

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

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

Dated: 15th April, 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. J.S. Gupta, D. Dir. (Law)

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

ORDER

**In pursuance of the directions given by this Tribunal
on 17.12.2009 and 11.02.2010, the Secretary for Forum of
Regulators has filed the Compliance Report on 30.03.2010.**

**On a perusal of the said Report dated 30.03.2010, We
noticed that our directions have been complied with only
partially and the directions in respect of some of the areas,
have not been complied with. Therefore, we requested
Mr. Meet Malhotra and Mr. Amit Kapur, who are nominated**

as Amicus Curiae counsel, to go through the Report of the Secretary of Forum of Regulators and to file their suggestions so that further suitable directions could be given to the officials concerned. Accordingly, they have been filed on 09.04.2010 before this Tribunal.

Taking into consideration of the Compliance Report filed by the Secretary of the Forum of Regulators dated 30.03.2010 as well as the Report of suggestions dated 09.04.2010 made by the Amicus Curiae counsel, we deem it Appropriate to issue the following directions:

- 1. With regard to the constitution of the State Electricity Regulatory Commissions in Arunachal Pradesh and Sikkim, it is stated that the proposal for constitution of the Sate Electricity Regulatory Commission in Arunachal Pradesh is under active consideration with the Finance Department of the State Government, but notification has not yet been issued. It is very unfortunate to notice that we have been giving the directions after directions for the past several months directing all the State Governments to constitute**

the State Commissions, which is a statutory obligation on their part under the Act, but even then no effective steps have been taken in Arunachal Pradesh as per the Report of the Secretary of the Forum of Regulators. Therefore, we call upon the Secretary of the Department of Power or the Chairman of the Sikkim State Electricity Board to ensure the implementation of the constitution of the State Commission in Arunachal Pradesh and report about the same before this Tribunal by appearing in person on the next date of hearing.

With regard to Sikkim, it is a sad state of affairs to note that there has been no response till date. We are anguished to observe that the Secretary of Energy, Sikkim, has not cared to send any reply to this Tribunal or to the Secretary of the Forum of Regulators. There is no reason for this apparent lack of responsibility. So, the Secretary of the Forum of Regulators is again directed to get the required assistance from the Ministry of Power, Government of India, and to take follow up action by

contacting the State Government to constitute the State Commission for Sikkim. As there has been no response from the Secretary of Energy, Sikkim, either by giving some information to the Secretary of Forum of Regulators or by sending the Report to this Tribunal, we deem it appropriate to call upon the Secretary of Energy, Sikkim, to ensure that the Commission is constituted without any further delay. He is further directed to appear in person or through his responsible representative before this Tribunal to report about the compliance of this Order on the next date of hearing, the failure of which will be seriously viewed.

2. With regard to the direction for the constitution, appointment and to ensure to make CGRF functional, it is noticed that the vacancies remain to be filled up by the CGRF by the distribution licensees Lakshdweep. It is stated in the Report that there is no response to the advertisement. Therefore, the follow up action has to be taken to see that the Lakshdweep CGRF vacancies are filled up in the quickest possible time and the Secretary of the Forum of Regulators has to ensure the same. In fact, under

Section 42 (5) of the Act, it is for the Distribution Licensees to ensure that CGRF Members are appointed and since this has not been done, the Distribution Licensees are also directed to see that Lakshdweep CGRF vacancies is filled up without any further delay. Similarly, we also deem it appropriate to direct the Chairpersons of all State Electricity Regulatory Commissions to ensure that the vacancies of CGRF in their respective states are filled up by the Distribution Licensees without any delay and the Compliance Report be sent to the Secretary for Forum of Regulators as well as to this Tribunal before the next date of hearing.

In this context, one more suggestion regarding functioning of CGRF made by the Amicus Curiae counsel needs consideration and requires our directions. Accordingly, as suggested by the Amicus Curiae counsel, it would be appropriate to direct the Chairpersons of all the State Electricity Regulatory Commissions to ensure proper functioning of CGRF Members, which is available in all the States. They shall direct all the Distribution Licensees to

ensure that the CGRF is constituted for each Revenue Division (3 to 5 districts) of the State. Similarly CGRF be mandated and required to hold court on notified days in different districts to ensure that consumers get easy access to the grievance redressal mechanism. In respect of this aspect also, the Secretary of the Forum of Regulators is directed to follow up and ensure compliance of this direction.

3. With regard to constitution, appointment and to make functional of Ombudsman, it is stated that the Secretary to the State Electricity Regulatory Commission in Tripura has been made as officiating Ombudsman. Similarly, in Andhra Pradesh also, the Director (Law) of the State Commission has been made as officiating Ombudsman. In our view, this is quite wrong due to the fact that the Ombudsman is playing an independent role of Judge to decide about the issues between the consumers and others and he should not hold any other position in the Commission. Therefore, as suggested by the Amicus Curiae counsel, we hereby direct

the Chairman of the State Commissions of Tripura as well as Andhra Pradesh to appoint a suitable full time Ombudsman, who is not an officiating officer of the Commission, this is already endorsed by all the State Electricity Regulatory Commissions as mentioned in para 10 of the Forum of Regulators Recommendations on “Protection of Consumer Interest”.

4. With reference to the direction to the Secretary of the Forum of Regulators about the Institutionalised Mechanism to secure continued compliance with the Electricity Act 2003 in consumer interest, we notice the following suggestions:

a) The Secretary of the Forum of Regulators has proposed on-line quarterly compliance status up-dation by Forum of Regulators in the suggested format placed at Annexure 1 of his Report dated 29.03.2010.

b) The Secretary of the Forum of Regulators has placed on record the Report on “Protection of Consumer Interest”, which was adopted by all the members of ERCs.

c) The Secretary of the Forum of Regulators has also proposed that Forum of Regulators shall conduct a dissemination of best practices in the area of “consumer protection” through Annual conferences organized under the aegis of FoR, attended by Ombudsmen, CGRF officers and consumer organizations.

All these suggestions made by the Secretary of the Forum of Regulators are hereby endorsed and approved. Accordingly, he is directed for implementation of the same.

As directed above, the Secretary of Energy of Arunachal Pradesh and the Secretary of Energy of Sikkim are directed to take immediate steps to comply with our directions and to appear in person or through their responsible representatives, before this Tribunal to report the compliance on 10.05.2010.

Registry is directed to send a copy of this Order to the Secretary of Forum of Regulators and to the Chairmen of all the State Commissions as well as the Chairmen of the

Utilities. Similarly, this Order copy shall be sent to the Chief Secretaries of both Arunachal Pradesh and Sikkim states to enable them to take further action in this matter.

Post the matter on 10.05.2010. Prior to this date, the Secretary of the Forum of Regulators may send the Compliance Report to this Tribunal.

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

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