

*** THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN**
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

+ WRIT APPEAL No.1159 of 2016

% Dated: 25.10.2018

Central Power Distribution Company of A.P. Ltd., and others.

... Appellants

VERSUS

\$ The Consumer Grievances Redressal forum of APCPDCL
And another.

... Respondents

! Counsel for the appellants : R.Vinod Reddy (SC for TRANSCO)

^ Counsel for the respondent No.1 : Sri P.Srinivasa Rao

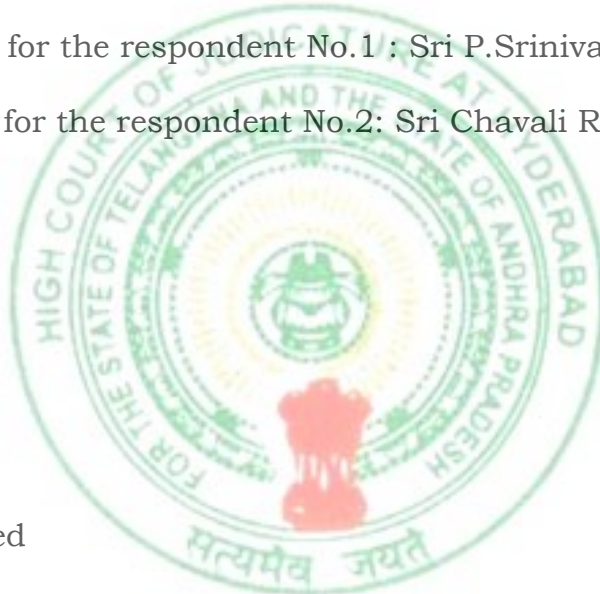
Counsel for the respondent No.2: Sri Chavali Ramanand

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? Cases referred

(1997) 3 SCC 261



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AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT APPEAL No.1159 of 2016

JUDGMENT: (Per the Hon'ble the Chief Justice Sri Thottathil B. Radhakrishnan)

The first appellant is a 'distribution licensee' as defined in Section 2(17) of the Electricity Act, 2003; hereinafter referred to as 'the Act'. The second respondent is a 'consumer' as defined in Section 2(15) of that Act. The first respondent is the Consumer Grievances Redressal Forum, hereinafter referred to as 'the Redressal Forum' established by the first appellant distribution licensee in terms of Section 42(5) of the Act. The second respondent consumer presented a grievance for redressal before the first respondent Redressal Forum. After hearing the consumer and the distribution licensee, the Redressal Forum issued a decision. The distribution licensee filed writ petition invoking Article 226 of the Constitution of India, challenging the decision issued by the Redressal Forum. The learned single Judge held that the writ petition is not maintainable and the distribution licensee is bound to give effect to the decision of the Redressal Forum. The learned single Judge held that clause 14 of Chapter IV of the Andhra Pradesh Electricity Regulatory Commission (Establishment of Forum and Vidyut Ombudsman for Redressal of Grievances of Consumers) Regulation, 2004; hereinafter referred to as 'the Regulations'; provides power to remove difficulties could be resorted to by the distribution licensee and not otherwise. It is also held that clause 5(11)(c) of

the Regulations makes it mandatory that the distribution licensee shall implement the decisions and orders of the Redressal Forum made in favour of the complainant. For these reasons, the writ petition was dismissed as not maintainable. Hence, this Appeal by the distribution licensee.

2. Heard the learned standing counsel for the appellants and the learned counsel for the second respondent.

3. Making reference to different judicial precedents, in particular **L.Chandra Kumar v. Union of India**¹, the learned counsel appearing for the appellant distribution licensee argued that the writ petition ought not to have been dismissed as not maintainable. He argued that there is no exclusion of judicial review through any of the provisions of the Regulations or the Act; and, more importantly, there can be no exclusion of judicial review if requisite grounds are established. It is pointed out that even as per the impugned Judgment, no alternative efficacious remedy has been noticed and the power to remove difficulties available to the Commission under the Regulations is not a remedy available to a distribution licensee against a decision of the Redressal Forum. He also argued that it cannot be taken that the distribution licensee has no right at all to challenge the decision of the Redressal Forum; even if, the question whether the writ Court would interfere, would be an issue in the realm of judicial discretion.

¹ (1997) 3 SCC 261

4. On behalf of second respondent consumer, reference was made to the contents of the decision rendered by the Redressal Forum and it is pointed out that there is no ground whatsoever to interfere with the redressal of the consumer's grievance as has been extended by the Redressal Forum through the decision impugned in the writ petition.

5. Section 42(5) of the Act obliges the distribution licensee to establish a Forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by 'State Electricity Regulatory Commission', defined in Section 2(64) of the Act and constituted under sub-section (1) of Section 82 of the Act. Rule 7 of the Electricity Rules, 2005, hereinafter referred to as 'the Rules', provides that the distribution licensee shall establish 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 distribution licensee and independent member, who is familiar with the consumer affairs, as nominated by the Appropriate Commission. That Commission issues guidelines for different purposes including those which matters relating to Redressal Forum. The manner of appointment and the qualification and experience of the persons to be appointed as member of the Forum and the procedure of dealing with the grievances of the consumers by the Forum and other similar matters would be as per the guidelines specified by the State Commission, going by the proviso to Rule 7(1) of the Rules. Sub-section (6) of Section 42

provides that any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission. Sub-section (7) of Section 42 provides that the Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission. These provisions in sub-sections (5), (6) and (7) of Section 42 of the Act shall be without prejudice to the rights, which the consumers may have, apart from the rights conferred under those sub-sections.

6. Regulation 5 of the Regulations deals with the functions of the Forum. Clauses (1) to (3) provide the process of decision making by the Forum on the basis of majority of the members present and voting. The co-opted member from the consumer sector in terms of Regulations 3 and 4 shall not have the right to vote. There is also provision for casting a duty by the Chairperson in certain situations. These provisions in clauses (1) to (3) of Regulation 5 of the Regulations unequivocally show that there is a process of decision making by the Redressal Forum in relation to the grievance of the consumer. Such decision making would lead to a result on the grievance of the consumer as between the consumer and the distribution licensee. If the consumer's grievance is not redressed by that process, the consumer would have the opportunity to carry that dispute to the Ombudsman. Under clause (11) (a) of Regulation

5 of the Regulations, the Forum shall decide the complaint and shall give the reasons in support of its decision. The Forum has also the power to pass such interim orders on the request of the complainant as the Forum considers appropriate pending the final decision on the complaint. While clause (11) (c) of Regulation 5 provides that the distribution licensee shall duly implement the decisions and orders of the Forum made in favour of the complainant, such statutory responsibility to implement the Forum's decisions cannot by itself denude the distribution licensee to challenge a particular decision of the Forum on grounds which are sustainable at the instance of the distribution licensee. This is so because judicial review is an inexcusable basic guarantee of the constitutional scheme and such judicial review through writ Court invoking Article 226 of the Constitution would not stand excluded by the mere prescription of a duty on the distribution licensee to implement the decision and orders of the Forum made in favour of the complainant.

7. The Commission has the power to remove difficulties. If that power available in Regulation 14 of the Regulations is to be operated vis-à-vis the decision of the Redressal Forum, that would amount to saying that the power to remove difficulties can be converted to be a redressal mechanism for adjudication and resolution of a dispute as to the correctness of the decision of the Redressal Forum on a grievance placed by a complainant for redressal. This is not the purpose of conferring the

Commission with the power to remove difficulties under Regulation 14 of the Regulations. The finding in the impugned Judgment that the power to remove difficulties is the proper course to be adopted by the distribution licensee is, therefore, unsustainable.

8. The upshot of the aforesaid discussion is that the distribution licensee is entitled to challenge a decision of the Redressal Forum. The question whether a writ petition filed by a distribution licensee is to be entertained or not depends upon the facts and factors of each case and duly applying the fundamental principles that govern Writ jurisdiction including the context and purpose of issuing such grievance redressal decisions by the Redressal Forum constituted by the distribution licensee on statutory compulsion.

9. Electricity Act, 2003 is a comprehensive legislation enacted to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry. As spelt out even in its Preamble, it aims at taking care of various aspects including protecting interest of consumers. Therefore, the statutory device provided through Section 42(5) of the Act, Rule 7 of the Rules and the Regulations is to ensure a fine balance between the interest of the consumers and the distribution licensees. The bridging of this equation comes in the form of the quality of combination of

persons, who are to be members of the Redressal Forum. Regulation 3 provides for the constitution of the Forum and affirms the statutory command in the Act to have the Forum established within the time limit fixed by the Act. It further provides that the Forum shall consist of three members including the Chairperson. It is the distribution licensee who appoints the Chairperson and the Members of the Forum. The composition of the Forum shall be in terms of the different sub-clauses in clause (2) of Regulation 3 of the Regulations. Sub-clause (i) is affirmation of the inexcusable principle that members of the Forum shall be persons of ability, integrity and standing. The sub-clause (ii) of clause (2) provides that the Chairperson of the Forum shall be a serving officer of the distribution licensee or a retired person possessing degree in electrical engineering and having at least 20 years of experience in the distribution of electricity and having served not below the rank of Superintending Engineer. Sub-clause (iii) of clause (2) provides that one member who is a serving officer of the distribution licensee or a retired person having at least 10 years of experience in Accounting out of which at least 5 years in revenue matters and having served not below the rank of Senior Accounts Officer. Sub-clause (iv) of clause (2) provides that one member is a serving officer of the distribution licensee or a retired person having at least 5 years of experience in legal matters and having served not below the rank of Assistant Secretary. Thus, the constitution of the Forum is statutorily

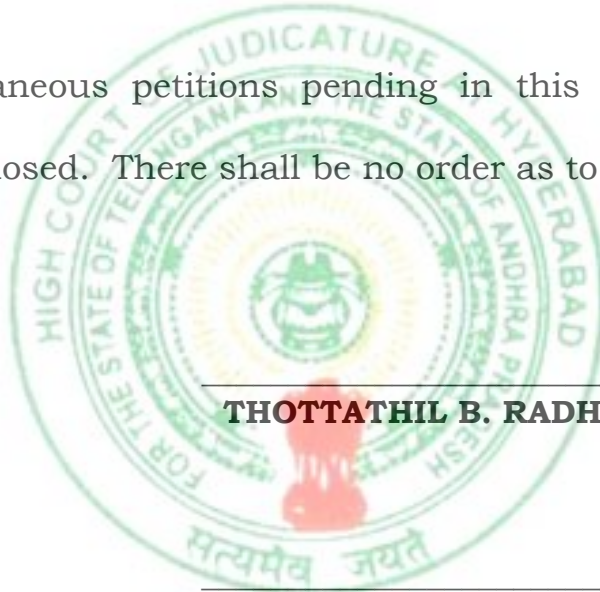
required to be a combination of a person well informed in the field of electrical engineering and allied sciences, another in the field of accounting and another in legal matters. The Forum so constituted; when works with ability, integrity and standing; deserves to be treated as one with due expertise and capable to provide redressal for the grievance of the consumers on the basis of the particular facts and factors of a particular case or grievance of the consumer. This is the purpose of creation of the Redressal Forum. Therefore, the decision that it renders deserves to be treated as one rendered by a statutorily constituted Forum with persons of due expertise from the relevant fields. In such cases, the scope of judicial review, as is understood through the plethora of judicial precedents, is to be regulated in such manner that interference ought to be minimal.

10. We state the aforesaid here because though we have examined the decision of the Redressal Forum, which is impugned by the distribution licensee in the writ petition, we do not see that there was any adjudication on that issue by the learned single Judge. Nor do the grounds raised in the Writ Appeal elaborate on that aspect of the matter; obviously because, that does not appear to have been an issue adjudicated at the hands of the learned single Judge. The proper course that would be open for us would be to make an order of remand after delineating the legal principles as aforesaid and holding that the writ petition filed by the

distribution licensee was not liable to be dismissed on ground of alternative remedy, including on a ground referable to the Commission's power to remove difficulties as per the Regulations.

11. In the result, this Writ Appeal is allowed setting aside the impugned order. The writ petition is remitted for reconsideration by the learned single Judge in the light of what is stated aforesaid. The writ petition be listed before the learned single Judge as per roster at the earliest.

Miscellaneous petitions pending in this Appeal, if any, shall stand closed. There shall be no order as to costs.



THOTTATHIL B. RADHAKRISHNAN, CJ

RAMESH RANGANATHAN, J

25.10.2018

Note: LR copy be marked.
(By order)
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