

MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

v.

RELIANCE ENERGY LTD. AND ORS.

AUGUST 14, 2007

[A.K. MATHUR AND MARKANDEY KATJU, JJ.]

Electricity Act, 2003—ss. 42(5) and (6), 86(1)(f) and 128—State Electricity Regulatory Commission—Jurisdiction of—To issue direction to its licencees/distributors and to decide the dispute of individual consumer—Held: Commission has power to issue general directions to prevent harassment to the public at large by its licencees/distributors—But a blanket direction without making a proper investigation in the issue is unsustainable—Commission does not have jurisdiction to decide the dispute of individual consumer—Such dispute has to be decided by Consumer Grievance Redressal Forum and ombudsman created under Regulations by the State—Maharashtra Electricity Regulatory Commission (Consumer Redressal Forum and Ombudsman) Regulations, 2003.

In the C.A. No. 2846 of 2006, the Maharashtra Electricity Regulatory commission (appellant), on receiving complaints from consumers against its licencees/distributors, without getting an investigation done, directed the licencees/distributors to withdraw the supplementary/amendment Bills issued by them and to refund the amount collected to the concerned consumers. The order of the Commission was set aside by the appellate Tribunal and directed that each consumer should approach the forum created u/s 42(5) of Electricity Act, 2003.

In appeal to this Court, the question for consideration was whether the Commission had power to give a general direction to its licencees/distributors.

In Civil Appeal No. 3551 of 2006, the question for consideration was whether the Commission had jurisdiction to decide the dispute of individual consumer.

Disposing of Appeal No. 2846/2006 and allowing the Appeal No. 3551/2006, the Court.

A HELD: Civil Appeal No. 2846 of 2006

B 1.1. In view of Section 86(1) (f) of Electricity Act, the State Government has only power to adjudicate upon disputes between licensees and generating companies. It follows that the Commission cannot adjudicate disputes relating to grievances of individual consumers. The adjudicatory function of the Commission is thus limited to the matter prescribed in Section 86(1)(f). [Para 12] [19-F, G]

C 1.2. The Commission has power to issue directions. The Commission is empowered with all powers right from granting licence and laying down the conditions of licence and to frame regulations and to see that the same are properly enforced and also power to enforce the conditions of licence under sub-section (6) of Section 128. [Paras 14 and 15] [20-G, F]

D 1.3. When the Commission received a spate of complaints from consumers against its licensees/distribution companies that they are arbitrarily issuing supplementary/amended bills and charging excess amounts for supply of electricity, it felt persuaded to invoke its general power to supervise the licensees/distribution companies and in that connection issued notice. There can be no manner of doubt that the Commission has full power to pull up any of its licensee or distribution company to see that the rules and regulations laid down by the Commission are properly complied with. It is the duty of the Commission under Sections 45(5), 55(2), 57, 62, 86, 128, 129, 181 and other provisions of the Act to ensure that the public is not harassed. [Para 16] [21-A, B, C]

F 1.4. The Commission did not get an investigation made under Section 128(1) which it could have done, and without that, and without getting a report under Section 128(5) it passed an order directing refund of the amounts collected by the licensees/distribution companies, was not permissible, since such a direction could, if at all, be given after getting a report of the investigation agency. In these circumstances, the view taken by the Appellate Authority in the impugned order to that extent is correct that the individual consumers should have approached the appropriate forum under Section 42(5) of the Act. [Para 17] [21-D, E, F]

H 1.5. Though the Commission has power to issue a general direction to licensees that they should abide by conditions of the licence issued by them and charge only as per the tariff fixed under the Act so that the public at large should not be harassed, but so far as the blanket direction given by the

Commission for refunding the entire amount without making a proper investigation whether the issue of supplementary/amended bills was really warranted in every case or not is unsustainable. Here the Commission has gone beyond its jurisdiction. [Para 18] [21-G, 22-A] A

1.6. Keeping in view the equity of both the parties, it will be proper to direct that all the licensees/distribution companies in the State of Maharashtra issue a general public notice, stating therein that whoever feels aggrieved by the supplementary/amended bill, he/she can approach the licensee/distribution company for redressal of their grievance within a period of three months from the date of publication of the notice. That would meet the ends of justice instead of passing a blanket order as given by the Commission for refunding the money charged by the licensees/distribution companies by issuing supplementary/amended bills. [Para 18] [22-B, C] B C

Civil Appeal No. 3551 of 2006

2.1. In exercise of power under Section 42(5) the State has already framed the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2003 and created Consumer Grievance Redressal Forum and Ombudsman. Under the 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 the Commission could not 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. [Para 7] [25-B, C, D] D E

Suresh Jindal v. BSES Rajdhani Power Ltd. and Ors., 132 (2206) DLT 339 (DB), referred to. F

2.2. Sub-Section (1)(f) of Section 86 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 matter is remitted to the proper Forum created under Section 42(5) of the Act to decide the grievance of the respondent herein in accordance with law. [Paras 8 and 9] [26-G-H] G H

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2846 of 2006.

From the Common Order dated 29.03.2006 of the Appellate Tribunal for Electricity in First Appeal Nos. 30 and 164 of 2005 and 25 of 2006.

WITH

B C.A. No. 3551 of 2006.

Altaf Ahmad, M.G. Ramachandran, K.V. Balarkrishnan, Anand K. Ganesan, K.V. Mohan, Varun Thakur and A.S. Bhasme for the Appellant.

C J.J. Bhat, Shyam Divan, Rajiv Shakdher, Sunita Chandurkar, Syed Naqvi, Smieetaa Inna, Rajesh Kumar, Swati Sinha, Jayasree Singh, Shefali Jain (for M/s. Fox Mandal & Co.), Prashant Bhushan, Ramji Srinivasan, M.V. Kini, Ravi Kini, V.B. Joshi (for M/ P.H. Parekh & Co.), Rukhsana Choudhary, U.A. Rana, Abhishek Rao and Nitesh Jain (for M/s. Gagrat & Co.) for the Respondent.**D** The Judgments of the Court were delivered by**E** **A.K. MATHUR, J.** 1. This appeal under Section 125 of the of the Electricity Act, 2003 (hereinafter for short "the Act") is directed against the judgment and order dated 29th March, 2006 passed by the Appellate Tribunal for Electricity whereby the Appellate Tribunal has allowed the appeals filed by the distribution companies and set aside the orders passed by the Maharashtra Electricity Regulatory Commission (hereinafter for short "The Commission") dated 23.2.2005. The Commission on 3.8.2004 addressed a notice to all its licensees/distribution companies in Maharashtra and made an inquiry from them with regard to raising of the bills by the said licensees/distribution companies on the basis other than the actual meter reading for the relevant period, when large variations in consumption were noticed, or for other reasons. The notice dated 3.8.2004 sent by the Commission to all its licensees/distribution companies reads as under :-**G** "Several instances have come to the Commission's notice of so-called "amendment", "supplementary" or other such bills being raised by some licensees to consumers, often several years later, on a basis other than the actual meter reading for the relevant period, when large variations in consumption are noticed, or for other reasons. Computerised systems have sometimes been put in place which generate such bills automatically.**H**

Wide variations observed in recorded consumption and other such apparent anomalies may be useful for monitoring, checking/testing of meters and for taking corrective action. However, billing on a basis other than recorded consumption, and raising amended bills accordingly (often after several years later, and without giving reasons), is not mandated by law.

The electricity statutes (in the past, and at present) provide *inter alia* that, in case of metered consumers, energy consumption charges have to be billed on the basis of meter readings. Moreover, the licensee, and not the consumer, is responsible for maintaining, rectifying, or having such meters replaced where necessary. Thus, no "amendment" bills of the kind referred to above can be raised, and any additional billing has to follow due process and the provision of law.

In the context of such "amendment" bills, I am directed to ask that the billing practices followed be immediately reviewed and brought into conformity with the statutory provisions. An affidavit stating the corrective action taken (including withdrawal of all such pending bills, and refund, though adjustment in energy bills or otherwise, of amounts received from consumers on or after 10.6.2003) may be furnished by 3rd September, 2004."

2. In response to the said notice all the licensees/distribution companies in Maharashtra made their respective submissions before the Commission explaining under what circumstances the supplementary/amended bills were sent to the consumers. They tried to justify raising of such bills and stated that the these bills were rightly sent as they found that some time the meters were not registering proper consumption and on that basis they tried to justify their action.

3. The Commission examined the matter in detail and *vide* its order dated 23.2.2005 in para 46 directed as under:-

"46. After considering all these factors and the submissions made, the Commission directs that the supplementary/amendment bills issued in the circumstances set out at para 42 and 43 above from 10th June, 2003 (the date of coming into force of EA, 2003) and upto notification of the Supply Code.

a. should be withdrawn, if due meter testing has not been done with the results intimated to the consumer.

- A b. any amounts collected should be refunded to the concerned consumers (without interest considering the earlier lack of clarity on this meter on the part of the licensees);
- c. where meters have been found to be defective upon subsequent due testing (and the results intimated to the consumer), the bills may be adjusted for upto 3 months prior to the date of testing or meter replacement, whichever is earlier, and any amounts recovered in excess refunded without interest (in the case of 'stopped' meters, the analogy of the Supply Code provisions should be applied for assessment);
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- d. the above action should be completed by 30th May, 2005, so as to give the licensees more than 3 months' time in view of the work likely to be involved;
- e. compliance should be submitted on affidavit by 15th June, 2005, with a list of consumers involved, and certifying that no further action remains to be done in terms of this Order."
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By another order dated 23.8.2005 in the case of *M/s. Prayas* (Energy Group) Pune, the Commission in para 45 directed as under :-

E "45. Considering the foregoing, the Commission disposes of Prayas' petition with the following directions, which would apply for the period from 1st June, 2004 (i.e. around 3 months after the detailed Tariff Order dated 10th March, 2004, upto 19th January, 2005 (following which the Supply code Regulations were notified):

F (a) no billing using past consumption or some related 'average' basis should be resorted to for more than a period of 3 months. (where average billing has been continuing for more than that period just prior to 1st June, 2004, then it cannot be continued from that date. In case average billing has been resorted to for, say, 2 months prior to that, it can be continued only for upto one month more). During that period 3 months, the meter should have been tested/replaced, with the results intimated to the consumer, and appropriate bill adjustments carried out thereafter (where such average billing is being done on the basis of presumed faulty meter, and where defectiveness of the meter has accordingly been established). If due and timely diligence has not been exercised by the licensee, he cannot claim the right to continue

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billing on a presumptive, average basis. The same principle will apply to all other situations in which such 'average' billing has been resorted to, except in cases where the meter is not accessible. (However, the Commission notes that, in the case of locked/inaccessible meters, the licensees have recourse to the remedies provided under Section 163 of EA, 2003, and it would be expected that MSEB would exercise it sooner rather than later).

(b) In all cases where bills have been raised and/or recoveries made which are not in accordance with (a) above, the bills should be withdrawn and/or amounts refunded to the consumers, through energy bills or other means, as may be relevant, by 30th November, 2005, with interest at the same rate as payable by consumers to MSEB for delayed payments."

4. Aggrieved against both these orders, the matter was taken up in appeal before the Appellate Authority. The Appellate Authority by the impugned order dated 29th March, 2006 set aside the orders passed by the Commission and directed that each consumer should approach the forum created under Section 42(5) of the Act for the individual grievances.

5. Aggrieved against the order dated 29.3.2006 passed by the Appellate Authority, the present appeal has been filed under Section 125 of the Act.

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

7. Learned counsel for the appellant-Commission has submitted before us that the Commission has the power to give a general direction to its licensees/distribution companies and he also submitted that in exercise of the power under the Act, the Commission was competent to issue the aforesaid direction. As against this, the learned counsel appearing for the respondent-licensees/distribution companies submitted that the Commission has no power to issue a direction like the one issued in the present case and entertain individual complaints and direct refund of the whole amount by a blanket order.

8. The question before us is : what is the power of the Commission and to what extent the Commission can issue directions. Suffice it to say that the Regulatory Commission was constituted under the Electricity Act, 2003. The Act was a new enactment which was promulgated by superseding the Indian

A Electricity Act, 1910 and the Electricity Supply Act, 1948. The Statement of Objects and Reasons of the Act which have been summarized in the Preamble, reads as under:-

B “An Act to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalisation of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto.”

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D “Appropriate Commission” as defined in Section 2(4) of the Act means the “Central Regulatory Commission referred to in sub-section (1) of Section 76 or the State Regulatory Commission referred to in Section 82 or the Joint Commission referred to in Section 83, as the case may be”. In exercise of its power under Section 82 of the Act, the State of Maharashtra constituted the Maharashtra Electricity Regulatory Commission. The Commission exercises all the powers which are enumerated in the Act. Though various provisions were pointed out to us by learned counsel for the parties, but Section 82 which is relevant for our purposes reads as under :-

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F “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 :

G 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 and the Chairperson, Members, Secretary, and officers and other employees thereof shall continue to hold office on the same terms and conditions on which they were appointed under those Acts:

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Provided further that the Chairperson and other Members of the State Commission, appointed, before the commencement of this Act, under the Electricity Regulatory Commissions Act, 1998 (14 of 1998) or under the enactments specified in the Schedule, may, on the recommendations of the Selection Committee constituted under subsection (1) of Section 85, be allowed to opt for the terms and conditions under this Act by the concerned State Government.

(2) The State Commission shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

(3) The head office of the State Commission shall be at such place as the State Government may, by notification, specify.

(4) The State Commission shall consist of not more than three Members, including the Chairperson.

(5) The Chairperson and Members of the State Commission shall be appointed by the State Government on the recommendation of a Selection Committee referred to in Section 85."

9. We are not concerned with the provisions of appointment of Members of the Commission as they are dealt with by Sections 84 and 85 of the Act. Section 86 deals with the functions of the Commission and is relevant for our purposes. For ready reference, the same is reproduced hereunder.

"86. *Functions of State Commission:*—(1) The State Commission shall discharge the following functions, namely :-

(a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, withing the State:

Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

(b) regulate electricity purchase and procurement process of distribution of licensees including the price at which electricity shall be procured from the generating companies or licensees or

- A** from other sources through agreements for purchase of power for distribution and supply within the State;
- (c) facilitate intra-State transmission and wheeling of electricity;
- (d) issue licences to persons seeking to act as transmission licensees, distribution licensees and electricity traders with respect to their operations within the State;
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- (e) promote congeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;
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- (f) adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration;
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- (g) levy fee for the purposes of the Act;
- (h) specify State Grid Code consistent with the Grid Code specified under clause (h) of sub-section (1) of Section 79;
- (i) specify or enforce standards with respect to quality, continuity and reliability of service by licensees;
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- (j) fix the trading margin in the intra-State trading of electricity, if considered, necessary;
- (k) discharge such other functions as may be assigned to it under this Act.
- F** (2) The State Commission shall advise the State Government on all or any of the following matters, namely :-
- (i) promotion of competition, efficiency and economy in activities of the electricity industry;
- (ii) promotion of investment in electricity industry;
- G** (iii) reorganisation and restructuring of electricity industry in the State;
- (iv) matters concerning generation, transmission, distribution and trading of electricity or any other matter referred to the State Commission by that Government;
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- (3) The State Commission shall ensure transparency while exercising its powers and discharging its functions. A
- (4) In discharge of its functions, the State Commission shall be guided by the National Electricity Policy, National Electricity Plan and Tariff Policy published under section 3. B

10. Thus, from the above provision it is clear that the primary purpose of the Commission is to determine tariff for generation, supply, transmission of electricity etc. and to regulate the electricity purchase and procurement process of distribution licensees, to facilitate intra-State transmission, to promote cogeneration and generation of electricity from renewable sources of energy, to adjudicate upon the disputes between the licensees and generation companies and to refer any dispute for arbitration, to levy fee for the purposes of this Act, specify State Grade Code consistent with the Grid Code specified under clause (h) of sub-section (1) of Section 79. Sub-Section (2) of Section 86 also empowers the State Commission to advise the State Government on any of the matters including promotion of competition, efficiency, matters concerning generation, transmission, distribution and trading of electricity etc. Sub-Section (3) provides that the Commission shall ensure transparency while exercising its powers and discharging its functions. Sub-section (4) provides that in discharge of its functions the Commission shall be guided by the National Electricity Policy, National Electricity Plan and Tariff Policy published under Section 3. C D E

11. We are not going into other questions as to how licenses were granted to all these utilities, i.e., various distribution companies. It is not necessary for us to go into these questions as in the present case, we are primarily concerned to decide the powers of the Commission and to what extent it can issue directions and whether the direction given by the Commission in the present case is sustainable or not. F

12. It may be noted from a perusal of Section 86(1)(f) of the Act that the State Government has only power to adjudicate upon disputes between licensees and generating companies. It follows that the Commission cannot adjudicate disputes relating to grievances of individual consumers. The adjudicatory function of the Commission is thus limited to the matter prescribed in Section 86(1)(f). G

13. Section 14 of the Act provides for grant of licence; Section 16 provides for conditions of licence; Section 61 lays down the tariff regulations H

- A** and Section 62 provides for determination of tariff. The Commission under Section 94 has civil powers also and under Section 96 it has power of entry and seizure. Under Section 126 the Commission has the power to investigate and make assessment. Section 127 provides for an appeal to the appellate authority. Under Section 128 the Commission can make investigation of certain matters where it is satisfied that the licensee has failed to comply with
- B** any of the conditions of licence or failed to comply with any of the provisions of the Act or the rules and regulations made thereunder. Sub-Section (6) of Section 128 empowers the Commission to take any action against the licensee/ generating company. Sub-section (6) reads as under :-
- C** (6) On receipt of any report under sub-section (1) or sub-section (5), the Appropriate Commission may, after giving such opportunity to the licensee or generating company, as the case may be, to make a representation in connection with the report as in the opinion of the Appropriate Commission seems reasonable, by order in writing :-
- D** (a) require the licensee or the generating company to take such action in respect of any matter arising out of the report as the Appropriate Commission may think fit; or
- (b) cancel the licence; or
- E** (c) direct the generating company to cease to carry on the business of generation of electricity.

F Section 142 of the Act provides for punishment for non-compliance of directions issued by the Commission and Section 143 empowers the Commission to adjudicate after holding an inquiry in such manner as may be prescribed by the Government. Section 181 empowers the Commission to make regulations.

G 14. A comprehensive reading of all these provisions leaves no manner of doubt that the Commission is empowered with all powers right from granting licence and laying down the conditions of licence and to frame regulations and to see that the same are properly enforced and also power to enforce the conditions of licence under sub-section (6) of Section 128.

H 15. Thus, insofar as the first contention of the learned counsel for the respondents that the Commission has no power is concerned, we are of the view that the same is wrong. In this behalf the provisions of The Electricity Act, 2003 are quite clear and categorical and Section 128(6) empowers the Commission to get the conditions of licence enforced. But the question is

whether the said power under Section 128(6) has been rightly exercised by the Commission or not. After clearing the first hurdle, that the Commission has power to issue directions, we shall now examine whether the direction given by the Commission in the present case is correct or not. A

16. When the Commission received a spate of complaints from consumers against its licensees/distribution companies that they are arbitrarily issuing supplementary/amended bills and charging excess amounts for supply of electricity, it felt persuaded to invoke its general power to supervise the licensees/distribution companies and in that connection issued notice dated 3.8.2004. There can be no manner of doubt that the Commission has full power to pull up any of its licensee or distribution company to see that the rules and regulations laid down by the Commission are properly complied with. After all, it is the duty of the Commission under Sections 45(5), 55(2), 57, 62, 86, 128, 129, 181 and other provisions of the Act to ensure that the public is not harassed. B C

17. In exercise of this general power notice dated 3.8.2004 was issued when mass scale supplementary/amended bills were issued to the consumers. When these consumers approached the Commission, the Commission directed its licensees to immediately review their billing policies and bring the same in conformity with the statutory provisions of the Act. The Commission did not get an investigation made under Section 128(1) which it could have done, and without that, and without getting a report under Section 128(5) it passed an order directing refund of the amounts collected by the licensees/distribution companies, which in our opinion was not permissible, since such a direction could, if at all, be given after getting a report of the investigation agency. The Commission could have made an investigation and got a report from the investigation agency and on that basis directions could have been given. However, that was not done. In these circumstances, in our opinion, the view taken by the Appellate Authority in the impugned order to that extent is correct that the individual consumers should have approached the appropriate forum under Section 42(5) of the Act. D E F

18. Thus while we hold that the Commission has power to issue a general direction to licencees that they should abide by conditions of the licence issued by them and charge only as per the tariff fixed under the Act so that the public at large should not be harassed, we are of the opinion that so far as the blanket direction given by the Commission for refunding the entire amount without making a proper investigation whether the issue of H

A supplementary/amended bills was really warranted in every case or not is unsustainable. Here the Commission has gone beyond its jurisdiction. After all the distribution/ generating companies have to incur expenses for generation/distribution of power, and we cannot at the same time give license to the consumers to commit theft of electricity or to be benefited by improper functioning of the meter to the disadvantage of the distribution/generating company. Thus, keeping in view the equity of both the parties, we think it will be proper for us to direct that all the licensees/distribution companies in the State of Maharashtra issue a general public notice in two daily newspapers having wide circulation in the State, one English newspaper and one in vernacular language. The notice shall state that whoever feels aggrieved by the supplementary/amended bill, he/she can approach the licensee/distribution company for redressal of their grievance within a period of three months from the date of publication of the notice. In our view, that would meet the ends of justice instead of passing a blanket order as given by the Commission for refunding the money charged by the licensees/distribution companies by issuing supplementary/amended bills. The individual consumers may make a grievance before the licensee/distribution company that they have not consumed the electricity for which they are charged or that the meter reading was not proper or that they have been excessively charged for the power which they have not actually consumed. Therefore, we direct that all the licensees/distribution companies shall issue a public notice in two daily newspapers having wide circulation in the State of Maharashtra, one in English language and the other in vernacular language requiring their respective consumers to make their representations for redressal of their grievances in respect of the supplementary/amended bills. The licensees/distribution companies shall decide the individual cases received by them after giving a fair opportunity of hearing to the consumers. The consumers who still feel not satisfied with the order passed by the licensees/distribution companies can approach the appropriate forum constituted under Section 42(5) of the Act and, if still not satisfied, with the order passed by the appropriate forum to approach the Ombudsman under Section 42(6) of the Act. Accordingly, we hold that while the Commission had a power to issue general directions to prevent harassment to the public at large by its licensees/distribution companies, but a blanket direction to refund the amounts collected by the licensees/distribution companies which has been given by the Commission was not warranted.

H 19. Although, the Appellate Authority has set aside the order passed by the Commission and issued a direction that the individual consumers may

approach the appropriate orders under Sections 42(5) and (6) we are not interfering with that direction, but we direct that before that the licensees/distribution companies shall hear the parties as directed hereinabove and decide whether the supplementary/amended bills issued by them are proper or not. A

20. In view of the above discussion, this appeal stands disposed of with no order as to costs. B

K.K.T.

Appeal disposed of.

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. C

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 D E F G H

A 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

(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 v. BSES Rajdhani Power Ltd. & Ors.*, reported in 132 (2006) DLT 339 (DB) and *Dheeraj Singh v. 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

A 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.

B 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.

K.K.T.

Appeal allowed.

STATE OF MAHARASHTRA
v
VASHISHTHA RAMBHAU ANDHALE

AUGUST 17, 2007

[K.G. BALAKRISHNAN, C.J. AND P.K. BALASUBRAMANYAN, J.]

Code of Criminal Procedure, 1973:

s. 439—Bail application—Stamp scam—CBI directed to take up investigation in March 2004—Respondent, a police official arrested on the ground that he accepted illegal gratification for releasing those connected with the scam—Trial Court refused his bail application—However, High Court granted bail—Challenge against—Held: High Court erred in discarding the evidence collected by CBI as gathered belatedly—CBI was directed to take up investigation only in March, 2004—To that extent, approach of High Court not approved—However aid extended to members of organized crime also amounts to offence under MCOCA, but this matter to be decided by trial Court at the time of trial—At this stage order of bail not interfered with—Trial Court to take decision after taking proper evidence—Maharashtra Control of Organised Crime Act, 1999.

Prosecution case was that the respondent, Inspector of Police was arrested during the investigation of the crime registered in relation to the organized crime known as ‘stamp scam’. Special Court declined his prayer for bail. On appeal, High Court granted bail.

In appeal to this Court, State contended that the CBI had taken over the investigation as directed by this Court in March 2004, on finding that the Special Investigating Team constituted for that purpose was not investigating the crime having great social dimensions, in a proper manner or with due sincerity; that the investigation conducted by the CBI indicated involvement of the respondent in lending a helping hand to Telgi to facilitate the commission of an organised crime and the High Court made an erroneous approach to the materials gathered by the CBI and has erred in discarding them on the basis that there was some delay in recording the statements of witnesses and the confessional statement of accused No.8 ‘S’, who confessed that he had handed over Rs.15 lakhs to the respondent by way of illegal gratification for

A releasing those connected with a stamp offence; that the High Court has also not kept in mind the nature of the offence, its impact on society, the position held by the respondent, his duty as a protector of the law and the rights of the citizens and the nature of his conduct and that it was a clear case where the offences under ss. 3, 4 and 24 of the Maharashtra Control of Organised Crime Act, 1999 (MCOCA) had been made out.

B

Dismissing the appeal, the Court

HELD: 1. The High Court was not correct in thinking that all the evidence gathered by the CBI must be treated as evidence gathered belatedly. The High Court obviously forgot that the CBI was directed to take up the investigation by this Court only in March 2004 and what this Court was intending, was a thorough investigation by the CBI, especially in the nature of unsatisfactory performance of the State Police and the number of police personnel and higher ups allegedly involved in the organised crime. To that extent the approach or attitude of the High Court in dealing with the appeal against the refusal to grant bail to the respondent cannot be approved. Same would be the position regarding the confessional statement of 'S' and the High Court was not correct in trying to discard it on the basis that it was belated.

D

[Para 7] [30-G, H; 31-A, B]

2. Any studied inaction or aid extended to the members of an organised gang involved in such crime might also amount to an offence under MCOCA and this fact cannot be forgotten when dealing with the case of a police officer allegedly involved in the crime. But then that is a matter to be decided by the trial court at the time of trial of the offence.

E

[Para 8] [31-B, C]

3. At the same time, it is not proper in this appeal to go into the various aspects urged at great length by counsel appearing in the case. The matters must be left to the trial court for decision after taking proper evidence and it would be premature to pronounce on the various aspects urged before this Court. Though this Court has not fully approved the views expressed by the High Court in the order under challenge, it is not necessary at this stage, to interfere with that order and set aside the bail granted to the respondent.

F

G

[Para 9] [31-D, E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1087 of 2007.

H

From the Final Judgment and Order dated 15.6.2004 of the High Court of Judicature at Bombay in Criminal Appeal No. 519/2004. A

Sushil Kumar, R.K. Jain, Shekhar Nafde, V.A. Mohta, Sandhya Goswami, Adolf Mathew, Vinay Arora, Sanjay Jain, P. Parmeswaran, Anuradha Rustagi, S. Sonawane, Nilakanta Nayak, S.V. Deshpande, Shivaji M. Jadhav, Himansu Gupta, Brij Kishor Sah, D.M. Narqolkar, S.S. Shinde and Ravindera Kumar Adsure, for the appearing parties. B

The Judgment of the Court was delivered by

P.K. BALASUBRAMANYAN, J. 1. Leave granted. C

2. This appeal by the prosecution challenges the order granting bail to the respondent, Inspector of Police attached to the Dharavi Crime Branch, Unit-5, Mumbai. The respondent was arrested during the investigation of the crime registered in the Bund Garden Police Station, Pune relating to the organised crime that has come to be known as the "stamp scam". The respondent was accused No.55. He was arrested on 18.10.2003 and though the Special court declined his prayer for bail, in appeal, the High Court granted bail. It is that order of the High Court that is challenged in this appeal. D

3. Learned counsel for the appellants submitted that the Central Bureau of Investigation (for short the CBI) had taken over the investigation as directed by this Court in March 2004, had conducted proper investigation and had charge-sheeted various accused and a revised charge-sheet had been filed in July 2004. It is submitted that this Court had entrusted the investigation to the CBI on finding that the Special Investigating Team constituted for that purpose by the State of Maharashtra was not investigating the crime having great social dimensions, in a proper manner or with due sincerity. He submitted that the investigation conducted by the CBI clearly indicated the involvement of the respondent in lending a helping hand to Telgi to facilitate the commission of an organised crime and the evidence, thus, far obtained by the CBI has not been appreciated properly by the High Court keeping in mind the circumstances under which the CBI came into the picture and started an investigation on its own. Counsel submitted that the High Court made an erroneous approach to the materials gathered by the CBI and has erred in discarding them on the basis that there was some delay in recording the statements of the witnesses, at least nine of whom had spoken of the involvement of the respondent and the confessional statement of accused No. 8 Sajid, who confessed that he had handed over Rs. 15 lakhs to the E F G H

A respondent by way of illegal gratification and as a *quid pro quo* for the respondent releasing those connected with a stamp offence.

B 4. Learned counsel for the appellants particularly pointed out that the respondent had failed to arrest Telgi when Telgi had appeared in the office of the Crime Branch Dharavi, Unit-5, Mumbai. Similarly, the respondent had set free the various persons taken into custody when huge quantity of fake stamps were recovered in a raid and this was done by the respondent in the light of the illegal gratification received by him from Sajid. The High Court erred completely in not giving due weight to those witnesses who spoke of the failure of the respondent to arrest Telgi even when he was wanted and when he appeared at the Police Station and presented himself before the respondent and also the confession of Sajid supported by other relevant materials that a sum of Rs.15 lakhs had been paid to the respondent for inducing him to set free a number of persons involved in the stamp scam, taken into custody while raiding a premises in Andheri and recovering a huge cache of fake stamps.

D 5. Counsel submitted that the High Court has also not kept in mind the nature of the offence, its impact on society, the position held by the respondent, his duty as a protector of the law and the rights of the citizens and the nature of his conduct. It was a clear case where the offences under Section 3, 4 and 24 of the Maharashtra Control of Organised Crime Act, 1999 (for short the MCOCA) had been made out. The High Court ought not to have interfered with the order refusing to grant bail.

E 6. Learned counsel for the respondent, on the other hand submitted that the respondent was not holding such a responsible post as to be able to assist Telgi and his associates in the manner suggested by the prosecution and that the High Court has not erred in granting bail to him. Counsel submitted that the confession of Sajid had to be tested at the trial and the High Court was not incorrect in not relying on it at this stage to refuse bail to the respondent. Counsel also submitted that after all it was an order granting bail to an accused, no doubt in a serious crime and that normally this Court in appeal would not interfere with such an order. Counsel therefore, submitted that no interference was warranted in this appeal.

G 7. We find that there is some merit in the contention of the learned counsel for the appellants that the High Court was not correct in thinking that all the evidence gathered by the CBI must be treated as evidence gathered belatedly. The High Court obviously forgot that the CBI was directed to take

H

up the investigation by this Court only in March 2004 and what this Court was intending, was a thorough investigation by the CBI, especially in the nature of unsatisfactory performance of the State Police and the number of police personnel and higher ups allegedly involved in the organised crime. To that extent we cannot approve the approach or attitude of the High Court in dealing with the appeal against the refusal to grant bail to the respondent. Same would be the position regarding the confessional statement of Sajid and the High Court was not correct in trying to discard it on the basis that it was belated.

8. Any studied inaction or aid extended to the members of an organised crime, the members of an organised gang involved in such crime might also amount to an offence under MCOCA and this fact cannot be forgotten when dealing with the case of a police officer allegedly involved in the crime. But then that is a matter to be decided by the trial court at the time of trial of the offence. For the present we need only indicate that we cannot fully endorse the approach made by the High Court in granting bail to the respondent.

9. At the same time, we do not think it proper in this appeal to go into the various aspects urged at great length by counsel appearing in the case. We think that the matters must be left to the trial court for decision after taking proper evidence and it would be premature to pronounce on the various aspects urged before us. Though we are not in a position either to fully endorse or to fully approve the views expressed by the High Court in the order under challenge, we do not think that it is necessary, at this stage, to interfere with that order and set aside the bail granted to the respondent. We, therefore, decline to interfere with the decision of the High Court though we do find merit in some of the aspects urged by the counsel for the appellant.

10. In view of what is stated above, the appeal is dismissed leaving all the questions open to be decided by the trial court.

D.G.

Appeal dismissed.