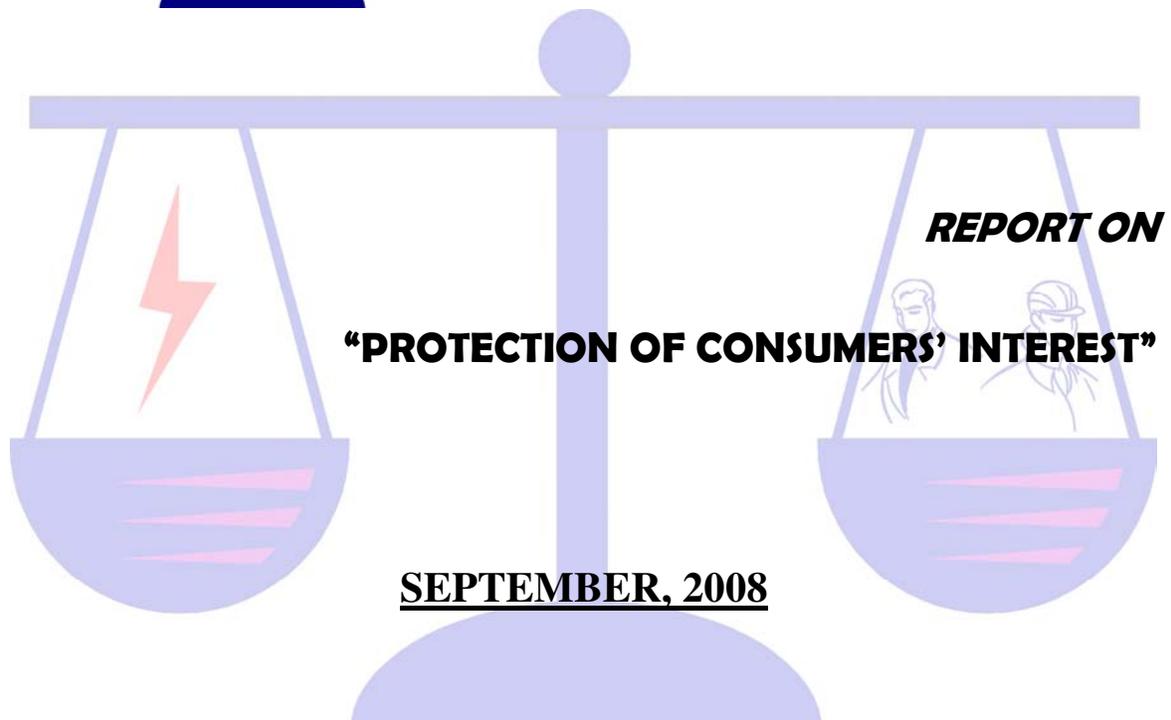


FORUM OF REGULATORS (FOR)



FORUM OF REGULATORS (FOR)

Sectt: C/o Central Electricity Regulatory Commission (CERC)

3rd & 4th Floor, Chanderlok Building, 36, Janpath, New Delhi-110001

Tel No.: 23353503 , Fax No. : 23753923

www.forumofregulators.org

EXECUTIVE SUMMARY

The Electricity Act, 2003 makes elaborate provisions which seek to protect the interests of consumers. The National Electricity Policy and the Tariff Policy framed under the Act reinforce its provisions. They stipulate a road map and action plan for various stakeholders in ensuring protection of consumers' interests.

In line with the provisions of the Act and the policies, steps have been taken by stakeholders in different states towards institutionalizing the mechanisms of grievance redressal machinery, such as the Consumer Grievance Redressal Forum (CGRF) and the ombudsman. Performance standards have also been specified delineating, inter alia, the requirements on quality of supply. A consumer advocacy system has also been institutionalized in some states to educate consumers about their rights and obligations.

The Forum of Regulators (FOR) has been deliberating on issues specific to the protection of consumers' interests on a regular basis. In its meeting held in June 2008, FOR felt the need to review the steps taken in various states, and to address the issues which required clarification so as to evolve consensus and uniformity of approach in handling consumer related issues. The Forum thus constituted a Working Group consisting of chairpersons of a few State Commissions with the mandate to examine all such issues in detail and submit report before the Forum. The Group submitted its report which was considered by the FOR in its meeting held in September, 2008.

The report as approved by the FOR: (i) examines in detail the various legal provisions in the context; and (ii) analyses the issues at stake after taking into consideration the views of the stakeholders through interaction with various stakeholders including NGOs, ombudsmen and selected academic and research institutions. The report

finds that some provisions of the Act especially those relating to CGRF and ombudsman are being subjected to multiple interpretations based on experiences of different states. The report examines the provisions with specific reference to the recommendations of the Standing Committee on Energy to delineate the philosophy behind creation of the institutions of CGRF and Ombudsman. The report also suggests various steps to make the functioning of the CGRF and ombudsman effective. The report specifically: (i) recommends measures to ensure financial and operational autonomy to these institutions; and (ii) suggests a framework for monitoring the performance of these institutions, implementation of their orders, and remedial steps for non-compliance of their orders.

The report also goes into the issues relating to institutionalization of consumer advocacy and suggests a model consumer charter for State Commissions to adopt.

CONTENTS

❖	Executive Summary	
1.	Introduction.....	1-2
2.	Approach.....	3-5
3.	Legal Provisions Regarding Consumers’ Interest.....	...6-15
4.	Implementation Status.....	16-18
5.	Interaction with Stakeholders.....	19-19
6.	Issues.....	20-42
7.	Conclusions and Recommendations.....	43-50
❖	List of Abbreviations	
❖	APPENDIX	

CHAPTER - 1

INTRODUCTION

- 1.1 The consumer remains the focus of reforms in the electricity sector in India. The liberal framework envisaged in the Electricity Act, 2003 is aimed at ensuring that the efficiency gains achieved through competition get translated into benefits for consumers. Apart from the framework of competition, the Act also makes specific provisions seeking to safeguard the interests of consumers.
- 1.2 The FOR, in its meeting held on June 13, 2008 at New Delhi, deliberated on the issues involved in the protection of consumers' interest with specific reference to the provisions of the Electricity Act, 2003, and the rules made thereunder. The FOR reviewed the steps taken by various State Commissions in this regard and felt that there were a number of issues which either required clarification or demanded detailed examination. A Working Group was constituted consisting of a few chairpersons of State Commissions with the mandate to examine all such issues in detail and submit a report to FOR within a period of three months.
- 1.3 The order constituting the Working Group is enclosed in **APPENDIX-I**.

1.4 The mandate for the Working Group was to make recommendations on:

- Steps required to make the functioning of the CGRFs and ombudsmen more effective;
- The possible options and strategies for consumer education, empowerment and funding;
- Institutionalizing consumer advocacy;
- Suggested draft of a consumer charter;
- Methodology for meeting the financial requirements of the office of the ombudsmen so as to ensure its independence from the distribution licensees;
and
- Any other relevant issue.

CHAPTER - 2

APPROACH

2.0 Approach

The Working Group adopted the following approach to analyse the issues relating to the protection of consumers' interests:

2.1 Examination of legal provisions

2.1.1 The Group examined the various provisions of the Electricity Act, 2003, the relevant recommendations of the Standing Committee on Energy constituted for the purpose of examining the Electricity Bill, 2001 as introduced in Parliament, and the rules framed by the Government of India (GoI) with specific reference to the protection of consumers' interests.

2.1.2 The objective was to appreciate the vision behind these legal provisions in terms of safeguarding and furthering the interests of consumers at large.

2.2 Review of status of implementation of the provisions of the Act

2.2.1 The Working Group compiled information from various State Commissions in regard to implementation of the various provisions of the Act and regulations framed on the issue.

2.2.2 The objective was to assess as to whether the vision of the statute has been accomplished through actions taken by the State Commissions, which have the responsibility of implementing the provisions of the Act.

2.3 *Interaction with NGOs, ombudsmen and select institutions engaged in studies on issues relating to consumers' protection.*

2.3.1 The Working Group interacted with NGOs which are actively involved in espousing the cause of the consumer in different fora including Regulatory Commissions, Appellate Tribunal, High Courts and the Supreme Court. The Group also interacted with the ombudsmen appointed in some states. Interaction was also held with institutions, such as the Administrative Staff College of India (ASCI), Hyderabad which was engaged as a consultant by the Ministry of Power to study the 'Functioning of Consumer Grievance Redressal Mechanism under the Electricity Act, 2003' and the Consumer Advocate in Karnataka.

2.3.2 The objective was to have a first-hand experience of how the grievances of consumers were being addressed in practice.

2.4 *Assessment of gap between vision and implementation*

2.4.1 Based on the analysis of the legal provisions and status of implementation of such provisions, and after detailed interaction with the persons involved at the grassroots level in dealing with matters relating to consumers' interests, the Working Group sought to assess the gap that remained between the vision and the achievement in this regard.

2.5 The Working Group also studied the various models on consumer advocacy and the pronouncements of various courts on issues relevant to its terms of reference.

2.6 The Working Group also referred to the report of The Energy and Resource Institution (TERI) on ‘Analysis and Compilation of Tariff Orders’ to the extent it dealt with consumers’ protection issues.

2.7 *Finding solutions – measures to address the issues at stake*

2.7.1 The Working Group relied on a detailed study and assessment based on interaction with stakeholders, to find solutions and recommend measures to address the issues that seem to be affecting the interests of consumers in the electricity sector in India.

CHAPTER - 3

LEGAL PROVISIONS REGARDING CONSUMERS' INTERESTS

Provisions in the Electricity Act, 2003

- 3.1 The Electricity Act, 2003 makes comprehensive provisions seeking to protect the interests of consumers. The commitment of the law makers in terms of safeguarding consumers' interests gets reiterated right in the preamble of the Act which reads as follows:

“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, rationalization 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.”

3.2 The Act goes on to make specific provisions seeking to protect the consumers' interests. Section 43 of the Act provides for universal service obligation for the licensee to provide connection to a consumer within a stipulated period of time, failing which the licensee is liable to pay compensation to the affected consumer. The relevant provision is reproduced below:

“Section43. (Duty to supply on request): --- (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:

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.

Explanation.-For the purposes of this sub-section, “application” means the application complete in all respects in the appropriate form, as required by the

distribution licensee, along with documents showing payment of necessary charges and other compliances.

(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.”

3.3 Section 42 of the Electricity Act, 2003 provides, inter alia, for the establishment of a CGRF for settling the grievances of consumers. It also provides for a channel of appeal in the form of ombudsman for settling non-redressal of grievances at the stage of CGRF :

*“Section 42. (Duties of distribution licensee and open access): --- (1)
(2)*

(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.”

3.4 Section 56 of the Act provides, inter alia, that no sum due from a consumer can be recovered after a period of two years unless such sum has been shown as arrears continuously from the date such sum became first due. The relevant provision is reproduced below:

“Section 56. (Disconnection of supply in default of payment): -- (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days’

notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest, -

(a) an amount equal to the sum claimed from him, or

(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

3.5 Section 57 of the Act requires the appropriate Commission to frame regulations on standards of performance which a licensee is required to follow failing which

he is liable to pay penalty. Section 59 of the Act provides for monitoring all such performance standards through periodic reports to be submitted before the Regulatory Commissions:

“Section 57. (Consumer Protection: standards of performance of licensee): (1) The Appropriate Commission may, after consultation with the licensees and persons likely to be affected, specify standards of performance of a licensee or a class of licensees.

(2) If a licensee fails to meet the standards specified under sub-section (1), without prejudice to any penalty which may be imposed or prosecution be initiated, he shall be liable to pay such compensation to the person affected as may be determined by the Appropriate Commission:

Provided that before determination of compensation, the concerned licensee shall be given a reasonable opportunity of being heard.

(3) The compensation determined under sub-section (2) shall be paid by the concerned licensee within ninety days of such determination.”

“Section 58. (Different standards of performance by licensee): The Appropriate Commission may specify different standards under sub-section (1) of section 57 for a class or classes of licensee.”

“Section 59. (Information with respect to levels of performance): --- (1) Every licensee shall, within the period specified by the Appropriate Commission, furnish to the Commission the following information, namely:-

(a) the level of performance achieved under sub-section (1) of the section 57;

(b) the number of cases in which compensation was made under sub-section (2) of section 57 and the aggregate amount of the compensation.

(2) The Appropriate Commission shall at least once in every year arrange or the publication, in such form and manner as it considers appropriate, of such of the information furnished to it under sub-section (1).”

Section 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 in so far as it is inconsistent with any other provisions of the Consumer Protection Act, 1986 or the Atomic Energy Act, 1962 or the Railways Act, 1989.

Section 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.

Provisions in the Rules

- 3.6 The GoI has also framed rules giving flesh to the provisions of the CGRF and ombudsman. The relevant rules (Rule 7 of the Electricity Rules, 2005 (as amended) are quoted below:

Rule-7. Consumer Grievance 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. The Appropriate Commission shall nominate one independent member who is familiar with the consumer affairs.

Provided that the manner of appointment and the qualification and experience of the persons to be appointed as member of the Forum and the procedure of dealing with the grievances of the consumers by the Forum and other similar matters would be as per the guidelines specified by the State Commission.

(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.*

Provisions in the National Electricity Policy

3.7 Para 5.13 Protection of consumers' 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.”

Provisions in the Tariff Policy (TP)

- 3.8 *“Para 8.0 - Supply of reliable and quality power of specified standards in an efficient manner and at reasonable rates is one of the main objectives of the National Electricity Policy. The State Commission should determine and notify the standards of performance of licensees with respect to quality, continuity and reliability of service for all consumers. It is desirable that the Forum of Regulators determines the basic framework on service standards. A suitable transition framework could be provided for the licensees to reach the desired levels of service as quickly as possible. Penalties may be imposed on licensees in accordance with section 57 of the Act for failure to meet the standards.”*

CHAPTER - 4

IMPLEMENTATION STATUS

4.0 Implementation Status

4.1 The Working Group reviewed the status of implementation of various provisions of the Act, especially the provisions relating to CGRF, ombudsman, consumer advocacy, performance standards and quality of supply. For the actual status see **APPENDIX- II to VII.**

4.2 The Working Group noted that most of the State Electricity Regulatory Commissions (SERCs) have notified the regulations stipulating the guidelines for establishment of CGRF and ombudsman. The institutions of CGRF and ombudsman have also been established in most states. A number of cases have also been reported heard and settled in these fora.

4.3 The Working Group also noted that most of the SERCs have notified regulations on standards of performance. Several State Commissions have also put in place a mechanism for monitoring the performance standards of the licensees vis-à-vis the standards specified by the Commissions.

4.4 The Working Group also reviewed the status of implementation of consumer advocacy and found that different models of consumer advocacy were being followed in different states. The State Commissions have been adopting different methods for consumer education and dissemination of information. For instance, the Madhya Pradesh Electricity Regulatory Commission (MPERC) has involved NGOs for consumer education and empowerment and is reported to have used the technique of street plays (*Nukkar Natak*) to spread the information in the local language and dialect. The Uttar Pradesh Electricity Regulatory Commission (UPERC) has engaged the Voluntary Organization in Interest of Consumer Education (VOICE), an NGO for consumer education. The Jharkhand Electricity Regulatory Commission (JSERC) has advertised through the ‘*Kya Aap Jante Hai?*’ series to educate the consumers about their rights and duties. However, a large number of SERCs are yet to institutionalize consumer advocacy.

4.5 The Karnataka Electricity Regulatory Commission (KERC) has taken salutary steps towards institutionalizing consumer advocacy. The Office of the Consumer Advocacy (OCA) appointed within SERC has undertaken several activities to empower, inform, and educate the public in general and several societies/organizations in particular about developments in the electricity sector. The consumer advocate appears before the Commission in public hearing wherever consumers’ interest is involved. It has been a party in various petitions before the High Court and the Appellate Tribunal of Electricity (ATE). The Government of the National Capital Territory of Delhi has instituted the

Electricity Consumer Advocate Committee (ECAC) for representing consumers' interests in different fora including the Regulatory Commission, ATE, High Court, Supreme Court, etc.

- 4.6 The Working Group also noted the important steps taken by the Uttarakhand Electricity Regulatory Commission (UERC), for example the New Connection Regulations, and directions regarding display boards. The display boards (4'x3') have been installed at all cash collection centres, and divisional and sub-divisional offices of distribution licensees. The Uttarakhand Commission has conducted *Jan Goshthies* at various remote places to educate consumers about their rights under the Commission's Regulations.

CHAPTER - 5**INTERACTION WITH STAKEHOLDERS**

- 5.0 Interaction with NGOs, ombudsmen, institutions like ASCI involved in studies on issues relating to consumers' protection.**
- 5.1 *Interaction with NGOs:*** In order to have first-hand experience of consumer related issues, the Working Group interacted with NGOs, such as Mumbai Grahak Panchayat, which together with PRAYAS in Maharashtra, was involved with consumer education and consumer advocacy.
- 5.2 *Interaction with ombudsmen:*** The Working Group also interacted with the ombudsmen of Andhra Pradesh, Maharashtra and Karnataka to understand the difficulties and constraints in implementation of the provisions of the Act on settlement of grievances of consumers.
- 5.3 *Interaction with ASCI:*** The ASCI was engaged by the Ministry of Power, GoI to study the 'Functioning of Consumer Grievance Redressal Mechanism under the Electricity Act, 2003.' The Working Group interacted with ASCI to understand its findings with a view to ensuring that all important issues are addressed by the Group in finalizing its recommendations.
- 5.4** For a note on the issues highlighted by these stakeholders in the course of interaction see **APPENDIX-VIII**.

CHAPTER - 6

ISSUES

6.0 Analysis of Issues

The Working Group zeroed in on the issues that required clarification or demanded detailed analysis based on: (a) a detailed study of various provisions of the law; (b) the vision behind those provisions; and (c) due consideration and regard to the views of the stakeholders including NGOs, ombudsmen and the institutions like the ASCI.

6.1 Legal issues

The following legal issues emerged demanding clarification:

6.1.1 The penalty under section 43 can be imposed only by the SERCs. Similarly, the compensation under section 57 can be given only by the Electricity Regulatory Commissions (ERCs) and not by the CGRFs and ombudsmen.

6.1.1.1 The Working Group examined the provisions of section 43 and section 57 of the Act as also the provisions of section 42(5) and section (6). It concluded that the law makers seemed to have been conscious in granting powers of imposing penalty and compensation only on the Regulatory Commissions.

Even the Central Electricity Authority (CEA), an important statutory authority, had not been granted any such power. So far as CGRF was concerned, it was conceived as a clearly identifiable organ within the organization of the licensee for the purpose of settling grievances of consumers. The same was the role of the ombudsman but outside the fold of the licensee. The Act provided that these fora were to operate as per the guidelines framed by the Regulatory Commissions. As such their orders could be enforced in the same manner as the regulations of the SERC concerned were enforced under section 142 of the Act. This explained why powers of imposing penalty had not been given to the CGRF or ombudsman.

6.1.2 Multiple interpretations are possible regarding the provisions of sub-section 2 of section 56 of the Act and there are orders of the High Courts of various states which have given divergent decisions. The issue is whether limitation of two years would apply from the date when the amount became first due or from the date when the amount was first shown in the bill.

6.1.2.1 The Group examined the specific judgments of the High Courts of Mumbai, Delhi and the order of the ATE in this regard. The relevant extracts are reproduced below:

6.1.2.2 Extract from the judgment dated October 05, 2006 of the Bombay High Court in W.P. (L) No. 2221 of 2006 (Awadesh S. Pandey vs. Tata Power Co. Ltd.):

“Submission of counsel for the petitioner is that the provisions of Section 56 do not empower respondent No. 1 to recover any amount if the period of two years has elapsed nor can electricity supply be cut off for non-payment of those dues. In other words what is sought to be contended is that if the demand or part of the demand is time barred the provisions of Section 56 would not be attracted. We are afraid, we cannot subscribe to that proposition. Section 56(1) is a special provision, enabling the generating company or the licensee to cut-off supply of electricity until such charges or sum as demanded under Section 56(1) is paid. Relying on sub-section (2), it was strenuously urged that Section 56(1) cannot be resorted to after the period of two years from the date when such demand became first due. In our opinion, sub-section (2) only provides a limitation, that the recourse to recovery by cutting off electricity supply is limited for a period of two years from the date when such sum became due. As long a sum is due, which is within two years of the demand and can be recovered, the licensee of the generating company can exercise its power of coercive process of recovery by cutting off electricity supply. This is a special mechanism provided to enable the licensee or the generating company to recover its dues expeditiously. The Electricity Act has provided that mechanism for improvement of supply of electricity and to enable the licensee or generating company to recover its dues. Apart from the above mechanism, independently it can make recovery by way of a suit.”

See APPENDIX IX for the full judgment.

6.1.2.3 Extract from the judgment dated November 14, 2006 of the Appellate Tribunal in Appeal No. 202 & 203 of 2006 (Ajmer Vidyut Vitran Nigam Limited, vs. Chittorgarh, Rajasthan vs. M/s Sisodia Marble & Granites Pvt. Ltd. & Ors):
“The basic question for determination is what is the meaning of the words ‘first due’ occurring in Section 56(2) of the Electricity Act, 2003. ... In H.D. Shourie vs. Municipal Corporation of Delhi, AIR 1987 Delhi 219, the Delhi High Court has ruled that electricity charges become first due after the bill is sent to the consumer and not earlier thereto. In our opinion, the liability to pay electricity charges is created on the date electricity is consumed or the date the meter reading is recorded or the date meter is found defective or the date theft of electricity is detected but the charges would become first due for payment only after a bill or demand notice for payment is sent by the licensee to the consumer. The date of the first bill/demand notice for payment, therefore, shall be the date when the amount shall become due and it is from that date the period of limitation of two years as provided in Section 56(2) of the Electricity Act, 2003 shall start running.”

The full judgment of the Tribunal is enclosed in APPENDIX X.

6.1.2.4 In this context it would also be relevant to mention the judgment by Hon’ble Calcutta High Court in Mahesh Oil Mill & Another, vs. State of West Bengal

& Another (Writ Petition No. 516 of 2005) decided on February 19, 2007 may be referred.

Paragraphs 7 to 10 of the said judgment read:

7. It is really confusing when the counsel for CESC says that his client did not demand payment of the amount as one due and recoverable from the petitioners. In the bill in question CESC demanded payment of the amount on account of unrealized arrears for the months in question. Therefore, it is apparent that CESC demands the amount as sums due and recoverable from the petitioners as arrears of charges for electricity supplied during the months in question. There can be no doubt, in the face of the clear provisions in Section 56(2), that CESC was simply not empowered and entitled to issue the notice threatening to cut off supply of electricity on failure to pay the amount, from 1993 till raising the bill for September 2004 the amount in question had never been shown in any bill or in any other document, sent and served on the petitioners, as an amount recoverable from them as arrear of charges for electricity supplied.

8. It is not a case where the petitioners are seeking advantage of any mistake committed by CESC. It is very difficult to give a conclusive finding regarding the case of CESC that it had actually committed a mistake while disclosing the figure of the suspense account before the arbitrator. The disputes were settled by it before the arbitrator. The award was made long ago. There is nothing

to show that the mistake was detected by CESC immediately after the award was made. It is a highly disputed question of fact whether it committed any mistake in the matter of maintenance of the suspense account.

9. The admitted fact is that for the period for which it demanded payment from the petitioners, payments had been duly made by the petitioners. If because of its own mistake it received a lesser amount in terms of the award (because of wrong inclusion of subsequent payments in the accounts submitted before the arbitrator), in my opinion, it was not empowered to raise such a bill as was raised in September 2004 calling upon the petitioners to pay for the same period twice over. I therefore hold that for non-payment of the amount demanded by the impugned bill CESC was not entitled to cut off supply of electricity to the petitioners.

10. For these reasons, I set aside the impugned bill (for the month September 2004) and declare that for non-payment of the amount demanded thereby for the months in question, CESC was not and is not entitled to cut off supply of electricity to the petitioners. The writ petition is allowed to this extent. There shall be no order for costs in it. Urgent certified xerox copy of this order shall be supplied to the parties, if applied for, within three days from the date of receipt of the file by the section concerned.

6.1.2.5 There are divergent judgments in the issue in question. The Group noted the position.

6.1.3 Can a person who has applied for a new connection be considered as ‘consumer’ for the purpose of approaching the CGRF or ombudsman.

6.1.3.1 The Group examined this issue in the light of the judgment of the Supreme Court in the case of the Lucknow Development Authority (LDA) vs. M.K. Gupta. [CA 6237 (1990) dated 5th November 1993], wherein the Court *inter alia* interpreted the question as to whether a person who applied for a house from the LDA could be treated as a consumer and observed that a person who ‘applied’ was a ‘potential user’ and would be covered by the definitions of the words ‘service’ and ‘consumer’ under the said Act and would be eligible for relief for deficiency in service. The relevant extract is reproduced below:

The Consumer Protection Act, 1986 opts for no less wider definition. It reads as under: "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 and 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 service for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person:

(Explanation - For the purposes of sub-clause (i) "commercial purpose" does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self employment;)

.....

"Service" means service of any description which is made available to potential users and includes 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 contract of personal service.

The provisions in the Acts, namely, Lucknow Development Act, Delhi Development Act or Bangalore Development Act clearly provide for preparing a plan, development of land, and framing of scheme etc. Therefore if such authority undertakes to construct building or allot houses or building sites to citizens of the State either as amenity or as benefit then it amounts to rendering of service and will be covered in the expression 'service made available to potential users'. A person who applies for allotment of a building site or for a flat constructed by the development authority or enters into an agreement with a builder or a contractor is a potential user and nature of transaction is covered in the expression 'service of any description'.

The full judgment is in **APPENDIX XI**.

6.1.3.2 The Group felt that given the fact that the Consumer Protection Act, 1986 has been given precedence over the Electricity Act, 2003 (in terms of sections 173 and 174 of the Act), the above interpretation – that a potential user could be treated as a consumer – would also stand extended to the consumer of electricity to the extent the question of protection of consumers' interest against deficiency of service is concerned.

6.1.4 **Whether the regulations made by SERCs under section 42 (5) and (6) can provide that a licensee can engage a legal practitioner in relation to any matter before the CGRF and also before the ombudsman, only where the**

aggrieved consumer has availed the assistance of a legal practitioner in advancing his case.

6.1.4.1 The general sentiment on the issue was that engagement of legal practitioners by licensees when consumers are not engaging or are not able to engage lawyers puts consumers to a disadvantaged position. Therefore, the Group directed the FOR Secretariat to seek legal opinion on the above question. The Secretariat solicited opinion on the issue from M/s Hemant Sahai Associates who advised that *“the Electricity Act, 2003 provides for the establishment of CGRF as an internal self correcting mechanism within the distribution licensee’s own set-up to redress the grievances of the consumers mostly through the process of amicable settlement and conciliation. To that extent, such proceedings before the CGRF may not be adversarial in nature, and in fact may not even be proceedings with any legal connotation. Accordingly, in our view it will be legally tenable to provide by guidelines/ regulations framed by the State Commission, that in respect of the resolution of the grievances of consumers through the mechanism of CGRF, both parties (i.e. the consumer and the distribution licensee) shall not be represented by lawyers.*

However, in the absence of a specific stipulation in the Electricity Act, 2003 restricting the right of the lawyers to appear before the ombudsman, any regulations framed by the Appropriate Commission in exercise of its power under Section 181(2) (r), (s) read with Section 42(5), (6) and & (7) cannot

impose such restriction on the practice of lawyers before the ombudsman. Any restriction imposed by the Appropriate Commission on the right of a licensee to appoint/ engage any lawyer or avail legal assistance in relations to matters adversarial in nature involving the recording of evidence before the ombudsman amounts in effect to a restriction on the lawyers to appear before the ombudsman in such matters or class of matters. Such a restriction amounts to a direct interference with the right of the lawyers to practice in the forums as prescribed in Section 14(1)(a), (b), (c) of the Indian Bar Council Act, 1926.

Having regard to the fact that consumers in certain cases are unable to avail appropriate legal assistance for pursuing their cases, the Commission may find it appropriate to constitute Consumer Legal Assistance Cells consisting of lawyers, to provide required legal advice, support and assistance to consumers, wherever necessary. Such unit would be funded by the utilities. Further, the extent to which legal expenses of a licensee are incurred towards litigation against any consumer as an opposite party may be disallowed in the ARR of such licensee. This would be an equitable and justifiable approach, putting the utilities to bear their own legal expenses in such matters.”

The legal opinion is explained in **APPENDIX XII**.

6.1.4.2 The Group considered the legal opinion in the context and recommended that SERCs should provide by guidelines/ regulations framed under section 42(5) and (6) of the Act. In respect of the resolution of the grievances of consumers through the mechanism of CGRF – which was an organ of the licensee and where proceedings may not be adversarial in nature - both parties (i.e. the consumer and the distribution licensee) should not be represented by lawyers. However, the proceedings before the ombudsman being essentially adversarial in nature, imposition of such a restriction might not be legally tenable in the absence of a specific provision in the Act. The Group felt that wherever there is a practice of the licensee being represented by an advocate before the ombudsman, consumer legal assistance cells might be constituted by SERCs, to provide required legal advice, support, and assistance to consumers, wherever necessary. Such a unit could be funded by the SERCs.

6.2 *Issues relating to CGRF*

6.2.1 The Group found that there were two schools of thought on the issue as to whether CGRF was an internal organ of the licensee or whether it was to be treated as an independent grievance redressal mechanism outside the licensee.

6.2.1.1 The Group examined the legal provisions in this regard and relevant provision viz. section 42(5) which reads as follows: “*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.”

6.2.1.2 The Group also referred to the relevant recommendations (in para 8.69 of the report) of the Standing Committee on Energy made while examining the Electricity Bill, 2001, which is reproduced as follows: *“The Committee notes that these Forums are to work under the licensees only.... The Committee, therefore, recommends that there is a need to formulate some kind of ombudsman scheme to safeguard the interests of the consumer.”*

6.2.1.3 The Group felt that reading of the provision contained in section 42(5) of the Act read with recommendation (para 8.69 of the report of the Standing Committee on Energy), revealed that CGRF should be treated as an internal level grievance redressal organ of the distribution licensee.

6.2.1.4 The Group noted that several State Commissions had treated CGRF as a second channel of appeal by creating separate internal grievance redressal machinery as the first channel of appeal. The Group felt that such a practice does not go with the letter and spirit of the Act. Therefore, it is required to be ensured that the consumer having a grievance should have right to approach the CGRF directly without any precondition of approaching any particular staff or other committee set up by the licensee. Though the consumer should

have a right to directly approach the CGRF, periodic meetings/interactions by the local utility staff with the consumers may also be encouraged as these have proved useful in resolving petty and routine issues. The Group noted that the Rajasthan Electricity Regulatory Commission (RERC) and the Chhatisgarh State Electricity Regulatory Commission (CSERC) had passed orders merging internal grievance redressal mechanisms of discom in CGRF and felt that this spirit should be followed by all SERCs across the board.

6.3 *Whether licensee should also have the right to appeal before the ombudsman?*

6.3.1 The Group noted that some State Commissions had reservations on the provisions of section 42(6) of the Act in that the said provision did not give a right to the licensees to appeal before the ombudsman against the orders of CGRF. The Group noted that the given the fact that CGRF was conceived as an internal organ of the licensee, it was obvious that the orders of the CGRF would be acceptable to the licensee and that only the aggrieved consumer could have grievance against the order of such internal organ of the licensee. Thus, logically the Act did not provide for the right to a licensee to appeal against the orders of CGRF.

6.3.2 *Composition of CGRF and qualification of its members.*

6.3.2.1 It was noted that various SERCs have adopted different methods of composition of CGRF. The qualification specified for the members also varied significantly from state to state.

6.3.2.2 The Group observed that proviso to Rule 7 of the Electricity Rules, 2005 (as amended) authorized SERCs to specify qualifications of the members of the CGRF. The ERCs in Maharashtra and Uttarakhand had already specified the qualification and experience requirement for the chairperson of the Forum in such a manner as to ensure that he would not be a serving employee of the licensee. The findings of ASCI also reiterated that the chairperson of the CGRF should not be a serving employee of the licensee. According to the Rule 7 (as amended) of the Electricity Rules, 2005, the manner of appointment and the qualification and experience of the persons to be appointed as member of the Forum would be as per the guidelines specified by the State Commission. The Group, therefore, felt that SERCs may consider framing regulations in this regard in such a manner as to ensure that the chairperson of the CGRF was not a serving employee of the utility. It was felt that the requirement in Rule 7 of the Electricity Rules that the Forum “*shall consist of officers of licensee*” did not imply that the officer had to be a ‘serving’ officer of the licensee. So long as the salary of a member of the Forum was paid by the licensee, such a member could be treated as an ‘officer of licensee’ and the requirement of Rule 7 would be met. It was; however, felt that association of one or two serving officers of the licensee with CGRF was necessary as it facilitated timely availability of information and also the acceptability of the decision of the CGRF.

6.3.3 *Ease of access of CGRF*

6.3.3.1 The Group felt that since the institution of CGRF was meant to look into the redressal of grievances of consumers, it was incumbent that such a Forum should be easily accessible to a consumer.

6.3.3.2 It was therefore felt that the CGRF should be located at a place which was easily accessible by a consumer under the jurisdiction of such a Forum. Ideally, CGRF should hold sittings at different places on predefined dates for hearing the grievances of consumers, as was being followed in states like Madhya Pradesh.

6.3.4 *Funding of CGRF*

6.4 The Group felt that a proper funding structure would be necessary to ensure impartial functioning of the CGRF. The practice in this regard varied from state to state. The Group considered the suggestion of the ASCI in this regard. However, it felt that CGRF being an internal organ of the licensee, the expenditure of the CGRFs should be borne by the licensee.

6.4.1 *Implementation of CGRF orders*

6.4.1.1 The Group noted that the orders of the CGRFs were not being complied with by licensees in various states. It was also observed that some State

Commissions had provided in their regulations that non-implementation of the orders of CGRF would be treated as non-compliance of the regulations of SERCs and the licensee would be liable for action under section 142 of the Act.

- 6.4.1.2 The Group felt that all SERCs should make similar provisions in their regulations clearly stipulating that non-compliance of the orders of CGRF would be treated as contravention of the regulations of SERC making the licensee liable for action under section 142 of the Act.

6.4.2 *Remedy against CGRF's inaction to pass orders*

- 6.4.2.1 It was brought to the notice of the Group that there were occasions in some states where the grievance brought before the CGRFs had not been settled or decided by the Forum for a very long period.

- 6.4.2.2 The Group felt that inaction or deliberate delay caused by the CGRF in settling grievances of the aggrieved consumer defeats the very purpose of establishing such an institution and runs counter to the provisions of the Act.

- 6.4.2.3 It was felt that each SERC while specifying the regulation in this regard should provide a time limit (say 45 days or 60 days for different categories of grievances) for disposal of grievances by the CGRF. It should also be provided that in the event of a CGRF not disposing of the grievances within

the stipulated time period, the consumer should have the right to approach the ombudsman for settlement of non-redressal of his grievance by the CGRF. In addition, the provisions of section 142 of the Act may also be invoked for non-compliance of the regulations of the State Commission.

6.5 Ombudsman

6.5.1 Designation of an officer of SERC as ombudsman:

The Group noted that in some SERCs, the officer of the Commission had been designated as an ombudsman. It was felt that the institution of the ombudsman should be created on a full-time basis with a view to ensuring that proper attention is given to the resolution of the grievances of consumers. It was, therefore, suggested that such a practice of designating an officer of SERC should be discontinued. The practice of appointing a retired person from the judiciary or a retired person from the utility or the government, having stature and standing as was being followed in some states could be adopted by others.

6.5.2 Whether approval of government was required under Section 91 for appointment of ombudsman and supporting staff.

The Group noted that there was a doubt on the issue as to whether approval was required under Section 91 of the Act for creating a post for appointment of an ombudsman. The Group examined the issue in detail and felt that Section 91 dealt with creation of regular posts for the Regulatory Commission and that an ombudsman should not be treated as a regular employee of the Commission.

Since the provision for the appointment of an ombudsman was made in Section 42 (6) of the Act, there was no need for creation for a separate post for Ombudsman and his supporting staff. Consequently, there was no need for seeking approval of the government under Section 91 of the Act. The office of the ombudsman and the supporting office may be created under the relevant regulations of the SERC concerned.

6.5.3 Appeal against the Order of the ombudsman.

It was opined by some State Commissions that the Act did not provide for a forum of appeal against the orders of the ombudsman. There was a general consensus that the institution of ombudsman was conceived as an arbitrator who would seek to settle the grievances through conciliation. In any case, writ petition against the order of the ombudsman could always lie before the High Court. In this connection, the Group referred to the judgment of the Allahabad High Court in the civil miscellaneous Writ Petition No. 16216 of 2008, dated April 2, 2008. The High Court in its order stated, inter alia, that: “where the electricity ombudsman has succeeded in mediation and conciliation in persuading the parties to reach to a settlement, the proceedings would not be subjected to challenge except on the grounds of jurisdictional error committed by the electricity ombudsman or any fraud alleged and proved on record. In any other case, the award may be challenged as an arbitrary award on grounds available under section 34 of the Arbitration and Conciliation Act, 1996. The scope of interference with award is limited to the grounds, which may be taken under

section 34 of the Arbitration and Conciliation Act, 1996.” If the grievance is not settled through conciliation, the ombudsman has the power to proceed with the grievance and make orders. This is held by Hon’ble High Court of Madras in Writ Petition No. 6199 of 2007 in the matter of Superintending Engineer Dharmapuri Electricity Distribution Circle vs. Meenakshi Udyog India Pvt. Ltd. and Tamil Nadu Ombudsman. It is held that:

“The ombudsman is not a mediator alone but an adjudicator as well – The Electricity ombudsman is an Appellate Authority under the Regulations for Consumer Grievance Redressal Forum and Electricity ombudsman 2004 – High Court of Madras Rejects TNEB’s contention that ombudsman has no jurisdiction to adjudicate upon disputes.” [Source: Tamil Nadu Electricity Regulatory Commission (TNERC) website]

6.5.4 Funding of ombudsman

The Group reviewed the practice of funding the office of ombudsman and felt that the expenses of the office of ombudsmen should not be met from the financial support directly from the distribution licensee, as it might raise a question on the independence of the ombudsmen.

It was agreed that office of ombudsman should be funded by SERCs and a separate budgetary allocation could be made in the budget of SERC to that extent. The SERC may recover such expenses from the licensees directly.

6.5.5 Monitoring of performance of grievance redressal machinery

The Group reviewed the mechanism adopted by some SERCs for monitoring the performance of the grievance redressal machinery. It was felt that several SERCs were yet to put in place a proper monitoring mechanism. It was agreed that the provision in the rule issued by GoI stipulating inter alia requirement of submission of a report by the ombudsman should be institutionalized by all SERCs. The relevant extract of the Rule is quoted as follows: *“(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.”*

It was also opined that a six monthly conference of the CGRF members and the ombudsman by the SERC would be appropriate for experience sharing and receiving a feedback for improving guidelines and regulations.

The disposal of grievances should be monitored up to the point of compliance of the order of CGRF or ombudsman and not just the passing of order by these bodies.

6.6 *Institutionalizing Consumer Advocacy.*

6.6.1 The Group specifically noted the steps taken by the SERCs of Madhya Pradesh, Karnataka and Uttarakhand for consumer advocacy and consumer education.

6.6.2 It was observed that NGOs should be involved in consumer education and empowerment. Leaflets highlighting the consumers' rights under the standards of performance regulations could be distributed for dissemination of information amongst the consumers.

6.6.3 As regards consumer advocacy, it was opined that consumers' groups might not be funded from the budget of the SERC as there could be an occasion when consumers' groups could appeal against the order of Regulatory Commissions in other fora. However, if such funding was not on a case to case basis but was given as an annual fixed grant then conflict of interest would not be an issue. It was suggested that a proposal could be formulated for funding of consumers' groups by the Ministry of Consumer Affairs.

6.6.4 It was agreed that FOR should financially support identified competent NGOs or eminent persons to take up/contest important consumer related cases in High Courts, Appellate Tribunal of Electricity (APTEL) and the Supreme Court so that consumers' interests are effectively represented.

6.6.5 Knowledgeable retired personnel could be appointed by SERCs as consumer advocates for participating in: (a) tariff hearing to represent interests of domestic, agricultural, and SSI-LT category consumers; (b) hearing for load shedding protocols; and (c) hearing for framing standards of performance.

6.6.6 It was felt that SERCs should organize regular orientation courses for capacity building of consumer advocates. Such orientation courses could also be organized by FOR in order to give the consumer advocates wider awareness and opportunity for sharing of experience in other states.

6.7 *Consumer Charter*

The Group noted that consumer charters have been issued by some State Commissions reiterating the rights of consumers. The Group studied such charters as also the consumer charters issued by other regulatory bodies like TRAI and evolved a model consumer charter which is enclosed in **APPENDIX XIII**.

CHAPTER - 7**CONCLUSIONS AND RECOMMENDATIONS**

- 7.0 Sincere efforts have been made by the Regulatory Commissions in attaining the objectives enshrined in the Act towards safeguarding consumers' interests. This conclusion was reached after: (a) a detailed analysis of the issues at stake; (b) examination of the case laws backed by legal opinion on some critical issues; and (c) by the experience gained through interaction with stakeholders. However, a great deal more needs to be done. The major findings and recommendations are summarized below.
- 7.1 The Regulatory Commissions have been given adequate powers under the Act to effectively enforce the provisions including those relating to the protection of consumers' interests. All such powers including imposition of penalty under section 43, compensation under section 57 and invoking section 142 of the Act should be resorted to wherever required by the Regulatory Commissions.
- 7.2 There is a general sentiment against the practice of the licensees engaging lawyers in proceedings before the CGRF and ombudsman. This puts into a disadvantaged position the consumer, who on occasions may not be in a position to engage lawyers. It is recommended that SERCs should specify in the guidelines and

regulations framed under section 42(5) and (6) of the Act that in respect of the resolution of the grievances of consumers through the mechanism of CGRF – which is an organ of the licensee and where proceedings may not be adversarial in nature - both parties (i.e. the consumer and the distribution licensee) shall not be represented by lawyers. However, since the proceedings before the ombudsman, being essentially adversarial in nature, the imposition of such a restriction may not be legally tenable in the absence of a specific provision in the Act. It is, therefore, recommended that wherever there is a practice of the licensee being represented by an advocate before the ombudsman, consumer legal assistance cells might be constituted by SERCs, to provide required legal advice, support, and assistance to consumers, wherever necessary. Such a unit could be funded by the SERCs.

- 7.3 Some State Commissions have treated the CGRF as a second channel of appeal by creating separate internal grievance redressal machinery as the first channel of appeal. Such a practice does not go with the letter and spirit of the Act. This is clearly evident from the wordings of the provision in section 42(5) of Act and the reiteration of the Standing Committee on Energy while examining the Electricity Bill, 2001. The CGRF should be treated as the internal first-level grievance redressal organ. Some State Commissions had passed orders merging internal grievance redressal mechanisms of discom with CGRF. It is suggested that this practice should be followed by all SERCs across the board. Therefore, it is necessary to ensure that the consumer who has a grievance should have the right to approach the CGRF directly without any precondition of approaching a

particular staff or other committee set up by the licensee. Though the consumer should have a right to directly approach the CGRF, periodic meetings and interactions by the local utility staff with the consumers may also be encouraged as these have proved useful in resolving petty and routine issues.

7.4 In the context of the provisions of section 42(6) of the Act, there are sentiments that the said provision does not give right to the licensees to appeal before the ombudsman against the orders of the CGRF. It is reiterated that given the fact that the CGRF has been conceived as an internal organ of the licensee, it is assumed that the orders of the CGRF would be acceptable to the licensee and that only the aggrieved consumer could have grievance against the order of such an internal organ of the licensee. Thus, logically the Act did not provide for the right of a licensee to appeal against the orders of the CGRF.

7.5 According to the Rule 7 (as amended) of the Electricity Rules, 2005, the manner of appointment and the qualification and experience of the persons to be appointed as members of the Forum would be as per the guidelines specified by the State Commission. The qualification and experience required for the appointment of a chairperson of the Forum should be specified in such a manner as to ensure that the person is not serving as a regular employee of the licensee. It is observed that the requirement in Rule 7 of the Electricity Rules, 2005 that the Forum “*shall consist of officers of licensee*” does not imply that the officer had to be a regular officer of the licensee. So long as the salary of the member of the

Forum is paid by the licensee, such a member could be treated as an ‘officer of licensee’ and the requirement of Rule 7 would be met. It is, however, suggested that association of one or two service officers of the licensee with CGRF is necessary as it facilitates timely availability of information and also the acceptability of the decision of the CGRF.

- 7.6 Since the idea behind creating the institution of CGRF is redressal of grievances of consumers, it is incumbent that such a Forum should be easily accessible to a consumer. It is therefore suggested that the CGRF should be located at a place which is easily accessible by the consumer under jurisdiction of such a Forum. Ideally, CGRF should hold sittings at different places but there should be predetermined dates for hearing the grievances of consumers.
- 7.7 As the CGRF is an internal organ of the licensee, it is recommended that the expenditure of the CGRF be borne by the licensee.
- 7.8 All SERCs should make provisions in their regulations clearly stipulating that non-compliance of the orders of CGRF would be treated as contravention of the regulations of SERC making the licensee liable for action under section 142 of the Act.
- 7.9 Each SERC, while specifying the regulation under section 42(5) and (6), should provide a time limit (say 45 days or 60 days) for disposal of grievances by the

CGRF. In the event of the CGRF not disposing off the grievances within the stipulated time period, the consumer should have the right to approach the ombudsman for settlement of non-redressal of his grievance by the CGRF. In addition, the provisions of section 142 of the Act may also be invoked for non-compliance of the regulations of the State Commission.

7.10 It is recommended that the institution of the ombudsman should be created on a full-time basis so that proper attention is given to the resolution of the grievances of consumers. It is, therefore, suggested that the practice of designating an officer of SERC as ombudsman should be discontinued.

7.11 Section 91(2) deals with creation of a regular post for the Regulatory Commission and that an ombudsman should not be treated as a regular employee of the Commission. Since the provision for the appointment of an ombudsman has been made in the Act itself in Section 42 (6), there is no need for the creation for a separate post for ombudsman and consequently there is no need for seeking approval of the government under Section 91(2) of the Act.

7.12 There is a general sentiment that the Act does not provide for a forum of appeal against the orders of the ombudsman. The institution of ombudsman has been conceived as an arbitrator who seeks to settle the grievances through conciliation. This is borne out by the Allahabad High Court judgment in the civil miscellaneous Writ Petition No. 16216 of 2008, dated April 2, 2008. If the

grievance is not settled through conciliation, the ombudsman has the power to **proceed with the grievance and make orders**. In any case, however, a writ petition against the order of the ombudsman could always lie before the High Court under writ jurisdiction.

- 7.13 Expenses of the office of the ombudsman should not be met by the distribution licensee, as it might raise a question on the independence of the ombudsman. The office of the Ombudsman should be funded by SERCs and a separate budgetary allocation could be made in the budget of SERC for this purpose. The SERC may recover such expenses from the licensees directly.
- 7.14 Several SERCs are yet to put in place a proper mechanism for monitoring the grievance redressal machinery. The provision in the rule issued by GoI stipulating inter alia requirement of submission of the report by the ombudsman should be institutionalized by all SERCs.
- 7.15 A six-monthly conference of the CGRF members and ombudsman by SERC would be appropriate for experience sharing and receiving a feedback for improving guidelines and regulations.
- 7.16 It is recommended that NGOs should be involved for consumer education and empowerment. Leaflets highlighting the consumers' rights under the standards of performance regulations should be distributed for dissemination of information

amongst the consumers. This would be best achieved by printing the ‘consumers’ rights’ on the back of the electricity bill. This would ensure wider access of message and improve awareness amongst the consumers.

- 7.17 As regards consumer advocacy, consumers’ groups should not be funded from the budget of the SERC as there could be an occasion when consumers’ groups could appeal against the order of Regulatory Commissions in other fora. However, if such funding is not on a case to case basis but is given as an annual fixed grant, conflict of interest would not be an issue. In addition, it is suggested that a proposal be formulated for funding of consumers’ groups by the Ministry of Consumer Affairs.
- 7.18 It is recommended that FOR should financially support identified competent NGOs or eminent persons to take up/contest important consumer related cases in High Courts, APTEL, and the Supreme Court so that consumers’ interests are effectively represented.
- 7.19 Knowledgeable retired personnel could be appointed by SERCs as consumer advocates for participating in: (a) tariff hearing to represent interests of domestic, agricultural, and SSI-LT category consumers; (b) hearing for load shedding protocols; and (c) hearing for framing standards of performance. However, there is a need for further deliberation for the ways and means for strengthening the consumer advocacy mechanism.

7.20 SERCs should organize regular orientation courses for capacity building of consumer advocates. Such orientation courses could also be organized by FOR in order to give the consumer advocates wider awareness and opportunity for sharing of experience in other states.

7.21 Each SERC should notify a consumer charter based on the model charter suggested in this report.

List of Abbreviations

AERC	Assam Electricity Regulatory Commission
APERC	Andhra Pradesh Electricity Regulatory Commission
APTEL	Appellate Tribunal of Electricity
ASCI	Administrative Staff College of India
ATE	Appellate Tribunal of Electricity
BERC	Bihar Electricity Regulatory Commission
CEA	Central Electricity Authority
CERC	Central Electricity Regulatory Commission
CESC	Calcutta Electricity Supply Company
CGRF	Consumer Grievance Redressal Forum
CSERC	Chhatisgarh State Electricity Regulatory Commission
DERC	Delhi Electricity Regulatory Commission
ECAC	Electricity Consumer Advocate Committee
ERC	Electricity Regulatory Commission
FOR	Forum of Regulators
GERC	Gujarat Electricity Regulatory Commission
HERC	Haryana Electricity Regulatory Commission
HPERC	Himachal Pradesh Electricity Regulatory Commission
J&KSERC	Jammu & Kashmir Electricity Regulatory Commission
JSERC	Jharkhand State Electricity Regulatory Commission
KERC	Karnataka Electricity Regulatory Commission
KSERC	Kerala State Electricity Regulatory Commission
LDA	Lucknow Development Authority
MERC	Maharashtra Electricity Regulatory Commission
MPERC	Madhya Pradesh Electricity Regulatory Commission
MSERC	Meghalaya State Electricity Regulatory Commission
NCT	National Capital Territory
NEP	National Electricity Policy
NGO	Non-Governmental Organization
OCA	Office of Consumer Advocacy
OERC	Orissa Electricity Regulatory Commission
PSERC	Punjab State Electricity Regulatory Commission
RERC	Rajasthan Electricity Regulatory Commission
RI	Reliability Index
SERC	State Electricity Regulatory Commission
TERC	Tripura Electricity Regulatory Commission
TERI	The Energy and Resource Institution
TNERC	Tamil Nadu Electricity Regulatory Commission
TP	Tariff Policy
UERC	Uttarakhand Electricity Regulatory Commission
UPERC	Uttar Pradesh Electricity Regulatory Commission
VOICE	Voluntary Organization in Interest of Consumer Education
WBERC	West Bengal Electricity Regulatory Commission

APPENDIX

FORUM OF REGULATORS (FOR)

Secretariat : C/o. Central Electricity Regulatory Commission (CERC)

Core-3, 6th & 7th Floors, SCOPE Complex, Lodhi Road, New Delhi 110 003

Tele No.:24361051 / Fax No.:24360010

No.:15/2(7)/2008-FOR-WG/PCI

Dated : 23rd June, 2008

**SUB : CONSTITUTION OF THE WORKING GROUP ON
“PROTECTION OF CONSUMER INTERESTS”.**

Sir,

The Forum of Regulators (FOR) decided in its meeting held on 13th June, 2008 to constitute a Working Group on “Protection of Consumer Interests”. The Chairperson of the Forum was authorized to nominate various SERCs on the Working Group.

2. The Chairperson, FOR, has constituted the Working Group as indicated below :-

(i)	Chairperson, CERC	...	Chairman of the Working Group
(ii)	Chairperson, CSERC	...	Member
(iii)	Chairperson, KERC	...	Member
(iv)	Chairperson, MPERC	...	Member
(v)	Chairperson, RERC	...	Member
(vi)	Chairperson, UERC	...	Member
(vii)	Chairperson, UPERC	...	Member
(viii)	Chairperson, WBERC	...	Member
(ix)	Secretary, CERC	...	Member
(x)	Deputy Chief (RA), CERC	...	Coordinator.

3. In the SERCs where the post of Chairperson is vacant, the senior Member of the SERC would be the Member of the Working Group.

4. The Working Group would inter-alia consider the relevant provisions of the National Electricity Policy, National Tariff Policy, reports of the studies conducted by TERI, the models of consumer advocacy being followed in various States and would give its recommendation on -

- Steps required to make functioning of the Forums for Redressal of Consumer Grievances and Ombudsmen more effective,

- The possible options and strategies for consumer education, empowerment and funding,
- Institutionalizing Consumer Advocacy,
- Suggested draft of a Consumer Charter,
- Methodology for meeting the financial requirements of the office of the Ombudsmen so as to ensure its independence from the distribution licensees, and
- Any other relevant issue.

5. The Secretariat of the Forum would provide secretariat to the Working Group. The Working Group would submit its recommendations by 30th September, 2008 for consideration of the Forum.

Sd/-
(Alok Kumar)
Secretary

To :

- (1) Chairperson, CSERC.
- (2) Chairperson, KERC.
- (3) Chairperson, MPERC.
- (4) Chairperson, RERC.
- (5) Chairperson, UERC.
- (6) Chairperson, UPERC.
- (7) Chairperson, WBERC.

Copy for information to -

Chairperson, CERC/FOR.

Setting up of CGR Forum & Ombudsman

S. No.	SERC	CGR Regulation	Summary
1.	APERC	2004	<ul style="list-style-type: none"> Notified
2.	AERC	Dec22 nd ,2003	<ul style="list-style-type: none"> CGR forum in 3 Discoms, Ombudsman appointed.
3.	BERC	May 20 th ,2006	<ul style="list-style-type: none"> One CGRF is functioning since August 2006 for entire licensed area of BSEB. 213 cases have been filed by consumers and 86 cases have been disposed of by CGRF upto 30.11.2007; Ombudsman not yet appointed.
4.	CSERC	Feb15, 2005	<ul style="list-style-type: none"> CGR established in 3 centers. CGRFs set up by CSEB in Raipur, Bilaspur, Jagdalpur; Other Discoms viz. Bilai Steel Plant (BSP) and JSPL have set up single Forum in their area; 234 cases received by CSEB Forums, out of which 225 cases have been settled; Ombudsman appointed, 30 cases received so far, out of which 26 cases have been disposed of till Nov., 2007;
5.	DERC	November, 2003	<ul style="list-style-type: none"> CGRFs formed by each of the three Discoms in 2004; 4677 complaints received by CGRFs so far, out of which 4541 have been disposed of till Nov 2007; 75% of the cases decided have gone in favour of consumers; Ombudsman appointed; Ombudsman sends bi-annual reports. SERC maintains break-up of complaints. Over 80% of complaints are related to metering and billing problems; Out of 4677 complaints received by CGRFs, only 226 complaints i.e. 4.8% of the total number of complaints have gone on appeal;
6.	GERC	March 31, 2005	<ul style="list-style-type: none"> CGRFs in 8 centers. Ahmedabad and Surat Licence areas have two CGRFs respectively. UGVCL, DGVCL and MGVCL have each one CGRF in their licence area and PGVCL has three CGRFs due to large licence area. GERC has appointed Secretary as Ombudsman with effect from August 5, 2005.
7.	HERC	April 12 th ,2004	<ul style="list-style-type: none"> CGRFs established by Discoms; Discoms file a quarterly report to the SERC; Ombudsman has been appointed; Ombudsman has to submit report to the SERC every six month containing details of the nature of grievances; 15 complaints filed during July, 07 to Dec,07.
8.	HPERC	Oct 23 rd ,2003	<ul style="list-style-type: none"> HPSEB, the only licensee has constituted CGR forum during June, 2005. Ombudsman appointed during December 2004.
9.	JSERC	Notified	<ul style="list-style-type: none"> CGRFs established by Discoms;

			<ul style="list-style-type: none"> SERC exercises checks through quarterly reports and giving directions in case of delay in disposal of cases; Ombudsman appointed; 14 cases filed before Ombudsman, out of which 12 relate to billing dispute and 2 relate to connection/reconnections.
10.	J&KSE RC	No provision	<ul style="list-style-type: none"> No provision in J&K Act-2000
11.	KERC	June 10, 2004	<ul style="list-style-type: none"> CGRFs established by 5 Discoms; During 2006-07, 109 cases have been disposed of by CGRFs and 21 cases are pending; Ombudsman appointed; 32 cases disposed of by Ombudsman so far 8 cases are pending;
12.	KSERC	October 6 th ,2005	<ul style="list-style-type: none"> CGRFs set up; 391 cases received till March 2007, out of which 336 cases disposed of and 45 are pending; Ombudsman appointed; 33 cases received till December, 2007, out of which 31 cases have been disposed of and 2 are pending; 11 cases disposed of have gone in favour of licensees and 20 in favour of consumers.
13.	MPER C	April 12 th ,2004	<ul style="list-style-type: none"> CGRFs established; SERC monitors performance of CGRFs through Ombudsman; During 2006-07, 1875 cases settled, out of the total of 2007 cases (including 521 pending cases of the previous year); During 2007-08 (upto September, 2007) 673 cases settled, out of the total of 790 cases (including 132 pending cases of the previous year); Ombudsman appointed; Ombudsman conducts proper hearing to decide cases and also monitors whether decision of CGRF/Ombudsman being properly implemented. On non-compliance SERC issues notices to Discoms; Scrutiny of 6 cases settled by each CGRF undertaken by Ombudsman every month;
14.	MERC	Notified in 2006	<ul style="list-style-type: none"> One CGRF each for TPC, REL, BEST and MPECS has been constituted. In case of MSEDCL, for Eleven zones of MSEDCL, a total of 11 CGRF's have been constituted. One Ombudsman has been appointed for the State.
15.	MsERC	February 22 nd , 2007	<ul style="list-style-type: none"> Regulations on Redressal of Grievances have been notified in 2007; Ombudsman appointed; No cases filed before Ombudsman so far.
16.	OERC	Notified 17.05.2004	<ul style="list-style-type: none"> Commission has established two Ombudsmen & 12 grievance redressal forums for the state.

17.	PSERC	Notified	<ul style="list-style-type: none"> • CGRF and Ombudsman are functional
18.	RERC	Notified	<ul style="list-style-type: none"> • CGRF established. SERC monitoring performance regularly; • Ombudsman appointed; • Half report by Ombudsman to SERC, giving details about nature of grievances of consumers, response of licensees, opinion of Ombudsman on licensees compliance of Performance Standards; • Out of 68 cases received, 50 cases have been settled and 18 are pending.
19.	TNERC	Notified	<ul style="list-style-type: none"> • The Commission issued Regulations for CGRFs & Ombudsman which came into force in Feb, 2004; • Licensees have established CGRFs in all the 38 distribution circles. The Forums have disposed of 382 petitions from July 2006 to June 2007; • Ombudsman has been functioning from 7.6.2005. 17 petitions have been admitted and all have been disposed of during 1-1-2007 to 31-12-2007.
20.	TERC	Notified	<ul style="list-style-type: none"> • CGR formed and Secretary of the Commission appointed as Ombudsman.
21.	UERC	Notified	<ul style="list-style-type: none"> • Two CGR and one Ombudsman functional.
22.	UPERC	December 9, 2003	<ul style="list-style-type: none"> • Offices of CGR Forum are functional. Ombudsman has been appointed and is functional. State Govt. has been requested to expedite sanction of staff for the office of Ombudsman. On the basis of feedback from consumers and stakeholders the Commission has modified these regulations have also been notified. Action to operationalize the Forum as per new regulations is in hand.
23.	WBER C	Notified	<ul style="list-style-type: none"> • CGRF has been established at the level of the licensees as per the Regulation of Commission; • Ombudsman operating for more than 3 years has kept a close watch to ensure that the grievances of the consumers submitted to the Forum and the cases of non redressal of the grievances referred to the Ombudsman are settled expeditiously; • Out of 1970 cases received, 1726 cases have been settled and 244 are pending.

Steps taken by SERCs on CGRF/Ombudsman :

S.No.	SERC	Comments
1.	AERC	<ul style="list-style-type: none"> • Regulations stipulating guidelines on Consumer Grievance Redressal Forum and Electricity Ombudsman, issued; • Most of the complaints received are of irregular billing due to installation of digital energy meters.
2.	BERC	<ul style="list-style-type: none"> • CGRF established by BSEB and is functional from Sept 2006; • 213 cases have been filed by consumers and 86 cases have been disposed of by CGRF upto 30.11.2007; • Ombudsman yet to be appointed as the post of Ombudsman not yet sanctioned by State Government.
3.	CSERC	<ul style="list-style-type: none"> • Regulations on CGRF and Ombudsman notified; • CGRFs set up by CSEB in Raipur, Bilaspur, Jagdalpur; • Other Discoms viz. Bilai Steel Plant (BSP) and JSPL have set up single Forum in their area; • 234 cases received by CSEB Forums, out of which 225 cases have been settled; • Both Ombudsman and SERC monitor progress of complaints filed with CGRFs; • Regular meeting held by SERC with CGRF on complaint redressal; • Non-compliance of orders of CGRF and Ombudsman, treated as violation of SERC regulations and as liable for action under section 142 of the Act; • Ombudsman appointed. 30 cases received so far, out of which 26 cases have been disposed of till Nov., 2007; • Quarterly report by Ombudsman to SERC on disposal of cases; • Also a six monthly report by Ombudsman about the nature of grievances, response of licensees, and Ombudsman's opinion about licensee's compliance of standards of performance; • Most of the complaints are related to billing dispute. Some cases are relating to delay in giving connections; • Issues regarding effectiveness of CGRF because of CGRF consisting primarily of licensees' employees.

4.	DERC	<ul style="list-style-type: none"> • CGRFs formed by each of the three Discoms in 2004; • 4677 complaints received by CGRFs so far, out of which 4541 have been disposed of till Nov 2007; • 75% of the cases decided have gone in favour of consumers; • Ombudsman appointed; • Ombudsman sends bi-annual reports. SERC maintains break-up of complaints. Over 80% of complaints are related to metering and billing problems; • Out of 4677 complaints received by CGRFs, only 226 complaints i.e. 4.8% of the total number of complaints have gone on appeal; • Ombudsman bi-annual reports have been discussed with licenses and suggestions made by Ombudsman about strengthening of grievances handling mechanism at Discom level have been generally accepted by Discoms.
5.	GERC	<ul style="list-style-type: none"> • SERC is regularly holding meetings of Consumer Grievances Redressal Forums (CGRFs) for reviewing grievances redressal mechanism; • SERC is also getting quarterly progress reports regarding complaints handled by the CGRFs; • The nature of complaints received include non-release of deposits, transfer charges, development charges, slowness of meters etc; • In order to review and monitor performance of CGRFs, meeting convened by Ombudsman; • Information regarding Ombudsman was published in newspapers; • All CGRFs were requested to fix information regarding Ombudsman on their notice boards and to upload this information on their websites.
6.	HERC	<ul style="list-style-type: none"> • CGRFs established by Discoms; • Discoms file a quarterly report to the SERC; • Ombudsman has been appointed; • Ombudsman has to submit report to the SERC every six month containing details of the nature of grievances; <p>15 complaints filed during July, 07 to Dec,07.</p>
7.	HPER C	<ul style="list-style-type: none"> • CGRFs has been set up by the Discoms; • Discoms file a quarterly, on category-wise no. of complaints received, redressed and pending;

		<ul style="list-style-type: none"> • Ombudsman has been appointed; • Ombudsman has to submit half yearly reports on matters relating to : <ol style="list-style-type: none"> 1) Delay in giving Electricity, 2) quality of voltage, 3) Interruption in supply, 4) metering problems 5) billing problems 6) tariff problems, 7) others if any, along- with opinion of Ombudsman.
8.	J&K ERC	<ul style="list-style-type: none"> • J&K State Electricity Act does not have provision for CGRF and Ombudsman.
9.	JSER C	<ul style="list-style-type: none"> • CGRFs established by Discoms; • SERC exercises checks through quarterly reports and giving directions in case of delay in disposal of cases; • Ombudsman appointed; • 14 cases filed before Ombudsman, out of which 12 relate to billing dispute and 2 relate to connection/reconnections.
10.	KERC	<ul style="list-style-type: none"> • CGRFs established by Discoms; • During 2006-07, 109 cases have been disposed of by CGRFs and 21 cases are pending; • Ombudsman appointed; • Ombudsman submits bi-annual report to SERC indicating nature of grievances, his opinion about implementation of orders; • 32 cases disposed of by Ombudsman so far – 8 cases are pending; • Complaints relate mainly to new connection, delay in refund of security deposit, relief from payment of arrears, violation of electricity supply and distribution code standards, wrong billing/excessive billing, etc; • Licensees have implemented all orders of Ombudsman.
11.	KSER C	<ul style="list-style-type: none"> • CGRFs set up; • 391 cases received till March 2007, out of which 336 cases disposed of and 45 are pending; • Ombudsman appointed; • 33 cases received till December, 2007, out of which 31 cases have been disposed of and 2 are pending; • 11 cases disposed of have gone in favour of licensees and 20 in favour of consumers.
12.	MPER C	<ul style="list-style-type: none"> • CGRFs established; • SERC monitors performance of CGRFs through

		<p>Ombudsman;</p> <ul style="list-style-type: none"> • During 2006-07, 1875 cases settled, out of the total of 2007 cases (including 521 pending cases of the previous year); • During 2007-08 (upto September, 2007) 673 cases settled, out of the total of 790 cases (including 132 pending cases of the previous year); • Ombudsman appointed; • Ombudsman conducts proper hearing to decide cases and also monitors whether decision of CGRF/Ombudsman being properly implemented. On non-compliance SERC issues notices to Discoms; • Scrutiny of 6 cases settled by each CGRF undertaken by Ombudsman every month; • Ombudsman submits six monthly report to SERC; • Response of licensees towards disposal of complaints has been satisfactory.
13.	MERC	<ul style="list-style-type: none"> • SERC has framed a comprehensive “Electricity Consumer’s Rights Statement” with the objective of enabling consumers to protect themselves by creating awareness about their rights available and the service as well as the level of quality that may reasonably expect from the electricity distribution companies in their respect areas etc; • Utilities are also directed to spread over awareness about the consumers grievances redressal mechanism; • As per information available, leaflets on consumers’ awareness were circulated along with electricity bills and information hoardings have been displayed of their respect billing centre/customer care centre about consumer grievances redressal mechanism.
14.	MsERC	<ul style="list-style-type: none"> • Regulations on Redressal of Grievances have been notified in 2007; • Ombudsman appointed; • No cases filed before Ombudsman so far.
15.	OERC	<ul style="list-style-type: none"> • CGRFs are operational all over the State since October, 2004 and Ombudsmen are functioning since Jan, 2005; • Procedure for redressal laid down in Regulations on CGRF and Ombudsman; • SERC conducts periodic inspection of the

		<p>operation of the CGRFs;</p> <ul style="list-style-type: none"> • Requirement for CGRFs to submit quarterly, biennial and annual reports; • Monitoring of complaints of Ombudsman relates to billing disputes, low voltage, allegedly illegal disconnection, delay in new connection, defective meter, dispute over contract demand, delay in replacement of burnt transformer and non-implementation of orders of CGRFs; • Bi-annual report by Ombudsmen to SERC; • Observations of Ombudsmen so far include: rising trend of registration of cases before Ombudsman, greater awareness about role of Ombudsman required, mutual conciliation should be predominant means of addressing disputes, non-implementation of orders of Ombudsmen in some cases.
16.	PSER C	<ul style="list-style-type: none"> • CGRF established. SERC monitoring performance regularly; • Ombudsman appointed. Half report to SERC.
17.	RERC	<ul style="list-style-type: none"> • CGRF established. SERC monitoring performance regularly; • Ombudsman appointed; • Half report by Ombudsman to SERC, giving details about nature of grievances of consumers, response of licensees, opinion of Ombudsman on licensees compliance of Performance Standards; • Out of 68 cases received, 50 cases have been settled and 18 are pending.
18.	TNER C	<ul style="list-style-type: none"> • The Commission issued Regulations for CGRFs & Ombudsman which came into force in Feb, 2004; • Licensees have established CGRFs in all the 38 distribution circles. The Forums have disposed of 382 petitions from July 2006 to June 2007; • Ombudsman has been functioning from 7.6.2005. 17 petitions have been admitted and all have been disposed of during 1-1-2007 to 31-12-2007.
19.	TERC	<ul style="list-style-type: none"> • SERC notified Grievance Redressal Management System and Ombudsman appointed; • On receiving a complaint, SERC advised the consumer to follow the grievance redressal procedure.
20.	UPER C	<ul style="list-style-type: none"> • CGRFs established in all Discoms; • SERC holds meetings with CGRFs to hear their

		<p>problems and assess procedures followed in disposal of grievances of consumers;</p> <ul style="list-style-type: none"> • Regulations on Ombudsman notified and Ombudsman is required to submit reports to SERC.
21.	UERC	<ul style="list-style-type: none"> • CGRFs appointed for redressal of complaints; • Licensees are required to submit a quarterly report on the number of complaints received, redressed and pending along with reasons for their pendency; • Ombudsman has also been appointed by SERC.
22.	WBER C	<ul style="list-style-type: none"> • CGRF has been established at the level of the licensees as per the Regulation of Commission; • Ombudsman operating for more than 3 years has kept a close watch to ensure that the grievances of the consumers submitted to the Forum and the cases of non redressal of the grievances referred to the Ombudsman are settled expeditiously; • Out of 1970 cases received, 1726 cases have been settled and 244 are pending.

Consumer Advocacy

<u>S. No.</u>	<u>SERC</u>	<u>Summary</u>
1.	AERC	12 Consumer groups have been empanelled under Consumer Advocacy Cell. A quarterly info bulletin "The Electricity Consumer Grid" published.
2.	BERC	Action yet to be taken. However, comments/suggestions of consumers/ stake holders and general public are invited on matter relating to tariff determination and finalization of regulations.
3.	CSERC	Consumer Advocacy Cell has been set-up in the Commission. A two day seminar organized for NGO's on regulatory regime. A training programme to train members of NGO's has been conducted in 2007-08 and is being conducted during 08-09.
4.	DERC	Each year with the admission of the Annual Revenue Requirements (ARR) petitions of the Discoms, the Commission gives wide publicity among stakeholders and nominates some of the officers of the Commission for interaction with the stakeholders for enabling them to comprehend the content/import of the ARR petitions. This helps in the stakeholders contributing meaningfully while offering their comments against the ARR petitions and also during the subsequent public hearings. On the initiative of the Commission, the Govt. of NCT of Delhi have recently notified the Electricity Consumers Advocacy Committee(ECAC), rendering a platform to the consumers for protecting their interests before DERC, the Appellate Tribunal for Electricity and other Courts of the land
5.	GERC	Representatives of various consumer groups are made member of State Advisory Committee as well as Supply code Review panel.
6.	HERC	HERC, as provided in section 94(3) may consider authorizing a person to represent the interest of the consumers in the proceedings before it.
7.	HPERC	Consumer representative appointed under the Act to protect consumer interest.
8.	JSERC	This is an on going process and the commission is carrying out required activities.

9.	J&KSERC	The Commission has taken note of this issue.
10.	KERC	Capacity building for consumer groups is being done through Office of Consumer Advocacy by conducting workshops, training, Seminars and issue of quarterly magazines/leaflets.
11.	KSERC	Classes for capacity building conducted on subjects like Safety, Supply Code and ARR & ERC. Being done
12.	MPERC	About 120 NGOs have been registered to participate in the reform process and they are also involved in the process of determination of ARR. These NGOs are further requested to spread awareness about rights and responsibilities amongst the consumers. Also an NGOs' workshop has been organized to discuss various consumer related issues.
13.	MERC	The SERC has appointed four consumer representative groups as authorized consumer representatives under section 94(3) of the Electricity Act, 2003. Consumer Advocacy Cell is established in MERC office and started functioning from Feb'08
14.	MsERC	This is an ongoing exercise. Two consumer awareness programmes have been organized so far. One more is planned for this month.
15.	OERC	Commission has decided to float some consumer advocacy papers. OERC has played a predominant role by making GRFs and Ombudsmen operational and by creating consumers awareness through publication of Frequently Asked Questions (FAQs)/ What should you do? Both in Oriya and English etc. OERC also publishing "What should you do?" in leading dailies on alternative Sundays for the benefits of the Consumers.
16.	PSERC	Consumer advocacy cell set up. Guide containing information regarding consumer complaint handling procedure and other consumer related issues for guidance of consumers prepared and distribution among consumers/consumers groups. Some representatives of consumer groups taken as members of the State Advisory committee of the Commission.
17.	RERC	SERC has kept a provision in the budget estimates towards consumer education/advocacy. The state govt. has also been informed of the same.

18.	TNERC	The commission has appointed a Consumer Advocacy Officer. This officer is coordinating with the consumer group. Consumer centric periodical, Newsletters, etc are sent free of cost to consumer organization, groups and association. "Consumer Query Platform" software has been hosted by the Commissions website facilitating consumers queries. Replies and clarifications are put up within 10 days.
19.	TERC	Awareness campaign – open public discussion being held.
20.	UERC	The Commission has chosen members of Advisory Committee, which meets at least once in quarter, from different fields representing interest of various consumer groups such as domestic, commercial, industrial, agriculture, academic etc. From time to time Commission has been publishing notices in newspapers highlighting the important orders, Regulations issued/to be issued by it seeking comments from all the stakeholders. Further, Commission has been holding various meetings/Jan-Gosthis across the States wherein consumers are told of their rights and duties under the Act and the Regulations.
21.	UPERC	Commission has initiated creation of a Cell for Consumer Education and Advocacy (CCEA) on public-private partnership basis. The CCEA is functioning as per the MoU signed with VOICE, New Delhi. It was formally launched on 14 th November, 2007.
22.	WBERC	Already consumer awareness building is undertaken through different communication to enhance capacity of consumers.

**Steps taken by SERCs on Performance Standards
and Reliability Indices:**

S.No	SERC	Comments
1.	AERC	<ul style="list-style-type: none"> • Distribution Licensees Standards of Performance Regulations, 2004 notified; <p>Utilities are regulated by predetermined indices on quality of power supply, voltage variation limits and neutral voltage displacement.</p>
2.	BERC	<ul style="list-style-type: none"> • Specified standards with respect to quality, continuity and reliability of services to be maintained by a Distribution Licensee in its Standards of Performance of Distribution Licensee Regulation, 2006; • Licensee would be liable for payment of compensation to the affected consumers.
3.	CSERC	<ul style="list-style-type: none"> • Standards of performance in distribution of electricity, notified in July, 2006; • These Regulations cover issues like restoration of power supply, attending normal fuse of call complaints, replacement of failed distribution transformers, complaints regarding unscheduled load shedding, complaints regarding voltage variation beyond permissible limits, replacement of failed meters, providing new connections etc; • Quarterly reports on compliance of performance standards, published by SERC at least once in a year; • Method to compute distribution system reliability index also specified.
4.	DERC	<ul style="list-style-type: none"> • Reliability indices viz. system average interruption frequency index (SAIFI), system average interruption duration index (SAIDI), monthly average interruption frequency index (MAIFI), laid down in Electricity Supply Code and Performance Standards Regulations, 2007; • These indices indicate reliability of services being offered by distribution companies (Discoms); • Other standards specified by DERC include procedure and time limit for Discoms to attend to problems of consumers on metering, billing etc.; • Compensation for non-compliance of performance standards by Discoms; • Pre-determined indices on quality of power supply

		like requirement of maintaining not less than 99% in case of fuse-off calls rectification within 3 hours for urban areas/ 8 hours for rural areas.
5.	GERC	<ul style="list-style-type: none"> • Standard of Performance of Distribution Licensees Regulations notified in March, 2005 which deals with the matters relating to quality, continuity and reliability of services; • Specified formats for submission of information related parameters like – interruption, period of schedule outages to performance; • Regular compliance reports from the distribution licensees to SERC; • SoP Regulations provide for various limits/time period for the, voltage variations, harmonics – related to quality of power.
6.	HERC	<ul style="list-style-type: none"> • SoP regulations notified in July, 2004 which incorporate quality, continuity and reliability of service that a licensee shall achieve in discharge of its obligation; • Guaranteed standards of performance specify the rate of compensation if licensee fails to meet them; • Reliability Indices viz. SAIFI, SAIDI and MAIFI has been specified in the regulation.
7.	HPERC	<ul style="list-style-type: none"> • SoP specified for the Licensee and in case the licensee fails to meet the standards specified, the licensee is liable to pay compensation; • Guaranteed Sop has been formulated; • Determination of base line indices is under process.
8.	J&K SERC	<ul style="list-style-type: none"> • Distribution Performance Standard Regulations 2006, which contain the indices on the quality power supply, notified by the J&K SERC.
9.	JSERC	<ul style="list-style-type: none"> • Standard of performance for distribution licensee notified by the Commission in 2005; • SERC ordered in one case, reduction of energy charge on tariff by 2.5% for failure to implement the regulations.
10.	KERC	<ul style="list-style-type: none"> • Standard of supply, continuity and quality of power supply, specified in Grid Code; • Frequency limits being maintained through implementation of Availability Based Tariff (ABT). This has helped in ensuring grid discipline; • The Commission, through monthly reports, is monitoring the interruptions and reliability of

		supply.
11.	KSER C	<ul style="list-style-type: none"> • Overall standards of performance specified by KSERC; • Quality of Supply for voltage and frequency is specified in Kerala Electricity Supply Code, 2005.
12.	MPER C	<ul style="list-style-type: none"> • Regulation of distribution performance standards notified by MPERC on 28.10.2005; • Quarterly and annual report on performance standards are published in newspapers/ available in MPERC website; • NGOs workshop held by MPERC in August, 2007 to disseminate information on performance standards amongst consumers; • Discoms directed by MPERC to display performance standards at their offices. Field visit by MPERC to ensure compliance of directions; • Ombudsman directed to review performance standards bi-annually; • As per directions of MPERC, six lakh pamphlets containing details of performance standards, distribution along with electricity bills in Bhopal, Indore and Jabalpur; • Pre-identified indices like total number of 11KV feeders, sum of outage duration of all feeders, outage duration per feeder, number of outage per feeder, total number of tripping, feeder reliability index of area etc.; • Monthly information on power reliability indices, published in newspapers every year; • Quality Monitoring Cell constituted in MPERC.
13.	MERC	<ul style="list-style-type: none"> • Regulations on Standards of Performance (SoP) viz. Electricity Supply Code & Other Conditions of Supply, Terms & Conditions of Tariff and General Conditions of Distribution License, have been issued; • SERC through different orders also gives directives to utilities for enforcing standards with respect to quality, continuity and reliability of service, however, due to sever demand-supply gap in the State, SERC regulated quantity of supply to ensure that no category of consumers is discriminated against; • Reliability in indices have been specified in the Regulations on SoP; • Reports on various indices are hosted by licensees

		in their websites which are monitored by SERC. SERC has also engaged an agency to carry out field inspections on behalf of Commission.
14.	MsERC	<ul style="list-style-type: none"> • Promulgated the Meghalaya Electricity Supply Code, 2006 and the MsERC (Standards of Performance) Regulations, 2006; • These Regulations provide consumers with the necessary means of securing their rights in accordance with the provisions of Act.
15.	OERC	<ul style="list-style-type: none"> • Regulation on Licensee's Standard of Performance notified in May, 2004, which specifies minimum standard with respect to quality, continuity and reliability of services by Licensees; Guaranteed Standard of Performance and overall Standard of Performance; • Under Guaranteed Standard of Performance, performance of licensees is monitored on parameters like restoration of power supply, voltage variation, harmonics, complaints about meters, applications for new connection/additional load, complaints about consumer's bills etc; • Methods of computing distribution system reliability indices like SAIFI, SAIDI, MAIFI, are specified in overall Standards of Performance; • Under the standards of performance, licensees are required to attend to the service within a fixed period of time. Provision of incentive or disincentive linked to performance; • Monthly, quarterly and annual reports are being submitted by the Discoms on guaranteed standards of performance and overall standards of performance.
16.	PSERC	<ul style="list-style-type: none"> • Specified in Electricity Supply Code and Related Matters Regulations (w.e.f. 01-01-2008); • Licensee shall be liable to pay compensation for violation.
17.	RERC	<ul style="list-style-type: none"> • Already specified various standards of performance (SoP) for the licensees to ensure quality, continuity and reliability of services, and system availability, voltage management, voltage unbalance, current unbalance, system adequacy, frequency management, service reliability, harmonic distortion for transmission licensees.
18.	TNER	<ul style="list-style-type: none"> • Standard of Performance Regulations came into

	C	<p>force in Sept., 2004 with salient features – effective new service connections, change of tariff, shifting & transfer of service connection, quality of supply, interruption and restoration of supply, handling of complaints, payment of compensation, level of overall performance, to be achieved by the licensee etc.;</p> <ul style="list-style-type: none"> • Regulations related to payment of compensation when the licensee fails to meet the specified performance standards came into force in Jan, 2007; • SERC has set standards in respect of effecting new service connection, duration of interruption, voltage parameters, transformer failure rates, waiting time for restoration of supply etc.; • SERC has directed the utility (as per CEA Regulations on connectivity standards on harmonics) to measure the harmonics and its impact on distribution system.
19.	TERC	<ul style="list-style-type: none"> • Regulations on Performance Standards and Supply Code notified.
20.	UPERC C	<ul style="list-style-type: none"> • Reliability index at the feeder level and at consumer level determined by UPERC. Also defined are guaranteed time limits for various break downs, voltage variations, rectification of billing disputes, installation/ replacement of meters; • SAIFI, SAIDI, MAIFI indices of reliability defined; • Licensees directed to do rostering based on AT&C losses of a particular division; • Incentive/disincentive schemes linked with the loss levels at distribution transformers introduced for the benefit of consumers and staff of the licensee.
21.	UERC	<ul style="list-style-type: none"> • Regulations specifying standards with respect to quality, continuity and reliability of services by licensee have been issued; • SERC has also taken steps to streamline the billing system of the licensee by issuing time bound action plan to eliminate billing deficiencies and often visited different parts of the State for effective compliances of the same; • Standards of Performance Regulations have specified the power supply on quality, restoration, voltage variations/unbalance and period of

		<p>schedule outages;</p> <ul style="list-style-type: none"> • Reliability indices viz. System Average Interruption Frequency Index (SAIFI), System Average Interruption Duration Index (SAIDI) and Momentary Average Interruption Frequency Index (MAIFI) specified by the SERC.
22.	WBERC	<ul style="list-style-type: none"> • Standards have been laid down by notifying the allowable periods of unplanned interruption of supply to consumers to ensure quality, continuity and reliability of supply; • Indices on quality of power supply are yet to be developed which require collection of data (voltage level of supply, the terrain, climate condition, salinity of atmosphere and such other natural characteristics of different localities within the area of supply of distribution licensee, consumer mix, the character of various loads under different categories of consumers, the predominant mode of supply etc.

Status on Norms for Standards of Performance:

S.No	SERC	Notification	Summary
1.	APERC	2004	Notified and amended in 2005
2.	AERC	Feb 4, 2005	Regulation notified and is effective
3.	BERC	Jan., 22 nd , 2007	Notified
4.	CSERC	July 14, 2006	SoP has already been notified along with Supply Code. Penalties for delay in consumer services have also notified.
5.	DERC	April, 2007	Notified
6.	GERC	March 31, 2005	Notified with provision for penalties in case of non-performance of distribution licensee.
7.	HERC	July 16 th , 2004	Notified
8.	HPERC	Nov 3 rd , 2005	Notified
9.	JSERC	August 12 th , 2005	Notified
10.	J&KSE RC	June 19, 2006	Regulations already notified on 19-06-06.
11.	KERC	June 10, 2004	Regulations issued.
12.	KSERC	May 9, 2006	Notified. Date of implementation extended up to 30 th April 2008
13.	MPERC	July 13, 2004 and revised on Sep. 26 th , 2005	Payment of compensation for delay in consumer services also notified in the regulation. Quarterly report is being submitted by Discoms on Sop. SERC also spreading awareness in consumers about SoP.
14.	MERC	January 20, 2005	Notified
15.	MsERC	December , 2006	Notified and Payment of compensation for delay in consumer services also notified in the regulation.
16.	OERC	Notified	The commission has approved a Business plan with incentive for improved AT&C loss.

17.	PSERC	June 29 th ,2007	Notified
18.	RERC	Notified	For transmission & Distribution
19.	TNERC	September 01,2004	Order for the payment of compensation in case the Distribution Licensee fails to meet the stipulated standards has already been issued.
20.	TERC	Notified	Regulation issued and performance being monitored. Response from State Government and utility yet to come at desired level.
21.	UERC	April 17, 2007	Payment of compensation and penalties for delay in consumer services also notified in the regulation. Quarterly report is being submitted by the distribution licensee on SoP. SERC also spreading awareness in consumers about SoP.
22.	UPERC	Feb 18, 2005	SoP have been included in the Electricity Supply Code and notified. Compensation to consumers for non-adherence to some of the standards has been made effective from the date of notification of the Code. For the remaining Standards, penalties shall be made effective in phases.
23.	WBERC	Notified on 18.10.200 5	SoP shall soon be amended for further up gradation. Draft publication is already done and comments and suggestions already received.

Status of steps taken by SERCs in the direction of facilitating capacity building of the consumer groups and their effective representation in the regulatory process

S. No.	SERC	Status
1.	AERC	A consumer advocacy cell has been set up by the Commission in Feb 2004. The Cell empanelled 12 consumer groups from all over the states. Three 'Electricity Consumers Awareness Meet' were organized which provides a forum for representatives from empanelled consumer groups and supplier to interact among each other and air their views and concerns. Also direct feedback on power supply and performance of the Discoms are being gathered from consumers from different parts of the state and send to the Discom for action.
2.	BERC	BERC takes views of consumer groups before finalizing any regulation, concept paper and tariff orders for effective representation of consumer groups before the Commission to enhance the efficacy of regulatory process.
3.	CSERC	Consumer advocacy cell has been set up for support and capacity building of consumers. This cell gives wide publicity to the functioning of Forums and Ombudsman through media and pamphlets. The SERC has enlisted the services of a reputed NGO to create awareness amongst the consumers about their rights and obligations under the Act. Also there is a system of registration of NGOs working in the interest of consumers.
4.	DERC	The GoNCTD have notified the appointment of Electricity Consumers Advocate Committee (ECAC) for representing the interest of consumers in the proceeding before this Commission as well as other Forums, Appellate Tribunals for Electricity, Courts, etc.
5.	HERC	HERC has not authorized any person to represent interest of the consumers in the proceedings before the Commission.
6.	HPERC	Commission has appointed a consumer representative to represent the common interest of the consumers in all matters, hearings and proceedings before the Commission, though the consumers are also free to represent their views. Any consumer organization which is registered under the law of State and having the protection of the interest of

		consumers as their object is also recognized as a consumer forum to appear before the Commission. The Commission has an officer of the rank of Dy. Director (Consumer Affairs), facilitating the settlement of consumers grievances.
7.	J&K SERC	N/A
8.	JSERC	JSERC has established groups who conduct short street plays “Nukkad Natak” in the blocks and villages and also advertise “ <i>kya aap jante hai?</i> ” series to educate the consumers about their rights and duties. Commission also assists in holding workshops/seminars to create public awareness. Group of consumers registered with Commission to represent consumer’s interest in the proceedings.
9.	KERC	<ul style="list-style-type: none"> ▪ Pioneering steps by SERC to promote consumers participation, by giving legal status for consumer advocacy; ▪ Office of the Consumers Advocacy (OCA) appointed within SERC in 2001; ▪ In last six years, OCA has undertaken several activities to empower, inform and educate public in general and several societies/organizations in particular about developments in the electricity sector; ▪ OCA has been conducting various activities and events seeking to disseminate information to the public; ▪ OCA publishes newsletters, bringing out leaflets, pamphlets, alerts and fact-sheets to educate consumers on several issues; ▪ OCA has published a training module covering all aspects of electricity regulations, which can be used by consumers groups in their training seminars; ▪ OCA holds Public Outreach Meeting (POM), capacity building programme, public hearings etc; ▪ The Consultant (Consumer Advocacy) also appears before the Commission in public hearings wherever consumer interest is involved. It has been a party in various petitions before SERC, High Court and Appellate Tribunal for Electricity.
10.	KSERC	Consumer groups such as HT & EHT Consumers Association, Merchant Associations, Small Scale Industries Association, NGO’s representing domestic

		consumer are encourages to take part in all the public hearings. Representatives of all the above class of consumers are selected to the State Advisory Committee. Regular classes for consumers groups are conducted to enlighten them of the regulatory process.
11.	MPERC	About 120 NGOs spread across the State have been registered with the Commission. They are also invited to the hearings on the determination of ARR/Tariff petitions for representing the interest of the consumers. Workshop was conducted to apprise the consumer groups about performance standards, various compensations, grievance redressal forum and Ombudsman. MPERC has also authorized the consumer organizations to take up the matter of consumer interests before the Forum/Ombudsman. MPERC has designated an officer of the Commission as “Consumer Advocacy Officer” within the Commission to look after the consumer interests and educate them.
12.	MERC	MERC has authorized four consumer Representatives : a. Prayas (Energy Group), Pune b. Mumbai Grahak Panchayat, Mumbai c. Thane Belapur Industries Association, Navi Mumbai d. Vidarbha Industries Association, Nagpur All representatives called for every hearing. They provided with the data/suggestions/Applications/Records required for their analysis and comments/suggestions/objections. SERC has also framed a compressive “Electricity Consumer’s Rights Statements (ECRS)”. MERC has established ‘Consumer Advocacy Cell’ to look after the activities such as Consumer awareness, Media Communications, Public Relations. And Compliances pertaining to Consumer Grievance etc.
13.	MsERC	In first tariff fixation well documented representations submitted by various interest groups, civil society and NGOs and the lively debate during the public hearing were demonstrated.
14.	PSERC	PSERC has nominated NGO’s/Consumer Groups representatives as Member(s) of the State Advisory Committee. For facilitating capacity building and general guide in respect of complaint handling procedure and facilities available for redressal of grievances has also been prepared and made available to consumer groups.
15.	RERC	The Commission has identified certain persons/agencies representing different groups of consumers to whom draft

		documents along with background papers relating to proposed amendments are provided so as to present their views before the commission in the public hearing. If so needed, they may seek further information directly from the concerned Discoms. Further, as & when required, the Commission also appoints amices curie to present the consumer interest before the Commission. The Members in the State Advisory Committee are also appointed in such a manner so as to have it represented by different groups of consumers.
16.	TNERC	TNERC has established a 'Consumer Advocacy Wing' on Dec 5 th ,2005 which engaged in educating the consumers and creating awareness to impart knowledge on their rights and responsibilities by means of publishing News Letters, Consumer Guide and Pamphlet etc. For capacity building of consumer groups, TNERC has proposed to conduct one day seminar cum workshop in all the 9 distribution regions of the Licensee and also in the process of authorizing a knowledgeable person from Consumer Action Group by way of induction to represent the interests of the consumers on that behalf at various forums.
16.	UPERC	A MOU was signed between UPERC and Voluntary Organization in Interest of Consumer Education (VOICE) for setting up a Cell for Consumer Education and Advocacy (CCEA) in U.P., to build awareness & empower the consumer on electricity related issues.
18.	WBERC	So far no such situation arisen to use the power under section 94(3) of the Electricity Act, 2003.

Note on interaction with Stakeholders

1. Interaction with NGO

1.1 The Group interacted with Shri Ashok Pendse, President, Mumbai Grahak Panchayat, Mumbai. Shri Pendse made a presentation highlighting the initiatives taken by Mumbai Grahak Panchayat and Prayas in Maharashtra relating to consumer education and consumer advocacy. He suggested a three stage strategy for dissemination of information and consumer education. The first stage involves training of select few persons capable of handling cases in Regulatory Commissions, Appellate Tribunals, High Courts and Supreme Court. The middle group (consisting of about 50-60 persons a state) capable of handling routine complaints related to billing, meters, connection and disruption of supply etc. The lower end group (consisting of about 3000-5000 people) involving villages, remote districts etc. to be trained by the middle group. He also emphasized the need for financial support for consumer groups/NGOs for fighting cases at Appellate Tribunal, High Courts and Supreme Court, as the costs of fighting cases are substantial. A copy of the presentation made by Shri Pendse is enclosed as **Annexure-1**.

2. Interaction with Consumer Advocate, KERC:

2.1 A presentation was made by Shi Y.G. Muralidharan, KERC on “Consumer Advocacy and Protection of Consumer interests in Electricity Sector”. A copy of the presentation is at **Annexure-II**. The presentation covered, inter alia, the need for protection of consumer interests in electricity sector, various models for consumer protection and the model of consumer advocacy in KERC. The presentation also briefly included

the structure of consumer advocacy institutions in other countries. Shri Muralidharan emphasized that the protection of consumer interests required not just the redressal of consumer grievances but also adequate attention to consumer advocacy aspects.

2.2 The following were the main points of discussion subsequent to the presentation:

- ERCs should fund the Office of Consumer Advocate (OCA).
- There was an urgent need for educating the consumer groups about intricacies of tariff proposals so that their participation in the regulatory process was well informed. The focus should be on domestic consumers and agricultural consumers.
- Subsequent to the setting up of forums for redressal of consumer grievances under the Electricity Act, the role of the OCA in Karnataka in redressal of consumer grievances has substantially reduced.
- OCA in Karnataka undertakes review of implementation of the Standards of Performance once in two years.
- The models being adopted by TRAI and SEBI for funding the consumer advocacy could also be studied.
- Karnataka ERC has recently constituted a revolving fund of Rs. One crore to be funded by the distribution companies. This fund will be known as 'Electricity Consumer Welfare Fund' and will be utilized to financially support the consumer groups.
- The suggestion (in the presentation) of including a representative of consumers in the regulatory bodies would have potential of being misused in the form of nominations of politically connected people.

3. Interaction with Ombudsman of Andhra Pradesh:

3.1 Shri K. Rajagopal Reddy, Director (Law) in APERC is also functioning as Vidyut Ombudsman. A note circulated by Shri Reddy on the subject 'protection of consumer interests' is enclosed at **Annexure-III**. In his interaction with the Working Group, he mainly made the following points:

- Consumer Grievances Redressal Forums (CGRFs) may also be given the task of educating the consumers under supervision of the Ombudsman.
- Under the APERC regulations, compliance with the orders of the CGRF has been made mandatory. Licensee is also allowed to file the appeal before the Ombudsman.
- Ombudsman does not have executive powers. However, the orders of the Ombudsman are generally being implemented as these orders are arrived at through the process of settlement.
- In cases where the distribution companies do not respond to the queries of the CGRFs in time, the CGRFs pass orders ex-parte with an option to the licensee to approach the Forum again.
- In Andhra Pradesh, each CGRF consists of two serving officers of the utility, one member from legal background and the 4th member is an independent person.

4. Interaction with Ombudsman of Maharashtra :

4.1 Shri W.G. Gorde has been working as Ombudsman in Maharashtra for last 3 and half years. He made the following main points:

- There are 15 CGRFs in the State of Maharashtra out of which 3 are in Mumbai city (there are 3 distribution licensees in the city).
- The number of grievances received by the CGRFs was following:

In year 2005	:	401
In year 2006	:	482
In year 2007	:	532
In year 2008 (till June)	:	300
- 80% of the grievances have already been decided out of which 66% have been decided in favour of consumers. 518 grievances were not decided in favour of consumers by the CGRFs for various reasons. Out of this, 267 consumers approached the Ombudsman. 41% of these 267 cases were decided by the Ombudsman in favour of consumers.
- The CGRFs in the State of Maharashtra consists of 3 members each. The Chairperson is a retired District Judge/Collector. One member is an officer of the distribution licensee and is of the rank of Executive Engineer. Third member is from a NGO. The members of the CGRFs are paid by the distribution licensees.
- The role of the Chairperson of CGRFs was crucial in efficient discharge of the functions of CGRFs.
- The distribution licensees often send a person of legal background and therefore it would be essential that consumer/consumer groups are adequately educated through consumer advocacy.

- Ombudsman/ CGRFs should go into details of the cases at their level in view of the fact that adopting the provisions of CPC is not mandatory for these bodies. Shri Gorde quoted a ruling of National Commission (under the Consumer Protection Act) that the consumer forums should examine all relevant issues themselves.
- The Chairman and the Members of the CGRFs should be trained/ given orientation in order to enable them to write proper and speaking orders.
- Clarity was required on some legal provisions of the Electricity Act. He quoted three specific matters:
 - a) The penalty under section 43 can be imposed only by the SERCs. Similarly, the Appropriate Commission has power to determine compensation under Section 57(2) of the Electricity Act, 2003. Accordingly, scale of compensation is decided by the Commission by framing Regulations called MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005. It also mandates that Distribution Licensee, either of its own knowledge or upon written claim filed by any eligible person, is liable to pay compensation as has been determined by the Commission. In case, this is not done by the Distribution Licensee, obviously it constitutes 'grievance' as defined in the Regulations. It is then dealt with by the Forum (and by the Electricity Ombudsman). Forums and Ombudsman are empowered under the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006, to

award compensation to the consumers, for failure to observe the standards of performance.

- b) Multiple interpretations are possible regarding the provisions of sub-section 2 of section 56 of the Act and there are orders of the High Courts of Bombay and Kolkata which have given divergent decisions. The issue is not whether the limitation of two years would apply from the date when the amount becomes first due. This is clear from the provision under section 56. The issue is, what is the meaning of 'first due' and the consequences thereof on the consumers' interest. The crux of the matter is whether the distribution licensee can / should be entitled to raise bill for any charges under this section, belatedly, say, after 10 years (which is beyond two years) and claim that the sum so charged has become first due on the day and date of raising such bill
- c) Can a person who has applied for a new connection be considered as 'consumer' for the purpose of approaching the CGRF/ Ombudsman. Shri Gorde referred to the judgement of the Supreme Court in the case LDA Vs M.K. Gupta. [CA 6237 (1990) dated 5th November 1993]

- The orders of the CGRFs in Maharashtra were being complied with generally and there was some delay only in some cases due to administrative reasons. Orders of the Ombudsman were also being complied with. He informed that the Delhi High Court had ruled that these were expert bodies.
- The non-compliance of the orders of the CGRFs was being treated in Maharashtra as non-compliance of regulations of SERCs and there should be no question of asking the aggrieved consumer to

approach the Ombudsman for seeking the compliance of the orders of the CGRFs. However, in some cases of non-compliance, the Ombudsman had issued notice to the distribution licensees and this had resulted into immediate compliance.

- CGRFs could take up consumer advocacy.
- Main points of the SOPs and the rights of the consumers needed to be widely disseminated by printing them on the backside of electricity bills in vernacular language mandatorily.

5. **Secretary, KERC is functioning as Ombudsman** in State of Karnataka. He said that the Ombudsman had decided 39 cases out of 40 cases represented before it. 11 cases have gone in the favour of consumers and the orders of the Ombudsman have been implemented by the licensees.

6. Presentation by ASCI team:

Prof. Usha Ramachandran of ASCI made a presentation on the report of the study on 'Functioning of Consumer Grievances Redressal Mechanism under the Electricity Act 2003' which ASCI has done as an assignment given by the Ministry of Power. A copy of the presentation is at **Annexure-IV**. During the presentation, the following points were emphasized by Prof. Ramachandran:

- For effective functioning of the CGRFs, the chairperson should not be a serving officer of the licensee.

- The expenditure of the CGRFs should be recovered from the ARR of the licensee and the remuneration to the members of the CGRFs should be paid through the SERCs.
- The monitoring system should ensure that the consumer grievances are monitored upto the point of implementation of the CGRFs/ Ombudsmen orders by the distribution licensees, and not just the disposal of cases by CGRFs/Ombudsmen.
- SERCs should ensure that there was an appropriate enforcement mechanism to ensure timely implementation of the orders of the CGRFs/Ombudsmen. Individual officers/employees should be made responsible for the same.
- The consumer should not be required to pay any fee for filing their grievances before the CGRFs.
- SERCs should specify reasonable time limits for disposal of various categories of grievances.
- The Forums should have sittings/hearings at different locations in their jurisdiction with a specified schedule so that all the consumers are not required to come to the headquarters of the Forums.

Presentation on

**Consumer Advocacy
By
Ashok Pendse
Mumbai Grahak Panchayat**

11th July 2008

Three Types of Groups required

Top End – Capable of going from Regulatory Commission to Appellate Tribunal to Supreme Court like MGP, Prayas – 2-3 persons. Presently, MGP, Prayas are handling about 10-11 Tribunals and 3 Supreme Court cases.

Three Types of Groups required

Middle Group – Capable of handling routine complaints related to billing, meters, connection and disruption of supply approximately about thousand persons in State like Maharashtra. These complaints form about 80% of total complaints. So far trained 250 in five districts. Training will be given by top end.

Lower End – Namely villages, remote districts etc. around 3000 to 5000 people. Training to these people will be given by middle group of people.

Financial Support

- It is necessary to financially support NGOs. At Tribunal and Supreme Court, cost to the NGOs was our prayer. However, initial cost is to be borne by NGOs. It will be a prudent idea to make NGO take up the cases at Appellate and Supreme Court instead of Regulatory Commissions defending the cases.
- At Supreme Court, if NGOs are capable then the advocates are prepared to work at much lower fees. However, even one case will be in the range of between three to four lacs. This is simply because it comes for hearing not less than four to five times in Delhi.

Financial Support

- At Appellate Tribunal, at earlier stage, Ashok Pendse of MGP and Shantnu Dikshit of Prayas had argued themselves in person. However, now it has gone into the realm of advocates. Approximate cost-Rs.80,000 to 1,00,000.
- Training to middle group. The groups are trained in a batch of around 40-50 for one day. Approximate Cost – between Rs. 15000 – 20000. However, this programme is not offered free but with the nominal charge.

Financial Support

- Something on the similar lines will be required for grass root level training.

What MGP and Prayas can offer

- **One Seminar per month for different States. As far as top end is concerned, it will have to be pick and choose. Since you require persons with a knowledge of Electrical Engineering and Finance and Law, it is difficult to get combination of all the three. Hence, the persons need to be trained for deficit subject.**

Thank You

Welcome to members of Forum of Regulators

Presentation on
**Consumer Advocacy & Protection of Consumer
Interests in Electricity Sector**

Y.G. Muralidharan
Consultant (Consumer Advocacy)
KERC, Bengaluru
8th August, 2008

This presentation is about

- **Need for consumer protection in electricity sector**
- **Models of consumer protection**
- **Consumer Advocacy – KERC Model**
- **The way ahead**

Need for consumer protection

- **Increasing consumer awareness**
- **Transformation of the sector**
- **Unequal bargaining power**
- **Enabling legislations**
- **Emergence of regulatory bodies**

Consumer Protection Models

- **Information**
- **Consultation**
- **Participation**
- **Decision Making**
- **Empowerment**

Consumer Protection Models

- **In-house consumer affairs bureau**
- **Consumer representatives in the Regulatory Commission**
- **External Advisory Bodies**

Consumer Protection Models In-house

- **Community Opinion Investigation Committee (Jakarta Water Supply Regulatory Board, Indonesia)**
- **One-Stop Public Assistance Centers (National Telecommunication Commission, Philippines)**
- **Office of Consumer Advocacy (KERC in Karnataka, India)**
- **Consumer Assistance Division, Maine Public Utilities Commission**

Consumer Protection Models Board level representation

- **Korean Electricity Commission**
- **PNG Water Board (Papua New Guinea)**
- **Consumer Association (in Ghana's Public Utility Regulatory Board)**

Consumer Protection Models External Advisory Bodies

- **Consumer Forum, Malaysia**
- **Energywatch, UK**
- **Watervoice, England & Wales)**
- **Consumer Law Center, Victoria**

What is Consumer Advocacy

- **Consumer Advocacy is to provide a voice for:-**
 - **Consumers**
 - **Competitive markets**
 - **Consumer protection regulation**
 - **Consumer redress**
 - **Distributive Justice**

Types of advocacy

- **Structural & Transactional**
 - **Policy Advocacy**
 - **Individual Advocacy**
 - **Group Advocacy**

Role of Consumer Advocate

- **Review of policies, programs and regulations that govern consumer protection**
- **Monitor compliance with consumer protection rules and standards**
- **Provide mediation service for consumer complaints**

Role of Consumer Advocate

- **Ensure disclosure of rules, regulations & environmental standards**
- **Represent consumers before the Commission**
- **Empower consumers with tools they need to advocate for themselves**

Current Framework of Consumer Advocacy in KERC

- **KER Act 1999 provides for a senior officer to represent consumers**
- **Office of Consumer Advocacy established in Sept. 2001**
- **OCA functions independently**
- **Funded by KERC**

OCA of KERC – major activities

- **Information dissemination**
- **Capacity building / Training**
- **Representation**
- **Grievance handling**
- **Networking**
- **Review / monitoring**

Activities of OCA

- **The consumer advocate is authorized by KERC to represent the interests of consumers [Sec. 94(3)] of Electricity Act 2003**

OCA - Activities

- **1400 complaints solved**
- **130 consumer groups trained**
- **Newsletter**
- **Leaflets and alerts**
- **Articles in Media**
- **Briefing session on tariff**

OCA - Activities

- **Visits to ESCOMS**
- **Review of Standard of Performance**
- **Petition in HC / ATE**
- **Petition before Commission**
- **Promoting Electricity consumers network**

OCA - Achievements

- **Perception about KERC has changed**
- **Increase in number of objections to tariff hike**
- **232 in 2000 – 11830 in 2007**
- **Improvement in quality of intervention**

Challenges

- **Capacity of consumer groups on electricity issues limited**
- **Disorganized and conflicting interests**
- **Non-availability of information in local languages**
- **Lack of funds**

Funding Mechanism – Best practices

- **Telecom Regulatory Authority of India**
- **Securities Exchange Board of India**
- **Funds provided by the Commission itself in KERC, FERC etc.**

Funding Mechanism – KERC initiative

- **Committee formed to identify modalities for funding consumer groups**
- **Report under preparation**
- **ESCOMS have agreed to provide Rs.1 crore towards Electricity Consumer Welfare Fund**

Consumer Advocacy & Protection of Consumer Interests in Electricity Sector

**Thanks for your time
Y.G. Muralidharan
KERC, Bengaluru**

Brief note on the subject with regard to protection of Consumer Interests

Presented by : K.Rajagopala Reddy, Director(Law)

A.P.Electricity Regulatory Commission

and Vidyut Ombudsman

Steps required to make functioning of the Forums for Redressal of Consumer Grievances and Ombudsman more effective.

The Electricity Act, 2003 casts a duty on the Distribution Licensees to establish Forums for redressal of grievances of consumers, which is mandatory. The word "shall" used in sub-section (5) of Section 42 of the Electricity Act and sub-rule (1) of Rule 7 of the Electricity Rules, 2005 makes it amply clear that the Distribution Licensees have to compulsorily establish Forums for redressal of consumer grievances. Similarly, it is also mandatory for the Electricity Regulatory Commissions to nominate or designate Ombudsman as an Appellate Authority over the Forums. The role of the Regulatory Commissions in the functioning of these Forums and Ombudsman is crucial.

First and foremost responsibility of the State Regulatory Commissions is to ensure that the Forums are constituted and Ombudsman is designated and they discharge their functions in a time bound manner. The State Regulatory Commissions have to ensure that vacancies arising in the forums should be filled in periodically by the Distribution Licensee concerned and to nominate (4th) the independent member as per the amendment made to sub-rule (1) of rule 7 of the Electricity Rules 2005 by the Government of India. To ensure that the Forums and the Ombudsman are discharging their duties effectively, State Regulatory Commissions have to periodically monitor their performance as mentioned in the Electricity Act 2003 and the Electricity Rules made there under.

The creation of the Regulatory Commissions at the Central and State level is looked upon by the consumers as an opportunity to seek redressal for their grievances in respect of supply of power given by the power utilities. The quality of power supply being poor by any standards, there have been a large number of complaints against the service

rendered by the utilities. There is a tradition in India to seek redressal at the highest level without even going through the normal channels where grievances could have been redressed. Therefore, the Commissions have to ensure that clear instructions for systematic handling of grievances have to been given by the licensees, especially the Distribution Licensees.

The utilities should be encouraged to draw up a Citizens Charter or Standards of Service and give it wide publicity. Any complaint or grievance would be in relation to the non-adherence of a provision in the Citizens Charter or Standards of Service.

In our system the supply is 'far' stretched and there would be a lot of problems. It would not be possible to satisfy all consumers. Therefore, Standards of Service which can be practiced should be fixed with reference to ground realities and published and made available. If this is not there, the Regulatory Commissions should insist on such a Statement being made by the Distribution Company.

These Standards of Service will be basis for deciding the 'consumer' grievance and how it should be redressed. What would be the penalties that the Distribution Company would suffer if it does not confirm to the promised standards has to be indicated. APERC notified Licensees Standard of Performance (Regulation No.7/2004) prescribing compensation payable to consumers for non-compliance of the standards in terms of Section 57 of the Electricity Act, 2003 and published in the Gazette of A.P.

Possible options and strategies for consumer education, empowerment and funding.

Awareness among the electricity consumers of their right to get adequate supply of electricity on demand as mandated under Section 43 of Electricity Act 2003 need to be increased by educating the consumers of such rights. Statements on the existing situation, promises made in the Citizens Charter or Service Standards prescribed/related to supply of electricity by the Distribution Licensees etc., need to be published and popularized so as to reach the people at large. Some of the grievances arise on account of indifference of the

field staff who are in direct contact with consumers like linemen, meter readers, billing personnel etc. A great deal of effort has to be made to educate these people and in bringing about the required mindset change. The utility personnel should be made to understand the needs of the consumers and at the same time are able to educate the consumers through meetings, discussions etc., as some of their grievances are due to inadequate appreciation of the problems of the utility.

The ground realities indicate that some of the grievances are due to poor equipment or overall shortage of power in the system, which can neither be remedied nor field staff made responsible. These situations should be tackled by having clearly published statements on the existing situation and by moderating the promises made in the Citizen Charter or Service Standards. Thus, continuous interaction with consumers is the first and foremost requirement, which automatically becomes part and parcel of consumer education and empowerment. APERC notified Consumers' Right to Information Regulation, 2000 wherein inter-alia it is stated that the licensees shall provide free of charge to all the new consumers at the time of release of supply, copies of Consumer Rights Statement, Code of Practice on payment of bills and Complaint Handling Procedures. Other persons may also purchase copies of the above documents at a reasonable cost of duplication.

Prescribing "Procedure for filing appeal before Appellate Authority" (Regulation No.4 of 2004) by APERC against the final order of assessing authority under Section 126 of the Act for unauthorized use of electricity is another instance of empowering consumers of electricity.

Funding options include (1) Governmental Appropriations (2) Utility Revenue Surcharge and (3) Regulatory Commission Budget. Cost of consumer education and empowerment is small, if not negligible and therefore it will not be a burden to any of these agencies. Other options include funding through Non-Governmental Organizations, private funding by Industrial Consumers, individuals, Charitable Organizations, etc.

Improving service to consumers of electricity is an important aspect of reform process of the Indian electricity sector and Electricity Regulatory Commissions play an important role in this process. By providing a Forum for Consumer Representatives to argue on behalf of consumers and in their interest, the Regulatory Commissions maintain strong democratic process. However, complexities which are inherent of the sector require that the Consumer Representatives have professional training, access to large amount of data, etc. In countries like India, where majority of the population are uneducated, deputing Consumer Advocates or Professional Representatives funded through utility revenues is necessary. Utilities may object to the concept of Consumer Advocates as it amounts to "paying for their own opposition", but the utilities should recognize that better informed and better served consumers are receptive to change when necessary. In developed countries, Consumer Advocate Offices have helped to provide consumer's protection on one hand and reducing utility expenditure on the other.

Apart from advocating lower rates for all customers of the electricity utilities, etc. the other important objective of Consumer Advocacy is to provide for better service.

Nature of electricity is such that it requires the Consumer Advocacy groups to be familiar with diverse subjects like Engineering, Accounting, Economics, Finance, Environment, etc. Therefore, the primary requisite for promoting Consumer Advocacy is to identify Consumer Representatives who have specialized knowledge in those areas, other-wise they may not effectively represent the interests of consumers. For this purpose, it is necessary for the Consumer Advocacy groups to have resources like office premises to accommodate Advocates, Analysts, Supporting Staff, Consultants, Experts, etc. Suitable funding by utilities is of paramount significance, other-wise it is difficult to ensure that Consumer Advocacy grow as an institution.

Suggested draft of Consumer Charter:

As mentioned above, APERC notified Licensees Standard of Performance (Regulation No.7/2004) prescribing compensation payable to consumers for non-compliance of the standards in terms of Section 57 of the Electricity Act, 2003 and published in the Gazette of A.P. The Distribution Licensees published the "Guaranteed Standards of Performance and Compensation to Consumers in case of Default" prescribed by APERC in the above mentioned Regulation, the manner of payment of compensation and other salient feature as "Citizen Charter".

Methodology for meeting the financial requirements of the office of the Ombudsmen so as to ensure its independence from the distribution licensees:

APERC notified "Appointment of Vidyut Ombudsman and terms & conditions of Service Regulation in the year 2007 wherein it is mentioned that the Ombudsman shall be provided with the Secretariat and the expenses of the Secretariat shall be paid out of the Fund constituted under Section 103 of the Electricity Act, 2003. However, till the time such fund is constituted, it is stated that the expenses of the Secretariat shall be borne by the Distribution Licensee in such proportion as may be determined by APERC.

The provision for meeting the expenses of Ombudsman by the Distribution Licensees is only a stopgap arrangement. In order to maintain independence from the Distribution Licensees, it is preferable to constitute Fund for meeting the expenses of Vidyut Ombudsman and its Secretariat.

The Regulations mentioned above may be accessed from the website of APERC

www.ercap.org

Vidyut Ombudsman

1. Statutory back ground:

Forum

Each distribution licensee is required to establish a Forum for redressal of grievances consumers as required u/s 42 (5) of the Electricity Act 2003, which is extracted he under:

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 consumers in accordance with the guidelines as may be specified by the State Commission."

Ombudsman

The Appeals arising out of the decisions of these Forums lie with the Ombudsman who has to settle the grievances of consumer as per the Regulations of the Commission vide Section 42 (6) and 42 (7) of the Act which are extracted here under:

Section 42(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."

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. "

2. Regulations of the Commission:

Pursuant to the statutory provisions mentioned above, the A.P. Electricity Regulatory Commission notified the Regulation called The Andhra Pradesh Electricity Regulatory Commission (Establishment of Forum and Vidyut Ombudsman for redressal of grievances of the consumers) Regulation 2004 (No. 1 of 2004) in the A.P. Extra Ordinary Gazette No.21 dated 26-02-2004. The said Regulation specifies the functions, and procedure for representation, procedure for settlement by agreement, by award and the reports to be submitted which are briefly described here under:

- (j) The consumer aggrieved by the decision of the Forum has to file appeal within 30 days - Ombudsman may relax this period
.....clause (1) and its proviso
- (k) Ombudsman's decision whether the complaint is fit for being considered or not shall be final
.....clause 9 (2)
- (l) Ombudsman shall not entertain any matter which is before the Commission or any other authority including under parts X, (Commissions), XI (Tribunal), XII (Enquiry and Enforcement), XIV (Offences & Penalties), and XV (Special Courts), of the Act
.....clause 8 (1) (a)
- (m) Ombudsman shall in the first instance act as a counsellor and mediator
.....clause 8 (1) (c)
- (n) When a complaint is settled through mediation of the Ombudsman, he shall make a recommendation which shall be sent to the complainant and the Licensee for acceptance within 15 days
.....clause 11 (3), (4)
- (o) If the complaint is not settled by agreement within 30 days or any extended period, the Ombudsman shall pass an award within 3 months from the date of (p) receipt of complaint giving reasons for the decision made, after giving an opportunity of

being heard

.....clauses 9 (5), 12 (1)i, (2) (3)

- (q) The complainant has to inform the licensee, of his acceptance of the award with in a month. The Licensee has to comply with the award with in 15 days of receipt of acceptance of complainant and inform the Ombudsman of its compliance of the award

..... clause 12 (16), (7)

- (r) If the complainant does not communicate the acceptance, the Licensee need not implement the award

.....clause 12(8)

- (s) The Ombudsman is required to submit quarterly report with in 15 days of end of each quarter and Annual Report by 31st May of every year on the activities on the preceding year

.....clause 16 (1), (2)

3. Rules notified by Government of India:

As per Para 7 of the Electricity Rules 2005 notified by Government of India in the notification No. G.S.R. 379 (E) Act dated 08-06-2005, the Ombudsman has to submit half-yearly reports to the State Commission and the State Government with in 45 days after end of each half-year giving details of nature of grievances, response of Licensees, opinion of Ombudsman, on compliance of Standards of Performance of Licensees specified by the Commission u/s 57 of the Act.

4. Appointment (designating) of the Ombudsman

The institution of Vidyt Ombudsman was established in September' 2005 pursuant to the Commission's proceedings No. Secy/04, dt 19-09-2005 designating the Director (Law) of the Commission as Ex-officio Electricity Ombudsman for the state pending notification of the Regulation on the terms and conditions of service of Ombudsman and his staff. Subsequently the Commission designated Sri. S.Surya Prakasa Rao, Secretary, APERC as the Ex-officio Electricity Ombudsman in place of Dir(Law), vide proceedings No. 345/A-184/2005 dt 26-11-2005. Subsequently, vide proceedings APERC/ A-185/2007/2; dt: 11-

04-2007, Director (Law) of the Andhra Pradesh Electricity Regulatory Commission was appointed as Vidyut Ombudsman for the State.

5 Amendment to Regulation No.1 of 2004:

Consequent to amendment of Sub-rule(1) of Rule 7 of the Electricity Rules, 2005 by the Central Government notified in the Gazette of India vide G.S.R.No.667(E) dt:26-10-2006, the Andhra Pradesh Electricity Regulatory Commission amended Regulation No.1 of 2004 changing the composition of the members of the Forum to four, including the Chairperson and the matters connected thereto. The said amendment was published in the Gazette of A.P. on 01-10-2007.

6. Regulation No.2 of 2007:

In exercise of the powers vested in sub-sections (6) and (7) of Section 42 of the Electricity Act, 2003 the Commission notified Regulation No.2/2007 on 03-07-2007 providing for terms and conditions of service of Ombudsman and his staff..

The incumbency of the Electricity Ombudsman has been as follows:

From	To	Incumbent as Ex-officio Ombudsman
19-09-2005	15-11-2005	Sri.D.S.Prasad Director(Law) APERC
26-11-2005	10-04-2007	Sri.S.Surya Prakash Rao, Secretary/APERC
11-04-2007	Till date	Sri.K.Rajagopala Reddy Director(Law) APERC

7. Abstract of complaints handled:

a) Number of Cases disposed:

Sl.No.	Year	Applications received	Disposed	Pending
1	2005	5	5	Nil
2	2006	36	36	Nil
3	2007	41	37	4
4	2008	15	4	11

(b) Analysis of Nature of the majority of complaints

It is observed that majority of the appeals are on excess billing due to meter defect or improper meter readings entered by meter readers. Another similar issue concerned with consumer interests that has come up for consideration in these appeals is, the procedure for replacement of burnt meters. The erstwhile APSEB used to replace the meters burnt for the first time, fee of cost. As per the standard of performance Regulation (No. 7 of 2004) notified by the Commission the cost of the meter has to be borne by the consumer if the cause for burning is due to defect with consumer installation. If the cause is attributable to Licensee supply, the DISCOM has to replace the meter free of cost. Some DISCOMs are following the procedure as per Regulation No.7 of 2004 while some other DISCOMs are following the erstwhile APSEB procedure. Even within the same DISCOM, different procedures are followed in different circles.

It may be necessary to streamline the procedure to avoid discrimination in the treatment to different consumers in the matter of replacement of burnt meters. In the back billing cases arising on account of accumulated consumption due to suppressed readings, the connivance of Licensees' staff with consumers can be reasonably expected. However ultimately the consumer will be the victim, as he will have to pay for the energy consumed by him even at a later date with surcharge wherever applicable. It is therefore necessary that the Licensees should take punitive action on such staff and also advise the consumers to check up the meter readings when they are entered in the pass book or when bill is received, every month.



Presentation on
Functioning of Consumer Grievance
Redressel Mechanism under the
EA 2003

to

FOR Working Group on
Protetion of Consumer Interests



Bangalore, 8th August 2008

Administrative Staff College of India

1



The Context

- The provisions of Electricity Act 2003 have come into force more than 4 years back
- Section 42 (5) requires every distribution licensee to establish consumer forums as per the guidelines specified by the SERCs
- Section 42 (6) provides for appointment of an ombudsman by the SERC for redressel of consumer aggrieved by non-redressel of grievances under Section 42 (5)
- Question was to examine the working of the consumer forums across various states
- **In this background, the study was entrusted to ASCI by the MOP to cover 15 states in the five regions**

2



Objectives of the study

- Whether the structure of the Forums is such it provides independence in addressing the grievances of consumers?
- Whether the number of Forums established across the jurisdiction in the licensee area are adequate?
- Whether the Ombudsman is able to act independently in redressing the grievances of consumers?
- Whether the Forums are able to function effectively in redressing the grievances of the consumers?
- Whether the establishment of Forums and their functioning have any impact on redressal of grievances of the consumers and met the objectives of the Act?

3



Scope of Study - I

- The study covers the following States:

Southern Region	Kerala, Andhra Pradesh & Tamil Nadu
Western Region	Gujarat, Chhattisgarh & Madhya Pradesh
Northern Region	Uttar Pradesh, Punjab & Delhi
Eastern Region	West Bengal, Orissa & Jharkhand
North Eastern Region	Assam, Tripura & Meghalaya

4

Scope of Study - II

- To examine the:
 - the structure of the Forums set by the Licensees in various States.
 - The distribution of Forums across the jurisdiction of a licensee and adequacy of the number of the Forums for serving the consumers.
 - Number and nature of grievances being filed by the consumers before the Forum.
 - The status of disposal and average time taken by the Forums to dispose consumer grievances.
 - The breakup (based on the nature of grievances) of the grievances which remained non-settled at the level of Forums and in which the consumers had to approach Ombudsman.
 - Status of disposal and average time taken for settling the grievance by the Ombudsman in various States.
 - The status of submission of six monthly reports by the Ombudsman to State Government and SERCs.
 - Action, if any, taken by the SERCs on the basis of the reports of the Ombudsman and its impact.

5

Study

- No of Licensees in each state
- Structure of Consumer forums
- No of forums in each licensee area
- Working of Consumer Forums
- Working of Ombudsman
- Our suggestions/ recommendations

6

No of Licensees					
SN	State	Number of Distribution licensees			Remarks
		Public sector DISCOMs	Private sector	Total	
1	Andhra Pradesh	4	-	4	
2	Tamil Nadu	1	-	1	SEB
3	Kerala	1	7	8	SEB
4	Gujarat	4	1	5	
5	Chhattisgarh	1	-	1	SEB
6	Madhya Pradesh	3	-	3	
7	Uttar Pradesh	4	2	6	
8	Punjab	1	-	1	SEB
9	Delhi	1	3	4	
10	West Bengal	2	3	5	
11	Jharkhand	2	2	4	SEB
12	Orissa	-	4	4	
13	Assam	3	-	3	
14	Meghalaya	1	-	1	SEB
15	Tripura	1	-	1	State Power Corporation
16	Total	29	22	51	

Note: All above states have forums/ Meghalaya is setting up a forum
 All states have appointed/ designated an Ombudsman

7

SERC Regulation

- The structure, number, and procedure for redressal of grievances are as per the regulations issued by the respective SERCs

8

Structure of Forums

A.P. Tamil Nadu, Kerala, Gujarat, Madhya Pradesh, Delhi, Orissa, Jharkhand, Punjab & Assam	Three member forums
West Bengal	Single member forum, officer at Circle/ regional and corporate level is "Consumer Grievance Redressal Officer"
Uttar Pradesh	2 member forum; regulations revised to provide for 3 member forum
Chhattisgarh	2 member forums, regulations revised in Dec 2007 to provide for 3 member forum
Meghalaya	Process of establishing a forum
Tripura	No independent forum but a three tier departmental forums at sub-division, division and head quarters levels for disposing grievances

Note: All the utilities studied have 3 member forums except West Bengal

9

Composition of Forums – I

- In general:
 - One Member shall be an Electrical Engineer not below the rank of Superintending Engineer in service or retired.
 - One Member shall be qualified in legal or financial / accounts disciplines either an officer in service or retired.
 - The third Member shall be from a registered consumer association / organization.

10

Composition of Forums – II

- Exceptions:
- Andhra Pradesh:
 - The three Member Forums have an Engineer, a finance member and a member with legal background. The Forum has to co-opt a fourth member from a registered consumer organization / association, but without voting rights.
- Jharkhand
 - the Commission specified a three member Forum with one engineer, one person with legal/judicial background and one with finance / accounts background, but no representation to consumers organization/association. **None shall be working officers of the licensee.**
- Madhya Pradesh
 - has specified that any person who is currently in the employment of licensee shall not be eligible to be appointed as Chairperson or member for two years after leaving the service
- West Bengal
 - In a single member Forum the Superintending Engineer or senior officers of the operation circle / region would be Chairperson / Member.

11

Composition of Forums – III

- Earlier to making Rule 7 (1) by the Central Government, the State Commissions have specified that an officer either in service or retired should be Chairperson / Member of the Forums, these regulations have since been modified in most of the states specifying only in service officers as Chairperson and Members of the Forum.

12



Appointment of Chairman/ Member of Forums

- In most states, the licensee appoints the Chairperson and Members of the Forum
- In some cases, the Commission obtains a panel of names from the licensee and approves them and the Forum Chairman/ members are appointed by the licensee

13



Forums in each licensee area - Guidelines

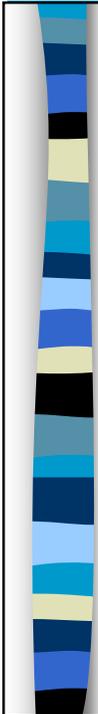
- As per the guidelines issued by the State Commissions the licensee can establish the number of Forums as per the need for redressal of grievances of consumers.
- The guiding principle is that the Forum should be within the reach of the consumers.
- The licensees in the fifteen States where the study is conducted have followed different approaches in establishing the number of Forums in each of the licensee areas.

14

No of Forums in each licensee area			
State	Number of Licensees	Number of Forums	Remarks
A.P	4	4	
T. N.	1	37	Each operation circle has a Forum.
Kerala	8	9	SEB has 3 Forums. Other licensees have one each. Trissur Municipality has no Forum.
Gujarat	5	8	Out of 4 DISCOMs, 3 have one Forum each, one (Pachim Discom) has 3. Torrent Power Limited a private licensee has 2..
M. P	3	3	-
Chhattisgarh	1	3	Three Forums covering three regions.
Delhi	4	4	-
Punjab	1	1	PSEB a deemed licensee has one Forum

No of Forums in each licensee area - cont..d			
Uttar Pradesh*	6	55	4 Discoms have 53 Forums (one for each operation circle). The two licensees at Kanpur and Noida have one each.
Orissa	4	12	Licensees have more than one Forum each.
West Bengal	5	20	Three private licensees have three Forums. WBSEDCL has 17 Forums, one for each circle. DVC has not constituted a forum
Jharkhand	4	3	DVC has not constituted the Forum
Asam	3	3	-
Meghalaya	1	-	Yet to be established
Tripura	1	-	Departmental Forums at sub-division, division and headquarter level.
Total	51	162	

*: UP regulations of Oct 2007 specifying 18 Forums for 6 licensees yet to be implemented



Procedure to Handle Grievances

- SERCs lay down procedures
- Point of first contact is licensee, then consumer forum and then ombudsman
- Jharkhand ERC & Uttar Pradesh ERC have specified that complainant shall pay certain fees along with applications

17



ASCI Observations

- All the Commissions have specified similar procedures for handling of complaints, only Jharkhand and Uttar Pradesh Commissions have specified some fee(s) Rs.50 to be paid along with the complaint, no such fee(s) is specified by the other Commissions.
- Some Commissions have set period for disposal of grievance at 45 days, some at 60 days and some at 90 days from the date of receipt of complaint.
- All the Forums are following the procedure laid down by the respective Commissions, in the guidelines.

18

No of Grievances

State	Number of Grievances Filed					Total
	2004	2005	2006	2007	2008 (Upto Mar/08)	
Andhra Pradesh	-	190	672	471	-	1333
Tamilnadu	372	708	730	829	136	2775
Kerala	-	-	337	266	35	638
Gujarat	-	265	569	531	-	1365
Madhya Pradesh	278	2634	1999	1227	364	6502
Chhattisgarh	-	22	90	142	-	254
Delhi	821	1313	1380	1290	-	4804
Uttar Pradesh+	151	273	373	437	-	1234
Punjab	-	-	240	156	41	437
Orissa	1608	2604	1789	1665	531	8197
West Bengal	-	4090	5481	4602	-	14173
Jharkhand	-	-	68	47	14	129
Assam	-	-	3	7	1	11
Meghalaya *						
Tripura **						

19

+ Data pertains to Meerut and Agra DISCOMs.; *Forum is yet to be established.
** Officers at sub-division, division and head quarters are designated as Forums. No proper records are maintained.

Nature of Grievances

i)	Billing related	Billing errors, back billing etc.
ii)	Metering related	Defective meters, burnt meters, digits jumping of meters, erratic recording of consumption etc.
iii)	Power supply related	Frequent interruptions, voltage fluctuations, etc., low voltage, high voltage and other supply related.
iv)	Disconnection and Reconnection of supply	Wrong disconnections, delay in reconnection etc.
v)	Release of new service connections	Delays in release of new service connection etc.
vi)	Category change, title transfer etc.,	Delay in effecting tariff change, title change etc.
vii)	Others	Grievances other than mentioned above, such as shifting of line, street lights not functioning, shifting of service etc.

20

ASCI Observations

- Wide publicity in the media, on the electricity consumption bills served to the consumers etc., is required to create awareness to the consumers about the Forums and their role in redressing consumer grievances.
- In almost all States about 20 to 70% of grievances are billing related, 8 to 28% are metering related, 2 to 10% are supply related and others are on various other issues.
- If the licensees could pay more attention to billing and metering related issues, the number of grievances / complaints filed would drastically come down.
- In some States the number of grievances have come down over years probably because of better service to the consumers by the licensees.

21

Disposal of Grievances – ASCI Observations

- The grievances/complaints filed were disposed within the time frame (45 days to 90 days) specified by the respective State Commissions.
- There are few cases where the time taken is beyond specified by the Commission. This is stated to be due to procedural delays.
- It is stated that the grievances related to billing and metering are taking more time as they involve some technical issues and requires time to get them verified.

22

Ombudsman

- In most of the States, an independent person is appointed as Ombudsman.
- In Andhra Pradesh, Gujarat, Assam and Tripura one of the officers of the Commission is designated as Ombudsman by the respective Commissions.
- Ombudsmen are mostly retired senior officers and persons of stature and rich experience in the respective disciplines and good track record in service in the related fields and are able to carryout the job efficiently and effectively.
- They are provided office accommodation and other facilities required to work effectively and efficiently.
- Even the officers designated by the Commission are either serving senior officers or officers retired at senior level.

23

Ombudsman – ASCI Observations

- Most of the representation received pertain to billing
- Delays in redressel are by and large procedural -
 - Ombudsmen in different States stated that the delays in some cases are mostly procedural because of adjournment or due to the complainant and licensee not being able to come to an agreement and / or either the complainant or a nominee of licensee not being able to attend the hearings and seeking adjournments.

24

Independence – ASCI Observations

- **Ombudsman:**
 - neither the Commission nor the licensee or State Government interfere in their work and they are free to take decisions and give awards based on merits of the case.
- **Forums**
 - Wherever the Forums are headed by independent persons, (not serving officers of the licensee), it could be said they are working independently without any interference from any quarters.
 - Wherever serving officers are appointed it is not possible to say prima-facie whether they act independently when they have to take decisions in favour of consumers particularly where monetary issues are involved such as refund of money to consumers etc.
- SERCs do not interfere in the working of Ombudsman and Forum.
- The Commission reviews the functioning of the Ombudsman and Forums periodically and communicates its comments and also convenes meetings of Ombudsman, Forums and licensees to review and discuss the functioning of the Forums.

25

Impact of Consumer Forums: Summary of ASCI Observations

- Establishment of Consumer Grievance Redressal Forum under the Act has created a channel for consumers to get their grievance redressed.
- The establishment of Forum has also created some awareness in the employees of the utility that they are answerable to the organizations created by the Act - the Forum and Ombudsman and hence the response level of the officers of the licensees to the consumer complaints has improved to some extent.
- While reduction in the number of grievances filed before the Forums indicate this, the impact is not to the extent required.
- Though it is four years since the Forums are established consumers, particularly, in semi-urban and rural areas are not fully aware of establishment of Forums, wide publicity is required to be given in the media especially electronic media – TV etc and on electricity bills on the establishment of Forums and their role.
- There is no enforcement mechanism if the licensee does not implement the decisions/ orders of the Forums / Ombudsman

26



ASCI Key Recommendations

- **The Forum with serving officers of the licensee either single or three member Forum cannot be truly independent to protect the interests of the consumers. The rule 7(1) requires to be amended by MoP**

27



ASCI Key Recommendations – cont..d

- **It is suggested that the forum should be a three member Forum - one with engineering background, one with finance / accounts or legal background and one representing consumer interests, one need not be from consumer organisation or association, he / she could be person who is interested in consumer affairs.**

28



ASCI Key Recommendations - cont..d

- **The Chairperson and members appointed in the Forum shall be independent persons, either retired officers from power sector or others who have power sector background.**
- **The members shall be independent persons and not in service officers.**

29



ASCI Key Recommendations - cont..d

- The tenure of appointment shall be 3 years or upto the age of 65 years which ever is earlier.
- No member shall be appointed if he is over 62 years at the time of appointment.
- Salary and other perquisites may be fixed by the state Commission at appropriate level.
- The appointment of the chairman and members must be approved by the SERCs
- SERCs could appoint the Forum members, meet their expenses and recover the cost from the licensees so that the forums could be truly independent

30

ASCI Key Recommendations - cont..d

- One Forum for each licensee area is considered adequate if there are multiple licensees in a state.
- If there is a single licensee for the entire State such as Electricity Board or DISCOM such states may have one for each region / zone this could be 3 to 5 in each State.
- The Forums can have sittings / hearings at different locations in the state with a specified schedule so that all the consumers need not come to headquarters of the Forum. (This is working well in majority of States where the licensee has a single forum)
- This will improve the quality of Forums, if they have to be really independent to address the grievances of consumers.

31

ASCI Key Recommendations - cont..d

- The enforcing mechanism for the implementation of the decisions of Forums and Ombudsmen has to be introduced so that individual officers / employees made responsible for causing the grievance and non-redressal of grievance are penalized.
- The compensation, if any, to be paid to the consumers in such cases must be recovered from the persons responsible.
- If an enforcement mechanism is introduced there will be more awareness on the part of utility employees and the grievances will get settled at licensee level itself and grievances to be filed before the Forum will be reduced in course of time and consumer will get better service.

32



ASCI Key Recommendations - cont..d

- A period of 60 days for disposal appears to be reasonable.
- No fees should be prescribed for filing the grievance before the Forum.

33

Equivalent Citation: AIR2007Bom52

IN THE HIGH COURT OF BOMBAY

W.P. (L) No. 2221 of 2006

Decided On: 05.10.2006

Appellants: **Awadesh S. Pandey**

Vs.

Respondent: **Tata Power Co. Ltd. and Ors.**

Hon'ble Judges:

F.I. Rebello and Anoop V. Mohta, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Milind Vasudeo and A.B. Ketkar, Advs.

For Respondents/Defendant: S.V. Doijode, Adv., i/b., Doijode and Assoc.

Subject: Electricity Catch Words Mentioned IN

Acts/Rules/Orders:

Electricity Act, 2003 - Section 56, 56(1) and 56(2); Maharashtra Electricity Regulatory Commission Regulations, 2006

JUDGMENT

F.I. Rebello, J.

1. Rule. Heard forthwith.
2. The petitioner had applied for electric connection from respondent No. 1. Respondent No. 1 commissioned meter No. 2759592 on the petitioner's premises on 3rd January, 2003 for connected load of 125 HP (93.25 KW). The petitioner started using electricity since 30th August, 2003. Bills for the period from 30th August, 2003 to 30th October, 2003 and also subsequent bills till November, 2005 were sent to the petitioner indicating multiplying factor of one. Respondent No. 1 around November, 2003 during energy audit observed that petitioner was billed by applying incorrect multiplying factor since beginning, the correct multiplying factor being 40. Supplementary bill was preferred in January, 2006 for Rs. 12,33,328/-.
3. The petitioner contested the said bill by filing a complaint before Consumer Redressal Forum on 6-3-2006. On 25-3-2006 as the petitioner had not paid electric dues in terms of the bill, respondent No. 1 issued notice of disconnection but withdrew the same. On 5-5-2006 the Consumer Redressal Forum passed an order against petitioner against which petitioner preferred appeal before the Electricity Ombudsman. The Electricity Ombudsman partly allowed the appeal and directed to recover amended dues under Section 56(2) of the Electricity Act, 2003 (hereinafter referred as "Electricity Act". Respondent

No. 1 on 24-7-2006 made demand on the petitioner in a sum of Rs. 11,48,844/-. On 24-7-2006 itself, a notice of disconnection was issued demanding arrears of Rs. 13,17,141.13 paisa after some correspondence as no relief was given to the petitioner. The petitioner filed writ petition before this Court being Writ Petition (L) No. 1866 of 2004 challenging the notice of disconnection. In the meantime on 16-8-2006 respondent No. 1 amended earlier demand as the demand was not in conformity with the order of the Electricity Ombudsman. As petition became infructuous, liberty was granted to withdraw the petition with liberty to file fresh petition. The petitioners once again by letter of 30th August, 2006 called respondent No. 1 and 2 to withdraw their claim. The petitioner received a third notice of disconnection issued by respondent No. 1 on 4-9-2006 and consequently the present petition.

4. At the hearing of this petition, the learned Counsel for the petitioner has submitted as under:

(i) Whether Electricity Ombudsman can pass order retrospectively covering a period from December, 2003 when the Electricity Ombudsman is established in the month of December, 2004.

(iii) Whether the Electricity Ombudsman has jurisdiction to pass impugned order dated 18th July, 2006 allowing back billing for 23 months by amending bills and the regulation system of MERC Regulations, 2006 or part of the disputes have been referred to MERC.

5. For the purpose of considering the controversy what is relevant are the provisions of Section 56 of the Electricity Act which we are gainfully reproducing for the purpose of deciding the issues that have been raised by the petitioner herein.

56. Disconnection of supply in default of payment.- (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protests,-

(a) an amount equal to the sum claimed from him, or

(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.

6. Insofar as first issue is concerned, the power to recover is under Section 56 of the Act. A temporary absence or non-appointment of an Electricity Ombudsman cannot defeat the right which otherwise can be claimed by respondent No. 1. Once there be a power and assuming that vacancy of Electricity Ombudsman or Electricity Ombudsman itself has been appointed in December, 2004, would not mean that the authority having jurisdiction is precluded or prohibited from effecting recoveries for the period prior to its appointment. The recovery will, however, be subject to the bar of limitation as contained in Section 56. The Electricity Ombudsman therefore would while exercising jurisdiction, issue an order even in respect of dues which have become due and payable before the establishment of the post of Electricity Ombudsman in December, 2004. The first issue, therefore, has to be rejected.

7. We then come to the next issue as to whether the demand made by respondent No. 1 is contrary to the provision of Section 56 of the Electricity Act. We have already narrated the facts. The Electricity Ombudsman by his order of 18th July, 2006 held that the respondent No. 1 is entitled to recover past dues by correcting multiplying factor. The question posed by the Electricity Ombudsman to itself was whether the recovery could be made for the entire period of 26 months i.e. for a period from October, 2003 to November, 2005 and that too belatedly in January, 2006. After considering the various provisions including the regulations, the Ombudsman held, only those charges for a period of two years previous to the demand could be recovered and that the arrears for the consumption in January, 2004 became first due in February, 2004 as supplementary bill was raised in 2006 and these dues having been within two years are recoverable under the provisions of Section 56(2) of the Electricity Act.

Submission of counsel for the petitioner is that the provisions of Section 56 do not empower respondent No. 1 to recover any amount if the period of two years has elapsed no can electricity supply be cut off for nonpayment of those dues. In other words what is sought to be contended is that if the demand or part of the demand is time barred the provisions of Section 56 would not be attracted. We are afraid, we cannot subscribe to that proposition. Section 56(1) is a special provision, enabling the generating company or the licensee to cut-off supply of electricity until such charges or sum as demanded under Section 56(1) is paid. Relying on Sub-section (2), it was strenuously urged that Section 56(1) cannot be resorted to after the period of two years from the date when such demand became first due. In our opinion, Sub-section (2) only provides alimitation, that the recourse to recovery by cutting of electricity supply is limited for a period of two years from the date when such sum became due. As long a sum is due, which is within two years of the demand and can be recovered, the licensee of the generating company can exercise its power of coercive process of recovery by cutting-of electricity supply. This is a special mechanism provided to enable the licensee or the generating company to recover its dues expeditiously. The Electricity Act has provided that mechanism for improvement of supply of electricity and to enable the licensee or generating company to recover its dues. Apart from the above mechanism, independently it can make recovery by way of a suit. In our opinion, therefore, the impugned order passed by the Electricity Ombudsman does not suffer from any error apparent on the face of the record and consequently there is no merit in this petition.

8. For all the aforesaid reasons Rule discharged. In the circumstances of the case, however, there shall be no order as to costs.

Appeal No. 202 & 203 of 2006

**Before the Appellate Tribunal for Electricity
Appellate Jurisdiction
Appeal Nos. 202 & 203 of 2006**

Dated: 14th November, 2006.

Present: Hon'ble Mr. Justice Anil Dev Singh, Chairperson

Hon'ble Mr. A. A. Khan, Technical Member

IN THE MATTER OF:

Appeal No. 202

Ajmer Vidyut Vitran Nigam Limited, Appellant
Chittorgarh, Rajasthan.

Versus

1. M/s Sisodia Marble & Granites Pvt. Ltd. & Ors,
F-101, 102 RIICO Industrial Area, Chittorgarh- 312 001..
2. Rajasthan Electricity Regulatory Commission,
Vidyut Bhawan, Jyoti Nagar, Jaipur, Rajasthan. Respondents

Appeal No. 203

Ajmer Vidyut Vitran Nigam Limited, Appellant
Chittorgarh, Rajasthan.

Versus

1. M/s Safe Polymers Pvt. Ltd. & Anr.,
64-65, Udyog Vihar, Sukher, Udaipur, Rajasthan.
2. Rajasthan Electricity Regulatory Commission,
Vidyut Bhawan, Jyoti Nagar, Jaipur, Rajasthan. Respondents

Counsel for the appellant : Mr. Manu Mridul. Advocate

Mr. Anant Kumar Vatsya, Advocate

Counsel for the respondents : Mr. R.C. Sharma, Dy. Secy., RERC.

Mr. S.C. Saxena, Consultant.

Page 1 of 10 Appeal No. 202 & 203 of 2006

Under Section 111 (2) of The Electricity Act, 2003 :

Judgement

Per Hon'ble Mr. A.A. Khan, Technical Member

1. The interpretation of the words 'first due' occurring in Section 56 (2) of the Electricity Act, 2003, is involved in these appeals. Therefore, both the appeals are being disposed of together by this judgement. Appeal No. 202 of 2006 is treated as a leading case and the decision in this appeal shall also apply to appeal No. 203 of 2006.

FACTS OF THE CASE:

2. On 24.08.2000, the first respondent being consumer of the appellant was provided with an electrical connection for 150 KVA with a connected load of 298 HP. In accordance with the terms of Regulation No. 9 of the Rajasthan Electricity Regulatory Commission (Distribution Licensee's Standards or performance) Regulations, 2003 (for brevity called as 'Regulations, 2003') the meter provided to the customer is required to be periodically checked/inspected and tested. In case of the meters of HT consumers with a contract demand of up to 500 KVA, the inspection/checking and testing is required to be done at least once in an year.
3. The respondent's meter was previously subjected to inspection on 19.07.2001 and 10.09.2002 and on both these occasions it was recording the consumption flawlessly.
4. On 03.03.2003 when the meter was checked by the appellant in situ using ACCUCHECK, it was found to be defective as the meter was recording less than the actual consumption. The aforesaid testing is stated to have been carried out in the presence of the first respondent and a joint inspection report was duly signed by the respondent. On 05.03.2003, the appellant replaced the defective meter by a new meter. The defective meter along with the joint inspection report was sent to the commercial department of the appellant for the defect analysis and assessment and computation of charges as per the applicable rule and procedure.
5. While the matter was pending with the Commercial Department of the appellant, during the audit process it was detected that a sum of Rs. 4,28,034/- worked out on the basis of the inspection report has not been debited to the account of the first respondent. As a consequence, on 19.04.2005, the appellant raised a demand notice for the sum of Rs. 4, 28,034/- and was advised to file their objections, if any, within 15 days or else the aforesaid amount shall be debited to their

account. The first respondent did not agree with the additional demand and asked for details of the charges which was provided to them by the appellant by a communication dated 10.05.2005.

6. By a letter dated 02.06.2005, the first respondent furnished its own calculation to the appellant stating that the demand should be limited to Rs. 1,65,312/- and expressed its readiness to pay it in three equal installments. The appellant did not agree with it and debited a sum of Rs. 4, 28,034/- in the regular electricity bill No. 308 dated 08.08.2005. The first respondent, however, did not make the payment of the demand of arrears. Thereafter, the appellant served an electricity disconnection notice dated 28.02.2005 upon the first respondent.
7. Objections against the demand of the appellant were raised by the first respondent before the Electrical Inspector under Regulation No. 39 (1) of the Rajasthan Electricity Regulatory Commission (Electric Supply Code & Connected Matters) Regulations, 2004 and under condition No. 49 of the Terms and Conditions for Supply of Electricity- 2004 read with Section 56 (2) of Electricity Act 2003. The appellant filed their reply and raised preliminary objection with regard to the jurisdiction of the electrical Inspector in the matter.
8. The Electrical Inspector after hearing both the parties set aside the demand raised by the appellant on the ground of it being raised beyond the limitation period as provided under Section 56 (2) of Electricity Act 2003 read with Regulation 39 (1) of the Regulations, 2004 and Condition No. 49 of the Terms and Conditions of Supply of Electricity, 2004 and declared the disconnection notice dated 22.08.2005 issued by the appellant as invalid and quashed the same.
9. Aggrieved by the aforesaid order of the electrical inspector, the appellant preferred a petition No. 90 of 2006 before the Regulatory Commission. The Commission in its order dated 20.06.2006 held that the matter did not fall within the jurisdiction of the electrical Inspector and quashed the demand raised by the appellant on the ground that the same has been raised beyond a period of two years as provided by Section 56 (2) of Electricity Act 2003 read with Regulation 39 (1) of the Code and Condition No. 49 of Terms and Condition of Supply of Electricity Regulations - 2004.

Discussion & Analysis:

10. We observe that the impugned order is based on the provisions of Section 56 (2) of Electricity Act 2003; Regulation 39 (1) of the Regulations, 2004 and Condition No. 49 of the Terms and

Conditions of Supply of Electricity, 2004. The Section 56 (2) of the electricity Act 2003 reads as under:

“56(2): Notwithstanding anything contained in any other law for the time being in force, no sum due from any customer, under this Section shall be recoverable after the period of two years from the date when sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of electricity”.

11. The Regulation 39 (1) of the Regulations, 2004 specifies as mentioned below:

“39(1) No sum due from any consumer on account of charges for electricity OR any other sum other than a charge for electricity, shall be recoverable after a period of two years from the date when such sum became first due, unless such sum has been shown continuously as arrears and the licensee shall not cut off supply of electricity”.

12. Also the provision of Condition No. 49 of the Terms and Conditions of Supply of Electricity 2004 stipulates as under:

“49. Recovery of old dues:

No sum due from any consumer on account of charges for electricity or any sum other than a charge for electricity shall be recoverable after a period of two years from the date when such sum became first due, unless such sum has been shown continuously as arrears and the Nigam shall not cut off supply of electricity”.

13. From the above, it may be seen that the aforesaid provisions of the Electricity Act 2003, the Regulations of 2004 and the Terms and Conditions for supply of Electricity, 2004 are identical and the case hinges on the interpretation of Section 56 (2) of Electricity Act- 2003.

14. We have heard the learned counsel for the parties. The basic question for determination is what is the meaning of the words ‘first due’ occurring in Section 56(2) of the Electricity Act 2003; Regulation 39(1) of the Regulations, 2004 and condition No. 49 of the Terms and Conditions for supply of Electricity, 2004. In case the words ‘first due’ is construed as meaning consumption, it would imply that the electricity charges would become due and payable, the moment electricity is consumed. In that case failure to pay charges will entail consequences leading to disconnection of electricity to consumers even though the consumer will only know the units consumed by him and will not know the exact amount payable by him as per the approved tariff as the actual computation depends upon different parameters such as peaking/non-peaking rates; HT/LT rates etc. The responsibility to determine the amount payable by the consumer

is that of the licensee. The consumer cannot be expected to discharge the duties of the distributor or the supplier of electricity. Moreover, it will create an anomalous situation as it would be difficult to determine the last date by which the payment is to be made by the consumer and in case last date is not known, it will be difficult to levy surcharge for delayed payment. Besides there will be problem in issuing notice for disconnection for failure to pay the charges on consumption. It appears to us that it could never be the intention of the legislature to equate the words 'first due' with consumption. The consumption of electricity will certainly create a liability to pay but the amount will become due and payable only after a bill or demand is raised by the licensee for consumption of electricity by the consumer in accordance with the Tariff Order. Such a bill/demand will notify a date by which the dues are to be paid without surcharge.

15. It is to be noted that a meter records the consumption of energy uninterruptedly on a continuous basis by the consumer and for such consumption the liability for payment of corresponding amount of charges by the consumer is continuously created but will not be due for payment unless the amount is raised through bill or a demand notice.
16. In H.D. Shourie vs. Municipal Corporation of Delhi, AIR 1987 Delhi 219, the Delhi High Court has ruled that electricity charges become first due after the bill is sent to the consumer and not earlier thereto. In this regard the High Court held as under:

“A bill for consumption of electricity can be sent even three years after the electricity has been consumed. The electricity charges become due after the bill is sent and not earlier. This being so, the proviso to S. 455 of Act (66 of 1957) will apply only when the bill has been sent and the remedy available with the licensee for filing a suit to recover the said amount would come to an end after three years elapse after the electricity charges have become due and payable. To put it differently, the provisions of S. 455 would come into play after the submission of the bill for electricity charges and not earlier”.

The judgement further holds that,

“The amount of charges would become due and payable only with the submission of the bill and not earlier. It is the bill which stipulates the period within which the charges are to be paid. The period which is provided is not less than 15 days after the receipt of the bill. If the word “due” in S. 24 is to mean consumption of electricity, it would mean that electricity charges would become due and payable the moment

electricity is consumed and if charges in respect thereof are not paid then even without a bill being issued a notice of disconnection would be liable to be issued under S. 24. This certainly could not have been the intention of the Legislature. Section 24 gives a right to the licensee to issue not less than 7 days' notice if charges due to it are not paid. The word "due" in this context must mean due and payable after a valid bill has been sent to the consumer. It cannot mean 7 days notice after consumption of the electricity and without submission of the bill. Even though the liability to pay may arise when the electricity is consumed by the consumer, nevertheless it becomes due and payable only when the liability is quantified and a bill is raised. Till after the issue and receipt of the bill the authority has no power or jurisdiction to threaten disconnection of the electricity which has already been consumed but for which no bill has been sent".

The same judgement further provides that the arrear of charges in case of a defective meter can not be more than six months irrespective of period of defect in the meter. It reads thus;

"The maximum period for which a bill can be raised in respect of a defective meter under S. 26 (6) is six months and no more. Therefore, even if a meter has been defective for, say, a period of five years, the revised charges can be for a period not exceeding six months. The reason for this is obvious. It is the duty and obligation of the licensee to maintain and check the meter. If there is a default committed in this behalf by the licensee and the defective meter is not replaced, then it is obvious that the consumer should not be unduly penalized at a later point of time and a large bill raised. The provision for a bill not to exceed six months would possibly ensure better checking and maintenance by the licensee".

17. Thus, in our opinion, the liability to pay electricity charges is created on the date electricity is consumed or the date the meter reading is recorded or the date meter is found defective or the date theft of electricity is detected but the charges would become first due for payment only after a bill or demand notice for payment is sent by the licensee to the consumer. The date of the first bill/demand notice for payment, therefore, shall be the date when the amount shall become due and it is from that date the period of limitation of two years as provided in Section 56(2) of the Electricity Act, 2003 shall start running. In the instant case, the meter was tested on 03.03.2003 and it was allegedly found that the meter was recording energy consumption less than the actual by 27.63%. Joint inspection report was signed by the consumer and licensee and

thereafter, the defective meter was replaced on 05.03.2003. The revised notice of demand was raised for a sum of Rs. 4, 28,034/- on 19.03.2005. Though the liability may have been created on 03.03.2003, when the error in recording of consumption was detected, the amount become payable only on 19.03.2005, the day when the notice of demand was raised. Time period of two years, prescribed by Section 56(2), for recovery of the amount started running only on 19.03.2005. Thus, the first respondent cannot plead that the period of limitation for recovery of the amount has expired.

18. Though we have held that the amount due from the appellant is not barred by limitation and is recoverable, yet at the same time, we regretfully recognize that it was a serious lapse on the part of the licensee for having sent a demand notice only on 19.04.2005 to the consumer after more than 2 years of declaring the meter faulty. Notwithstanding the fact that the demand is not barred by limitations, the fact of considerable delay in raising the demand was against the commercial principles. The licensee ought to have realized that when such large sums of money are allowed to remain unrecovered from the consumers for long periods of time, it not only affects the investment opportunities but also erodes the value of the principal on account of inflation. The action of the licensee is not in public interest. It woefully demonstrates the lack of commercial sense.
19. We would also like to mention that after the appellant furnished the details of the charges of Rs. 4,28,034/- claimed from the first respondent on 10.05.2005, the latter submitted its own calculation, based on arrears for three months, to the appellant stating that the demand should be of Rs. 1,65,312/- and expressed its willingness to pay the amount in three equal installments. Thus, the dispute was not with regard to the liability to liquidate the arrears by the first respondent but it was concerning the quantum of the liability of the appellant.
20. It appears the appellant did not accept the offer dated 10.05.2005 made by the first respondent and proceeded to take further actions to recover the amount of Rs. 4,28,034/- in that the said amount was debited in the regular electricity bill No. 308 dated 08.08.2005 and consequent upon its non-payment took coercive action of issuing notice for disconnection etc. Under the circumstances, the offer made by the first respondent is no longer alive and can not be legally enforced
21. In view of the fact that demand raised by the appellant against the first respondent is not barred by limitation, we allow the appeal and

set aside the impugned order dated 20.06.2006, passed by the Rajasthan Electricity Regulatory Commission in petition No. RERC/90/2006, and remit the matter to the Commission for adjudication of the matter in the light of this Judgment and in accordance with law.

Appeal No. 203 of 2006.

22. On the basis of the decision rendered in Appeal No. 202 of 2006 and the meaning ascribed to the words 'first due' occurring in Section 56 (2) of the electricity Act, 2003, we allow the appeal and set aside the impugned order, dated June 21, 2006, passed by the Rajasthan Electricity Regulatory Commission in Petition No. RERC/91/06, and remit the matter to the Commission for adjudication of the matter, in the light of the judgement rendered in Appeal No. 202 of 2006, and in accordance with law.

Dated: 14th November, 2006.

(A. A. Khan)
Member (Technical)
(Justice Anil Dev Singh)
Chairperson

Commission to entertain a complaint under the Act, it appears appropriate to ascertain the purpose of the Act, the objective it seeks to achieve and the nature of social purpose it seeks to promote as it shall facilitate in comprehending the issue involved and assist in construing various provisions of the Act effectively. To begin with the preamble of the Act, which can afford useful assistance to ascertain the legislative intention, it was enacted, 'to provide for the protection of the interest of consumers'. Use of the word 'protection' furnishes key to the minds of makers of the Act. Various definitions and provisions which elaborately attempt to achieve this objective have to be construed in this light without departing from the settled view that a preamble cannot control otherwise plain meaning of a provision. In fact the law meets long felt necessity of protecting the common man from such wrongs for which the remedy under ordinary law for various reasons has become illusory. Various legislations and regulations permitting the State to intervene and protect interest of the consumers have become a haven for unscrupulous ones and the enforcement machinery either does not move or it moves ineffectively, inefficiently and for reasons which are not necessary to be stated. The importance of the Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. It attempts to remove the helplessness of a consumer which he faces against powerful business, described as, 'a network of rackets' or a society in which, 'producers have secured power' to 'rob the rest' and the might of public bodies which are degenerating into store house of inaction where papers do not move from one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helpless, bewildered and shocked. The malady is becoming so rampant, widespread and deep that the society instead of bothering, complaining and fighting for it, is accepting it as part of life. The enactment in these unbelievable yet harsh realities appears to be a silver lining, which may in course of time succeed in checking the rotine. A scrutiny of various definitions such as 'consumer', 'service', 'trader', 'unfair' trade practice indicates that legislature has attempted to widen the reach of the Act. Each of these definitions are in two parts, one, explanatory and the other expandatory. The explanatory or the main part itself uses expressions of wide amplitude indicating clearly its wide sweep then its ambit is widened to such things which otherwise would have been beyond its natural import. Manner of construing an inclusive clause and its widening effect has been explained in *Dilworth v. Commissioner of Stamps* [1899] A.C. 99 as under:

'include' is very generally used interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute, and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural, import, but also those things

which the definition clause declares that they shall include.

It has been approved by this Court in *Regional Director, Employees' State Insurance Corporation v. Highland Coffee Works of P.F.X. Saldanha and Sons and Anr.* MANU/SC/0607/1991, *Andhra Pradesh v. Taj Mahal Hotel, Secunderabad* MANU/SC/0239/1971 and *The State of Bombay and Ors. v. The Hospital Mazdoor Sabha and Ors.* MANU/SC/0200/1960. The provisions of the Act thus have to be construed in favour of the consumer to achieve the purpose of enactment as it is a social benefit oriented legislation. The primary duty of the court while construing the provisions of such an Act is to adopt a constructive approach subject to that it should not do violence to the language of the provisions and is not contrary to attempted objective of the enactment.

3. Although the legislation is a milestone in history of socio-economic legislation and is directed towards achieving public benefit we shall first examine if on a plain reading of the provisions unaided by any external aid of interpretation it applies to building or construction activity carried on by the statutory authority or private builder or contractor and extends even to such bodies whose ancillary function is to allot a plot or construct a flat. In other words could the authorities constituted under the Act entertain a complaint by a consumer for any defect or deficiency in relation to construction activity against a private builder or statutory authority. That shall depend on ascertaining the jurisdiction of the Commission. How extensive it is? A National or a State Commission under Sections 21 and 16 and a consumer forum under Section 11 of the Act is entitled to entertain a complaint depending on valuation of goods or services and compensation claimed. The nature of, 'complaint' which can be filed, according to Clause (c) of Section 2 of the Act is for unfair trade practice or restrictive trade practice adopted by any trader or for the defects suffered for the goods bought or agreed to be bought and for deficiency in the service hired or availed of or agreed to be hired or availed of, by a 'complainant' who under Clause (b) of the definition clause means a consumer or any voluntary consumer association registered under the Companies Act 1956 or under any law for the time being in force or the Central Government or any State Government or where there are one or more consumers having the same interest then a complaint by such consumers. The right thus to approach the Commission or the forum vests in consumer for unfair trade practice or defect in supply of goods or deficiency in service. The word 'consumer' is a comprehensive expression. It extends from a person who, buys any commodity to consume either as eatable or otherwise from a shop, business house, corporation, store, fair price shop to use of private or public services. In Oxford Dictionary a consumer is defined as a, 'purchaser of goods or services'. In Black's Law Dictionary it is explained to mean, 'one who consumes. Individuals who purchase, use, maintain, and dispose of products

and services. A member of that broad class of people who are affected by pricing policies, financing practices, quality of goods and services, credit reporting, debt collection, and other trade practices for which state and federal consumer protection laws are enacted.' The Act opts for no less wider definition. It reads as under:

"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 service for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person:

(Explanation - For the purposes of Sub-clause (i) "commercial purpose" does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;)

It is in two parts. The first deals with goods and the other with services. Both parts first declare the meaning of goods and services by use of wide expressions. Their ambit is further enlarged by use of inclusive clause. For instance, it is not only purchaser of goods or hirer of services but even those who use the goods or who are beneficiaries of services with approval of the person who purchased the goods or who hired services are included in it. The legislature has taken precaution not only to define 'complaint', 'complainant', 'consumer' but even to mention

in detail what would amount to unfair trade practice by giving an elaborate definition in Clause (r) and even to define 'defect' and 'deficiency' by Clauses (f) and (g) for which a consumer can approach the Commission. The Act thus aims to protect the economic interest of a consumer as understood in commercial sense as a purchaser of goods and in the larger sense of user of services. The common characteristics of goods and services are that they are supplied at a price to cover the costs and generate profit or income for the seller of goods or provider of services. But the defect in one and deficiency in other may have to be removed and compensated differently. The former is, normally, capable of being replaced and repaired whereas the other may be required to be compensated by award of the just equivalent of the value or damages for loss. 'Goods' have been defined by Clause (i) and have been assigned the same meaning as in Sale of Goods Act, 1930 which reads as under:

"goods" means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be served before sale or under the contract of sale.

It was therefore urged that the applicability of the Act having been confined to moveable goods 'only a complaint filed for any defect in relation to immoveable goods such as a house or building or allotment of site could not have been entertained by the Commission. The submission does not appear to be well founded. The respondents were aggrieved either by delay in delivery of possession of house or use of sub-standard material etc. and therefore they claimed deficiency in service rendered by the appellants. Whether they were justified in their complaint and if such act or omission could be held to be denial of service in the Act shall be examined presently but the jurisdiction of the Commission could not be ousted because even though it was service it related to immoveable property.

4. What is the meaning of the word 'service'? Does it extend to deficiency in the building of a house or flat? Can a complaint be filed under the Act against the statutory authority or a builder or contractor for any deficiency in respect of given property. The answer to all this shall understanding of the word 'service'. The term has variety of meanings. It may mean any benefit or any act resulting in promoting interest or happiness. It may be contractual, professional, public, domestic, legal, statutory etc. The concept of service thus is very wide. How it should be understood and what it means depends in the context in which it has been used in an enactment. Clause (o) of the definition section defines it as under :

"Service" means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or loading 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 contract of personal service.

It is in three parts. The main part is followed by inclusive clause and ends by exclusionary clause. The main clause itself is very wide. It applies to any service made available to potential users. The words 'any' and 'potential' are significant. Both are of wide amplitude. The word 'any' dictionary means 'one or same or all'. In Black's Law Dictionary it is explained thus, word "any" has a diversity of meaning and may be employed to indicate "all" or "every" as well as "same" or "one" and its meaning in a given statute depends upon the context and subject matter of the statute'. The use of the word 'any' in the context it has been used in Clause (o) indicates that it has been used in wider sense extending from one to all. The other word 'potential' is again very wide. In Oxford Dictionary it is defined as 'capable' of coming into being, possibility'. In Black's Law Dictionary it is defined as 'extending in possibility but not in act. Naturally and probably expected to come into existence at some future time, though not now existing; for example, the future product of grain or trees already planted, or the successive future instalments or payments on a contract or engagement, already made.' In other words service which is not only extended to actual users but those who are capable of using it are covered in the definition. The clause is thus very wide and extends to any or all actual or potential users. But the legislature did not stop there. It expended the meaning of the word further in modern sense by extending it to even such facilities as are available to a consumer in connection with banking, financing etc. Each of these are wide ranging activities in day to day life. They are discharged both by statutory and private bodies. In absence of any indication, express or implied there is no reason to hold that authorities created by the statute are beyond purview of the Act. When banks advance loan or accept deposit or provide facility of locker they undoubtedly render service. A State Bank or nationalised bank renders as much service as private bank. No distinction can be drawn in private and public transport or insurance companies. Even the supply of electricity or gas which throughout the country is being made, mainly, by statutory authorities is included in it. The legislative intention is thus clear to protect a consumer against services rendered even by statutory bodies. The test, therefore, is not if a person against who complaint is made is a statutory body but whether the nature of the duty and function performed by it is service or even facility.

5. This takes us to the larger issue if the public authorities under different enactments are amenable to jurisdiction under the Act. It

was vehemently argued that the local authorities or government bodies develop land and construct houses in discharge of their statutory function, therefore, they could not be subjected to provisions of the Act. The learned Counsel urged that if the ambit of the Act would be widened to include even such authorities it would vitally affect functioning of official bodies. The learned Counsel submitted that the entire objective of the Act is to protect a consumer against malpractices in business. The argument proceeded on complete misapprehension of the purpose of Act and even its explicit language. In fact the Act requires provider of service to be more objective and caretaking. It is still more in public services. When private undertakings are taken over by the government or corporations are created to discharge what is otherwise State's function, one of the inherent objectives of such social welfare measures is to provide better, efficient and the cheaper services to the people. Any attempt, therefore, to exclude services offered by statutory or official bodies to the common man would be against the provisions of the Act and spirit behind it. It is indeed unfortunate that since enforcement of the Act there is a demand and even political pressure is built up to exclude one or the other class from operation of the Act. How ironical it is that official or semi-official bodies which insist on numerous benefits, which are otherwise available in private sector, succeed in bargaining for it on threat of strike mainly because of larger income accruing due to rise in number of consumers and not due to better and efficient functioning claim exclusion when it comes to accountability from operation of the Act. The spirit of consumerism is so feeble and dormant that no association, public or private spirited, raises any finger on regular hike in prices not because it is necessary but either because it has not been done for sometime or because the operational cost has gone up irrespective of the efficiency without any regard to its impact on the common man. In our opinion, the entire argument found on being statutory does not appear to have any substance. A government or semi-government body or a local authority is as much amenable to the Act as any other private body rendering similar service. Truly speaking it would be a service to the society if such bodies instead of claiming exclusion subject themselves to the Act and let their acts and omissions scrutinised as public accountability is necessary for healthy growth of society.

6. What remains to be examined is if housing construction or building activity carried on by a private or statutory body was service within meaning of Clause (o) of Section 2 of the Act as it stood prior to inclusion of the expression 'housing construction' in the definition of "service" by Ordinance No. 24 of 1993. As pointed out earlier the entire purpose of widening the definition is to include in it not only day to day buying and selling activity undertaken by a common man but even to such activities which are otherwise not commercial in nature yet they partake of a character in which some benefit is conferred on the consumer. Contraction of a house or flat is for the benefit of person for whom

it is constructed. He may do it himself or hire services of a builder or contractor. The latter being for consideration is service as defined in the Act. Similarly when a statutory authority develops land or allots a site or constructs a house for the benefit of common man it is as much service as by a builder or contractor. The one is contractual service and other statutory service. If the service is defective or it is not what was represented then it would be unfair trade practice as defined' in the Act. Any defect in construction activity would be denial of comfort and service to a consumer. When possession of property is not delivered within stipulated period the delay so caused is denial of service. Such disputes or claims are not in respect of immovable property as argued but deficiency in rendering of service of particular standard, quality or grade. Such deficiencies or omissions are defined in Sub-clause (ii) of Clause (r) of Section 2 as unfair trade practice. If a builder of a house uses sub-standard material in construction of a building or makes false or misleading representation about the condition of the house then it is denial of the facility or benefit of which a consumer is entitled to claim value under the Act. When the contractor or builder undertakes to erect a house or flat then it is inherent in it that he shall perform his obligation as agreed to. A flat with a leaking roof, or cracking wall or sub-standard floor is denial of service. Similarly when a statutory authority undertakes to develop land and frame housing scheme, it, while performing statutory duty renders service to the society in general and individual in particular. The entire approach of the learned Counsel for the development authority in emphasising that power exercised under a Statute could not be stretched to mean service proceeded on misconception. It is incorrect understanding of the statutory functions under a social legislation. A development authority while developing the land or framing a scheme for housing discharges statutory duty the purpose and objective of which is service to the citizens. As pointed out earlier the entire purpose of widening the definitions is to include in it not only day to day buying of goods by a common man but even to such activities which are otherwise not commercial but professional or service oriented in nature. The provisions in the Acts, namely, Lucknow Development Act, Delhi Development Act or Bangalore Development Act clearly provide for preparing plan, development of land, and framing of scheme etc. Therefore if such authority undertakes to construct building or allot houses or building sites to citizens of the State either as amenity or as benefit then it amounts to rendering of service and will be covered in the expression 'service made available to potential users'. A person who applies for allotment of a building site or for a flat constructed by the development authority or enters into an agreement with a builder or a contractor is a potential user and nature of transaction is covered in the expression 'service of any description'. It further indicates that the definition is not exhaustive. The inclusive clause succeeded in widening its scope but not exhausting the services which could be covered in earlier part. So any service except when it is free of charge or under a constraint of personal service is included in it.

Since housing activity is a service it was covered in the clause as it stood before 1993.

7. In Appeal. No 2954 filed by a builder it was urged that inclusion of 'housing construction' in Clause (o) and 'avail' in Clause (d) in 1993 would indicate that the Act as it stood prior to the amendment did not apply to hiring of services in respect of housing construction. learned Counsel submitted that in absence of any expression making the amendment retrospective it should be held to be prospective as it is settled that any law including amendments which materially affect the vested rights or duties or obligations in respect of past transactions should remain untouched. Reliance was placed on Jose Da Costa and Am, v. Bascora Sadasiva Sinai Narcornim and Ors. MANU/SC/0054/1975; State of Madhya Pradesh and Ors. v. Rameshwar Rathod MANU/SC/0323/1990 and Re Pulborough School Board Election Case (1891) 94 All ER 834. It was also argued that when definition of 'service' in Monopolies and Restrictive Trade Practices Act was amended in 1991 it was made retrospective. Therefore, in absence of use of similar expression in this Act it should be deemed to be prospective. True, the ordinance does not make the definition retrospective in operation. But it was not necessary. In fact it appears to have been added by way of abundant caution as housing construction being service was included even earlier. Apart from that what was the vested right of the contractor under the agreement to construct the defective house or to render deficient service? A legislation which is enacted to protect public interest from undesirable activities cannot be construed in such narrow manner as to frustrate its objective. Nor is there any merit in the submission that in absence of the word 'avail' in the definition of 'consumer' such activity could not be included in service. A perusal of the definition of 'service' as it stood prior to 1993 would indicate that the word 'facility' was already there. Therefore the legislature while amending the law in 1993 added the word in Clause (d) to dispel any doubt that consumer in the Act would mean a person who not only hires but avails of any facility for consideration. It in fact indicates that these words were added more to clarify than to add something new.

8. Having examined wide reach of the Act and jurisdiction of the Commission to entertain complaint not only against business or trading activity but even to service rendered by statutory and public authorities the stage is now set for determining if the Commission in exercise of its jurisdiction under the Act could award compensation and if such compensation could be for harassment and agony to a consumer. Both these aspects specially the latter are of vital significance in the present day context. Still more important issue is the liability of payment. That is should the society or the tax payer be burdened for oppressive and capricious act of the public officers or it be paid by those responsible for it. The administrative law of accountability of

public authorities for their arbitrary and even ultra vires actions has taken many strides. It is now accepted both by this Court and English courts that the State is liable to compensate for loss or injury suffered by a citizen due to arbitrary actions of its employees. In *State of Gujarat v. Memon Mahomed Haji Hasam*, AIR (1961) SC 1885 the order of the High Court directing payment of compensation for disposal of seized vehicles without waiting for the outcome of decision in appeal was upheld both on principle of bailee's, 'legal obligation to preserve the property intact and also the obligation to take reasonable care of it to return it in same condition in which it was seized' and also because the government was, 'bound to return the said property by reason of its statutory obligation or to pay its value if it had disabled itself from returning it either by its own act or by act of its agents and servants'. It was extended further even to bonafide action of the authorities if it was contrary to law in *Lala Bishambar Nath v. The Agra Nagar Mahapalika, Agra*, MANU/SC/0127/1973. It was held that where the authorities could not have taken any action against the dealer and their order was invalid, 'it is immaterial that the respondents had acted bonafide and in the interest of preservation of public health. Their motive may be good but their orders are illegal. They would accordingly be liable for any loss caused to the appellants by their action.' The theoretical concept that King can do no wrong has been abandoned in England itself and the State is now held responsible for tortuous act of its servants. The first Law Commission constituted after coming into force of the Constitution on liability of the State in Tort, observed that the old distinction between sovereign and non-sovereign functions should no longer be invoked to determine liability of the State. Friedmann observed,

It is now increasingly necessary to abandon the lingering fiction of a legally indivisible State, and of a feudal conception of the Crown, and to substitute for it the principle of legal liability where the State, either directly or through incorporated public authorities, engages in activities of a commercial, industrial or managerial character. The proper test is not an impracticable distinction between government and non-governmental functional, but the nature and form of the activity in question.

Even *M/s. Kasturi Lal Ralia Ram Jain v. State of Uttar Pradesh*, MANU/SC/0086/1964 did not provide any immunity for tortuous acts of public servants committed in discharge of statutory function if it was not referable to sovereign power. Since house construction or for that matter any service hired by a consumer or facility availed by him is not a sovereign function of the State the ratio of *Kasturi Lal* (supra) could not stand in way of the Commission awarding compensation. We respectfully agree with Mathew, J., in *Shyam Sunder v. State of Rajasthan*,

MANU/SC/0208/1974 that it is not necessary, 'to consider whether there is any rational dividing line between the so-called sovereign and proprietary and commercial functions for determining the liability of the State'. In any case the law has always maintained that the public authorities who are entrusted with statutory function cannot act negligently. As far back as 1878 the law was succinctly explained in *Geddis v. Proprietors of Bonn Reservoir*, (1878) 3 App. Cas. 430 thus,

I take it, without citing cases, that it is now thoroughly well established that no action will lie for doing that which the Legislature has authorised, if it be done without negligence, although it does occasion damage to anyone; but an action does lie for doing what the Legislature has authorised, if it be done negligently.

Under our Constitution sovereignty vests in the people. Every limb of the constitutional machinery is obliged to be people oriented. No functionary in exercise of statutory power can claim immunity, except to the extent protected by the Statute itself. Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour before authorities created under the Statute like the Commission or the courts entrusted with responsibility of maintaining the rule of law. Each hierarchy in the Act is empowered to entertain a complaint by the consumer for value of the goods or services and compensation. The word 'compensation' is again of very wide connotation. It has not been defined in the Act. According to dictionary it means, 'compensating or being compensated; thing given as recompense;'. In legal sense it may constitute actual loss or expected loss and may extend to physical, mental or even emotional suffering, insult or injury or loss. Therefore, when the Commission has been vested with the jurisdiction to award value of goods or services and compensation it has to be construed widely enabling the Commission to determine compensation for any loss or damage suffered by a consumer which in law is otherwise included in wide meaning of compensation. The provision in our opinion enables a consumer to claim and empowers the Commission to redress any injustice done to him. Any other construction would defeat the very purpose of the Act. The Commission or the forum in the Act is thus entitled to award not only value of the goods or services but also to compensate a consumer for injustice suffered by him.

9. Facts in Civil Appeal No. 6237 of 1990 may now be adverted as it is the only appeal in which the National Commission while exercising its appellate power under the Act not only affirmed the finding of State Commission directing the appellant to pay the value of deficiency in service but even directed to pay compensation for harassment and agony to the respondent. The Lucknow Development Authority with a view to ease the acute housing problem in the city of Lucknow undertook development of land and formed plots of different categories/sizes and

constructed dwelling units for people belonging to different income groups. After the Construction was complete the authority invited applications from persons desirous of purchasing plots or dwelling house. The respondent applied on the prescribed form for registration for allotment of a flat in the category of Middle Income Group (M.I.G.) in Gomti Nagar Scheme in Lucknow on cash down basis. Since the number of applicants was more, the authority decided to draw lots in which flat no. 11/75 in Vinay Khand-II was allotted to the respondent on 26th April 1988. He deposited a sum of Rs. 6132 on July 2, 1988 and a sum of Rs. 1,09,975 on July 29, 1988. Since the entire payment was made in July 1988 the flat was registered on 18th August 1988. Thereafter the appellant by a letter dated 23rd August 1988 directed its Executive Engineer-VII to hand over the possession of the flat to the respondent. This information was given to him on 30th November 1988, yet the flat was not delivered as the construction work was not complete. The respondent approached the authority but no steps were taken nor possession was handed over. Consequently he filed a complaint before the District Forum that even after payment of entire amount in respect of cash down scheme the appellant was not handing over possession nor they were completing the formalities and the work was still incomplete. The State Commission by its order dated 15th February 1990 directed the appellant to pay 12% annual simple interest upon the deposit made by the respondent for the period 1.1.89 to 15.2.90. The appellant was further directed to handover possession of the flat without delay after completing construction work upto June 1990. The Commission further directed that if it was not possible for the appellant to complete the construction then it should hand over possession of the flat to the respondent by 5th April 1990 after determining the deficiencies and the estimated cost of such deficient construction shall be refunded to the respondent latest by 20th April 1990. The appellant instead of complying with the order approached the National Commission and raised the question of jurisdiction. It was overruled. And the appeal was dismissed. But the cross appeal of the respondent was allowed and it was directed that since the architect of the appellant had estimated in October 1989 the cost of completing construction at Rs. 44615 the appellant shall pay the same to the respondent. The Commission further held that the action of the appellant amounted to harassment mental torture and agony of the respondent, therefore, it directed the appellant to pay a sum of Rs. 10,000 as compensation.

10. Who should pay the amount determined by the Commission for harassment and agony, the statutory authority or it should be realised from those who were responsible for it. Compensation as explained includes both the just equivalent for loss of goods or services and also for sufferance of injustice. For instance in Civil Appeal No... of 1993 arising out of S.L.P. (civil) No. 659 of 1991 the Commission directed the Bangalore Development Authority to pay Rs. 2,446 to the consumer for the expenses incurred by him

in getting the lease-cum-sale agreement registered as it was additional expenditure for alternative site allotted to him. No misfeasance was found. The moment the authority came to know of the mistake committed by it it took immediate action by allotting alternative site to the respondent. It was compensation for exact loss suffered by the respondent. It arose in due discharge of duties. For such acts or omissions the loss suffered has to be made good by the authority itself. But when the sufferance is due to malafide or oppressive or capricious acts etc. of a public servant, then the nature of liability changes. The Commission under the Act could determine such amount if in its opinion the consumer suffered injury to what is called misfeasance of the officers by the English courts. Even in England where award of exemplary or aggravated damages for insult etc. to a person has now been held to be punitive exception has carved out if the injury is due to, 'oppressive, arbitrary or unconstitutional action by servants of the government' (Salmond and Heuston on the Law of Torts). Misfeasance in public office is explained by Wade in his book on Administrative Law thus.

Even where there is no ministerial duty as above, and even where no recognised tort such as trespass, nuisance, or negligence is committed, public authorities or officers may be liable in damages for malicious, deliberate or injurious wrong-doing. There is thus a tort which has been called misfeasance in public office, and which includes malicious abuse of power, deliberate maladministration, and perhaps also other unlawful acts causing injury.

The jurisdiction and power of the courts to indemnify a citizen for injury suffered due to abuse of power by public authorities is founded as observed by Lord Hailsham in *Cassell and Co. Ltd. v. Broome and Anr.* (1972) AC 1027 on the principle that, 'an award of exemplary damages can serve a useful purpose in vindicating the strength of law'. An ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities. That is provided by the rule of law. It acts as a check an arbitrary and capricious exercise of power. In *Rookers v. Barnard and Ors.* (1964) AC 1129 it was observed by Lord Devlin, 'the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service'. A public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it. Compensation or damage as explained earlier may arise even when the officer discharges his duty honestly and bonafide. But when it arises due to arbitrary or capricious behaviour then it loses its individual character and assumes social significance. Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous. Crime and

corruption thrive and prosper in the society due to lack of public resistance. Nothing is more damaging than the feeling of helplessness. An ordinary citizen instead of complaining and fighting succumbs to the pressure of undesirable functioning in offices instead of standing against it. Therefore the award of compensation for harassment by public authorities not only compensates the individual, satisfies him personally but helps in curing social evil. It may result in improving the work culture and held in changing the outlook (sic) in his book 'Administrative Law' has observed that it is to the credit of public authorities that there are simply few reported English decisions on this form of malpractice, namely, misfeasance in public offices which includes malicious use of power, deliberate maladministration and perhaps also other unlawful acts causing injury. One of the reasons for this appears to be development of law which, apart, from other factors succeeded in keeping a salutary check on the functioning in the government or, semi-government offices by holding the officers personally responsible for their capricious or even ultra vires action resulting in injury or loss to a citizen by awarded damages against them. Various decisions rendered from time to time have been referred by Wade on Misfeasance by Public Authorities. We shall refer to some of them to demonstrate how necessary it is for our society. In *Ashby v. White* (1703) 2 Ld. Raym. 938 the House of Lords invoked the principle of *ubi jus ibi remedium* in favour of an elector who was wrongfully prevented from voting and decreed the claim of damages. The ratio of this decision has been applied and extended by English courts in various situations. In *Roncarelli v. Duplessis* (1959) 16 DLR (2d) 689 the Supreme Court of Canada awarded damages against the Prime Minister of Quebec personally for directing the cancellation of a restaurant-owner's liquor licence solely because the licensee provided bail on many occasions for fellow members of the sect of Jehovah's Witnesses, which was then unpopular with the authorities. It was observed that 'what could be more malicious than to punish this licensee for having done what he had an absolute right to do in a matter utterly irrelevant to the Alcoholic Liquor Act? Malice in the proper sense is simply acting for a reason and purpose knowingly foreign to the administration, to which was added here the element of intentional punishment by what was virtually vocation outlawry.' In *Smith v. East Elloe Rural District Council* (1956) AC 736 the House of Lords held that an action for damages might proceed against the clerk of a local authority personally on the ground that he had procured the compulsory purchase of the plaintiffs property wrongfully and in bad faith. In *Perrington v. Thomson* (1959) VR 236 the Supreme Court of Victoria awarded damages for exercising a power the authorities knew they did not possess. A licensing inspector and a police officer ordered the plaintiff to close his hotel and cease supplying liquor. He obeyed and filed a suit for the resultant loss. The Court observed, 'Now I take it to be perfectly clear, that if a public officer abuses his office, either by an act of omission or commission, and the consequence of that is an injury to an individual, an action may be maintained against such public

officer'. In *Wood v. Blaire*, *The Times*, 3, 4, 5 July 1957 a dairy farmer's manageress contracted typhoid fever and the local authority served notices forbidding him to sell milk, except under certain conditions. These notices were void, and the farmer was awarded damages on the ground that the notices were invalid and that the plaintiff was entitled to damages of misfeasance.' This was done even though the finding was that the officers had acted from the best motives.

11. Today the issue thus is not only of award of compensation but who should bear the brunt. The concept of authority and power exercised by public functionaries has many dimensions. It has undergone tremendous change with passage of time and change in socio-economic outlook. The authority empowered to function under a Statute while exercising power discharges public duty. It has to act to subserve general welfare and common good. In discharging this duty honestly and bonafide loss may accrue to any person. And he may claim compensation which may in circumstances be payable. But where the duty is performed capriciously or the exercise of power results in harassment and agony then the responsibility to pay the loss determined should be whose? In a modern society no authority can arrogate to itself the power to act in a manner which is arbitrary. It is unfortunate that matters which require immediate attention linger on and the man in the street is made to run from one end to other with no result. The culture of window clearance appears to be totally dead. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match the inaction in public oriented departments gets frustrated and it erodes the credibility in the system. Public administration, no doubt involves a vast amount of administrative discretion which shields the action of administrative authority. But where it is found that exercise of discretion was malafide and the complainant is entitled to compensation for mental and physical harassment then the officer can no more claim to be under protective cover. When a citizen seeks to recover compensation from a public authority in respect of injuries suffered by him for capricious exercise of power and the National Commission finds it duly proved then it has a statutory obligation to award the same? It was never more necessary than today when even social obligations are regulated by grant of statutory powers. The test of permissive form of grant are over. It is now imperative and implicit in the exercise of power that it should be for the sake of society. When the Court directs payment of damages or compensation against the State the ultimate sufferer is the common man. It is the tax payers' money which is paid for inaction of those who are entrusted under the Act to discharge their duties in accordance with law. It is, therefore, necessary that the Commission when it is satisfied that a complainant is entitled to compensation for harassment or mental agony or oppression, which finding of course should be recorded carefully on material and convincing circumstances and not lightly, then it should further direct the department concerned to

pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behaviour by dividing it proportionately where there are more than one functionaries.

12. For these reasons all the appeals are dismissed. In Appeal No. 6237 of 1990 it is further directed that the Lucknow Development Authority shall fix the responsibility of the officers who were responsible for causing harassment and agony to the respondent within a period of six months from the a copy of this order is produced or served on it. The amount of compensation of Rs. 10,000 awarded by the Commission for mental harassment shall be recovered from such officers proportionately from their salary. Compliance of this order shall be reported to this Court within one month after expiry of the period granted for determining the responsibility. The Registrar General is directed to send a copy of this order to the Secretary, Lucknow Development Authority immediately.

13. In Appeal Nos. 6237 of 1990, 5257 of 1990, 3963 of 1989 and 2954-59 of 1992 the appellant shall pay costs to the contesting respondents which is assessed at Rs. 5,000 in each case. Since the respondents have not put in appearance in other appeals there shall be no order as to costs.

August 26, 2008

Alok Kumar
Secretary CERC & FOR
CERC, Core-3, 6th & 7th floor,
SCOPE Complex, Lodhi Road,
New Delhi-110003

Dear Sir,

1. This is in reference to your letter dated 5.8.2008 bearing no. 15/4(4)/2008-FOR/CERC whereby you had sought a legal opinion from us. The issue relates to the right of a licensee to be represented by a legal practitioner in relation to any matters before the Consumer Grievance Redressal Forum (CGRF) established under sub-section (5) of Section 42 and also before the Ombudsman under Sub-section (6) of Section 42 of the Electricity Act 2003, specifically where the aggrieved consumer has not availed the assistance of a legal practitioner in advancing his case.
2. An important question that arises as a necessary corollary of the present issue is whether such a restriction imposed on the licensees to engage a legal practitioner would amount to an interference with the right of Advocates to practice in such forums under section 14 (1) (a), (b) and (c) of the Indian Bar Council Act, 1926 and also Section 30 of the Advocates Act, 1961.

In the case of *Aeltemesh Rein, Advocate, Supreme Court Vs. Union of India & Ors. reported in 1988 (4) SCC 54*, the Hon'ble Supreme Court while dealing with the right of Advocates to practice before various courts, tribunals and other authorities, made the following observations which is relevant for the present discussion:

"We have traveled a long distance from the days when it was considered that the appearance of a lawyer on one side would adversely affect the interest of the parties on the other side. The Legal Aid and Advice Boards, which are functioning in different States, can now be approached by people belonging to weaker sections, such as, Scheduled Castes, Scheduled Tribes, women, Labourers etc. for legal assistance and for providing the services of competent lawyers to appear on their behalf before the Courts and Tribunal in which they have cases".

In view of the increasing number of legal aid committees and cells in every State, the disadvantageous position faced earlier by litigants with limited resources has lost significance, which is reflected in the observations of the Supreme Court.

3. The redressal proceeding before the CGRF and Ombudsman under Section 42 (5), (6) & (7) of the Electricity Act comprises broadly of the following stages:-
 - Any consumer having a grievance against the concerned distribution licensee files a representation before the CGRF;
 - Reply is filed by the licensee to the representation filed by the consumer.
 - The proceedings before the CGRF are usually conciliatory in nature where the CGRF tries to settle the matter between the licensee and the consumer through conciliation. However, where no conciliation is possible, the CGRF passes orders after examining the comments from the parties and after conducting such enquiry or local inspection as may be considered necessary and after affording reasonable opportunity of hearing to the parties and to present respective evidence in favour of their case;

- Any consumer aggrieved by non-redressal of his grievance before the CGRF can make a representation for redressal of his grievance to the Ombudsman appointed or designated by the State Commission;
 - Ombudsman after completing the enquiry of the respective contentions of the parties and the evidence on record and documents, dispose of the representation of the consumer by a reasoned order on all issues raised by the consumer.
4. In our view, the Electricity Act, 2003 provides for the establishment of CGRF as an internal self correcting mechanism within the distribution licensee's own set-up to redress the grievances of the Consumers mostly through the process of amicable settlement and conciliation. To that extent, such proceedings before the CGRF may not be adversarial in nature, and in fact may not even be proceedings with any legal connotation. Accordingly, in our view it will be legally tenable to provide by guidelines/ regulations framed by the State Commission, that in respect of the resolution of the grievances of Consumers through the mechanism of CGRF, both parties (i.e. the Consumer and the distribution licensee) shall not be represented by lawyers. However, the position will be different where the guidelines/ regulations framed by the State Commission provides for a structured adjudicating procedure to be followed by the CGRF. In such a case, the restriction as to appointment of the advocate/ legal practitioner by parties will have to be viewed in light of the specific guidelines/ regulations framed by the State Commission.
5. The proceedings before the Ombudsman arise only in such cases where the consumer is aggrieved by "non- redressal" of his grievance before the CGRF. The Ombudsman decides the respective contentions of the parties after examining the conflicting stands of the consumer and the distribution licensee and the documents in relation thereto. In appropriate cases however, effort may be undertaken by the Ombudsman to settle the issues between the parties.
6. In our view the proceedings before the Ombudsman are likely to be adversarial in nature and may also involve the recording of evidence between the parties for rendering decision on the dispute, any restriction imposed on the utilities for engaging lawyers would be contrary to the provisions of the Advocates Act, and susceptible to challenge before court of appropriate jurisdiction.
7. Section 30 of the Advocates Act entails upon the lawyer the right to carry on its practice at various Courts, Tribunals and other forums. However, the said section has not yet been brought in to force. Consequently, at present, the right of an advocate registered on the roles of the Bar Council is governed by Section 14(1) (a), (b) & (c) of the Indian Bar Council Act, 1926¹, which is quoted herein for ready reference:
- "14. Right of advocates to practise.- (1) An advocate shall be entitled as of right to practise--*
- (a) subject to the provisions of sub-section (4) of section 9, in the High Court of which he is an advocate, and*
 - (b) save as otherwise provided by sub-section (2) or by or under any other law for the time being in force in any other Court 2*** and before any other Tribunal or person legally authorized to take evidence, and*
 - (c) before any other authority or person before whom such advocate is by or under the law for the time being in force entitled to practise.*
8. An advocate has a right to appear before any court, or any tribunal or authority legally authorized to take evidence. Such right of practice of the Advocates cannot be restricted/ denied by any rules or regulations framed by the Appropriate Commission unless the parent act, i.e., Electricity Act,

¹ (1985) 1 SCC 479 – Lingappa Pochanna Appelwar vs State of Maharashtra.

2003 has restricted the participation of Advocates in proceedings before Ombudsman.² The law is well settled that the rules or regulations framed under a statute should not violate the provisions of other Acts. The validity of delegated legislation can be challenged on the ground that it is contrary to provisions of any act other than the parent act.³ In the absence of a specific stipulation in the Electricity Act, 2003 restricting the right of the lawyers to appear before the Ombudsman, any regulations framed by the Appropriate Commission in exercise of its power under Section 181(2)(r), (s) read with Section 42(5), (6) and & (7) cannot impose such restriction on the practice of lawyers before the Ombudsman. Any restriction imposed by the Appropriate Commission on the right of a licensee to appoint/ engage any lawyer or avail legal assistance in relations to matters adversarial in nature involving the recording of evidence before the Ombudsman amounts in effect to a restriction on the lawyers to appear before the Ombudsman in such matters or class of matters. Such a restriction amounts to a direct interference with the right of the lawyers to practice in the forums as prescribed in Section 14(1)(a), (b), (c) of the Indian Bar Council Act, 1926. What cannot be achieved directly cannot be achieved indirectly. Such regulation would be contrary to the provisions of the Advocates Act and the Indian Bar Council Act, and therefore liable to be struck down by a Court of competent jurisdiction.

9. The Appropriate Commission while discharging its duties is guided by the interests of consumers. Having regard to the fact that consumers in certain cases are unable to avail appropriate legal assistance for pursuing their cases, the Commission may find it appropriate to constitute Consumer Legal Assistance Cells consisting of lawyers, to provide required legal advice, support and assistance to consumers, wherever necessary. Such unit would be funded by the utilities. Further, the extent to which legal expenses of a licensee are incurred towards litigation against any consumer as an opposite party may be disallowed in the ARR of such licensee. This would be an equitable and justifiable approach, putting the utilities to bear their own legal expenses in such matters.

Please feel free to revert should you require any clarifications.

With Best Regards

HEMANT SAHAI ASSOCIATES

² Please see Section 36(4) of the Industrial Disputes Act, 1947 which excludes the participation of lawyers in Labour Courts, Tribunal, etc. Also see Section 13 of the Family Courts Act, 1984 having a similar clause.

³ (1985) 1 SCC 641 – Indian Express Newspapers vs Union of India
(2006) 4 SCC 327 – Kerala Samasthana Chethu Thozhilali vs State of Kerala

MODEL CONSUMER CHARTER

CONSUMER RIGHTS STATEMENT:

This Consumers' Rights Statement is a synopsis of rights available under the Electricity Act 2003 to consumers of electricity, with the twin objectives of enabling consumers to protect themselves by creating an awareness regarding the rights available and the service as well as the level of quality that consumers may reasonably expect from the electricity distribution companies in their area of supply.

I. RIGHT TO KNOW:

1. Consumers have the following basic rights to have access to information on matters related to electricity supply:
 - (i) The conditions and procedure for getting new connection, disconnection, reconnection, change in load/name/tariff category.
 - (ii) Standards of performance regarding quality to be maintained and services to be provided by Distribution Licensees.
 - (iii) The code of practice on payment of bills.
 - (iv) Complaint handling procedures and grievance redressal.
 - (v) Tariff schedule and other schedule of Charges approved by the State Electricity Regulatory Commission.
 - (vi) Correctness of meter.
 - (vii) To know and choose the electric service provider upon fulfilling certain eligibility conditions Under Open Access and implementation of retail competition.

2. It is the duty of the distribution licensee to display the above documents in abridged form in bill collection centres and in such other places (public places through hoardings) as to draw the attention of general public. Consumers have the right to demand copies of the above documents on payment of reproduction charges (Consumer Right Statement: will be free of cost), from consumer service centers, division office, circle office, section office, ward office of the electricity distribution company. Consumers also have the right to access above documents from the website of the electricity distribution company in order to download the electronic media version of the above documents.

II. PROCEDURE FOR GETTING NEW CONNECTION:

Consumers have several rights, namely:

1. To receive application form(s) and format of the agreement to be executed for obtaining new connections at prescribed fee from any of the offices or from the website of the electricity distribution company.
2. To know the status of their application and information about the reasons of non-disposal or rejection thereof, personal hearing, appeal and removal of deficiencies.
3. To receive a copy of the agreement after the same has been executed for obtaining a new connection.
4. To receive prior intimation regarding the visit/ entry into their premises by an authorized representative of the electricity distribution company.
5. To demand proof of identity from such representatives of the electricity distribution company visiting their premises.
6. To know the charges that the applicant / consumer has to pay to get the supply/new connection as per Schedule of Charges approved by SERC.
7. To receive supply within the time.

III. SECURITY DEPOSIT:

1. It is the responsibility of consumer to deposit security by way of cash/cheque/demand draft.
2. On payment of security deposit in cash (including cheque / demand draft), consumers have the right to receive interest, provided that the deposit amount (in cash) is Rs. 50 or more.
3. Excess amount deposited by consumer towards Security is refundable to the consumers with interest.

IV. METERS:

1. Consumers can purchase the meter from the electricity distribution company or any supplier of meters as per the specifications of the Central Electricity Authority.
2. Consumers have the right to get the meter tested for accuracy upon making a request to the electricity distribution company and upon payment of testing charges. Besides the testing facility of the electricity distribution company, consumers have the right to get the meter tested at such facility as may be approved by the SERC. Consumers have the right to receive a copy of the meter test report, which in any case should be provided within two months from the date of request for testing.

V. BILLING:

Consumers have the right to:

1. Receive bills with such detailed particulars (including due date for payment) as specified in the Electricity Supply Code notified by the SERC at the intervals of at least once in every two months in respect of consumers in town and cities and at least once in three months in respect of all other consumers.
2. A duplicate copy of the bill may also be demanded in case of loss of the original bill and to know the amount of the bill (including due date for payment) on the spot from the office of the electricity distribution company designated for the purpose. Consumers also have the right to report non-receipt or loss of bill over telephone and to request for the amount of the bill (including due date for payment) after providing identity verification.
3. Demand from the electricity distribution company an explanation of the basis of computation of the bill.

VI. RIGHT TO RECEIVE NOTICE AND DUE PROCESS PRIOR TO DISCONNECTION AND PROCEDURE OF RECONNECTION:

Consumers have a right:

1. To receive minimum fifteen clear days' notice in writing before disconnection under default of payment under section 56 of the Act.
2. To pay under protest an amount equal to the sum claimed from him or the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during preceding six months, whichever is less, pending disposal of any dispute between him and the Distribution Licensee.
3. To receive supply after removing cause(s) of the disconnection by the consumer and obtaining the reconnection order by paying the amounts due within a period stipulated in Standards of Performance Regulations.
4. Right of prior notice is not available in cases where the consumer's installation poses a danger to the health or safety of other consumers or electricity supplier's employees or the public, and in cases where the consumer is indulging in theft or unauthorized use of electricity.

VII. STANDARDS OF PERFORMANCE OF ELECTRICITY DISTRIBUTION COMPANIES:

Certain standards of performance of the electricity distribution companies are guaranteed under the Standards of Performance regulations notified by the SERC. Consumers have a right to receive service at such standards.

VIII. CONSUMER SERVICE CENTRE:

Consumers have a right to visit personally or to communicate with the help of any medium of communication to consumer service centres established by the electricity distribution companies to get information or to lodge the complaint. The consumer service centres will provide essential services including facility for payment of bills.

IX. COMPLAINT HANDLING AND GRIEVANCE REDRESSAL:

Consumers have the right to have their grievances redressed in accordance with the regulations notified by the SERC under the provisions of Section 42(5) and (7) of the EA 2003. A synopsis of the rights available to consumers is provided below:

1. To demand from cash collection centres and offices of the electricity distribution company copies of the rules and procedures for redressal of grievances made by the electricity distribution company as well as the regulations notified by the SERC under the provisions of Section 42(5) and (7) of the EA 2003, by paying photocopying charges.
2. To know from the electricity distribution company —
 - 2.1. The manner and the form in which a grievance may be made to the Forum;
 - 2.2. The assistance available from the Forums.

X. DISPLAY ON THE ELECTRICITY BILL:

1. Website address of the Distribution Licensee.
2. The postal and street address, the phone and fax number and, if available, electronic mail address of the Consumer Grievance Redressal Forums (“Forums”), Electricity Ombudsman and Consumer service centres.
3. Summary of Standard of Performance shall be mandatory printed in vernacular language on the back side of the electricity bill.