

(2008) 02 OHC CK 0077

In the Orissa High Court

Case No : Writ Application (Civil) No. 165 of 2006

Orissa Consumers Association and Another

APPELLANT

Vs

Orissa Electricity Regulatory Commission and Others

RESPONDENT

Date of Decision : 14-02-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Electricity Act, 2003 — Section 111, 112, 125, 14, 64(2)
Orissa Electricity Reforms Act, 1995 — Section 15

Citation : (2008) CLT 27 Supp

Hon'ble Judges : A.K. Ganguly, C.J;I. Mahanty, J

Bench : Division Bench

Advocate : K.N. Jena, D.K. Mohapatra, M. Ganguli, B.P. Bal and G. Mohanty, for the Appellant; S. Mohanty, H. Parida for Party No. 1, N.C. Panigrahi, G.S. Dash, N.K. Tripathy S.R. Panigrahi for Party No. 2 and Government Advocate for Party No. 3, for the Respondent

Judgement

1. Mahanty, J.—The Orissa Consumers" Association has filed this writ application, inter alia, seeking to challenge a notice dated 9.12.2005 issued by the Grid Corporation of Orissa Ltd. (Annexure-I) pursuant to the direction of the Orissa Electricity Regulatory Commission, Bhubaneswar which had directed publication of such an advertisement in case No. 42 of 2005 bringing to the notice of public an application u/s 64(2) of the Electricity Act, 2003 read with Reg. 53(7) of the OERC (Conduct of business) Regulations, 2004 for annual revenue requirement and bulk supply tariff application for the year 2006-07.

2. Mr. K.N. Jena, learned Counsel for the Petitioners, inter alia, submitted that the applicant- GRIDCO (Opp. Party No. 2) was not a "licensee" on the date of making the application for fixation of annual revenue requirement and bulk supply tariff. Mr. Jena further asserts that the Commission ought not to have entertained the application of the GRIDCO under the provisions of the Electricity Act, 2003 and ought not to have proceeded to determine tariff of Bulk supply of electricity, since the GRIDCO was not a licensee i.e. neither a Transmission or

Distribution or Trading licensee on the date of its application i.e. 30.11.2005.

3. This Court by its order dated 16.01.2006 had directed issue of notice on the question of admission and stay to the Opp. Parties by special messenger and thereafter, by the order dated 30.1.2006 directed as follows:

As an interim measure, we direct that the proceeding in Case No. 42 of 2005 shall continue but the order passed therein shall be subject to the result of the writ application.

4. Mr. N.C. Panigrahi, learned Sr. Advocate appearing for the GRIDCO- Opp. Party No. 2 while vehemently denying the contentions advanced by the learned Counsel for the Petitioner, pleaded that the GRIDCO was a "deemed licensee" since it was granted licence No. 2 of 1997 by the Orissa Regulatory Commission u/s 15 of the Orissa Electricity Reform Act, 1995 for carrying out the business of transmission and Bulk supply of electric energy within the area of transmission. Learned Counsel further submitted that under the proviso to, it is stipulated that any person engaged in the business of transmission or supply of electricity under the provisions of the repealed laws or any Act specified in the Schedule (The Orissa Electricity Reform Act, 1995) (Orissa Act 2 of 1996) as mentioned at Serial No. 1 of the Schedule to the Electricity Act, 2003, on or before the appointed date shall be deemed to be a licensee under this Act for such period as may be stipulated in the licence.

5. Mr. Panigrahi at the out set raised an objection on the ground of maintainability of the present writ application. It is averred in the counter affidavit filed by Opp. Party No. 2 that the writ petition is pre-mature, misconceived and there is alternative and efficacious remedy available to the Petitioners u/s 111 of the Electricity Act, 2003 and any person aggrieved by an order passed by the appropriate Commission under this Act is entitled to prefer an appeal to the Appellate Tribunal for electricity. It is contended that the appellate Tribunal in terms of Section 112 is an expert body consisting of a technical persons having adequate ability, standing, knowledge or experience in dealing with the matters relating to electricity generation, distribution and Regulation or economic, commerce, law or management. The said Appellate Tribunal is headed by a Chairperson of the rank of a Judge of the Supreme Court or the Chief Justice of a High Court. It is further asserted that in terms of Section 125 of the 2003 Act, any person aggrieved by any decision or order of the appellate Tribunal is entitled to file an appeal to the Hon'ble Supreme Court of India.

6. Mr. Jena, in response to the plea of maintainability raised by the learned Counsel for Opp. Party No. 2 submitted that the writ application was maintainable since it questions the competency of Opp. Party No. 2 for making the necessary application before the Commission and further also the Petitioner sought to question the exercise of jurisdiction by the Commission in directing advertisement of an application which in its contention was incomplete.

7. Although various contentions were advanced by the learned Counsel for both the parties on the merit of their respective claims, yet for the purpose of present writ application, it is important to take note of the fact that even after association-Association had moved this Court in the present writ petition and an interim order dated 30.01.2006 had been passed, thereafter, it appears that association-Association went and appeared before the Orissa Electricity Regulatory Commission on 14.2.2006 while the Commission was in Seisin of hearing Case No. 42 of 2005 (notice of which is subject matter of challenge) and further it is important to note herein that not only the Orissa Consumers" Association entered appearance through their counsel before the Regulatory Commission, but they also raised the same preliminary objection regarding maintainability of the application of the GRIDCO before the Commission. It was contended that the GRIDCO now being a "Trading Company" is unnecessary and against the spirit of Electricity Law and such contention of Mr. Jena, learned Counsel for the Association was over ruled by the Commission by taking in to consideration Section 86(1)(a)(b) of the Electricity Act, 2003. The relevant portion of that order passed by the OERC is quoted herein below:

At the very inception of his argument, Mr. K.N.Jena, the authorized representative of Orissa Consumers" Association and FOCO, raised the preliminary objection regarding maintainability of against the order dated 4.2.2006 passed in Case No. 42 of 2005 by the OERC whereby the State Commission had rejected the petition-Association"s objection. It appears that the question of law raised in this writ application pertains to the extent and extant of the "deemed licence" under a State enactment which is saved by the Central Legislation. Whether the GRIDCO"s (O.P. No. 2) trading activity is covered there under or not is a question which should be best decided by the appellate authority under the Electricity Act, 2003 and therefore, we are refrain from exercising our jurisdiction under Articles 226 and 227 of the Constitution of India and dispose of the writ petition by giving liberty to the Petitioner to file an appeal against the order dated 4.2.2006 passed in Case No. 42 of 2005 before the appellate authority created u/s 111 of the Electricity Act, 2003. If such an application is filed within a period of one month from the date of this judgment, we hope and trust that the appellate authority will condone the delay in filing such an appeal, keeping in view the fact that the writ petition was pending before this Court since 4.1.2006 and deal with the limitation application liberally and consider the appeal on its own merits.

8. With the aforesaid observations and directions, the writ petition stands disposed of.

A.K. Ganguly, C.J.

9. I agree.