

Jharkhand State Electricity Regulatory Commission Ranchi

Form of Proceedings

Case (T)No. 13 of 2016

Adhunik Power & Natural Resources Ltd. Petitioner
Vrs.

Jharkhand Bijli Vitran Nigam Limited (JBVNL) & Ors. Respondents

For the Petitioner : Mr. Parinay Deep Shah and Mr. Saransh Sharan Advocates
For the Respondent : Mr. Amitabh and Mr. Amit Sinha Advocates

Sl.No	Date of Proceeding	Proceeding of the Commission with signature	Office action taken with date
1	2	3	4
13	17.10.2017	<p>APNRL filed a Review Petition against the order of the Commission on 28.09.2016. The respondent, Jharkhand Bijli Vitran Nigam Limited (JBVNL), in its reply filed on 11.08.2017, raised objection to the Review Petition on the points of maintainability among other issues. The petitioner filed the rejoinder to the objection petition on 23.08.2017. The matter was heard on the point of maintainability on 19.09.2017.</p> <p>Jharkhand State Electricity Regulatory Commission (JSERC) had Hon'ble Justice (Retd.) N.N.Tiwari as Chairperson, and Hon'ble Shri R.N.Singh as Member. On completion of his tenure, Hon'ble Justice (Retd.) N.N. Tiwari demitted the office of</p>	

Chairperson on 20.06.2017. Subsequently on 17.07.2017, Dr. Arbind Prasad was appointed as the Chairperson of the Commission.

Thus, on the date of the order under review and date of filing of the review petition, the Commission had Hon'ble Justice (Retd.) N.N. Tiwari as Chairperson and Shri R.N.Singh as Member. On the date of hearing on the point of maintainability, the Commission has Dr. Arbind Prasad as the Chairperson and Shri R.N.Singh as Member.

Points for determination:

Should the petition for review, be heard and disposed of by the Commission comprising its Chairperson Dr. Arbind Prasad, and Member, Shri R.N.Singh, or by the Member Shri R.N.Singh, alone.

The petitioner has submitted that the order was passed by two member bench comprising the then Chairperson, Hon'ble Justice (Retd.) N.N.Tiwari and Member Shri R.N.Singh. In the current situation while the Hon'ble Justice (Retd.) N.N.Tiwari has retired, only, Mr. R.N. Singh, who was one of the member of the original bench , is still a sitting member in the Hon'ble

Commission. It is an established principle of law that only the bench which has passed the original order shall hear the review application filed against the said order. According to the petitioner, the rational behind it is that “in the interest of justice, in the interest of consistency in judicial pronouncement and maintaining the good judicial traditions, an effort should always be made for the review applications to be heard by the same judges, if they are in the same court. Any attempt to too readily provide for review application to be heard by any available judge or judges should be discouraged”

(Para 14 of the Hon’ble Supreme Court’s Judgment in Maltesh Gudda Pooja Vs. State of Karnataka & others Civil Appeal No. 8525 of 2011)

The petitioner has further submitted that if the review is sought of an order passed by two judge bench, and if one of the judges of that bench is unavailable, then the matter is to be heard by the remaining judge alone and cannot be heard by the other Judges or by the remaining Judge sitting with another Judge who was not party to the original order sought to be reviewed.

The petitioner has relied in making this submission on the

judgment passed by the Hon'ble High Court of Andhra Pradesh's judgment in Kum K. Pushpa Leela Vrs. Labor Court, Guntur & Anr. (1992) SAP Lj399(HC); decision reported in Sitarama Sastry Vrs.State AIR 1967 Rajasthan 264.

Where as spirit behind all these judgments are understandable that wherever possible the review should be heard by the same bench of the court in the interest of consistency of in judicial pronouncements. However, these judgments were made in the context of the Rules relevant for the courts whose orders were under review, mainly Order 47 Rule 5 of the Code of Civil Procedure.

However, the Commission is not a court in strict sense to be fully governed by the Civil Procedure Code, rather it has to follow in its proceedings such rules of procedure as it may specify. The relevant section of the Electricity Act, 2003 is reproduced below:

“92. Proceedings of Appropriate Commission- (1) The Appropriate Commission shall meet at the head office or any other place at such time as the Chairperson may direct, and **shall observe such rules of procedure in regard to the transaction of**

business at its meetings (including the quorum at its meetings) as it may specify)”

The Commission under the above provision has prescribed for its conduct of business” JSERC (Conduct of Business) Regulation, 2016.

The relevant provisions of the said Regulation is reproduced below:

“A10: QUORUM

10.1 For all initial procedural issues and also adjudicatory proceedings of the Commission, generally the quorum of the Commission shall be two among the three Members;

10.2 In the event that the posts of Chairperson and/or any one of the Member are vacant or one member proceeds on leave for a period more than 30 days, the quorum of the Commission shall be one Member for all procedural and adjudicatory proceedings. In such situation the sole member shall also exercise all administrative and financial powers of the Commission.

A11: CONDUCT OF PROCEEDINGS IN THE ABSENCE OF CHAIRPERSON

11.1 The Chairperson shall preside over the meeting(s)/proceeding(s) of the Commission. If he is unable to attend the meeting(s)/proceeding(s) of the Commission, any other Member nominated by the Chairperson on his behalf and in the absence of such nomination or where there is no Chairperson, any Member chosen by the Members present from among themselves shall preside at the meeting(s)/proceeding(s)”

From the provisions it is evident that the Commission has no provisions of conduct of its adjudicating proceedings by a bench of one member alone when the Chairperson and member both are present.

Therefore, the submission by the petitioner that the review petition should be heard and disposed of by Hon’ble Member, Mr. R.N. Singh, alone is not sustainable and is rejected,

Now that the issue of competency, as to who should hear the reviewed petition has been settled, we keep it for further hearing on other points.

Put up on 17.11.2017 at 2.30PM.

Sd/-
Member (Engg.)

Sd/-
Chairperson