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

Date of decision: 15th January, 2020

\+ W.P.(C) 13612/2019

DIGNITY RESTORATION & GRIEVANCE SETTLEMENT ASSOCIATION (DRGSA) ..... Petitioner

Through: Ms. Shantha Devi Raman and Ms. Aishna Jain, Advocates

versus

GOVT. OF NCT OF DELHI & ORS. ..... Respondents

Through: Mr. Satyakam, ASC for GNCTD
Mr. Prashant Bhardwaj and Mr. Rishi Bharadwaj, Proxy Counsel for Ms. Pratima K. Gupta, Advocate for R-3
Mr. Anupam Varma, Mr. Aditya Gupta, Mr. Nikhil Sharma and Mr. Rahul, Advocates for R-4 to R-6

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

O R D E R

% **15.01.2020**

D.N. PATEL, CHIEF JUSTICE (ORAL)

1. This Public Interest Litigation has been preferred with the following prayers:-

> *"(a) To issue a writ, order or direction in the nature of Mandamus or Certiorari directing the Respondents to quash the Tariff Order dated 31.08.2017 issued by the Delhi Electricity Regulation Commission to collect surcharge under the head of "Pension Surcharge" at the rate of 3.70% from their consumers.*

(b) To issue a writ, order or direction in the nature of Mandamus or Certiorari directing the Respondents to refund the money of the Consumers which have been illegally collected in name of "Pension Surcharge" or to adjust the amount in the future electricity bills.

(c) Pass such other or further orders as this Hon'ble Court deem fit and proper in the circumstances of the case.

2. The issue raised in this petition has already been dealt with by this Court in W.P.(C) 8653/2017 in which we have passed a detailed order dated 10.12.2019 (***Sudhanshu M. Kumar Vs. Union of India & Ors***.). The said order is reproduced as under:-

"1. This writ petition has been preferred with the following prayers:

xxx xxx xxx

c) Issue appropriate Writ/Order/directions prohibiting/restraining DERC from imposing 3.70% additional surcharge amounting to Rs.423.67 Crores on consumers of electricity in Delhi and further prohibiting/restraining BSES Rajdhani Power Limited, BSES Yamuna Power Limited and Tata Power Delhi Distribution Limited from collecting 3.70% additional surcharge for the period September 2017 to March 2018 from the electricity Consumers of Delhi through their monthly power bills.

xxx xxx xxx."

2. Counsel appearing for the petitioner submitted that in view of the actions already taken by the respondents, prayers (g) and (h) do not survive and therefore the same are not pressed by the petitioner.

3. We have heard the counsel for both sides and looking to the facts and circumstances of the case, it appears that this petitioner is challenging various ***Tariff Orders*** *passed by the*

Delhi Electricity Regulatory Commission *for different financial years:*

(a) 2011-12 (Annexures P-8 & P-9);

(b) 2012-13 (Annexures P-10 & P-11);

(c) 2013-14 (Annexures P-13 & P-14);

(d) 2014-15 (Annexure P-16);

(e) 2015-16 (Annexures P-17 & P-18);

(f) 2016-17;

(g) 2017-18 (Annexures P-22 & P-23);

4. Looking to the provisions of ***The Electricity Act, 2003*** *(hereinafter referred to as 'the Act, 2003'), especially* ***Section 111*** *thereof, it appears that these orders are appealable orders.*

5. For ready reference Section 111 of the Act, 2003 reads as under:

> *"**111. Appeal to Appellate Tribunal**. -(1) Any person aggrieved by an order made by an adjudicating officer under this Act (except under section 127) or an order made by the Appropriate Commission under this Act may prefer an appeal to the Appellate Tribunal for Electricity:*
>
> *Provided that any person appealing against the order of the adjudicating officer levying any penalty shall, while filing the appeal, deposit the amount of such penalty:*
>
> *Provided further that wherein any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, it may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.*
>
> *(2) Every appeal under sub-section (1) shall be filed within a period of forty five days from the date on which*

a copy of the order made by the adjudicating officer or the Appropriate Commission is received by the aggrieved person and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(4) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned adjudicating officer or the Appropriate Commission, as the case may be.

(5) The appeal filed before the Appellate Tribunal under subsection (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within one hundred and eighty days from the date of receipt of the appeal:

Provided that where any appeal could not be disposed of within the said period of one hundred and eighty days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within the said period.

(6) The Appellate Tribunal may, for the purpose of examining the legality, propriety or correctness of any order made by the adjudicating officer or the Appropriate Commission under this Act, as the case may be, in relation to any proceeding, on its own motion or otherwise, call for the records of such proceedings and make such order in the case as it thinks fit."

6. *Moreover, counsel appearing for the respondent Nos.6, 7 and 8 who are:*

(a) Mr. Buddy A. Ranganadhan & Mr. Hasan Murtaza, Advocates appearing for respondent Nos.6 and 7 i.e. for BSES Rajdhani Power Ltd. and BSES Yamuna Power Ltd. respectively.

(b) Mr. Sudhir Nandrajog, Senior Advocate with Mr. Anupam Varma, Mr. Nikhil Sharma, Mr. Rahul Kinra and Mr. Aditya Gupta, Advocates appearing for respondent No.8 i.e. Tata Power Delhi Distribution Ltd.
The aforesaid respondents have already preferred appeals under ***Section 111*** *of the Electricity Act, 2003 before the Appellate Tribunal for the Electricity, New Delhi.*

7. *Much has been argued out by the counsel for the petitioner that this writ petition is tenable in law and the tariff as fixed by the Delhi Electricity Regulatory Commission (hereinafter referred to as 'the Regulatory Commission') is beyond their power/jurisdiction. We are not in agreement with this contention for the following reasons:-*

(a) Pensionery surcharge which has been inter-woven in the tariff has led to believe this petitioner that there is no power with the Regulatory Commission. Looking to the provisions of the Act, 2003, it cannot be said that there is want of jurisdiction with the Regulatory Commission for fixing tariff for the Financial Years 2011-12 to Financial Years 2017-18.

(b) It cannot be said that the Tariff Orders were passed by the Regulatory Commission without any power, jurisdiction and authority.

(c) Tariff order, as passed by the Regulatory Commission, can always be challenged before the Appellate Authority. It is not the case that the Regulatory Commission has decided any labour or criminal matter. Regulatory Commission has exercised power within its jurisdiction. Wrong order passed, while exercising,

power under the law, such order is appealable under Section 111 of the Act, 2003.

(d) There is no violation of principles of natural justice.

(e) There is no unconstitutionality involved in this writ petition nor the same is contended.

8. *Thus, there is no want of jurisdiction, nor is there violation of principles of natural justice for the fixation of the Tariff Orders by the Regulatory Commission. Moreover, fixation of Tariff Orders by the Regulatory Commission under Section 62 of the Electricity Act, 2003 cannot be said to be unconstitutional and thus, the present writ petition does not fall within the exception, where without approaching the Appellate Authority a writ is tenable.*

9. *Looking at the facts of the present case as stated hereinabove, respondent Nos.6, 7 and 8 have already availed efficacious alternative remedy by way of statutory appeal under Section 111 of the Electricity Act, 2003 challenging the very same impugned Tariff Orders passed by the Regulatory Commission filed for different Financial Years from 2011-12 to Financial Years 2017-18.*

10. *In a matter pertaining to an identical issue, Division Bench of this Court has passed an order dated 28th August, 2017 in W.P.(C) 296/2016 which reads as under:*

> *"1. Mr. Raman Kapoor, ld. Senior Counsel for the petitioner submits that in view of the objection of respondent no. 1 - Government of NCT of Delhi that the petitioner has an alternate remedy by way of an appeal under Section 111 of the Electricity Act, 2003, he has instruction to withdraw the present writ petition.*
>
> *The petitioner is also present in person before us.*
>
> *2. In view of the above, this writ petition and pending applications are dismissed as withdrawn."*

11. In view of the aforesaid order passed in W.P.(C) 296/2016 and looking to the fact that this petitioner has an efficacious alternative remedy available under Section 111 of the Electricity Act, 2003, we see no reason to entertain this writ petition.

12. As an appeal is tenable in law against the impugned orders and moreover the other appeals preferred by respondent Nos.6, 7 and 8 are already pending, we are not going into the fine niceties of the facts and varieties of arguments canvassed by the counsel for petitioner about the power, jurisdiction and authority of the Regulatory Authority which has passed the impugned orders and of the Appellate Authority etc. It is pertinent to mention that the cost incurred by the Distribution Company can also be taken into consideration while fixing the electricity tariff. Cost of the Distribution Company includes salary and other allowances to be paid to their employee and with that logic even pension can be included.

13. Furthermore, as and when appeal/appeals are preferred by the petitioner or the appeals as preferred by the respondent Nos.6, 7 and 8 are to be decided, the Appellate Authority shall decide the same in accordance with law, rules, regulations and Government policy applicable to the facts depending on each case and essentially on the basis of evidences available on record without being influenced by the order passed by this Court in this writ petition.

14. With the aforesaid observations, this writ petition is hereby dismissed."

3. In view of the above decision, the present writ petition stands dismissed.

CHIEF JUSTICE

C.HARI SHANKAR, J.

JANUARY 15, 2020/rhc