



COMPETITION COMMISSION OF INDIA

Case No. 43 of 2014

In Re:

Ms. Anila Gupta

Informant

And

BEST Undertaking

Opposite Party

CORAM

**Mr. Ashok Chawla
Chairperson**

**Mr. M. L. Tayal
Member**

**Mr. S. L. Bunker
Member**

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**



Appearances: Shri Binoy Gupta, Authorised Representative of the informant.

Ms. Swega Agarwal, Advocate and Shri Rajender Dubal, AGM (L) for the opposite party.

Order under section 26(2) of the Competition Act, 2002

1. Ms. Anila Gupta *vide* her instant application, received in the Commission on 18.06.2014, is seeking re-opening of her previously instituted information *viz.* Case No. 06 of 2010 which was filed by her ('the informant') under section 19(1)(a) of the Competition Act, 2002 ('the Act') against BEST Undertaking ('the opposite party'/ BEST), alleging *inter alia* contravention of the provisions of section 4 of the Act.
2. Facts, as gathered from the order of the Commission in Case No. 06 of 2010 dated 11.01.2012 closing the same, may be briefly noted:
3. The informant, a consumer of electricity of the opposite party, made an application to M/s Tata Power Co. (TPCL) on 20.10.2009 for supply of electricity which would entail migration from the current supplier BEST. TPCL responded by apprising that her request could not be acceded to on the ground that rules for changeover from one supplier to another were not applicable to BEST, BEST being a local government body.
4. The informant subsequently filed a Case No. 86 of 2009 before the Maharashtra Electricity Regulatory Commission (MERC) against TPCL praying for an order for commencement of supply by TPCL.



5. During the course of hearing before MERC held on 21.10.2010, BEST opposed the informant's request on the ground that BEST, being a local authority, had exclusive territorial jurisdiction to supply electricity in its area and therefore, TPCL could not supply electricity within BEST's area of supply. TPCL, on the other hand, expressed willingness to supply electricity to the informant.
6. It had been alleged by the informant that the stand taken by BEST against its consumers, is illegal and BEST has blatantly indulged in gross and flagrant abuse of its dominant position.
7. Based on the above averments and allegations, the informant had filed the information before the Commission being Case No. 06 of 2010.
8. The Commission *vide* its order dated 11.01.2012 closed the matter giving the liberty to the informant to approach the Commission again, if so she desired, after a final view was taken by the Hon'ble Appellate Tribunal for Electricity (APTEL). Subsequently, it appears that the matter was carried to the Hon'ble Supreme Court of India which has recently delivered its verdict on 08.05.2014. Accordingly, the informant has filed the present application seeking re-opening of Case No. 06 of 2010.
9. The Commission has perused the material available on record besides hearing the authorized representative of the informant and the counsel for the opposite party.
10. When the matter came up for hearing before the Commission, the authorized representative of the informant submitted that in view of the order of the Hon'ble Supreme Court in the case of *Brihanmumbai Electric Supply & Transport Undertaking v. Maharashtra Electricity Regulatory Commission (MERC) & Ors.*, Civil Appeal No. 4223 of 2012, as discussed



infra, he is not pressing the instant application/ information before the Commission and he may be allowed to withdraw the same. However, the authorized representative of the informant submitted before the Commission that as substantial delay has been occasioned, he would pray for award of compensation.

11. The Commission has perused the order of the Hon'ble Supreme Court in the case of *Brihanmumbai Electric Supply & Transport Undertaking* case (*supra*) wherein the Hon'ble Supreme Court held as follows:

....Section 42 of the Act deals with the duties of distribution licensee and open access. Sub-Section (1) thereof provides that it shall be the duty of a distribution licensee to develop and maintain an efficient co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in the Act. Sub-section (2) casts an obligation upon the State Commission to introduce open access in phases and subject to such conditions, as may be specified, these conditions may include the cross subsidies and other operational constraints. It is thereafter in sub-section (3) of Section 42 provision is made for wheeling of electricity with respect to supply stating that duties of distribution licensee shall be of a common carrier providing non-discriminatory open access. Thus sub-section (3) provides for open access and casts a duty upon the distribution licensee in this behalf. Here, it excludes local authority, as distributor of electricity from such an obligation. However, when it comes to the duty of distribution licensee to supply the electricity under section 43, it mandates that same is to be given to the owner or occupier of any premises on his application within one month from the receipt of the said application. This duty under Section 43 imposed upon a distribution licensee does not distinguish between a local



authority and other distribution licensee. It is also not a case of the appellant that in a particular area where a local authority is a distribution licensee, there cannot be any other distribution licensee at all....

Thus, on a conjoint reading of Sections 42 and 43 of the Act along with the objectives and purpose for which Act 2003 is enacted, it becomes clear that there are two ways in which a consumer stated in a particular area can avail supply of electricity, as pointed out by the learned senior counsel for TPC and noted above. When an application is made by a consumer to a distribution licensee for supply of electricity, such a distribution licensee for supply of electricity, such a distribution licensee can request other distribution licensee in the area to provide it network to make available for wheeling electricity to such consumers and this open access is to be given as per the provisions of section 42 (3) of the Act. It is here only that local authority is exempted from such an obligation and may refuse to provide makes it network available. Second option is, under section 43 of the Act, to provide the electricity to the consumer by the distribution licensee from its own network. Therefore, if in a particular area local authority has its network and it does not permit wheeling of electricity from by making available its network, the other distribution licensee will have to provide the electricity from its own network. For this purpose, if it is not having its network, it will have to lay down its network if it requires in order to supply electricity to a consumer seeking supply



12. Thus, it is apparent that though the Hon'ble Supreme Court recognized the exemption granted to a local authority in terms of the provisions of section 42(3) of the Electricity Act, 2003 from provision of its network to other distribution licensee for wheeling electricity by way of open access, yet the Hon'ble Court reiterated the universal service obligations of distribution licensees under the said Act to provide electricity to willing consumers from their own networks and here no special dispensation was found to be provided for the local authorities.
13. The opposite party also filed an affidavit in reply whereby and whereunder it has been submitted that MERC had published EOI on 01.01.2014 for issuing their licenses in the area of Mumbai City and part of Mumbai Suburban Area which includes BEST Undertaking's area of supply. It has also been submitted that TPCL has filed an application bearing No. 90 of 2014 before MERC, the Competent Authority for grant of license in the Mumbai City and part of Mumbai Suburban Area since its earlier license is granted upto 15.08.2014.
14. In view of the above, the Commission is of opinion that nothing survives in this application/ information and the same is disposed of accordingly. So far as the prayer made by the authorized representative of the informant for seeking compensation is concerned, the Commission notes that the same is beyond its jurisdiction. The informant may avail such remedies before appropriate forum for this purpose, if so advised.
15. In view of the above discussion, no case of contravention of the provisions of section 4 of the Act is made out against the opposite party and the information is ordered to be closed forthwith in terms of the provisions contained in section 26(2) of the Act.



16. It is ordered accordingly.

17. The Secretary is directed to inform the parties accordingly.

Sd/-
(Ashok Chawla)
Chairperson

Sd/-
(M. L. Tayal)
Member

Sd/-
(S. L. Bunker)
Member

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

New Delhi
Date: 12/09/2014