

A CESC LTD.
v.
GAJENDRA HALDEA AND ORS.
(Civil Appeal No. 333 of 2007)

B APRIL 09, 2009
[DR. ARIJIT PASAYAT AND ASOK KUMAR
GANGULY, JJ.]

Electricity Act, 2003:

C ss. 60 and 121 – Appellate Tribunal for Electricity – Power
of – Plea that Tribunal invoked s. 60 to direct all Regulatory
Commissions to fix trading margins as if it involved tariff
determination – Held: Order passed by Tribunal cannot be
D maintained and is set aside.

The instant appeal was filed against the order of the
Appellate Tribunal for Electricity. It was contended that in
view of s. 60 of the Electricity Act, 2003, the Tribunal was
not empowered to fix trading margins in respect of
E traders, intermediators etc. in exercise of its revisional
supervisory powers u/s 121 of the Electricity Act, 2003. It
was also submitted that neither respondent no.1 initiated
any proceedings before the Regulatory Commission
concerned nor did he make any grievance relating to
F excessive exercise/non-exercise of jurisdiction by such
Regulatory Commission.

Allowing the appeal, the Court

G Held: In view of the decision in *Grid Corporation's**
case, the order passed by the Tribunal cannot be
maintained and the same is set aside. [Para 6] [837-B-C]

Grid Corporation of Orissa Ltd. vs. Gajendra Haldea and

Ors. 2008 (11) SCALE 313, relied on.

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Case Law Reference:

2008 (11) SCALE 313 relied on para 3

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 333 of 2007.

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From the Judgment & Order dated 22.12.2006 of the Appellate Tribunal for Electricity, New Delhi in Petition No. 1 of 2005.

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Khaitan & Co. for the Appellant.

S. Potaraju, C.K. Rai, J. Raimei, G. Gamgmei, H.K. Puri, K.V. Mohan, U.S. Prasad, Indu Sharma, H. Wahi and Mamta Tushir for the Respondent.

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The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment passed by the Appellate Tribunal for Electricity, New Delhi (hereinafter referred to as to the 'Tribunal'). The appeal has been filed under Section 125 of the Electricity Act, 2003 (in short the 'Act').

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2. The primary stand of the appellant is that though the Tribunal accepted that Electricity Regulatory Commissions (in short the 'Regulatory Commission') did not have any power to determine tariff for trading, it invoked Sections 60 and 66 of the Act to direct all Regulatory Commissions to fix trading margins as if it involved tariff determination. Stand of the appellant is that only appropriate Regulatory Commission can invoke provisions of Section 60 upon arriving at a finding that a particular licensee or generator had conducted himself in the specified manner which has an adverse effect on competition in the electricity industry. According to the appellant the Tribunal issued directions on assumptions and presumptions without any adjudication on tests laid down in Section 60 of the Act. In

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- A essence, the stand is that the Tribunal is not empowered to determine tariff in exercise of its revisional supervisory powers under Section 121 of the Act. It was pointed out that the exercise of power under Section 121 of the Act was not permissible because respondent No.1-Gajendra Haldea had
- B neither initiated any proceedings before the concerned Regulatory Commission and had also not made any grievance relating to excessive exercise or non exercise of jurisdiction by such Regulatory Commission. Strong reliance is placed on a decision of this Court in *Grid Corporation of Orissa Ltd. v. Gajendra Haldea and Ors.* (2008 (11) SCALE 313) holding that respondent-Gajendra Haldea cannot be treated as a person aggrieved under the Act.
- C

- D 3. Respondent No.1 on the other hand supported the judgment and submitted that *Grid Corporation's* case (*supra*) has no application to the facts of the case.

4. In order to appreciate the rival submissions Section 111 needs to be noted. The same reads as follows:

- E “111. *Appeal to Appellate Tribunal.*-(1) Any person aggrieved by an order made by an adjudicating officer under this Act (except under section 127) or an order made by the Appropriate Commission under this Act may prefer an appeal to the Appellate Tribunal for Electricity:

- F Provided that any person appealing against the order of the adjudicating officer levying any penalty shall, while filing the appeal, deposit the amount of such penalty:

- G Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, it may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.

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(2) Every appeal under sub-section (1) shall be filed within a period of forty five days from the date on which a copy of the order made by the adjudicating officer or the Appropriate Commission is received by the aggrieved person and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(4) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned adjudicating officer or the Appropriate Commission, as the case may be.

(5) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within one hundred and eighty days from the date of receipt of the appeal:

Provided that where any appeal could not be disposed of within the said period of one hundred and eighty days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within the said period.

(6) The Appellate Tribunal may, for the purpose of examining the legality, propriety or correctness of Appropriate Commission under this Act, as the case may be, in relation to any proceeding, on its own motion or

A otherwise, call for the records of such proceedings and make such order in the case as it thinks fit.”

5. In *Grid Corporation's* case (supra) it was inter-alia observed as follows:

B “15. It is unnecessary to go into the question as to the nature of the transaction, because respondent No.1-
Gajendra Haldea in order to prove that he had locus standi
C relied on Sections 121 and 142 of the Act. It was also stated that it is not in the nature of PIL. It was stated that the prayer for refund was not being pressed.

16. A bare reading of Sections 121 and 142 of the Act which read as follows shows that those provisions are not applicable.

D “121. *Power of Appellate Tribunal*- The Appellate Tribunal may, after hearing the Appropriate
Commission or other interested party, if any, from
E time to time, issue such orders, instructions or directions as it may deem fit, to any Appropriate Commission for the performance of its statutory function under this Act.

F “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
G 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,
H 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."

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17. Therefore, the Appellate Tribunal was wrong in interfering with the conclusions of CERC that respondent No.1's petition was not entertainable and/or maintainable."

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6. The order passed by the Tribunal cannot be maintained in view of what is stated in *Grid Corporation's* case (supra) and is set aside. The appeal is allowed without any order as to costs.

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R.P.

Appeal allowed.