

BEFORE THE APPELLATE TRIBUNAL FOR ELECTRCITY
(APPELLATE JURISDICTION)

APPEAL NO. 155 OF 2010 AND
APPEAL No. 156 of 2010

Dated : 11TH JULY, 2011

Coram; Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr. Justice P.S. Datta, Judicial member

APPEAL NO. 155 OF 2010

In the matter:

K. Raheja Corporation Pvt.Ltd.,
Plot No. C-30, Block G, Opp. SIDBI,
Bandra Kurla Complex, Bandra(East),
Mumbai 400 051. ...Appellant (s)

Versus

1. Maharashtra Electricity Regulatory Commission,
13th floor, World Trade Centre,
Cuff Parade,
MUMBAI 400 005.
2. Maharashtra State Electricity Distribution Co.Ltd.,
5th floor, Prakashgad, Bandra (East),
Mumbai- 400 051. Respondent(s)

APPEAL NO. 156 OF 2010

In the matter of :

M/s. Maharatta Chamber of Commerce Industry &
Agriculture,
505, A Wing, 5th floor, MCCIA Trade Tower,
ICC Complex , 403- A, Senapati Bapat Road,
PUNE 411016.
Appellant(s)

Versus

1. Maharashtra Electricity Regulatory Commission,
13th floor, World Trade Centre,
Cuff Parade,
MUMBAI 400 005.
2. Maharashtra State Electricity Distribution Co.Ltd.,
5th floor, Prakashgad, Bandra (East),
Mumbai- 400 051. Respondent(s)

Counsel for the Appellant : Mr. Abhay Nevagi
Ms. Sampada Narang

Counsel for the Respondent: Mr. Vikas Singh, Sr. Advocate
Mr. Abhishek Mitra
Mr. Buddy A Ranganadhan
Mr. Ravi Prakash &
Mr. Varun Pathak
Mr. Dev Dutt Kamat

JUDGMENT

HON'BLE MR. JUSTICE P.S. DATTA, JUDICIAL MEMBER

1. These two appeals relate to discontinuation of what is called single point supply. The question of discontinuation of single point supply arose way back in the year 2006 when it was reported in the print media that owners of large buildings/complexes being HT industrial consumers were supplying electricity to innumerable occupiers of such buildings/complexes unauthorisedly and arbitrarily billing such occupants without installation of separate meters for such occupants. It is in this context that the concept of discontinuation of single point supply has emerged.
2. While determining ARR and tariff of a licensee for FY 2005-2006 and 2006-2007 the Commission by order dated 3.10.2006 in case No. 25 of 2005 and case No. 53 of 2005 for the first time directed that HT industrial and commercial category consumers undertaking sub-distribution to mixed loads would have to either operate through a franchisee route or take individual connections under relevant category. Again, in case No. 26 of 2009 the Commission reiterated its earlier order by the order dated 24.5.2010 which we will advert to as we proceed gradually in this order.

3. Maharashtra Chamber of Commerce, Industry & Agriculture, the appellant in appeal no. 156 of 2010 filed case no. 75 of 2007 seeking clarifications from the Commission of its previous order dated 03.10.2006 passed in case no. 25 of 2005 and 53 of 2005 in the matter of ARR petition of M/s. Reliance Energy Ltd. for FY 2005-06 & ARR and tariff for FY 2006-07 regarding single point supply to commercial building/industrial complexes for mixed load. The said appellant in that petition no. 75 of 2007 prayed for answers on the following:-

“

- i) Whether a common transformer for all or a separate transformer for each HT consumer within same premises need to be provided,*
- ii) Whether each transmission OA consumer needs a separate line running up to Transmission System or a common line for a group of Transmission OA consumers in the same premises can be planned,*
- iii) Can NON – OA consumers / persons get their supply through / on OA transmission connection planned by the owner of the premises for his requirement in following cases:-*
 - a) Distribution Licensee has not laid distribution back-bone,*
 - b) Unable to supply required power,*
 - c) Unable to supply required power in allowed time under the Act*
 - d) In case Standby DG sets for ensuring un-interrupted power is planned by the owner of the above premises for all the tenants / leave – licensees whether the complex in its capacity as generator can have single point supply.*

B. To allow open access to all consumers in Commercial Building / Industrial Complexes with mixed load on single point supply if required, in case Licensee does not permit Franchisee route. Alternately and otherwise owner / manager of the premises i.e. commercial building / industrial complex having mixed load be treated as limited trader for supply to members on his premises.”

4. The Commission heard the matter and passed the following order on 1st June, 2010 in petition No. 75 of 2007:

“32. As regards the clarifications sought by the Petitioner in its Petition, the views of the Commission are as under:

A-i) Whether a common transformer for all or a separate transformer for each HT consumer within same premises need to be provided?

The Commission is of the view that providing power supply to individual HT consumers located in a single building through separate transformer is not practicable due to space constraint and hence, directs distribution licensees to provide power supply to such entities at single point through franchise route. However, in case HT consumers located in a building apply for individual power supply then the space requirement of transformer for providing such power supply shall be governed by the Regulation 5.5 and 5.6 of MERC (Electricity Supply Code and Other Conditions of Supply) Regulation 2005 which reads as under:

“5.5 Where, in the opinion of the Distribution Licensee, the provision of supply requires installation of a distribution transformer within the applicant’s premises, the applicant shall make available to the Distribution Licensee, by way of lease, for the period for which supply is given to the premises, a suitable piece of land or a suitable room within such premises for the distribution transformer:

Provided that the terms and conditions for such lease of land or room shall be mutually agreed between the Distribution Licensee and the applicant having regard to prevailing market rates:

.....
.....

5.6 Notwithstanding anything contained in Regulation 5.5, where the provision of land or room is required under the Development Control Rules of the local authority or by any appropriate authority of the State Government, the terms and conditions for use of such land or room by the Distribution Licensee shall be as determined under the said Rules or by the said authority.”

A-ii) Whether each transmission OA consumer need a separate line running up to Transmission System or a common line for a group of Transmission OA consumers in the same premises can be planned?

Regulation 4.2 of MERC (Transmission Open Access) Regulations 2005, and Regulation 3 & 15 of MERC (Distribution Open Access) Regulations 2005 specify the

modality for seeking open access to the transmission and distribution systems of the licensees. As per the views and suggestions received from the Working Group, subject to fulfilment of the eligibility to seek open access under the Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations, 2005, it is technically feasible to give one OA line for many consumers in the same plot/area and hence, no duplication of network is needed as long as sharing of wire network is considered for the OA purpose. As it is obligatory for distribution licensee to give non-discriminatory access to OA consumers, OA consumers have to pay only the charges as decided by the Commission for utilising distribution system for the OA purpose.

A-iii) Can NON – OA consumers / persons get their supply through / on OA transmission connection planned by the owner of the premises for his requirement in following cases:-

- a) Distribution Licensee has not laid distribution backbone,***
- b) Unable to supply required power,***
- c) Unable to supply required power in allowed time under the Act?***

The Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations, 2005 specifies the eligibility to seek open access and accordingly so far as eligibility criterion is satisfied a consumer of a Distribution Licensee shall be eligible for open access to the distribution system of such Distribution Licensee for obtaining supply of electricity from a Generating Company or from a Licensee other than such Distribution Licensee. Accordingly, at the present Contract Demand of a consumer must be not less

than 1 MVA to seek open access. Thus, in principle, the clarification raised by the Petitioner is answered in the negative because to allow NON – OA consumers / persons to get their supply through / on OA transmission connection planned by the owner of the premises would be to violate the Distribution Open Access Regulations mentioned above.

A-iv) In case Standby DG sets for ensuring uninterrupted power is planned by the owner of the above premises for all the tenants / leave – licensees whether the complex in its capacity as generator can have single point supply?

Yes, provided they are covered by a franchisee agreement common to all the beneficiaries.

B. To allow open access to all consumers in commercial Building / Industrial Complexes with mixed load on single point supply if required, in case Licensee does not permit Franchisee route. Alternately and otherwise owner / manager of the premises i.e. commercial building / industrial complex having mixed load be treated as limited trader for supply to members on his premises.

In view of the dispensations given in this order and the Commission's order dated May 24, 2010 in the matter of MSEDCL's Petition for In-principle approval of MoU route for selection of Distribution Franchisee (Case No.62 of 2009) the licensee cannot refuse to appoint / enter into franchisee agreement. Accordingly, with the above observations and necessary directions, the Commission disposes of the Petition in Case No. 75 of 2007."

5. These two appeals one filed by K. Raheja Corporation Pvt. Ltd. (Appeal No. 155 of 2010) and the other by Mahratta

Chamber of Commerce, Industry & Agriculture (Appeal No. 156 of 2010) are directed against the order dated 01.06.2010 passed by the Maharashtra Electricity Regulatory Commission, respondent no.1 herein in case no. 75 of 2007 and they are being disposed of by this common judgment and order in view of the question arising in both is whether the order of the Commission abolishing single point supply and directing operation instead through a franchise route or through individual connection by the consumers is justifiable or not.

6. Mahratta Chamber of Commerce, Industry & Agriculture (for short, 'MCCIA') preferred Appeal No. 156 of 2010 to urge the following:-

a) In the order dated 03.10.2006 disposing of the tariff petition and ARR for FY 2005-06 and 2006-07 whereby the Commission directed that all HT industrial and commercial category consumers undertaking sub-distribution to mixed loads from a single point supply shall within six months from the date of that order have to operate either through a franchise route or take individual connection there was no discussion at all in details and no objections were called for and the order was passed upon the tariff petition of one licensee and was followed in tariff petition of other licensees without examining technical/practical feasibility or legal aspects.

- b) Consequent upon discontinuation of single point supply, the Commission did not amend the Standard of Performance as well as related Regulations because the Standard of Performance, 2005 has made it mandatory for every consumer having 186 Hp connected load to apply for separate transformer, metering kiosk, HT transformer, utility panel, etc.
- c) Even after the order was passed, the respondent no.2 Maharashtra Electricity Distribution Company Ltd., continued to supply under single point supply and although in the year 2005, the Commission ordered the utilities to frame regulations for supply through franchisee model the respondent no.2 did not frame any regulations. The Commission took cognizance of the fact that a lot of clarity was required in respect of various issues involving single point supply. The Commission directed that a working group would be constituted consisting of one representative of each distribution licensee which was to submit suggestions on how HT consumers in a commercial building can be supplied through a common transformer and during hearing the respondent no.2 admitted that it was executing tripartite agreement with multiple consumers availing themselves of supply through single transformer. The Commission observed in its order dated 20.12.2007 as follows:-

“The Commission observed that considering the necessity of supplying HT consumers in single point

(separate HT transformer) to ensure the applicability of HT tariff, the existing regulations may need to be accordingly modified. Various issues need to be considered as a whole.”

- d) An interim order was passed by the Commission on 26.03.2008 upon the application of the appellant containing additional information and submissions restraining all distribution licensees from disconnecting supply to consumers availing themselves of the single point supply until final disposal of the case no. 75 of 2007. The Commission observed as follows:-

“7. Without going into the merits, the Commission is of the finding that grave prejudice would be caused if MSEDCL (followed by other distribution licensees consequently) were to disconnect power supply to hundreds of HT Industrial and Commercial category consumers who have installed sub-meters to give supply to different individuals, at the time the petition as filed on November 28, 2007, is subjudice. The Petitioners who have been pro-active in the past before the Commission to represent the interests of its members that are consumers of distribution licensees, cannot be questioned on the basis of locus standi. The Petitioners have raised such issues in their Petition that with the help of the working group of the distribution licensees would culminate into practical solutions to the problem of such supply effected by HT Industrial and Commercial category consumer throughout

in several areas of supply of the distribution licensees in the State of Maharashtra.

8. In light of the matter being sub-judice, the Commission is inclined to pass the present interim order restraining all distribution licensees from disconnecting power supply to those of its consumers who need to be brought under the regulatory ambit of the aforesaid direction. Accordingly, all distribution licensees are hereby directed that they shall not disconnect power supply to such of their consumers as aforesaid, until further orders.”

7. The appellants came to be more elaborative to say that the order impugned dated 01.06.2010, did not at all clarify the points raised by the appellants and according to the appellants, they are as follows:

a) The Commission did not define the status of a single point consumer after the passing of the order of disconnection of single point supply on 03.10.2006 till the time a franchisee agreement is entered into because sub-metering cannot be termed as sale of electricity.

b) The order impugned is silent on the report of the working group and objections filed thereon by the appellants. All the related and relevant issues were left undecided.

- c) The Commission should have clarified that sub-metering and sale of electricity to the occupants by consumer having single point supply does not amount to sale of electricity or unauthorized use.
- d) The Commission failed to clarify as to whether the Mall / Multiplex / Commercial Complex owners who are supplying electricity through sub-metering can levy any additional amount to recover the cost of installation.
- e) The Commission failed to note that the respondent no.2 has not framed regulations for franchisee model from the year 2005 when single point supply was discontinued. The impugned order is silent about the guidelines regarding franchisee agreement.
- f) Since the distribution licensees are required to enter into franchisee agreement with single point consumers either through MoU route or through competitive bidding, the Commission should have defined the status of the existing proceedings either before the Assessment Officer under Section 126 or the Appellate Authority under Section 127 in respect of the assessment made on consumers availing single point supply.
- g) The Commission observed that no duplication of network was needed as long as sharing of wire network was considered for open access purposes. The order also says that open access consumer has to

pay only the charges as decided by the Commission for utilizing the distribution system for open access system. The Commission did not spell out whether its order impugned will prevail or the earlier Standard of Performance 2005 and regulations will prevail.

- h) The Commission has not clarified whether the owner can charge to the occupants of the commercial complex towards the power supplied through DG Set.
- i) The order is silent as to whether a new consumer who wants to avail himself of single point supply in a complex under construction can avail himself of the supply as the construction may take more than a year.
- j) The impugned order is silent on interim protection.

8. The other appellant, namely, K. Raheja Corporation Pvt. Ltd. (Appeal No. 155 of 2010) contends as follows:

- a) Commercial towers, multiplexes, malls, IT parks, old commercial buildings including World Trade Centre draw power at single point supply. Then the power goes to respective consumer/occupant/tenant/licensee/lessee. The owner of the premises collects the consumption charges from the respective consumers, and common area electricity consumption are charged on the basis of some formula which may be different in every such shopping centre/multiplex/ mall etc. The supply of such nature is named as single point supply.

- b) Respondent no.2 did not frame any regulations for supply of electricity to the consumers through franchisee route and continued to supply electricity through single point supply to Malls/shopping centre/multiplex etc. knowing well that there will be sub-metering even after the order was passed.
- c) The appellants time and again placed on record the necessity of continuation of single point supply to multi-tenanted buildings/IT parks etc. There was rapid development of Malls and complexes in terms of size, horizontally as well as vertically.
- d) The Regulatory Commissions/Distribution Licensees of the States of Tamil Nadu, Punjab, Rajasthan, Uttar Pradesh, Uttarakhand, Himachal Pradesh and Manipur have allowed single point supply and sub-distribution to individual consumers/tenants/occupants/licensee without the need of franchisee route.
- e) An owner/operator of a mall may not procure electricity for his own use but is still a consumer as defined in Section 2 (15) of the Electricity Act, 2003. The consumer has the option to procure electricity from any third party other than the distribution licensee of his area. Operating through franchisee route will restrict /limit the right of such a consumer. Regulation 3 of the

MERC (Distribution Open Access) Regulations, 2005 is pointer to this fact.

f) The Commission did not clarify all the matters raised before it in the impugned order.

9. The respondent no.2 filed a counter affidavit denying the averments of the appellants to be true and contends as follows:-

a) The appellants filed clarificatory petition before the Commission seeking for clarification of the order of the Commission dated 03.10.2006 on certain points in the matter of discontinuation of single point supply, as such in clarificatory petition no dispensation in the form of any relief was prayed for, or was available.

b) The contention of the appellants that the directives in the tariff orders dated 03.10.2006 and 20.10.2006 were passed without hearing the affected consumers is not sustainable. Moreover, the Commission's order dated 03.10.2006 was directed against errant consumers to ensure compliance with the provisions of the Act. Also, the Commission provided all clarifications as were sought for.

c) Commercial/residential complexes and buildings receive single point supply in individual name. Therefore, sub-distribution or sub-metering is done by

such consumer on its own which is completely illegal. Once this is declared illegal, the consumers are required to seek individual connections in their own names.

- d) Only a few entities are carrying on with this illegal activity and many of them have already paid the penalties under Section 126 of the Act. Most other entities have actually taken individual connections for each individual tenement and it is not correct to say that innumerable consumers are affected.
- e) The discretion to appoint distribution franchisee is vested in the distribution licensee who may not be compelled to grant franchisee to any particular individual and this point has been made clear in MERC's order in case no. 62 of 2009.
- f) In the order dated 20.10.2006, the Commission did not direct the MSEDCL to frame regulation for supply through franchisee model. The agreements referred to by the appellant are for use of the transformer and have no bearing with the subsequent illegal metering. If the appellant was aggrieved by the alleged non-framing of regulations, it could have sought specific directions but it deliberately chose not to do so and is now assailing the impugned order on the frivolous ground that the clarifications issued were not adequate.

- g) The issue of assessment in respect of Sai Erectors is a proceeding under Section 126 of the Act and is outside the domain of the Commission and of this Tribunal.
- h) The whole intention of the appellants is to prolong the motivated litigation in the vested interest of a member. The appellant MCCIA has provided no details as to its members including those who are allegedly affected by the order.
- i) The Tribunal cannot be asked to decide on some hypothetical issues which are not *lis*.
- j) The interim order of the Commission dated 26.03.2008 did not and in fact could not have restrained the respondent no.2 from carrying out the assessment under Section 126.
- k) The Commission while dismissing the case no.05 of 2009 by order dated 17.08.2009 wherein one M/s. Gesco claiming parity with the allegedly affected consumers in case no. 75 of 2007 sought interim protection observed that Gesco's real aim was to seek reprieve from assessment being undertaken under Section 126 of the Act.

10. The Commission filed a counter-affidavit almost on the same line as the respondent no.2 but in details and its contentions are para-phrased as below:-

a) The contention that the order dated 03.10.2006 passed in case no. 25 of 2005 and case no. 53 of 2005 dealing with discontinuation of single point supply was passed without hearing is not correct.

b) The petition of the appellant MCCIA dated 20.11.2007 in petition No. 75 of 2007 was intended to seek clarification on several issues for implementation of the directions with discontinuation of single point supply and the Commission by order dated 20.12.2007 took into account the fact that issues that were raised by the appellant needed to be considered after taking into account findings that are arrived at by all the distribution licensees in the State. The Commission formed a study group with direction to submit report within a month and the appellant also filed an application on 19th March, 2008 seeking urgent reliefs which the Commission granted in the order dated 26.03.2008.

c) The Commission directed that HT Industrial and Commercial category consumers shall continue to be under this category for a transition period of six months from the date of the order keeping in view the metering constraints and identification of consumers, and thereafter the consumers will have to either operate

through a franchise route or take individual connections under relevant category.

- d) All issues germane to the case in hand were clarified by the Commission. The points raised in the additional submissions dated 18.05.2009 were also addressed to by the Commission.
- e) The impugned order dated 01.06.2010 clarified all matters.
- f) The appellants cannot canvass a case that HT Industrial Commercial category consumer and commercial category consumer would undertake sub-distribution to mixed loads without obtaining a valid licence under the Electricity Act, 2003, while on the other hand advance submissions that the Commission ordered for discontinuance of single point supply, particularly when several allegations were made in the print media that HT Industrial consumers (builders) are illegally supplying and arbitrarily billing against their tenants without installing separate meters.
- g) The allegation of violation of natural justice has been rendered infructuous in view of the Commission's order dated 26.03.2008 and dated 01.06.2010 passed in case no. 75 of 2010 as the specific issue relating to single point supply was heard and decided.

11. Upon the pleadings as aforesaid, the following issues are raised:-

a) Whether the Commission's orders directing discontinuance of single point supply is legal and valid?

b) Whether the impugned order of the Commission passed on the petition of the appellants seeking for clarification on some issues clarified the issues or not?

c) Whether the respondent no.2 was responsible for non-implementation of the order of the Commission?

d) What are the issues left unattended to by the Commission?

12. The learned Advocate for the Commission, Mr. Buddy A Rangadhan argues as follows:

a) Sub-distribution by HT Industrial and Commercial category consumer without a license under Section 12 of the Act is not in consonance with the Act, 2003.

b) Sections 12 and 14 read with Section 2 (17), Section 2 (18) and Section 2 (19) are relevant for deciding the issue and these provisions would show the scope and mandate of the Act. If it is the activity of the appellant and their constituents to lay down a distribution system of its own, then purchase of power from a distribution licensee for sub-distribution is unlawful.

c) The Commission in its tariff order dated 03.10.2006 observed:-

“Any HT Industrial and commercial category consumer undertaking sub-distribution to mixed loads shall continue to be under this category for a period of six months from the date of this order keeping in view the metering constraints and identification of consumers. Thereafter, the consumers belonging to this category requiring a single point supply will have to either operate through a franchisee route or take individual connections under relevant category”

d) It cannot be contended that single point supply is legal and the only point of the appellants by filing the petition is with respect to various clarifications in the actual process of discontinuing with single point supply.

e) Neither the Commission nor this Tribunal is duty bound to give clarifications to the appellant as to how to comply with the provisions of the Electricity Act, 2003 as a pre-condition for the appellant to comply with the Act. It is for the appellants to comply with the mandate of the Act and whether they are in compliance or not will be determined by the appropriate authority under the Act.

- f) The Commission in its order dated 24.05.2010 in connection with case No. 62 of 2009 gave a finding that single point supply is not authorized by the Act.
- g) Before the Commission there were two separate proceedings, one was respecting the MoU route for selection of distribution franchisees by MSEDCL and the other relating to clarifications sought for by the appellants. Before the Commission, the appellants did not take the stand that single point supply was legal and authorized under the Act.
- h) It is the mandate of the Act that no person shall 'distribute' electricity without a licence. What the appellants and their constituents were doing is 'distribution' of electricity without a licence, the Commission is seeking to enforce the provisions of the Act. The Tribunal is not to advise the appellants as to how to comply with the Act.

13. The respondent no.2 countered the case of the appellant with the following arguments:-

- a) Under Section 12 of the Electricity Act, 2003, there is complete prohibition for any person indulging in activities of transmission, distribution and trading of electricity without a licence under Section 14. The 7th proviso to Section 14 is relevant.
- b) It is the distribution licensee that is empowered to undertake distribution of electricity for a specified area

within the area of supply of the distribution licensee through another person and if that distribution licensee were to opt to do so, the said other person was not obliged to obtain any separate licence from the Commission.

- c) Availing of single point supply for the purpose of further distribution from the distribution licensee amongst consumers is an illegal activity because there is no provision permitting sub-distribution without a license and each sub-consumer of a consumer having availed of single point supply was required to apply separately to the distribution licensee.
- d) This legal position was clarified by the Commission in its order dated 03.10.2006 and 20.10.2006 passed in respect of various distribution licensees in the State of Maharashtra and the Commission gave six months time to each individual consumer either to go for franchise or to take individual connection.
- e) It is not the case of any consumer or even of the appellants that they either individually or collectively had sought for independent connection and that the same has been denied by the distribution licensee and that they are facing problems because of the same.
- f) One Sai Erectors took connection in their individual name on 15.02.2007 and installed sub-meters to supply electricity which was illegal.

g) In December, 2007, the appellant filed application before the MERC seeking clarifications in respect of single point supply. The Commission had no jurisdiction to entertain such petition because the only jurisdiction to entertain dispute by the Commission is Section 86 (1) (f) . The so called consumer association had no right to approach the Commission to get clarification. The only recourse could have been through a petition under Section 42 (5), the Commission had no jurisdiction on matters relating to proceedings under Section 126.

h) After the coming into force of the Electricity Act, 2003, the transmission of electricity, distribution of electricity and trading of electricity all became licensed activities, and under Section 12 of the Act, there was a complete bar for any person indulging in any of the aforesaid three activities without a licence under Section 14 which in its 7th proviso facilitates a distribution licensee to select a franchisee for distribution of electricity through that franchisee in his area of supply. Therefore, with the commencement of the Act, a sub-consumer and a consumer having availed himself of single point supply was required to apply separately to the distribution licensee. This legal position was only reiterated by the Commission in its tariff orders dated 03.10.2006 and 20.10.2006 passed in respect of various distribution licensees in the State of Maharashtra. These two orders remained unchallenged so far as the withdrawal of the

single point supply is concerned. Thus, these two orders became final and now the appellants or their constituents cannot raise frivolous pleas so as to frustrate the implementation of the orders.

- i) In November, 2007 the MSEDCL conducted an assessment under Section 126 of the Act of one Sai Erectors who took connection in its individual name on 15.02.2007 but installed sub-meters to give supply to the end-users. This act of the Sai Erectors was illegal.
- j) Seeking clarifications and answering clarifications do not fall under Section 86 (1) (f) of the Act and the present appeal itself is barred under Section 111 which only speaks of adjudication of dispute.
- k) The Commission has no jurisdiction in respect of the proceedings under Section 126 or under Section 127 of the Act.
- l) Therefore, on the jurisdictional issue the appeal is not maintainable.
- m) No consumer association within the area of a distribution licensee has been conferred any right under the Act to ask for being appointed as a franchisee by the distribution licensee. The Act only permits the distribution licensee if it thinks appropriate to appoint franchisee. The appeal proceeds on the wrong footing that a person availing himself of single point supply has an indefeasible right to

take electricity as a franchisee and that the distribution licensee is bound to appoint the person availing himself of single point supply as its franchisee and that the distribution licensee is to make the terms of the franchisee conducive to the person availing himself of such single point supply.

n) The Electricity (Removal of Difficulties) 8th order, 2005 has permitted single point supply and sub-distribution in the case of Group Housing Society only.

o) The appeal is misconceived and is liable to be dismissed.

14. All the issues are taken up together for the sake of convenience of treatment. Upon hearing the learned counsel for the appellant for couple of days what could be gathered from his submission is that unless all the issues are clarified by the Commission afresh by remitting the matter back to the Commission, franchisee route or individual connections which are alternative to the single point supply is impossible and that on principle there might be no objection to the discontinuation of the system. As the arguments advanced from hour to hour, alternative arguments came out from the learned counsel for the appellant to the effect that single point supply is purely authorized by law, as such the direction of the Commission right from the beginning on 03.10.2006 that by operation through franchisee route or through taking individual connection single point supply should be stopped is not proper. Therefore, the question that has arisen is whether single point supply is legal or not.

So far as memorandum of appeal is concerned, it does not raise any voice questioning the legality or otherwise of the discontinuation of the single point supply. It is only in the rejoinder to the written arguments and oral submissions of the learned counsel for the appellants that attempt has been made to justify single point supply. It has to be remembered that in the original petition before the Commission in Petition No. 75 of 2007 the appellants did not raise any point whatsoever challenging the orders dated 3.10.2006 and 20.10.2006 for discontinuation of single point supply. A case has been developed and enlarged in the appeals to justify the continuation of the system.

15. What is single point supply? Since this is not a legal term defined anywhere in the Act or in Regulations of the Commissions and the concept is susceptible of understanding differently by different minds, it is of utmost importance that the concept has to be made clear insofar as the present appeals are concerned. According to the appellants, commercial buildings/towers, multiplexes, malls, IT parks, old commercial houses, draw power at a point of supply and then the power goes to end-users residing in such complexes in different capacities. The owner of the premises who is HT industrial and commercial category consumer collects consumption charges from such end-users, and for common area electricity consumption on the basis of some formula and supply of such a nature is named as single point supply. Mr. Buddy A. Rangnadhan, learned counsel for the Commission has elaborated from the point where Mr. Abhay Nevagi learned Advocate for the

appellant has ended. According to Mr. Ranganadhan, single point supply has to be understood with reference to HT Industrial and Commercial category consumers. The owner of commercial complexes receives power at a single point for distribution to mixed loads. Such an owner has number of consumers under him with whom the distribution licensee has no connection. Such an owner of the commercial complexes, called HT Industrial and Commercial category consumer, supplies power to different persons under him through sub-metering without any authority and thereby engages himself in the business of sale of electricity to such end-users who are not the consumers legally under a distribution licensee. Where sub-distribution is undertaken by such HT Industrial and Commercial category consumer without a licence under Section 12 of the Act, such unauthorized sale or trading of electricity is illegal and this is what is called a single point supply. In fact, both Mr. Abhay Nevagi and Mr. Buddy A. Ranganadhan do not differ between themselves as to what is really understood in common parlance by what is called single point supply. But Nevagi submits that such supply of electricity to the different occupants in a commercial complex by the owner of the premises through sub-metering is not at all a business of sale or trading of electricity and as such the transaction is not illegal. Mr. Nevagi submits that the primary contention of the respondent no.2 that the discontinuation of single point supply is a mandate of the Act and is prohibited by law is misconceived because the Electricity Act does not declare such single point supply to be illegal and in support of his contention he takes us to Section 2 wherein "area of supply",

'consumer', 'distribution licensee,' 'distributing main', 'person', 'premises', 'service line', 'supply and trading' have been defined. It is, therefore, necessary to see the definitions of these terms.

(3) "area of supply" means the area within which a distribution licensee is authorised by his licence to supply electricity;

(15) "consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;

(17) "distribution licensee" means a licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply;

(18) "distributing main" means the portion of any main with which a service line is, or is intended to be, immediately connected

(19) "distribution system" means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers;

(49) " person" shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person;

(51) " premises" includes any land, building or structure;

(61) "service-line" means any electric supply line through which electricity is, or is intended to be, supplied –

(a) to a single consumer either from a distributing main or immediately from the Distribution Licensee's premises; or

(b) from a distributing main to a group of consumers on the same premises or on contiguous premises supplied from the same point of the distributing main;

(70) "supply", in relation to electricity, means the sale of electricity to a licensee or consumer;

(71) "trading" means purchase of electricity for resale thereof and the expression "trade" shall be construed accordingly;

16. In this connection, it is also necessary to look at the following sections of the Electricity Act.

"12. No person shall

(a) transmit electricity; or

(b) distribute electricity; or

(c) undertake trading in electricity, unless he is authorised to do so by a licence issued under section 14, or is exempt under section 13.

13. The Appropriate Commission may, on the recommendations, of the Appropriate Government, in accordance with the national policy formulated under section 5 and in public interest, direct, by notification that subject to such conditions and restrictions, if any, and for such period or periods, as may be specified in the notification, the provisions of section 12 shall not apply to any local authority,

Panchayat Institution, users' association, co-operative societies, nongovernmental organizations, or franchisees:

14. The Appropriate Commission may, on application made to it under section 15, grant any person licence to any person

—

*(a) to transmit electricity as a transmission licensee; or
(b) to distribute electricity as a distribution licensee; or
(c) to undertake trading in electricity as an electricity trader,
in any area which may be specified in the licence:*

Provided that any person engaged in the business of transmission or supply of electricity under the provisions of the repealed laws or any Act specified in the Schedule on or before the appointed date shall be deemed to be a licensee under this Act for such period as may be stipulated in the licence, clearance or approval granted to him under the repealed laws or such Act specified in the Schedule, and the provisions of the repealed laws or such Act specified in the Schedule in respect of such licence shall apply for a period of one year from the date of commencement of this Act or such earlier period as may be specified, at the request of the licensee, by the Appropriate Commission and thereafter the provisions of this Act shall apply to such business:

Provided further that the Central Transmission Utility or the State Transmission Utility shall be deemed to be a transmission licensee under this Act:

Provided also that in case an Appropriate Government transmits electricity or distributes electricity or undertakes trading in electricity, whether before or after the

commencement of this Act, such Government shall be deemed to be a licensee under this Act, but shall not be required to obtain a licence under this Act:

Provided also that the Damodar Valley Corporation, established under sub-section

(1) of section 3 of the Damodar Valley Corporation Act, 1948, shall be deemed to be a licensee under this Act but shall not be required to obtain a licence under this Act and the provisions of the Damodar Valley Corporation Act, 1948, in so far as they are not inconsistent with the provisions of this Act, shall continue to apply to that Corporation:

Provided also that the Government company or the company referred to in sub-section (2) of section 131 of this Act and the company or companies created in pursuance of the Acts specified in the Schedule, shall be deemed to be a licensee under this Act:

Provided also that the Appropriate Commission may grant a licence to two or more persons for distribution of electricity through their own distribution system within the same area, subject to the conditions that the applicant for grant of licence within the same area, shall, without prejudice to the other conditions or requirements under this Act, comply with the additional requirements relating to the capital adequacy, credit-worthiness, or code of conduct as may be prescribed by the Central Government, and no such applicant, who complies with all the requirements for grant of licence, shall be refused grant of licence on the ground that there already exists a licensee in the same area for the same purpose:

Provided also that in a case where a distribution licensee proposes to undertake distribution of electricity for a specified area within his area of supply through another person, that person shall not be required to obtain any separate licence from the concerned State Commission and such distribution licensee shall be responsible for distribution of electricity in his area of supply:

Provided also that where a person intends to generate and distribute electricity in a rural area to be notified by the State Government, such person shall not require any licence for such generation and distribution of electricity, but he shall comply with the measures which may be specified by the Authority under section 53:

Provided also that a distribution licensee shall not require a licence to undertake trading in electricity.”

17. Now, Mr. Nevagi submits the following:-
- a) 'Area' in the definition refers to "area of supply" and not the premises of the consumers in the 'area of supply'
 - b) Distribution of electricity contemplated under Part-IV of the Act contemplates distribution in the area of supply and does not cover the premises of the consumer in the area of supply. Thus, Part-IV of the Act is made applicable to geographical area of the distribution licensee and does not include a particular premises.

- c) The intention of the legislature while giving a definition of “Premises” is to exclude the area of the premises from the definition of “area of supply”. A consumer in the premises is under an obligation to seek supply of electricity from a distribution licensee in the area of supply. Therefore, restriction on distribution of electricity within geographical area of a distribution licensee requires exemption under Sections 13 and 14 of the Act.
- d) Distribution or sub-distribution contemplated under Par-IV of the Act refers to distribution within the area of supply as defined in Section 2 (3) and not in the “premises” as defined in Section 2 (51) so long as the consumer is having supply from distribution licensee in his area of supply and tariff is paid as per tariff order.
- e) Definition of ‘consumer’ will have to be read in conjunction with definition of ‘person’. Thus, definition of consumer includes even a body of individuals or a group of consumers. Thus, any person, group of persons, or association or a body corporate can have single point supply.
- f) The definition of ‘service line’ refers to an electrical supply line through which electricity is supplied to a single consumer either from distributing main or from distribution licensee premises or from distributing main to a group of consumers on the same premises.

- g) Definition of “supply” in relation to electricity means sale of electricity to licensee or consumer and definition of consumer includes person who in turn includes a group of consumers.
- h) If definition of ‘supply’ read with the definition of ‘service line’ is considered then supply of electricity to a licensee or consumer does not require licence under Part-IV of the Act. License is required for distribution of electricity.
- i) Supply of electricity to a consumer through single point supply does not constitute any element of sale of electricity. Therefore, single point supply to a particular premises by sub-metering is not trading.
- j) If a group of consumers have a single point supply in their premises from a distribution licensee authorized to operate and maintain a distribution system for supply of electricity to the consumers the same cannot be termed as being prohibited by law.
- k) Single point supply is permissible in the case of Cooperative Group Housing Society under the authority of the Central Government.
- l) Supply Code, 2005 and definitions in the regulations of the MERC do not prohibit single point supply.
- m) Dedicated Distribution Facilities includes facilities to a group of consumer on the same premises.

- n) Definition of 'meter'. in regulation R (q) of the MERC Regulations, 2005 also provides for meter meaning set of integrating instruments.
- o) MERC (Standards of Performance of Distribution Licensees, Period for giving supply and Determination of Compensation) Regulations, 2005 and definition of 'persons' as in Regulation 2 (b) mean the same person as defined in Section 2 (49) of the Act and the said definition includes a group of consumers or a body corporate.
18. Mr. Buddy A. Ranganadhan, learned advocate for the Commission submits that when sub-distribution is undertaken by HT industrial and commercial category consumer without license under Section 12 of the Act, the same would amount to unauthorized supply and not permitted under the Act. Sections 12 and 14 read with Section 2 (17) to 2 (19) of the Act have made the position clear. Therefore, distribution of electricity to any person by any person without a licence is illegal unless it is so exempted under Section 13. If a HT industrial or a commercial category consumer lays down a distribution system for supply of electricity to a number of persons within the complex for their consumption and institutes a mechanism for billing and realization of charges qua such end users, such category of consumer can be said to be engaged in illegal sale of electricity and it is in this context that single point supply has been forbidden by the order of

the Commission. This is why the Commission by order dated 03.10.2006 observed as follows:-

"7. Any HT Industrial and Commercial category consumer undertaking sub-distribution to mixed loads shall continue to be under this category for a period of six months from the date of this order keeping in view the metering constraints and identification of consumers. Thereafter, the consumers belonging to this category requiring a single point supply will have to either operate through a franchisee route or take individual connections under relevant category."

19. It is submitted by Mr. Ranganadhan that in the petition before the Commission or in the original memo of appeal it is not the case of the appellants that single point supply as is used in the context above is legal and authorized under the Act.
20. With regard to the sufficiency or otherwise of the clarifications, Mr Ranganadhan has made series of submission and we will consider the same when we come to the consideration of the series of the queries.
21. Having heard the submissions of the learned counsel for the appellants on the interpretation of different clauses of the Act, it appears to us that the learned counsel is of the view that 'premises' is to be totally severed from the definition of "area of supply" It is common knowledge that the words defined in the definition clause have to be understood in the context in which it is used. The context would cover

different provisions of the Act and understanding of the Act as a whole. It is difficult to accept the arguments that the distribution contemplated under Part IV only has to be understood in the context of “area of supply” to the exclusion of the “premises “of the consumer. Electricity connection is given to a consumer in his premises by a distribution licensee within the area of his supply. Therefore, each of the words, namely, ‘premises’, ‘consumer’ and ‘area of supply’ has its own connotation and the premises cannot be segregated from the area of supply. Exemptions spoken of under Section 13 which has been canvassed by the learned counsel for the appellant is completely misnomer and misplaced in the context. This section speaks of the authority of the Commission on the recommendation of the Government to make the provision of Section 12 non-applicable to the entities as stated therein. If according to the learned counsel for the appellant, sub-distribution of electricity to the occupants of a building by the owner or consumer of such building is not unlawful then the provision of Sections 12 and 14 would be nugatory and self-defeating. Learned counsel for the appellant reads the definition of “consumer” in conjunction with the definition of ‘person’. So far so there is no harm ,but he is mistaken when he says that a consumer includes a group of consumers. A consumer may mean a person, and a person may mean a company or a body corporate or association or body of individuals whether incorporated or not or artificial juridical person but the concept of consumer does not extend to a situation where number of end users each living separately in a building and connected to consumer or owner of a building

are conjoined together. A body of individuals is comprised within the definition of 'person' but such body of individuals cannot be construed to mean a countless number of independent end users who do not form a body of individuals. The word "group of consumers" is absent in the definition of the word 'consumer'. Reference to 'service line' is uncalled for because it has got no use in the context. Service line is a line for distribution of electricity to a single consumer from a distribution main or to a group of consumers in the same premises or on contiguous premises supplied from the same point of the distributing main. It does not mean that a group of consumers in the same premises can be served with electrical power through one authorized consumer alone. A group of consumers can have a necessary co-relation with a distribution licensee. The word 'supply' and the word 'service line' cannot be confused and confounded because supply means the sale of electricity to a licensee or a consumer. It is the licensee alone who is authorised for distribution of electricity against the tariff sanctioned by the Commission. A consumer does not include a group of consumers in terms of the definition. If a consumer upon receipt of electrical energy distributes such energy to different end users according to their need and if such end users are not consumers within the meaning of the Act and they are charged tariff or fee for such consumption of electrical energy with which a distribution licensee is not concerned then the question may arise definitely whether such distribution of power to different end users within a complex in lieu of a tariff or fee charged by a consumer would amount to unauthorized sale of electricity. A

consumer receives electricity only “for his own use” and this excludes a situation where a consumer can on receipt of electrical energy sell a part of that energy or the entire energy itself to different people for their respective consumption. It is only for HT VI category consumer, namely, Group Housing Society where perhaps such single point supply is permitted. Thus, a consumer cannot have his own distribution system for distribution of electrical energy in turn to his tenants/occupiers/users etc. The concept of dedicated distribution facility cannot be invoked in the circumstances of the case. Thus, ‘premises’ cannot be obliterated in order to justify an argument that what is supplied by a distribution licensee is electrical energy to a geographical location or area of supply. It is wrong to suggest that the distribution contemplated under Part-IV of the Act only refers to distribution within the area of supply and not in the premises. The ‘premises’ is intrinsically related to the ‘area of supply’. A peculiar argument is advanced by the learned counsel for the appellants that the Act, particularly Part –IV does not provide that license is required for supply of electrical energy, and license is only required for distribution of energy. If this argument is accepted, it would mean that when a distribution licensee gives power to a consumer who is a consumer within the meaning of the term then such a consumer can supply electricity to different heterogeneous people living in a commercial complex and such a supply does not amount to distribution. To accept this argument would amount to legalizing what has been termed illegal in the very concept of Part-IV. When the learned advocate for the appellant puts

forward this argument orally and in his written submission, he becomes oblivious of the definition of 'supply' which in relation to electricity means the sale of electricity to a licensee or to a consumer. The MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005 does not become of any assistance to the case of the appellant. It is wrong to suggest that person as is given in Section 2(49) of the Act includes a conglomeration of consumers. A consumer cannot be permitted to maintain a distribution system of his own for distribution to end users which is not authorized by law. When through a single point supply power is traded, we cannot say that such a transaction as is alleged in the instant case would be legal.

22. Thus, single point supply as is understood in the context upon examination of the provisions of the Act does not appear to have been authorized. Indeed, till now the constant stand of the appellants is that they are not averse to having a distribution franchisee model. They filed petition being no. 75 of 2007 only for clarifications in respect of implementation of the system and formulation of policy by the distribution licensee, although at the same breath the appellants maintained that single point supply is not prohibited in the law. If a consumer charges different amounts from different end users according to the nature of consumption for such users residing in a complex either as tenants, occupier or lessee or in any other capacity whatsoever to the exclusion of being a consumer within the definition of the Act, then such realization of the amount

which is not accounted for before a distribution licensee and such consumption by different occupiers at the behest of a consumer behind the knowledge of the distribution licensee, as is argued before us by the MSEDCL, are unknown to the law. Let us now see what exactly was prayed for before the Commission by filing the petition by the appellants. In the petition, it was not questioned that abolition of single point system was illegal. The petition avers that for several years single point supply has been in use but now with the abolition of the system some difficulties arose and the Commission may issue a clarificatory order on the following:-

- a) Whether a common transformer for all or a separate transformer for each HT consumer within the same premises need to be provided?
- b) Whether each transmission OA consumer need a separate line running two transmission system or a common line for a group of transmission consumers in the same premises can be planned?
- c) Can Non-OA consumers / persons get their supply through/on OA transmission connection planned by the owner of the premises for his requirement in the following cases:-
 - i) Distribution licensee has not laid distribution backbone

- ii) Unable to supply required power
 - iii) Unable to supply required power in allowed time under the Act.
- d) In case standby DG Sets for ensuring uninterrupted power is planned by the owner of the premises for all the tenants /leave-lincensees whether the complex is in its capacity as generator can have single point supply.
- e) The Commission may allow open access with mixed load on single point supply in case the licensee does not permit franchisee route. Alternatively, the owner of the premises shall be treated as limited trader for supply to his members on his premises.

23. The above petition, be it remembered, is not a petition, strictly speaking, for adjudication of *lis*. No *lis* between the appellants and MSEDCL developed till then when the petition was filed. The petition raised some queries which required answer or clarification by the Commission. It is made clear that the Tribunal adjudicates upon the disputes under Section 111 which are decided by the Commission. The order of the Commission which as we have in the preceding paragraph reproduced gave rise to this appeal and it is only in the appeal, nay, in the rejoinder to the counter-affidavits of the respondent nos. 1 and 2 that the appellants have put forward an alternative plea that single point supply in the context in which it is used and understood by the parties is legal. Law is very well settled that a Court or a Tribunal does not decide a hypothetical question or queries

unless such question or query becomes an issue for adjudication. Since question of law has been raised to the effect that single point supply in the context in which the parties have understood it is legal, we have thought it appropriate to answer the legal question with reference to the statute. The Tribunal is not intended to issue clarifications on some possible future practical problems. Still then, let us see how far the Commission has been successful in satisfying the appellants.

24. In paragraph 3 of this judgment, we have reproduced the answers /clarifications given by the Commission in the impugned order dated 01.06.2010 in petition no. 75 of 2007. It is noticeable that this petition was pending before the Commission for a period exceeding three years. It is not the case of the appellants before us that the answers /clarifications issued by the Commission in the impugned order are wrong, illegal and unacceptable. On a bare reading of the impugned order, particularly the clarificatory part thereof, it does not appear that the answers to the questions raised were not given. Now the appellants before us, infact, had elaborated their queries to give an appearance of series of queries which the appellants expects us to answer by raising the point that the answers given by the Commission still leave many a questions unattended to. Before we advert to the further issues raised by the appellant, it is important to reproduce the finding of the Commission dated 20.06.2008 in connection with case no. 72 of 2007 as follows:

“

V) *As regards creation of a separate tariff category for supply intended for townships under a franchisee agreement or otherwise, to enable the township developer, the township developer or franchisee to supply to mixed loads within the township, the Commission has already clarified that taking bulk supply at single point and supplying further to individual dwellings is legal only in a case of Group Housing Societies and in case there are other loads, such as commercial, industrial, etc., the same cannot be supplied through the same connection. Separate individual connection will have to be taken for such loads, as it is possible to supply to such consumers after taking supply at single point, only in case the supplier has a distribution license or has been appointed as a franchisee by the distribution licensee. MSEDCL has been directed to ensure metering arrangements so that the consumers currently classified under HT VI commercial category and requiring a single point supply, will have to either operate through a franchisee route or take individual connections under relevant category. MSEDCL is directed to ensure compliance with this directive immediately. “*

25. The Commission in its order dated 24.5.2010 passed in case No. 62 of 2009 observed as follows:

“V)Over the past two to three years, the Commission has come across similar problems primarily in case of existing Commercial and Office Complexes regarding

*supply at single point for distribution to mixed loads. In such cases, the distribution licensees have neither installed the individual meters nor the sub-distribution of electricity is being regulated in any manner. Though the Commission has directed the licensees to formulate a practical solution for this problem, there has not been any significant progress. Hence, the Commission is of the view that the practical solution being considered in the present case should be adopted for all such cases of supply at single point for further distribution to mixed loads, wherein one agency can be appointed as the Distribution Franchisee through the MoU route, and can supply to the individual users within the complex. **This will ensure that all such cases will come squarely within the provisions of the EA 2003 which is not the case now.**{ emphasis supplied}”.*

25. a) With regard to the first query before this Tribunal as to what would be status of a single point consumer between the period from 03.10.2006, that is the date of the order passed in petition no. 25 of 2005 and 53 of 2005 and till the time a franchisee agreement is entered into, it is apparent that this query has no relevance and it is only a query for the sake of query and the impugned order covers the material point raised before the Commission. From the counter affidavits of the two respondents and the written submissions it clearly appears that pursuant to the order of the Commission

dated 03.10.2006, the respondent no.2 got a number of proceedings initiated against certain persons under Section 126 of the Electricity Act for alleged unauthorized supply of electrical connection to different people and against some such persons penalty has been realized. If a person is found to be engaged in unauthorized use of electricity then charges are payable by such persons or by any person benefited by such use. The order under Section 126 of the Act is subject to appeal to the appellate authority as provided in Section 127 of the Act and none of the Sections do have any concern either with the Commission or with the Tribunal. Therefore, it is useless to put an academic question as to the status of such person engaged in supply of electrical connection when the question has been answered in the Act itself.

- b) On the question of single point supply, the Commission is said to have observed in its earlier order dated 20.12.2007 that in respect of single point supply various issues need to be considered as a whole and a working group was constituted by the Commission. Therefore, it was alleged by the appellants that the situation was complex and a *de novo* hearing was necessary wherein all related issues could be considered and as such the matter should be remanded back to the Commission. We find no point in this argument. If in course of implementation of

introduction of franchisee route any unforeseen practical difficulty emerges, the same can be sorted out by all concerned and unless a problem becomes a *lis* there is no point in calling for remand of the matter back to the Commission.

- c) Emphasis is made to the interim order of the Commission dated 26.03.2008 wherein the Commission passed an interim order restraining disconnection until further order. This interim order was passed more than three years back from now and has become *non-est* after the passing of the impugned order. Passing of the interim order at one point of time does not entail that *status quo* as was existing prior to 03.10.2006 should be continued for an indefinite period of time even though single point supply in the context in which the parties have understood the matter is unauthorized by law. The Commission has clarified all the issues so raised and it is futile again to argue that sub-metering for supply to different people does not amount to unauthorized sale.
- d) The question whether the multiplex owner supplying electricity through sub-metering can levy any additional amount to recover the cost of installation does not arise in view of the impugned order.
- e) The point that the respondent no.1 ought to have annexed to the impugned order at least a model franchisee agreement or framed guidelines does not

succeed in view of the fact that the MSEDCL forwarded to M/s. Inorbit Malls (I) P. Ltd. through their letter dated 07.12.10 a franchisee agreement form. No arguments has been advanced that the methodology reflected in the agreement form is not sufficient.

- f) Any future confusion as to whether the impugned order will prevail or the earlier Standard of Performance 2005 and the regulations will prevail is not a confusion as yet existing. The order clarified that the open access consumer has to pay only the charges as may be decided by the Commission for utilization of distribution system for open access purpose.
- g) The question whether in respect of one stand by DG Set for ensuring uninterrupted power, the owner can charge to the occupants of the commercial complex for supply through DG Set has been answered in the impugned order itself.
- h) Another hypothetical question has been raised as to whether if a new consumer wants to avail single point supply in a complex under construction, can the consumer avail the supply as the construction may take more than one year? Innumerable such hypothetical questions which are not *lis* before us do not call for any answer from the Tribunal and we think the Commission's order principally covers the material issues and hypothetical problems may be posed before

the Commission or the MSEDCL when the problem really arises.

- i) As to the question that the discontinuation of single point supply was first made in the order dated 03.10.2010 in a tariff petition being no. 25 of 2005 and 53 of 2005 but the issue was not made known to the public by notice. The learned advocate for the Commission has submitted that the notice was published in connection with the cases as aforesaid and after series of orders were passed it does not behove the appellants now to say that the order was illegal and it requires fresh hearing. To our understanding, if the single point supply as understood by the parties is not authorized by law and the Commission in successive orders have termed such single point supply to be illegal, it is meaningless to say that a public hearing was necessary to elicit a point which essentially is a point of law. In the petition dated 28.11.2007 (petition no. 75 of 2007) the appellants admitted to have been apprised of the order passed as far back as 03.10.2006 and by such petition they only ask for some clarifications which have been given by the Commission and no query has been withheld. If more queries arise in course of implementation of the system, the appellants may approach the Commission or MSEDCL as the case may be.

- j) The Commission allowed six months time to all concerned to switch over to franchisee route or take

individual connection under relevant category and it is not that an order has been passed in a recent time to the surprise of all concerned. In these circumstances, the arguments of the learned counsel for the appellants that continuation of the system till fresh hearing is done is not acceptable.

- k) The draft report submitted by the Working Group was considered by the Commission and the Commission invited suggestions/comments from all the stake holders on the draft report, therefore, there is no point in saying that the principle of natural justice was violated. The Commission duly considered the draft report of the Working Group. The Commission in its order dated 03.10.2010, observed as follows:-

“7. Any HT Industrial and Commercial category consumer, undertaking sub-distribution to mixed loads, shall continue to be under this category for a period of six months from the date of this Order keeping in view the metering constraints and identification of consumers. Thereafter, the consumers belonging to this Category requiring a single point supply will have to either operate through a franchise route or take individual connections under relevant category.”

- l) The Commission addressed the issue of specific guidelines in its order dated 24th May, 2010 in case no. 62 of 2009 which we reproduce below:-

“7. Having heard the Parties and after considering the material placed on record, the Commission is of the view as under:

i) As regards MSEDCL's prayer for approval of the MoU route for appointment of Distribution Franchisee, the Commission holds that it is for the Distribution Licensee to adopt any method for selecting the Distribution Franchisee on such terms and conditions as it deems fit, and the Commission has no jurisdiction to approve either the process or the Party selected by the Distribution Licensee. However, as expressed by the stakeholders, the Commission is of the view that ideally, the Distribution Franchisee should be selected and appointed through a competitive bidding process to ensure complete transparency and competition.

ii) Under the particular circumstances brought out by MSEDCL in the Petition that in respect of the Developer of the Township/IT Park, etc., who has already invested in the distribution infrastructure for the area under consideration, it may not be possible to appoint the Distribution Franchisee through a Competitive Bidding process, as it would amount to treating the developer who has already invested capital in the area at par with another Party who has not invested any capital in that area. Further, the issues of asset value and transfer price, etc., would also have to be addressed under such a situation. The Commission, therefore, recognises that in such cases, appointment of Distribution Franchisee through a Competitive Bidding process may not be feasible and MSEDCL may initiate the MoU route for appointing the Distribution Franchisee. However, while doing so, MSEDCL, as a Distribution Licensee,

should take care to protect its own interests and that of its direct consumers, as well as the interest of the consumers within the Distribution Franchisee area, who are also primarily its consumers.

iii) MSEDCL has requested the Commission to approve the BST for supply to the Distribution Franchisee at single point for distribution to mixed loads within the Franchised area. MSEDCL has suggested that the BST be determined upfront by assuming a certain proportion of mixed loads, viz., residential, commercial, industrial, etc. However, this approach cannot be adopted as there are bound to be differences in consumption mix between one Distribution Franchisee and another, and obviously, the BST for each Franchisee will have to reflect its own consumption mix. Also, the Commission cannot determine BST for all the possible combinations of consumer mix. Further, since the freedom to appoint Franchisees would be available to all the distribution licensees in the State, there are likely to be several Distribution Franchisees, and therefore, it is impractical for the Commission to determine the BST for all the Distribution Franchisees. Further, the Commission holds that determination of BST is part of the process under Section 64 of the Electricity Act, 2003 for determination of Aggregate Revenue Requirement and tariff and hence, cannot be determined de hors the process under Section 64. Moreover, the Commission cannot undertake the exercise of BST determination on a case to case basis, and as when a distribution licensee decides to enter into a MoU with different entities at different points in time, and MSEDCL's proposal regarding BST determination is thus impractical on this ground.

iv) *MSEDCL has proposed the terms and conditions of the Distribution Franchisee Agreement, which is a matter to be decided by each Licensee. However, the Commission feels that every Distribution Licensee should evolve a Distribution Franchisee Agreement, which should be common to all its Franchisees selected through MoU route, and hence, non-discriminatory. Also, a Distribution Franchisee cannot refuse if either the Developer or one of the Group of consumers comes forward to become a Franchisee. The Commission further directs that the dispensation to become a Franchisee of the Distribution Licensee in the State will be available to all the following categories:*

- a) Residential colonies*
- b) Commercial buildings*
- c) Multiplexes and malls*
- d) Townships*
- e) Other single point consumers like Railways, Defence, etc. The period of Franchisee Agreement should neither be less than five (5) years nor longer than the validity of the licence period of the Distribution Licensee. The Distribution Licensee should prescribe and obtain quarterly returns from the Distribution Licensee. **

The Licensees may also prescribe and collect information such as interruptions, billing disputes, etc., to monitor and ensure the discharge of its duties regarding Standards of Performance, Consumer Satisfaction, etc. v) Over the past two to three years, the Commission has come across similar problems primarily in the case of existing Commercial and Office Complexes regarding supply at single point for

distribution to mixed loads. In such cases, the distribution licensees have neither installed the individual meters nor the sub-distribution of electricity is being regulated in any manner. Though the Commission has directed the licensees to formulate a practical solution for this problem, there has not been any significant progress. Hence, the Commission is of the view that the practical solution being considered in the present case should be adopted for all such cases of supply at single point for further distribution to mixed loads, wherein one agency can be appointed as the Distribution Franchisee through the MoU route, and can supply to the individual users within the complex. This will ensure that all such cases will come squarely within the provisions of the EA 2003, which is not the case now.

vi) However, in respect of Distribution Franchisees to be selected through the competitive bidding process, the licensees are free to prepare separate terms and conditions for each Franchisee Agreement, on a case by case basis. It may be noted that in either case, the retail consumers cannot be charged a tariff higher or lower than that approved by the Commission for the same category of consumers in that licence area, and also, the responsibility of ensuring conformance with Standards of Performance, safety and all other relevant Regulations rests with the respective Licensees.

vii) As regards availability of Open Access to the Distribution Franchisee to source power, the Commission holds that the right of eligible consumers to Open Access cannot be fettered in any manner irrespective of whether the Open Access is being sought

for base power requirement or for sourcing the additional power to mitigate load shedding.”

- m) If the franchisee agreement requires to be vetted by the Commission, the same may be got done by the MSEDCL and it does not require any deliberation at the end of the Tribunal.
- n) When in-principle approval was already approved by the Commission to the distribution franchisee, it is immaterial that the MSEDCL had earlier contended that distribution franchisee cannot be appointed by MoU route.
- o) As to the points that States of Tamil Nadu, Punjab, Uttar Pradesh, Uttarakhand, Himachal Pradesh and Manipur have permitted single point supply, it has been rightly submitted by the learned advocate for the Commission that the concept of single point supply as is understood by the parties in the context of the given case being unknown to law, it is of no point in going through the orders of the different Commissions.
- p) As to the alleged need of a single transformer with distribution licensee's meter on the HT side and metering of individual consumers/end users, the Commission's successive orders on the central issue are decisive.
- q) The point was raised that the property owners in large complexes are facing space constraints for sub-station for public transformer as well as establishing the LT network of a licensee by installing switchgear and transformers. This point has already been decided by the Commission in the

order dated 01.06.2010 with reference to regulations 5.5 and 5.6 of MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005. We need not reproduce what the Commission has stated in the impugned order.

- r) With reference to the submission that in the case of multiple applicants in the same building where there are issues of space constraints, the electricity to even HT consumers shall be supplied at LT supply, it has been argued in reply that category-wise tariff decided by the Commission is broadly classified into HT and LT depending upon the level of voltage and thus a consumer eligible for HT connection as per Standards of Performance Regulations but connected on LT supply due to space constraints will be charged at LT tariff. The point that installation of separate transformers for each HT consumer is impossible and there may be consumers of 600 KVA and above has been addressed to by the Commission in the impugned order itself.

- s) With reference to the submission that Commission should derive a universal formula applicable to all licensees, it has been submitted that the consumer should be connected on specified voltage level as per Regulations, 2005 and in that case no additional surcharge would be leviable. The Commission allowed 2% additional surcharge on the prayer of the respondent no.2 for release of connection at voltage level below the prescribed level by an order dated 12.09.2010 in tariff petition no. 111 of 2009.

- t) With respect to the issue of separate line for OA consumers in the same premises as has been deliberated in the draft report, the Commission in the impugned order has addressed to this question with reference to Regulation 4.2 of MERC (Transmission Open Access) Regulations, 2005 and Regulations 3 and 15 of the MERC (Distribution Open Access) Regulations, 2005 and has held that it is technically possible to give one OA line for many a consumers in the same area or plot and no duplication of network is needed and OA consumers are to pay only the charges as decided by the Commission for utilizing distribution system for the OA purpose.
- u) With respect to the arguments that in absence of guidelines/regulations, franchisee route cannot be operated, it has been submitted by the learned counsel for the Commission that the point has been dealt with in the impugned order itself.
- v) Learned counsel for the appellants produced a sheet from the tariff order issued by the Commission in support of the argument that the Commission itself had allowed single point supply and sub-distribution in case of commercial complexes but we find that the same is applicable only to the commercial complexes operating within the group housing society and the matter has been clarified in the tariff order.
26. In the ultimate analysis, we are to observe that the clarifications sought for on the queries by the appellants were given by the Commission and it is in this Tribunal that the queries were

multiplied requiring answer from us but these queries are not subject-matter of any dispute and we do not find any fault with the order of the Commission.

27. As we seriously mean that single point supply in the context in which the parties have understood the matter should be done away with for all time to come by making proper arrangements in the alternative as suggested in the Commission's impugned order we direct the Commission to enforce its order within a period of six months from the date of this order. That is, the parties get six months time for implementation of the Commission's order
28. The appeal thus fails and is dismissed. No cost.

(Justice P.S. Datta)
Judicial Member

(Mr. Rakesh Nath)
Technical Member

Dated:- 11th July, 2011

INDEX : REPORTABLE/NON-REPORTABLE

PK/RKT