

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI
(APPELLATE JURISDICTION)**

**APPEAL NO.226 OF 2014
AND
I.A. NO.346 OF 2014**

Dated: 30th JANUARY, 2017.

**Present: Hon'ble Smt. Justice Ranjana P. Desai, Chairperson
Hon'ble Shri T. Munikrishnaiah, Technical Member.**

IN THE MATTER OF:

**POWER TRANSMISSION CORPORATION)
OF UTTARAKHAND LIMITED)
Vidyut Bhawan, Near ISBT Crossing,)
Saharanpur Road, Majra, Dehradun -248)
002 (Uttarakhand).) **Appellant****

Versus

**1. UTTARAKHAND ELECTRICITY)
REGULATORY COMMISSION)
"Vidyut Niyamak Bhawan", Near)
ISBT, P.O.Majra, Dehradun,)
Uttarakhand – 248171)
2. **M/S GOLD PLUS GLASS INDUSTRY)
LTD.)
Village Thithola, Tehsil Roorkee, Dist:)
Haridwar, Uttarakhand (Through its)
Managing Director).)
3. **UTTARAKHAND POWER)
CORPORATION LTD.)
Victoria Cross, Vijeta "Gabbar Singh)
Bhawan", Kanwali Road, Dehradun,)
Uttarakhand.) **Respondents********

Counsel for the Appellant(s) : Mr. Sitesh Mukherjee
Mr. Sarul Jain
Mr. Kamal Kant
Ms. Geeta Malhotra
Mr. Pankaj Kumar, AR

Counsel for the Respondent(s) : Mr. Buddy A. Ranganadhan
Mr. D.V. Raghu Vamsy
Mr. Raunak Jain for **R.1**

Mr. Dinesh Parashar for **R-2**

J U D G M E N T

PER HON'BLE (SMT.) JUSTICE RANJANA P. DESAI – CHAIRPERSON

1. The Appellant – Power Transmission Corporation of Uttarakhand Ltd. (“**PTCUL**” or “**the Appellant**”) is the State Transmission Utility in the State of Uttarakhand. The Appellant operates and maintains transmission network in the State and provides transmission services to the interested users including the generating stations operating in the State. Respondent No.1 is the Uttarakhand Electricity Regulatory Commission (“**the State Commission**”). Respondent No.2 is M/s. Gold Plus Glass Industry Ltd. (“**M/s. Gold Plus**”) situated at Village Thithola, Tehsil Roorkee, Distt. Haridwar.

Respondent No.3 is Uttarakhand Power Corporation Ltd. (**“UPCL”**). It is a distribution licensee. In this appeal the Appellant has challenged the orders dated 16/01/2014 and 10/06/2014 passed by the State Commission.

2. Facts of the case need to be stated. Mr. Yogesh Tyagi, Manager (Public Relations) of M/s. Gold Plus filed a complaint dated 01/02/2013 before the State Commission stating that M/s. Gold Plus had deposited an amount of Rs.5,17,79,036/- in the office of the Appellant for 132 KV line. However, despite the lapse of four years the said line has not been provided to M/s. Gold Plus. It was further stated that the Appellant has not taken any action though it has been informed about this. It was further stated that this has caused financial loss to M/s. Gold Plus.

3. The State Commission vide its letter Nos.120 and 121 both dated 25/04/2013 directed MD, UPCL and MD, PTCUL to submit a report to the State Commission by 05/05/2013

stating reason for the delay in light of the UERC (Release of New HT & EHT Connections, Enhancement and Reduction of Loads) Regulations, 2008 (“**UERC Regulations, 2008**”).

4. In response to the said letter UPCL vide its letter dated 12/06/2013 forwarded the State Commission’s letter to MD, PTCUL and endorsed a copy thereof to the State Commission for information. By another letter dated 25/06/2013 UPCL informed the State Commission that M/s. Gold Plus had deposited two demand drafts for the total amount of Rs.5,17,79,036.00 for 132 KV line with PTCUL. Since PTCUL has not provided the said line M/s. Gold Plus filed W.P. No.2679 of 2011 in the Uttarakhand High Court in which UPCL is made a party. The said writ petition is pending.

5. Because PTCUL did not respond to the State Commission’s letter, the State Commission sent a reminder dated 09/07/2013 and directed MD, PTCUL to submit the report by 19/07/2013. In response to the State Commission’s

reminder, PTCUL sent reply dated 15/07/2013. Relevant extract of the said reply is as under:

“... the supply of M/s Gold Plus Glass Industry Ltd. at 132 KV Level was given on dated 10.11.2008 by alternative arrangement and continuing till date. As regards construction of 132 KV line and 132 KV bay, it is to intimate that 132 KV bay at Mangalore Substation is complete and ready for energisation. The expenditure on this work till date is Rs.89.96 Lakhs. It is further to intimate that there is severe right of way problem as the land owners are not allowing construction of this line in their fields. Till date the progress of line is as below:-

- 1. Material received at site Rs.111.00 Lakhs.*
- 2. Physical progress – 10 foundations out of 36 is completed and work is in Progress, M/s Gold Plus have been requested several times in the past to resolve the right of way with department but fruitful result is not coming as their supply is continuing.*

It is also to intimate that the amount deposited by M/s Gold Plus Glass Industry Ltd. cannot be returned and no interest can be paid.”

6. Taking cognizance of the above facts and having regard to the UERC Regulations, 2008 and having come to the conclusion that PTCUL had violated provisions thereof the

State Commission issued show cause notice to MD, PTCUL directing him to submit PTCUL's reply by 10/10/2013 as to why appropriate action under Section 142 of the Electricity Act 2003 ("**the said Act**") be not taken against PTCUL. The MDs of PTCUL and UPCL were directed to appear before the State Commission on 11/10/2013 at 12.00 hrs.

7. On 11/10/2013 MDs of PTCUL and UPCL remained present before the State Commission with their respective replies. The State Commission issued the following daily order on that day.

"On scheduled date of hearing i.e. on 11.10.2013, Shri Yogesh Tyagi (Petitioner) and MD, UPCL & MD, PTCUL along with their officers (Respondents) were present. The Commission heard the parties and daily order was issued as follow:

"PTCUL is directed to submit year wise details of expenses incurred out of Rs. 5.18 crore deposited by the petitioner in September, 2008 and also the manner in which balance amount has been utilized by it within 10 days of the date of Order."

“The Petitioner is directed to co-ordinate with PTCUL regarding the issue of ROW and apprise the Commission of the discussions held with PTCUL and the future course of action within 10 days of the date of Order.””

Though the daily order dated 11/10/2013 directed M/s. Gold Plus to co-ordinate with PTCUL regarding the issue of ‘Right of Way’ (“**Right of Way**” or “**ROW**”) and apprise the State Commission of the discussions held with PTCUL and future course of action within ten days, M/s Gold Plus did not abide by the said direction. M/s. Gold Plus was therefore directed to show cause and explain as to why appropriate penalty be not imposed on it under Section 142 of the said Act. In reply M/s Gold Plus by its letter dated 07/11/2013 informed the State Commission that PTCUL has promised to give all details of disputed ROW and that M/S. Gold Plus was constantly in touch with PTCUL.

8. The State Commission considered the replies filed by the parties in light of relevant regulations. The State Commission

referred to Regulation 4(8) and 4(10) of the UERC Regulations 2008 which read thus:

“4(8) Distribution licensee shall, within one month from date of receipt of application, study the feasibility of providing such connection including route survey for line and associated works and sanction the load. In case, works related to transmission licensee at 132 kV or 220 kV are required to be executed, the distribution licensee shall immediately intimate the transmission licensee for carrying out such study and take the estimate of works charges from it. The distribution licensees shall ensure that it informs the applicant, the estimated amount that is required to be deposited, in accordance with Table 1 given below, and the date by which the said amount is to be deposited within the said period of one month. The distribution licensee shall also indicate in the above communication, the approximate time frame for providing such connection, which shall not be more than that specified in these Regulations or tentative date indicated by consumer in his application, whichever is later.

4(10) All 132 kV works shall be executed by transmission licensee. Prior intimation, along with amount of estimated works charges deposited by applicant for such works, to the transmission licensee would be required to be given by the distribution licensee sufficiently in advance so as to meet the overall time frame laid down in these Regulations. For feeders emanating from its 132 kV/220 kV substations, the distribution licensee shall provide an appropriate metering cubicle at such 132 kV/220 kV

substation. Transmission Licensee's responsibility shall be limited upto line side isolator of the feeder."

9. As regards the time of completion of the works the State Commission referred to Regulations 5(2) and 5(3) of the UERC Regulations 2008. They read as under:

"5(2) In cases, where supply of electricity to premises applied for does not require commissioning of new substation/bay, the distribution licensee shall complete installation of HT/EHT works within the time specified below for different voltage levels from the date of deposition of amount by the applicant:-

<i>Sl.No.</i>	<i>Description</i>	<i>No. of Days</i>
<i>(i)</i>	<i>11 kV works including line (a) not involving independent feeder (b) involving independent feeder</i>	<i>60 days 90 days</i>
<i>(ii)</i>	<i>33 kV works including line</i>	<i>120 days</i>
<i>(iii)</i>	<i>132 kV and above works including line</i>	<i>180 days</i>

5(3) In cases, where supply of electricity to premises applied for requires Commissioning of a new substation/bay, the distribution licensee shall take up the work on the new sub-station/bay at its own cost

and complete the work within the additional time specified below for different sub-station:-

<i>Sl.No.</i>	<i>Description</i>	<i>No.of Days</i>
<i>(i)</i>	<i>New 33/11 kV sub-station</i>	<i>180 days</i>
<i>(ii)</i>	<i>Augmentation of existing 33/11 kV sub-station</i>	<i>120 days</i>
<i>(iii)</i>	<i>Extension of bay at 33/11kV sub-station</i>	<i>45 days</i>
<i>(iv)</i>	<i>132 kV and above sub-station</i>	<i>18 months</i>
<i>(v)</i>	<i>Extension of bay at 132 kV and above sub-station</i>	<i>90 days</i>

The State Commission noted that the above regulations stipulate the time frame for completing installation of HT/EHT works and commissioning of a sub-station/bay, which in the present case is 270 days (180+90) in accordance with the regulations.

10. The State Commission observed that its regulations do not prohibit the licensee from taking necessary action in so far as the right of way is concerned. The State Commission quoted Rule 3(b) of the Works of Licensee Rules, 2006. It reads as follows:

“3(b)...

Provided that in case where the owner or occupier of the building or land raises objections in respect of works to be carried out under this rule, the licensee shall obtain permission in writing from the District Magistrate or the Commissioner of Police or any other officer authorised by the State Government in his behalf, for carrying out the works.”

11. Having considered the above provisions the State Commission concluded as under:

“It is clear from the prevailing Regulations that while responsibility of constructing a 132 kV transmission line lies with the transmission licensee as the feasibility study for providing such connection including route survey for line and associated works are in the scope of transmission licensee, UPCL as a distribution licensee has to coordinate with transmission licensee for compliance of the regulation and in no case can absolve itself from its obligation to supply under the provisions of Regulations/Act by merely stating that the delay in the matter is attributable to the transmission licensee.”

12. The State Commission further concluded that as per the submissions made before it an amount of Rs.2.20 crore was deposited by M/s. Gold Plus on 08/09/2008 and an amount of Rs.2.98 crore was deposited on 18/10/2008. The State

Commission further noted that taking the last date of deposit i.e. 18/10/2008 PTCUL was required to complete the work of installation of 132 KV and commissioning of a new Station/Bay by 15/07/2009. However, the work of erection of line and sub-station is still not completed. The State Commission noted that Right of Way problem has been cited by PTCUL as the reason for its inability to complete the work within the stipulated time frame. The State Commission further expressed that after accepting a total amount of Rs.5.18 crore from M/s. Gold Plus, PTCUL has so far incurred expenditure of 2.42 crore. PTCUL has thus retained the balance amount of Rs.2.76 crore for the past 5 years. The State Commission observed that onus of obtaining required clearance including Right of Way is on PTCUL and on this pretext PTCUL cannot delay execution of works for years. In view of this conclusion the State Commission passed the following order:

“18. In light of the above the Commission hereby orders that:

- (i) *PTCUL should take urgent steps to complete this work and furnish quarterly progress report in this regard.*

- (ii) *PTCUL shall calculate the interest at the Bank Rate on the amount lying unutilised with it and this interest would be for the period subsequent to the expiry of 270 days from the date of last deposit and upto the completion of the said work. However, the total interest shall be adjusted out of dues of the consumer or added to the refund to be made to the consumer based on the actual expenditure incurred on the completion of the work. The Commission hereby directs PTCUL to submit compliance report within one month from the date of completion of the work.”*

13. The Appellant filed review petition before the State Commission for review of the order dated 16/01/2014. By order dated 10/06/2014 the State Commission rejected the review petition. In this appeal the Appellant has challenged order dated 16/01/2014 as well as order dated 10/06/14 passed by the State Commission.

14. We have heard at some length Mr. Sitesh Mukherjee learned counsel appearing for the Appellant. We have perused the written submissions filed by him. Gist of the submissions is as under:

- (a) M/s. Gold Plus made application early in the year 2008. The UERC Regulations 2008 came into force on 05/12/2008. The terms and conditions on which PTCUL agreed to construct the line for the consumer vide letter dated 30/08/2008 contained a covenant that the consumer had to obtain ROW which was not contrary to the said Act. At the time when M/s. Gold Plus's application was processed the Electricity Supply (Consumers) Regulations 1984 were invoked under which the consumer was to obtain ROW. Under the said Act no timeline is provided for extension of distribution ways or commissioning of new

sub-station. Alternate connection was supplied to M/s Gold Plus on 10/11/2008 i.e. prior to the coming into force of UERC Regulations 2008. In the circumstances the time limit and obligations provided in the UERC Regulations 2008 cannot be said to be applicable to PTCUL.

- (b) UERC Regulations 2008 set out new code for applications and timelines. None of them existed prior to UERC Regulations 2008 coming into force. Hence, they are not applicable to PTCUL. Subordinate legislation cannot be applied retrospectively unless such retrospectivity is expressly permissible under the provisions of the said Act or the UERC Regulations 2008. In this connection reliance is placed on the following judgments.

(i) **The State of Madhya Pradesh and Ors v. Tikamdas**¹.

(ii) This Tribunal's judgment in **Appeal No.52,67,68 and 69 of 2012.**

(iii) This Tribunal's judgment in **Appeal No.111,114,119,120,127,128,129,130,131 and 41 of 2010.**

(c) There is no provision in the said Act or the regulations applicable at the relevant time making the term requiring a consumer to obtain ROW found in letter dated 30/08/2008 illegal. The ROW requirement at least for adjoining premises is cast on the consumer in the regulations applicable at the relevant time.

(d) Costing of the line in issue was done on the basis that the consumer would get the ROW issue resolved. In the event ROW is obtained by PTCUL, the whole costing of line would

¹ (1975) 2 SCC 100

change even as per the UERC Regulations 2008.

- (e) A commercial dispute with regard to interest against a licensee would only lie before the Consumer Grievance Redressal Forum (“**CGRF**”). The State Commission has adjudicated upon a consumer dispute under the garb of non-compliance of UERC Regulations 2008. Reliance is placed on **Maharashtra Electricity Regulatory Commission v. Reliance Energy Ltd**².

- (f) Without prejudice to the above it is submitted that the State Commission did not do any investigation under Section 128 of the said Act. Section 142 of the said Act does not provide for award of interest. Section 129 of the said Act applies only in cases of contravention of the said Act and regulations. When UERC

² (2007) 8 SCC 381

Regulations, 2008 do not apply the question of contravention does not arise.

- (g) **Judgment dated 11/03/2011 passed in Appeal No.197 of 2011 in MSEDCL v. MERC** and **judgment dated 28/07/2011 passed in Appeal No.36 of 2011 in MSEDCL v. MERC** by this Tribunal on which reliance is placed by Respondent No.1 help the Appellant.
- (h) The State Commission did not go into the facts as to what steps the Appellant had in fact taken to carry out the construction of line and the difficulties faced in this regard by the Appellant. Factual matrix was never called for by the State Commission.
- (i) The Appellant has restricted its case to the question of the State Commission's authority to award interest. Having regard to the above submissions the impugned order be set aside.

15. We have heard Mr. A. Buddy Ranganadhan learned counsel appearing for Respondent No. 1. We have perused the written submissions filed by him. Gist of the submissions is as under:

- (a) Reading of Sections 42(1), 43(1), 14 and the definition of the term “Distribution System” under Section 2(17) of the said Act clearly indicates that it is the statutory duty of the distribution licensee to create a network and give supply of electricity to a consumer. The function of PTCUL which is a State Transmission Utility under Section 39(2) (c) of the said Act to develop intra-State transmission for smooth flow of electricity is virtually in *pari materia* with the obligation of a distribution licensee under Section 42(1) of the said Act.

- (b) Sections 67, 68 and 168 of the said Act indicate the wide powers conferred on PTCUL to carry out its statutory obligations under the said Act.
- (c) The terms of the sanction letter cannot override the Appellant's binding obligations under the said Act.
- (d) The Electricity Supply (Consumers), Regulations 1984 were framed under the Electricity Supply Act 1948 which stood repealed by the said Act. Hence, the said regulations have no application to the present case.
- (e) In any case Regulation 6 of the said Regulations applies, if at all only to the premises 'adjoining' the consumer's premises.
- (f) The contract was entered into on 30/08/2008. However, the entire work of the line and plant was undertaken much after the UERC Regulations 2008 were notified on 05/12/2008.

Hence, the UERC Regulations 2008 are applicable to the present case.

(g) Since the works have been conducted after the UERC Regulations 2008 were notified, they would apply to such works. There is no question of the UERC Regulations 2008 being applied retrospectively.

(h) The present dispute is between the Appellant which is a transmission licensee and a consumer. The CGRF Regulations framed by the State Commission *stricto sensu* apply only to distribution licensees in their area of supply. This is clear even from Regulation 1(3) of the UERC (Guidelines for Appointment of Members and Procedure to be followed by the Forum for Redressal of Grievances for the Consumers) Regulations 2007.

(i) Judgment of the Supreme Court in **Maharashtra Electricity Regulatory**

Commission v. Reliance Energy Ltd. does not help PTCUL. In fact in that case the Supreme Court has held that the State Commission has full power to pull up any of its licensees or distribution companies to see that rules and regulations laid down by the State Commission are properly complied with.

- (j) Various provisions of Section 42 of the said Act indicate that whatever rights may be available to a consumer under the Consumer Grievance Redressal Forum, would be in addition to its rights to approach any other forum including the State Commission.
- (k) Reliance is placed on this Tribunal's **judgment dated 11/03/2011 in Appeal No.197 of 2011 in MSEDCL v. MERC** and **judgment dated 28/07/2011 in Appeal No.36 of 2011 in MSEDCL v. MERC.**

(l) Various provisions of the said Act enjoin the distribution licensee and the Appellant with certain obligations under the said Act. If the Appellant was not complying with such statutory obligations, the State Commission would be fully empowered to exercise jurisdiction under the said Act. Section 129 of the said Act is important in this regard. Section 142 of the said Act is also relevant.

(m) In view of the above the appeal is clearly misconceived and deserves to be dismissed.

16. Mr. Dinesh Parashar learned counsel appearing for Respondent No.2 has also addressed us. He has adopted the submissions of Mr. A. Buddy Ranganadhan learned counsel appearing for Respondent No.1. Reply is filed on behalf of Respondent No.2.

17. Having given the gist of the submissions of the parties we shall now proceed to deal with them. Salient facts will have to be revisited to appreciate the rival contentions. Admittedly M/s. Gold Plus deposited an amount of Rs.2,20,00,000.00 and an amount of Rs. 2,97,79,036.00 with PTCUL, the transmission licensee on 02/09/2008 and 15/10/2008 respectively. The total amount deposited is Rs.5,17,79,036.00. This amount was deposited for 132 KV Transmission Line for which M/s. Gold Plus had applied in early 2008. However, the transmission line was not provided despite repeated requests from M/s. Gold Plus. M/s Gold Plus therefore filed complaint dated 01/02/2013 in the State Commission. The State Commission took action on the said complaint and called for reports from PTCUL and UPCL. PTCUL stated that it had incurred expenditure of Rs.2.42 crores. Thus an amount of Rs.2.76 crores was found lying with PTCUL for about five years. The State Commission upon perusal of the complaint and the Reports submitted by the parties came to a conclusion that the licensees had to provide transmission line to M/s. Gold Plus. They had not completed

the construction of works and ROW problem is cited as an excuse to justify their inaction. The State Commission came to a conclusion that obtaining ROW clearance was the responsibility of the licensee. Since PTCUL had retained M/s. Gold Plus's money without carrying out its obligation, the State Commission directed PTCUL to calculate the interest at the Bank rate on the amount lying unutilised with it for the period subsequent to the expiry of 270 days from the date of last deposit upto the completion of the work of construction of the line.

18. The main contention of the Appellant is that the responsibility of getting ROW clearance was that of the consumer i.e. M/s. Gold Plus. The Appellant is heavily relying on sanction letter dated 30/08/2008 which says that the completion period of the work will be 6 months from the date of award of contract subject to getting clearance of ROW by M/s Gold Plus and clause 6 of the Electricity Supply (Consumers) Regulations 1984. To address these

submissions we will have to go to the relevant provisions of the said Act.

19. Section 2(17) of the said Act defines “distribution licensee” to mean a licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply. Section 42 lays down the duties of a distribution licensee. Section 42(1) says that it shall be the duty of a distribution licensee to develop and maintain an efficient coordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions of the said Act. Under Section 43 (1), the distribution licensee is obliged to supply electricity on request and under Section 43(2), it is obliged to supply electric plant or electric line. Sections 43 to 46 provide for payment for such supply and equipments.

20. The Appellant is a State Transmission Utility. We must therefore go to Section 39 which relates to State Transmission

Utility and its functions. Under Section 39 (2) (c) the State Transmission Utility is obliged to ensure development of an efficient, coordinated and economical system of intra-State transmission for smooth flow of electricity from a generating station to the load centre. Thus the functions of the State Transmission Utility like the Appellant and a distribution licensee are similar with regard to transmission network. The legislature's intention to strengthen the hands of licensee so that it can carry out its statutory obligations is seen in Section 67 which permits the licensee to open and break up the soil, etc. to lay down or place electric lines, plants and other works. Under Section 164 of the said Act the State Government may by an order in writing *inter alia* for the purpose of placing of electric lines or electrical plants for transmission of electricity confer upon the licensee the powers of "a telegraph authority".

21. A perusal of all the above provisions of the said Act leads us to conclude that the Appellant Transmission Utility has wide, all pervading powers. The Appellant is authorised to create, operate and maintain the network of transmission lines

for the consumers to get supply of electricity. The Appellant is obliged under the law to provide line and plant to the consumers. The Appellant has been conferred with wide powers so that it can effectively attain its goal. The consumer is not similarly placed. Whether the responsibility of getting ROW clearance can be placed on the consumer will have to be examined against the backdrop of the above mentioned provisions of law. In our considered opinion the Appellant cannot abdicate its responsibility on the basis of a clause in the sanction letter that clearance of ROW is the consumer's responsibility. This averment made in the sanction letter is completely out of sync with the provisions of the said Act. We are unable to fasten the responsibility of clearance of ROW on M/s. Gold Plus on the basis of the said averment.

22. Reliance placed by the Appellant on clause 6 of the Electricity Supply (Consumers) Regulation 1984 is totally misplaced. The said regulations were framed under the Electricity Supply Act 1948. The said regulations stood repealed by virtue of Section 185(1) of the said Act. In any

case Regulation 6 of the said regulations does not help the Appellant. Regulation 6 relates only to the premises adjoining the consumer's premises. It is not the Appellant's case that it was unable to lay down the line only because the 'adjoining' land was not available.

23. Apart from the provisions of the said Act, provisions of the UERC Regulations, 2008 also support the contention of M/s. Gold Plus that ROW clearance is the responsibility of the transmission licensee. We have quoted the view expressed by the State Commission to that effect after reproducing the relevant provisions of the UERC Regulations, 2008. We concur with the said view that the responsibility of constructing the transmission line lies with the transmission licensee as the feasibility study for providing such connection including route survey of line and associated works are in the scope of the Appellant, the transmission licensee and UPCL as a distribution licensee has to coordinate with the Appellant. They cannot shirk their responsibility particularly when M/s.

Gold Plus has deposited the required amount with the Appellant.

24. It is urged by the Appellant that the UERC Regulations, 2008 are not applicable to the present case because they were notified on 05/12/2008. It is submitted that the Appellant had made application in early 2008, the contract was entered into on 30/08/2008 and the required deposits were made in September and October 2008 and the UERC Regulations 2008 were notified after these events. We are not impressed by this submission. The State Commission has observed that the works were started after the UERC Regulations 2008 came into force. Thus the Appellant undertook the statutory obligations after the UERC Regulations 2008 were notified. Therefore, the fulfilment of such obligations would have to be considered under the terms of the regulations in force at the relevant time.

25. The UERC Regulations 2008 are not applied retrospectively because they are not being applied to works which are completed prior to their being notified. It bears repetition to state that the works have been conducted after the UERC Regulations,2008 were notified. The UERC Regulations 2008 would necessarily apply to such works which are the subject matter of the UERC Regulations 2008.

26. In this connection we find great substance in Mr. Ranganadhan's submission that a pointer to the above view is that the UERC Regulations 2008 also contain a provision for enhancement or reduction of load. Such enhancement or reduction provision would obviously apply to an enhancement or reduction of load undertaken after 05/12/2008 even though the original connection had been granted prior to 05/12/2008. If the Appellant's submission is accepted that would mean that if the original connection had been taken prior to 05/12/2008, the enhancement or reduction of load for such connection would also not be covered by the UERC Regulations 2008 which would never be the case.

27. We also find substance in the submission that once the UERC Regulations 2008 were notified, all contracts would have to be aligned to them (See: **PTC India Limited v. Central Electricity Regulatory Commission**³). We are therefore of the opinion that the UERC Regulations 2008 are applicable to the present case. In view of our above conclusion it is not necessary for us to deal with the submissions of the Appellant on retrospectivity.

28. It is then contended by the Appellant that the State Commission could not have entertained the complaint filed by M/s. Gold Plus because the dispute raised by M/s. Gold Plus can only be dealt with by CGRF set up under Sections 42(5) and 42(6) of the said Act. Reliance is placed on the judgment of the Supreme Court in **Reliance Energy Limited**.

29. In this connection, we must note that Mr. Ranganadhan learned counsel for Respondent No.1 has pointed out that the

³ 2010(4) SCC 603

CGRF Regulations framed by the State Commission *stricto sensu* apply only to distribution licensees in their area of supply. Sections 42(5) and (6) of the said Act also apply to distribution licensees. This is also clear from Regulation 1(3) of the UERC (Guidelines for Appointment of Members and Procedure to be followed by the Forum for Redressal of Grievances for the Consumers), Regulations 2007. The Appellant is a transmission licensee, hence all these provisions are not applicable to it. Since the Appellant is providing line and plant for the purpose of providing supply to the consumers, we will examine the contention raised by the Appellant rather than adopting a technical approach.

30. To examine this contention it is necessary to advert to Section 42 of the said Act so far as it relates to CGRF. Following are the relevant sub-sections of 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 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 disignated 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.

(8) The provisions of sub-sections (5), (6) and (7) shall be without prejudice to right which the consumer may have apart from the rights, conferred upon him by those sub-sections.”

It is clear from the above provisions that CGRF is created for the redressal of the grievances of the consumers. Any person aggrieved by the decision of CGRF can approach the Ombudsmen appointed or designated by the State Commission and the provisions of sub-sections (5), (6) and (7) shall be without prejudice to right which the consumer may have apart from the rights conferred upon him by these sub-sections.

31. By its judgment in **Reliance Energy Limited**, the Supreme Court decided two appeals – one relating to Reliance Energy Limited and another relating to Lloyds Steel Industries Limited. In appeal relating to Reliance Energy Limited, the Supreme Court was concerned with the State Commission's order inter alia directing that the supplementary / amended bills sent to the consumers by the distribution companies be withdrawn and the amounts collected be refunded to the consumers. This order was passed pursuant to the notice issued by the State Commission to the licensees / distribution companies on the basis other than the actual meter reading. On an appeal being preferred to this Tribunal, this Tribunal set aside the said order and directed the consumers to approach CGRF. It was urged before the Supreme Court that the State Commission has power to give a general direction to its consumers. While dealing with this question the Supreme Court considered the Statement of Objects and Reasons of the said Act and the relevant provisions thereof. The Supreme Court observed that the State Commission cannot adjudicate disputes relating to individual consumers. But the Supreme

Court added that a comprehensive reading of all the provisions of the said Act leaves no manner of doubt that the State Commission is “empowered with all powers right from granting licence and laying down the conditions of licence and to frame regulations and to see that the same are properly enforced and also power to enforce the conditions of licence under subsection (6) of Section 128.” The Supreme Court further observed that the contention that the State Commission has no such power is wrong. We may quote the relevant paragraph which clears all doubts about the State Commission’s powers.

“18. When the Commission received a spate of complaints from consumers against its licensees/distribution companies that they are arbitrarily issuing supplementary/amended bills and charging excess amounts for supply of electricity, it felt persuaded to invoke its general power to supervise the licensees/distribution companies and in that connection issued notice dated 3-8-2004. There can be no manner of doubt that the Commission has full power to pull up any of its licensee or distribution company to see that the rules and regulations laid down by the Commission are properly complied with. After all, it is the duty of the Commission under Sections 45(5), 55(2), 57, 62, 86,

128, 129, 181 and other provisions of the Act to ensure that the public is not harassed.”

32. The Supreme Court, however, was of the opinion that the State Commission did not get an investigation made under Section 128(1) and without getting a report under Section 128(5), it passed an order directing refund from consumers. The Supreme Court made it clear that in these circumstances, the view taken by this Tribunal to the extent that the individual consumers should have approached CGRF was correct. Narration of the facts in appeal relating to Reliance Energy Limited confirms that there was violation of the provisions of the said Act and the Supply Code notified by the State Commission. It is clear from the observations of the Supreme Court that a dispute, which is a purely “private dispute” between a consumer and a discom, without any question of violation of the said Act or regulations of the State Commission, will fall within the jurisdiction of CGRF. In case of violation of the provisions of the said Act or regulations, the State Commission has all the powers to pull up the licensees.

In fact, under the Scheme of the said Act that is the duty of the State Commission.

33. So far as the appeal relating to Lloyds Steel Industries Limited is concerned, it is evident from the factual matrix that it pertained to reduction/enhancement of the contract demand and the consequential demand of the service line charges raised by the distribution licensee from the consumer i.e. Lloyds Steel. It was a dispute pertaining to a particular consumer contract demand and the consequential supply line charges raised on it. There is no dispute that such a private dispute falls within the jurisdiction of CGRF as observed by the Supreme Court.

34. The judgment of the Supreme Court in **Reliance Energy Limited** does not support the Appellant's contention that the State Commission had no jurisdiction to deal with the instant dispute. This judgment recognizes the State Commission's right to pull up a licensee in case there is a violation of statutory provisions or regulations even in a dispute between a

consumer and a licensee. Even a dispute between a consumer and a licensee may fall within the jurisdiction of the State Commission if it involves any violation or infraction of the said Act, relevant regulations or orders of the State Commission.

35. At this stage, it is necessary to revisit to Section 42(8) of the said Act which provides that the provisions of sub-sections (5) and (6) shall be without prejudice to a right which the consumer may have apart from the right conferred upon him by sub-sections (5) and (6) of Section 42. Thus any right the consumer may have under sub-sections (5) (6) and (7) of Section 42 would be in addition to and not in derogation of any other right under the said Act. This, in our opinion, preserves the State Commission's jurisdiction to step in, in gross cases particularly of violation of the said Act or the relevant regulations or its orders.

36. Coming to the facts of the present case, according to the complainant – M/s. Gold Plus, there is a violation of the said Act and the UERC Regulations, 2008. That is why notice

under Section 142 of the said Act was issued by the State Commission. Therefore, the State Commission, in our opinion, had jurisdiction to entertain the complaint of M/s. Gold Plus.

37. In this connection, we may refer to the **judgment dated 11/03/2011 passed by this Tribunal** in **MSEDCL v. MSERC** on which reliance is placed by Respondent No.1. In that case, the consumer had approached Maharashtra State Electricity Distribution Company Limited (“**MSEDCL**”) for refund of the excess service line charges paid based on Circular No.631. The State Commission passed order directing MSEDCL to refund the amount. MSEDCL challenged the said order *inter alia* on the ground that the State Commission had no jurisdiction to entertain the consumers’ petition because it was a dispute between consumer and licensee. Reliance was placed on **Reliance Energy Limited**. This Tribunal held that in **Reliance Energy Limited**, the Supreme Court has held that the State Commission has got full powers to pull up a distribution licensee to ensure that the rules and regulations

laid down by the State Commission as well as the orders passed by it are complied with. This Tribunal observed that billing dispute between the licensee and consumer cannot be gone into by the State Commission, but retaining excess service line charges under a Circular held to be invalid was illegal and, therefore, the State Commission has jurisdiction to entertain such dispute.

38. Again in **judgment dated 28/07/2011** in **MSEDCL v. MSERC**, this Tribunal dealt with the same issue. In that case, the consumer had filed petition before the State Commission under Section 142 of the said Act seeking direction to Maharashtra State Electricity Distribution Company to grant open access in its favour. The State Commission allowed the petition. In the appeal carried before this Tribunal MSEDCL urged that the State Commission had no jurisdiction to entertain the dispute in view of Section 42 of the said Act. This Tribunal referred to **Reliance Energy Limited** and held that the State Commission has got the supervisory and

adjudicatory jurisdiction to deal with the disputes pertaining to grant of open access and not CGRF. We may quote the relevant conclusion drawn by the State Commission.

“46. The dispute relating to the Open Access would be dealt only by the Commission as the Act clearly provides that the Commission must ensure fulfillment of the mandate to provide such Open Access which would include issuing directions to grant Open Access which has rightly been given in the impugned order. This, jurisdiction vested with the Commission cannot be usurped or taken away by the Consumer Grievance Redressal Forum. In other words, the Consumer Grievance Redressal Forum established by the Distribution Licensee will have no jurisdiction to entertain or decide a dispute where the statutory mandate to provide Open Access has been violated by the Distribution Licensee. Therefore, the dispute in question can be resolved by the State Commission alone and not by the Consumer Grievance Forum. As such, there is no infirmity in the impugned order.”

Thus, the State Commission can entertain and decide complaint between consumers and licensees where there is a violation of the provisions of the said Act or the regulations framed by the State Commission or orders passed by the State Commission. A pure consumer-licensee dispute like a billing

dispute will lie before the CGRF. What is a pure consumer-licensee dispute will depend on facts and circumstances of each case.

39. We must also refer to Section 129 of the said Act. It reads thus:

“129. Orders for securing compliance.- (1) *Where the Appropriate Commission, on the basis of material in its possession, is satisfied that a licensee is contravening, or is likely to contravene, any of the conditions mentioned in his licence or the licensee or conditions for grant of exemption or the licensee or the generating company has contravened or is likely to contravene any of the provisions of this Act, it shall, by an order, give such directions as may be necessary for the purpose of securing compliance with that condition or provision.*

(2) While giving direction under sub-section (1), the Appropriate Commission shall have due regard to the extent to which any person is likely to sustain loss or damage due to such contravention.”

As it is clear, under Section 129, the State Commission has power to give such directions as may be necessary for the purpose of securing compliance with the provisions of the said Act. Section 142 empowers the State Commission to impose

penalty on any person who contravenes provisions of the said Act. In fact, the present proceedings were initiated under Section 142 of the said Act. Thus, the State Commission's powers to issue direction to the licensees can be traced to the provisions of the said Act.

40. The fact that M/s. Gold Plus was given supply through alternate source does not absolve the Appellant of its responsibility of providing 132 KV line to M/s. Gold Plus for which M/s. Gold Plus had applied and paid the requisite amount. Connecting M/s. Gold Plus to an existing network on temporary basis is no substitute for 132 KV line.

41. It is submitted that Section 142 of the said Act does not provide for award of interest and Section 129 of the said Act applies only in case of contravention of the said Act and regulations. It is further submitted that since the UERC Regulations, 2008 do not apply to the present case, question of their contravention does not arise at all. We have already

held that since the works were conducted after the UERC Regulations, 2008 came into force, the UERC Regulations 2008 would be applicable to this case. We have already recorded the conclusion that the Appellant has failed to carry out its obligations under the provisions of the said Act and the UERC Regulations 2008. Thus there is a contravention of the provisions of said Act and the UERC Regulations 2008. In our opinion contravention of the provisions of the said Act and the UERC Regulations 2008 resulting in non performance of obligations by the Appellant would justify the grant of interest by the State Commission on the amount of Rs.2.76 crores retained by the Appellant over a period of 5 years without performing its obligations. In the peculiar facts and circumstances of the present case we cannot find fault with the State Commission's order directing the Appellant to pay interest till the works are completed.

42. It is pertinent to note that the State Commission has added a rider that the total interest shall be adjusted out of

dues of M/s. Gold Plus or added to the refund to be made to M/s. Gold Plus based on the actual expenditure incurred on completion of the work. Pertinently the State Commission has directed the Appellant to submit compliance report.

43. Having applied the relevant provisions of the said Act and the relevant regulations of the UERC Regulations, 2008 to the facts of the present case, we are of the opinion that no interference is necessary with the impugned order. The State Commission has rightly taken note of the fact that the Appellant has not carried out its statutory obligation of constructing a 132 KV line though M/s. Gold Plus had paid the requisite amount. The State Commission has rightly noted that the amount of Rs.2.42 crores paid by M/s. Gold Plus has been retained by the Appellant for over 5 years without completing the work and directed the Appellant to pay interest thereon to M/s. Gold Plus for the period subsequent to the expiry of 270 days from the date of last deposit upto the completion of the work. The impugned order, in our opinion,

is legal and just. Appeal is, therefore, dismissed. Needless to say that I.A. No.346 of 2014 stands disposed of accordingly.

44. Pronounced in the open court on this **30th day of January,2017.**

T. Munikrishnaiah
[Technical Member]

Justice Ranjana P. Desai
[Chairperson]

✓ **REPORTABLE / NON-REPORTABLE**