

Neutral Citation No. - 2024:AHC-LKO:36890-DB

[A.F.R.]

[Reserved]

**Case :- WRIT - C No. - 7368 of 2006**

**Petitioner :-** U.P.Power Corporation Limited Thru M.D.

**Respondent :-** Central Electricity Regulatory Commission Thru Secy.  
And Anr.

**Counsel for Petitioner :-** D.D. Chopra, Divyam Krishna, Shailesh  
Verma

**Counsel for Respondent :-** I B Singh, Madhumita Bose, Rekha Nigam

**Hon'ble Vivek Chaudhary, J.**

**Hon'ble Om Prakash Shukla, J.**

1. Heard Sri D.D. Chopra, learned Senior Advocate, assisted by Sri Shailesh Verma, learned counsel representing the UPPCL-petitioner, Ms. Madhumita Bose, learned counsel for respondent no.1-CERC and Ms. Rekha Nigam, learned counsel for respondent no.2-NTPC.
2. Present writ petition is filed by U.P. Power Corporation Limited (UPPCL) against the Central Electricity Regulatory Commission (CERC) and NTPC Limited. Though, number of reliefs are sought in the present writ petition, however, Sri D.D. Chopra, learned Senior Counsel for the petitioner confines his prayer to relief 'ia' of the writ petition only and states that he is not pressing any other relief except the aforesaid relief 'ia'. The relief 'ia' of the writ petition reads under:-

*"ia. Issue an appropriate writ, order or direction in the nature of certiorari quashing Regulation 5A of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (First Amendment), Regulations, 2006 (the impugned regulations) be declaring it to be ultra-vires and not consistent with*

*the provisions of Electricity Act, 2003 only to the extent the same provides for payment of simple interest at 6% per annum."*

3. Learned counsel for petitioner states that Regulation 5A of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (First Amendment), Regulations, 2006 (hereinafter referred to as 'Regulations of 2006') is directly in conflict with Section 62(6) of the Electricity Act, 2003 (hereinafter referred to as 'Act of 2003').
4. Opposing the same, both the counsel for respondents submit that there is no illegality in the regulations.
5. Section 61 of the Electricity Act provides that appropriate commission shall, subject to the provision of this Act, specify the terms and conditions for the determination of tariff. Section 62 of the Electricity Act, 2003 reads as follows:-

*"62. Determination of tariff.—(1) The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for—*

*(a) supply of electricity by a generating company to a distribution licensee: Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;*

*(b) transmission of electricity;*

*(c) wheeling of electricity;*

*(d) retail sale of electricity:*

*Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.*

*(2) The Appropriate Commission may require a licensee or a generating company to furnish separate details, as may be specified in respect of generation, transmission and distribution for determination of tariff.*

*(3) The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.*

*(4) No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified.*

*(5) The Commission may require a licensee or a generating company to comply with such procedures as may be specified for calculating the expected revenues from the tariff and charges which he or it is permitted to recover.*

***6) If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee."***

6. Section 178 of the Act of 2003 empowers the Central Commission to make rules for carrying out the provisions of the Act. In exercise of such powers, Central Electricity Regulatory Commission had notified Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 (Regulations of 2004). Further, by notification dated 01.06.2006, the Central Electricity Regulatory Commission amended the said regulations by inserting Regulation 5A, after

Regulation 5 of the principal Regulations of 2004. Regulation 5A reads as follows:-

*“5A. Provisional tariff: Provisional tariff or provisional billing of charges, wherever allowed by the Commission based on the application made by the generating company or the transmission licensee or by the Commission on its own motion or otherwise, shall be adjusted against the final tariff approved by the Commission.*

*Provided that where the provisional tariff charged exceeds the final tariff approved by the Commission under these regulations, the generating company or the transmission licensee, as the case may be, shall pay simple interest @ 6% per annum, computed on monthly basis, on the excess amount so charged, from the date of payment of such excess amount and up to the date of adjustment.*

*Provided further that where the provisional tariff charged is less than the final tariff approved by the Commission, the beneficiaries shall pay simple interest @ 6% per annum, computed on monthly basis on the deficit amount from the date on which final tariff will be applicable up to the date of billing of such deficit amount.*

*Provided also that excess/deficit amount along with simple interest @ 6% shall be adjusted within three months from the date of the order failing which the defaulting utility/beneficiary shall be liable to pay penal interest on excess/deficit amount at the rate as may be decided by the Commission.”*

7. The simple submission made by counsel for petitioner is that while Section 62(6) specifically provides that interest equivalent to bank rate shall be chargeable at the time of recovery of a price or charge exceeding the tariff determining under the said section, while regulation 5A provides that while adjusting the said amount simple interest at the rate 6% per annum shall be payable. On the face of it, Regulation 5A is directly in conflict with the Section 62(6) which specifically

provides that the interest rate would be equivalent to the bank rate.

8. In the present case, the regulations are framed under the Act of 2003 and they can not be in conflict with any provision of Act of 2003. Suffice is to refer to the decision in 5 Judges Bench of Supreme Court in case of ***Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi, (1975) 1 SCC 421***. In paragraph-18 the Court held:-

*“18. The authority of a statutory body or public administrative body or agency ordinarily includes the power to make or adopt rules and regulations with respect to matters within the province of such body provided such rules and regulations are not inconsistent with the relevant law. In America a “public agency” has been defined as an agency endowed with governmental or public functions. It has been held that the authority to act with the sanction of Government behind it determines whether or not a governmental agency exists. The rules and regulations comprise those actions of the statutory or public bodies in which the legislative element predominates. These statutory bodies cannot use the power to make rules and regulations to enlarge the powers beyond the scope intended by the legislature. Rules and regulations made by reason of the specific power conferred on the statute to make rules and regulations establish the pattern of conduct to be followed. Rules are duly made relative to the subject-matter on which the statutory bodies act subordinate to the terms of the statute under which they are promulgated. Regulations are in aid of the enforcement of the provisions of the statute. Rules and regulations have been distinguished from orders or determination of statutory bodies in the sense that the orders or determination are actions in which there is more of the judicial function and*

*which deal with a particular present situation. Rules and regulations on the other hand are actions in which the legislative element predominates.” (emphasis added)*

In **General Officer Commanding-in-Chief v. Subhash Chandra Yadav, (1988) 2 SCC 351**. In paragraph-14 the Court held:-

*"14. This contention is unsound. It is well settled that rules framed under the provisions of a statute form part of the statute. In other words, rules have statutory force. But before a rule can have the effect of a statutory provision, two conditions must be fulfilled, namely, (1) it must conform to the provisions of the statute under which it is framed; and (2) it must also come within the scope and purview of the rule-making power of the authority framing the rule. If either of these two conditions is not fulfilled, the rule so framed would be void. The position remains the same even though sub-section (2) of Section 281 of the Act has specifically provided that after the rules are framed and published they shall have effect as if enacted in the Act. In other words, in spite of the provision of sub-section (2) of Section 281, any rule framed under the Cantonments Act has to fulfil the two conditions mentioned above for their validity. The observation of this Court in *Jestamani Gulabrai Dholkia v. Scindia Steam Navigation Company [AIR 1961 SC 627 : (1961) 2 SCR 811]* relied upon by Mr Aggarwal, that a contract of service may be transferred by a statutory provision, does not at all help the appellants. There can be no doubt that a contract of service may be transferred by statutory provisions, but before a rule framed under a statute is regarded a statutory provision or a part of the statute, it must fulfil the above two conditions. Rule 5-C was framed by the Central Government in excess of its rule-*

*making power as contained in clause (c) of sub-section (2) of Section 280 of the Cantonments Act before its amendment by the substitution of clause (c); it is, therefore, void.”(emphasis added)*

**In *St. Johns Teachers Training Institute v. Regional Director, NCTE, (2003) 3 SCC 321.*** In paragraph-10 the Court held:-

*"10. A regulation is a rule or order prescribed by a superior for the management of some business and implies a rule for general course of action. Rules and regulations are all comprised in delegated legislations. The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. **Rules cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details.** The legislature may, after laying down the legislative policy confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of policy. The need for delegated legislation is that they are framed with care and minuteness when the statutory authority making the rule, after coming into force of the Act, is in a better position to adapt the Act to special circumstances. Delegated legislation permits utilisation of experience and consultation with interests affected by the practical operation of statutes. Rules and regulations made by reason of the specific power conferred by the statutes to make rules and regulations establish the pattern of conduct to be followed. Regulations are in aid of enforcement of the provisions of the statute. The process of legislation by*

*departmental regulations saves time and is intended to deal with local variations and the power to legislate by statutory instrument in the form of rules and regulations is conferred by Parliament. The main justification for delegated legislation is that the legislature being overburdened and the needs of the modern-day society being complex, it cannot possibly foresee every administrative difficulty that may arise after the statute has begun to operate. Delegated legislation fills those needs. The regulations made under power conferred by the statute are supporting legislation and have the force and effect, if validly made, as an Act passed by the competent legislature." (Emphasis added)*

**In *Newspapers Ltd. Vs. State Industrial Tribunal, U.P. And***

***Others, 1957 SCC Online SC 32.*** In paragraph-19 the Court held:-

*"19....The cardinal rule in regard to promulgation of by-law or making rules is that they must be legi fidei rationi consona, and therefore all regulations which are contrary or repugnant to statutes under which they are made are ineffective..." (Emphasis added)*

9. The principle of law is well settled that law should be consonant with principles of faith and reason, delegated legislation such as regulations framed under an Act, cannot be in conflict with its principal legislation. Regulations need to be consistent and harmonious with the statutes under which they are formulated. The Electricity Act of 2003 provides the statutory framework within which regulations are enacted, and any regulations promulgated must be aligned with and not contradict the provisions of the principal legislation.
10. Counsels for the respondents could not explain the said conflict between the regulation and section. Bank rate is variable and is

based upon large number of considerations. The legislature in its best wisdom has provided the same to be charged while adjusting the amount, therefore, the respondent no.1 Central Electricity Regulatory Commission did not have any power to provide any different rate of interest in its regulations for adjustment which is at variation from the amount payable under Section 62 of the Act of 2003.

11. Thus, the said Regulation 5A to the extent of fixation of payable interest for amounts to be adjusted under Section 62 of the Act of 2003, being in direct conflict with Section 62(6) of the Act of 2003 is declared ultra-vires and is quashed.
12. The writ petition succeeds and is ***allowed.***

**Order Date :-16.05.2024**

**Arti/-**

**[Vivek Chaudhary,J.]**

**[Om Prakash Shukla,J.]**