
(2006) 11 UK CK 0025

In the Uttarakhand High Court

Case No : Writ Petition No's. 542 to 545, 579, 1119, 1348 and 1349 of 2006 (M/B) and Special Appeal No's. 97 to 99 and 101 to 107 of 2006

Uttaranchal Power Corporation Ltd. and Another APPELLANT

Vs

Consumer Grievances Redressal Forum and Another RESPONDENT

Date of Decision : 01-11-2006

Acts Referred:

Electricity Act, 2003 — Section 181(1), 181(2), 42(1), 42(2), 42(3)
Electricity Rules, 2005 — Rule 7, 7(1)

Citation : (2007) 1 UC 631

Hon'ble Judges : P.C.Verma, J; Dharam Veer, J

Bench : Division Bench

Advocate : Alok Singh, N.S. Negi, B.D. Upadhyaya and Gopal Narain, for the Appellant; Sudhanshu Dhulia Arvind Vashisth, A.K. Bansal, Jitendra Chaudhary, Vipul Sharma and Puja Banga, for the Respondent

Final Decision : Allowed

Judgement

1. In all these writ petitions and special appeals, the question of law is one based on the similar set of facts, therefore, all these cases are being disposed of by this one common judgment.
2. The grievance of the Petitioners/Appellants is that the applications made by the consumers have been allowed against the Petitioners/Appellants by the forum constituted for redressal of grievance of the consumers.
3. The sole ground of challenge is that the forum which decided the applications of consumers raising their grievance, was not constituted in accordance with the provisions of the Electricity Act, 2003 and Rules framed thereunder.
4. Part-VI of the Electricity Act, 2003 (hereinafter to be referred as Act) provides for Distribution of Electricity and the Provisions with respect to distribution licensees (licensees which in all the cases is Uttaranchal State Power Corporation). Sub-section (1) of Section 42 of the Act provides that it shall be

the duty of a distribution licensee to develop and maintain an efficient co-ordinated and economical distribution system in accordance with the provisions contained in this Act. Sub-section (2) of Section 42 of the Act provides that State Commission shall introduce open access in such phases and subject to such conditions as may be specified within one year of the appointed date by it. Sub-section (3) of Section 42 of the Act provides that where any person, whose premises are situated within the area of supply of a distribution licensee i.e. Power Corporation requires a supply of electricity from a generating company or any licensee other than such distribution licensee, such person may, by notice, require the distribution licensee for wheeling such electricity in accordance with regulations made by the State Commission and the duties of the distribution licensee with respect to such supply shall be of a common carrier providing non-discriminatory open access. Sub-section (4) of Section 42 of the Act provides that where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply. The relevant provision which is attracted in these cases in Sub-section (5) of Section 42 of the Act is reproduced as under:

Every distribution licensee shall, within six months from the appointed date or date of grant of licence, 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.

5. It is evident from the reading of aforesaid sub-section that the every distribution licensee shall establish a forum for redressal of grievance of the consumers in accordance with the guidelines as may be specified by the State Commission. Thus, the forum is to be established by the licensee i.e. Power Corporation.

6. In the State of Uttaranchal, the State Commission has been established by the Regulations framed in exercise of powers under Sub-section (5) of Section 42 of the Act read with Clause (r) of Sub-section (2) of Section 181 of the Act. Clause (3) of the Regulation provides for Constitution of Forum For Redressal of Grievances of The Consumers. Sub-clauses (1) and (2) of Regulation 3 are relevant and are being quoted below as the rest of the clauses of the Regulation 3 of the Regulations are not relevant:

3. Constitution of the Forum for Redressal of Grievances of the Consumers:

(1) In terms of Sub-section (5) of Section 42 of the Act, every distribution licensee shall establish one or more Forum as may be prescribed by the Commission for redressal of grievances of the consumers in accordance with these regulations.

(2) Each Forum shall consist of three members to be appointed by the

Distribution Licensee with the following composition:

(a) The Chairperson of the Forum shall be a retired judicial officer having at least 20 years of experience in legal/judicial profession or a retired District Judge or a retired civil servant not below the rank of a Collector, or a retired Professor of the Electrical Engineering Department of a reputed institute;

(b) One member shall be a serving or retired officer of the licensee possessing degree in Electrical Engineering and having at least 15 years experience in distribution of electricity not below the rank of Deputy General Manager or an officer in charge of a Distribution Circle;

(c) One member out of members representing consumers on the State Advisory Committee constituted u/s 87 of the Act.

7. Sub-section (1) of Section 181 of the Act is general in nature empowering the State Government to make regulations by notification consistent with this Act and the Rules. Sub-section (2) of Section 181 of the Act gives the particular matters for making provisions in the Regulations and there are 42 clauses in Sub-section (2) of Section 181 of the Act which commence from (a) to (zp). Only Clause (r) of Sub-section (2) of Section 181 of the Act is relevant in the present case, which is reproduced as under:

181 (2) (r). guidelines under Sub-section (5) of Section 42

8. Reading of Clause (r) of Sub-section (2) of Section 181 of the Act is clearly consistent that the provisions contained in Sub-section (5) of Section 42 of the Act with the guidelines should be provided in the Regulations to dispose of the applications of grievances of the consumers in accordance with the said guidelines.

9. Reading of Sub-section (5) of Section 42 of the Act and Section 181 sub-section (1) and Sub-section (2)(r) reveals that the Forum is to be constituted by the licensee i.e. the Power Corporation and the Forum shall dispose of the applications for grievances raised in accordance with the provisions made in the guidelines contained in the Regulations. Thus, the power to constitute the Forum is vested with the licensee company i.e. the Uttaranchal Power Corporation and not with the State Commission.

10. Since the Regulations were issued by the State Commission, therefore, the licensee i.e. the Power Corporation followed such Regulations and constituted the Forum vide its office memorandum dated 06-04-2004 which is constituted as provided under Sub-clause (2) of Clause-3 of the Regulations. Since, we have held that the Regulations are void, therefore, the constitution by the licensee of the Forum is also illegal, as the same has been constituted under the directions of the Commission by its Regulations. The occasion to challenge the constitution arose after the Rules were framed which came into force on 08-06-2005 known as Electricity Rules, 2005 and Rule 7(1) of the said Rules provides for constitution of a Forum.

11. Sub-rule (1) of Rule 7 of the aforesaid Rules provides for constitution of a forum for redressal of grievances of consumers under Sub-section (5) of Section 42 of the Act which shall consist of officers of the licensee. In Regulation 3 of the Regulations framed by the Electricity Commission, it is not provided that the Forum shall consist of forum of Officers. It provides only one member out of three members while under Rule 7(1) of the Rules, it is provided that entire forum to be of the officers of the licensee i.e. the Power Corporation.

12. It is not in dispute that after enforcement of the Rules, the licensee company i.e. Power Corporation has not established the Forum as provided under Rule 7(1) of the Rules. Thus, the illegal decision as it emerges from the provisions of the Act, Rules and Regulations, it is clear that the constitution of Forum by the licensing company under the direction of the State Commission was illegal.

13. Learned counsel for the Electricity Commission Sri S. Dhulia, Sr. Advocate submitted that the Rules cannot override the Act and the Clause (5) of Section 42 of the Act gives the power to the State Commission read with Section 181(2) (r) to constitute the Forum. The argument is totally misconceived as we have held earlier in this judgment that the Commission has no power to constitute the Forum.

14. Learned counsel for the Electricity Commission further submitted that the licensee company i.e. the Power Corporation has not constituted the Forum in accordance with the provisions of Rule 7(1) of the Rules of 2005. He further placed before us the circular issued by Government of India, Ministry of Power addressed to Secretaries, State Electricity Regulatory Commissions, para 2 and 3 of which reads as under:

2. Suggestions have been received by this Ministry from various sources regarding the composition of the Consumer Redressal Forum as prescribed under Rule 7. It has been suggested that the composition of the Forum should not be restricted to officers of the licensee.

3. It is being proposed that this rule may be amended to provide that at least one member of the Forum should be from outside in order to add the credibility of the institution.

15. At the strength of this letter, learned Counsel for the Power Corporation submitted that the cases may be kept alive and may not be disposed of till the Rules are amended and the provisions for constitution is provided under Sub-rule (1) of Rule 7 of the Rules. The new forum shall come into existence after the amendment of the Rules. The Rules have not been amended so far and the forum which has decided the applications of the consumers being in accordance with the provisions of Sub-regulations (1) and (2) of Regulation 3 of the Regulations, is contrary to the existing Rules. Therefore, we hold that the decision given by an illegal constitutional Forum cannot be by the de facto doctrine.

16. In view pf the above, the writ petitions as well as special appeals are allowed. The impugned orders in the writ petition as well as the impugned orders passed by learned Single Judge of this Court in Special Appeals are hereby set aside. However, it is provided that the applications of the consumers shall be disposed of by a duly constituted Forum constituted by the Licensing Authority i.e. the Uttaranchal Power Corporation Ltd. The Power Corporation is directed to constitute the Forum within three days from today and the applications of the consumers shall be disposed of within a period of ten days after giving them reasonable opportunity of hearing. No order as to costs.