

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

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

Dated: 9th October, 2009

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

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

ORDER

1. This Tribunal having its concern over the grievance of the consumers thought it fit to issue directions to all the State Commissions/Joint Commissions to ensure effective implementation of Sections 42(5) to 42(7), 50, 57 and 59 of the Electricity Act, 2003 by taking the immediate steps by the Order dated 29.5.2009. In the same Order, the Tribunal sought specific information as to the status of effective implementation of the Electricity Act, 2003 in letter and spirit in all the States and Union Territories from the Secretary to the Forum of Regulators.

2. Pursuant to the said Order dated 29.5.2009, the Secretary to the Forum of Regulators as also the State Electricity Regulatory Commissions and Joint Electricity Regulatory Commissions have submitted their respective status report on the issues.

3. This Tribunal directed the Registry to give copies of all the reports to Mr. Meet Malhotra, the Learned Counsel for the Delhi Electricity Regulatory Commission (Review Petitioner) and Mr. Amit Kapur, the Learned Counsel for the Respondent who have been asked to assist this Tribunal to enable them to file memo giving the suggestions for issuing suitable further directions in the matter. Accordingly, they have filed the memorandum giving the details of the proposed directions.

4. On perusal of the reports as well as the memorandum, it is noticed that there are 27 States and 7 Union Territories in India where the Electricity Act applies. The State Electricity Regulatory Commissions are functional in most of the States and the Union Territories, including two Joint Electricity Regulatory Commissions (JERCs) - one for Manipur and Mizoram other for Union Territories and State of Goa except Delhi. But the State Electricity Regulatory Commissions are not functional in the States of Sikkim, Nagaland and Arunachal Pradesh. It is also found that there is only partial compliance of the implementation of the various provisions of the Act.

5. In the light of the particulars given in the report as well as the memorandum submitted by the Learned Counsel for the parties, it would be appropriate to issue the following directions:

Issue No. 1: Constitution, appointment and operationalisation of the State Electricity Regulatory Commissions.

As indicated above, the State Electricity Regulatory Commissions are functional in all States and Union Territories except in (1) Sikkim, (2) Nagaland and (3) Arunachal Pradesh. This Tribunal as a custodian and guardian of the statutory functions of the State Electricity Regulatory

Commissions under the Act feels that immediate steps shall be taken by the concerned to ensure the constitution, appointment and operationalisation of the State Electricity Regulatory Commissions for the States of Sikkim, Nagaland and Arunachal Pradesh. Therefore, the Secretary to the Forum of Regulators is directed that it shall forthwith take up the issue of constitution, appointment and operationalisation of the State Electricity Regulatory Commissions for the States of Sikkim, Nagaland and Arunachal Pradesh by taking suitable steps with the cooperation of the authorities concerned. In this context, it would be proper to send a copy of this Order to the Secretary to the Union Ministry of Power for his information and consideration. Accordingly, the Registry is directed to send a copy of this Order to the Secretary to the Union Ministry of Power.

Issue No. 2: Constitution, appointment and empowerment of the Consumer Grievance Redressal Forum

It is noticed from the memorandum and the reports that the Joint Electricity Regulatory Commission (JERC) of Manipur and Mizoram has still not submitted the required information either to this Tribunal or to the Secretary to the Forum of Regulators in spite of several Orders passed by this Tribunal. The Secretary to the Forum of Regulators also had indicated that the reminders have been sent to the JERC of Manipur and Mizoram and still the required information has not been received. We are not informed by the JERC of Manipur and Mizoram as to why they have not submitted the reports either to the Secretary to the Forum of Regulators or to this Tribunal in compliance with the Order passed by this Tribunal dated 29.5.2009. Therefore, we deem it fit to direct the Chairman and Secretary of this JERC, namely, Manipur and Mizoram to submit the required information as referred to in the Order dated 29.5.2009 to this Tribunal as well as to the Secretary to the Forum of Regulators within 15 days of the receipt of this Order. We hope that the

Chairman and Secretary of this JERC would give due respect to this Order at least and comply with the same without any further delay.

As indicated above, it is noticed from the reports that various Appropriate Commissions are in partial compliance of the implementation of the Electricity Act, 2003 in respect of Section 45(5). The status of the information with reference to the partial compliance is set out below:

Sl.	State	Status of CGRF	Status of CGRF Guidelines
1.	Goa and Union Territories	Not constituted	Not Notified as yet
2.	Tripura	Not constituted	Notified and Publicized
3.	Jharkhand	Vacancy of two Members (Tata Steels Ltd. and one Member in JUSCO)	Notified and Publicized
4.	Orissa	Vacancy of two powers of Co-opted Member one each in WESCO and NESCO area	Notified and Publicized
5.	Bihar	Vacancy of one Member in CGRF	Notified and Publicized
6.	Maharashtra	Vacancy of one Chairman in BEST CGRF	Notified and Publicized
7.	Delhi	Vacancy of one Chairman in BYPL CGRF	Notified and Publicized
8.	Himachal Pradesh	Vacancy of Secretary	Notified and Publicized
9.	Haryana	Vacancy of two Members in CGRF	Notified and Publicized
10.	Meghalaya	Constituted.	The Meghalaya State Electricity Regulatory Commission (Redressal of Grievances) Regulations, 2007 only published in the Gazette and not brought into effect.

In view of the above information that the earlier direction given by this Tribunal by the Order dated 29.5.2009 has not been fully complied with, the

respective State Commissions are directed that they shall ensure the compliance of the Order by constituting the Consumer Grievance Redressal Forum and also by filling up the vacant posts without any further delay. This has to be complied with within one month from the date of receipt of this Order. The Secretary to the Forum of Regulators shall ensure the compliance of these directions by getting the progress verified and file the report of the same before the Tribunal.

Issue No. 3: Constitution, appointment and operationalisation of Electricity Ombudsman

As indicated above, regarding the appointment of Ombudsman in Manipur and Mizoram, no particulars have been received yet. Therefore, the Chairman and Secretary of the Joint Electricity Regulatory Commission of Manipur and Mizoram shall submit these particulars to this Tribunal within 15 days of the receipt of this Order.

It is also noticed in the memorandum as well as the reports that the various State Commissions are only in partial compliance of the implementation of the Act in respect of Section 42(6) over the appointment of Ombudsman. The status of information compliance is set out below:

Sl.	State	Status of Electricity Ombudsman	Status of Ombudsman Guidelines
1.	Goa and UTs	Electricity Ombudsman not constituted.	Ombudsman Guidelines not published and notified.
2.	Tripura	Electricity Ombudsman not constituted. Secretary Tripura Electricity Regulatory Commission functioning as Ombudsman	Appointment Regulations have been notified.
3.	Bihar	Not constituted.	Ombudsman Guidelines notified and placed on the SERC website.
4.	Gujarat	Secretary, Gujarat Electricity Regulatory Commission acting as the Electricity Ombudsman.	Ombudsman Guidelines notified.

5.	Assam	Position of Electricity Ombudsman vacant.	Ombudsman Guidelines notified.
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Therefore, the Chairman of the State Commissions concerned shall immediately take steps to see that the Ombudsman is appointed and become functional. In various States though Electricity Ombudsman's post was created, the Secretary of the State Commission has been functioning as the Ombudsman in charge. This cannot be allowed to continue. The role of the Ombudsman is very important as his order is final and the same is not appealable. He has to travel various parts of the State and then entertain the appeal from the aggrieved as against the Grievance Cell Order and decide the issue after applying his mind. As such, he takes the role of a Judge. When the Order of an Ombudsman becomes final, then the Ombudsman shall take extra care to decide the issue judiciously. Therefore, wherever Ombudsman's post has not been created, the State Commission shall ensure that the said post is created and filled up. At any cost, the Secretary of the Commission should not be allowed to function as the Ombudsman as he may not be able to discharge both the functions simultaneously and effectively. Accordingly, directed. This appointment and filling up of the post must be done within one month from the date of the receipt of the Order and report must be submitted immediately afterwards.

Issue No. 4: Implementation of the appropriate standards of performance to the Distribution Licensee working under the Regulatory supervision of State Commission/Joint Commission

As indicated above, JERC of Manipur and Mizoram has not given any information with reference to this, therefore, Chairman and Secretary of this JERC shall submit the same within 15 days of the receipt of this Order. Even though the JERC of Goa and UTs has submitted the report, it has not published the required Performance Regulations. Therefore, the Chairman

and Secretary of this JERC are directed to duly notify the same and submit the report within 15 days of the receipt of this Order.

It is also further directed that the Secretary to the Forum of Regulators has to evaluate the standards of performance and the supply code notified by the Appropriate Commissions to evaluate variations and any specific gaps that need to be rectified. This process can be completed within one month from the date of this Order, thereafter the report can be sent to this Tribunal to enable this Tribunal to pass further Orders. Accordingly, all the concerned are directed. Registry is directed to send a copy of the Order to all the State Commissions as well as the Joint Commissions and the Secretary to the Forum of Regulators.

Post the matter on **10.11.2009.**

(H.L. Bajaj)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson