

**Delhi Electricity Regulatory Commission**  
**Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 17**

**Petition No. 29/2006**

**In the matter of:**

Nawab Udyog,  
1/104, WHS, Kirti Nagar,  
New Delhi-110015.

.....**Complainant**

**VERSUS**

North Delhi Power Limited  
Through its : **Managing Director**  
Sub-Station Building,  
Hudson Lines, Kingsway Camp,  
Delhi-110009.

.....**Respondent**

**Coram:**

**Sh. K. Venugopal, Member & Sh. R. Krishnamoorthy, Member.**

**Appearance:**

1. Mr. V. K. Goel, Advocate for the Petitioner
2. Mr. Subhash Ahuja
3. Mr. Naresh, Petitioner
4. Mr. Ashok Chandra, HOD, Commercial NDPL
5. Mr. Rajnish Ranjan, Advocate for the Respondent
6. Ms. Anamika Sharma, Officer
7. Mr. I. M. Singh, HOG (Legal Affairs)
8. Mr. Bibhu Biswal, Manager Corporate Commercial

**ORDER**

(Date of Hearing: 19.10.2006)

(Date of Order: .01.2007)

- 1) The Complainant is stated to be a registered consumer of electricity connection with K. No. 33300146322(IP).
- 2) The present complaint has been filed by the Complainant mainly seeking the following relief:
  - a) Imposition of penalty upon the Respondent for violating the Regulations of DERC.

- b) Quashing the illegal demand of Rs. 1,71,600/- reflected in the bill for the month of April, 2006, raised by the Respondent.
  - c) Direction to the Respondent to correct the bill without LPSC.
  - d) Award him suitable compensation.
- 3) The Complainant has submitted that on 19.01.1996, an inspection was carried out and subsequently, Fraudulent Abstraction of Energy (FAE) case was made out against him, but, the meter was not changed by the Respondent.
- 4) The Complainant has alleged that on 07.01.2003 another FAE case was made out against him almost on similar grounds.
- 5) The matter was referred to the Permanent Lok Adalat (PLA), wherein the FAE bill raised by the Respondent was stayed by the Permanent Lok Adalat vide its Order dated 15.01.2003
- 6) The matter remained unresolved and was closed by the Permanent Lok Adalat.
- 7) The Complainant preferred a Writ Petition before the Hon'ble High Court of Delhi on the ground that the bill raised by the Respondent was not in consonance with the Regulations of DERC and further, that the Respondent has failed to comply with the principles of natural justice.
- 8) The Complainant/Petitioner mainly sought the following relief in the Writ Petition:
- a) to quash and set aside the impugned bill for an amount of Rs. 2,92,570/- raised by the Respondent on the basis of the inspection done on January 7, 2003.
  - b) to direct the Respondent to refund the excess payment on account of alleged misuse inspite of the fact that the Petitioner had a valid municipal license.

- 9) The Complainant has submitted that on the first date of hearing the Respondent withdrew the FAE bill but, the issue regarding misuse is still pending in the High Court. Thus, at present only the issue at (b) remains the subject matter of pending Writ Petition.
- 10) The present grievance of the Complainant is that the Respondent has raised a bill of Rs. 1,71,600/- in the month of April, 2006, wherein, Rs. 1,09,553.75/- has been reflected as arrears.
- 11) The Complainant has submitted that he made all the previous payments while availing the benefit of LPSC in December, 2005 and, further, in January, 2006.
- 12) He has further submitted that the arrears reflected in the bill of April, 2006 are on account of some past demand which seems to be more than three years old and is barred under Section 56(2) of the Electricity Act, 2003.
- 13) The Respondent initially filed a brief reply and submitted objections against the maintainability of the complaint before this Commission. In support of their objections, they also annexed copies of the following judgments:
  - a) The judgment dated 29.02.2006 passed in Reliance Energy Limited Versus MERC (by Appellate Tribunal of Electricity).
  - b) The judgment dated 30.11.2005 passed in Ram Kishan Vs. NDPL by the Hon'ble High Court of Delhi.
- 14) The Respondent also raised the following issues in support of their contentions:
  - a) That the present complaint is a "billing dispute" and does not reflect any contravention of the provisions envisaged under Section 142 of the Electricity Act, 2003(in short referred as 'Act').
  - b) That the functions of the Commission provided under Section 86 of the Electricity Act, 2003 revealed that the Commission shall adjudicate upon the disputes between the licensees and generating companies.

The Respondent also referred to Section 42(5) to (8) of the Electricity Act, 2003, where the statutory mechanism for redressal of consumer grievances has been provided.

- c) That the Commission may not usurp the jurisdiction of the Consumer Redressal Forum or that of Ombudsman.
  - d) That the present dispute must be referred to the CGRF where the grievance may be redressed effectively on merit.
  - e) The Respondent also referred to the Writ Petition No. 2488/2006 titled Nawab Udyog Vs. NDPL pending before the Hon'ble High Court of Delhi and submitted that the Complainant is restrained from approaching two Forums simultaneously and prayed that the present complaint is not maintainable in view of the brief submissions of the Respondent.
- 15) In response to the brief submissions made by the Respondent, the Complainant filed the rejoinder, wherein, he submitted the following:
- a) That his complaint falls within the ambit of Section 142 of the Electricity Act, 2003, and is very much maintainable.
  - b) That the Respondent is supposed to file the complete reply at the first instance and the same may not be permitted to be filed in piecemeal.
  - c) That the provisions quoted by the Respondent are separate and distinct provisions and operate differently. The power to impose penalty is vested only with the Commission under Section 142 and it is necessary to strictly regulate the DISCOMs and to deter them from arbitrary and illegal actions, for the benefit of the consumers at large, this Hon'ble Commission is right in exercising its powers under Section 142 of the Electricity Act, 2003.
  - d) That if the arguments of the Respondent are accepted then Section 142 of the Electricity Act, 2003 will become redundant.

- e) That Section 142 of the Electricity Act, 2003 does not debar the jurisdiction of any other Forum or Authority to try or entertain a dispute/complaint.
  - f) That there is no such provision barring the jurisdiction of the Commission except in cases of theft or matters in relation to Section 126 or 127 of the Electricity Act, 2003, where the jurisdiction of other courts are barred.
  - g) That Section 142 is a separate and special provision of the Electricity Act, 2003, to deal with the complaints against DISCOMs.
  - h) That the Writ Petition no. 2488/2006 pending before the Hon'ble High Court of Delhi is only with regard to the refund/adjustment of misuse charges.
  - i) That the Hon'ble High Court has directed the Respondent to file their response limited to the issue regarding refund of misuse charges.
  - j) That the Respondent may not be permitted to curb the legal rights of the consumers.
- 16) The Respondent have also filed their detailed reply, reiterating their stand already taken in the brief reply and annexed various judgments to substantiate their stand. In their reply on merits, the Respondent have submitted that in pursuant to an inspection conducted on 19.01.1996 at the premises of the Complainant, the theft case was booked against him. The consumer was also maintaining low power factor and a case of misuse was also booked. Further, a FAE bill was raised by the Respondent on the basis of the second inspection conducted on 07.01.2003, which was subsequently withdrawn by the Respondent. The Respondent have further submitted the following:
- a) That the meter of the said connection was changed on 29.08.2003 as the same was defective and on 07.06.2005, the meter was reprogrammed to make it capable of recording KVAH alongwith KWH and it was clearly mentioned in the bill of January, 2006, that the bill was under revision.

- b) That the bill issued in the month of April, 2006 amounting to Rs. 1,71,609/- was inclusive of Rs. 1,09,553/- (= [2x Rs. 54,591/-] + current bill revision for Rs. 370/-) and the actual consumption charges. The Respondent have submitted that inadvertently, the assessment during the DVB period of an amount of Rs. 54,591.44/- was credited to the Complainant instead of being debited. They have further clarified that the SIS (Special Information Slip) was issued on 17.12.2005 before the issuance of the Consumption bill for the month of November, 2005 due to which the demand of the present period/bill i.e., Rs. 27,383/- was not included in the SIS. They have also submitted that the object of the LPSC Waiver Scheme was to waive all LPSC charges on payment of their outstanding principal amount. This did not disentitle the Respondent to make assessment on account of defective/burnt meter and raise the bill for periods prior to LPSC Waiver Scheme, therefore, the assessment done is legitimate and the amount raised in SIS cannot be treated as final.
- c) That the impact of the said provision on the ability of a Licensee to raise bills for escaped demand is already before the Hon'ble Delhi High Court in Writ Petition (Civil) No. 4962/2006 titled NDPL vs. Electricity Ombudsman, which is listed for hearing on 10.01.2007 and the Hon'ble High Court of Delhi has stayed the Order of the Ombudsman dealing the issue under Section 56(2) vide its Order dated 30.03.2006.
- 17) It is evident from the issues raised by the Learned Counsel for the Respondent that his main contention is that billing disputes do not fall within the jurisdiction of the Commission. The duties of the Commission are confined and have to be restricted under Section 86. Billing disputes have to be entertained only by CGRF and Ombudsman under Section 42(5) and 42(6) respectively and, that the present dispute should be referred to CGRF otherwise, it would amount to usurping its jurisdiction by the Commission.
- 18) The Learned Counsel has also produced certain judgements in support of his case. On the other hand, the Counsel for the Complainant has, with equal force, submitted that his complaint falls within the ambit of Section 142; the provisions of Section 142 are separate and distinct and operate differently; if the argument of the Respondent's Counsel is accepted then

Section 142 will become totally redundant; Section 142 does not debar the jurisdiction of any other Forum or Authority to entertain a complaint; Section 142 is a separate and special provision to deal with the complaints against DISCOMs and that the Respondent may not be allowed to curb the legal rights of the consumers.

- 19) The Counsel for the Respondent has submitted that before deciding the case on merit, the Commission may like to decide the issue of jurisdiction of the Commission under Section 142 of the Electricity Act, 2003. He has reiterated that Section 86 which prescribes various functions to be performed by the Commission restricts its role only to adjudicate upon the disputes between the Licensee and Generating Companies and to refer any dispute for arbitration.
- 20) The Commission heard the arguments on both sides and also examined the written submissions of the parties as well as the judgements cited by Learned Counsel Sh. Amit Kapoor, Advocate, in support of his case. The Commission has decided to first adjudicate upon the issue of 'jurisdiction' under Section 142 of the Act and not to dwell upon the case on merit at this stage.
- 21) The issue before the Commission is whether the Commission has power to entertain petitions/complaints under Section 142 of the Act notwithstanding the creation of CGRF and Ombudsman under Section 42 of the same Act. To deliberate upon this issue, the Commission has examined the following judgements cited by the Learned Counsel for the Respondent:-

**A. Appeal No. 30/2005, 164/2005 and 25/2006, M/s Reliance Energy Ltd. versus MERC and order dated 29.03.2006.**

- a) In these cases, MERC vide its letter dated 03.08.2004 had issued certain instructions to the distribution Licensees directing them that:

*"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 generates such bills automatically.*

2. *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.

3. 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 provisions of law.

4. 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 through adjustment in energy bills otherwise, of amounts received from consumers on or after 10.06.2003) may be furnished by 3<sup>rd</sup> September, 2004."

b) The Discoms submitted their written objections/response. Various Consumer Forums also intervened and submitted their representations and the Commission (MERC) after hearing the Discoms and Consumer Forums etc., vide its Order dated 23.02.2005 directed the Discoms that :

"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 paras 42 and 43 above from 10<sup>th</sup> June, 2003 (the dated of coming into force of EA, 2003) and up to notification of the Supply Code –

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

b) Any amount collected should be refunded to the concerned consumers (without interest considering the earlier lack of clarity on this matter on the part of the licenses);

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.);

d) The above action should be completed by 30<sup>th</sup> 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 15<sup>th</sup> June, 2005, with a list of consumers involved, and certifying that no further action remains to be done in terms of this Order."



The letter dated 03.08.2004 was written by MERC to the Discoms suo-moto. The directions issued by MERC were challenged before the Appellate Tribunal for Electricity (in short 'Tribunal') and while allowing the appeals, the Tribunal in its judgement dated 29.3.2006 (para 21 and 22) had made following observations: -

*"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 as 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."*

- c) The Hon'ble Appellate Tribunal while allowing the three appeals and setting aside the Order passed by the MERC made it clear in para 27 of the above judgment that the consumers have a definite Forum to remedy the billing dispute under Section 42(5) & (6). Further, Section 42(8) also saved the rights of the 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 work out the remedies, as may be open to them in law, the Hon'ble Tribunal added that they not only declined to examine the merits of the case and counter case of both the parties as the issues or

controversies are left open to be agitated before the competent Forum.

- d) It is evident from the findings/observations of the Appellate Tribunal that it has not restrained the rights of the consumers under Section 42(8) and a consumer is at liberty to approach any other Forum or Court, apart from seeking redressal from CGRF and Ombudsman under Section 42(5) and 42(6) respectively. For easy reference Section 42(5), (6), (7) and (8) are reproduced below :-

*"42(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.*

*(6) Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.*

*(7) The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.*

*(8) The provisions of sub-sections (5), (6) and (7) shall be without prejudice to right which the consumer may have apart from the rights conferred upon him by those sub-sections."*

- e) A plain reading of Section 42(8) makes it clear that the provisions of sub-Sections 5, 6 and 7 shall be without prejudice to the right which a consumer may have, apart from the rights conferred on him by those sub-sections. A further reading of the judgement makes it evident that the Hon'ble Tribunal has neither dealt with the provisions of Section 142 nor interpreted its scope or extent in the above judgement. For easy references Section 142 is reproduced below:

***"142. Punishment for non-compliance of directions by Appropriate Commission***

*In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any provisions of this Act or rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh*

*rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction."*

In fact, the provisions of Section 142 of the Act, are independent and give exclusive power to the Commission to impose penalty against any person, provided it is satisfied that such person has contravened any of the provisions of this Act or the rules or Regulations made thereunder, or any direction issued by the Commission, after giving such person an opportunity of being heard in the matter. No other authority under the Act is given power to impose penalty. The CGRF and Ombudsman have limited powers and cannot impose penalty even when they are satisfied that there has been a contravention of some mandatory provisions of the Act or Rules or Regulation or any direction of the Commission, by the Licensee etc.

- f) The Commission is of the view that the above judgement is not applicable in the present case as it nowhere refers to the provisions of Section 142 of the Act under which such petitions are made to the Commission for imposing penalty against the Distribution Licensees for contravention of certain mandatory provisions, Rules or Regulations or directions of the Commission. Moreover, the Hon'ble Tribunal in para 27 of its judgement has itself clarified that under Section 42(8) of the Act the rights of the consumer are saved and they are at liberty to approach any other Forum or Court as may be open to them in law.

**B. Ram Kishan versus NDPL 130(2006) DLT 549(DB) decided by Hon'ble High Court of Delhi on 30.11.2005.**

- a) In this case the Petitioner had approached the High Court regarding the dispute of his electricity bills. When the said writ petition was decided against him, the present LPA (746/2004) was filed before the Division Bench. During the course of arguments, it was brought to the notice of the High Court that institutions of CGRF and Ombudsman have already been created under Section 42(5) and 42(6) of the Act and the Appellant should have approached the said institutions instead

of approaching the High Court by way of a writ petition. The Division Bench disposed of the appeal by observing that "it is well settled that ordinarily writ jurisdiction will not be exercised when there is an alternative remedy. Where statutory remedy is available or a Statutory Tribunal has been set up, a writ petition should not ordinarily be entertained".

- b) There can be no dispute with respect to the observation of the Hon'ble High Court as the position is well settled. Moreover, the Hon'ble High Court in the above case had not gone into the provisions of Section 142 of the Act or its scope and extent, as there is no mention of this provision in the Order of the Court. It is pertinent to mention that in the above case the attention of the High Court was invited to Section 42(8) of Act and the Court had expressed its views that "in our opinion this only means that if the petitioner has right before any other Forum, he can avail all those rights. This does not mean that the principle of alternative remedy applicable to writ petition has to be ignored, in view of Section 42(8)".
- c) The Commission is of the view that above judgement of Hon'ble High Court does not support the contention of the Respondent's Counsel that the Commission cannot entertain the petition under Section 142 of the Act, as this Section was not even remotely referred to in the judgement of the High Court and the only point which the court made is that a writ petition should not ordinarily be entertained when an alternative remedy is available. This observation, as already mentioned, is not in dispute.

**C. Suresh Jindal versus BRPL and others decided by Delhi High Court on 20.2.2006 (LPA 256/2006).**

The above case primarily related to replacement of existing electro mechanical meters by new electronic meters. This judgement makes a mention about the rights of the consumer to approach Forum under Section 42(5), and thereafter Ombudsman under Section 42(6) of the Act. This judgement however, makes no reference or mention of Section 142 of the Act and, therefore, no

benefit can be derived from the above judgement in the present case.

- D. **Motiram Ghelbani Vs. Jagan Nagar, AIR 1985 SC 709.**
- E. **V.M. Salgocar Vs. Board of Trustees of Port Mormugao JT 2005(3) SC 607.**
- F. **L.R. Bhattad Vs. State of Maharashtra , AIR 2003 SC 3502.**

The above judgements have also been referred to by the Learned Counsel for the Respondent to show that a special provision in a statute shall prevail over a general provision in that statute. This infact, is not in dispute but, what is relevant to determine the issue of jurisdiction is to examine the provisions of Section 142, its scope, purpose and legislative intent; why such a provision was incorporated in the Act giving wide powers to the Commission notwithstanding the provisions of Section 42(5), (6) and (7). In fact, the above judgements do not appear to support the Respondent's Counsel on the jurisdiction aspect in the present case, notwithstanding the fact that we agree with the observation of the courts that a special provision in statute shall prevail over the general provision of that statute.

- G. Sh. Amit Kapoor, Learned Counsel for the Respondent has also referred to Writ Petition (Civil) No. 4962/2006 Titled **NDPL Vs. Electricity Ombudsman** pending in Delhi High Court and which is listed for hearing on 10<sup>th</sup> Jan., 2007. It has been stated by Learned Counsel that subject matter of the said Writ Petition is to interpret Section 56 (2) of the Act and decide its scope and extent. Since this Commission has decided not to deal with this complaint on merit and confine itself only to the jurisdiction issue, the said writ petition may not be of much help at this stage. Moreover, the matter is still pending in the court and unless we know the final outcome, no party can perhaps derive any benefit out of the above case at this stage.

- 22) The issue of jurisdiction whether the Commission can entertain petitions under section 142 of the Act and if so, to what extent, is to be decided by the Commission in the light of the provisions of Section 142, to be read

with Section 42 and the Regulations viz., DERC (Guidelines for establishments of Forum for redressal of grievances of the consumers and Ombudsman) Regulations, 2003; DERC comprehensive (conduct of business) Regulations 2001, and DERC (Performance Standards – metering and billing ) Regulations, 2002. Sections 42(5), (6), (7), (8) and 142 have already been reproduced at para 21A(d) page 10 of this order. Section 142 by its plain reading leaves no ambiguity about the scope and extent to which a petition can be entertained by the Commission under this provision. This Section provides that any person can file a complaint before the Commission and if that Commission is satisfied that any person has contravened any of the provisions of this Act or the Rules or the Regulations made thereunder, or any direction issued by the Commission, the Commission may after giving such person an opportunity of being heard in the matter, by Order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed Rupees One Lakh for each contravention and in case of a continuing failure with an additional penalty which may extend to Rupees Six Thousand for every day during which the failure continues after contravention of the first such direction. The term 'person' has also been defined in Section 2 (49) of the Act as under :

*"Person shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person."*

- 23) Section 42(5), (6) and (7) talks about the Forum for redressal of grievances of the consumers; representation against the Order of the Forum before the Ombudsman and the manner thereof. The Regulations of DERC viz., DERC (Guidelines for establishment of Forum for redressal of grievances of the consumers and Ombudsman) Regulations , 2003 define the word 'complaint' as also the 'procedure' to be followed by such Forums and the Ombudsman while dealing with a consumer's complaint. In fact, Section 42 (8) leaves no scope of any ambiguity or misinterpretation and provides very clearly that the provisions of Sub-Section (5), (6) and (7) shall be without prejudice to right which the consumer may have apart from the rights conferred upon him by those sub-sections. If the provisions of Section 42(8) are read and interpreted with the provisions of section 142, the only conclusion would be that the power given to the Commission under section 142 is independent of the provisions of Section 42 (5), (6)

and (7) and wherever a person approaches the Commission alleging contravention of the statutory provisions or any direction of the Commission and if the Commission is satisfied after following the due process of law that there has been a definite contravention of any statutory provisions or the directions of the Commission, it would be at liberty to impose penalty. In fact, the cases are being referred to the Commission even by the CGRF for imposing penalty where a violation of any statutory provision has been established. Merely because a dispute relates to billing or metering may not be a sufficient ground not to entertain a complaint by the Commission under section 142 of the Act if violation of certain statutory provisions or directions are established. If the view, as suggested by Learned Counsel for the Respondent, that the Commission cannot entertain billing disputes, is accepted then the very purpose of section 142 will be defeated and its provisions will become redundant. At the same time, the Commission is conscious of the fact that it cannot deal with all types of billing disputes and should restrain itself by entertaining complaints where there is violation of any statutory provisions or directions etc. The Commission feels that the spirit and object of section 42 and 142 of the Act are not the same. The disputes which are essentially metering and billing disputes, without attributing contravention of any statutory provisions or directions etc., need to be entertained by CGRF under section 42 (5) and its appeal to Ombudsman under section 42(6). However, the cases where contravention of any statutory provisions or directions of the Commission is attributed or alleged and also prima-facie made out from the complaint, such cases need to be entertained by the Commission, to ascertain whether there is any violation, as alleged, or not and then decide further course of action accordingly. In some cases it may be necessary to ascertain the facts from the other parties and if after knowing the version of both sides and hearing the parties, the Commission arrives at a conclusion that the subject matter does not involve violation of any statutory provisions etc., it can restrain itself from proceeding further in the matter and refer it to the concerned CGRF for further adjudication or else the complainant can be advised to approach the CGRF. Under the existing regulations viz. the DERC Comprehensive (Conduct of Business) Regulations, 2001, the procedure to deal with a petition has been provided under Regulation 15 and onwards. Under these Regulations, the Commission cannot pass an order refusing admission without giving the party concerned an

opportunity of being heard. Regulation 15 (x), (xi) are relevant and reproduced below for ready reference:

*“(x) The Commission may admit the Petition for hearing without requiring the attendance of the party. The Commission shall not pass an order refusing admission without giving the party concerned an opportunity of being heard. The Commission may, if it considers appropriate, issue notice to such person or persons, as it may desire, to hear the petition for admission.*

*(xi) If the Commission admits the Petition, it may give such orders and directions, as may be deemed necessary, for service of notices to the respondent(s) and other affected or interested parties; for the filing of replies and rejoinder in support of the Petition in such form as the Commission may direct and for the petition to be placed for hearing before the Commission.”*

- 24) The spirit of the above Regulation is to give a chance to the concerned party to put forward his version and enable the Commission to know about the case so that it can decide whether a particular petition needs to be proceeded with further or its admission can be refused right at that stage. If a party refuses to offer comments on merits and take the plea of jurisdiction, it would be difficult for the Commission to know the actual facts and decide the further course of action. If the Commission is satisfied after going through the version of both the parties that there has been no contravention of any statutory provision or directions of the Commission etc., it can refuse admission and restrain itself from proceeding further and in such cases, the Commission may prefer to refer the case to an appropriate Forum under section 42(5) of the Act. At the same time, if contravention of a statutory provision or direction is prima-facie established, the Commission would be at liberty to proceed with the matter under section 142 of the Act and pass appropriate orders.
- 25) The contention of Learned Counsel for the Respondent that the Commission can only adjudicate upon the disputes between the Licensees and Generating companies within the fourwalls of Section 86 of the Act, does not appear to be correct. If his view is to be upheld, that would render the scheme of Section 142 totally redundant and meaningless. The Commission feels that the scheme provided under Section 142 to be read with Section 42(8) of the Act, is over and above the provisions of Section 86 and provides a tool in the hands of the Commission to ensure that the persons contravening the statutory provisions or direction of the Commission are dealt with suitably to deter them from indulging in similar activities/violations in future. The language



of Section 142 is worded in a manner that enlarges the scope of the Commission to entertain complaints where any of the provisions of the Act or the Rules or Regulations made thereunder, or any direction of the Commission, is contravened. The plea of Learned Counsel that entertaining the present Petition under Section 142 will amount to usurping the jurisdiction of CGRF or Ombudsman, is not the correct interpretation as the role and purpose of these institutions are different. Whereas these two institutions are for redressal of grievances of the consumers within the confines of Section 42(5) & (6), the Commission is to entertain petitions under Section 142 for the purpose of imposing penalty where violations are established after giving an opportunity of being heard to the parties. This authority to impose penalty is not available with the CGRF or the Ombudsman.

- 26) The Counsel for the Respondent has also referred to Writ Petition no. 2488/2006 titled Nawab Udyog Vs. NDPL pending before Delhi High Court and submitted that the Complainant is restrained from approaching two Forums simultaneously and prayed that the present complaint is not maintainable on this ground alone. The Complainant has submitted his reply and said that subject matter of Writ Petition is different from the one agitated before this Commission and, therefore, his complaint before this Commission is maintainable. Since the Commission is only considering the issue of jurisdiction at this stage, and not deciding the complaint on merit, this aspect would be considered subsequently after deciding the issue of jurisdiction.
- 27) The Learned Counsel for the Complainant, apart from raising other issues, has also stated that there is no provision in the Act which debars the jurisdiction of the Commission except in the cases of theft or matters in relation to Section 126 and 127 where the jurisdiction of other courts is barred. To appreciate this point the provisions of Section 145 of the Act are reproduced below:

*"No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in Section 126 or an appellate authority referred to in Section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."*

- 28) The Commission is inclined to agree with the contention of Learned Counsel for the Complainant that Section 142 of the Act will become redundant if the plea of the Respondent's Counsel is accepted. The Commission also agrees that Section 142 is an independent provision and not restrained or restricted by the provisions of Section 42 (5), (6) and (7). In fact, the spirit and object of both these sections and the schemes provided therein are independent and incorporated to achieve different objects.
- 29) The Electricity Act, 2003, has broadly provided a four tier mechanism to deal with the disputes under the Act:
- a) Section 42, which deals with the Consumer Grievance Redressal Forum, and the institution of Ombudsman being an Appellate Authority of the CGRF.
  - b) Section 126, dealing with the cases of DAE and assessment done by the Assessing Officer and Section 127, provides for appeal before the Appellate Authority against the Assessing Officer.
  - c) Section 153 provides for the Constitution of the special courts for dealing with the cases of theft of electricity under Sections 135 to 139 of the Act.
  - d) Section 142 deals with the complaints by the persons for imposition of penalty in cases of non-compliance of directions by Appropriate Commission.
- 30) The present complaint has been filed under Section 142 against the NDPL alleging violation of certain Regulations of this Commission as well as the violation of certain provisions of the Electricity Act, 2003.
- 31) After considering the arguments on both sides, their pleadings and the judgments cited before the Commission, the Commission is of the considered view that Section 142 is an independent provision which provides for punishment for contravention of statutory provisions or non-compliance of directions by the Commission. This provision or power is not to be linked or confused with the powers and functions of CGRF and Ombudsman under Section 42(5) & (6) of the Act. It has to be

appreciated that these two institutions namely CGRF and Ombudsman have not been given any power to impose penalty. This power infact, is exclusively given to the Commission. No similar provision has been given anywhere in the Act for any other judicial Forum or Authority. Moreover, when Section 142 is read and interpreted alongwith the provisions of Sections 42, Section 145 and relevant Regulations of DERC, the only conclusion which can be safely arrived at would be that the cases involving contravention of any of the provisions of the Act or the Rules or Regulations or any directions issued by the Commission, can be entertained by the Commission under Section 142 of the Act. However, it is made clear that the Commission has been authorized to entertain the complaints under Section 142, but, if it is satisfied that a complaint does not reveal any such violation, and is essentially a simple metering or billing complaint, not falling within the ambit of Section 142, the Commission will restrain from dealing with such complaints and may either refer such complaints to the concerned CGRF or else reject the complaint with a direction or advice to the Complainant to approach the appropriate Forum.

32) In brief, it may be added for the sake of clarity that the complaints received by the Commission under Section 142 can be broadly classified in following two categories:

- a) Where violation of any statutory provision or direction of the Commission is alleged or prima-facie established;
- b) Where there is no apparent violation of any statutory provision or direction of the Commission.

In the first category of cases, there can be no dispute about the jurisdiction of the Commission under Section 142 of the Act and the Commission shall continue to entertain such complaints. As regards the cases falling in the second category, the Commission after following the due process as provided in the Regulations and knowing the version of both the parties, if satisfied that there has been no such violation, it would refrain from proceeding with the case further, and may refer it to the appropriate Forum or reject the same with a suitable advice to the Complainant, as the case may be. The Commission would like to add here that even in the cases falling in the first category i.e. (a) above, if the

Commission after knowing the version of the concerned parties arrived at the conclusion that there is no contravention of any provision of the Act or Rules or Regulations or directions of the Commission etc., it may decide not to deal with the case further and refer it to the Forum or advise the Complainant to approach the concerned Forum.

- 33) The Commission is of the considered view that it has jurisdiction to entertain complaints including those relating to metering and billing where violation of any statutory provisions or directions of the Commission are alleged or prima-facie established, under Section 142 of the Act notwithstanding the creation of CGRF and Ombudsman under Section 42(5) and (6) as the object to create these institutions is different from the object of Section 142 where powers are exclusively entrusted to the appropriate Commission. It would be wrong to interpret and may be even misleading to conclude that merely because a complaint relates to a billing dispute, the Commission will have no jurisdiction to entertain it, regardless of contravention of any statutory provisions or the directions of the Commission. Such an interpretation would render the provisions of Section 142 redundant. The Commission, therefore, do not agree with the contentions of the Learned Counsel for the Respondent on the issue of jurisdiction.
- 34) The issue of jurisdiction is decided accordingly.
- 35) The matter may be listed for hearing to decide the same on merits.
- 36) Ordered Accordingly.

Sd/-  
(K. Venugopal)  
MEMBER

Sd/-  
(R. Krishnamoorthy)  
MEMBER