

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 79 of 2006

In the matter of
Petition filed by M/s. Bennett, Coleman & Co., Ltd., under Section 86 of the
Electricity Act, 2003

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

ORDER

Dated: 23rd April, 2007

M/s. Bennett, Coleman & Co. Ltd., filed a Petition before the Commission on December 20, 2006 under the provisions of Section 86 of the Electricity Act, 2003 (“EA 2003”). The dispute referred for adjudication relates to the recovery of charges for consumption of electricity for industrial activities at higher commercial tariff.

2. The facts leading to the filing of the present Petition as averred therein, are briefly stated as under:

(i) The Petitioners are printer and publisher of newspapers and magazines carrying out industrial activity.

(ii) Until February 25, 1992, the entire publishing activity inclusive of press and pre-press activities were being carried out from the premises of the Petitioners situated at the Times of India Building, D.N. Road, Mumbai – 400 001 (hereinafter for short, referred to as “Unit No. 1”). Thereafter, the Petitioner shifted the printing activity to a printing press of the Petitioners at Kandivali, Mumbai (hereinafter for short, referred to as “Unit No. 2”) due to shortage of space faced in Unit No. 1 on account of a large increase in volume of



printing due to increase in circulation, change in technology. However, the Petitioners bifurcated the printing activity into pre-press activity and press activity. While, the printing activity was shifted to Unit No. 2, the pre-press activity (pre-press requirements or processing contents) continued to be undertaken and located at Unit No. 1.

(iii) It is claimed that the pre-press activity (pre-press requirements or processing contents) undertaken and located at Unit No. 1 retains its character as inherently an industrial activity in the chain of continuous processes all of which are essential and integral activities for production of a newspaper. It is averred in the Petition that the establishment at Unit No. 1 has always been an industrial establishment by virtue of it being registered under the provision of the Factories Act, 1948 and under the Mumbai Municipal Corporation Act, 1888. The Petitioners claim that they have for several decades, being paying electricity charges to the Brihan Mumbai Electric Supply and Transport Undertaking (“BEST”), which supplies electricity to the Petitioners, at IND(HV) (Industrial Tariff). It is averred in the Petition that as against the originally sanctioned total connected load of 3547 KW (vide Government Order dated 11.06.1979), the load at Unit No. 1 was reduced to 2916.4KW due to shifting of the printing activity to Unit No. 2. While sanctioning the revised electrical load, the Office of Jt. Director of Industries (MMR), Government of Maharashtra, under letter dated November 10, 2004 acknowledged that the “industrial power” required by Unit No. 1 was now being sanctioned for computerized desk top publishing for newspaper.

(iv) The Petitioners claim that, BEST have, pursuant to conducting an inspection of Unit No. 1 on March 24, 2000 erroneously changed the tariff category applicable to the Petitioners. According to the Petitioners, BEST issued a letter dated July 13, 2000 to the Petitioners in terms whereof BEST came to a finding that the Petitioners, are liable to be charged with RC (HV) tariff instead of IND (HV) tariff with effect from June 1, 2000. In the Petition, it is pointed out that, the said letter states that bills relating to the past period are liable to be amended, as the Petitioners who were charged IND (HV) tariff earlier in point of time did not any more qualify for IND (HV) tariff as it was necessary that at least



75% of the total connected load should be industrial load, for availing of the said IND (HV) tariff. The said letter also states that Unit No. 1 attracts RC (HV) tariff as per the tariff schedule of BEST, i.e., commercial tariff, as the printing press of the Petitioners which used to undertake activities in the nature of industrial activities qualifying for IND (HV) tariff, i.e., industrial tariff, had been shifted from its aforesaid Unit No. 1 to Unit No. 2 at Kandivali. It is asserted that as the said letter was unilateral, payment was made by the Petitioner against the bill pertaining to the month of July 2000 at RC (HV) tariff, under protest. It is further asserted that the Petitioners had urged BEST to maintain status quo as regards the industrial use of Unit No. 1 as in the past. The Petitioners made representations to BEST on the basis that as per inspections carried out by the staff of BEST in the past the industrial load of Unit No. 1 remains confirmed. Petitioners have referred to a letter dated October 16, 2002 (Exhibit L) in terms whereof the Petitioners clarified to BEST that air-conditioning was imperative to undertake pre-press activities at Unit No. 1 and therefore the air conditioning load of 1589 KW should be accepted as industrial load and further the IND(HV) tariff for A/c. No. 00-508-000 be restored with effect from June 2000 and excess RC(HV) tariff charged by BEST, be refunded. In the said letter, Petitioners have referred to BEST Letter No. CS/OPEX/-24/AGR/41005/2001 dated 4.9.2001 which, as per the Petitioners, admits that pre-press activities are an Industrial Activity. The Petitioners had also represented that as for the commercial load which was found by BEST as “exceeding limit”, a new air cooled transformer of 1250 kVA capacity was installed in Unit No. 1 and the commercial load pertaining to other group entities of the Petitioners were transferred on a newly installed transformer which was on RC (HV) tariff. The Petitioners contend that the load on Unit No. 1, relates to press function which is a 100% industrial activity. The Petitioners have stated that they have continued to pay the bills of BEST under the aforesaid commercial tariff under protest.

(v) Thereafter, the Mumbai Municipal Corporation (“MMC”) under its letter dated May 30, 2003 revoked the permit given to the Petitioners for establishing factory/workplace at Times of India Building, D.N. Road, Mumbai – 400 001 (Unit No.



1), with immediate effect, on the basis that steam, water or mechanical power was not employed at the said premises. The MMC had also directed BEST, under the said letter, to disconnect the industrial load supplied to the aforesaid premises. The Petitioners had taken up the aforesaid issue of revocation by MMC and also claimed refund of excess amounts recovered by BEST aggregating to Rs. 2,79,49,872/-, under a Legal Notice dated June 6, 2003 issued to MMC and BEST. The Petitioner had also initiated proceedings under Suit No. 2838 of 2003 before Hon'ble High Court of Judicature at Bombay restraining BEST from disconnecting supply and for levying tariff at industrial rate and consequential refund of recovery at commercial rate, which has yet not been disposed.

(vi) Petitioners have submitted that in terms of the "IT & ITES Policy 2003" issued by the Industries, Energy and Labour Department, Government of Maharashtra, "*IT and ITES units will be entitled for supply of power at industrial rates under the MERC tariff orders. These Units will be categorized as a separate group of consumers through the MERC*". In this respect, the Petitioners have, besides the aforesaid letter dated November 10, 2004 issued by the Jt. Director of Industries, also referred to another letter dated October 18, 2004 issued by the same office which grants registration to the Petitioner as "IT Enabled Service Unit" for computerized desk top publishing for newspapers. The Petitioner have submitted that the MMC vide its letter dated January 20, 2005 permitted the Petitioner to establish "IT enabled services – Computerized Desktop Publishing for newspaper pre-press activity" and to work the same with an aggregate power of 3909 HP (equivalent to 2916.4 KW).

(vii) Petitioners have submitted that in the aforesaid Suit No. 2838 of 2003 in Notice of Motion No. 2630 of 2006, Hon'ble High Court in its order dated January 18, 2006, recorded the representation of BEST that should the Petitioners herein file any representation before BEST on the basis of the fresh industrial licence issued to it in 2004 and pertaining to the industrial user of the premises, BEST would consider the same and pass appropriate order thereon within eight weeks from the date of the order. However,



on the representation preferred by the Petitioners, BEST vide its Order dated May 5, 2006, arbitrarily held that the Petitioners were not qualified for industrial tariff by bifurcating and omitting from industrial or ITES activities areas such as corridor, passage, waiting room, security, stores, purchase, record room, store room, conference room, engineering and production department, etc., regarding the same as commercial activities and accordingly rejected their said representation. BEST had held that 47.7% of the load is used at Unit No. 1 for industrial activity and that therefore the said unit did not qualify for industrial tariff. It is this Order dated May 5, 2006 passed by the Deputy Chief Engineer (Commercial South) of BEST, that the Petitioners on being aggrieved, have filed the present Petition before the Commission. The Petitioners have, among other reliefs, prayed for directions to BEST to the effect that electricity supply to Unit No. 1 of the Petitioners be charged at Industrial rates.

3. An admissibility hearing was held on March 28, 2007. Shri. E.P. Bharucha, Senior Advocate appeared for the Petitioners. Shri. Harinder Toor, Counsel appeared for BEST. Counsel for Petitioners submitted that the Commission has jurisdiction to admit the Petition under Section 86(1)(a) of the EA 2003 so far as it relates to determination of tariff as is required in terms of the said IT & ITES Policy, 2003. Shri. E.P. Bharucha argued that in terms of the common judgment dated March 29, 2006 passed by the Appellate Tribunal for Electricity in Appeal No. 30 of 2005, Appeal No. 164 of 2005, Appeal No. 25 of 2006, it is the Commission which has jurisdiction to determine tariff. Counsel also submitted that it can be reasonably inferred that the said IT & ITES Policy, 2003 is a direction or guideline made by the State Government under Section 108 of the EA 2003 to the Commission for the determination of tariff for IT and ITES units at industrial rates by categorising them as a separate group of consumers.

4. Per contra, Shri. Harinder Toor, Counsel for BEST, argued that the dispute raised by the Petitioners relate to issues concerning “application” of tariff and not “determination” of tariff. Counsel submitted that on the issue of correct or incorrect application of tariff it is the Consumer Grievance Redressal Forum established by BEST



which is the appropriate forum for adjudication of the dispute raised by the Petitioners and not this Commission. Functions are vested with the Commission under clause (f) of Section 86(1) of the EA 2003 to adjudicate upon disputes between the licensees and generating companies. Furthermore, the present dispute is *sub judice* before the Hon'ble Bombay High Court. Counsel argued that, therefore, the present Petition is not maintainable and cannot be admitted under clauses (a) or (f) of Section 86(1) of EA 2003. Shri E.P. Bharucha, refuted one contention raised by BEST by submitting that it would be incorrect to allege that the Petitioners have or had indulged in unauthorized use of electricity so as to be liable, in any manner, under Section 126 of the EA 2003. Shri E.P. Bharucha also submitted that the Petitioners were constrained to initiate appropriate proceedings before the Hon'ble Bombay High Court pursuant to a written communication made by BEST that supply at its premises would be disconnected. Suit No. 2838 of 2003 (*Bennett Coleman & Co. Ltd. Vs. BEST & Anr.*) was filed before the Hon'ble Bombay High Court primarily to determine pre-press activity as industrial activity *per se*, which has yet not been disposed of by the Hon'ble Court. Subsequently, after the issuance of the said IT & ITES Policy, 2003 by the Government of Maharashtra, Petitioners initiated Notice of Motion No. 2630 of 2003 in the said proceedings seeking restoration of industrial tariff in terms of the said Policy. The Hon'ble Bombay High Court vide its aforesaid order dated January 18, 2006, has held that the Petitioners may file "*appropriate legal proceedings as may be available in law*" should BEST pass any order adverse to the interests of the Petitioners.

5. The following points are framed for consideration in this Petition:
- (i) Whether the reliefs prayed for by the Petitioners can be granted by determination of tariff by the Commission under Section 86(1)(a) of the EA 2003?
 - (ii) Whether the dispute raised in the Petition relates to application of appropriate tariff to the Petitioners?



- (iii) Whether the IT & ITES Policy, 2003 issued by the Government of Maharashtra is a direction to the Commission under Section 108 of the EA 2003?
- (iv) Whether the Petition raises a dispute which the Commission has jurisdiction to adjudicate under Section 86(1)(f) of the EA 2003?
- (v) Whether the Commission has jurisdiction under any other provision of the EA 2003 to entertain and try the present Petition?

6. Taking up the first point for consideration, it is necessary to refer to Section 86(1)(a) which reads as under:

“86. (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, within the State: Providing 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;

Section 86 of the EA 2003 lays down the functions of the State Commissions. The power under Section 86(1)(a) is not an original power and the same is circumscribed by sections 62 and 64 thereof. In *Gajendra Haldea Vs. Central Electricity Regulatory Commission & Ors.*, the Appellate Tribunal for Electricity held in its judgment dated December 22, 2006 in Petition No. 1 of 2005, as under:

“34. It appears to us that the general words in Sections 79 (1) (a) & (b) and 86(1) (a) must take colour from the words used in Section 62 (1), particularly Section 62 (1) (a). Otherwise, it is not possible to reconcile the provisions of Section 62(1)



on the one hand and Section 79 (1) (a) & (b) and Section 86(1) (a) on the other. It is well established principle of construction of statutes that as far as possible the provisions of a statute on the same subject must be harmonized. Sections 79(1) (a) & (b) require regulation of tariff for generation. They must be construed in the context of Section 62(1) (a), which provides for determination of tariff by the Appropriate Commission for supply of electricity by a generating company to a distribution licensee. Similarly, Section 86(1)(a), which requires determination of tariff, inter alia, for 'supply and generation of Electricity' must be construed with reference to Section 62(1), particularly 62 (1) (a) and accordingly are to be interpreted to mean that the State Commission is empowered to determine tariff for supply of electricity by a generating company to a distribution licensee and cannot be construed to mean that the State Commission is possessed of the jurisdiction to fix the tariff for sale of electricity by a generator to trader or an intermediary or supply of electricity by a trader to any person. In case Section 79(1) (a) & (b) and Section 86(1) (a) are not construed in this manner, a grave difficulty would arise for determination of tariff. Section 64 of the Act of 2003 postulates filing of an application under Section 62 thereof by a generating company or a licensee. Section 64 reads as under:

64. Procedure for tariff order. – (1) An application for determination of tariff under Section 62 shall be made by a generating company or licensee in such manner and accompanied by such fee, as may be determined by regulations.....

35. Thus, it is clear from a reading of Section 64(1) of the Act that an application for determination of tariff can only be made under Section 62.....Therefore, tariff under Section 62 can only be determined by filing an application under Section 64 but the application must be confined to the determination of tariff in respect of four categories of cases specified in Section 62 and not under Sections 79(1) (a)& (b) and 86 (1)(a) of the Act.



36.The fact that the statute prescribed filing of an application under Section 62 before the Commission for determination of tariff shows that the provisions of Sections 79(1)(a) & (b) and Section 86 (1)(a) must take colour from the provisions of Section 62(1) of the Act. In this view of the matter, there would be no need for a separate provision for filing an application for determination of tariff under Section 79 (1)(a) & (b) and Section 86 (1)(a). Therefore, the statute did not provide for a provision for filing an application for determination of tariff under Section 79(1)(a) & (b) and 86(1)(a) of the Act.”

Section 64 (1) does not authorize filing of an application by a consumer under Section 62 or Section 86 (1) (a) for determination of tariff for supply of electricity by a licensee. In view of the aforesaid decision, therefore, the Petitioners, who are consumers of BEST, cannot make an application for determination of tariff under Sections 62, 64(1) or 86(1)(a). It also does not prescribe that the Appropriate Commission can simply fix tariff. According to Section 64 (1), an application for determination of tariff shall be made by a generating company or licensee alone. Therefore, tariff under Section 62 can only be determined by filing an application under Section 64. The power of the Commission under Section 86 of EA 2003 is a legislative function and Section 86(1)(a) cannot be utilized by a party for filing a Petition which raises a controversy in the nature of an adversarial litigation. Point No. 1 is answered accordingly.

7. Taking up the second and third point for consideration, it is necessary to refer to the averments made in the Petition. It has been averred once a Factory Permit is granted by the MMC and the premises housing Unit No. 1 having being declared / recognized as a factory, it was incumbent on BEST to have charged the Petitioner for electricity supplied for industrial activity mentioned in the Factory Permit at Industrial Tariff. It is claimed that it is not open to BEST to go behind the Factory Permit granted by the MMC. The Petitioners are aggrieved by the Order dated May 5, 2006 passed by the Deputy Chief Engineer (Commercial South) of BEST, that has led to the filing of the present Petition before the Commission. It is asserted that the load used at Unit No. 1 of the



Petitioners was, in the aforesaid Order dated May 5, 2006 passed by the Deputy Chief Engineer (Commercial South) of BEST, sought to be segregated between Industrial and Non-industrial load without any rationale to come to the conclusion that allegedly only 47.7% of the load is used for Industrial activity. The Petitioners also submit that it is their case that their Unit No. 1 is an IT and ITES unit, in terms of "IT & ITES Policy 2003" issued by the Industries, Energy and Labour Department, Government of Maharashtra, so as to be qualified for supply of power at industrial rates by categorizing the same as a separate group by the Commission. It is asserted that BEST ought to have charged Unit No. 1 of the Petitioners at industrial tariff as the aforesaid "IT & ITES Policy 2003" and letter dated November 10, 2004 issued by the Jt. Director of Industries (MMR), BEST Letter No. CS/OPEX/-24/AGR/41005/2001 dated 4.9.2001, MMC letter dated January 20, 2005, were binding on BEST. It has been asserted that BEST, since about June 2000, has been wrongly recovering charges for electricity supplied to Petitioner's Unit No. 1 at higher commercial tariff. It has also been averred that if the determination of activities at Unit No. 1 is carried out in a rational manner and activities carried out in corridors, canteen, toilets, etc., are not arbitrarily regarded as commercial activity, more than 75% of the installed load could be established as load for industrial activity. It is clear, therefore, that the dispute raised in the Petition relates to application of appropriate tariff to the Petitioners.

For long the tariffs charged by BEST to its consumers, such as the Petitioner herein, remained undetermined by the Commission. Upon directions from the Commission, BEST, submitted its application for approval of Annual Revenue Requirement and Tariff Proposal for 2004-05 and 2005-06, under affidavit. This was the first time that BEST submitted a Petition for approval of ARR and Tariff Proposal to the Commission. The Commission, in exercise of the powers vested in it under Section 61 and Section 62 of the Electricity Act, 2003 and all other powers enabling it in this behalf, and after taking into consideration all submissions made by BEST, all objections, responses, issues raised during a Public Hearing, determined the ARR and tariff for supply of electricity by BEST for retail distribution, under its operative Order dated



February 25, 2006 and detailed Order dated March 9, 2006. BEST implemented the revised electricity tariffs from October 1, 2006. Whereas, the tariffs that were being charged by BEST to the Petitioners as sought to be contended, relate to a period prior to the aforesaid Orders being passed by the Commission with respect to BEST's tariffs. If at all, it was for BEST, being a deemed licensee, to propose the implementation of the aforesaid "IT & ITES Policy 2003" for supply of power at industrial rates to IT & ITES units by categorizing the same as a separate group as stated therein. As observed in the preceding paragraphs, it is for the licensee to make application for determination of tariff under Section 64 (1) and not for the Commission to *suo motu* determine tariff. As to whether the "IT & ITES Policy 2003" issued by the Industries, Energy and Labour Department, Government of Maharashtra, is a direction under Section 108 of EA 2003, the Commission is of the view that there is a need to examine the said provision as it will portray what needs to be accomplished and therefore, how it should be construed. Section 108 of EA 2003 reads as under:

108. (1) In the discharge of its functions, the State Commission shall be guided by such directions in matters of policy involving public interest as the State Government may give to it in writing.

(2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the State Government thereon shall be final.

The presence of the words "*as the State Government may give to it*", in fact the words "*..to it*", implies the issuance of specific directions by the State Government to the Commission and not that all policies made by the State Government would come within the purview of Section 108. It is well settled that what is missing from the statute cannot be brought in by the Court through a process of involved



interpretation, as to do so will be legislation and not construction. In the aforesaid judgment in *Gajendra Haldea Vs. Central Electricity Regulatory Commission & Ors.*, the Appellate Tribunal observed as Under:

“.....In the case of Magor & St. Mellons Rural District Council vs. New Port Corporation (1951) 2 All E.R. 839, it was held that the duty of the court is to interpret the words, the legislature has used. Those words may be ambiguous, but even if they are, there is no power with and duty of the Court to travel outside them on a voyage of discovery...”

In the above context, in the preceding paragraphs it has been explained that the Commission does not have *suo motu* powers under Sections 62, 64(1) and 86(1)(a) to determine tariff as it is for licensees to apply for determination of tariff. Therefore, on this account also, even if it is to be assumed that the aforesaid “IT & ITES Policy” was a direction under Section 108 for the Commission to be “*guided by*” it is not within the jurisdiction of the Commission to *suo motu* apply any specific tariff to a separate category of consumers. Also as noted above, issues raised by the Petitioners related to a period prior to BEST applying for ARR and tariff fixation and consequent passing of operative Order dated February 25, 2006 and detailed Order dated March 9, 2006. In view of the above, the Commission is of the view that the contentions raised by the Petitioner with respect to the applicability of the said “IT & ITES Policy” cannot be given effect to under the present proceedings as giving any effect thereto would amount to re-opening of the operative Order dated February 25, 2006 and detailed Order dated March 9, 2006, which is beyond the purview of the present Petition.

As far as the common judgment dated March 29, 2006 passed by the Appellate Tribunal is concerned, as relied upon by the Petitioners, the said judgement is of no avail neither on account of the different subject matter it deals with nor on account of the decision made therein. The said judgment arises on account of issuance of amendment/supplementary and average bills by licensees (often after several years later,



and without giving reasons) without testing of meters. Portions of the said judgment to the extent relevant is set out as under:

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

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

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

“86 – Functions of State Commission

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

(a)

(b)

(c)

(d)

(e)

(f)

(g)

(h)

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

(j)

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

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

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

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

“27. *The consumers have a definite forum to remedy the Billing dispute under Section 42(5) and further representation thereof under Section 42(6). Further Section 42(8) also saved the rights of consumer to approach any other forum such*



as the forums constituted under the Consumer Protection Act 1986 or other courts as may be available. In the circumstances, while making it clear that it is for the consumers to workout the remedies as may be open to them in Law, we hasten to add that we not only declined to examine the merits of the case and counter case of both parties as the issues or controversies are left open to be agitated before competent forum.”

Having already held in the preceding paragraphs that the dispute raised in the Petition relates to application of appropriate tariff to the Petitioners, it needs to be determined as to whether the Commission has jurisdiction to decide or adjudicate on such an issue as between the Petitioners, which is a consumer of BEST and BEST, being a deemed licensee under EA 2003. In the past a number of such cases concerning the applicability of tariff has been referred to the Commission. In one such case No. 28 of 2003 in the matter of change of category from Sizing to Powerloom and related matters, the Commission by its Order dated August 10, 2004 held as under:

“18. The Commission observed that new Regulations have been put in place today with regard to the mechanism for settlement of grievances such as this. The Commission also cited the definition of 'grievance' contained in the Regulations. MSEB should endeavour to resolve the position with regard to disconnection and change of category and verification of arrears of the Petitioner through their internal redressal mechanism within one month. Compliance should also be filed..”

The second and third points are answered accordingly.

8. Taking up the fourth point, it is clear from the averments made in the Petition as well as the submissions made by Counsel that the issues referred under the Petition relate to a dispute between a consumer and a licensee regarding application of a specific tariff. The Commission is of the view that such a dispute cannot be adjudicated by the Commission as the same is not a dispute intra-licensees and/ or generating companies.



The dispute referred under the present Petition does not come within the purview of Section 86(1)(f) of the EA 2003.

The fourth point is answered accordingly.

9. On fifth point as to whether the Commission has jurisdiction under any other provision of the EA 2003 to entertain and try the present Petition, the Commission is of the view that even if the EA 2003 is interpreted in a broad manner and not in a narrow or restrictive sense insofar as the jurisdiction of the Commission is concerned, so that the purpose for which the act has been enacted may be achieved, the Commission is of the finding that there is no provision in EA, 2003 or any express authority of law or incidental and ancillary powers, which are necessary to make fully effective the express grant of statutory powers, which specifically enumerates the powers of the Commission to adjudicate the present dispute between the Petitioners, which is a consumer and BEST, which is a deemed licensee. The Act prescribes penal provisions under sections 142 and 146 for contravention or non-compliance of any order or direction issued by the Commission. However, no such plea has been made by the Petitioners. It is also not the case of the Petitioners that BEST has effected change in category without the Commission's approval.

The fifth point is answered accordingly.

10. (i) By virtue of powers conferred by Section 181 read with Sub-sections (5) to (7) of Section 42 of the EA 2003, the Commission has made the MERC (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations 2006, in supercession of the MERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations 2003, which has come into force from 20th April, 2006. The internal grievance redressal cells ("IGRC") and the CGRFs established by the distribution licensees are expected to redress consumers' grievances in respect of matters specifically provided in the MERC (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006 ("CGRF Regulations"). The powers and jurisdiction of the CGRF are no doubt clearly defined. Within the bounds of its jurisdiction, the CGRF has all the powers expressly and impliedly granted. It, therefore, follows that the CGRF



also has such powers as are truly incidental and ancillary for doing of such acts employing all such means as are reasonably necessary to make the grant effective. The jurisdiction of the CGRF as seen from sub-section (5) of Section 42 of EA 2003 read with the provisions of the CGRF Regulations is enumerated there in.

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

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

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

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

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

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



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

(v) Being a creature of the Statute, it is not open to the Commission to go beyond the provisions of the EA 2003. The Commission has to discharge its functions within the limits imposed therein and to act according to its provisions. In view of the above observations, as against the contentions and prayers made by the Petitioners, the Commission is of the view that an attempt to invoke the provisions of Section 86(1)(a) of the EA, 2003 in this case cannot be sustained in law, since the dispute has nothing to do with tariff fixation or tariff notification or enforcement thereof. The special provision in sub-section (5) of Section 42 of EA, 2003 will govern this with further representation thereof under sub-section (6) of Section 42 to the Electricity Ombudsman and will exclude the applicability of all other provisions in EA, 2003.

11. In view of the above, the Petitioner may pursue its grievance and work out the remedies with the said authority. An order passed or direction issued by the CGRF and / or the Electricity Ombudsman is binding on the parties so named in the order or direction and such order or direction is required to be implemented or complied with by the Distribution Licensee or the person required by the order or direction to do so. In view of the continuing impasse in this case, the Commission in the passing, deems it necessary for BEST to review the basis on which the Petitioners are being charged commercial rate, and to withdraw it if considered appropriate after such review. It is not for the Commission to undertake BEST's day-to-day executive and commercial functions by requiring issues of change in applicable tariff category to be referred to it for decision, nor is it the Commission's intention to encourage a via media that would place an unnecessary procedural or other burden in such cases.



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

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member

Sd/-
(Dr Pramod Deo)
Chairman



Secretary, MERC