

CASE NO.:
Appeal (civil) 7082-7084 of 2001

PETITIONER:
PUNJAB STATE ELECTRICITY BOARD

Vs.

RESPONDENT:
NATIONAL THERMAL POWER CORPORATION LIMITED & OTHERS

DATE OF JUDGMENT: 10/10/2001

BENCH:
M.B. SHAH & R.P. SETHI

JUDGMENT:

Shah, J.

Leave granted.

Appellant Punjab State Electricity Board and other States Electricity Boards have filed these appeals against the impugned judgment and order dated 7th March, 2001 passed by the High Court of Delhi in Civil Miscellaneous No. 232 of 2001 in FAO No.131 of 2001, FAO No.159 of 2000 and FAO No.88 of 2001.

The Central Electricity Regulatory Commission (hereinafter referred to as the Commission), constituted under the Electricity Regulatory Commissions Act, 1998 (hereinafter referred to as the Act) by its order dated 21.12.2000 has fixed the norms for tariff for hydro generation and inter-state transmission. That order was challenged by the respondent National Thermal Power Corporation Limited (hereinafter referred to as the NTPC) by filing FAO No.159 of 2000 under Section 16 of the Act before the High Court of Delhi. The High Court by its interim order has virtually stayed the operation of the impugned order by laying down certain conditions and by observing that it appears desirable that all the directions issued by the Commission shall be observed to charge tariff on the basis of the pre-existing norms. It was also observed that the NTPC shall continue to charge tariff on the basis of pre-existing norms only so long as the arrears up to 31st March, 2001 due against different respondents mainly State Electricity Boards are not adjusted and the moment the arrears of NTPC stand paid, the concerned State Electricity Board and all concerned respondents shall be entitled to move the Court for fresh consideration. The Court also observed that it was just an interim order and after the group for formulating the Tariff Policy takes a decision, the Court shall be informed about the decision taken by the group for formulating the tariff policy and the party shall be entitled to be heard afresh. These interim directions are challenged by the Punjab State Electricity Board (PSEB).

At the time of hearing of these matters, learned counsel for the PSEB submitted that the interim order passed by the High Court is, on the face of it, illegal. He also contends that Section 16 only provides for filing of appeal but it does not empower the High Court to stay the operation of the order which was passed by the

Commission after considering the submission as well as evaluating various norms required for fixing the tariff.

In its report, the Commission has observed as under:

1.4.1. The terms and conditions as will be notified, shall, apply to all utilities covered under Section 13(a) (b) and (c) of the ERC Act unless specifically stated otherwise. However, it should be remembered that these terms and conditions shall apply wherever cost based tariff is determined by the Commission. These terms and conditions shall be in force for a period of 3 years effective from 1st April, 2001 and reviewable/renewable at the discretion of the Commission.

1.4.3. If this order creates any unfairness, or hardship, parties may approach the Commission for redressal, within 60 days of issue in accordance with the provisions for review as contained in Regulation 103 of the Conduct of Business Regulation.

In para 1.5.1 the Commission has kept in view the twin objectives contained in Section 13(e) according to which tariff shall be fair to the consumers and facilitate mobilization of adequate resources for the power sector.

In its operative order, the Commission has observed that the normal tariff period shall be a period of five years but shall at this stage be for a period of three years. Finally it has observed that:

Ensuring the financial viability of efficient and proactive utilities, would be a prime concern of the Commission. At the same time, safeguarding the interests of the consumers is a major responsibility of the Commission, particularly, when the market structure and system conditions do not support competition. The Commission has to play a balancing role and it intends to discharge this responsibility transparently, through a consultative mode. It expects that participative decision making will lighten the burden of transiting to a more efficient system, for all stakeholders.

It is true that under Section 38(1) of the Act, the Central Commission has to discharge its functions by taking into consideration directions issued by the Central Government in matters of policy involving public interest. Nothing has been pointed out to indicate that Government has issued such directions. In any case all these questions are required to be dealt with at the time of final hearing of the matter and at this stage, it would be difficult to hold that prima facie, the norms prescribed by the Central Commission are arbitrary or ex facie unjustifiable, particularly in view of Section 13(e) which inter alia provides that its function is to aid and advise the Central Government in formulation of tariff policy which shall be (i) fair to the consumer; and (ii) facilitate mobilization of adequate resources for the power sector.

Further, the Commission has submitted its Report after considering all relevant material which was placed before it and after hearing all objections raised by the concerned parties. In view of the time frame prescribed by the Commission, if the interim stay order continues indefinitely, the Report would become totally nugatory. If

the norms prescribed by the Commission are implemented and finally if the appeal is allowed or norms are modified, NTPC could be appropriately compensated.

Lastly, it is true that section 16 only provides that any person aggrieved by the decision or order of the Central Commission may file an appeal to the High Court. No further procedure is prescribed under the Act and no rules are shown to us prescribing any procedure. Learned counsel for the parties have also not pointed out any provision in the Act or the Rules indicating that while exercising the appellate jurisdiction, the High Court has power to grant such interim relief. It is true that when appellate jurisdiction is conferred unless there is a specific provision to the contrary, the jurisdiction of the appellate authority would be of widest amplitude. In proper cases, such authority may have jurisdiction to grant interim reliefs. However, this would depend upon the nature of the order passed by the competent authority in discharge of its functions. In case of exercise of administrative or advisory jurisdiction by the authority, there may not be any question of granting interim stay. It is needless to point out that even if there is power to grant interim stay, it cannot be exercised in a routine way or as a matter of course in view of the special nature of jurisdiction conferred upon the Commission. However, considering the fact that the appeal is pending before the High Court, in our view, the aforesaid question is not required to be finally determined at this stage because the High Court itself has observed that the matter may be placed for further hearing after the Group for formulating the Tariff Policy takes decision and that the parties would be entitled to be heard afresh. Similar are the observations made by the Commission in its Report.

Hence, in our view, this was not a fit case for grant of interim relief so as to make the Report virtually nugatory. Further, the High Court in its impugned judgment has observed that this is just an interim order and after the Group for formulating the Tariff Policy takes a decision, the High Court should be informed about the decision taken by the Group for formulating the Tariff Policy and parties would be entitled to be heard afresh. In this view of the matter, the impugned order passed by the High Court requires to be set aside and the Court is requested to decide the appeals on merits as expeditiously as possible.

In the result, the appeals are allowed, the impugned order passed by the High Court is set aside. There shall be no order as to costs.

J.
(M.B. Shah)

J.
(R.P. Sethi)

October 10, 2001.