

A                   ORISSA ELECTRICITY REGULATORY COMMISSION

v.

L.I. PARIJA AND ORS.

JANUARY 16, 2006

B                   [ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

C                   *Constitution of India, 1950: Article 226—Interim orders by High Court in writ petitions restraining the Commission from fixing tariff—Later, order recalled but matters kept pending—Held, restraint orders are indefensible—Besides, meanwhile Commission having fixed the tariff and levies having been made, there was no necessity to keep the writ petitions pending which have become infructuous—Interim orders—Orissa Electricity Reforms Act, 1994.*

D                   **The present appeals were filed against the interim orders passed by the High Court restraining the appellant from proceeding to fix tariff for the years 2002-03 and 2003-04. Meanwhile, the High Court though recalled the earlier orders but kept the writ petitions pending for purpose of monitoring the action of the appellant.**

E                   **Allowing the appeals, the Court**

F                   **HELD: The interim orders passed by the High Court restraining the Commission from exercising its functions are indefensible. After the High Court had permitted the Commission to take necessary decision, the Commission, in fact, took decision and fixed the tariff for the relevant periods; and levy is being made accordingly. Correctness of the tariff fixed can be questioned before the prescribed forum, as provided in the Orissa Electricity Reforms Act, 1994. That being so, there was no necessity for the High Court to keep the writ petitions pending. Nothing further needs to be done in these appeals except directing the High Court to treat the writ petitions as having become infructuous. [421-F-H; 422-A]**

G                   **CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 519-524 of 2006.**

From the Judgment and Orders dated 3.2.2003 of the Orissa High Court

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in Misc. Case Nos. 7410 and 8953 of 2002, dated 7.3.2003 in Misc. Case No. 414 of 2003 and dated 14.3.2003 in O.J.C. No. 6751 of 2001 and Misc. Case Nos. 414 and 580 of 2003. A

Mr. Raj Kumar Mehta for the Appellants.

Janaranjan Das, Swetaketu Mishra, R.K. Talwar, Amit Talwar, Yash Pal Dhingra and Ms. N. Annapoorani for the Respondents. B

The Judgment of the Court was delivered by

**ARIJIT PASAYAT, J.** Heard learned counsel for the parties. C

Leave granted.

The appeals were essentially directed against the interim orders passed by the Orissa High Court directing, in offence, restraining the Orissa Electricity Regulatory Commission (in short 'the Commission') – appellant herein from taking steps in the matter of fixation of tariff for the periods 2002-03 and 2003-04. During the course of hearing, learned counsel for the appellant placed before us an order dated 02.09.2003 in Misc. Case Nos. 1380 and 1805 of 2003 by which the earlier orders were modified and the Commission was permitted to decide on the question of fixation of tariff for the aforesaid two periods. The writ petitioners before the High Court, who are respondent Nos. 2 to 13 in these appeals have not appeared inspite of service of notice. From the order dated 02.09.2003, it is clear that the High Court virtually recalled the order of restraint on the exercise of power of the Commission. But at the same time, the High Court has kept the matters pending for the purpose of monitoring the action of the Commission. We find these orders to be rather strange. The interim orders passed by the High Court restraining the Commission from exercising its functions are indefensible. After the High Court had permitted the Commission to take necessary decision, the Commission has, in fact, taken decision and has fixed the tariff for the two periods. It is also not disputed that levy is being made on the basis of tariff so fixed. It is not in dispute that correctness of the tariff fixed can be questioned before the prescribed forum, as provided in the Orissa Electricity Reform, Act, 1994. That being so, there was no necessity for the High Court to keep the writ petitions pending. As the Commission has already taken decisions, the tariffs have been fixed and levys are being made, nothing further needs D  
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A to be done in these appeals except directing the High Court to treat the Writ Petition as having become infructuous. The appeals are accordingly disposed of. In view of this order, the notice of contempt issued by the High Court and the contempt proceedings stand quashed.

R.P.

Appeals allowed.