

NATIONAL POWER TRAINING INSTITUTE, FARIDABAD

Online Training program on
 "Protection of Consumer Interest" for Officers of CGRF and Ombudsman
 (Under the aegis of Forum of Regulators)
 16-19, February 2021

List of the participants registered and attended the program from 16-19 February 2021

S.No.	Name of the participant	Designation	Name of the organization
1	Sitanshu Kumar	Law Officer	Bihar Electricity Regulatory Commission
2	Laxman Jageer	ACCOUNTS OFFICER	Telangana State Electricity Regulatory Commission
3	Bhavesh Shah	Staff Officer	Office of the Electricity Ombudsman, GERC, Ahmedabad
4	Er. K.L.Gupta	HP Electricity Ombudsman	HP Electricity Ombudsman
5	Subhash Prasad Kumar	Chairperson	Consumer Grievance Redressal Forum, Gaya
6	Naresh Kumar Mehta	Member/accounts,CGRF	DHBVN
7	Bishwajeet Kumar	Head Power Management	Tata Steel Limited
8	Amrit Lal Yadav	CHAIRPERSON	Consumer Grievance Redressal Forum, Muzaffarpur
9	Bhanu Prakash	JOINT DIRECTOR	TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
10	Moninder Pal Singh Wasal	ELECTRICITY OMBUDSMAN	JOINT ELECTRICITY REGULATORY COMMISSION FOR GOA AND UTs
11	Niranjan Singh	Electricity Ombudsman	Bihar Electricity Regulatory Commission, Bihar
12	Dr B N Singh	Chairperson	Consumers Grievance Redressal Forum , Bhagalpur
13	J.PRABHAKARAN	DEPUTY DIRECTOR (ENGG)	TNERC
14	Sauvik Dhara	Superintending Engineer (Elect)	Damodar Valley Corporation
15	Bhavani Prasad Rao	VICE PRESIDENT (BUDGET & STRATEGY)	INDIA POWER CORPORATION LIMITED
16	Indranil Banerjee	Sr. Manager (HR & Admn.)	West Bengal State Electricity Distribution Co. Ltd.
17	Anfal A	Dy Manager	Electronics Technology Parks (Technopark)
18	Dipanjana Sarkar	Manager (Customer Relations)	CESC Limited
19	Rajendra Prasad Nayak	LAW OFFICER	JSERC
20	Jai Prakash Narayan Pandey	CHAIRMAN CONSUMER'S GRIEVANCE RED	BOKARO STEEL LIMITED (SAIL), BOKARO
21	M.Vishwakarma	Member/Executive Engineer	CSPDCL
22	NL Sahu	Chaiperson/ Add CE	CSPDCL
23	Rajinder Singh More	Member CGRF Chandigarh	JERC
24	Nasib singh chouhan	Deputy sectary	HERC

Director (Trg/RKD)

N.W. 02/03/2021

Dr K.P.S. Parmar
 Dy Dir (Trg) / Program Co-ordinator
 02/03/2021

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 "Protection of Consumer Interest" for Officers of CGRF and Ombudsman
 (Under the aegis of Forum of Regulators)
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Program Schedule

Date/Timings	Topic/Faculty	Links for online session
16.02.2021 (Tuesday)		
9.45am-10.30am	9.45 am (Registration and joining of the participants) 10.10am-10.30am (Inaugural session)	
10.30am-12.00pm	Role of Regulatory framework and Institutionalizing Consumer Advocacy (Dr Ashok Pendse, Energy Coordinator, Belapur Industries Association, Mumbai)	https://meet.google.com/vqk-duom-nmx
2.30pm-4.00pm	Procedure for Handling Consumer Complaints – A Model Mechanism (Sh Rajasekhar Devaguptapu, Ex Advisor ^{FOR} CERC)	https://meet.google.com/xue-guks-sca
17.02.2021 (Wednesday)		
10.30am-12.00pm	Possible options and strategies for consumer education empowerment & funding (Dr Ashok Pendse, Energy Coordinator, Belapur Industries Association, Mumbai)	https://meet.google.com/gig-wfrs-vct
2.30pm-4.00pm	Electricity Act 2003 and Enabling Regulatory provisions with emphasis on Protection of Consumer Interest (Sh Raj Singh Niranjana, Law Expert & Managing Partner, Trans India Law Associates (TILA), Legal Adviser, International Solar Alliance)	https://meet.google.com/baj-msoi-evh
18.02.2021 (Thursday)		
10.30am-12.00pm	Consumer Empowerment & Grievance redressal mechanism (Sh Rajasekhar Devaguptapu, Ex Advisor ^{FOR} CERC)	https://meet.google.com/yta-przq-pzd
2.30pm-4.00pm	Constitutional laws and some landmark judgements pertaining to consumers in the Power Sector (Sh Raj Singh Niranjana, Law Expert & Managing Partner, Trans India Law Associates (TILA), Legal Adviser, International Solar Alliance)	https://meet.google.com/pbf-ogbi-kvp
19.02.2021 (Friday)		
10.30am-12.00pm	Technology Interventions to Improve Customer Care Practices (Sh Munish Sharma, Circle Head (Retail Business), BSES Rajdhani Power Ltd)	https://meet.google.com/xec-kfbi-ghc
2.30pm-3.30pm	Important legal issues arising before CGRFs and Electricity Ombudsman (Ms Abiha Zaidi, Law offices of Abiha Zaidi, New Delhi)	https://meet.google.com/uov-ibou-wci
3.30pm	Open discussion and views sharing from participating CGRFs & Ombudsman & Closing of the program	

Note: Online session links (Google meet links) would be activated 15 minutes before start of the each session.

NVK ^{wa}
10/02/2021

Dr N V Kumar
Director (Trg/R&D)

^{10/02/2021}
Dr KPS Parmar
Dy Director

Online feedback through Google form for training program on Protection of Consumer Interest, 16-19 Feb 2021, NPTI Faridabad (as received from participants)

Timestamp	Username	Name of the Trainee	Title of Program	Duration	Areas and subjects covered	Depth of theoretical content	Distribution of time among	Lecture by faculty	Problem Solving/ Answers	Range and quality of	Relevance of subjects	Video session	Overall feedback of
2021/02/19 11:06:37 AM GMT+5:30	bhavaniprasad.rao@indiapower.com	NPTI	Protection of Consumer Interest	16 -21 feb	Excellent	Excellent	Useful	Excellent	Very useful	Very useful	Excellent	Excellent	Excellent
2021/02/19 11:06:37 AM GMT+5:30	indranil.hr@gmail.com	Indranil Banerjee	Protected of Customer interest	16-19 Feb 2021	Excellent	Excellent	Very useful	Excellent	Excellent	Excellent	Very useful	Very useful	Excellent
2021/02/19 11:26:25 AM GMT+5:30	klgupta99@gmail.com	K L Gupta	Protection of Consumer Interest	4 days	Excellent	Very useful	Very useful	Excellent	Very useful	Very useful	Excellent	Excellent	Excellent
2021/02/19 12:07:21 PM GMT+5:30	mv05101969@gmail.com	M.Vishwakarma	Protection of Consumer Interest	16-19, February	Very useful	Very useful	Very useful	Excellent	Very useful	Very useful	Excellent	Very useful	Very useful
2021/02/19 12:09:39 PM GMT+5:30	narottam0305@gmail.com	Narottam Lal Sahu	Protection of Consumer Interest	16-02-2021 to 19-02-2021	Excellent	Excellent	Excellent	Excellent	Excellent	Excellent	Excellent	Excellent	Excellent
2021/02/19 12:14:14 PM GMT+5:30	so.ombudsman@gercin.org	BHAVESH J SHAH'	Protection of Consumer interest	Suffice the time duration	Very useful	Very useful	Very useful	Useful	Useful	Adequate	Useful	Useful	Useful
2021/02/19 1:13:33 PM GMT+5:30	jpnpandey@gmail.com	Jai Prakash Narayan Pandey	Protection of Consumer Interest	16th Feb to 19th Feb.	Excellent	Excellent	Very useful	Excellent	Excellent	Very useful	Excellent	Excellent	Very useful
2021/02/19 1:16:19 PM GMT+5:30	jpnpandey@gmail.com	Jai Prakash Narayan Pandey	Protection of Consumer Interest	16-02-2021 to 19-02-2021	Excellent	Excellent	Excellent	Excellent	Very useful	Excellent	Very useful	Excellent	Very useful
2021/02/19 1:26:19 PM GMT+5:30	accounts@tserc.gov.in	Laxman Jageer	online training program on protection of consumer interest	3 hours daily	Useful	Useful	Useful	Useful	Useful	Very useful	Useful	Useful	Useful
2021/02/19 1:42:25 PM GMT+5:30	ddp@tserc.gov.in	BHANU PRAKASH	"Protection of Consumer Interest" for Officers of CGRF and Ombudsman	4 days	Excellent	Very useful	Excellent	Very useful	Excellent	Very useful	Very useful	Excellent	Excellent

K.P.S. Parmar
22/02/2021

37524/2021/CRU - CERC

Timestamp	Username	Name of the Trainee	Title of Program	Duration	Areas and subjects covered	Depth of theoretical content	Distribution of time among	Lecture by faculty	Problem Solving/ Answers	Range and quality of	Relevance of subjects	Video session	Overall feedback of
2021/02/19 1:55:23 PM GMT+5:30	juristspkumar@gmail.com	Subhash Prasad Kumar	Protection of Consumer Interest	16.02.2021 to 19.02.2021	Excellent	Excellent	Excellent	Excellent	Excellent	Excellent	Excellent	Excellent	Excellent
2021/02/19 2:12:45 PM GMT+5:30	ombudsman.jercuts@gov.in	MONINDER PAL SINGH WASAL	Protection of Consumers interest for CGRF & Ombudsman	16.02.2021 to 19.02.2021	Excellent	Very useful	Very useful	Very useful	Very useful	Very useful	Very useful	Very useful	Very useful
2021/02/19 2:30:26 PM GMT+5:30	lawofficer@berc.co.in	Sitanshu Kumar	Protection of Consumer Interest	16-19 February 2021	Very useful	Excellent	Very useful	Excellent	Very useful	Very useful	Excellent	Very useful	Excellent
2021/02/19 2:45:50 PM GMT+5:30	eo.herc@nic.in	Nasib Singh Chouhan	Protection of Consumer Interest for Officers of CGRF and Ombudsman	16-19, February 2021	Excellent	Excellent	Very useful	Excellent	Excellent	Excellent	Excellent	Excellent	Excellent
2021/02/19 3:32:01 PM GMT+5:30	dipanjan.sarkar@rpsg.in	DIPANJAN SARKAR	PROTECTION OF CONSUMER INTEREST	16 - 19 FEBRUARY 2021	Very useful	Very useful	Useful	Very useful	Useful	Very useful	Excellent	Very useful	Very useful

14/02/2021
22/02/2021

LANDMARK JUDGEMENTS PERTAINING TO CONSUMERS IN POWER SECTOR

**Authors- Adv. Raj Singh
Niranjan & Dr. Rajni
Patel**

**Compiled by Trans India Law
Associates**



CONTENTS

A. TABLE OF JUDGMENTS.....	Page 4
B. BRIEF SUMMARY OF THE JUDGMENTS.....	Page 6-27
I. Maharashtra Electricity Regulatory Commission vs. Reliance Energy Ltd. and Ors. Decided on 14.08.2007: MANU/SC/7800/2007	
II. Hindustan Zinc Limited vs. Ajmer Vidyut Vitran Nigam Limited decided on 04.12.2019 : MANU/SC/1808/2019	
III. Kisan Cold Storage and Ice Factory vs. Paschimanchal Vidyut Vitran Nigam Ltd. and Ors. Decided on 03.04.2019: MANU/UP/1236/2019	
IV. The Maharashtra State ... vs. Lloyds Steel Industries Ltd decided on 14.08.2007 : MANU/SC/8261/2007	
V. U.P. Power Corporation Ltd. and Ors. Vs. Anis Ahmad decided on 01.07.2013: MANU/SC/0606/2013	
VI. Purshottam Behl vs. Messers B.S.E.S. Rajdhani Power Limited (Successor-in-interest of Erstwhile Delhi Vidyut Board) through its Director/Managing Director/Chairman/Principal Officer (04.04.2013 - NCDRC): MANU/CF/0177/2013	
VII. B.S.E.S. Yamuna Power Ltd. vs. Krishna (03.02.2014 - NCDRC): MANU/CF/0281/2014	
VIII. Brihan Mumbai Electricity Supply & transport under taking Versus Maharashtra Electricity Commission (MERC) & others Civil Appeal No. 4223 of 2012 in the Supreme Court of India.	

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IX. T.M. Prakash and Ors. vs. The District Collector and The Superintending Engineer, Tamil Nadu Electricity Board: MANU/TN/2091/2013

X. Haryana State Electricity Board vs. Hanuman Rice Mills and Ors. (20.08.2010 - SC): MANU/SC/0626/2010

C. COMPLETE JUDGMENTSPage 28-164

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A. TABLE OF JUDGMENTS

S. No.	Name of the Case	Ratio Decidendi	Court
1	Maharashtra Electricity Regulatory Commission vs. Reliance Energy Ltd. and Ors.	Commission has gone beyond its jurisdiction by giving direction to the Discom for refunding the entire amount without making a proper investigation	Supreme Court
2	Hindustan Zinc Limited vs. Ajmer Vidyut Vitran Nigam Limited	By virtue of section-42 of the act, any consumer, who is aggrieved by non-redressal of his grievances Under Sub-section (5), can go to Ombudsman	Supreme Court
3	Kisan Cold Storage and Ice Factory vs. Paschimanchal Vidyut Vitran Nigam Ltd. and Ors.	Distribution Licensee cannot be expected to have a remedy in the regard of approaching the Electricity Ombudsman.	Allahabad High Court
4	The Maharashtra State ... vs Lloyds Steel Industries Ltd on 14 August, 2007	Commission as well as the Appellate Authority are unsustainable and they have erred in coming to the conclusion that the Commission has jurisdiction.	Supreme Court
5	U.P. Power Corporation Ltd. and Ors. Vs. Anis Ahmad	A "complaint" against the Assessment made by Assessing officer Under Section 126 or against the offences committed Under Sections 135 to 140 of the Electricity Act, 2003 is not	Supreme Court

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		maintainable before a Consumer Forum.	
6	A. Purshottam Behl vs. Messers B.S.E.S. Rajdhani Power Limited	The Electricity consumer needs to be compensated for the long years during which period he was wrongly deprived of the electricity connection.	National Consumer Disputes Redressal Commission
7	B.S.E.S. Yamuna Power Ltd. vs. Krishna	Non-punching of data of the computer system and non-raising of the electricity bill for 5 years is sheer negligence and deficiency in service.	National Consumer Disputes Redressal Commission
8	Brihan Mumbai Electricity Supply & transport under taking v. Maharashtra Electricity Commission (MERC) & others	SC Judgment gives Relief for Electricity Consumers in Mumbai	Supreme Court
9	T.M. Prakash and Ors. vs. The District Collector and The Superintending Engineer, Tamil Nadu Electricity Board	Electricity supply is a legal right and denial of it is a violation of human rights (Madras High Court)	
10	Haryana State Electricity Board vs. Hanuman Rice Mills and Ors.	Electricity Board cannot seek enforcement of contractual liability of previous owner against purchaser of property after disconnection of electricity supply	Supreme Court

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B. BRIEF SUMMARY OF JUDGMENTS

1. Case- Maharashtra Electricity Regulatory Commission vs. Reliance Energy Ltd. and Ors. Decided on 14.08.2007: MANU/SC/7800/2007

Facts-

- The Maharashtra Electricity Regulatory Commission addressed a notice to all its licensees/distribution companies in Maharashtra and made an inquiry from them with regard to raising of the bills by the said licensees/distribution companies on the basis other than the actual meter reading for the relevant period, when large variations in consumption were noticed, or for other reasons.

- In response to the said notice all the licensees/distribution companies in Maharashtra tried to justify raising of such bills and stated that these bills were rightly sent as they found that some time the meters were not registering proper consumption and on that basis they tried to justify their action.

- After considering all these factors and the submissions made, the Commission directs that the supplementary/amendment bills issued in these circumstances:-

- (i) Should be withdrawn, if due meter testing has not been done with the results intimated to the consumer.

- (ii) any amounts collected should be refunded to the concerned consumers

- (iii) where meters have been found to be defective upon subsequent due testing, the bills may be adjusted for up to 3 months prior to the date of testing or meter replacement, whichever is earlier, and any amounts recovered in excess refunded without interest

- Aggrieved against these orders, the matter was taken up in appeal before the Appellate Tribunal. The Appellate Tribunal set aside the orders passed by the Commission and directed that each consumer should approach the forum created under Section 42(5) of the Act for the individual grievances. Aggrieved against the

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order passed by the Appellate Tribunal, the present appeal has been filed under Section 125 of the Act.

Issues-

- What is the power of the Commission and to what extent the Commission can issue directions?
- Whether the individual consumer can approach the Commission under the Act or not.

Judgement-

○ While we hold that the Commission has power to issue a general direction to licences that they should abide by conditions of the licence issued by them and charge only as per the tariff fixed under the Act so that the public at large should not be harassed, we are of the opinion that so far as the blanket direction given by the Commission for refunding the entire amount without making a proper investigation whether the issue of supplementary/amended bills was really warranted in every case or not is unsustainable.

○ Here the Commission has gone beyond its jurisdiction. After all the distribution/generating companies have to incur expenses for generation/distribution of power, and we cannot at the same time give license to the consumers to commit theft of electricity or to be benefited by improper functioning of the meter to the disadvantage of the distribution/generating company. Thus, keeping in view the equity of both the parties, we think it will be proper for us to direct that all the licensees/distribution companies in the State of Maharashtra issue a general public notice in two daily newspapers having wide circulation in the State, one English newspaper and one in vernacular language.

○ The consumers who still feel not satisfied with the order passed by the licensees/distribution companies can approach the appropriate forum constituted

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under Section 42(5) of the Act and, if still not satisfied, with the order passed by the appropriate forum to approach the Ombudsman under Section 42(6) of the Act.

- If any grievance is made by a consumer, then they have a remedy under Section 42(5) of the Act and according to Sub-section (5) every distribution licensee has to appoint a forum for redressal of grievances of the consumers. In exercise of this power the State has already framed.

- The Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2003 (hereinafter referred to as "2003 Regulations") and created Consumer Grievance Redressal forum and Ombudsman. Under these 2003 Regulations a proper forum for redressal of the grievances of individual consumers has been created by the Commission. Therefore, now by virtue of Sub-section (5) of Section 42 of the Act, all the individual grievances of consumers have to be raised before this forum only. In the face of this statutory provision we fail to understand how the Commission could acquire jurisdiction to decide the matter when a forum has been created under the Act for this purpose.

- The matter should have been left to the said forum. It has been held in these decisions that the Forum and Ombudsman have power to grant interim orders. Thus a complete machinery has been provided in Section 42(5) and 42(6) for redressal of grievances of individual consumers. Hence wherever a Forum/Ombudsman have been created the consumers can only resort to these bodies for redressal of their grievances.

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2. Case- Hindustan Zinc Limited vs. Ajmer Vidyut Vitran Nigam Limited decided on 04.12.2019 : MANU/SC/1808/2019

Facts

- The Appellant had four high tension electricity connections for its units for which four contracts with the Respondent were entered into for purchase of electricity. The dispute that arose between the parties was as to the unscheduled interchange charges which become payable under the agreements.
- When the disputes arose between the parties, the Appellant and the Respondent/by two orders passed by the Electricity Regulatory Commission, the Commission stated that it would itself decide the dispute between the parties.
- However, the Commission appointed an Arbitrator under Section 86(1)(f) read with Section 158 of the Electricity Act, referring the dispute to arbitration. By Award, the Arbitrator raised issues between the parties and struck down Clause of the open access agreements, as a consequence of which, the unscheduled interchange charges would be billed as per the agreements that were earlier entered into between the parties.
- This Award was challenged before the Commercial Court in a Section 34 petition under the Arbitration and Conciliation Act, 1996, which was dismissed.
- A Section 37 appeal was then decided by the High Court. The High Court reversed the order of the Commercial Court and set aside the entire Award stating that the dispute raised between the parties in the present case would be outside Section 86 of the Electricity Act altogether.

Judgement-

This was quite apart from the separate mechanism provided in Section 42(6) of the Electricity Act, where a representation for redressal of grievances may be made to the Ombudsman appointed or designated by the State Commission, which, had already been set up.

Held that under section 42 of the act, any consumer, who is aggrieved by non-redressal of his grievances Under Sub-section (5), may make a representation for

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the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.

The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.

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3. Case- *Kisan Cold Storage and Ice Factory vs. Paschimanchal Vidyut Vitran Nigam Ltd. and Ors. Decided on 03.04.2019: MANU/UP/1236/2019*

Facts-

The present reference before the Full Bench has been occasioned by a referring order of a Division Bench dated 20.1.2016. The Division Bench upon noticing that there was a conflict between the decisions of the Division Bench in the case of M/s. Jindal Poly Films Limited v. U.P. Electricity Regulatory Commission, Lucknow and others and the judgment of Single Judge in the case of Dakshinanchal Vidyut Vitran Nigam Limited v. Vidyut Lokpal Lucknow.

Issue-

I) In view of the provisions of sub-sections (5), (6) and (7) of Section 42 of the Electricity Act, 2003, under which a consumer who is aggrieved by non-redressal of his grievance is permitted to make a representation before the Ombudsman and the Ombudsman is required to settle the grievance of the consumer, whether Regulation 8.1(i) of the Uttar Pradesh Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2007 is ultra vires the provisions of the Act;

(II) Whether the judgment of the Division Bench in Ms. Jindal Poly Films Ltd. v. U.P. Electricity Regulatory Commission, Lucknow decided on 15 April 2011 can be regarded as laying down the correct principle of law.

Judgement-

Section 42(5) of the Act, 2003, which is neither an extension of the Distribution Licensee nor under its control and it being an independent Forum, the Distribution Licensee must be given an opportunity to approach the Electricity Ombudsman is also patently misconceived inasmuch as, as already discussed above, the Act 2003 only gives a remedy to a consumer to approach the Electricity Ombudsman. The said remedy provided to the Consumer being a creation of statute, as such, the

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Distribution Licensee cannot be expected to have a remedy in this regard of approaching the Electricity Ombudsman.

It was categorically found that the Act, 2003 does not provide for any remedy to the Distribution Licensee to approach the Electricity Ombudsman against the order passed by the Forum rather the said remedy has only been given to the Consumer.

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4. Case- The Maharashtra State ... vs. Lloyds Steel Industries Ltd decided on 14.08.2007 : MANU/SC/8261/2007

Facts-

- the respondent company approached the Maharashtra Electricity Regulatory Commission with the grievance that a demand notice issued by the Appellant's Wardha office be declared as illegal and may be set aside and quashed and the respondent company be permitted to avail power supply to the limit of 90 MVA without recovery of any additional charge either on account of service connection charges or the service line charges and to further direct the appellant herein to refund the amount of Rs. 227.9 lakhs so collected for re-instatement of the contract demand to the original level of 90 MVA along with interest @ 12% from the date of payment till the date of refund.
- The respondent company was a consumer of the Maharashtra State Electricity Board and originally they had a connection of 90 MVA which was subsequently reduced to 80 MVA and finally to 56 MVA on a request made by the company.
- Thereafter again they applied in June, 2002 for enhancement of their contract demand upto 90 MVA. Their request for enhancement of contract demand upto 90 MVA was granted though it was clearly mentioned in the order while reducing the contract demand to 56 MVA that in case enhancement of contract demand was subsequently required by the respondent company, it would attract payment of service line and other charges as per then prevailing conditions of supply.
- However, the regular supply of 90 MVA was restored on the request of the respondent company. The supply of 90 MVA was restored in June, 2002 and thereafter a demand was raised in terms of letter dated 02.08.2001 for service line charges, which was agreed to be paid by the respondent company, but in installments. Aggrieved against the said order the respondent- company filed a

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petition before the Commission on the ground that the demand of Rs.227.9 lakhs so raised for reinstatement of contract demand of 90 MVA is not proper.

- An objection was raised before the Commission that the Commission has no jurisdiction in the matter in view of [Section 42](#) of the Act and that the consumer should approach the Consumer Grievance Redressal Forum and thereafter, if still aggrieved, the Ombudsman created under the Act for redressal of their grievances. The Commission over-ruled this objection by making a reference to some decision of the Bombay High Court and proceeded to assume jurisdiction and directed the refund of the aforesaid amount to the respondent company.

Issue-

Whether the individual consumer can approach the Commission under the Act or not?

Judgment-

The view taken by the Commission as well as the Appellate Authority are unsustainable and they have erred in coming to the conclusion that the Commission has jurisdiction. Consequently, we set aside the order dated 18th October, 2005 passed by the Commission and the orders dated 5th April, 2006 and 2nd June, 2006 passed by the Appellate Authority and remit the matter to the proper Forum created under [Section 42\(5\)](#) of the Act to decide the grievance of the respondent herein in accordance with law. We make it clear that we have not made any observation with regard to the merits of the demand raised by the appellant upon the respondent company and it will be open for the proper forum to adjudicate the same. The payment, if any, made by the company will not operate as an estoppel against the respondent company. We hope that the forum will decide the matter expeditiously.

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5. Case- U.P. Power Corporation Ltd. and Ors. Vs. Anis Ahmad decided on 01.07.2013: MANU/SC/0606/2013

Facts:

Respondents-consumers filed complaints against assessment made under Electricity Act, 2003 before the Consumer Forum. The Consumer for a remitted the matter to State Commission. It held that it would have jurisdiction to entertain complaint against the final order passed by the Assessing officer Under Section 126 of the Electricity Act. Further, the jurisdiction of the consumer fora is not barred by any provisions of the Electricity Act but the same is expressly saved Under Section 173 read with Sections 174 and 175 of the Electricity Act.

Judgment-

While allowing the Appeals, Court held-

(i) In case of inconsistency between the Electricity Act, 2003 and the Consumer Protection Act, 1986, the provisions of Consumer Protection Act will prevail, but ipso facto it will not vest the Consumer Forum with the power to redress any dispute with regard to the matters which do not come within the meaning of "service" as defined Under Section 2(1)(o) or "complaint" as defined Under Section 2(1)(c) of the Consumer Protection Act, 1986.

(ii) A "complaint" against the Assessment made by Assessing officer Under Section 126 or against the offences committed Under Sections 135 to 140 of the Electricity Act, 2003 is not maintainable before a Consumer Forum.

(iii) The Electricity Act, 2003 and the Consumer Protection Act, 1986 runs parallel for giving redressal to any person, who falls within the meaning of "consumer" Under Section 2(1)(d) of the Consumer Protection Act, 1986 or the Central Government or the State Government or association of consumers but it is limited to the dispute relating to "unfair trade practice" or a "restrictive trade practice adopted by the service provider"; or "if the consumer suffers from deficiency in service"; or

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"hazardous service"; or "the service provider has charged a price in excess of the price fixed by or under any law".

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6. Purshottam Behl vs. Messers B.S.E.S. Rajdhani Power Limited (Successor-in-interest of Erstwhile Delhi Vidyut Board) through its Director/Managing Director/Chairman/Principal Officer (04.04.2013 - NCDRC): MANU/CF/0177/2013

Facts-

In a complaint case No. C-88/2000 of Mr. Purshottam Behl vs. BSES Rajdhani Power Ltd. before Delhi State Consumer Dispute Redressal Commission, the complainant owning a land of 215 sq. yd has taken an electrical connection of 2KW load. As per agreement executed, the complainant was required to maintain his own line till service lines/ LV lines are installed by the opposite party. The complainant received a show cause notice on 20/04/1998 from OP informing him of report of theft of electricity lodged in police station as the electricity load consumer by him had been 9.312 KW against sanctioned load of 2KW. In view of theft of electricity, OP raised a demand of Rs. 2, 42,998.75.

Appellant-Complainant made a representation to the Respondent pointing out that in the second quarter of 1997 Respondent had advertised in leading newspapers that all those who are having houses or plots in the authorized/unauthorized colonies can obtain an electricity connection by paying charges @ Rs.75/- per square yard which was later on increased to Rs.95/- per square yard, which he had done and, therefore, it was with malafide intention that this complaint had been made by the Respondent's Assistant Engineer and Lineman to whom he had refused to pay a bribe. The electricity connection provided to the Appellant-Complainant had also been illegally disconnected on 18.04.1998. Further, the allegation that there was 9.312 KW consumption of electricity was incorrect because Appellant-Complainant had never applied for more than 2 KW to the Respondent. Being aggrieved by the action of the Respondent, Appellant filed a complaint before the State Commission on grounds of unfair trade practice and deficiency in service and sought a total compensation of Rs.9, 87,546/-, which included quashing of demand notice of OP, compensation on a/c of increase cost towards purchase of diesel, mental agony,

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staying without electricity for 6 years etc. Respondent/Opposite Party did not submit any reply, written version or affidavit by way of evidence.

Judgment-

The State Commission, therefore, on the basis of evidence produced before it partly allowed the complaint by observing as follows:

1. So far as the allegations of direct theft of electricity is concerned it has no basis particularly in view of the aforesaid clause 7 of the agreement between the parties that till service lines/L.V. Mains are installed by DVB complainant shall maintain his own line and that DVB will not be responsible for any loss/damage to man/material from the line maintained by the complainant.

2. As regards the allegation of having used higher load than the sanctioned load the OP has neither filed any reply nor any material to show and prove the said allegation. Even otherwise connection was granted on 29-07-1997 and it was disconnected on 18-04-1998 on the basis of the show cause notice dated 18-04-1998. In between no inspection of the premises was ever done by the OP. Furthermore, the subsequent policy of the OP advertised in the National newspapers in the second quarter of the year 1997 i.e. much prior to the show cause notice and the disconnection of the electricity that all those houses or plots in authorized or unauthorized colonies can obtain electric connection by paying charges @ Rs.75/- per sq. yd. and the complainant had made the payment and the connection was granted.

3. The cumulative effect of the agreement between the parties as well as subsequent advertisement and lack of evidence on the part of the OP to prove the allegation of having used more load than the sanctioned load, particularly when the OP did not lay down the main line and service lines/L.V. mains and allowed all the consumers to maintain their own line at their own risk, the demand was wholly unjustified and illegal.

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The State Commission, therefore, quashed the demand of Rs.2, 42,998.75 ps. raised by the Respondent against the Appellant-Complainant on account of electricity consumption. However, no other relief as prayed for was granted. Hence, the present appeal No. 55 of 2008 seeking compensation was filed before National Commission. National Commission awarded “the Appellant needs to be compensated for the 6 long years during which period he was wrongly deprived of the electricity connection. After taking into account the facts and circumstances of this case, we are of the view that a compensation of Rs.2 Lakhs is justified and reasonable. We, therefore, partly allow this appeal and in the partial modification of the order of State Commission direct the Respondent to also pay the Appellant a sum of Rs.2 lakhs as compensation within a period of 8 weeks, failing which it will carry interest @ 9% per annum for the period of default’.

When there are wrong allegations by the licensee with regard to the use of the meter, which were not substantiated by any evidence, the complainant has to suffer mental pain, agony and sheer sufferings.

Delhi State Commission awarded in appeal No. 11/313 of BSES Yamuna Power Mtd. Vs. T.Samuel awarded compensation of Rs. 6,000/- to the electricity consumer for the allegation of licensee for “meter tempering” which were not substantiated. This appeal by the OP of the Case No. 204/10 is directed against the order dated 23.5.2011 passed by the District Forum, North East, Bunkar Vihar Complex, Nand Nagri, Delhi-91, directing the appellant/OP for the refund of Rs. 2,338/- and Rs. 5712/- and also a compensation of Rs. 6000/-.The appellant Ms. BSES Yamuna Power Ltd. served a notice dated 26.2.10 alleging the electricity meter tampering by the complainant. When the pressure was made by the OP on the complainant, he had to fill-up the Voluntary Declaration Forum under protest and he was penalised with paying an amount of Rs. 2338 and the Assessment Bill Meter Tampering of Rs. 5712/-. The meter was not tempered at any point of time by the complainant in as much as the electricity meter belonging to the appellant/OP. Despite of many representations submitted by the complainant to the appellant/OP, nothing has

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been done, therefore, complainant filed a complaint for the refund of the aforesaid amount along with compensation of Rs. 50,000/- and Rs. 10,000/- as litigation cost.

The District Forum vide order dated 23.5.2011 directed the appellant to refund Rs, 2338/- and Rs. 5712/- deposited by the complainant and also directed to pay compensation of Rs. 6000/-.It was very vehemently argued by the Ld. Counsel for the Appellant that meter installed in the premises of the complainant was taken off on the basis of the VDS form which was filled by the complainant himself and new meter was installed, therefore, the complainant is barred from raising any issue on inspection of the assessment made on the basis of the VDS. On the other hand, it is argued by the respondent present in person that the VDS form was submitted by him on the basis of wrong notice issued by the appellant and the officer, Sh. Vikram Singh (Business) of the appellant has pressurized him that in case the VDS form is not filled by him, the electric connection will be disconnected.

It is an admitted case of both the parties that the inspection report of the concerning officer belonging to the appellant was submitted and found no fault at all, however, the meter was sent to be examined by the laboratory of the appellant/OP who submitted the report on 24.5.10. Both these two documents have not been filed by any of the parties in this case. The laboratory report dated 24.5.10 goes to show that LCD and meter LED was found OK and data retrieve was also found normal and the meter data found not matching, however, the conclusion was shown, "Meter found faulty". Admittedly, the meter was installed by the appellant/OP in the premises of the respondent/complainant. Nowhere it is alleged at any point of time that it is the case of meter tampering. At the time of inspection, the load was found connected with the meter which was taken off from the premises of the complainant and subsequently tested by lab and found to be faulty. It appears was that the conclusion that is the meter found to be faulty is a deliberate attempt by the officer of the appellant/OP to save the skin of the appellant in as much as it

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is without any reason or basis. We are with the complete agreement that the finding of the District Forum with regard to the refund of the amount in as much as there is no fault or any reason to pay the aforesaid two amounts to the appellant/OP.

So far as the amount of the compensation is concerned, the District Forum has awarded a compensation of Rs. 6000/-. Obviously when there are wrong allegations by the appellant/OP with regard to the use of the meter, which were not substantiated by any evidence, the complainant has to suffer mental pain, agony and sheer sufferings. Award of Rs. 6000/- as compensation by the District Forum cannot be said to be excessive by any stretch of imagination

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**7. B.S.E.S. Yamuna Power Ltd. vs. Krishna (03.02.2014 - NCDRC):
MANU/CF/0281/2014**

Facts-

In an Appeal No. 2010/243 filed by the OP against an order of District Consumer Forum in a complaint case No.207/2009 of Smt. Krishna vs. BSES, State Commission did not agree with the contention of OP that that due to non-punching of the data of the computer system, the meter was not punched. This is sheer negligence and deficiency on the part of the appellant, for which the complainant/respondent cannot be punished. The District Consumer Forum reduced the demand of OP of Rs. 98,840/- to Rs. 9,026 and also directed OP to pay compensation of Rs.5000/- and Rs.1000/- litigation costs to the complainant. The OP failed to raise the bill for 5 years despite repeated requests and visit of the complainant/respondent to the office of the appellant and all of a sudden when a visit was made by the officials of the appellant in January 2009, a bill of Rs.98,840/-was raised.

Judgment-

Delhi State Commission agreed with the finding recorded by the District Forum, and there is no justification to interfere with the impugned order and dismissed the appeal.

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8. Brihan Mumbai Electricity Supply & transport under taking Versus Maharashtra Electricity Commission (MERC) & others Civil Appeal No. 4223 of 2012 in the Supreme Court of India.

Facts-

In Mumbai BEST (Brihan Mumbai Electricity Supply & transport undertaking) was enjoying a kind of monopoly in retail electricity supply even though Tata power also has the license to supply electricity in the same area. Due to various subsidies offered by the State Government and inefficient management of their transport business BEST was making big losses. But all those losses were made up by BEST by increasing the unit cost of electricity. The unit rate of electricity of BEST was 100% more than the unit rate of Tata-power.

Mr. Guru Prasad Shetty who is a restaurant owner was the customer of BEST. He wanted to switch over to Tata power to save on electricity bills. Tata power asked our client to get NOC from BEST to give the Tata electricity connection. BEST refused to give NOC on the ground that they are a “local authority under the Electricity Act and hence in their area nobody can supply electricity to retail customers. In short BEST wanted to maintain monopoly to supply to retail customers.

The contention of the consumer was accepted by the Maharashtra Electricity Regulatory Commission and directed Tata Power Company to create its own infrastructure since BEST refused to wheel the power and give supply to Mr. Shetty by an order dated 22.02.2010. BEST went on an appeal to Electricity Appellate tribunal and challenged the directions of the Maharashtra Electricity Regulatory commission. Appellate Tribunal for Electricity also confirmed the order of the MERC and decided in favour of the consumer. BEST again filed an appeal before the Hon’ble Supreme Court of India. Mr. Dushyant Dave & Naphde Senior Counsels argued the case of BEST. Mr. Dhuruv Metha Senior counsel appeared for Tata power.

Mr. S. Ravi Shankar Advocate Supreme Court of India (Senior Partner- Law Senate Law Firm) appeared for the consumer Mr. Guru Prasad Shetty. He argued that Tata-power has to adhere to its universal supply obligation. It cannot run away from the responsibility of establishing their own infrastructure in the license area and supply electricity to the customers. Mr. S. Ravi Shankar further argued that if the monopoly of BEST is allowed it defeats the objective of the Act to create competition among the electricity suppliers. If competition is not encouraged and ensured efficiency cannot be achieved.

Judgement-

Hon’ble Supreme Court Bench comprising Hon’ble Justice Mr. Surinder Singh Nijjar and Mr. A. K. Sikri by a detailed Judgment dated 08.05.2014 accepted the contentions of Mr. S. Ravi Shankar and dismissed the appeals Civil Appeal No.4223

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of 2012 filed by M/S. Brihan Mumbai Electricity Supply & transport under taking (BEST) and upheld the rights of the retail electricity consumers to choose the electricity supplier on the basis of the service quality and price.

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9. T.M. Prakash and Ors. vs. The District Collector and The Superintending Engineer, Tamil Nadu Electricity Board: MANU/TN/2091/2013

Facts-

In a landmark ruling, the Madras high court has said electricity supply is a legal right and denial of power supply is a violation of human rights. Directing the Tiruvannamalai district administration and the Tamil Nadu Electricity Board (TNEB) to give electricity supply to more than 180 families of launderers living along Girivalam (circumambulation) path in Tiruvannamalai, on Tuesday said: "Access to electricity should be construed as a human right. Denial of it would amount to violation of human rights. "Noting that electricity has a bearing on education, health and family economy of the poor, Justice Manikumar said: "Lack of electricity supply is one of the determinative factors, affecting education, health and a cause of economy disparity, and consequently, inequality in society leading to poverty. Electricity supply is an aid to get information and knowledge. Children without electricity supply cannot even imagine competing with others."

The launderers had filed a petition saying though they had been living on poromboke land (government land without clear titles) along the holy Girivalam path in Tiruvannamalai for several decades, electricity supply had been denied to them. Their counsel G Pari cited a municipal committee decision to deny them power supply, and said the committee cannot override statutory provisions and electricity supply code.

Judgment-

Justice Manikumar said: "Lack of electricity denies people equal opportunities in the matter of education and consequently suitable employment, health, sanitation and other socioeconomic rights. Right to electricity of a person occupying government land is recognized in the distribution code and it is integral to the achievement of socio-economic rights."

The judge underlined the social duty of authorities and said: "It is the fundamental duty of the authorities to show compassion to those who are living in huts and tenements for long. When socio and economic justice is the mandate of the Constitution, it is a travesty of justice to deny electricity to the petitioners."

Pointing out that there is evidence to prove that they were living in the Girivalam area at least since 2005, Justice Manikumar said: "Though the district administration and municipality have claimed that the petitioners are encroachers, they cannot be expected to live in darkness. Even an occupant of a government poromboke site is entitled to seek a decent living with basic amenities like water, food, shelter and clothing. Electricity is indispensable. It would be inappropriate to contend that the petitioners are not entitled to electricity supply."

He directed the TNEB authorities to provide electricity connections to the families within four weeks.

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**10. Haryana State Electricity Board vs. Hanuman Rice Mills and Ors.
(20.08.2010 - SC) : MANU/SC/0626/2010**

Supreme Court observed that Electricity arrears do not constitute a charge over the property. Therefore, in general law, a transferee of premises cannot be made liable for the dues of the previous owner/ occupier.

A consumer cannot be compelled by the State Electricity Board to clear the dues of the previous owner of the premises he has purchased in an auction unless there is a statutory requirement or prior agreement to the effect, the Supreme Court has held. "In the absence of any statutory rules authorizing a demand for the dues of the previous occupant, an auction purchaser seeking supply of electrical energy by way of a fresh connection, cannot be called upon to clear the pre-sale arrears, as a condition precedent for granting fresh connection," a Bench of Justices R V Raveendran and H L Gokhale said in a judgment.

The apex court passed the judgment while dismissing the plea of the Haryana State Electricity Board challenging a Punjab and Haryana High Court ruling that M/s Hanuman Rice Mills, an auction purchaser was not liable to clear the dues of Rs.2,39 lakh owed by the previous owner M/s Durga Rice Mills. M/s Hanuman Rice Mills had purchased the premises of M/s Durga Rice Mills at a cost of Rs.15, 25,000 on December 14, 1990 in an auction conducted by the Haryana Financial Corporation for recovery of its dues.

The State Electricity Board granted a fresh electricity supply to the Mill, but four years later issued a notice on January 16, 1995 demanding Rs 2,39,251 towards arrears of electricity charges due by the previous owner. After the new Mill owner refused to pay the dues, the Board disconnected the power supply. The High Court by its judgment dated August 8, 2006 held that the liability of a consumer to pay charges for consumption of electricity, cannot be fastened on a subsequent auction purchaser of the property and cited the apex court's earlier ruling in the Isha Marbles vs. Bihar State Electricity Board - (1995).

Aggrieved, the Board appealed in the apex court. Dismissing the appeal, the apex court said the Board could not seek the enforcement of the liability of the previous owner/occupier against a purchaser, who was a third party vis-a-vis the contract between the Board and the previous occupant. The auction purchaser who buys the property after disconnection of the electricity supply, of the previous owner could not be considered as a 'consumer' within the meaning of the Electricity Act, the Bench said.

The Bench then laid certain broad guidelines for determining such disputes. "The position therefore can may be summarized thus : (i) Electricity arrears do not constitute a charge over the property. Therefore in general law, a transferee of a premises cannot be made liable for the dues of the previous owner/occupier. (ii) Where the statutory rules or terms and conditions of supply which are statutory

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character, authorize the supplier of electricity, to demand from the purchaser of a property claiming re-connection or fresh connection of electricity, the arrears due by the previous owner/occupier in regard to supply of electricity to such premises, the supplier can recover the arrears from a purchaser.

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C. COMPLETE JUDGMENTS

Maharashtra Electricity Regulatory Commission Vs. Reliance Energy Ltd. and Ors., SC, 2007

Hon'ble Judges/Coram:
A.K. Mathur and Markandey Katju, JJ.

Case Category:

ORDINARY CIVIL MATTER - MATTERS RELATING TO ELECTRICITY
DISPUTE(CONNECTION/DISCONNECTION ETC)
JUDGMENT

Civil Appeal No. 2846 of 2006

1. This appeal under Section 125 of the of the Electricity Act, 2003 (hereinafter for short "the Act") is directed against the judgment and order dated 29th March, 2006 passed by the Appellate Tribunal for Electricity whereby the Appellate Tribunal has allowed the appeals filed by the distribution companies and set aside the orders passed by the Maharashtra Electricity Regulatory Commission (hereinafter for short "The Commission") dated 23.2.2005. The Commission on 3.8.2004 addressed a notice to all its licensees/distribution companies in Maharashtra and made an inquiry from them with regard to raising of the bills by the said licensees/distribution companies on the basis other than the actual meter reading for the relevant period, when large variations in consumption were noticed, or for other reasons. The notice dated 3.8.2004 sent by the Commission to all its licensees/distribution companies reads as under:

Several instances have come to the Commission's notice of so-called "amendment", "supplementary" or other such bills being raised by some licensees to consumers, often several years later, on a basis other than the actual meter reading for the relevant period, when large variations in consumption are noticed, or for other reasons. Computerised systems have sometimes been put in place which generate such bills automatically. Wide variations observed in recorded consumption and other such apparent anomalies may be useful for monitoring, checking/testing of meters and for taking corrective action. However, billing on a basis other than recorded consumption, and raising amended bills accordingly (often after several years later, and without giving reasons), is not mandated by law. The electricity statutes (in the past, and at present) provide inter alia that, in case of metered consumers, energy consumption charges have to be billed

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on the basis of meter readings. Moreover, the licensee, and not the consumer, is responsible for maintaining, rectifying, or having such meters replaced where necessary. Thus, no "amendment" bills of the kind referred to above can be raised, and any additional billing has to follow due process and the provision of law.

In the context of such "amendment" bills, I am directed to ask that the billing practices followed be immediately reviewed and brought into conformity with the statutory provisions. An affidavit stating the corrective action taken (including withdrawal of all such pending bills, and refund, though adjustment in energy bills or otherwise, of amounts received from consumers on or after 10.6.2003) may be furnished by 3rd September, 2004.

2. In response to the said notice all the licensees/distribution companies in Maharashtra made their respective submissions before the Commission explaining under what circumstances the supplementary/amended bills were sent to the consumers. They tried to justify raising of such bills and stated that the these bills were rightly sent as they found that some time the meters were not registering proper consumption and on that basis they tried to justify their action.

3. The Commission examined the matter in detail and vide its order dated 23.2.2005 in para 46 directed as under:

46. After considering all these factors and the submissions made, the Commission directs that the supplementary/amendment bills issued in the circumstances set out at para 42 and 43 above from 10th June, 2003 (the date of coming into force of EA, 2003) and upto notification of the Supply Code.

a. should be withdrawn, if due meter testing has not been done with the results intimated to the consumer.

b. any amounts collected should be refunded to the concerned consumers (without interest considering the earlier lack of clarity on this meter on the part of the licensees);

c. where meters have been found to be defective upon subsequent due testing (and the results intimated to the consumer), the bills may be adjusted for upto 3 months prior to the date of testing or meter replacement, whichever is earlier, and any amounts recovered in excess refunded without interest (in the case of 'stopped' meters, the analogy of the Supply Code provisions should be applied for assessment);

d. the above action should be completed by 30th May, 2005, so as to give the licensees more than 3 months' time in view of the work likely to be involved;

e. compliance should be submitted on affidavit by 15th June, 2005, with a list of consumers involved, and certifying that no further action remains to be done in terms of this Order. By another order dated 23.8.2005 in the case of M/s. Prayas (Energy Group) Pune, the Commission in para 45 directed as under:

45. Considering the foregoing, the Commission disposes of Prayas' petition with the following directions, which would apply for the period from 1st June, 2004 (i.e. around 3 months after the detailed Tariff Order dated 10th March, 2004, up-

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till 19th January, 2005 (following which the Supply code Regulations were notified):

(a) no billing using past consumption or some related 'average' basis should be resorted to for more than a period of 3 months. (where average billing has been continuing for more than that period just prior to 1st June, 2004, then it cannot be continued from that date.

In case average billing has been resorted to for, say, 2 months prior to that, it can be continued only for upto one month more). During that period 3 months, the meter should have been tested/replaced, with the results intimated to the consumer, and appropriate bill adjustments carried out thereafter (where such average billing is being done on the basis of presumed faulty meter, and where defectiveness of the meter has accordingly been established). If due and timely diligence has not been exercised by the licensee, he cannot claim the right to continue billing on a presumptive, average basis. The same principle will apply to all other situations in which such 'average' billing has been resorted to, except in cases where the meter is not accessible. (However, the Commission notes that, in the case of locked/inaccessible meters, the licensees have recourse to the remedies provided under Section 163 of EA, 2003, and it would be expected that MSEB would exercise it sooner rather than later).

(b) In all cases where bills have been raised and/or recoveries made which are not in accordance with (a) above, the bills should be withdrawn and/or amounts refunded to the consumers, through energy bills or other means, as may be relevant, by 30th November, 2005, with interest at the same rate as payable by consumers to MSEB for delayed payments.

4. Aggrieved against both these orders, the matter was taken up in appeal before the Appellate Authority. The Appellate Authority by the impugned order dated 29th March, 2006 set aside the orders passed by the Commission and directed that each consumer should approach the forum created under Section 42(5) of the Act for then individual grievances.

5. Aggrieved against the order dated 29.3.2006 passed by the Appellate Authority, the present appeal has been filed under Section 125 of the Act.

6. We have heard learned Counsel for the parties and perused the record.

7. Learned Counsel for the appellant-Commission has submitted before us that the Commission has the power to give a general direction to its licensees/distribution companies and he also submitted that in exercise of the power under the Act, the Commission was competent to issue the aforesaid direction. As against this, the learned Counsel appearing for the respondent-licensees/distribution companies submitted that the Commission has no power to issue a direction like the one issued in the present case and entertain individual complaints and direct refund of the whole amount by a blanket order.

8. The question before us is :

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what is the power of the Commission and to what extent the Commission can issue directions. Suffice it to say that the Regulatory Commission was constituted under the Electricity Act, 2003. The Act was a new enactment which was promulgated by superseding the Indian Electricity Act, 1910 and the Electricity Supply Act, 1948. The Statement of Objects and Reasons of the Act which have been summarized in the Preamble, reads as under:

An Act to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalisation of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto.

"Appropriate Commission" as defined in Section 2(4) of the Act means the "Central Regulatory Commission referred to in Sub-section (1) of Section 76 or the State Regulatory Commission referred to in Section 82 or the Joint Commission referred to in Section 83, as the case may be". In exercise of its power under Section 82 of the Act, the State of Maharashtra constituted the Maharashtra Electricity Regulatory Commission. The Commission exercises all the powers which are enumerated in the Act. Though various provisions were pointed out to us by learned Counsel for the parties, but Section 82 which is relevant for our purposes reads as under:

82. Constitution of State Commission-(1) Every State Government shall, within six months from the appointed date, by notification, constitute for the purposes of this Act, a Commission for the State to be known as the (name of the State) Electricity Regulatory Commission:

Provided that the State Electricity Regulatory Commission, established by a State Government under Section 17 of the Electricity Regulatory Commissions Act, 1998 (14 of 1998) and the enactments specified in the Schedule, and functioning as such immediately before the appointed date shall be the State Commission for the purposes of this Act and the Chairperson, Members, Secretary, and officers and other employees thereof shall continue to hold office on the same terms and conditions on which they were appointed under those Acts:

Provided further that the Chairperson and other Members of the State Commission, appointed, before the commencement of this Act, under the Electricity Regulatory Commissions Act, 1998 (14 of 1998) or under the enactments specified in the Schedule, may, on the recommendations of the Selection Committee constituted under Sub-section (1) of Section 85, be allowed to opt for the terms and conditions under this Act by the concerned State Government.

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(2) The State Commission shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

(3) The head office of the State Commission shall be at such place as the State Government may, by notification, specify.

(4) The State Commission shall consist of not more than three Members, including the Chairperson.

(5) The Chairperson and Members of the State Commission shall be appointed by the State Government on the recommendation of a Selection Committee referred to in Section 85.

9. We are not concerned with the provisions of appointment of Members of the Commission as they are dealt with by Sections 84 and 85 of the Act. Section 86 deals with the functions of the Commission and is relevant for our purposes. For ready reference, the same is reproduced hereunder.

86. Functions of State Commission:- (1) The State Commission shall discharge the following functions, namely:

(a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State:

Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

(b) regulate electricity purchase and procurement process of distribution of licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;

(c) facilitate intra-State transmission and wheeling of electricity;

(d) issue licences to persons seeking to act as transmission licensees, distribution licensees and electricity traders with respect to their operations within the State;

(e) promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;

(f) adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration;

(g) levy fee for the purposes of the Act;

(h) specify State Grid Code consistent with the Grid Code specified under Clause (h) of Sub-section (1) of Section 79;

(i) specify or enforce standards with respect to quality, continuity and reliability of service by licensees;

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- (j) fix the trading margin in the intra-State trading of electricity, if considered, necessary;
- (k) discharge such other functions as may be assigned to it under this Act.
- (2) The State Commission shall advise the State Government on all or any of the following matters, namely:
 - (i) promotion of competition, efficiency and economy in activities of the electricity industry;
 - (ii) promotion of investment in electricity industry;
 - (iii) reorganisation and restructuring of electricity industry in the State;
 - (iv) matters concerning generation, transmission, distribution and trading of electricity or any other matter referred to the State Commission by that Government;
- (3) The State Commission shall ensure transparency while exercising its powers and discharging its functions.
- (4) In discharge of its functions, the State Commission shall be guided by the National Electricity Policy, National Electricity Plan and Tariff Policy published under Section 3.

10. Thus, from the above provision it is clear that the primary purpose of the Commission is to determine tariff for generation, supply, transmission of electricity etc. and to regulate the electricity purchase and procurement process of distribution licensees, to facilitate intra-State transmission, to promote cogeneration and generation of electricity from renewable sources of energy, to adjudicate upon the disputes between the licensees and generation companies and to refer any dispute for arbitration, to levy fee for the purposes of this Act, specify State Grade Code consistent with the Grid Code specified under Clause (h) of Sub-section (1) of Section 79. Sub-section (2) of Section 86 also empowers the State Commission to advise the State Government on any of the matters including promotion of competition, efficiency, matters concerning generation, transmission, distribution and trading of electricity etc. Sub-Section (3) provides that the Commission shall ensure transparency while exercising its powers and discharging its functions. Sub-section (4) provides that in discharge of its functions the Commission shall be guided by the National Electricity Policy, National Electricity Plan and Tariff Policy published under Section 3.

11. We are not going into other questions as to how licenses were granted to all these utilities, i.e., various distribution companies. It is not necessary for us to go into these questions as in the present case, we are primarily concerned to decide the powers of the Commission and to what extent it can issue directions and whether the direction given by the Commission in the present case is sustainable or not.

12. It may be noted from a perusal of Section 86(1)(f) of the Act that the State Government has only power to adjudicate upon disputes between licensees and generating companies. It follows that the Commission cannot adjudicate disputes

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relating to grievances of individual consumers. The adjudicatory function of the Commission is thus limited to the matter prescribed in Section 86(1)(f).

13. Section 14 of the Act provides for grant of licence; Section 16 provides for conditions of licence; Section 61 lays down the tariff regulations and Section 62 provides for determination of tariff. The Commission under Section 94 has civil powers also and under Section 96 it has power of entry and seizure. Under Section 126 the Commission has the power to investigate and make assessment. Section 127 provides for an appeal to the appellate authority. Under Section 128 the Commission can make investigation of certain matters where it is satisfied that the licensee has failed to comply with any of the conditions of licence or failed to comply with any of the provisions of the Act or the rules and regulations made thereunder. Sub-Section (6) of Section 128 empowers the Commission to take any action against the licensee/generating company. Sub-section (6) reads as under:

(6) On receipt of any report under Sub-section (1) or Sub-section (5), the Appropriate Commission may, after giving such opportunity to the licensee or generating company, as the case may be, to make a representation in connection with the report as in the opinion of the Appropriate Commission seems reasonable, by order in writing:

(a) require the licensee or the generating company to take such action in respect of any matter arising out of the report as the Appropriate Commission may think fit; or

(b) cancel the licence; or

(c) direct the generating company to cease to carry on the business of generation of electricity.

Section 142 of the Act provides for punishment for non-compliance of directions issued by the Commission and Section 143 empowers the Commission to adjudicate after holding an inquiry in such manner as may be prescribed by the Government. Section 181 empowers the Commission to make regulations.

14. A comprehensive reading of all these provisions leaves no manner of doubt that the Commission is empowered with all powers right from granting licence and laying down the conditions of licence and to frame regulations and to see that the same are properly enforced and also power to enforce the conditions of licence under Subsection (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 categoric and Section 128(6) empowers the Commission to get the conditions of licence 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

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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.

17. In exercise of this general power notice dated 3.8.2004 was issued when mass scale supplementary/amended bills were issued to the consumers. When these consumers approached the Commission, the Commission directed its licensees to immediately review their billing policies and bring the same in conformity with the statutory provisions of the Act. The Commission did not get an investigation made under Section 128(1) which it could have done, and without that, and without getting a report under Section 128(5) it passed an order directing refund of the amounts collected by the licensees/distribution companies, which in our opinion was not permissible, since such a direction could, if at all, be given after getting a report of the investigation agency. The Commission could have made an investigation and got a report from the investigation agency and on that basis directions could have been given. However, that was not done. In these circumstances, in our opinion, the view taken by the Appellate Authority in the impugned order to that extent is correct that the individual consumers should have approached the appropriate forum under Section 42(5) of the Act.

18. Thus while we hold that the Commission has power to issue a general direction to licensees that they should abide by conditions of the licence issued by them and charge only as per the tariff fixed under the Act so that the public at large should not be harassed, we are of the opinion that so far as the blanket direction given by the Commission for refunding the entire amount without making a proper investigation whether the issue of supplementary/amended bills was really warranted in every case or not is unsustainable. Here the Commission has gone beyond its jurisdiction. After

all the distribution/generating companies have to incur expenses for generation/distribution of power, and we cannot at the same time give license to the consumers to commit theft of electricity or to be benefited by improper functioning of the meter to the disadvantage of the distribution/generating company. Thus, keeping in view the equity of both the parties, we think it will be proper for us to direct that all the licensees/distribution companies in the State of Maharashtra issue a general public notice in two daily newspapers having wide circulation in the State, one English newspaper and one in vernacular language. The notice shall state that whoever feels aggrieved by the supplementary/amended bill, he/she can approach the licensee/distribution company for redressal of their grievance within a period of three months from the date of publication of the notice. In our view, that would meet the ends of justice instead of passing a blanket order as given by the Commission for refunding the money charged by the licensees/distribution companies by issuing supplementary/amended bills. The individual consumers may make a grievance before the licensee/distribution company that they have not consumed the electricity for which they are charged or

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that the meter reading was not proper or that they have been excessively charged for the power which they have not actually consumed. Therefore, we direct that all the licensees/distribution companies shall issue a public notice in two daily newspapers having wide circulation in the State of Maharashtra, one in English language and the other in vernacular language requiring their respective consumers to make their representations for redressal of their grievances in respect of the supplementary/amended bills. The licensees/distribution companies shall decide the individual cases received by them after giving a fair opportunity of hearing to the consumers. The consumers who still feel not satisfied with the order passed by the licensees/distribution companies can approach the appropriate forum constituted under Section 42(5) of the Act and, if still not satisfied, with the order passed by the appropriate forum to approach the Ombudsman under Section 42(6) of the Act. Accordingly, we hold that while the Commission had a power to issue general directions to prevent harassment to the public at large by its licensees/distribution companies, but a blanket direction to refund the amounts collected by the licensees/distribution companies which has been given by the Commission was not warranted.

19. Although, the Appellate Authority has set aside the order passed by the Commission and issued a direction that the individual consumers may approach the appropriate orders under Sections 42(5) and (6) we are not interfering with that direction, but we direct that before that the licensees/distribution companies shall hear the parties as directed hereinabove and decide whether the supplementary/amended bills issued by them are proper or not.

20. In view of the above discussion, this appeal stands disposed of with no order as to costs.

Civil Appeal No. 3551 of 2006

21. This appeal under Section 125 of the Electricity Act, 2003 (hereinafter for short "the Act") is directed against the judgment passed by the Appellate Tribunal for Electricity (hereinafter for short "the Appellate Tribunal") dated 5th April, 2006 in Appellant's appeal No. 191/2005 and the order dated 2nd June, 2006 passed by the Appellate Tribunal in Review Petition No. 3/2006 and I.A. No. 60/2006.

22. It is not necessary for us to go into the detailed facts. Suffice it to say that the respondent company approached the Maharashtra Electricity Regulatory Commission (hereinafter for short referred to as "the Commission") with the grievance that a demand notice dated 26.8.2002 issued by the Appellant's Wardha office be declared as illegal and may be set aside and quashed and the respondent company be permitted to avail power supply to the limit of 90 MVA 4 without recovery of any additional charge either on account of service connection charges or the service line charges and to further direct the appellant herein to refund the amount of Rs. 227.9 lakhs so collected for re-instatement of the contract demand to the original level of 90 MVA along with interest @ 12% from the date of payment till the date of refund. The respondent company was a consumer of the Maharashtra State Electricity Board and originally they had a connection of 90 MVA which was subsequently reduced to 80 MVA and finally to 56 MVA on a request made by the company. Thereafter again they applied in June, 2002 for enhancement of their

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contract demand upto 90 MVA. Their request for enhancement of contract demand upto 90 MVA was granted though it was clearly mentioned in the order dated 12.8.2001 while reducing the contract demand to 56 MVA that in case enhancement of contract demand was subsequently required by the respondent company, it would attract payment of service line and other charges as per then prevailing conditions of supply. However, the regular

supply of 90 MVA was restored on the request of the respondent company. The supply of 90 MVA was restored in June, 2002 and thereafter a demand was raised in terms of letter dated 02.08.2001 for service line charges, which was agreed to be Paid by the respondent company, but in installments. Aggrieved against the said order the respondent-company filed a petition before the Commission on the ground that the demand of Rs. 227.9 lakhs so raised for reinstatement of contract demand of 90 MVA is not proper. An objection was raised before the Commission that the Commission has no jurisdiction in the matter in view of Section 42 of the Act and, that the consumer should approach the Consumer Grievance Redressal Forum and thereafter if still aggrieved, the Ombudsman created under the Act for redressal of their grievances. The Commission over-ruled this objection by making a reference to some decision of the Bombay High Court and proceeded to assume jurisdiction and directed the refund of the aforesaid amount to the respondent company.

23. Aggrieved against the said order dated 18th October, 2005, the Maharashtra State Electricity Distribution Company Ltd. (hereinafter for short "MSEDCL") approached the Appellate Tribunal for Electricity created under the Act. The Appellate Tribunal vide its order dated 5th April, 2006 affirmed the order passed by the Commission. Thereafter a review petition was filed by the MSEDCL before the Appellate Tribunal, which was also rejected vide order dated 2nd June, 2006. Aggrieved against both these orders, the MSEDCL has approached this Court by the present appeal under Section 125 of the Act.

24. We have heard learned Counsel for the parties and perused the record.

25. The basic question which arises for our consideration in this appeal is whether the individual consumer can approach the Commission under the Act or not.

26. For deciding this question, the relevant provision is Section 42(5) of the Act, which reads as under:

42. Duties of distribution licensees and open access.-

(1) X X X

(2) X X X

(3) X X X

(4) X X X

(5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

27. As per the aforesaid provision, if any grievance is made by a consumer, then they have a remedy under Section 42(5) of the Act and according to Sub-section (5) every distribution licensee has to appoint a forum for redressal of grievances of the consumers. In exercise of this power the State has already framed. The Maharashtra

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Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2003 (hereinafter referred to as "2003 Regulations") and created Consumer Grievance Redressal forum and Ombudsman. Under these 2003 Regulations a proper forum for redressal of the grievances of individual consumers has been created by the Commission. Therefore, now by virtue of Sub-section (5) of Section 42 of the Act, all the individual grievances of consumers have to be raised before this forum only. In the face of this statutory provision we fail to understand how could the Commission acquire jurisdiction to decide the matter when a forum has been created under the Act for this purpose. The matter should have been left to the said forum. This question has already been considered and decided by a Division

Bench of the Delhi High Court in the cases of Suresh Jindal v. BSES Rajdhani Power Ltd. and Ors. reported in 132 (2006) DLT 339 (DB) and Dheeraj Singh v. BSES Yamuna Power Ltd. and we approved of these decisions. It has been held in these decisions that the Forum and Ombudsman have power to grant interim orders. Thus a complete machinery has been provided in Section 42(5) and 42(6) for redressal of grievances of individual consumers. Hence wherever a Forum/Ombudsman have been created the consumers can only resort to these bodies for redressal of their grievances. Therefore, not much is required to be discussed on this issue. As the aforesaid two decisions correctly lay down the law when an individual consumer has a grievance he can approach the forum created under Sub-section (5) of Section 42 of the Act.

28. In this connection, we may also refer to Section 86 of the Act which lays down the functions of the State Commission. Sub-section (1)(f) of the said Section lays down the adjudicatory function of the State Commission which does not encompass within its domain complaints of individual consumers. It only provides that the Commission can adjudicate upon the disputes between the licensees and generating companies and to refer any such dispute for arbitration. This does not include in it an individual consumer. The proper forum for that is Section 42(5) and thereafter Section 42(6) read with Regulations of 2003 as referred to hereinabove.

29. Therefore, in the facts and circumstances of the present case, we are of the opinion that the view taken by the Commission as well as the Appellate Authority are unsustainable and they have erred in coming to the conclusion that the Commission has jurisdiction. Consequently, we set aside the order dated 18th October, 2005 passed by the Commission and the orders dated 5th April, 2006 and 2nd June, 2006 passed by the Appellate Authority and remit the matter to the proper Forum created under Section 42(5) of the Act to decide the grievance of the respondent herein in accordance with law. We make it clear that we have not made any observation with regard to the merits of the demand raised by the appellant upon the respondent company and it will be open for the proper forum to adjudicate the same. The payment, if any, made by the company will not operate as an estoppel against the respondent company. We hope that the forum will decide the matter expeditiously.

30. With the above observations, the appeal is allowed with no order as to costs.

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Hindustan Zinc Limited Vs. Ajmer Vidyut Vitran Nigam Limited, SC, 2019

Hon'ble Judges/Coram:

Rohinton Fali Nariman, Aniruddha Bose and V. Ramasubramanian, JJ.

Case Category:

ARBITRATION MATTERS - SLPS CHALLENGING ARBITRATION MATTERS

JUDGMENT

Rohinton Fali Nariman, J.

1. Leave granted.

2. The present appeal raises an important question as to the scope of arbitration proceedings under the Electricity Act, 2003 (hereinafter referred to as 'Electricity Act' for brevity), in particular, Section 86(1)(f) thereto read with Section 158.

3. The skeletal facts necessary to decide this case are as follows:

The Appellant before us, Hindustan Zinc Limited, has four high tension electricity connections for its units at Chanderiya, Debari, Aghucha and Dariba, for which four contracts with the Respondent were entered into for purchase of electricity.

4. The Appellant also set up a captive power plant of 154 MW at Chanderiya, which was commissioned in February, 2005, and synchronized with the Rajasthan Vidyut Prasaran Nigam Limited Grid. Short term open access to transmission and distribution systems of this Grid was sought under the Regulations and requisite permission was obtained. Thereafter, the Appellant entered into three open access agreements with the Respondent on 10.03.2005 for wheeling of power from its captive power plant on the Respondent's distribution system to the three units that were owned by it which were the units at Aghucha, Debari and Dariba respectively. Open access commenced on 24.03.2005 and the power generated at its captive power plant was injected at 132 KV and 220 KV at the grid substations at Chittorgarh from where it was transmitted on the Respondent's transmission system and then supplied to the Appellant's three units.

5. The dispute that arose between the parties was as to the unscheduled interchange charges which become payable under Clauses 8 and 9 of the three agreements dated 10.03.2005.

6. Clauses 8 and 9 read as follows:

(8) Scheduling:

The following procedure is agreed upon by the parties for scheduling open access power at generation and drawl at the receiving point by Open Access Consumer:

.....

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.....
 (c) The Open Access Consumer at 10 AM each day shall furnish to Ajmer Discom Schedule of drawl on 15 minute block basis which it intent to draw against the open access and on 15 minute block basis Schedule against contract demand of existing connections, if any, separately. The drawl Schedule of open access power shall be limited to the availability shown by the supplying generator in its schedule.

9. Settlement

(a) The parties agree that the settlement of mismatch between the Schedule injection and actual injection by the generating station injecting open access power into State Transmission System of by the generating station embedded in the Distribution System for each 15 minute block shall be done in following manner.

(i) Un-scheduled generation not exceeding 5% of the generation/injection scheduled in any 15 minute block at UI price specified by the Commission for the state from time to time.

(ii) Generation exceeding 5% of the generation/injection scheduled in any 15 minute block shall be considered as zero and no UI charges shall be receivable by the generating station for such excess generation.

(iii) The mismatch between the Schedule generation and actual generation shall be determined from the meter data down loaded through MRI and 15 minute block-wise Schedule furnished for each day during the billing month.

.....
 (c) The mismatch in total drawl scheduled by consumer against open access and against existing contract demand and total actual drawl in each 15 minute block shall be done in following manner:

(i) Un-schedule drawl not exceeding 5% of the total Schedule made by the consumer against open access and existing Discom connections in any 15 minutes block shall be priced at UI rate and payable/receivable by the Open Access Consumer.

(ii) The balance mismatch in scheduled' and actual drawl shall be paid by the Open ' Access Consumer to the Ajmer Discom at the mutually agreed rates and in absence of any agreement such drawl would be treated as temporary supply and shall be charged the tariff for temporary supply as contained in Part III of the "Tariff for Supply of Electricity 2004": booklet for the applicable category.

(iii) The mismatch between the Schedule drawl and actual drawl shall be determined from the meter data down loaded through MRI and 15 minute block wise Schedule furnished for each day during the billing month.

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7. It will be seen that each of the three units is described as an Open Access Consumer and that if generation exceeds 5% of the injection that is scheduled the day previous in any 15 minutes block, mismatch between scheduled generation and actual generation will then either be determined at mutually agreed rates or the excess supply will be treated as temporary supply and charged the tariff for temporary supply as contained in Part III of the Tariff for Supply of Electricity 2004 booklet for the applicable category. (If, however, mismatch does not exceed 5%, it shall be priced at the unscheduled interchange charges rate that is either payable or receivable by the open access consumer.)

8. When the disputes arose between the parties, the Appellant and the Respondent/by two orders passed by the Rajasthan Electricity Regulatory Commission dated 22.05.2006 and 23.06.2006, the Commission stated that it will itself decide the dispute between the parties.

9. However, by order dated 12.02.2007, the Commission appointed an Arbitrator Under Section 86(1)(f) read with Section 158 of the Electricity Act, referring the following dispute to arbitration:

...to resolve the dispute rising out of the Open Access availed by M/s. HZL from its Captive Power Plant at Chanderia [Chittorgarh] to its other industrial units located within the area of AVVNL in the matter of UI charges billed by AVVNL. The Petitioner shall file an application along with complete details before the Arbitrator within one week from the date of receipt of the notice from the Arbitrator. The Arbitrator should endeavor to accord his award within a period of 4[four] months from the date of this Order. In all other respects the arbitration shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

10. By Award dated 25.08.2007, the learned Arbitrator raised 12 issues between the parties and struck down Clause 8(c) and 9 of the open access agreements dated 10.03.2005, as a consequence of which, the unscheduled interchange charges would be billed as per the agreements that were earlier entered into between the parties.

11. This Award was challenged before the Commercial Court in a Section 34 petition under the Arbitration and Conciliation Act, 1996, (hereinafter referred to as 'Arbitration Act' for brevity), which was dismissed vide the Commercial Court's order dated 25.02.2017.

12. A Section 37 appeal was then decided vide the impugned judgment dated 05.04.2018 by the High Court of Judicature for Rajasthan, Jaipur Bench.

13. The High Court held that, in the peculiar facts of this case, the captive generating plant of the company situated at Chanderiya was to use, through open access, the distribution system of the Respondent to wheel power to three of its own units which were situated at Aghucha, Debari and Dariba as aforesaid. Given this fact, and given the fact that the three agreements were entered into with these three units, the High Court held that the hat worn by the Appellant-

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company, which contained all four units, was that of an open access consumer and not that of a generating company. As a result of which, Section 86(1)(f) of the Electricity Act would not be attracted. Consequently, the issue being one of inherent lack of jurisdiction, the High Court reversed the order of the Commercial Court, Ajmer, and set aside the entire Award stating that the dispute raised between the parties in the present case would be outside Section 86 of the Electricity Act altogether. The High Court also went on to discuss the merits of the Award and, on several grounds, set aside the Award as being perverse on merits as well.

14. We have heard detailed arguments from Shri C.S. Vaidyanathan, learned senior Counsel appearing on behalf of the Appellant, and Shri Puneet Jain, learned Counsel for the Respondent.

15. Section 42 of the Electricity Act, 2003, is relevant for the purpose of discussion and set out hereunder:

Section 42. (Duties of distribution licensee and open access):

(1) It shall be the duty of a distribution licensee to develop and maintain an efficient co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.

(2) The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access In successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:

Provided that such open access shall be allowed on payment of a surcharge in addition to the charges for wheeling as may be determined by the State Commission:

Provided further that such surcharge shall be utilised to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee:

Provided also that such surcharge and cross subsidies shall be progressively reduced in the manner as may be specified by the State Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use:

Provided also that the State Commission shall, not later than five years from the date of commencement of the Electricity (Amendment) Act, 2003, by Regulations, provide such open access to all consumers who require a supply of electricity where the maximum power to be made available at any time exceeds one megawatt.

(3) Where any person, whose premises are situated within the area of supply of a distribution licensee, (not being a local authority engaged in the business of

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distribution of electricity before the appointed date) requires a supply electricity from a generating company or any licensee other than such distribution licensee, such person may, by notice, require the distribution licensee for wheeling such electricity in accordance with Regulations made by the State Commission and the duties of the distribution licensee with respect to such supply shall be of a common carrier providing non-discriminatory open access.

(4) Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply.

(5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

(6) Any consumer, who is aggrieved by non-redressal of his grievances Under Sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.

(7) The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.

(8) The provisions of Sub-sections (5), (6) and (7) shall be without prejudice to right which the consumer may have apart from the rights conferred upon him by those Sub-sections.

16. Section 86 which deals with' the functions of the State Commission, and states as follows:

Section 86. Functions of State Commission.-(1) The State Commission shall discharge the following functions, namely:

(a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State:

Provided that where open access has been permitted to a category of consumers Under Section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

.....

.....

(f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;

17. The bone of contention revolves around Section 86(1)(f).

18. Shri Vaidyanathan, learned senior Counsel for the Appellant, has argued that the challenge to the Award was only on merits before the learned Commercial Court, and no challenge was raised stating that the Arbitrator's appointment itself would be without jurisdiction, both the parties having agreed to the order dated

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12.02.2007 to refer the matter to arbitration. However, the said issue was argued and taken up before the High Court in First Appeal under Section 37 of the Arbitration Act.

19. We are of the view that it is settled law that if there is an inherent lack of jurisdiction, the plea can be taken up at any stage and also in collateral proceedings.

20. This was held by this Court in Kiran Singh and Ors. v. Chaman Paswan and Ors. MANU/SC/0116/1954: (1955) 1 SCR 117 as follows:

... It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was coram non iudice, and that its judgment and decree would be nullities.

21. Therefore, it is a little difficult to countenance Shri Vaidyanathan's argument that having consented, the Respondent cannot now turn around and challenge the very appointment of the Arbitrator as being invalid and without jurisdiction.

22. Coming now to Section 86 of the Act, it is clear that the adjudication upon disputes can only be between licensees and generating companies and not between licensees and consumers, which is provided for in an open access situation by Section 42.

23. We may also hasten to add that under the Open Access Regulations of 2004, Clause 29, in particular, gives a three-tier hierarchy of challenge when it comes to disputes raised between distribution licensees and consumers in relation to matters qua open access.

24. This is quite apart from the separate mechanism provided in Section 42(6) of the Electricity Act, where a representation for redressal of grievances may be made to the Ombudsman appointed or designated by the State Commission, which, as has been pointed out by Shri Puneet Jain, has already been set up.

25. The matter is no longer res integra, This Court, in Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd. MANU/SC/1055/2008: (2008) 4 SCC 755 had occasion to construe the language of Section 86(1)(f) of the Act of 2003, in the following terms:

26. It may be noted that Section 86(1)(f) of the Act of 2003 is a special provision for adjudication of disputes between the licensee and the generating companies. Such disputes can be adjudicated upon either by the State Commission or the person or persons to whom it is referred for arbitration. In our opinion the word

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'and' in Section 86(1)(f) between the words 'generating companies' and 'to refer any dispute for arbitration' means 'or'. It is well settled that sometimes 'and' can mean 'or' and sometimes 'or' can mean 'and' (vide G.P. Singh's 'Principle of Statutory Interpretation' 9th Edition, 2004 page 404.)

27. In our opinion in Section 86(1)(f) of the Electricity Act, 2003 the word 'and' between the words 'generating companies' and the words 'refer any 'dispute' means 'or', otherwise it will lead to an anomalous situation because obviously the State Commission cannot both decide a dispute itself and also refer it to some Arbitrator. Hence the word 'and' in Section 86(1)(f) means 'or'.

28. Section 86(1)(f) is a special provision and hence will override the general provision in Section 11 of the Arbitration and Conciliation Act, 1996 for arbitration of disputes between the licensee and generating companies. It is well settled that the special law overrides the general law. Hence, in our opinion, Section 11 of the Arbitration and Conciliation Act, 1996 has no application to the question who can adjudicate/arbitrate disputes between licensees and generating companies, and only Section 86(1)(f) shall apply in such a situation.

26. What becomes clear on a reading of this judgment is that the expression 'and' occurring in Section 86(1)(f) must be read as 'or'. But this is only because, as has been pointed out in the judgment, the State Commission cannot both decide the dispute itself and also refer it to an Arbitrator. Otherwise also, reference of any dispute for arbitration can only be between the licensees and generating companies and not otherwise.

27. This being the case, the High Court is right in stating that the Arbitrator could not, in law, have been appointed by the State Commission Under Section 86 of the Electricity Act. The Award based on such appointment would be non est in law.

28. However, the High Court did not stop with a finding on this issue, but went on to discuss the merits of the Award. We may only state that in case the Appellant wishes to avail of any other remedy in law, none of the observations made by the High Court will stand in its way.

29. The appeal stands disposed of accordingly.

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Kisan Cold Storage & Ice Factory Vs. Paschimanchal Vidyut Vitran Nigam Ltd. and Ors., Allahabad High Court, 2019

Hon'ble Judges/Coram:

Vikram Nath, Rajesh Singh Chauhan and Abdul Moin, JJ.

JUDGMENT

Abdul Moin, J.

1 . We have heard Sri B.C. Rai, learned counsel for the appellant, Sri J.N. Mathur, Senior Advocate assisted by Sri Amarjeet Singh Rakhra and Ms. Aprajita Bansal, learned counsel representing respondent Nos. 1 and 2, Sri Sanjay Singh, learned counsel representing respondent No. 5 and Sri S.B. Pandey, learned Assistant Solicitor General of India alongwith Ms. Nandita Bharati, Advocate representing the Union of India- respondent No. 6.

2. The present reference before the Full Bench has been occasioned by a referring order of a Division Bench dated 20.1.2016. The Division Bench upon noticing that there was a conflict between the decisions of the Division Bench in the case of M/s. Jindal Poly Films Limited v. U.P. Electricity Regulatory Commission, Lucknow and others in Writ Petition No. 2456 (MB) of 2011 decided on 15.4.2011 and the judgment of Single Judge in the case of Dakshinanchal Vidyut Vitran Nigam Limited v. Vidyut Lokpal Lucknow and others in Writ Petition No. 4237 (MS) of 2008 as well as another judgment by Single Judge in the case of Pachimanchal Vidyut Vitran Nigam Limited v. Electricity Ombudsman and others in Writ Petition No. 6411 (MS) of 2012 and being of the view that the judgment of the Division Bench in the case of M/s. Jindal Poly Films Limited requires reconsideration keeping in view the provisions of Section 42 (5) (6) and (7) of the Electricity Act, 2003 (hereinafter referred to as 'the Act, 2003') has referred the following questions of law for decision:

"(I) In view of the provisions of sub-sections (5), (6) and (7) of Section 42 of the Electricity Act, 2003, under which a consumer who is aggrieved by non-redressal of

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his grievance is permitted to make a representation before the Ombudsman and the Ombudsman is required to settle the grievance of the consumer, whether Regulation 8.1(i) of the Uttar Pradesh Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2007 is ultra vires the provisions of the Act;

(II) Whether the judgment of the Division Bench in Ms. Jindal Poly Films Ltd. v. U.P. Electricity Regulatory Commission, Lucknow decided on 15 April 2011 can be regarded as laying down the correct principle of law."

3. While dealing with the questions which have been framed for consideration by the Full Bench, it would be convenient to reproduce the relevant provisions of the Electricity Act, 2003 alongwith the Regulations of the Uttar Pradesh Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2007 (hereinafter referred to as 'the Regulations, 2007') which are set out below:

4. The "Area of Supply" has been defined under Section 2(3) of the Act, 2003, as under:

"area of supply" means the area within which a Distribution Licensee is authorised by his licence to supply electricity;

5. The "Consumer" under the provisions of the Act, 2003 has been defined in Section 2(15) of the Act, 2003, as under:

"consumer" means any person who is supplied with electricity for his own use by a Licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a Licensee, the Government or such other person, as the case may be;

6. A "Distribution Licensee" has been defined under Section 2(17) of the Act, 2003, as under:

"Distribution Licensee" means a Licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply;

7. A "Licensee" has been defined under Section 2 (39) of the Act, 2003, as under:

"Licensee" means a person who has been granted a licence under Section 14;

8. "Rules" have been defined under Section 2 (59) of the Act, 2003 as "rules" means rules made under the Act.

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9. The "State Commission" has been defined under Section 2(64) of the Act, 2003, as under:

"State Commission" means the State Electricity Regulatory Commission constituted under sub-section (1) of Section 82 and includes a Joint Commission constituted under sub-section (1) of Section 83;

10. Section 42 of the Act, 2003 provides as follows:

"Section 42. (Duties of Distribution Licensee and open access):- (1) It shall be the duty of a Distribution Licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.

(2) The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:

Provided that [such open access shall be allowed on payment of a surcharge] in addition to the charges for wheeling as may be determined by the State Commission:

Provided further that such surcharge shall be utilised to meet the requirements of current level of cross subsidy within the area of supply of the Distribution Licensee:

Provided also that such surcharge and cross subsidies shall be progressively reduced in the manner as may be specified by the State Commission: Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use:

[Provided also that the State Commission shall, not later than five years from the date of commencement of the Electricity (Amendment) Act, 2003, by regulations, provide such open access to all consumers who require a supply of electricity where the maximum power to be made available at any time exceeds one megawatt.]

(3) Where any person, whose premises are situated within the area of supply of a Distribution Licensee, (not being a local authority engaged in the business of distribution of electricity before the appointed date) requires a supply of electricity from a generating company or any Licensee other than such Distribution Licensee, such person may, by notice, require the Distribution Licensee for wheeling such electricity in accordance with regulations made by the State Commission and the duties of the Distribution Licensee with respect to such supply shall be of a common carrier providing non-discriminatory open access.

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(4) Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the Distribution Licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such Distribution Licensee arising out of his obligation to supply.

(5) Every Distribution Licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a Forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

(6) Any consumer, who is aggrieved by non-redressal of his grievances under subsection (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.

(7) The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.

(8) The provisions of sub-sections (5),(6) and (7) shall be without prejudice to right which the consumer may have apart from the rights conferred upon him by those sub-sections."

11. From perusal of Section 42 of the Act, 2003 alongwith the definitions as set forth above, it clearly comes out that it shall be the duty of the Distribution Licensee to develop and maintain an efficient, coordinated and economical distribution system in his area of supply and to supply the electricity in accordance with the provisions contained in the Act, 2003. As per sub-section (5) of Section 42 of the Act, 2003, every Distribution Licensee shall, within six months from the appointed date or date of grant of licence, establish a Forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission. Sub-section (6) of Section 42 of the Act, 2003, provides that any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as "Ombudsman" to be appointed or designated by the State Commission. As per subsection (7) of Section 42 of the Act, 2003, the Ombudsman shall settle the grievance of the consumer. Thus, it clearly comes out that the Distribution Licensee is to establish a Forum for redressal of grievances of the consumer who if aggrieved by non-redressal of his grievance may make a representation to the Ombudsman for the redressal of his grievance. The Forum is to be established by the Distribution Licensee in accordance with the guidelines specified by the State Commission.

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12. Section 181 of Act, 2003, prescribes the power of the State Commission to make Regulations. For the sake of convenience, Section 181 of the Act, 2003, is reproduced below:

"Section 181. (Powers of State Commissions to make regulations):-(1) The State Commissions may, by notification, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the power contained in sub-section (1), such regulations may provide for all or any of the following matters, namely:

- (a) period to be specified under the first proviso of Section 14;
- (b) the form and the manner of application under sub-section (1) of Section 15;
- (c) the manner and particulars of application for licence to be published under subsection (2) of Section 15;
- (d) the conditions of licence Section 16;
- (e) the manner and particulars of notice under clause(a) of sub-section (2) of Section 18;
- (f) publication of the alterations or amendments to be made in the licence under clause (c) of sub-section (2) of Section 18;
- (g) levy and collection of fees and charges from generating companies or Licensees under sub-section (3) of Section 32;
- (h) rates, charges and the term and conditions in respect of intervening transmission facilities under proviso to Section 36;
- (i) payment of the transmission charges and a surcharge under subclause (ii) of clause(d) of sub-section (2) of Section 39;
- (j) reduction [***] of surcharge and cross subsidies under second proviso to subclause (ii) of clause (d) of sub-section (2) of Section 39;
- (k) manner and utilisation of payment and surcharge under the fourth proviso to sub-clause(ii) of clause (d) of sub-section (2) of Section 39;
- (l) payment of the transmission charges and a surcharge under sub- clause (ii) of clause (c) of Section 40;
- (m) reduction [***] of surcharge and cross subsidies under second proviso to subclause (ii) of clause (c) of Section 40;

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- (n) the manner of payment of surcharge under the fourth proviso to sub-clause (ii) of clause (c) of Section 40;
- (o) proportion of revenues from other business to be utilised for reducing the transmission and wheeling charges under proviso to Section 41;
- (p) reduction [***] of surcharge and cross-subsidies under the third proviso to sub-section (2) of Section 42;
- (q) payment of additional charges on charges of wheeling under sub-section (4) of Section 42;
- (r) guidelines under sub-section (5) of Section 42;
- (s) the time and manner for settlement of grievances under sub-section (7) of Section 42;
- (t) the period to be specified by the State Commission for the purposes specified under sub-section (1) of Section 43;
- (u) methods and principles by which charges for electricity shall be fixed under sub-section (2) of Section 45;
- (v) reasonable security payable to the Distribution Licensee under sub-section (1) of Section 47;
- (w) payment of interest on security under sub-section (4) of Section 47;
- (x) electricity supply code under Section 50;
- (y) the proportion of revenues from other business to be utilised for reducing wheeling charges under proviso to Section 51;
- (z) duties of electricity trader under subsection (2) of Section 52;
- (za) standards of performance of a Licensee or a class of Licensees under sub-section (1) of Section 57;
- (zb) the period within which information to be furnished by the Licensee under sub-section (1) of Section 59;
- [(zc) the manner of reduction of cross-subsidies under clause (g) of Section 61;]
- (zd) the terms and conditions for the determination of tariff under Section 61;
- (ze) details to be furnished by Licensee or generating company under sub-section (2) of Section 62;
- (zf) the methodologies and procedures for calculating the expected revenue from tariff and charges under sub-section (5) of Section 62;

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- (zg) the manner of making an application before the State Commission and the fee payable therefor under sub-section (1) of Section 64;
- (zh) issue of tariff order with modifications or conditions under sub-section (3) of Section 64;
- (zi) the manner by which development of market in power including trading specified under Section 66;
- (zj) the powers and duties of the Secretary of the State Commission under sub-section (1) of Section 91;
- (zk) the terms and conditions of service of the secretary, officers and other employees of the State Commission under sub-section (2) of Section 91;
- (zl) rules of procedure for transaction of business under sub-section (1) of Section 92;
- (zm) minimum information to be maintained by a Licensee or the generating company and the manner of such information to be maintained under sub-section (8) of Section 128;
- (zn) the manner of service and publication of notice under Section 130;
- (zo) the form of preferring the appeal and the manner in which such form shall be verified and the fee for preferring the appeal under sub-section (1) of Section 127;
- (zp) any other matter which is to be, or may be, specified.
- (3) All regulations made by the State Commission under this Act shall be subject to the condition of previous publication."

13. From the aforesaid, it comes out that as per sub-section (1) of Section 181, the State Commission may make Regulations consistent with Act, 2003 and the Rules to carry out the provisions of the Act, 2003.

14. So far as the rules as referred to in Section 181 of the Act, 2003, are concerned (keeping in view the definition of "rules" under Section 2(59) of the Act, 2003, the rules are the Electricity Rules, 2005 (hereinafter referred to as 'the Rules, 2005'), which, so far as the consumer redressal Forum and Ombudsman are concerned, is governed by Rule 7 of the Rules, 2005, which for the sake of convenience, is reproduced below:

"Consumer Redressal Forum and Ombudsman.-(1) The Distribution Licensee shall establish a Forum for redressal of grievances of consumers under sub-section (5) of Section 42 which shall consist of officers of the Licensee.

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(2) The Ombudsman to be appointed or designated by the State Commission under sub-section (6) of Section 42 of the Act shall be such person as the State Commission may decide from time to time.

(3) The Ombudsman shall consider the representations of the consumers consistent with the provisions of the Act, the Rules and Regulations made hereunder or general orders or directions given by the Appropriate Government or the Appropriate Commission in this regard before settling their grievances.

(4) (a) The Ombudsman shall prepare a report on a six monthly basis giving details of the nature of the grievances of the consumer dealt by the ombudsman, the response of the Licensees in the redressal of the grievances and the opinion of the ombudsman on the Licensee's compliance of the standards of performance as specified by the Commission under Section 57 of the Act during the preceding six months.

(b) The report under sub-clause (a) above shall be forwarded to the State Commission and the State Government within 45 days after the end of the relevant period of six months."

15. A perusal of the sub-rule (1) of Rule 7 of the Rules, 2005, categorically provides that the Distribution Licensee shall establish a Forum for redressal of grievances of consumers under subsection (5) of Section 42 which shall consist of officers of the Licensee.

16. From a perusal of the aforesaid sections and the rules, it is clearly apparent that the entire thrust of Section 42 of the Act, 2003 and Rule 7 of the Rules, 2005, is on the establishment of a Forum for redressal of grievances of the consumers which, as per definition clause of Section 2(15) of the Act, 2003, means any person who is supplied electricity for his own use.

17. The U.P. Electricity Regulatory Commission i.e. the State Commission while exercising powers conferred by Section 181 of the Act, 2003 read with sub-section (5) to (8) of Section 42 of the Act, 2003 made the Regulations namely the Regulations, 2007. Regulation 1.4 of the Regulations, 2007, clearly specifies that the Regulations shall be read with the relevant provisions of the U.P. Electricity Reforms Act, 1999 (for short, 'the Act, 1999'), to the extent they are not inconsistent with the provisions of the Electricity Act, 2003. For the sake of convenience, Regulation 1.4 of the Regulations, 2007, is reproduced as under:

"These Regulations shall be read with the relevant provisions of the U.P. Electricity Reforms Act, 1999 to the extent they are not inconsistent with the provisions of the Electricity Act, 2003."

18. The definition of a "Complainant" as provided in Regulation 2.1 (d) of the Regulations, 2007, reads as under:

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"Complainant" means-

- (i) a consumer or more than one consumer having shared interest in the grievance or authorized representative of such consumer(s); or
- (ii) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or under any other law for the time being in force.
- (iii) a person who has completed all procedural requirement for obtaining a connection but the sanction has not been accorded by the Distribution Licensee within the time frame specified by the Commission in the Electricity Supply Code."

19. A "complaint" has been defined in Regulation 2.1 (e) of the Regulations, 2007, as follows:

"Complaint" means any allegation in writing made by a complainant or his authorized representative regarding any consumer grievance arising in relation to-

- (i) any defect or deficiency in electricity supply or service by a Licensee, including non-conformity with the applicable performance standards specified in the Electricity Supply Code;
- (ii) billing including charging for the electricity supplied or services mentioned in the complaint, a price in excess of the price fixed by the Commission in tariff order or otherwise;
- (iii) offering electricity services, to the public which will be hazardous to life and safety when availed, in contravention of the provisions of the Act, rules made there under, Electricity Supply Code or any other law.
- (iv) violation of any provision of the Act, the rules or regulations made there under or license requiring the Licensee to display the information in regard to the manner or effect of use of the electrical services.
- (v) breach of any obligation, made under the Act, the Electricity Supply Code, tariff order, provisions relating to safety and electricity supply, meter, disconnection, realization of dues, by the Licensee which adversely affects any consumer or which the Forum may consider appropriate to be treated as a complaint.

20. The "Consumer" has been defined in Regulation 2.1(f) of the Regulations, 2007, as under:

""consumer" means any person who is supplied with electricity for his own use by a Licensee or the Government or by any other person engaged in the business of supplying electricity to the public under the Act or any other law for time being in force, and includes any person whose premises are for the time being connected for

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the purpose of receiving electricity with the works of a Licensee, Government or any other person, as the case may be."

21. The "Grievance" has been defined in Regulation 2.1 (n) of the Regulations, 2007, as under:

" "grievance" in relation to the consumer means failure of the Distribution Licensee to provide the specified or agreed electricity service, giving rise to a complaint."

22. From perusal of Regulation 1.4 of the Regulations, 2007, it clearly comes out that the Regulations, 2007, have to be read with the relevant provisions of the Act, 1999, to the extent that they are not inconsistent with the provisions of the Act, 2003, meaning thereby that it is Act, 2003, which is to prevail in case of any inconsistency.

23. Likewise, a complainant before the Forum would mean "consumer" moving a "complaint" for any consumer 'grievance' and a 'consumer' would be a person who is supplied electricity for his own use.

24. The other relevant provisions of Regulations, 2007, would be Regulation 5 pertaining to the jurisdiction of the Forum, Regulation 6 pertaining to the procedure before the Forum and Regulation 8 dealing with the representation before Electricity Ombudsman. For the sake of convenience, Regulations 5, 6 and 8 of the Regulations, 2007, are reproduced as under:

"5.0 Jurisdiction of the Forum-

5.1 The Forum shall not entertain a complaint, if it pertains to matters mentioned in Section 126, 127, 128, 135 to 139, 143, 152 and 161 of the Electricity Act, 03.

5.2 The Forum shall have the jurisdiction to take up complaints, except those under Regulation 5.1, on an application before it or suo-moto if it considers appropriate in the interest of justice.

5.3 The Forum shall not entertain a complaint if it pertains to the same subject-matter for which any proceedings before any Court, authority or any other Forum is pending or a decree, award or a final order has already been passed by any competent Court, authority or Forum.

6.0 Procedure before the Forum-6.1 The designated staff of the Forum shall-

- (i) receive Complaints and issue acknowledgement;
- (ii) maintain records;
- (iii) post the matter/complaint for hearing as per direction of

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the Forum;

(iv) function as decided by the Forum.

6.2 Every complaint to the Forum must be submitted in writing and shall contain the following particulars;

(i) Name of the individual or the organization, postal address, service connection number, tariff category, telephone number, fax number and the E-mail address (if any) of the complainant;

(ii) Name of the Distribution Licensee and its office to which complaint pertains;

(iii) Full facts of the matter supported by self-attested copies of relevant documents;

(iv) the relief prayed for;

(v) a statement that the matter is not pending before any Court, authority or Forum;

(vi) a copy of response, if any, or order of the Licensee; and

(vii) any other matter considered relevant.

6.3 Complaint shall be accompanied by fees of Rs. 50/- through Indian postal order or demand draft or banker's cheque payable to Forum or any other instrument specified by the Forum.

6.4 The Forum shall determine the admissibility of the Complaint not later than seven working days from the date of receipt of the complaint. No complaint shall be rejected unless an opportunity of hearing is provided to the complainant except matters related to

Regulation-5.1.

6.5 After admission, the Forum shall proceed to adjudicate upon the complaint in the manner provided in these Regulations.

6.6 The Forum shall cause a copy of the Complaint served on the concerned Distribution Licensee directing it to submit, in writing, its reply with a copy of such reply directly to the complainant within two weeks or such extended period, not exceeding three weeks, as may be granted by the Forum. The complainant shall file a counter reply, if any, to the reply of the Distribution Licensee within next one week with a copy to such Licensee.

6.7 If the Distribution Licensee fails to respond within the time given by the Forum or fails to appear before the Forum through an authorized representative, the Forum may proceed to hear and dispose of the matter ex parte on the basis of the documents and any other evidence on record or pass such order as may be considered proper in the interest of justice.

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6.8 If the Complainant does not appear on the date of hearing before the Forum, the Forum may dispose it of on the basis of the documents on record or pass such order as may be considered proper in the interest of justice.

6.9 (i) Every Complaint shall be heard as expeditiously as possible. The Forum shall adjudicate upon a Complaint by a speaking order at the earliest but preferably within three months from the date of receipt of complaint by the Forum.

(ii) In the event of Complaint being not disposed of within the period, the Forum shall record in writing reasons for the same. In such cases, the complainant may also approach the Ombudsman.

6.10 (i) The Forum may pass such interim orders, as it may consider necessary, pending final disposal of the complaint:

Provided that, save in exceptional circumstances, the interim relief shall not be allowed for a period of more than three months;

Provided further that in case of dispute in regard to bill, the interim relief shall not be granted unless the complainant deposits with the authority/office/officer, with whom the amount has to be deposited, an amount at the following rates or at such rates as may be revised by the Commission by an Order:

(a) Rs. 1000 per KW for sanctioned loads upto 5KW,

(b) Rs. 5000/- plus Rs. 2000/- per KW for each additional KW of sanctioned load above 5 KW to 25 KW, and

(c) Rs. 45000/- plus Rs. 2500 per KW for each additional KW of sanctioned load above 25 KW; or an amount to the extent of fifty percent of the impugned demand, whichever is less;

Provided also that the application seeking interim relief shall be disposed of within three working days after receipt of the complaint.

(ii) the supply of the consumer shall not be disconnected and, if disconnected, shall be reconnected within 24 hours if he has deposited the amount directed by the Forum.

6.11 The Forum shall not grant more than one adjournment unless sufficient cause is shown and the reasons for grant of adjournment shall be recorded in writing by the Forum. In such case, the party seeking adjournment shall pay other party a sum of Rs. 100/- as compensation for the hardship caused due to adjournment of the case.

8.0 Representation before Electricity Ombudsman

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8.1 (i) Any consumer aggrieved by the order made by the Forum or where the Forum has failed to redress the grievance within the specified period or Distribution Licensee is aggrieved by the Order of the Forum, may prefer representation to the "Electricity Ombudsman".

(ii) The representation may be made by the consumer or by his authorized representative or by the Distribution Licensee within 30 days of the order.

(iii) The representation shall be in writing, signed by the consumer or his authorized representative or, as the case may be, by the authorized officer of the Distribution Licensee, shall be accompanied by the copy of the order of the Forum, where an order has been passed, and shall state-

- (a) Name and address of the consumer,
- (b) Name and address the Distribution Licensee,
- (c) Name and address of the Forum,
- (d) Facts giving rise to representation,
- (e) Relief sought.
- (f) Any other relevant fact.

8.2 No representation shall lie to Electricity Ombudsman unless-

(a) the Consumer has made a written representation to the Forum in prescribed manner and the Forum has either rejected the representation or has failed to dispose it of within specified time;

(b) the consumer or the Distribution Licensee is aggrieved by the decision of the Forum;

(c) the representation is in respect of the matter, which has not been already settled by the Electricity Ombudsman or by any Court, Tribunal or any other competent authority;

(d) the representation relates to a matter which is not pending in any Court, Tribunal, Arbitrator or any other competent authority.

8.3 "Electricity Ombudsman" may, for reason to be recorded, entertain a representation after the expiry of the specified period, if it is satisfied that there was sufficient cause for not filing the same within that period.

8.4 "Electricity Ombudsman" shall not entertain a representation from any consumer, who is required to pay an amount to any authority/office/officer of the concerned Distribution Licensee as specified by the Forum in the final order, until the complainant has deposited, in compliance with such order of the Forum, thirty

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three percent of such amount inclusive of any amount already paid to such authority/office/officer in pursuance to an interim order of the Forum, if any."

25. As per Regulation 5.1 of the Regulations, 2007, the Forum is not to entertain a complaint if it pertains to a matter mentioned in Sections 126, 127, 128, 135, to 139, 143, 152 and 161 of the Act, 2003.

26. A complaint is to be made before the Forum under the provisions of Regulation 5.2 of the Regulations, 2007, and the Forum, as per Regulation 6.5 of the Regulations, 2007, after admission, would proceed to adjudicate upon the complaint As per Regulation 6.9 (i) of the Regulations, 2007, every complaint shall be heard as expeditiously as possible and the Forum shall adjudicate upon a complaint by a speaking order at the earliest but preferably within three months from the date of receipt of complaint by the Forum.

27. As per Regulation 6.9 (ii) of the Regulations, 2007, in the event of complaint being not disposed of within the period, the complainant may also approach the Ombudsman.

28. In terms of Regulation 8 of the Regulations, 2007, a representation before the Electricity Ombudsman is provided.

29. In terms of Regulation 8.1 (i) of the Regulations, 2007, any consumer aggrieved by the order made by the Forum or where the Forum has failed to redress the grievance within the specified period or a Distribution Licensee, if aggrieved by the order of the Forum, may prefer representation to the Electricity Ombudsman.

30. Regulation 8.2 of the Regulations, 2007, provides that no representation would lie to the Electricity Ombudsman unless the consumer has made a written representation to the Forum in prescribed manner and the Forum has either rejected the representation or has failed to dispose it of within specified time or the consumer or the Distribution Licensee is aggrieved by the decision of the Forum.

31. Thus, it is apparent that though the Regulations, 2007 have been framed by the State Commission while exercising power conferred upon it by Section 181 read with sub-section (5) to (8) of Section 42 of the Act, 2003, which only pertains to establishment of a Forum for redressal of grievances of the consumers yet Regulation 8.1(i) of the Regulations, 2007, has gone beyond redressal of grievance of the consumer by also giving the Distribution Licensee the remedy of approaching the Electricity Ombudsman if aggrieved by the order of the Forum. Whether inclusion of Distribution Licensee in Regulation 8.1(i) and giving him the remedy of approaching the Electricity Ombudsman against the order passed by the Forum would render Regulation 8.1 of the Regulations, 2007, ultra vires, the mandatory provisions of Section 42 (5) (6) and (7) of the Act, 2003 and Rule 7 of the Rules, 2005, would be the question to be decided by the Full Bench.

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32. Having thus summed up the issue before the Full Bench, we proceed to discuss the arguments raised on behalf of the learned counsels for the contesting parties.

33. Learned counsel for the appellant submits that though the framing of the aforesaid Regulations, 2007, are within the competence of the State Commission yet part of Regulation 8 of the Regulations, 2007, which gives a remedy to the Distribution Licensee also to approach the Electricity Ombudsman would be going against the mandatory provisions of Sections 42 (5) (6) and (7) of the Act, 2003, which mandates that the Forum would be for redressal of the grievances of the consumers and that it is the consumer, who if aggrieved by non-redressal of his grievance by the Forum, may make a representation to the Electricity Ombudsman, who shall settle the grievance of the consumer. Thus, it is argued that once sub-sections (5) (6) and (7) of Section 42 of the Act, 2003 read with Rule 7 of the Rules, 2005, do not contemplate any grievance redressal for Distribution Licensee in the Forum to be established and the Forum is only for the consumer, consequently part of Regulation 8 which provides a remedy to the Distribution Licensee to approach the Electricity Ombudsman, would be ultra vires the Act, 2003, more particularly to Section 42 (5), (6) and (7) read with Rule 7 of the Rules, 2005.

34. Learned counsel for the appellant further argues that Section 181 of the Act, 2003, gives the power to the State Commission to make regulations which are consistent with the Act, 2003. It is thus contended that once the Act, 2003 mandates for establishment of a Forum for redressal of grievances of the consumer then the said Regulations more particularly Regulation 8 of the Regulations, 2007, which gives a remedy even to the Distribution Licensee to approach the Electricity Ombudsman, would make the said Regulation inconsistent to the Act, 2003, thereby rendering Regulation 8 of the Regulations, 2007, so far as it includes the Distribution Licensee and giving him the remedy of approaching the Electricity Ombudsman as ultra vires to the Act of 2003.

35. So far as the judgment in the case of M/s. Jindal Poly Films Limited (supra) is concerned, learned counsel for the appellant argues that the Division Bench of this Court has not explicitly gone into the aforesaid aspects of the matter while holding Regulation 8.1 of the Regulations, 2007, as intra-vires inasmuch as the Division Bench has proceeded on a general assertion and presumption that the Act, 2003 should be read as a whole and not be read section by section and word by word and thereafter held the same to be intra-vires to the Act. It is argued that had the Division Bench gone into the specific provisions of Section 42(5) to (7) of the Act, 2003 read with Section 181 of the Act, 2003 and there being no other provision in the Act, 2003 providing otherwise, consequently the said finding of Regulation 8.1 of the Regulations, 2007 being intra-vires could not have been arrived at by Division Bench. It is also argued that Division Bench has held Regulation 8.1 of the Regulations, 2007, to be intra-vires in view of "related provisions of the Act" without

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indicating as to which of the related provisions of the Act were being referred to and once there are no other related provisions of the Act which give any right to the Distribution Licensee to approach the Ombudsman against the order of the Forum and the Forum has been constituted only for redressal of grievance(s) of the consumer consequently the judgment of Division Bench in the case of M/s. Jindal Poly Films Limited (supra) cannot be said to have laid down the correct law.

37. Per contra, Sri Jai Deep Narain Mathur, Senior Advocate, assisted by Sri Amarjeet Singh Rakhra and Ms. Aprajita Bansal, has argued that once the Act, 2003 more particularly Section 42 (5) to (7) did not bar the Distribution Licensee to approach the Electricity Ombudsman, if aggrieved against the order of the Forum, and taking this into consideration, the Regulations, 2007 have been framed by the State Commission under the provisions of Section 181 of the Act, 2003. Consequently merely because the Distribution Licensee has been given the right of approaching the Electricity Ombudsman aggrieved by the order of the Forum, the same by itself would not render Regulation 8.1 of the Regulations, 2007 ultra-vires.

38. Elaborating this further, it is argued that the Distribution Licensee has been defined in Section 2(1) of the Act, 2003, and Section 16 of the Act, 2003 provides that the appropriate Commission may specify any general or specific condition which would apply to a Licensee and such conditions would be deemed to be the condition of the License which has been granted to the Licensee by the appropriate Commission. Further Section 181 (2) (d) of the Act, 2003 provides that the State Commission would enumerate the conditions of license under Section 16 by taking recourse to its regulation making power under Section 181 of the Act, 2003. Regulation 3.17 of the Regulations, 2007, provides that constitution of Forum under the regulation and compliance of various provisions of regulation would be deemed to be a condition of the license of the Licensee and non-compliance is to be dealt in accordance with the provisions of the Act, 2003 and hence the license is deemed to include a provision by which the Licensee will have an opportunity to initiate proceedings for settlement of a consumer grievance before the Electricity Ombudsman. It is argued that as the said condition is a condition of a license of the Licensee, the same would not be open to challenge by a consumer who is receiving electricity in accordance with the power given to the Distribution Licensee in accordance with his license. It is also argued that it is for the purpose of enabling the Distribution Licensee to develop and maintain an efficient, coordinated and economical system in accordance with the provisions of the Act, 2003 that the State Commission in exercise of powers under Section 16 read with Section 181 (2) (d) of the Act of 2003 has made it mandatory for the Distribution Licensee to create an independent Forum for settlement of the grievance of the consumers and for an Electricity Ombudsman who would entertain the representations from both the consumers as well as the Licensee. It is argued that the term "settle the grievance" as used under Section 42(7) of the Act, 2003 cannot only mean settlement of the

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grievance at the instance of one party to the dispute rather the same has to be given a broad meaning so as to enable the Distribution Licensee also to approach the Electricity Ombudsman.

39. Sri Mathur also argues that once the State Commission has created an independent Forum under Section 42(5) of the Act, 2003, which is neither an extension of the Distribution Licensee nor under its control, accordingly it would be in the fitness of things that in the event of a Distribution Licensee being aggrieved by the decision of the Forum, the compliance of which would effect the efficient, coordinated and economical distribution system in the areas of supply of the Distribution Licensee as such the Distribution Licensee must be given an opportunity to get the grievance of the consumer settled by the Electricity Ombudsman. Such a purposive intent clearly comes out from the whole reading of Section 42 of the Act, 2003 and cannot be permitted to be given a restrictive meaning.

40. Sri Mathur further argues that in terms of Section 181 (2)(s) of the Act, 2003, once the State Commission has exercised its power and has framed the Regulations specifying the time and manner for settlement of the grievances under sub-section (7) of Section 42 of the Act, 2003, consequently it would mean the settlement of grievances of both the consumer as well as the Distribution Licensee. It is argued that once such a power is vested with the State Commission of framing of Regulations consequently after the said Regulations have been framed, same cannot be called in question on the grounds as indicated by the appellant. In terms of Section 42(5) and 42 (7) of the Act, 2003, the exclusive supporting legislative power has been conferred upon the State Commission and the same having been exercised and the Regulations, 2007 having been framed, merely because the Distribution Licensee has also been included in Regulation 8 of the Regulations, 2007, cannot be a ground for holding Regulation 8 ultra-vires to the Act, 2003.

41. Sri Mathur argues that in case the Distribution Licensee prefers a representation before the Electricity Ombudsman for settlement of the grievance of the consumer, that itself would not ipso-facto prejudice the consumer inasmuch as Regulation 7.6 of the Regulations, 2007 lends finality to the settlement of the grievances of the consumers by the Forum and makes the order of the Forum binding on the Distribution Licensee only after the right of representation before the Electricity Ombudsman has been availed by the Distribution Licensee. Thus, once no prejudice is caused to the consumer consequently Regulation 8 of the Regulations, 2007 cannot be said to be ultra-vires to the Act, 2003. It is also argued that once no pecuniary limit has been fixed for exercise of power by the Forum as such in case the Distribution Licensee is aggrieved by the decision of the Forum, the compliance of which would affect its efficient, coordinated and economical distribution system in its areas of supply, it is only fair and just that the Distribution

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Licensee be also given an opportunity to get the grievance of the consumer settled by the Electricity Ombudsman in terms of Regulation 8 of the Regulations, 2007.

43. Sri Sanjay Singh, learned counsel appearing for respondent No. 5 - U.P. Electricity Regulatory Commission, while adopting the arguments of Sri Jaideep Narain Mathur, Senior Advocate, has also argued that once the Act, 2003 confers exclusive jurisdiction upon the State Commission to frame Regulations for establishment of Forum and Ombudsman and the said Regulations having been framed by the Commission resulting in issue of Regulations, 2007 consequently there is presumption with regard to constitutional validity of the Act, Rules or Regulations. In this regard, reliance has been placed upon the judgment of Hon'ble the Supreme Court in the case of State of T.N. and another v. P. Krishnamurthy and others -

MANU/SC/1581/2006 : (2006) 4 SCC 517. Sri Singh also argues that by framing of Regulations no fundamental right guaranteed under the Constitution of India of the consumer is being violated apart from the fact that there is no arbitrariness or unreasonableness in Regulation 8 of the Regulations, 2007, so far as it includes the Distribution Licensee within its ambit. It is also argued that in case a holistic view of the issue is taken then there does not appear any conflict or inconsistency between the Rules, 2005, Act 2003 and the Regulations, 2007. It is submitted that even if for the argument's sake, it is assumed that there is a conflict or inconsistency between Rule 7 of the Rules, 2005 and Regulation 8.1 (i) of the Regulations, 2007, even then the provisions of Regulations 2007 will prevail over the Electricity Rules, 2005 as the power to make Regulations has specifically been conferred upon the State Commission under sub-section (5) to (7) of Section 42 of the Act, 2003 and consequently the general power will yield to special power. In this regard, reliance has been placed upon the judgment of Hon'ble the Supreme Court in the case of J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of U.P. and others - MANU/SC/0287/1960 : AIR 1961 SC 1170. Sri Singh also argues that once the Forum functions independently of the Distribution Licensee as such denial of remedy to Distribution Licensee by way of representation before the Electricity Ombudsman will amount to procedural discrimination.

44. Heard learned counsel for the contesting parties and perused the records.

45. The Regulations, 2007 have been framed by the U.P. Electricity Regulatory Commission by exercising the powers conferred on it by Section 181 read with sub-sections (5) to (7) of Section 42 of the Act, 2003. Sub-sections (5) of Section 42 of the Act, 2003, gave the power to the State Commission to frame the guidelines in pursuance to which the Distribution Licensee, within six months from the appointed date or date of grant of license, establish a Forum for redressal of grievances of the consumers. Further in terms of sub-section (6) of the Section 42 of the Act, 2003, any consumer who is aggrieved by non-redressal of his grievance

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under sub-section (5) may make a representation for the redressal of his grievance to the Electricity Ombudsman and the Electricity Ombudsman, in terms of sub section (7) of Section 42 of the Act, 2003 shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.

46. In pursuance to the aforesaid provisions, the State Commission made the Regulations, 2007, which also include in Regulation 3 the Constitution of the Consumer Grievance Redressal Forum. In terms of Regulation 3.1 of the Regulations, 2007, the Distribution Licensee has to establish and operate a Forum in accordance with the Regulations, 2007 at certain locations. Regulation 3.7 of the Regulations, 2007 provides that the Forum shall function independent of the Licensee. Regulation 5 of the Regulations, 2007 sets out the jurisdiction of the Forum.

47. The controversy arises after a complaint filed by the consumer is either decided whereby the remedy is spelt out in Regulation 8.1(i) of the Regulations, 2007 whereby any consumer aggrieved by the order made by the Forum or where the Forum has failed to redress the grievance within the specified period has been given a remedy of preferring a representation to the Electricity Ombudsman. However, Regulation 8.1 (i) of the Regulations, 2007 also provides that in case a Distribution Licensee is aggrieved by the order of the Forum he may prefer a representation to the Electricity Ombudsman.

48. Once sub-section (5) of Section 42 of the Act, 2003 provides that a Forum would be for redressal of the grievance of the consumers and sub-section (6) of Section 42 of the Act, 2003 provides that any consumer aggrieved by non-redressal of his grievance under sub-section (5), may make a representation for redressal of his grievance to the Electricity Ombudsman and sub-section (7) provides that the Electricity Ombudsman shall settle the grievance of the consumer consequently it clearly comes out that inclusion of "Distribution Licensee" in Regulation 8.1 (i) of Regulations, 2007 would be in conflict to the specific provisions of Section 42 (5) and (6) of the Act, 2003 and Rule 7 of the Rules, 2005.

49. Elaborating this, we may refer to the definition of "Consumer" as given under Section 2(15) of the Act, 2003 as well as Regulation 2.1(f) of the Regulations, 2007 which do not include the Distribution Licensee in its ambit rather the Distribution Licensee has been defined separately under Section 2(17) of the Act, 2003. A 'consumer' would be a person who is supplied with the electricity for his own use by a Licensee or the Government or by any other person and includes a person whose premises are for the time being connected for the purpose of receiving electricity. Thus, for his grievance, the Consumer may approach the Forum and being aggrieved with the order of the Forum, the Consumer may approach the Electricity Ombudsman. Section 42(5) provides for a consumer grievance redressal forum. Likewise, Rule 7 of Rules, 2005 also speaks about the Distribution Licensee

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establishing a Forum for redressal of the grievances of the consumers. Likewise Section 181 (1) of the Act gives the power to the State Commission to make regulations consistent with the Act and the Rules. Once the Act and the Rules themselves do not contemplate for constitution of any Forum for redressal of grievance of a Distribution Licensee rather the thrust is for redressal of grievance of the consumer then by no stretch of imagination could the State Commission have framed regulations whereby the grievance redressal for the Distribution Licensee has also been provided and thus inclusion of Distribution Licensee in Regulation 8.1(i) of the Regulations, 2007 would be ultra vires to Section 42 (5) to (7) of the Act, 2003.

50. From the aforesaid discussions, it clearly comes out that both the Act, 2003 and the Rules, 2005 are clear, categorical and unambiguous and require no addition of any word or reading of an additional word in it. Once the Act, 2003 read with Rules, 2005 provides for a Forum for redressal of grievance of the consumer and the consumer alone consequently there is no scope of a Distribution Licensee staking its claim to approach the Electricity Ombudsman as is sought to be done under Regulation 8 of the Regulations, 2007.

51. Further sub-section (6) of Section 42 of the Act, 2003 provides a remedy of making representation to a Consumer aggrieved by non-redressal of his grievance to the Electricity Ombudsman and no one else. It is settled proposition of law that statutory right in the realm of appeal, review, revision etc must be provided in the statute. The statute has provided such a remedy to a consumer for non-redressal of his grievance but not to the Distribution Licensee and consequently the Distribution Licensee cannot be allowed to be included through Regulation 8.1(i) of the Regulations, 2007 for the purpose of approaching the Electricity Ombudsman as has been provided in Regulation 8 of the Regulations, 2007. Once the regulations are to be framed in terms of Section 181 (1) of the Act, 2003 consistent with the Act, 2003 and the Rules, 2005, the same could not have included the Distribution Licensee for the purpose of approaching the Electricity Ombudsman as is sought to be done in terms of Regulation 8.1(i) of the Regulations, 2007.

52. The argument of Sri Mathur that Section 42 (5) to (7) of the Act, 2003, did not bar the Distribution Licensee to approach the Electricity Ombudsman is patently misconceived for a plain reading of Section 42(6) of the Act, 2003 clearly provides that it is consumer who if aggrieved by non-redressal of his grievance under sub-section (5) may make a representation for redressal of his grievance to the Electricity Ombudsman. The statute itself not having given this remedy to the Distribution Licensee, would not empower the Regulations framed under the provisions of the Act, 2003 to provide the said remedy to the Distribution Licensee.

53. The argument of Sri Mathur that the State Commission has created an independent Forum under Section 42(5) of the Act, 2003, which is neither an

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extension of the Distribution Licensee nor under its control and it being an independent Forum, the Distribution Licensee must be given an opportunity to approach the Electricity Ombudsman is also patently misconceived inasmuch as, as already discussed above, the Act 2003 only gives a remedy to a consumer to approach the Electricity Ombudsman. The said remedy provided to the Consumer being a creation of statute, as such, the Distribution Licensee cannot be expected to have a remedy in this regard of approaching the Electricity Ombudsman. So far as the independence of the Forum is concerned, though Regulation 3.5 of the Regulations, 2007 indicates that the Forum shall function independent of the Licensee yet Regulation 3.3 of the Regulations, 2007 itself provides that the Distribution Licensee shall invite applications for appointment on the post of a Technical Member of the Forum. The Officer of the Licensee is also to be a Member of the Forum in terms of Regulation 3.2 of the Regulations, 2007. As such, once the power of selection and appointment is given to the Distribution Licensee, the funds and expenditure are also in the hands of the Distribution Licensee and the power of removal of members of the Forum in practice is also with the Distribution Licensee. Consequently, the kind of independence expected from such Forum cannot be said to be complete independence of the Forum. This would also be apparent from perusal of Regulation 3.12 of the Regulations, 2007, which categorically provides that the salary, allowances, secretarial support, office accommodation and infrastructure facilities for establishing the office and other facilities required for efficient functioning of the Forum shall be provided by the concerned Distribution Licensee. The power of removal of any Member has also been given to the Distribution Licensee which, suffice to state, makes it apparent that the independence of the Forum is illusory. However, as we have not been called upon to give any finding regarding independence of the Forum, we refrain from doing so.

54. As regards the argument of Sri Sanjay Singh, learned counsel for respondent No. 5, that inclusion of the Distribution Licensee in Regulation 8 of the Regulations, 2007, is not violative of fundamental rights or any provisions of the Constitution of India or is not manifestly arbitrary or unreasonable, suffice to state that, as already discussed above, Regulations 8.1(i) of the Regulations, 2007 so far as it includes the Distribution Licensee runs foul of the specific provisions of Section 42(5) to (7) of the Act, 2003 read with Rule 7 of the Rules, 2005 and Section 181 (1) of the Act, 2003 by which the Forum is to be constituted for the redressal of the grievance of the consumer and that in terms of Section 42(6) of the Act, 2003, it is a consumer who if aggrieved by the non-redressal of his grievance under sub-section (5) may approach the Electricity Ombudsman. Once specific provisions under the Act, 2003 stand unambiguous no regulations could have been framed contrary to the provisions of the Act, 2003 and as such the argument of Sri Singh is rejected.

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55. So far as the judgment in the case of M/s. Jindal Poly Films Limited (supra) is concerned by which the vires of the Regulation 8.1(i) of the Regulations, 2007 have been upheld, a perusal of the said Division Bench judgment clearly reveals that the Division Bench of this Court has not considered in depth the aforesaid aspects of the matter while holding Regulation 8.1(i) of the Regulations, 2007 as intra-vires in as much as the Division Bench has proceeded on a general assertion that the Act, 2003 should be read as a whole and not section by section and word by word. We have already extracted the relevant provisions of the Act, 2003 and we have categorically found that the Act, 2003 does not provide for any remedy to the Distribution Licensee to approach the Electricity Ombudsman against the order passed by the Forum rather the said remedy has only been given to the Consumer. Thus, the general assertion of the Division Bench of there being related provisions of the Act without specifically referring to or indicating as to which provisions of the Act were being referred to while holding Regulation 8.1(i) of the Regulations, 2007 to be intra-vires more particularly when Section 42(5) to (7) of the Act, 2003 are explicit, thus renders the judgment of the Division Bench as not laying down the correct principle of law.

56. As regards the case laws cited on behalf of the appellant as well as the respondents, suffice to state that discussion of the said case laws would unnecessarily burden our judgment more particularly when the Act, 2003 read with Rule 7 of the Rules, 2005 and Section 181 (1) of the Act, 2003, itself is clear and unambiguous.

57. Accordingly, keeping in view the aforesaid discussions, we answer these issues in the following manner:

(i) Regulation 8.1(i) of the Uttar Pradesh Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2007, so far as it includes the Distribution Licensee is ultra-vires to the provisions of the Act, 2003.

(ii) The judgment of the Division Bench in M/s. Jindal Poly Films Limited (supra) decided on 15.4.2011 does not lay down the correct principle of law.

58. In view of the answers to the two questions, the special appeal be sent to the concerned Division Bench for decision. The other special appeals/writ petitions connected with this reference or whose papers were produced, will be de-linked and shall be placed before the concerned appropriate Courts for decision in accordance with law laid down in this judgment.

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The Maharashtra State Electricity Distribution Co. Ltd. Vs. Lloyds Steel Industries Ltd., SC, 2007

Hon'ble Judges/Coram:

A.K. Mathur and Markandey Katju, JJ.

Case Category:

ORDINARY CIVIL MATTER - MATTERS RELATING TO ELECTRICITY
DISPUTE(CONNECTION/DISCONNECTION ETC)
JUDGMENT

1. This appeal under Section 125 of the Electricity Act, 2003 (hereinafter for short "the Act") is directed against the judgment passed by the Appellate Tribunal for Electricity (hereinafter for short "the Appellate Tribunal") dated 5th April, 2006 in Appellant's appeal No. 191/2005 and the order dated 2nd June, 2006 passed by the Appellate Tribunal in Review Petition No. 3/2006 and I.A. No. 60/2006.

2. It is not necessary for us to go into the detailed facts. Suffice it to say that the respondent company approached the Maharashtra Electricity Regulatory Commission (hereinafter for short referred to as "the Commission") with the grievance that a demand notice dated 26.8.2002 issued by the Appellant's Wardha office be declared as illegal and may be set aside and quashed and the respondent company be permitted to avail power supply to the limit of 90 MVA without recovery of any additional charge either on account of service connection charges or the service line charges and to further direct the appellant herein to refund the amount of Rs. 227.9 lakhs so collected for re-instatement of the contract demand to the original level of 90 MVA along with interest @ 12% from the date of payment till the date of refund. The respondent company was a consumer of the Maharashtra State Electricity Board and originally they had a connection of 90 MVA which was subsequently reduced to

80 MVA and finally to 56 MVA on a request made by the company. Thereafter again they applied in June, 2002 for enhancement of their contract demand upto 90 MVA. Their request for enhancement of contract demand upto 90 MVA was granted though it was clearly mentioned in the order dated 12.8.2001 while reducing the contract demand to 56 MVA that in case enhancement of contract demand was subsequently required by the respondent company, it would attract payment of service line and other charges as per then prevailing conditions of supply. However, the regular supply of 90 MVA was restored on the request of the respondent company. The supply of 90 MVA was restored in June, 2002 and thereafter a demand was raised in terms of letter dated 02.08.2001 for service line charges, which was agreed to be paid by the respondent company, but in installments. Aggrieved against the said order the respondent- company filed a petition before the Commission on the ground that the demand of Rs. 227.9 lakhs so raised for reinstatement of contract demand of 90 MVA is not proper. An objection was raised before the Commission that the Commission has no jurisdiction in the matter in view of Section 42 of the Act and that the consumer should approach the Consumer

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Grievance Redressal Forum and thereafter, if still aggrieved, the Ombudsman created under the Act for redressal of their grievances. The Commission over-ruled this objection by making a reference to some decision of the Bombay High Court and proceeded to assume jurisdiction and directed the refund of the aforesaid amount to the respondent company.

3. Aggrieved against the said order dated 18th October, 2005, the Maharashtra State Electricity Distribution Company Ltd. (hereinafter for short "MSEDCL") approached the Appellate Tribunal for Electricity created under the Act. The Appellate Tribunal vide its order dated 5th April, 2006 affirmed the order passed by the Commission. Thereafter a review petition was filed by the MSEDCL before the Appellate Tribunal, which was also rejected vide order dated 2nd June, 2006. Aggrieved against both these orders, the MSEDCL has approached this Court by the present appeal under Section 125 of the Act.

4. We have heard learned Counsel for the parties and perused the record.

5. The basic question which arises for our consideration in this appeal is whether the individual consumer can approach the Commission under the Act or not. 6. For deciding this question, the relevant provision is Section 42(5) of the Act, which reads as under:

42. Duties of distribution licensees and open access.-

(1) x x x x x x

(2) x x x x x x

(3) x x x x x x

(4) x x x x x x

(5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

7. As per the aforesaid provision, if any grievance is made by a consumer, then they have a remedy under Section 42(5) of the Act and according to Sub-section (5) every distribution licensee has to appoint a forum for redressal of grievances of the consumers. In exercise of this power the State has already framed The Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2003 (hereinafter referred to as "2003 Regulations") and created Consumer Grievance Redressal Forum and Ombudsman. Under these 2003 Regulations a proper forum for redressal of the grievances of individual consumers has been created by the Commission. Therefore, now by virtue of Sub-section (5) of Section 42 of the Act, all the individual grievances of consumers have to be raised before this forum only. In the face of this statutory provision we fail to understand how could the Commission acquire jurisdiction to decide the matter when a forum has been created under the Act for this purpose. The matter should have been left to the said forum. This question has already been considered and decided by a Division Bench of the Delhi High Court in the cases of Suresh Jindal v. BSES Rajdhani Power Ltd. and Ors. reported in MANU/SC/4037/2007: 132 (2006) DLT 339 (DB) and Dheeraj Singh v. BSES Yamuna Power Ltd., MANU/DE/8006/2006 and we approve of these decisions. It has been held in these

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decisions that the Forum and Ombudsman have power to grant interim orders. Thus a complete machinery has been provided in Section 42(5) and 42(6) for redressal of grievances of individual consumers. Hence wherever a Forum/Ombudsman have been created the consumers can only resort to these bodies for redressal of their grievances. Therefore, not much is required to be discussed on this issue. As the aforesaid two decisions correctly lay down the law when an individual consumer has a grievance he can approach the forum created under Sub-section (5) of Section 42 of the Act.

8. In this connection, we may also refer to Section 86 of the Act which lays down the functions of the State Commission. Sub-section (1) (f) of the said Section lays down the adjudicatory function of the State Commission which does not encompass within its domain complaints of individual consumers. It only provides that the Commission can adjudicate upon the disputes between the licensees and generating companies and to refer any such dispute for arbitration. This does not include in it an individual consumer. The proper forum for that is Section 42(5) and thereafter Section 42(6) read with Regulations of 2003 as referred to hereinabove.

9. Therefore, in the facts and circumstances of the present case, we are of the opinion that the view taken by the Commission as well as the Appellate Authority are unsustainable and they have erred in coming to the conclusion that the Commission has jurisdiction. Consequently, we set aside the order dated 18th October, 2005 passed by the Commission and the orders dated 5th April, 2006 and 2nd June, 2006 passed by the Appellate Authority and remit the matter to the proper Forum created under Section 42(5) of the Act to decide the grievance of the respondent herein in accordance with law. We make it clear that we have not made any observation with regard to the merits of the demand raised by the appellant upon the respondent company and it will be open for the proper forum to adjudicate the same. The payment, if any, made by the company will not operate as an estoppel against the respondent company. We hope that the forum will decide the matter expeditiously.

10. With the above observations, the appeal is allowed with no order as to costs.

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the Consumer Protection Act. The provisions of the Electricity Act have overriding effect qua provisions of any other law except that of the Consumer Protection Act, 1986, the Atomic Energy Act, 1962 and the Railways Act, 1989.

iii) Section 42(8) of the Electricity Act specifically provides that the remedies conferred on consumer under sub-sections (5), (6) and (7) of Section 42 are without prejudice to the right which the consumer may have apart from the rights conferred upon him by those sub-sections.

iv) Section 145 of the Electricity Act specifically bars the jurisdiction of the Civil Court to entertain any suit or proceedings in respect of any matter which an assessing officer referred to in Section 126 or an Appellate Authority referred to in Section 127 of the Electricity Act or the Adjudicating Officer appointed under the Electricity Act, is empowered to determine.

Second part of Section 145 provides that no jurisdiction shall be granted by any Court or Authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act. For this purpose, if we refer to Sections 173 and 174 and apply the principle laid down there-under, it would mean that qua the consumer fora there is inconsistency and, therefore, 'other authority' would not include consumer fora.

v) Consumer of electrical energy provided by the Electricity Board or other Private Company, is a consumer as defined under Section 2(1)(o) of the Consumer Protection Act and a complaint alleging any deficiency on the part of the Board or other private company including any fault, imperfection, shortcoming or inadequacy in quality, nature and manner of performance which is required to be maintained by or under any law or in pursuance of any contract in relation to service, is maintainable under the Consumer Protection Act.

Against the Assessment Order passed under Section 126 of the Electricity Act, a consumer has option either to file Appeal under Section 127 of the Electricity Act or to approach the Consumer Fora by filing complaint. He has to select either of the remedy. However, before entertaining the complaint, the Consumer Fora would direct the Consumer to deposit an amount equal to one- third of the assessed amount with the licensee [similar to Section 127(2) of the Electricity Act].

vi) Consumer Fora have no jurisdiction to interfere with the initiation of criminal proceedings or the final order passed by any Special Court constituted under Section 153 or the civil liability determined under Section 154 of the Electricity Act.”

3. The judicial Member having not agreed with the majority finding, by his minority judgment dated 16th April, 2008 held as follows:

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“14. In the result I hold as under:

i) The provisions contained in Section 126 and 127 of Part XII of the Electricity Act, 2003 are not inconsistent with the provisions of Consumer Protection Act, 1986 and consequently there is no need to have resort to the provisions of Section 173 and 174 of the Electricity Act. The provisions of the Consumer Protection Act and Electricity Act can be given their full meaning and effect on the ground (ii) Consumer fora constituted under the Consumer Protection Act would have jurisdiction to entertain only the complaints filed by a consumer of electricity alleging any defect or deficiency in the supply of electricity or alleging adoption of any unfair trade practice by the supplier of electricity. (iii) The consumer fora established under the Consumer Protection Act have no jurisdiction over the matter relating to the assessment of charges for unauthorized use of electricity, tampering of meters etc. as also over the matters which fall under the domain of special Courts constituted under the Electricity Act, 2003.” Following the aforesaid majority decision dated 10th April, 2008, other cases were disposed of by the National Commission in similar terms by impugned orders dated 13th March, 2009, 29th March, 2011 and 7th July, 2011. By impugned order dated 13th March, 2009, giving reference to the aforesaid judgment dated 10th April, 2008, the matter was remitted to the State Consumers Disputes Redressal Commission (hereinafter referred to as the “State Commission”) for fresh decision.

4. For determination of the issue involved in these appeals, it is necessary to discuss the relevant facts as were pleaded by the parties before the Consumer Fora. The same is mentioned hereunder:

5. Case of Anis Ahmad, Anis Ahmed filed a complaint before the District Consumer Protection Forum, Moradabad and claimed that he is a consumer of electricity having connection No.104427 with sanctioned load of 6.5 horse power. He alleged that the authorities of the U.P. Power Corporation Ltd. prepared a fictitious checking report dated 17th July, 2003 and falsely implicated the complainant that he had used more than sanctioned load of 10 H.P. in his factory and on the basis of fictitious report a proceeding was initiated on 15th April, 2004 followed by a bill No.5004369 dated 15th June, 2004 demanding a sum of Rs.2,11,451/-. He prayed to direct the appellant to correct the bill, withdraw the demand notice and to pay the costs.

The appellant, U.P. State Corporation Ltd. filed the objections regarding maintainability of the above said petition. It was alleged that the complainant had industrial connection which was disconnected earlier due to the arrears of electricity dues. On a checking held on 17th March, 2004 by Sub-Divisional Officer-II and Junior Engineer, it was found that the L.T. line of three phases passing from the other side of the premises of the complainant was tapped with the cables attached with the meter though they were disconnected earlier and the complainant was

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using full 10 horse power load by committing theft of electricity by bye-passing the meter.

6. Case of Rakhi Ghosh Rakhi Ghosh claimed before the District Consumer Disputes Redressal Forum, at Suri, Birbhum, West Bengal, that he is a consumer of electricity having Connection No.1/7884 with connected load of 20 H.P. He is running his husking mill through connected load. He challenged the bill for Rs.3,73,935/- raised by the West Bengal State Electricity Board which was raised on the ground of unauthorized extension of load of 8 H.P.

The appellant, West Bengal Electricity Board filed the objections and raised the question of maintainability of the application. It was stated that consumer was enjoying Industrial connection and, therefore, does not fall within the definition of "consumer" under the Consumer Protection Act, 1986. It was further alleged that a police case being No.19/2005 dated 26th February, 2005 has already been lodged against Rakhi Ghosh for theft of electricity, therefore, the consumer forum has no jurisdiction to entertain the application.

7. Case of Prithvi Pal Singh Prithvi Pal Singh filed a complaint before the District Consumer Protection Forum-II, Moradabad that he is a consumer having connection No.0102/102474 with a sanctioned load of 6 KW. It was alleged that the U.P. Power Corporation Ltd. got his premises inspected by its team and subsequently sent a notice to him on 1st December, 2005. In the said notice it was alleged that the Enforcement team on inspection made on 25th November, 2004 found that the complainant was committing theft of electricity by making a cut at the cable prior to meter and was using excess load. He challenged the bill raised by the Corporation for Rs.1,45,546/- and prayed for compensation of 10,000/- for harassment.

The appellant, U.P. Power Corporation Ltd. filed objections and raised the question of maintainability of the petition. It was alleged that on checking, a cut mark on three phase cable before the meter was detected by which the complainant was committing theft of electricity of 13 KW by bye-passing the meter. A bill for Rs. 1,99,805/- was raised for theft of the electricity.

8. Case of Zulfikar Zulfikar filed a complaint before the District Consumer Protect Forum- II, Moradabad, challenging a notice of assessment. He stated that he is a consumer of commercial electricity connection bearing No.3293/115275, the sanctioned load of which is 3 KW. According to him on receipt of notice he enquired about the same to the appellant and came to know that on the basis of checking report they have issued the bill. It was alleged that the said checking report dated 22nd July, 2004 is false and fabricated and no checking was done on the premises of the complainant.

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The appellant, U.P. Power Corporation Ltd. filed objections raising the question of maintainability of the complaint on the ground that the complainant Zulfikar had commercial connection and hence does not fall within the definition of 'Consumer'. It was alleged that Enforcement Squad and Assistant Engineer (Raids) on 22nd July, 2004 raided the premises of the complainant and during the inspection found that 4 leads of the PVC cable of electricity line leading to the meter had been cut and bye-passing the same, 5.76 KW load was being used by the complainant illegally. They alleged theft of electricity against the complainant for which an assessment notice was issued. It was contended that theft of electricity does not amount to deficiency in service, therefore, the Consumer Forum does not have the jurisdiction to entertain the petition regarding the theft of the electricity under the Consumer Protection Act.

9. Case of Shahzadey Alam Shahzadey Alam filed a complaint case before the District Consumer Protection Forum-II, Moradabad challenging the revenue assessment notice dated 9th February, 2005 and requested to pay the compensation for mental and physical agony. In his petition Shahzadey Alam stated that he was consumer of electricity connection No.0832782700, having a sanctioned load of 2 KW. On 20th October, 1986, the officials of the U.P. Power Corporation Ltd. disconnected the aforesaid electricity connection for non-payment of Suvindh Shulka. As the said electricity connection was not required for the complainant, he did not get the same restored. It is alleged that in spite of the same, the complainant received a notice of assessment on 16th February, 2005.

The appellant, U.P. Power Corporation Ltd. on appearance challenged the maintainability of the petition before the Consumer Forum. It was stated that the complainant had himself admitted that his electricity connection was disconnected on 20th October, 1986, therefore, the petition was not maintainable. It was further alleged that the complainant has a factory which was raided and checked by the enforcement squad on 24th January, 2005 at 4.10 hours and that it was found that the complainant was committing theft of electricity by cutting three phase cable going near his premises to the connection No.2783/116398 of L.M.V.-II category of Shri Javed and by connecting it with 15 meters cable and using 4.70 K.W. load and that no valid connection was found in the premises of the complainant. Therefore, the complainant was asked to deposit compounding fee of Rs.1,02,400/-, but he has not deposited it. On the basis of the report a notice was issued to the complainant.

10. Case of Atul Kumar Gupta Atul Kumar Gupta filed a complaint before the District Consumer Protection Forum-II, Moradabad, stating that he is a consumer of electricity connection No.1034/117269, having sanctioned load of 7.5 KW. It is alleged that the electricity connection of the complainant has been disconnected on 29th February, 2003 on the ground of outstanding electricity charges. Later on, the appellant informed that a case in connection with checking is under consideration and, therefore, the connection of the complainant cannot be restored. The

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complainant alleged that on 13th March, 2004 he received Revenue assessment notice alongwith a checking report No.164 dated 1st March, 2004, though no checking was conducted at the premises of the complainant on 1st March, 2004. He prayed for cancellation of the assessment notice dated 10th March, 2004 and claimed compensation of Rs.5,000/- towards mental agony and financial loss.

The appellant, U.P. Power Corporation Ltd., in their reply raised the question of maintainability of the petition in view of the fact that the complainant's connection was disconnected on 28th February, 2003 and that on inspection it was found that he was committing theft of electricity by pilferage of electricity.

11. Case of Tauseef Ahmed Tauseef Ahmed moved before the District Consumer Protection Forum-II, Moradabad and stated that he is a consumer of electricity having connection No.115694 with sanctioned load of 2 KW. He alleged that three employees of the U.P. Power Corporation Ltd. visited his premises. Out of them one represented himself to be the Junior Engineer and demanded bribe of Rs.6,000/- illegally. As he refused to pay the amount, a notice was served on him on 8th September, 2004 along with a report dated 11th August, 2004 and a bill for Rs.1,94,382/- was raised. He challenged the bill before the District Forum.

The U.P. Power Corporation Ltd. on appearance raised the question of maintainability of the petition, one of the grounds taken was that the complainant has already filed an Original Suit No.391 of 2004 (Tauseef Ahmed vs. Uttar Pradesh Power Corporation) for the same relief before the Court of Civil Judge (Junior Division), Moradabad in which summons has already been issued and the matter is pending. It was alleged that the premises of the claimant was checked on 11th August, 2004 in the presence of the complainant and on checking it was found that 6.945 KW of electricity had been illegally used instead of sanctioned load of 2 KW. It was brought to the notice of the Forum that use of excess load than the sanctioned electric load for any other purpose for which connection has been granted, comes within the meaning of "pilferage of electricity" as defined under U.P. Electricity (Consumers) Regulation, 1984 for which notice of assessment was sent to the complainant for recovery of sum of Rs.1,94,382/- which on hearing the parties was finalized to be Rs.1,07,985/- vide order dated 1st October, 2004.

12. Case of Mohd. Yunus Mohd. Yunus filed a complaint before the District Consumer Protection Forum-II, Moradabad claiming to be a consumer of commercial electricity having connection No.2701/0-98494, with sanctioned load of 5 KW. It was alleged that on the basis of a checking report dated 17th November, 2004 revenue assessment notice dated 1st February, 2005 was served on him. He sought for a copy of the report and came to know that Junior Engineer had sent a false checking report to the Divisional Office because of non- payment of monthly "Suvidha Sulk" by the complainant. He challenged the revenue assessment notice dated 1st February, 2005 and claimed compensation of Rs.10,000/- for mental suffering and financial loss.

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The U.P. Power Corporation Ltd. on appearance raised the question of maintainability of the petition. It was stated that the complainant is a consumer of L.M.V.-II category using electricity for commercial purposes, therefore, he does not fall under the definition of "consumer", as defined under Section 2(1)(d) of the Consumer Protection Act. It was further alleged that on 17th November, 2004 on checking of the premises of the complainant by Sub-Divisional Officer-II, Moradabad and Junior Engineer it was found that the complainant was using the connection for industrial purposes under L.M.V.-6 category without any prior consent of the U.P. Power Corporation Ltd. He was using electrical energy for the purposes other than the purpose for which it was sanctioned. Therefore, the complainant was found to be guilty of pilferage of electricity.

13. All the cases against the U.P. Power Corporation Ltd. were filed before the District Consumer Protection Forum-II, Moradabad. The decision having given in favour of the complainants, U.P. Power Corporation Ltd moved before the State Consumer Disputes Redressal Commission, Uttar Pradesh, Lucknow which by its common judgment dated 31st January, 2007/1st February, 2007 dismissed all the revision petitions filed by the U.P. Power Corporation Ltd.

14. For the said reason all the cases in which the question of jurisdiction of the Consumer Forum were raised, they were heard and decided by the National Commission initially by the impugned judgment dated 10th April, 2008/16th April, 2008, followed by other orders. Submissions:

15. Learned counsel for the appellants contended as under:

(a) The proceedings under Sections 126, 127, 135 etc. of the Electricity Act, 2003 initiated by the service providers are not related to deficiency of service in the supply of electricity by the service providers under the Electricity Act, 2003. Therefore, the complaints against the proceedings under Section 126, 127, 135 etc. of the Electricity Act, 2003 are not maintainable before the Forum constituted under the Consumer Protection Act, 1986.

(b) In absence of any inconsistency between Sections 126, 127, 135 etc. of the Electricity Act, 2003 and the provisions of Consumer Protection Act, 1986, Sections 173 and 174 of the Electricity Act, 2003 are not attracted.

16. Per contra, according to the respondents, a complaint under the Consumer Protection Act, 1986 against the final assessment order passed under Section 126 of the Electricity Act, 2003 is maintainable before the Consumer Forum.

17. To determine the question, it would be appropriate to refer to the Statement of Objects and Reasons and relevant provisions of the Consumer Protection Act, 1986, as quoted below:

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“STATEMENT OF OBJECTS AND REASONS The Consumer Protection Bill, 1986 seeks to provide for better protection of the interests of consumers and for the purpose, to make provision for the establishment of Consumer councils and other authorities for the settlement of consumer disputes and for matter connected therewith.

2. It seeks, inter alia, to promote and protect the rights of consumers such as-

a) the right to be protected against marketing of goods which are hazardous to life and property;

b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;

c) the right to be assured, wherever possible, access to an authority of goods at competitive prices;

d) the right to be heard and to be assured that consumers interests will receive due consideration at appropriate forums;

e) the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and

f) right to consumer education.

3. These objects are sought to be promoted and protected by the Consumer Protection Council to be established at the Central and State level.

4. To provide speedy and simple redressal to consumer disputes, a quasi-judicial machinery is sought to be setup at the district, State and Central levels. These quasi-judicial bodies will observe the principles of natural justice and have been empowered to give relief of a specific nature and to award, wherever appropriate, compensation to consumers. Penalties for noncompliance of the orders given by the quasi-judicial bodies have also been provided.” Scope of consumer complaint

18. “Consumer dispute” is defined under Section 2(e) of the Consumer Protection Act,1986 in the following manner:

“2(e) “consumer dispute” means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint.” Therefore, for a valid consumer dispute an assertion and denial of a valid complaint is must.

19. “Complaint” is defined under Section 2(1) (c) of the Consumer Protection Act,1986 in the following manner:

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"2(1)(c) "complaint" means any allegation in writing made by a complainant that-

i) an unfair trade practice or a restrictive trade practice has been adopted by (any trader or service provider ;

ii) the goods bought by him or agreed to be bought by him suffer from one or more defects;

iii) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;

iv) a trader or the service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint, a price in excess of the price-

a) fixed by or under any law for the time being in force;

b) displayed on the goods or any package containing such goods;

c) displayed on the price list exhibited by him by or under any law for the time being in force;

d) agreed between the parties;

(v) goods which will be hazardous to life and safety when used, are being-offered for sale to the public-

a) in contravention of any standard relating to safety of such goods as required to be complied with, by or under any law for the time being in force;

b) if the trader could have known with due diligence that the goods so offered are unsafe to the public;

(vi) services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by the service provider which such person could have known with due diligence to be injurious to life and safety;

with a view to obtaining any relief provided by or under this Act;"

Therefore, it is only in respect to aforementioned aspects that a consumer complaint can be filed viz.

* Unfair trade practice or restrictive trade practice. * When there is a defective goods.

* Deficiency in services * Hazardous goods * Hazardous services * a price in excess of the price fixed under any law etc.

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20. Deficiency of service is defined under Section 2(g) of the Consumer Protection Act, 1986 in the following manner:

"2(g) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service."

Therefore, it is clear that nature of transaction under Section 126 does not come within the ambit of "complaint".

21. Section 2(1)(b) of the Consumer Protection Act, 1986 defines "complainant" as follows:

"2(1)(b) "complainant" means-

- i) a consumer; or
- ii) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or under any other law for the time being in force; or
- iii) the Central Government or any State Government; or
- iv) one or more consumers, where there are numerous consumers having the same interest;
- v) in case of death of a consumer, his legal heir or representative; who or which makes a complaint;"

22. Whereas "consumer" is defined under Section 2(1)(d) of the Consumer Protection Act, 1986 in the following manner:

"2(1)(d) "consumer" means any person who-

- (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
- (ii) [hires or avails of] any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who [hires or avails of] the services for consideration paid or promised, or partly paid

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and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person; (but does not include a person who avails of such services for any commercial purpose;) Explanation.-For the purposes of this clause, "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment;"

From a bare reading of the section aforesaid it is clear that person(s) availing services for 'commercial purpose' do not fall within the meaning of "consumer" and cannot be a "complainant" for the purpose of filing a "complaint" before the Consumer Forum.

23. "Service" as defined under Section 2(1)(o) of the Consumer Protection Act, 1986 includes supply of electrical or other energy and reads as follows:

"2(1)(o)"service" means service of any description which is made available to potential (users and includes, but not limited to, the provision of) facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, (housing construction,) entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service." Therefore, a consumer within the meaning under Section 2(1) (d) may file a valid complaint in respect of supply of electrical or other energy, if the complaint contains allegation of unfair trade practice or restrictive trade practice; or there is a defective goods; deficiency in services; hazardous services or a price in excess of the price fixed by or under any law etc. Maintainability of complaint filed by the respondents.

24. From the facts narrated in the preceding paragraph it is clear that Anis Ahmed, Rakhi Ghosh, Prithvi Pal Singh, Zulfikar, Shahzadey Alam, Atul Kumar Gupta, Tauseef Ahmed and Mohd. Yunus had electrical connections for industrial/commercial purpose and, therefore, they do not come within the meaning of "consumer" as defined under Section 2(1)(d) of the Consumer Protection Act, 1986; they cannot be treated as "complainant" nor they are entitled to file any "complaint" before the Consumer Forum.

25. Admittedly, the complainants made their grievance against final order of assessment passed under Section 126 of the Electricity Act, 2003. None of the respondents alleged that the appellant(s) used unfair trade practice or a restrictive trade practice or there is deficiency in service(s) or hazardous service(s) or price fixed by the appellant(s) is excess to the price fixed under any law etc. In absence of any allegation as stipulated under Section 2(1)(c) of the Consumer Protection Act, 1986, their complaints were not maintainable.

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26. Therefore, we hold that the complaint filed by the respondents were not maintainable before the Consumer Forum.

Maintainability of a complaint before the Consumer Forum against final order of assessment made under Section 126 of the Electricity Act, 2003 or action taken under Sections 135 to 140 of the Electricity Act, 2003

27. Section 2(15) of the Electricity Act, 2003 defines 'consumer' in the following manner:

"2(15). "consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;"

28. From a bare reading of section aforesaid we find that the "consumer" as defined under Section 2(15) includes any person who is supplied with electricity for his own use by a licensee and also includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, irrespective of the fact whether such person is supplied with electricity for his own use or not. Per contra under Section 2(1)(d) of the Consumer Protection Act, 1986 those who were supplied with electricity for commercial purpose and those who do not avail services for consideration, irrespective of electricity connection in their premises do not come within the meaning of "consumer".

29. Section 126 of the Electricity Act, 2003 empowers the assessing officer to make assessment in case of "unauthorized use of electricity". It provides that if on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in "unauthorized use of electricity", he shall assess the electricity charges payable by such person or by any other person benefitted by such use, the Section reads as under:

"126.Assessment.- (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person benefitted by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

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(3) The person, on whom an order has been served under subsection (2) shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.

(4) Any person served with the order of provisional assessment, may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him.

(5) If the assessing officer reaches to the conclusion that unauthorized use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorized use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.

(6) The assessment under this section shall be made at a rate equal to (twice) the tariff applicable for the relevant category of services specified in sub-section (5).

Explanation.- For the purposes of this section,-

(a) “ assessing officer” means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

(b) “ unauthorised use of electricity” means the usage of electricity –

i) by any artificial means; or

ii) by a means not authorised by the concerned person or authority or licensee; or

iii) through a tampered meter; or

iv) for the purpose other than for which the usage of electricity was authorized; or

v) for the premises or areas other than those for which the supply of electricity was authorized.”

30. Section 145 of the Electricity Act, 2003 bars the jurisdiction of Civil Court to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in Section 126. A separate provision of appeal to the appellate authority has been prescribed under Section 127 so that any person aggrieved by the final order made under Section 126, may within thirty days of the said order, prefer an appeal, which reads as under:

127. Appeal to appellate authority.- (1) Any person aggrieved by the final order made under section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.

(2) No appeal against an order of assessment under sub-section shall be entertained unless an amount equal to half of the assessed amount is deposited in cash or by

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way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal.

(3) The appellate authority referred to in sub-section (1) shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the assessing officer and the appellant.

(4) The order of the appellate authority referred to in sub-section (1) passed under sub-section (3) shall be final.

(5) No appeal shall lie to the appellate authority referred to in sub-section (1) against the final order made with the consent of the parties.

(6) When a person defaults in making payment of assessed amount, he, in addition to the assessed amount, shall be liable to pay, on the expiry of thirty days from the date of order of assessment, an amount of interest at the rate of sixteen per cent per annum compounded every six months." Therefore, it is clear that after notice of provisional assessment to the person indulged in unauthorized use of electricity, the final decision by an assessing officer, who is a public servant, on the assessment of "unauthorized use of electricity" is a "Quasi Judicial" decision and does not fall within the meaning of "consumer dispute" under Section 2(1) (e) of the Consumer Protection Act, 1986.

31. Part XIV of the Electricity Act, 2003 relates to "offences and penalties". If Section 126 is read with Section 135 to 140 it will be clear that various acts of "unauthorized use of electricity" constitute "offences" mentioned under Sections 135 to 140 and attracts sentence and fine as prescribed therein.

32. For proper appreciation, we refer to Section 135 which relates to "theft of electricity". Interference with meters or work of licensee, tapping of electricity, making or causing to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee; tampering of meter, installation or use of tampered meter, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; damaging or destroys of an electrical meter, apparatus, equipment, use of electricity through a tampered meter; use of electricity for the purpose other than for which the usage of electricity was authorized constitute "theft of electricity" and constitute "offence" under Section 135 of the Electricity Act, 2003, which reads as follows:

"135. Theft of electricity.- (1) Whoever, dishonestly,--

a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee or supplier, as the case may be; or

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(b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or

(c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity; or

(d) uses electricity through a tampered meter; or

(e) uses electricity for the purpose other than for which the usage of electricity was authorised, so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both:

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use--

(i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;

(ii) exceeds 10 Kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months, but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:

Provided further that in the event of second and subsequent conviction of a person where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use exceeds 10 kilowatt, such person shall also be debarred from getting any supply of electricity for a period which shall not be less than three months but may extend to two years and shall also be debarred from getting supply of electricity for that period from any other source or generating station:

Provided also that if it is provided that any artificial means or means not authorised by the Board or licensee or supplier, as the case may be, exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

1A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity:

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Provided that only such officer of the licensee or supplier, as authorised for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorised shall disconnect the supply line of electricity:

Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty four hour from the time of such disconnect:

Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause., restore the supply line of electricity within forty-eight hours of such deposit or payment;] (2) Any officer of the licensee or supplier as the case may be, authorised in this behalf by the State Government may--

(a) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity [has been or is being], used unauthorisedly;

(b) search, seize and remove all such devices, instruments, wires and any other facilitator or article which [has been or is being], used for unauthorised use of electricity;

(c) examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under subsection (1) and allow the person from whose custody such books of account or documents are seized to make copies thereof or take extracts therefrom in his presence.

(3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list:

Provided that no inspection, search and seizure of any domestic places or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.

(4) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act.”

33. "Theft of electric lines and materials" constitute offence under Section 136; whereas "receiving stolen property" constitute offence under Section 137. Interference with meters or works of licensee unauthorisedly connecting any meter,

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indicator or apparatus with any electric line; unauthorise reconnection of any meter, indicator or apparatus with electric line or other works; laying or causing to be laid, or connecting any works for the purpose of communicating with any other works belonging to a licensee; or injuring any meter, indicator, or apparatus belonging to a licensee maliciously etc. constitute “offences” which attracts punishment under Section 138 of the Electricity Act, 2003. Section 138 of the Electricity Act reads as follows:

“138. Interference with meters or works of licensee.-(1) Whoever,-

(a) unauthorisedly connects any meter, indicator or apparatus with any electric line through which electricity is supplied by a licensee or disconnects the same from any such electric line; or

(b) unauthorisedly reconnects any meter, indicator or apparatus with any electric line or other works being the property of a licensee when the said electric line or other works has or have been cut or disconnected; or

(c) lays or causes to be laid, or connects up any works for the purpose of communicating with any other works belonging to a licensee; or

(d) maliciously injures any meter, indicator, or apparatus belonging to a licensee or willfully or fraudulently alters the index of any such meter, indicator or apparatus or prevents any such meter, indicator or apparatus from duly registering;

shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten thousand rupees, or with both, and, in the case of a continuing offence, with a daily fine which may extend to five hundred rupees; and if it is proved that any means exist for making such connection as is referred to in clause (a) or such reconnection as is referred to in clause (b), or such communication as is referred to in clause (c), for causing such alteration or prevention as is referred to in clause (d), and that the meter, indicator or apparatus is under the custody or control of the consumer, whether it is his property or not, it shall be presumed, until the contrary is proved, that such connection, reconnection, communication, alteration, prevention or improper use, as the case may be, has been knowingly and wilfully caused by such consumer.”

34. Clause (b) of the Explanation below Section 126, defines "unauthorized use of electricity" as the usage of electricity by any artificial means; or by a means not authorized by the concerned person or authority or licensee; or through a tampered meter; or for the purpose other than for which the usage of electricity was authorized; or for the premises or areas other than those for which the supply of electricity was authorized.

All the aforesaid acts constitute “offences” under Section 135 to 140 of the Electricity Act, 2003, as noticed above.

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35. From a bare reading of Section 126 and Sections 135 to 140, it is clear that while acts of "unauthorized use of electricity" attracts civil consequence of penal charge of electricity, twice the rate of electricity, for which assessment is made by assessing officer under Section 126; the very same acts of "unauthorized use of electricity", constitute "offences" under Section 135 to 140 for which sentence and fine has been prescribed.

36. As per Section 153 of the Electricity Act, 2003, Special Courts are to be constituted for speedy trial for the offences referred to in Sections 135 to 140. The said Section reads as follows:

“153. Constitution of Special Courts.- (1) The State Government may, for the purposes of providing speedy trial of offences referred to in [sections 135 to 140 and section 150], by notification in the Official Gazette, constitute as many Special Courts as may be necessary for such area or areas, as may be specified in the notification.

(2) A Special Court shall consist of a single Judge who shall be appointed by the State Government with the concurrence of the High Court.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless he was, immediately before such appointment, an Additional District and Sessions Judge.

(4) Where the office of the Judge of a Special Court is vacant, or such Judge is absent from the ordinary place of sitting of such Special Court, or he is incapacitated by illness or otherwise for the performance of his duties, any urgent business in the Special Court shall be disposed of--

(a) by a Judge, if any, exercising jurisdiction in the Special Court;

(b) where there is no such other Judge available, in accordance with the direction of District and Sessions Judge having jurisdiction over the ordinary place of sitting of Special Court, as notified under sub-section (1).”

37. The Civil Court's jurisdiction to consider a suit with respect to the decision of assessing officer under Section 126, or decision of appellate authority under Section 127 is barred under Section 145 of the Electricity Act, 2003, which reads as under:

“145. Civil Court not to have jurisdiction.- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in Section 126 or an Appellate Authority referred to in Section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”

38. The National Commission placed much reliance on sub sections (5) and (6) of Section 42 of the Electricity Act, 2003 to derive power to adjudicate dispute arising out of Section 126, but it failed to notice that Section 42 of the Electricity

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Act, 2003 is not applicable in the case of licensee who is a trader or supplier of electricity but it relates to "distribution licensees".

39. Section 14 of the Electricity Act, 2003 empowers the Appropriate Commission to grant a licence to any person to "transmit electricity" or "to distribute electricity" or "to undertake trading in electricity", the relevant portion of Section 14 reads as follows:

“14. Grant of licence.- The Appropriate Commission may, on an application made to it under Section 15, grant a licence to any person –

- a) to transmit electricity as a transmission licensee; or
- b) to distribute electricity as a distribution licensee; or
- c) to undertake trading in electricity as an electricity trader, in any area as may be specified in the licence.”

40. Amongst the three categories of licensee(s) viz. “transmission licensee”; "distribution licensee" and the "licensee to undertake trading in electricity", the provisions with respect to "distribution licensees" have been provided under Part VI of the Electricity Act, 2003 but not the two other licensees. Bare perusal of Part VI and Section 42 of the Electricity Act, 2003 makes it further clear. The same is quoted hereunder:

“Part VI DISTRIBUTION OF ELECTRICITY Provisions with respect to distribution licensees

42. Duties of distribution licensees and open access. -(1) It shall be the duty of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.

(2) The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints: Provided that [such open access shall be allowed on payment of a surcharge] in addition to the charges for wheeling as may be determined by the State Commission:

Provided further that such surcharge shall be utilised to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee:

Provided also that such surcharge and cross subsidies shall be progressively reduced [***] in the manner as may be specified by the State Commission:

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Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use:

[Provided also that the State Commission shall, not later than five years from the date of commencement of the Electricity (Amendment) Act, 2003 (57 of 2003) by regulations, provide such open access to all consumers who require a supply of electricity where the maximum power to be made available at any time exceeds one megawatt.] (3) Where any person, whose premises are situated within the area of supply of a distribution licensee, (not being a local authority engaged in the business of distribution of electricity before the appointed date) requires a supply of electricity from a generating company or any licensee other than such distribution licensee, such person may, by notice, require the distribution licensee for wheeling such electricity in accordance with regulations made by the State Commission and the duties of the distribution licensee with respect to such supply shall be of a common carrier providing non-discriminatory open access.

(4) Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply. (5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

(6) Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.

(7) The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.

(8) The provisions of sub-sections (5), (6) and (7) shall be without prejudice to right which the consumer may have apart from the rights conferred upon him by those sub-sections.”

41. Section 50 of the Electricity Act, 2003 empowers the State Commission to specify an Electricity Supply Code to provide for recovery of electricity charges, intervals for billing of electricity charges, measures for preventing damage to electrical plant or electrical line or meter, entry of distribution licensee etc., and it reads as follows:

“50. The Electricity Supply Code.- The State Commission shall specify an Electricity Supply Code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof,

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restoration of supply of electricity, measures for preventing tampering, distress or damage to electrical plant or electrical line or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter, entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters.” From reading Section 50, it is clear that under the Electricity Supply Code provisions are to be made for recovery of electricity charges, billing of electricity charges, disconnection etc. and measures for preventing tampering, distress or damage to the electrical plant or line or meter etc. But the said code need not provide provisions relating to it do not relate to assessment of charges for “unauthorized use of electricity” under Section 126 or action to be taken against those committing 'offences' under Sections 135 to 140 of the Electricity Act, 2003.

42. Limitation under Section 173,174 and 175 of the Electricity Act, 2003 is only qua the scope of Consumer Protection Act, which read as under:

“ 173. Inconsistency in laws.- Nothing contained in this Act or any rule or regulation made thereunder or any instrument having effect by virtue of this Act, rule or regulation shall have effect insofar as it is inconsistent with any other provisions of the Consumer Protection Act, 1986 (68 of 1986) or the Atomic Energy Act, 1962 (33 of 1962) or the Railways Act, 1989 (24 of 1989).”

174. Act to have overriding effect. - Save as otherwise provided in section 173, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

175. Provisions of this Act to be in addition to and not in derogation of other laws. - The provisions of this Act are in addition to and not in derogation of any other law for the time being in force.”

43. The inconsistency would arise only if the provisions of the Electricity Act, 2003 run counter to the provisions of the Consumer Protection Act, 1986 or if while enforcing provision on one statute, provisions of other statute is violated. We find that the entire object and reasons of Consumer Protection Act is not crossed over by the Electricity Act, 2003 and whenever such situation arise the Electricity Act, 2003 has left the option open for the consumer to take recourse under other Laws.

44. The National Commission by its majority decision dated 10th April, 2008 referring to Section 3 of the Consumer Protection Act, 1986 and Sections 173, 174 and 175 of the Electricity Act, 2003 held as follows:

“A bare reading of the aforesaid Sections makes it abundantly clear that –

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i) The intention of the Parliament is not to bar the jurisdiction of the consumer fora under the CP Act. The Electricity Act also impliedly does not bar the jurisdiction of the consumer fora;

ii) On the contrary, it saves the provisions of Consumer Protection Act, 1986, Atomic Energy Act, 1962 and the Railways Act, 1989;

iii) By non-obstante clause, it has been provided that if anything in the Electricity Act, Rules or Regulations is inconsistent with any provisions of the Consumer Protection Act, it shall have no effect; and

iv) Provisions of the Electricity Act are in addition to and not in derogation of any other law for the time being in force. The act supplements the existing redressal forum, namely, the Consumer Fora.”

45. The National Commission though held that the intention of the Parliament is not to bar the jurisdiction of the Consumer Forum under the Consumer Protection Act and have saved the provisions of the Consumer Protection Act, failed to notice that by virtue of Section 3 of the Consumer Protection Act, 1986 or Sections 173,174 and 175 of the Electricity Act, 2003, the Consumer Forum cannot derive power to adjudicate a dispute in relation to assessment made under Section 126 or offences under Sections 135 to 140 of the Electricity Act, as the acts of indulging in "unauthorized use of electricity" as defined under Section 126 or committing offence under Sections 135 to 140 do not fall within the meaning of "complaint" as defined under Section 2(1)(c) of the Consumer Protection Act, 1986.

46. The acts of indulgence in "unauthorized use of electricity" by a person, as defined in clause (b) of the Explanation below Section 126 of the Electricity Act,2003 neither has any relationship with "unfair trade practice" or "restrictive trade practice" or "deficiency in service" nor does it amounts to hazardous services by the licensee. Such acts of "unauthorized use of electricity" has nothing to do with charging price in excess of the price. Therefore, acts of person in indulging in 'unauthorized use of electricity', do not fall within the meaning of "complaint", as we have noticed above and, therefore, the "complaint" against assessment under Section 126 is not maintainable before the Consumer Forum. The Commission has already noticed that the offences referred to in Sections 135 to 140 can be tried only by a Special Court constituted under Section 153 of the Electricity Act, 2003. In that view of the matter also the complaint against any action taken under Sections 135 to 140 of the Electricity Act, 2003 is not maintainable before the Consumer Forum.

47. In view of the observation made above, we hold that:

(i) In case of inconsistency between the Electricity Act, 2003 and the Consumer Protection Act, 1986, the provisions of Consumer Protection Act will prevail, but

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ipso facto it will not vest the Consumer Forum with the power to redress any dispute with regard to the matters which do not come within the meaning of "service" as defined under Section 2(1)(o) or "complaint" as defined under Section 2(1)(c) of the Consumer Protection Act, 1986.

(ii) A "complaint" against the assessment made by assessing officer under Section 126 or against the offences committed under Sections 135 to 140 of the Electricity Act, 2003 is not maintainable before a Consumer Forum.

(iii) The Electricity Act, 2003 and the Consumer Protection Act, 1986 runs parallel for giving redressal to any person, who falls within the meaning of "consumer" under Section 2(1)(d) of the Consumer Protection Act, 1986 or the Central Government or the State Government or association of consumers but it is limited to the dispute relating to "unfair trade practice" or a "restrictive trade practice adopted by the service provider"; or "if the consumer suffers from deficiency in service"; or "hazardous service"; or "the service provider has charged a price in excess of the price fixed by or under any law".

48. For the reasons as mentioned above, we have no hesitation in setting aside the orders passed by the National Commission. They are accordingly set aside. All the appeals filed by the service provider-licensee are allowed, however, no order as to costs.

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Purshottam Behl vs. Messers B.S.E.S. Rajdhani Power Limited (Successor-in-interest of Erstwhile Delhi Vidyut Board) through its Director/Managing Director/Chairman/Principal Officer (04.04.2013 - NCDRC): MANU/CF/0177/2013

1. This First Appeal has been filed by Purshottam Behl, Appellant herein and Original Complainant before the Delhi State Consumer Disputes Redressal Commission (hereinafter referred to as the State Commission) being aggrieved by the order of that Commission which had only partly allowed his complaint against M/s. BSES Rajdhani Power Limited, Respondent herein and Opposite Party before the State Commission.

FACTS:

In his complaint before the State Commission, Appellant-Complainant had contended that he is the sole proprietor of a small auto repair workshop which he operates on 215 square yards of land owned by him on the Delhi-Gurgaon Road. Consequent to a policy introduced by the Respondent in the year 1997 for the grant of Non-Domestic Power Connection in the non-conforming areas of the Union Territory of Delhi, on 27.07.1997 Appellant-Complainant had applied for 2 KW electricity load in the prescribed application format. He also executed an agreement in the form supplied by the Respondent, according to which he was required to maintain his own line till service lines/LV mains were installed by the Respondent. He further agreed that Respondent would not be responsible for any damage/loss to man or material from the line maintained by him. Appellant-Complainant received a show cause notice dated 20.04.1998 from an Assistant Engineer of the Respondent informing him that a report of theft of electricity had been lodged against him in Police Station Vasant Kunj as the electricity load consumed by him had been assessed as 9.312 KW against the sanctioned load of 2 KW and consequently a sum of Rs. 2,42,998.75 ps. was demanded from him. Appellant-Complainant made a representation to the Respondent pointing out that in the second quarter of 1997 Respondent had advertised in leading newspapers that all those who are having houses or plots in the authorized/unauthorized colonies can obtain an electricity connection by paying charges @ Rs. 75/- per square yard which was later on increased to Rs. 95/- per square yard, which he had done and, therefore, it was with malafide intention that this complaint had been made by the Respondent's Assistant Engineer and Lineman to whom he had refused to pay a bribe. The electricity connection provided to the Appellant-Complainant had also been illegally disconnected on 18.04.1998. Further, the allegation that there was 9.312 KW electricity consumption was incorrect because Appellant-Complainant

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had never applied for more than 2 KW to the Respondent. Being aggrieved by the action of the Respondent, Appellant filed a complaint before the State Commission on grounds of unfair trade practice and deficiency in service and sought a total compensation of Rs. 9,87,546/-, which included the following:

Non-Domestic Electricity Connection, calculated at the rate of 25% charges for development obtained from the complainant by the Respondent/Opposite Party

2. When the case came up before the State Commission, Respondent/Opposite Party did not submit any reply, written version or affidavit by way of evidence. The State Commission, therefore, on the basis of evidence produced before it partly allowed the complaint by observing as follows:

6. So far as the allegations of direct theft of electricity is concerned it has no basis particularly in view of the aforesaid clause 7 of the agreement between the parties that till service lines/L.V. Mains are installed by DVB complainant shall maintain his own line and that DVB will not be responsible for any loss/damage to man/material from the line maintained by the complainant.

7. As regards the allegation of having used higher load than the sanctioned load the OP has neither filed any reply nor any material to show and prove the said allegation. Even otherwise connection was granted on 29-07-1997 and it was disconnected on 18-04-1998 on the basis of the show cause notice dated 18-04-1998. In between no inspection of the premises was ever done by the OP. Furthermore, the subsequent policy of the OP advertised in the National newspapers in the second quarter of the year 1997 i.e. much prior to the show cause notice and the disconnection of the electricity that all those houses or plots in authorized or unauthorized colonies can obtain electric connection by paying charges @ Rs. 75/- per sq. yd. and the complainant had made the payment and the connection was granted.

8. The cumulative effect of the agreement between the parties as well as subsequent advertisement and lack of evidence on the part of the OP to prove the allegation of having used more load than the sanctioned load, particularly when the OP did not lay down the main line and service lines/L.V. mains and allowed all the consumers to maintain their own line at their own risk, the demand was wholly unjustified and illegal.

The State Commission, therefore, quashed the demand of Rs. 2,42,998.75 ps. raised by the Respondent against the Appellant-Complainant on account of electricity consumption. However, no other relief as prayed for was granted. Hence, the present appeal seeking compensation.

4. Learned Counsel for both parties made oral submissions.

5. Learned Counsel for the Appellant stated that even though the State Commission had concluded that there was deficiency in service on the part of Respondent and thus quashing the wrong demand of Rs. 2,42,998.75 ps. made by Respondent, it

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erred in not awarding any compensation since the Appellant had been left without any electricity following its disconnection in 1998. When queried by us regarding the present status of electricity, Counsel for the Appellant stated that in 2004 Appellant had taken another similar connection in the name of his son and, therefore, from that year onwards he did have electricity supply in his premises but prior to that there was no electricity connection from 1998. Therefore, he had been deprived of the same for about 6 long years from 1998 to 2004, for which the compensation has been requested.

6. Learned Counsel for the Respondent while confirming that it had accepted the order of the State Commission and had also refunded the amount of Rs. 2,42,998.75 ps. to the Appellant as directed by the State Commission, contended that as per the policy of the Respondent two commercial electricity connections cannot be sanctioned for one premises and, therefore, Appellant cannot now claim restoration of his own electricity connection since he had already been sanctioned another connection in the name of his son. We have considered the submissions made by learned Counsels for the parties and have also gone through the evidence on record. We agree with the order of the State Commission that the Respondent had wrongly disconnected Appellant's power supply and, therefore, the sum of Rs. 2,42,998.75 ps. demanded by it was not justified. Respondent had accepted this order and had refunded the amount. While we agree with the contention of Counsel for the Respondent that as per the policy two commercial electricity connections cannot be sanctioned in the same premises, the Appellant needs to be compensated for the 6 long years during which period he was wrongly deprived of the electricity connection. After taking into account the facts and circumstances of this case, we are of the view that a compensation of Rs. 2 Lakhs is justified and reasonable. We, therefore, partly allow this appeal and in the partial modification of the order of State Commission direct the Respondent to also pay the Appellant a sum of Rs. 2 lakhs as compensation within a period of 8 weeks, failing which it will carry interest @ 9% per annum for the period of default.

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**B.S.E.S. Yamuna Power Ltd. vs. Krishna (03.02.2014 - NCDRC):
MANU/CF/0281/2014**

1. The Petitioner has filed the present revision petition against the order in First Appeal No. 243/2010 passed by the learned State Consumer Disputes Redressal Commission, (in short, 'State Commission') Delhi, which dismissed the appeal, contrary to law and erroneously upheld the order and judgment dated 13.1.2010 passed by the District Consumer Disputes redressal Forum (hereinafter referred to as, 'District Forum') New Delhi. Brief facts of the case are:

The Petitioner/OP B.S.E.S Yamuna Power Ltd., installed an electricity connection in the house of the Complainant/Respondent on 15.11.2003. The electricity bill for the use was not being issued by the OP, till 27.7.2008. In the meantime, the complainant made requests to OP on 22.9.2004, 25.10.2005 and again, on 29.1.2007, he visited the office of OP, but did not get the bill. However, on 27.7.2008, the OP issued a bill for Rs. 1070, which was paid by the Complainant, on 1.10.2008. Thereafter, on 3.2.2009, the officials of the OP slapped a huge bill in the sum of Rs. 98,840 on the complainant, without any proper explanation. Hence, alleging deficiency in service by OP, the complainant filed complaint No. 207/2009, before the District Forum, on 20.3.2009.

2. The District Forum partly allowed the complaint and directed the OP/Petitioner to recover only Rs. 9,026 from the complainant, along with subsequent amount on current bills. It also awarded compensation in the sum of Rs. 5,000 for mental agony and a sum of Rs. 1,000 towards costs of litigation.

3. Aggrieved by the order of District Forum, the OP filed First Appeal (FA No. 243/2010) before the appeal before the State Consumer Disputes Redressal Commission (in short, 'State Commission'), Delhi. The State Commission dismissed the appeal.

4. Hence, the OP preferred this revision petition.

5. We have heard both the parties. The learned Counsel for OP brought our attention to the terms of Regulation 16(ix) and (iv) of the DERC Regulations, 2007, and averred that a consumer cannot be allowed to consume electricity, without paying the bills for consumption. It was the responsibility of the consumer to inform the OP, in writing, that he has not been receiving the bills relating to the consumption charges. Complainant has not taken any steps to get the bills from the Petitioner and enjoyed the consumption of electricity, for more than 5 years.

6. The Counsel for OP contended that due to non-punching of data in the computer system, the meter was not punched, hence, bill of the Complainant was not raised. It was noticed by OP, first time, under the scheme of UBC (unbilled cases) and only after that, the OP punched the data in the system, on 17.7.2008 and downloaded

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reading as 28009 dated 26.9.2008. Thereafter, till April 2009, a bill for Rs. 1,00,223 including arrears was raised against the Complainant.

7. The OP put reliance upon the judgment held by this Commission in Maharashtra State Electricity Board v. Swastic Industries, III (1996) CPJ 71 (NC), wherein it upheld the demand raised after a span of 9 years of actual consumption of electricity, clearly holding that raising bill for electricity consumed, howsoever belated, cannot be termed as 'deficiency of service'. The relevant portion of the said judgment stating the question of law in issue, reads as follows:

We have perused the order in the case of M/s. Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. v. The Municipal Corporation of Greater Bombay & Another, reported in MANU/MH/0057/1978 : AIR 1978 Bom 1978 369... In the light of these statutory provisions, they held that there is no warrant to read the word due in the narrower sense viz. as only restricted to amounts within the period of limitation or which could be successfully claimed by a suit. In other words, there is no logical basis shown for preferring the narrower construction to the ordinary construction i.e. wider construction. The wider meaning would be more in accord with the scheme of the statutory provisions as also with commercial honesty.

8. It is well settled that normal law of limitation is not applicable for recovery of electricity dues. The period in question, arose before the implementation of Electricity Act, 2003, and will be governed by the provisions of Electricity Act, 1910. Reference in this regard may be made to the decision in H.D. Shourie v. Municipal Corporation of Delhi and Another, reported in MANU/DE/0356/1987 : 32 (1987) DLT 73 ... Similar view was taken by Hon'ble High Court of Delhi, in a recent judgment, in the case of B.S.E.S. Rajdhani Power Ltd. v. Consumer Grievance Redressal Forum, W.P. (C) 13556/2006 with Nalin Bhushan Chandlok v. B.S.E.S. Rajdhani Power Ltd., W.P. (C) 14873/2006.

9. Therefore, we are of considered view that, the amount due and payable by the Complainant is public money. Electricity is not merely a commercial commodity, bought and sold, but a national energy resource. The Complainant has used and enjoyed the electricity for about one decade, without paying any bill. The series of judgments have recognized the legislative intent behind preventing loss to public money. This view was taken by this Commission in Swastic Industries Case (supra), and observed as follows:

However, the inefficiency of functionaries of the Appellants, deplorable though it is, cannot and should not be made a ground to cause a loss to a public utility concern.

10. As the OP has not specified about what was the rate per unit of electricity consumption, during 2003, we are also in dilemma as the OP raised a huge bill in the sum of Rs. 1,00,223 till April 2009, which needs further scrutiny and

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clarification. Accordingly, we allow this revision petition and set aside the order of State Commission. The OP is directed to issue fresh bill with proper calculation as per prevalent electricity rates during the period November 2003 to April 2009. It was a case of contributory negligence, hence we direct that OP should charge only for units consumed and should not levy any penalty or interest. It is further directed that the amount due by the Complainant, be recovered in equal monthly instalments, for 12 months, after proper verification and calculation. No orders as to costs.

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Brihan Mumbai Electricity Supply & transport under taking Versus Maharashtra Electricity Commission (MERC) & others Civil Appeal No. 4223 of 2012 in the Supreme Court of India.

J U D G M E N T

A.K.SIKRI,J.

1. Respondent No.3 is a consumer (hereinafter referred to as the “consumer”) of electricity (LT-II Category) whose premises are situated within area of supply of the appellant namely Brihanmumbai Electricity Supply and Transport Undertaking (BEST). In April 2009, he approached respondent No.2 i.e. Tata Power Company Limited (TPC) with a request that he be supplied the electricity by TPC. In nutshell, he wants to switch over from BEST to TPC for his electricity requirement. In response to his request, TPC advised the consumer vide letter dated 8.7.2009 to approach the BEST for its permission to use its distribution network of the BEST to enable TPC to supply electricity to the consumer using that network. The consumer, accordingly, turned to BEST requesting it to give the said permission. It was, however, denied by BEST vide letter dated 31.7.2009 and again on 10.8.2009. After receiving this rejection, the consumer approached Mumbai Electricity Regulatory Commission (hereinafter referred to as the “Regulatory Commission”) with petition seeking the following directions:

“(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 the 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 of Giving Supply and Determination of Compensation) Regulations 2005;”

2. In the meantime, respondent Nos.4 to 8 also filed similar petitions before the Regulatory Commission with same relief as they also wanted to switch over to TPC for their electricity requirement. Since direction was sought for TPC, only TPC was made party. However, at the instance of Regulatory Commission BEST and Reliance Industries Limited (RIL) were also impleaded in these matters. After hearing all the parties, Regulatory Commission passed orders dated 22.2.2010 holding that TPC was bound to supply electricity in terms of applicable Regulations and therefore direction was given to the TPC to supply electricity to the consumers either through BEST wires or its own wires. The operative part of that order reads as under:

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“In view of the above there is no requirement to issue a direction in regard to the Petitioner’s claim of compensation under Regulation 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.”

3. We may point out here that the BEST (the appellant herein) had resisted the demand of the consumers in their petitions with the following contentions:

(a) The Regulatory Commission did not have the jurisdiction to entertain a dispute between the consumer and a distribution licensee;

(b) TPC was not a deemed distribution licensee for the area in question and therefore was not permitted to supply the electricity to any consumer in that area;

(c) that unlike other distribution licensees, BEST being a local authority, no persons situated in BEST’s area of supply could avail electricity from any other licensee, on account of BEST invoking a statutory exemption available to a local authority under Section 42(3) of The Electricity Act, 2003 Act (hereinafter referred to as the Act).

(d) Since TPC had clarified that it was willing to extend its network and supply electricity, BEST also contended that TPC could not extend its network in BEST’s area of supply, without BEST’s consent and agreement.

4. In its order dated 22.2.2010 while issuing the directions extracted above, the Regulatory Commission rejected BEST’s contentions and held that Tata Power had a duty under the Act to extend its distribution network and supply electricity, if the consumers so required, in the South Mumbai area. In light of TPC’s position that it was willing to extend its network and supply electricity, the MERC held that there was no requirement to give any directions to it. The Regulatory Commission also held that TPC would be deemed distribution licensee for the area in question.

5. BEST challenged the aforesaid order of the Regulatory Commission by filing appeal before the Appellate Tribunal for Electricity, New Delhi (hereinafter referred to as the “Appellate Tribunal”). This appeal, however, has been dismissed by the Appellate Tribunal vide orders dated 4.4.2012, thereby affirming the findings and direction of the Regulatory Commission. Not satisfied, BEST has filed the instant appeal statutorily provided under Section 125 of the Electricity Act.

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6. We have already stated in brief the four contentions which were raised by BEST before the Regulatory Commission. Same contentions were raised before the Appellate Tribunal, which are the submissions before us as well. Therefore, we proceed to deal with these submissions hereinafter:

RE: Jurisdiction of the Regulatory Commission.

7. This contention was raised primarily on the ground that there was an alternative remedy provided to the consumer to raise his grievances before the Consumer Grievances Redressal Forum (CGRF) established under Section 42 (5) of the Act. Therefore, the consumer should have approached the said Forum instead of filing petition before the Regulatory Commission. This contention is totally misconceived and rightly rejected by the authorities below. As noted above, petition was filed by the consumer seeking direction against TPC to supply electricity to him. Thus, he approached the Regulatory Commission to enforce a distribution licensee obligation under the Act. As on that date, he was not the consumer of TPC but wanted to become its consumer. In so far as CGRF is concerned, which each distribution licensee is required to set up under Section 42 (5) of the Act, it deals with the grievances of the consumer. Consumer is defined under Section 2 (15) of the Act and reads as under:

“any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purposes of receiving electricity with the works of a licensee, the Government or such other person, as the case may be.”

8. Thus, respondent No.3 not being a consumer could not have approached CGRF. Further, we find that in Maharashtra Electricity Regulatory v. Reliance Energy Ltd. (2007) 8 SCC 381, this Court has held that the Regulatory Commission has the power to require a licensee to fulfill its obligations under the Act. Thus, we are of the opinion that the Regulatory Commission had the requisite jurisdiction to entertain the petition filed by the consumer. Presumably, for this reason, this contention was pressed half hearted before us and given up in the middle.

RE: Whether TPC is deemed distribution licensee

9. Before we take note of the argument of the parties on this aspect and deal with the same, some background facts need a mention. TPC is the successor of the Bombay Hydroelectric License, 1907, the Andhra Valley Hydro-electric License, 1919, the Nila Mula Valley Hydro- electric License, 1921 and Trombay Thermal

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Power Electric License 1953 to supply electricity to consumers in specified areas in and around Mumbai (Erstwhile Licenses). The Erstwhile Licenses were subsequently amalgamated and transferred to Tata Power on 12.7.2001.

10. The Government of Maharashtra, in exercise of powers under the Indian Electricity Act, 1910 amended the area of supply under the Erstwhile Licenses from time to time. This included addition of new areas as well as handing over of certain areas to the Government owned distribution company, earlier known as the Maharashtra State Electricity Board.

11. TPC's area of supply overlaps with that of Reliance Infrastructure Limited (R Infra) another distribution licensee in the suburban Mumbai area, and with that of the Appellant (BEST) in South Mumbai. In 2002, R Infra filed a petition before the Respondent No.1 (MERC) alleging that Tata Power's license did not authorize Tata Power to supply electricity to direct retail consumers (with a maximum demand below 1000KVA). While the petition was pending, the Electricity Act, 2003 came into force.

12. On the basis of aforesaid facts TPC claimed that by virtue of first proviso to Section 14 of the Act, it was a deemed licensee for the area of supply of BEST. Under Section 14 the Regulatory Commission is empowered to grant a license to any person on an application made to it under Section 15 of the Act. This license may pertain to transmit electricity as a transmission licensee; or distribute electricity as a distribution licensee; or to undertake trading in electricity as an electricity trader, in any area, as may be specified in the license. This section has nine provisos which stipulated various circumstances under which no specific license is required by making an application under Section 15 and if the conditions stipulated in any of these provisos are satisfied, such a person is treated as deemed licensee. We are here concerned with 1st proviso under which TPC claims to be a deemed distribution licensee as well as 6th proviso which is invoked by BEST in contending TPC cannot be a deemed distribution licensee in the area where BEST operates. Therefore, we reproduce both these provisos:

1st Proviso: "Provided that any person engaged in the business of transmission or supply of electricity under the provisions of the repealed laws or any Act specified in the Schedule on or before the appointed date shall be deemed to be a licensee under this Act for such period as may be stipulated in the licence, clearance or approval granted to him under the repealed laws or such Act specified in the Schedule, and the provisions of the repealed laws or such Act specified in the Schedule in respect of such licence shall apply for a period of one year from the date of commencement of this Act or such earlier period as may be specified, at the

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request of the licensee, by the Appropriate Commission and thereafter the provisions of this Act shall apply to such business.

6th Proviso: Provided also that the Appropriate Commission may grant a licence to two or more persons for distribution of electricity through their own distribution system within the same area, subject to the conditions that the applicant for grant of licence within the same area shall, without prejudice to the other conditions or requirements under this Act, comply with the additional requirements [relating to the capital adequacy, creditworthiness, or code of conduct] as may be prescribed by the Central Government, and no such applicant, who complies with all the requirements for grant of licence, shall be refused grant of license on the ground that there already exists a licensee in the same area for the same purpose.”

13. As per the first proviso if any person was engaged in the business of transmission or supply of electricity under the provisions of the repealed laws etc. that person is deemed to be a licensee under the Act, 2003 as well. The period for such deemed licence is the one that is stipulated in the licence, clearance or approval granted to him under the repealed laws. If it is under any Act specified in the Schedule in respect of such licence, then the period of licence is for one year from the date of commencement of the Act or such period as may be specified by the Appropriate Commission. It would mean that either the period of deemed licence for such a person is the period which is stipulated in the licence, clearance or approval granted to him under the repealed laws or for a period of one year from the date of commencement of the Act or the period which may be specified, at the request of the licensee by the Regulatory Commission. Once, such a period is over, then that person is supposed to apply for licence under Section 14.

Proviso six, on the other hand, deals with a different situation. As per this provision, the Regulatory Commission is authorized to grant a licence to two or more persons for distribution of electricity through their own distribution system within the same area. It is subject to the conditions that the applicant for grant of licence within the same area shall apply with the additional requirements relating to the capital adequacy, creditworthiness, or code of conduct as may be prescribed by the Central Government. It further provides that merely because there exists a licensee in the same area would not be a ground to reject an application for another applicant for same purpose. This provision deals with open access policy.

14. As per the TPC, proviso one is applicable in their case since its predecessor were granted licence under the Act, 1910 and therefore it continuous to be licensee as per the aforesaid deeming provision under the Act, 2003 as well. The case set up by the TPC in this behalf is such a licence granted under the old Act is valid upto 15.8.2014 which is categorical stipulated in the Specific Licence Conditions by the Regulatory Commission. Therefore, it is only after 15.8.2014 that the TPC would be

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required to take fresh licence by making application under Section 15 of the Act, 2003. This is stated on the ground that the MERC formulated the MERC (Specific Conditions of License applicable to the Tata Power Company Limited) Regulations, 2008 (Specific License Conditions) under Section 16 of the Act. The Specific License Conditions read with the MERC (General Conditions of Distribution License) Regulations, 2006 set out the terms and conditions of Tata Power's license in supersession of the Erstwhile Licenses, and authorize Tata Power to supply electricity in its area of supply to the public for all purposes in accordance with the Act. The Specific License Conditions further stipulate that the term of Tata Power's license is up to 15.8.2014.

15. The argument of BEST, on the other hand, is that the Appellate Tribunal was wrong in holding TPC was a deemed licensee under the first proviso to Section 14, as well as a parallel licensee under the sixth proviso to Section 14 of the Act 2003. According to Mr. Naphade, the Appellate Tribunal gravely erred in failing to appreciate that network of TPC cannot be allowed or extended within the area of supply of BEST in the absence of distribution licensee which TPC failed to obtain from Regulatory Commission, though it is a necessary requirement under sections 14 and 15 read with Section 12 of the Act. It was argued that as per the first proviso to Section 14, a person is treated deemed licensee only if it is engaged in the business of supply of electricity under the provisions of the repealed laws and it is for such period "as may be stipulated in the licence granted to him under the repealed laws". It was argued that the protection was only for that period which is stipulated in the licence and not on the basis of licence and there is no such period specified in the business up to 15.8.14 specified in the licence. It was, further, argued that the provisions of the repealed laws in respect of such licences are applicable for a period of one year within which and thereafter licence was to be obtained under Section 14 by moving an application under Section 15, as per the procedure prescribed in the Act 2003. It was argued that for the deeming fiction in the first proviso to said Section 14 to arise, (i) a person must be engaged in the business of supply of electricity under the repealed laws on or before 10.6.2003, and (ii) a period (being, period of subsistence of licence) be stipulated in the licence granted to such person under the repealed laws. It was further pointed out that said deeming fiction applies (i) to such a person, and (ii) for such stipulated period.

16. There are two facets of the submissions made by Mr. Naphade. In the first instance it is to be found that there is a stipulation of period in the manner stated in the first proviso. Second aspect is as to whether it is incumbent, in all cases, to apply for licence under the provisions of Sections 14 and 15 of the Act immediately after the expiry of one year from the date of commencement of the said Act. In so far as first aspect is concerned, the argument of the appellant loses sight of the fact that in the first proviso the period for which any person can be a deemed licensee

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is not only such period which is stipulated in the licence, clearance or approval granted to him under the repealed laws or such Act specified in the Schedule. It also provides that the provisions of repealed laws or such Act specified in the Schedule in respect of such a licence shall apply for a period of one year from the date of commencement of Act 2003 or such earlier period as may be specified at the request of the licensee by the Regulatory Commission. In the present case, the Regulatory Commission formulated MERC (Specific Conditions of License Applicable to TPCL) Regulation 2008 i.e. Specific Licence Conditions. These were formulated under Section 16 of the Act 2003 and it is in these conditions there is a specific stipulation regarding term of TPC licence up to 15.8.2014. We, therefore, are unable to accept the submissions of the appellant that the licence was valid for a period of one year only. It would be useful to refer to Section 16 of the Act under which aforesaid Specific Licence Conditions of TPC are formulated.

“16. Conditions of licence.- The Appropriate Commission may specify any general or specific conditions which shall apply either to a licensee or class of licensees and such conditions shall be deemed to be conditions of such licence:

Provided that the Appropriate Commission shall, within one year from the appointed date, specify any general or specific conditions of licence applicable to the licensees referred to in the first, second, third, fourth and fifth provisos to section 14 after the expiry of one year from the commencement of this Act.” Proviso to the aforesaid section very categorically enables the Regulatory Commission to specify general or specific condition of licence applicable to licensees referred to in the first to fifth proviso to Section 14 after expiry of one year after the commencement of that Act. Since as on the date of commencement of the Act, TPC became deemed licensee under the first proviso as its predecessors were holding the distribution licence under the repealed laws and thereafter specific conditions of licence are formulated by the Regulatory Commission under Section 16 mentioning the period of 15.8.2014, it becomes clear that the combined fact of that would be that YPC would be deemed licence till 15.8.2014.

Tata Power’s license to supply electricity in the South Mumbai area is clearly established by virtue of the following:

- (a) The Erstwhile Licensee authorized Tata Power to supply electricity to all consumers in Mumbai, including the South Mumbai area;
- (b) When the new Act came into force, by virtue of the 1st Proviso to Section 14, Tata Power was deemed to be a licensee under that Act.

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This is also clear from Section 172(b) of the Act. It is trite law that once the purpose of the deeming provision is ascertained, full effect must be given to the statutory fiction and the fiction is to be carried to its logical end.

17. An argument was sought to be raised before us that Regulation 2008 laying down specific conditions for TPC are flouted as they were not made by the Regulatory Commission within the mandatory period of one year. However, no such argument was raised earlier and there is no challenge to the validity of the aforesaid Regulations which are made by the Regulatory Commission under its statutory powers and therefore are having statutory force. Once, we come to the conclusion that TPC can be treated as deemed distribution licensee under the first proviso to Section 14 of the Act 2003 and the area of the licence is the same which overlaps with the area covered by BEST, argument predicated on sixth proviso to Section 14 would not be available to the BEST.

RE: AVAILABILITY OF OPEN ACCESS TO TPC IN THE AREA COVERED BY BEST, WHICH IS A LOCAL AUTHORITY AND PERMISSIBILITY OF TPC TO EXTEND ITS NETWORK IN BEST AREA OF SUPPLY WITHOUT ITS APPROVAL/CONSENT.

18. It was argued by Mr. Naphade that under the Act neither open access can be allowed nor distribution system or network of a purported parallel licensee (such as TPC) can be laid or extended within area of supply of BEST. The learned senior counsel labored on the aspect that admittedly BEST was a Public Sector Undertaking and such bodies are given due recognition of and grant of exemption and/or protection to a special category of licensee being a local authority in the business of distribution of electricity before the appointed day. He submitted that as BEST would be covered by the expression “ a local authority” protected measures provided under the Act would be applicable to it as well. According to him, a local authority was always placed on a special footing under Act, 1910 as well as Act, 1948 and now under Act, 2003 which was clear from the provisions of Section 42 (3) of the Act that reads as under:

“42(3) Where any person, whose premises are situated within the area of supply of a distribution licensee, (not being a local authority) engaged in the business of distribution of electricity before the appointed day) requires a supply of electricity from a generating company or any licensee other than such distribution licensee, such person may, by notice, require the distribution licensee for wheeling such electricity in accordance with regulations made by the State Commission and the duties of the distribution licensee with respect to such supply shall be of a common carrier providing non-discriminatory open access.” This provision which deals with the duties of distribution licensee as well as open access specifically excludes a local authority.

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Mr. Naphade thus argued that if the Legislature, having regard to the special status of a local authority engaged in the business of distribution of electricity before the appointed date (such as BEST), has duly exempted open access in its area of supply, then it is but consequential and/or a fortiori that a distribution system or network of a purported parallel licensee (such as TPC) cannot be laid or extended within the area of supply of a local authority engaged in the business of distribution of electricity before the appointed date (such as BEST). His submission was that the Legislature could never have and in fact, has not intended that such special status (inclusive of exemption from open access) be in vain or rendered illusory/infructuous/nugatory, and more so by a mere lay out or extension of a distribution system or network of the purported parallel licensee. It is a fundamental principle of law that duly made legislation can never be and should not be in vain or to no avail. Hence, such special status (inclusive of exemption from open access) cannot be ignored, but must necessarily be given full effect to and enforced. According to him an irrational situation would arise if the purported parallel licensee (such as TPC) could not supply electricity under open access in the area of supply of a local authority engaged in the business of distribution of electricity before the appointed date (such as BEST), but could lay or extend its distribution system or network in the area of supply of a local authority engaged in the business of distribution of electricity before the appointed date (such as BEST). As such, Section 42 (3) necessarily has to be interpreted to qualify or restrict aforesaid Sixth Proviso to Section 14, Section 43(1), Section 42(1) and/or Section 42(2), to the extent that any person, whose premises are situated within the area of supply of a distribution licensee, (which is a local authority engaged in the business of distribution of electricity before the appointed date) cannot require a supply of electricity from a generating company or any licensee other than such distribution licensee, through (i) open access and/or(ii) otherwise (including under parallel license). Moreso, as the provisions of the Electricity Act, 2003, provide for protection of interest of electricity consumers, and as such ought not and should not be interpreted to entail unnecessary burden of said capital expenditure or electricity consumers; a local authority engaged in the business of distribution of electricity before the appointed date (such as BEST) is ex-facie placed on a special pedestal vis-à-vis ordinary distribution licensees, under the Third Proviso to Section 51 of the Electricity Act, 2003, which has been liberally interpreted in favour of and to advantage of a local authority engaged, before the commencement of the Electricity Act, 2003, in the business of distribution of electricity (such as BEST), by the Hon'ble Supreme Court of India in the Order dated 8.2.2011 made in Civil Appeal No.848 of 2011 (Municipal Corporation of Greater Mumbai vs. Maharashtra Electricity Regulatory Commission & Ors.).

19. On the other hand, Mr. Dhruv Mehta, learned senior counsel appearing for TPC submitted that by this argument of the appellant was mixing the otherwise two

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distinct concepts, namely that of open access under Section 42 (3) of the Act and that of Universal Service of Relations contained in Section 43 of the Act. Highlighting the purpose of the Act which has, inter-alia, provided emphasizing the need for efficiency and competition in the distribution business as well as open access system and also multiple licences system in the same area of supply, he submitted that if the contention of the appellant is accepted it would negate the very objective which is sought to be achieved by the aforesaid provisions. Mr. Mehta argued that under the Act, there are two ways in which a consumer situated in a particular area can avail supply of electricity: (i) from a distribution licensee authorized to supply electricity in that area under Section 43; or

(ii) from any other supplier through the distribution network of a distribution licensee by seeking “open access” in terms of Section 42(3). In the first option, the distribution licensee operating in a particular area is required to lay down its network if required, in order to supply electricity to a consumer seeking supply. The second option, which is known as open access is provided under Section 42 read with Section 2(47) of the 2003 Act. Under Section 42(3) of the 2003 Act, a consumer has the right to require a distribution licensee to make its network available for wheeling electricity to such consumer from a third party supplier (i.e. a supplier of electricity not being a distribution licensee in the area where the consumer is situated). He submitted that this distinction between the two different concepts is to be born in mind and the matter is seen in its proper perspective. Section 42(3) carries out an exception in favour of local authority only qua open access which would mean that a consumer is disallowed from seeking open access from a distribution licensee which is a local authority like BEST. That would mean that a consumer being supplied by BEST cannot demand that BEST allow a third party subject to supply electricity to such consumer through the network of BEST. According to him, this exception would extend to position contained in section 43 which casts “Universal Service Obligation” on all distribution licensees to give supply to any owner or occupier within its supply area. That would only mean if there is an another distribution licensee in the area in which a local authority like BEST also operates, a consumer can approach that distribution licensee to supply him the electricity. However, for that purpose, the said distribution licensee will have to supply the electricity from its own laid in the network without using the network of local authority.

20. After considering the rival contentions, we are of the opinion that the interpretation suggested by Mr. Mehta needs to prevail and therefore we do not find any fault with the view taken by the Appellate Tribunal. We have already reproduced above provisions of Section 42 (3) of the Act. As pointed out above, Section 42 of the Act deals with the duties of distribution licensee and open access. Sub- Section (1) thereof provides that it shall be the duty of a distribution licensee to develop and

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maintain an efficient co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in the Act. Sub-section (2) casts an obligation upon the State Commission to introduce open access in phases and subject to such conditions, as may be specified, these conditions may include the cross subsidies and other operational constraints. It is thereafter in sub-section (3) of Section 42 provision is made for wheeling of electricity with respect to supply stating that duties of distribution licensee shall be of a common carrier providing non-discriminatory open access. Thus sub-section (3) provides for open access and casts a duty upon the distribution licensee in this behalf. Here, it excludes local authority, as distributor of electricity from such an obligation. However, when it comes to the duty of distribution licensee to supply the electricity under section 43, it mandates that same is to be given to the owner or occupier of any premises on his application within one month from the receipt of the said application. This duty under Section 43 imposed upon a distribution licensee does not distinguish between a local authority and other distribution licensee. It is also not a case of the appellant that in a particular area where a local authority is a distribution licensee, there cannot be any other distribution licensee at all.

21. Thus, on a conjoint reading of Sections 42 and 43 of the Act along with the objectives and purpose for which Act 2003 is enacted, it becomes clear that there are two ways in which a consumer stated in a particular area can avail supply of electricity, as pointed out by the learned senior counsel for TPC and noted above. When an application is made by a consumer to a distribution licensee for supply of electricity, such a distribution licensee for supply of electricity, such a distribution licensee can request other distribution licensee in the area to provide it network to make available for wheeling electricity to such consumers and this open access is to be given as per the provisions of section 42 (3) of the Act. It is here only that local authority is exempted from such an obligation and may refuse to provide makes it network available. Second option is, under section 43 of the Act, to provide the electricity to the consumer by the distribution licensee from its own network. Therefore, if in a particular area local authority has its network and it does not permit wheeling of electricity from by making available its network, the other distribution licensee will have to provide the electricity from its own network. For this purpose, if it is not having its network, it will have to lay down its network if it requires in order to supply electricity to a consumer seeking supply.

22. This interpretation of ours is in consonance of the objective and purpose of the Act. The aforesaid objective is further clarified by the Tariff Policy and the National Electricity Policy under section 3 of the Act which emphasized the need for efficiency and competition in the distribution business. On going through the statement of objects and reasons contained in the new Act, the interpretation, which we are

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leading to, gets further facilitated. Prior to this Act, there were three Acts, namely of 1910, 1948 and 1998 which were governing the laws relating to electricity and were operating in the field. Within few years, it was felt that the three Acts of 1910, 1948 and 1998 which were operating in the field needed to be brought in a new self contained comprehensive legislation with the policy of encouraging private sector participation in generation, transmission and distribution and also the objectives of distancing the regulatory responsibilities from the Government and giving it to the Regulatory Commissions. With these objectives in mind the Electricity Act, 2003 has been enacted. Significant addition is the provisions for newer concepts like power trading and open access. Various features of the 2003 Act which are outlined in the statement of objects and reasons to this Act. Notably, generation is being delicensed and captive generation is being freely permitted. The Act makes provision for private transmission licensees. It now provides open access in transmission from the outset. While open access in transmission implies freedom to the licensee to procure power from any source of his choice, open access in distribution, with which we are concerned here, means freedom to the consumer to get supply from any source of his choice. The provision of open access to consumers ensures right of the consumer to get supply from a person other than the distribution licensee of his area of supply by using the distribution system of such distribution licensee.

23. The concept of open access under the Act enables competing generating companies and trading licensees, besides the area distribution licensees, to sell electricity to consumers when open access in distribution is introduced by the State Electricity Regulatory Commissions. Supply by way of open access is a completely different regime as is also clear from the fact that consumers who have been allowed open access under Section 42 may enter into an agreement with any person for supply of electricity on such terms and conditions, including tariff, as may be agreed upon by them under Section 49 of the Act unlike consumers who take supply under section 43 of the Act.

24. Once we read the provisions in the aforesaid manner, it becomes clear that there is no exemption from universal service obligation to any distribution licensee under the Act, on account of the presence of a “local authority” as a distribution licensee in the particular area of supply, which is also reinforced by Paragraph 5.4.7 of the National Electricity Policy which clearly states that the second licensee in the same area shall have the obligation to supply to all consumers in accordance with Section 43. In this context, it is relevant to reproduce the following observations in Chandu Khamaru v. Nayan Malik reported in (2011) 12 SCC 314:

“7...These provisions in the Electricity Act, 2003 make it amply clear that a distribution licensee has a statutory duty to supply electricity to an owner of occupier of any premises located in the area of supply of the distribution licensee,

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if such owner or occupier of the premises applies for it, and correspondingly every owner or occupier of any premises has a statutory right to apply for and obtain such electric supply from the distribution licensee.”

25. It is, therefore, difficult to accept the extreme position taken by the appellant that if local authority is a distribution licensee in a particular area, there cannot be any other distribution licensee in that area without the permission of such a local authority. Not only such a contention would negate the effect of universal supply obligation under Section 43, it will also amount to providing an exception which is not there either in Section 43 or Section 14 of the Act namely to treat local authority in special category and by giving it the benefit even that benefit which is not specified under the Act.

26. It is trite that Court should lean in favour of an interpretation which subserves the objective of the Act namely the purposive interpretation. In *Tata Power Co.Ltd. v. Reliance Energy Ltd. & Ors.* (2008) 10 SCC 321, this Court gave due recognition to objective behind the Act viz. to promote competition and give the consumer open to choose the distribution licensee from which it seeks electricity as is clear from the following paragraphs:

102. On the other hand, in our view, the provisions of both the 1903 and 1910 Electricity Acts encourage competition in the electricity trade and the same is also incorporated in the licences issued in favour of the distribution licensees, which also include licensees generating power for supply. The element of competition has been included in the Preamble to the 2003 Act and permeates the same in its various provisions.

103. As submitted by Mr Chagla, the Act is meant to be consumer-friendly and one of the objectives it sets out to achieve is to give the consumer an option to choose the distribution licensee from whom it wishes to receive supply of electrical energy. The intervention of MIDC, Marol Industries Association and the appeals filed by it, has obviously been made in that context.

In MSR Leathers vs. S.Palaniappan & Anr. (2013) 1 SCC 177 it was observed:

“24. That brings us to the question whether an offence punishable under Section 138 can be committed only once as held by this Court in *Sadanandan* case¹. The holder of a cheque as seen earlier can present it before a bank any number of times within the period of six months or during the period of its validity, whichever is earlier. This right of the holder to present the cheque for encashment carries with it a corresponding obligation on the part of the drawer to ensure that the cheque drawn by him is honoured by the bank who stands in the capacity of an agent of the drawer vis-à-vis the holder of the cheque. If the holder of the cheque has a right,

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as indeed is in the unanimous opinion expressed in the decisions on the subject, there is no reason why the corresponding obligation of the drawer should also not continue every time the cheque is presented for encashment if it satisfies the requirements stipulated in clause (a) of the proviso to Section 138. There is nothing in that proviso to even remotely suggest that clause (a) would have no application to a cheque presented for the second time if the same has already been dishonoured once. Indeed if the legislative intent was to restrict prosecution only to cases arising out of the first dishonour of a cheque nothing prevented it from stipulating so in clause (a) itself. In the absence of any such provision a dishonour whether based on a second or any successive presentation of a cheque for encashment would be a dishonour within the meaning of Section 138 and clause (a) of the proviso thereto. We have, therefore, no manner of doubt that so long as the cheque remains unpaid it is the continuing obligation of the drawer to make good the same by either arranging the funds in the account on which the cheque is drawn or liquidating the liability otherwise. It is true that a dishonour of the cheque can be made a basis for prosecution of the offender but once, but that is far from saying that the holder of the cheque does not have the discretion to choose out of several such defaults, one default, on which to launch such a prosecution. The omission or the failure of the holder to institute prosecution does not, therefore, give any immunity to the drawer so long as the cheque is dishonoured within its validity period and the conditions precedent for prosecution in terms of the proviso to Section 138 are satisfied.” While dealing with the issue No.2 above, we have already held that TPC and BEST are parallel distribution licensee in the South Bombay Area.

27. The appellant has sought to rely on the expression “Save as otherwise provided in this Act” in Section 43(1) of the Act to read into Section 43(1) the exception for local authorities provided for in Section 42(3). The TPC has successfully refuted this submission by pointing out that these words in Section 43(1) are required to be read in the context in which they appear. The said words were inserted in the section by way of an amendment to the Act in 2007. An “Explanation” to Section 43(1) was also added by the same amendment providing that “application” by a consumer in Section 43(1) means an application complete in all respects along with documents showing payment of necessary charges and other compliances, meaning thereby that the obligation of the distribution licensee to supply within the specified time period will begin only after it has received such completed application by the applicant. Further, Sections 45 and 46 provide for the distribution licensee’s powers to recover charges for electricity supplied and the expenditure incurred in providing electric line or plant for giving supply. Section 47 provides that the distribution licensee may require any person demanding electricity supply from him to give a reasonable security, failing which the distribution licensee may refuse to give supply of electricity to such consumer. We are of the opinion that it is in this context that

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the expression “save as otherwise provided in this Act” in Section 43 (1) is to be construed.

28. Before we part with we would like to make it clear that there is a dispute between TPC and R-infra) (respondent No.9) which is the subject matter of Civil Appeal Nos. 4667-68/2013. R Infra is a distribution licensee in suburban Bombay where TPC is also a licensee. Both supply electricity to different consumers. Dispute is between them with regard to cross subsidiary surcharge (CSS) payable by consumer taking supply from TPC or R Infra network. We make it clear, by way of abundant caution, that we have not touched upon the said dispute and obviously so as even otherwise the subject matter in the instance case is totally different. Therefore Civil Appeal Nos.4667- 68/2013 shall be decided on its own merits.

29. We, thus, do not find any merit in any of the contentions of the appellant. As a consequence, this appeal fails and is hereby dismissed with cost thereby affirming the order of the Appellate Tribunal.

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T.M. Prakash and Ors. vs. The District Collector and The Superintending Engineer, Tamil Nadu Electricity Board (27.09.2013 - MADHC) : MANU/TN/2091/2013

JUDGMENT

The petitioners have sought for a Mandamus, directing the respondents to provide electricity connection to them, based on Indemnity Bond.

2. It is the case of the petitioners that they are residing in Government poromboke lands, for the past 2 centuries and about 180 members are engaged in Laundry work. They have put up huts in the working place. Their children are studying in Schools and Colleges, but they do not have electricity connection. When they have made applications to the respondents, to provide electricity supply, the Superintending Engineer, Tamil Nadu Electricity Board, has directed them to obtain "No Objection Certificates" from the District Collector, Tiruvannamalai, the 1st respondent herein. Therefore, they made a representation, dated 11.08.2010 to the 1st respondent, for grant of No Objection Certificate. Another representation, dated 31.05.2011, was also made to the Superintending Engineer, Tamil Nadu Electricity Board, Tiruvannamalai, 2nd respondent herein, to provide electricity. But the 2nd respondent has rejected the said request on 07.06.2011, citing irrelevant reasons.

3. On the above pleadings, Mr.Pari, learned counsel for the petitioners submitted that the petitioners are residing in Periyar Nagar, Tiruvannamalai District, and that they have been issued with Ration Cards by the Civil Supplies Corporation. Attention of this Court was also invited to the property tax receipts issued by Tiruvannamalai Municipality, for the years 2011-12, Voter's I.D., issued by the Election Commission of India, to prove that the petitioners are residing at Polur Road, 7th Street, Thiruvannamalai District.

4. Referring to [Section 43](#) of the Electricity Act, 2003, which mandates the 2nd respondent to provide electricity supply, to an occupier of the land or premises and Regulation 27(12) of the Tamil Nadu Electricity Distribution Code, 2004, Mr.Pari, learned counsel for the petitioner submitted that a duty is cast upon the 2nd respondent to provide electricity supply, upon receipt of applications, along with an undertaking from the petitioners, as provided for.

5. Referring to the memo, dated 29.11.2005, of the Additional Chief Engineer, TEDC, Tiruvannamalai-4, stating that in respect of poromboke land, inside/outside Girivalam path, there is no need to provide electricity service connection, till a

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separate decision is taken, by the Committee, after consulting Municipal authorities, Panchayat authorities and Revenue Department, he submitted that the said memo cannot override the statutory provision and the Regulations framed thereunder, and indirectly curtail the rights of the petitioners, under the Statutory provisions, which includes the Distribution and Supply Codes, to obtain electricity supply, for living.

6. Learned counsel for the petitioners further submitted that when the Statute contemplates supply of electricity to even persons, in occupation of Government poromboke lands, the restriction imposed by the authorities, on the basis of the abovesaid memo, runs contrary to the [Electricity Act](#), 2003 and Tamil Nadu Electricity Distribution Code, 2004. He further submitted that though the petitioners are residing in the abovesaid place, for long number of years, patta has not been given, despite request.

7. In this context, learned counsel for the petitioners invited the attention of this Court to the proceedings of the Tahsildar, Tiruvannamalai District, dated 23.10.1992, addressed to the Municipal Commissioner, Tiruvannamalai Municipality and submitted that in the year 1992, the Tahsildar, has requested the Commissioner, Tiruvannamalai Municipality, to send a resolution, for grant of house site pattas, to the laundry workers, in respect of Survey Nos.95, 96, 10, 520 and 521, Chettikulam Medu, Tiruvannamalai. Endorsement of the Jamabanthi Officer cum Revenue Divisional Officer, Tiruvannamalai, on the request, dated 11.05.1992, made by the 1st petitioner, has also been referred.

8. Learned counsel for the petitioners also referred to another proceedings in Na.Ka.No.A5/68703/91, dated 19.12.1991 of the District Collector, Tiruvannamalai, by which, a reply has been sent to the 1st petitioner, General Secretary, Laundry Workers Welfare Association, 37, Polur Road, Tiruvannamalai, to the effect that, for issuance of house site pattas, action has been taken to sub-divide the lands in Survey Nos.95, 96, 10, 520 and 521, Chettikulamedu, Tiruvannamalai District. On the basis of the abovesaid documents, he submitted that laundry workers have been in possession and enjoyment of the properties mentioned in the writ petition, for a very long time and that they cannot be treated as encroachers.

9. Referring to the Display Board erected in Thanthai Periyar Nagar, Tiruvannamalai, earmarking that lands have been allotted to the beneficiaries of laundry workers and that nobody should encroach upon the said land, learned counsel for the petitioners submitted that it is the District Administration, which

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has been delaying assignment of lands to the petitioners, despite the proceedings, stated supra. According to him, the State Government have allotted funds to construct "Salavaithurai" and that the petitioners have also contributed monetarily, for the construction and that electric connection has also been given to the said "Salavaithurai". Current Consumption Charges are being paid by the local administration, every month.

10. Learned counsel for the petitioners further submitted that when the matter of evicting the encroachers, in and around Girivala Pathai, came up before the Hon'ble Supreme Court in S.L.P.Nos.12443 to 12447 of 2001, the same has been disposed of on 03.10.2005, at that time, accepting the affidavit filed by the Municipal Commissioner, Tiruvannamalai, to take suitable action to prevent further encroachments on both sides of Girivala Pathai.

11. It is also the contention of the learned counsel for the petitioners that subsequently, on 13.09.2008, the Committee constituted for monitoring the activities, in and around Grivalam path, has passed a resolution to file a modification affidavit before the Hon'ble Supreme Court to assign pattas, to those, who are in occupation of Government poromboke lands, as per the then Government guidelines. But then, no steps have been taken.

12. Placing reliance on a decision of this Court in A.Muthusamy v. The Assistant Engineer, TNEB reported in 2009 (4) CTC 606, learned counsel for the petitioners submitted that electricity service connection can be given to persons, who are in occupation of premises, even if their ownership is under dispute, provided they furnish a Indemnity Bond and pay necessary fee. He also submitted that the electricity supply can be given to those, who reside in Poromboke lands, as per the Distribution Code and the directives of Government, issued from time to time.

13. Placing reliance on a decision of this Court in [Balasubramanian v. Ramaiah Thondaman](#) reported in 2007 (13) SCC 182, learned counsel for the petitioners further submitted that grant of patta cannot be equated to that of a document of title and at the most, patta proceedings and the ultimate order by the competent authority, granting patta may be used as a piece of evidence to show that the subject matter property is with the grantee. According to him, when proceedings for issuance of patta had already been issued, in respect of Survey Nos.95, 96, 10, 520 and 521, Chettikulamedu, Tiruvannamalai District, the Government have to grant patta, recognising their long possession and occupation of the properties at Polur Road. For the reasons stated supra, he prayed for a Mandamus.

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14. The Superintending Engineer, Tiruvannamalai Electricity Distribution Circle, TANGEDCO, has filed a counter affidavit. Reiterating the averments made therein, Mr.G.Vasudevan, learned counsel appearing for the Electricity Board submitted that in the wake of the Government of India's decision, to bring the entire Girivalam Path in Tiruvannamalai, under the control of Archeological Survey India's jurisdiction, action was taken and several Writ Petitions were filed before this Court. Finally, the Apex Court, accepting the affidavit filed by the Municipal Commissioner, Tiruvannamalai, passed an order in S.L.P.Nos.12443 to 12447 of 2001, dated 03.10.2005, directing the District Administration, Tiruvannamalai and Tiruvannamalai Municipality, to take suitable action to prevent further encroachments on both sides of Girivalam Path.

15. Learned counsel appearing for the Electricity Board further submitted that with a view to implement the orders of the Hon'ble Supreme Court, dated 03.10.2005, a meeting was conducted on 23.11.2005, at the Tiruvannamalai District Collectorate, in which, eminent persons of various walks of life, officials of various Government Departments, including Tamil Nadu Electricity Board, in Tiruvannamalai Town, participated and that the meeting was presided over by Hon'ble Justice Mr.Venkataswamy (Retired). In the said meeting, on the basis of the views expressed by various participants and with a view to prevent further encroachments on both sides of Girivalam path, Tamil Nadu Electricity Board has been instructed not to effect new service connections and also, to disconnect all electricity service connections effected on both sides of Girivalam path.

16. Learned counsel for the Tamil Nadu Electricity Board further submitted that in pursuance of the decision, stated supra, new service connections are not effected to the premises, situated along side the areas, between the Hill and Girivalam path. When the petitioners have approached the Office of the Superintending Engineer, Tamil Nadu Electricity Board, Tiruvannamalai, they were orally informed that the constructions put up by them in poramboke lands, fall between the Hill and Girivalam path and in view of the decision taken in the meeting held on 23.11.2005, in which, Tamil Nadu Electricity Board had also participated, service connections cannot be effected.

17. Learned Counsel for the Board further submitted that when the 1st petitioner has sent a written representation, dated 31.05.2011, to the Assistant Engineer, O & M, Town, East, Tiruvannamalai, requesting to effect service connection to his premises, a reply, dated 07.06.2011, has been given, stating that since the 1st petitioner's premises, is situated in Periyar Nagar, which falls between the Hill and Girivalam path, service connection cannot be effected, as per the directives of the

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Hon'ble Supreme Court. The 1st petitioner was also informed that service connection could be effected to his premises, only if he obtains a "No Objection Certificate" from the District Administration.

18. Learned counsel for the Tamil Nadu Electricity Board further submitted that though the petitioner has stated in his affidavit that he has submitted a representation, dated 19.05.2012, to the District Collector, Tiruvannamalai, seeking No Objection Certificate, for getting service connection, the Superintending Engineer, Tamil Nadu Electricity Board, Tiruvannamalai, is not aware of the outcome of the same. According to him, inspite of receiving the reply, dated 07.06.2011, sent by the Assistant Engineer, (O & M), Town, East, Tiruvannamalai, the petitioners have filed the present writ petitions, with incorrect averments.

19. Referring to Regulation 27(12) of the Tamil Nadu Distribution Code, 2004, learned counsel for the Board further submitted that unless and until, a No Objection Certificate is produced from the Revenue Authorities, Electricity supply cannot be given. He strongly relied on the decision of the Supreme Court in S.L.P.Nos.12443 to 12447 of 2001 and the decision taken in the Joint Action Committee meeting held on 23.11.2005. For the abovesaid reasons, he prayed for dismissal of the writ petition.

Heard the learned counsel for the parties and perused the materials available on record.

20. Before advertng to the facts of this case, at the outset, this Court deems it consider, as to whether, the [Electricity Act](#), 2003 and the Tamil Nadu Distribution Code, 2004, framed thereunder, in exercise of the powers conferring under [Sections 46](#) and [86](#) of the Electricity Act, 2003, casts a mandatory duty, on the licensee to provide electricity supply to a owner or occupier of a premises, or whether it is only directory.

21. [Section 43](#) of the Electricity Act, 2003, deals with the duty to supply on request and the said Section reads as follows:

"(1) Save as otherwise provided in tis 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 :

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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.

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1) :

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default."

22. In exercise of the powers conferring under [Sections 46](#) and [86](#) of the Electricity Act, 2003, the State Electricity Regulatory Commission has framed the Tamil Nadu Electricity Distribution Code, 2004. Regulation 27 of the Tamil Nadu Electricity Distribution Code, 2004 deals with requisitions for supply of energy and Clause 12 of the said Regulation, relevant for this case, is extracted hereunder:

"(12) Supply shall be given in poromboke land on production of-

(i) No Objection Certificate obtained from the Officer (not below the rank of Deputy Tahsildar) or

(ii) Where such No Objection Certificate could not be produced by the applicant for service connection the following undertaking shall be furnished:-

(1) "I am aware that I am liable to be evicted and for supply disconnection at any time, if the lands are required by the Government and/or any dispute arises at a later date and that electricity supply given in this regard will not confer any claim on ownership of the land.

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(2) I am aware that the above undertaking shall not confer permanent and full right to the ownership of the land."

Let me consider some of the decisions of the Hon'ble Apex Court, as to how a provision has to be understood, ie., as to whether, it is mandatory or directory.

23. As per [Section 43](#) of the Electricity Act, on an application made by the owner or occupier of any premises, a duty is cast upon the licensee to supply of electricity to such premises, within one month, after receipt of the application requiring such supply. Sub-Section (3) of [Section 4](#), states that if the distribution licensee fails to supply the electricity, within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.

24. Crawford on 'Statutory Construction' (Ed. 1940, [Art. 261](#), p. 516) sets out the following passage from an American case approvingly as follows:

"The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other."

25. [In State of U.P., v. Baburam Upadhyia](#) reported in AIR 1961 SC 751, the Hon'ble Mr. Justice Subbarao, has observed that, "the Court may consider inter alia, the nature and design of the statute, and the consequences which would follow from construing it the one way or the other; the impact of other provisions whereby the necessity of complying with the provisions in question is avoided; the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions; the fact that the non-compliance with the provisions is or is not visited by some penalty; the serious or the trivial consequences, that flow therefrom; and above all, whether the object of the legislation will be defeated or furthered".

In the same judgment, the Hon'ble Judge has further held that when a statute uses the word 'shall', prima facie it is mandatory but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute.

26. The Hon'ble Mr. Justice Hidayatullah, in [M/s.Sainik Motors v. State of Rajasthan](#) reported in AIR 1961 SC 1480, observed that ordinarily though the word

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shallis mandatory, it can be interpreted as directory if the context and intention otherwise demands.

27. [In P.T.Rajan v. T.P.M.Sahir](#) reported in 2003 (8) SCC 498, the following conclusions are relevant, 45. A statute as is well known must be read in the text and context thereof. Whether a statute is directory or mandatory would not be dependant on the user of the words shall or may. Such a question must be posed and answered having regard to the purpose and object it seeks to achiev

47. The construction of a statute will depend on the purport and object for which the same had been used.

49. Furthermore, a provision in a statute which is procedural in nature although employs the word shallmay not be held to be mandatory if thereby no prejudice is caused.

28. [In Ashok Lanka v. Rishi Dixit](#) reported in 2005 (5) SCC 598, para No.53 is relevant, which reads as under:-

53. The question as to whether a statute is mandatory or directory would depend upon the statutory scheme. It is now well known that use of the expression shall or mayby itself is not decisive. The court while construing a statute must consider all relevant factors including the purpose and object the statute seeks to achieve. (see [P.T.Rajan v. T.P.M.Sahir](#) and [U.P.SEB v. Shiv Mohan Singh](#)).

29. [In Delhi Airtech Services \(P\) Ltd., v. State of U.P.](#), reported in 2011 (9) SCC 354, one of the substantial questions of law framed by the Hon'ble Supreme Court of India, was whether [Section 17\(3-A\) of the Land Acquisition Act](#), 1894, is mandatory or directory and whether non-compliance of the same, would vitiate the entire land acquisition proceedings, even when the land had already vested in the State, in terms of [Section 17\(1\)](#) of the Act. Due to the divergent views expressed by the Hon'ble Judges, the matter has been referred to a larger Bench. However, the decisions considered by Hon'ble Mr. Justice Swatanter Kumar, are worth consideration, in this case, 117. In 'Principles of Statutory Interpretation', 12th Edition, 2010, Justice G.P. Singh, at page 389 states as follows:

As approved by the Supreme Court:

"The question as to whether a statute is mandatory of directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed.

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The meaning and intention of the legislation must govern, and these are to be ascertained not only from the phraseology of the provision, but also by considering its nature, its design and the consequences which would follow from construing it the one way or the other"

"For ascertaining the real intention of the Legislature", points out Subbarao, J, "the court may consider inter alia, the nature and design of the statute, and the consequences which would follow from construing it the one way or the other; the impact of the other provisions whereby the necessity of complying with the provisions in question is avoided; the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions; the fact that the non-compliance with the provisions is or is not visited by some penalty; the serious or the trivial consequences, that flow therefrom; and above all, whether the object of the legislation will be defeated or furthered".

If object of the enactment will be defeated by holding the same directory, it will be construed as mandatory, whereas if by holding it mandatory, serious general inconvenience will be created to innocent persons without very much furthering the object of enactment, the same will be construed as directory. But all this does not mean that the language used is to be ignored, but only that the prima facie inference of the intention of the Legislature arising from the words used may be displaced by considering the nature of the enactment, its design and the consequences flowing from alternative construction. Thus, the use of the words 'as nearly as may be' in contrast to the words 'at least' will prima facie indicate a directory requirement, negative words a mandatory requirement 'may' a directory requirement and 'shall' a mandatory requirement."

118. Maxwell, in Chapter 13 of his 12th Edition of 'The Interpretation of Statutes', used the word 'imperative' as synonymous with 'mandatory' and drew a distinction between imperative and directory enactments, at pages 314-315, as follows:

"Passing from the interpretation of the language of statutes, it remains to consider what intentions are to be attributed to the legislature on questions necessarily arising out of its enactments and on which it has remained silent."

The first such question is: when a statute requires that something shall be done, or done in a particular manner or form, without expressly declaring what shall be the consequence of non-compliance, is the requirement to be regarded as imperative (or mandatory) or forms prescribed by the statute have been regarded as essential to the act or thing regulated by it, and their omission has been held fatal to its validity.

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In others, such prescriptions have been considered as merely directory, the neglect of them involving nothing more than liability to a penalty, if any were imposed, for breach of the enactment. "An absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially".

It is impossible to lay down any general rule for determining whether a provision is imperative or directory. "No universal rule," said Lord Campbell L.C., "can be laid down for the construction of statutes, as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of Courts of Justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed."

And Lord Penzance said:

"I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject matter; consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act; and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory."

119. In a recent judgment of this Court, [May George v. Tahsildar](#) [(2010) 13 SCC 98], the Court stated the precepts, which can be summed up and usefully applied by this Court, as follows:

- (a) While determining whether a provision is mandatory or directory, somewhat on similar lines as afore-noticed, the Court has to examine the context in which the provision is used and the purpose it seeks to achieve;
- (b) To find out the intent of the legislature, it may also be necessary to examine serious general inconveniences or injustices which may be caused to persons affected by the application of such provision;
- (c) Whether the provisions are enabling the State to do some things and/or whether they prescribe the methodology or formalities for doing certain things;
- (d) As a factor to determine legislative intent, the court may also consider, inter alia, the nature and design of the statute and the consequences which would flow from construing it, one way or the other;

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(e) It is also permissible to examine the impact of other provisions in the same statute and the consequences of non-compliance of such provisions;

(f) Physiology of the provisions is not by itself a determinative factor. The use of the words 'shall' or 'may', respectively would ordinarily indicate imperative or directory character, but not always.

(g) The test to be applied is whether non-compliance with the provision would render the entire proceedings invalid or not.

(h) The Court has to give due weightage to whether the interpretation intended to be given by the Court would further the purpose of law or if this purpose could be defeated by terming it mandatory or otherwise.

120. Reference can be made to the following paragraphs of May George (supra) :

"16. [In Dattatraya Moreshwar v. The State of Bombay and Ors.](#) [AIR 1952 SC 181], this Court observed that law which creates public duties is directory but if it confers private rights it is mandatory. Relevant passage from this judgment is quoted below:

'7.....It is well settled that generally speaking the provisions of the statute creating public duties are directory and those conferring private rights are imperative. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of legislature, it has been the practice of the Courts to hold such provisions to be directory only, the neglect of them not affecting the validity of the acts done.'

17. A Constitution Bench of this Court in [State of U.P. v. Babu Ram Upadhyia](#) [AIR 1961 SC 751] decided the issue observing:

'29.....For ascertaining the real intention of the Legislature, the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences

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that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered.'

22. [In B.S.Khuna and Ors. v. Municipal Corporation of Delhi and Ors.](#) [(2000) 7 SCC 679], this Court considered the provisions of the Delhi Municipal Corporation Act, 1957, particularly those dealing with transfer of immovable property owned by the Municipal Corporation. After considering the scheme of the Act for the purpose of transferring the property belonging to the Corporation, the Court held that the Commissioner could alienate the property only on obtaining the prior sanction of the Corporation and this condition was held to be mandatory for the reason that the effect of non-observance of the statutory prescription would vitiate the transfer though no specific power had been conferred upon the Corporation to transfer the property.

23. [In State of Haryana and Anr. v. Raghubir Dayal](#) [(1995) 1 SCC 133], this Court has observed as under:

'5. The use of the word 'shall' is ordinarily mandatory but it is sometimes not so interpreted if the scope of the enactment, or consequences to flow from such construction would not so demand. Normally, the word 'shall' prima facie ought to be considered mandatory but it is the function of the Court to ascertain the real intention of the legislature by a careful examination of the whole scope of the statute, the purpose it seeks to serve and the consequences that would flow from the construction to be placed thereon. The word 'shall', therefore, ought to be construed not according to the language with which it is clothed but in the context in which it is used and the purpose it seeks to serve. The meaning has to be described to the word 'shall'; as mandatory or as directory accordingly. Equally, it is settled law that when a statute is passed for the purpose of enabling the doing of something and prescribes the formalities which are to be attended for the purpose, those prescribed formalities which are essential to the validity of such thing, would be mandatory. However, if by holding them to be mandatory, serious general inconvenience is caused to innocent persons or general public, without very much furthering the object of the Act, the same would be construed as directory.' "

121. The Legislature in [Sections 11A](#) and [17\(3A\)](#) of the Act has used the word 'shall' in contradistinction to the word 'may' used in some other provisions of the Act. This also is a relevant consideration to bear in mind while interpreting a provision.

122. The distinction between mandatory and directory provisions is a well accepted norm of interpretation. The general rule of interpretation would require the word to

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be given its own meaning and the word 'shall' would be read as 'must' unless it was essential to read it as 'may' to achieve the ends of legislative intent and understand the language of the provisions. It is difficult to lay down any universal rule, but wherever the word 'shall' is used in a substantive statute, it normally would indicate mandatory intent of the legislature.

123. Crawford on 'Statutory Construction' has specifically stated that language of the provision is not the sole criteria; but the Courts should consider its nature, design and the consequences which could flow from construing it one way or the other.

124. Thus, the word 'shall' would normally be mandatory while the word 'may' would be directory. Consequences of non-compliance would also be a relevant consideration. The word 'shall' raises a presumption that the particular provision is imperative but this prima facie inference may be rebutted by other considerations such as object and scope of the enactment and the consequences flowing from such construction.

125. Where a statute imposes a public duty and proceeds to lay down the manner and timeframe within which the duty shall be performed, the injustice or inconvenience resulting from a rigid adherence to the statutory prescriptions may not be a relevant factor in holding such prescription to be only directory. For example, when dealing with the provisions relating to criminal law, legislative purpose is to be borne in mind for its proper interpretation. It is said that the purpose of criminal law is to permit everyone to go about their daily lives without fear of harm to person or property and it is in the interests of everyone that serious crime be effectively investigated and prosecuted. There must be fairness to all sides. (Attorney General's Reference (No. 3 of 1999) (2001) 1 All ER 577 Reference : Justice G.P. Singh on 'Principles of Statutory Interpretation', 11th Edition 2008). In a criminal case, the court is required to consider the triangulation of interests taking into consideration the position of the accused, the victim and his or her family and the public.

126. The basic purpose of interpretation of statutes is further to aid in determining either the general object of the legislation or the meaning of the language in any particular provision. It is obvious that the intention which appears to be most in accordance with convenience, reason, justice and legal principles should, in all cases of doubtful interpretation, be presumed to be the true one. The intention to produce an unreasonable result is not to be imputed to a statute. On the other hand, it is not impermissible, but rather is acceptable, to adopt a more reasonable

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construction and avoid anomalous or unreasonable construction. A sense of the possible injustice of an interpretation ought not to induce Judges to do violence to the well settled rules of construction, but it may properly lead to the selection of one, rather than the other, of the two reasonable interpretations. In earlier times, statutes imposing criminal or other penalties were required to be construed narrowly in favour of the person proceeded against and were more rigorously applied. The Courts were to see whether there appeared any reasonable doubt or ambiguity in construing the relevant provisions. Right from the case of [R. v. Jones](#), ex p. Daunton [1963(1) WLR 270], the basic principles state that even statutes dealing with jurisdiction and procedural law are, if they relate to infliction of penalties, to be strictly construed; compliance with the procedures will be stringently exacted from those proceedings against the person liable to be penalized and if there is any ambiguity or doubt, it will be resolved in favour of the accused/such person. These principles have been applied with approval by different courts even in India. Enactments relating to procedure in courts are usually construed as imperative. A kind of duty is imposed on court or a public officer when no general inconvenience or injustice is caused from different construction. A provision of a statute may impose an absolute or qualified duty upon a public officer which itself may be a relevant consideration while understanding the provision itself. (See 'Maxwell on The Interpretation of Statutes', 12th Edition by P. St. J. Langan and R. v. Bullock, [(1964)1 QB 481])

127. One school of thought has accepted that the word 'shall' raises a presumption that the particular provision is imperative, while the other school of thought believes that such presumption is merely prima facie, subject to rebuttal by the other considerations mentioned above. For example, in *M/s. Sainik Motors, Jodhpur & Others v. The State of Rajasthan* [AIR 1961 SC 1480], the word 'shall' has been held to be merely directory.

128. G.P. Singh in the same edition of the above-mentioned book, at page 409, stated that the use of the word 'shall' with respect to one matter and use of word 'may' with respect to another matter in the same section of a statute will normally lead to the conclusion that the word 'shall' imposes an obligation, whereas the word 'may' confers a discretionary power. But that by itself is not decisive and the Court may, having regard to the context and consequences, come to the conclusion that the part of the statute using 'shall' is also directory. It is primarily the context in which the words are used which will be of significance and relevance for deciding this issue.

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129. Statutes which encroach upon rights, whether as regards person or property, are subject to strict construction in the same way as penal Acts. It is a recognized rule that they should be interpreted, if possible, so as to respect such rights and if there is any ambiguity, the construction which is in favour of the freedom of the individual should be adopted. (See 'Maxwell on The Interpretation of Statutes', 12th Edition by P. St. J. Langan)

130. This Court in the case of Devinder Singh (supra) held that the [Land Acquisition Act](#) is an expropriatory legislation and followed the case of [Hindustan Petroleum Corporation v. Darius Shapur Chennai and Ors.](#) [(2005) 7 SCC 627]. Therefore, it should be construed strictly. The Court has also taken the view that even in cases of directory requirements, substantial compliance with such provision would be necessary.

131. If I analyze the above principles and the various judgments of this Court, it is clear that it may not be possible to lay down any straitjacket formula, which could unanimously be applied to all cases, irrespective of considering the facts, legislation in question, object of such legislation, intendment of the legislature and substance of the enactment. In my view, it will always depend upon all these factors as stated by me above. Still, these precepts are not exhaustive and are merely negative. There could be cases where the word 'shall' has been used to indicate the legislative intent that the provisions should be mandatory, but when examined in light of the scheme of the Act, language of the provisions, legislative intendment and the objects sought to be achieved, such an interpretation may defeat the very purpose of the Act and, thus, such interpretation may not be acceptable in law and in public interest.

132. Keeping in mind the language of the provision, the Court has to examine whether the provision is intended to regulate certain procedure or whether it vests private individuals with certain rights and levies a corresponding duty on the officers concerned. The Court will still have to examine another aspect, even after holding that a particular provision is mandatory or directory, as the case may be, i.e., whether the effect or impact of such non-compliance would invalidate or render the proceedings void ab initio or it would result in imposition of smaller penalties or in issuance of directions to further protect and safeguard the interests of the individual against the power of the State. The language of the statute, intention of the legislature and other factors stated above decide the results and impacts of non-compliance in the facts and circumstances of a given case, before the Court can declare a provision capable of such strict construction, to term it as absolutely mandatory or directory.

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30. Now, let me consider some of the decisions of the Hon'ble Apex Court on the scope and effect of regulations, framed by the competent authorities under the Act.

31. [In Sukhdev Singh v. Bagatram Sardar Singh Raghuvanshi](#) reported in 1975 (1) SCC 421, the Supreme Court, while explaining the scope and characteristics of the Regulations framed under the [Companies Act](#), at Paragraphs 10 to 25, held as follows:

10. The contentions on behalf of the State are these. Regulations are framed under powers given by the statute affecting matters of internal management. Regulations do not have a statutory binding character. Terms and conditions of employees as laid down in the regulations are not a matter of statutory obligations. Regulations are binding not as law but as contract. Regulations have no force of law. Regulations provide the terms and conditions of employment and thereafter the, employment of each person is contractual.

11. The contentions on behalf of the employees are these. Regulations are made under the statute. The origin and source of the power to make regulations is statutory. Regulations are self binding in character. Regulations have the force of law inasmuch as the statutory authorities have no right to make any departure from the regulations.

12. Rules, Regulations, Schemes, Bye-laws, orders made under statutory powers are all comprised in delegated legislation. The need for delegated legislation is that statutory rules are framed with care and minuteness when the statutory authority making the rules is after the coming into force of the Act in a better position to adapt the Act to special circumstances. Delegated legislation permits utilisation of experienced and consultation with interests affected by the practical operation of statutes.

13. In England the Statutory Instruments (Confirmatory Powers) Order, 1947 contemplates orders in Council or other instruments which are described as orders. The Rules Publication Act 1893 in England defines "rule making authority" to include every authority authorised to make any statutory rules. Statutory rules are defined there as rules, regulations or by-laws made under any Act of Parliament, in England. Orders are excluded from the statutory definition of statutory rules as being administrative. In England regulation is the term most popularly understood and the one favoured by the Committee on Ministers, Powers, who suggested that regulations should be used for substantive, law and rules for procedural law, while orders should be reserved to describe the exercise of executive power or the taking

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of a judicial or quasi judicial decision (See Craies on Statute Law, 7th Ed. at p. 303). The validity of statutory instruments is generally a question of vires, i.e., whether or not the enabling power has been exceeded or otherwise wrongfully exercised.

14. Subordinate legislation is made by a person or body by virtue of the powers conferred by a statute. By-laws are made in the main by local authorities or similar bodies or by statutory or other undertakings for regulating the conduct of persons within their areas or resorting to their undertakings. Regulations may determine the class of cases in which the exercise of the statutory power by any such authority constitutes the making of statutory rule.

15. The words "rules" and "regulations" are used in an Act to limit the power of the statutory authority. The powers of statutory bodies are derived, controlled and restricted by the statutes which create them and the rules and regulations framed thereunder. Any action of such bodies in excess of their power or in violation of the, restrictions placed on their powers is ultra vires. The reason is that it goes to the root of the power of such corporations and the declaration of nullity is the only relief that is granted to the aggrieved party.

16. In England subordinate legislation has, if validly made, the full force and effect of a statute, but it differs from a statute in that its validity whether as respects form or substance is normally open to challenge in the, Courts.

17. Subordinate legislation has, if validly made, the, full force, and effect of a statute. That is so whether or not the statute under which it is made provides expressly that it is to have effect as if enacted therein. If an instrument made in the exercise of delegated powers directs or forbids the doing of a particular thing the result of a breach thereof is, in the absence of provision to the contrary, the same as if the command or prohibition had been contained in the enabling statute itself. Similarly, if such an instrument authorises or requires the doing of any act, the principles to be applied in determining whether a person injured by the act has any right of action in respect of the injury are not different from those applicable whether damage results from an act done under the direct authority of a statute, *Re Langlois and Biden*, (1891) 1 Q.B. 349 and *Kruse v. Johnson*, (1898) 2 Q.B. 91.

18. The authority of a statutory body or public administrative body or agency ordinarily includes the power to make or adopt rules and regulations with respect to matters within the province of such body provided such rules and regulations are not inconsistent with the relevant law. In America a "public agency" has been defined as an agency endowed with governmental or public functions. It has been

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held that the authority to act with the sanction of Government behind it determines whether or not a governmental agency exists. The rules and regulations comprise those actions of the statutory or public bodies in which the legislative element predominates. These statutory bodies cannot use the power to make rules and regulations to enlarge the powers beyond the scope intended by the legislature. Rules and regulations made by reason of the specific power conferred on the statute to make rules and regulations establish the pattern of conduct to be followed. Rules are duly made relative to the subject matter on which the statutory bodies act subordinate to the terms of the statute under which they are promulgated. Regulations are in aid of the enforcement of the provisions of the statute. Rules and regulations have been distinguished from orders or determination of statutory bodies in the sense that the orders or determination are actions in which there is more of the judicial function and which deal with a particular present situation. Rules and regulations on the other hand are actions in which the legislative element predominates.

19. The process of legislation by departmental regulations saves time and is intended to deal with local variations and the power to legislate by statutory instrument in the form of rules and regulations is conferred by Parliament and can be taken away by Parliament. The legislative function is the making of rules. [Some Acts](#) of Parliament decide particular issues and do not lay down general rules.

20. The justification for delegated legislation is threefold. First, there is pressure on parliamentary time. Second, the technicality of subjectmatter necessitates prior consultation and expert advice on interests concerned. Third, the need for flexibility is established because it is not possible to foresee every administrative difficulty that may arise to make adjustment that may be called for after the statute has begun to operate. Delegated legislation fills those needs.

21. The characteristic of law is the manner and procedure adopted in many forms of subordinate legislation. The authority making rules and regulation must specify the source of the rule and regulation making authority. To illustrate, rules are always framed in exercise of the specific power conferred by the statute to make rules. Similarly, regulations are framed in exercise of specific power conferred by the statute to make regulations. The essence of law is that it is made by the law-makers in exercise of specific authority. The vires of law is capable of being challenged if the power is absent or has been exceeded by the authority making rules or regulations.

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22. Another characteristic of law is its content. Law is a rule of general conduct while administrative instruction relates to particular person. This may be illustrated with reference to regulations under the Acts forming the subject matter of these appeals. [The Life Insurance Corporation Act](#) as well as the [Industrial Finance Corporation Act](#) confers power on the Corporation to make regulations as to the method of recruitment of employees and the terms and conditions of service of such employees or agents. The Oil and [Natural Gas Commission Act](#) under [section 12](#) states that the functions and terms and conditions of service of employees shall be such as may be provided by regulations under the Act. Regulations under the 1959 Act provide inter alia the terms and conditions of appointment and scales of pay of the employees of the Commission. The regulations containing the terms and conditions of appointment are imperative. The administrative instruction is the entering into contract with a particular person but the form and content of the contract is prescriptive and statutory.

23. The noticeable feature is that these, statutory bodies have no free hand in framing the conditions and terms of service of their employees. These statutory bodies are bound to apply the terms and conditions as laid down the regulations. The statutory bodies are not free to make such terms as they think fit and proper. Regulations prescribe the terms of appointment, conditions of service and procedure for dismissing employees. These regulations in the statutes are described as "status fetters on freedom of contract". The Oil and Natural Gas [Commission Act](#) in [section 12](#) specifically enacts that the terms and conditions of the employees may be such as may be provided by regulations. There is a legal compulsion on the Commission to comply with the regulations. Any breach of such compliance would be a breach of the regulations which are statutory provisions. In other statutes under consideration, viz., the [Life Insurance Corporation Act](#) and the [Industrial Finance Corporation Act](#) though there is no specific provision comparable to [section 12](#) of the 1959 Act the terms and conditions of employment and conditions of service are provided for by regulations. These regulations are not only binding on the authorities but also on the public.

24. Broadly stated, the distinction between rules and regulations on the one hand and administrative instructions on the other is that rules and regulations can be made only after reciting the source of power whereas administrative instructions are not issued after reciting source of power. Second the executive power of a State is not authorised to frame rules under [Article 162](#). This Court held that the Public Works Department Code was not a subordinate legislation ([See G.J.Fernandes v. State of Mysore & Ors.](#), (1967) 3 S.C.R. 636). The, rules under [Article 309](#) on the

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other hand constitute not only the constitutional rights of relationship between the State and the Government servants but also establish that there must be specific power to frame rules and regulations.

25. The Additional Solicitor General submitted that regulations could not have the force of law because these regulations are similar to regulations framed by a company incorporated under the [Companies Act](#). The fallacy lies in equating rules and regulations of a company with rules and regulations framed by a statutory body. A company makes rules and regulations in accordance with the provisions of the [Companies Act](#). A statutory body on the other hand makes rules and regulations by and under the powers conferred by the Statutes creating such bodies. Regulations in Table-A of the Companies Act are to be adopted by a company. Such adoption is a statutory requirement.

In the same paragraph, the Apex Court made the distinction in respect of companies incorporated under the Act and the companies, which are creatures of statutes.

"A company cannot come into existence unless it is incorporated in Accordance with the provisions of the [Companies Act](#). A company cannot exercise powers unless the company follows the statutory provisions. The provision in the [Registration Act](#) requires registration of instruments. The provisions in the [Stamp Act](#) contain provisions for stamping of documents. The non-compliance with statutory provisions will render a document to be of no effect. The source of the power for making rules and regulations in the case of Corporation created by a statute is the statute itself. A company incorporated under the [Companies Act](#) is not created by the [Companies Act](#) but comes into existence in accordance with the provisions of the Act. It is not a statutory body because it is not created by the statute. It is a body created in accordance with the provisions of the statute.

32. [In Peerless General Finance and Investment Co. Ltd., v. Reserve Bank of India](#) reported in 1992 (2) SCC 343, the Supreme Court, having considered the regulations issued by the Reserve Bank of India, at Paragraphs 52 and 53, held that the regulations issued under the Chapter 3-B of the Reserve Bank of India Act, 1934, are statutory regulations. While saying so, the Supreme Court also considered a decision made in [State Bank of U.P., v. Babu Ram Upadhy](#) reported in 1961 (2) SCR 679 = AIR 1961 SC 751, where the Apex Court held that rules made under a statute must be treated, for all the purposes of construction or obligations, exactly, as if they were in that Act and are to the same effect, as if they were contained in the Act and are to be judicially noticed, for all purposes or construction or obligations.

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33. In Peerless General Finance's case (stated supra), the Supreme Court also took note of another decision in [D.V.K. Prasada Rao v. Govt. of A.P.](#), reported in AIR 1984 A.P. 75, wherein, the same view was laid down. The Supreme Court in Peerless General Finance's case (cited supra), observed that the directions are incorporated and become part of the Act itself. They must be governed by the same principles, as the statute itself. The statutory presumption that the legislature inserted every part thereof, for a purpose to and the legislative intention should be given effect to.

34. In St. John's Teacher's [Training Institute v. Regional Director, NCTE](#), reported in 2003 (3) SCC 321, at Paragraph 10, observed as follows:

A Regulation is a rule or order prescribed by a superior for the management of some business and implies a rule for general course of action. Rules and Regulations are all comprised in delegated legislations. The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details. The legislature may, after laying down the legislative policy confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the frame work of policy. The need for delegated legislation is that they are framed with care and minuteness when the statutory authority making the Rule, after coming in to force of the Act, is in a better position to adapt the Act to special circumstances. Delegated legislation permits utilisation of experience and consultation with interests affected by the practical operation of statutes. Rules and Regulations made by reason of the specific power conferred by the Statutes to make Rules and Regulations establish the pattern of conduct to be followed. Regulations are in aid of enforcement of the provisions of the Statute. The process of legislation by departmental Regulations saves time and is intended to deal with local variations and the power to legislate by statutory instrument in the form of Rules and Regulations is conferred by Parliament. The main justification for delegated legislation is that the legislature being over burdened and the needs of the modern day society being complex it can not possibly foresee every administrative difficulty that may arise after the Statute has begun to operate. Delegated legislation fills those needs. The Regulations made under power conferred by the Statute are supporting legislation and have the force and affect, if validly made, as the Act passed by the competent legislature. (See Sukhdev Singh v. Bhagatram, AIR 1975 SC 1331)

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35. [In Andhra Bank v. B.Satyanarayan](#) reported in 2004 (2) SCC 657, the Supreme Court held that a valid regulation once framed would be a part of the statute.

36. In [Section 43](#) of the Electricity Act, the word "shall" is used. Applying the principles of law to the [Electricity Act](#), Distribution and Supply Codes, as regards supply of electricity, from the language employed in [Section 43](#) of the Act, ie., duty to supply electricity on request and [Section 44](#) of the Act, ie., exceptions from discharging the duty to supply electricity, which states that nothing contained in [Section 43](#) shall be taken as requiring a distribution licensee to give supply of electricity to any premises, if he is prevented from so doing by cyclone, floods, storms or other occurrences beyond his control, it could be concluded that there is a statutory obligation to provide electricity to a owner or occupier of the premises.

37. The term premises, defined as per [Section 2\(51\)](#) of the Electricity Act, includes any land, building or structure. As stated supra, occupier means the person in occupation (whether as owner or otherwise) of the premises, where electricity is used or intended to be used. As per Regulation 27(1) of the Tamil Nadu Distribution Code, 2004, the provision regarding the duty of licensee, as detailed in [Section 43](#) of the Electricity Act, ie., duty to supply electricity on request, is that on an application by the owner or occupier of any premises, the licensee shall give supply of electricity to such premises, within one month, after the receipt of the application requiring such supply, failing which, the licence shall be liable to a penalty of one thousand rupees, for each day of default.

38. Proviso to [Section 43\(2\)](#) of the Electricity Act, states that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission. As per Regulation 27(1), the provision regarding the duty of licensee, as detailed in [Section 43](#) of the Act, to supply electricity, on request is reproduced below:

(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.

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Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

Provided that the licensee will refuse to supply electricity to an intending consumer who had defaulted payment of dues to the licensee in respect of any other service connection in his name.

39. Some of the clauses in Regulation 27, relevant for this case, are extracted hereunder:

"(11) The requirement to be notified by the Authority through regulations shall be complied with for availing the service connection.

(12) Supply shall be given in poromboke land on production of-

(i) No Objection Certificate obtained from the Officer (not below the rank of Deputy Tahsildar) or

(ii) Where such No Objection Certificate could not be produced by the applicant for service connection the following undertaking shall be furnished:-

(1) "I am aware that I am liable to be evicted and for supply disconnection at any time, if the lands are required by the Government and/or any dispute arises at a later date and that electricity supply given in this regard will not confer any claim on ownership of the land.

(2) I am aware that the above undertaking shall not confer permanent and full right to the ownership of the land.

(13) Within a door number or sub door number, an establishment or person will not be given more than one service connection.

(14)

(15) In case of flat system and shopping complexes where more than one flat or shops are located with permanent physical segregation, more than one service shall be given.

40. Annexure III to the Tamil Nadu Electricity Distribution Code, 2004, deals with Formats. Form 1 deals with an application form, for L.T. Service connection (except

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agriculture and hut). Form 3 deals with an application form for Hut Service and Form 5 deals with Owner Consent Letter for getting New Supply. Form 6 is the Indemnity Bond to be furnished by an intending consumer, who is not the owner of the premises and applies without the consent of the owner.

41. Thus, reading of the statutory provisions of the Act and the Code framed by the authorities, makes it clear that the intention of the Legislature is to provide electricity supply to all the persons, whether they are the owners of the property or occupiers, as the case may be. As stated supra, as between the owner and occupier, like in the case of a landlord and tenant, a mortgagee, assignee and any other person, who is in lawful possession and not a tress-passer, and even in the case of those residing in government poromboke lands, there is a provision for supply of electricity, subject to the submission of an undertaking, etc., as stated supra.

42. When consequences of penalty on failure to comply with a prescribed requirement is provided for, by the statute, there cannot be any doubt that such statutory requirement must be interpreted as mandatory. A mandatory provision gives no discretion and it is intended to be obeyed. Discretionary power gives the authority to use it, as its discretion. The latter can be fulfilled substantially. Failure to adhere to the provisions or in compliance of the same, entailing penalty, then it should be the construction and intention of the Legislature, is to make it mandatory.

43. In the light of the legal pronouncements of the Apex Court, [Section 43](#) of the Electricity Act and the Regulations framed thereunder, have to be construed as mandatory, to provide electricity supply, to the owner or occupier of the premises and to those, who reside in Government poromboke lands, where electricity is used or intended to be used.

44. Now reverting back to the case on hand, at the outset, this Court is not inclined to accept the contention of the learned counsel for the petitioners that they are not encroachers of Government poromboke lands. If they are not encroachers, there is absolutely no necessity for the 1st petitioner to make a representation for issuance of a "No Objection Certificate", from the District Administration. For clarity, the letter, dated 19.05.2012, of the 1st petitioner, addressed to the District Collector, Tiruvannamalai, is extracted hereunder:

"To the notice of dutiful officer, The place in which, I reside for several years at No.220A, 7th Street, Polur Road, Tiruvannamalai Town, is a Government poromboke land. Its survey number is 96, Chettikulam Poromboke. The Public Relation Officer and Executive Engineer, Tiruvannamalai West, vide his letter, has

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stated that a No Objection Certificate shall be obtained from the Revenue Authorities and that the electricity service connection will be given only if the certificate is produced. Accordingly, I request you to issue me No Objection Certificate for obtaining electricity service connection to my residence."

45. Even from the counter affidavit of the Superintending Engineer, Tiruvannamalai Electricity Distribution Circle, TANGEDCO, Vengikkal, Tiruvannamalai 606 604, it is evident that when the petitioners have approached his Office, for effecting electricity service connection, they were orally informed that since the constructions put up by them fall in poramboke lands, between the Hill and Girivalam path and in view of the decision taken in the Joint Action Committee's meeting held on 23.11.2005, in which, the Tamil Nadu Electricity Board had also participated, service connections cannot be effected.

46. Though the petitioners have contended that they have been residing in the premises hereditarily for nearly two Centuries, no documents have been filed to substantiate the same. But it is admitted by the Superintending Engineer, Tiruvannamalai Electricity Distribution Circle that the petitioners have been residing in Government Poramboke lands, falling between the Hill and Girivalam path, atleast since 2005 or even before. From the perusal of the Photographs enclosed in the typed set of papers, it is also evident that there is a "Salavaithurai", where clothes are being washed.

47. As stated surpa, in proceedings in Mu.Mu.No.22298/90, dated 23.10.1992, the Tahsildar, Tiruvannamalai, has requested the Commissioner, Tiruvannamalai Municipality, to send necessary resolution for assignment of house site pattas, to the laundry workers in T.S.No.95, 96, 10, 520 and 521. Perusal of the said letter, also shows that earlier, a letter in Na.Ka.No.A9.22298/90, dated 27.11.1990, has been sent in this regard and followed by reminders. A copy of the said proceedings has been marked to the 1st petitioner, General Secretary, Laundry Worker's Welfare Committee, 37, Polur Road, Tiruvannamalai, The Revenue Inspector, Tiruvannamalai (North) and Land Surveyor, Tiruvannamalai.

48. As stated supra, the Jamabanthi Officer cum Revenue Divisional Officer, Tiruvannamalai, while endorsing the request, dated 11.05.1992, has stated that action has been taken on the request, for assigning pattas. The District Collector, Tiruvannamalai, has also made an endorsement, vide proceedings in Na.Ka.No.A5/68703/91, dated 19.12.1991, stating that steps have been taken for assigning house site pattas, in respect of lands in Survey Nos.95, 96, 10, 520 and

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521, Chettikulamedu, Tiruvannamalai District. Copy of the said endorsement has been sent to the 1st petitioner, General Secretary, 37, Polur Road, Tiruvannamalai.

49. All the above proceedings indicate that in the year 1991-92, steps have been taken to provide house site pattas, to the laundry workers in the abovesaid Survey Numbers, and sub-divisions were directed to be made. Therefore,, it could be deduced that the laundry workers did not own any place and that is, why, the District Administration has thought it fit to assign house site pattas. No materials have been produced before this Court, about the further action taken, in this regard. But it is the representation of the learned counsel for the Electricity Board, that the petitioners did not like that place.

50. Be that as it may, perusal of the order made in S.L.P.Nos.12443 to 12447 of 2001, shows that writ petitions have been filed in this Court, for directions to the Commissioner, Tiruvannamalai Municipality, in any manner, permitting any construction activity, in the circuit path or about thirteen kilometers or in and around the holy hill or Tiruvannamalai and in particular, prohibiting construction (exceeding the height of five meters) of whatever nature, permanent, semi-permanent or temporary and a further direction has been sought to remove the encroachments, including hutments, which had been put up in and around Annamalai Hill and along side Giripradakshina Path, from Annamalaiswamy Ashram to Pachiammal Temple, in clockwise direction, in the land lying between the Hill and Giripradakshina path. This Court has appointed a Special Co-ordination Committee, for a period of two years and issued various directions. Besides, a Special Coordination Committee, comprising of twenty three members of which, Hon'ble Justice T.S.Arunachlam, has been appointed as the Chairperson, Local Area Committee and comprising of various members, has been constituted. On the Special leave petitions filed by the Commissioner of Tiruvannamalai Municipality, the order of this Court has been stayed, in terms of the orders passed on 6th August, 2001. Thereafter, various orders have been passed and directions have been issued to the Archaeological survey of India, as also to the Ministry of Tourism, Government of India. In July' 2005, a detailed affidavit has been filed by the Commissioner of Thiruvannamalai Municipality, placing on record, the various steps being taken, including certain short-term measures and developmental works, within the Town. On perusal of the affidavit filed, the Hon'ble Supreme Court, by order, dated 12th July, 2005, has expressed a tentative view that the Special Leave Petitions can be disposed of, by accepting the suggestions, as contained in the affidavit and directed that the work of development and management, including removal of encroachments, etc., shall be undertaken, as

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suggested in the affidavit and in consultation with Hon'ble Mr. Justice T.S.Arunachalam. The writ petitioner and all the parties have also submitted that it would be appropriate that developmental works are undertaken, as suggested in the affidavit and that the direction of this Court, constituting a Committee has been substituted, by directing the works to be undertaken as per the affidavit of July, 2005, in consultation with Hon'ble Mr. Justice T.S.Arunachalam or any other retired Judge. The Supreme Court has also taken note of the fact that the Government of India had filed an affidavit, stating that it may be permitted to withdraw the preliminary notification, dated 20th September, 2002, declaring the Temple as a National Monument. On the communication from Hon'ble Mr. Justice T.S.Arunachalam, expressing certain personal difficulties, the Hon'ble Supreme Court, vide order, dated 03.10.2005, has directed that all necessary measures, as stated in the affidavit, shall be undertaken by the Municipality and other connected authorities/committees, in consultation with Hon'ble Mr. Justice K.Venkataswami, Retired Judge of the Supreme Court.

51. Material on record further discloses that a meeting has been held on 23.11.2005 at the Tiruvannamalai District Collectorate and the following agendas have been taken up for discussion, (1)Conversion of Sodium Lamp into CFL.

(2)Illuminating Sodium Lamp on Full Moon day only. For other days, CFL lamp may have to be used. Proposals to be evolved for this switching arrangements.

(3)Electricity Lighting arrangements in the said areas and provision of 'UG' cable connection may be considered within the area of 'Madaveethi'.

(4)Electricity service connections in the inner and outer area Girivalam path may be given only on production of Planning approval for patta lands.

(5)For poromboke land inside/outside Girivalam path no need to give electricity service connection till a separate decision is taken after consulting Municipal Authorities. Panchayat Authorities and Revenue Department.

(6)As per the stay order of the Hon'ble High Court of Madras, the District Collector of Tiruvannamalai had given instructions to Tamil Nadu Electricity Board not to give any Electricity Service connections inner and outer "Girivalam Path". Now in the light of orders of the Hon'ble Supreme Court of India, Electricity Service Connections may be given to the residence and other establishments in the said areas, Madaveethi and other development areas, inter and outer "Girivalam Path" areas on production of Planning Permission for Patta Lands."

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52. Thereafter, the Additional Chief Engineer, TEDC, Tiruvannamalai-4, has issued a Memo No.ACE/TEDC/TL/TD/TA 2/F.Girivalam/D.No.547/05, dated 29.11.2005. According to the learned counsel appearing for the respondents, the Committee had decided not to give electricity service connection, till a separate decision is taken, after consulting the Municipal, Panchayat authorities and the Revenue Department. Though the memo reads that as per the stay order of this Court, the District Collector has given instructions, not to give Electricity service connection, in the inner and outer area of Girivalam path, the memo further reads that in the light of orders of the Hon'ble Supreme Court of India, electricity service connections may be given to those, who are residing and other establishments in areas, viz., Madaveethi and other development areas, inter and outer "Girivalam Path" areas, on production of Planning Permission for Patta Lands.

53. The memo also makes it clear that in the case of those residing in T.S.No.95, 96, 10, 520 and 521, in and around Girivalam path, a decision has been taken to provide electricity service connection, for those, who are residing in patta lands, if planning permission is given, which means that there is no intention to deny the basic amenity to those, who have obtained planning permission. Proceedings in Memo Na.Ka.No.A2/23871/1998, dated 13.09.2008, shows that on 09.09.2008, the Committee has convened a meeting in the presence of Hon'ble Mr.Justice K.Venkatesamy and others. It was the 5th meeting, presided over by Hon'ble Mr. Justice K.Venkatesamy and more than 39 persons, representing, various walks of life, have participated. After deliberations on various issues, the Committee has resolved as follows:

"(1) Whether the Government land in the Girivalam path, circumambulate the hill, that were alienated/assigned, has been functioning as per the norms stipulated by the Government? It shall be monitored and a report shall be submitted in that regard.

(2) In respect of the Government lands, which were alienated/assigned and not used, the land alienation/land assignment shall be cancelled.

(3) In order to prevent the further encroachment in the hill from Ramanaswaram till Panchiamman Temple, it has been instructed to mobilise fund from the temple fund or through some other means by constructing a preventive wall and to give a permanent identification.

(4) The District Collector is requested to make arrangements to assign the lands, belonging to the Revenue Department, as Reserve Forest and for the devotees and

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tourists to use the hill, during regular periods and during festivals, without any hindrance from the Forest Department, and at the same time, the District Collector is requested to assign the land to the Forest Department.

(5) As per the present guidelines of the Government, it has been decided that the Municipal Administration shall file modification affidavit in the Supreme Court of India, with regard to grant of patta to the houses, which have been under encroachment for more than five years.

(6) We express our gratitude to the District Administration for the arrangements made to supply drinking water through Reverse Osmosis, from 09.09.2008 in the "Girivalam" path of the hill and for having granted separate room and telephone connection in the Office of the District Collector, for the Development Committee of the Girivalam path.

(7) The Electricity Board has been instructed to serve the electricity service connection in the "Annamalaiar Hill", which was granted after the order passed in by the Supreme Court of India.

(8) It has been instructed that the Tahsildar shall not give "No Objection Certificate" to the Electricity Board, for obtaining electricity service connection for the encroachments, made in the hill.

(9) It has been instructed to remove the encroachments made near Chandralingam and Egambareswar Temple.

(10) It is resolved that the District Superintendent of Police shall not permit the audio cassette vendors, who are functioning with much noise in the Girivalam path, to use speakers.

11. The Electricity Board is requested to prevent electricity theft in the "Girivalam" path.

12. The Municipality has been requested to take steps to remove the buildings constructed of more than nine meters in the Girivalam path.

13. It has been resolved to remove the hall meant for refugees."

54. Among other things, Resolution No.5 passed by the Committee is to file a modification affidavit before the Hon'ble Supreme Court, by Tiruvannamalai Municipality to regularise their occupation of government poromboke lands and to

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grant patta to the houses, which have been under encroachment for more than five years. Resolution No.7 is to advice the Tamil Nadu Electricity Board to disconnect the service connections given, after the judgment of the Hon'ble Supreme Court. Resolution No.8 is to the effect that the Tahsildar, should not give "No Objection Certificates" to the encroachers, to obtain electricity service connection.

55. The District Collector, Tiruvannamalai District, has not filed any counter affidavit, as to what action has been taken, pursuant to the resolutions. It is not known, as to whether, steps have been taken by the Commissioner, Tiruvannamalai Municipality, to file any modification affidavit, in the Hon'ble Supreme Court, for taking appropriate action, for issuance of house site pattas, to those, who have been in occupation of Government lands for more than 5 years, as per the then existing guidelines. Resolution No.5 clearly indicates that the Committee has taken a decision that the lands are not longer required.

56. When a resolution has been passed by the Committee, in 2008, to file a Modification Affidavit, it could be seen that there is a deviation from the stand of the Committee. Earlier, in 2005, for removal of encroachments, directions were sought for, but subsequently, the Committee constituted to carry out the developmental works, had suggested in the affidavit, dated 03.10.2005, for removal of encroachments. But in the year 2008, it has taken a decision to file a modification affidavit in the Hon'ble Supreme Court. Nevertheless, the Committee has also resolved to advice the Electricity Board, to disconnect the electricity service connection, granted, after the judgment of the Hon'ble Supreme Court and advice the Tahsildar, not to issue any "No Objection Certificate".

57. Regulation 2(x) of the Tamil Nadu Electricity Distribution Code, 2004, defines the word, Occupier as the person in occupation (whether as owner or otherwise) of the premises, where electricity is used or intended to be used. The word occupier is defined in the same manner, in Regulation 2(p) of the Tamil Nadu Electricity Supply Code, 2004. The above definition clearly convey that any person, who intends to use electricity, can seek for supply.

58. As per the Regulation 27(4) of the Tamil Nadu Electricity Distribution Code, 2004, an intending consumer who is not the owner of the premises, shall produce a consent letter in Form 5 of Annexure III, to the Tamil Nadu Electricity Distribution Code, from the owner of the premises, for electricity supply. If the owner is not available or refuses to give a consent letter, the intending consumer shall produce proof of his/her being in lawful occupation of the premises and also execute an indemnity bond in Form 6 of the Annexure III to this code, indemnifying the licensee

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against any loss on account of disputes arising out of effecting service connection to the occupant and acceptance to pay security deposit, twice the normal rate.

59. The word "occupier", means any person in occupation (whether as owner or otherwise) of the premises, where electricity is used or intended to be used, has been expanded in the Tamil Nadu Electricity Distribution Code, 2004, to an intending consumer also, who is not the owner of the premises, but in "lawful occupation", of the same.

60. The issue, as to whether, persons in occupation of Government poromboke lands, can also be given electricity service connection, has been considered by the Tamil Nadu Electricity Regulatory Commission. Regulation 27(12) has been amended, vide Commission's Notification No.TNERC/DC/8-3, dated 31.05.2006, with effect from 21.06.2006. Before the amendment, the said regulation stood as follows:

Supply shall be given in poromboke land on production of necessary documents as per the directive from the Government from time to time. After the amendment, as per the above notification, the amended Regulation reads as follows:

(12) Supply shall be given in poromboke land on production of-

(i) No Objection Certificate obtained from the Officer (not below the rank of Deputy Tahsildar) or

(ii) Where such No Objection Certificate could not be produced by the applicant for service connection the following undertaking shall be furnished:-

(1) "I am aware that I am liable to be evicted and for supply disconnection at any time, if the lands are required by the Government and/or any dispute arises at a later date and that electricity supply given in this regard will not confer any claim on ownership of the land.

(2) I am aware that the above undertaking shall not confer permanent and full right to the ownership of the land."

61. At this juncture, it is also worthwhile to extract Forms 3 and 6 in Annexure-III, dealing with applications for hut service and Indemnity Bond, with reference to Regulation 27(3) and (4), as follows:

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FORM-3 APPLICATION FOR HUT SERVICE (Refer clause 27(3) (Form of requisition for supply of Low Tension Energy 40 Watts to huts in Panchayats) To The Engineer of the Licensee Sir,

1. I hereby request you to supply electrical energy to my hut described below:
2. I agree to pay for energy, service connection meter rent and other charges including security deposit as demanded in accordance with the regulations prescribed by Tamil Nadu Electricity Regulatory Commission.
3. I wish to be charged under Tariff under schedule of the TNERC tariff order dated.
4. I agree to receive supply only for 40 W lamp and utilize the energy for my hut described hereunder and I agree that the authorities may disconnect the service connection in case I utilise the energy above 40 W.
5. In case I sell or otherwise dispose of the hut, I agree to give one Calendar month notice in writing and pay all the arrears to the Licensee.
6. I will make arrangements to make the single point wiring for lighting in my hut in accordance with the Code provisions and the safety rules prescribed by the Authority . I request the Licensee to provide single point wiring for lighting in my hut and the necessary payment will be made by me.
7. Self Declaration The service connection applied for the hut is owned by me and
 - a) it is built in my patta land (Land Tax Receipt is enclosed)
 - b) it is built in the private land and No Objection Certificate obtained from the landowner is enclosed.
 - c) it is built in the poromboke land and No Objection Certificate obtained from the Officer (not below the rank of Deputy Tahsildar) is enclosed.
 - d) It is built in the poromboke land and I furnish the following undertaking,-
 - (1) I am aware that I am liable to be evicted and for supply disconnection at any time if the lands are required by the Government and / or any dispute arises at a later date and that electricity supply given in this regard will not confer any claim on ownership of the land.

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(2) I am aware that the above undertaking shall not confer permanent and full right to the ownership of the land. (Delete clause not applicable)

8. Description of the premises

(a) Name of the applicant

(b) Father's Name

(c) Adi Dravidar / Other Castes

(d) Survey No. / identification of hut

(e) Area of hut

(f) Whether the hut constructed with clay soil / thatched roof

(g) Village and Taluk

(h) Tenanted by (Name in block letters)

(i) Applicants correspondence address Signature of the Consumer/ left thumb impression FORM-6 (To be obtained in a stamped paper).

(Refer clause 27(4) Indemnity Bond from the occupier when there is no consent letter from owner.

Indemnity Bond to be furnished by an intending consumer who is not the owner of the premises and applies without the consent of the owner.

DEED OF INDEMNITY THIS DEED OF INDEMNITY EXECUTED ON THIS, THEDAY OFTWO THOUSANDby Thiru./Tmty..... S/o. D/o W/o..... residing at having office / workshop athereinafter called the indemnifier (which terms shall mean and include executors, administrators, heirs, successors and assigns) to and in favour of the (name of Licensee and address), a body corporate, hereinafter called the Licensee (which terms shall mean and include its successors in office and assigns).

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WHEREAS the consumer has taken on lease the premises in Door No.....for the purpose of..... from Thiru./TmttyS/o D/o W/o..... residing at who is the owner of the above said premises.

AND WHEREAS the consumer has approached the said owner of the premises to give his /her consent in writing to avail of a service connection in his/her name for the purpose of his / her business.

AND WHEREAS the said owner is not available/has refused to give his/her consent in writing for the purpose.

AND WHEREAS the indemnifier has requested the Licensee to give a service connection in his/her name subject to execution of an indemnity bond by him/her indemnifying the Licensee against any damage or loss caused to the Licensee in respect of the service connection in his/her name.

AND WHEREAS in consideration of the acceptance of the above for a service connection in his/her name, the indemnifier hereby agrees to indemnify the Licensee against all proceedings, claims, demands, costs, damages, expenses which the Licensee may incur by reason of a fresh service connection given to the indemnifier without the consent of the owner of the premises. The indemnifier further undertakes to make good any sum that may be found to be and become payable to the Licensee with regard to all liabilities and claims personally as well as by means of both movable and immovable properties. The indemnifier agrees that the enhanced Security Deposit paid by him shall be adjusted against the arrears of current consumption charges but also against any claim that may arise in the event of termination of the agreement prior to the expiry of the contracted period. The indemnifier further undertakes that the Licensee shall be at liberty to disconnect the service connection given to him/her , and also for loading the dues remaining unpaid by him/her to other service connection (s) that may stand in his/her name.

NOW THE CONDITION OF THE above written bond is such that if the indemnifier shall duly and faithfully observe and perform the above said conditions, then the above written bond shall be void, otherwise the same shall remain in full force.

IN WITNESS WHEREOF Thiru/ Tmttythe indemnifier has signed this deed on the day month and year herein before first mentioned.

SIGNED AND DELIVERED BY In the presence of Witness (Name and Address)-

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1.

2.

62. Representations made to the District Administration to issue "No Objection Certificates", gives a clear indication that they are in occupation of Government poramboke lands. A combined reading of Regulation 27(12) with the application Form, for Hut service as provided in Form-3, makes it clear that a person, requiring electricity service connection, should obtain a "No Objection Certificate" from the officer, not below the rank of Deputy Tahsildar or where such "No Objection Certificate" could not be produced by the applicant, for service connection, he must give an undertaking, as stated supra.

63. The Memo, dated 29.11.2005, runs contrary to Regulation 27(12) read with Form-3 of Annexure-III, by which, persons in occupation of poramboke land, can seek for supply of electricity, by giving an undertaking that they are aware that they would be evicted and for disconnection of supply, at any time, if the lands are required by the Government, and/or any dispute arises at a later point of time. Supply of electricity would not confer any claim on ownership of the land.

64. When the Tamil Nadu Electricity Regulatory Commission, a Statutory body, constituted under the Act, in exercise of powers, conferred under [Sections 46](#) and [86](#) of the Electricity Act, 2003, has framed the Tamil Nadu Electricity Distribution Code, a delegated legislation, this Court is of the view that the decision of the Joint Action Committee meeting held on 23.11.2005, which has culminated into a Memo, dated 29.11.2005, not to provide electricity connection to those, who reside in poramboke lands, inside/outside Girivalam path, till a separate decision is taken, after consulting the Municipal authorities, Panchayat authorities and Revenue Department runs contrary to the delegated legislation. The decision taken by the Committee cannot either directly or indirectly curtail the rights of the occupants, in poramboke lands, for getting electricity connection. When the delegated legislation, by devising a procedure, enables the occupant of poramboke lands, upon satisfying the requirement, to seek for electricity supply, the decision of the Committee, in effect and substance, has gone beyond the same. Anything done or ordered to be done, contrary to the delegated legislation cannot be approved, as a valid action, falling within the statutory provisions of electricity laws.

65. When Tamil Nadu Electricity Distribution Code, 2004, makes it mandatory on the licensee, to provide electricity supply, to those, who are in occupation of poramboke lands, on production of "No Objection Certificate", from the Officer, not

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below the rank of Deputy Tahsildar or where no such No Objection Certificate could not be produced by the applicants for service connection and when the applicants can give an undertaking or declaration, stated supra, the licensee cannot deny electricity service connection to the petitioners, who have substantiated their continuous occupation and also admitted by the 2nd respondent, in his counter affidavit.

66. Lack of electricity supply is one of the determinative factors, affecting education, health, cause for economic disparity and consequently, inequality in the society, leading to poverty. Electricity supply is an aid to get information and knowledge. Children without electricity supply cannot even imagine to compete with others, who have the supply. Women have to struggle with firewood, kerosine, in the midst of smoke. Air pollution causes lung diseases and respiratory problems. Electricity supply to the poor, supports education and if it is coupled with suitable employment, disparity is reduced to certain extent. Lack of education and poverty result in child labour.

67. When right to education upto the age of 14 years is a fundamental right, when right to health is also recognised as a right to life, under [Article 21](#) of the Constitution of India, access to electricity supply should also be considered as a right to life, in terms of [Article 21](#) of the Constitution of India. The respondents ought to have addressed all the issues, instead of banking on the Committee's decision, which in the humble opinion of this Court, is not in aid of human right, but inapposite to the need for, providing the basic amenity, electricity. The authorities ought to have considered, whether it would be effective enforcement of [Article 21](#) or [Article 21-A](#) of the Constitution of India, while denying the petitioners, access to electricity supply.

68. The respondents ought to have visualised the difficulties of the women, children and aged persons, living in the huts for several years, without electricity. Electricity supply is an essential and important factor for achieving socio-economic rights, to achieve the constitutional goals with sustainable development and reduction of poverty, which encompasses lower standards of living, affects education, health, sanitation and many aspects of life. Food, shelter and clothing alone may be sufficient to have a living. But it should be a meaningful purpose. Lack of electricity denies a person to have equal opportunities in the matter of education and consequently, suitable employment, health, sanitation and other socio-economic rights. Without providing the same, the constitutional goals, like Justice, Liberty, Equality and Fraternity cannot be achieved.

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69. Right to electricity to a person in occupation of Government poromboke lands is recognised in the Distribution Code and it is integral to the achievement of socio-economic rights. It is extricably related to amolerate poverty. Electricity is an implicit component and facet of human right. In the light of the above discussion, the respondents ought to have come forward to provide electricity supply to the petitioners, instead of opposing the relief sought for.

70. Access to electricity should be construed as a human right, of course, to the requirements to be satisfied under the electricity laws. Denial of the same, upon even satisfying the requirements, would amount to violation of human rights. The action of the respondents is regressive. Electricity supply under the [Electricity Act](#), the Distribution and Supply Code, is a legal right. At this juncture, this Court deems it fit to consider the meaning of the word, 'right' and few decisions, as to when a Mandamus, can be sought for,

71. The word "right, or in its plural form "rights," is a common term, of broad signification. It is a generic, abstract, and comprehensive term, having a wide scope of meaning in its various legal applications, and it has no satisfactory definition or explanation, except in connection with some concrete conception of thing out of which it grows. It may mean any legal right as the word is normally used, or it may be limited to some specific one of the large class of recognised "rights." It may be a right to do something, to have something, to be something, or even to let alone; it may refer to a right or privilege to use a highway or other public facility, or to utilise one of the great institutions of nature, or, on the other hand, it may refer to personal liberty, security, health, or property.

72. In Wharton's Law Lexicon, the word 'Right' means; 1) is a legally protected interest 2) is an averment of entitlement arising out of legal rules 3) right is an interest recognised and protected by moral or legal rules 4) right, comprehends every right known to the law.

73. In K.J.Aiyar's Judicial Dictionary, the word 'Right' means; 1) a right is a legally protected interest, 2) a right is an interest which is recognised and protected by law.

74. In Stroud's Judicial Dictionary, the word 'Right' means, is where one hath a thing that was taken from another wrongfully, as by disseisin, discontinuance, or putting out, or such like, and the challenge or claime that he hath who should have the thing, is called right.

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75. In *State of Kerala v. A.Lakshmi Kutty* reported in 1986 (4) SCC 632, the Supreme Court held that a Writ of Mandamus is not a writ of course or a writ of right but is, as a rule, discretionary. There must be a judicially enforceable right for the enforcement of which a mandamus will lie. The legal right to enforce the performance of a duty must be in the applicant himself. In general, therefore, the Court will only enforce the performance of statutory duties by public bodies on application of a person who can show that he has himself a legal right to insist on such performance. The existence of a right is the foundation of the jurisdiction of a Court to issue a writ of Mandamus.

76. [In Raisa Begum v. State of U.P.](#), reported in 1995 All.L.J. 534, the Allahabad High Court has held that certain conditions have to be satisfied before a writ of mandamus is issued. The petitioner for a writ of mandamus must show that he has a legal right to compel the respondent to do or abstain from doing something. There must be in the petitioner a right to compel the performance of some duty cast on the respondents. The duty sought to be enforced must have three qualities. It must be a duty of public nature created by the provisions of the Constitution or of a statute or some rule of common law.

77. In *Mr.'X' Vs. Hospital 'Z'* reported in (1998) 8 SCC 296, while considering the right of privacy and the violations of personal rights, the conflict between fundamental right of the parties, at paragraph No.15, the Apex Court explained the word "right" as follows:

"RIGHT" is an interest recognised and protected by moral or legal rules. It is an interest the violation of which would be a legal wrong. Respect for such interest would be a legal duty. That is how Salmond has defined the "Right". In order, therefore, that an interest becomes the subject of a legal right, it has to have not merely legal protection but also legal recognition. The elements of a "LEGAL RIGHT" are that the "right" is vested in a person and is available against a person who is under a corresponding obligation and duty to respect that right and has to act or forbear from acting in a manner so as to prevent the violation of the right. If, therefore, there is a legal right vested in a person, the latter can seek its protection against a person who is bound by a corresponding duty not to violate that right.

78. Writ of mandamus cannot be issued merely because, a person is praying for. One must establish the right first and then he must seek for the prayer to enforce the said right. If there is failure of duty by the authorities or inaction, one can approach the Court for a mandamus. The said position is well settled in a series of decisions.

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(a) In the decision reported in (1996) 9 SCC 309 ([State of U.P. and Ors. v. Harish Chandra and Ors.](#)) in paragraph 10, the Apex Court held as follows:

10. ...Under the Constitution a mandamus can be issued by the court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and the said right was subsisting on the date of the petition....

(b) In the decision reported in (2004) 2 SCC 150 ([Union of India v. S.B. Vohra](#)) the Supreme Court considered the said issue and held that 'for issuing a writ of mandamus in favour of a person, the person claiming, must establish his legal right in himself. Then only a writ of mandamus could be issued against a person, who has a legal duty to perform, but has failed and/or neglected to do so.

(c) In the decision reported in (2008) 2 SCC 280 ([Oriental Bank of Commerce v. Sunder Lal Jain](#)) in paragraphs 11 and 12 the Supreme Court held thus,

11. The principles on which a writ of mandamus can be issued have been stated as under in The Law of Extraordinary Legal Remedies by F.G. Ferris and F.G. Ferris, Jr.:

Note 187.-Mandamus, at common law, is a highly prerogative writ, usually issuing out of the highest court of general jurisdiction, in the name of the sovereignty, directed to any natural person, corporation or inferior court within the jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office or duty. Generally speaking, it may be said that mandamus is a summary writ, issuing from the proper court, commanding the official or board to which it is addressed to perform some specific legal duty to which the party applying for the writ is entitled of legal right to have performed.

Note 192.-Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice. The chief function of the writ is to compel the performance of public duties prescribed by statute, and to keep subordinate and inferior bodies and tribunals exercising public functions within their jurisdictions. It is not necessary, however, that the duty be imposed by statute; mandamus lies as well for the enforcement of a common law duty.

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Note 196.-Mandamus is not a writ of right. Its issuance unquestionably lies in the sound judicial discretion of the court, subject always to the well-settled principles which have been established by the courts. An action in mandamus is not governed by the principles of ordinary litigation where the matters alleged on one side and not denied on the other are taken as true, and judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the writ the court may, and should, look to the larger public interest which may be concerned-an interest which private litigants are apt to overlook when striving for private ends. The court should act in view of all the existing facts, and with due regard to the consequences which will result. It is in every case a discretion dependent upon all the surrounding facts and circumstances.

79. When a Writ of Mandamus can be issued, has been summarised in Corpus Juris Secundum, as follows:

Mandamus may issue to compel the person or official in whom a discretionary duty is lodged to proceed to exercise such discretion, but unless there is peremptory statutory direction that the duty shall be performed mandamus will not lie to control or review the exercise of the discretion of any board, tribunal or officer, when the act complained of is either judicial or quasi-judicial unless it clearly appears that there has been an abuse of discretion on the part of such Court, board, tribunal or officer, and in accordance with this rule mandamus may not be invoked to compel the matter of discretion to be exercised in any particular way. This principle applies with full force and effect, however, clearly it may be made to appear what the decision ought to be, or even though its conclusion be disputable or, however, erroneous the conclusion reached may be, and although there may be no other method of review or correction provided by law. The discretion must be exercised according to the established rule where the action complained has been arbitrary or capricious, or based on personal, selfish or fraudulent motives, or on false information, or on total lack of authority to act, or where it amounts to an evasion of positive duty, or there has been a refusal to consider pertinent evidence, hear the parties where so required, or to entertain any proper question concerning the exercise of the discretion, or where the exercise of the discretion is in a manner entirely futile and known by the officer to be so and there are other methods which it adopted, would be effective." (emphasis supplied)

80. A writ of Mandamus, can be issued by the court, in its discretion, for which, it must be shown that, there is a non discretionary legal duty upon the authority against whom, the relief is sought for and that the person approaching the High

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Court under [Article 226](#) of the Constitution of India, has to prove that he has a legal right to be enforced against the authority, for the failure of performance of a legal or statutory duty, by the authority against whom, the relief is sought for.

81. Removal of encroachment is different, from entitlement to seek for electricity supply. The law applicable for removal of encroachment and the mandatory duty to provide electricity, under the electricity law, are different and distinct. The delegated legislation, taking note of occupation of those in poromboke lands, has recognised them as "occupiers", entitled to seek for electricity supply, and in such circumstances, while removal of encroachment can be done, as per the procedure under the Encroachment Laws, supply of electricity cannot be denied to the "occupier" of poromboke lands. When statutory provisions do not differentiate a owner and occupier for the use or intended to use, electricity supply even by a person in occupation of poromboke lands, denial of electricity supply by the respondents, to the petitioners, who are in occupation, atleast from 2005 onwards, amounts to discrimination and violative of [Article 14](#) of the Constitution of India.

82. From the materials on record, it could be deduced that atleast from 2005 onwards, the petitioners are residing, in and around Girivalam path, without electricity supply. Food, Shelter and clothing are the basic amenities for living. Water is indispensable. Though the District Administration and Commissioner, Tiruvannamalai Municipality, have claimed that the petitioners are encroachers, in and around Girivala Pathai, they cannot be expected to live in darkness. Even an occupant in a Government poromboke land, is entitled to seek for a decent living with basic amenities, like water, food, shelter and clothing. Electricity is indispensable. In the wake of the statutory provisions, it would be inappropriate to contend that the petitioners are not entitled to electricity supply. As stated supra, though the Municipality and District Administration, in the year 2005, have decided to remove the encroachments, much water has flown under the bridge and things have changed in the year 2008, when the Committee has decided to file a modification affidavit to regularise their occupation, ie., to assign house site pattas, in terms of Government Orders.

83. As between the owner and an intending consumer, who is not the owner of the premises, it is suffice that the intending consumer, produces a consent letter in Form 5 of Annexure III of the Distribution Code from the owner of the premises for availing supply. If the owner is not available or refuses to give consent letter, the intending consumer shall produce proof of his/her being in lawful occupation of the premises and also execute an indemnity bond in Form 6 of the Annexure III of the code indemnifying the licensee against any loss on account of disputes arising out

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off effecting service connection to the occupant and acceptance to pay security deposit twice the normal rate.

84. In the case of those, who reside in Poromboke lands, to produce a "No Objection Certificate from the Officers, not below the rank of Deputy Tahsildar and if such certificate is not produced, an undertaking is sufficient. In the light of the statutory provisions and for all the reasons, stated supra, this Court is of the view that the petitioners are entitled to seek for electricity service connection.

85. The issue as to whether the petitioners are entitled to pattas, in the places, where they now reside, cannot be adjudicated in this writ petition.

86. Before parting with the case, it is my humble view that when lot of devotees visit the temple, and go around the Girivalam Path, hoping that 'God' would fulfil their aspirations, answer their prayers, pardon them, for their sins and wrong doings, and offer their prayers, with things, starting from flowers to Gold, why should the Committee, hopefully comprising of God fearing persons, should deny them even 'basic lighting', in the families of poor laundry workers, solely, on the ground that they do not own a place for living. At this juncture, this Court is reminded of a saying, "ViHapd; rphpg;gpy; ,iwtid fhz;fpd;nwd;/" When a mechanism legally devised is available in the Code framed under the [Electricity Act](#) and admittedly, when they are residing in the place, from 2005 onwards, this Court is of the view that there is a failure on the part to discharge their statutory duties.

87. It is the fundamental duty of the respondents to show compassion to those who are living in huts and tenements for long number of years, taking into consideration their socio-economic disabilities, without electricity supply for many years. Preamble to the Constitution of India guarantees right of every person to justice, social, economic and political. When socio and economic justice is the mandate of the Constitution of India, it is a traversity of justice to deny electricity to the petitioners. Income is one of the sources for achieving an egalitarian society and it is the fundamental right to decent living. Providing electricity to the poor, subject to the satisfying conditions, as per the electricity laws, would reduce the economic imbalance and help the under privileged. The authorities should be pragmatic and realistic to the constitutional goals. The weaker sections and under privileged do not crave, in their heart, for power in hierarchical positions, they only want electric power to have "lighting" in their house. Hut dwellers cannot expect and afford luxury. But for them, it is only a basic amenity. Electricity supply should, not only be extended to pattadars or the owners of lands, but it should also be extended to

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the poor and the needy, who live in government poromboke lands, when they substantiate occupation, for a considerable period.

88. On the facts and circumstances of the case, the respondents are directed to consider the case of the petitioners and provide electricity connection, based on their applications, along with the necessary undertaking and Indemnity Bond, to be submitted by them. Electricity supply to be granted, within a period of four weeks from the date of receipt of the applications and other requirements. No costs. Consequently, connected Miscellaneous Petition is also closed.

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***Haryana State Electricity Board Vs. Hanuman Rice Mills and Ors.,
MANU/SC/0626/2010***

JUDGMENT

R.V. Raveendran, J.

1. Leave granted. Heard.

2. The second respondent - Haryana Financial Corporation auctioned the rice mill premises of one of its borrowers - Durga Rice Mills, to recover its dues. The first respondent purchased the said premises at the auction on 14.12.1990 for a consideration of Rs. 15,25,000/- and paid the entire sale consideration to the second respondent. When the first respondent purchased the mill premises, electricity supply to the premises had been disconnected. After taking possession of the premises, the first respondent applied for and obtained electricity connection in its own name in the year 1991. Four years later, the appellant served upon the first respondent, a notice dated 16.1.1995 demanding payment of Rs. 2,39,251/- towards arrears of electricity charges due by the previous owner Durga Rice Mills.

3. The first respondent filed a civil suit for permanent injunction and the said suit ended in dismissal on 5.12.1996 which was affirmed by the appellate court on 27.2.1998. Thereafter the appellant served a notice dated 2.3.1998 informing the first respondent that the electricity supply will be disconnected if the said arrears due by Durga Rice Mills were not paid. This was followed by disconnection of electricity supply on 9.3.1998. First respondent filed a suit challenging the said demand and disconnection of electricity supply. The said suit was dismissed by the trial court. While dismissing the suit, the trial court held that the claim of the appellant was barred by limitation. Feeling aggrieved by the dismissal, the first respondent filed an appeal; and feeling aggrieved by the finding that appellant's claim was barred by limitation, the appellant filed an appeal. The first appellate court decided the appeals by a common judgment dated 30.10.2003. It dismissed the appeal filed by the appellant and allowed the appeal filed by the first respondent. It held that first respondent could not be made liable for the dues of the previous owner, as there was no provision in the terms and conditions of sale that the electricity dues of the previous owner should be paid by the first respondent as auction purchaser. The judgment of the first appellate court was challenged by the appellant by filing a second appeal. The Punjab & Haryana High Court by its judgment dated 8.8.2005 dismissed the said appeal holding that the liability of a consumer to pay charges for consumption of electricity, cannot be fastened on a

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subsequent auction purchaser of the property, in view of the decision of this Court in *Isha Marbles v. Bihar State Electricity Board* MANU/SC/0632/1995 : (1995) 2 SCC 648.

4. Feeling aggrieved the appellant filed this appeal raising two contentions:

(i) The dismissal of the first suit filed by the first respondent for permanent injunction having attained finality, the second suit filed by the first respondent for a declaration that demand and disconnection were invalid, was barred by the principles of *res judicata*.

(ii) The decision in *Isha Marbles* relied on by the High Court was inapplicable to the facts of the case. The decision of this Court in *Dakshin Haryana Bijli Vitran Nigam Ltd. v. Paramount Polymers (P) Ltd.* MANU/SC/4652/2006 : (2006) 13 SCC 101, entitles the appellant to claim and receive the electricity dues of the previous owner from the new owner/auction purchaser.

Re: Point No. (i)

5. The first suit by the first respondent was for a permanent injunction to restrain the appellant Board from enforcing the demand notice dated 16.1.1995 in respect of the electricity consumption charges incurred by the previous owner. By the second suit, the first respondent sought a declaration that the notice dated 9.3.1998 threatening disconnection of electricity supply for non-payment of the arrears of the previous owner and the consequential disconnection dated 9.3.1998, were invalid and for consequential relief. The matter that was directly and substantially in issue in the second suit was completely different from the matter that was directly and substantially in issue in the first suit. The reliefs claimed were also different, as the first suit was for a permanent injunction and the second suit was for a declaration and consequential relief. Therefore the second suit was not barred by *res judicata*.

Re: Point No. (ii)

6. The High Court held that the demand was untenable in view of the decision in *Isha Marbles*. In *Isha Marbles* this Court held that in the absence of a charge over the property in respect of the previous electricity dues, and in the absence of any statutory rules authorizing a demand for the dues of the previous occupant, an auction purchaser seeking supply of electrical energy by way of a fresh connection, cannot be called upon to clear the pre-sale arrears, as a condition precedent for granting fresh connection. This Court further held that an Electricity Board could

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not seek the enforcement of the contractual liability of the previous owner/occupier against a purchaser, who was a third party in so far as the contract between the Electricity Board and the previous occupant and that an auction purchaser who purchases the property after disconnection of the electricity supply, could not be considered as a 'consumer' within the meaning of the Electricity Act, 1910 or Electricity (Supply) Act, 1948, even though he seeks reconnection in respect of the same premises. This Court observed:

Electricity is public property. Law, in its majesty, benignly protects public property and behoves everyone to respect public property. Hence, the courts must be zealous in this regard. But, the law, as it stands, is inadequate to enforce the liability of the previous contracting party against the auction purchaser who is a third party and is in no way connected with the previous owner/occupier. It may not be correct to state, if we hold as we have done above, it would permit dishonest consumers transferring their units from one hand to another, from time to time, infinitum without the payment of the dues to the extent of lakhs and lakhs of rupees and each one of them can easily say that he is not liable for the liability of the predecessor in interest. No doubt, dishonest consumers cannot be allowed to play truant with the public property but inadequacy of the law can hardly be a substitute for over zealousness .

(emphasis supplied)

7. The appellant relies on the subsequent decision of this Court in Paramount Polymers (supra) to distinguish the decision in Isha Marbles. In Paramount Polymers (supra), the terms and conditions of supply contained a provision (clause 21A) providing that reconnection or new connection shall not be given to any premises where there are arrears on any account, unless the arrears are cleared. In view of the said express provision, this Court distinguished Isha Marbles on the following reasoning:

This Court in Hyderabad Vanaspati Ltd. v. A.P. SEB MANU/SC/0260/1998 : (1998) 2 SCR 620 has held that the Terms and Conditions for Supply of Electricity notified by the Electricity Board under Section 49 of the Electricity (Supply) Act are statutory and the fact that an individual agreement is entered into by the Board with each consumer does not make the terms and conditions for supply contractual. This Court has also held that though the Electricity Board is not a commercial entity, it is entitled to regulate its tariff in such a way that a reasonable profit is left with it so as to enable it to undertake the activities necessary. If in that process in respect of recovery of dues in respect of a premises to which supply had been made, a

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condition is inserted for its recovery from a transferee of the undertaking, it cannot ex facie be said to be unauthorized or unreasonable. Of course, still a court may be able to strike it down as being violative of the fundamental rights enshrined in the Constitution of India. But that is a different matter. In this case, the High Court has not undertaken that exercise.

The position obtaining in Isha Marbles (supra) was akin to the position that was available in the case on hand in view of the Haryana Government Electrical Undertakings (Dues Recovery) Act, 1970. There was no insertion of a clause like Clause 21A as in the present case, in the Terms and Conditions of Supply involved in that case. The decision proceeded on the basis that the contract for supply was only with the previous consumer and the obligation or liability was enforceable only against that consumer and since there was no contractual relationship with the subsequent purchaser and he was not a consumer within the meaning of the Electricity Act, the dues of the previous consumer could not be recovered from the purchaser. This Court had no occasion to consider the effect of clause like Clause 21A in the Terms and Conditions of Supply. We are therefore of the view that the decision in Isha Marbles (supra) cannot be applied to strike down the condition imposed and the first respondent has to make out a case independent on the ratio of Isha Marbles (supra), though it can rely on its ratio if it is helpful, for attacking the insertion of such a condition for supply of electrical energy. This Court was essentially dealing with the construction of Section 24 of the Electricity Act in arriving at its conclusion. The question of correctness or otherwise of the decision in Isha Marbles (supra) therefore does not arise in this case especially in view of the fact that the High Court has not considered the question whether Clause 21A of the terms and conditions incorporated is invalid for any reason.

The decision in Paramount Polymers was followed in Dakshin Haryana Bijli Vitran Nigam Ltd. v. Excel Buildcon Pvt. Ltd. 2008 (10) SCC 720.

8. In Paschimanchal Vidyut Vitran Nigam Ltd. v. DVS Steels and Alloys Pvt. Ltd. MANU/SC/8234/2008 : 2009 (1) SCC 210 this Court held, while reiterating the principle that the electricity dues did not constitute a charge on the premises, that where the applicable rules requires such payment, the same will be binding on the purchaser. This Court held:

A transferee of the premises or a subsequent occupant of a premises with whom the supplier has no privity of contract cannot obviously be asked to pay the dues of his predecessor in title or possession, as the amount payable towards supply of electricity does not constitute a 'charge' on the premises. A purchaser of a premises,

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cannot be foisted with the electricity dues of any previous occupant, merely because he happens to be the current owner of the premises.

When the purchaser of a premises approaches the distributor seeking a fresh electricity connection to its premises for supply of electricity, the distributor can stipulate the terms subject to which it would supply electricity. It can stipulate as one of the conditions for supply, that the arrears due in regard to the supply of electricity made to the premises when it was in the occupation of the previous owner/occupant, should be cleared before the electricity supply is restored to the premises or a fresh connection is provided to the premises. If any statutory rules govern the conditions relating to sanction of a connection or supply of electricity, the distributor can insist upon fulfillment of the requirements of such rules and regulations. If the rules are silent, it can stipulate such terms and conditions as it deems fit and proper, to regulate its transactions and dealings. So long as such rules and regulations or the terms and conditions are not arbitrary and unreasonable, courts will not interfere with them.

A stipulation by the distributor that the dues in regard to the electricity supplied to the premises should be cleared before electricity supply is restored or a new connection is given to a premises, cannot be termed as unreasonable or arbitrary. In the absence of such a stipulation, an unscrupulous consumer may commit defaults with impunity, and when the electricity supply is disconnected for non-payment, may sell away the property and move on to another property, thereby making it difficult, if not impossible for the distributor to recover the dues. Provisions similar to Clause 4.3(g) and (h) of Electricity Supply Code are necessary to safeguard the interests of the distributor.

9. The position therefore can may be summarized thus:

(i) Electricity arrears do not constitute a charge over the property. Therefore in general law, a transferee of a premises cannot be made liable for the dues of the previous owner/occupier.

(ii) Where the statutory rules or terms and conditions of supply which are statutory in character, authorize the supplier of electricity, to demand from the purchaser of a property claiming re-connection or fresh connection of electricity, the arrears due by the previous owner/occupier in regard to supply of electricity to such premises, the supplier can recover the arrears from a purchaser.

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Position in this case

10. The appellant did not plead in its defence that any statutory rule or terms and conditions of supply, authorized it to demand the dues of previous owner, from the first respondent. Though the appellant contended in the written statement that the dues of Durga Rice Mills were transferred to the account of the first respondent, the appellant did not specify the statutory provision which enabled it to make such a claim. The decision in Paramount Polymers shows that such an enabling term was introduced in the terms and conditions of electricity supply in Haryana, only in the year 2001. The appellant did not demand the alleged arrears, when first respondent approached the appellant for electricity connection in its own name for the same premises and obtained it in the year 1991. More than three years thereafter, a demand was made by the appellant for the first time on 16.1.1995 alleging that there were electricity dues by the previous owner. In these circumstances the claim relating to the previous owner could not be enforced against the first respondent.

11. On facts, it has to be held that the decision of the High Court does not call for interference. The appeal is therefore dismissed. Parties to bear their respective costs.

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Dr. Rajni Patel President - Joint Managing Partner –Trans India Law Associates (www.tila.in) & Dr.Gopal Energy Foundation (www.dgef.in)

After a Decade of education in Law (LLB), Management (MBA) & Research (PhD) and decade of practicing Law as attorney, today she rose to become the Joint Managing Partner of TILA. She also served as Expert Examiner for professional bodies like ICAI and ICSI. Dr.Rajni led TILA Teams for one of the largest acquisition of Land for setting up Solar/ Wind projects in India for leading companies such as IREDA, Suzlon Energy, Adani Renewable etc. Under her guidance TILA has also advised Energy Companies for PPAs/ Energy Contract Management. Her team also worked for merger and acquisitions for Power PSU's like SJVN Ltd./NEEPCO Ltd. Thanks to Dr.Rajni, for supporting Solar Module Manufacturing Companies for BIS / ALMM approvals.

She is a sought-after attorney, for Legal Due Diligence for land acquisition for Energy Projects & acquisition of Energy Companies especially Hydro/Solar/Wind. As President of DGEF she has been able to highlight "Right to Energy" for resolution of Energy poverty & Climate change". Dr Rajni Patel has been selected as "ASIA'S MOST INFLUENTIAL WOMEN IN RENEWABLE ENERGY" and she has Ministry of New & Renewable Energy, World Bank and Solar Quarter for this honour.

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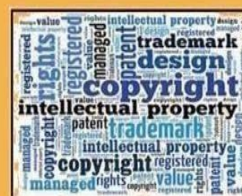
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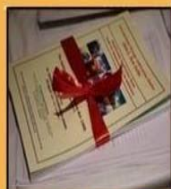
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**Online Training program on
“Protection of Consumer Interest” for Officers
of CGRF and Ombudsman
(Under the aegis of Forum of Regulators)
16-19, February 2021**

Procedure for Handling Consumer Complaints

– A Model Mechanism

On 16 Feb, 2021 at NPTI

Rajasekhar Devaguptapu

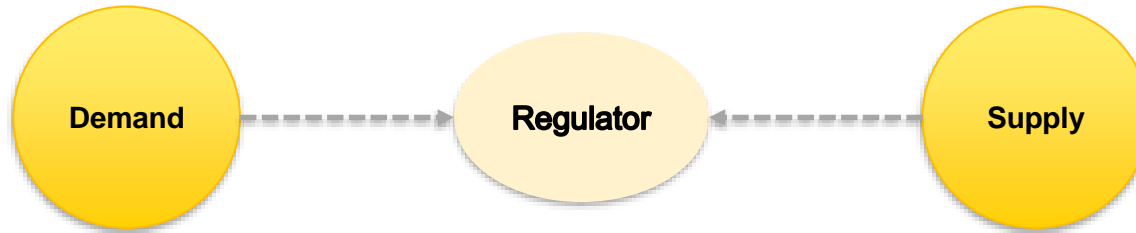
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In this Presentation ...

- Background
- Key Enabling Provisions in Act & Policies
- Progress Achieved
- Role of Forum of Regulators
- Model Mechanism

Background



- Consumers constitute critical segment of electricity market
- Crucial to the sectoral growth - Any change in demand has significant effect on market
- Consumers are categorized for convenience in governance & operation, but each consumer is important
- Standards of Performance and Grievance Redressal Mechanism go hand-in-hand
- Electricity Act, 2003 and subsequent policies strengthened position of consumers

Consumer Redressal supported through Act & Policies

Electricity Act, 2003

Section 42 provides for establishment of CGRFs & Ombudsman and mandates ERCs to formulate guidelines

"Section 42

.....

(5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

(6) Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.

(7) The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.

(8) The provisions of sub-sections (5), (6) and (7) shall be without prejudice to right which the consumer may have apart from the rights conferred upon him by those sub-sections."

Consumer Redressal supported through Act & Policies

National Electricity Policy, 2005

Clause 5.13 provides for specification of standards, mechanism for grievance redressal, strengthening of consumer representation etc.

5.13 PROTECTION OF CONSUMER INTERESTS AND QUALITY STANDARDS

5.13.1 *Appropriate Commission should regulate utilities based on pre-determined indices on quality of power supply. Parameters should include, amongst others, frequency and duration of interruption, voltage parameters, harmonics, transformer failure rates, waiting time for restoration of supply, percentage defective meters and waiting list of new connections. The Appropriate Commissions would specify expected standards of performance.*

5.13.2 *Reliability Index (RI) of supply of power to consumers should be indicated by the distribution licensee. A road map for declaration of RI for all cities and towns up to the District Headquarter towns as also for rural areas, should be drawn by up SERCs. The data of RI should be compiled and published by CEA.*

5.13.3 *It is advised that all State Commissions should formulate the guidelines regarding setting up of grievance redressal forum by the licensees as also the regulations regarding the Ombudsman and also appoint/designate the Ombudsman within six months.*

5.13.4 *The Central Government, the State Governments and Electricity Regulatory Commissions should facilitate capacity building of consumer groups and their effective representation before the Regulatory Commissions. This will enhance the efficacy of regulatory process.*

Consumer Redressal supported through Act & Policies

Tariff Policy, 2016

Provides guiding principles for taking care of consumer interests through access to electricity, reasonable tariff, standards of performance, subsidy, cross-subsidy, open access etc.

Progress Achieved

- All of SERCs / JERCs notified CGRF Regulations
- Majority have also notified Regulations on Standards of Performance
- Multiple CGRFs & Ombudsman
- Coverage of entire jurisdiction by holding meetings at multiple locations
- Consumer Awareness through providing information on bills / posters at DisCom offices

Role of Forum of Regulators

- Report on Protection of Consumers' Interests, 2008
- CGRF Model Regulations, 2011
- Review of Functioning of CGRFs & Ombudsman, 2016
- Consumer Protection in Electricity Sector in India, 2020

Model Regulations

- **Suggestive Framework**
 - Drawn from best practices of CGRFs / Regulations of ERCs / FoR Model Regulations
 - ERCs are free to customize the Model Provisions to suit local needs
 - Model Regulations provide Framework for CGRFs, Ombudsman, Consumer Advocacy

Model Regulations

- **Four Tier Structure**

- Internal Grievance Redressal (at DisCom level)
- Consumer Grievance Redressal Forum
- Electricity Ombudsman
- Enforceability is an issue - Provision to approach ERC (under Section 142)

Model Regulations

- **Key Drivers for Resolution of Grievances**
 - Geographical reach
 - Grievance handling capacity
 - Number of Sittings
 - Timelines
- **Determine**
 - No. of CGRFs & Ombudsmen
 - Number of Hearings per week
 - Location of Hearings

Model Regulations

- **Consumer**

- Apart from existing consumers, applicants, registered / un-registered consumer associations / groups, legal heirs / representatives included

- **Complaint**

- Simple complaint on a paper (preferably in the format, but non-adherence to format cannot be a reason to reject the complaint), email, portal etc.
- Location of Forum
- Time-limit for disposal of complaint

Model Regulations

- **Structure**

- Chairperson - Technical
- Member - Legal
- Member - Independent
- Fixed tenure of 3 years (65 years age - max. limit)
- Full time
- Office space, secretarial support, remuneration to be provided by licensee
- Selection - by whom ?
 - Licensee (or) ERC
 - A Coordinated effort ?

Model Regulations

- **Procedure**

- Registration of Complaints – Allow consumers to track status
 - Non-Supply / Connection / Dis-Connection / Re-Connection / Metering / Billing
- Usage of electronic mode be encouraged
- Summary proceedings
- Hear the matter – Complainant & DisCom
- Allow representation
- Each Member gets one vote – Chairperson gets Second and Casting Vote
- Timely disposal

Model Regulations

- **Procedure**
 - Receipt of grievance
 - Seek comments of DisCom
 - Seek relevant record
 - Direct for inspection either by DisCom or third party
 - Expenses on account of inspection
 - Avoid adjournment
 - Principles of natural justice to be followed
 - Proceedings & Decision to be recorded and issue reasoned order

Model Regulations

- **Limitations**

- Should not be pending before any other judicial for a
- Theft cases should not be considered
- Should not attract provisions of other statutes / regulations
- Time barred (maximum limit of 2 years)
- Should not be frivolous / vexatious / malafide

Model Regulations

- **Compliance**

- Licensee to comply with the Order of CGRF within 21 days
- Forum to monitor compliance status and report to ERC
- A window of 30 days to approach Ombudsman

Model Regulations

- **Ombudsman**
 - First exhaust CGRF channel
 - Appointment by ERC - Fixed tenure - Age limit
 - Specialization Legal / Senior Administrative / Senior Technical
 - Secretariat support, remuneration to be shared by DisComs
 - Technical / Legal Advisors may support
 - Avoid adjournment
 - Principles of natural justice to be followed
 - Proceedings & Decision to be recorded and issue reasoned order
 - Promote disposal through conciliation

Model Regulations

- **After Ombudsman ?**
 - Non-compliance of CGRF / Ombudsman Order to be considered as suo-motu complaint by ERC
 - Not satisfied with the Order of Ombudsman
 - May approach ERC (under Section 142)
 - May approach Higher Judicial Forum
 - Ideally, DisCom should also be allowed to approach Ombudsman against CGRF Order and the ERC against the Ombudsman Order
 - Quality of Power remains a major concern

Model Regulations

- **Consumer Advocacy**

- Not all ERCs have included in their Regulations
- Establishment of Consumer Advocacy Cell by ERC
- To be fully funded by ERC
- Young law graduates may be encouraged to intern with CACs
- Promote consumer out-reach activities
- Measures for increasing awareness in consumers about their rights and responsibilities
- Measures to promote safety and energy conservation
- Also include Formats for complaints, reporting etc.

Thank you

Consumer Empowerment & Grievance Redressal Mechanism

On 18 Feb, 2021 at NPTI

Rajasekhar Devaguptapu

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In this Presentation ...

- Background
- Electricity Sector – Enabling Provisions
- Role of Key Entities
- Critical Issues
- Cross-Sectoral Learnings
- Progress Achieved

Background

- Empowering Consumers is crucial,
 - Consumers are **critical** to sectoral growth, as they constitute demand side
 - Consumers **initiate** flow of revenues back to supply side
- Consumer empowerment through,
 - **Participation** in Stakeholder consultation / Public Hearing
 - Formulation of Policies / Regulations
 - Open Court Hearings
 - **Exploring** grievance redressal channels
 - **Making** efforts in improving consumer awareness

Electricity Sector – Enabling Provisions

- Change in momentum with EA, 2003
 - Electricity Act, 2003
 - National Electricity Policy, 2005
 - Tariff Policy, 2016
 - Regulations of CERC / SERCs / JERCs

Consumer Empowerment – Role of Key Entities

- Electricity is a concurrent subject – Central / State Govts.
 - Stake holder consultation in policy formulation
- Central & State Electricity Regulatory Commissions
 - Public Hearings, Open Hearing of Arguments in Adjudicatory Matters
 - Formulation of facilitative regulatory frameworks
 - Effective Monitoring Mechanism
- Utilities
 - Consumer Awareness
 - Internal Grievance Redressal mechanism
- CGRFs / Ombudsman
 - Timely Disposal (cost-effective, easy access)
- Consumer Associations / Individual Consumers
- Right to Information

Oversight through Legislative Bodies

- Questions in Public Interest
- Laying of Regulations
- Detailed Examination through Standing Committees

Critical Issues

- Overlap between CGRFs / Ombudsman & CDRFs (incl. CDRC)
- Policy / Rules vs. Regulations
- Difference between un-authorized use & theft
- Quality of Power – Largely unaddressed
- Competition in Retail Sale of Electricity

Redressal Mechanism in other Sectors

Other Sectors in India

- Banking
 - Code of Bank's Commitment to Customers (Banking Codes & Standard Board of India – Monitoring, Consumer Awareness)
 - Branch Manager – Local Head Office – Banking Ombudsman – Appellate Authority
- Telecom
 - Complaint Centre – Appellate Authority (of TSP) – 3 Tier Framework under discussion
- Insurance
 - Internal Grievance Redressal – Appellate (IRDAI)

International Experiences

- UK : Utility's Consumer Care Centre – Citizen's Advice Service – Ombudsman Service – Higher Judiciary
- Philippines : Complaint at Supervisor – Settlements Arbitrator - ERC

Cross-Sectoral Learnings

- In Banking Sector –
 - Complaints categorised viz. attitude/behaviour, operational, technology related
 - Multiple touch points
 - Various levels within in internal grievance redressal mechanism
- In Telecom Sector –
 - Advisory Committee to assist Appellate Authority
- In Insurance Sector –
 - Automation through business process management

Progress Achieved

- Four tier Grievance Redressal Mechanism
- All of SERCs / JERCs notified CGRF Regulations
- Majority have also notified Regulations on Standards of Performance
- Multiple CGRFs & Ombudsman
- Coverage of entire jurisdiction by holding meetings at multiple locations
- Compensation on account of deficient service (CGRFs) / Penalties (ERCs)
- Consumer Awareness

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16-19, February 2021**

Discussion Points

- Constitution of India
- Electricity Act, 2003.
- Proposed amendment to Electricity Act, 2003.
- Section 42(5) & 42(7) – Consumer Protection
- Section 42(8) & 173– Other Consumer Protection
- Arbitration Dispute in Electricity Sector.
- Bilateral Power Treaties Between India and SAARC countries & Myanmar.

Status of subject Electricity as per Constitution

ENTRY 38 OF CONCURRENT LIST -

Parliament as well as State Legislatures are vested with the power to make laws with respect to Electricity.

Article-246 of constitution of India determines the relationship between Union and States about concurrent list.

Further in the constitution of India the subject matter of Electricity has been included in list-III concurrent list at Entry 38

Doctrine of Eclipse

Doctrine of Harmonious Constructions

Right to Energy

ARTICLE - 246 of The Constitution of India

Subject matter of laws made by Parliament and by the Legislatures of States –

- (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the Union List)
- (2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the Concurrent List)
- (4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included (in a State) notwithstanding that such matter is a matter enumerated in the State List

From the above, it is clear that Parliament as well as State Legislatures are vested with the power to make laws with respect to Electricity.

Electricity Act, 2003

Objectives

To consolidate the laws relating to generation, transmission, distribution, Trading and use of electricity.

For taking measures conducive to development of electricity industry

To promote competition in the National Electricity Market

To protect interest of consumers

To promote universal access to electricity

Constitution of CAE, IRC, ATE

Promotion of efficient and environmentally benign policies

Rationalization of electricity tariffs

Salient Features of the Electricity Act

Distribution has been liberalized-Consumers will have the choice of Electricity supplier

Generation of Electricity has been De - licensed

Open access in distribution of electricity

Distribution has been liberalized-Consumers will have the choice of Electricity supplier

Distribution Licensees are deemed to be Electricity trader

The Act also envisages a Specialized body , Electricity Appellate Tribunal

Reorganization of SEBs

Creation of Ombudsmen institution and consumer grievance redressal mechanisms

Structure of Indian Power Market

Concurrent Policy Making	Central Government	29 State Govt's	
Regulations	CERC	SERC	
System Operators	NLDC	5 RLDC	29 SLDC
Generation	Central Generating Station	State Generating Station	IPPs
Transmission	Central Transmission Unit	State Transmission Unit	IPTC
Distribution	State Distribution Companies		Private Distribution Companies
Markets	Power Exchange	Bilateral Markets 8	

Generation of Electricity

- Generation has been de-licensed and captive generation is being freely permitted.

Exception

- Hydro project - would need approval of the state Government and clearance from the Central Electricity Authority which would go into the issues of dam safety and optimal utilization of water resources.

- Nuclear Projects – Governed by Atomic Energy Act. 1962

Transmission of Electricity

- Transmission Utility at the Central as well as State level, which is a Government company, and have the responsibility of ensuring that the transmission network is developed in a planned and coordinated manner to meet the requirements of the sector.
- The load dispatch function could be kept with the Transmission Utility or separated. In the case of separation the load dispatch function would have to remain with a State Government organization/company.
- Private transmission Companies can seek licensees IRCs.
- There would be open access in transmission from the outset with provision for surcharge for taking care of cross subsidy with the surcharge being gradually phased out.

Transmission of Electricity

The transmission strategy of the Government gives a thrust on development of National Grid including interstate connection, technology up-gradation, and optimization of transmission cost

**National Load Dispatch Centre
(NLDC)**



**Regional Load Dispatch
Center (RLDC)**



**State Load Dispatch Centre
(SLDC)**

National Load Dispatch centre

Supervision over the Regional Load Dispatch Centers

Coordination with Regional Load Dispatch Centres for achieving max economy and efficiency in the operation of National Grid

Providing Operational feedback for national grid planning to the Authority and Central Transmission Utility

Levy and collection of such fee and charges from the generating companies or licensees involved in the power system

Dissemination of information relating to operations of transmission system in accordance with directions issued by Central Government from time to time

Open Access

Imagine a toll road where the operator has a right to choose as to who can use the road. This is anti competitive and monopolistic venture. Similarly it would be anticompetitive and monopolistic if the Electricity Utility has these rights.

SOLUTION

worthwhile to Separate the CARRIAGE (Fixed network like wires) from CONTENT (Moving Element like Energy). This is precisely what the Electricity Act aims at. The Electricity Transmission and Distribution lines are also being opened up on the same lines.

Open Access in telecom is called “Interconnections”. International Experience of Open Access has been good. When Open Access was introduced in United Kingdom the prices of Electricity fell down by 30%. The policy makers in India also it seems are aiming for the same , but due to over neglected system the experts are of opinion that in short run (3 to 5 years) the prices will rise but afterward the real prices it is proposed will decline.

Distribution of Electricity

“The basic issue is how to make money selling something everybody wanted free”

Abheek Burman, The Economic Times

DISTRIBUTION OF ELECTRICITY

Distribution licensees would be free to undertake generation and generating companies would be free to take up distribution licenses.

The State Regulatory Commissions may permit open access in distribution in phases with surcharge for

For rural and remote areas stand alone systems for generation and distribution would be permitted.

For rural areas decentralised management of distribution through Panchayats, Users Associations, cooperatives or Franchisees would be permitted.

Parallel Distribution Network allowed

Components of Open Access Charges – for Distribution of Power

A consumer opting for open access purchases electricity from a source other than the discom operating in his area. For this, the customer is liable to pay:

1. Energy Charges

- To be paid to the seller of electricity.
- The rate will be in accordance with the contract with the power company.

2. Wheeling Charges

- To be paid to the Distribution Licensee
- Rate as fixed in the tariff order

3. Cross-Subsidy Surcharge

- To the distribution licensee
- Rate determined by SERC or the nodal agency

4. Additional Surcharge

- To the distribution licensee

5. Standby Charges

- To the distribution licensee

6. Transmission Charges

- To the Transmission Company

7. Scheduling & System Operating Charges

- To SLDC as fixed by the SERC.

Trading of Electricity

“I can’t understand why people are frightened by new ideas.

I am frightened of the old ones.”

John Cage

Trading as a distinct activity is being recognized with the safeguard of the regulatory commissions being authorized to fix ceilings on trading margins, if necessary.

Where there is direct commercial relationship between a consumer and a generating company or a trader the price of power would not be regulated and only the transmission and wheeling charges with surcharge would be regulated.

Power Exchange

CERC has permitted trading of electricity through Power Exchange with effect from June 2008

Sl. NO.	Power Exchange	Year of Establishment
1	Indian Energy Exchange	2008
2	Power Exchange of India Limited	2008

Benefits

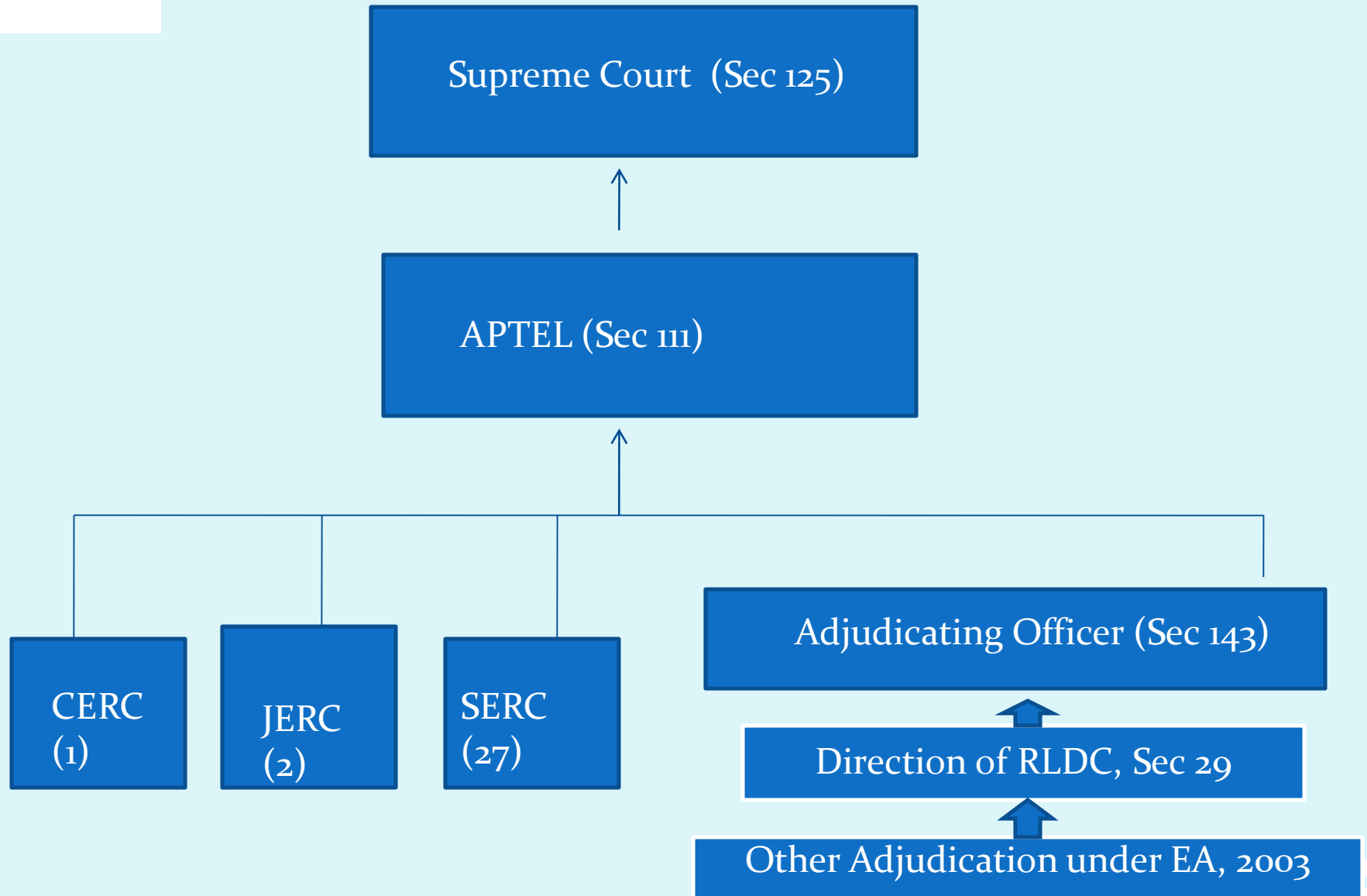
Neutral and transparent mechanism giving rise to better price discovery

Complete anonymity of bids among traders, and reduces search cost for seller as well as buyer

Single point check on non-competitive practices, easy surveillance

Regulatory Institutions in the Electricity Sector

Resolving Regulatory Issues



Hierarchy for trail of criminal offences under section 135 to 139

Provisions relating to theft of electricity have a revenue focus.

Supreme Court



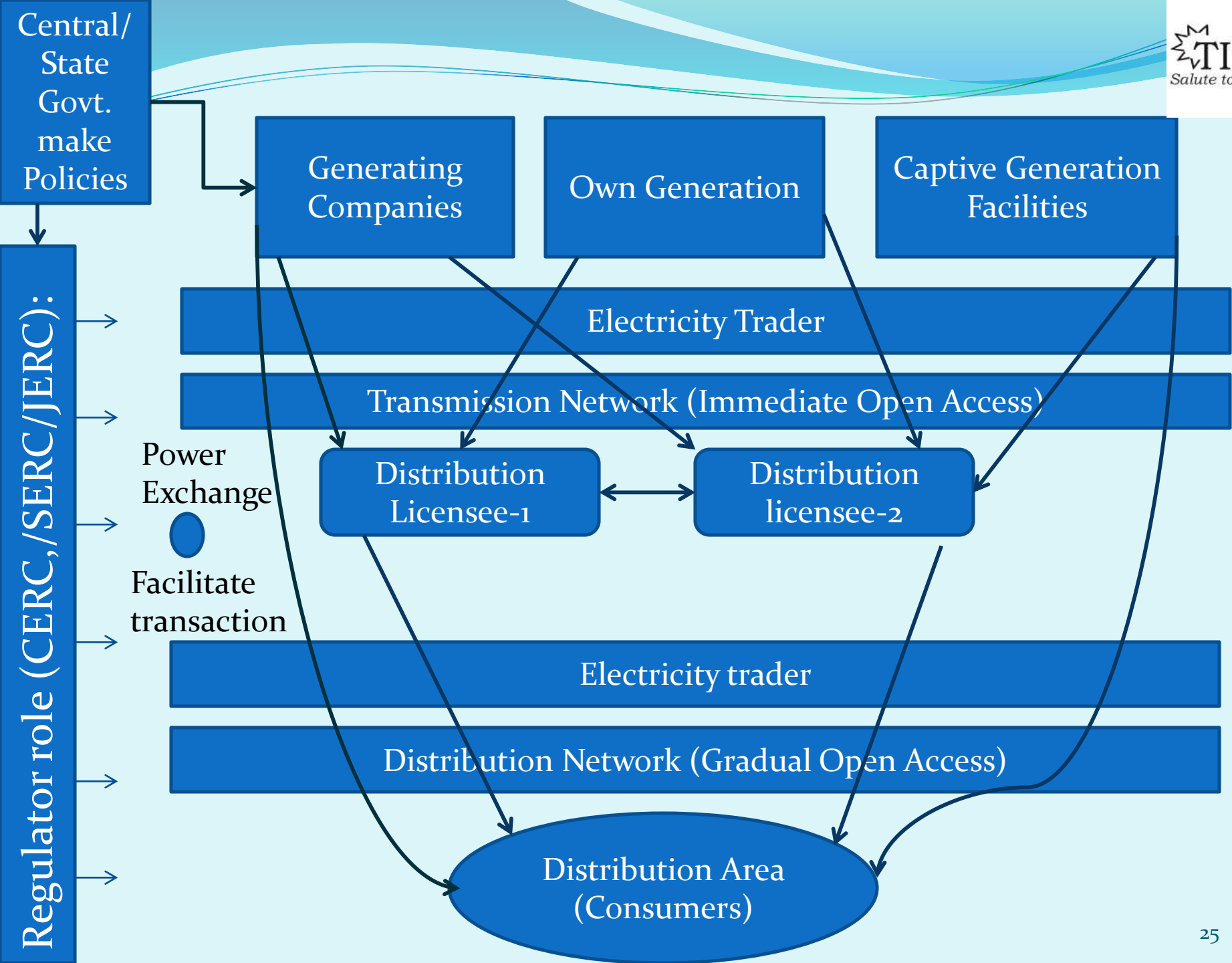
High Court

Section 156 for
Appeal & Revision



Special Courts

Part XV Section 153



Highlights

- The Bill amends the Electricity Act, 2003.
- It seeks to segregate the distribution network business and the electricity supply business, and introduce multiple supply licensees in the market.
- It introduces a supply licensee who will supply electricity to consumers. The distribution licensee will maintain the distribution network and enable the supply of electricity for the supply licensee.
- The State Electricity Regulatory Commissions will grant supply licenses. Consumers can choose to buy electricity from any of the supply licensees in a given area of supply.
- If a supply licensee ceases to be a supply licensee, or is suspended, electricity will be supplied by a provider of last resort (POLR). The POLR will be a supply licensee designated by the State Electricity Regulatory Commission.
- The Bill defines renewable energy and provides for a National Renewable Energy Policy. It requires coal and lignite based thermal generators to produce 10% of thermal power installed capacity as renewable energy.

Key Issues and Analysis

- The Bill requires the presence of a government company as a supply licensee in an area of supply. This may affect competition. Currently, state distribution companies often keep tariffs lower than the cost of electricity. If this behavior by a government owned supply licensee continues, it may drive out other supply licensees. This could defeat the objective of increasing competition.
- The Bill states that all revenue deficits in the electricity sector prior to the enforcement of the Bill will be recovered. The deficits were a result of several factors such as: (i) state distribution companies not revising tariffs in a timely manner, (ii) an inefficient tariff structure and cross-subsidisation by high paying consumers, and (iii) high aggregate technical and commercial losses because of low investment, theft, pilferage, lack of metering and poor billing systems. Some of these issues could be addressed by the new scheme “UDAY”.

Consumer (Section 2(15))

- Elements (used 64 times in Electricity Act 2003)
 - 1. Any person
 - 2. Supplied with electricity for his own use
 - 3. By licensee/ government/other person engaged in the business of supplying electricity.

**Appeal Lies to State Electricity
Regulatory Commission**



ELECTRICITY OMBUDSMEN



**CONSUMER GRIEVANCE REDRESSAL
MECHANISMS**

[Section 42(7)] - The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.

[Section 42(5)] - Every distribution licensee shall, within six months from the appointed date or date of grant of license, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

Other Remedies for Consumers

Section 42 (8)/173/174/175

Consumer
Protection Act 1986

Supreme Court

Section 136, Special
Leave Petition

National Consumer Dispute
Redressal Commission
(National Commission)

Consumer Dispute
Redressal Commission
(State Commission)

Consumer Dispute
Redressal Forum (District
forum)

Lok
Adalats

Legal Services
Authorities Act
1987

NHRC

For Interim
Relief

Resolving Civil Matters in Power Sector

Appellate Authority

Section 127



Assessing Officer

Section 126

Arbitration Disputes in Energy Sector

- **Part XVI Dispute Resolution - Section 158 Arbitration**
- **International Energy Arbitration Centre (IEAC)**
- **Around 35 Arbitration Disputes on NHPC are in Arbitration Disputes amounting to INR 8000 Crores**
- **Around 120 Arbitration Disputes of Generation Companies are in Arbitration Dispute amounting to INR 12,000 Crores**

International Grid – Is it possible

Bilateral Power Treaties Between India and SAARC countries & Myanmar

Regulatory Environment in South Asia & Myanmar

Country	Applicable Law	Ministry & Regulators
1. Afghanistan	-	Ministry of Energy and Water
2. Bangladesh	Electricity Act 1910; National Energy Policy 1995; Policy Guidelines for the Enhancement of Private Participation in the Power Sector, 2008; The Bangladesh Power Development Board Order, 1972; Bangladesh Energy Regulatory Commission Act, 2003; Rural Electrification Board Ordinance, 1977; Renewable Energy Policy of Bangladesh, November 2008	Ministry of Power, Energy and Mineral Resources; Bangladesh Energy Regulatory Commission (BERC)
Bhutan	Bhutan Electricity Act 2001	Ministry of Energy, Bhutan Electricity Authority, Department of New and Renewable Energy 35

Regulatory Environment in South Asia & Myanmar

Country	Applicable Law	Ministry & Regulators
4. India	Electricity Act, 2003; Regulations framed by CERC/ JERC/ SERC	Ministry of Power, Ministry of Renewable Energy, department of Nuclear Energy, APTEL, CERC, JERC, SERC
5. Nepal	Electricity Act, 2049 (1992); Energy Regulations 2050 (1993)	Department of Electricity Development, Ministry of Energy
6. Myanmar	Myanmar Electricity Law of 2014	Ministry of Energy; Ministry of Electric Power; Electricity Regulatory Commission

Regulatory Environment in South Asia & Myanmar

Country	Applicable Law	Ministry & Regulators
7. Pakistan	Regulation of Generation, Transmission and Distribution of Electric Power Act 1997; NEPRA Licensing (Distribution) Rules, 1999	Ministry of Water and Power; National Electric Power Regulatory Authority (NEPRA)
8. Sri Lanka	Sri Lanka Electricity Act, No 20 of 2009	Ministry of Power and Renewable Energy; PUSCL

Afghanistan

- The Construction of a 442-kilometre (275 mi) high voltage transmission line from Uzbekistan to Afghanistan was completed by October 2008. It runs from Kabul towards the border with Uzbekistan, and connects to the Uzbek electricity transmission system. The transmission lines were jointly funded by India and the Asian Development Bank. As a result, by early April 2009 all of the capital city of Kabul had 24-hour electricity, the increase in power has already made a difference to many ordinary Afghans. By 2011, the 220 kV line from Uzbekistan had a capacity of nearly 300 MW.

Bangladesh

- Rampal Power Station was set up near Khulna in a Joint Venture between NTPC and the Bangladesh Power Development Board under the name Bangladesh India Friendship Power Company. This serves the power lines from Bheramara (Khulna, Bangladesh) to Baharampur (Odisha, India).
- Bangladesh seeks access to Bhutan and Nepal through India, but there has been no break through.
- Cancellation of Tipaimukh Hydro Electricity power in Manipur Project was a set back due to statutory and environmental provisions.

Bhutan

- **Jaldhaka Agreement, 1961:** Power connections from West Bengal and Assam to electrify bordering villages/towns in South West Bhutan.
- The following Power plants were funded by India with 40% grant and 60% loan given to Bhutan :-

1. **Chukha in 1974**
2. **Kurichu in 1994**
3. **Tala in 1996**

- The following projects are under construction and funded by the Government of India. The earliest projects are

expected to be completed by 2018 :-

1. **1200 MW Punatsangchu I** (40% Grant and 60% Loan)
2. **1020 MW Punatsangchu II** (30% Grant)
3. **720 MW Mangdehchu** (30% Grant)
4. **600 MW Kholongchu** (Joint venture between SJVNL and DGPC) Financed on 70:30 debt to equity ratio.
5. **570 MW Wangchhu** (30% Grant)

Myanmar

- Due to the political instability leading to sour relations between the two nations until recently, there have been no power exchange agreements.
- With the political stability in Myanmar and the Modi government coming in there have been negotiations regarding power exchange between the two nations.
- India looks to trade its energy with Myanmar which has abundance of Natural Gas that India lacks.

Nepal

- A Power Trade Agreement was signed between the two countries In 2014 to access open connections. This Agreement allowed companies licensed with one country to access open connections of the other country.
- 900 MW Arun III Hydro-electric Project which is a Joint Venture between the two governments.
- 400KVA cross border transmission line from Muzaffarpur (Bihar, India) to Dhalkebar (Janakpur, Nepal).
- 132 KVA line between Kataiya (Bihar, India) and Kushaha (Sagarmatha, Nepal)
- 132 KVA line between Raxaul (Bihar, India) and Parwanipur (Janakpur, Nepal).
- The experience of Bhutan clearly indicates that the benefits accruing to Nepal from Hydropower exports can be substantial.

Pakistan

- There is a complete network of transmission lines and grids on the Pakistani side along the northwestern border of Indian Punjab. The nearest grid on the Indian side of Punjab is Patti, located very near to Lahore Ring.
- In 1998-99, the Dinanath (in Pakistan) – Patti (in India) link between Pakistan-India was considered to transfer surplus power available in Pakistan at that time, on radial basis, by synchronously connecting some part of the Indian load with Pakistan Grid. It may be noted that the Pakistan grid is at 500kV AC whereas the voltage adopted in the Indian grid is 400kV and 765kV AC. Therefore, a direct AC link between the two countries may not be technically feasible.
- Hence technological incompatibility and poor government relations together has forced India to not see Pakistan as a partner for power trade.

Sri Lanka

- The island nation of Sri Lanka is facing capacity and energy shortages. Most hydro resources of the country have been exploited and there is limited scope for further exploitation.
- Accordingly Government of Sri Lanka (Ceylon Electricity Board) has entered into a Memorandum of Understanding with NTPC of India for setting up of a 2 x 500 MW thermal power station in Sri Lanka based on coal generation.
- Another possibility between Sri Lanka and India is a transmission interconnection between the two countries. Madurai on the Indian side and New Anuradhapura substation on the Sri Lankan side have been identified as strong substations for this purpose. The length of the HVDC line is about 385km. Thus the proposed link could be a feasible option with possibility to enhance the capacity to 1000 MW in future.

THANK YOU

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LEGAL ASPECTS OF
REGULATION
LANDMARK
JUDGMENTS IN
ELECTRICITY LAWS

CASE 1.

**Maharashtra Electricity Regulatory Commission
Vs.
Reliance Energy Ltd. & Ors.**

Bench:
Division

Civil Appeal No. 2846 of 2006
(2007) 8 SCC 381

M.E.R.C. vs. Reliance energy Ltd. (2007)

- The Appellate Tribunal of Electricity set aside the order given in case of M/s Prayas (Energy Group) Pune, where the commission directed as follows:

“No billing to be resorted to for more than 3 months. In case average billing have been resorted, appropriate billing adjustments to be carried out, if defective meter. Same principle to apply where average billing is sought. In all other cases, bills to be withdrawn and refunded to consumers. M.E.R.C. Vs. Reliance energy Ltd. (2006)”

Further the tribunal directed consumer to approach the court for individual grievances.

M.E.R.C. Vs. Reliance energy Ltd. (2007)

Question of Law: What is the Power of Commission
&
To what extent the commission can issue directions.

RATIO OF THE CASE

Commission had power to issue directions to prevent harassment to the public at large, but a blank direction to refund the amounts collected by the licensees/distribution companies given by the Commission was not warranted.

CASE 2.

M/s Sesa Sterlite Ltd.

Vs.

Orissa electricity Regulatory Commission & Ors.

Bench:

CIVIL APPEAL NO. 5479 of 2013

AIR 2014 SC 2037

Question of Law:

Question of Law: Whether a developer of a notified Special Economic Zone, who has been deemed by law to be a licensee for distribution of electricity, is required to, once again, apply to Electricity Regulatory Commission under the Electricity Act for grant of a license or the deeming fiction carved out in Section 14 of the Electricity Act automatically dispenses with this requirement and ipso facto makes such SEZ developer a distribution licensee.”

RATIO OF THE CASE

Following ratios emerges from the decision of the Supreme Court in this case:

1. Supply of Electricity to consumers is must to be a distribution licensee.
2. Where a distribution licensee is supplying power to any other consumer but receiving power from its own consumption such a licensee is a consumer.
3. CSS is compensatory charge and payable by any consumer to the distribution licensee.
4. The line, irrespective of voltage and the one who paid the cost of such line, connecting to the consumers premises is a part of distribution system of the distribution licensee.

LANDMARK JUDGMENTS OF APTEL

Case 3

Jindal Power Ltd.

Vs.

Central Electricity Regulatory Commission

BENCH:

DIVISION BECH

APPEAL NO. 83 of 2010

Jindal Power Ltd. Vs. CERC.

Question of Law:

1. Which application have priority between LTA application and MTOA application while granting open access.
2. Whether part LTA can be granted in the event the available transmission capacity is less than the quantum of all LTA application filed in a particular month.

HELD

The applications for LTA and MTOA have to be processed separately. While processing application for MTOA, the application seeking access for larger duration shall have higher priority. The third proviso to Regulation 10(1) states that in case LTA application requires planning or augmentation of transmission system, such planning or augmentation may be considered on 30th June and 31st December in each year.

This means that if the existing transmission system and that planned/under execution is not adequate to accommodate the LTA requirement and new transmission system has to be identified for permitting full LTA quantum then such planning will be considered twice in a year i.e. on 30th June and 31st December.

Thus, the LTA applications where new transmission system is required to be identified will have to wait for grant of LTA till the study for system augmentation over and above that planned/under execution system is carried out

CASE 4

Konark Power Projects Ltd

Vs.

**Respondent: Karnataka Electricity Regulatory
Commission**

Bench:

Mr. Karpaga Vinayagam, Chairman

Mr. V J Talwar, Technical Member

- APPEAL NO. 35 OF 2011

Konark Power Projects Ltd Vs. K.E.R.C

Question of Law:

1. Whether the Commission has the power to modify the tariff contained in a subsisting PPA.

APTEL'S OBSERVATIONS AND RULING

- The State as well as the Country has been facing power shortage and this fact has been accepted by the Government of Karnataka. Under such circumstances it should be our endeavor to produce energy to the extent possible.
- In the context of prevailing power scenario in the country, it is well said that “No power is expensive power”. In other words power at any cost is acceptable as the Cost of unserved energy could be very high.
- The State Commission as indicated in the impugned order has power to modify the tariff for concluded PPA in larger public interest.
- The guiding principles laid down in Section 61 of the 2003 Act would indicate that the Commission has to maintain a balance so that the generators also may not suffer unnecessarily. In the context of prevailing power situation in the country, it would not be desirable to keep any generating unit out of service for want of ‘just’ tariff

LANDMARK JUDGMENTS OF cerc (Central Electricity Regulatory Commission)

CASE 5

The Indian Railways

Vs.

Power Grid Corporation of India

BENCH:

Full Judge Bench

CERC- Petition No. 197/MP/2015

Now in APTEL

The Indian Railways

Vs.

Power Grid Corporation of India

Question of Law:

1. Whether the petitioner's claim as an authorized entity under the provisions of the Railways Act to distribute and supply electricity can be sustained in law and if so, whether the petitioner is exempted from complying with the requirements put forth by MSETCL for the purpose of granting connectivity?

- In the light of the judgement of the Supreme Court in **UOI Vs UPSEB**, it is held that the petitioner is an authorized entity under the Railways Act to undertake transmission and distribution activities in connection with the working of the railways, independent of its status under the Electricity Act. Therefore, the information sought by MSETCL vide its letter dated 6.7.2015 are not relevant for grant of connectivity and concurrence to the petitioner for scheduling of power from RGPPL and GUVNL through the ISTS and State networks by availing long term access or medium term open access in terms of Connectivity Regulations.

The Indian Railways

Vs.

Power Grid Corporation of India

Question of Law:

1. Whether the Indian Railways can be considered as a deemed distribution licensee under the Electricity Act?

- The petitioner is a deemed licensee under third proviso to Section 14 of the Electricity Act and no separate declaration to that effect is required from the Appropriate Commission. The petitioner as a deemed licensee shall be bound by the terms and conditions of licensee specified or to be specified by the Appropriate Commission under proviso to Section 16 of the Electricity Act.

The Indian Railways

Vs.

Power Grid Corporation of India

Question of Law:

1. Whether the petitioner should be treated as a separate regional entity for the purpose of scheduling and energy accounting in terms of deviation settlement?

- The drawl points from ISTS located within a State shall be treated as a single entity for the purpose of scheduling. The group of TSSs situated in a State and connected directly with ISTS may be treated as one „fragmented control area“ and the responsibility for scheduling, metering, balancing, applicability of ISTS charges and losses etc, shall vest in the concerned RLDC. For the TSSs situated in a State and connected to State network, these functions shall vest in the concerned SLDC.

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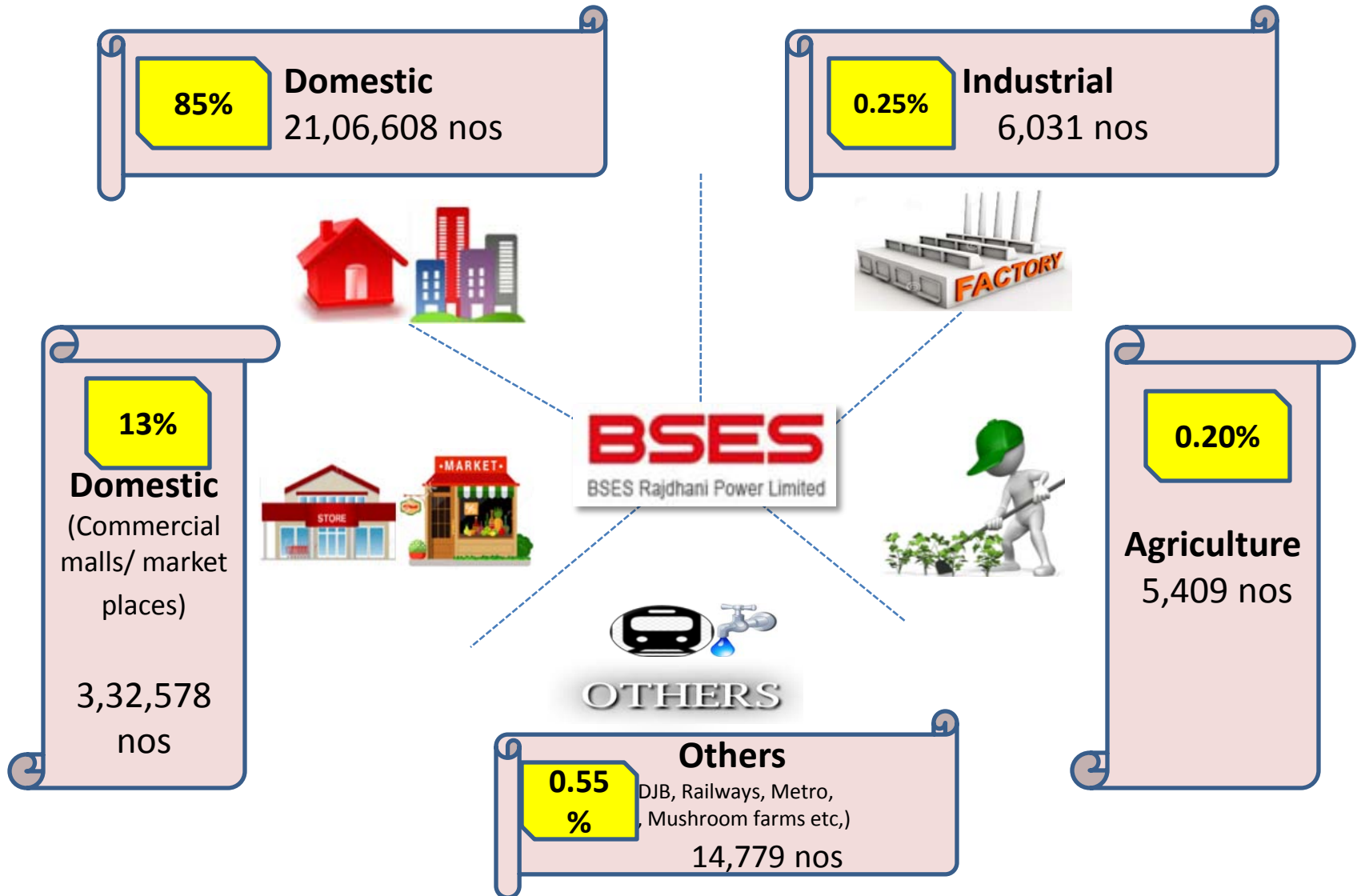
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+91 93 505 82601

BSES

हर दिन रोशन, हर पल रोशन... दक्षिण-पश्चिम दिल्ली रोशन !

BRPL serving largest Consumer base (~2.7 Mn) in Delhi..



Pre-privatization: Delhi Power Situation



Age Old Network

Unprofessional Culture

Outdated Technology

Poor Consumer Service

Equipment Burn outs

High Corruption

Inadequate Investment

High Theft

Business inheritance marred by multiple maladies

What Delhi Consumer was experiencing (Yr 2002)

Real Life Customers Experiences

1



4



2



5



3



6



- 1) **Flickering of TVs & dim Tube lights**
(Poor quality supply resulting in flickering/ dim lighting)
- 2) **“Voltage stabilizer” was an essential requirement**
(Under/over voltages damaging appliances)
- 3) **Long Queues for bill payment**
(a special day off for bill payment)
- 4) **Dim / ill-lit Streetlights - hazard to social safety**
- 5) **Constantly running Gensets causing air pollution**
(A Common sight at all marketplaces)
- 6) **“Linesman” being only touch point for customer**
(Virtually No customer care)

Reliable Power Supply

DVB Times



- **Constantly running Gensets causing air pollution in market areas**
- **Frequent equipment burnouts**

BSES



- **24x7 reliable supply with Reliability Index @ 99.98%**

Per Day Avg. Power cut reduced significantly

Quality Power Supply



- **Flickering** of TVs & dim Tube lights
- **Dim / ill-lit Streetlights** - hazard to social safety



- **State of the Art Network** leading to stable voltage supply

Days of DG sets, voltage stabilizers, inverters & UPS have gone

DG : Diesel Gensets
UPS : Uninterrupted Power Supply

Convenient Customer Care

DVB Times



- A “mere hole in the wall” catering to all services
- No dedicated customer care centers.
- Lack of Customer Service Intent

BSES



- State of Art Customer Care Centers
- BSES Office within range of 2 Kms
- Preferential / dedicated value add services

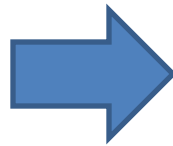
Towards achieving Customer Satisfaction

Web based initiatives

DVB Times



BSES



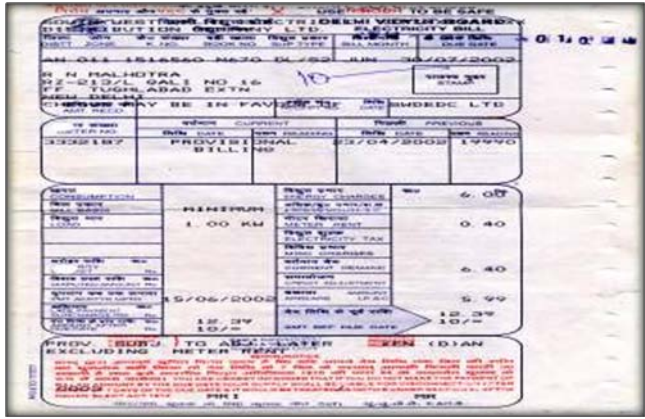
Features & Facilities

- Six months billing data
- Online Request for New Connection
- Online Request for Load Change
- Online Complaint Registration
- Online payment
- Energy conservation & Safety tips
- Download forms

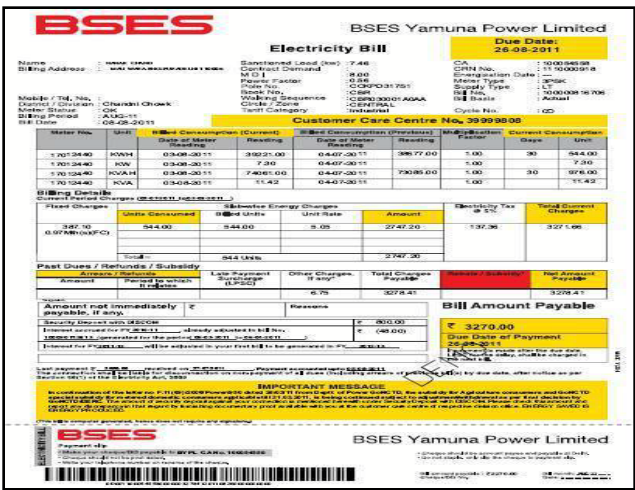
Array of web based options & information

New Improved Energy Bill

DVB Times



BSES

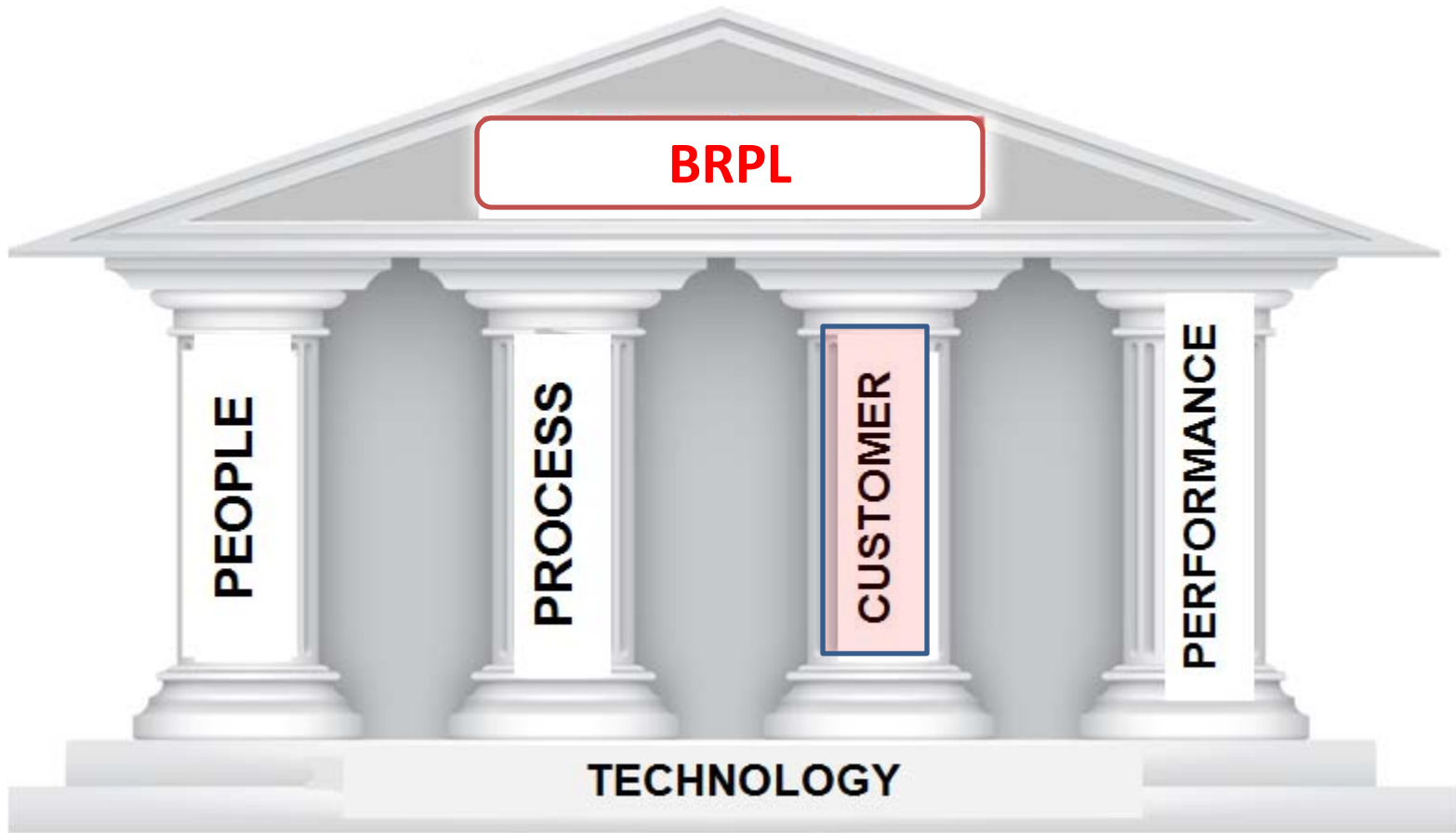


- Dull Colors.
- No clear contact information
- Unclear Bill payment information
- No mention of Energy Charge calculation
- Multicolor variable printing
- Highlighting contact details
- Bi-lingual (English / Hindi)
- Simplified bill calculation with previous details
- Space for Public Messages

A Customer-friendly and Informative Energy Bill as per the direction of DERC

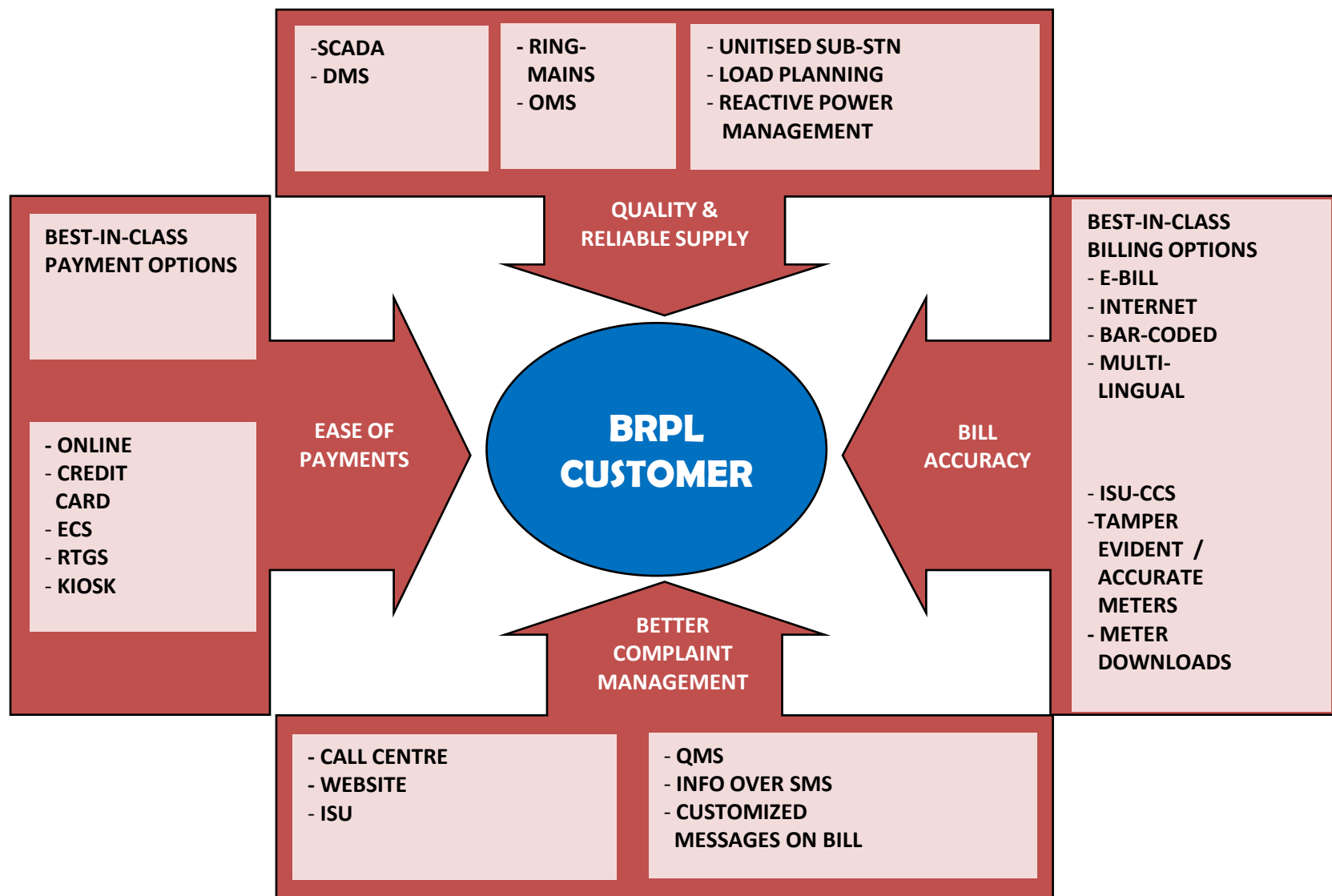


Customer centrality...



Customer is “Success Pillar” & hence “Customer Care” an essential aspect.

Technology inclusion at BRPL



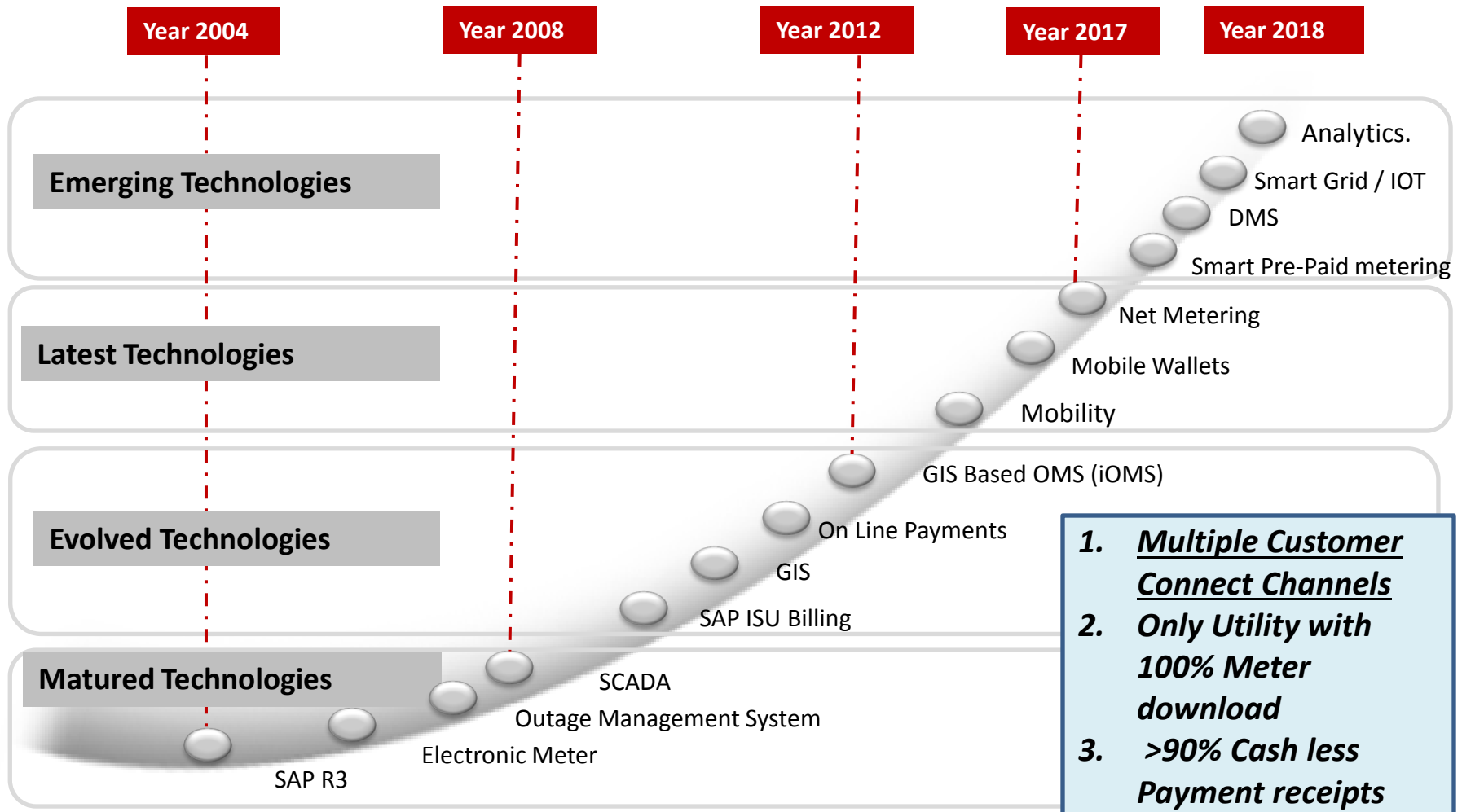
Turnaround Performance since 2002

*FY20 nos. are provisional

Parameter	UoM	July' 2002	March' 2020	% Change
OPERATIONS				
<i>AT&C Losses</i>	%	51.5%	8.4%	43%
<i>System Reliability – (ASAI)</i>	%	65%	99.8%	54%
<i>Transformer Failure</i>	nos	878	~30	97%
<i>Peak Load</i>	MW	1234	2745	97%
<i>Street Light Functionality</i>	%	45%	99.6%	121%
CUSTOMER INTERFACE				
<i>New Connection Energization Time</i>	Days	52	7	87%
<i>Meter Replacement Time</i>	Days	25	3	88%
<i>Provisional Billing</i>	%	15	1.5	93%
<i>Bill Complaint Resolution</i>	Days	45	3	93%
<i>Mean Time to Repair Faults</i>	Hours	12	1.32	89%
<i>Payment Collection Avenues – {Touch points}</i>	Nos.	20	>4500	Multiple
<i>Consumers</i>	Lacs	9.5	24.6	135%

BRPL serves large no of small, domestic consumers & caters to high theft prone areas

Digital Transformation Journey @ BSES



Technological innovation is a regular feature at BSES

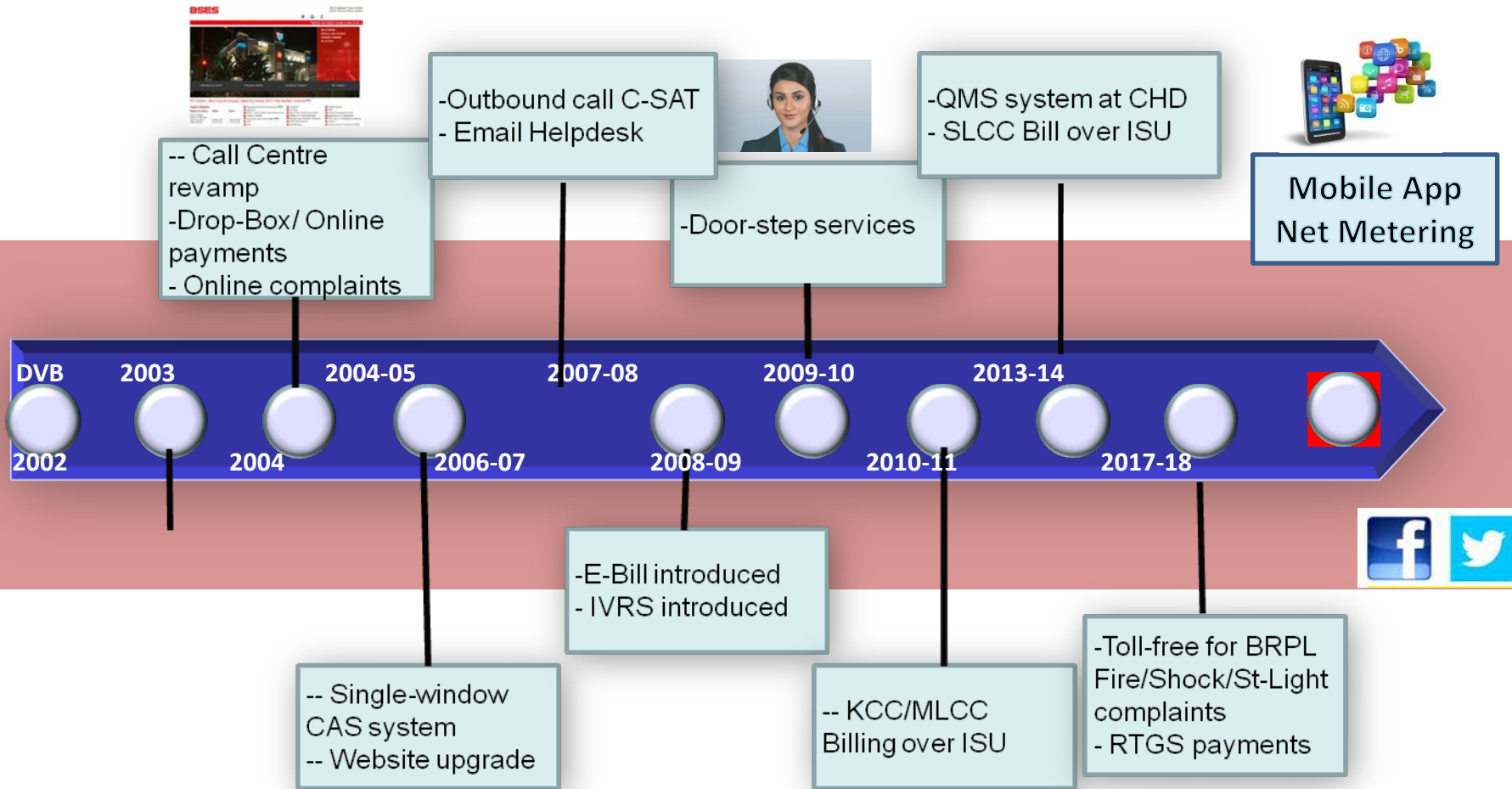
BRPL offers Futuristic Mobile App for customer



Mobile App Feature	Availability
Quick Pay	Yes
Contact us tab	Yes
Register For eBill	Yes
Past Payment History	Yes
Bill Download	Yes
Consumption trend (last 5 months)	Yes
“No Supply” Complaint Registration	Yes
Complaint Status	Yes
Call Link To Call Center	Yes
Social Media Plug-in	Yes
Request for New Connection, Name Change, Address Correction	Yes
Employee Verification	Yes
Feedback	Yes
Location of nearest BRPL office	Yes

BSES mobile application with total download exceeding 5 lac with rating of 3.4

Ever Improving Customer Services Journey...



A Progressive and Sustainable Journey towards Improving Customer Delight



C-SAT : Customer Satisfaction
 QMS : Queue Management System
 CHD : Customer Helpdesk

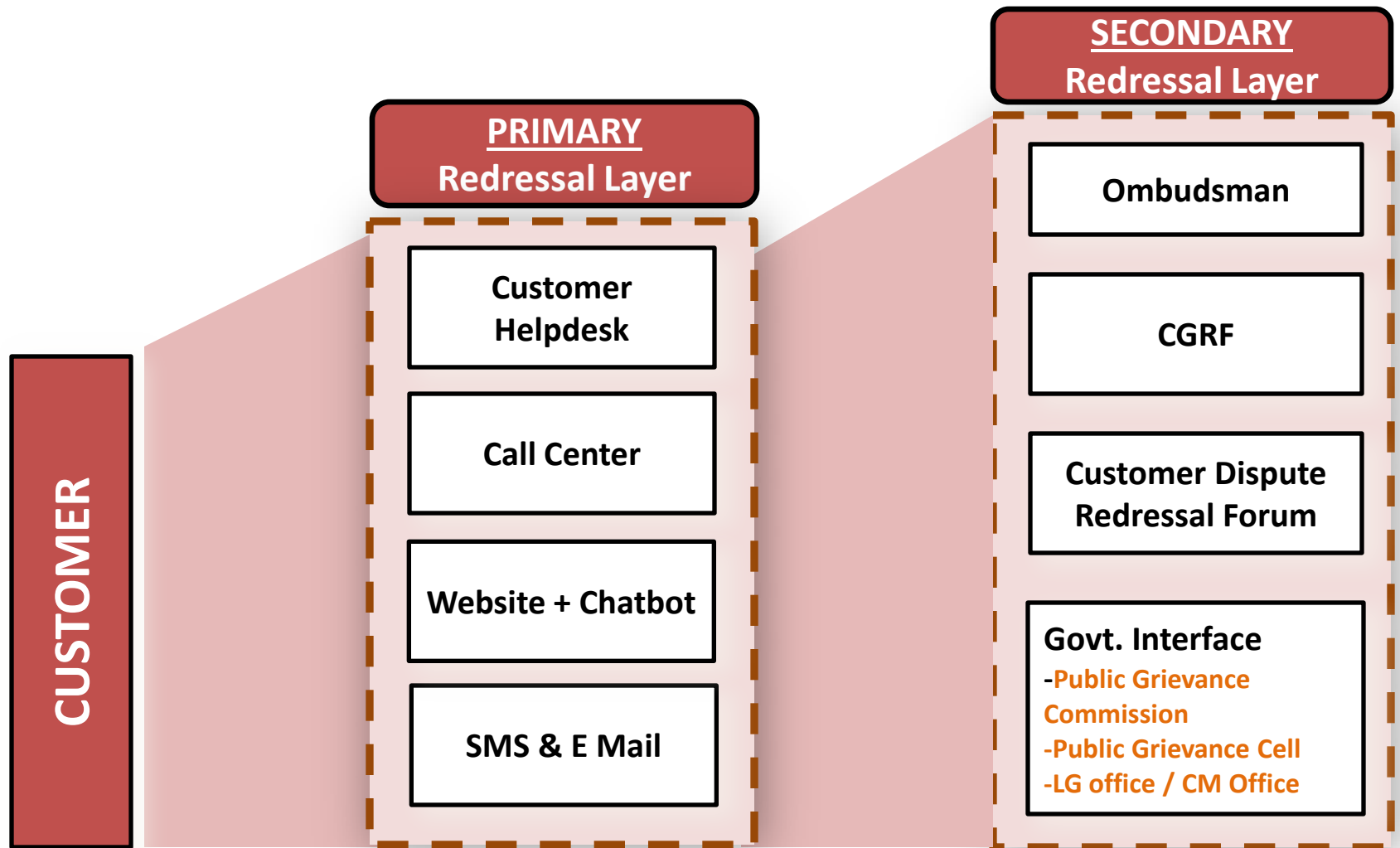
SLCC : Small Load Consumer Category
 MLCC : Medium Load Consumer Category
 KCC : Key Consumer Category

RTGS : Real Time Gross Settlement
 CAS : Consumer Application System
 IVRS : Interactive Voice Response System

BRPL offers all-most all payment platforms...

Payment Avenues	DVB	2003	2004	2005	2006	2008	2010	2011	2012	2013	2017-18
Cash Counters	√	Significant additions									
Govt. Centers						√	√	√	√	√	
Retail –(EasyBill, Suvidha, Oxigen)			√	√	√	√	√	√	√	√	
Drop Boxes			√	√	√	√	√	√	√	√	
Online			√	√	√	√	√	√	√	√	
Credit Card							√	√	√	√	
Kiosks						√	√	√	√	√	
RTGS									√	√	
PAYTM											√

BRPL offers Multiple Avenues of Grievance Redressal



Multiple touch points offer seamless Customer Experience

Customer Convenience

- 'No Current' complaint registration & 'Duplicate Bill' via WhatsApp
- Revamped Website
 - Multiple CA No.'s in single view
 - Forgot Username / Forgot Password feature
 - View/ Download Last 12 months Bills, Current Month's Payment Receipt
 - Ticker & Latest Updates Section
 - DERC Public Awareness Bulletin
- Payment without physical bill at cash counter
- Instant SMS confirmation for Cash Counter payment (Cash, Cheque, DD, Card)
- Digitization of snail mail process
- E-School Energy Conservation programs for students

Process Improvement

- ✓ Tie-ups with various **mobile wallets** conceived & implemented (**FIRST**)
- ✓ Also, **on-line recharge** of prepaid meters thru' mobile wallets (**FIRST**)
- ✓ **Digi Seva Kendra**: State of the art Digital Experience for on boarding (**FIRST**)
- ✓ **Online New Connection** Process (without any need for physical visit)
- ✓ **Recovery through Mobile Tabs**
- ✓ Payment tie-up with **Bharat QR** code
- ✓ **Digital delivery of colored E-Bills**
- ✓ **Wireless POS Card swipe** machines to recovery teams
- ✓ **Smart Meters & Prepaid Metering**
- ✓ **100% Technical Feasibility** thru Mobile Tabs

Call Center Initiatives

- Call routing of Complaint Center numbers to Call Center for standard service experience
- IVRS based Outbound dialer for payment recovery
- 'Enquiry', 'Request' and 'Complaint' tagging in SAP for all interactions
- 'No Current' outage information availability in call center IVRS
- 'First Bill' explanation call and 'Welcome Call' process
- In-housing of call center technology
- Push SMS functionality for call center



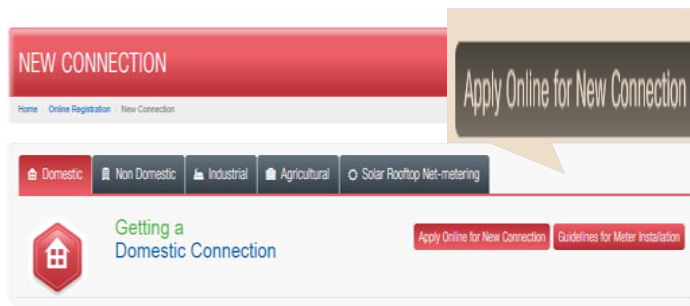
**Overnight adaptation to
the “New Normal” during
Covid 19 times through
Digital Transformation !**

Customer centric digital initiatives

BSES Aap Ke Sath – eRWA Meets – a first of its kind initiative for virtual online meetings with over 2000 RWAs.



ePermanent Lok Adalat - for amicable settlement by customers through virtual mode



eApplication - Customer can apply online for new connection & other services at his convenience



Self Service – Option for Customer to submit the self meter reading.

Customer centric digital initiatives

eCustomer Service – Host of Services through WhatsApp

1. Meter Reading Information

Know your meter reading schedule
Submit for Self Meter Reading

2. Billing Information

Get your Latest Bill
Understand your Current Bill & Consumption
Get your Last 5 months Bill details
Register to get E-bill

3. Payment Information

Pay your Bill
Get details of your last 5 Bill Payments

4. Complaint Registration

Register complaint for No Supply
Register complaint for Low Voltage
Register complaint for Current Leakage
Register complaint for Fire



Ease of Payment – Customer can pay through link provided in Bill PDF

BSES Bill of Supply for Electricity
Date of Print Out: 04/09/2020 BSES Rajdhani Power Ltd.
GSTIN: 07AAGS3072023

Name: PUNJAB LAL Billing Address: C-707 OF NEW FRIENDS COLONY, NEW DELHI NEAR, DELHI 110065 Contract Demand: 14.00 (kW) CA No: 158028316 Meter Type: 3P/6C Supply Type: LT Meter No: 108125948373 Bill No: Actual O.D. No: R-20/1015154015 Meter Reading Status: DL CCTV Tagged: No Street Light Tagged: No Cycle No: 0C WS-11 Tagged: No

Mobile / Tel. No: 987187323 Email ID: Tariff Category: Domestic / Residential

District / Division: New Friends Colony Working Sequence: NCR/07/AMAA Bill Month: SEP-20 Bill Date: 30-08-2020

Customer Care Centre No: 3999707

Make No.	Year	Model/Configuration/Contract	Rated Capacity (kVA)	Rating	Rated Capacity (kVA)	Rating	Rating	Rating	Rating	Rating	Rating
27141078	2018	2018-2020	14.00	14.00	14.00	14.00	14.00	14.00	14.00	14.00	14.00
27141078	2018	2018-2020	14.00	14.00	14.00	14.00	14.00	14.00	14.00	14.00	14.00
27141078	2018	2018-2020	14.00	14.00	14.00	14.00	14.00	14.00	14.00	14.00	14.00
27141078	2018	2018-2020	14.00	14.00	14.00	14.00	14.00	14.00	14.00	14.00	14.00

Billing Details (Current Period Charges: 30-07-2020 to 29-08-2020)

Particulars	Rate	Quantity	Amount	Particulars	Rate	Quantity	Amount
Basic Charge	100.00	1.00	100.00	Power Charge	1.00	1.00	1.00
Minimum Charge	100.00	1.00	100.00	CCTV Fee	0.00	1.00	0.00
Street Light Fee	0.00	1.00	0.00	Street Light Points	0.00	1.00	0.00
Other Charges	0.00	1.00	0.00	Other Charges	0.00	1.00	0.00
Total			100.00	Total			100.00

Bill Amount Payable: Rs. 0.00

Due Date of Payment: --

PAYNOW

NEW DELHI-110019

PAYNOW

at Delhi
rent slip..

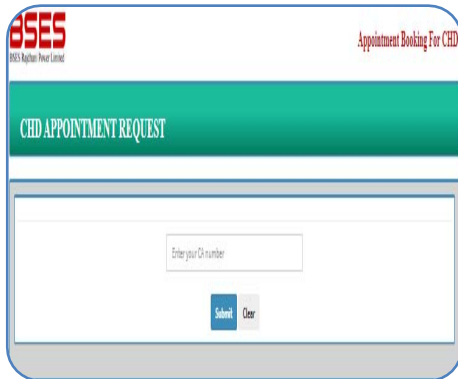
Bill month: SEP-20
Date:

NEW DELHI-110019



Customer centric digital initiatives

Safety First– Online prior appointment to visit Customer Care Centers ensuring social distancing.

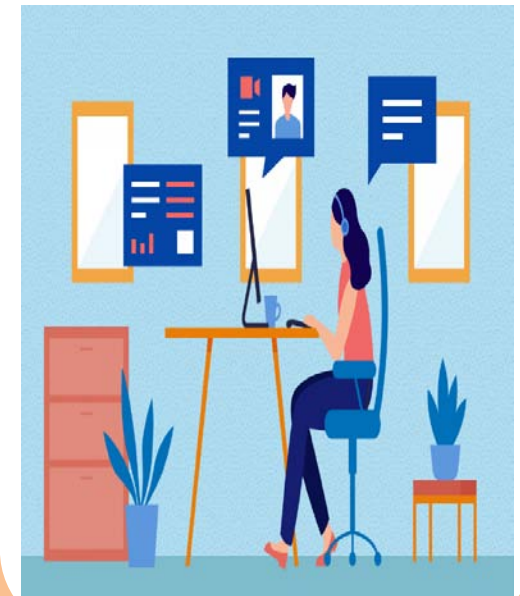


The screenshot shows a web form for "Appointment Booking For CHD". At the top left is the BSES logo with the tagline "BSES Right Your Line". At the top right, it says "Appointment Booking For CHD". Below the header is a green bar with the text "CHD APPOINTMENT REQUEST". The main form area has a text input field labeled "Enter your CH number" and two buttons: "Submit" and "Clear".

Onsite Service Camp – For our Senior Citizens and non tech savvy customers

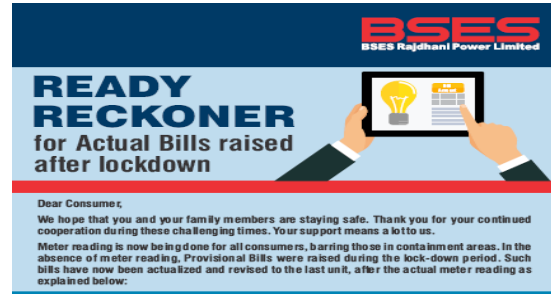


24X7 Call Center service continuity – Agents handling calls through Work from Home technology.



Customer centric digital initiatives

Customer Communication – Proactive communication to customers on various updates and digital initiatives.



Digital Services at a Glance

ONLINE SERVICES	WEBSITE	MOBILE APP	EMAIL	WHATSAPP	CALL CENTER	SMS SERVICES
Bill Information	✓	✓	✓	✓	✓	✓
Pay Bill	✓	✓	✓	✓	✓	✓
Bill Explanation	✓	✓	✓	✓	✓	✓
Billing & Meter Related Complaint	✓	✓	✓	✓	✓	✓
Register for eBill	✓	✓	✓	✓	✓	✓
Register Load Change Request	✓	✓	✓	✓	✓	✓
Demand Note Payment	✓	✓	✓	✓	✓	✓
Register New Connection Request	✓	✓	✓	✓	✓	✓
Self Meter Reading	✓	✓	✓	✓	✓	✓
CHD Appointment	✓	✓	✓	✓	✓	✓
No Supply Complaint	✓	✓	✓	✓	✓	✓
Outage Update	✓	✓	✓	✓	✓	✓
Share Feedback	✓	✓	✓	✓	✓	✓

OTHER INITIATIVES

❖ Ease of New Connection

- Simplified New Connection Form
- Only two documents required: Address Proof & Identity Proof
- Simplified process to drive away unauthorized persons
- Facilitators for filling of application form at CHD / DSS counters (piloted in SKT/VKP)

❖ Tied up for attractive cash back schemes



- ❖ Provision of quick temporary connections for tent houses / Pandals etc

BSES BSES Rajdhani Power Limited

NEW CONNECTION SERVICE(S) FORM

PLEASE FILL THIS FORM IN CAPITAL LETTERS (PLEASE USE THE APPROPRIATE BOX, WITH RESPECTIVE SECTION AND SUB-SECTION)

REQUEST NO. _____

Section 1. Applicant Details (To be applicable)

1a. Name of Applicant (to be filled in proof of photo identity applicable to Individual) / (Organization Name (Applicable for Organization))

1b. Address Details (To be filled in proof of photo identity)

Title: Mr. Mrs. Others (Please Specify) _____

House No. _____ Date of Birth: _____

1c. Address Details (To be filled in proof of photo identity)

1d. Date of Application (To be filled in proof of photo identity)

Section 2. Address

2a. Current Residential Address (To be filled in proof of photo identity and Registered Address (Applicable for Organization)) (B/S/G) Landmark, Locality

2b. Previous Address (To be filled in proof of photo identity)

Section 3. Category

Category	Sub-Category	Rate
I	Domestic (Consumer)	₹ 1000
II	Non-Domestic (Commercial/Industrial/Institutional)	₹ 2000
III	Public (Municipal Corporation/City Municipal Corporation)	₹ 5000
IV	Public (Municipal Corporation/City Municipal Corporation)	₹ 10000
V	Public (Municipal Corporation/City Municipal Corporation)	₹ 15000
VI	Public (Municipal Corporation/City Municipal Corporation)	₹ 20000

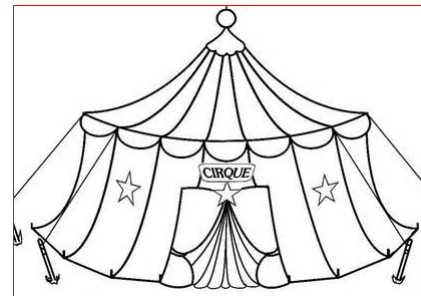
3d. CONNECTION SERVICE REQUIRED

3e. Type of Area

3f. Type of Premises

3g. Signature of Applicant/Authorized Signatory

Registered Office: BSES Rajdhani Power Ltd. BSES Bhawan Nehru Place, New Delhi 110019
 CIN: U74902DL1997PL111027, Tel: 598 8705 Website: www.bsesdelhi.com



NEW INITIATIVES

- ❖ Stair case metering / LED Lights in stair cases.
- ❖ WhatsApp no. (9555010022) introduced for theft reporting
- ❖ Introduction of **BSES Mobile App** (Available in Google Play Store / on BSES Website)
- ❖ Subsidy for CGHS consumers introduced
- ❖ Meters outside Premises for Consumer Safety / Reading in Consumer's absence
- ❖ Newer Bills & ebills to be introduced



NEW INITIATIVES



BSES Rajdhani Power Limited
Regd. Office : BSES Bhawan,
Nehru Place, New Delhi-110 019

A joint venture of Reliance Infrastructure Limited with Govt. of NCT, Delhi

प्रिय उपभोक्ता,

तारीख: 24 नवंबर, 2016

नमस्कार!

हम आपका ध्यान इस ओर आकर्षित करना चाहते हैं कि पिछले कुछ वर्षों के दौरान, बीआरपीएल ने अपनी आपूर्ति वाले क्षेत्रों में बिजली वितरण के आधारभूत ढांचे में सुधार लाने तथा उसका उन्नतिकरण करने की दिशा में उल्लेखनीय प्रगति की है।

साथ ही, बीआरपीएल ने निचले स्तर के वितरण ढांचों— जो कि उपभोक्ता के स्थान तक जाते हैं— का भी आधुनिकीकरण किया है, जैसे कि दोषपूर्ण व अतिग्रस्त केबलों तथा बस वार, आदि बदले गए हैं।

बिजली अधिनियम, 2003 और केंद्रीय विद्युत प्राधिकरण (सीईए) (मीटर लगाना व उसका परिचालन नियमावली, जून 22, 2010) का पालन करते हुए, बीआरपीएल उन सभी मीटरों को बाहर कर रही है, जो कि उपभोक्ता के स्थान/घर के भीतर लगे हुए हैं। निम्नलिखित कारणों से ऐसा किया जा रहा है:

- बिजली के उपकरणों/ इन्स्ट्रुमेंट्स की सुरक्षा
- मीटरों की मासिक रीडिंग के दौरान उपभोक्ताओं को कम से कम व्ययधान
- उपभोक्ता के घर के अंदर दाखिल होने की जरूरत पर/जालसाजों द्वारा मीटर रीडिंग की आड़ में उपभोक्ताओं के घर में घुसने की घटनाओं पर अंकुश लगाना
- उपभोक्ता के स्थान पर ताला लगे होने के बावजूद मीटर रीडिंग संभव

कृपया ध्यान दें कि इस अभियान के तहत, मीटर के स्थान परिवर्तन/ आधुनिकीकरण के लिए आपको कुछ भी भुगतान करने की जरूरत नहीं है।

हम आपसे अनुरोध करते हैं कि कृपया इस कार्य में हमारे प्रतिनिधियों के साथ सहयोग करें। मीटर चेंज रिपोर्ट (एमसीआर) की एक कॉपी भविष्य के आपके संदर्भ के लिए, आपको बीआरपीएल स्टाफ के द्वारा उसी घबत सौंप दी जाएगी।

किसी भी स्पष्टीकरण/ सहायता के लिए, कृपया डीजीएम (बिजनेस)/ डीजीएम (ओएंडएम) से नीचे दिए गए टेलीफोन नंबरों पर संपर्क करें, या आप अपने डिपिजन ऑफिस में भी जा सकते हैं।

आपको हर घबत अपनी सर्वोत्तम सेवाओं के लिए आभारस्त करते हैं।

शुभकामनाओं के साथ,



A joint venture of Reliance Infrastructure Limited with Govt. of NCT, Delhi

प्रिय उपभोक्ता,

तारीख: 24 नवंबर, 2016

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- मीटरों की मासिक रीडिंग के दौरान उपभोक्ताओं को कम से कम व्ययधान
- उपभोक्ता के घर के अंदर दाखिल होने की जरूरत पर/जालसाजों द्वारा मीटर रीडिंग की आड़ में उपभोक्ताओं के घर में घुसने की घटनाओं पर अंकुश लगाना
- उपभोक्ता के स्थान पर ताला लगे होने के बावजूद मीटर रीडिंग संभव

कृपया ध्यान दें कि इस अभियान के तहत, मीटर के स्थान परिवर्तन/ आधुनिकीकरण के लिए आपको कुछ भी भुगतान करने की जरूरत नहीं है।

हम आपसे अनुरोध करते हैं कि कृपया इस कार्य में हमारे प्रतिनिधियों के साथ सहयोग करें। मीटर चेंज रिपोर्ट (एमसीआर) की एक कॉपी भविष्य के आपके संदर्भ के लिए, आपको बीआरपीएल स्टाफ के द्वारा उसी घबत सौंप दी जाएगी।

किसी भी स्पष्टीकरण/ सहायता के लिए, कृपया डीजीएम (बिजनेस)/ डीजीएम (ओएंडएम) से नीचे दिए गए टेलीफोन नंबरों पर संपर्क करें, या आप अपने डिपिजन ऑफिस में भी जा सकते हैं।

आपको हर घबत अपनी सर्वोत्तम सेवाओं के लिए आभारस्त करते हैं।

शुभकामनाओं के साथ,

रघु एनी
सहायक उपभोक्ता
प्रमुख, कानून व सलाह
टेलीफोन: 011-29960587
ईमेल: rem_antony@relianceada.com



NEW INITIATIVES

Dear RWA,

At the outset we place on record our immense gratitude for your continued patronage & support to help us at BRPL deliver the best to all our esteemed Consumers, time & again. We seek your earnest support and hand holding in our special initiatives towards loss reduction to curb pilferage of power, to the extent possible.

Keeping the above in perspective, we would like to draw your attention to the aspect of staircase lighting wherein it has been found that staircase lighting is unmetered, especially in DDA colonies, Group Housing Societies etc. Such instances make it prone to the unpleasantness of enforcement proceedings time to time.

BRPL once again volunteers to help in this initiative to ensure customer satisfaction along with our esteemed Utkrish Sahabhagis / RWA office bearers. BRPL has short listed a vendor who would be visiting you shortly with the following proposal:

- Change the existing Tube Light/Incandescent bulb with LED bulb of 3Watt/ 7Watt (depending on Consumer's choice).
- Wherever such connections are found unmetered, all such points would be connected to the consumers' own meter/common are meter. Here, it would be worthwhile to place on record that with a 3 Watt LED bulb operating 10-11 hours a day, maximum consumption shall be approx. only 'One Unit/month costs Rs.4.32 only' and approx. '2.5 Unit/month costs Rs.10.08 only' for 7 Watt LED bulb:

Energy Consumption per month		
LED Bulb Wattage	Total Units Consumed/month	Energy Charges/month (Rs.)
3W	1.08 *	4.32 **
7W	2.52	10.08

* Lighting presumed to be used @ 12 hours for 30 days

** Minimum slab rate as applicable to DX consumers

- For the above, major payment shall be sponsored by BRPL and the RWA / individual shall make only a

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** Minimum slab rate as applicable to DX consumers

- For the above, major payment shall be sponsored by BRPL and the RWA / individual shall make only a nominal payment to the Agency as under:

Sl. No.	Scenario	LED Bulb Installation scheme for Staircase Light	Consumer/Group share				Total Cost (In Rs.)
			BRPL Share (In Rs.)	3 Watt LED	7 Watt LED	7 Watt LED	
1	Staircase light already through meter	No action	0	0	0	0	0
2	Only Tube Light exists	Installation of: 1. LED Bulb 2. LED Bulb 3. Screw 4. Switch 5. Meter 6. Wiring by electrician	50	35	40	85	130
3	Holder exists, Incandescent Bulb/CFL exists/not exists	Installation of: 1. LED Bulb 2. LED Bulb 3. Meter 4. Wiring by electrician	50	23	47	72	97
4	Holder, LED Bulb exists but staircase light not through meter	Installation of: 1. Meter to be connected with consumer meter/ 2. Screw 3. Switch 4. Wiring by electrician	47	0	0	47	47

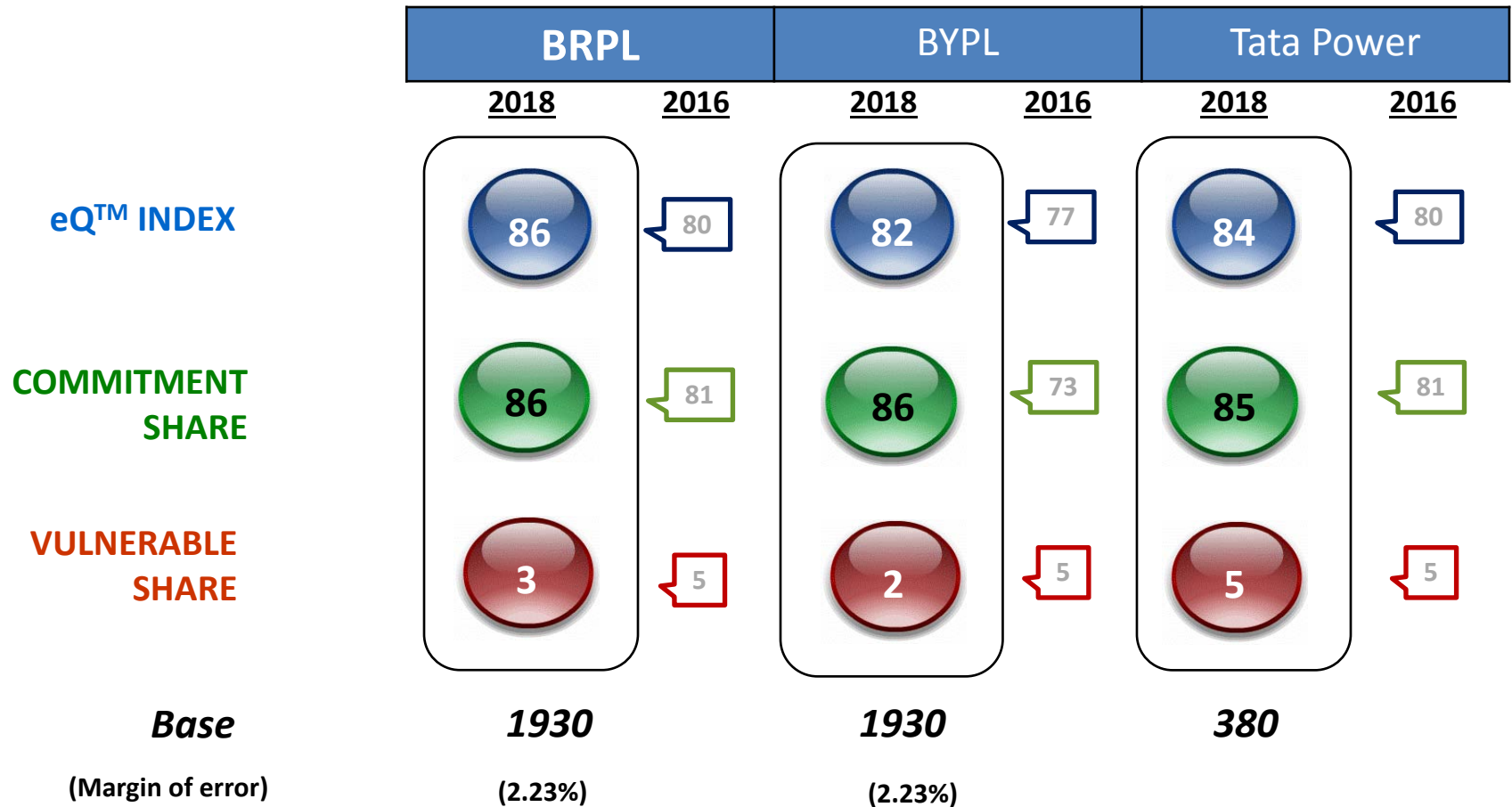
For a seamless implementation of the above, the Customer Care Officer of your Division shall contact you. However, you may also contact your Customer Care Officer or DGM (Business) for all further clarifications / support for an expeditious field execution

Assuring you of our best services at all times.

With warm regards,

Renu Antony

Unmatched Operational Efficiency (Nielsen Survey 2018)



The eQ index for BRPL has increased from 80 to 86. A significant improvement in satisfaction too has been observed this time with commitment share increasing to 86 from 81 in 2016.

Brand Imagery of BRPL in Nielsen Survey



BSES
BSES Rajdhani Power Limited

- **Very successful** in their respective fields
- **Non replaceable**, holds monopoly in it's field of work
- **Very mature and experienced outlook**
- Grows with the demand of time, **open to change & innovation**
- **Very dynamic**, leaves an impression of their work on the viewers/consumers

BSES RAJDHANI is perceived to be associated with Mr Amitabh Bachchan owing to his success and experience in his field

BSES

Note: The image is just for reference purpose

BSES Hall of Fame: "National & International Accolades"



Coming together *is a beginning;*
keeping together *is progress;*
working together is
SUCCESS.

Thank You

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@bsesdelhi

CONSUMER ADVOCACY & OTHER ISSUES

Ashok Pendse,

THE TOPICS

- ✘ Consumer advocacy
- ✘ Possible options for consumer education.
- ✘ Consumer empowerment and funding.

CONSUMER ADVOCACY

Definition:-

- × Movement or **policies, aimed at regulating** products, **services**, methods, **standards of** manufacturers, **sellers**& advertisers in the **interest of** buyer(**consumer**).
- × **Policies aimed at regulating Services, Standards of sellers in the interest of consumers.**

CONSUMER ADVOCACY

- ✘ Electricity Act, 2003:-
- ✘ It has mandated Consumer grievance redressal forum (CGRF) and Ombudsman as per section 42-5 & 42-6. The word is shall and not may.
- ✘ CGRF and Ombudsman did not exist prior to Electricity Act.

CONSUMER ADVOCACY IN MAHARASHTRA

✘ The Break up of CGRF

MSEDCL	-	11 nos.
BEST	-	1 nos.
Reliance	-	1 nos.
TATA	-	1 nos.
Total	-	14 nos.

- ✘ Normally in MSEDCL area 3-4 internal redressal forum are present per one CGRF (Virtually 1 per district)

CONSUMER ADVOCACY IN MAHARASHTRA

- ✘ CGRF consists of one chairman, one consumer member & one member of the utility. It also has a staff of about 3-5 persons additionally.
- ✘ Composition of chairman's 7 High court or district judges, 3 retired government officials and 4 persons from Electrical Inspectorate.
- ✘ It works from 10 AM to 5 PM on all days except holidays.
- ✘ No consumer has to travel more than about 100 km to reach CGRF.
- ✘ Roughly about 2000 cases per annum are registered with CGRF. The cases in favor of consumers is generally 70%.

CONSUMER ADVOCACY IN MAHARASHTRA

- ✘ There are 2 Ombudsman covering the state. Nearly 8+6 CGRF is the division per Ombudsman.
- ✘ About 180–200 cases per annum go to Ombudsman.
- ✘ Cases in favor of consumers are about 70%.
- ✘ The cases going to High court against Ombudsman are about 3-5 per annum.

THE ISSUES OF CONSUMERS

- ✘ Old arrears in respect of premises.
- ✘ Excessive billing.
- ✘ Connection in respect of agriculture pump.
- ✘ Classification of consumer.

THE ISSUES OF CONSUMERS

Old arrears in respect of premises:-

1. Auctioned premises
2. Non billed premises
3. Non application of Multiplying factor.
4. Permanently disconnected premises.
5. The present Supreme court case.

THE ISSUES OF CONSUMERS

Excessive Billing:-

1. Monopolistic attitude
2. Perennial shortage of fund.
3. Threat of disconnection.

THE ISSUES OF CONSUMERS

Connection in respect of agriculture pump:-

1. The economics of connection .
2. The methods of funding .

THE ISSUES OF CONSUMERS

Classification of consumer:-

1. Use of section 126 & threat of disconnection.

WHAT CGRF'S CAN DO

- ✘ Ask utility to give notice as per section 56-1 of 15 days.
- ✘ Consumer can approach CGRF with this notice to get a stay if CGRF is convinced.

REPEATED ISSUES 1

- ✘ Defective meter needs clarity
- ✘ Change of category from continuous to non continuous.
- ✘ Disconnection of supply made even in pending disputes before the Forum / Ombudsman.
- ✘ Long delays in granting agricultural connections beyond the period provided.

REPEATED ISSUES 2

- ✘ Refund of meter cost not done inspite of order.
- ✘ Date of actual issue and receipt of bill in respect of availing incentive.
- ✘ Dispute regarding recovery of past arrears under Section 56 (2) of the Electricity Act, 2003 and this issue is pending in the High Court since 2011. Ambiguity in implementation.

CONSUMERS ARE AGGRIEVED ABOUT

- ✘ Cases in which interest payable under Section 62 (6) and the rate of interest.
- ✘ Delay and the procedure followed regarding assessment under Section 126 and appeal under Section 127 of the Electricity Act, 2003.
- ✘ IGRC is not effective – No decisions are given – mostly rejected.
- ✘ Vacant post of Chairman and members in the Forums and delay in decision.

CONSUMERS ARE AGGRIEVED ABOUT

- ✘ Consumer Representatives to be genuine and fair.
- ✘ Customer centres to be established as per the SOP Regulations, 2014.
- ✘ Issue regarding giving connection to the buildings constructed unauthorisedly.

✘
✘

CONSUMERS ARE AGGRIEVED ABOUT

- ✘ Forums and the Ombudsman are expected to protect the interest of consumers.
- ✘ Grievances should not be rejected on technical grounds or for other minor lapses.
- ✘ Distribution Licensees are adding the disputed amount in regular monthly bills and the consumers are hesitant to pay disputed amount. This is aggravating the problem further by increase in interest and delayed payment charges. Disputed amount should be shown separately in the bill or separate bill for arrears be given so that the current bill can be paid regularly to avoid disconnection.

CONSUMERS ARE AGGRIEVED ABOUT

- ✘ There are large number of cases of non compliances of orders of Forums and Ombudsman where the consumers are required to approach the MERC under Section 142 of the Act.
- ✘ Power to ensure compliance needs to be delegated to the Forums and Ombudsman by suitably amending the Act and Regulations.
- ✘ In spite of the MERC order, meter cost etc. is recovered from the HT consumers increasing the grievances unnecessarily. Where there is specific provision or the order of the MERC on any aspect, it should be followed by the Utilities.
- ✘ Consumers should be allowed to approach the Forums directly by intimating the IGRCs. The relevant provisions of CGRF Regulations need to be suitably amended.

✘
✘

CONSUMERS ARE AGGRIEVED ABOUT

- ✘ Though no new plea be allowed to be raised before the Ombudsman, furnishing of additional information or evidence should be allowed at the appellate stage for proper justice.
- ✘ The Chairman of the IGRC who is the Nodal Officer and conversant with the case should appear before the Forum and the Ombudsman.
- ✘ District Committees should be constituted as per Section 166 (5) of the Electricity Act, 2003.
- ✘ Definition of the “grievance” and the “consumer” needs to be suitably amended.

CONSUMERS ARE AGGRIEVED ABOUT

- ✘ Forum and Electricity Ombudsman should hold circuit hearings at district places wherever possible.
- ✘ Chairman and the Member (Consumer) of the Forum, both should be appointed by MERC and Chairman should be as far as possible having experience of judicial work.
- ✘ There is no objection for giving remedy to file review by the Distribution Licensees to avoid litigation in High Court.

CONSUMERS ARE AGRIEVED ABOUT

- ✘ Steps to be taken by the Forums and the Utilities for consumer awareness.
- ✘ Officials attending hearing on behalf of the Utilities are not empowered to settle the grievances.
- ✘ There is less than 1% awareness amongst consumers about redressal mechanism. Therefore, campaigning should be made by the Forums and Distribution Licensees.
- ✘ There is delay in passing final orders by the Forum due to shortage of staff, etc. This position needs to be improved keeping in view the time limit of two months prescribed in the Regulations.
- ✘ Vacant posts of the Chairman and Members of the Forums

CONSUMER EDUCATION & EMPOWERMENT

Three tiers:-

➤ First TIER

State level – 2 or 3 persons. Capable of representing in stages of commission, tribunal & ultimately Supreme court.

➤ Second TIER

At CGRF level about 4-5 organizations & Hence about 10-12 persons helping consumers even helping in drafting of complaint.

➤ Third TIER

In grass root level about 100-150 people at every internal forum.

CONSUMER EDUCATION & EMPOWERMENT

Education:-

- At State level :- TBIA can train 2-3 people in Mumbai.
- Second Tier:- We may be in a position to share the ideas regarding training.
- Third tier:- Commission / Ombudsman /CGRF will have to help.

FUNDING TO CONSUMERS

- ✘ At Supreme court level:- 3-4 years and about Rs.10-12 lakhs.
- ✘ At appellate tribunal:-1 year and about Rs.1.5-2 lakhs.
- ✘ At High court :- 2-3 years and about 2-3 lakhs
- ✘ At Commission :- 6-8 months and about Rs.20-25 Thousand
- ✘ At CGRF:- 2-3 months and about 2-3 thousand.

FUNDING TO CONSUMERS

- ✘ Ministry of consumer affairs
- ✘ From Forum of regulators
- ✘ May be from State commission

FUNDING TO CONSUMERS

The issues:-

- ✘ Who should get?
- ✘ What quantum?
- ✘ On what issues?
- ✘ Why commission should support consumers to fight against utility and on occasion against commission even
- ✘ Will consumers get into this habit?

Thank you!
Jimmy

