

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: **8th March, 2011**

Judgment Pronounced on: **23rd May, 2011**

W.P.(C) No. 4821/2010

NAND KISHORE GARG..... Petitioner Through: Mr. Laliet Kumar and Mr. Deepak Vohra, Advs. Versus GOVT. OF NCT OF DELHI AND ORS. Respondents

Extracts of the Judgment

“.....We will be failing in our duty if we do not refer to the manner in which the Commission has proceeded. It is not only baffling but also perplexing. It is shocking to the basic concept of prudence. The legislature has conferred regulatory power on a regulatory body. It has a sacrosanct purpose. The Chairman and the members are required to act within the parameters of the statute following the paradigm of a regulatory body. A regulatory body is not expected to create confusion. We have said so as we are reminded of saying “in this entire scenario one thing is singularly clear that there is enormous chaos and confusion”. A Commission of this nature is expected to avoid confusion as it has the effect potentiality to lead to economic anarchy.

When there is anarchy in the field of economy, there is a dent in the spine of the nation. A regulatory body has no right to do so by its own functioning. The members of the Commission should bear in mind that they have been conferred with immense responsibility. The 2003 Act requires that Commission should act in a particular manner. That is the intention of the legislature and the intention is of an imperative character. The Commission cannot give an indecent burial to the imperative mandate of the statute, corrode the integral scheme engrafted under it and defeat the legislative intendment. There may be a perceptual error by any adjudicating or regulating authority but there cannot be a functioning which would lead to a volcanic eruption by violation of the statute.....”

“.....Keeping the statutory role ascribed to it and the jurisdiction determined by the Apex Court, the Commission has to function with responsibility, intellectual integrity, consistent objectivity and transparent functionalism appreciating the essential nature of the regulatory body. We emphasize on intellectual integrity and transparent functionalism as we are totally dissatisfied with the way the Commission has proceeded with the manner of determination. We may also note here that if a state of chaos and anarchy has ushered-in in the Commission the State Government is also responsible by unjustifiably intruding and encroaching on the functions of the Commission by interdicting.....”

Selected conclusions....

The notings on the files by the Commission do not constitute an “Order” under the 2003 Act.

The Commission shall be alive to the role conferred on it by the 2003 Act and also bear in mind the principles laid down by the Apex Court in *PTC India Limited* (supra).

The Commission under the 2003 Act is required to deal with the aspect of tariff determination with intellectual integrity, transparent functionalism and normative objectivity and not act in a manner by which its functioning invite doubt with regard to its credibility.

The Commission shall proceed afresh by following the due procedure and do the needful and not afford any kind of opportunity for criticism and determine the tariff.

The complete copy of the Judgment can be accessed on the website of the Hon'ble High Court of Delhi