

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7465 OF 2021
(@ SLP (CIVIL) NO. 20736/2019)

UTTAR PRADESH POWER CORPORATION LIMITED & ORS. ..APPELLANT(S)

VERSUS

KISAN COLD STORAGE AND ICE FACTORY & ORS. ..RESPONDENT(S)

O R D E R

Leave granted.

By an Order dated 20.01.2016, a Division Bench of the Allahabad High Court referred the following questions for decision by a Full Bench:

“(I) In view of the provisions of sub-sections (5) (6) and (7) of Section 42 of the Electricity Act, 2003, under which a consumer who is aggrieved by non-redressal of his grievance is permitted to make a representation before the Ombudsman and the Ombudsman is required to settle the grievance of the consumer, whether Regulation 8.1(i) of the Uttar Pradesh Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2007 is ultra vires the provisions of the Act;

(II) Whether the judgment of the Division Bench in M/s. Jindal Poly Films Ltd. vs. U.P. Electricity

Regulatory Commission, Lucknow decided on 15 April, 2011 can be regarded as laying down the correct principle of law."

By the impugned judgment dated 03.04.2019, the Full Bench answered the reference and declared Regulation 8.1 (i) of the Uttar Pradesh Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2007 ('CGRF Regulations') to be *ultra vires* sub-sections (5), (6) and (7) of Section 42 of the Electricity Act, 2003 ('Act') and Rule 7 of the Electricity Rules, 2005.

The facts in brief which are necessary for disposal of this appeal are as below:

A complaint was filed by Respondent No.1 before the Consumer Grievance Redressal Forum ('Forum') on the ground that the electricity bills were not in compliance with the applicable tariff. The said complaint was allowed by the Forum on 04.05.2011.

Aggrieved by the decision of the Forum, Appellant No.3 preferred an appeal before the Ombudsman in terms of Regulation 8.1(i) of the CGRF Regulations. An objection was raised by Respondent No.1 about the maintainability of the representation preferred by Appellant No.3 before the Ombudsman.

On 18.05.2012, the Ombudsman rejected the representation preferred by Appellant No.3, which was challenged by Appellant

No.2 by filing Writ Petition, being Misc. Single No.6114 of 2012. By an order dated 27.11.2015, the High Court set aside the decision of the Ombudsman dated 18.05.2012 by relying upon the judgment dated 15.04.2011 passed by the Division Bench of the Allahabad High Court in *M/s Jindal Poly Films Ltd. v. U.P. Electricity Regulatory Commission, Lucknow*. The Ombudsman was directed to decide the question of maintainability of the representation made by Appellant No.3. The judgment of the learned Single Judge dated 27.11.2015 in Writ Petition, being Misc. Single No.6114 of 2012, was challenged by Respondent No.1 by filing Special Appeal No. 20 of 2016 before the High Court.

In view of the conflict of opinion between a judgment of the learned Single Judge dated 06.01.2012 in *Dakshinanchal Vidut Vitran Nigam Ltd. v. Vidut Lokpal Lucknow & Ors.* (Misc. Single No.4237 of 2008) and the judgment of the Division Bench in *Jindal Poly Films* (supra), as stated above, the matter was referred to a Full Bench.

Section 42 of the Act deals with the duties of Distribution Licensees and open access. Sub-sections (5) to (7) of Section 42 of the Act, which are relevant for the purpose of this case, as below:

(5) *Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as*

may be specified by the State Commission.

(6) 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.

(7) The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.

Section 181 of the Act empowers the State Commissions to make regulations. In exercise of the power conferred under the said provision, the U.P. Electricity Regulatory Commission framed the CGRF Regulations in the year 2007. By the said Regulations, a forum was constituted for the redressal of consumer grievances. Regulation 8 of the CGRF Regulations provides that any person aggrieved by an order made by the Forum may prefer a representation against such order to the Electricity Ombudsman. The High Court was of the opinion that Section 42(6) of the Electricity Act restricts the representation against the decision of the forum constituted by a Distribution Licensee to consumers only. Therefore, the Regulation providing an opportunity to a Distribution Licensee to prefer a representation to the Ombudsman is *ultra vires* Section 42(6) of the Act.

Mr. Sitesh Mukherjee, learned counsel appearing for the appellants, submitted that the High Court committed an error

in its interpretation of Regulation 8.1(i) of the CGRF Regulations by restricting the scope of a representation to be made against an order passed by the Forum constituted by the Distribution Licensee. He submitted that 'complaint', as defined under Regulation 2.1(e) of the CGRF Regulations, takes into its fold a variety of issues that can be raised by consumers. In the event of a decision by the Forum allowing those complaints, a Licensee would not have a remedy if Regulation 8.1(i) is declared to be *ultra vires* the provisions of sub-sections (5) to (7) of Section 42 of the Act. A Distribution Licensee will be forced to pursue a remedy outside the statute by filing a writ petition under Article 226 of the Constitution of India. Sub-sections (5) to (7) of Section 42 of the Act have to be read along with the other provisions of the statute and it cannot be said that a Licensee will not have redressal with respect to grievances that may arise out of decisions of the Forum. He relied upon the regulations to argue that the Forum is headed by a judicial member. Though one of the members would be an officer of the Licensee, he would be discharging his duties by being a full-time member of the Forum. According to Mr. Mukherjee, the Regulations provide the right to make a representation to the Licensee before the Ombudsman, in furtherance of the principles of natural justice and cannot be treated only as an appeal.

Learned counsel appearing for Respondent No.1 submitted

that the U.P. Electricity Regulatory Commission has published revised draft regulations, seeking comments. These draft regulations do not have a provision corresponding to Regulation 8.1(i) as far as providing Distribution Licensee the right to make representation before the Ombudsman is concerned. He argued that the Forum has to consider the grievances of the consumers within the four corners of the Act and if there is any decision that is taken by the Forum which might have a bearing on the policies of the Distribution Licensee, the Distribution Licensee will always have an opportunity of taking redressal to other remedies available to it under the law.

We are in agreement with the Full Bench judgment of the High Court dated 03.04.2019 for the following reasons:

Section 43 (5), (6) and (7) provide for a mechanism by which a forum for redressal of grievances of consumers is established and an Ombudsman will decide the representations of the consumers who are aggrieved by a decision of the forum. Any guidelines to be framed by the State Commission should be in strict conformity with the said provisions of the Act. Section 43(6) makes it clear that a representation to the Ombudsman against a decision of the forum can be preferred only by a consumer. Regulation 8.1(i) providing a right of representation to a Distribution Licensee is completely contrary to Section 43(6) of the Act and, is, therefore, *ultra vires*. It is trite law that subordinate legislation

cannot override a statutory provision. Furthermore, when there is no ambiguity in a statutory provision literal construction has to be adopted. There is absolutely no confusion that Section 43 (6) enables only consumers and not a Distribution Licensee to prefer representations to an Ombudsman against a decision of the forum. Therefore, we uphold the judgment of the High Court. In view the above, it is not necessary to deal with other submissions made by Mr. Mukherjee, learned counsel appearing for the Appellants. The Appeal is dismissed.

.....J
(L.NAGESWARA RAO)

.....J
(B.R. GAVAI)

.....J
(B.V. NAGARATHNA)

NEW DELHI;
07th DECEMBER, 2021

ITEM NO.8

COURT NO.5

SECTION XI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 20736/2019

(Arising out of impugned final judgment and order dated 03-04-2019 in SA No. 20/2016 passed by the High Court Of Judicature At Allahabad, Lucknow Bench)

UTTAR PRADESH POWER CORPORATION LIMITED & ORS. Petitioner(s)

VERSUS

KISAN COLD STORAGE AND ICE FACTORY & ORS. Respondent(s)

Date : 07-12-2021 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MRS. JUSTICE B.V. NAGARATHNA

For Petitioner(s) Mr. Sitesh Mukherjee, Adv.
Ms. Prerna Priyadarshini, AOR
Mr. Abhishek Kumar, Adv.
Mr. Priyashree Sharma PH, Adv.
Mr. Nived Veerapaneni, Adv.
Mr. Karan Arora, Adv.
Ms. Rushali Agarwal, Adv.
Mr. Syed Faraz Alam, Adv.

For Respondent(s) Mr. Kumar Vaibhaw, Adv
R-1 Ms. Devina Sehgal, AOR
Mr. Mohd. Ashaab, Adv

R-4 (UPERC) Mr. C. K. Rai, AOR
Mr. Sumit Panwar, Adv.

Mr. Jayant K Sud, Ld. ASG
Mr. Randeep Sachdeva, Adv.
Mr. Merusagar Samantray, Adv.
Mr. Pranay Ranjan, Adv.
Mr. Vanshdeep Dalmia, Adv.
Mr. Divyansh H Rath, Adv.
Mr. Kush Chaturvedi, Adv.
Dr. D.V. Rao, Adv.
Mr. Gurmeet Singh Makker, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is dismissed in terms of the signed
order. Pending application(s), if any, shall stand
disposed of.

(Geeta Ahuja)
Court Master

(Anand Prakash)
Court Master

(Signed Order is placed on the file)