

(2012) 01 P&H CK 0061

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 19814 of 2011

M/s. Sawadeshi Udyog, Khajuri
Road, Yamuna Nagar and Others

APPELLANT

Vs

Uttar Haryana Bijli Vitran Nigam,
Panchkula and Others

RESPONDENT

Date of Decision: Jan. 18, 2012

Acts Referred:

- Constitution of India, 1950 - Article 226
- Easements Act, 1882 - Section 37, 53
- Electricity Act, 1910 - Section 12, 18
- Electricity Act, 2003 - Section 111, 127, 185, 67, 69
- Electricity Regulatory Commission Act, 1998 - Section 17
- General Clauses Act, 1897 - Section 6
- Haryana Electricity Reform Act, 1997 - Section 39

Citation: AIR 2012 P&H 72

Hon'ble Judges: Alok Singh, J

Bench: Single Bench

Advocate: I. D. Singla, for the Appellant; B. S. Rana, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Alok Singh, J.

Present writ petition is filed challenging the order dated 13.09.2010, passed by Haryana Electricity Regulatory Commission-respondent No. 2. In the present case a very important question arises before this Court:-- As to whether order passed by the Commission can be challenged by way of appeal before this Court u/s 39 of the Haryana Electricity Reforms Act, 1997 (hereinafter referred as "Haryana Act") or can

be challenged before Appellate Tribunal u/s 111 of the Electricity Act, 2003 (hereinafter referred as "2003 Act").

2. Learned counsel for the petitioners has submitted that the Haryana Regulatory Commission was constituted under the Haryana Act, therefore, order passed by the Commission, appointed under the Haryana Act, can be challenged before this Court u/s 39 of the Haryana Act by way of appeal, therefore, present petition be treated as appeal u/s 39 of the Haryana Act. He further contends that since appeal lies u/s 39 of the Haryana Act, therefore, it is for the aggrieved party either to file appeal u/s 39 of the Haryana Act or to approach Tribunal u/s 111 of the 2003 Act. As per learned counsel Haryana Act was saved and was not repealed as provided u/s 185 of 2003 Act.

3. Sections 82, 111 and 185 of the Electricity Act, 2003 are being reproduced herein:

Section 82. (Constitution of State Commission): --(1) Every State Government shall, within six months from the appointed date, by notification, constitute for the purposes of this Act, a Commission for the State to be known as the (name of the State) Electricity Regulatory Commission:

Provided that the State Electricity Regulatory Commission, established by a State Government u/s 17 of the Electricity Regulatory Commissions Act, 1998 and the enactments specified in the Schedule, and functioning as such immediately before the appointed date, shall be the State Commission for the purposes of this Act and the Chairperson, Members, Secretary, and other officers and other employees thereof shall continue to hold office, on the same terms and conditions on which they were appointed under those Acts:

Provided further that the Chairperson and other Members of the State Commission appointed, before the commencement of this Act under the Electricity Regulatory Commissions Act, 1998 or under the enactments specified in the Schedule, may on the recommendations of the Selection Committee constituted under sub-section (1) of Section 85 be allowed to opt for the terms and conditions under this Act by the concerned State Government.

(2) The State Commission shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

(3) The head office of the State Commission shall be at such place as the State Government may, by notification, specify.

(4) The State Commission shall consist of not more than three Members, including the Chairperson.

(5) The Chairperson and Members of the State Commission shall be appointed by the State Government on the recommendation of a Selection Committee referred to in section 85.

Section 111. (Appeal to Appellate Tribunal): --(1) Any person aggrieved by an order made by an adjudicating officer under this Act (except u/s 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 fortyfive 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 sub-section (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.

Section 185. (Repeal and saving): --(1) Save as otherwise provided in this Act, the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998 are hereby repealed.

(2) Notwithstanding such repeal,

(a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

(b) the provisions contained in sections 12 to 18 of the Indian Electricity Act, 1910 and rules made thereunder shall have effect until the rules under sections 67 to 69 of this Act are made;

(c) the Indian Electricity Rules, 1956 made u/s 37 of the Indian Electricity Act, 1910 as it stood before such repeal shall continue to be in force till the regulations u/s 53 of this Act are made.

(d) all rules made under sub-section (1) of section 69 of the Electricity (Supply) Act, 1948 shall continue to have effect until such rules are rescinded or modified, as the case may be;

(e) all directives issued, before the commencement of this Act, by a State Government under the enactments specified in the Schedule shall continue to apply for the period for which such directions were issued by the State Government.

(3) The provisions of the enactments specified in the Schedule, not inconsistent with the provisions of this Act, shall apply to the States in which such enactments are applicable.

(4) The Central Government may, as and when considered necessary, by notification, amend the Schedule.

(5) Save as otherwise provided in sub-section (2), the mention of particular matters in that section, shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897, with regard to the effect of repeals.

4. Having perused Section 82 of the 2003 Act I have no hesitation to say that State Electricity Regulatory Commission constituted under the Haryana Act shall be the State Commission for the purpose of the 2003 Act.

5. There is no dispute that orders passed by State Commission can be assailed before the Appellate Tribunal u/s 111 of the 2003 Act.
6. Having perused Section 185 of the 2003 Act it can safely be said that only those provisions of the Haryana Act, which are not inconsistent with the provisions of the 2003 Act, shall have application. Since in the 2003 Act appeal is provided to the Appellate Tribunal u/s 111 of the 2003 Act, therefore, appeal to this Court u/s 39 of the Haryana Act would not lie and Section 39 of the Haryana Act being inconsistent with Section 111 of the 2003 Act shall have no application.
7. In the opinion of this Court since order impugned was passed by the Commission deemed to have been constituted u/s 82 of the 2003 Act, therefore, order passed by the Commission shall be appealable before the Appellate Tribunal u/s 111 of the 2003 Act.
8. Since alternate efficacious remedy is available to the petitioner to approach the Appellate Tribunal u/s 111 of the 2003 Act, therefore, I am not inclined to invoke my jurisdiction under Article 226 of Constitution of India. Dismissed. However, petitioner shall be at liberty to approach the Appellate Tribunal u/s 111 of the 2003 Act.