

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Date of decision: 9<sup>th</sup> November, 2011.**

+ **W.P.(C) 7219/2011**

% **ALL INDIA HINDU MAHASABHA** ..... **Petitioner**  
Through Mr. Sitab Ali Choudhary, Adv.

Versus

**DELHI ELECTRICITY REGULATORY COMMISSION**  
**& ORS** ..... **Respondents**

Through Mr. Meet Malhotra, Sr. Adv. with Ms.  
Pratima Gupta, Adv. for R-1.  
Mr. Sandeep Sethi, Sr. Adv. with Mr.  
Anupam Varma & Ms. Deepika  
Kalia, Advocates for R-2, 3 & 4.  
Ms. Zubeda Begum, Adv. for R-5.

**CORAM :-**

**HON'BLE THE ACTING CHIEF JUSTICE**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**JUDGMENT**

**RAJIV SAHAI ENDLAW, J.**

1. This petition filed in public interest seeks quashing of the increase in tariff/charges of electricity in the city of Delhi, first by upto 22% and thereafter by 0.35 paise per unit and seeks a mandamus for roll back of the said increase. It is the contention of the petitioner that the said increases are

without any basis or rhyme and reason in as much as the Electricity Distribution Companies, in so far as Delhi is concerned, are making profit. It is further contended that the said increases are gross violation of the Share Holding Agreement dated 27<sup>th</sup> June, 2002 between the Distribution companies and the Govt. of NCT of Delhi and statutes, rules and regulations and in infringement of the legal and fundamental rights of citizens of India. The petition came up first before this Court on 28<sup>th</sup> September, 2011 when finding that the petitioner had not pleaded the errors if any in fixation of the tariff, the counsel for the petitioner was directed to peruse the tariff fixation by the Delhi Electricity Regulatory Commission (DERC) and to bring it on record. An additional affidavit has been filed by the petitioner enclosing therewith the tariff scheduled for the financial year 2010 and for the year 2011-12 and reply dated 30<sup>th</sup> September, 2011 of the DERC to the RTI query of the petitioner and on the basis whereof the petitioner pleads that all the three Distribution Companies are in huge profit after tax. The petitioner on the basis thereof also contends the increase in tariff to be illegal.

2. The Electricity Act, 2003 in Part (VII) thereof makes elaborate

provisions as to the determination of tariff. Under Section 62 thereof the tariff is to be determined by the appropriate commission which in the case of the city of Delhi is the DERC, in accordance with the provisions of the Act. Section 61 requires the appropriate commissions as the DERC is to specify the terms and conditions for determination of tariff, having regard *inter alia* to safeguarding of consumers interest and at the same time recovery of the cost of electricity in a reasonable manner. The appropriate commissions are to be constituted in accordance with the provisions of Part (X) of the Act and under Section 82 thereunder, by the State Government. The said State Commission is to comprise of not more than three members including the Chairperson to be appointed by the State Government on the recommendation of a selection committee referred to in Section 85 of the Act. The said Selection Committee is to comprise of a person who has been a Judge of the High Court as the Chairperson, the Chief Secretary and the Chairperson of the Authority or the Chairperson of the Central Commission. The qualification under Section 84 for appointment as a Chairperson/member of the State Commission is, adequate knowledge of

and dealing with the problems relating to engineering, finance, commerce, economics, law or management.

3. Section 110 of the Act provides for establishment by the Central Government of an Appellate Tribunal for Electricity to hear appeals against the order of the appropriate commissions. Under Section 111 “any person” aggrieved by an order of the appropriate commission, is permitted to prefer an appeal to the Appellate Tribunal for Electricity and such appeals are prescribed to be disposed of within 180 days from receipt thereof. The said Appellate Tribunal is to under Section 112 comprise of a Chairperson and three other members and the qualification prescribed under Section 113 for appointment as the Chairperson is either a sitting or a retired Judge of the Supreme Court or the Chief Justice of a High Court.

4. The aforesaid would show that elaborate arrangement has been made for fixation of the tariff by the DERC and appeal thereagainst. We have as such enquired from the counsel for the petitioner as to why the appropriate remedy for the grievance if any of the petitioner is not by way of an appeal to the Appellate Tribunal for Electricity under Section 111 of the Electricity

Act, 2003. The counsel for the petitioner has at the outset contended that the petitioner is not entitled under Section 111 to prefer an appeal. The said contention is however not borne out from the language of Section 111 which permits “any person aggrieved by an order” to prefer an appeal. The senior counsel for DERC appearing on advance notice has also confirmed that the remedy of appeal is available to any person including such as the petitioner. The counsel for the petitioner faced with the said situation has next contended that he does not have faith in the appellate mechanism. Such contention without any pleading or basis cannot be accepted. From the pleadings and the arguments, it appears that the petitioner was not even aware of the remedy of appeal. The counsel for the petitioner has argued that since illegal increases have been permitted, the petitioner does not expect to get any relief from the authorities under the Electricity Act. The said argument also has no merit particularly when the Appellate Tribunal is to be headed by a sitting/ retired Judge of the Supreme Court or the Chief Justice of a High Court and the qualifications prescribed for the other members of the Appellate Tribunal also disclose them to be senior officers.

The counsel for the petitioner has then contended that the writ remedy being not maintainable for the reason of availability of alternative remedy is not an absolute rule and this Court can, considering that the entire population of the city of Delhi is affected, exercise jurisdiction.

5. We however do not find any merit in the last contention also. Elaborate procedure, prescribing the various factors to be taken into consideration for fixation of tariff has been provided in the Act. The members of the DERC who under the Act is to fix the tariff are disclosed to be experts with knowledge of the subject; similarly the members of the Appellate Tribunal are also found to be experts in the subject. When the Legislature has provided for such expert bodies, this Court will not exercise the writ jurisdiction. In this regard we may also notice that the petition, save for averring that the two increases in tariff have been affected, does not make any pleading whatsoever as to how the tariff fixed is in violation of the statute or any other rules/regulations applicable thereto. The counsel for the petitioner during the hearing also could only draw attention to Sub-Section 4 of Section 62 of the Act which “ordinarily” prohibits amendment in tariff

more than once in any financial year. The same again is not an absolute bar to amendment/revision in tariff more than once in a financial year. The counsel for the petitioner as aforesaid has not pleaded or annexed the basic document which will contain reasons for the increases, nor challenged the same. A person approaching the Court even by way of a PIL is required to put in some work to at least make out a plausible case before the Court. PIL cannot always be allowed as merely bringing an issue to the notice of the Court particularly when the petitioner has had legal assistance. The Supreme Court in *Narmada Bachao Andolan Vs. State of M.P.* (2011) 7 SCC 639 has emphasized that even in a PIL, there must be sufficient material in the petition on the basis of which the Court may proceed and a litigant cannot approach the Court to have a fishing or roving enquiry. Similarly, in *Dr. B. Singh VS. UOI* (2004) 3 SCC 363 the practice of filing vexatious PILs was deprecated. However, in the present case no effort whatsoever is found to have been made to even *prima facie* satisfy this Court that the tariff impugned is in contravention of statute or other applicable law, rules and regulations. The petitioners and counsels preferring PILs cannot

act merely on the basis of the Newspapers' Reports as is the case in the present instance also.

6. The counsel for the petitioner has during the course of hearing handed over a list of judgment with as many as ten judgments but has been unable to show the relevance thereof to the controversy in issue. We have as such not felt the need to deal with the same.

7. The petition is thus dismissed. However considering that the petitioner has been represented by a young advocate, we refrain from imposing any costs but sincerely hope that the counsels bringing petitions before this Court in public interest shall put in more work than merely drawing attention of this Court to the issues which may be agitating the public. Liberty is also granted to the petitioner to approach DERC/Appellate Tribunal for Electricity for appropriate relief, if any entitled to.

**RAJIV SAHAI ENDLAW, J**

**ACTING CHIEF JUSTICE**

**NOVEMBER 09, 2011/bs**