

SUPREME COURT OF INDIA

Orissa Electricity Regulatory Commission

Vs.

Western Electricity Company of Orissa Limited

C.A.No.946 of 2007

(B.N. Agrawal and G.S. Singhvi JJ.)

05.01.2009

ORDER

1. By an order dated 27th January, 2006, Orissa Electricity Regulatory Commission (for short `the Regulatory Commission') directed issue of notice to the respondents under proviso to Section 24(1) of the *Electricity Act, 2003* (for short `the Act'), requiring them to file representations against proposed suspension of their licences. Simultaneously, the Regulatory Commission appointed three special officers to over see working of the respondents. The appeals filed by the respondents against that order were allowed by the Appellate Tribunal for Electricity (for short `the Appellate Tribunal') vide its order dated 13th December, 2006. The Appellate Tribunal set aside the order impugned in the appeals but observed that if the Regulatory Commission proposes to continue or initiate fresh action under Section 24 of the Act, then it shall do so strictly in accordance with the relevant statutory provisions and follow the procedure prescribed therein.

2. We have heard the learned counsel for the parties and perused the record. In our view, in the facts and circumstances of the case, the Regulatory Commission was justified in issuing notice to the respondents calling upon them to file representations against proposed suspension of their licences, but there was no warrant for appointment of special officers to over see their work. Therefore, the Appellate Tribunal had rightly annulled the appointment of the special officers. However, it could not have set aside the order of the Regulatory Commission in its entirety without properly appreciating that only show cause notice had been issued to the respondents and final order was yet to be passed by the Regulatory Commission.

3. Accordingly, the appeal is allowed in-part. The impugned order of the Appellate Tribunal is quashed so far as it annuls the show cause notice issued by the Regulatory Commission under Section 24(1) of the Act. Now, it would be open to the respondents to file their representations/ objections before the Regulatory Commission, which shall proceed to decide the matter in accordance with law without being influenced by the observations made in the order impugned in these appeals.

4. Needless to say that we have not gone to the question as to whether while issuing notice under Section 24(1) of the Act proposing suspension of the licence, the Regulatory Commission could pass an order for appointment of special officer and this question is left to be decided in appropriate case.

Civil Appeal No.2309 of 2007:

5. In view of the order passed in Civil Appeal No.946 of 2007, it is not necessary to pass any further order in this appeal, but we clarify that any observation made against the appellants in the impugned order shall not prejudice their cause before the Regulatory Commission.