

2. Rule. Rule made returnable forthwith. With consent of parties, the petition is taken up for final disposal.

3. The petitioner has challenged the order passed by respondent no.2, dated 5th September, 2013 along with public notice dated 24.02.2015 and the proceedings of advertisement No. 12/2014 by which respondent No.2 has fixed tariff. The petitioner has further challenged the order passed by respondent No.2 in Case No. 95/2013, dated 25.06.2015 by way of amendment in the writ petition.

4. The petitioner is a consumer of respondent No.3- Company. Respondent No.2 is a Regulatory Commission established under the Electricity Act, 2003. It has power to fix tariff and is expected to be a watchdog of interest of the consumers and function transparently.

5. According to the petitioner, on 16.08.2012, respondent No.2 settled the tariff w.e.f. 1st August, 2012 in case No.19/2012. As per provisions of Electricity Act, respondent No.3 has to apply to respondent No.2 for increase in the tariff. On such application, respondent No.2 Commission has to issue a

public notice, it has to call and hear objections of the consumers and then it has to take decision. On 05.09.2013, without any request or application of respondent No.3, respondent No.2 Commission took up suo moto proceedings and in total breach of the mandatory provisions of public hearing etc., allowed respondent No.3 Company to recover huge amount of Rs.3450.13 crore, practically increasing cost by 20% to the consumers. The recovery was started from 7th September, 2013 and much more amount is recovered from the consumers.

6. TATA Motor challenged the said order in Appeal No. 295/2015 before the Appellate Tribunal for Electricity. The Appellate Tribunal remanded the matter to respondent No.2 for deciding the matter afresh. The Appellate Tribunal also directed respondent No.2 to decide the matter by following the procedure as contemplated under Sections 63, 64 and 86(3) of the Electricity Act, 2003.

7. On 24.02.2015, the Regulatory Commission, i.e. Respondent No.2 put up a notice on its website without disclosing any particulars as to how and why additional burden is put up, its impact, necessity, etc. due to

which, public at large could not understand adverse affects and put objections etc. On 09.04.2013, date was fixed at Aurangabad. The petitioner was personally present and gave written representation, requesting to publish public notice in newspaper, giving all details to enable the public at large to raise effective objections. Representation was received but not answered nor detail publication was given on the website.

8. Respondent No.2 Commission has denied the material allegations in the petition and it is contended that petition is not maintainable as alternative remedy is available under the provisions of the Electricity Act, 2013. The Appellate Tribunal, has power to consider the aspect in appeal under section 111 of the Electricity Act. By way of additional affidavit it is contended that after remand of the matter, respondent no.2, after giving proper opportunity to these concerned parties, has passed order on 26.03.2015. Respondent No.2 prays to reject the petition.

9. We have heard the arguments of Mr. R. R. Mantri, learned counsel for the petitioner, Mr. B. A. Shidne,

learned AGP for respondent No. 1 State, Mr. Ratnakar Singh, learned counsel for Respondent Nos. 2 & 4 and Mr. Anil S. Bajaj, Advocate for respondent No.3.

10. During the course of argument, Mr. Mantri has argued that respondent no.2 fixed and finalized the tariff without request/application of respondent no.3. The commission has took up the proceedings suo moto which is in contravention of section 64 of the Electricity Act. He further argued that respondent No.2 Commission has not followed the provisions of Section 64 of the Electricity Act nor gave a public notice. Objections were not called from the Consumers and it has decided the matter haphazardly in one day. Further more, initial order dated 5th September, 2013 was assailed before the Appellate Tribunal, Electricity and the learned Appellate Tribunal has remanded the matter and directed respondent No.2 to pass a consequential order. The Appellate Tribunal has observed that respondent no.2 has not followed the mandatory provisions. Therefore, according to Mr. Mantri, respondent no.2 was not empowered to re-fix the tariff. Only it has to pass consequential orders as per directions of the Appellate Tribunal.

11. Mr. Mantri, the learned counsel further argued that after remand of the matter, a public notice was given. It was without any material particulars which the common people can know. Giving of public notice and hearing was a farce. Mr. Mantri further argued that the work of the Commission/respondent No.2 is in the regulatory nature and it should have safeguarded the interest of the consumers but in the blatant violation of the mandatory provisions, respondent No.2 has passed the impugned order dated 25.06.2015.

12. Mr. Mantri, the learned counsel for the petitioner has relied on the observations of the Apex court in the case of **Union of India & ors. Vs. Tania Construction Pvt. Ltd., reported in 2011(5) SCC 697,** which reads as under:

13."27. Apart from the above, even on the question of maintainability of the writ petition on account of the Arbitration Clause included in the agreement between the parties, it is now well-established that an alternative remedy is not an absolute bar to the invocation of the writ jurisdiction of the High Court or the Supreme Court and that without exhausting such alternative remedy, a writ petition would not be maintainable. The various decisions cited by Mr. Chakraborty would clearly indicate that the

constitutional powers vested in the High Court or the Supreme Court cannot be fettered by any alternative remedy available to the authorities. Injustice, whenever and wherever it takes place, has to be struck down as an anathema to the rule of law and the provisions of the Constitution. We endorse the view of the High Court that notwithstanding the provisions relating to the Arbitration Clause contained in the agreement, the High Court was fully within its competence to entertain and dispose of the Writ Petition filed on behalf of the Respondent Company. "

14. Mr. Mantri, the learned counsel also relied on the judgment of the Apex Court in the case of **M. P. State Agro Industries Development Corporation Ltd. & another Vs. Jahan Khan**, reported in 2007 AIR SC 3133, wherein it is observed that:

15. "The rule of exclusion of writ jurisdiction due to availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of the availability of an alternative remedy, a writ court may still exercise its discretionary jurisdiction of judicial review, in at least three contingencies, namely, (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice or (iii) where the orders or

proceedings are wholly without jurisdiction or the vires of an Act is challenged. In these circumstances, an alternative remedy does not operate as a bar."

16. Mr. Mantri, the learned counsel further submits that Respondent No.4 has committed contempt of this Court. This Court on 16.04.2015 had issued notice. Respondent No.4 was served with the notice, had appeared in the matter on 07.05.2015 and sought time. When this Court was seized of the matter, then respondent No.4 ought not to have decided the proceedings. The said act amounts to contempt of this court.

17. As against this, Mr. Singh, the learned counsel for respondent No.2 has argued that the respondent No.2, after remand of the matter has observed the relevant mandatory provisions of the Electricity Act and after giving public notice and after hearing the objections, passed appropriate orders. Further more, it was submitted by the learned counsel that the petitioner has efficacious remedy under the provisions of Section 111 of the Electricity Act. Therefore the writ petition is not maintainable. The learned counsel has further argued that when the efficacious remedy

of appeal is available to the petitioner, it is not desirable to exercise jurisdiction under Article 226 of the Constitution of India. The learned counsel further relied on the provisions of the Maharashtra Electricity (Conduct of Business) Regulation, 2004 and stated that the Commission may, suo moto or on petition by any affected person, initiate proceedings. The learned counsel has relied on the following case laws:

(1) (1983) 2 Supreme Court Cases 433, Titaghur Paper Mills Co. Ltd. and another vs. State of Orissa and others, wherein it is held that:

"Where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute alone must be availed of."

(2) (1998) 8 Supreme Court Cases 1, Whirlpool Corporation Vs. the Registrar of Trade Marks, Mumbai and another, wherein it is held that:

"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High court not only for issuing writs in the nature of habeas corpus, mandamus,

prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution of also for "any other purpose."

18. Before going to consider the merit of the case, it is material to note that when the present petition was pending before this Court, respondent No.2 decided the tariff by its order dated 25.06.2015. In fact, it was expected from respondent No.2 to await the decision of this court. The propriety required so. Therefore, it was expected from it to stay away its hand. However, respondent No.2 was exercising quasi-judicial power. This Court had not passed any prohibitory order against the respondent. As such act of the respondent passing order during pendency of the present petition may not amount to contempt of Court in strict sense.

19. In view of submissions of Mr.Mantri, it is necessary to refer to relevant observations of the Tribunal i.e. summary of findings, which reads as under:

(a) The impugned order has been passed in violation of Sections 62, 64 and 86(3) of the Electricity Act, 2003. The State Commission should have followed the mandatory procedure contemplated under section 64 and 86(3) of the Electricity Act,

2003 by issuing public notice and giving opportunity to the consumers to raise objections/suggestions on the retail supply of tariff proposed and only after considering these objections/suggestion, should have determined the tariff.

(b) As per section 62(4) of the Act, the tariff may not ordinarily be amended more frequently than once. However, the tariff can be amended more than once in a financial year in respect of any changes in terms of fuel surcharge formula as may be specified by the State Commission. This Tribunal has held earlier that the tariff can be revised without following the procedure u/s 64 provided the revision in tariff is in terms of the Fuel surcharge Formula as specified by the State Commission through Regulations or by the tariff Order. The Impugned Order was not an amendment in tariff as per the Scheduled specified Fuel Surcharge Formula.

(c) we, therefore, set aside the impugned order and remand the matter to the State commission to give opportunity to the parties concerned as per the provisions of Section 64 of the Electricity act and hear the matter in a transparent manner and pass the final order uninfluenced by its earlier findings, as expeditiously as possible. we want to make it clear that we are not giving any opinion on the merits."

20. Looking to the above observations, it appears that the Appellate Tribunal has directed respondent no.2 to pass order after following relevant provisions

of the Electricity Act and further it was clarified that the Tribunal has not given any opinion on the merits of the case.

21. We have perused the order dated 25.06.2015 impugned by way of amended pleadings. On perusal of the same, it appears that the issue of fixation/revision of tariff is an issue to be examined and determined by the Experts. Furthermore, in view of the provisions of Section 111 of the Electricity Act, there is remedy of Appeal available for the petitioner or any other aggrieved person. In view of the fact that efficacious remedy is provided by way of appeal before the Authority consisting of the experts in the said field, it would be more appropriate that the matter is dealt by the experts. We are of the opinion that it is not necessary to exercise writ jurisdiction under Article 226 of the Constitution of India.

22. On perusal of the above observations of the Apex Court in the case of **M.P.State Agro Industries Development Corproation Ltd.** supra, we do not think that the petitioner is seeking enforcement of his fundamental right nor the impugned orders are wholly without jurisdiction. In such circumstances, this is

not a fit case warranting exercise of writ jurisdiction under Article 226 of the Constitution. As such the petition is disposed of with liberty to the petitioner to avail alternate remedy. All contentions of the respective parties are kept open. The Forum where the appeal/proceedings may be filed shall consider the time spent in prosecuting the present writ petition.

23. Rule is discharged with aforesaid observations. There shall be no order as to costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC