

CENTRAL ELECTRICITY REGULATORY COMMISSION

v.

GAJENDRA HALDEA AND ORS.

(Civil Appeal No. 2050 of 2007)

APRIL 9, 2009

**[DR. ARIJIT PASAYAT AND ASOK KUMAR
GANGULY, JJ.]**

Electricity Act, 2003: Power of Tribunal to determine tariff for trading – Scope – Held: Respondent neither initiated any proceeding before the concerned Regulatory Commission nor made any grievance relating to excessive exercise or non-exercise of jurisdiction by Regulatory Commission – Bare reading of ss.121 and 142 shows that those provisions were not applicable – Order of tribunal directing Regulatory Commissions to fix trading margins cannot be maintained.

Grid Corporation of Orissa Ltd. v. Gajendra Haldia and Ors. (2008) 11 SCALE 313, relied on.

Case Law Reference:

(2008) 11 SCALE 313 relied on **Para 2**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2050 of 2007.

From the Judgment & Order dated 22.12.2006 of the Appellate Tribunal for Electricity in Petition No. 1/2005 and I.A. Nos.1 & 32 of 2006.

V.R. Reddy, U.U. Lalit Shanti Bhushan, M.G. Ramachandran, R. Chandrachud, R. Joseph, H.K. Puri, P. Narasimhan, Sridhar Potaraju, R. Joseph, Pradeep Misra, Suraj Singh, Sanjeev Kumar, Avinash Menon, Vishal Gupta Kumar Mihir (M/s. for Khaitan & Co.), Manish Singhvi, D.K.

A Sinha, Sandeep Bajaj, Hemantika Wahi, Mamta Tushit,
Somnath Padhan, H. Wahi, Fox Mandal & Co. Ugra Shankar
Prasad, A.K. Ganeshan, S. Shashtri, K.V. Mohan, Jagjit Singh
Chhabra, Pratik Dham, C.K. Rai, D. Julis Regmej, Sridhar
Potarju, Raj Kumar Mehta, U. Sharma, Nikhil Nayyar, TVS
B Raghvendra Sreyas, Ambuj Agrawal, Suresh Chandra Tripathy,
Amit Kapur, Poonam Verma, Anupam Verma, A. Guneshwar
Sharma Shrestha Verma, Vibha Datta Makhija, Nidhi Minocha,
Ruchi G. Narula, Vivek Kishore, Rakesh K. Sharma, Pradeep
C Kumar, A.S. Bhasme, Sharmila Upadhyay, G. Umapathy, Vibha
Tiwari, Rakesh K. Sharma, Richa Srivastava (for Gopal Jain)
and Indu Sharma for the appearing parties.

The Judgment of the Court was delivered by

D **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').

E 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
F 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
G 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
essence, the stand is that the Tribunal is not empowered to
determine tariff in exercise of its revisional supervisory powers

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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 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.

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:

"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:

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:

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.

(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

A 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:

B 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.

C (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.

D (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.

E (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:

F 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.

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

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

"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 B
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 C
applicable.

"121. Power of Appellate Tribunal- The Appellate
Tribunal may, after hearing the Appropriate
Commission or other interested party, if any, from D
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.

"142. Punishment for non-compliance of directions E
*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 F
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,
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 H

