(2014) 12 KL CK 0174

In the High Court Of Kerala

Case No : W.P. (C) No. 2625 of 2012

Assistant Executive Engineer, KSEB — APPELLANT

Vs

Principal Agricultural Officer, Kollam and Others — RESPONDENT

Date of Decision : 08-12-2014

Acts Referred:
Electricity Act, 2003 — Section 108, 126, 135, 136, 137

Citation : (2015) 1 KHC 356 : (2015) 1 KLT 526

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : P. Santhalingam, Senior Standing Counsel and S. Sharan, Standing Counsel, Advocates for the Appellant; P.V. Lonachan, Senior Government Pleader, Advocates for the Respondent

Judgement

P.R. Ramachandra Menon, J.—The petitioner, an Assistant Executive Engineer of the Electrical Sub Division, Oachira is constrained to approach this Court by way of this writ petition filed in the year 2012, seeking to set aside Exts. P6 and P8 orders passed by the Consumer Grievance Redressal Forum (CGRF) virtually trespassing into other fields, to which CGRF does not have any competence or jurisdiction, particularly with regard to fixation of Tariff, which in fact comes strictly within the realm of Regulatory Commission. The case of the petitioner is that, power connection was given to the first respondent herein, i.e. Prl. Agricultural Officer, Prl. Agriculture Office, Collectorate, Kollam to run a Nursery, (State Coconut Nursery at Karunagappally). On finding that the respondent was liable to satisfy higher tariff, steps were being pursued in this regard; when the first respondent approached the CGRF. Originally, the connection provided to the ''Coconut Nursery'' run by the first respondent was under category LT V tariff, i.e. an agricultural connection. This was sought to be changed to LTIV tariff - industrial category and demand was raised accordingly. The first respondent filed a complaint before the CGRF requesting for re-classification of tariff to LTV. The CGRF arrived at a finding that the tariff applicable to the State Coconut Nursery was LT IV tariff; simultaneously alerting the complainant that, if he was aggrieved of the order in any manner, it was open for the party to file appeal before the Ombudsman within thirty days. It appears from the pleadings and proceedings that the first respondent did not approach the Ombudsman, but filed a review petition before the CGRF vide Ext. P4 dated 18/03/2011. After considering the same, the CGRF passed Ext. P6 order dated 27/04/2011, whereby the change in classification was ordered to be effected from LT IV to LT V and the authorities of the Board were directed to raise bills only under LT V tariff. Met with the circumstance, the petitioner herein filed a review petition dated 01/08/2011 (RP 1 of 2011) before the CGRF. But interference was declined and Review Petition was dismissed as per Ext. P8 order dated 27/08/2011, which made the petitioner to approach this Court by filing this writ petition.

2. A counter-affidavit has been filed by the first respondent seeking to sustain the course and proceedings; also stating that the jurisdiction exercised by the CGRF is perfectly within the four walls of law and is not assailable under any circumstance. The Prl. Secretary, Power Department was suo motu impleaded as Additional second Respondent. In the course of further proceedings, a counter affidavit has been filed by the under Secretary to the Government on behalf of the Prl. Secretary, Power Department to the effect that the proceedings pursued by the CGRF are per se wrong and not sustainable.

3. Heard both the sides in detail.

4. Mr. Santhalingam, the learned Senior Counsel appearing for the petitioner submits that the classification and fixation of tariff is a job which is to be discharged by the Regulatory Commission. It is stated that, as per the tariff order approved by the Regulatory Commission, agricultural consumers (including dewatering and lift irrigation) are categorised under LT V tariff; whereas agricultural nurseries without sale are categorized under LT IV tariff. Agricultural nurseries with sale come under LT VIIA tariff, if they do the sales in the same premises, if there is no segregation of load for pumping. If the LT VIIA consumer opts for segregation of their motor load for pumping and installs separate meters, LT IV tariff shall be applied for pumping and the balance operation will come under LT VIIA tariff.

5. It is brought to the notice of this Court that the prescription made by the Regulatory Commission in this regard is clearly discernible from Note 1 and 2 given under LT VIIA Commercial Tariff, which is extracted below:

Note.--1. If the agriculture nurseries do sale also in the same premises, the tariff applicable shall be LT VIIA if there is no segregation of load for pumping.

2. If the LT VIIA consumer opts for segregation of their motor load for pumping and installs separate meters, LT IV tariff shall be applied for pumping and LT VIIA tariff shall be applied for other activities in the same premises.

6. The learned Sr. Counsel also points out that there is absolutely no jurisdiction vested with the CGRF or the State Electricity Ombudsmnan to have dealt with

the complaint of this nature, more so since Ext. P4 preferred by the first respondent does not actually amount to a ''complaint'' at all, as defined under Regulation 2(f), which reads as follows:

"(f) ''Complaint'', means any grievance made by a complainant in writing on:

(i) defect or deficiency in electricity service provided by the licensee;

(ii) unfair or restrictive trade practices of licensee in providing electricity services;

(iii) charging of a price in excess of the price fixed by the Commission for supply of electricity and allied services;

(iv) errors in billing;

(v) erroneous disconnection of supply;

(vi) electricity services which are unsafe or hazardous to public life in contravention of the provisions of any law or rule in force; or

(vii) any other grievance connected with the supply of electricity by the licensee except those related to the following:

(1) unauthorised use of electricity as provided under Section 126 of the Act;

(2) offences and penalties as provided under Sections 135 to 139 of the Act; and

(3) accident in the distribution, supply or use of electricity under Section 161 of the Act."

Reference is also made to sub-section (3) of Section 62 of the Electricity Act, which deals with determination of tariff, which reads as follows:

"(3) The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer''s load factor, power factor, voltage, total consumption of electricity during any specified period or the time, at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required."

7. Tariff has been actually fixed by the Regulatory Commission, taking note of all the parameters concerned as envisaged under Section 62(3) and this is not at all a matter for CGRF or Electricity Ombudsman to have dealt with. The learned Senior Counsel places reliance on the version of the additional second respondent/Prl. Secretary, Department of Power in his counter affidavit dated 25th May, 2012. Paragraph 3 and 4 are relevant, which are reproduced below:

"3. It is submitted that KSE Board cannot levy subsidized charges for a commercial activity as Government is allotting required amount to the Agricultural Department to give subsidy to the farmers. Selling coconut seedlings is a commercial activity and the tariff fixed for commercial activity has to be remitted. It has been admitted in the order dated 27/04/2011 that the

Department is selling nursery products to the needy persons in concessional rates.

4. It is further submitted that the Consumer Grievance Redressal Forum ought to have taken into account the fact that the agricultural nurseries with sale are categorized under LT VII A tariff. It at all such nurseries are affected, they should approach the Regulatory Commission for appropriate relief. The KSE Board has only applied the classification prescribed by the Regulatory Commission. The tariff prescribed by the Kerala State Electricity Regulatory Commission is applicable both to the Government farms and private farms without any differentiation. Therefore, by taking into account the object of the nursery farm, a different classification cannot be adopted. In effect, the Consumer Grievance Redressal Forum has directed not to apply or follow the classification prescribed by the Regulatory Commission. It is therefore submitted that the Consumer Grievance Redressal Forum has no jurisdiction to direct that the classification prescribed by the Regulatory Commission who is the statutory authority to fix the tariff under Section 62(3) of Electricity Act 2003 need not be applied. Moreover as per Section 108 of Electricity Act 2003 only the Government can give direction in the discharge of the State Regulatory Commission that too, in matters of policy involving public interest."

After hearing both the sides, this Court finds that the petitioner is entitled to succeed, as no provision is brought to the notice of this Court to sustain the impugned orders passed by the CGRF; more so in view of the categoric assertion made from the part of the Additional 2nd respondent/Power Secretary of the State in this regard. Accordingly, the impugned orders are set aside and the writ petition stands allowed. No cost.