

**Appellate Tribunal for Electricity**  
**(Appellate Jurisdiction)**

**Appeal No. 110 of 2011**

**Dated: 26<sup>th</sup> July, 2012**

**Present: HON'BLE MR. JUSTICE KARPAGA VINAYAGAM, CHAIRPERSON**  
**HON'BLE MR. V J TALWAR, TECHNICAL MEMBER,**

**IN THE MATTER OF:**

**M/s Awadh Wood Products,**  
11/236, Souterganj Kanpur and  
Works at Assam Road, Mihinpurwa,  
Bahraich.

...Appellant

Versus

1. **U.P Power Corporation Limited**  
14, Ashoka Marg, Shakti Bhawan,  
Lucknow.

2. **Executive Engineer,**  
Electricity Distribution Division  
U.P Power Corporation Limited  
Bahraich.

3. **Uttar Pradesh Electricity Regulatory Commission**  
II Floor, Kisan Mandi Bhawan,  
Gomti Nagar, Lucknow.

...Respondents

Counsel for the Appellant: Mr Arvind Kumar  
Mr Anuj Kumar

Counsel for the Respondents : Mr Pradeep Misra

**JUDGMENT**

**PER MR. V J TALWAR TECHNICAL MEMBER**

1. The Appellant, M/s Awadh Wood Product is a consumer of electricity in the State of Uttar Pradesh having established a Cold Storage plant at Bahraich, UP. The 1<sup>st</sup> Respondent, UP Power Corporation Limited (Power Corporation) is a deemed licensee under Section 14 of the Electricity Act, 2003 (Act) and was a Distribution, Retail and Bulk Supply Licensee under UP Electricity Reforms Act, 1999 (Reforms Act). The 2<sup>nd</sup> Respondent is an Executive Engineer, an employee of Power Corporation (R-1). The 3<sup>rd</sup> Respondent is the Uttar Pradesh Electricity Regulatory Commission (State Commission).
  
2. On 18.07.2003, the Appellant filed Petition No. 132 of 2003 before the State Commission under Section 26 read with Section 10H of the U.P. Electricity Reforms Act, 1999 praying for issuance of the following directions to the Power Corporation (R-1):-
  - a. To restore an independent feeder of 137 KVA at Motipur substation exclusive for the Applicant to supply it with continuous electricity, for at least 18 hours a day as per the terms of the contract.
  
  - b. To refund to the Applicant excessive amount charged by it treating the Applicant as a continuous urban power consumer whereas actually the Applicant has been supplied electricity only for 6 to 8 hours a day and that too from a rural feeder which is an independent.
  
  - c. To pay the compensation to the Applicant towards the losses suffered by the Applicant.

- d. Till such time, the independent feeder be restored to the Applicant who may be supplied electricity as rural continuous power consumer and accordingly be billed as per the rural tariff.
3. The U.P. State Commission disposed of the said Petition on 17.11.2003 directing the Respondents to raise all future bills on rural schedule and also to revise all the bills raised during 2003-2004 on rural schedule and make the refund of the amount extra charged from the Appellant. It was further directed to ensure the supply hours maintained to this 33 KV Sub Station to the Applicant as per the latest prevailing norms and to restore the status of independent feeder to the Applicant. However, there was no order as to the compensation for the loss the Appellant had suffered due to erratic power supply.
4. Aggrieved by the portion of the impugned order of the State Commission Dated 17.11.2003, the Appellant filed an Appeal under Section 36 of Reforms Act before Lucknow Bench of Allahabad High Court in January 2004. This appeal before the High Court of Allahabad was dismissed on 9.11.2009 with liberty to Appellant to prefer an Appeal before this Tribunal.
5. Accordingly, the Appellant has filed the present Appeal before us for adjudication as against the impugned order dated 17.11.2003.
6. The relevant facts of the case are as under:
  - a. The Appellant had set up an industrial unit in the year 1974 at Assam Road, Mihinpurwa, Bahiraich UP. It entered into an agreement with the erstwhile U.P. State Electricity Board (the Board), the predecessor of R-1 for a contracted load of 110 BHP. Subsequently, the Appellant also

intended to install a Cold Storage and for that purpose the Appellant applied for additional load of 60 BHP.

- b. After the completion of the cold storage as well as the installation of the electric machinery, the Appellant requested the Board to revise the sanctioned load and enhance the total load to 150 KVA. The Board sanctioned the aforesaid additional load with a condition that in order to ensure 18 hours continuous supply of electricity to the cold storage, the Appellant has to install an independent feeder. The Appellant accepted the terms and conditions of the Board for release of additional load and agreed to bear the cost of independent feeder. Accordingly, the Appellant deposited Rs 1,26,710/- towards security charges and cost of the independent feeder.
- c. Thereafter, the Board (R-1) informed the Appellant that since the total load of the Appellant's Cold Storage is 156 BHP the Appellant would be billed as per the Rate Schedule HV2 under continuous process industry. However, at this stage neither the Independent Feeder was constructed, nor the Appellant was provided with any facility for getting the electric supply through Independent Feeder i.e. 18 hours continuous supply.
- d. The Board failed to lay the independent feeder despite the fact that the Appellant had already deposited entire cost of Independent Feeder and electric supply was given to the Appellant Cold Storage through rural feeder as per the Rural Schedule for only 10 to hours per days instead of committed 18 hrs supply per day. Nevertheless, the Appellant was being billed as per Urban Schedule for supply of 18 hrs per day.
- e. The Appellant made several representations to the Respondent Board to establish the dedicated feeder to his use, the cost of which had already

been paid by the Appellant and provide him supply for 18 hours a day as per terms of the agreement. It was requested that till such time the dedicated feeder is laid and the Appellant is supplied for 18 hours a day, which should be charged at rural schedule for non-continuous process industries.

- f. After a long delay and continuous persuasion, the Independent feeder was established by the Board (R-1) in the month of April, 1991. However, the supply to the Appellant remained erratic. The Board (R-1) connected other loads of the village to the 'Independent Feeder' exclusively constructed for the Appellant's Cold Storage and making it rural feeder.
- g. In the mean time, U.P. Electricity Reforms Act, 1999 was enacted on 14.1.2000 and the Board ceased to be in existence. By virtue of section 23 of the Reforms Act read with the UP Transfer Scheme, 2000, entire assets and liabilities etc. in respect of distribution work and transmission of electricity was vested with the Government of the State of U.P. and then it vested in U. P. Power Corporation Limited (R-1).
- h. In August 2000, U.P. Power Corporation Ltd. (R-1) issued tariff notification dated 9.8.2000 revising the tariff providing, inter alia, a rebate of 10% on the amount billed to the consumer in rural area getting supply as per rural schedule.
- i. However, this provision was not extended to the Appellant. The Power Corporation (R-1) did not pay any heed to the representations made by the Appellant from time to time with reference to the correctness of the bill and continued to issue incorrect bills, leaving no option to the Appellant but to pay incorrect bills to avoid any disconnection.

- j. Thereafter, the Appellant submitted a detailed representation on 17-5-2003 before Respondent no.1 seeking correction of the bills with a further request that the Appellant may be given supply as per continuous process and made a claim of Rs 15 crores 43 lakhs towards compensation for the loss it has suffered due to failure of the Power Corporation (R-1) to make the supply of power for committed 18 hrs per day.
- k. Since neither the bills were corrected nor the supply was regularized as per urban schedule, the Appellant filed a petition on 18.7.2003 under section 26 read with Section 10 (h) of U.P. Electricity Reforms Act, 1999 before the State Commission with prayers as referred to above.
- l. Ultimately on 17-11-2003 the State Commission passed an order partly rejecting the petition filed by the Appellant. Aggrieved by the order of the State Commission dated 17.11.2003 the Appellant filed an Appeal before Lucknow Bench of Allahabad High Court. The High Court in turn gave the liberty to the Appellant to file this Appeal challenging the Impugned Order dated 17.11.2003 before this Tribunal. Hence this Appeal.
7. The learned counsel for both the parties elaborately argued the matter. In the light of the rival contentions of the parties the following questions would arise for our consideration
- I. Whether the State Commission had power to adjudicate upon the disputes between the consumers and distribution licensee as on 17.11.2003 i.e. the date of Impugned Order?**

**II. Whether the Appellant is entitled for refund of excess amount charged by the Respondent by billing in urban schedule on independent feeder where as supply was given on Rural mixed feeder?**

**III. Whether, under the provisions of the UP Electricity Reforms Act, 1999 or Electricity Act, 2003, the Appellant is entitled for compensation for the loss it had suffered because of certain actions of the UP State Electricity Board, the predecessor of the Respondent Power Corporation?**

8. Having heard the learned Counsel for both the parties we shall now deal with these questions one by one.
9. First question before us for consideration is as to Whether the State Commission had power to adjudicate upon the disputes between the consumers and distribution licensee as on 17.11.2003 i.e. the date of Impugned Order.
10. The learned counsel for the Respondent submitted that the issue is related to billing disputes and therefore the Consumer Grievance Redressal Forum established by the Respondent under Section 42(5) of the 2003 Act is the appropriate forum. In elaborating this point, he made the following submissions on the jurisdiction issue:
  - a. The State Regulatory Commission established by the State Government under Section 17 of Electricity Regulatory Commissions Act, 1998 or under the enactments specified in the schedule (U.P. Electricity Reforms Act, 1999) became the State Commission for the purpose of the 2003 Act in accordance with

the first proviso to Section 82 of Electricity Act, 2003. Accordingly, the provisions of U P Reforms Act, which are not consistent with the provisions of 2003 Act, would not be applicable.

- b. The functions of the State Commission are provided under Section 86 and there is no provision regarding any consumer dispute to be adjudicated by the State Commission.
- c. The Hon'ble Supreme Court in 2007 (8) SCC 381 Maharashtra Electricity Regulatory Commission Vs. Reliance Energy Ltd. & Ors. has held that the State Commission has no powers to decide the dispute of an individual consumer and the proper forum for that purpose is the Consumer Grievance Redressal Forum as per Section 42(5) and office of the Ombudsman as first appellate authority as per section 42(6) of Electricity Act, 2003
- d. This Tribunal in Appeal No. 57 of 2006, Appeal No. 165 of 2005 and Appeal No. 42 of 2006 has also taken the view that the consumer disputes could be decided only by the Grievance Redressal Forums constituted under Section 42(5) of the 2003 Act and not by the State Commissions.

11. Refuting the contentions urged by the Respondent, the learned counsel for the Appellant elaborated this point by making following submissions:

- a) Under UP Reforms Act 1999, the State Commission had power to address the grievance of the consumers and since this provision of 1999 Act is not inconsistent with any of the provisions of the 2003 Act, it is to be applied in the State of UP by virtue of Section 185 (3) of 2003 Act.

- b) The Consumer Grievance Redressal Forum was not constituted in the state of U.P. at the time of filing of petition before the State Commission on 18.7.2003. This situation continued even at the time of passing of the impugned order by the State Commission on 17.11.2003. The State Commission had notified the UPERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2003 on 9.12.2003 i.e. after the State Commission passed the impugned order and Consumer Grievance Redressal Forums had been constituted thereafter. Thus, under these circumstances the State Commission had jurisdiction to adjudicate upon the issues resulting from consumer's complaints and the order passed on 17.11.2003 by the State Commission was within its power and jurisdiction.
- c) The Respondent did not raise the issue of jurisdiction earlier before the Commission as well as before the High Court. In fact, the Power Corporation had implemented the directions given by the State Commission in the Impugned Order. The Respondents are, therefore, estopped from raising such pleas before this Tribunal.

12. Let us examine the relevant provisions of the 2003 Act. Section 82 of the Act dealing with the constitution of the State Commissions reads as under:

***“82. Constitution of State Commission.—(1) Every State Government shall, within six months from the appointed date, by notification, constitute for the purposes of this Act, a Commission for the State to be known as the (name of the State) Electricity Regulatory Commission:***

*Provided that the State Electricity Regulatory Commission, established by a State Government under section 17 of the*

*Electricity Regulatory Commissions Act, 1998 (14 of 1998) and the enactments specified in the Schedule, and functioning as such immediately before the appointed date shall be the State Commission for the purposes of this Act ...*

13. The UP State Commission was constituted under Section 17 of the Electricity Reforms Act 1998 and in accordance with Section 3 of UP Electricity Reforms Act; it became the Commission under that Act. Upon enactment of 2003 Act, it became the Commission for the purpose of 2003 Act and its functions and powers are to be regulated by the provisions of 2003 Act.
14. The State Electricity Board constituted under Section 5 of Electricity Supply Act 1948 was unbundled in the year 1999 into three companies and Power Corporation (R-1) was entrusted with the responsibilities of distribution, retail supply and bulk supply in the State. In the year 2000 the State Commission granted license to the Power Corporation (R-1) for Distribution, Retail Supply and Bulk Supply in the State under section 15 of Reforms Act. Upon enactment of Electricity Act 2003, the Power Corporation (R-1) became the deemed licensee under this Act as per 1<sup>st</sup> proviso to the Section 14 of the 2003 Act which reads as under:

*“14. Grant of licence.—The Appropriate Commission may, on an application made to it under section 15, grant a licence to any person—*

- (a) to transmit electricity as a transmission licensee; or*
- (b) to distribute electricity as a distribution licensee; or*
- (c) to undertake trading in electricity as an electricity trader,*

*in any area as may be specified in the licence:*

*Provided that any person engaged in the business of transmission or supply of electricity under the provisions of the repealed laws or any Act specified in the Schedule on or before the appointed date shall be deemed to be a licensee under this Act for such period as may be stipulated in the licence, clearance or approval granted to*

*him under the repealed laws or such Act specified in the Schedule, and the provisions of the repealed laws or such Act specified in the Schedule in respect of such licence shall apply for a period of one year from the date of commencement of this Act or such earlier period as may be specified, at the request of the licensee, by the Appropriate Commission and thereafter the provisions of this Act shall apply to such business.”*

15. It is clear from the 1<sup>st</sup> proviso to Section 14 of the 2003 Act (reproduced above) that the Respondent Power Corporation became the deemed licensee under the 2003 Act and also that the provisions of the UP Reforms Act 1999 would apply for one year from the date of commencement of 2003 Act. The Electricity Act, 2003 came into force with effect from 10<sup>th</sup> June 2003. Accordingly the provisions of UP Reforms Act 1999 would apply to the Power Corporation till 10<sup>th</sup> June 2004. In the present case, the State Commission had passed the impugned order on 17.11.2003 i.e. before 10<sup>th</sup> June 2004. Therefore, we have to examine as to whether the State Commission had jurisdiction to entertain any dispute between the consumer and licensee under UP Reforms Act 1999.

16. Section 26 of the UP Reforms Act 1999 empowers the State Commission to enforce the compliance of terms and conditions of the licence. Relevant portion of Section 26 is reproduced below:

**“26. Orders by the Commission.** (1) *Where it comes to the knowledge of the Commission from a complaint or otherwise that any of the terms and conditions of a licence has been contravened by the licensee or is likely to be contravened, it may by an order require the licensee to do, or to abstain from doing, such things as may be specified in such order for the purposes of securing compliance with the terms and conditions of the licence.”*

17. The learned counsel for the Appellant contended that the State Commission had approved the draft Distribution Code (UP Supply Code

2002) submitted by the Power Corporation (R-1) in accordance with clause 17 of Distribution Licence. Therefore, violation of Supply Code would amount to violation of licence conditions. Further, Clause 26 & 27 of Supply Code 2002 empowered the State Commission to adjudicate upon the disputes between consumers and licensee. Thus the State Commission had powers to adjudicate upon the disputes between consumer and the licensee.

18. In view of 1<sup>st</sup> proviso to Section 14 of the 2003 Act read with Section 26 of UP Reforms Act 1999 and UP Supply Code 2002, We are of the opinion that the State Commission had jurisdiction to adjudicate upon the disputes between consumer and licensee up to 10<sup>th</sup> June 2004 i.e. till completion of one year from the date of enactment of the 2003 Act.
19. In view of the above, the incidental question that may arise as to whether the power of the State Commission to resolve all the disputes between consumers and licensee ceases after 10.6.2004 or the State Commission still have powers to resolve some of the disputes involving consumers and licensee. The State Commission would not have any power to resolve the disputes falling within the jurisdiction of Consumer Grievance Redressal Forums established under Section 42(5) of the 2003 Act such as matters related to billing, metering, delay in providing new connection or change in name or enhancement of loads etc. In all other matters which would fall outside the jurisdiction of CGRF and the Special Court established under Section 153 of the 2003 Act, such as matters related grant of open access under section 42 or compensation to consumers under section 57 of the Act etc., would fall within the jurisdiction of the State Commission.

20. This Tribunal in Appeal No. 36 of 2011 in the matter of MSEDCL Vs MERC and others has held that the dispute relating to grant of Open Access would be dealt with 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. This, jurisdiction vested with the Commission cannot be usurped or taken away by the Consumer Grievance Redressal Forum. In other words, the Consumer Grievance Redressal Forum established by the Distribution Licensee will have no jurisdiction to entertain or decide a dispute where the statutory mandate to provide Open Access has been violated by the Distribution Licensee. Therefore, the dispute in question can be resolved by the State Commission alone and not by the Consumer Grievance Forum.

21. Section 57 of the 2003 Act deals with the grant of compensation to the consumer and 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.”***

22. Subsection 2 of Section 57 along with its proviso would make it clear that the State Commission has power to provide compensation to

consumers and in case any dispute arises, the Commission has powers to adjudicate upon such matters.

23. Further, clause 7.13 of UP Supply Code 2005 provides for complaints before the Commission. This Clause is set out below:

***“7.13 Complaints before the Commission***

*The complaint before the Commission may be filed under the provisions of the Act, or Regulations made there under, provided it concerns with compliance of orders, rules, regulations, or directives of Commission, provided also, that all such matters, are other than those covered under clause 7.10 of this code.*

*Provided further, the appeal from the decision of a Chief Electrical Inspector or an Electrical Inspector, shall lie with the Commission as per the provision laid down in section 35 of the Electricity Reforms Act, 1999, until provisions contrary to this effect are made by the State Government”*

24. Clause 7.10 of the UP Supply Code 2005 details the disputes which fall within the jurisdiction of CGRF. These Supply Code Regulations 2005 has not been challenged so far and has, therefore attained finality.
25. To conclude, we are of the view that the State Commission had power to resolve all the disputes between consumers and licensee till 10.6.2004. Thereafter, the powers of the Commission to adjudicate upon the matters falling within the jurisdiction of CGRF established under section 42(5) of the Act ceases to exist. However, the State Commission has powers to resolve all other disputes falling outside the jurisdiction of CGRF or Special Courts.
26. Ld. Counsel for the Respondent no.1 has referred to the findings in the following cases to press his point on jurisdiction of the State Commission.

- i. Maharashtra Electricity Regulatory Commission Vs. Reliance Energy Ltd. & Ors. 2007 (8) SCC 381
- ii. UP Power Corporation and Ors Vs Premier Ispat and Ors 2010 ELR (APTEL) 124
- iii. Madhyanchal Vidhyut Vitran Limited and Others Vs Sheo Rice and Floor Mills and Ors Manu/ET/0107/2009
- iv. Madhyanchal Vidhyut Vitran Limited and Ors Vs UPERC and Ors 2010 ELR(APTEL) 170

27. In our opinion the '*Ratio decidendi*' of these authorities would not be applicable to the present case as the facts of these cases are different from the case before us. All these cases relate to the billing disputes. However, the dispute before us is not a billing dispute but it relates to the demand of compensation for the loss suffered by the Appellant due to the failure of the licensee to provide him committed supply for 18 hours per day. With regard to authorities at (ii), (iii) and (iv) referred to above; all these cases pertain to period beyond one year from the date of enactment of the 2003 Act i.e. after 10.6.2004. In para 25 above we have held that the State Commission had jurisdiction to adjudicate upon the disputes between consumer and licensee up to 10<sup>th</sup> June 2004 i.e. till completion of one year from the date of enactment of the 2003 Act.

28. On application of decisions of the courts in one case to other similar cases, the Hon'ble Supreme Court in Bharat Petroleum Corporation Ltd. Vs N. R. Vairamani (2004) 8 SCC 579 has observed that:

*"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as*

*provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed:*

*"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."*

10. In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said, "Lord Atkin's speech.....is not to be treated as if it was a statute definition it will require qualification in new circumstances." Megarry, J in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said:

*"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."*

11. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

12. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

*"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a*

*case falls, the broad resemblance to another case is not at all decisive."*

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*"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."*

29. The issue of jurisdiction is accordingly decided in favour of the Appellant.
30. Second question before us for consideration is as to whether the Appellant is entitled for refund of excess amount charged by the Respondent by billing in urban schedule on independent feeder where as supply was given on Rural mixed feeder?
31. The learned Counsel for the Appellant argued that although it had deposited the entire amount for laying independent feeder from Respondent's substation to its premises, the Respondent failed to lay down the feeder and supplied the power to the Appellant from rural feeder which was subjected to load shedding roster but the Respondent billed the Appellant at Urban Schedule.
32. The learned Counsel for the Respondent submitted that as per Section 56(2) the licensee cannot recover any sum due from any consumer after two years unless the said sum has been shown continuously as recoverable as arrears of charges for electricity supplied. It is further stated that the consumer also cannot be allowed to raise any demand for damages or refund after so many years and such a demand would be barred by time and that in the present case the Appellant wants to recover the alleged loss caused to it during 1997-1998 and revision of bills of electricity from 1992-1993 which is not permissible in law. He also

pointed out that the State Commission had granted license to the Respondent in the year 2000 and Separate Schedules for Urban and Rural areas were introduced sometime in the year 2000-2001 and therefore, the claim of the Appellant for revisions of the bills from 1992-93 is completely unjustified and is liable to be dismissed.

33. Let us examine the findings of the State Commission in the Impugned Order which read as under:

*“ The terms of the sanction order for releasing the load by the respondent was conditional – i.e. subjected to the roistering schedule of UPPCL.*

*The fact that the consumer has all along paid the bills and never took to the legal recourse available to them regarding the above matter as raised in the petition now before the Commission, tantamount to consumer’s acceptance, to the terms of supply by the respondent.”*

34. We have examined the materials available on record. We find that the Appellant had not raised this issue with the Respondent till 2003 as correctly pointed out by the State Commission also. The Appellant has mentioned that independent feeder was laid by the Respondent and continuous power supply was provided to him for some time and under these circumstances it would not be possible to determine the period during which the Respondent did not provide power supply for 18 hrs per day. The Appellant should have taken timely legal recourse before appropriate forum for getting the relief. It is also noted that the Appellant in his prayer in the petition before the state Commission as well as in this Appeal did not indicate the period for which the bills were required to be amended. Therefore, the State Commission had rightly directed to amend the bills for the year 2003-04.

35. In view of above, we conclude that there is no infirmity with findings of the State Commission. This point is answered as against the Appellant.
36. Third question for our consideration is as to whether under the provisions of the UP Electricity Reforms Act, 1999 or Electricity Act, 2003, the Appellant is entitled for compensation for the loss it had suffered because of certain actions of the UP State Electricity Board, the predecessor of the Respondent Power Corporation?
37. The main grievance of the Appellant is that although the State Commission had acknowledged in the impugned order that the Appellant had suffered huge losses due to failure of the Power Corporation (R-1) to provide committed electrical power supply for 18 hours per day, the Commission had failed to provide any compensation. Learned Counsel for the Appellant has urged the following contentions in support of his claim:
- a. As per Section 26(2)(b) read with Section 28(2) of the UP Electricity Reforms Act 1999, the State Commission has powers to award compensation to any person who has suffered loss due to any action of the licensee contravening the terms and conditions of its license.
  - b. The licensee is liable to pay compensation to the Appellant as per Section 57 of 2003 Act.
  - c. The Licensee had contravened the provision of UP Electricity Supply Code 2002 by not providing the Appellant power committed for 18 hrs per day.

d. Thus the licensee has contravened the terms and conditions of its license and is, therefore, liable to pay compensation to the Appellant for the loss it had suffered.

38. The learned counsel for the Respondent contended that UP reforms Act 1999 did not have any provision for compensation to be provided to any consumer for the loss it had suffered due to failure of the licensee to provide power supply for 18 hours per day. He further contended that as per Section 56(2) the licensee cannot recover any sum due from any consumer after two years unless the said sum has been shown continuously as recoverable as arrears of charges for electricity supplied; hence a consumer cannot be allowed to raise any demand for damages after so many years and such a demand would be barred by time and in the present case the Appellant wants to recover the alleged loss caused to it during 1997-1998 which is not permissible under law.

39. The Appellant has relied upon section 26 and 28 of the UP Electricity Reforms Act 1999 which, as per the Appellant, entitles him for compensation for the loss it had suffered at the hands of the Respondent. In order to appreciate this submission of the Appellant, we need to set out relevant portions of Sections 26 and 28 of 1999 Act. Let us now refer to Section 26 which reads as under:

***“26. Orders by the Commission. (1) Where it comes to the knowledge of the Commission from a complaint or otherwise that any of the terms and conditions of a licence has been contravened by the licensee or is likely to be contravened, it may by an order require the licensee to do, or to abstain from doing, such things as may be specified in such order for the purposes of securing compliance with the terms and conditions of the licence.***

***(2) While making an order under this section, the Commission shall have regard to the following facts, namely,-***

*(a) the extent to which the contravention referred to in sub-section (1) will affect the achievement of the objects and purposes of this Act;*

*(b) the extent to which any person is likely to sustain loss or damage in consequence of anything which is likely to be done or omitted to be done in contravention of any of the terms and conditions of the licence, before an order can be made; and*

*(c) any other remedy available in respect of the contravention referred to in sub-section (1)*

*(3) Before making an order under sub-section (1), the Commission shall give a notice to the licensee:-*

*(a) stating that it proposes to make the order;*

*(b) setting out,-*

*(i) conditions or requirements, with which the proposed order is intended to secure compliance;*

*(ii) the acts or omissions which, in its opinion, constitute contravention of any of the terms and conditions of the licence; and*

*(iii) any other facts which, in its opinion, justify the making of the order; and*

*(c) specifying the period not being less than thirty days from the date of the notice within which the licensee may make representation or objections to the proposed order.*

*(4) A notice under sub-section (3) shall be published for general information, in at least one daily newspaper widely circulated in the area of supply.*

*(5) Where the Commission is of the view that the purpose of making an order shall be defeated by delay in making the order, or the contingency of the circumstances so require, it may make an interim order not inconsistent with the order proposed under sub-section (3) any time after seven days from the date of the said notice.*

*(6) The Commission shall have the powers to give directions for the vesting of the management and control of any of the undertakings of the licensee with the assets, interests and rights of the undertaking with any person or authority pending an inquiry in the matter, if the Commission*

*considers it necessary to make such direction after taking into account the objects and purposes of this Act and the need to maintain continuous supply of electricity in an efficient and safe manner to the consumers. Provided that no direction under this sub-section shall be issued without giving the licensee a reasonable opportunity of being heard.*

*(7) The Commission may, after considering the representations or objections received and after affording the licensee an opportunity of being heard, make an order at any time after the expiry of the period referred to in clause (c) of sub-section (3), if,-*

*(a) the Commission has reasons to believe that the licensee has contravened or is contravening or may in all probability contravene any of the terms and conditions of the licence; and*

*(b) the order appears to be necessary for securing compliance with the terms and conditions of the licence.*

*(8) Where, after a notice has been issued under sub-section (3), the licensee has taken or has agreed to take all such steps as may be necessary for the implementation of the terms and conditions of the licence, it shall not be necessary for the Commission to make an order under this section.*

*(9) **An order under this section,-***

***(a) shall take effect from such prospective date as may be specified in the order; and***

*(b) may be revoked or modified at any time by the Commission after affording an opportunity of being heard to the licensee and all other such persons as are likely to be affected by such order.*

*(10) An order under sub-section (1) or sub-section (5), shall be published in at least one daily newspaper widely circulated in the area of supply."*

40. Bare reading of this section 26 of 2999 Act would reveal that the State Commission may, on coming to know about any contravention of the conditions of the license by the licensee, direct the licensee, by an order, to abstain from doing such action which is in contravention with the license conditions and while doing so, the Commission shall have regard

to the loss any person may suffer due to such contravention. It further provides in clause (a) of sub-section 9 that the said order shall have prospective effect. This section does not provide that licensee would be liable to pay compensation to any person who has suffered loss due to any action of the licensee in contravention of the license conditions and that too retrospectively for the period prior to issuance of licence to the Power Corporation (R-1).

41. Now let us now examine the provisions of section 28 of the UP Electricity Reforms Act 1999 which reads as under:

***“28. Fines, compensation and charges. (1)The Commission shall have the powers to impose such fines and charges as may be provided by the regulations for contravention by a generating company, licensee or other person, of any of the provisions of this Act or the rules and regulations made thereunder or the directions or orders of the Commission made from time to time. The fines that the Commission may impose may extend to rupees five lakh for contravention of any of the provisions of this Act and in case of a continuing contravention; the Commission may impose a further fine, which may extend to rupees twenty thousand for each day during which such contravention continues.***

***(2) The Commission shall have the power to direct the person, who has contravened the provisions of this Act, to make payment of compensation to the person who has suffered loss or damage due to such contravention.”***  
{emphasis added}

42. According to the Appellant, the Respondents have contravened the provisions of the UP Supply Code 2002 which had been framed by the State Commission in accordance with Section 30 of UP Electricity Reforms Act 1999 and therefore, contravention of any of the provision of the Supply Code would entitle the Appellant for compensation in terms of Section 28(2) of the 1999 Act.

43. In order to ascertain as to whether the UP Supply Code 2002 had been framed in pursuance of Sections 30 and 52 of 1999 Act and, therefore, has statutory flavour, we have examined the Sections 30 and 52 of the 1999 Act which read as under:

**“30. Power of Commission to make regulations.** (1) *The Commission may, in consultation with the licensee and the Electricity Advisory Committee and any other person as it thinks fit, make regulations which may provide for all or any of the following matters, namely,-*

*(a) the circumstances in which licensees are to inform customers of their rights;*

*(b) standards of performance in relation to any duty arising out of the rights referred to in clause (a); and*

*(c) the circumstances in which the licensees are to be exempted from any requirements of the regulations, and may make different provisions for different licensees.”*

*(2) Nothing in this Act shall affect the rights and privileges of the consumers under any other law for the time being in force.*

...

...

**52. Power to make regulations.** (1) *The Commission may make regulations not inconsistent with this Act or the rules made thereunder for the efficient performance of its functions under this Act.*

*(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such regulations may provide for all or any of the following matters, namely,-*

*(a) the administration of the affairs of the Commission in the exercise of its functions;*

*(b) determination of the functions to be assigned to licensees and other persons involved in the generation, purchase, transmission, distribution or supply of electricity, the manner in which such functions shall be discharged and the procedures to be*

*adopted and enforced in regard to the operation and maintenance of power system and electric supply lines;*

*(c) the procedure and the conditions for the grant of licences, the particulars and documents to be made available by the persons applying for licences, the standards and general conditions subject to which the licence shall be granted, the grant of exemptions from the requirement of a licence, the revocation and amendment of licences and the effect thereof and all matters related thereto;*

*(d) the duties, powers, rights and obligations of licensees;*

*(e) the particulars to be furnished, and the form and manner for furnishing information, particulars, documents, accounts and books by the persons involved in the generation, transmission, distribution, supply or use of electricity;*

*(f) the terms and conditions and the procedure for determination of revenues and tariffs;*

*(g) the determination of the standards of performance of the persons involved in the generation, transmission, distribution or supply of electricity in the State;*

*(h) the fees and charges payable by the licensee and the consumer of electricity;*

*(i) the amount of fines and penalties to be imposed for violation of the provisions of this Act including the method and manner of imposition of fines and penalties and collection of the same;*

*(j) any other matter which is required to be, or may be, provided by regulations.*

44. Thus, in terms of Sections 30 & 52 reproduced above, the State Commission had been mandated to frame Regulations specifying the the circumstances in which licensees are to inform customers of their rights and standards of performance in relation to any duty arising out of the such rights and other matters. Scrutiny of UP Supply Code 2002 would indicate that this code had not been framed by State Commission in pursuance of the Section 30 or any other Section of the 1999 Act. The fact that UP Supply Code 2002 was not a Regulation framed under provisions of the Reforms Act 1999 but was a document prepared by the

licensee in pursuance of conditions of license and approved by the State Commission, is evident from the Statement of Objects and Reasons for UP Supply Code 2005. Relevant portion of the said Statement of Objects and Reasons is reproduced below:

***“Electricity Supply Code - 2005***

***Statement of Objects and Reasons***

1. *Under UP Electricity Reforms Act, 1999 (hereinafter referred to as the “Reforms Act”), UP Electricity Regulatory Commission was assigned with functions to regulate the distribution, supply, utilization of electricity, issue licenses to regulate the working of licensees and to set the standards of services for the consumers as well as standards for the electricity industry in the State. **While granting licenses to the then three major distribution licensees i.e. UPPCL, KESCO & NPCL, the Commission required that the licensees should prepare distribution codes and submit them to the Commission for approval, as a condition of the supply license. In pursuance to the Commission’s directions, Uttar Pradesh Power Corporation Limited (UPPCL) had submitted a draft distribution code which was approved by the Commission and was made applicable in areas served by UPPCL, Kanpur Electricity Supply Company Limited (“KESCO”) and the Noida Power Company Limited (“NPCL”) with effect from 1<sup>st</sup> July 2002....** {emphasis added}*

45. Thus, the UP Supply Code 2002 cannot be held to be framed by the State Commission under 1999 Act. To establish it further, the opening para 1.1 of the Supply Code 2002 is reproduced below:

*“1.1 The Electricity Supply Code (hereinafter called ‘Code’) details the obligations of the Licensee and consumers vis-à-vis each other and specifies the set of practices that shall be adopted by the Licensee to provide efficient, cost-effective and consumer friendly service to the consumers. It specifically details the following:*

- (a) *The procedure for connection, disconnection, reconnection, assessment of*

*load and for enhancement or reduction of load.  
(b) Practices relating to payment of bills and consumer metering.  
(c) Standards of Performance for the Licensee; and  
(d) Procedure for Redressal of Consumer Grievances”*

46. In contrast, the UP Supply Code 2005 framed by the State Commission as per Section 50 of 2003 Act clearly states that the in exercise of powers conferred by section 50 of 2003, the State Commission has framed the Supply Code. In order to establish the difference between the two codes, Clause 1 of the 2005 Supply Code is also reproduced below:

*“Introduction*

*In exercise of powers conferred by section 50 and 181 read with sections 43 to 48, 50, 55 – 59, of the Electricity Act 2003 (Act 36 of 2003), the UP Electricity Regulatory Commission, after previous publication, hereby makes the following Code, namely:*

**Short Title and Objectives**

*1.1 The Electricity Supply Code 2005 (hereinafter called ‘Code’), shall be applicable to all distribution licensees in their respective licensed areas in the State, from the date the Commission may by notification, appoint for the purpose. ...*

47. Opening paragraphs of the two codes would clearly establish that UP Supply Code 2002 had not been framed under any of the provisions of 1999 Act. Further, unlike the ERC Act 1998 or 2003 Act, which provide for mandatory requirement of Regulations framed under these Acts to be placed before the Parliament or the State Legislature, as the case may be, UP Reforms Act 1999 did not have any such provision. Therefore, even if the Supply Code was framed under the 1999 Act, it cannot be held to have statutory flavour and became part of the Reforms Act. Accordingly, violation of this Supply Code, if any, cannot be held to be

violation of the 1999 Act to attract the provision of Section 28 of the said Act and to award compensation to the Appellant.

48. Interestingly, the Appellant in its Appeal or in oral submissions as well as in written submissions did not indicate as to which provision of the 1999 Act or the UP Supply Code 2002 had been violated by the Respondents. During the proceedings a specific query was put in this regard. Even then the Appellant could not indicate as to which of the provision of the Act or the UP Supply Code 2002 had been violated by the Respondent.
49. The Learned Counsel for the Appellant had contended that Section 57 of Electricity Act 2003 empowers the State Commission to award compensation. This contention of the Appellant is liable to be rejected for the following reasons:
- i. Electricity Act 2003 was made effective from 10<sup>th</sup> June 2003. Any Rule or Regulation made under this Act cannot have retrospective effect.
  - ii. Section 57 of the 2003 Act requires the State Commission to frame regulations to award compensation to consumer if the licensee fails to meet the Standard of Performance specified by the State Commission under Section 57(1) of the Act. This Section would have only prospective effect.
  - iii. The State Commission has framed the Standard of Performance for distribution licensee as part of Supply Code Regulations in the year 2005. Clause 1.1 of the Supply Code provides for prospective applicability of the Supply Code.
  - iv. Chapter 7 of the Supply Code 2005 deals with Standard of Performance. It also provides for the Compensation to be granted

to the consumer in case of failure of the licensee to meet these standards. As per Clause 7.9 of the Supply Code, the liability of compensation on Licensee shall be effective from the date of enforcement of the Code.

- v. Admittedly, the demand of compensation by the Appellant relates to the period prior to enactment of 2003 Act and, therefore, it cannot be covered under provisions of the 2003 Act and Supply Code 2005 made under various provisions of 2003 Act.

**50. Summary of our findings:**

- a. **In view of 1<sup>st</sup> proviso to Section 14 of the 2003 Act read with Section 26 of UP Reforms Act 1999 and UP Supply Code 2002, We are of the opinion that the State Commission had jurisdiction to adjudicate upon all the disputes between consumer and licensee up to 10<sup>th</sup> June 2004 i.e. till completion of one year from the date of enactment of the 2003 Act. Thereafter, the powers of the Commission to adjudicate upon the matters falling within the jurisdiction of CGRF established under section 42(5) of the Act ceases to exist. However, the State Commission has powers to resolve all other disputes falling outside the jurisdiction of CGRF or Special Courts.**
- b. **Having examined the records available with us, we find that the Appellant had not raised this issue with the Respondent till 2003 as correctly pointed out by the State Commission. The Appellant has submitted that independent feeder was laid by the Respondent and continuous power supply was provided to him for some time and under those circumstances it would not be possible to determine the period during which the Respondent did not provide**

power supply for 18 hrs per day. This cannot be accepted. The Appellant should have taken timely legal recourse before appropriate forum for getting the relief. It is also noted that the Appellant in his prayer in the petition before the state Commission as well as in this Appeal did not indicate the period for which the bills were required to be amended. Therefore, the State Commission had rightly directed to amend the bills for the year 2003-04.

- c. Scrutiny of UP Supply Code 2002 would indicate that this code had not been framed by State Commission in pursuance of the Section 30 or any other Section of the 1999 Act. The fact that UP Supply Code 2002 was not a Regulation framed under provisions of the Reforms Act 1999 but it was a document prepared by the licensee in pursuance of conditions of license approved by the State Commission, is evident from the Statement of Objects and Reasons for UP Supply Code 2005. Further, opening paragraphs of the two codes viz., Supply Code 2002 and Supply Code 2005 would clearly establish that UP Supply Code 2002 had not been framed under any of the provisions of 1999 Act. Unlike the ERC Act 1998 or 2003 Act, which provide for mandatory requirement of Regulations framed under these Acts to be placed before the Parliament or the State Legislature, as the case may be, UP Reforms Act 1999 did not have any such provision. Therefore, even if the Supply Code was framed under the 1999 Act, it cannot be held to have statutory flavour and became part of the Reforms Act. Accordingly, violation of this Supply Code, if any, cannot be held to be the violation of the 1999 Act so as to attract the

**provision of Section 28 of the said Act and to award compensation to the Appellant.**

51. In the light of our above findings, we do not find any reason to interfere with the impugned order of the State Commission. The Appeal is accordingly dismissed being devoid of merits. However, there is no order as to costs.

**(V J Talwar)**  
**Technical Member**

**(Justice Karpaga Vinayagam)**  
**Chairperson**

Dated: 26<sup>th</sup> July, 2012

REPORTABLE/~~NOT REPORTABLE~~