

**Before the Appellate Tribunal for Electricity
Appellate Jurisdiction**

Appeal No. 27 of 2005

**Present : Hon'ble Mr. Justice E. Padmanabhan, Judicial Member
Hon'ble Mr. H.L. Bajaj, Technical Member**

Powerlinks Transmission Ltd.
New Delhi

... Appellant

Versus

1. Central Electricity Regulatory Commission, New Delhi
2. Power Grid Corporation of India Ltd. New Delhi
3. Bihar State Electricity Board, Patna
4. Jharkhand State Electricity Board, Ranchi
5. West Bengal State Electricity Board, Kolkata
6. Government of Sikkim, Power Deptt.
7. Damodar Vley Corporation, Kolkata
8. Grid Corporation of India Ltd., Bhubhneswar
9. Rajasthan Rajya Vidyut Prsaran Nigam Ltd. Jaipur
10. Uttar Pradesh Power Corporation Ltd. Lucknow
11. Uttranchal Power Corporation Ltd. Dehradun
12. Delhi Transco Limited, New Delhi
13. Power Development Department, Srinigar
14. Punjab State Electricity Board, Patiala
15. Haryana Vidyut Prsar Nigam, Panchkula

..... Respondents

For the Appellants : Mr. Mukul Rohatgi, Sr. Advocate with
Mr. Sanjeev Puri and Mr. Ajay K. Dutt,
Advocate.

For the Respondents : Mr. S.B. Upadhyay, Sr. Advocate with
Mr. Shiv Mangal Sharma, Advocate for
Resp. No. 2, Power Grid Corpn.
Mr. R.B. Sharma, Advocate for BSES,
Resp. No. 3

Mr. S. Pushkarna, Advocate for Delhi
Transco., Resp.No. 5
Mr. T.P.S. Bawa, OSD(Commercial) for
PSEB
Mr. T. Rout, Jt.Chief(Law) for CERC
Mr. Kesav Mohan, Advocate for HVPNL
Resp. No. 15.
Mr. K.S. Dhingra,Chief(Law) CERC
Ms Shaista Siddeque, Advocate
Mr. N.M. Sharma,Advocate
Ms Nirmal Krishnamoorthy,Dy.Chief

Dated 29th August, 2006

JUDGMENT

Heard Mr. Mukul Rohatgi, Sr. learned counsel, Mr. Sanjeev Puri, and Mr. Ajay Kumar Dutta, Advocates for the appellant.

2. In this appeal the following reliefs have been sought for:-
 - (a) Pass an appropriate order or directions quashing tariff order dated March 29,2004 and order dated July 08,2004 passed by Respondent for the period commencing from April 1,2004.
 - (b) Pass appropriate order or directions directing the Respondent to maintain the return on equity of not less than 16% under the tariff order dated March 29,2004 passed by Respondent
 - (c) Set aside the impugned tariff order dated March 29,2004 and impugned order dated July 08,2004.
3. At the time of hearing it was pointed out to the learned senior counsel appearing for the appellant that in effect the appellant challenges the validity of the Statutory Regulations framed by Central Electricity Regulatory Commission. It is admitted that the Regulations which is challenged are statutory in nature. The learned counsel appearing for the contesting respondents rightly contended

that this Appellate Tribunal has no jurisdiction to examine the validity of statutory regulations framed by the first respondent CERC. The learned counsel appearing for the respondents relied upon a full Bench judgment of Appellate Tribunal dated November 9, 2005, Neyveli Lignite Corporation Ltd. V/s Tamil Nadu Electricity Board and Others in Appeals No. 114 and 115 of 2005.

4. The learned Sr. counsel took time to go through the judgment of the full Bench and to make his submissions on any adjourned date. Accordingly, time was given to the learned counsel. It was also represented by the learned counsel that there are other pronouncements of the Hon'ble Supreme Court which he may be in a position to lay his hands to support his contentions that this Appellate Tribunal has jurisdiction to examine the validity of Regulations.

5. On August 24, 2006 this appeal was listed once again. The learned senior counsel appeared for the appellant. The learned senior counsel while referring to the judgment pronounced by the full Bench of Appellate Tribunal fairly stated that in view of the said judgment this appeal could not be proceeded and liberty be given to the appellant to challenge the Regulations before any other forum of competent jurisdiction.

6. The full Bench in Neyveli Lignite Corporation Ltd. V/s Tamil Nadu Electricity Board & Ors. rendered in appeals No. 114 and 115 of 2005, while placing reliance on the pronouncement of the Hon'ble Supreme Court in West Bengal Electricity Regulatory Commission V/S C.E.R.C. reported in 2002 Vol. VIII of SCC 715 held thus:

“ 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 *suo moto* 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 judgment 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 1151 (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.

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 1`21, 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) © 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 Clause (a), (b) and (c) of Sub Regulation (i) of Regulation 16 apply to various entities. Regulation 16(i) (c) undoubtedly applies to the appellate 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 Commission 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.”

7. We are bound by the pronouncement of the Supreme Court and the full Bench of this Tribunal and we have also followed the said judgment in later appeals as well.

8. In the light of the judgment of the Hon'ble Supreme Court as well as the full Bench judgment of this Appellate Tribunal, we dismiss the appeal holding that the validity of Regulations cannot be examined by us and liberty is given to the appellant to approach the appropriate Forum to work out its remedies according to law.

Pronounced in the open Court on August 29, 2006.

(Mr. H.L. Bajaj)
Technical Member

(Mr. Justice E. Padmanabhan)
Judicial Member