

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

**APPEAL NO.264 OF 2016**

**AND**

**I.A. NO.667 OF 2016**

**Dated : 07<sup>th</sup> FEBRUARY, 2017.**

**Present: Hon'ble Smt. Justice Ranjana P. Desai, Chairperson  
Hon'ble Shri I.J. Kapoor, Technical Member.**

**IN THE MATTER OF:**

**PASCHIM GUJARAT VIJ CO. LTD. )  
"Paschim Gujarat Vij Seva Sadan", Off. )  
Nana Mava Main Road, Laxminagar, )  
Rajkot-360 004. ) .... **Appellant****

Versus

**1. GOKUL AGRO RESOURCES LTD., )  
B-402, Shapath Hexa, Nr. Ganesh )  
Meridian, Opp. Gujarat High Court, )  
Ahmedabad -382355. )**

**2. GUJARAT ELECTRICITY )  
REGULATORY COMMISSION, )  
6<sup>th</sup> Floor, GIFT ONE, Road 5 C, Zone )  
5, GIFT City, Gandhinagar-55. ) .... **Respondents****

**Counsel for the Appellant(s) : Mr. M.G. Ramachandran  
Mr. Anand K. Ganesan  
Ms. Ranjitha Ramachandran  
Ms. Anushree Bardan**

**Counsel for the Respondent(s) : Mr. Navin Pahwa  
Mr. Ashish Jha  
Ms. China Jethwani for **R.1****

**Ms. Suparna Srivastava for **R.2****

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## J U D G M E N T

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

1. The Appellant is a distribution licensee. Respondent No.1 - Gokul Agro Resources Limited is a consumer of the Appellant. In this appeal, the Appellant has challenged Order dated 26/07/2016 passed by Respondent No.2, the Gujarat Electricity Regulatory Commission ("**State Commission**") whereby the State Commission has admitted Respondent No.1's petition.

2. We must give a brief background of the case. Respondent No.1 has two HT connections. Respondent No.1 sought NOC to obtain Open Access which was denied by the Appellant on the ground that the same legal entity of Respondent No.1 having two separate connections need to merge the connections and for a premises there can be only one connection. The Appellant was supplying electricity to the two connections separately and was billing accordingly. However, from June 2015, the Appellant revised the

methodology for issuance of energy bills by charging excess 11.11% on the total units consumed. Respondent No.1 therefore filed a petition before Respondent No.2 the State Commission under Sections 62(6), 86(1) and 94(1) (g) of the Electricity Act, 2003 (**“the said Act”**) *inter alia* on the grounds that the action of the Appellant was in violation of the provisions of the said Act, the rules and regulations framed thereunder and also in violation of the tariff orders of the State Commission.

3. The Appellant raised a preliminary objection that the State Commission has no jurisdiction to entertain the petition the dispute raised before it being a dispute between the consumer and the distribution licensee. According to the Appellant only the Consumer Grievance Redressal Forum (**“CGRF”**) constituted under Section 42(5) of the said Act has the power. In this connection, reliance was placed on the judgment of the Gujarat High Court in Modern Denim

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**Limited v Uttar Gujarat Vij Gujarat Ltd.**<sup>1</sup> By the impugned order, the State Commission rejected the preliminary objection and admitted the petition.

4. Mr. Navin Pahwa learned counsel appearing for Respondent No.1 raised objection to the maintainability of this appeal. Hence, the parties were directed to file their response on the issue of maintainability.

5. Raising objection to the maintainability of the appeal, Mr. Navin Pahwa learned counsel for Respondent No.1 firstly relied on the judgment of the Supreme Court in **PTC India Limited v. Gujarat Electricity Regulatory Commission & Anr**<sup>2</sup>.

Counsel submitted that in this case the Supreme Court has held that the object of the said Act is to ensure expeditious adjudication of the disputes raised by the parties and, therefore, there is no warrant for entertaining preliminary objections raised by the parties. Counsel submitted that the Appellant has in this appeal raised only the preliminary issue

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<sup>1</sup> Judgment dated 12/08/2013 in Special Civil Application Nos.15262 of 2012 & 15263 of 2012

<sup>2</sup> Judgment dated 18/10/2012 in Civil Appeal No.7524 of 2012

of jurisdiction. Hence, the appeal be dismissed. Counsel submitted that the appeal challenges interim order of admission of petition. On this ground also the appeal is liable to be dismissed. Counsel further submitted that this matter does not involve a simple billing dispute. The question of merger of two HT connections and recovery of 11.11% monthly energy charges in addition to regular bill amount squarely fall within the jurisdiction of the State Commission. They involve interpretation of provisions of the said Act and relevant rules and regulations. In support of his submissions counsel relied on judgment of the Supreme Court in **BSES Ltd v. Tata Power Co. Ltd. & Ors**<sup>3</sup>. and order of the Supreme Court in **Lanco Amarkantak Power Ltd. v. Haryana Electricity Regulatory Commission & Ors**<sup>4</sup>. Counsel also relied on judgment of this Tribunal in **PTC India Limited v. Gujarat Electricity Regulatory Commission & Anr**<sup>5</sup>. Counsel submitted that in the circumstances, the appeal is liable to be dismissed at the stage of admission.

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<sup>3</sup> (2003) Supp-4 SCR 932

<sup>4</sup> Order dated 19/02/2013 in IA No.7 of 2012 in Civil Appeal No.10329 of 2011

<sup>5</sup> Judgment dated 01/10/2012 in Appeal No.31 of 2012

6. Ms. Suparna Srivastava, learned counsel for the State Commission submitted that Section 62 of the said Act relates to determination of tariff by the State Commission. As per sub-section 6 thereof, under which the petition is filed, the consumer can recover amount charged in excess of the tariff determined by the State Commission. Dispute raised by Respondent No.1 relates to recovery of 11.11% monthly energy charges which is not determined by the State Commission can only be decided by the State Commission. Counsel drew our attention to paragraph 1.10 of the petition and submitted that while examining the issue of merger the State Commission will have to look into two sets of regulations and consider which of them apply to the present case and, therefore, the dispute is not just a billing dispute. The State Commission has jurisdiction to entertain it.

7. Mr. Ramachandran learned counsel for the Appellant submitted that the dispute involved in this case is a purely individual consumer grievance which is covered by Section

42(5) and (6) of the said Act. Counsel submitted that the claim of the Appellant is consistent with the provisions of the Electricity Supply Code notified by the State Commission. Counsel submitted that the issues involved in these appeals do not require any clarification of the tariff order or regulations of the State Commission. In support of his submissions counsel relied on the judgment of the Supreme Court in **Maharashtra State Electricity Distribution Co. Ltd v. Lloyds Steel Industries Ltd**<sup>6</sup> and judgment of this Tribunal in **Dakshin Haryana Bijli Vitaran Nigam Ltd. v. Princeton Estate Condominium Association, DLF Universal Ltd.**<sup>7</sup> and judgment of this Tribunal in **BSES Rajdhani Power Limited v. Delhi Electricity Regulatory Commission**<sup>8</sup>. Counsel distinguished the judgments cited by the Respondents and submitted that they have no application to the present case. Counsel submitted that the appeal deserves to be admitted considering the settled law.

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<sup>6</sup> AIR 2008 SC 1042

<sup>7</sup> 2007 APTEL 356

<sup>8</sup> Judgment dated 30/03/2009 in Appeal No.181 of 2008

8. Prayer of Respondent No.1 is that the instant statutory appeal be dismissed at the stage of admission as it raises no arguable questions of fact or of law. In this connection we may refer to the judgment of the Supreme Court in **Bolin Chetia v. Jagadish Bhuyan & Ors.**<sup>9</sup> where the Supreme Court considered whether a statutory appeal provided under Section 116-A of the Representation of People Act, 1951 could be summarily dismissed. Following observations of the Supreme Court are relevant.

*“9. .... The discretion conferred on the appellate court to dismiss the appeal at its threshold is a judicial discretion and cannot be exercised arbitrarily or by whim or fancy. The appellate courts exercise the discretion in favour of summary dismissal sparingly and only by way of exception. However, that does not tantamount to saying that the appellate court does not possess the power to dismiss an appeal summarily and at the threshold. Such power to summarily dismiss can be exercised, depending on the facts and circumstances of a given case, before issuing notice to the respondent and even before sending for the record of the inferior forum. .... Where the appellate court exercises its discretion in favour of dismissing the first appeal without issuance of notice to the respondent, it is expected that the reasons for doing so are placed on record. Such recording of*

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<sup>9</sup> (2005) 6 SCC 81

*reasons is necessary where the order of summary dismissal is open to challenge before a superior forum. This rule of practice does not apply to the Supreme Court as it is the final court and as no appeals lie against the decisions of this Court, including a decision by which an appeal is summarily dismissed.*

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*16. It is thus clear that the appellate courts including the High Court do have power to dismiss an appeal summarily. Such power is inherent in appellate jurisdiction. The power to dismiss summarily is available to be exercised in regard to first appeals subject to the caution that such power will be exercised by way of exception and if only the first appellate court is convinced that the appeal is so worthless, raising no arguable question of fact or of law, as it would be a sheer wastage of time and money for the respondent being called upon to appear, and would also be an exercise in futility for the court. The first appellate court exercising power to dismiss the appeals summarily ought to pass a speaking order making it precise that it did go into the pleas – of fact and/or law – sought to be urged before it and upon deliberating upon them found them to be devoid of any merit or substance and giving brief reasons.....”*

9. Having regard to the law laid down by the Supreme Court, we can dismiss the instant appeal summarily as a first appellate court by giving reasons if we come to a conclusion that it is devoid of any merit.

10. Pertinently the impugned order merely admits the petition. It does not decide the rights of the parties. The State Commission has directed the parties to file their replies. Since rights of the parties are not decided by the impugned order the Appellant cannot be said to be aggrieved by the impugned order which merely admits the petition. The appeal is therefore liable to be dismissed on that count.

11. Even otherwise, on a proper interpretation of the relevant provisions of the said Act and on a perusal of the relevant judgments, we are of the opinion that the appeal is liable to be dismissed. In this connection, sub-sections 5, 6, 7 and 8 of Section 42 of the said Act need to be quoted. They read as under:

**“42. Duties of distribution licensee and open access.-**

- |     |     |     |     |
|-----|-----|-----|-----|
| (1) | xxx | xxx | xxx |
| (2) | xxx | xxx | xxx |
| (3) | xxx | xxx | xxx |
| (4) | xxx | xxx | xxx |

*(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.*

Section 42 makes it obligatory on the State Commission to establish a forum for redressal of grievances of the consumers (CGRF). Appeal against the order of the CGRF lies to the Ombudsman appointed by the State Commission. All the rights which the consumer has, under sub-sections 5, 6 and 7, are without prejudice to rights which the consumer may have apart from the rights conferred by those sub-sections.

12. To examine whether Respondent No.1's case is covered by the above provisions, it is first necessary to consider what is the nature of its grievance. In the petition, Respondent No.1 has specifically raised the point that GERC (Electricity Supply Code) Regulations, 2005 do not provide for merger of two connections. It is further submitted that the question is whether connections which were released prior to GERC (Electricity Supply Code) Regulations, 2005 would be covered by them and would be required to be merged as per the provisions of the said Act. In this context, the State Commission has rightly observed that this issue requires interpretation of the provisions of the said Act, rules and regulations framed thereunder, the agreements signed between Respondent No.1 and the Appellant and the conditions of supply of erstwhile Gujarat Electricity Board.

13. The second issue is regarding the recovery of 11.11% charges in addition to monthly energy bill. It is linked to the issue of merger of two connections. It was submitted before the State Commission that due to non-merger of two

connections, the Appellant was incurring loss equivalent to 11.11% units consumption in individual connection. It is pertinent to note that Respondent No.1 has filed the petition also under Section 62(6) of the said Act. Section 62 relates to determination of tariff by the Appropriate Commission. Section 62(6) says that if any licensee or a generating company recovers a price or charge exceeding the tariff determined under Section 62, the excess amount shall be recoverable by the person who has paid such amount. Thus, the licensees can charge the tariff approved and determined by the Appropriate Commission. Whether 11% additional amount on energy bill is recoverable or not can be decided by the State Commission which has passed the tariff order in the light of the tariff order, said Act and relevant regulations. Counsel for the Appellant submitted that every dispute will involve interpretation of tariff orders or relevant regulations and CGRF or Ombudsman can very well conduct the exercise. We are unable to agree with the counsel. The present dispute is not a typical consumer-licensee dispute. For examining the issue of merger, the relevant regulations will have to be studied.

Similarly, for examining 11% additional charges, which are linked to merger, tariff orders will have to be seen. Provisions of the said Act also have to be looked into. Whether a particular dispute is a consumer dispute or not, will depend on facts and circumstances of each case. This dispute does not merely involve calculation of amounts and finding whether billing is wrong in light of determined tariff. It involves complex issues of merger of connections and 11% additional amount on energy bill not covered by the tariff order. In our opinion, therefore, the State Commission has jurisdiction to entertain Respondent No.1's petition.

14. In **Lloyds Steel Industries Limited**, on which the Appellant has placed reliance, the dispute was regarding demand raised for reinstatement of contract demand. The Supreme Court held that the matter should have been left to CGRF and the State Commission had no jurisdiction to entertain such a dispute. In our opinion, this judgment will not be applicable to the present case because that case covered a pure consumer grievance. It did not involve issues like

merger of two connections and additional charge over and above the energy bills. Besides, it appears from the judgment of the Supreme Court that the issue whether a particular consumer grievance involving complex issues requiring interpretation of tariff orders, relevant regulations, conditions of supply can be raised before the State Commission was not argued before the Supreme Court. It appears that no submissions were advanced on Section 42(8) of the said Act. The said judgment is, therefore, not applicable to the present case.

15. Judgment of this Tribunal in **Dakshin Haryana Bijli Vitaran Nigam Ltd.**, is also not applicable to this case. Firstly, this judgment is based on concession. This Tribunal has noted the concession as follows:

*“Concedingly, the grievance or complaint of the contesting Respondent is one falling under Part VI: Distribution of Electricity of the Electricity Act, 2003 and in particular under Section 42(5) of the Electricity Act, 2003, as the gravamen of the allegations being failure to supply electricity against the distribution license (“Discom” for brevity)”.*

Besides, in that case, the distribution licensee had not constituted CGRF. Instead of calling upon the licensee to constitute CGRF, the State Commission had claimed the jurisdiction of CGRF. The Appellant cannot draw any support from this judgment.

16. Judgment of this Tribunal in **BSES Rajdhani Power Limited** also does not help the Appellant. In that case, the Appellant had admitted before the State Commission that it was a case of wrong double billing and submitted to the jurisdiction of the State Commission. This Tribunal, in the circumstances, held that when a specific remedy is available for the consumer regarding wrong billing under Section 42(5) and 42(6) of the said Act, the consumer cannot approach the State Commission for redressal and the State Commission should direct the consumer to approach CGRF. Undoubtedly, simple billing disputes have to go before CGRF. This case, in our opinion, does not involve a simple billing dispute.

17. On this point, we may usefully refer to the judgment of the Supreme Court in **Maharashtra Electricity Regulatory Commission v. Reliance Energy Limited**<sup>10</sup>. In that case 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

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<sup>10</sup> (2007) 8 SCC 381

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.”*

18. 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, which was held to fall within the jurisdiction of CGRF. There is no dispute that such a private dispute falls within the jurisdiction of CGRF as observed by the Supreme Court.

19. In this connection, we may also refer to the **judgment dated 11/03/2011 passed by this Tribunal in MSEDCL v. MSERC.** 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.

20. 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*

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*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.”*

21. Having regard to the above judgments, this Tribunal in **Power Transmission Corporation of Uttarakhand Limited v. Uttarakhand Electricity Regulatory Commission<sup>11</sup>** has observed as under:

*“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.”*

22. We must also revisit Section 42(8) of the said Act which states that the provisions of sub-sections (5) and (6) shall be

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<sup>11</sup> Judgment dated 30/01/2017 in Appeal No.226 of 2014

without prejudice to the right which the consumer may have apart from the right conferred upon him by sub-sections (5) and (6) of Section 42. It is clear from the language of sub-section (8) of Section 42 that 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. Counsel for the Appellant has, relying on the judgment in **Dakshin Haryana Bijli Vitaran Nigam Ltd.**, urged that Section 173 of the said Act saves the Consumer Protection Act, 1986, and, therefore, the consumer can approach the Consumer Redressal Forum constituted thereunder. It is true that a consumer's right to approach the Consumer Redressal Forum can be said to be covered by Section 42(8), but **Dakshin Haryana Bijli Vitaran Nigam Ltd.** does not say that any other right which the consumer may have under the said Act is not covered by Section 42(8). Thus, a consumer will be entitled to approach the State Commission in cases 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

or in complex cases, which are not pure and simple billing disputes but which involve interpretation of the provisions of the said Act, relevant regulations and tariff orders.

23. In view of the above, the instant appeal which challenges the order admitting Respondent No.1's petition is liable to be dismissed and is accordingly dismissed. In view of the dismissal of the appeal, IA No.667 of 2016 does not survive and is dismissed as such. We make it clear that on the merits of the case we have not expressed any opinion and the State Commission shall deal with the petition independently and in accordance with law.

24. Pronounced in the Open Court on this **07<sup>th</sup> day of February, 2017.**

**I.J. Kapoor**  
**[Technical Member]**

**Justice Ranjana P. Desai**  
**[Chairperson]**

✓ **REPORTABLE/NON-REPORTABLE**