



Serial No. 07-11
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 184 of 2021 with
WP(C) No. 185 of 2021
WP(C) No. 204 of 2021
WP(C) No. 205 of 2021
WP(C) No. 206 of 2021

Date of Order: 21.02.2022

Meghalaya Power Distribution Corporation Ltd.	Vs.	Marbaniang Project Pvt. Ltd. & Ors.
Meghalaya Power Distribution Corporation Ltd.	Vs.	Jud Cements Ltd. & Ors.
Meghalaya Power Distribution Corporation Ltd.	Vs.	M/S Jumbo Roofing & Tiles & Ors.
Meghalaya Power Distribution Corporation Ltd.	Vs.	Shree Sai Prakash Alloys Pvt. Ltd. & Ors.
Meghalaya Power Distribution Corporation Ltd.	Vs.	CMJ Breweries Pvt. Ltd. & Ors.

Coram:

Hon’ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) :	Mr. A. Kumar, AG with Mr. A.H. Kharwanlang, GA. Ms. R. Colney, GA.
For the Respondent(s) :	Mr. K. Paul, Sr. Adv. with Mr. S. Chanda, Adv.

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

1. Matter taken up via Hybrid Mode.



2. This bunch of writ petitions involving identical issues are being disposed of by this common order.

3. These petitions have been filed against the orders passed by the Learned Chairperson of the Meghalaya State Electricity Regulatory Commission (MSERC), on the ground that the orders are without jurisdiction, and suffer from procedural infirmities, as the issues concern the grievances of individual consumers and are not disputes between licensees and generating companies, in which case the Commission would have had jurisdiction to adjudicate.

4. Mr. A. Kumar, learned Advocate General on behalf of the petitioners, submits that apart from the lack of jurisdiction, the impugned orders even if the Regulatory Commission was competent to take up the matters were non-est in law, as they were passed without the prescribed coram. Attention of the Court with regard to jurisdiction and coram, has been drawn to the judgments of the Hon'ble Supreme Court, the provisions of the Meghalaya State Electricity Regulatory Commission (Conduct of Business) Regulations 2007 and the Electricity Act, 2003.

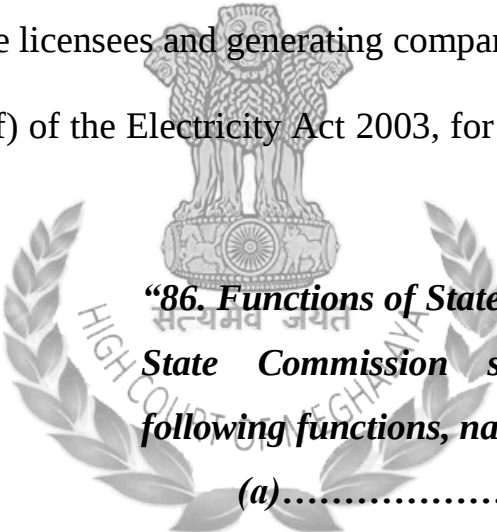
5. At the outset itself, Mr. K. Paul, learned senior counsel for the respondents, fairly concedes that the Meghalaya State Electricity Regulatory Commission (MSERC) had no jurisdiction to entertain the matters and pass orders thereon as has been occasioned in the instant cases.



6. On the submissions of the learned counsel for the parties, these writ petitions are disposed of without contest, however, with the following observations.

In *Maharashtra Electricity Regulatory Commission vs. Reliance Energy Limited* reported in (2007) 8 SCC 381, it has been held that where the State concerned had created a proper forum for redressal of grievances of consumers, the State Electricity Regulatory Commission had no jurisdiction to adjudicate upon such matter and even under S. 86(1)(f) of the Electricity Act 2003, the said Commission had no power to adjudicate upon disputes relating to grievance or consumers and it could only adjudicate upon the disputes between the licensees and generating companies.

S. 86(1)(f) of the Electricity Act 2003, for convenience is quoted herein below:



“86. Functions of State Commission.-(1) The State Commission shall discharge the following functions, namely:-

- (a).....**
- (b).....**
- (c).....**
- (d).....**
- (e).....**
- (f) adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration.”**

With regard to coram, the Hon’ble Supreme Court in the case of *Tamil Nadu Generation and Distribution Corporation Ltd. vs. PPN Power Generating Company Pvt. Ltd.* reported in (2014) 11 SCC 53, has held that



the presence of one Judicial Member is a must in decisions taken by the Regulatory Commission. Paras – 55 and 59 which are relevant are quoted herein below:

“55. We, however, find substance in the submission of Mr. Nariman that adjudicatory functions generally ought not to be conducted by the State Commission in the absence of a judicial member, especially in relation to disputes which are not fairly relative to tariff fixation or the advisory and recommendatory functions of the State Commission.

59. In view of the aforesaid categorical statement of law, we would accept the submission of Mr. Nariman that the tribunal such as the State Commission in deciding a lis, between the appellant and the respondent discharges judicial functions and exercises judicial power to the State. It exercises judicial functions of far-reaching effect. Therefore, in our opinion, Mr. Nariman is correct in his submission that it must have essential trapping of the court. This can only be achieved by the presence of one or more judicial members in the State Commission which is called upon to decide complicated contractual or civil issues which would normally have been decided by a civil court. Not only the decisions of the State Commission have far-reaching consequences, they are final and binding between the parties, subject, of course, to judicial review.”

The Meghalaya State Electricity Regulatory Commission (Conduct of Business) Regulations 2007, with regard to coram has at Section 10 provided as follows:



‘10. Quorum.

Where the Commission has also one Member or more the quorum of any meeting shall be two including the Chairperson.”

7. In the fact and circumstances of the case, these writ petitions are allowed and accordingly disposed of. The respondents however, are at liberty to seek other remedy in accordance with law.

Judge

Meghalaya
21.02.2022
“D.Thabak-PS”

