

(2005) 12 DEL CK 0151

In the Delhi High Court

Case No : Writ Petition (C) 23396 of 2005 and CM No. 15413 of 2005

Subhash Chand

APPELLANT

Vs

N.D.P.L. and Others

RESPONDENT

Date of Decision : 12-12-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity Act, 2003 — Section 111, 111(2), 127, 42(5)

Citation : (2006) 126 DLT 185 : (2006) 86 DRJ 167 : (2006) 1 RCR(Civil) 620

Hon'ble Judges : Mukul Mudgal, J;H.R. Malhotra, J

Bench : Division Bench

Advocate : Laliet Kumar, for the Appellant; Sandeep Sethi and Suresh Tripathi, for the Respondent

Final Decision : Disposed Off

Judgement

Mukul Mudgal, J.—Rule D.B. With the consent of the learned counsel for the parties, the writ petition is taken up for final hearing.

2. This writ petition inter alias challenges Clause 8.2.1 of the tariff Order of 2004-05 and 2005-06 of tariff schedule issued by the respondent No. 1 being ultra virus to the Constitution of India, as well as seeks the quashing of the bill dated 31st October, 2005 for a sum of Rs. 8,07,416/- raised against K. No. 32204133472 on the basis of speaking order dated 1st October, 2005.

3. Mr. Sandeep Sethi, the learned senior counsel appearing for the respondent No. 1/NDPL submits as a preliminary objection that this writ petition is not maintainable and the petitioner should have availed of the appellate remedy provided u/s 111 of the Electricity Act, 2003, which reads as follows:-

"111. Appeal to Appellate Tribunal.--(1) Any person aggrieved by an order made by an adjudicating officer under this Act (except u/s 127) or an order made by the Appropriate Commission under this Act may prefer an appeal to the Appellate Tribunal for Electricity:

Provided that any person appealing against the order of the adjudicating officer levying any penalty shall, while filing the appeal, deposit the amount of such penalty:

Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, it may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.

(2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date of which a copy of the order made by the adjudicating officer of the Appropriate Commission is received by the aggrieved person and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

..."

4. Mr. Sethi further submitted that a retired Chief Justice of a High Court is heading such a Tribunal which is in a position to provide adequate relief to the petitioner in respect of the orders complained of in the writ petition. He submitted that the challenge to the validity of clause 8.2.1 of the tariff can be made before such a Tribunal. In support of his submission that the writ petition is not maintainable, the learned senior counsel appearing for the petitioner has further relied upon the order passed by the Hon"ble Chief Justice and Madan B. Lokur, J. in LPA No. 746/2004 dated 30th November, 2005, the relevant portion whereof reads as follows:-

"10. If this Court entertains writ petition regarding disputes relating to electricity, water, telephone bills etc. even though there is an alternative remedy provided by the statute before some forum, this Court will be flooded with lakhs and lakhs of such writ petitions and will be doing no other work except deciding such writ petitions.

11. We are of the opinion that ordinarily no writ petition should be entertained regarding disputes relating to electricity, water, telephone and other kind of bills, if there is a Forum provided under the statute or rules or regulations there under for resolving such disputes."

5. While we are in respectful agreement with the aforesaid view taken by the learned Division Bench and indeed bound by it, we nevertheless want to clarify the scope and ambit of Article 226 of the Constitution of India as laid down by the Hon"ble Supreme Court in U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others, , as follows:-

"...The Constitution is not a Statute. It is fountainhead of all the Statutes. When

the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or persons is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a co-operative society or association or body of individuals, whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him...."

6. The Hon"ble Supreme Court in the said judgment while enunciating the above wide scope of Article 226 of the Constitution nevertheless reiterated the self-imposed restrictions on the exercise of such right in the following words:-

"... But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this Court has laid down certain guidelines and self-imposed limitations have been put there subject to which the High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances. The High Court does not interfere when an equally efficacious alternative remedy is available or when there is an established procedure to remedy a wrong or enforce a right. A party may not be allowed to bypass the normal channel of civil and criminal litigation. The High Court does not act like a proverbial "bull in a china shop" in the exercise of its jurisdiction under Article 226."

7. In *Ram and Shyam Company Vs. State of Haryana and Others*, , the Supreme Court held that the Rule which requires the exhaustion of alternate remedies is a rule of convenience and discretion rather than a rule of law and does not oust the jurisdiction of the Court.

8. We are of the view that while no fetters can be put on the scope and ambit of Article 226 of the Constitution of India, this Court certainly follows well settled principles laid down by the Hon"ble Supreme Court while exercising appropriate restraint in the exercise of such powers. Therefore, while this Court would not normally entertain a petition directly when an alternate Forum is provided, in case there is violation of principles of natural justice or there is perversity in the order passed or the alternate remedy is not equally efficacious or conditions precedent for exercise of such alternate remedy, are so onerous as to result in gross miscarriage of justice, the power and jurisdiction of this Court under Article 226 of the Constitution cannot be curtailed.

9. Mr. Sethi the learned senior counsel for the respondent No. 1 has submitted that in so far as the right to challenge the validity of Bill dated 31st October, 2005 for Rs. 8,07,416/- is concerned it can be challenged before the appellate forum constituted u/s 42(5) of the Electricity Act which was established u/s 42(5) and reads as follows:-

"42. Duties of distribution licenses and open access.-- .

...

(5) Every distribution licensee shall, within six months from the appointed date or date of grant of license, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission"

10. While the correctness of the Bill dated 31st October, 2005 for a sum of Rs. 8,07,416/- is concerned it may be challenged before the appellate forum constituted u/s 42(5) of the Act. However, in so far as the challenge to the validity of the tariff is concerned this may be challenged u/s 111 of the Electricity Act, 2003, before the Appellate Tribunal as contended by Shri Sethi. Mr. Tripathi who appears for respondent No. 2/DERC, however, submitted that as per the provisions u/s 111(2), today such a challenge could not be maintainable in view of the fact that the tariff order was issued in the year 2003 and challenge is well beyond the period prescribed u/s 111. The learned counsel for the petitioner submits that in so far as the petitioner is concerned, the challenge could only be made when such tariff order was enforced against the petitioner by virtue of the bill dated 31st October, 2005 based upon the order dated 1st October, 2005.

11. In the facts and circumstance of the case, we are of the view that it is thus open to the Appellate Tribunal to determine the validity of the challenge to the tariff as stated by Mr. Sethi and to determine whether such an appeal was maintainable u/s 111(2) as contended by Mr. Tripathi. Taking into account the facts and circumstances averred in the writ petition and in particular, the plea of the petitioner that while the infractions started on 1st March, 2004 the show cause notice was issued only on 25th April, 2005 and that no recovery for a period six months prior to the show cause notice could be made, we are of the view that till further orders are passed by the Appellate Tribunal in an application for interim relief in the appeal to be filed by the petitioner, the petitioner is required to deposit 50% of the billed amount of Rs. 8,07,416/- within a period of four weeks from today. The appeal shall also be filed by the petitioner before the Appellate Tribunal within four weeks from today and we leave it entirely open to the appellate Tribunal to determine whether any further interim orders should be passed or this interim order should be continued or varied. This order will not come in the way of the appellate Tribunal in granting its own interim order, if any, required to be passed in favor of the petitioner entirely uninfluenced by the interim order passed in this petition. The petitioner shall, however, continue to pay the current billing charges.

12. The writ petition and the interim application stand disposed of accordingly.