

Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

RP No. 5 of 2009 in
Appeal No. 181 of 2008

Dated : 11th February, 2010

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. H. L. Bajaj, Technical Member

Delhi Electricity Regulatory Commission ... Appellant(s)

Versus

BSES Rajdhani Power Pvt. Ltd. ... Respondent(s)

Counsel for the Appellant(s): Mr. Meet Malhotra with
Mr. Ravi S.S. Chauhan
Mr. M.S. Gupta, Dy. Director, Law (DERC)

Counsel for the Respondent(s): Mr. Amit Kapur for BSES RPL

O R D E R

By the order dated 17.12.09, this Tribunal gave three directions, to the Secretary to the Forum of Regulators. On receipt of the said directions the Secretary to the Forum has now sent a compliance report dated 15.01.2010 to this Tribunal.

02) This Tribunal, by the order dated 17.12.09, gave three specific directions which are as follows:

- (i) The Secretary to the Forum of Regulators shall take up the issue of constitution, appointment and operationalization of the State Electricity Regulatory Commissions for the States of Sikkim and Arunachal Pradesh by getting sufficient cooperation from the Secretary to the Union Ministry of Power.**
- (ii) The Secretary to the Forum of Regulators has to ensure full compliance of the provision of Electricity Act 2003 in respect of Section 42(5) regarding Consumer Grievance Redressal Forum in certain States**
- (iii) The Secretary to the Forum of Regulators has also to ensure full compliance with regard to the constitution and appointment of electricity ombudsman in certain States.**

03) Responding to these directions, as mentioned above, the Secretary to the Forum of Regulators has sent a report dated 15.01.2010 only in partial compliance of those directions.

04) In regard to the 1st direction, it is stated in the Report that the Secretary to the Forum of Regulators approached the Secretary of Ministry of Power and requested for his intervention to take up the matter with the States of Sikkim and Arunachal Pradesh and also contacted the Energy Secretaries of the Government of Sikkim and Arunachal Pradesh and requested them to take up further steps by reminding the directions issued by this Tribunal and for constituting Regulatory Commission, but no written reply has yet

been sent by the State Governments of Sikkim and Arunachal Pradesh to the Forum of Regulators. This is very unfortunate.

05) In view of the above status report, it will be appropriate to again direct both the State Governments of Arunachal Pradesh and Sikkim to quicken up the process with reference to the first direction.

06) Accordingly, we direct the Secretary to the Forum of Regulators to follow up the process by contacting Secretaries of the Energy Department of these States and requesting them to take immediate and adequate steps for constitution of the State Commissions in these two States. It is desirable to ensure the same is constituted in both the States within one month of receipt of this order.

07) In regard to the second direction, namely for appointment of CGRF, it is reported by the Secretary to the Forum of Regulators the vacancies have been filled up in the CGRF constituted by the distribution licensees in Daman and Diu, Dadar and Nagar Haveli and Tata Steel Ltd. but in Andaman & Nicobar and Lakshwdeep no appointments have been so far made. It is also noticed from the report that the Bihar State Electricity Board and Dakshin Haryana Bijli Vitran Nigam Ltd. are in continued default in the appointment of members. It is also seen that no response has been received from Jharkhand. This is also a sorry state of affairs. Hence, the Secretary to the Forum of Regulators is again directed to ensure the

compliance to the second direction by approaching the concerned officials. This must be at any rate complied within one month from the date of receipt of this order.

08) In regard to the third direction, with reference to the constitution and appointment of ombudsman, it is noticed from the report of the Secretary that this direction has been complied with by Goa and the Union Territories, Gujarat and Assam but there is a continued default in Tripura, Andhra Pradesh and Bihar. It is seen from the report that in Andhra Pradesh a Director (Law) of State Commission has been officiated as ombudsman. In Tripura also the Secretary to the State Commission is functioning as ombudsman. We do not approve of this nomination.

09) Our categorical view in this matter has already been indicated in the earlier orders. The ombudsman is a separate body and has to decide issues and he should be independent of the State Commission. Hence the Secretary to the Forum of Regulators is directed to follow up the further action with the concerned State Commissions of Tripura, Andhra Pradesh and Bihar to ensure that independent officer who is qualified as an ombudsman in these places is appointed without any further delay. This process also must be over within one month from the date of the receipt of this order.

10) In addition to the above, as pointed out by Mr. Amit Kapur and Mr. Meet Malhotra, the amicus curie counsel, it is necessary for the

Tribunal to consider the other issues for the effective functioning of the mechanisms in the State Commissions and also for the periodic evaluations.

11) The following questions are to be analysed and the solutions are to be found out for effective functioning of the system:

- (i) What mechanism can be institutionalized to secure continued compliance with the requirements of the Electricity Act 2003 by the Appropriate Commissions and the utilities, as also for their periodic evaluation;**
- (ii) What role could be assigned to the Forum of Regulators in the interest of stake holders and consumers in this behalf including mechanisms like:**
 - a) Online quarterly compliance status updation by Forum of Regulators**
 - b) Evolving the best practice norms and guidelines which could be followed;**
 - c) To secure accountability in this behalf.**

12) This Tribunal feels, in order to analyse these aspects it would be appropriate to direct Secretary to the Forum of Regulators to appear and give his suggestions and solutions on these aspects.

13) Under these circumstances, the Secretary to the Forum of Regulators is directed to appear before this Tribunal on 30th March, 2010 to file a report of the compliance of the various directions

given in this order as well as to give his written suggestions and solutions on the aspects referred to above, on the basis of which, this Tribunal will pass further orders.

14) The Registry is directed to send a copy of this order to all the Secretaries of the State Commissions, Chief Secretaries of Sikkim and Arunachal Pradesh and to both the Amicus Curie counsel, forthwith.

Post the matter for further orders on 30.03.2010.

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

**(Justice M. Karpaga Vinayagam)
Chairperson**