

BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION,  
SHIMLA

In re:- Appeal under section 12-A of the Himachal Pradesh Electricity  
Regulatory Commission (Electricity Ombudsman) Regulations,  
2004.

M/S Jawalaji Alloy Pvt. Ltd  
Raja Ka Bagh, Jasoor, Teh. Nurpur  
Distt. Kangra, H.P.  
(Through its Managing Director  
Sh. Ram Kishore Mahajan)

...Appellant

V/s

1. H.P. State Electricity Board,  
Vidyut Bhawan, Shimla-4.  
(through its Secretary)
2. Superintending Engineer, HPSEB,  
Dalhousie, Distt. Chamba, H.P.
3. Sr. Executive Engineer,  
Electrical Division,  
HPSEB, Nurpur, Distt. Kangra, H.P.

...Respondents

Appeal No. 86/08

(Decided on 3.5.2008)

**CORAM**  
**YOGESH KHANNA, CHAIRMAN**

Counsel:-

For petitioner	Sh. Arvind Sharma, Advocate
For respondents	Sh. Chandan Goel, Advocate.

**Order**

M/S Jawalaji Alloy Pvt. Ltd. Raja Ka Bagh, Jasoor, Tehsil Nurpur,  
Distt. Kangra (through its Managing Director and authorized representative  
Sh. Ram Kishore Mahajan and the Learned Counsel Arvind Sharma) filed an  
appeal/representation before the Electricity Ombudsman H.P. under regulation  
13 of the HPERC (Guidelines for Establishment of Forum for Redressal of

Grievances of Consumers) Regulations, 2003, read with Section 42(6) of the Electricity Act, 2003, against the order dated 27.6.2007, passed by the Forum for Redressal of Grievances of Consumers, Himachal Pradesh State Electricity Board. The Learned Electricity Ombudsman disposed of the said appeal/representation vide his order dated 5<sup>th</sup> Dec., 2007, passed in case Nos. 6 and 10 of 2007, and now the appellant aggrieved by the said order has filed an appeal before this Commission under regulation 12-A of the HPERC (Electricity Ombudsman) Regulations, 2004 which reads as under:-

“12-A Appeal- (1) Any person aggrieved by an award made under regulation 12 by the Electricity Ombudsman may prefer an appeal in Form 1-A against such award to the Commission, within a period of forty-five days from the date of the award:

Provided that the Commission may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing the appeal within that period.

- (2) The Memorandum of Appeal shall be signed and verified in the manner specified in Form-1A.
- (3) The appeal shall be accompanied by such fee as may be specified in the Schedule to the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 and such fee shall be payable to the Commission in the same manner as the fees are payable in relation to the petitions or applications made to the Commission under the said Conduct of Business Regulations.
- (4) On receipt of an appeal under sub-regulation (1), the Commission shall, after giving the appellant an opportunity of being heard, dispose of the appeal as expeditiously as possible, and the decision of the Commission shall be final.
- (5) Unless otherwise permitted by the Commission, the matters, in relation to which no provision has been made in these regulations, shall be governed by the provisions laid down in the Conduct of Business Regulations of the Commission for submission and processing of the petitions and applications in the Commission.”

2. It is the settled law that no Statutory Authority or Tribunal can assume jurisdiction in respect of the subject matter which the statute does not confer, if the Court or Tribunal exercises the jurisdiction then the order is vitiated. The Hon'ble Appellate Tribunal for Electricity, had the opportunity to consider the scope of the provisions of section 42(5) to (8) of the Electricity Act, 2003 in various cases i.e. **Reliance Energy Limited V/s Maharashtra Electricity Regulatory Commission and Maharashtra State Electricity Distribution Company V/s Prayas, Kerve Road Pune (Appeal Nos. 30 of 2005, 164 of 2005 and 25 of 2006) decided on 29.3.2006 (2007 APTEL 543); Dakshin Haryana Bijli Vitran Nigam Ltd V/s Princeton Estate Condominium Association, DLF Universal Ltd (Appeal Nos 105 to 112 of 2005) decided on 29.3.2006; (2007 APTEL 356) and Dakshin Haryana Bijli Vitran Nigam V/s DLF Services Ltd (Appeal No. 104 of 2005) decided on 29.3.2006.) (2007 APTEL 764); and Reliance Energy Ltd. V/s K.H. Nadkarni & Others (Appeal No. 11 of 2005) decided on 26.5.2006 (2007 APTEL 298) and CSEB V. Raghuvir Singh Ferro Alloys Ltd. & Others (Appeal Nos. 125, 126 & 127 of 2006) decided on 28.11.2006 (2007 APTEL 842); Himachal Pradesh State Electricity Board V/s M/S Emm Tex Synthetics Ltd. Jagat Khana Nalagarh & other (Appeal No. 117 of 2007, decided on 5<sup>th</sup> November, 2007;** In the aforesaid decisions the Hon'ble Appellate Tribunal, has concluded that the relation between a consumer and a distribution licensee is governed by Part VI – Distribution of Electricity Sub-section (5) to (8) of section 42- which provides with respect to Forum for Redressal of Grievances and the Appellate forum i.e. Ombudsman 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 State Electricity Regulatory Commission, being a regulatory, the highest State level, authority under 2003 Act as well as rule making authority has to exercise such powers and perform such functions as are 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. The Regulatory Commission being a quassi-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. It follows that the State Regulatory Commission has no jurisdiction or authority to decide the dispute raised by the respondents – who are consumers or the Consumer Association. The consumers have a definite forum to remedy their disputes under section 42(5) and further representation 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.

3. The Hon'ble Supreme Court in its verdict given in **Maharashtra State Electricity Distribution Co. Ltd V/s Lloyds Steel Industries Ltd JT 2007 (10) SC 375** approving the decision of the Delhi High Court in **Suresh Jindal Vs. BSES, Rajdhani Power Ltd & Others and Dheeraj Singh Vs BSES Yamuna Power Ltd 132 (2006 DLT 339 DB)** has also concluded that complete machinery has been provided in section 42(5) and 42(6) of the Electricity Act, 2003, for redressal of grievances of individual consumers. Hence wherever a Forum/ Ombudsman have been created/appointed the consumer can only resort to these bodies for redressal of their grievances. The Hon'ble Supreme Court in its another decision dated 14.8.2007 in **Civil Appeal No. 2846 of 2006 Maharashtra Electricity Regulatory Commission Vs Reliance Energy Ltd & Others JT 2007 (10) SC 365**, has not interfered with the decision of the Appellate Tribunal in First Appeal Nos. 30 and 164 of 2005 and 25 of 2006 (2007 APTEL 543) and has ruled that the adjudicatory function of the Commission is limited to the matters prescribed in section 86(1)(f) i.e. adjudication of disputes between the licensees and the generating companies and as such the Commission cannot adjudicate disputes relating to grievances of individual grievances. However the Commission has jurisdiction only to issue general directions to prevent harassment to the public at large by its licensees/distributors.

4. Keeping in view the above discussion, it can be safely be concluded that the specific provisions of section 42(5) and 42(6) of the Electricity Act, 2003 provide for Forum for redressal of grievances of the consumers and further representation to the Electricity Ombudsman. The licensees/distribution companies are to decide the individual cases received by them after giving a fair opportunity to the consumers. The consumers who still feel

not satisfied with the order passed by the licensee/distribution companies can approach the appropriate Forum constituted under section 42(5) of the Act and, if still not satisfied, with the order passed by the appropriate forum to approach the Ombudsman under section 42(6) of the Act. These provisions in the Act do not contemplate any further appeal to the Commission. Thus it follows that regulation 12-A of the HPERC (Electricity Ombudsman) Regulations, 2004 was excessive exercise of power, in respect of subject matter which the statute does not confer. Further regulation 12-A has also now been omitted.

5. With this background, and the judgments cited, the Commission lacks jurisdiction to entertain appeals against the orders of the Electricity Ombudsman and it does not find any ground to admit this appeal. The Commission, therefore, dismisses this appeal as not admitted, with the liberty to the appellant to approach any other forum or Court, as may be available to him.

The order is passed and signed on 3<sup>rd</sup> May, 2008.

(Yogesh Khanna)  
Chairman

