

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION  
GANDHINAGAR**

**Petition No. 1722 of 2018**

**In the matter of:**

**Petition under Section 142, 146 and 149 of the Electricity Act, 2003 for violation and contravention of Section 16, 57, 61, 61(d), 62, 64(6), 181, 86 (1)(g) and 94 of the Electricity Act, 2003 read with Regulation 6 (b) and 62 of the GERC (Conduct of Business) Regulations, 2005 read with Regulation 17, 18, 32 and 34 of the GERC (Distribution License) Regulations, 2005 read with Regulation 6.1, 6.26, 6.27, 6.33 and 6.54 (5) & (10) of the GERC (Supply Code and related matters) Regulations, 2015 read with Regulation 18(2) and Standard for Consumer Meters- Part- III - (1)(a), (1)(b) and 2 of the CEA (Installation and Operation of Meters) Regulations, 2006 read with Regulation 12(1) of Gujarat Electricity Distribution Code (Second Amendment) Regulations, 2016 read with Regulation 2.16 of the GERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2011 for providing supply and other relevant enabling provisions of Act, Law, Rules and Regulations prevailing in the land.**

Petitioner: Shri Sanjay Amratlal Agrawal  
36, Gujarat Grain Market Opp. Anupam Cinema  
Khokhara, Ahmedabad 380 026

Represented by: Shri Yogendra Agrawal, Shri Babubhai Kanjaria and  
Shri Manish Shah  
V/s

Respondent No. 1: Torrent Power Limited (TPL)  
Samanvay, 600, Tapovan  
Ambawadi, Ahmedabad 380 015

Represented by: Shri Chetan Bundela and Ms. Luna Pal

**CORAM:**

**Shri Anand Kumar, Chairman  
Shri P. J. Thakkar, Member**

**Date: 22/07/2020**

**ORDER**

1. This Petition has been filed by Shri Sanjay Amratlal Agrawal seeking following prayers-

1.1. To declare that the respondent TPL is guilty for contravention and violation of provisions of E.A.2003 and various Regulations as stated in the Petition.

- 1.2. The Respondent TPL is liable to impose with the penalty for breach, contravention and violation of provisions of E.A. 2003, Rules and Regulations made there under as per Section 142, 146 and 149 of E.A. 2003 and other relevant and enabling provisions.
  - 1.3. To revoke the license of the TPL for distribution of Electricity in its supply area.
  - 1.4. To initiate all punitive legal actions civil and criminal and be further pleased to impose exemplary economic pecuniary costs.
  - 1.5. To direct TPL to give an under taking that all provisions of E.A.2003 Rules and Regulations for its distribution business shall be henceforth complied with.
  - 1.6. To pass an order for investigation under Section 128 of E.A. 2003 to find out the other such cases where the consumers are extorted hard earned money by violating and contravening the provisions of E.A. 2003 and Regulations as stated in the Petition.
  - 1.7. To call for the name and designation of concerned person of TPL for contravention and violation of provisions of the E. A. 2003 Rules and Regulations made there under and punish them with imprisonment under Section 146 of E.A. 2003 and other relevant provisions.
  - 1.8. To direct the respondent TPL to pay the petitioner the actual amount for legal charges and incidental and ancillary expenses incurred for the filing and pursuing the present petition.
2. Facts provided in the Petition are as under-
- 2.1. The petitioner Shri Sanjay Amratlal Agrawal is a non-residential consumer of TPL distribution Ahmedabad having 6 kW, 3-phase supply and consumer No. 728621.
  - 2.2. The Petitioner is running mini cold room where seasonal fruits are temporary stored to prevent them from deterioration. Looking to the nature of business it is depending on market economic condition and falls in the category of seasonable business. The business was slow and there was no client, the owner of the service is forced to keep the business closed for more than four years.
  - 2.3. On 05.05.2017 the employee of TPL has come to the premises and made search of meter and took away meter to the laboratories for testing. The meter was tested on

12.05.2017 in the lab and found without any infringement, tempering or any pilferage. However, the electronic meter counter found stopped.

- 2.4. The TPL has sent bill as defective meter assessment of Rs. 53,582/- in accordance with the Regulation 6.58 of the GERC- Electricity Supply Code.
- 2.5. The Petitioner has on non-resolution of their representation at local office filed complaint with the Consumer Grievance Redressal Forum (CGRF) on 03.08.2017.
- 2.6. Further, the Petitioner aggrieved by the Order of the CGRF filed appeal before the Electricity Ombudsman.
- 2.7. It is submitted by the Petitioner that although the Electricity Ombudsman has upheld the decision of the CGRF, some violation of the provisions of Regulations/ Act observed by the Electricity Ombudsman as mentioned in its Order dated 20.01.2018.
- 2.8. It is submitted that the Respondent TPL has not complied with the provisions of the Clauses Nos.- 6.1, 6.26, 6.27, 6.33, 6.54(5), 6.54(9) and 6.54(10) of the GERC- Electricity Supply Code 2015. Further the Petitioner also stated that as confirmed by the Electricity Ombudsman in its Order dated 08.12.2017 in Case No. 104/2017, the TPL has also not complied with the provisions of Clauses No. 6.11 and 6.12 of the GERC- Electricity Supply Code 2015. The relevant Clauses of the Electricity Supply Code, 2015 is given here under-

*“6.1 No installation shall be serviced without a meter. All meters shall conform to requirements as laid down in the Central Electricity Authority (Installation & Operation of Meters) Regulations, 2006 and amendments thereof, issued under Section 55 of the Act. The licensee shall also comply with the abovementioned Regulations for energizing a new connection or for replacement of meter or for other purposes such as energy audit and interface meter.”*

..

*“6.26 It shall be the licensee’s responsibility to satisfy itself regarding the accuracy of the meter before it is installed and the licensee may test them for this purpose. The licensee shall conduct periodical inspection/testing and calibration of the meters as specified by the Central Electricity Authority (Installation & Operation of Meters) Regulations, 2006 and all subsequent amendments. The licensee shall give the accuracy report of the meter by the laboratory to the consumer and also give periodical inspection and testing and calibration report of the meter to the consumer.*

*6.27 Test results shall be maintained.”*

...

*“6.33 The licensee shall dispatch the test report to the consumer, to be received under acknowledgment, within 2 working days of the date of testing. In case of faulty meter, rectification for a maximum period of six months or from the date of last testing, whichever is shorter, on the basis of the test report, shall be adjusted in the subsequent bill.”*

...

*“6.54 The following information shall be included in the bill:*

...

*(5) Pole Number from which connection is served / Name of sub-division or centre;*

...

*(9) Status of meter (OK/defective/not available);*

*(10) Billing Status (Regular/ Assessed/ Provisional Bill with reason);*

*...”*

- 2.9. It is submitted that the Respondent TPL has not complied with the provisions of the Clause No.- 18.2 of the CEA (Installation and Operation of Meters) Regulations, 2006 and Clauses No. 1(b) and 2 of Part-III Standards for Consumers Meters of the schedule of the CEA (Installation and Operation of Meters) Regulations, 2006. The relevant part is quoted here below-

*“18. Calibration and periodical testing of meters. –*

...

*(2) Consumer meters*

*The testing of consumer meters shall be done at site at least once in five years. The licensee may instead of testing the meter at site can remove the meter and replace the same by a tested meter duly tested in an accredited test laboratory. In addition, meters installed in the circuit shall be tested if study of consumption pattern changes drastically from the similar months or season of the previous years or if there is consumer’s complaint pertaining to a meter. The standard reference meter of better accuracy class than the meter under test shall be used for site testing of consumer meters up to 650 volts. The testing for consumers meters above 650 volts should cover the entire metering system including CTs, VTs. Testing may be carried out through NABL accredited mobile laboratory using secondary injection kit, measuring unit and phantom loading or at any accredited test laboratory and recalibrated if required at manufacturer’s works.”*

*Part III Standards for consumers meters*

*(1) Measuring Parameters*

..

*(b) The consumer meter may have the facilities to measure, record and display one or more of the following parameters depending upon the tariff requirement for various categories of consumers. All parameters excluding instantaneous electrical parameters shall also be stored in memory.*

*(i) Cumulative reactive energy*

*(ii) Average power factor*

*(iii) Time of use of energy*

*(iv) Apparent power*

*(v) Maximum demand*

*(vi) Phase voltage and line currents*

*(2) All the three phase meters shall have data storage capacity for at least 35 days in a non-volatile memory."*

2.10. It is submitted that the Respondent TPL has not complied with the provisions of the Clause No.- 12(1) of the GERC-Distribution Code (Second Amendment) 2016, which is quoted here below-

*"Amendment to Attachment I of the principal code:*

*Clause 12 (I) of Attachment I of the principal code shall be substituted as under:*

*"The metering for 230 V single-phase supply shall be provided on a suitable board, located in such a place protected from sun and rain and shall be in a convenient position for taking readings enclosed in a suitable tamper-proof box. The tamper-proof box shall be of sufficient strength and design with locking and sealing devices and shall have adequate provision for heat dissipation with the required electrical clearances. The design shall permit readings to be taken without access to the meter or its connections. The terminals of the meter and box shall be made tamper-proof and sealed. For 400 Volts three phase supply, the meters and associated metering equipment including connections shall be enclosed in a suitable tamper-proof box. The tamper-proof box shall be of sufficient strength and design with locking and sealing devices and shall have adequate provision for heat dissipation with the required electrical clearances. The design shall permit readings to be taken without access to the meter or its connections."*

2.11. It is also submitted that the Respondent- TPL has violated the Clause-2.16 of CGRF and Ombudsman Regulations, 2011 by not hosting the hearing schedule and judgments/orders pronounced by CGRF on the web site of Torrent Power Ltd. as Distribution Licensee.

*"2.16 Every Licensee shall, as soon as is practicable but in any event within six months from, (i) the date of issuance of the license, or (ii) the coming into force of these Regulations, whichever is later, provide information about the Forum on its website*

*through which Consumers may retrieve information such as the contact details of the Forum, the orders and directions (if any) issued by the Forum and the dates of the next hearings.”*

- 2.12. It is stated that TPL is not sending the information/letter to the consumers in advance as to when the hearing is scheduled and in majority of the cases the intimation letter is received by the consumers after the date of hearing or in the evening time of previous day of hearing so that consumers cannot attend the hearing and cannot engage any representative violating the principle of natural justice.
  - 2.13. It is further stated that the TPL is habituated to violate and contravene the Regulations and is liable for punishment under section 142, 146 and 149 of the Electricity Act and Other relevant Regulations.
3. Respondent Torrent Power Limited in its reply dated 12.12.2018 submitted that-
- 3.1. The Commission to kindly condone the delay in filing the reply to the Petition.
  - 3.2. The petition is not maintainable and the Commission has no jurisdiction to decide the matter.
  - 3.3. The present petition has been filed by the Petitioner who is a consumer of the Respondent having service no. 728621. On 05.05.2017, the service of the Petitioner was visited by the officials of the Respondent as part of random checking and since meter was found stopped, it was box-sealed and new meter was installed.
  - 3.4. Incidentally, in the electricity bill of April, 2017 which was due for payment on 02.05.2017, the consumer was already intimated that his meter has recorded nil consumption and if power was being consumed at his premises, he is to inform the Respondent so as to rectify the defective meter. Similar intimations have been sent to the consumer in previous billing cycles as well. However, despite the continuous intimations, in this regard, the consumer did not approach the Respondent at any instance.
  - 3.5. During the random checking on 05.05.2017, the Respondent was informed vide the inspection slip issued on site, to remain present for meter testing on 10th May, 2017 or 11th May, 2017 or 12th May, 2017 failing which his meter would be tested ex-parte. Despite this, the Petitioner did not remain present during the meter testing and the meter was tested ex-parte. During the testing of meter, the meter counter was found stopped.

- 3.6. Accordingly, the Respondent carried out the stop meter assessment as per the provisions of Clause No. 6.58 of the Supply Code, 2015, for 180 days on 15<sup>th</sup> June, 2017 as per succeeding period due to preceding average not found and intimated the assessment amount to the Petitioner.
  - 3.7. Aggrieved by the same, the Petitioner approached the Consumer Grievance Redressal Forum of TPL-D (Ahmedabad). The Forum found the actions taken by the Respondent in line with the provisions of the Supply Code, 2015. Aggrieved by the Forum order, the Petitioner further approached the Ombudsman seeking relief. The Ombudsman, vide its order dated 20<sup>th</sup> January, 2018 was also pleased to uphold the order of the Forum.
  - 3.8. In the present matter, the Ombudsman has upheld the order of the forum. Hence, there cannot be any non-compliance/non-implementation of the Ombudsman order. Consequently, there is no cause of action for the Commission for enforcement of the order.
  - 3.9. According to Regulation- 3.44 of the GERC (CGRF and Ombudsman) Regulations, 2011, no appeal against the order of the Ombudsman can lie before this Commission. In case any party wishes to file an appeal against the Ombudsman's order, the remedy lies elsewhere. The present petition is an appeal in disguise wherein the Petitioner is trying to indirectly review the order of the Ombudsman and seek relief. On this ground alone, the present petition deserves to be rejected.
  - 3.10. The Section 86 (1) (f) of the Electricity Act, 2003 provides that the State Electricity Regulatory Commission can only adjudicate upon the disputes between the licensees and the generating companies. Therefore, the Respondent would like to most humbly submit that the State Electricity Regulatory Commission has no jurisdiction to adjudicate upon the disputes relating to grievances of consumers.
  - 3.11. It is also submitted that the Respondent has made necessary changes in the system in line with the certain general observations made by the Ombudsman with reference to the operational aspects. The Respondent would like to submit that it is complying with all directions/orders issued by the Ombudsman in the present matter.
4. The Petitioner in its rejoinder dated 25.01.2019 reiterated the submission given in the Petition and further submitted that-
    - 4.1. It is stated that the act of delay in filing reply by the Respondent to be considered as violation of direction given in the Daily Order in this matter and to initiate action

against the Respondent accordingly. Further, it is requested the late reply of the Respondent not to be taken on record of this matter.

- 4.2. It is submitted that the present Petition before this Commission is related to initiation of penal action against the Respondent in view of the violation of some provisions of Regulation/ Act observed by the Electricity Ombudsman in its Orders in appeal No. 122/2017 and 135/2017 and not for adjudication of any issue/ complaint or enforcement of Order of the Electricity Ombudsman.
- 4.3. Further, the Respondent has in its reply submitted that some corrective steps have been taken by them in order to comply the observation of the Electricity Ombudsman in its Order meaning that the Respondent have accepted that there is non-compliance of Regulations/ Act.
- 4.4. The Petitioner further submitted that the Respondent has violated the provisions of the Clause No. 31(1) of the GERC (Distribution License) Regulations, 2005 and requested the Commission to take note of this as violation of general conditions of the license.
- 4.5. The Petitioner has also referred Daily Order dated 06.08.2013 in the Petition No. 1274 of 2013 (Navrang Color Lab vs. PGVCL) wherein the Commission while taking note of violation of the provisions of Electricity Supply Code directed to initiate proceedings under Section-142 of the Electricity Act against the Distribution Licensee.
5. The matter was listed for hearings on 20.10.2018 and 25.01.2019. During the hearing on 25.01.2019, the Petitioners and Respondent completed their arguments and made their submissions in the matter and parties were directed to file their written submissions, if any and the matter was reserved for Order.
6. The Petitioner in its final written submission dated 25.02.2019 submitted that-
  - 6.1. The Petitioner has paid the assessment bill by accepting the Order of the Electricity Ombudsman and the present Petition filed before the Commission is related to taking action under Section- 142, 146 and 149 of the Electricity Act, 2003 in view of the observation of the Electricity Ombudsman regarding violation of the provisions of Regulations/ Act by the TPL and the jurisdiction in this regard lies with the Commission only.
  - 6.2. It is further reiterated that as TPL is penalizing consumer for non-compliance of the provisions of Section- 126 and 135 of the Act. Similarly, the Commission also



requested to initiate action against TPL for violation of provisions of the Act/ Regulations.

7. The Respondent TPL in its final written submission dated 30.04.2019 stated that-
  - 7.1. The Petitioner is seeking to challenge the orders passed by the Consumer Grievance Redressal Forum and the Ld. Ombudsman under the Electricity Act, 2003.
  - 7.2. In the present case, admittedly the petitioner had approached the Consumer Grievance Redressal Forum raising the very same disputes as in the present case. The grievance of the petitioner was disposed of by the order of the Forum dated 13/10/2017. This was further challenged by the petitioner before the Ombudsman, which appeal also came to be disposed of vide order dated 20/01/2018. In the order passed by the Ombudsman, certain observations have been made on the future action to be taken by the Respondent, which have been duly complied with.
  - 7.3. The Electricity Act does not provide for any appellate or supervisory jurisdiction to any authority including the Hon'ble Commission over the orders passed Ombudsman under Section 42(7). This has been settled by the following decisions of the Hon'ble Appellate Tribunal and the Hon'ble Supreme Court.

“(a) Maharashtra Electricity Regulatory Commission v. Reliance Energy Limited, (2007) 8 SCC 381

*"31. The basic question which arise for our consideration in this appeal is whether the individual consumer can approach the Commission under the Act or not."*

*32. For deciding this question, the relevant provision is Section 42(5) of the Act, which reads as under:*

*"42. Duties of distribution licensee and open access.—(1)-(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."*

*33. As per the aforesaid provision, if any grievance is made by a consumer, then they have a remedy under Section 42(5) of the Act and according to sub-section (5) every distribution licensee has to appoint a forum for redressal of grievances of the consumers. In exercise of this power the State has already framed the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2003 (hereinafter referred to as "the 2003 Regulations") and created Consumer Grievance Redressal Forum and Ombudsman. Under these 2003 Regulations a proper forum for redressal of the grievances of individual*

consumers has been created by the Commission. Therefore, now by virtue of sub-section (5) of Section 42 of the Act, all the individual grievances of consumers have to be raised before this forum only. In the face of this statutory provision we fail to understand how could the Commission acquire jurisdiction to decide the matter when a forum has been created under the Act for this purpose. The matter should have been left to the said forum. This question has already been considered and decided by a Division Bench of the Delhi High Court in *Suresh Jindal v. BSES Rajdhani Power Ltd.* [(2006) 132 DLT 339 (DB)] and *Dheeraj Singh v. BSES Yamuna Power Ltd.* [Ed.: (2006) 127 DLT 525 (DB)] and we approve of these decisions. It has been held in these decisions that the forum and ombudsman have power to grant interim orders. Thus a complete machinery has been provided in Sections 42(5) and 42(6) for redressal of grievances of individual consumers. Hence wherever a forum/ombudsman have been created the consumers can only resort to these bodies for redressal of their grievances. Therefore, not much is required to be discussed on this issue. As the aforesaid two decisions correctly lay down the law when an individual consumer has a grievance he can approach the forum created under sub-section (5) of Section 42 of the Act.

34. In this connection, we may also refer to Section 86 of the Act which lays down the functions of the State Commission. Sub-section (1)(f) of the said section lays down the adjudicatory function of the State Commission **which** does not encompass within its domain complaints of individual consumers. It only provides that the Commission can adjudicate upon the disputes between the licensees and generating companies and to refer any such dispute for arbitration. This does not include in it an individual consumer. The proper forum for that is Section 42(5) and thereafter Section 42(6) read **with** the Regulations of 2003 as referred to hereinabove.

**(b) H.P. State Electricity Board v. M/s Gujarat Ambula Cements Ltd.,** Civil Appeal No. 2005 of 2011 dated 22.02.2011

"We are, therefore, face with a situation where the appellant-Board having chosen the wrong forum and having approached the Commission, has been directed by the High court to continue to pursue the remedy before the Appellate Tribunal. Although, from the decision in the case of *Maharashtra Electricity Regulatory Commission v. Reliance Energy Limited and others* (supra) and the statutory provisions, it is obvious that no such remedy exists, can it now be said that the appellant is remedy-less in a situation like this.

In our view, the answer is no. Even if the appellant had chosen a wrong forum and had moved the Commission, although the Commission did not have jurisdiction to entertain the applications, and the same having been made one of the grounds in the writ petition, the High Court ought to have considered the question, as to whether the Commission had jurisdiction to entertain **the** appeal and, therefore, should have proceeded to decide the writ petition **on** merits, which it has not done. We are of the view that since the Commission had no jurisdiction to entertain or decide the matter, the High court should have decided the matter on merits in the

*writ petition itself without directing the appellant to proceed before the Appellate Forum, which had no jurisdiction to entertain the matter, since the Commission from whose order the appeal would be preferred, itself had no jurisdiction to entertain the matter."*

- 7.4. The GERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2011 also reiterate the above position in law and provides as under:  
*"3.44 The orders of the Ombudsman shall be final and binding on the parties. No party can file an appeal before the Commission against the order. However, the rights of Complainant and Licensee to file an appeal before the judicial bodies (including but not limited to the Appellate Tribunal for Electricity, Forums and Commissions established under the Consumer Protection Act, 1986, High Court, Supreme Court, etc.) shall remain protected."*
- 7.5. In the light of the above position in law, it is not open to the Petitioner to now indirectly seek to challenge the order of the Ld. Ombudsman before the Hon'ble Commission.
- 7.6. The present proceedings are in effect by way of an appeal and seeking the same relief from the Commission, which were not granted by the Ombudsman.
- 7.7. It is also submitted that the Respondent has duly complied with the decision of the Ombudsman, including the general observations made on the operational aspects of the system. The Respondent has complied with all the directions and orders issued by the Ombudsman in the present matter and there is no non-compliance.
- 7.8. The reliance by the Petitioner on the decision of the Hon'ble Commission in the order dated 06.08.2013 in Petition No. 1274/2013 is also misplaced. In the said case, there was no issue of any challenge to the order of the Ombudsman or seeking relief contrary to the directions of the Ombudsman. Further, there was no issue of jurisdiction even raised or gone into in that case, for the same to be a precedent in the present case.
- 7.9. In the circumstances mentioned above, it is respectfully submitted that the present petition is not maintainable and is liable to be dismissed.
8. Thereafter, the matter was relisted on 20.07.2020 for mentioning/ directions on account of change in quorum, in response to hearing notice of the matter, the Petitioner vide its email dated 15.07.2020 informed that he has already filed its written submissions dated 25.02.2020 in the present matter pursuant to Daily Order dated 07.02.2019. It is also submitted that the Petitioner has no more submissions to make in the present matter. He requested that the Commission may accordingly decide the matter considering the submissions already made and based on record of the present Petition. Further during the

virtual hearing through video conference on 20.07.2020, the representative for the Respondent submitted that they have already made their submissions and completed their arguments earlier and no further submissions are required to be made by them in the matter and the Commission may decide the matter based on the submissions already made and the record of present Petition. During the hearing, the Respondent submitted that they are complying with the provisions of Regulations and also complied with the observation made by Electricity Ombudsman in this regard.

9. We have carefully considered the contentions of both the Petitioner and the Respondent. The petitioner has not raised any issue with the correction of the Assessment Bill but the main contention of the Petitioner is that the Electricity Ombudsman in its Order dated 20.01.2018 observed that there is violation of some provisions of Regulations/Act and prayed that action against the Respondent TPL to be initiated under Section- 142, 146 and 149 of the Electricity Act, 2003.

9.1. The relevant Sections of the Electricity Act, 2003 is quoted here below-

*“Section 142. (Punishment for non-compliance of directions by Appropriate Commission): In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction.*

...

*Section 146. (Punishment for non-compliance of orders or directions):*

*Whoever, fails to comply with any order or direction given under this Act, within such time as may be specified in the said order or direction or contravenes or attempts or abets the contravention of any of the provisions of this Act or any rules or regulations made thereunder, shall be punishable with imprisonment for a term which may extend to three months or with fine, which may extend to one lakh rupees, or with both in respect of each offence and in the case of a continuing failure, with an additional fine which may extend to five thousand rupees for every day during which the failure continues after conviction of the first such offence:*

*Provided that nothing contained in this section shall apply to the orders, instructions or directions issued under section 121.*

.....

*Section 149. (Offences by companies): --- (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of having committed the offence and shall be liable to be proceeded against and punished accordingly:*

*Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.*

*(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of having committed such offence and shall be liable to be proceeded against and punished accordingly.*

*Explanation. - For the purposes of this section,-*

*(a) "company" means a body corporate and includes a firm or other association of individuals; and*

*(b) "director", in relation to a firm, means a partner in the firm."*

- 9.2. Section-142 of the Electricity Act, 2003 clearly indicates that any person can file a complaint before the Commission regarding the contravention of directions, rules and regulations and provisions of the Electricity Act, 2003 as against any person. If on the said complaint the Commission is satisfied that he has committed contravention or violation, it can issue show cause notice to the said person and also can give such person an opportunity of being heard.
- 9.3. It is also noted that the Petitioner through the present Petition, is not seeking any review or appeal against the Order of the Electricity Ombudsman, but complaint is filed about the violation of provisions of the Regulations or Act and in the Petition, reference to observation of the Electricity Ombudsman in its Order, is provided as evidence. Hence, the Commission decides that there is a jurisdiction of the Commission to deal with the present Petition in accordance with the Section- 142 of the Electricity Act.
- 9.4. Section- 146 and Section- 149 are related to penalty in case of non-compliance of Orders or Directions and Offences by companies and it can be applicable only if it is established that there is non-compliance or offence.
10. In this Petition, it is submitted that the violations of the provision of various Regulations/ Act by the Respondent TPL are observed and noted by the Electricity Ombudsman in its

Order dated 20.01.2018 in the case No. 122/2017. The details and analysis of the Commission in this regard are as under-

- 10.1. The Petitioner stated that the Electricity Ombudsman has noted violations of the Provisions of the Regulation- 6.54 (5) of the Electricity Supply Code, 2015. While referring the observation of the Electricity Ombudsman in para no. 4.3 of the Order in this regard, the Commission noted that the Respondent TPL was advised to provide details in electricity bills in accordance with the provision of the Electricity Supply Code.
- 10.2. The Commission also noted the observation of the Electricity Ombudsman in para no. 4.8 and 4.9 of its Order with regard to violation of provisions in connection with the meter testing and maintaining results of meter testing. The Respondent TPL was advised to act in accordance with the relevant provisions of the Electricity Supply Code and the CEA (Installation and Operation of Meters) Regulations, 2006.
- 10.3. Further, in the para 4.11 of the Order, the Electricity Ombudsman asked the Respondent TPL to ensure compliance of the Clause 12.1 of the GERC- Distribution Code (Second Amendment) 2016.
- 10.4. In connection with the issues related to violation of the GERC (Distribution License) Regulations, 2004, the Electricity Ombudsman noted in para no. 4.12 of the Order that they have no jurisdiction to deal with the same.
- 10.5. The Respondent TPL in its written submission stated that it has complied with all the directions and orders issued by the Ombudsman in the afore said matter.
- 10.6. The Commission also take note of the observation of the Electricity Ombudsman in its Order dated 08.12.2017 in case no. 104/2017 wherein the Respondent TPL was advised to strictly implement the provisions of Electricity Supply Code regarding meter installations and replacement.
- 10.7. Reference to the decision of the Commission in its order dated 06.08.2013 in Petition No. 1274/2013 regarding initiation of action against Distribution Licensee under Section-142 of the Electricity Act, 2003 is not relevant to present Petition as the referred case was related to disconnection of electricity supply in contravention to relevant provisions of the Regulations/ Act.
- 10.8. Regarding complaint of the Petitioner for violation of Regulation 2.16 of the GERC (CGRF and Ombudsman) Regulations, 2011 for non-availability of the information related to hearing schedule and Orders of the CGRF on website, it is found that the

said information are available on the website of the respondent TPL in accordance with the Regulations.

10.9. From the above, it is clear that some deficiency is observed by the Electricity Ombudsman in connection with the compliances of provisions of the Regulations and Codes by the Respondent TPL and accordingly they were directed to ensure compliances in this regard. Further the Respondent TPL also stated that in view of the observations of the Electricity Ombudsman, they have made some changes in the practices and system to ensure compliances.

10.10. Accordingly, the Commission has decided to deal with the Present petition as it has clear jurisdiction in the matter to deal with any complaint filed under Section-142 of the Electricity Act, 2003. The Commission has examined the documents and submission in the present matter and considering facts and circumstances, the Commission is of the view that in the present matter, we do not find any well founded reason of non-compliance of directions or Regulations for taking any punitive action against the Respondent TPL under Section- 142, 146 or 149 of the Electricity Act, 2003.

11. However, considering the deliberations made by the Petitioner with regard to protection of consumer interest, which is of our primary concern also, the Commission directs the staff of the Commission to get compliance reports with regard to provisions of the Regulations referred in this matter from all distribution licenses in the State including the Respondent's one and submit the same to the Commission within six months from the date of issue of this order for its consideration and appropriate action.

12. We order accordingly.

13. With this order the matter stands disposed of.

**Sd/-**  
**(P. J. THAKKAR)**  
**MEMBER**

**Sd/-**  
**(ANAND KUMAR)**  
**CHAIRMAN**

Place: Gandhinagar

Date: 22/07/2020