(2015) 07 KL CK 0098

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 19551 (S), 22794, 4100, 19371, 22905, 22815, 25353, 25363, 26139, 27022, 27023 of 2012, 2190 of 2013 and 21853 of 2014

K.R. Venugopalan Nair APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 23-07-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21
Electricity Act, 2003 — Section 111, 62, 62(2), 62(5), 64
State Financial Corporations Act, 1951 — Section 32G, 32-G

Citation : (2015) 07 KL CK 0098

Hon'ble Judges : Ashok Bhushan, C.J;A.M. Shaffique, J

Bench : Division Bench

Advocate : K. Ramakumar, Senior Advocate, S.M. Prasanth and Smitha George, for the Appellant; Girija Gopal, Special Government Pleader and Jaice Jacob, SC, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan, C.J—All these Writ Petitions raising similar issues have been heard together and are being decided by this common judgment.

2. The Writ Petitions can be classified into three groups. The first group are the Writ Petitions filed for issue of a writ of quo warranto against private respondents, namely, Chairman and Members of the Kerala State Electricity Regulatory Commission (hereinafter referred to as "the Commission"). This group consists of W.P. (C) No. 4100 of 2012, W.P. (C) No. 2190 of 2013 and W.P. (C) No. 21853 of 2014. In W.P. (C) No. 4100 of 2012 apart from challenging the appointment of Members of the Commission, petitioner has also prayed for a direction to the State Government to appoint the petitioner as a Member of the Commission.

3. In the second group there are only two Writ Petitions being W.P. (C) Nos.

19551 and 22794 of 2012. In both the Writ Petitions apart from the prayer for issuance of a writ of quo warranto, a prayer for quashing the tariff order dated 25.07.2012 issued by the Commission has also been made. The third group consists of the rest of the Writ Petitions where the petitioners have challenged the tariff order dated 25.07.2012.

4. For deciding all these Writ Petitions, it shall be sufficient to refer the facts and pleadings in W.P. (C) No. 19551 of 2012 in which Writ Petition pleadings are complete. The said Writ Petition is being treated as the leading Writ Petition. Pleadings in W.P. (C) No. 22905 of 2012 also need to be separately noted since the petitioner therein challenges the tariff order dated 25.07.2012 on several grounds. Facts of some more Writ Petitions shall also be noted as necessary.

5. Facts and pleadings in W.P. (C) No. 19551 of 2012 are: Petitioner is a consumer of electric energy in the State of Kerala. He claims to be engaged in a business for which consumption of electricity is necessary. Petitioner claims to be aggrieved by the composition of the Commission as well as the fixation of electric energy charges by the Commission. Petitioner has arrayed Shri Parameswaran, respondent No. 5, Member of the Commission and Shri Mathew George, respondent No. 6, Member of the Commission. Petitioner''s case in the Writ Petition is that the 5th respondent, for a long time, was functioning as Chief Engineer, Kerala State Electricity Board (for short, "the KSEB") and thereafter as Electricity Ombudsman. The 5th respondent is getting pension from the KSEB. For the 6th respondent it is pleaded that he is functioning as Member, Finance in the KSEB. He being in charge of managing financial affairs of the Board has deep interest in the financial well being of the KSEB. It is pleaded that according to Section 85(5) of the Indian Electricity Act, 2003 (hereinafter referred to as "the 2003 Act") no person who have financial or other interest which is likely to affect prejudicially his functions as Chairman and Member shall be recommended and selected as such. It is pleaded that respondents 5 and 6 are wholly ineligible to function as Members of the Commission by the reason of principle of bias and likely prejudice, which will affect their function as Members in determining the tariff. In view of the above, any decision rendered by respondents 5 and 6 in that capacity should be declared as void, inoperative and unenforceable. Respondents 5 and 6 participated in the decision making process from March 2012 to August 2012. The KSEB has filed a petition for refixing the existing tariff for realisation of an additional amount of Rs. 1560.40 crores which petition was submitted on 29.03.2012 for revision of tariff. Public hearing was conducted on the application in which consumers and various other organizations were heard but ineligibility and incapacity of respondents 5 and 6 who are functioning as Members could not be pointed out by anybody who participated in the meeting. The Commission proceeded to pass an order on 25.07.2012 not only permitting the application submitted by the KSEB but by granting additional revenue. The annual fixation tariff has been made retrospectively with effect from 01.07.2012 though the decision was rendered on 25.07.2012. Petitioner prayed for the following reliefs in the Writ Petition:

"(i) To issue a writ of Quo warranto calling upon respondents 5 and 6 to show before this Hon''ble Court under what authority of law they are holding the position of members of the Kerala State Electricity Regulatory Commission and functioning as such.

(ii) To declare that the order Exhibit P2 is violative of Articles 14, 19 and 21 of the Constitution of India as much as it has been made without jurisdiction by ineligible persons and will result in gross discrimination and arbitrariness against the petitioner and other consumers.

(iii) To call for the records leading upto Exhibit P2 and quash the same by the issuance of a Writ of Certiorari or any other appropriate writ, order or direction.

(iv) To issue such other writs, orders or directions as this Hon''ble Court may deem fit and proper in the circumstances of the case."

6. In the Writ Petition counter affidavits have been filed by the Commission, KSEB, respondents 5 and 6 as well as the State of Kerala. In the counter affidavit filed by the Commission it is pleaded that the Commission is a Statutory Body constituted under Section 82 of the 2003 Act. The 5th respondent took charge as Member of the Commission on 25.11.2010 whereas the 6th respondent took charge on 15.12.2010. Members of the Commission are qualified to be appointed as per qualifications prescribed in Section 84 of the 2003 Act. After receipt of the application for revising the tariff based on the Anticipated Revenue Requirement and Expected Revenue Charges (ARR and ERC) for year 2012-13, the proceedings were taken as per the Rules. The Commission called for additional information from the KSEB, published the petition in newspapers called comments from all stake holders, conducted hearing in various public places and after evaluating various claims on requirements, issued the tariff order. Reference of an order dated 11.11.2011 passed by the Appellate Tribunal for Electricity in O.P. No. 1 of 2011 has also been referred to and the directions issued therein were extracted in the counter affidavit. The Commission after examining the views and objections raised during hearing and keeping in view the additional tariff policy, National Electricity Policy and the Regulations issued by the Commission took the decision. It is pleaded that allegation regarding illegal constitution of the Commission is only an indirect attempt to challenge the tariff order. It is pleaded that raising such an issue on the eligibility of respondents 5 and 6 after a period of more than 1 year and 8 months from their appointment and that too after Ext. P2 order is sufficient indication that it is not the eligibility of the Members that is sought to be set right by the Petitioner. It is pleaded that the Commission is entitled to revise the tariff retrospectively. Reliance is placed on a judgment of the Apex Court in Kanoria Chemicals and Industries Ltd. and Another Vs. State of U.P. and Others, (1992) 1 JT 199 : (1992) 1 SCALE 107 : (1992) 2 SCC 124 : (1992) 1 SCR 151 .

7. The KSEB has filed counter affidavit. The Aggregate Revenue Requirement of the KSEB is the budgetary exercise covering the business plan and estimate of

the various expenses such as cost of power purchase, employee cost, interest charges, repair and maintenance charges, administration and general expenses, etc., for the ensuing year. The KSEB has been filing the ARR and ERC before the Commission since the year 2003-04. The KSEB is incurring revenue loss of Rs. 518 crores per day since 1st April, 2012. The Commission has approved the tariff order after hearing the objection of all stake holders. The KSEB has published a summary of the tariff petition in two vernacular dailies on 10.05.2012 and two English dailies, viz., The New Indian Express on 10.05.2012 and The Hindu on 09.05.2012. The Commission thereafter heard the objections on 04.06.2012, 06.06.2012 and 08.06.2012 at three places. Revision of tariff was made after complying with all legal and procedural formalities. Any person aggrieved by the tariff order is entitled to file an appeal before the Electricity Appellate Tribunal under Section 111 of the 2003 Act.

8. Respondent No. 5 has filed a counter affidavit stating that application was invited for the post of Members vide Notification dated 27.07.2010. In response to the same he submitted an application wherein it was stated that the 5th respondent has been working as State Electricity Ombudsman from June 2008 onwards. It was further stated that the 5th respondent had retired as Chief Engineer from the KSEB in August, 2004 after a long service of 33 years in Distribution, Transmission, Generation and System Operation wings of the KSEB. The Selection Committee consisting of a retired Judge of this Court, Chief Secretary of the State and the Chairperson of the Central Electricity Regulatory Commission considered the application and recommended the name of the 5th respondent as Member. By issue of Notification dated 22.11.2010, the 5th respondent has been appointed as Member (Technical) of the Commission. It has been pleaded that there has been a large number of personnels in Commission drawn from utilities including the KSEB. Details of several persons who hold the post of Chairman and Member and Members of the Commission drawn from different utilities including KSEB. In the counter affidavit it has been pleaded that the tariff petition filed by the KSEB was considered as per provisions of the 2003 Act and the Kerala State Electricity Regulatory Commission (Tariff) Regulations 2003 (for short, "the 2003 Regulations") after conducting public hearing. The Commission has taken into consideration all relevant facts and circumstances. The technical Members of most of the States in the country are Engineers with experience in Electricity utilities. The allegation that the 5th respondent has deep interest to enhance the income of the KSEB is false and denied. Respondent''s interest in the financial well being of the KSEB is only to the extent expected from a Regulator towards a Regulated Entity. The 5th respondent does not have any personal interest in any of the matters coming before the Commission nor has the petitioner cited any such instance in his petition. Allegation of bias raised by the petitioner appears to be only a pretext to quash the tariff order by whichever means. The petitioner could not produce any evidence even for the suspicion of bias.

9. The 6th respondent has filed a counter affidavit almost reiterating the same

pleading as has been noted above on behalf of the 5th respondent. The 6th respondent stated that he belonged to Central Civil Service (Indian Post and Telegraphs Accounts and Finance Service). He had held senior positions in the Government of India, such as Deputy Director General (Ministry of Communications), New Delhi, Principal General Manager, BSNL and Controller of Communications Accounts (of the rank of Additional Secretary to Government of India). He was appointed in the KSEB only in the year 2007 and worked as Member (Finance) in the KSEB and from 2008 to 2010 he has served as Member in the Managing Committee of the KSEB. He has not drawn any pensionary benefits for the services rendered by him in the KSEB. The 6th respondent does not have any personal interest in any of the matters coming before the Commission nor the petitioner could cite any such instances in his petition. He has vast experience in finance and due to his vast experience he has been selected by the Selection committee for appointment as Member (Finance).

10. Counter affidavit has been filed by the State of Kerala where it has been stated that vacancies of Members had arisen in the Commission on 04.09.2010 and 14.12.2010. The State Government by Government Order dated 30.06.2010 constituted a Selection Committee consisting of Hon''ble Justice R. Rajendra Babu, Dr. P. Prabhakaran, Chief Secretary to Government of Kerala and Dr. Pramod Deo, Chairperson, Central Electricity Regulatory Commission, New Delhi. The Committee invited application by 27.07.2010. The Selection Committee received 90 applications and a short list of 24 candidates was prepared. The selection committee met on 08.10.2010 and decided that one Member should be from the Technical side preferably having experience in an electrical utility and another Member shall be from the Accounts side, preferably familiar with the accounts of electrical utilities. Names of respondents 5 and 6 were recommended to the Government. The Council of Ministers approved the recommendation in its decision dated 16.11.2010 and thereafter notification dated 22.11.2010 was issued. It has been pleaded that respondents 5 and 6 were in no way associated with the process of preparation of the tariff petition of the KSEB. Respondents 5 and 6 have left the KSEB in the year 2004 and 2010 respectively. There was tariff hike in 2002, 2007 and 2010. The revenue gap of 2012-13 was determined as Rs. 1889.15 and there was already an accumulated gap of 5000 crores from the past as per audited accounts of the KSEB. The Commission after following detailed procedural formalities like calling additional information from the Board, publication of petition in newspapers calling for comments from public and stake holders, conducting public hearing at various places and evaluating the various claims on requirements approved the requirements (ARR & ERC) of the KSEB. Since the approved revenue gap for the financial year 2012-13 was Rs. 1889.15 crores revision of tariff to abridge the gap became inevitable. It was stated that tariff can be revised by the Commission retrospectively as held in Kannodia Chemicals and Another (supra). The Appellate Tribunal for Electricity has also issued various directions. The tariff order dated 25.07.2012 was in accordance with the provisions of the 2003 Act and 2003 Regulations and other relevant

materials.

11. W.P. (C) No. 22905 of 2012 (Sree Sakthi Paper Mills Ltd. v. Kerala State Electricity Regulatory Commission and Others) has been filed by the petitioner which is a Private Limited Company engaged in paper manufacturing industry. Petitioner has challenged the tariff order dated 25.07.2012. Petitioner''s case is that the petitioner has been paying charges at the rate of 270/KVA as fixed charges and Rs. 3/- per unit as energy charges. The KSEB filed a petition on 01.04.2012 for revising the existing tariff structure for realising additional revenue. Commission sought certain clarifications. Thereafter petition was admitted on 25.04.2012 and numbered as O.P. No. 23 of 2012. Objections were invited, the same were filed and the Commission after deliberation finalised the electricity tariff by its order dated 25.07.2012. For the year 2012 the tariff was fixed as Rs. 300/- per KVA and fixed charges of Rs. 4.10 for HT consumers thereby increasing the tariff rate by 27%. Order dated 25.07.2012 had been made effective from 01.07.2012. It is submitted that retrospective operation of the tariff order is without jurisdiction and in excess of the power conferred on the Commission. According to the 2003 Regulations it is mandatory that application is to be filed four months before commencement of the financial year. In the present case application was to be filed on or before 01.12.2011. The application being filed on 01.04.2012 it is time barred. Tariff order is without jurisdiction. Tariff order cannot be issued on a piecemeal basis but it must be for a financial year. Petitioner has prayed for the following reliefs:

(i) Issue a writ of certiorari or other appropriate writ, order or direction quashing the final Tariff Order dated 25.7.2012 in O.P. No. 23 of 2012 issued by the 1st respondent in so far as it applies for the year 2012-13.

(ii) Issue a writ or certiorari or other appropriate writ, order or direction quashing Ext. P2 to the extent that it permits retrospective operation of Tariff Order dated 25.7.2012 in O.P. No. 23 of 2012 issued by the 1st respondent.

(iii) Issue a Writ of mandamus or other appropriate writ, order or direction directing the 2nd respondent to reimburse the additional amounts collected pursuant to Ext. P1 Tariff revision.

(iv) Issue such other appropriate writ, order or direction that may be deemed to be just and equitable in the facts and circumstances of the case."

12. In W.P. (C) Nos. 2190 of 2013, 21853 of 2014 and 22815 of 2012 apart from praying for issue of writ of quo warranto against the two Members, Parameswaran and Mathew George, a prayer has been made to issue a writ of quo warranto against Shri T.M. Manoharan, the Chairman of the Commission. Case set up for challenging the appointment of Members of the Commission are same and it is relevant to notice the case set up in the Writ Petition against the 6th respondent. It is sufficient to note the pleadings in W.P. (C) No. 2190 of 2013 in so far as allegations against the Chairman of the Commission have been made. T.M. Manoharan, the Chairman of the Commission was appointed as per

order dated 11.01.2013 of the State Government. Petitioner claims to be a Federation of Consumer Vigilance Centre. Writ Petition has been filed in public interest aggrieved by the conduct of the State Government and Selection Committee in the selection and appointment of Chairman/Members of the Commission from Ex-Officials/Officers of the KSEB by which object and creation of independent Regulatory Commission is said to have been undermined. It was pleaded that the 6th respondent has served as Chairman of the KSEB till his retirement on 31.05.2012. He served as Chairman of the KSEB from 19.09.2001 to May/June, 2008. It was mentioned that appointment of Members is already in challenge in W.P. (C) No. 19551 of 2012. It is pleaded that the very concept of the Commission as envisaged in the Electricity Regulatory Commission, 1998 is that an independent body to adjudicate the issues arising in generating Companies, Licensees may be constituted. Illegalities are being perpetuated in appointing Officers of the KSEB as Members of the said Commission. The 6th respondent before his retirement filed several applications before the said Commission. The 6th respondent cannot be expected to act impartially. Every decision of the Commission involves some decision taken by the KSEB. Respondents 6 to 8 are wholly ineligible to function as Members of the Commission by the reason of bias and likely prejudices which will affect their function as Chairman and Members with deep involvement in the KSEB. In the Writ Petition the prayer was for the issue of a writ of quo warranto to show cause as to under what authority respondents 6 and 7 are functioning as Chairman and Member. Prayer for quashing Ext. P10 notification by which the 6th respondent was appointed as Chairman has also been made.

13. Facts of one more Writ Petition of group one need to be noted, i.e., W.P. (C) No. 4100 of 2012. Petitioner in the said case claims to have retired as a Senior Manager of a Public Sector Bank in the year 2006. Petitioner''s case is that notification dated 27.07.2010 was published in the Malayala Manorama dated 07.08.2010 inviting application for appointment as Members in the Commission. Petitioner also submitted application dated 16.08.2010. But he heard nothing from the respondent. When news was published regarding appointment of respondents 3 and 4 as Members of the Commission, petitioner made an application under the Right to Information Act, 2005 to find out as to how many applications were received. Reply was that there were altogether 90 applications but there was no interview. Petitioner obtained information that the 3rd respondent retired from the KSEB as Chief Engineer on 31.08.2004 and the 4th respondent was working as Finance Member, KSEB from 01.08.2007 to 14.12.2010. It is pleaded that no yardstick has been adopted for selecting the most suitable, anywhere in the Act. Petitioner filed Writ Petition praying for a declaration that appointment of respondents 3 and 4 is arbitrary and illegal. He prayed for a further direction to the 1st respondent to appoint the petitioner as Member of the Commission.

14. We have heard learned Senior Advocates Shri K. Ramakumar & Shri Joseph Kodianthara, Shri Anchal C. Vijayan, Smt. C.G. Preetha, Shri P.K. Mohamed

Jameel, Shri Bechu Kurian Thomas, Shri B. Krishnamani, Shri K.N. Chandrababu, Shri C.R. Sivakumar and Shri Babu Joseph Kuruvathazha for petitioners and Shri N. Nagaresh, learned Assistant Solicitor General, Shri N.N. Sugunapalan, Shri P. Santhalingam and S. Sreekumar, Senior Advocates, Shri S. Sharan, Shri S. Sujin, Shri N. Reguraj, learned counsel for respondents and Smt. Girija Gopal, Special Government Pleader and perused the records.

15. Learned counsel appearing for the petitioners in the first and second group of Writ Petitions have raised the following submissions in support of the Writ Petitions. Appointment of Members and Chairman of the Commission cannot be made from the incumbents/officials of the KSEB which has to file application for fixation of tariff and raise various claims before the Commission. Officials working in the KSEB including Ex-officials have vested interest in the affairs and well being of the KSEB and they are bound to carry their interest in the KSEB while functioning as Chairman or Member of the Commission. Section 85(5) of the 2003 Act clearly prohibits persons having any financial or other interest which may affect prejudicially their functions as Chairman and Member of the Commission. Appointment of Chairman and Members of the Commission being clearly in breach of the Section 85(5) of the 2003 Act, writ of quo warranto be issued asking them to vacate their office. Chairman and the two Members whose appointments are under challenge are the persons who were working as Chairman, Chief Engineer and Member (Finance) in the KSEB respectively. Commission is an independent body which envisages independent members who can perform the duties of Chairman and Members without being affected by any prejudice and bias. Tariff order issued by such two Members who participated in the decision on 25.07.2012 deserves to be set aside on this ground alone.

16. Learned counsel for the petitioners in support of the Writ Petitions in the third group raised the following submissions: The tariff order dated 25.07.2012 has been made with effect from 01.07.2012 which is impermissible. Tariff order cannot be issued with retrospective effect. As per the 2003 Regulations the KSEB or Licensee has to provide the Commission full details of its calculation for ensuring the ERC for that year in the prescribed proforma. Application was submitted by the KSEB on 29.03.2012 which was beyond the time as prescribed in Regulation 3 of the 2003 Regulations. Application being time barred could not have been considered and the Commission committed error in issuing the tariff order on the said application.

17. Learned counsel appearing for the Commission refuting the submissions of the learned counsel for the petitioners contended that appointments of Chairman and Members have been made in accordance with the statutory procedure as prescribed in the 2003 Act. Selection Committee headed by retired Judge of the High Court, Chief Secretary of the State and Chairperson of the Central Regulatory Authority had considered the candidature of the applicants and has made recommendations thereafter in accordance with the qualifications prescribed in the Act. It is submitted that the mere fact that private respondents

who once upon a time had held office in the KSEB does not disqualify them from being appointed as Chairman and Member. It is submitted that for appointment of Chairman and Members, persons having experience in technical and financial fields are required. Those persons having experience in working in different utilities are fully eligible and while functioning as Chairman and Members of the Commission they do not carry any interest of the KSEB. No instance of any bias or personal interest has been referred to in any of the Writ Petitions on the basis of which it can be held that they have any personal interest in the functioning of the Commission. Chairman and Members of the Commission are required to function in accordance with the procedure prescribed in the Act and Regulations. Tariff fixation is done after public hearing and after hearing objections of all concerned.

18. Replying to the submissions made by the petitioners in the third group of Writ Petitions it is contended that tariff is fixed for one financial year and the Commission is fully empowered to issue tariff order retrospectively which may relate to concerned financial year. It is submitted that the application having submitted on 29.03.2012, which was published, objections invited and hearing have been made, every stake holder was well aware of the tariff fixation for the relevant year and the mere fact that by order dated 25.07.2012, 1st July was fixed for effecting the tariff order was inconsequential. The period prescribed in the 2003 Regulations for filing application is not mandatory. It is the obligation of the Commission to fix tariff for each year and no prejudice is caused to anyone since filing of application on 29.03.2012 was notified, objections invited and hearing conducted.

19. Learned counsel for the parties have referred to various judgments of the Apex Court which we shall refer to while considering the submissions in detail.

20. From the submissions made by the learned counsel and the pleadings on record, the following are the Issues which arise for consideration in this batch of Writ Petitions.

I. Whether by holding office in the KSEB by the private respondents they are disqualified to be appointed as Chairman/Member by virtue of Section 85(5) of the 2003 Act?

II. What are the financial or other interest referred in Section 85(5) which may disqualify a person from appointment as Chairman/Member?

III. Whether in the facts of the present case, private respondents who have been appointed as Chairman and Members of the Commission can be held to have financial or other interest which may disqualify them from appointment?

IV. Whether petitioners have made out a case for issue of a writ of quo warranto as prayed for in the Writ Petitions?

V. Whether tariff application dated 30.03.2012 submitted by the KSEB for tariff revision was barred by limitation as prescribed in Regulation 3 and was not liable to be considered by the Commission which have been filed after 1.12.2012?

VI. Whether requirement of filing an application not later than four months beyond the commencement of any financial year is a mandatory requirement for considering the application for tariff revision under Regulation 3 of the 2003 Regulations?

VII. Whether the tariff order can be issued by the Commission with retrospective effect?

VIII. Whether the tariff order dated 25.07.2012 deserves to be set aside?

ISSUE Nos. I TO IV:

21. These issues being interconnected are taken together. The appointment of private respondents to the post of Chairperson and Members of Kerala State Electricity Regulatory Commission is in issue. The State Commission is constituted under Section 82 of the 2003 Act. Section 84 of the 2003 Act deals with qualifications for appointment of Chairperson and Members of the State Commission. Section 84 is to the following effect:

"84. Qualifications for appointment of Chairperson and Members of State Commission.--(1) The Chairperson and the Members of the State Commission shall be persons of ability, integrity and standing who have adequate knowledge of, and have shown capacity in, dealing with problems relating to engineering, finance, commerce, economics, law or management.

(2) Notwithstanding anything contained in sub-section (1), the State Government may appoint any person as the Chairperson from amongst persons who is, or has been, a Judge of a High Court:

Provided that no appointment under this sub-section shall be made except after consultation with the Chief Justice of that High Court.

(3) The Chairperson or any other Member of the State Commission shall not hold any other office.

(4) The Chairperson shall be the Chief Executive of the State Commission."

Section 85 provides for constitution of Selection Committee to select Members of State Commission. Section 85 is relevant for the present case which is quoted as below:

"85. Constitution of Selection Committee to select Members of State Commission.--(1) The State Government shall, for the purposes of selecting the Members of the State Commission, constitute a Selection Committee consisting of--

Provided that nothing contained in this section shall apply to the appointment of a person as the Chairperson who is or has been a Judge of the High Court."

(2) The State Government shall, within one month from the date of occurrence of any vacancy by reason of death, resignation or removal of the Chairperson or a Member and six months before the superannuation or end of tenure of the Chairperson or Member, make a reference to the Selection Committee for filling up of the vacancy.

(3) The Selection Committee shall finalise the selection of the Chairperson and Members within three month from the date on which the reference is made to it.

(4) The Selection Committee shall recommend a panel of two names for every vacancy referred to it.

(5) Before recommending any person for appointment as the Chairperson or other Member of the State commission, the Selection Committee shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his functions as Chairperson or Member, as the case may be."

22. The functions of the Commission have been enumerated in Section 86. Section 84(1) provides qualifications for appointment of Chairperson and Members of State Commission which refers to the following essential qualification i.e. (a) persons of ability, integrity and standing (b) persons who have adequate knowledge and (c) who have shown capacity in, dealing with problems relating to engineering, finance, commerce, economics, law or management. Sub-section (4) of Section 84 thus clearly indicates that apart from having adequate knowledge, persons shall have capacity to deal with problems relating to engineering, finance, commerce, economics, law or management. Thus only persons who have experience in the relevant field are eligible for consideration. Section 86 enumerates the functions of the Commission as to the area in which the Commission has to function. A person having knowledge and experience with regard to the functions enumerated under Section 86 has to be considered for the job. Petitioners'' pleading in the writ petition is that the private respondents who are holding the office as Chairperson and Members are to be disqualified on the ground that they have held one or other post in the Kerala State Electricity Board. The submission of the petitioners is that they may have financial and other interest as they have to protect the financial and other interest of KSEB while functioning as Chairperson and Members of the Commission. The policies which they have pursued for the welfare of the KSEB will be pursued by them while they work as Members of the Commission, hence they have to be disqualified.

23. What is the meaning of ''financial or other interest'' used in Section 85(5) is the question which has to be answered. A perusal of Section 84(3) provides that the Chairperson or any other Members of the State Commission shall not hold any other office. The provision clearly provides that while they are holding the office of Commission, no other office shall be held by them. This is clearly intended to ensure that the Members of the Commission may not have any clash

of interest with respect to the office which they earlier held. In the present case the Member, Sri. P. Parameswaran, retired in the year 2004 as Chief Engineer of the KSEB and thereafter he has been functioning as the Electricity Ombudsman. Another Member, Sri. Mathew George belongs to the Civil Services Group A in Indian Posts and Telegraph Department and has worked in different capacities in Central Government and another State and he was appointed as Member (Finance) in the KSEB only for one year and 24 days from 01.08.2007 to 24.09.2008 and thereafter he was nominated in the Managing Committee of the State for managing the affairs of KSEB. Sri. Mathew George is receiving pension from the Central Government. Sri. T.M. Manoharan also was an Officer of Indian Forest Service who retired from the post of Chairperson, KSEB on 31.05.2012.

24. The Member Shri P. Parameswaran was only a person who belongs to the service of KSEB and retired in the year 2004. Other two persons, Sri. Mathew George and Sri. T.M. Manoharan belong to All India Services and they were in the KSEB for a short stint. The challenge to the appointment of Chairperson and Members is on the ground that they shall suffer bias towards KSEB while discharging their function in the Commission. The challenge to their appointment is thus on the ground of bias. Bias may be defined as a preconceived opinion or a predisposition or predetermination to decide a case or an issue in a particular manner, so much so that such predisposition does not leave the mind open to conviction. It is, in fact, a condition of mind, which sways judgments and renders the person unable to exercise impartiality in a particular case. "Bias" in common English parlance means and implies-predisposition or prejudice. The bias which is being alleged against the private respondents is nothing but official bias or policy bias. What is contended is that since they had worked in KSEB, they will carry prejudice in favour of KSEB while discharging their function in the Commission. The official and policy bias is commonly alleged against the administrators who act as the adjudicatory authority in a dispute between their Department and private party. The administrator is said to have official bias towards the Department he was attached earlier or may have policy bias i.e. he may have some interest in the policy followed in his parent Department. In the present case the Members of the Commission are appointed by a statutory Selection Committee and they are required not to hold any other office. Members of the Commission thus is not allowed to be attached to any other office while functioning in the Commission. Prof. H.W. Wade & C.F. Forsyth''s Administrative Law, 9th Edition, while explaining the Departmental or administrative bias has stated as follows:

"Departmental or administrative bias:

It is self-evident that ministerial or departmental policy cannot be regarded as disqualifying bias. One of the commonest administrative mechanisms is to give a minister power to make or confirm an order after hearing objections to it. The procedure for the hearing of objections is subject to the rules of natural justice in so far as they require a fair hearing an fair procedure generally. But the minister''s decision cannot be impugned on the ground that he has advocated the scheme or that he is known to support it as a matter of policy. The whole object of putting the power into his hands is that he may exercise it according to government policy."

25. Section 85(5) refers to financial or other interest of the person who is appointed as Chairperson or other Members of the Commission. What is forbidden in Section 85(5) is personal, financial or other interest. Section 85(5) never intended to disqualify persons who have worked in the utilities which are to deal with the Commission for different purpose and object. Thus Section 85(5) has to be read to mean that what Statute prohibit its personal bias i.e. personal, financial or other interest. In the present case, petitioners have not come up with any case, with any pleading that private respondents have any personal, financial or other interest which may likely to effect prejudicially their function as Chairperson or Members. This can be explained by taking an illustration. Suppose a person has a share in a public company which is engaged in generation and distribution of electricity and it makes an application before the Commission for revision of tariff, the person having shares of the company shall have personal, financial or other interest which may affect prejudicially his function as Chairperson or Member while dealing with the application of the company. On the mere fact that once upon a time private respondents had worked in the KSEB, they would still work in the interest of KSEB cannot be accepted. It has rightly been pleaded by the private respondents that the interest of the Members is only that interest which the regulatory authority has, as a regulatory entity.

26. Petitioners in the writ petition have also pleaded that the tariff rate has been revised on the application of KSEB after joining of Members; Sri. P. Parameswaran and Sri. Mathew George excessively. It is also pleaded by respondents that tariff of KSEB was revised in 2002, 2007 and 2010 and in fact the Members have worked for more than one year and 8 months when the writ petitions were filed for issue of writ of quo warranto. Most of the writ petitions except one were filed after the tariff order dated 25.07.2012 was issued. As noted above, after filing of the tariff application by the KSEB dated 29.03.2012, additional informations were called by the Commission. The applications were admitted. Thereafter it was notified in the daily newspapers. Objections were invited and public hearing was conducted at three places; on 04.06.2012 at Thiruvananthapuram, on 06.06.2012 at Ernakulam and on 08.06.2012 at Kozhikode; in which number of stakeholders participated, their views and objections were received during the hearing. The Commission also had taken into consideration the Anticipated Revenue Requirement and Expected Revenue form Charges and thereafter order was issued for revising the tariff. One of the pleadings made in the writ petition is that though KSEB by its tariff application asked only for Rs. 1,546.40 crores, grant was made for Rs. 1,676.84 i.e. 130 crores more by the Commission. The said ground has been properly explained with details in paragraph 13 of the Counter Affidavit of the Commission which reads as follows:

"13. The allegation in Ground B of the Writ Petition that the Commission had allowed the the 2nd respondent to recover an amount of 130 crores more than what was demanded by the 2nd respondent in Exhibit P1 petition is absolutely false and hence denied. It is submitted that in Exhibit P1 ARR & ERC petition filed by the 2nd respondent for the financial year 2012-13 the estimated Revenue requirement was Rs. 9,638.12 crores and Expected Revenue was Rs. 6,397.87 crores. So the revenue gap estimated by the 2nd respondent was Rs. 3,240.25 crores. However, in the ARR/ERC petition filed by the 2nd respondent there was a proposal to restrict sales at normal tariff to 85% and the balance was proposed to be sold at higher rate, i.e., at marginal cost of power from liquid fuel stations. On account of this alone, the additional income projected by the Board in their ARR/ERC petition was Rs. 775.94 crores. Thus there was an inbuilt tariff hike in the ARR/ERC petition itself. Even before the order on ARR/ERC was issued by the Commission the 2nd respondent filed their tariff petition estimating an additional revenue of Rs. 1,546.4 crores. Both put together the additional income sought for by the 2nd respondent was Rs. 2322.3 crores. Since the approved revenue gap for FY 2012-13 was Rs. 1,889.15 crores, a revision of tariff to bridge the revenue gap became inevitable. (In the meanwhile the Commission finalised the ARR/ERC petition filed by the 2nd respondent vide order dated 28th April, 2012. Vide the said order the Commission had approved the revenue gap for the FY 2012-13 as Rs. 1889.15 crores). The additional revenue proposed by the 2nd respondent in their tariff petition was Rs. 1,546.40 crores which was based on energy sales proposed in ARR petition with 15% power restrictions. Commission did not approve the round the year power restrictions which would work out as an additional tariff on a section of the consumers. Even though the 2nd respondent had anticipated a gap of Rs. 3,240.25 crores after power restrictions in ARR petition, they had chosen to propose a tariff revision for recovering Rs. 1,546.40 crores only and extra income of Rs. 775.94 crores on account of marginal sales at higher rate. However, the energy sales approved by the Commission for the FY 2012-13 was 16386 MU. Hence Commission for the purpose of analysis of tariff proposal adopted the approved energy sales. Accordingly, the additional revenue based on proposed tariff is estimated as Rs. 1,652.36 crores instead of Rs. 2,322.3 crores (Rs. 1,546.4 crores + 775.95 crores) estimated by the Board. Hence the statement that commission has granted more revenue than demanded by the 2nd respondent is incorrect."

27. The Commission while determining the tariff is required to follow a statutory procedure which includes public hearing and objections of all stakeholders. The tariff revision is granted in accordance with the national electricity policy and national tariff policy.

28. The Apex Court had occasion to consider a case reported in Delhi Fin. Corpn. and Another Vs. Rajiv Anand and Others, (2006) 131 CompCas 285 : (2004) 11 SCC 625 where the action was challenged on the ground that appointment of MD of State Financial Corporation under Section 32-G of the State Financial Corporations Act, 1951 is violative of the doctrine that "no man can be a judge in

his own cause". It was contended that the State Government having appointed the respective Managing Directors as the authority under Section 32-G, certificates of recovery were issued by the Managing Directors themselves. It was held by the Apex Court the doctrine that "no man can be a judge in his own cause" can be applied on the case where personal interest or some act have been taken in the matter concerned. It was held that merely because office of particular Corporation is the named authority does not mean that office would be biased. Following was observed in paragraph 9:

"9. Faced with this authority, it was submitted that the observations made by the Constitution Bench are per incuriam inasmuch as this authority has not taken note of the judgment in Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, AIR 1959 SC 308 : (1959) 1 SCR 319 Supp . We are unable to accept this submission. It is to be seen that there is a big difference in the facts of the two cases. The doctrine that "no man can be a judge in his own cause" can be applied only to cases where the person concerned has a personal interest or has himself already done some act or taken a decision in the matter concerned. Merely because an officer of a corporation is named to be the authority, does not by itself bring into operation the doctrine "no man can be a judge in his own cause". Of course, in individual cases bias may be shown against a particular officer but in the absence of any proof of personal bias or connection merely because officers of a particular corporation are named as the authority does not mean that those officers would be biased. As has been held by the Constitution Bench, a Managing Director is a high ranking officer. He is not personally interested in the transaction. There is no question of any bias or conflict between his interest and his duty. In Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, AIR 1959 SC 308 : (1959) 1 SCR 319 Supp the Secretary who had framed the Scheme then proceeded to hear the objections and advise the Chief Minister. It is because of the personal involvement of the Secretary that the majority took the view. Even then two Judges held that it did not follow that he was an improper person to hear the objections."

29. Further in paragraph 14 it was held that for applicability of doctrine, personal bias or personal interest has to be there, following was laid down:

"14. Thus, the authorities disclose that mere appointment of an officer of the corporation does not by itself bring into play the doctrine that "no man can be a judge in his own cause". For that doctrine to come into play it must be shown that the officer concerned has a personal bias or a personal interest or has personally acted in the matter concerned and/or has already taken a decision one way or the other which he may be interested in supporting. This being the law it will have to be held that the decision of the Delhi High Court is erroneous and cannot be sustained and the view taken by the Punjab and Haryana High Court is correct. It will, therefore, have to be held that Managing Director of a financial corporation can be appointed as an authority under S. 32G of the Act."

30. The above authority clearly support our view that Section 85(5) refers to Personal/financial interest or other interest of the person appointed. Section 85(5) did not intend to disqualify the persons coming from utilities. The Commission is an expert body which is entrusted with the expertise work as per the Electricity Act, 2003. Persons manning the office of the Commission, i.e. Chairperson and Members, have to be drawn from entities where they have experience, knowledge so that they are able to perform the duties entrusted on them. The experience in an Electricity Board is a relevant experience which can be utilised by a person while functioning as Chairperson or Members.

31. The Apex Court in Crawford Bayley and Co. and Others Vs. Union of India (UOI) and Others, AIR 2006 SC 2544 : (2006) 6 JT 217 : (2006) 6 SCALE 541 : (2006) 6 SCC 25 : (2006) 3 SCR 240 Supp : (2006) AIRSCW 3449 : (2006) 5 Supreme 857 had an occasion to consider the concept of personal bias of an officer in a statutory authority. In the above case under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 the Estate Officer was appointed who was an officer of a Bank, it was contended that appointment is vitiated on account of the doctrine that "no man can be a judge in his own cause". The State Bank of India which owned a building, initiated proceedings for termination of tenancy and initiated proceedings under 1971 Act for eviction. The Ministry of Finance has appointed an Officer belonging to the Bank itself. The Apex Court held that the doctrine of bias is not attracted. It was held that the doctrine come into play only when it is shown that the officer concerned has personal bias or personal interest or is personally interested in the matter concerned. Following was laid down in paragraph 18:

"18. In this connection, a reference was made to Delhi Fin. Corpn. and Another Vs. Rajiv Anand and Others, (2006) 131 CompCas 285 : (2004) 11 SCC 625 with regard to personal bias i.e. an officer of the statutory authority has been appointed as an Estate Officer, therefore, they will carry their personal bias. However, this Court in the aforesaid case held that the doctrine "no man can be a judge in his own cause" can be applied only to cases where the person concerned has a personal interest or has himself already done some act or taken a decision in the matter concerned. Merely because an officer of a corporation is named to be the authority, does not by itself bring into operation the doctrine, "no man can be a judge in his own cause". For that doctrine to come into play it must be shown that the officer concerned has a personal bias or connection or a personal interest or has personally acted in the matter concerned and/or has already taken a decision one way or the other which he may be interested in supporting."

32. Thus the authorities belonging to the same department when given adjudicatory functions, their actions are not treated to be actuated by bias. Here only personal interest or personal bias has to be shown. Hence it is too far fetched contention of the petitioners to be accepted that private respondents who once upon a time held the office of KSEB shall be biased while discharging their function in the Commission.

33. Sri. K. Ramakumar, learned Senior Counsel appearing for the petitioner have heavily relied on Rajesh Awasthi Vs. Nand Lal Jaiswal and Others, AIR 2013 SC 78 : (2013) ELR 137 : (2012) 135 FLR 926 : (2013) 1 RCR(Civil) 275 : (2012) 10 SCALE 527 : (2013) 1 SCC 501 . In that case the writ petition was filed in the Lucknow Bench of Allahabad High Court praying for a writ of quo warranto against the appellant who was continuing as Chairperson of U.P. State Electricity Regulatory Commission. The challenge was on the ground that Selection Committee has not complied with Section 85(5) of the 2003 Act. In the above case Selection Committee was constituted. Applications were invited. The Selection Committee recommended the names of two persons. While recommending the name of appellant an asterisk was put against his name, that if he was to be appointed, the Government would ensure that the provisions of Section 85(5) of the 2003 Act is complied with. It is useful to quote paragraph 3 of the judgment which is to the following effect:

"3. The meeting of the Selection Committee was held on 26.12.2008 and Selection Committee selected two persons on merit, namely, the appellant and one Mr. Amit Kumar Asthana. Panel of two names was forwarded by the Selection Committee to the government of U.P. with an asterisk against the name of the appellant stating that if he was appointed, the government would ensure first that the provisions of sub-section (5) of S. 85 of the Act would be complied with. The government appointed the appellant as the Chairman of the Commission on 29.12.2008. The appellant on that date sent a letter to the State Government stating that he had resigned from his previous assignments on 27.12.2008 and severed all his links with the private sector as required under S. 85 of the Act."

34. The High Court after considering the submissions held that the Committee has failed to comply with the provisions of Section 85(5) of the 2003 Act. Hence the appointment was vitiated. It was held in paragraph 6 of the judgment as follows:

"6. The High Court after considering the rival contentions came to the conclusion that the Selection Committee had failed to follow the provisions of sub-section (5) of S. 85 of the Act, hence the appointment was vitiated and the appellant had no authority to hold the post of Chairperson. Further, it was also found that the Selection Committee had no power to delegate the powers conferred on it under S. 85(5) of the Act to the State Government. The court also held that the first respondent had sufficient locus standi to move the writ petition and the delay in approaching the court was not a ground, since a person who had been appointed contrary to a statutory provisions had no legal right to hold on to that post. The High Court, therefore, allowed the writ petition, issued a writ of quo warranto and quashed the appointment of the appellant declaring the same as illegal and void."

35. The appellant took the matter to the Apex Court where the Apex Court observed that the Selection Committee while recommending the name has to satisfy itself that such person does not have any financial or like interest which

will prejudicially affect his function as Chairperson. It was noted by the Apex Court that the appellant was also the Joint Vice President of J.P. Power Venture Ltd., which was indicated in the bio-data. The Selection Committee has put an asterisk against his name and left to the Government to comply with Section 85(5). The Apex Court held that the power conferred under Section 85(5) has to be exercised by the Selection Committee and Committee alone and not the Government. Following was laid down in paragraphs 18, 19 and 20:

"18. We are clear in our mind about the language used in sub-section (5) of S. 85 of the Act, which calls for no interpretation. Words are crystal clear, unambiguous and when read literally, we have no doubt that the powers conferred under sub-section (5) of S. 85 of the Act has to be exercised by the Selection Committee and the Committee alone and not by the Government. Some of the words used in sub-section (5) of S. 85 are of considerable importance, hence, we give some emphasis to those words such as "before recommending", "the Selection Committee shall satisfy" and "itself". The Legislature has emphasized the fact that ''the Selection Committee itself has to satisfy'', meaning thereby, it is not the satisfaction of the government what is envisaged in sub-section (5) of S. 85 of the Act, but the satisfaction of the Selection Committee. The question as to whether the persons who have been named in the panel have got any financial or other interest which is likely to affect prejudicially his functions as Chairperson, is a matter which depends upon the satisfaction of the Selection Committee and that satisfaction has to be arrived at before recommending any person for appointment as Chairperson to the State Government. The government could exercise its powers only after getting the recommendations of the Selection Committee after due compliance of sub-section (5) of S. 85 of the Act. The Selection Committee has given a complete go - by to that provision and entrusted that function to the State Government which is legally impermissible. The State Government also, without application of mind and overlooking that statutory provision, appointed the appellant.

19. A writ of quo warranto will lie when the appointment is made contrary to the statutory provisions. This Court in The Mor Modern Cooperative Transport Society Ltd. Vs. Financial Commissioner and Secretary to Govt. Haryana and Another, (2002) 2 ACC 501 : AIR 2002 SC 2513 : (2002) 5 JT 125 : (2002) 5 SCALE 145 : (2002) 6 SCC 269 : (2002) 1 SCR 87 Supp : (2002) AIRSCW 2826 : (2002) 5 Supreme 55 held that a writ of quo warranto can be issued when appointment is contrary to the statutory provisions. In B. Srinivasa Reddy (supra), this Court has reiterated the legal position that the jurisdiction of the High Court to issue a writ of quo warranto is limited to one which can only be issued if the appointment is contrary to the statutory rules. The said position has been reiterated by this Court in Hari Bans Lal (supra) wherein this Court has held that for the issuance of writ of quo warranto, the High Court has to satisfy that the appointment is contrary to the statutory rules.

20. We are of the view that the principle laid down by this Court in the above - mentioned judgment squarely applies to the facts of this case. The appointment of the first respondent, in our considered view, is in clear violation of subsection (5) of S. 85 of the Act. Consequently, he has no authority to hold the post of Chairperson of the U.P. State Electricity Regulatory Commission."

36. In the above case thus writ was issued since the Selection Committee has abdicated its jurisdiction as required by Section 85(5) of the 2003 Act. It was clearly mentioned in paragraphs 35 and 36 as follows:

"35. On a perusal of the report of the Selection Committee it is manifest that the Committee has not recorded its satisfaction with regard to ingredients contained in S. 85(5) of the Act and left it to the total discretion of the State Government.

36. On a scanning of the anatomy of S. 85(5) it is limpid that the Selection Committee before recommending any person for appointment as a Chairperson or a Member of the State Commission shall satisfy itself that the person does not have any financial or other interest which is likely to affect prejudicially his functions as such Chairperson or Member, as the case may be. As the proceedings of the Selection Committee would reveal, it had not recorded its satisfaction prior to recommending the names of the two candidates. It is vivid that the Selection Committee abandoned its function and simply sent the file to the State Government. It has been argued with vehemence by Mr. Nageswara Rao, learned senior counsel for the appellant that when two names were chosen from amongst certain persons it has to be inferred that there was recommendation after due satisfaction as per statutory requirement."

37. Thus the above case is clearly distinguishable and the ratio laid down in the above case has no application in this case.

38. In the present case the Selection Committee issued notification dated 27.07.2010 inviting applications as per Section 84(1) of the Act. In the notification it was also mentioned that those who are now working in Private/ Central Government/PSUs, etc., shall submit their application through proper channel. It was also stipulated that if such persons are appointed, they shall resign or shall take voluntary retirement before taking charge as Member. It is useful to extract the following part of the notification dated 27.07.2010 filed as Ext. R1(c) in W.P. (C) No. 19551 of 2012 which is to the following effect:

" xx xx xx

Those who are now working in State/Central Governments, PSUs, autonomous bodies etc shall submit their application through the proper channel. Such persons if selected shall resign or take voluntary retirement before taking up appointment as Member. Applications forwarded otherwise and belated applications will not be considered in any case."

39. The Selection Committee started its proceedings on 08.11.2010 for consideration of 90 applications for the post of two Members of the Commission.

The Committee, after elaborate consideration, decided that one Member should be on technical side preferably having experience of electrical activities and the other preferably familiar with the account facilities. After short listing 24 candidates, the Selection Committee recommended two names for technical members and two names for account member. On the recommendation of the Selection Committee the Council of Ministers appointed Sri. P. Parameswaran and Sri. Mathew George as Members of the Commission. In view of the forgoing discussions our answer to Issue Nos. I to IV are as follows:

(1) by holding the office in the KSEB the private respondents i.e. the Chairperson and Members of the Commission were not disqualified to be appointed under Section 85(5) of the Act.

(2) the "financial" or "other interest" referred to under Section 85(5) are the personal financial or personal other interest of the person who is sought to be appointed. The personal financial interest or other personal interest of persons sought to be appointed shall disqualify the person from appointment as Chairperson or Member. In the facts of the present case the private respondents, i.e. Sri. P. Parameswaran, Sri. Mathew George and Sri. T.M. Manoharan who have been appointed as Members and Chairperson respectively cannot be held to have any personal, financial or other interest which may disqualify them from appointment.

(3) No case has been meted out by the petitioners to issue a writ of quo warranto.

ISSUNE Nos. V & VI

40. These Issues being interconnected are taken together. Submissions raised by the learned counsel for the petitioners appearing in the third category of Writ Petition is that application for revision of tariff filed by the KSEB being not in accordance with the provisions of the 2003 Regulations ought not have been considered by the Commission and the Commission committed error in passing the tariff order dated 25.07.2012. It is submitted that as per Regulation 3, the tariff application was required to be filed not later than four months before the commencement of the financial year. It is submitted that as per Regulation 3 the tariff application was required to be filed on or before 01.12.2011 and the tariff application having been filed on 29.03.2012 is clearly beyond the time prescribed and was liable to be rejected. The Commission ought not have proceeded with the application for publication, hearing and passing orders.

41. Statutory provisions regarding filing of tariff application needs to be noted for considering the aforesaid submission. Section 62 of the 2003 Act provides for determination of tariff. Under Section 62(2) the Appropriate Commission may require a licensee or a generating company to furnish separate details, as may be specified in respect of generation, transmission and distribution for determination of tariff. Section 64 provides the procedure for tariff order. Section 64(1), (2) and (3) which are relevant are quoted below:

"64. (1) An application for determination of tariff under section 62 shall be made by a generating company or licensee in such manner and accompanied by such fee, as may be determined by regulations.

(2) Every applicant shall publish the application, in such abridged form and manner, as may be specified by the Appropriate Commission.

(3) The Appropriate Commission shall, within one hundred and twenty days from receipt of an application under sub-section (1) and after considering all suggestions and objections received from the public,--

(a) issue a tariff order accepting the application with such modifications or such conditions as may be specified in that order;

(b) reject the application for reasons to be recorded in writing if such application is not in accordance with the provisions of this Act and the rules and regulations made thereunder or the provisions of any other law for the time being in force:

Provided that an applicant shall be given a reasonable opportunity of being heard before rejecting his application."

Section 62(5) also provides that "the Commission may require a licensee or a generating company to comply with such procedures as may be specified for calculating the expected revenues from the tariff and charges which he or it is permitted to recover". The Commission in exercise of its power under Section 62(5) as well as 64(1) framed the 2003 Regulations. Statement of objects and reasons of the Regulations clearly makes out the purpose for which the Regulations have been framed which is quoted below:

"Subsection (5) of Section 62 of the Electricity Act, 2003 (Central Act No. 36 of 2003) stipulates that the Commission may require a generating company or licensee to comply with such procedure as may be specified in calculating the expected revenue from the tariff and charges which he or it is permitted to recover. Application for determination of tariff shall be made by a Generating Company, the Board or a licensee in accordance with the provisions of Subsection (1) of Section 64 of the Act. The Regulations here under have been framed in pursuance of the above provisions of the Act. In designing the scheme contained in these Regulations, the Commission expects to achieve the following objectives:--

(a) To inform Generating companies, the Board or licensees of the basic minimum data on information requirements for seeking the Commission''s approval to the expected revenue from charges and for any proposal of modification of the tariffs;

(b) To provide standardised formats in which such information is to be provided;

(c) To specify the procedure by which the Commission would take up the ERC filings and Tariff filings for its consideration and appropriate orders thereon; and

(d) To ensure the greatest possible transparency in such procedure and the fullest possible opportunity for all concerned to participate in such a process."

ERC has been defined in Regulation 2(d) of the 2003 Regulations which is to the following effect:

"2(d) ERC shall mean the Expected Revenue from charges that the Generating company, Board or any other licensee is permitted to recover".

Chapter II of the 2003 Regulations contains the heading "ERC and Tariff Filings". Regulation 3 provides for annual ERC filing. Regulation 3(1) and (2) which are relevant for the present case are quoted below:

"3. Annual ERC filing.--(1) Not later than 4 months before the commencement of any financial year, Generating Companies, the Board or licensees shall provide to the Commission full details of its calculations for the ensuing financial year of the ERC for that year.

(2) The details of calculations of ERC and other related information shall be provided in the format prescribed in Annex I to these Regulations and shall be provided for each of the financial years as directed by the instructions given in each of these formats"

Regulation 4 provides for Tariff filing. Regulation 4(1), (2) and (3) which are relevant for the present case are quoted below:

"4. Tariff filing.--(1) The Commission may, on its own, on being satisfied that there is need to review the tariff of a Generating Company, the Board or any other licensee, shall initiate the process of review in accordance with the procedures set out in Chapter II of the General Regulations.

(2) If Generating Company, the Board or licensee desires to amend the current tariff, it shall prepare and lodge with the Commission its application for amendments, provided that no tariff or part of any tariff shall be amended more than once in any financial year. Provided further that the application for amendment of tariff shall be filed not later than four months before the intended date of implementation of such amended tariff.

(3) The application for amendment of tariff may be filed along with ERC filing or at any later date."

From the above it is clear that Regulations 3 and 4 deals with different subjects. Regulation 3 deals with Annual ERC filing whereas Regulation 4 deals with tariff filing.

42. In the counter affidavit filed by the KSEB in W.P. (C) No. 19551 of 2012 it has been stated in paragraph 6 that ARR and ERC petition of the KSEB for the year 2012-13 has been filed on 31.12.2011. Paragraph 6 of the counter affidavit is quoted below:

"KSEB has been filing the ARR & ERC before the Commission since the year

2003-2004. The ARR & ERC petition of KSEB for the year 2012-13 is the 10th petition filed before the State Commission, filed before the Commission on 31st December, 2011."

The petition for tariff has been filed by the KSEB on 29/30.03.2012 as stated by the KSEB. Copy of the petition has been filed as Ext. P1 in the leading Writ Petition. The subject of the application is as follows:

From the heading of the application it is clear that application was filed for revising the existing tariff. Thus the tariff application filed by the KSEB was under Regulation 4.

43. Submission which has been pressed by the learned counsel for the petitioners is that as per Regulation 3 application has to be filed not later than four months before the commencement of the financial year. Regulation 3 is made for ERC filing and does not relate to tariff application. Thus the very premises of the submission of learned counsel for the petitioners regarding tariff application is unfounded. Tariff application is regulated by Regulation 4 where there is no such requirement provided for. As noted above, ERC application was filed by the KSEB on 31.12.2011.

44. Now reverting to Regulation 4. Regulation 4(2) provides that if Generating Company, the Board or licensee desires to amend the current tariff, it shall prepare and lodge with the Commission its application for amendments, provided that no tariff or part of any tariff shall be amended more than once in any financial year and further that the application for amendment of tariff shall be filed not later than four months before the intended date of implementation of such amended tariff. The provision indicate that if the KSEB intends to make application for revision of tariff from a particular date, the application should be filed by it four months before the intended day. Regulation 4(3) clearly provides that the application for amendment of tariff may be filed along with ERC filing or at any later date. The above provision makes it clear that tariff application need not be filed at the time of filing ERC. Thus it can be filed subsequent to ERC filing which makes it clear that Regulation 3 does not control filing of tariff application. Thus submission of the learned counsel for the petitioner that tariff application dated 29/30.03.2012 filed by the KSEB being filed after 01.12.2011 was liable to be rejected cannot be accepted. Issue Nos. V and VI are answered in the following manner:

Issue No. V:- Application dated 29/30.03.2012 submitted by the KSEB for tariff revision was not required to be considered as per Regulation 3. But the application being a tariff application was required to be considered in accordance with Regulation 4 and there was no error committed by the Commission in considering the application dated 30.03.2012. Application dated 30.03.2012 cannot be said to have been filed beyond any time limit prescribed in Regulation 4.

Issue No. VI.- In view of our answer to Issue No. V, there is no requirement of filing the tariff application not later than four months of the financial year the question of it being a mandatory requirement does not arise.

ISSUE No. VII

45. Submission of petitioners is that tariff order dated 25.07.2012 effecting tariff revision with effect from 01.07.2012 was beyond the power and jurisdiction of the Commission. From the provisions of Regulation 4(2) it is clear that tariff shall not be amended more than once in a financial year. Thus tariff revision is contemplated by amendment in a financial year. Regulation 4(2) contemplated that "provided further that the application for amendment of tariff shall be filed not later than four months before the intended date of implementation of such amended tariff." Thus for an application there is proviso, that in the event, the applicant intends to amend the tariff from a particular date tariff application shall be filed four months before the intended day. Section 64(3) of the 2003 Act requires that the Appropriate Commission shall, within one hundred and twenty days from receipt of an application under sub-section (1) and after considering all suggestions and objections received from the public issue a tariff order with such modifications or such conditions as may be specified in that order. Section 64(3) thus "empowers the Commission to issue a tariff order accepting the application with such modifications or such conditions as may be specified in that order....". The above provision clearly empowers the Commission to issue tariff order with such modifications and such conditions as may be prescribed. The said provision clearly empowers the Commission to issue the tariff order implementing the same from a particular day as decided by the Commission. Present is not a case where the tariff amendment has been made from any date anterior to filing of the application or any date beyond the financial year concerned. The tariff application was filed for the year 2012-13 and it has been implemented from 01.07.2012. When a tariff application has been filed, directed to be published by the Commission for information and dates are fixed for public hearing permitting all to object all stake holders are thus well aware of the process of tariff revision. No exception can be taken thus for issuing a tariff order with particular date which is reasonable as per the decision of the Commission. Admittedly in the present case public hearings were completed on 12.6.2012 and tariff order was issued thereafter with effect from 01.07.2012. Taking a clue from Regulation 4(2), when an application specifies a particular date for implementation, and if an application is filed accordingly and there is delay in completion of the proceedings whether the Commission is not empowered to issue order from the intended date, the answer would be obviously ''yes'' since even if order is passed after the intended day as given by the application, order can be implemented from the intended date. When Commission can pass an order with effect from the intended date, even, subsequent to that date, the Commission is fully empowered to issue an order from an earlier date from the passing of the order.

46. Moreover, Regulation 7 saves inherent power of the Commission. Regulation

7(1) provides as follows:

"7. Saving of inherent power of the Commission.--(1) Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders, as may be necessary for meeting the ends of justice or to prevent abuse of process of the Commission."

The Commission thus is empowered to pass such order as may be necessary for meeting the ends of justice. In view of our above finding, we are of the considered opinion that no error was committed by the Commission in implementing the tariff revision from 01.07.2012 while passing the order dated 25.07.2012.

47. Learned Special Government Pleader has placed reliance on the decision in Kanoria Chemicals and Industries Ltd. and Another Vs. State of U.P. and Others, (1992) 1 JT 199 : (1992) 1 SCALE 107 : (1992) 2 SCC 124 : (1992) 1 SCR 151 where the Apex Court has laid down the following in paragraph 23:

"23. A retrospective effect to the revision also seems to be clearly envisaged by the section. One can easily conceive a weighty reason for saying so. If the section were interpreted as conferring a power of revision only prospectively, a consumer affected can easily frustrate the effect of the provision by initiating proceedings seeking an injunction restraining the Board and State from revising the rates, on one ground or other, and thus getting the revision deferred indefinitely. Or, again, the revision of rates, even if effected promptly by the Board and State, may prove infructuous for one reason or another. Indeed, even in the present case, the Board and State were fairly prompt in taking steps. Even in January 1984, they warned the appellant that they were proposing to revise the rates and they did this too as early as in 1985. For reasons for which they cannot be blamed this proved ineffective. They revised the rates again in March 1988 and August 1991 and, till today, the validity of their action is under challenge. In this state of affairs, it would be a very impractical interpretation of the section to say that the revision of rates can only be prospective."

Although the above judgment was interpreting provisions of the Electricity Supply Act, 1998, the principles laid down can also be applied with regard to the power of the Commission to revise the tariff.

48. In view of the foregoing discussion we answer Issue No. VI in the following manner:

The Commission was fully empowered to issue tariff order dated 25.07.2012 revising the tariff from 01.07.2012.

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49. Learned counsel for the respondents has submitted that against the tariff order petitioners have a statutory remedy under Section 111 of the Act which provided that any person aggrieved by the order made by the Commission, can

prefer an appeal to the Appellate Tribunal. In paragraph 6 of the counter affidavit filed by the Commission it has been stated that Appeal No. 129 of 2012 has already been filed against the tariff order by the Kerala HT and EHT consumers'' Association which was pending consideration before the Appellate Tribunal for decision. We are thus of the view that the tariff order dated 25.07.2012 does not deserve to be quashed in this proceedings. Thus remedy of the petitioners was to file appeal under Section 111 of the 2003 Act. We thus answer the Issue as follows:

"Tariff order passed on 25.07.2012 does not deserve to be set aside in these Writ Petitions."

In view of the foregoing discussion, we find that the petitioners are not entitled to the reliefs claimed in the Writ Petitions. All the Writ Petitions are dismissed.

The parties shall bear their own costs.

