to switch over from the Appellant (BEST) to Respondent No.2, Tata Power Company Limited.

7. On 8.7.2009, Tata Power Company Limited, Respondent No.2 advised the consumer Respondent No.3 to approach the Appellant and to seek Appellant's permission for the use of its distribution network by the Tata Power Company Limited-Respondent No.2 so that, in turn, the Respondent No.2 could supply electricity to the consumer. In response to the aforesaid advice, the consumer-Respondent No.3 approached the Appellant on 31.7.2009 and requested to grant such permission to get supply from Tata Power Company Limited, Respondent No.2 by using the distribution network of the Appellant. However, the Appellant did not incline to grant such

permission to the Respondent No.3 consumer. Hence on 10.8.2009, Respondent No.3 again approached Tata Power Company Limited (R-2) for the same but the Respondent No.2 again expressed its inability to supply electricity to consumer Respondent No.3 in the absence of the permission granted by the Appellant.

8. Therefore, on 25.9.2009, consumer Respondent No.3 filed a petition No.60/2009 before the State Commission praying for the directions to the Tata Power Company Limited to provide electricity supply to the Respondent No.3 and in case of failure, Tata Power Company Limited- Respondent No.2's Distribution License be cancelled and compensation be paid to the Respondent No.3 for such failure to provide the supply of electricity. During the pendency of this Petition, similarly placed consumers also filed petitions seeking the similar prayers.

All these Petitions have been clubbed together and common proceedings were held, in which the necessary parties as Respondents have participated.

9. The State Commission after hearing the parties including the Appellant passed the impugned order on 22.2.2010 giving the direction to the Tata Power Company Limited, Respondent No.2 to follow Regulation 4.7 of the Maharashtra Electricity Regulatory Commission Regulation, 2005 and also in terms of his license condition and to provide the electricity supply to the consumer, Respondent No.3 and other consumers by laying its own Distribution System Network within its entire area of supply.

10. Feeling aggrieved over this order, permitting the Respondent No.3 to get the supply from Respondent No.2,

by switching over from the Appellant to the Respondent No.2, the Appellant, has filed this present Appeal before this Tribunal.

11. The learned counsel for the Appellant has raised the following contentions mainly questioning the jurisdiction of the State Commission to enquire into the allegations contained in the Petition filed by the consumer as against the Distribution Licensee:

- i) The State Commission lacks jurisdiction to entertain any complaint from the consumer to inquire into the dispute between the consumer and the Distribution Licensee praying for any direction regarding extension of Distribution system and for payment of

compensation in violating Section 42(5) of the Act.

ii) Even though this complaint which had been filed by the consumer (R-3) invoking Section 43 of the Act, this section does not confer the State Commission with any jurisdiction to enter into the dispute between the consumer and the Distribution Licensee. Section 43 relates to the obligations of the Distribution Licensee to supply electricity on request. The present dispute which is between the consumer and the Distribution Licensee has to be resolved only by Grievance Redressal Forum under Section 42(5) of the Act.

iii) The State Commission gravely erred in directing another Distribution Licensee, Respondent No.2, Tata Power Company

Limited to set up its own Distribution Network in the area of the supply of the Appellant depriving its right to supply its consumer (R-3).

12. In reply to these issues, the Learned Senior Counsel for the Respondents submitted that the dispute is not between the consumer and the Distribution Licensee on the billing dispute but, on the other hand, the State Commission had enquired into the alleged violations and non-compliance of the licensing conditions of the Distribution Licensee as complained by the consumer and, therefore, the State Commission has got the jurisdiction to ensure proper compliance of the provisions of the licensing conditions as per Section 43 of the Act and as such the complaint filed by the consumer was maintainable.

13. The learned Counsel for both the parties argued at length on this issue and cited various authorities of this Tribunal as well as of the Hon'ble Supreme Court. In the light of the above rival contentions, the following questions may arise for consideration:

- (i) Whether the State Commission has got jurisdiction to go into the issue raised in the complaint filed by the consumer, Respondent No.3 by referring to Section 43 of the Electricity Act, 2003 when the remedy lies before forum for redressal of grievance of the consumers under Section 42(5) of the Act?
- (ii) Whether the State Commission was in error in holding and deciding that Tata Power Company Limited, Respondent No.2 can

extend or set up its own Distribution Network to supply electricity to consumer-Respondent No.3 in the area of supply of the Appellant when the consumer wishes to change from Appellant to Respondent No.2, Tata Power Company Limited?

14. The main grievance of the Respondent No.3-Consumer before the State Commission was that he had applied to Tata Power Company Limited, Respondent No.2 for supply of electricity but the same was refused by the Respondent No.2 merely on the ground that the consumer was unable to procure the No-Objection Certificate from the Appellant eventhough the Consumer was living in the licensed area of the Appellant as an existing consumer of the Appellant.

15. On refusal of the supply on such a ground, the Consumer-Respondent No.3 filed a petition before the State Commission praying for a direction to the Respondent No.2, Tata Power Company Limited to provide electricity supply to the Consumer either through the Appellant (BEST) Network or by extending its own Network and to pay compensation due to his failure to supply despite his request. The relevant prayer made by the consumer in the Petition is as follows:

“(a) That this Hon’ble Commission may be pleased to direct TPC to provide electricity supply to the Petitioner and make such supply available as early as possible, either on BEST network or by extending its own network, as may be necessary, failing which TPC’s distribution

license should be cancelled by this Hon'ble Commission.

(b) that this Hon'ble Commission may be pleased to direct the Respondent to pay compensation to the Petitioner under Regulations 3.2 and 12 of MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply & Determination of Compensation) Regulations, 2005;"

16. In the light of the above prayer, the State Commission after considering the various aspects including the jurisdiction raised by the Appellant before the State Commission, gave the directions with reasonings in the impugned orders. The relevant observations and the directions are quoted below:

“In view of the above TPC has to operate in terms of its latest license conditions which enjoin it to lay its distribution system or network within its entire area of supply.

(5) With respect to the requisition of supply by the petitioners, TPC has stated that “..the connection to the Petitioner’s premises has to be established by TPC within a period of one year as provided in the Standards of Performance regulations since it involves installation of sub-stations. Therefore, the prescribed time period for providing such connection has clearly not expired.” It has been stated that thus it is unreasonable for the Petitioner to expect that supply of electricity to its premises can be effected within a period of thirty days as the nearest infrastructure of TPC for providing supply to the Petitioner is the 22 kV sub-station about 350 meters

to 1000 meters in each case away from the Petitioner's premises and effecting supply to the Petitioner would require TPC to put up a 440 Volt sub-station along with other ancillary equipment and wires. TPC has also stated that "Tata Power did not refuse to provide supply of electricity to the Petitioner as is sought to be projected by the Petitioner".

In view of the above there is no requirement to issue a direction in regard to the petitioners' claim of compensation under Regulations 3.2 and 12 of the SOP regulations. However, TPC is bound by Regulation 4.7 of MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005 in terms of the timelines as mentioned in the said Regulation. Time has started ticking from the date of receipt of applications by TPC from the petitioners

who have requisitioned for electricity supply. TPC will have to adhere to the timelines specified in the regulations.”

17. Thus through this impugned order, the State Commission has given the direction to Tata Power Company Limited, Respondent No.2 to perform its universal service obligation and to comply with the provisions of the Act and the concerned Regulations. The said direction is directed against Tata Power Company Limited, Respondent No.2 and this is with respect to and in the interest of the Consumers generally.

18. The main plea that had been canvassed by the Appellant before this Tribunal is that the Petition filed by the Respondent No.3 before the State Commission was not maintainable and consequently, the direction given in the

impugned order is not within the jurisdiction of the State Commission.

19. According to the Learned Counsel for the State Commission, the impugned order of the State Commission was passed in the proceedings initiated before the State Commission on the Petition filed by the several consumers including Respondent No.3 as against the Distribution Licensee, namely, BEST (Appellant) and Tata Power Company Limited (R-2) complaining about their control over the exercise of choice of supplier by the consumer seeking suitable directions to ensure compliance of the relevant Regulation by the persons concerned and therefore, such directions given by the State Commission in regard to the non-compliance of the provisions of the Act under Section 43 of the Electricity Act, 2003 read with

the concerned Regulations of the State Commission are within its jurisdiction.

We shall now go into issue.

20. Now let us quote Section 43 of the Electricity Act, 2003:

“Section 43 of the Act (insofar as is relevant):

(1) Save as otherwise provided in this Act, every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such

period as may be specified by the Appropriate Commission”

21. The above provision would clearly indicate that the Appropriate Commission shall ensure compliance of the mandate that every Distribution Licensee shall provide supply of electricity to such premises within one month after receipt of application and if such supply requires extension of Distribution Mains, the same can be directed to be supplied through the said extensions. Therefore, it cannot be contended that the State Commission is not within its jurisdiction to issue necessary directions to ensure that licensees of the State Commission do comply with the provisions of the Act and the Regulations made thereunder.

22. The very fact that Section 43 of the Act enjoins the duty on a licensee to provide electricity connection within the time stipulated by the State Commission would itself show that if a licensee has not complied with the said mandate within the time limit so stipulated, the State Commission would be empowered to intervene and rectify the default committed by the said licensee.

23. If the contention of the Appellant that such a direction cannot be issued by the State Commission is accepted, then it would mean that the State Commission has to be a silent spectator and is powerless to ensure compliance of the said mandatory provisions contained in the Act.

24. As pointed out by the learned Counsel for the State Commission, there are other Sections which provide powers to the State Commission to issue such a direction

for compliance. Section 129 of the Act is relevant. The same is reproduced as under:

“Section 129:

(1) Where the Appropriate Commission, on the basis of material in its possession, is satisfied that a licensee is contravening, or is likely to contravene, any of the conditions mentioned in his licence or conditions for grant of exemption or the licensee or the generating company has contravened or is likely to contravene any of the provisions of this Act, it shall, by an order, give such directions as may be necessary for the purpose of securing compliance with that condition or provision.

(2) While giving direction under sub-section (1), the Appropriate Commission shall have due regard to the extent to which any person is likely to sustain loss or damage due to such contravention.”

25. A bare reading of the above provision would clearly reveal that the State Commission has unhindered powers to issue necessary directions as against the licensee to ensure compliance of the provisions of the Act, Regulations and the conditions of the license.

26. That apart, another Section 142, which is pointed out confers power upon the State Commission to issue penal directions for any contravention of the provisions of the Act. Section 142 is reproduced as under:

“Section 142: **Punishment for non-compliance of directions by Appropriate Commission.** In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made

thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction.”

27. The above provisions leave no doubt in any manner that the State Commission has got full power to direct any of its Licensee to ensure that the provisions of the Act, rule, Regulations framed under the Act and terms &

conditions of the License are properly complied with by a Licensee; and to penalize the licensee in the event of default. That apart, the State Commission has got general power to supervise the Licensees under the above said powers.

28. In the present case, the State Commission was approached by the Respondents Nos.3 to 8 Consumers complaining against Tata Power Company Limited, Respondent No.2 alleging contravention of Section 43 of the Act as well as contravention of its License conditions by Tata Power Company Limited under which Tata Power Company Limited is obliged to supply electricity to consumers in its License Area on their request.

29. Acting on such complaint, complaining the non-adherence to its licensing conditions and non-compliance

with universal supply obligation cast under Section 43 of the Act, the State Commission in the impugned order issued general direction to Tata Power Company Limited to ensure compliance with its statutory duties and develop and maintain an efficient coordinated and economical Distribution Licensee in its area of supply. As a matter of fact, the State Commission had directed Tata Power Company Limited to supply electricity to its consumers situated in the common area of supply of Tata Power Company Limited as well as BEST as per the terms and conditions of the license of the Distribution Licensee by laying down its own Distribution Network for giving supply.

30. It was strenuously contended by the learned counsel for the Appellant that the dispute is to be resolved only by

the Grievance Redressal Forum under Section 42(5) of the Act and not by the State Commission.

31. This submission has no merits. The Consumer, Respondent No.3 filed Petition complaining before the State Commission pointing out the situation where two Distribution Licensees, namely, Tata Power Company Limited and the BEST, operating in the same area of supply, are not co-operating with the consumers who wish to exercise their choice of supplier. The choice of supplier and the open access are the main thrust of the Electricity Act, 2003. According to the Respondent No.3-Consumer, the BEST (Appellant) is taking undue advantage of his alleged protection purportedly under sub-Section 3 of Section 43 of the Act, 2003 to hinder the exercise of choice of supplier by the complainant consumer by not granting the No-Objection Certificate for

switching over from the Appellant to Tata Power Company Limited for availing the electricity supply at lesser tariffs and the Tata Power Company (R-2) also has not been supplying electricity on the pretext of failure to produce the No Objection Certificate.

32. Hence the consumer complained against Tata Power Company Limited stating that Tata Power Company Limited has refused to supply electricity to the consumer even though it is statutorily required under Section 43 to provide by laying down its own Distribution System as required under Section 42(1) of the Act. This issue can be adjudicated upon only by the State Commission under the provisions of Sections 43 and 42(1) of the Act and not by the Grievance Redressal Forum under Section 42(5) of the Act.

33. In the present case, the State Commission upheld the contention of the Appellant that the Appellant could not be compelled to share its wide network with the Tata Power Company Limited. At the same time, the State Commission ruled that Tata Power Company Limited, Respondent No.2 was obliged under the Act, 2003 to develop and maintain efficient, coordinated and economical Distribution System in its area of supply. Accordingly, a specific direction has been issued by the State Commission to Tata Power Company Limited to supply electricity to its consumers situated in the common area of supply of Tata Power Company Limited and BEST as per the Licensing Conditions by laying down its own new Distribution Network for providing electricity supply to the consumers on their request.

34. It is quite appropriate in this context to refer to the relevant portions of the impugned order on this aspect:

“The Commission in its aforesaid Order dated 15.6.2009 had also stated “Hence, incurrence of capex cannot be a condition for meeting the Licensee’s obligations to all the consumers. In fact, the capital costs should be incurred only when there is no better optimal solution.”

“The above recommendation of the Commission does not dilute TPC’s statutory duty under Section 42(1) of the Act to develop and maintain an efficient, co-ordinated and economical distribution system in its area of supply and to supply electricity in accordance with the provisions contained in the Act. TPC will, therefore, need to make arrangements towards fulfilling its statutory duty on a continuous basis.

Shri Shetty has stated that TPC already has its own distribution network within BEST's area of supply. This has not been disputed by TPC. The question is only to extend it to connect it to the premises of the Petitioners”.

35. The Appellant had relied upon the judgment of Hon'ble Supreme Court reported in 2007 (8) SCC 381, Maharashtra Electricity Regulatory Commission Vs. Reliance Energy Limited. In this case, the Hon'ble Supreme Court has held that in the case of billing dispute/disputed electricity bills, the State Commission could not give a blanket direction to all the Distribution Licensees of States without undertaking investigation and in those cases, the consumer should approach the Consumer Grievance Redressal Forum to raise the grievance with regard to this dispute.

36. In that judgment, the Hon'ble Supreme Court dealt with two distinct Appeals. One of the Appeals dealt with the individual grievance of the individual consumer. In that Appeal, the Hon'ble Supreme Court after referring to Section 42(5) of the Act held that all the individual grievances of the consumers regarding billing disputes have to be raised before the Consumer Grievances Redressal Forum. In the other Appeal the Hon'ble Supreme Court has upheld the general power of the State Commission to issue various directions to the Distribution Licensees. The relevant observations by the Hon'ble Supreme Court are as follows:

“14. A comprehensive reading of all these provisions leaves no manner of doubt that the Commission is empowered with all powers right from granting license and laying down the conditions of

license and to frame regulations and to see that the same are properly enforced and also power to enforce the conditions of license under sub-section (6) of Section 128.

15. *Thus, insofar as the first contention of the learned counsel for the respondents that the Commission has no power is concerned, we are of the view that the same is wrong. In this behalf the provisions of The Electricity Act, 2003 are quite clear and categorical and Section 128(6) empowers the Commission to get the conditions of license enforced. But the question is whether the said power under Section 128(6) has been rightly exercised by the Commission or not. After clearing the first hurdle, that the Commission has power to issue directions,*

we shall now examine whether the direction given by the Commission in the present case is correct or not.

16. *When the Commission received a spate of complaints from consumers against its licensees/distribution companies that they are arbitrarily issuing supplementary/amended bills and charging excess amounts for supply of electricity, it felt persuaded to invoke its general power to supervise the licensees/distribution companies and in that connection issued notice dated 3.8.2004. There can be no manner of doubt that the Commission has full power to pull up any of its licensee or distribution company to see that the rules and regulations laid down by the Commission are properly complied with. After all, it is the duty of the Commission under Sections 45(5), 55(2), 57, 62, 86,*

128, 129, 181 and other provisions of the Act to ensure that the public is not harassed.”

37. The above observations of the Hon'ble Supreme Court would show that the Hon'ble Supreme Court upheld the power of the State Commission to ensure compliance with the Act, Regulations and the Licensing conditions by giving suitable directions to the Distribution Licensees. Therefore, the judgment would not be helpful to the Appellant. On the other hand, it supports the view taken by the State Commission.

38. In the instant case, BEST (the Appellant) is relying upon its special status as a legal authority. In other words, BEST is asserting its exclusive supply right in its area of supply. According to the Appellant, Tata Power Company Limited (R-2) or any other Distribution Licensees

cannot supply electricity to consumers in its licensed area. Thus, relying upon its purported special status as a legal licensee, the Appellant has objected to and disputed the statutory right of Tata Power Company Limited to supply electricity to its consumers falling within the common license area with that of the Appellant.

39. Thus the Appellant has virtually challenged the right of Tata Power Company Limited, Respondent No.2, despite the fact that the specific provisions of the MERC (General Conditions of Distribution Licensee) Regulations, 2006 and MERC (Specific Conditions of Distribution Licensee Applicable to Tata Power Company Limited) Regulations, 2008 permitting the Tata Power Company Limited to supply electricity to its consumers in its licensed area which includes the license area of BEST also.

40. In contrast to the Appellant's claim, Tata Power Company Limited has taken a stand before the State Commission asserting its right as Distribution Licensee to supply power to its consumers in its license area which also includes the license area of the Appellant. These disputes between the two Distribution Licensees, thus, cannot be adjudicated upon by the Grievance Redressal Forum constituted for redressal of the consumers grievance under Section 42(5) of the Act.

41. In the facts of the present case, only the State Commission has got the authority to go into the question raised by the Appellant, that is, "whether the Appellant as a legal authority has exclusive right to supply electricity in its licensed area to the exclusion of other Distribution Licensees?" This question could not be gone into and adjudicated upon by the Forum constituted for redressal of

consumer grievances as indicated above. Therefore, the State Commission is within its rights to give direction to Respondent No.2-Tata Power Company Limited to supply electricity to the Consumer-Respondent No.3.

42. As per Section 43 of the Act, the Respondent No.2-Tata Power Company Limited is bound by Regulation 4.7 of the MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005. Therefore, the directions of the State Commission is in accordance with the Regulations mentioned above. Hence, the contention of the Appellant regarding the jurisdiction would fail.

SUMMARY OF OUR FINDINGS:

43. I. The State Commission has got jurisdiction under Sections 43 and 129 of the Act to issue directions referred to in the impugned order.

II. The State Commission while upholding the contention of the Appellant that the Appellant could not be compelled to share its wide network with the Tata Power Company Limited (R-2) has correctly directed Tata Power Company Limited to supply electricity to the Consumer situated in the common area of supply of Tata Power Company Limited and BEST as per the License Condition by laying down its own new Distribution Network for giving such supply. As such this impugned order is valid and justified.

36. In view of the above findings, we conclude that there is no merit in the Appeal. The Appeal is dismissed. However, there is no order as to cost.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 14th February, 2011

REPORTABLE/NON-REPORTABLE