

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

APPEAL NO. 160 of 2016

Dated : 19th September, 2018

**PRESENT: HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER
HON'BLE MR. S.D. DUBEY, TECHNICAL MEMBER**

IN THE MATTER OF :

M/s. Print Wizards
Through its Proprietor Pradeep Bajaj
A-45, Ground Floor
Naraina Industrial Area, Phase-II
New Delhi – 110 028

.... **APPELLANT**

Versus

1. Tata Power Delhi Distribution Limited
(Formerly known as North Delhi Power Limited)
Connection Management Group
Through its General Manager
Corp Office: NDPL House
Hudson Lane Kingsway Camp
Delhi – 110 009

2. Delhi Electricity Regulatory Commission
Viniyamak Bhawan C-Block
Shivalik
Malviya Nagar
New Delhi – 110017

.... **RESPONDENTS**

Counsel for the Appellant(s) : Mr. Sanjay Kumar
Mr. Pradeep Bajaj (*Party in person*)

Counsel for the Respondent(s) : Mr. Anurag Bansal
Ms. Sakshi Mehrotra
Mr. Aditya Gupta
Mr. Manish Srivastava for R-1

Mr. Manu Seshadri
Mr. Samarth Chowdhury for R-2

J U D G M E N T

PER HON'BLE MR. S. D. DUBEY, TECHNICAL MEMBER

1. The **Appellant**, M/s Print Wizards, questioning the legality and validity of the impugned order dated 16.06.2015 (herein the “**impugned order**”) passed in Petition No. 43/2014 on the file of the Delhi Electricity Regulatory Commission (hereinafter referred to as “**Commission**” or “**Respondent Commission**” or “**Delhi Commission**”) has presented this Appeal under Section 111 of the Electricity Act 2003.
 - 1.1 The Respondent No. 1, Tata Power Delhi Distribution Limited (**TPDDL**) [(formerly known as North Delhi Power Limited (NDPL)] is a distribution licensee operating in the area of Appellant premises.
 - 1.2 The Respondent No. 2 is the State Regulatory Commission vested with the powers to regulate the subject power in NCT of Delhi under the Electricity Act, 2003.

2. Brief facts of the case are as follows:

- A. The Appellant is tenant in Property No. A-45, Ground Floor, Naraina Industrial Area, Phase-II, New Delhi-110028.
- B. The Appellant had applied for New Permanent Electric Connection - Non Domestic Light on 23.08.2010 vide Request No. 1011453764 dated 23.08.2010 for the above said premises and completed all commercial formalities for grant of New Permanent Electric Connection.
- C. Subsequently, on 11.11.2010, the above application was revised and the Respondent - Tata Power Delhi Distribution Limited (TPDDL) had accepted and issued their Demand Note No. 569517 dated 18.11.2010 for Rs. 27, 500/- (Rupees Twenty Seven thousand five hundred only) thereby also allocating Appellant the new K. No. 33204316992.
- D. Accordingly, Appellant had deposited an amount of Rs. 27,500/- (Rupees Twenty Seven thousand Five Hundred only) with TPDDL on 22.11.2010 by way of Demand Draft No. 458081 dated 20.11.2010 and the same was acknowledged vide Receipt No R22111033110014 dated 22.11.2010, towards installation of New Permanent Electric Connection.
- E. In spite of having completed all the paper formalities and the desired amount deposited on 22.11.2010, TPDDL has not yet installed New

Permanent Electric Connection at the above said premises due to one reason or the other for which the necessary letters were written by the Appellant to them.

- F. Due to non installation of electric connection, the Appellant filed Civil Suit in Dwarka District Court, New Delhi on 10/01/2011 and during the trial in Civil Suit No. 05/11, a decree was passed on 30.08.2013 which directed TPDDL to install New Permanent Electric Connection at the above said premises after certain conditions to be fulfilled by the Appellant.
- G. Thereafter, the Appellant approached Consumer Grievance Redressal Forum (CGRF) for TPDDL on 07.05.2014 for grant of compensation as per Sub-Section (3) of Section 43 of The Electricity Act, 2003.
- H. The Consumer Grievance Redressal Forum rejected the case of compensation and ordered to approach the DERC / Commission. Hence, Appellant had filed case No 43/2014 in DERC.
- I. In the meantime in year 2013, the alleged purchaser of the said premises, obtained Decree of Eviction against the Appellant and the Appellant challenged the Decree before the District Judge Patiala House, Delhi and the court has granted stay. Further, Landlord Sunil Garg has also cancelled the alleged Agreement to Sale and Power of Attorney.

J. After hearing both parties, the DERC had ordered the Respondent to pay Rs 9,800/- as compensation to the Appellant vide order dated 16/06/2015. The Appellant being aggrieved by the Impugned Order dated 16.6.2015 passed in Petition No. 43/2014 on the file of the second Respondent, presented this Appeal on the following grounds:

3. Grounds:

- 3.1 The Commission has not applied its judicial mind while deciding the case of the Appellant because the Respondent / TPDDL has contravened Sub-Section (1) of Section 43 of The Electricity Act, 2003 for which TPDDL is liable to compensate the applicant, by way of penalty which is Rs.1,00,000/-(Rupees One Lakh only) as per Section 142 of The Electricity Act, 2003.
- 3.2 The Commission has not applied its judicial mind while deciding the case of the Appellant because now due to the above said violation and as per Sub-Section (3) of Section 43 of The Electricity Act, 2003, Respondent company TPDDL is also liable to pay a penalty of Rs. 1,000/- (Rupees One thousand only) for each day of default, i.e. from 23.11.2010 to up to date.
- 3.3 The Commission has not applied its judicial mind while deciding the case of the Appellant because the Commission was empowered to take action on the complaint against the Respondent for violation of the Act and has vast power to entertain the complaint invoked under

Section 142 of the Electricity Act 2003 and hence the Commission has jurisdiction to try and decide this complaint and award the compensation as prayed by the Appellant in his complaint.

- 3.4 The Commission has not applied its judicial mind while deciding the case of the Appellant because Respondent had kept the money of the Appellant Rs 27,500/- for more than 8 years i.e. from 22/11/2010.
- 3.5 The present case is having two different stages i.e. one after applying of new connection and completing all the commercial formalities and before deciding of civil case No 05/2011 and second is after the judgment passed by the Senior Civil Judge in Civil Suit No 05/2011. As per First Stage i.e. on 23.08.2010 after applying the new connection with Respondent and completing commercial formalities and before passing the Judgment the Respondent has failed to answer that why Respondent had not installed the New electricity Connection at the premises of the Appellant in spite of allotting the K Number and fulfilling all the commercial formalities and taking the amount of Rs 27,500/- from the Appellant and so the Respondent is liable to pay compensation for that period. However the Second Stage after 30/08/2013 is after passing the judgment wherein the Appellant has approached the officials of the Respondent and tried to submit his Indemnity Bond as ordered with request to adjust amount of Rs 27,500/- already paid by Appellant to the Respondent in

ordered amount of Rs 60,000/- but Respondent has refused and till date not installed electricity connection as per judgment and hence Respondent is liable accordingly.

4. Question of Law

Following questions of law have been raised in the appeal for consideration:

- A. Whether Commission can pass an order by overlooking the provisions of the Electricity Act 2003 or not?
- B. Whether Commission can pass an order on presumption of facts or not?
- C. Whether Commission can pass an order on baseless and vague statements of Respondent?
- D. The value of documentary Evidence in proceedings.

5. Prayer

Following reliefs have been sought in the appeal for consideration:

- A. That this Tribunal may kindly direct the Respondent to compensate the Appellant with an amount of Rs. 1,00,000/- (Rupees One Lakh only) towards penalty as per Section 142 of The Electricity Act, 2003.
- B. That this Tribunal may kindly direct the Respondent to compensate the Appellant with an amount of Rs. 1,000/- (Rupees One thousand only) for each day of default, i.e. from 23.11.2010 to up to date

towards penalty as per Sub-Section (3) of Section 43 of the Electricity Act, 2003.

- C. That this Tribunal may kindly award the compensation in favour of the Appellant as defined U/S 57 of the Electricity Act 2003.
- D. That this Tribunal may kindly Award the litigation charges in favour of the Appellant.
- E. That this Tribunal may kindly pass any other order in favour of the Appellant and against the Respondent which this Tribunal deems fit and proper and in the interest of justice.

6. Submissions of learned counsel, Mr. Sanjay Kumar, appearing for the Appellant are as follows: -

6.1 Challenge to Impugned Order

The question of not challenging the impugned order by the Appellant was allegedly raised by the Respondent whereas in opening of Appeal it is submitted by Appellant that the Appellant is aggrieved with the order passed by Delhi Electricity Regulatory Commission dated 16/06/2015 in Petition No 43/2014 titled M/S Print Wizard Versus Tata Power Delhi Distribution Ltd hence the Appellant has filed this Appeal U/S 111 of the Electricity Act 2003.

6.2 Jurisdiction of the Tribunal

The question of jurisdiction was allegedly raised by Respondent before the State Commission as well and after detail argument, the

State Commission has decided that it has jurisdiction to try and decide this case and mentioned in its order whereas Respondent has not challenged the said order and hence it has attained finality. Further the Appellant has originally filed the claim before Consumer Forum and thereafter approached the State Commission hence the procedure has been followed. Further the Respondent has now raised issue of Ombudsman whereas the Ombudsman has no jurisdiction on claim Subject hence the State Commission has jurisdiction.

6.3 Limitation

The said order in question dated 16/06/2015 was received by the Appellant on 30/06/2015 by post moreover no date of dispatch is mentioned on the order. Further the Respondent has allegedly objected on limitation on the pretext that the Application for electricity connection was made in year 2010 and now it is beyond limitation whereas the Appellant was compelled to file Civil Suit in year 2011 and the said case was decided in 2013 and the Respondent has taken hostile attitude therefore Dr. Saurabh Kulshreshtha - ASCJ/JSCC, had passed a decree on 30.08.2013 in favour of Appellant and directed TPDDL to install New Permanent Electric Connection at the above said premises thereafter the Appellant has approached the District Forum and filed Claim petition and after its

dismissal, filed Claim before the State Commission so there is no bar of limitation and this claim is within limitation.

6.4 Jurisdiction of Civil Court is barred under Electricity Act

The Code of Civil Procedure is not applicable in the present proceeding because the Commission is governed by the Electricity Act 2003 and when there is Special Law then the CPC has no overriding effect on the special statute and Order II Rule 2 of CPC is not applicable in case in hand. Further the Claim in present Form is not maintainable before Civil Court because jurisdiction of the Civil Court is barred on this issue.

6.5 Value of Agreement to Sale and Power Of Attorney

The Respondent has alleged that on the basis of one legal notice sent by one Sh. Balkar Singh who alleged that he has purchased the property in question on the basis of agreement to sale and power of attorney and objection on installation of electricity connection, the Respondent had not installed the electricity meter at the site whereas no such documents were ever placed by the Respondent on record. Further on the basis of the said documents, no one can claim ownership because Hon'ble Supreme Court has decided in Suraj Lamp Industries Ltd V/S State of Haryana that no one can claim ownership on the basis of agreement to sale and power of attorney and hence these documents were having no force.

6.6 No Objection Certificate by Landlord

The Respondent has alleged that out of four owners only one owner has given No Objection to Appellant for obtaining electricity connection at his premises whereas the correct fact is that Mr Sunil Garg and his widow Bhabhi [wife of late Sh Anil Garg] and her two minor sons were holding the joint undivided property and Sh Sunil Garg who is landlord of Appellant has issued No Objection Certificate and himself visited to the office of the Respondent to authenticate it but with mala-fide Respondent had not installed the electricity connection.

6.7 Question of Challenging Cancellation of 06/12/2010

The Respondent has submitted first time in this Appeal that the Appellant has not challenged the cancellation of request whereas it is the case of Appellant that without serving any notice or demanding reply the Respondent has cancelled the request, so it is subject matter itself. Further in-spite of cancellation of request neither demand note was cancelled, nor Respondent has returned the amount of Rs 27,500/- deposited by the Appellant hence the contract subsist and cancellation of request is **nonest** and *void ab intio*. Moreover, no new plea can be raised in appeal by the Respondent which is not part of pleading.

6.8 Compliance of Order of Civil Court

The Appellant has claimed to have fully complied with the directions of the Civil Court.

The learned counsel appearing for the Appellant submitted that the second Respondent has committed grave error, much less material irregularity, it is manifest on the face of the Impugned Order. Therefore, he submitted that the order impugned passed by the second Respondent is liable to be set aside.

7. Mr. Manish Kumar Srivastava, learned counsel appearing for the first Respondent – Tata Power Delhi Distribution Limited, submitted as follows:-

7.1 The present appeal has been filed seeking enhancement of compensation granted by the Delhi Electricity Regulatory Commission.

Brief facts leading to the present Appeal are as follows:

- (a) On 23.08.2010, Sh. Pradeep Bajaj applied for grant of a new electricity connection for NL purpose with load of 11 kw *vide* request No. 1011453764 to be installed at A-45, Ground Floor, Naraina Industrial Area, Phase-II, New Delhi-110028 in the name of Pradeep Bajaj .

- (b) Thereafter, it is undisputed fact that on 11.11.2010, said Mr. Pradeep Bajaj cancelled earlier request made by it and instead made a new request to grant the connection in the name of his proprietorship concern i.e. *M/s Print Wizards* in capacity of tenant. Along with said application for new connection, the property documents in name M/s Hindi Printing Press, a proprietorship concern having its proprietor Mr. Shyam Sunder was submitted, whereas lease deed and No Objection Certificate [NOC] was given by Mr. Sunil Garg as Partner of said firm. Since, there was a mismatch in the document supplied, NOC and lease deed from Mr. Shyam Sunder were required.
- (c) On scrutiny of the documents it was learnt that the alleged original owner of the property M/S Hindi Printing Press was a Proprietorship concern and the property was relinquished in the name of four (4) persons namely (i) Mr. Sunil Garg, Smt. Sangita Garg, Mr. Bankim Garg and Ankit Garg, but same was deliberately concealed by the Appellant and only Mr. Sunil Garg was shown as owner.
- (d) The Appellant submitted NOC only from Mr. Sunil Garg in individual capacity in form of affidavit. On the representation

of the Appellant, demand note No. 569517 for a sum of Rs. 27,500 with non-domestic category was generated on 18.11.2010 for grant of new connection. The said amount was deposited by the Appellant on 22.11.2010.

- (e) After deposit of the demand note, officials of Respondent No. 1 visited the premises of the Appellant for installation of the meter on 01.12.2010. However, meter of Appellant could not be installed owing to the fact that there was obstruction caused by various persons present at site stating that property is purchased by them and Mr. Sunil Garg and other co-owners have sold the said property to them.
- (f) In the meantime, Respondent No. 1 also received a legal notice dated 29.11.2010, which contained factual details in relation to the disputed ownership of the said property from one Balkar Singh, claiming to be power of Attorney Holder of new owners. The said legal notice stated that owners of the said property are (i) Mrs. Jasvinder Kaur (50% share) (undivided) and (ii) Mrs. Sukhvinder Kaur (50% share) (undivided).
- (g) Since, ownership was disputed and Licensee is not competent to decide the dispute relating to ownership, *vide* rejection letter 06.12.2010, the application for new connection was cancelled.

The Appellant has admitted that the rejection letter was received by him.

- (h) It is pertinent to mention that the Appellant has till date not challenged the said letter of rejection dated 06.12.2010.
- (i) Appellant instituted a Civil Suit bearing No. 05 of 2011, inter alia, seeking mandatory injunction against Respondent No. 1 for installation of connection in the name of the plaintiff and further prayer of restraining above-said Mr. Balkar Singh from evicting him from the premises. Since, litigation between parties was pending and there was claims and counter claims relating to the ownership of the property, *status quo* was maintained during pendency of the litigation.
- (j) The determination of ownership of the property, in cases where there is a dispute of ownership, by a competent Court is necessary as it is a settled law that dues of electricity are against the premises, and if connection is granted without proper NOC from correct owner, in event of vacation of the premises by the tenant with subsisting dues has severe and prejudicial financial implications. In absence of a valid NoC of correct owner, the Respondent cannot realize the dues as dues against the property.

- (k) It is also important to mention that before the Ld. Civil Court, the Appellant has admitted that Mr. Balkar Singh, Mrs. Jasvinder Kaur and Mrs. Sukhvinder Kaur are interfering in supply of basic amenities.
- (l) Vide judgment and decree dated 30.08.2013, Ld. Civil Court decreed to suit imposing following conditions for grant of new connection to the Appellant;
- (i) shall pay additional security deposit of Rs. 60,000/-
 - (ii) shall submit Indemnity Bond before Civil Court indemnifying the owners of the property from any electricity dues arising out of the connection of the Appellant and clearly undertaking that any dues arising out of the connection in the name of the Appellant would be payable by him and him alone;
 - (iii) shall clear the outstanding due of Rs. 1,39,698/-;
 - (iv) shall complete the commercial formalities.
- (m) A perusal of the above said judgment would reveal that even the Civil Court has recognised that commercial formalities for grant of new connection was not complied and hence, direction for compliance of commercial formalities were issued against the Appellant.

- (n) But admittedly, none of the conditions as stipulated in judgment and decree dated 30.08.2013 for grant of new connection was fulfilled by the Appellant and further, there is nothing on record to even suggest that any of the above said conditions are fulfilled by the Appellant.
- (o) The Regulation 15 of Supply Code, 2007 regulates the grant of new connection and prescribes mandatory requirements to the said Supply Code, 2007. Under Regulation 15 of Supply Code, 2007, it is mandatory that the consumer completes all the commercial formalities of the Supply code, which contemplates that the consumer, *inter alia*, shall provide letter of landlord along with proof of ownership of landlord.
- (p) Rather than complying with the judgment dated 30.08.2013 as stated above, the Appellant filed a frivolous complaint before Consumers Grievance Redressal Forum (CGRF) constituted under Section 42(5) of the Electricity Act, 2003 for compensation and penalty under Section 43(3). However, *vide* order dated 17.06.2014, complaint was closed on the ground that the said CGRF has no powers to impose penalty under Section 43 (3) of the Electricity Act, 2003.

(q) The order dated 17.06.2014 of CGRF is appealable order under Section 42(6) of Electricity 2003, but instead of challenging the said order before Ombudsman, the Appellant filed a frivolous complaint under Section 142 of the Electricity Act, 2003, *inter alia*, praying as follows:

“(i) *To compensate the Applicant with an amount of Rs. 1,00,000/- (Rupees One lakh only) towards penalty as per Section 142 of the Electricity Act, 2003.*

(ii) *To compensate the applicant with an amount of Rs. 1,000/- (Rupees One thousand only) for each day of default, i.e from 23.11.2010 to up to date towards penalty as per Sub-Section (3) of Section 43 of the Electricity Act, 2003.”*

(r) The Respondent No. 1 filed reply to the complaint and categorically objected to maintainability of the said complaint for penalty and compensation before DERC.

(s) Vide order dated 16.06.2015, DERC came to the conclusion that there is no violation as far as Section 43 of the Electricity Act, 2003 is concerned as the Respondent has made *bona fide* attempts to install the meter at the premises of the

Appellant. The said finding is not challenged by the Appellant.

Relevant extract of the order is reproduced below:

“7. In view of the Submissions made by the Respondent and Petitioner, the Commission finds that the Discom has made bona fide efforts to install the meter at the site of the Petitioner. However, due to resistance from some persons at site in relation to the property dispute, they failed to install meter at the site of the Petitioner. Therefore, as such no violation of Regulation is established against the Discom.”

- (t) However, the DERC allowed compensation under Section 57 of the Electricity act and came to the conclusion that since the amount of Rs.27,500/- deposited by the Appellant is not paid, it paid a compensation of Rs.9,800 to the Appellant for delay of 35 days at the rate of Rs.280 per day in term of Schedule III of the Supply Code, 2007.
- (u) The said order of DERC is not under challenge but the present Appeal is filed only for enhancement of compensation, which is impermissible in law for reasons stated below:

7.2 Maintainability of Appeal

- (a) The present Appeal is liable to be dismissed as the same is not maintainable under Section 111 of the Electricity Act, 2003.

Section 111 provides that any person aggrieved by an order made by the Appropriate Commission under this Act, may prefer an appeal to the Appellate Tribunal for Electricity. However, a perusal of the prayer as sought by the Appellant at Page 19 of the Appeal, would reveal that the order dated 16.06.2015 is not even challenged by the Appellant. In absence of challenge to any order including order dated 16.06.2015 of DERC, the requirement of Section 111 of the Electricity Act, 2003 is not satisfied and hence, the appeal is liable to be dismissed on this ground alone.

- (b) Apart from above, since order dated 16.06.2015 of DERC is not challenged in present appeal by Appellant, which grants compensation of Rs. 9800 has become final between parties and hence, binding even on the Appellant. Further, since the order dated 16.06.2015 is not challenged before this Tribunal, cannot either set aside or modify the said order in exercise of powers under Section 111 of the Electricity Act, 2003. Reliance is placed on the judgment of the Hon'ble High Court of Meghalaya in *Smti. B. Nongrum and Shri. G. Dkhar vs. Government of Meghalaya, represented by the Chief Secretary to the Govt. of Meghalaya and Ors.* (03.03.2014 - Meghalaya): MANU/MG/0016/2014 wherein it was held that:

“15. Under the Doctrine of collateral challenge validity of an order which is not directly challenged cannot be challenged indirectly. Validity of an order must be directly challenged and got set aside in an independent proceeding. [Reference may be made to the decisions of the Apex Court in (i) *Pankaj Bhargava &Anr. vs. Mohinder Nath &Anr.* MANU/SC/0300/1991 : AIR 1991 SC 1233 & (ii) *Dr. Ku. NilofarInsaf vs. State of Madhya Pradesh &Ors.* MANU/SC/0420/1991 : AIR 1991 SC 1872].”

Reliance is also placed on the decision of the Hon’ble Supreme Court in *Krishna Priya Ganguly and Ors. vs. University of Lucknow and Ors.* (07.10.1983 - SC) MANU/SC/0063/1983 and of this Tribunal in *Madhya Pradesh Power Trading Co. Ltd. vs. Central Electricity Regulatory Commission and Ors.* (22.07.2009 - APTEL): MANU/ET/0075/2009

- (c) The Respondent herein has complied with the direction as contained in order dated 16.06.2015 and has paid an amount of Rs.27,500 and Rs.9,800/- to the Appellant *vide* covering letter dated 9th July 2015 and is received by the Appellant.
- (d) However, in spite of receipt of the same, Appellant has concealed the said fact of receipt of the compliance amount from this Tribunal at the time of filing of the present appeal,

which was filed by the Appellant on 10.08.2015 i.e. after issuance and receipt of above-said cheques. In any event, once Appellant has received the said amount without any demure or protest, under order dated 16.06.2015 of DERC, Appellant is estopped from challenging the same before this Tribunal.

7.3 Concealment of fact:

- (a) The present Appeal is liable to be dismissed on the sole ground that Appellant has concealed material facts before this Tribunal with malafide motives, which if revealed would disentitle the Appellant of any relief sought by him.
- (b) The Appellant has not only concealed the material fact that he has received the amounts in compliance of the order dated 16.06.2015, but the Appellant has also concealed the fact that Appellant himself has failed to comply with directions issued by Hon'ble Civil Court in Civil Suit No.05/11 titled as *Pradeep Bajaj Vs Sh. Sunil Garg & Others* vide order and judgment dated 30.08.2013 *i.e.*
 - (i) The Appellant has failed to pay **additional** security deposit of Rs. 60,000/- for grant of new connection
 - (ii) The Appellant has failed to submit the Indemnity Bond as directed by the Civil Court in the above-said Civil

Suit indemnifying the owners of the property from any electricity dues arising out of the connection of the Appellant and clearly undertaking that any dues arising out of the connection in the name of the Appellant would be payable by him and him alone;

- (iii) The Appellant has failed to clear the outstanding due of Rs. 1,39,698/-
 - (iv) The Appellant has failed to complete the commercial formalities as directed by the Civil Court.
- (c) The above-said stipulations are conditions precedent before any new connection can be granted by the Respondent to the Appellant, which admittedly is not complied by the Appellant deliberately. Till date, no document is filed by the Appellant to show that any of the conditions as imposed by the Civil Court is complied.
- (d) The Respondent has always acted bona fide and completely in accordance with law. *Vide* order and judgment dated 30.08.2013, Hon'ble Court of ASCJ in Civil Suit No.05/11 titled as *Pradeep Bajaj Vs Sh. Sunil Garg & Others* clarified the issue and directed the Appellant herein to complete the formalities as preconditions to the grant of new connection, which is till date not complied by the Appellant herein.

- (e) The Appellant is deliberately not complying with judgment and decree of Civil Court for the reason that Appellant never wanted a new connection knowing fully well there is dispute relating to ownership of the property and is only interested in pursuing frivolous litigations.
- (f) The Appellant is trying to take advantage of his own wrong as on one hand has failed to fulfil the obligation as directed by the Civil Court and on other hand alleging that he is entitled for the compensation. By not complying with orders of the Ld. Court, contained in paragraphs 48 to 53 of the judgment, the Appellant disentitles himself of any relief from this Tribunal including any enhancement of compensation.
- (g) The Appellant has also concealed the material fact that there are four owners of the suit property i.e. (i) Mr. Sunil Garg, Smt. Sangita Garg, Mr. Bankim Garg and Ankit Garg and falsely deposed that only Mr. Sunil Garg is owner of the property.
- (h) In fact, it is case of the Respondent that the Appellant at first instance was not even entitled to a new electricity connection on the basis of no objection certificate of only one co-owner *i.e* Mr. Sunil Garg out of four co-owners and the demand note was

got issued on the said fraudulent representation of the Appellant.

- (i) Thereafter, it has come to the knowledge of the Respondent that one Civil Suit has been filed by Ms. Jasvinder Kaur against Mr. Pradeep Bajaj (Proprietor of the Appellant) bearing CS No. 468/12, wherein a judgment dated 25.11.2014 by the Ld. District Courts at Dwarka has been passed delivering the possession of the property in favour of Ms. Jasvinder Kaur alongwith damages against the Appellant. It is pertinent to mention here that in the said judgment it is recorded at paragraph No. 22 that:

“22. Interestingly, Sunil Garg was duly examined as a witness (DW-5) by the Defendant. However, despite being the person best placed to support the defendant, DW-5 failed to acknowledge him as a tenant. It was the assertion of the Defendant in his written statement and affidavit in evidence as DW-1 that he continued to be a tenant of the Sunil Garg since 1996. Yet the affidavit DW-5 furnished by Sunil Garg failed to utter even a word regarding the status of the Defendant. DW-5 failed to assert that the defendant was the tenant under him since 1996. Since the witness was apparently inimical to the defendant, it was incumbent upon him to cross examine the

witness. Even this option was not exercised. The defendant thus failed to question his purported landlord as to why he was denying the tenancy. The conduct of the defendant only indicated one possibility – that he did not remain a tenant of DW-5 after 06.05.2009. ...”

- (j) In fact, the said judgment records that Mr. Sunil Garg (DW-5) even failed to recognize the Appellant as his tenant.
- (k) In view of the concealment of the said material facts by the Appellant, the Appellant is not entitled to any relief.

7.4 Forum shopping

- (a) The present Appeal is liable to be dismissed on the sole ground that Appellant has indulged in forum shopping with ulterior motive.
- (b) Appellant instituted a Civil Suit bearing No. 05 of 2011, inter alia, seeking mandatory injunction against Respondent No. 1 for installation of connection in the name of the plaintiff and further prayer of restraining above said Mr. Balkar Singh from evicting him from the premises.
- (c) No compensation is sought by the Appellant before the Ld. Civil Court and hence, now estopped from claiming compensation as alleged and is in fact barred by principles of order II Rule 2 of Code of Civil Procedure, 1908.

(d) It is only when Civil Court imposed certain conditions for grant of new connection to the Appellant and Appellant failed to get desired result from Civil Court and without complying with the said conditions as stated above and in order to avoid judgment and decree dated 30.08.2013 passed by Civil Court, Appellant filed a consumer complaint before Ld. CGRF constituted under Section 42 of the Electricity Act, 2003, which was closed by Ld. CGRF as it came to the conclusion that it has no jurisdiction to entertain a penalty but no appeal against the said order is filed by the Appellant under Section 42(6) before Ombudsman. As far as compensation is concerned, the said CGRF has jurisdiction to grant compensation to the consumer.

(e) The Regulation 9(7) of Delhi Electricity Regulatory Commission (Guidelines for establishment of Forum for redressal of the consumers and Ombudsman) Regulations 2003 [hereinafter referred to “Regulation 2003”] provides that it is well within the power of the CGRF to grant compensation. The relevant extract of Regulation 9(7) is reproduced below:

“(7) The Forum may, subject to the Regulations made by the Commission in this regard, award such compensation to the

complainants as it considers just and appropriate in the circumstances of the case.”

- (f) A perusal of the Regulation 9(7) of Regulation 2003 would reveal that the said CGRF has jurisdiction to grant compensation. However, when complaint of the Appellant was closed, Appellant failed to challenge the said order and hence, the same has attained finality. It is submitted that Schedule III of Delhi Electricity Supply Code and Performance Standards Regulations, 2007 [hereinafter referred to “*Supply Code, 2007*”] provides for compensations to be granted in event of default on part of the Licensee. Hence, in view of Regulation 9(7) of Regulation 2003, the said CGRF was well within its jurisdiction to grant compensation as contemplated in Supply Code, 2007. Hence, since the said order dated 17.06.2014 of CGRF was not challenged, the Appellant was estopped from approaching any other authority for the same cause of action.
- (g) Rather than challenging the order of CGRF closing the complaint, Appellant preferred a complaint under Section 142 of the Electricity Act, 2003 before Delhi Electricity Commission, which otherwise does not have jurisdiction to entertain the claim for compensation.

(h) From above, it is apparent that the Appellant is invoking jurisdiction of various forums with ulterior motive and is indulging in forum shopping, which is impermissible in law. Courts have deprecated the practice of forum shopping including Hon'ble Supreme Court in *Chetak Constructions Ltd. Vs. Om Prakash And Ors.* [(1998) 4 SCC 577], which has commented adversely on the practice of forum-shopping. In *Chetak Constructions (supra)*, the Hon'ble Supreme Court has specifically observed as follows:

"We certainly, cannot approve of any attempt on the part of any litigant to go "forum-shopping". A litigant cannot be permitted "choice" of the "forum" and every attempt at "forum-shopping" must be crushed with a heavy hand."

(i) In view of above, the Appellant is not entitled to any relief whatsoever.

7.5 Relief claimed is barred by principles of Order II Rule 2 of Code of Civil Procedure, 1908

The complaint of the complainant is barred by Order II Rule 2 of Code of Civil Procedure, 1908. The complainant has filed the Civil Suit based on the same cause of action on which he has filed the present complaint and has not claimed any such relief of compensation and hence, the Complainant is stopped from claiming

the same before Hon'ble State Commission or this Tribunal. Admittedly, no leave of court was sought by the Appellant for claiming the compensation separately from the Ld. Civil Court in Civil Suit No.05/11. It is settled principal of law that Order II Rule 1 requires every proceeding/suit to include the whole of the claim to which the Complainant is entitled in respect of any particular cause of action. Order II Rule 2 contemplates a situation where a Complainant herein omits to sue or intentionally relinquishes any portion of the claim which he is entitled to make. If the Complainant herein so acts, Order II Rule 2 of CPC makes it clear that he shall not, afterwards, sue for the part or portion of the claim that has been omitted or relinquished. The Order II Rule 2 (2) does not contemplate omission or relinquishment of any portion of the Complainant claim with the leave of the court so as to entitle him to come back later to seek what has been omitted or relinquished. The Respondent relies upon the judgment of M/S *Virgo Industries (Eng) P.Ltd vs M/S Venturetech Solutions P.Ltd* [2013 (1) SCC 625].

7.6 Jurisdiction of State Commission to grant compensation to consumer for alleged violation of Section 43 of the Electricity Act 2003

- (a) The Appellant herein has sought compensation from the DERC and the DERC does not have the jurisdiction to entertain

complaints of individual consumers under the Electricity Act. Section 142 does not give jurisdiction to the DERC to entertain matters pertaining to individual consumers.

- (b) It is the case of the Respondent that since the State Commission has no jurisdiction to entertain individual disputes between consumer and licensee under Electricity Act, 2003, any order passed by the State Commission adjudicating the dispute between consumer and licensee is nullity in eyes of law.
- (c) The State Commission such as Delhi Electricity Regulatory Commission does not have powers and jurisdiction to entertain any dispute relating to compensation between a consumer and Licensee. The Delhi Electricity Regulatory Commission cannot sit as an adjudicatory body to adjudicate the dispute between the consumer [Appellant herein] and licensee [Respondent No. 1]. The DERC, under Electricity Act, 2003, has been assigned with the functions, which relates to regulation of the electricity sector and it is not envisaged in the Electricity Act, 2003 that DERC would sit as a court for adjudication of matters relating to Compensation.

(d) Section 86 (f) of The Electricity Act 2003 prescribes the functions of the State Commission does not encompass within its domain complaints of individual consumers and that it only provides that the Commission can adjudicate upon the disputes between the licensees and the generating companies and to refer any such dispute to arbitration. The Supreme Court affirmed that this does not include in it a dispute of an individual consumer.

(e) In *Maharashtra Electricity Regulatory Commission* versus *Reliance Energy Ltd.* (2007 (8)SCC 381), the Hon'ble Supreme Court has categorically held that section 86(1)(f) of the Electricity Act, 2003 which prescribes the adjudicatory functions of the state Commission does not encompass within its domain petitions of individual Petitioners and that it only provides for adjudication of disputes between generating companies and licensees. The Supreme Court affirmed that this section does not include in it a case of an individual consumer and held as under:

“34. In this connection, we may also refer to Section 86 of the Act which lays down the functions of the State Commission. Sub-section (1)(f) of the said Section lays down the

adjudicatory function of the State Commission which does not encompass within its domain complaints of individual consumers. It only provides that “the Commission can adjudicate upon the disputes between the licensees and generating companies and to refer any such dispute for arbitration. This does not include in it an individual consumer. The proper forum for that is Section 42(5) and thereafter Section 42(6) read with Regulations of 2003 as referred to hereinabove.”

- (f) In ***BSES Rajdhani Power Limited*** versus ***Delhi Electricity Regulatory Commission*** bearing appeal No. 181 of 2008, this Tribunal has held that individual Petitioner cannot approach the State Commission to decide about the dispute between Licensee and the Petitioner.
- (g) In view of above, the Delhi Electricity Regulatory Commission has no power to entertain a dispute of consumer and grant compensation in exercise of power under Section 142 of the Electricity Act, 2003 as claimed by the Appellant, which is in nature of Torts.
- (h) The Section 142, in any event, does not empower the State Commission to grant compensation to any consumer, it only

contemplates that in event of the violation of any provisions of the Electricity Act, 2003, the Commission is empowered to impose penalty up to maximum of Rs. 1,00,000/- and not compensation.

- (i) The Section 142 thus provides that commission is empowered to punish the licensee and impose penalty up to maximum of Rs.1,00,000 but cannot adjudicate and grant compensation at all to any consumer for alleged violation.
- (j) Even otherwise, even if it is assumed that there is violation of Section 43, the Commission may only impose the penalty upon the Licensee. Once penalty is imposed, the amount of penalty is required to be deposited with the Regulatory Commission and in any event, cannot be given to the consumer as compensation under any circumstance.
- (k) In the present case, State Regulatory Commission after analysing the material on record came to the conclusion that there is no violation of Section 43 on part of the Respondent and hence, question of levying any penalty does not arise.

7.7 Non applicability of Section 43 for grant of compensation

- (a) The Appellant seeking compensation under Section 43 of the Electricity Act, 2003 on the ground that there was delay on

part of the Respondent in granting the electricity connection within 30 days from date of the deposit of the demand note amount *i.e.* 22.11.2010.

- (b) It is an admitted case that the amount of demand note dated 18.11.2010 was deposited by the Appellant only on 22.11.2010 and hence, the formalities of new connection was completed. It is also admitted fact that the Respondent visited the premises within 30 days *i.e.* on 01.12.2010 for installation of the electricity connection and the installation of the meter was resisted by the persons claiming to be the owner of the premises.
- (c) Pursuant to the resistance, the application for grant of new connection was cancelled vide rejection letter dated 06.12.2010, which was admittedly received by the Appellant herein.
- (d) Hence, once cancellation letter for new connection is issued or connection is cancelled, the applicability of Section 43 of the Electricity Act, 2003 ceases. If the Appellant was aggrieved by the cancellation, it ought to have challenged the same before appropriate court but admittedly the said cancelation letter dated 06.12.2010 was never challenged by the Appellant and

the same was accepted by the Appellant herein. Hence, once Appellant accepts the cancellation, it cannot be allowed to allege that the connection was not granted to him. In fact, perusal of judgment and decree would reveal that Civil Suit bearing No. 05 of 2011, *inter alia*, was filed by the Appellant seeking mandatory injunction against Respondent No. 1 for installation of connection in the name of the plaintiff and further prayer of restraining above-said Mr. Balkar Singh from evicting him from the premises and has not challenged the letter dated 06.12.2010 rejecting the application of the Appellant for new connection.

- (e) The object of Section 43 of the Electricity Act, 2003 is to ensure that after completion of the formalities, the connection is not delayed but if the application is rejected, the same cannot be treated as in violation of Section 43. In any event, for imposition of the penalty, it needs to be established that there was an unexplained failure on the part of the Licensee. In this case, the electricity connection was not installed as there was resistance at site in installation, which was beyond the control of the Respondent and also Appellant did not comply with the order of Ld. ASJ, *inter alia*, requiring submission of security

deposit, furnishing of indemnity bond, clearing outstanding dues, etc.

- (f) In fact, in the present case, admittedly, within 9 days from date of deposit of demand note i.e. on 06.12.2010 the Respondent No. 1 attempted to install the meter, which could not be done for the reason beyond control of the Respondent and hence, there is no default on part of the Respondent in any event.
- (g) After going through the records in detail, State Commission *vide* order dated 16.06.2015, categorically came to the conclusion that as far as Section 43 of the Electricity Act, 2003 is concerned, Respondent has made bona fide efforts to install the electricity connection but could not install due to resistance and hence, there was no violation on part of the Respondent. Relevant extract of the order dated 16.06.2015 is reproduced below:

“7. In view of the Submissions made by the Respondent and Petitioner, the Commission finds that the Discom has made bona fide efforts to install the meter at the site of the Petitioner. However, due to resistance from some persons at site in relation to the property dispute, they failed to install

meter at the site of the Petitioner. Therefore, as such no violation of Regulation is established against the Discom.”

- (h) A perusal of the order would reveal that the compensation of Rs. 9800/- was granted not for violation of the Section 43 but for the reasons that the amount of demand note i.e. Rs. 27,500/- was not refunded by the Respondent in spite of cancellation at the rate Rs. 280 per day *i.e.* Rs. 10 per Rs. 1000 deposited by the consumer in terms of Schedule-III of Supply Code, 2007 under Section 59 of the Electricity Act, 2003, which is only an enabling provision for specifying standards of performance of a licensee.
- (i) Without prejudice to the contention that there is no violation of Section 43, it is submitted that there is no provision for grant of compensation to consumer by State Regulatory Commission in event of the failure of the Licensee to grant new electricity connection within 30 days.
- (j) A perusal of the Section 43(3) would reveal that it provides only that in event a distribution licensee fails to supply the electricity within the period of 30 day, it shall be liable to a penalty and not a compensation to the consumer. It is submitted that the word used is “penalty” and not

compensation, which may be granted to the Appellant. In any event, even if any penalty is imposed by the State Regulatory Commission, the same has to be deposited with the State Regulatory Commission and cannot be given to the consumer.

7.8 Delay and laches / limitation

- (a) Without admitting that the Appellant is entitled to any compensation as alleged, it is submitted that in any event, any claim of the Appellant is barred by principles of Limitation.
- (b) It is an admitted case that dispute pertains to the year 2010 and last cause of action for claiming any compensation on part of the Appellant lastly arose on 06.12.2010, when the new electricity connection was refused by the Respondent herein.
- (c) It is also an admitted case of the Appellant that the Appellant first approached Delhi Electricity Regulatory Commission in the month of August 2014 only and that too after his failure to seek compensation from either Civil Court or CGRF.
- (d) It is a case of the complainant that he is entitled to compensation on the basis of rejection of request with effect from 23.11.2010 and hence, filing of complaint under Section 142 of the Electricity Act, 2003 is also barred by limitation. The Appellant ought to have filed claim of compensation

before appropriate court as well as complaint under Section 142 of the Electricity Act, 2003 with maximum period of 3 years as provided under Article 113 of Limitation Act, 1963.

- (e) Any application under Section 142 of the Electricity Act, 2003 for alleged violation of the provisions of the Electricity Act, 2003 or any regulation thereof has to be filed within the period of 3 years from date of cause of action, i.e. 06.12.2010 in the present case. Admittedly, the complaint before the Commission was filed on 08th August 2014, which is beyond the period of limitation.
- (f) This is the precise reason that the Appellant did not prefer any suit for claim of compensation before the appropriate court i.e. Civil Court as the Claim of compensation would have been barred and hence, with ulterior motive filed before the State Regulatory Commission.
- (g) Without prejudice to the contention of the Respondent hereinabove, it is submitted that even otherwise, admittedly cause of action for alleged compensation arose in December, 2010 and hence, the claim of the complainant itself is barred by limitation. In *North Delhi Power Limited vs. Indian Hydraulics Industries (P) Limited* [2012] 129 DRJ 644, Hon'ble High Court had held in similar situation that limitation would be

applicable even if there is no prescribed period under the statute. In *M.S. Shoes East Ltd. vs M.R.T.P. And Ors.* [107 (2003) DLT 595], the Hon'ble High Court of Delhi has also held the similar views.

The learned counsel for the first Respondent vehemently submitted that the order impugned passed by the second Respondent is strictly in consonance with the relevant provisions of the Electricity Act, Rules and Regulations. There is no error committed by the second Respondent in the impugned order which is well considered and well reasoned. Hence, the appeal filed by the Appellant may be dismissed as devoid of merits.

- 8. We heard learned counsel appearing for the Appellant and learned counsel appearing for the first Respondent at considerable length of time and have gone through carefully the written submissions filed by the Appellant and the first Respondent through their counsel and also taken into consideration the relevant material on records available in file. On the basis of the pleadings available, the issues emerged in the instant appeal for our consideration are as follows:**

(a) **Issue No.1**

Whether the Respondent Distribution Licensee (TPDDL) has failed to perform its obligated duties of providing electricity connection to the Appellant as per the Electricity Act?

(b) **Issue No.2**

Whether the Appellant is entitled for compensation in the facts and circumstances of the case under the Act?

9. OUR FINDINGS & ANALYSIS:

Issue No.1

9.1 The learned counsel for the Appellant, Mr. Sanjay Kumar contended that the Appellant had applied for New Permanent Electric Connection – Non Domestic Light as early as on 23.8.2010 (the revised application dtd. 11.11.2010) and completed the requisite formalities including deposit of connection fee (Rs.27,500/-) on 22.11.2010. However, the Respondent licensee (TPDDL) did not install new connection at the premises of the Appellant up till now. The Counsel further submitted that due to non-installation of electric connection on account of lack of bona fide on the part of the Respondent, the Appellant was compelled to file a Civil Suit in Dwarka District Court, New Delhi on 10.1.2011, bearing the Civil Suit No. 05 of 2011. The Civil Court passed a decree on 30.8.2013 and directed the Respondent TPDDL to install new Permanent Electric Connection at the above said premises after fulfilling certain conditions by the Appellant. He highlighted that the fact is that the connection has not been provided as yet by the Respondent, despite several follow up by the Appellant.

9.2 The learned counsel further contended that aggrieved with the negative response of the Respondent, the Appellant approached the CGRF but no respite / compensation was granted by the CGRF. Subsequently, the Appellant filed a petition in DERC for suitable redressal of his grievances. DERC, after hearing the Appellant as well as the Respondent, passed an order dated 16.6.2015 granting a mere compensation of Rs.9,800/-. The learned counsel further contended that even after the lapse of so many years, the Appellant has not been provided with the electricity connection so far and it tantamounts to utter violation of the Electricity Act which provides under Section 43 that *“every Distribution Licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply.”*

9.3 The learned counsel further submitted that the Respondent had stopped action for installing the electricity connection merely on the basis of a legal notice sent by one Shri Balkar Singh who alleged that he had purchased the property in question on the basis of agreement to sale and Power of Attorney. The counsel further submitted that the Respondent has not at all installed the electricity meter and no

such documents were ever placed on record by the Respondent indicating its bona fide attempt to install the meter, etc.

9.4 **Per contra**, learned counsel for the Respondent TPDDL submitted that after completion of the necessary formalities by the Appellant on 22.11.2010, its officials visited the said premises of the Appellant for installation of meter on 1.12.2010, but the meter could not be installed owing to the fact that there was objection and obstruction caused by various persons present at the site stating that property is purchased by them and the earlier owner and co-owners have sold the said property to them. Besides, a legal notice dated 29.11.2010 which contained factual details in relation to the disputed ownership of the said property was received from one Mr. Balkar Singh, claiming to be power of Attorney holder of new owners. The counsel contended that since ownership of the said premises were disputed and TPDDL was not competent to decide the dispute relating to ownership, the application for new connection was cancelled, vide the rejection letter dated 6.12.2010 which was duly received by the Appellant.

9.5 It was further contended by the counsel that the Appellant instituted a Civil Suit bearing No. 05 of 2011, inter alia, seeking mandatory injunction against the Respondent for installation of connection and

also restraining Mr. Balkar Singh from evicting him from the premises. In view of these facts and as per the settled law, the electricity connection cannot be granted without proper NOC from the correct owner. The Civil Court, vide its judgment and decree dated 30.8.2013 decided the Civil Suit No. 05 of 2011 imposing the following conditions for grant of new connection to the Appellant:

- (i) shall pay additional security deposit of Rs. 60,000/-
- (ii) shall submit Indemnity Bond before Civil Court indemnifying the owners of the property from any electricity dues arising out of the connection of the Appellant and clearly undertaking that any dues arising out of the connection in the name of the Appellant would be payable by him and him alone;
- (iii) shall clear the outstanding due of Rs. 1,39,698/-;
- (iv) shall complete the commercial formalities.

9.6 It emerged from the judgment of the Civil Court that for grant of new connection, the requisite commercial formalities had to be complied with by the Appellant. But admittedly, none of the conditions as stipulated in the Decree dated 30.8.2013, has so far been fulfilled by the Appellant.

9.7 The learned counsel further submitted that as per Regulation 15 of the Supply Code 2007, it is mandatory that the consumer completes all

the commercial formalities of the Supply Code before being granted a new connection which also envisages of no objection letter of the landlord along with proof of ownership of the landlord. He vehemently submitted that the Appellant, rather than complying with the Judgment dated 30.8.2013, filed a frivolous complaint before CGRF for compensation and penalty under Section 43(3) which was rejected vide Order dated 17.6.2014. It is interesting to note that the Order of CGRF is appealable under Section 42(6) of the Electricity Act 2003, but instead of challenging the said Order before Ombudsman, the Appellant filed a complaint, inter alia, praying for compensations as per Section 142 and Section 43(3) of the Act in DERC.

- 9.8 DERC, vide its order 16.6.2015 came to the conclusion that there is no violation as far Section 43 of the Electricity Act is concerned as the Respondent licensee has made bona fide attempts to install electricity connection at the premises of the Appellant. The said finding of DERC has not been challenged by the Appellant. DERC has only allowed compensation under Section 57 of the Act in form of compensation for the delay of 35 days in refund of Rs.27500/- deposited by the Appellant along with his application for connection under Schedule-III of the Supply Code 2007.

9.9 The learned counsel emphasized that the said Order of DERC is not under challenge in the present Appeal which has been preferred by the Appellant for enhancement of compensation and not for getting electricity connection.

Our findings:

9.10 We have taken note of the contentions of the learned counsel for the Appellant as well as the Respondent No. 1 and also took note of their submissions on record pertaining to this issue. It is an admitted fact that after getting the revised application for grant of electric connection on 11.11.2010 and completion of requisite commercial formalities by the Appellant by 22.11.2010, the Respondent deputed its officials for installation of meter on 1.12.2010, but could not install the same due to objection and obstruction by other persons present in the said premises. Subsequently, the Respondent also received a legal notice dated 29.11.2010 from one Mr. Balkar Singh claiming to be Power of Attorney holder of new owners.

9.11 In view of the dispute regarding ownership of the premises, and the said legal notice, the Respondent cancelled the application for electricity connection, vide rejection letter dated 6.12.2010 which was duly received by the Appellant. It would, thus appear that necessary follow up action for installing the connection was taken by the Respondent and made efforts to accomplish the case within two

months from the date of application. However, due to the circumstances not being under control of the Respondent, the matter could not be installed. Further, the rejection letter dated 6.12.2010 has never been challenged by the Appellant and instead, it preferred a Civil Suit which was also disposed of on 30.8.2013. The Civil Court while decreeing the suit imposed certain conditions for grant of new connection to be complied with by the Appellant which admittedly, have not been complied with as yet.

9.12 We have perused the Supply Code 2007 of the Respondent Licensee and taken note that under Regulation 15 of the Supply Code, it is mandatory that the consumer completes all the commercial formalities required therein and also provides NOC from landlord along with proof of his ownership. The Appellant, rather than complying with the Judgment of the Civil Court dated 30.8.2013, filed complaint before the CGRF and after its rejection from the CGRF, the Appellant preferred a petition before DERC, inter alia, praying multiple compensations under Section 142, Section 57 and Section 43(3) of the Electricity Act 2003. DERC passed the impugned order dated 16.6.2015 concluding that there is no violation of Section 43 of the Act as the Respondent has made bona fide attempt to install the electricity connection at the premises of the Appellant. DERC allowed compensation of Rs.9,800/- to the

Appellant only for the delay of 35 days in refunding the deposited amount of Rs.27,500/- by the Appellant along with his application for the connection. The same has been effected only under Section 57 of the Act and in terms of Schedule III of the Supply Code, 2007. The Section 142 of the Act is not relevant in the instant case.

9.13 In view of the above facts and circumstances of the case, we are of the considered opinion that the Respondent Licensee (TPDDL) has made requisite efforts to accomplish the installation of connection and has, in no way, violated the provisions of the Electricity Act as far as grant of electricity connection is concerned and the State Commission has rightly recorded its findings in the Impugned Order dated 16.6.2015. We therefore, do not find any justification to interfere in the conclusions of the DERC in the above order.

Issue No. 2

9.14 The second issue, which happens to be the core issue of the Appeal filed by the Appellant, pertains to the grant of compensation to the Appellant under the Provisions of the Electricity Act 2003 in the facts and circumstances of the instant case. Before we examine this issue, it is relevant to see various relevant provisions of the Act under which the Appellant has sought for compensations in lieu of not getting the electricity connection at its premises.

(I) Section 142 of the Electricity Act 2003:

The Section is reproduced below:

“Section 142 (Punishment for non-compliance of directions by Appropriate Commission):

In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction.”

(II) Sub-Section 3 of Section 43 of the Electricity Act 2003

The Section is reproduced below:

“(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable

to a penalty which may extend to one thousand rupees for each day of default.”

(III) Section 57 of the Electricity Act 2003

The Section is reproduced below:

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

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

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

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

(IV) Regulation 9 (7) of DERC Regulations 2003

The relevant extract of the Regulation is reproduced below:

“(7) The Forum may, subject to the Regulations made by the Commission in this regard, award such compensation to the complainants as it considers just and appropriate in the circumstances of the case.”

9.15 Citing the facts and issues involved in the case of not receiving the electricity connection, the Appellant has approached various forums with a main prayer of getting compensations under various provisions of the Electricity Act 2003, namely Section 142, Section 43(3), Section 57, etc. It is relevant to note that in his prayer at various forums, the Appellant has not challenged cancellation of his application for getting supply connection by the Respondent Licensee but only sought for compensations / additional compensations in lieu of that. The Appellant has sought an amount of Rs. 1,00,000/- (Rupees One Lakh only) towards penalty as per Section 142 of the Act. Additionally, a compensation of Rs.1000/- (Rupees One Thousand only) for each day of default, that is from 23.11.2010 to up to date towards penalty envisaged as per Sub-Section 3 of Section 43 of the Act. Further, the Appellant has also desired compensation as defined under Section 57 of the Act.

9.16 Learned counsel, Mr. Sanjay Kumar appearing for the Appellant highlighted that in view of the denial of the electricity connection, the Appellant had no alternative but to approach various legal forums for

redressal of his grievances and seek compensations admissible to him under the Act. He further contended that in spite of the cancellation of his request for electricity connection, neither Demand Note was cancelled by the Respondent nor Respondent had returned the amount of Rs.27,500/- deposited along with the application. Hence, the contract subsists and cancellation of request is **nonest** and **void ab intio**.

9.17 **Per contra**, learned counsel, Mr. Manish Srivastava appearing for Respondent No.1 (TPDDL) submitted that since order dated 15.6.2015 of DERC is not challenged in the present Appeal by the Appellant which grants compensations of Rs.9,800/- (Rupees Nine Thousand Eight Hundred only), the same has become final between the parties and hence binding even on the Appellant. The learned counsel placed his reliance on the judgment of the Hon'ble High Court of Meghalaya in *Smt. B. Nongrum and Shri G. Dkhar Vs. Government of Meghalaya represented by the Chief Secretary to the Govt. of Meghalaya and Ors.* [(03.03.2014 - Meghalaya): MANU/MG/0016/2014].

9.18 He further contended that the Respondent has complied with the directions as contained in the referred order of DERC and had paid all amounts including compensations to the Appellant, vide letter dated 9.7.2015, which was duly received by the Appellant. The

counsel further indicated that the Appellant has not only concealed the material facts that he has received the amounts in compliance with DERC Order dated 16.6.2015, but has also concealed the fact that he has failed to comply with directions issued by the Hon'ble Civil Court in Suit No. 05 of 2011. He emphasized that the Appellant is deliberately not complying with Judgment and Decree of the Civil Court for the reasons that he never wanted a new connection knowing fully well that there is dispute relating to the ownership of the property and he is only interested in pursuing frivolous litigations.

9.19 The learned counsel vehemently contended that when Civil Court imposed certain conditions for grant of new connection and the Appellant failed to get desired result from the Civil Court, without complying with the said conditions of the Decree dated 30.8.2013 passed by the Civil Court, the Appellant filed a consumer complaint before CGRF constituted under Section 42 of the Act. The case was closed by CGRF as it came to the conclusion that it has no jurisdiction to entertain a penalty but no appeal against the said order of CGRF was filed by the Appellant under Section 42(6) before Ombudsman. He further submitted that the CGRF has jurisdiction to grant compensation to the consumer under DERC Regulation 9(7). He further submitted that since the said order 17.6.2014 of CGRF

was not challenged, the Appellant was estopped from approaching any other authority for the same cause of action. Further, rather than challenging the order of CGRF, the Appellant preferred a complaint under Section 142 of the Act before DERC which otherwise did not have jurisdiction to entertain the claim for compensation.

9.20 The learned counsel further contended that the action of the Appellant in invoking jurisdiction of various forums tantamounts to forum shopping which is impermissible in law. To substantiate his submission, the learned counsel placed reliance on the judgment of Hon'ble Supreme Court in *Chetak Constructions Ltd. Vs. Om Prakash And Ors.* [(1998) 4 SCC 577], which held as under:

“We certainly, cannot approve of any attempt on the part of any litigant to go “forum-shopping”. A litigant cannot be permitted “choice” of the “forum” and every attempt at “forum-shopping” must be crushed with a heavy hand.”

9.21 The counsel further contended that the State Commission did not have powers and jurisdiction to entertain a dispute relating to compensation between a consumer and licensee and that too, under Section 142. Section 86(f) of the Act prescribes the adjudicatory functions of the State Commission, but does not encompass within its domain complaints of individual consumers and that it only provides that the Commission can adjudicate on the disputes between the

licensees and the generating companies. The Hon'ble Supreme Court has also confirmed the same in the case of *Maharashtra Electricity Regulatory Commission* versus *Reliance Energy Ltd.* [(2007 (8) SCC 381)]. He further submitted that the object of Section 43 of the Act is to ensure that after completion of the formalities, the connection is not delayed but if the application is rejected due to valid reasons, it cannot be treated as violation of Section 43. In any event, for imposition of the penalty, it needs to be established that there was an unexplained failure on the part of the licensee.

9.22 It is manifest on the face of the impugned order of the State Commission that after going through the available records in detail, it categorically came to the conclusion that as far as Section 43 of the Electricity Act is concerned, Respondent has made bona fide efforts to install the electricity connection but could not do so due to definite reasons of physical resistance and legal notice and hence, there was no violation of the relevant provision on part of the Respondent. DERC granted compensation of Rs.9800/- not for violation of Section 43, but for the reasons that the paid up amount of Demand Note, i.e. Rs.27,500/- was not refunded subsequently and a delay of 35 days had occurred in the refund.

Our findings:

- 9.23 We have considered the contentions of the learned counsel for the Appellant as well as the Respondent No.1 (TPDDL) and also perused relevant provisions in the Electricity Act 2003 relating to the subject matter. We have taken note that while it is a fact that the Appellant could not get electricity connection at its premises and approached various forums for getting compensations in lieu of that under various Sections of the Act. On other hand, we observe that after completion of the commercial formalities by the Appellant, the Respondent Licensee made bona fide attempts to install electricity connection at the premises of the Appellant but was prevented by some persons of the premises physically as well as through legal notice.
- 9.24 While going through the relevant Sections, i.e. 43(3), 57, 142 of the Electricity Act 2003, we hold that as rightly concluded by the State Commission, there is no violation of either Section 43 or Section 142. As far as Section 57 namely, Standards of Performance of Licensee is concerned, the State Commission has already granted compensation of Rs.9,800/- for slackness in the performance of the Respondent licensee for causing delay of 35 days in refund of the initial deposit amount of Rs.27,500/-.

9.25 We further hold that the Appellant has not produced any oral or documentary evidence of creating conducive environment for getting electricity connection at its premises knowing the fact of obstruction being created by other occupants and also issue of legal notice by one Mr. Balkar Singh. It is accordingly concluded that getting electricity connection became a secondary priority for the Appellant and he proceeded to various forums with a primary and sole object of getting compensations which incidentally was not permissible in the law.

9.26 **In view of the above foregoing reasons, we are of the considered opinion that the Appellant is not entitled for further compensations in the facts and circumstances of the case under the Electricity Act, 2003 in addition to what has already been granted by the State Commission.**

10. SUMMARY OF OUR FINDINGS :

In the light of our findings and analysis brought out hereinabove, we firmly opine that the issues raised in the instant Appeal No. 160 of 2016 filed by the Appellant lack merit and the Appeal is liable for dismissal. Further, we do not find any error or a legal infirmity in the Impugned Order. Therefore, the Impugned Order dated 16.6.2015 passed by the Delhi Electricity Regulatory Commission deserves to be upheld.

ORDER

For the forgoing reasons, as stated above, we are of the considered view that the issues raised in the present appeal, being Appeal No. 160 of 2016 are devoid of merits. Hence the instant Appeal filed by the Appellant is dismissed.

The impugned order passed by Delhi Electricity Regulatory Commission dated 16.06.2015 in Petition No. 43/2014 is hereby upheld.

No order as to costs.

Pronounced in the Open Court on this 19th day of September, 2018.

(S.D. Dubey)
Technical Member

(Justice N.K. Patil)
Judicial Member

✓
REPORTABLE / NON-REPORTABLE

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