

CASE NO.:
Appeal (civil) 3551 of 2006

PETITIONER:
The Maharashtra State Electricity Distribution Co. Ltd

RESPONDENT:
Lloyds Steel Industries Ltd

DATE OF JUDGMENT: 14/08/2007

BENCH:
A.K.MATHUR & MARKANDEY KATJU

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 3551 OF 2006

1. This appeal under Section 125 of the Electricity Act, 2003 (hereinafter for short "the Act") is directed against the judgment passed by the Appellate Tribunal for Electricity (hereinafter for short "the Appellate Tribunal") dated 5th April, 2006 in Appellant's appeal No. 191/2005 and the order dated 2nd June, 2006 passed by the Appellate Tribunal in Review Petition No. 3/2006 and I.A. No. 60/2006.

2. It is not necessary for us to go into the detailed facts. Suffice it to say that the

respondent company approached the Maharashtra Electricity Regulatory Commission (hereinafter for short referred to as "the Commission") with the grievance that a demand notice dated 26.8.2002 issued by the Appellant's Wardha office be declared as illegal and may be set aside and quashed and the respondent company be permitted to avail power supply to the limit of 90 MVA without recovery of any additional charge either on account of service connection charges or the service line charges and to further direct the appellant herein to refund the amount of Rs. 227.9 lakhs so collected for re-instatement of the contract demand to the original level of 90 MVA along with interest @ 12% from the date of payment till the date of refund. The respondent company was a consumer of the Maharashtra State Electricity Board and originally they had a connection of 90 MVA which was subsequently reduced to 80 MVA and finally to 56 MVA on a request made by the company. Thereafter again they applied in June, 2002 for enhancement of their contract demand upto 90 MVA. Their request for enhancement of contract demand upto 90 MVA was granted though it was clearly mentioned in the order dated 12.8.2001 while reducing the contract demand to 56 MVA that in case enhancement of contract demand was subsequently required by the respondent company, it would attract payment of service line and other charges as per then prevailing conditions of supply. However, the regular supply of 90 MVA was restored on the request of the respondent company. The supply of 90 MVA was restored in June, 2002 and thereafter a demand was raised in terms of letter dated 02.08.2001 for service line charges, which was agreed to be paid by the respondent company, but in installments. Aggrieved against the said order the respondent-company filed a petition before the Commission on the ground that the demand of Rs.227.9 lakhs so raised for reinstatement of contract demand of 90 MVA is not proper. An objection was raised before the Commission that the Commission has no jurisdiction in the matter in view of Section 42 of the Act and that the consumer should approach the Consumer Grievance Redressal Forum and thereafter, if still aggrieved, the Ombudsman created under the Act for redressal of their grievances. The Commission over-ruled this objection by making a reference to some decision of the Bombay High Court and proceeded to assume jurisdiction and directed the refund of the aforesaid amount to the respondent company.

3. Aggrieved against the said order dated 18th October, 2005, the Maharashtra State Electricity Distribution Company Ltd. (hereinafter for short "MSEDCL") approached the Appellate Tribunal for Electricity created under the Act. The Appellate Tribunal vide its order dated 5th April, 2006 affirmed the order passed by the Commission. Thereafter a review petition was filed by the MSEDCL before the Appellate Tribunal, which was also rejected vide order dated 2nd June, 2006.

Aggrieved against both these orders, the MSEDCL has approached this Court by the present appeal under Section 125 of the Act.

4. We have heard learned counsel for the parties and perused the record.

5. The basic question which arises for our consideration in this appeal is whether the individual consumer can approach the Commission under the Act or not. 6.

For deciding this question, the relevant provision is Section 42(5) of the Act, which reads as under:-

42. Duties of distribution licensees and open access.-

(1) x x x x x x

(2) x x x x x x

(3) x x x x x x

(4) x x x x x x

(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."

7. As per the aforesaid provision, if any grievance is made by a consumer, then they have a remedy under Section 42(5) of the Act and according to sub-section (5) every distribution licensee has to appoint a forum for redressal of grievances of the consumers. In exercise of this power the State has already framed The Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2003 (hereinafter referred to as "2003 Regulations") and created Consumer Grievance Redressal Forum and Ombudsman. Under these 2003 Regulations a proper forum for redressal of the grievances of individual consumers has been created by the Commission. Therefore, now by virtue of sub-section (5) of Section 42 of the Act, all the individual grievances of consumers have to be raised before this forum only. In the face of this statutory provision we fail to understand how could the Commission acquire jurisdiction to decide the matter when a forum has been created under the Act for this purpose. The matter should have been left to the said forum. This question has already been considered and decided by a Division Bench of the Delhi High Court in the cases of Suresh Jindal Vs. BSES Rajdhani Power Ltd. & Ors. reported in 132 (2006) DLT 339 (DB) and Dheeraj Singh Vs. BSES Yamuna Power Ltd. and we approve of these decisions. It has been held in these decisions that the Forum and Ombudsman have power to grant interim orders. Thus a complete machinery has been provided in Section 42(5) and 42(6) for redressal of grievances of individual consumers. Hence wherever a Forum/Ombudsman have been created the consumers can only resort to these bodies for redressal of their grievances. Therefore, not much is required to be discussed on this issue. As the aforesaid two decisions correctly lay down the law when an individual consumer has a grievance he can approach the forum created under sub-section (5) of Section 42 of the Act.

8. 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.

9. Therefore, in the facts and circumstances of the present case, we are of the opinion that the view taken by the Commission as well as the Appellate Authority are unsustainable and they have erred in coming to the conclusion that the Commission has jurisdiction. Consequently, we set aside the order dated 18th October, 2005 passed by the Commission and the orders dated 5th April, 2006 and 2nd June, 2006 passed by the Appellate Authority and remit the matter to the proper Forum created under Section 42(5) of the Act to decide the grievance of the respondent herein in accordance with law. We make it clear that we have not made any observation with regard to the merits of the demand raised by the appellant upon the respondent company and it will be open for the proper forum to adjudicate the same. The payment, if any, made by the company will not operate as an estoppel against the respondent company. We hope

that the forum will decide the matter expeditiously.

10. With the above observations, the appeal is allowed with no order as to costs.

JUDIS