

Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal Nos. 51, 52, 53, 54, 55, 56, 145, 146, 147, 148, 149, 150, 198, 199 &
200 of 2006

Dated: 6th December, 2006

Present: Hon'ble Mr. Justice Anil Dev Singh, Chairperson
Hon'ble Mr. A. A. Khan, Technical Member

Appeal Nos. 51 & 52 of 2006

Powergrid Corporation Ltd., ...Appellant

V/s

Rajasthan Rajya Vidyut Prasaran Nigam Ltd. & Ors ...Respondent(s)

Appeal No. 53 of 2006

N.T.P.C. Ltd. ...Appellant

V/s

Madhya Pradesh State Electricity Board & Ors. ...Respondent(s)

Appeal Nos. 54, 55 & 56 of 2006

N.T.P.C. Ltd. ...Appellant

V/s

Union of India & Ors. ...Respondent(s)

Appeal No. 145, 148, 149 & 150 of 2006

Tamil Nadu Electricity Board ...Appellant(s)
V/s
C.E.R.C. & Ors., ...Respondent(s)

Appeal Nos. 146 & 147 of 2006

Tamil Nadu Electricity Board ...Appellant(s)
V/s
N.T.P.C. & Ors. ...Respondent(s)

Appeal Nos. 198, 199 & 200 of 2006

Neyveli Lignite Corporation Ltd., ...Appellant
V/s
CERC & Ors., ...Respondent(s)

Counsel for the Appellant: Mr. R. Venkataramani, Sr. Adv. with
Mr. V. Krishnamurthy, Mr. P.R. Kovilan &
Mr. Ashok Panigrahi for TNEB
(In Appeal Nos. 146 to 150 of 2006)
Mr. M. G. Ramachandran with Mr. Anand K.
Ganesan & Mr. Sudhir Mishra
Mr. Ramnesh Jerath,
Mr. R. Chandrachud & Mr. R. Sasiprabhu for NLC (in
Appeal Nos. 198 to 200 of 2006)

Counsel for the Respondents: Mr. R.K. Mehta for GRIDCO
Mr. Pradeep Misra for UPPCL & DTL & PSEB
(in Appeal Nos. 53, 54, 55 & 56 of 2006)
Mr. R.B. Sharma for BSEB
Mr. Sakesh Kumar for MPSEB
Ms. Yogmaya Agnihotri for CSEB
Mr. Rohit Singh for GEB and CSEB

Mr. Ramji Srinivasan with Ms. Mandakini Singh for
KPTCL (in Appeal Nos. 51 to 56 and 198 to 200 of 2006)
Mr. Sudhir Mishra for Powergrid
(in Appeal Nos. 54, 55 & 56 of 2006)
Mr. Ajit S. Bhasme & Mr. Varun Thakur for MSEB
Mr. Anand K. Ganesan
Mr. Sumeet Pushkarna with Mr. V.K. Malhotra
for Delhi Transco Ltd.
Mr. Keshav Mohan for State of Haryana
Mr. M. T. George for KSEB
Mr. Swaroop Singh & Ms. Kiran Suri
Mr. R. Chandrachud for NLC
Mr. A.K. Garg (Rep.,)
Mr. R.K. Arora, SE/T, HPGCL (Rep.,)

JUDGMENT

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

The appellant, in these appeals, is basically aggrieved of some of the norms laid down by the Central Electricity Regulatory Commission (for short 'CERC') for determination of tariff by its orders dated January 4, 2000, December 15, 2000 and December 21, 2000. The appellant has also challenged the order of the CERC dated November 6, 2001, whereby the CERC rejected the prayer of the appellant to determine tariff in accordance with pre-existing norms and directed the appellant to file revised tariff petitions based on the norms notified by the Commission as per Orders dated January 4, 2000, December 15, 2000 and December 21, 2000.

2. A preliminary objection has been raised by the respondents to the maintainability of these appeals. According to the respondents, the appeals are not maintainable as the orders dated January 4, 2000, December 15, 2000 and December 21, 2000 passed by the CERC are of no effect whatsoever, since the CERC for determination of tariff has framed Regulations and the tariff is required to be determined in accordance with these Regulations. On the other hand, it was submitted by the learned counsel for the appellant that the Regulations are based on the impugned orders dated January 4, 2000, December 15, 2000 and December 21, 2000. The learned counsel for the appellant contended that in case the impugned orders are set aside by this Tribunal, it will remove the basis on which edifice of the Regulations was built and thereafter, the appellant shall be filing writ petition before the High Court or would be taking recourse to other appropriate proceedings to challenge the hollow shell of the Regulations, which is bound to be knocked off.

3. We have considered the submissions of the learned counsel for the parties. It is not in dispute that the CERC under Section 58 of the Electricity Regulatory Commissions Act, 1998 has framed Regulations called CERC (Terms and Conditions of Tariff) Regulations, 2001 (for short 'Regulations of 2001) which were notified on March 26, 2001. The tariff is, therefore, to be determined in accordance with the Regulations of 2001. The orders dated January 4, 2000, December 15, 2000 and December 21, 2000 cannot be utilized and even in the past were not utilized for the purposes of determining the tariff. The orders dated January 4, 2000, December 15, 2000 and December 21, 2000 were protempore in nature and held the field till the Regulations were framed. After the Regulations were framed the aforesaid orders lost their efficacy and utility. In the circumstances, the challenge to the orders is academic in nature. The appellant, in fact by an indirect way, is challenging the Regulations of 2001 in the guise of attacking the aforesaid Orders. This cannot be permitted.

4. In Neyveli Lignite Corporation vs. Tamil Nadu Electricity Board & Ors. (Appeal Nos. 14 and 115 of 2005), we have taken a view that this Tribunal has no jurisdiction to determine the validity of the Regulations in appeal as the Regulations are in the nature of sub-ordinate legislation. While holding so, we relied upon the decision of the Supreme Court in West Bengal Electricity Regulatory Commission v. CESC Ltd. (2002) 8 SCC 715 at page 739, wherein it was held to the effect that the Regulations framed by the Regulatory Commission are under the authority of sub-ordinate legislative functions conferred on it by Section 58 of the Electricity Regulatory Commission Act, 1998. It was further held that the High Court sitting as an appellate court under the Act of 1998 could not have gone into the validity of the Regulations in exercise of its appellate power.

5. Since the appellant cannot challenge the Regulations in appeal before us, it cannot be allowed to challenge the impugned orders dated January 4, 2000, December 15, 2000 and December 21, 2000 as no tariff determination has taken

place on the basis of these orders and they have been replaced by the Regulations of 2001. It is well settled that what cannot be done directly ought not to be allowed to be achieved indirectly. In the case of U.P. Cooperative Federation vs. Singh Consultants, 1988 (1) SCC 174, it was held that one cannot do something indirectly what one is not free to do directly. Again in the case of Sangramsinh Vs. Shantadevi, 2005(11) SCC 314, the Supreme Court held that it is trite that what cannot be done directly cannot be done indirectly. To the same effect is the decision of the Supreme Court in the case of Jagir Singh vs. Ranbir Singh, 1979(1) SCC 560.

6. The learned counsel for the appellant submitted that the courts have been allowing the parties to impugn the orders of the authorities even though they were notified under the Statute subsequently. The authorities cited by the learned counsel for the appellant have no bearing to the case in hand as there is nothing to show that the courts permitted challenge to orders after they were replaced by the rules/ regulations framed under the statutory provisions without challenging the

latter { rules/ regulations}, especially when no action is taken under the former (orders).

7. The appellant has even challenged the order of the CERC dated November 6, 2001, whereby the CERC had declined the prayer of the appellant for determination of tariff as per earlier norms and had directed the appellant to file revised tariff petitions in accordance with the norms notified by the Commission as per the aforesaid impugned orders. Since the Regulations of 2001 were notified on March 26, 2001, the tariff petition is, therefore, required to be filed for determination of tariff in accordance with the Regulations of 2001. Unless the appellant challenges the Regulations of 2001 and succeeds in his challenge, he cannot ask for determination of tariff as per the earlier norms.

8. We feel that the purpose of the Electricity Act, 2003 would have been better served in case the Tribunal had been conferred with the power to determine the validity of the regulations.

9. In the result the appeals fail and are hereby dismissed.

No costs.

(Anil Dev Singh)
Chairperson

(Mr. A.A. Khan)
Technical Member

Dated: the December 6 , 2006