

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 29 of 2006

In the matter of
Petition filed by M/s. Girija Steels Pvt. Ltd. seeking quashing of demand of payment of SLC, SCC and cost of meter, and refund of monies recovered towards SLC and SCC, together with interest

Dr. Pramod Deo, Chairman
Shri. A. Velayutham, Member
Shri. S. B. Kulkarni, Member

ORDER

Dated: June 6, 2007

M/s. Girija Steels Pvt. Ltd. (“**the Petitioners**”) filed a petition on September 7, 2006 seeking the quashing of the quotation raised by the Maharashtra State Electricity Distribution Company Limited (“**MSEDCL**”) vide their letter dated May 23, 2006. The said quotation is in dispute to the extent the Petitioners have been required to bear an amount of Rs. 18,90,000/- towards SLC (i.e., service line charges) an amount of Rs. 85,600/- towards fixed service connection charges (“**SCC**”); and an amount of Rs.15,000/- towards cost of meter for the release of fresh HT connection at 33 KV level in the plant of the Petitioners situated at Gut No. 850, Village Bidkin, 24 Km Stone Paithan Road, Taluka Paithan, District Aurangabad (“**the factory premises**”). The Petitioners have further sought for directions upon MSEDCL to refund amounts to the tune of Rs. 19,90,670/-, together with interest at prevailing bank rate, which the Petitioners have paid to MSEDCL in part, i.e., Rs. 15,00,000 on May 30, 2006 and Rs. 4,90,670/- on June 6, 2006, under protest.

2. The Petitioners are a company engaged in the manufacturing of mild steel ingots and have a factory at the aforesaid premises. MSEDCL and their Superintending Engineer, Rural Circle, Vidyut Bhavan, Aurangabad, have been impleaded as Respondent No.s 1 and 2 respectively. It is averred in the petition that on March 28, 2003, MSEDCL disconnected the power supply to the aforesaid factory premises of the Petitioners on account of non-payment of energy bills pertaining to consumption of electricity at their aforesaid factory premises during January 2003 and March 2003. Thereafter, on and from October 17, 2003, the Petitioners were subjected to temporary disconnection.



3. It is submitted by the Petitioners that despite several requests, the Petitioners could not obtain the approval of MSEDCL on certain waivers and installments with respect to the amounts pending against the Petitioners. The Petitioners filed Writ Petition No. 2808 of 2004 [*M/s. Girija Steels Pvt. Ltd. vs. MSEDCL & Ors.*] before the Hon'ble Bombay High Court (Aurangabad Bench) seeking *inter alia* directions upon MSEDCL for granting certain waivers and installments with regard to the dues pending and settlement of the said dues.

4. On March 4, 2005, while Writ Petition No. 2808 of 2004 being in motion before the Hon'ble Bombay High Court, the advocate of MSEDCL handed over a letter of the MSEDCL dated January 27, 2005 to the advocate of the Petitioners. The said letter contained a conditional approval for clearance of arrears and reconnection of supply to the Petitioners with provisions *inter alia*, to (i) consider the temporary connection effective on and from October 17, 2003 as permanent disconnection, and thus, payments towards SLC, SCC, security deposit ("SD"), and such other charges, would need to be borne by the Petitioners, afresh; (ii) to withdraw all proceedings initiated by the Petitioners against MSEDCL. On the very same day, i.e., March 4, 2005, the Petitioners vide an affidavit undertook to withdraw the said Writ Petition provided that amounts towards fresh connection should be calculated by MSEDCL in terms of the MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 ("**the Supply Code**"). Vide order dated March 11, 2005, the Hon'ble Bombay High Court (Aurangabad Bench) was pleased to dispose of Writ Petition No. 2808 of 2004 owing to the Petitioners accepting the reconnection/ fresh connection package offered by MSEDCL pursuant to their letter dated January 27, 2005.

5. Thereafter, vide their letters dated March 16, 2005, April 1, 2005, April 6, 2005 and April 7, 2005, the Petitioners requested MSEDCL to devise/determine a reconnection package/estimate in terms of the Supply Code. Pursuant thereto, the Petitioners collected a quotation from MSEDCL (through their Superintending Officer) dated April 8, 2005 for reconnection of supply. The Petitioners have contended that the amounts contained in the said quotation dated April 8, 2005 have not been determined in terms of the Supply Code, and therefore the said quotation is incorrect. The Petitioners vide their letter dated April 11, 2005 requested MSEDCL to correct the amounts contained in the quotation dated April 8, 2005 and determine their reconnection package in terms of the Supply Code.

6. MSEDCL vide their letter dated May 6, 2005 considered revising/re-determining a reconnection package but without omitting charges towards SLC, CRA (which is a head-based charged akin to SCC) and cost of meter. The Petitioners have contended that the Petitioners should not have been charged amounts towards SLC, CRA, and cost of meter which have been paid by the Petitioners at the time when new connection was released at the factory premises of the Petitioners. The contention of the Petitioners is that reconnection of supply does not require any "fresh work" or erecting any supply line in terms of Regulation 3.2(a) of the Supply Code. Thus, MSEDCL cannot charge the Petitioners towards SLC, CRA, and cost of meter.



7. It is averred in the petition that being aggrieved by the unlawful demand of MSEDCL, the Petitioners filed Writ Petition No. 3273 of 2005 [*M/s. Girija Steels Pvt. Ltd. vs. MSEDCL & Ors.*] before the Hon'ble Bombay High Court (Aurangabad Bench) challenging the said quotation dated April 8, 2005. Subsequently, MSEDCL vide letter dated April 10, 2006, offered a one-time settlement towards waiver of M.D charges, waiver of D.P.C charges, adjustments on SD, legal expenses incurred by MSEDCL, etc, and reconnection of supply for an amount of Rs. 1,20,59,903/-. In the said letter, it was *inter alia* provided by MSEDCL that temporary disconnection since October 17, 2003 should be treated as permanent disconnection and charges with respect to new connection i.e., payment of SLC or Cost of Estimate (whichever is higher) for the dismantling of 33 KV original line, payment of SCC, 15% supervision charges, cost of agreement, testing charges and security deposit, would need to be borne by the Petitioners. The said amounts were required for construction of service line at 33 KV (2.1 km in length) that was dismantled by MSEDCL. The Petitioners have contended the said service line has been dismantled by MSEDCL without any reason. The Petitioners have submitted that should the Commission consider that MSEDCL had dismantled the said service line at 33KV for any reasonable purpose, the Petitioners should be required to pay only labour charges towards reconstruction of feeder line.

8. It is averred in the petition that since the factory of the Petitioners had been shut down for a period of 30 months owing to the non-availability of electricity supply, the Petitioners were constrained to make payment of Rs. 1,21,24,079/- on May 10, 2006 as a one-time settlement. This payment towards one-time settlement payment was made under protest.

9. Subsequent thereto, MSEDCL vide letter dated May 23, 2006 informed the Petitioners that fresh HT connection would be sanctioned subject to payment of Rs. 51,43,190/-, of which Rs. 18,90,000/- was towards SLC, Rs. 85,600/- was towards fixed SLC and Rs, 15, 000/- was towards cost of meter. Thereafter, the Hon'ble Bombay High Court vide order dated April 26, 2006, in Writ Petition No. 3273 of 2005 directed the Petitioners to withdraw their writ petition with liberty "*to submit a representation to the Regulatory Commission, as prayed for...*". While the Petitioners were considering to initiate the present proceedings before the Commission, amounts to the tune of Rs. 19,90,670/-, have been paid to MSEDCL in part, i.e., Rs. 15,00,000 on May 30, 2006 and Rs. 4,90,670/- on June 6, 2006, under protest for reconnection of supply.

10. The Petitioners have further contended that the present dispute is similar in nature to the dispute MSEB had with M/s. Lloyd Steels Industries Limited in Case No. 23 of 2004 (in the matter of illegal recovery of Service Line Charges, etc., from M/s Lloyds Steel Industries Ltd., for reinstatement of contract demand). The judgment delivered in the said case towards refund of amounts collected towards SLC and SCC that was upheld by the Appellate Tribunal for Electricity in Appeal No. 191 of 2005 [*Maharashtra State Electricity Distribution Company Limited vs. M/s. Lloyds Steel Industries Limited & Anr*] should be considered while disposing of the present case.



11. MSEDCL filed their affidavit-in-reply on November 6, 2006. In the said affidavit-in-reply, MSEDCL have contended that the issues raised by the Petitioners constitute a grievance which may be resolved in terms of the MERC (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2005 (“**CGRF Regulations**”). The Commission has no statutory jurisdiction to hold trial of the present matter and the present petition should not be admitted. MSEDCL have further contended that issues concerning the dispute raised by the Petitioners stem from MSEDCL disconnecting supply for one M/s. Niranjani Alloy Steel Private Limited (“**NASPL**”), which is a sister concern of the Petitioners. Such a disconnection was effected on account of theft of electricity detected on July 10, 1999. NASPL filed Writ Petition No. 4840 of 1999 before the Hon’ble Bombay High Court (Aurangabad Bench) challenging the disconnection. Vide order dated November 26, 1999, MSEB was directed to provide reconnection to NASPL, provided *inter alia*, that NASPL deposits certain amounts with MSEB.

12. MSEDCL have contended that NASPL failed to make payments in terms of the order dated November 26, 1999 passed by the Hon’ble Bombay High Court. MSEB filed Contempt Petition No. 146 of 2000 [MSEB & Anr. vs. M/s. Niranjani Alloy Steel Private Limited & Anr.] in Writ Petition No. 4840 of 1999. Vide ad interim order dated September 13, 2000 and final order dated October 12, 2000, the undertaking tendered on behalf of NASPL inasmuch as not to shift their transformers from their factory premises was recorded and confirmed. The Petitioners requisitioned for new connection to MSEB on May 17, 2000. During the course of inspection undertaken by MSEB to provide new connection to the Petitioners, it was discovered that two of the transformers located at the aforesaid premises of the Petitioners have been illegally shifted from the factory of NASPL, in flagrant violation of the undertakings submitted before Hon’ble Bombay High Court.

13. MSEDCL have contended that several proceedings had been initiated by the Petitioners owing to MSEB not providing them with new connection. It has been contended that new connection have not been provided to the Petitioners as payments towards the same, as directed in terms of various orders in the said several proceedings, have never been made by the Petitioners. Thereafter, on the Petitioners making adequate payments much later in point of time, supply was eventually provided to the Petitioners on or about August 14, 2002 with Consumer account number being 493029040490.

14. MSEDCL have contended that due to the Petitioners’ failure to pay energy bills pertaining to energy consumption during January 2003 to March 2003, supply to the Petitioners was disconnected on or about March 28, 2003. The Petitioners even failed to comply with the terms and conditions for reconnection package offered by MSEB vide their letter dated April 5, 2003 for payment of dues amounting to Rs. 166.01 lakhs. Vide order dated April 17, 2003 passed by the Hon’ble Bombay High Court (Nagpur Bench) in Civil Applications No.s 2052 and 2053 of 2003 in Writ Petition No. 3399 of 2000, MSEB were directed to grant reconnection on the Petitioners making payments towards 30% of total arrears including reconnection charges before April 24, 2003, and the balance 70% would be paid in three equal installments, together with “*required reconnecting charges and such other charges which are levied.....while reconnecting the power supply to them.*” MSEDCL have contended that on the Petitioners’ making payment of 30% of the total reconnection amount and receiving reconnection of supply from MSEB, supply was re-connected.



15. However, the Petitioners again defaulted in making payments of energy bills pertaining to the period from April 2003 to May 2003 and therefore supply was again disconnected on May 31, 2003. Subsequent to further events, the Hon'ble Supreme Court vide order dated June 30, 2003 in [Special Leave Petition (C) 11000 / 2003] have directed that MSEB should provide restoration of supply on the Petitioners making payment of 2% of Rs. 203.91 lakhs *"in arrears on or before 15th July 2003"* and *"restoration charges"*. The remaining amount shall be paid *"in six equal installments"* commencing from August 15, 2003 and thereafter on *"15th day of every succeeding month"*. Further, vide orders dated June 30, 2003 in [Special Leave to Appeal (Civil) No. 10986-10987 / 2003 – *M/s. Girija Steels Pvt. Ltd vs. State of Maharashtra & Ors.*] and July 18, 2003 in [I.A. No.s 5-6 / 2003 in Special Leave to Appeal (Civil) No. 10986-10987 / 2003] the Hon'ble Supreme Court have directed that the Petitioners shall pay to MSEB the arrears amounting to Rs. 1,68,92,500/- as on June 26, 2003 *"in six equal installments commencing 15th July 2003 and thereafter on 15th day of every succeeding month."*

16. MSEDCL contended that the Petitioners failed to pay the dues as promised and upon the supply being disconnected, the Petitioners undertook in court to deposit an amount of Rs. 44,54,130.68/- with interest, towards arrears and restoration of supply. Thereafter, the Petitioners continued to evade making payments in contradiction to their undertakings. The Petitioners initiated multiple proceedings against MSEB while at the same time making representations seeking waiver of delayed payment charges, SCC, SLC and SD. Subsequently, pursuant to the order dated April 26, 2006, the Hon'ble Bombay High Court (Aurangabad Bench) in Writ Petition No. 3273 of 2005, and upon the receiving a letter dated May 23, 2006 from MSEB, the Petitioners made payment of an amount of Rs. 19,90,600/- on May 30, 2006 and the said payment was not made under protest, as alleged by the Petitioners.

17. MSEDCL have contended that it was later discovered by them that orders towards restoration of supply have been obtained by the Petitioners through misrepresentation and suppression of material facts. The Petitioners had already sold their aforesaid factory premises in favour of one M/s. J. Square Steel Pvt. Ltd (**"JSSPL"**) vide a Deed of Sale dated March 29, 2006. Thus, the waivers given to the Petitioners considering the exigency in reaching an amicable settlement, have actually accrued to the unlawful benefit of the said JSSPL. The official information was received by MSEDCL on September 9, 2006 on JSSPL making an application seeking change of consumer name.

18. MSEDCL have contended that SLC is charged basically to cover the cost of infrastructure of generation and transmission network upto distribution main and SCC is charged as a link between the licensee's nearest distribution point i.e., distribution main, to the point of supply at the consumer's premises. MSEDCL have contended that reconnection charges in respect of supply to the Petitioners should be determined as per the Departmental Circular (Commercial) No. 607 issued by MSEB on August 20, 1992. The Petitioners are bound and liable to pay charges towards SLC, SCC and cost of meter as per the modality enumerated in the said Circular, prevailing supply conditions. MSEDCL have denied all averments made by the Petitioners as to the illegality in their being charged SLC and SCC for reconnection of power and/or the quantification/determination of the said charges. MSEDCL have further contended that the Schedule of Charges of MSEDCL having not been approved by the Commission, the levy of SLC, SCC and cost of meter on the



Petitioners have been lawful in terms of the said Circular. As have been alleged by the Petitioners, the payment of Rs. 19,90,600/- towards the quotation dated May 23, 2006 does not amount to any illegal recovery or collection on the part of MSEDCL and the same, together with interests, is not required to be refunded.

19. MSEDCL have further contended that the present petition should be dismissed on the ground of non-joinder of parties, since JSSPL has not been impleaded as a party. On this sole count, any order on merits passed by the Commission would be infructuous. The Petitioners have not approached the Commission with clean hands and suppressed various material facts. MSEDCL have further contended that the issues concerning the matter of the Petitioners are not similar to issues that are concerned in Appeal No. 191 of 2005 [MSEDCL vs. Llyods Steel Industries Limited & MERC] before the Appellate Tribunal for Electricity and any inference to the said judgment would not be applicable to the present case.

20. On January 16, 2007, the Petitioners submitted their affidavit-in-rejoinder. In the said affidavit-in-rejoinder, the Petitioners have submitted that contrary to the averments in the affidavit-in-reply of MSEDCL, the Commission has statutory jurisdiction to hold trial of the present case. Further, payment of the amount of Rs. 19,90,600/- towards SLC, SCC and cost of meter by May 30, 2006 was made under protest. The Petitioners have contended that vide their letter dated May 18, 2006, the Petitioners had informed the Superintending Officer, MSEDCL, Rural Circle, Aurangabad that the aforesaid factory premises of the Petitioners have been sold to JSSPL.

21. The hearing in the present case had to be adjourned on several occasions due to non-availability of either of the parties and request made in connection therewith. At the admissibility hearing held on April 3, 2007, Shri. V.M. Thorat, Counsel, appeared on behalf of the Petitioners. Smt. Deepa Chawan, Counsel, appeared on behalf of MSEDCL along with their officials. Shri. Thorat submitted that the present petition is maintainable under Section 142 of the Electricity Act 2003 (“EA 2003”), as the present petition, in sum and substance, is a complaint under Section 142 of the EA 2003. Counsel submitted that while the Petitioners sought revised sanction of fresh electricity supply (New HT Connection) at 33 KV level, MSEDCL, vide their letter dated May 23, 2006, informed that the said sanction would be subject to the following sanction, *inter alia*:

“4. **ESTIMATE:**

The Sanction of Fresh Load is to the extension of 3500 KW Connected Load with 3780 KVA Contract Demand at 33 KV level under Estimated cost scribed by executing provision of 100 sqmm ACSR DOG conductor along with matching line material for 2.1 KM length of HT line.....”

Counsel submitted that since the Petitioners are connected on express feeder, there could not have been any valid reason for MSEDCL to dismantle the said HT line of 2.1 km. The said HT line was an existing infrastructure at the time when the Petitioners were availing supply from MSEDCL. The expense arising out of such dismantling should be borne entirely by MSEDCL and it would be illegal on account of MSEDCL recovering the same from the Petitioners. Counsel submitted that MSEDCL under paragraph 14 of their affidavit-in-reply filed on November 6, 2006, have not refuted/ challenged the averment of



the Petitioners inasmuch to bear only labour charges towards rebuilding of the said HT line. It may be therefore rightly presumed that the said contention of the Petitioners is accepted by MSEDCL.

22. Smt. Deepa Chawan, Counsel for MSEDCL, submitted that in their affidavit-in-reply filed on November 6, 2006, MSEDCL have solely dealt with issues concerning the admissibility of the present petition and have not dealt with the issues raised by the Petitioners on merits. Counsel submitted that the dues charged by MSEDCL towards SLC and SCC relate to dues prior to the coming into force of the Supply Code and the same should not be determined as per the law prevailing under the said Supply Code. Counsel submitted that the Petitioners have initiated multiplicity of proceedings concerning the same issues of payment of SLC and SCC for reconnection of supply, which have been raised in the present petition. The Petitioners should not be given freedom from compliance as per various orders passed by the Hon'ble Bombay High Court (Aurangabad Bench and the Nagpur Bench) and the Hon'ble Supreme Court. It has been unlawful on the part of the Petitioners not to disclose full details of proceedings initiated by the Petitioners. Counsel further submitted that the observation of the Hon'ble Bombay High Court (Aurangabad Bench) in Writ Petition No. 3273 of 2005 vide its order dated April 26, 2006 should not be construed to provide jurisdiction on the Commission to adjudicate the present petition. It is well settled that the High Court of Judicature has powers to pass/ issue directions but cannot confer jurisdiction. Jurisdiction is conferred by the legislature through the instrument of a statute. Counsel further submitted that the present petition does not qualify admission as a complaint under Section 142 of the EA 2003 as no averment in terms of Section 142 has been made by the Petitioners under oath. Per contra, Shri. V. M. Thorat, argued that it is not required for the Petitioners to submit details of all the proceedings initiated by the Petitioners as they do not concern the issues raised in the present matter.

23. Having considered the material placed on record and the arguments advanced by both the parties, the Commission observes that primarily the Petitioners have not adopted good practice. It has been observed that time and again the Petitioners have initiated proceedings to eel their way out from the rigors of clearing outstanding dues. The orders cited and referred by MSEDCL are demonstrative that various fora, including the Hon'ble Supreme Court, have observed the incidences of the Petitioners with respect to non-payment of dues. While the misdemeanors of the Petitioners, so far as shifting of transformers from NASPL, non-disclosure of the incidence of sale of their aforesaid premises in favour of JSSPL at the proper point of time, and other similar incidences should be resolved through appropriate judicial mechanisms, the Commission observes that the Petitioners have not disclosed all facts. The orders submitted by MSEDCL, especially - (i) order dated June 30, 2003 passed by the Hon'ble Supreme Court in [Special Leave Petition (C) 11000 / 2003] directing the Petitioners to make payment of 2% of Rs. 203.91 lakhs "*in arrears on or before 15th July 2003*" and "*restoration charges*", and remaining amount "*in six equal installments*" commencing from August 15, 2003 and thereafter on "*15th day of every succeeding month*", to avail reconnection of supply; (ii) order dated June 30, 2003 in [Special Leave to Appeal (Civil) No. 10986-10987 / 2003 – *M/s. Girija Steels Pvt. Ltd vs. State of Maharashtra & Ors.*] read with order dated July 18, 2003 in [I.A. No.s 5-6 / 2003 in Special Leave to Appeal (Civil) No. 10986-10987 / 2003] directing the Petitioners to pay arrears amounting to Rs. 1,68,92,500/- as on June 26, 2003 "*in six equal installments commencing 15th July 2003 and thereafter on 15th day of every succeeding month*" –; are



demonstrative of the volume of arrears that were pending against the Petitioners. The Petitioners have not dealt on these aspects in their affidavit-in-rejoinder filed on January 16, 2007 and neither have they refuted the contentions of the Counsel of MSEDCL in this regard during the admissibility hearing held in the matter on April 4, 2007.

24. The various contentions raised by the Petitioner herein, which is a consumer, and MSEDCL, a deemed distribution licensee, averments made in the petition, counter reply, rejoinder and various materials placed on record, makes it clear that in the present case the Commission has been called upon to decide a dispute between a consumer and a licensee. However, in terms of the common judgment dated March 29, 2006 passed by the Appellate Tribunal for Electricity in Appeal No. 30 of 2005, Appeal No. 164 of 2005, Appeal No. 25 of 2006, the Commission is precluded from deciding a dispute between a consumer and a licensee. The judicial propriety demands that when the Appellate Tribunal has passed the aforesaid Order, the same has to be abided by the MERC and, therefore, to decide the present case, which as aforesaid is a dispute between a consumer and a licensee would be against all cannons and discipline and propriety of judicial hierarchy. The Hon'ble Supreme Court has held in the judgment reported in **(2004) 5 SCC: SLP © No....of 2004 (CCs Nos 8071-72 of 2002)** Tirupati Balaji Developers (P) Ltd. and Others V/s State of Bihar and Others, as under:

“

9. *In a unified hierarchical judicial system which India has accepted under its Constitution, vertically the Supreme Court is placed over the High Courts. The very fact that the Constitution confers an appellate power on the Supreme Court over the High Courts, certain consequences naturally flow and follow. Appeal implies in its natural and ordinary meaning the removal of a cause from any inferior court or tribunal to a superior one for the purpose of testing the soundness of decision and proceedings of the inferior court or tribunal. The superior forum shall have jurisdiction to reverse, confirm, annul or modify the decree or order of the forum appealed against and in the event of a remand the lower forum shall have to rehear the matter and comply with such directions as may accompany the order of remand. The appellate jurisdiction inherently carries with it a power to issue corrective directions binding on the forum below and failure on the part of the latter to carry out such directions or show disrespect to or to question the propriety of such directions would – it is obvious – be destructive of the hierarchical system in administration of justice. The seekers of justice and the society would lose faith in both”.*

25. Portions of the aforesaid common judgment dated March 29, 2006 passed by the Appellate Tribunal for Electricity in Appeal No. 30 of 2005, Appeal No. 164 of 2005, Appeal No. 25 of 2006, to the extent relevant is set out as under:

“ 17. *.The contention of the Respondents that the dispute relates to tariff or that it relates to implementation of tariff notified is a clear misconception. The entire dispute which were taken up by MERC is a dispute between consumer and Licensee with respect to billing, be it a wrong billing or excess billing or adopting wrong basis or procedure, illegal billing and it has nothing to do with tariff or tariff notification or enforcement thereof.*



19. The learned counsel for contesting Respondents relied upon Clauses (i) & (k) of the said Act to trace the power of the MERC to adjudicate the billing dispute.

Section 86(1) (i) and (k) reads thus:

86 Functions of State Commission

(1) The State Commission shall discharge the following functions, namely:-

(a)

(b)

(c) .

(d) .

(e)

(f) ..

(g)

(h) ..

(i) specify or enforce standards with respect to quality, continuity and reliability or service by licensees;

(j) ..

(k) discharge such other functions as may be assigned to it under this Act.

20. On a reading of the said clause, we have no hesitation to reject such a contention, as the two clauses will not take in billing dispute.

21. The relation between a consumer and a distribution licensee is governed by Part VI Distribution of Electricity. Section 42 (5) to (8) provides with respect to forum for redressal of grievance and the appellate forum as well. When a forum has been constituted for redressal of grievances of consumers by the mandate of Section 42, no other forum or authority has jurisdiction. The MERC, being a regulatory, the highest State level authority under the 2003 Act as well rule making authority has to exercise such functions as provided in the legislative enactment and it shall not usurp the jurisdiction of the consumer redressal forum or that of the Ombudsman. The special provision excludes the general is also well accepted legal position.

22. The Regulatory Commission, being a quasi judicial authority could exercise jurisdiction, only when the subject matter of adjudication falls within its competence and the order that may be passed is within its authority and not otherwise. On facts and in the light of the statutory provision conferring jurisdiction on the redressal forum and thereafter an appeal to Ombudsman, it follows that the State Regulatory Commission has no jurisdiction or authority to decide the dispute raised by Respondents 1 & 2, who are consumers or the Consumer Association. Apart from this, certain of the directions issued are not even applied and are in excess of jurisdiction. The Commission has to act within the four corners of The Electricity Act 2003 and the State Act in so far it is saved by Sec 185 of Electricity Act 2003. It is clear from the discussions the State Regulator has no jurisdiction to enter upon, inquire or on any part of the dispute on hand or adjudicate the same.



27. *The consumers have a definite forum to remedy the Billing dispute under Section 42(5) and further representation thereof under Section 42(6). Further Section 42(8) also saved the rights of consumer to approach any other forum such as the forums constituted under the Consumer Protection Act 1986 or other courts as may be available. In the circumstances, while making it clear that it is for the consumers to workout the remedies as may be open to them in Law, we hasten to add that we not only declined to examine the merits of the case and counter case of both parties as the issues or controversies are left open to be agitated before competent forum. “*

26. As aforesaid, it is clear from the averments made in the Petition as well as the submissions made by Counsel that the issues referred under the Petition relate to a dispute between a consumer and a licensee regarding application of certain specific charges. The Commission is of the view that such a dispute cannot be adjudicated by the Commission as the same is not a dispute intra-licensees and/ or generating companies. The Commission is of the view that even if the EA 2003 is interpreted in a broad manner and not in a narrow or restrictive sense insofar as the jurisdiction of the Commission is concerned, so that the purpose for which the act has been enacted may be achieved, the Commission is of the finding that there is no provision in EA, 2003 or any express authority of law or incidental and ancillary powers, which are necessary to make fully effective the express grant of statutory powers, which specifically enumerates the powers of the Commission to adjudicate the present dispute between the Petitioners, which is a consumer and MSEDCL, which is a deemed licensee. The Act prescribes penal provisions under sections 142 for contravention or non-compliance of any order or direction issued by the Commission. However, no such complaint has been filed by the Petitioners.

27. (i) By virtue of powers conferred by Section 181 read with Sub-sections (5) to (7) of Section 42 of the EA 2003, the Commission has made the MERC (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations 2006, in supercession of the MERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations 2003, which has come into force from 20th April, 2006. The internal grievance redressal cells (“IGRC”) and the CGRFs established by the distribution licensees are expected to redress consumers’ grievances in respect of matters specifically provided in the MERC (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006 (“CGRF Regulations”). The powers and jurisdiction of the CGRF are no doubt clearly defined. Within the bounds of its jurisdiction, the CGRF has all the powers expressly and impliedly granted. It, therefore, follows that the CGRF also has such powers as are truly incidental and ancillary for doing of such acts employing all such means as are reasonably necessary to make the grant effective. The jurisdiction of the CGRF as seen from sub-section (5) of Section 42 of EA 2003 read with the provisions of the CGRF Regulations is enumerated there in.

Sub-section (5) of Section 42 of EA 2003 reads thus:

(5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.



Regulation 2.1 (c) of the CGRF Regulations reads thus:

(c) Grievance means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which has been undertaken to be performed by a Distribution Licensee in pursuance of a licence, contract, agreement or under the Electricity Supply Code or in relation to standards of performance of Distribution Licensees as specified by the Commission and includes inter alia (a) safety of distribution system having potential of endangering of life or property, and (b) grievances in respect of non-compliance of any order of the Commission or any action to be taken in pursuance thereof which are within the jurisdiction of the Forum or Ombudsman, as the case may be.

(ii) The entirety of power as spelt out in the aforesaid provisions could be exercised by the IGRC and the CGRF only as against a “grievance” filed by the Petitioners herein.

(iii) On facts and in the light of the statutory provision conferring jurisdiction on the IGRC/CGRF, the Commission does not propose to examine the factual billing dispute or contentions advanced by the respective parties, as it is for the competent IGRC/CGRF to decide such grievances or disputes. The special provision excludes the general is a well accepted legal position.

(iv) Therefore, it is a question of the Petitioner taking up the matter with the concerned IGRC/ CGRF, as the case may be. The CGRF is expected to examine the factual matrix of the matter by investigating in detail as regards the contentions of the Petitioners based on facts.

(v) Being a creature of the Statute, it is not open to the Commission to go beyond the provisions of the EA 2003 and judicial pronouncements of higher forums including the Hon’ble Appellate Tribunal for Electricity. The Commission has to discharge its functions within the limits imposed therein and to act according to its provisions. In view of the above observations, as against the contentions and prayers made by the Petitioners, the Commission is of the view that the special provision in sub-section (5) of Section 42 of EA, 2003 will govern this case with further representation thereof under sub-section (6) of Section 42 to the Electricity Ombudsman and will exclude the applicability of all other provisions in EA, 2003.

28. In view of the above, the Petitioner may pursue its grievance and work out the remedies with the said authority. An order passed or direction issued by the CGRF and / or the Electricity Ombudsman is binding on the parties so named in the order or direction and such order or direction is required to be implemented or complied with by the Distribution Licensee or the person required by the order or direction to do so. In case any party does not comply with an order passed by the CGRF or the Electricity Ombudsman the Commission may initiate proceedings *suo motu* or on a complaint filed by any person to impose penalty or prosecution proceeding under Sections 142 and 149 of the Act. This is without prejudice to any penalty which may be imposed or prosecution proceeding which may be initiated under the Act for such non-compliance.



In the circumstances, while giving liberty to the Petitioner to workout its remedies before the competent forums, the Commission dismisses the Petition as not maintainable, for the reasons as aforesaid.

sd/-
(S.B. Kulkarni)
Member

sd/-
(A. Velayutham)
Member

sd/-
(Dr. Pramod Deo)
Chairman



Secretary, MERC