

Before the Karnataka Electricity Regulatory Commission, Bangalore

Dated this the 1st day of July 2004

Present

- | | | |
|----------------------------------|----------|-----------------|
| 1. Sri. Philipose Matthai | - | Chairman |
| 2. Sri. H.S. Subramanya | - | Member |
| 3. Sri. S.D.Ukkali | - | Member |

Case No: RP 05/2004

Between

M/s Jindal Thermal Power Company Ltd.,
Post Box No.9
Village & Post Toranagallu,
Bellary District

Petitioner

(M/s Amarchand & Mangaldas & Suresh A. Shroff & Co.)

and

1. M/s Bhuwalka Pipes Ltd.,
P.O.Vidyanagar - 583 275
Village: Torangallu
District: Bellary
2. M/s Karignur Iron & Steel Ltd.,
Embitee Complex
Bellary Road,
Hospet.
3. M/s. Jindal Vijayanagar Steel Ltd.,
P.O. Vidyanagar - 583 275
Village Torangallu
Bellary Dist.
4. M/s. Karnataka Power Transmission Corpn. Ltd.,
Kaveri Bhavan, K.G.Road,
Bangalore - 560 009.

Respondents

(By Sri. S.S.Nagananda, Adv.for Resp. No.4)

This petition seeks modification of the Commission's order dated 22nd January 2004 in the Case No. OP 14/2003. The Petitioner states that he has filed this petition "for *inter alia*, modification and/or review" of the said order under Regulations 8 and 11 of the K.E.R.C. (General and Conduct of Proceedings) Regulations, 2000.

2. We have heard the learned Counsels for the Petitioner and the Respondent No.4 on the issue of maintainability of the petition. Sri L. Vishwanathan, learned Counsel, who addressed the arguments on behalf of the Petitioner, stated that the modification sought by the Petitioner is independent of Review and that the Commission has wide powers under the Regulations to modify its own orders. He contended that the constraints placed on a Review petition in Order XLVII Rule 1 of the Code of Civil Procedure, 1908, would not be applicable to modifications and alterations of the orders. He argued that Regulation 8 of the K.E.R.C. (G & C of Proceedings) Regulations have specified that the Commission, in addition to review, may revoke, revise, modify, amend, alter or otherwise change any decision, direction, order, or other document. He further stated that there is similar provision in the Monopolies and Restrictive Trade Practices Act, 1969 and the Hon. Supreme Court of India has held in Case *Mahindra and Mahindra Vs Union of India (1979 (2) SCC 529)* that the Commission (MRTP) should examine each case on its own facts and find whether it is a proper case in which the order made by it should be amended or revoked. He also contended that Regulation 11 of the KER C (G&C Proceedings) Regulations saves the inherent powers of the Commission and gives ample scope for any modification of its orders. Sri Nagananda, learned Counsel for the Respondent No.4 stated that the Regulations alone cannot give powers of modification or alteration without any empowerment in the Act. His contention was that the Regulations are only extension of the provisions of the Act.

3. We have carefully considered the points raised by the learned Counsels and also studied the case law relied upon by the learned Counsel for the Petitioner.

Section 10 of **the Karnataka Electricity Reforms Act, 1999** is as follows:

"10. Powers of the Commission.-

(1) The Commission shall, for the purpose of any inquiry or proceedings under this Act, have the powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), while trying a suit in respect of the following matters, namely. -

* * * * *

(h) review of its decisions, directions and orders. "

* * * * *

Section 94 of **the Electricity Act, 2003**, reads as follows. -

" 94. Powers of Appropriate Commission. -

(1) The Appropriate Commission shall, for the purposes of any enquiry under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely. -

* * * * *

(f) reviewing its decisions, directions and orders."

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Regulation 8 (1) of **the KERC (General and Conduct of Proceedings) Regulations, 2000**, is as follows. -

"8 Powers of Review, Revision etc. -

(1) The Commission may, either on its own motion or on an application made by any interested or affected party, within 90 days of the making or issuing of any decision, direction, order, notice, or other document or the taking of any action in pursuance of these regulations, review, revoke, reverse, modify, amend, alter, or otherwise change such decision, direction, order, notice or other document issued or action taken by the Commission or any of its officers."

Regulation 11 of **the KERC (General and Conduct of Proceedings) Regulations, 2000**, is as follows. -

"11. Saving the inherent powers of the Commission. -

(1) Nothing in these regulations shall be deemed to limit or otherwise affect the inherent powers of the Commission to make such orders as may be necessary for

meeting the ends of justice or to prevent the abuse of the process of the Commission.

(2) Nothing in these regulations shall bar the Commission from adopting a procedure which is at variance with any of the provisions of these regulations, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient for dealing with such a matter or class of matters.

(3) Nothing in these regulations shall, expressly or impliedly, bar the Commission from dealing with any matter or exercising any power under the Act for which no regulations have been framed, and the Commission may deal with such matters, powers and functions in a manner it thinks fit.

(4) In the exercise of its powers under the Act, and the discharge of its functions, the Commission shall as circumstances may permit, be guided by the principles of natural justice.

Sub Section (2) of Section 13 of **the Monopolies and Restrictive Trade Practices Act, 1969**, reads as follows. -

"§.13. Orders of Commission may be subject to conditions, etc. -

* * * * *

(2) Any order made by the Commission may be amended or revoked at any time in the manner in which it was made"

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Evidently there is an identical provision regarding the power of review conferred on the Commission by the Electricity Act, 2003, and the KER Act, 1999. These Acts confer only the power of review and nothing beyond a review as prescribed under the Code of Civil Procedure, 1908. There is no express provision of either modification or alteration similar to the one laid down in Section 13 of the MRTTP Act, 1969. Therefore the expressions "revoke, reverse, modify, amend, alter, or otherwise change such decision, direction, order," in Regulation 8(1) of KER C (General & Conduct of Proceedings) Regulations, 2000, have no independent source other than the power of review under the Act, and have to be construed as the result of a review prescribed under the Act. Therefore, we do not accept the contention of Sri Vishwanathan that the review is independent of modification or alteration and that the modification etc is free from the scope

and constraints of Rule XLVII Rule 1 of the Code of Civil Procedure. We also hold that modification sans review, by exercising powers under Regulation 8 (1) of the G & C Regulations, is not possible. Therefore we conclude that the case law relied upon by the learned Counsel is not relevant to the case before us. The learned Counsel for the Petitioner also contended that the Commission's inherent powers are saved under Regulations 11 of G & C Regulations, and that the Commission may modify its orders by invoking its inherent powers. The question of invoking inherent powers by the Commission would not arise, since specific powers of review have been conferred on the Commission by the Act, and this is also not a case covered under Regulations 11 of the G & C Regulations.

4. The learned Counsel for the Petitioner has pressed only for a modification of the impugned order without resorting to a review. For the reasons explained above, we have come to the conclusion that the present petition is not maintainable.

5. The petition is **dismissed as not maintainable**. So ordered.

(Philipose Matthai)

(H.S.Subramanya)

(S.D.Ukkali)