

**Before the Appellate Tribunal for Electricity  
(Appellate Jurisdiction)  
Appeal Nos. 114 & 115 of 2005**

Dated: 9.11.2005

Present:

Hon'ble Mr. Justice Anil Dev Singh, Chairperson  
Hon'ble Mr. Justice E. Padmanabhan, Judicial Member  
Hon'ble Mr. H.L. Bajaj, Technical Member

Nayveli Lignite Corporation Ltd., -Appellants in both appeals

V/s

Tamil Nadu Electricity Board & Others - Respondent in both appeals

For Appellant: Mr. V.R.Reddy, Sr. Advocate, Mr. K.R.Sasibrabhu,  
Mr. E.Venukumar and Mr. S.S.Chaudas,Advocates

For proposed

Respondents: Mr. Mukul Rohtagi, Sr. Advocate for WBSEB with  
Mr. Bhaskar Mitra, Mr. H.K.Puri, Mr. P.K.Bagchi

Mr. Shanti Bhushan, Sr. Advocate for CESC with Dr. Samu  
Chakraborty, Ms. Gauri Rasgotra and Mr. Sanjay Pathak,  
Advocates

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Mr. M.G.Ramachandran and Mr. Amit Kapur

**JUDGEMENT**

Per Hon'ble Mr. Justice Anil Dev Singh, Chairperson:

1. In these appeals, the validity of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations 2004, particularly Regulations 16 and 21 thereof have been questioned.

The following two issues arise in these two appeals for our determination:-

- i) Whether or not, the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 are in the nature of subordinate legislation? and
  - ii) Whether or not, this Tribunal has the jurisdiction to examine the validity of the impugned Regulations?
  
2. Appearing for the Appellants Mr. V.R.Reddy, the learned Senior Counsel urged that the Regulations framed under the Electricity Act, 2003 are not in the nature of subordinate legislation and have an administrative character only. He pointed out that a legislative act results in the formulation of a rule of general application without reference to a particular case or an individual. He submitted that some of the Regulations are not of general application and apply only to a particular entity, a characteristic indicative of an administrative act. He referred to Regulation 16(i) (c) of the Regulations to illustrate his point. The learned Senior Counsel submitted that Regulation 16(i) (c) applies to the appellant alone. He also canvassed that Regulation making by the Commission is an administrative act, which can be examined by the Appellate Tribunal for its validity. He drew our attention to the decision of the Supreme Court in K.L.Shephard and others V/S Union of India (1987) 4 SCC 431 for drawing distinction between the legislative and executive functions.
  
3. Mr. M.G.Ramachandran and Mr. Amit Kapur submitted that similar questions are likely to arise in large number of matters and our decision on both the issues shall have wide ramifications. In view of the submission of the Counsel, we permitted them to advance their arguments with regard to the aforesaid two issues. The learned Counsel also contented that

the Regulations are not legislative in character and are merely administrative orders issued by the Central Electricity Regulatory Commission, against which appeal lies to the Tribunal. In other words, it was submitted that the Regulations do not have a statutory flavour as they emanate from administrative activity of the Commission. The learned Counsel relied upon the decision of Supreme Court in L.Chandra Kumar V/s. Union of India and others, (1997) 3 SCC 261 which, inter-alia, deals with the powers of the Tribunals constituted under Articles 323-A and 323-B of the Constitution.

4. Mr. V.R.Reddy, Mr. M.G. Ramachandran and Mr. Amit Kapur also submitted that the powers of the Appellate Tribunal are of wide amplitude and it can examine the question relating to the vires or the validity of the Regulations framed under Central Act 36 of 2003. The learned Counsel in order to buttress the point referred to us, the decision of the Supreme Court in Cellular Operators Association V/S Union of India (2000) 3 SCC 186, but it does not deal with aforesaid issues with which we are concerned in this appeal.
5. We have also heard Mr. Shanti Bhushan and Mr. Mukul Rohtagi, the learned Senior Counsel, who appeared in the applications for implemement filed on behalf of their respective clients. According to them, the Regulation making power comprised in sections 61 & 178 of the Act of 2003 is a legislative power and this being so the validity of the Regulations cannot be examined by us, sitting as an Appellate Tribunal constituted under section 111 of The Electricity Act 2003.

6. We have considered the submissions of Mr. Reddy, Mr. Ramachandran and Mr. Amit Kapur as also the submissions of Mr. Shanti Bhushan and Mr. Mukul Rohtagi. We find that both the issues are covered by the decision of Supreme Court in West Bengal Electricity Regulatory Commission V/S CESC Limited, (2002) 8 SCC 715. In that case, the Supreme Court while examining the nature of the Regulations framed by the Regulatory Commission under section 58 of The Electricity Regulatory Commission Act, 1998, held that the Regulations were in the nature of subordinate legislation and the High Court sitting as an appellate authority under Section 27 of 1998 Act did not possess the jurisdiction to go into the validity of those Regulations.
  
7. Section 58 of the 1998 Act and Section 61 of The Electricity Act 2003 are identical in nature. Both Section 58 of the 1998 Act and Section 61 of the 2003 Act empower the Regulatory Commission to frame the Regulations. Section 59 of 1998 Act and Section 182 of 2003 Act require Regulations to be laid before the legislature. The provisions of the two Acts being similar in character, the decision of the Supreme Court rendered in West Bengal Electricity Commission case (Supra) will squarely apply to the present case, in so far as the nature of the Regulations is concerned, which have been framed by the Central Electricity Regulatory Commission under Section 178 of the 2003 Act read with Section 61 thereof.
  
8. In order to appreciate the impact of the decision of the Supreme Court, it is necessary to set out the following dicta laid down by their lordships in the West Bengal Electricity Regulatory Commission case (Supra):

“42. The question for our consideration is whether the High court sitting as an appellate court under Section 27 of the Act has the jurisdiction to go into the validity of the Regulations framed under the Act and if so, factually the Regulations as found by the High Court are contrary to the statute.

43. The High Court while considering the validity of the Regulations came to the conclusion that the 1998 Act does not contemplate hearing of the consumers, and also that the Commission’s Regulations have conferred an indiscriminate right of hearing on the consumers. We do not think that these findings of the High Court can be justified. While discussing the right of the consumer to be heard (*locus standi*), we have already held that the 1998 Act has both expressly and impliedly conferred such right of hearing on the consumers. Proceeding on that basis we now consider whether the Regulations framed by the Commission, in any manner, confer an indiscriminate right of hearing. The Commission in exercise of its power under Section 58 of the 1998 Act has framed the Regulations keeping in mind, the mandate of the Act. In Regulations 18,19,24,25 and 31(4) the Commission has evolved a procedure by which it could restrict the number of representations as also the method to be followed in the proceedings before it which includes the restriction on hearing. Regulations 18 and 19 require the Commission to recognize such associations or other bodies of consumers which in its opinion, should be permitted to appear before

the Commission. The said Regulations also empower the Commission to regulate the nature and extent of participation by such groups. Regulations 31(4) (ii) and (iii) also empower the Commission to control the proceedings before it. From the above Regulations, it is clear that the Commission has the necessary power to regulate the proceedings before it and the apprehension of the High Court that by granting such power the Commission may have to hear all the 17 lakhs of consumers of Calcutta is wholly imaginary. That apart, on the facts of the instant case there is no such allegation that the Commission has in fact given indiscriminate hearing to the consumers. As a matter of fact, the respondent Company which was the appellant before the High Court has not even raised this issue and the High Court has suo motu gone into this issue. On the basis of provisions found in the Regulations framed by the Commission, we are of the opinion that there is no room for any indiscriminate hearing before the Commission. Therefore, the finding of the High Court that the Regulations do leave room for such indiscriminate hearings is erroneous.

44. Having held on merits that the Regulations are not arbitrary and are in conformity with the provisions of the Act, we will now consider whether the High Court could have gone into this issue at all in an appeal filed by the respondent Company. First of all, we notice that the High court has proceeded to declare the Regulations contrary to the Act in proceeding which was initiated before it in its appellate power under Section 27 of the Act. The appellate

power of the High court in the instant case is derived from the 1998 Act. The Regulations framed by the Commission are under the authority of subordinate legislation conferred on the Commission in Section 58 of the 1998 Act. The Regulations so framed have been placed before the West Bengal Legislature; therefore they have become a part of the statute. That being so, in our opinion the High court sitting as an appellate court under the 1998 Act could not have gone into the validity of the said Regulations in exercise of its appellate power.

45. This Court in the case of K.S.Venkataraman & Co. (P) Ltd. V/s State Of Madras (AIR 1966 SC 1089:( 1966) SCR 229 after discussing the judgement of the Calcutta High court in the cases of (i) Raleigh Investment Co. Ltd., V/s Governor General in Council (ILR (1944) 1 Cal. 34) , (ii) United Motors (India) Ltd., V/s State of Bombay ((1953) 55 Bom LR 246), and (iii ) M.S.M.M. Meyyappa Chettiar V/s ITO (1964) 55 ITR 151 (Mad) held: (SCR pp. 251 H-252 A).

“There is, therefore, weighty authority for the proposition that a tribunal, which is a creature of a statute, cannot question the vires of the provisions under which it functions.”

46. From the above decision, we hold that the High Court while exercising its statutory appellate power under Section 27 of the 1998 Act could not have gone into the validity of the Regulations which are part of the statute itself.”

9. In view of the aforesaid decision of the Supreme Court, which is directly on the point, we have no hesitation in holding that the Regulations framed under Sections 61 & 178 of the Electricity Act 2003, are in the nature of subordinate legislation and we have no jurisdiction to examine the validity of the Regulations in exercise of our appellate jurisdiction under Section 111 of the Act of 2003. Even, under section 121, which confers on the Tribunal supervisory jurisdiction over the Commission, we cannot examine the validity of the Regulations framed by the Commission, as we can only issue orders, instructions or directions to the Commission for the performance of its statutory functions under the Act. It is not a case, where the Commission has failed to perform its statutory functions.

At this stage we may also refer to the submission of Mr. Reddy that Regulation 16(i) (c) of the Regulations applies to the appellant alone and therefore the same cannot be in the nature of subordinate legislation. It needs to be noted that Sub Clauses (a), (b) and (c) of Sub Regulation (i) of Regulation 16 apply to various entities. Regulation 16(i) (c) undoubtedly applies to the appellant alone but this is in view of the special nature of the generating unit established by the appellant. It is well settled that a legislation can be framed for a single unit, entity or a person. The same principle would apply to the framing of subordinate legislation in respect of a single unit or entity or body, provided it can be distinguished from others on the basis of its peculiar or distinctive features. In any event we are bound by the decision of the Supreme Court rendered in the West Bengal Electricity Board case (Supra) as it directly deals with the nature of the Regulations notified by the Regulatory Commission in exercise of its power conferred by Section 58 of the Electricity Regulatory Commissions Act, 1998, a provision similar to sections 68 and 178 of The Electricity Act, 2003. None of the other



decisions cited at the bar deal with the Regulations framed under the provisions of the Act of 1998 or the Act of 2003.

Accordingly, on the first point we hold that the Regulations framed under Electricity Act 2003, are in the nature of subordinate legislation and on second point we hold that the challenge to their validity falls outside the purview of the Tribunal.

In the circumstances the appeals fail and are hereby dismissed.

**(Mr.H.L.Bajaj)**  
**Technical Member**

**(Mr.Justice E.Padmanabhan)**  
**Judicial Member**

**(Mr.Justice Anil Dev Singh)**  
**Chairperson**