

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

**Review Petition No. 5 of 2009
In Appeal No. 181 of 2008**

Dated: 29th May, 2009

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

Delhi Electricity Regulatory Commission ... Review Petitioner / R1

Versus

BSES Rajdhani Pvt. Ltd. & Anr. Respondent (s)

Counsel for the Review Petitioner/R1 : Mr. Meet Malhotra &
Mr. S.S. Chauhan for DERC
Mr. M.S. Gupta, Dy. Dir (Law), DERC.

Counsel for the Respondent (s) : Mr. Amit Kapur,
Mr. Anupam Verma &
Mr. Shri Venkatesh Respondent

ORDER

1. This Tribunal by its order dated 30.03.2009 had set aside the order of the State Commission and remanded the matter to the Grievance Cell to enquire into the matter regarding the billing disputes. The State Commission has filed a review seeking some clarification with reference to some observations made in the Order in relation to the powers under Section 142 of the Electricity Act which provides for the State Commission to enquire into the complaint of a person regarding non-compliance of the directions, rules, regulations, contraventions, violations etc.

2. When the matter was taken up for hearing, it is brought to the notice of this Tribunal that two-tier mechanism for grievance redressal has not been made functional in several States. It appears that even after the period of 6 years after the Electricity Act, 2003 came into force, only some of the States have implemented the scheme relating to the establishment of the grievance redressal mechanism under Section

42(5), (6) & (7) of the Electricity Act, 2003 and also in respect of the compliance of the various provisions of the scheme of the Supply code under Sections 50, 57 and 59 of the Act. It is also brought to our notice that in some States, the scheme has either been implemented partially or not at all.

3. When we asked the learned Counsel for both the Petitioner as well as the Respondent, they suggested that this Tribunal can give suitable interim directions as guidelines to all the State Commissions/Joint Commissions to ensure full compliance of Section 42 (5) to (7) and Sections 50, 57 and 59 of the Electricity Act, 2003. As a matter of fact, it is brought to our notice that in some States, the Ombudsmen have not at all been appointed by the State Commissions/Joint Commissions. We also hear reports that in some States, in view of the fact that the two-tier mechanism under Section 42 (5) to (7) has not been made functional, the consumers even for the billing disputes were constrained to approach the Commissions/Joint Commission under Section 142 of the Act.

4. Sections 42(5) to (7) envisaged that two-tier mechanism for consumer grievance redressal must be established under the aegis of the respective State Electricity Regulatory Commission within 6 months of the Electricity Act, 2003 having come into effect, i.e., by 10.12.2003, comprising:

- (a) A Consumer Grievance Redressal Forum (CGRF) appointed for each of the distribution licensee in terms of the guidelines to be specified by the State Commission concerned. The CGRF was meant to be the forum of first instance for adjudication of all grievances in accordance with the guidelines specified by the State Commission. **[Section 42(5)]**
- (b) An Ombudsman appointed/designated for each State by the State Commission concerned, to adjudicate upon any representation made by a consumer aggrieved by non-redressal of his grievances by the CGRF. The Ombudsman is required to settle the grievance within such time and in such manner as may be prescribed by the State Commission. **[Section 42(6) & (7)]**

5. Sections 50 and 57 of the Electricity Act, 2003 vest the power in the State Commission/Joint Commissions to specify various aspects of the standards of performance and rules governing the commercial relationship between a distribution licensee and its consumers, viz.:

- (a) The Electricity Supply Code providing the various aspects of metering, billing and recovery of electricity charges etc. as provided under Section 50.
- (b) Standards of performance of a licensee towards consumers with compensation payable as may be determined by the respective State Commissions/Joint Commissions after giving an opportunity of hearing to the licensee as provided under Sections 57 and 58.
- (c) Each licensee is obliged to file periodic statements of such periodicity as specified before the respective State Commissions/Joint Commissions regarding the levels of performance achieved, number of cases in which compensation was made and the aggregate amount of compensation.

6. These Sections, namely, 42(5) to (7), 50, 57 and 59 of the Electricity Act, 2003 have to be given immediate effect to by the respective State Commission/Joint Commission in order to ensure that the grievances of the consumers are redressed speedily and effectively by the two-tier mechanism by making appropriate regulations and also appointing the Ombudsman. Further the State Commissions/Joint Commissions have to specify various aspects of the standards of performance and rules governing the commercial relationship between a distribution licensee and its consumers. If this is not ensured by the respective State Commissions, the purpose of introduction of these Sections will not get achieved.

7. Though we are to decide a question in this Review Petition with reference to the powers of the Commission to go into the complaint of a consumer regarding his billing dispute, we feel that there is an urgency to give suitable interim directions even during

the pendency of the Review Petition in order to ensure that the State Commission/Joint Commission are not allowed to be inundated with deluge of consumer grievances which will hamper their vital regulatory and specialized role as regulators of the power sector in each State.

8. Of course, we intend to give various suitable guidelines and directions to the State Commissions/Joint Commissions with reference to the effective functioning of the various mechanisms as provided in the Act while passing our final order. In the meantime, we deem it appropriate to give interim directions by invoking the powers under Section 121 of the Electricity Act, 2003 to all the State Commissions/Joint Commissions to ensure that Sections 42(5) to (7), 50, 57 and 59 of the Electricity Act, 2003 are given effect to without any delay.

9. Hence, we give the following directions:

- (1) All the State Commissions/Joint Commissions are hereby directed to secure and ensure the effective implementation of Sections 42(5) to (7), 50, 57 and 59 of the Electricity Act, 2003 by taking the following actions:
 - (a) Constitute, appoint and make functional the Consumer Grievance Redressal Forum (CGRF) for each distribution licensee under the regulatory supervision of the respective State Commission/Joint Commission. In case the CGRF has already been constituted but vacancy has arisen, fill up the vacancy in the CGRF.
 - (b) Constitute, appoint and make functional the Ombudsman for the State.
 - (c) Specify and publicise guidelines governing the functioning of the CGRF and of the Ombudsman as also the grievance redressal mechanism of the consumers of electricity within the State.

- (d) Notify and publicise appropriate standards of performance applicable to distribution licensees functioning under the regulatory supervision of the State Commission/Joint Commission.
- (e) All the State Commissions/Joint Commissions on receipt of this Order shall forthwith initiate the process of giving effect to Sections 42(5) to (7), 50, 57 and 59 of the Electricity Act, 2003 and make the mechanism functional within a period of 45 days from the date of the receipt of this Order.
- (2) As suggested by the learned Counsel for the Respondent, it would be desirable to direct the Secretary to the Forum of Regulators as representative of the State Commission/Joint Commission to assist this Tribunal in ascertaining the level of implementation of the said scheme of the Electricity Act, 2003 by the State Commission and file his report before this Tribunal to enable the Tribunal to pass further orders.
- (3) All the State Commissions/Joint Commissions after completion of the said exercise as referred to above, within 45 days, shall send the compliance report with reference to these interim directions on or before 07.08.2009.
- (4) If some of the State Commissions/Joint Commissions as referred to above have already implemented the scheme, they can send their respective reports regarding the said implementation to this Tribunal.
10. Registry is directed to forward a copy of this Order to all the State Commissions/Joint Commissions and Secretary to the Forum of Regulators forthwith.
11. Accordingly directed.
12. Post the matter for further hearing on **10.08.2009**.

(A.A. Khan)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson