

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
AT NEW DELHI  
(APPELLATE JURISDICTION)**

**APPEAL NO.233 OF 2016  
AND  
IA NOS.497, 498 AND 507 OF 2016**

**Dated : 4<sup>th</sup> October, 2016**

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson  
Hon'ble Mr. I.J. Kapoor, Technical Member.**

**In the matter of:-**

**GLOBAL ENERGY PVT. LTD. )  
207, Gera Imperium II, SF, )  
Patoo Plaza, Panjim, )  
North Goa, )  
Goa – 403001 ) ... **Appellant****

**AND**

**1. KARNATAKA ELECTRICITY )  
REGULATORY COMMISSION )  
No. 9/2, 6<sup>th</sup> & 7<sup>th</sup> Floor, )  
Mahalaxmi Chambers, )  
M.G. Road, Bangalore, )  
Karnataka – 560 001 )**

**2. POWER COMPANY OF )  
KARNATAKA LTD. )  
Cauvery Bhavan, )  
Bengaluru – 560009 )**

**3. BANGALORE ELECTRICITY )  
SUPPLY CO. LTD. )  
K.R. Circle, )  
Bengaluru – 560001 ) ... **Respondents****

**Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr. Adv.  
Mr. Nimesh Kr. Jha**

Counsel for the Respondent(s) : Mr. Manu Seshadri for **R.1**

Mr. D.L. Chidananda for **R.2**

Mr. Anand K. Ganesan for **R.3**

## **J U D G M E N T**

### **PER HON'BLE (SMT.) JUSTICE RANJANA P. DESAI – CHAIRPERSON:**

1. The Appellant is a Company incorporated under the provisions of the Companies Act 1956, engaged in the business of trading of electricity throughout India. Respondent No.1 is Karnataka Electricity Regulatory Commission (**“the State Commission”**). Respondent No.2 (**“PCKL”**) is the Power Company of Karnataka Ltd., which is entrusted with the responsibility of arranging sources of power for the various distribution licensees of the State of Karnataka. Respondent No.3 is the Bengaluru Electricity Supply Company Ltd., (**“BESCOM”**) which is a distribution licensee in the State of Karnataka. In this appeal the Appellant has challenged Order dated 01/09/2016 passed by the State Commission.

2. The facts narrated in the impugned order will have to be stated in short. In a tender floated on 12/11/2013 by PCKL for supply of power on short term basis to BESCO, the Appellant participated and was declared a successful bidder as it quoted the lowest tariff of Rs.4.85 per unit. Initially there was difficulty in obtaining open access approval from the Maharashtra State Load Despatch Centre. Maharashtra Electricity Regulatory Commission gave a direction on 02/06/2014 in Case No.71 of 2014 pursuant to which open access was granted to the Appellant with certain conditions. Power Purchase Agreement (“**PPA**”) was executed between the Appellant and BESCO. Accordingly, the Appellant supplied power to BESCO from 03/07/2014 to 31/12/2014. The said PPA was extended for a period of another six months from 01/01/2015. It was again extended from 01/07/2015 for a period of eleven months. Finally on 26/05/2016 it was again extended from 01/06/2016 to 31/08/2016 for a reduced quantum of 165.200 MW, though the request of the Appellant and PCKL was to procure supply of power for a period of eleven months from 01/06/2016 and for a quantum of 235.270 MW.

While approving the power procurement for only three months from 01/06/2016, the State Commission had directed PCKL to initiate tender proceedings for procuring short-term power through 220 KV Chikodi-Mudasangi and 20 KV Chikodi-Talangade Inter-State line and complete the process within three months, to enable the State to utilize these Inter-State lines for the subsequent period from 01/07/2016 in order to ensure transparency and to obtain competitive rates.

On 07/07/2016, the Appellant made a representation to the Additional Chief Secretary seeking extension of the period for power supply from 01/09/2016 to 30/04/2017 at a reduced rate of Rs.4.36 per unit, as against the earlier rate of Rs.4.85 per unit. Copy of the same was marked to PCKL. This proposal was not pursued further by PCKL.

On 05/08/2016, PCKL published a notice in newspapers inviting tender for supply of power through 220 KV Chikodi-Kolhapur Inter-State line on radial mode from Western Region. On 12/08/2016, PCKL modified its notice inviting tender, published on 05/08/2016 stating that the power could be procured from any Region instead of Western Region alone, as published earlier.

**3.** Aggrieved by the State Commission's decision extending the PPA for procurement of power only by three months the Appellant filed an appeal in this Tribunal. One of the grievances of the Appellant was that the Appellant was not given hearing. Without going into the merits of the case this Tribunal vide its order dated 17/08/2016 directed the State Commission to give hearing to the Appellant on the Appellant filing a petition before it. Accordingly, after the Appellant filed the petition, hearing was given to the Appellant and the impugned order was passed. By the impugned order the State Commission dismissed the Appellant's petition.

**4.** The main grievance of the Appellant is that the State Commission extended its PPA with BESCO only for 3 months. The Appellant had sought extension of the PPA from 01/09/2016 to 30/04/2017. The extension, according to the Appellant, was wrongly denied.

**5.** Mr. Sen, learned counsel for the Appellant has assailed the impugned order on many grounds. But in our opinion what goes to the root of the matter is his submission that three Members of the State Commission heard the matter, however, the order was

signed by only two Members which is in teeth of Regulation 31 of the KERC (General and Conduct of Proceedings) Regulations, 2000 (“**the said Regulations**”). Counsel submitted that such order is not an order of the State Commission. It will have to be set aside. In support of his submissions counsel relied on **Karnal Improvement Trust v. Parkash Wanti & Anr.<sup>1</sup>, BSES Ltd. v. Tata Power Co. Ltd & Ors.<sup>2</sup>, Rasid Javed & Ors. v. State of UP & Anr.<sup>3</sup>, United Commercial Bank Ltd v.Their Workmen<sup>4</sup> and Nand Kishore Garg v. Govt. of NCT of Delhi & Ors<sup>5</sup>.**

6. Mr. Manu Seshadri, learned counsel for Respondent No.1 State Commission submitted that the third Member who has not signed the impugned order had to go abroad to attend a workshop on Smart Grid and therefore he could not sign the order. The impugned order does not become *non est* because it was not signed by the third Member. A reading of Section 92 of the Electricity Act, 2003 (“**the said Act**”) makes it clear that a Member being present in a meeting and voting in support of or

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<sup>1</sup> (1995) 5 SCC 159,

<sup>2</sup> (2004) 1 SCC 195

<sup>3</sup> (2010) 7 SCC 781

<sup>4</sup> (1951) SCR 380

<sup>5</sup> 2011 ELR (Delhi) 745

against the decision implies that the said Member had actively participated in the decision-making process. If Section 185 (3) of the said Act, Section 9 (5) of the Karnataka Reforms Act 1999 and the said Regulations are read in proper perspective it is clear that the quorum for holding a meeting of the State Commission is two Members when it consists of three Members. Regulation 31 (2) of the said Regulations does not prescribe that all the Members of the State Commission, who heard the matter should also be present while taking a decision on the matter. Counsel submitted that as the law stands today a meeting can be convened of two Members of the State Commission who have heard the matter for taking a decision in that matter even in the temporary absence of the other Member of the State Commission. The judgments on which reliance is placed by the Appellant are not applicable to the present case as the facts of these cases differ from the facts of the present case. Judgment of the Supreme Court in **Ishwar Chandra v. Satyanarayana Sinha & Ors**<sup>6</sup> is applicable to the facts of this case. In the circumstances the contention of the Appellant that the impugned order is *non est* deserves to be rejected.

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<sup>6</sup> (1972) 3 SCC 383

7. Mr. Chidananda, learned counsel for Respondent No.2 PCKL submitted that in this case there is a lacuna in the decision-making process as three Members heard the matter and the impugned order is signed by only two Members. This lacuna in the decision making process goes to the root of the matter. It cannot be treated as a mere irregularity. Counsel submitted that if this ground of challenge is upheld the matter may have to be remitted to the State Commission for a *de novo* hearing. Counsel relied on the Supreme Court's judgments in the **United Commercial Bank Ltd.** and **BSES Ltd.**

8. Mr. Ganesan, learned counsel for Respondent No.3 BESCO submitted that non-signing of the order by all the three Members who heard the matter has introduced legal infirmity in the impugned order. This is contrary to the basic principle of law that one who hears must decide. Counsel relied on the Supreme Court's judgment in **Rasid Javed.** Counsel submitted that a fair reading of Section 92 (3) of the said Act would lead to the conclusion that all the Members who heard the matter need to be present in such meeting for the decision to be taken. This principle would apply irrespective of the provisions of the

regulations regarding hearing because the regulations cannot provide what is not permitted by the said Act. Counsel submitted that in any event Regulation 31 of the said Regulations provides that those who heard the matter have to decide it. Therefore the impugned order suffers from a legal infirmity. Counsel submitted that this cannot however give advantage to the Appellant on the merits of the power purchase or otherwise affect the bidding process being undertaken because it has not participated in the bidding process.

9. Before we deal with the rival contentions it is necessary to keep in mind Section 92 of the said Act and Regulation 31 of the said Regulations. Section 92 of the said Act reads thus:

**“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.*

*(2) The Chairperson, or if he is unable to attend a meeting of the Appropriate Commission, any other Member nominated by the Chairperson in this behalf and, in the absence of such nomination or where there is no Chairperson, any Member chosen by the*

*Members present from amongst themselves, shall preside at the meeting.*

*(3) All questions which come up before any meeting of the Appropriate Commission shall be decided by a majority of votes of the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding shall have a second or casting vote.*

*(4) Save as otherwise provided in sub-section (3), every Member shall have one vote.*

*(5) All orders and decisions of the Appropriate Commission shall be authenticated by its Secretary or any other officer of the Commission duly authorised by the Chairperson in this behalf.”*

Regulation 31 of the said Regulations reads thus:

*“31. Orders of the Commission*

*(1) No Member shall exercise his vote on a decision unless he was present during all substantial hearings of the Commission on the matter.”*

*(2) The Commission shall pass orders on the Petition in writing and the Members of the Commission who heard the matter and voted on the decisions will sign the orders.*

*(3) The reasons given by the Commission in support of the orders, including those by a dissenting Member, if*

*any, shall form a part of the order and shall be available for inspection and supply of copies in accordance with these Regulations.*

*(4) All orders and decisions issued or communicated by the Commission shall be certified by the signature of an Officer empowered in this behalf by the Chairman and shall bear the Seal of the Commission.”*

**10.** We must now analyse Section 92 and Regulation 31 because they are central to the issue involved in this case. Section 92(1) states that the Appropriate Commission 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. Rules of procedure specified by the State Commission in this regard are found in the said Regulations which is evident from their title. They are called KERC (General and Conduct of Proceedings) Regulations 2000. Regulation 31 to which we shall soon advert requires the Members who heard the matter and voted on the decision to sign the orders. Section 92 (3) states that all questions which come up before any meeting of the Appropriate Commission shall be decided by a majority of votes of the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence the person

presiding shall have a second or casting vote. Thus the decision has to be by majority of the Members present and voting. Section 92 (4) states that save as otherwise expressly provided in subsection (3) every Member shall have one vote. It is urged that Regulation 31 does not state that all the three Members of the State Commission who heard the matter should remain present for taking a decision on the matter and sign the order and in case the order is signed only by two Members it is *non est*. Therefore, impugned order signed by only two Members is valid. We are not in agreement with the learned counsel. Such a view, in our opinion would be against the basic principle of judicial decision making that those who hear must decide the matter. Section 92 and Regulation 31 will have to be construed in a manner which will not obviate the above mentioned fundamental principle. We shall now turn to Regulation 31.

**11.** Regulation 31 speaks about orders of the Commission. It lays down a strict procedure. It is clear and unambiguous and puts certain restraint on the Members obviously to secure that all orders of the Commission meet with the accepted principles underlying judicial decision-making. Regulation 31 (1) states

that no Member shall exercise his vote on a decision unless he was present during all substantial hearings of the Commission on the matter. This provision forbids a Member who has not participated in hearings and not applied his mind to the issue involved from voting. Regulation 31 (2) is more explicit. It states that the Commission shall pass orders on the petition in writing and the Members of the Commission who heard the matter and voted on the decision will sign the orders. Regulation 31 (3) states that the reasons given by the Commission in support of the orders, including those by a dissenting Member shall form part of the order and shall be available for inspection and supply of copies in accordance with these Regulations. Thus those who hear the matter have a joint responsibility to conclude it. Only they can vote on the decision as having participated in the substantial hearings, it is obvious that they have applied their mind to the matter. The Commission has to pass orders in writing and those who heard the matter and voted on the decision will sign the orders. Thus the responsibility to sign the orders is fixed. As per Regulation 31 (3), the orders have to be reasoned orders. The reasons form part of the order. Regulation 31 (3) takes care of a situation where a Member dissents. In that

event the dissenting Member has to give reasons for his dissent and these reasons shall form part of the order. Section 31(3) requires that the reasons given by the Members shall be available for inspection and supply of copies in accordance with the said regulations. It is clear from Regulation 31 that signing of order by those who heard the matter and voted on the decision is a must. Even a dissenting Member must give reasons for his dissent and sign the reasons for the dissent. They form part of the order. No Member can avoid the responsibility of signing the order. It is implicit in Regulation 31 that all those who heard the matter must be present in the meeting. This is in tune with the principle that all those who heard the matter must sign the order. The order may be unanimous or there may be a dissenting voice. But the requirement is that all the Members who heard the matter have to sign the order. The conclusion is that an order which is not signed by all the Members who heard the matter will be *non est*.

**12.** It is now necessary to refer to judgments of the Supreme Court to which our attention is drawn to ascertain the principles laid down by the Supreme Court. In **United Commercial Bank**

**Ltd.** the seven judge bench of the Supreme Court was considering the question whether the Industrial Tribunal (Bank Disputes) had jurisdiction to make awards. The Tribunal consisted of three Members i.e. Mr. Aiyar, Mr. Sen and Mr. Mazumdar. After the Tribunal commenced its sittings Mr. Mazumdar was absent on various dates. Thereafter Mr. Aiyar was absent for a considerable period as his services were placed at the disposal of Ministry of External Affairs for some other work. Mr. Sen and Mr. Mazumdar sat together and from 23/11/1949 to 20/02/1950 made certain awards. Mr. Aiyar joined Mr. Sen and Mr. Mazumdar on 20/02/1950. They heard the parties and made some awards. The objection to the jurisdiction was two-fold. Firstly, it was urged that in the absence of Mr. Aiyar the two Members had no jurisdiction to hear anything at all without the appropriate notification and Mr. Aiyar's services having ceased to be available on 23/11/1949, he cannot sit again with the other two Members to form the Tribunal in the absence of notification under Section 7 of the Industrial Disputes Act. The Supreme Court considered the relevant provisions of the Industrial Disputes Act. Sections 15 and 16 of

the Industrial Disputes Act being crucial to the issue involved need to be quoted:

*“15. (1) “Where an industrial dispute has been referred to a Tribunal for adjudication, it shall hold its proceedings expeditiously and shall, as soon as practicable on the conclusion thereof, submit its award to the appropriate Government.*

*(2) On receipt of such award, the appropriate Government shall by order in writing declare the award to be binding:*

\* \* \*

*(4) Save as provided in the proviso to sub-section (3) of section 19, an award declared to be binding under this section shall not be called in question in any manner.”*

*16. “The report of a Board or Court and the award of a Tribunal shall be in writing and shall be signed by all the Members of the Board, Court or Tribunal, as the case may be:*

*Provided that nothing in this section shall be deemed to prevent any member of the Board, Court or Tribunal from recording a minute of dissent from a report or award from any recommendation made therein.”*

**13.** After considering the submissions advanced before the bench Chief Justice Kania expressed the majority view. The objection raised to the jurisdiction to make awards was upheld. It was held that all the interim awards made and signed by

Mr. Sen and Mr. Mazumdar and final awards made and signed by Mr. Sen, Mr. Mazumdar and Mr. Aiyar were without jurisdiction. While coming to this conclusion the Supreme Court laid down the basic principles governing the decision-making process to be followed by the quasi-judicial bodies as under:

*“5. .... It is thus clear and indeed it is not disputed that the tribunal as a body should sit together and the award has to be the result of the joint deliberations of all Members of the Tribunal acting in a joint capacity. Section 16 requires that all Members of the Tribunal shall sign the award. This again emphasizes that the function of the Tribunal is joint and it is not open to any Member to refrain from signing the award. If the award is not signed by all Members it will be invalid as it will not be award of the Tribunal.”*

.....

*“9. .... That seems to us to be the correct position because the fundamental basis on which the Tribunal has to do its work is that all Members must sit and take part in its proceedings jointly. If a Member was casually or temporarily absent owing to illness, the remaining Members cannot have the power to proceed with the reference in the name of the Tribunal, having regard to the absence of any provision like section 5(4) or 6(3) in respect of the Tribunal. The Government had notified the constitution of this Tribunal by the two notification summarized in the earlier part of the judgment and thereby had constituted the Tribunal to consist of three Members and those three were Mr. Sen, Chairman, Mr. Mazumdar and Mr. Chandrasekhara Aiyar. Proceeding with the adjudication in the absence of one, undermines the basic principle of the joint work*

*and responsibility of the Tribunal and of all its Members to make the award .....*”

.....

*“13. .... The result is that all the interim awards purported to be made by Mr. Sen and Mr. Mazumdar as well as the final awards made by the three must all be held to have been made without jurisdiction. It seems to us that the only way in which the Government could have put matters right was by a notification issued in February, 1950, constituting the tribunal as a fresh Tribunal of three Members (and not by proceeding as if a vacancy had been filled up on 20<sup>th</sup> February, 1950, under section 8) and three Members proceeding with the adjudication de novo. Even if the contention of the respondents that Mr. Chandrasekhara Aiyar continued throughout a Member of the Tribunal were accepted, in our opinion, the appellants’ objection to the jurisdiction of the three persons to sign the award must be upheld. Section 16 which authorizes them to sign is preceded by section 15. Unless they have complied with the provisions of section 15, i.e., unless all the three have heard the matter together, they have no jurisdiction to make the award in terms of section 15 and have therefore also no jurisdiction to sign the award under section 16. In any view of the matter the awards are therefore without jurisdiction.”*

.....

*“15. .... In our opinion the position here clearly is that the responsibility to work and decide being the joint responsibility of all the three Members, if proceedings are conducted and discussions on several general issues took place in the presence of only two, followed by an award made by three, the question goes to the root of the jurisdiction of the Tribunal and is not a matter of irregularity in the conduct of those proceedings. The absence of a condition necessary to found the jurisdiction to make the award or give a*

*decision deprives the award or decision of any conclusive effect .....*”

.....

*“17. On the admitted principle that the work of the Tribunal, which is of a quasi-judicial nature, is one of joint responsibility of all its Members, .....”*

.....

*“59. It is quite true that a quasi-judicial Tribunal enjoys greater flexibility and freedom from the strict rules of law and procedure than an ordinary court of law, but however much informality and celerity might be considered to be desirable in regard to the proceedings of an Industrial Tribunal, it is absolutely necessary that the Tribunal must be properly constituted in accordance with the requirements of law before it is allowed to function at all. I fail to see further how the issuing of a formal notification under section 7 of the Act could delay the proceedings of the Tribunal or hamper expeditious settlement of the disputes. Section 16 of the Industrial Disputes Act makes the imperative provision that the award of a Tribunal shall be in writing and shall be signed by all the Members. So long as there is no change or alteration in the original notification which constituted the Tribunal, the expression “all the Members” must mean and refer to all the Members whose names appear in this notification and, unless all of them sign the award, it would not be valid or operative award in the law.”*

**14.** In **BSES Ltd.**, the Bombay Suburban Electric Supply Co. (“BSES”) filed a petition before the Maharashtra Electricity Regulatory Commission (“the Commission”) for resolution of

dispute regarding the changes for stand-by facility of 275 MVA provided to it by Tata Power Co. Ltd (“TPC”). The Commission decided the petition by order dated 07/12/2001. The main part of the order was written by two Members of the Commission. The Chairman of the Commission gave a separate dissenting order in which he stated that he was not informed of any of the meetings that his colleagues had with the consultants nor was he advised of any minutes of the meetings till draft order was circulated to him. BSES and TPC approached the Bombay High Court being aggrieved by the said order. The Bombay High Court remitted the matter to the Commission for *de novo* consideration. The said order was challenged in the Supreme Court. While rejecting the appeal the Supreme Court after noticing the above facts observed as under:

*“24. The facts mentioned above clearly show that the procedure adopted by the Commission was not fair and proper inasmuch as the Chairman did not participate in the meetings which the other two Members had with the consultants, whereunder a formula was devised. Under Regulation 21, the quorum for proceedings before the Commission shall be three. In these circumstances, the High Court was perfectly justified in remitting the matter to the Commission for de novo consideration and no exception can be taken to such a course of action.”*

15. In **Karnal Improvement Trust**, the Supreme Court was dealing with the question whether the Chairman of the Tribunal constituted to hear reference under Section 18 of the Land Acquisition Act can alone pass an award under the Land Acquisition Act. The Supreme Court *inter alia* observed that when the Tribunal consists of three Members, the opinion has to be of the composite body and not of the sole President. Following are the relevant observations of the Supreme Court.

*“7. The award of the Tribunal has been designated to be the award of the court and the Tribunal is the court and each Member is entitled to his own opinion in determination of the compensation or measurements of the land. The Chairperson as a Civil Judge is empowered to sign the award on behalf of the Tribunal. In case of difference of opinion, the majority opinion of the Members shall be the decree of the Tribunal. The mandatory quorum, therefore, is three members and the award of the Tribunal is a decree of a civil court. The President also is a Member of the Tribunal and everyone of them is liable to be removed for any of the grounds enumerated in Section 10. Each Member qua discharge of the functions is an independent Member. Mere fact that the President will record the evidence, in the absence of the assessors, or that he is given power to preside over the Tribunal and to compel the presence of the witnesses or to secure the evidence does not per force minimise or undermine the composition of, continuance and functions of the assessors as Members of the Tribunal. Temporary absence of a Member including President, may entail, by implication, his removal and appointment of a substitute Member, which would reinforce that in the*

discharge of the functions as a Member, the presence and participation of each Member, the presence and participation of each Member of the Tribunal should be mandatory, unless his absence becomes unavoidable and beyond his control. Take for instance, absence due to being out of station. The power to record evidence in the absence of the assessors does not clothe the President with the power to decide himself the question of compensation or measurement of land as sole Member Tribunal. When the Tribunal consists of three Members, the opinion, has to be of the composite body, and not of the sole President. The power vested in the President to decide questions of law and title and procedure does not undermine the position of assessor-Members of the Tribunal and other matters. The President need not necessarily be a local man. He may be a judicial officer drafted from the service of the respective States; and the assessors, by implication, may be only local men having acquaintance with the prevailing prices of the land. The President must of necessity be either judicially trained or administratively experienced person. When the Tribunal determines compensation or dispute as to the extent of the land acquired or of the quality of the land under acquisition, the decision is that of the Tribunal. In case of difference of opinion, the majority view would be the executable decree. In other words, it indicates that it is a three-Member statutory body and does not consist of the Presiding Judge only. He is left with no option but has to associate the other Members in determining the compensation of the acquired land for the trust or its nature or extent. Any other interpretation would be inconsistent with and derogatory to the scheme, purpose and intendment of the Act. The presence and participation of each Member in the adjudication of the compensation or measurement or quality of land is of necessity, mandatory. The Tribunal will have the assistance of the counsel for the trust and of the claimant or/and counsel for the claimant, if any, engaged by the claimant in determining the

*compensation or for the measurement and quality of the land. It would, therefore, be clear that all the three Members should be present and should participate at the time of enquiry unless unavoidable, hear the matter on merits and the decision of the Tribunal, if not unanimous and if there be difference of opinion, be as per the majority.*”[emphasis supplied]

16. In **Gullapalli Nageswara Rao & Ors. v. Andhra Pradesh State Road Transport Corporation & Anr.**<sup>7</sup>, the Constitution Bench of the Supreme Court was *inter alia* dealing with the contention that the scheme framed under the Motor Vehicles Act 1939 was *ultra vires* the said Act. It was urged *inter alia* before the Supreme Court that while the Motor Vehicles Act and the rules framed thereunder impose a duty on the State Government to give a personal hearing the procedure prescribed by the rules impose a duty on the Secretary to hear and the Chief Minister to decide. It was contended that this divided responsibility was destructive of the concept of public hearing. By a majority judgement the Constitution Bench upheld this contention and held that this procedure offends basic principle of judicial procedure. In **Rasid Javed** the Supreme Court reiterated this

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<sup>7</sup> AIR 1959 SC 308

principle. The Supreme Court observed that the proposition that a person who hears must decide and that divided responsibility is destructive of the concept of judicial hearing is too fundamental a proposition to be doubted and this settled principle has been highlighted by the Supreme Court in **Gullapalli Nageswara Rao**.

**17.** Reliance placed by Mr. Manu Seshadri, learned counsel for the State Commission on the judgment of the Supreme Court on **Ishwar Chandra** is misplaced. That judgement has no application to this case. Facts of both the cases differ. In any case the observations of the Supreme Court that where there is no rule or regulation or any other provision for fixing the quorum, the presence of the majority of the Members would constitute it a valid meeting and matters considered thereat cannot be held to be invalid will not be applicable to this case at all in view of the clear language of Regulation 31 (2) of the said Regulations which requires the Members of the Commission who heard the matter and voted on the decisions to sign the orders. We have already analysed Section 92 and Regulation 31 hereinabove. In view of the authoritative pronouncements of the Supreme Court

discussed by us in the preceding paragraphs, we find no substance in Mr. Manu Seshadri's submissions based on Section 9 (5) of the Karnataka Electricity Reforms Act 1999. We reject those submissions.

**18.** In our opinion the judgments of the Supreme Court referred to by us, make it clear that the work of the Commission which is of a quasi-judicial nature is one of joint responsibility of all Members. The Commission as a body should sit together and the order of the Commission has to be the result of the joint deliberations of all Members of the Commission acting in a joint capacity. All Members of the Commission who heard the matter should sign the order. If the order is not signed by all Members who heard the matter it will be invalid as it will not be order of the Commission. This is in line with the fundamental proposition that a person who hears must decide and divided responsibility is destructive of the concept of judicial hearing. If a Member dissents he must give reasons for the dissent and that shall form part of the order.

**19.** Thus Section 92 of the said Act, Regulation 31 of the said Regulations and the judgments of the Supreme Court which we have referred to, lead us to conclude that the impugned order is *non est* and void as the matter was heard by three Members and order was signed by two Members. This is against the basic principle that one who hears the matter should sign the order.

**20.** We must also note that all the counsel except the counsel for the State Commission have supported the view taken by us though some of them have strongly urged that on merits the Appellant has no case. In this regard we clarify that we have not gone into the merits of the case as the preliminary point raised by the Appellant goes to the root of the matter. We therefore leave the contentions of the parties on the merits of the case open.

**21.** Before parting we must express our extreme dissatisfaction about the manner in which the State Commission has functioned in this matter. It has ignored the fundamental principle of judicial decision-making which applies to quasi judicial bodies as well that one who hears the matter must sign the order. We are told that the Member who heard the matter could not sign the

order dated 01/09/2016 because he was out of the country from 31/08/2016 to 02/09/2016 (both days inclusive) in connection with a workshop on 'Smart Grid'. We are shocked at this explanation. Writing of a judgment is a serious matter. Judgments deal with rights and obligations of parties. In the power sector in most cases huge stakes are involved and each matter has commercial implications. But even if a matter does not involve high stakes all the same it decides rights and obligations of parties. Consumers are affected by such orders. Ideally workshops held on holidays should be attended by Members so that the Commission's work does not suffer. But it is quite possible that in a given case the workshop may be of great significance and may make valuable addition to the knowledge of the Member. In such a case if the Member proceeds to attend a workshop signing of orders must be deferred. Undoubtedly, this Tribunal had fixed a time limit for deciding the instant matter. But an appropriate prayer could have been made to this Tribunal to extend the time limit. Signing of order is more important than attending a workshop.

**22.** In the circumstances we set aside the impugned order. We remit the matter to the State Commission for a *de novo* hearing. The State Commission shall hear the parties afresh and deliver its judgment independently and in accordance with law. We make it clear that we have upheld the preliminary objection raised by the appellant that the matter was heard by three members and the order was signed only by two members. We further make it clear that the impugned order is set aside only on that ground. The appeal is disposed of in the afore-stated terms.

**23.** Needless to say that the Interim Application Nos.497 of 2016, 498 of 2016 and 507 of 2016 shall stand disposed of.

**24.** Pronounced in the Open Court on this **4<sup>th</sup> day of October, 2016.**

**(I.J. Kapoor)**  
**Technical Member**

**(Justice Ranjana P. Desai)**  
**Chairperson**

✓ **REPORTABLE / ~~NON-REPORTABLE~~**