

(2019) 12 UK CK 0036
In the Uttarakhand High Court
Case No : Special Appeal No. 987 Of 2019

M/s Datt Infrastructure & Service Ltd	APPELLANT
Vs	
Uttarakhand Power Corporation Ltd	RESPONDENT

Date of Decision : 07-12-2019

Acts Referred:

Electricity Act, 2003 — Section 42(6), 185
Allahabad High Court Rules, 1952 — Rule 5
Constitution Of India, 1950 — Article 226

Citation : (2019) 12 UK CK 0036

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Dr. Pulak Raj Mullick, Dharmendra Barthwal

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. Pulak Raj Mullick, learned counsel for the appellant and Mr. Dharmendra Barthwal, learned Standing Counsel for the Uttarakhand

Power Corporation Ltd.-respondent and, with their consent, the Special Appeal is disposed of at the stage of admission.

2. This Special Appeal is preferred against the order passed by the learned Single Judge in Writ Petition (M/S) No.1726 of 2012 dated 20.09.2019.

The appellant herein filed Writ Petition (M/S) No. 1726 of 2012 seeking a writ of certiorari to quash the order dated 10.05.2012 passed by the

Ombudsman (Electricity, Dehradun); a writ of mandamus allowing a refund of Rs. 7,38,967/- for supervision and contingency charges; and for refund

of Rs. 8,12,574/-, admitted by the Uttaranchal Power Corporation Limited in their letter dated 19.05.2007, along with interest.

3. In the order under appeal, the learned Single Judge held that a licensee i.e. the Uttarakhand Power Corporation Limited (for short the

Corporation) could charge 15 per cent of the estimate as supervision charges; these charges had to be borne by the appellant-writ petitioner;

the Ombudsman had, therefore, rightly come to the conclusion that the supervision charges, that was 15 per cent of the total estimated cost of

construction of the sub-station, had to be borne by the appellant-writ petitioner; reliance placed by the appellant-writ petitioner, on the Electricity

Supply (Consumers) Regulations, 1984, was totally misconceived as, although Section 185 of the Electricity Act, 2003 saved the Regulations, that was

for a limited period till the Corporation and the Authorities framed their own Regulations; since that had been done, what would be applicable was

what was adopted or made applicable by the Corporation for the State of Uttarakhand; and, therefore, the appellant-writ petitioner was liable to pay

the charges. The learned Single Judge, thereafter, dismissed the Writ Petition. Aggrieved thereby, the appellant-writ petitioner has preferred the

present Special Appeal.

4. Mr. Dharmendra Barthwal, learned Standing Counsel for the Corporation, would, relying on two Division Bench judgments of this Court, in *A mrit*

Versha Udyog (Pvt.) Ltd. v. Uttaranchal Power Corporation Limited : 2018 (2) U.D. 22 and *Uttarakhand Power Corporation Ltd. v.*

Doiwala Sugar Company Ltd. : (2019) SCC OnLine Utt 110,6 put in issue the maintainability of an intra-Court appeal. Learned counsel would

submit that against an order passed by the learned Single Judge, either interdicting or affirming the order passed by the Ombudsman under the

Electricity Act, 2003, an intra-Court appeal, under Chapter VIII Rule 5 of the Allahabad High Court Rules, would not lie.

5. Chapter VIII Rule 5 of the Allahabad High Court Rules stipulates that an appeal would lie to the Court, from a judgment (not being a judgment

passed in the exercise of the jurisdiction conferred by Article 226 of the Constitution in respect of any judgment, order or award of a tribunal or Court

or statutory arbitrator made, or purported to be made, in the exercise, or purported exercise, of jurisdiction under any Uttar Pradesh Act or under any

Central Act with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution.

6. The Electricity Act, 2003 is a law made by Parliament and, in the light of Chapter VIII Rule 5 of the Allahabad High Court Rules, it does appear

that an intra-Court appeal would not lie.

7. Mr. Pulak Raj Mullick, learned counsel for the appellant-writ petitioner, would however submit, placing reliance on Section 42(6) of the Electricity

Act, 2003, that the Ombudsman, under the Electricity Act, 2003, is not a Tribunal; and, consequently, the bar under Chapter VIII Rule 5 of the

Allahabad High Court Rules would not apply, and an intra-Court appeal would lie.

8. Section 42(6) of the Electricity Act, 2003 stipulates that any consumer, who is aggrieved by the non-redressal of his grievance under sub-section

(5), may make a representation for the redressal of his grievance to an authority to be known as the Ombudsman to be appointed or designated by the

State Commission. The submission of Mr. Pulak Raj Mullick, learned counsel for the appellant-writ petitioner, is that, since Section 42(6) of the

Electricity Act, 2003 only enables a representation to be made to the Ombudsman for the redressal of grievance, the Ombudsman is not a Tribunal;

and, consequently, the bar, under Chapter VIII Rule 5 of the Allahabad High Court Rules, would not apply.

9. In *Amrit Versha Udyog (Pvt.) Ltd. v. Uttaranchal Power Corporation Limited* : 2018 (2) U.D. 22, a Division Bench of this Court held that

the Ombudsman, constituted under the Electricity Act, 2003, was a Tribunal as it was called upon to decide a lis raised by a consumer; the fact that it

was not open to the distribution licensee to challenge the order of the Consumer Forum, as the right to make a representation was conferred

exclusively on the consumer, did not detract from the fact that the Ombudsman was a Tribunal; and, since the Ombudsman acting under the Act is a

Tribunal, no further appeal lies from the judgment passed by the learned Single Judge.

10. This order of the Division Bench, in *Amrit Versha Udyog (Pvt.) Ltd. v. Uttaranchal Power Corporation Limited* : 2018 (2) U.D. 22, was

followed by another Division Bench of this Court in *Uttarakhand Power Corporation Ltd. v. Doiwala Sugar Company Ltd.* : (2019) SCC

OnLine Utt 1106.

11. The question, whether or not the Ombudsman is a Tribunal, has already been decided by a Division Bench of this Court, in *Amrit Versha Udyog*

(Pvt.) Ltd. v. Uttaranchal Power Corporation Limited : 2018 (2) U.D. 22, holding that the Ombudsman was a Tribunal. As this judgment was

later followed by another Division Bench in Uttarakhand Power Corporation Ltd. v. Doiwala Sugar Company Ltd. : (2019) SCC OnLine Utt

1106, we see no reason to now take a different view, from the opinion expressed by two Division Benches of this Court, to uphold the submission of

Mr. Pulak Raj Mullick, learned counsel for the appellant-writ petitioner, that the Ombudsman is not a Tribunal.

12. Following the judgments of the coordinate Division Bench in Amrit Versha Udyog (Pvt.) Ltd. v. Uttaranchal Power Corporation Limited :

2018 (2) U.D. 22; and Uttarakhand Power Corporation Ltd. v. Doiwala Sugar Company Ltd. : (2019) SCC OnLine Utt 110, 6the Special

Appeal is dismissed as not maintainable. No costs.