

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

R.P. No.5 of 2009 IN
APPEAL No.181 of 2008

Dated: 27th January, 2012

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member,

D.E.R.C

Petitioner/Respondent

Versus

BSES Rajdhani Power Pvt. Ltd

Respondent/Appellant

Counsel for the Petitioner : Mr. Meet Malhotra, Sr. Adv

Counsel for the Respondent : Mr. Amit Kapur

ORDER

1. Delhi Electricity Regulatory Commission has filed this Review Petition seeking clarification with reference to some observations made in the judgement dated 30.3.2009 rendered by this Tribunal in Appeal No.181 of 2008 in relation to powers under Section 142 of the Electricity Act which provides for the State Commission to inquire into the complaint regarding not only non compliance of the directions but also the violation of Rules and Regulations etc.,

2. The Appeal No.181 of 2008 arose out of the order passed by the Delhi Electricity Regulatory Commission imposing penalty and compensation on BSES Rajdhani Power Limited over the grievance of the consumer complainant. As against this order, the BSES Rajdhani Power Limited filed the Appeal in Appeal No.181 of 2008 challenging the said order. The Tribunal in that Appeal set aside the said order and remanded the matter to the Grievance Cell directing it to redress the grievance of the complainant consumer by the judgement dated 30.3.3009.
3. We have heard Mr. Meet Malhotra, learned Counsel for the Review Petitioner i.e. Delhi Electricity Regulatory Commission and Mr. Amit Kapur, learned Cousnel for the BSES Rajdhani Power Limited, the Respondent.
4. When the matter was heard on the query raised by us, both the learned Counsel for the Appellant and Respondent brought to our notice that two tier Grievance Redressal Mechanism has not been made functional in several States. It is stated that even after a period of 06 years, after the Electricity Act, 2003 came into force, only some of the States have implemented the scheme relating to the establishment of Grievance Redressal Forum and in respect of the compliance of the various provisions of the scheme of the Supply Code. It has also been brought to our notice that in some States the scheme has either been implemented partially or not at all. We were also informed that

in some other States the Ombudsman has not at all been appointed by the State/Joint Commissions and the two tier mechanism of Grievance Cell has not been made functional and the consumers even for billing disputes were constantly approaching the State/Joint Commissions under Section 142 of the Act. When we asked the learned Counsel for both the parties with reference to the institutional vacuum with the Regulatory mechanism, they suggested that this Tribunal by invoking powers under Section 121 of the Act can give suitable interim directions as guidelines to all the State/Joint Commissions to ensure full compliance of the provisions of the Act especially with regard to the establishment of the Grievance Redressal Mechanism in all the States and with regard to the compliance of the scheme of the supply code.

5. Though we have to decide the question in this Review Petition with reference to the powers of the State Commission to go into the complaint of the consumer regarding his grievance under Section 142 of the Act, we feel that there is an urgency to give suitable directions even during the pendency of this Review Petition in order to ensure that the State/Joint Commissions are not allowed to be inundated with deluge of consumer grievance which will hamper their vital regulatory and specialised role as a Regulator to the Power Sector in each State.

6. Therefore, we intended to give suitable guidelines and directions to the State/Joint commissions with reference to the effective functioning of various mechanism as provided in the Act even before passing the final order in this Review Petition.
7. Accordingly we have requested both the Counsel for the parties namely Mr. Meet Malhotra and Mr. Amit Kapur to act as Amicus Curiae Counsel for giving suggestions to this Tribunal with regard to the issue of a suitable interim directions to the State/Joint Commissions by invoking section 121 of the Act, 2003. Accordingly, they agreed to be Amicus Curiae Counsel and by order dated 29.5.2009, both were appointed as Amicus Curiae Counsel.
8. We were informed that the appropriate directions should be issued with regard to the following aspects:
 - (a) State Electricity Regulatory Commissions have not been established or not being functional in Sikkim, Nagaland and Arunachal Pradesh.
 - (b) Inconsistency in effective establishment and implementation of the two tier consumer grievance redressal mechanism as envisaged in terms of Section 42 (5) to (7) of the Electricity Act, 2003. In several States, the consumer grievance redressal forums and/or the Ombudsmen have not been established nor

appointed or nor functioning. It was noticed that in some States the officials of the Commissions are also acting as Ombudsmen.

(c) Inconsistency in specifying various aspects of the standards of performance and rules governing commercial relationship between a distribution licensee and its consumers – in respect of various aspects in terms of Section 50 and 57 of the Electricity Act, 2003.

(d) Need for an effective periodic evaluation of these institutional mechanism with the involvement of the Forum of Regulators.

9. On these issues, as suggested by the Amicus Curiae Counsel, we have issued several directions to the State/Joint Commissions and also to the Secretary to the Forum of Regulators. In fact, by the order dated 29.5.2009, we have directed the Secretary, Forum of Regulators to act as a representative of all the State/Joint Commissions to ascertain the level of the implementation of the mechanism and scheme of the Electricity Act, 2003 and to file his report periodically before this Tribunal to enable this Tribunal to pass further orders.

10. We have issued various directions in this regard to State Commissions as well as to the Joint Commissions and to the Secretaries to the Government through the orders passed on

various dates namely 9.10.2009,17.12.2009,11.2.2010, 30.3.2010,15.4.2010,10.5.2010, 24.5.2010, 5.7.2010, 1.11.2010, 14.12.2010,15.12.2010,14.1.2011,4.2.2011,11.4.2011,31.5.2011 , 29.7.2011, 5.9.2011 and 12.10.2011.

11. In pursuance of these orders, we have received the respective reports from all the State/Joint Commissions which have shown that they have acted in compliance with our directions by putting in place the institutional mechanism by filling in any voids and as also by submitting periodical status reports. In doing so, they have acted with promptness as per the call of duty to establish credible institutional mechanism for safeguarding consumer's interest and for securing effective mechanism for seeking redressal of the grievance of the consumers.

12. Initially, it was noticed that even the Regulatory Commissions were not constituted in Sikkim, Arunachal Pradesh and Nagaland. On the basis of our periodical interim directions, the Secretary to the Forum of Regulators promptly contacted all the Commissions and ensured that the Consumer Grievance Redressal Forum was established and Ombudsmen were appointed. However, there was a delay in the constitution of the Regulatory Commissions in the State of Sikkim and Arunachal Pradesh. Therefore, we have specifically given directions to the Chief Secretary of Sikkim and Arunachal Pradesh to constitute the Regulatory Commission by appointing

the Chairman and other Members in accordance with the procedure contemplated under the Act without any delay. On some of the hearings, it was brought to our notice that in some States, the Director or Officer attached with the Commission has been designated as Ombudsman. To those Commissions, we have directed to appoint a separate Ombudsman as the Ombudsman has to perform independently. On some of the occasions we were constrained to summon the Secretary of Government of Sikkim as well as the Secretary of Government of Arunachal Pradesh and asked for their explanation regarding the failure to constitute the State Commissions in their respective States. They asked for further time for compliance of the directions. Accordingly, time was given. Even then, the said directions have not been complied with in time.

13. Therefore, we have directed both the Chief Secretary and Secretary of Power of the Government of Sikkim to appear before this Tribunal to inform this Tribunal as to what was the difficulty in constitution of the Commission. In obedience to our direction, the Secretary (Power) and the Chief Secretary to the Government of Sikkim appeared before this Tribunal and filed Affidavit giving undertaking that they would convene a selection Committee within the time frame to select the Chairman and complete all the formalities for constitution of the Commission. Ultimately this was complied with in time. Like this we have

given our directions to respective officials of the various State Commissions and the State Governments and Secretaries of Forum of Regulators to appear before this Tribunal to give report with regard to the periodical directions in compliance of our directions. Accordingly, they appeared and filed their compliance Report.

14. Resultantly, today we have noticed that there is substantial compliance with our directions. The substantial compliance is reflected in the following aspects:

- (a) State Electricity Regulatory Commissions are established in all States.
- (b) Supply Codes and standards of performance of licensees are in place and easily available in the public domain. Needless to say, this is a necessary step in the consumers knowing their rights and remedies for their grievances. FoR has evolved Model Supply Code and Model Consumer Protection Regulation which can be used by various SERCs and JERCs.
- (c) Consumer Grievance Redressal Forums are functioning across the country.
- (d) Ombudsmen are functioning in almost all States.
- (e) However, there have been some infractions but we need not be detained by those at this stage; we will deal with that situation later.

15. In view of above substantial compliance with our directions we have to observe that all the Commissions are worthy of our appreciation. We also place on record our appreciation in particular for the Secretary to the Forum of Regulators for rendering effective assistance in:

- (a) Disseminating orders of this Tribunal to various SERCs and JERCs.
- (b) Following up compliance, analyzing and collating the varied status updates from various SERCs and JERCs into brief and lucid reports.
- (c) Assisting the Tribunal in establishing an effective periodic review of the institutional mechanism for safeguarding consumer interest, comprising:
 - (i) On line quarterly compliance status up-dation by the Forum of Regulators in the suggested format placed as Annexure 1 to the Report dated 29.3.2010.
 - (ii) Report on Protection of Consumer Interest which has been adopted by all the member ERCs.
 - (iii) Proposed Annual Conferences organised under the aegis of the Forum of Regulators to disseminate best practices in the area of Consumer Interest- to

be attended by Ombudsmen, CGRF officers and Consumer Organisations.

(d) Initiatives taken by the Forum of Regulators for ensuring consumer protections including Model Supply Code and Model Consumer Protection Regulation developed by them.

These proposals were noted, endorsed and approved for implementation by the Tribunal by the order dated 15.4.2010.

16. We have received last Status Report on 3.1.2012 from the Secretary to the Forum of Regulators with regard to some infractions. Those are as follows:

(a) The post of the member CGRF in Lakshadweep is still lying vacant.

(b) In Uttar Pradesh:

(i) There are 9 vacant posts of Technical Members of CGRF.

(ii) Vacant posts of Chairman/Judicial Members of CGRF for Varanasi and Gorakhpur.

(iii) Member CGRF for Azamgarh is yet to join.

(iv) Posts of Member Licensee for Azamgarh and Basti are vacant.

- (c) The posts of CGRFs are yet to be created in Nagaland, Sikkim and Arunachal Pradesh
- (d) The post of Ombudsman is yet to be created in Nagaland and Arunachal Pradesh.

17. In the light of the above infractions noticed in the report, we deem it appropriate to direct the State/Joint Commissions of Uttar Pradesh, Nagaland, Sikkim, Arunachal Pradesh and Lakshadweep to make necessary appointments expeditiously not later than 2 months from the date of the receipt of this order. The Secretary to the Forum of Regulators shall oversee the same and follow up on the implementation and place the matter before this Tribunal for orders in case of any non compliance.

18. In this backdrop, we wish to conclude these suo-moto proceedings while directing all the State/Joint Commissions and all licensees to be mindful and vigilant of their respective obligations to ensure the availability of the effective functioning of CGRF and Ombudsman, we now issue the following directions which we have indicated in our earlier orders also:

- (a) The process for selection of vacancies likely to arise should be undertaken in a timely manner so as to ensure that there is no unnecessary delay in appointment of a Member to the CGRF/Ombudsman.

- (b) All the State Commissions/Joint Commissions and Licensees shall send quarterly written status report regarding the functioning and performance in the approved format (complaints received/adjudicated or settled) to the Secretary of Forum of Regulators who will compile and post the said information on line. He would also file a status report in this Tribunal once in 03 months in the Format already approved through our order dated 15.4.2010.
- (c) The Secretary of Forum of Regulators will also continue with the dissemination of best practices in the area of consumer interest through annual conferences to be organised under the aegis of Forum of Regulators to be attended by Ombudsman, CGRF Officers and Consumer Organisations as earlier adopted and approved through the order dated 15.4.2010.
- (d) The Ombudsman is a separate body. He has to decide the issues independently and he should act independent of the State Commission. Ombudsman plays an independent role of a judge to decide the issues of the consumers and others and so he should not hold any other position in the Commission. Accordingly, the Commissions as well as the Secretary to the Forum of Regulators should ensure that independent person is

appointed in time as Ombudsman to enable him to act independently as directed earlier by the order dated 11.2.2010 and 15.4.2010.

19. Before parting these suo-moto proceedings we shall record our heartfelt appreciation over the effective assistance rendered by Mr. Meet Malhotra, the learned Senior Counsel and Mr. Amit Kapur, the learned Counsel as Amicus Curiae Counsel to enable this Tribunal to issue the periodical directions to various authorities which have been promptly complied with by all concerned. But for the able assistance rendered by both of them the Tribunal would not have been able to ensure the Regulatory Mechanism envisaged by the Act, 2003 becomes functional.
20. With these observations, the suo-moto proceedings are closed.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 27th January, 2012

Reportable