

**BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY
Appellate Jurisdiction, New Delhi**

Appeal No. 91 of 2008 & IA Nos. 121 & 230 of 2008

Dated this 19th day of December, 2008

**Coram : Hon'ble Mr. H. L. Bajaj, Technical Member
Hon'ble Ms. Justice Manju Goel, Judicial Member**

IN THE MATTER OF:

1. Dakshin Haryana Bijli Vitran Nigam
Hisar,
Haryana
(through its Managing Director,
Vidyut Sadan, Hisar, Haryana)
 2. Chief General manager (Operation)
Dakshin Haryana Bijli Vitran Nigam,
Shakurbasti, Punjabi Bagh, New Delhi.
 3. General Manager (Operation) Circle
Dakshin Haryana Bijli Vitran Nigam,
Gurgaon, Haryana
 4. Dy. General Manager (Operation)
Sub-Urban Division,
DHBVN, Gurgaon, Haryana
 5. Assistant General Manager (Operation)
OCC S/D, DHBVN,
Gurgaon, Haryana
- ... Appellant(s)

Versus

1. Electricity Ombudsman
(Vidyut Lokpal) Haryana
Bays No. 33 – 36, Sector-4,
Panchkula, Haryana – 134 109
2. M/s. Uddar Gagan Properties Pvt. Ltd.,
306/FF, Suncity Shopping Arcade,
Suncity Township, Hyderpur Viran,
Sector-54, Gurgaon, Haryana ... Respondent(s)

Counsel for the Appellant : Mr. Neeraj Kumar Jain,
Mr. Sanjay Singh and Mr. Umang
Shankar

Counsel for Respondents: Mr. Maninder Singh and
Mr. Sanchar Anand

J U D G M E N T

Ms. Justice Manju Goel, Judicial Member

The appeal is directed against the order of Electricity Ombudsman (Vidyut Lokpal) Haryana dated 05.03.08 in Appeal No. 35 of 2007. The preliminary question that has to be determined in this case is whether this Tribunal acting under section 111 of the Electricity Act 2003 (hereinafter referred to as the Act) has the jurisdiction to hear an appeal against the order of the Electricity Ombudsman. Both counsel have been heard on the issue at length. Our attention has been drawn to an earlier judgment of this

Tribunal in the case of M/s. Polyplex Corporation Limited, GBD, Vs. Uttaranchal Power Corporation Limited and Others in Appeal No. 220 of 2006 dated 30th March, 2007 (Energy Law Reporter 2007 APTEL 115) which deals with the issue. In that judgment this Tribunal (with the Coram of Hon'ble Chairperson and Mr. A.A.Khan, Technical Member) held that section 111 of the Act does not give jurisdiction to this Tribunal to hear an appeal from the order of an Electricity Ombudsman. However, since the line of argument adopted by the learned counsel for the appellant is different from the line of argument adopted in the previous judgment of this Tribunal we proceed to consider the question afresh.

2. Before proceeding further, it will be appropriate to give a brief resume of the function of the Ombudsman. We find reference to Ombudsman in sub section (6) & (7) of section 42 of the Act. Section 42 deals with 'duties of distribution licensees and open access'. Sub-section (5) of section 42 requires every distribution licensee to establish a forum for 'redressal' of grievances of the consumers in accordance with guidelines as may be specified by the State Commission. Sub-section (6) provides that a consumer who is aggrieved by non-redressal of his grievance under sub-section (5) may make a 'representation' to the Ombudsman. Sub-section (7) of section 42 prescribes that an Ombudsman shall 'settle' the grievances of the consumers. The following sub-section (8) says that

the provisions of sub-sections (6), (7) & (8) shall be without prejudice to the right of the consumer which he may have apart from the rights conferred upon him by those sub-sections. Sub-sections (5), (6), (7) & (8) of section 42 are reproduced below:

“42. Duties of distribution licensees and open access.

(1) ...

(2) ...

(3) ...

(4) ...

(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.”*

3. Now we can read section 111 of the Act to see if Ombudsman is an authority from whose order an appeal would lie before this Tribunal. The relevant part of section 111 is as under:

“111. **Appeal to Appellate Tribunal.** – (1) *Any person aggrieved by an order made by an adjudicating officer under this Act (except under section 127) or an order made by the Appropriate Commission under this Act may prefer an appeal to the Appellate Tribunal for Electricity.*

Provided that any person appealing against the order of the adjudicating officer levying any penalty shall, while filing the appeal, deposit the amount of such penalty:

Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, it may dispense with such deposit subject to such

conditions as it may deem fit to impose so as to safeguard the realization of penalty.

- (2) ...
- (3) ...
- (4) ...
- (5) ...
- (6) ...”

4. There are two authorities from whose order the appeal can lie before this Tribunal: (i) adjudicating officer and (ii) appropriate Commission. The impugned order is not an order of the appropriate Commission. The impugned order is an order of an Ombudsman. Is Ombudsman an adjudicating officer? It is interesting to note that adjudicating officer found “in section 111” is written with small letters thereby indicating that ‘adjudicating officer’ is used as a common noun and not as a proper noun. Interestingly, ‘adjudicating officer’ has not been defined in the Act. Therefore, we are required to look at other provisions of this Act to determine who is an adjudicating officer. The word ‘adjudicating officer’ is found in sub-section 2 of section 143 of the Act. Section 142 of the Act deals with punishment for non-compliance of directions of the Commission. The appropriate Commission has been empowered to impose a penalty on any person found to have contravened any of the provisions of the Act or Rules or Regulations made thereunder or any directions issued by the Commission. Section 143 gives power to adjudicate. Under this section, a

Member of the appropriate Commission has to be appointed as an officer to hold an inquiry for the purpose of imposing any penalty. For the purpose of holding this inquiry certain powers to summon and enforce attendance has been given by sub-section (2) of section 143. Interestingly, 'adjudicating officer' found in section 143 is again with small letters as found in section 111. The provision of section 143 is extracted below:

“143. Power to adjudicate.- (1) *For the purpose of adjudging under this Act, the Appropriate Commission shall appoint any of its Members to be an adjudicating officer for holding an inquiry in such manner as may be prescribed by the Appropriate Government, after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.*

(2) *While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or produce any document which in the opinion of the adjudicating officer, may be*

useful for or relevant to the subject matter of the inquiry, and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of section 29 or section 33 or section 43, he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.”

5. In no other part of the Act the word adjudicating officer can be found. The previous judgment of this Tribunal dealt with this issue in the judgment mentioned above, under the heading “question No.(iv)”. The Tribunal’s discussion and finding as found under sub-heading ‘question No.(iv)’ is extracted below:

“Question No. (iv)

“28. In order to answer the fourth question, it is necessary to refer to Section 111 of the Electricity Act, 2003. Under Section 111 of the Act, appeal lies to the Appellate Tribunal from an Order passed by the appropriate Commission or by the Adjudicating Officer. Section 111 of the Electricity Act, 2003 reads as follows:

111. Appeal to Appellate Tribunal. – (1) Any person aggrieved by an Order made by an Adjudicating Officer under this Act (except under Section 127) or an Order made by the Appropriate Commission under this Act may prefer an appeal to the Appellate Tribunal for Electricity:

Provided that any person appealing against the Order of the Adjudicating Officer levying any penalty shall, while filing the appeal, deposit the amount of such penalty:

Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, it may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realization of penalty.

29. It was submitted by the learned Senior Counsel for the Appellant that an Ombudsman or Consumers' Grievances Redressal Forum or bodies like Appellate Committee is an "Adjudicating Officer" and under Section 111 of the Act, an appeal would lie to this tribunal against the Orders passed by any of them. The question to be considered is whether any of these authorities is an

“Adjudicating Officer”. The answer lies in Sections 143 and 144 read with Sections 29, 33 and 43 of the Act. These seem to be the only provisions, which are capable of shedding light on the question.

30. Section 143 of the Act empowers the Appropriate Commission to appoint any of its members as the Adjudicating Officer for holding an enquiry after giving the person concerned reasonable opportunity of being heard before imposing any penalty on him. Section 144 of the Act lays down the factors which are to be taken into account by the Adjudicating Officer while adjudicating the quantum of penalty under Section 29 or Section 33 or Section 43 of the Act. Section 29 of the Act empowers the Regional Load Dispatch Centre to issue such directions and exercise such supervision and control as may be required for ensuring stability of grid operations and for achieving the maximum economy and efficiency in the operation of power system in the region under its control. Sub-Section (2) of Section 29 of the Act requires every licensee, generating company, generating stations, Sub-stations and any other person connected with the operation of the power system to comply with the directions issued by the Regional Load Dispatch Centre

under Sub-section (1) of Section 29 of the Act. Sub-section (3) of Section 29 of the Act provides that all directions of the Regional Load Dispatch Centre to any Transmission Licensee of the State Transmission Lines or any other licensee of the State or Generating Company or Sub-station in the State shall be issued through the State Load Dispatch Centre and the State Load Dispatch Centre shall ensure that such directions are duly complied with by the licensee or generating company or sub-station. Sub-section (6) of Section 29 of the Act makes a provisions for the imposition of penalty upto Rs. 15 lacs on the licensee, generating company or any other person who fails to comply with the directions issued by the Regional Load Dispatch Centre under Sub-section (2) or Sub-section (3) of Section 29 of the Act.

31. Section 33 of the Act requires every licensee, generating company, generating stations, sub-stations and any other person connected with the operation of the power system to comply with the directions issued by the State Load Dispatch Centre. In case of default I complying with the directions by any of the aforesaid entities or persons, a penalty up to Rs. 5 lacs can be imposed.

32. Section 43 of the Act requires a distribution licensee to supply electricity to owner and occupier of any premises on demand by an applicant within specified period of time. In case of default the distribution licensee is liable for penalty, which can extend to Rs. 1,000 for each day of default. Thus, penalty can be imposed for violation of directions of Regional and State Load Dispatch Centres and violation of Section 43 of the Act. The question is who can impose penalty conceived by the Sections 29, 33 ad 43 of the Act. This will be clear from a reading of Section 143. Section 143 of Act reads as follows:

Power to adjudicate – (1) For the purpose of Adjudicating under the Act, the Appropriate Commission shall appoint any of its members to the an Adjudicating Officer for holding an inquiry in such manner as may be prescribed by the Appropriate Commission, after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

(2) While holding an inquiry, the Adjudicating Officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or produce any document which in

the opinion of the Adjudicating officers, may be useful for or relevant to the subject matter of the inquiry, and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of Section 29 or Section 33 or Section 43, he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

33. Thus, according to Section 143 of the Act, it is the Adjudicating Officer, who can impose the penalty and the Adjudicating Officer is the one who is a member of the Appropriate Commission and is appointed by it. It is against the Order of the Adjudicating Officer that a person can file an appeal under Section 111 of the Act. Any person appealing against the Order of the Adjudicating Officer under Section 111 is required to deposit the amount of such penalty unless the Tribunal dispenses with such deposit. The fact that the first proviso to Section 111 of the Act requires the defaulter to deposit penalty levied by an Adjudicating Officer, shows that the Adjudicating Officer is the one conceived by Section 143 of the Act. It is the Adjudicating Officer appointed under Section 143, who is empowered to impose penalty under Sections 29, 33 and 43 of the Act. The Ombudsman appointed under the Act by the appropriate Commission is not the Adjudicating

Officer within the meaning of Section 111 of the Act as the Adjudicating Officer can only be appointed under Section 143 of the Act, while the Ombudsman is appointed under Section 42(6) of the Act and has no jurisdiction to levy any penalty. On the same token, neither the Consumer Grievances Redressal Forum nor the Appellate Committee can be considered as an Adjudicating Officer conceived by Section 111 of the Act read with Section 143 thereof.

34. Having regard to the aforesaid discussion and answers to the aforesaid questions, we hold as under

(1) No Petition/appeal/application lies before any Regulatory Commission or this tribunal in respect of a billing matter.

(2) No Petition/appeal/application lies to any Regulatory Commission or the Appellant Tribunal from an Order passed by an Ombudsman or Consumer Grievances Redressal Forum or any other body like Appellate Committee.

(3) The Petition filed before the UERC was rightly returned by the Commission.”

6. In the above judgment, the provisions examined were sections 29, 33, 43 of the Act as well as those under sections 143 and 144. Mr. Neeraj Kumar Jain, advocate appearing on behalf of the appellant, has taken us through the provisions of sections 29, 33, 39, 43, 126, 127, 143, 158, 161 and 162. It is argued that in section 111, the word 'adjudicating officer' is not restricted to 'adjudicating officer' as described in section 143. The foundation of this argument is the use of the phrase "except under section 127" which suggests that if these words are absent in section 111, the assessing officer in section 126 as well as the appellate authority, under section 127, would have been covered under section 111. In other words, 'adjudicating officer', according to Mr. Neeraj Kumar, covers all officers who are authorized to carry out adjudication work. 'Ombudsman' is, he pleads, also a person who adjudicates. According to Mr. Neeraj Kumar, Ombudsman being an officer entrusted with the job of adjudication is an 'adjudication officer' covered by section 111.

7. Accordingly, we now proceed to examine these provisions. Section 29 empowers Regional Load Dispatch Center to issue certain directions. Sub-section (6) prescribes a penalty not exceeding Rs.15 Lacs for non-compliance with directions issued under sub-section (2) & (3). Sub-section(5) of section 29 requires any dispute

with reference to the quality of electricity, safe, secure and integrated operation of the Regional Grid or in relation to any direction given under sub-section (1) to be referred to the Central Commission for decision.

8. Section 33 similarly deals with the power of the State Load Despatch Center. The penalty for non-compliance with the direction of the State Load Dispatch Centre is prescribed in section (5) of section 33. Sub-section (4) of section 33 requires disputes regarding quality of electricity etc. to be referred to the State Commission for decision.

9. Section 43 requires the distribution licensee to provide for electricity connection within one month of the receipt of the application. Sub-section (3) of section 43 prescribes a penalty for failure to comply with this obligation.

10. Section 126 prescribes assessment of electricity charges payable by a person indulging in un-authorized use of electricity. Such assessment has to be done by an 'assessing officer'. An appeal from the order of the 'assessing officer' has been prescribed in section 127 of the Act. Although 'assessing officer' has been written in small letters, the term has been defined in the Explanation appended to section 126. Both the provisions are very

important for our present analysis and accordingly the relevant parts of this section are reproduced below:

“126. Assessment.-(1) *If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.*

(2) ...

(3) ...

(4) ...

(5) ...

(6) ...”

127. Appeal to appellate authority. – (1) *Any person aggrieved by the final order made under section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied*

by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.

(2) No appeal against an order of assessment under sub-section (1) shall be entertained unless an amount equal to one-third of the assessed amount is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal.

(3) The appellate authority referred to in sub-section (1) shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the assessing officer ad the appellant.

(4) The order of the appellate authority referred to in sub-section (1) passed under sub-section (3) shall be final.

(5) No appeal shall lie to the appellate authority referred to in sub-section (1) against the final order made with the consent of the parties.

(6) When a person defaults in making payment of assessed amount, he, in addition to the assessed amount,

shall be liable to pay, on the expiry of thirty days from the date of order of assessment, an amount of interest at the rate of sixteen per cent per annum compounded every six months.”

11. Section 158 deals with arbitration and prescribes that if any matter is directed to be determined by arbitration, by or under the Act, such arbitrator shall be appointed by an appropriate Commission. However, the section further says that apart from nominations of the arbitrator all other aspects of the arbitration shall be subject to Arbitration and Conciliation Act 1996.

12. Section 161 and 162 deals with inquiry into the incidents of accident. Sub-section (1) of section 161 prescribes a notice to the Electrical Inspector to be given by any person affected by any accident. Sub-section (2) of section 162 deals with inquiry. Sub-section (2) of section 162 can be read in this context. They are as under:

“161. Notice of accidents and inquiries. –(1) ...

(2) The Appropriate Government may, if it thinks fit, require any Electrical Inspector, or any other person appointed by it in this behalf, to inquire and report-

(a) as to the cause of any accident affecting the safety of the public, which may have been occasioned by or in connection with, the generation, transmission, distribution, supply or use of electricity, or

(b) as to the manner in, and extent to, which the provisions of this Act or rules and regulations made thereunder or of any licence, so far as those provisions affect the safety of any person, have been complied with.

(3) ...”

162. Appointment of Chief Electrical Inspector and Electrical Inspector.- (1) The Appropriate Government may, by notification, appoint duly qualified persons to be Chief Electrical Inspector or Electrical Inspectors and every such Inspector so appointed shall exercise the powers and perform the functions of a Chief Electrical Inspector or an Electrical Inspector under this Act and exercise such other powers and perform such other functions as may be prescribed within such areas or in respect of such class of works and electric installations and subject to such restrictions as the Appropriate Government may direct.

(2) In the absence of express provision to the contrary in this Act, or any rule made thereunder, an appeal shall lie from the decision of a Chief Electrical Inspector or an Electrical Inspector to the Appropriate Government or if the Appropriate Government, by general or special order so directs, to an Appropriate Commission.”

13. As mentioned earlier, the learned counsel for the appellant has placed importance on the words ‘except under section 127’ appearing in sub-section (1) of section 111. According to his interpretation, the presence of the words ‘except under section 127’ indicates that an appeal would lie against all adjudicating officers working under this Act except those under section 127 of the Act. He argues that unless orders of all other adjudicating officers had been subjected to the jurisdiction of this Tribunal there was no requirement of using the words ‘except under section 127’. He says further that unless his interpretation is accepted, the phrase ‘except under section 127’ would become redundant and an interpretation that makes these words redundant would not be appropriate. According to him, the officers mentioned in section 126 and 127 as well as the officers mentioned in 161 and 162 are ‘adjudicating officers’. He also says that Ombudsman is also performing the function of ‘adjudication’ and is therefore adjudicating officer. The

Forum of Redressal of Grievance established by distribution licensees, by the same token, are also 'adjudicating officers'.

14. Mr. Maninder Singh, advocate appearing for the respondent, strongly refutes the above submissions of Mr. Neeraj Kumar Jain. According to him, the words 'except under section 127' are added in order to reiterate that the finding of the appellate authority under section 127 is final. We may recall the provision of sub section 4 of section 127 extracted earlier. It is submitted by Mr. Maninder Singh that the legislature by inclusion of these words 'except under section 127' intends to ensure that order passed by appellate authority in appeal from the assessment is not brought before this Tribunal in appeal.

15. It is also pointed out by Mr. Maninder Singh that none of the above provisions except section 143 uses the word adjudication. Ombudsman himself 'settles' the grievances of the consumers. We can refer to sub-section (7) of section 42, which has been extracted above. The Section says that 'Ombudsman shall settle the grievances of the consumers'. Section 126 deals with assessment and talks of 'assessing officer'. Section 126 also defines 'assessing officer'. The appellate authority who hears appeals from the final order made under section 126 also makes the assessment. This situation is further clear from sub-section (2) of section, already

extracted above. The officer under section 161 holds an 'inquiry' on being appointed in this behalf and makes a report. Reference can be made to sub-section (2) and sub-section (3) of section 161, already extracted above. Section 162 prescribes for appointment of Chief Electrical Inspector and Electrical Inspector and then prescribes that an appeal from the decision of Chief Electrical Inspector or Electrical Inspector would lie to the appropriate Government or to the appropriate Commission. Section 162 does not mention the word adjudication. Nor is it provided anywhere in this Act that Electrical Inspector or Chief Electrical Inspector have to perform any function of adjudication. It may be stated that the provisions of sections 29, 33, and 43 prescribes for a penalty which can be imposed for certain violations. Such penalty can be imposed following the procedure laid down in sections 142 and 143. The word 'adjudicating officer' appears in no other provision except section 143 and 144. Section 144 only deals with the factors to be considered by the 'adjudicating officer' while adjudicating the quantum of penalty under section 29, 33, 43 & 142. Therefore 'adjudication' is a function which the Act gives only to an 'adjudicating officer' functioning under section 143 and 144 of the Electricity Act 2003.

16. We find much force in the argument of Mr. Maninder Singh. It is true that the term 'adjudicating officer', written in small letters,

appear to indicate a common noun. It also gives an impression that there would be several adjudicating officers under the Act. However, when closely examined any authority or officer working under any section other than section 143 clearly does not perform the function of adjudication. They may either 'redress', 'settle', 'assess' or 'inquire' into. The Act does not specifically provide the function of adjudication on any of these authorities. The function of the Consumer Redressal Forum is to 'redress' and the function of the Ombudsman is to 'settle' the grievances of the consumers. These functions may have some trappings of adjudication. However, the Act itself does not recognize their function as that of adjudication. Therefore, it would not be correct to read Ombudsman into the words adjudicating officer.

17. There is yet another way of looking at it. If the Act intended to provide for an appeal against an order of Ombudsman before this Tribunal the Act would certainly have used the word Ombudsman. The 'assessing officer' cannot be read into the common description of the adjudicating officer as the 'assessing officer' has been used with an appropriate definition. Similarly an inquiry conducted by Electrical Inspectors are not in the nature of adjudication. However, if anyone is found responsible for an accident he can go in appeal against such a finding. However, fact finding enquiries are not adjudications. It further follows that only adjudication

contemplated by the Act is a function of the adjudication done under section 143 as per the principles laid down in section 144 and as per the procedures laid down in section 142. No other provision deals with 'adjudication' or 'adjudicating officer'. Therefore, the only possible interpretation of section 111 of the Act is that an appeal can lie before this Tribunal from an order under section 142/143 or an order of an appropriate Commission.

18. We may notice that the previous judgment of this Tribunal has treated the words 'adjudicating officer' with capital letters and as proper noun. Although it does not correspond with the way the legislature has used the term in the Act, we very much wish that the legislature had used the word adjudicating officer in section 111 as well as in sections 143 and 144 with capital letters for that would have avoided all confusions about the intention of the legislature. We also notice that only interpretation of the words "except under section 127" is to ensure finality to the assessment done in respect of any unauthorized consumption of electricity.

19. On the basis of the above analysis, we find ourselves in total agreement with the previous finding of this Tribunal rendered in the case of M/s. Polyplex Corporation Limited, GBD, Vs. Uttaranchal Power Corporation Ltd. and Others (supra) and reiterate that no

appeal would lie before this Tribunal from an order of the Electricity Ombudsman.

20. The present appeal is not maintainable and hence dismissed. Both interlocutory applications also stand disposed of.

Pronounced in open court on this **19th day of December, 2008.**

(H. L. Bajaj)
Technical Member

(Justice Manju Goel)
Judicial Member