
(2005) 08 UK CK 0005

In the Uttarakhand High Court

Case No : Writ Petition No. 981 of 2004 (M/B)

Kashi Vishwanath Steels Ltd.

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 25-08-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Electricity Act, 1910 — Section 17, 4

Electricity Act, 2003 — Section 110, 111, 111(1), 111(2), 127

Citation : (2006) 1 UC 238

Hon'ble Judges : Cyriac Joseph, C.J;B.C. Kandpal, J

Bench : Division Bench

Advocate : M.C. Bansal, for the Appellant;

Final Decision : Dismissed

Judgement

Cyriac Joseph, C.J.—The Petitioner is a Public Ltd. Company engaged in the manufacture of Steel Ingots, HSD Bars, Wire Rods and Structural Steel etc. It is situated at Narain Nagar, Bazpur Road, Kashipur, District Udham Singh Nagar in the State of Uttaranchal. The Petitioner challenges the provisional tariff order dated 24-08-2004 passed by the second Respondent - Uttaranchal Electricity Regulatory Commission. The writ petition was admitted on 14-12-2004. No interim order was passed by this Court in this case. The case is posted for final hearing today.

2. The impugned order was passed by the second Respondent - Uttaranchal Electricity Regulatory Commission u/s 62(4) and 86 of the Electricity Act, 2003. u/s 111(1) of the Electricity Act, 2003, any person aggrieved by an order made by an adjudicating officer under the said Act (except u/s 127) or an order made by the Appropriate Commission under the said Act may prefer an appeal to the Appellate Tribunal for Electricity. u/s 111(2), every appeal under Sub-section (1) shall be filed within a period of 45 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; provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of 45 days if it is satisfied that there was sufficient cause for not filing it within that period. The order impugned in this writ petition was passed on 24-08-2004. This writ petition was filed on 04-10-2004. In spite of the provision for a statutory appeal against the impugned order, the Petitioner filed this writ petition on the ground that the Appellate Tribunal contemplated u/s 110 of the Electricity Act, 2003 had not been established. In paragraph 25 of the writ petition, it is specifically stated that though u/s 110 of the Electricity Act, 2003 there is a provision for appeal to the Appellate Tribunal against the impugned order, the Appellate Tribunal has not been constituted as yet by the Central Government and therefore, the Petitioner is constrained to file the writ petition.

3. In the absence of an Appellate Tribunal, the Petitioner was justified in approaching this Court by filing a writ petition against the impugned order and this Court rightly entertained the writ petition and admitted the same. But the situation has now changed. It is not disputed that the Appellate Tribunal, as contemplated u/s 110 of the Electricity Act, 2003, has already been established and the Tribunal has started functioning on 21-07-2005. It is also not disputed that the Central Government has issued a Notification dated 08-06-2005 providing that any appeal filed within 45 days from the date of commencement of the functioning of the Tribunal will be treated as an appeal filed within time for the purposes of Section 111 of the Electricity Act, 2003. Thus, the Petitioner has still got ample time to file a statutory appeal against the order impugned in this writ petition. Since, the Petitioner was constrained to file the writ petition due to the absence of an Appellate Tribunal to consider the appeal and since the Appellate Tribunal has already been constituted and has started functioning and since the Petitioner has still got ample time to file an appeal against the impugned order, we deem it just and proper that the Petitioner is relegated to the remedy of filing the statutory appeal. By adopting such a course, no prejudice will be caused to the Petitioner.

4. Mr. M.C. Bansal, learned Counsel for the Petitioner submitted that since the writ petition has already been admitted by this Court and since it is posted for final hearing, the dispute raised in the writ petition may be decided by this Court itself. However, we are not impressed by this argument. The writ petition was filed and was entertained at a time when there was no Appellate Tribunal in existence. Ordinarily, when a statutory appeal is provided, the party should avail of such statutory remedy of filing the appeal. The Petitioner himself has stated that he was constrained to file the writ petition due to the absence of the Appellate Tribunal for considering the appeal. This Court also entertained the writ petition only because of such a situation. In view of the change of circumstance, there is no justification for this Court to proceed with the case for deciding the dispute on merit.

5. We take such a view, also, in the light of the observations of the Hon''ble

Supreme Court in West Bengal Electricity Regulatory Commission Vs. C.E.S.C. Ltd. etc. etc., . Those observations are extracted hereunder:

102. We notice that the Commission constituted u/s 17 of the 1998 Act is an expert body and the determination of tariff which has to be made by the Commission involves a very highly technical procedure, requiring working knowledge of law, engineering, finance, commerce, economics and management. A perusal of the report of ASCI as well as that of the Commission abundantly proves this fact. Therefore, we think it would be more appropriate and effective if a statutory appeal is provided to a similar expert body, so that the various questions which are factual and technical that arise in such an appeal, get appropriate consideration in the first appellate stage also. From Section 4 of the 1998 Act, we notice that the Central Electricity Regulatory Commission which has a judicial member as also a number of other members having varied qualifications, is better equipped to appreciate the technical and factual questions involved in the appeals arising from the orders of the Commission. Without meaning any disrespect to the Judges of the High Court, we think neither the High Court nor the Supreme Court would in reality be appropriate appellate forums in dealing with this type of factual and technical matters. Therefore, we recommend that the appellate power against an order of the State Commission under the 1998 Act should be conferred either on the Central Electricity Regulatory Commission or on a similar body. We notice that under the Telecom Regulatory Authority of India Act, 1997 in Chapter IV, a similar provision is made for an appeal to a Special Appellate Tribunal and thereafter a further appeal to the Supreme Court on questions of law only. We think a similar appellate provision may be considered to make the relief of appeal more effective.

6. In our view, the Appellate Tribunal is better equipped to decide the dispute in this case. Hence, the mere fact that the writ petition was admitted at a time when the Appellate Tribunal was not in existence need not compel us to proceed to decide the dispute on merits even after the Appellate Tribunal has been established.

7. Mr. M.C. Bansal, learned Counsel also contended that the provisions of the Electricity Act, 2003 do not provide that a writ petition already admitted cannot be decided by the High Court on the ground that the Appellate Tribunal has been established or that the proceedings pending before the High Court shall stand transferred to the Appellate Tribunal. We are declining to decide the dispute on merits, not on the ground that there is any statutory prohibition against our proceedings with the matter, but on the ground that, when a party has got an effective alternate remedy, ordinarily a writ petition should not be entertained and also on the ground that as observed by the Hon"ble Supreme Court, the High Court cannot be appropriate appellate forum for dealing with this type of factual and technical matters and that the Appellate Tribunal is better equipped to appreciate the technical and factual questions involved in the appeals arising from the orders of the Regulatory Commission. Hence, even in the absence of a

statutory prohibition, we are entitled and justified to decline to exercise our discretionary jurisdiction under Article 226 of the Constitution of India in this case.

8. In the above circumstances, the writ petition is dismissed without prejudice to the right of the Petitioner to file an appeal u/s 111 of the Electricity Act, 2003 before the Appellate Tribunal established u/s 110 of the said Act.