

Before Kanwaljit Singh Ahluwalia, J.

**DAKSHIN HARYANA BIJLI VITRAN NIGAM,
LTD. HISAR,—Petitioner**

versus

**ELECTRICITY OMBUDSMAN, HARYANA, PANCHKULA
AND OTHERS,—Respondents**

C.W.P. No. 19668 of 2008

25th November, 2009

Constitution of India, 1950—Art. 226—Haryana Electricity Regulatory Commission (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers) and (Electricity Ombudsman) Regulation, 2004—Regs. 2(h), (j) & (k) and 22—Nigam seeking quashing of order of Electricity Ombudsman holding consumers of licensee Nigam entitled to get 6% interest on consumption security and meter security deposits made by them—Whether Consumer Grievance Redressal Forum and Electricity Ombudsman have jurisdiction or any authority of law to deal with subject matter of Section 47(4)—Held, no—Electricity Ombudsman was well within its right to pass order as it was for giving effect to order—Determination of rate by appropriate Commission—Ombudsman only giving effect to same—After determining rate of interest consumers held entitled to interest from April, 2003 onwards.

Held. that the Electricity Ombudsman was only acting in consonance with the general orders or directions given by the appropriate Commission, in the present case Haryana Electricity Regulatory Commission. HERC in its wisdom had deleted Regulation 23 of 2004 Regulation. This part was not also challenged by the petitioner, therefore, right of appeal which vested was forsaken. Therefore, the answer to question No. 1 as to whether the Consumer Grievance Redressal Forum and the Electricity Ombudsman have jurisdiction or any authority of law, to deal with the subject matter of Section 47(4) of the Act formulated by the petitioner is in negative and it is held that in the facts and circumstances of the present case Electricity Ombudsman was well within its right to pass order as it was for giving effect to order.

(Para 34)

Further held, that answer to question No. 2 as to whether the CGRF and/or the Electricity Ombudsman deal only with the matters specified under Regulation 2(h) read with Regulations 2(m) and 2(n) of the Regulations is that Electricity Ombudsman could deal with the matter as non-payment of interest at the rate prescribed by the Commission amounted to unfair practice. Even otherwise, respondent No. 3 being consumer was entitled to file complaint under Regulation 2(h) of 2004 Regulations. Regulation 2(k) define Consumer Dispute. The definition of Consumer Dispute is very broad, pervasive and non-payment of interest or at a lesser rate than prescribed by HERC can be safely termed as Consumer Dispute. Therefore, Electricity Ombudsman was well within his powers to pass impugned order.

(Para 36)

Further held, that once rate was determined by the appropriate Commission, HERC, Ombudsman was only giving effect to the same. Therefore, after determining the rate of interest, he had held consumers entitled to the interest from April, 2003 onwards. The 2003 Act was enforced in the State of Haryana on 10th December, 2003, therefore, under Section 47(4) of 2003 Act, consumers were entitled to payment of interest. Therefore, it is clarified that consumers in the present case will be entitled to interest from the date when the 2003 Act was adopted by the State of Haryana i.e. from 10th December, 2003 and not from April, 2003. The answer to question No. 3 as to whether the action of the Electricity Ombudsman while passing the impugned order dated 20th December, 2007 is without jurisdiction and as such non-est in the eyes of law is that Ombudsman was giving effect to order (Annexure P8) as the consumers were demanding interest right from the day they become entitled to the same and had pursued their claims by filing writ petition and subsequently approaching HERC. But the statutory right vested in them from 10th December, 2003. Therefore, from that date, consumers will be entitled to interest.

(Para 37)

Vikas Suri, Advocate *for the petitioner*.

None for respondents No. 1 and 2

G. K. Chawla, Advocate *for respondent No. 3*.

KANWALJIT SINGH AHLUWALIA, J. (ORAL)

(1) Counsel for the parties are in agreement that Civil Writ Petitions No. 19668, 19670, 19671, 19672 and 19673 titled as “**Dakshin Haryana Bijli Vitran Nigam Limited, Hisar versus Electricity Ombudsman, Haryana, Panchkula and Others**” can be disposed of by common judgment as on facts, law and the controversy raised, all these writ petitions are similar in nature.

(2) For facility of reference, facts are gathered from Civil Writ Petition No. 19668 of 2008 titled as “Dakshin Haryana Bijli Vitran Nigam Limited, Hisar versus Electricity Ombudsman, Haryana, Panchkula and Others”.

(3) Dakshin Haryana Bijli Vitran Nigam Limited (hereinafter referred to as “Nigam”) has approached this Court for seeking quashing of impugned order (Annexure P9) dated 20th December, 2007 whereby the Electricity Ombudsman came to conclusion that the consumers of licensee Nigam are entitled to get 6% interest on consumption security and meter security deposits made by them.

(4) In the writ petition, the petitioner has formulated the following questions :—

- (1) Whether the Consumer Grievance Redressal Forum (hereinafter referred to as “CGRF”) and the Electricity Ombudsman have jurisdiction or any authority of law, to deal with the subject matter of Section 47(4) of the Act ?
- (2) Whether the CGRF and/or the Electricity Ombudsman deal only with the matters specified under Regulation 2(h) read with Regulations 2(m) and 2(n) of the Regulations ?
- (3) Whether the action of the Electricity Ombudsman while passing the impugned order dated 20th December, 2007 (Annexure P9) is without jurisdiction and as such non-est in the eyes of law ?
- (4) Whether the 2005 Regulations specifying the rate of interest payable and the directions of HERC in that regard sufficient compliance of the mandate of Section 47 of the Act ?

(5) During course of arguments of this writ petition following questions have also arisen for consideration of this Court, same after formulation have been given serial number in continuation :—

(5) Whether the Ombudsman is bound by the directions given by the Haryana State Regulatory Commission and in the interpretation of the same can determine bank rate or not ?

(6) What is the Reserve Bank of India rate or it is different from prevailing Saving Bank Account rate ?

(6) Respondent No. 3 to the writ petition admittedly is a consumer of the Nigam, Petitioner is an electricity distributor.

(7) Section 82 of the Electricity Act, 2003 (hereinafter referred to as “2003 Act”) enumerates constitution of State Commission, which can be called Electricity Regulatory Commission and in present case Haryana Electricity Regulatory Commission (hereinafter referred to as “HERC”). In introduction to “The Electricity Act, 2003, while specifying reasons and objects, it was stated as under :—

“1.3 Over a period of time, however, the performance of SEBs has deteriorated substantially on account of various factors. For instance, though power to fix tariffs vests with the State Electricity Boards, they have generally been unable to take decisions on tariffs in a professional and independent manner and tariff determination in practice has been done by the State Governments. Cross-subsidies have reached unsustainable levels. To address this issue and to provide for distancing of Government from determination of tariffs, the Electricity Regulatory Commissions Act, was enacted in 1998. It created the Central Electricity Regulatory Commission and has an enabling provision through which the State Governments can create a State Electricity Regulatory Commission. 16 States have so far notified/created State Electricity Regulatory Commissions either under the Central Act or under their own Reform Acts”.

(8) The HERC, thus, not only has to determine tariff but also has to protect interest of consumer.

(9) Section 85 of 2003 Act prescribe constitution of Selection Committee for selection of Members of the State Commission.

(10) In this petition, for facility of decision, Court is concerned with Section 86 which provide functions of the State Commission. For facility of reference, Section 86 of 2003 Act can be reproduced below :—

Section 86. (Functions of State Commission) :—

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

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

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

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;

(c) facilitate intra-State transmission and wheeling of electricity;

(d) issue licences to persons seeking to act as transmission licensees, distribution licensees and electricity traders with respect of their operations within the State;

(e) promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;

- (f) adjudicate upon the disputes between the licensees, and generating companies and to refer and dispute for arbitration;
 - (g) levy fee for the purposes of this Act;
 - (h) specify State Grid Code consistent with the Grid Code specified under clause (h) of sub-section (1) of section 79;
 - (i) specify or enforce standards with respect to quality, continuity and reliability of service by licensees;
 - (j) fix the trading margin in the intra-State trading of electricity, if considered necessary; and
 - (k) discharge such other functions as may be assigned to it under this Act.
- (2) The State Commission shall advise the State Government on all or any of the following matters, namely :—
- (i) promotion of competition, efficiency and economy in activities of the electricity industry;
 - (ii) promotion of investment in electricity industry;
 - (iii) reorganization and restructuring of electricity industry in the State;
 - (iv) matters concerning generation, transmission, distribution and trading of electricity or any other matter referred to the State Commission by that Government.
- (3) The State Commission shall ensure transparency while exercising its powers and discharging its functions.
- (4) In discharge of its functions, the State Commission shall be guided by the National Electricity Policy, National Electricity Plan and tariff policy published under section 3.
- (11) Under Section 86(1)(a) of 2003 Act, powers are vested in the State Commission to determine the tariff for generation, supply, transmission and wheeling of electricity, therefore, a distribution company can only charge those tariffs which are determined by the State Regulatory Commission. This

call upon to have a look at Section 42 of 2003 Act. Section 42 of 2003 Act defines duties of distribution licensees and open access. For purpose of this judgment, reference is only required to be made to sub-sections 5, 6, 7 and 8 of Section 42 of 2003 Act. The same read as under :--

“Section 42. (Duties of distribution licensee and open access) :—

(1) to (4) XXX XXX XXX XXX XX

(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”

(12) The HREC to achieve the object of redressal of grievance of consumers and their complaints, to make functioning of licensee transparent, introduced independent umpire called Ombudsman and notified regulations known as Haryana Electricity Regulatory Commission (Guidelines) for Establishment of Forum for Redressal of Grievances of the Consumers) and (Electricity Ombudsman) Regulation, 2004 (hereinafter referred to as

“2004 Regulation”). Regulation 2(h) of 2004 Regulation notices issues which can be made subject matter of a complaint. Regulation 2(h) of 2004 Regulation read as under :—

“2. Definition

(a) to (g) XXX XXX XXX XXX XX

(h) “Complaint” means any grievance in writing made by a complainant that :—

- (i) there exists defect or deficiency in electricity service provided by the Distribution licensee;
- (ii) an unfair or restrictive trade practice has been adopted by the distribution licensee in providing electricity services;
- (iii) the distribution licensee has charged a rate in excess of that fixed by the Commission for supply of electricity and related services;
- (iv) the distribution licensee has recovered expenses, in excess of charges approved by the Commission, in providing any electric line or electric plant or electric meter;
- (v) the electricity services provided by the distribution licensee, is unsafe or hazardous to public life and is in contravention to the provisions of any law in force”.

(13) Regulations 2(j) and (k) of 2004 Regulation defines consumer and consumer disputes. The same are reproduced as under :—

“2. Definition

(a) to (i) XXX XXX XXX XXX XX

(j) “consumer” means any person who is supplied with electricity for his own use by a distribution licensee or the Government or by any other person engaged in the business of supplying electricity to the public under the Applicable Legal Framework or any other law for the time being in force and includes any person whose premises are for the time being connected for

the purpose of receiving electricity with the works of a distribution licensee, the Government or such other person, as the case may be;

(k) “**Consumer dispute**” means a dispute where the person against whom complaint has been made, denies or disputes the allegation contained in the complaint;

(14) Regulations 2(m) and (n) of 2004 Regulation defines defect and deficiency.

(15) In the present case, whether the issue raised in the present writ petition is the consumer dispute, defect or deficiency is an ancillary issue on which this Court has to ponder.

(16) Regulations 8, 9 and 10 of 2004 Regulation give procedure for decision of the complaint by CGRF. The Regulations also provide that decision taken on the complaint is appealable under Regulation 12 of 2004 Regulation to the Electricity Ombudsman. The right of appeal only vests in the consumer alone.

(17) Regulation 19 of 2004 Regulation describe mode of rejection of complaint by the Electricity Ombudsman. This Court is not concerned with the same.

(18) Regulation 21 of 2004 Regulation mention settlement of complaint by agreement. In the present case, since there was no agreement, this part is not required to be reproduced.

(19) Regulation 22 of 2004 Regulation define hearing of the matter and award. The same read as under :—

“22. Hearing of the matter and award

(1) Where the complaint is not settled by agreement under regulation 21, the Electricity Ombudsman may determine the manner, the place, the date and the time of the hearing of the matter as he considers appropriate.

(2) The Electricity Ombudsman may hear the pleadings of the parties and direct the parties to submit written statement of submission in the matter.

- (3) The Electricity Ombudsman shall pass a speaking order giving reasons for his findings and award.
- (4) The Electricity Ombudsman shall pass an award within a period of three months from the date of receipt of the complaint and send a copy of the award to the complainant, distribution licensee and HERC within 7 days. The distribution licensee/ Complainant shall inform the Electricity Ombudsman of its compliance within 7 days of the implementation of the award”.

(20) Regulation 23 of 2004 Regulation provided an appeal to the Commission. This part has been deleted,—*vide* a notification of amendment issued by HERC on 16th October, 2006 which has been annexed as Annexure P2.

(21) After having broadly noticed the provisions, for further reference to other provisions, which are required for decision of this case, it is necessary to notice the facts, for determining the controversy raised in the writ petitions.

(22) Respondent No. 3, consumer, had deposited security with distribution licensee in terms of Section 47(1) of 2003 Act. Section 47(1) of 2003 Act says :—

“Section 47. (Power to require security) :—

- (1) Subject to the provisions of this section, a distribution licensee may require any person, who requires a supply of electricity in pursuance of section 43, to give him reasonable security, as may be determined by regulations for the payment to him of all monies which may become due to him :—
 - (a) in respect of the electricity supplied to such persons; or
 - (b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to person, in respect of the provision of such line or plant or meter, and if that person fails to give such security, the distribution licensee may, if he thinks fit, refuse to give the supply of electricity or to provide the line or plant or meter for the period during which the failure continues”.

(23) The consumer is entitled to interest upon the security provided at the rate equivalent to the bank rate or more to be determined by the HERC. Section 47(4) of 2003 Act read as under :—

“Section 47. (Power to require security) :—

- (1) XXX XXX XXX XXX
- (2) XXX XXX XXX XXX
- (3) XXX XXX XXX XXX
- (4) The distribution licensee shall pay interest equivalent to the bank rate or more, as may be specified by the concerned State Commission, on the security referred to in sub-section (1) and refund such security on the request of the person who gave such security”.

(24) HERC under Sub Section 2(t) of Section 181 read with Sections 43, 46 and 47 of 2003 Act is empowered to make regulations. In exercise of these powers HERC formed regulations called Haryana Electricity Regulatory Commission (Duty to Supply Electricity on Request, Power to Recover Expenditure Incurred in Providing Supply and Power to Require Security) Regulations, 2005 (hereinafter referred to as “2005 Regulations”). Regulation 5.7 of “2005 Regulations” reads as under :—

“5.7 Interest on Consumption Security and Meter Security

The Licensee shall pay interest on Consumption Security and meter security deposited by the consumer at the Saving Bank rate notified by State Bank of India or such higher rate as the Commission may fix, from time to time. The interest accruing to the credit of the consumer shall be adjusted in energy bills of April or May of every year or in the final bill if permanent disconnection is sought by the consumer during the year”.

(25) Manufacturer Association, Faridabad, approached this Court with a prayer that as required under Section 47(4) of the 2003 Act, licensee should pay interest on the security and preferred Civil Writ Petition No. 2847 of 2006 which was listed before a Division Bench of this Court

and the said writ petition was disposed of on 24th February, 2006 and the following order was passed :—

“It is clear from Annexure P6 that the matter is still under consideration of the respondents. We accordingly direct that the final decision shall be taken by the respondents in the matter within a period of six months from the date that a certified copy of this order is supplied to them.

Disposed of accordingly”.

(26) In pursuance to directions issued by this Court, HERC on 27th July, 2006, passed order (Annexure P8). It will be essential to reproduce below the order in its entirety :—

“Subject : Interest on Consumption Security and Meter Security deposited by the consumers.

The Manufacturer’s Association Faridabad,—*vide* letter No. MAF/ 23 dated 17th May, 2006 addressed to the Commission, MD/ DHBVNL and others has brought to the notice of the Commission, the matter regarding rate of interest to be paid by the Distribution Licensee on the consumer security. The Manufacturer’s Association, Faridabad has also referred to a CWP No. 2847 of 2006 filed in this regard by the Association, though, no communication, in respect of the said CWP has earlier been received by the Commission.

The Commission has considered the subject cited matter in view of the provisions of Section 47(4) of the Electricity Act, 2003 and Section 5.7 of the Commission’s Regulation No. HERC/12/2005. I have been directed to convey that interest on all consumer securities be paid with immediate effect, at the Bank Rate determined from time to time by the Reserve Bank of India. As already provided in the above Regulation, the interest accruing to the credit of the consumers shall be adjusted in energy bills of April or May of every year or in the final bill if permanent disconnection is sought by the consumer during the year”.

(27) Respondent No. 3 approached CGRF and, thereafter, filed an appeal before the Electricity Ombudsman. The concluding portion of the order against which the Nigam is aggrieved and has approached this Court by filing the present writ petition with a prayer that this part of the order be quashed, read as under :—

“Therefore, keeping in view the facts and circumstances of the case I directed the licensee to pay the interest on security deposit at bank rate with effect from 10th December, 2003 onwards.

The Bank rate is defined as under :—

“The rate of which the Reserve Bank of India lends funds to the National Banks as notified by R.B.I. from time to time”.

The bank rate with effect from April, 2003 till 30th August, 2007 is 6%. Therefore, I direct the licensee DHBVNL, to pay the interest on consumption security and meter security @ bank rate of 6% from 10th December, 2003 to 31st March, 2007. The interest for the financial year 2005-06 was paid @ saving bank rate on 3.5% should also be paid @ 6%. From April, 2006 to 26th July, 2006 also be paid @ 6% per year. The amount of interest from 10th December, 2003 to 31st March, 2007 should be credited to the current bills of the applicant from the month of January, 2008 onwards if not already paid and the interest for the current financial year i.e. 2007-08 may be paid in the month of April, 2008 @ 6% per year.

Both the parties to bear their own costs.

The file may be consigned to record”.

(28) Mr. Vikas Suri, Advocate, appearing for the petitioner, states that not only this order be quashed the same be also set aside as the Ombudsman had no authority and jurisdiction to pronounce the above order. The petitioner-Nigam had filed an appeal against this order to HERC. The same was returned *vide* Annexure P10 and it was stated by the Commission that it has no jurisdiction to entertain the appeal against the order of Electricity Ombudsman.

(29) The above said facts have been gathered from the pleadings made in the writ petition.

(30) In the response filed to the writ petition by respondent No. 3, nothing substantial has emerged except that the pleadings made in the writ petition have been controverted and a plea has been raised that regarding jurisdiction of the Electricity Ombudsman, no argument was raised before Ombudsman and petitioner had accepted the jurisdiction of the Ombudsman.

(31) It is now time to answer the questions formulated in the earlier part of the judgment.

Re. : Question No. 1

(32) Mr. Suri has very forcefully contended that the Consumer Grievances Redressal Forum (hereinafter referred to as "the CGRF") and the Electricity Ombudsman have no jurisdiction to affix the rate of interest. This power only vests in the HERC and the same having been exercised by the HERC *vide* Annexure P8. The Electricity Ombudsman could not say that respondent No. 3 ought to be paid interest at rate of 6% and retrospectively.

(33) Section 47(4) of 2003 Act binds the distribution licensee to pay interest equivalent to bank rate or more as may be specified by the HERC. In the present case, on a dispute referred by the Division Bench of this Court, in the writ petition, preferred by Manufacturer Association, Faridabad, HERC discharged its duty and determined what interest is to be paid on the security deposit *vide* order (Annexure P8). HERC carried exercise to determine interest by taking into consideration Section 47(4) of 2003 Act, Regulation 5.7 of 2005 Regulations and concluded that consumer is entitled to interest at the bank rate determined from time to time by the Reserve Bank of India. In other words, the Commission being conscious of the fact that Regulation 5.7 of 2005 Regulations prescribe that a consumer is entitled to interest which is paid to a Saving Bank Account Holder of State Bank of India determined bank rate and said that consumer is to be paid according to Bank Rate prescribed by Reserve Bank of India. In other words, bank rates payable by Reserve Bank of India may have been higher or lower than the rate of interest paid to a Saving Bank Account holder of a State Bank of India. Therefore, what rate of interest was to be paid was determined by HERC which was in their domain under Section 47(4) of 2003 Act. HERC took a conscious decision regarding rate of interest. Having determined that the consumer is to be paid at a bank rate payable by Reserve Bank of India,

CGRP and Electricity Ombudsman had only to decipher what was the bank rate payable by the Reserve Bank of India. Therefore, that being within the powers of the Electricity Ombudsman and he had acted within his jurisdiction. He had only given effect to order (Annexure P8). Neither there was any attempt to reduce or increase the rate of interest which the Commission had determined, *vide* Annexure P8 exercising powers under Section 47(4) of 2003 Act. It will be pertinent to mention here that the order (Annexure P8) had attained finality and was not assailed by the petitioner-Nigam. There was a right of appeal available to Nigam to approach against the order of the Commission to the Appellate Tribunal. They had foregone this right. Therefore, the Electricity Ombudsman had to act in accordance with the mandate laid down by the HERC. It will be necessary to refer to the Electricity Rules, 2005 (hereinafter referred to as "2005 Rules"). Sub Rule (3) to Rule 7 of 2005 Rules read as under :

"7(3) The Ombudsman shall consider the representations of the consumers consistent with the provisions of the Act, the Rules and Regulations made hereunder or general orders or directions given by the Appropriate Government or the Appropriate Commission in this regard before settling their grievances".

(34) Therefore, the Electricity Ombudsman was only acting in consonance with the general orders or directions given by the appropriate Commission, in the present case HERC. HERC in its wisdom had deleted Regulation 23 of 2004 Regulation (Annexure P1). This part was not also challenged by the petitioner, therefore, right of appeal which vested was forsaken. Therefore, the answer to question No. 1 formulated by the petitioner is in negative and it is held that in the facts and circumstances of the present case Electricity Ombudsman was well within its right to pass order (Annexure P9) as it was for giving effect to order (Annexure P8).

Re. : Question No. 2

(35) Dilating question No. 2, Mr. Suri has stated that within Regulation 2(h) read with Regulations 2(m) and (n) of 2004 Regulation, it was beyond the powers of the Electricity Ombudsman to deal with the appeal filed by respondent No. 3.

(36) Counsel for the petitioner has submitted that non-implementation of the order (Annexure P8) neither amounted to defect nor deficiency in service, therefore, the Electricity Ombudsman could not be

approached for execution of order (Annexure P8). Counsel has read Regulations 2(m) and (n) of 2004 Regulation which define defect and deficiency. They have been already reproduced in the earlier portion of the judgment. While lending all force to this argument, petitioner had become oblivious of Regulation 2(h)(ii) of 2004 Regulation. A consumer can always urge in the complaint that it was an unfair and restricted trade practice to hold the deposit and not to pay the interest as per the requirement of Statute. Non payment of interest is an unfair practice especially when Section 47(4) of 2003 Act cast duty upon a licensee to pay interest. Therefore, answer to question No. 2 is that Electricity Ombudsman could deal with the matter as non-payment of interest at the rate prescribed by the Commission amounted to unfair practice. Even otherwise, respondent No. 3 being consumer was entitled to file complaint under Regulation 2(h) of 2004 Regulation. Regulation 2(k) define Consumer Dispute. The definition of Consumer Dispute is very broad, pervasive and non-payment of interest or at a lesser rate than prescribed by HERC can be safely termed as Consumer Dispute. Therefore, Electricity Ombudsman was well within his powers to pass impugned order (Annexure P9).

Re. : Question No. 3

(37) Mr. Suri has contended that the petitioner-Nigam, from 2003 onwards was paying interest on the security deposit as per the rate prescribed under 2005 Regulations. Mr. Suri further states that as per 2005 Regulations, consumer was entitled to pay interest at the rate at which a Saving Bank Account holder of the State Bank of India is entitled to. It is submitted that from 2005 onwards interest at the rate of 3.5% was paid to the consumer. The interest was paid from the date when notification dated 26th July, 2005 (Annexure P5) was issued and 2005 Regulations were enacted. Mr. Suri has further submitted that even if it is assumed that in compliance with order (Annexure P8) passed by the HERC, petitioner was under obligation to pay interest according to Reserve Bank of India bank rate that is to be paid from the date of order i.e. 27th July, 2006. It is submitted that Ombudsman had committed a grave error by ordering that respondent No. 3 is entitled to interest at the rate of 6% with effect from 10th December, 2003. It is further submitted that the direction of Commission, issued,—*vide* order (Annexure P8), could be implemented prospectively and not retrospectively. Counsel has prayed that this part of the order whereby consumer was awarded interest in the retrospective effect being without jurisdiction should be set aside. This contention raised

by counsel for the petitioner cannot be accepted. This Court cannot become oblivious of the fact that consumers were agitating for non-payment of interest. Manufacturer Association, Faridabad, had approached this Court by filing Civil Writ Petition No. 2847 of 2006. This Court had disposed of the writ petition by directing the respondents to take a final decision. Accordingly, order (Annexure P8) was passed and consumers were held entitled to interest at the Reserve Bank of India bank rate. Once rate was determined by the appropriate Commission HERC, Ombudsman was only giving effect to the same. Therefore, after determining the rate of interest, he had held consumers entitled to the interest from April, 2003 onwards. The 2003 Act was enforced in the State of Haryana on 10th December, 2003, therefore, under Section 47(4) of 2003 Act, consumers were entitled to payment of interest. Therefore, it is clarified that consumers in the present case will be entitled to interest from the date when the 2003 Act was adopted by the State of Haryana i.e. from 10th December, 2003 and not from April, 2003. The answer to question No. 3 is that Ombudsman was giving effect to order (Annexure P8) as the consumers were demanding interest right from the day they become entitled to the same and had pursued their claims by filing writ petition and subsequently approaching HERC. But the statutory right vested in them from 10th December, 2003. Therefore, from that date, consumers will be entitled to interest.

Re. : Question No. 4

(38) Counsel for the parties are in agreement that while discussing questions No. 1 to 3, question No. 4 already stand answered and no separate discussion is required.

Re. : Question No. 5

(39) A reference has already been made to Rule 7(3) of 2005 Rules to say that Ombudsman is duty bound to consider the directions given by the appropriate Commission. Therefore, order (Annexure P8) passed by HERC amounted to direction which the Ombudsman could not ignore and had to give effect to the same. Therefore, answer to question No. 5 is in affirmative.

Re. : Question No. 6

(40) The appropriate Commission HERC, after considering Regulation 5.7 of 2005 Regulations, gave a direction that consumers are entitled to payment of interest on the security deposit at the bank rate

determined from time to time by the Reserve Bank of India. In order (Annexure P9) Ombudsman has noticed following definition of bank rate :

The Bank rate is defined as under :

“The rate at which Reserve Bank of India lends funds to the National Banks as notified by R.B.I. from time to time”.

(41) Mr. Suri, during the course of arguments, has very fairly stated that definition of bank rate given by Ombudsman is not disputed. It is also not disputed that according to the bank rate, the rate at the relevant time was 6%. This submission that the bank rate was 6% at the relevant time and the definition of bank rate, has been made by Mr. Suri on instructions from Ramesh Kamra, Accounts Officer, Chief General Manager (Finance), Dakshin Haryana Bijli Vitran Nigam Limited, Hisar.

(42) Mr. Chawla though stated that the consumers were entitled to higher rate of interest than 6% as sale circular issued in 1992 prescribed 10% rate of interest but he has failed to dislodge the definition of Reserve Bank of India bankrate. He also failed to place on record any document to show that at the prevailing time, Reserve Bank of India bank rate was more than 6%. Even otherwise, in a writ petition preferred by the distribution licensee-respondent No. 3 cannot urge that higher rate of interest be awarded as order (Annexure P9) was accepted and no challenge was made to the same. Mr. Chawla has stated that awarding of 6% interest was accepted by consumer, that is why this order was not challenged.

(43) After having answered the question that consumer is entitled to award of interest from December, 2003 and not from April, 2003, nothing more is required to be said.

(44) This Court will be failing its duty in case hard work put in by Mr. Vikas Suri, Advocate, is not acknowledged and recognized. Indeed Mr. Suri with all eloquence has very meticulously assisted this Court to arrive at conclusions, even though same have gone against him.

(45) With the observations made above, the present writ petition is disposed of.

R.N.R.