

(2000) 12 OHC CK 0021

In the Orissa High Court

Case No : Misc. Appeal No's. 61, 62, 63, 64 and 163 of 2000

Orissa Consumers' Association and others and Sundargarh
District Employers' Association

APPELLANT

Vs

Southern Electricity Supply Company of Orissa Ltd.
(SOUTHCO), Central Electricity Supply Co. Ltd., North
Eastern Electricity Supply Co. Ltd. (NESCO), Western
Electricity Supply Co. Ltd. (WESCO) and Orissa Electricity
Regulatory Commission and others

RESPONDENT

Date of Decision : 22-12-2000

Acts Referred:

Electricity (Supply) Act, 1948 — Section 49(3), 57
Electricity Regulatory Commission Act, 1998 — Section 41
Orissa Electricity Reforms Act, 1995 — Section 26, 3(2), 39, 5, 5(1)

Citation : AIR 2001 Ori 135 : (2001) 92 CLT 10

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : M/s K.N. Jena, D.K. Mohapatra, A.N. Rao, M. Ganguly, M/s R.B. Mohapatra, M.M. Satpathy, R.N. Mohanty, S.K. Behera and Miss R. Misra, for the Appellant; Gangadhar Rath M/s B.K. Nayak, J.K. Khuntia, S.S. Patra, B.K. Patnaik, P. Sinha, S.K. Pradhan, P.S. Nayak, Smt. S. Pattnaik, S.C. Lal, Sumit Lal, B.K. Nayak, M/s Samareswar Mohanty and N.C. Panigrahi, for the Respondent

Judgement

P.K. Misra, J.—All these appeals directed against the orders passed by the Regulatory Commission fixed tariff for retail supply of electricity are being disposed of by this common judgment, as similar questions are involved.

2. Misc. Appeal No. 61/2000 has been filed on behalf of Orissa Consumers' Association relating to taxation of tariff for retail supply on the basis of the appreciation made by the Southern Electricity Supply Company Orissa Ltd. (in short, "SOUTHCO"). Misc. Appeal No. 62/2000 has been filed by the very same Association against the order fixing tariff for supply of electricity by the Central Electricity Supply Company of Orissa Ltd. (in short, "CESSCO"), Misc Appeal No. 63/2000 has been filed by the very same Association against such fixation by

North Eastern Electricity Supply Company of Orissa Ltd. (in short, "NESCO"). Misc. Appeal Nos. 163/2000 and 64/2000 are directed against the order passed by the Regulatory Commission fixing tariff for retail supply of electricity to the consumers by the Western Electricity Supply Company of Orissa Ltd. (in short, "WESCO"). Application were filed by the four distribution companies u/s 26 of the Orissa Electricity Reform Act, 1995 (hereinafter referred to as the "Reform Act") for fixation of tariff for retail supply of electricity to different categories of consumers. After complying the various queries by the Regulatory Commission, noticed -was published in several local newspapers. Several objections were filed out of which some objections were rejected for non-compliance with the terms and conditions. Objections had been filed, inter alia, on behalf of Sundargarh District Employers" Association (appellant in Misc. Appeal No. 163/2000) and Orissa Consumers" Association and others (appellants in the other appeals). The Regulatory Commission after considering the various objections has fixed tariff for different categories of consumers.

3. Mr. K. N. Jena, learned counsel appearing for Orissa Consumers" Association has contended that the Regulatory Commission is purported to follow the provisions contained in section 26 of the Reforms Act, which is a State Act, It has been submitted that since the subject matter is in the Concurrent List and the Electricity Regulatory Commissions Act, 1998, which is a Central Act, has been passed subsequently by the Parliament, the provisions contained in the later Act should have been followed. This question was also raised in the connected Misc. Appeal Nos. 51/2000, 70/2000 and 97/2000 (Western Electricity Supply Company of Orissa Ltd. (WESCO), etc. v. Orissa Electricity Regulatory Commission & another, etc) and by a common judgment "delivered today, the same has been negatived and it has been observed that the provisions contained in the Reforms Act are applicable in view of the provision contained in section 41 of the Central Act. The main contention raised, therefore, is not acceptable.

4. Learned counsels appearing in these appeals have contended that in the absence of any Regulations, the Commission could not have fixed the tariff. It is to be noted that similar contention raised in the aforesaid three connected appeals having been negatived, the contention now raised cannot be accepted.

5. Mr. Jena, the learned counsel, further submitted that in view of the provisions contained in section 57-A(1)(e) of the Electricity (Supply) Act, 1948, and the Sixth Schedule attached thereto, tariff which had been earlier fixed in November, 1998, could not have been changed before expiry of three years. Similar contention raised in the connected appeals has been negatived and as such, the contention is not tenable.

6. Mr. Jena then submitted that various distribution companies without providing efficient service to the customers, unjustifiably increased the tariff. It has been submitted that the main intention of the Reform Act is being thwarted and the distribution companies instead of streamlining their own administration are exploiting the consumers by raising the tariff without any justification.

While it is true that there is much scope for improvement in the quality of service to be provided by various distribution companies and there is a crying need for streamlining their administrative set-up so as to minimize the expenditure and maximize efficiency, the order passed by the Regulatory Commission fixing tariff cannot be set at naught on this score. It is obvious that GRIDCO and various distribution companies have failed to check the growing menace of pilferage of energy which ultimately affects the bona fide users as well as the companies themselves. Be that as it may, it is a matter which is required to be looked into by the Regulatory Commission in future. However, because of such shortcomings the order passed cannot be quashed.

7. Mr. Jena also contended that at the time of fixation of tariff, the Commission had consisted of two members and as such in view of the provisions contained in section 3(2) of the Reforms Act read with section 5(1) (a), the entire proceeding was vitiated. Such a contention raised in the connected appeals has been rejected and it is not necessary to delve into the very same question again.

8. Mr. R. B. Mohapatra, counsel appearing for appellant in Misc. Appeal No. 163/2000, apart from supporting the contentions raised by Mr. Jena has also raised the contention that the Regulatory Commission should not have benefitted one class of customers by fixing higher tariff for some and lower tariff for other. Nothing has been pointed out to show any gross discrimination. It has been held in the decision reported in Kerala State Electricity Board Vs. S.N. Govinda Prabhu and Bros. and Others, that in view of the provisions contained in section 49(3) of the Electricity (Supply) Act, 1948, for supply of electricity to any person, having regard to the geographical position of any area, the nature of the supply and purpose for which supply is required and other relevant factors, different tariffs may be prescribed. It is, of course, true that there should not be any arbitrary discrimination. In the facts and circumstances brought on record, it cannot be said at this stage that there has been any arbitrary discrimination.

9. For the aforesaid reasons, the contention raised by the appellants having failed there is no scope for interference. However, in the connected appeals relating to fixation of tariff for bulk supply, the matter has been remanded. If on account of any re-fixation of tariff for the year 1999-2000 any consequential change is necessary for re-fixing the tariff for retail supply, it may be considered in accordance with law.

The appeals are accordingly disposed of. There will be no order as to costs.

10. Appeals disposed of.