

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble the Chief Justice and
Hon'ble Mr. Justice Joymalya Bagchi

M.A.T. No. 1984 of 2014
CAN 10875 of 2014
West Bengal State Electricity Regulatory Commission
Vs.
Impex Ferro Ltd. & Ors.

With
F.M.A. No. 4319 of 2014
CAN 9152 of 2014
West Bengal State Electricity Regulatory Commission
Vs.
Impex Ferro Ltd. & Ors.

For the appellant : Mr. Pratik Dhar,
Mr. Ritwaik Pattanayak,
Mr. Samir Haldar.

For the respondent nos. : Mr. Sagar Bandyopadhyay,
1 to 4 Mr. Tapas Saha,
Ms. Soma Kar Ghosh,
Mr. S. Dewnji,
Mr. D. Deb,
Mr. N. Banerjee.

For the DVC : Mr. Joydeep Kar,
Mr. Subir Pal.

Heard on : 17.03.2015 & 19.03.2015

Judgement on : 29.04.2015

Joymalya Bagchi, J.: Having considered the averments made in CAN 10875 of 2014 being application under section 5 of the Limitation Act in connection with MAT No. 1984 of 2014 and being satisfied with regard thereto delay of 327 days in preferring the appeal (MAT No. 1984 of 2014) is condoned.

Appeal being MAT No. 1984 of 2014 is directed against the order dated 20.12.2013 passed by the learned Single Judge in WP No. 35245 (W) of 2013 so far as it relates to the direction of the learned Single Judge that the respondent/writ petitioners be given an opportunity of oral hearing at the time of determination of retail/distribution tariff of the licensee Damodar Valley Corporation by the appellant West Bengal Electricity Regulatory Commission (hereinafter referred to as "State Commission").

Appeal being FMA No. 4319 of 2014 is directed against the order dated 31.07.2014 disposing of review petition RVW No. 33 of 2014 preferred by the State Commission seeking review of the aforesaid order in that regard.

Both the appeals have been heard analogously and are being disposed of by a common judgement and order.

Shorn of details, factual matrix giving rise to the aforesaid appeals is as follows :-

Damodar Valley Corporation, 'DVC' for short, is a statutory body under the Damodar Valley Corporation Act, 1948 (for short Act of 1948). DVC generates electricity and is a deemed licensee under the Electricity Act, 2003 (for short Act of 2003) as per section 14 of the said Act of 1948. Apart from generating electricity, DVC also carries on interstate and intrastate transmission, distribution and supply of electricity to various consumers in the States of West Bengal and Jharkhand (erstwhile Bihar). Respondent/writ petitioners are the consumers of electricity from DVC.

Part VII of the Act of 2003 provides for a comprehensive scheme for tariff determination through appropriate Commissions constituted under the Act, namely, Central Electricity Regulatory Commission (hereinafter referred to as "CERC") and the State Commission.

Section 79 of the Act of 2003, inter alia, provides that CERC shall regulate and fix the tariff of generating companies which carry on generation and sale of electricity in more than one States and shall also fix the tariff in respect of interstate transmission of electricity.

Section 86 of the Act, inter alia, provides that the State Commission shall determine the tariff for generation, supply, transmission of electricity, wholesale, bulk or retail, within the State.

Under the aforesaid statutory scheme, DVC made an application before CERC for determination of its tariff for the period of 2009-2014 in terms of section 79 of the Act of 2003. By various tariff orders passed between 24.02.2013 to 30.09.2013, CERC fixed final tariff in respect of generating stations and interstate transmission of DVC for the period of 2009-2014. CERC by order dated 30.09.2013 further clarified that the retail/distribution tariff of DVC for the said period is to be determined by the State Commission as per the provisions of section 86 of the Act, as aforesaid.

It is the grievance of the respondent/writ petitioners, prior to determination of such retail tariff by the State Commission, on the basis of generation and interstate transmission tariff orders passed by CERC, DVC raised demand notices for differential amount payable for the period from May, 2010 to August, 2010 as also revised bills on and from September, 2013 as per its own calculation.

Being aggrieved by the aforesaid demand notice to pay differential amount for the period from May, 2010 to August, 2010 and the revised bills on and from September, 2013 as per rates unilaterally fixed by DVC, respondent/writ petitioners herein, preferred the instant writ petition.

After hearing the parties, a learned Single Judge of this Court directed stay of the impugned demand notices subject to the writ petitioners furnishing bank guarantee to the tune Rs. 3.75 crores and further directed as follows :-

“.....The D.V.C. must file the application in terms of the order dated 30th September, 2012 as also in terms of the tariff regulation dated 25th April, 2011. In the event, the said application is filed, the West Bengal Electricity Regulatory Commission shall dispose of the matter preferably within a period of 120 days of filing of the said application after giving a reasonable opportunity of hearing to the respective parties. The furnishing of bank guarantee shall abide by the result of the application to be filed by the D.V.C. In the event, the D.V.C. does not file the application in terms of the order dated 30th September, 2013 within 31st December, 2013, the petitioners would be at liberty to apply before this Court for discharge of the bank guarantee. The said bank guarantee shall be furnished within a period of one week from date.

There shall be an unconditional stay of the impugned demands raised by the D.V.C. for a period of one week from date. In the event, the bank guarantee is furnished, the stay shall continue until further orders.

It is needless to mention that furnishing of bank guarantee shall ultimately abide by the result of the decision of the West Bengal Electricity Regulatory Commission to be passed on the basis of the application to be file by the D.V.C. on or before 31st December, 2013.

In view of the aforesaid, it is not necessary and does not require to go in the merits of the claim. The State Electricity Regulatory Commission shall decide the matter uninfluenced by the order passed by this Court.” (emphasis supplied)

In view of the fact the learned Single Judge had directed that the respondent/writ petitioners shall be given an opportunity of hearing, that is, oral hearing, at the time of determination of retail tariff by the appellant State Commission, the latter filed a review petitioner pleading that under the scheme

of the Act and the regulations framed thereunder there was no scope to give oral hearing to consumers/objectors, that is, the writ petitioners, at the time of fixation of retail tariff. Such review petition was disposed of by the learned Single Judge by order dated 31.07.2014 holding that opportunity of oral hearing was a part of fair procedure and the writ petitioners were entitled to the same as they had been called upon to furnish bank guarantee in terms of the order dated 22.12.2013. Further the Commission was directed to dispose of the application for determination of tariff filed by DVC within six months.

Both the orders have been assailed before us.

Mr. Dhar, learned senior counsel appearing for the appellant State Commission submitted that it is evident from the scheme of the Act, particularly, section 64 thereof and regulation 2.4 of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011 (hereinafter referred to as "the Regulations") framed thereunder that the consumers were entitled only to make written suggestions and/or objections to the tariff application submitted by the licensee and the same was to be considered in accordance with law. There was no scope of giving oral hearing to the consumers or members of the public. Oral hearing was envisaged to be given only to the licensee in the event his application was rejected. He submitted that the respondent/writ petitioners had not sought for oral hearing in the writ petition yet the learned Single Judge had suo motu granted such privilege to them. He further submitted that determination of tariff was a legislative exercise which obviated any requirement of oral hearing. He relied on **Union of India & Anr. Vs. Cynamide India Ltd. & Anr., (1987) 2 SCC 720** in support of such contention. He accordingly, submitted that the direction for giving oral hearing to the respondent/writ petitioners be set aside.

Mr. Kar, senior counsel for DVC supported the submissions made on behalf of the appellant Commission. He further supplemented by submitting that the proceeding before the Commission was not an adversarial one and it was incumbent on the Commission itself to protect the interest of the consumers on its own in terms of section 61(d) of the Act of 2003. He further submitted that raising of differential tariff was, in fact is in the interest of the consumers lest they be overburdened with arrears upon final fixation of tariff. He submitted furnishing of bank guarantee in terms of the order of the First Court cannot give a better right in favour of writ petitioners vis a vis other consumers in the matter of representation before the Commission. Oral hearing of consumers was not envisaged in the scheme of the Act and the same would cause unnecessary delay and protraction in the matter of fixation of tariff under section 64 of Act of 2003.

Per contra, Mr. Bandyopadhyay, learned counsel appearing for the respondent/writ petitioners submitted that there was nothing in law which expressly debar the State Commission from hearing the respondent/writ petitioners. It was submitted that in view of section 18 of the DVC Act, DVC was permitted to sell electricity not less than 3000 volts, hence, its consumers are not innumerable but restricted in number. Hence, no inconvenience would be caused in the event the respondent/writ petitioners were given an opportunity of oral hearing. He, however, admitted that DVC supplies electricity to about 120 consumers. He submitted that opportunity of oral hearing was given to affected persons by CERC during tariff fixation. Therefore, the writ petitioners ought to be heard by the State Commission also during fixation of retail tariff.

Relying on **PTC India Ltd. Vs. Central Electricity Regulatory Commission, (2010) 4 SCC 603** he submitted that fixation of tariff under section 64 of the Act is a quasi-judicial act which attracted principles of natural justice. He submitted that law is well settled any decision of a quasi-judicial authority

having adverse consequence on a person necessitates affording an opportunity of hearing to him.

He relied on **Institute of Chartered Accountants of India Vs. L.K. Ratna & Ors., (1986)4 SCC 537 (para 17, 18), D.K. Yadav Vs. J.M.A. Industries Ltd., (1993)3 SCC 259, Carborundum Universal Ltd. Vs. Central Board of Direct Taxes, New Delhi, (1989) Supp(2) SCC 462** in support of his contention.

He finally argued that in the instant case opportunity of hearing had been extended to the respondent/writ petitioners as an equitable relief inasmuch as they had been saddled with a liability to furnish bank guarantee of Rs. 3.75 crores by the learned Single Judge till the determination of tariff by the appellant State Commission. Delay in determination of tariff has been caused by the indifferent approach of DVC and not the respondent/writ petitioners, therefore they should not be denied an opportunity of oral hearing on that score.

The nub of the dispute is, therefore, whether the respondent/writ petitioners have a right of oral hearing before the appellant State Commission in the matter of determination of retail tariff under section 64 of the Act or alternatively, in the facts of this case they are entitled to such relief on an equitable premise being saddled with the liability to furnish bank guarantee in terms of the order appealed against.

Section 64 of the Act of 2003 reads as follows :

“64. Procedure for tariff order.- (1) An application for determination of tariff under section 62 shall be made by a generating company or licensee in such manner and accompanied by such fee, as may be determined by regulations.

(2) Every applicant shall publish the application, in such abridged form and manner, as may be specified by the Appropriate Commission.

(3) The Appropriate Commission shall, within one hundred and twenty days from receipt of an application under sub-section (1) and after considering all suggestions and objections received from the public,--

(a) issue a tariff order accepting the application with such modifications or such conditions as may be specified in that order;

(b) reject the application for reasons to be recorded in writing if such application is not in accordance with the provisions of this Act and the rules and regulations made thereunder or the provisions of any other law for the time being in force:

Provided that an applicant shall be given a reasonable opportunity of being heard before rejecting his application.

(4) The Appropriate Commission shall, within seven days of making the order, send a copy of the order to the Appropriate Government, the Authority, and the concerned licensees and to the person concerned.

(5) Notwithstanding anything contained in Part X, the tariff for any inter-State supply, transmission or wheeling of electricity, as the case may be, involving the territories of two States may, upon application made to it by the parties intending to undertake such supply, transmission or wheeling, be determined under this section by the State Commission having jurisdiction in respect of the licensee who intends to distribute electricity and make payment therefor.

(6) A tariff order shall, unless amended or revoked, continue to be in force for such period as may be specified in the tariff order."

A perusal of section 64 would make it clear that an application filed by a licensee for fixation of tariff under section 62 of the Act is to be published in such form and manner as may be specified by the appropriate Commission. In

response to such publication, members of the public (including consumers) are entitled to submit suggestions and objections before the Commission. The Commission upon receipt of such suggestions/objections (if any) from the public shall within 120 days from receipt of tariff application consider such suggestions/objections and pass tariff order accepting the application with such conditions or modifications as may be specified in the said order or reject such application after assigning reasons in support thereof. It has been further provided that in the event the Commission rejects the tariff application a reasonable opportunity of hearing is to be given to the licensee. Order under section 64 of the Act is subject to an appeal before the Appellate Tribunal under section 111 of the Act at the behest of an aggrieved party where the parties shall be given an opportunity of hearing by the Tribunal while disposing of such appeal.

The appellant State Commission in exercise of its powers under the Act of 2003 framed regulations relating to determination of tariff, namely, West Bengal Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011.

Regulation 2.4 reads as follows :

“2.4. Notwithstanding anything to the contrary contained elsewhere in these regulations or any other regulations of the Commission, the Commission will undertake hearing or invite suggestions and objections in a manner and at a stage which is only specifically provided in these regulations with following provisions:-

- i) Wherever there is invitation of suggestion and objection under these regulations it shall mean that such suggestion and objection shall always be submitted in written form only.**

- ii) Whenever suggestions and objections are required to be invited under these regulations it shall be through advertisement in website and/or newspaper in a manner as specified in these regulations for any purpose.
- iii) Hearing wherever provided in these regulations shall always be supported by a written submission which shall be compatible with the oral submission made during hearing. The issue(s) raised in the written submission of any hearing will only be considered as the content of hearing in the proceeding by the Commission.

Reading of the aforesaid regulation in the light of the statutory provision leaves no doubt in one's mind that suggestions or objections to the application for determination of tariff must be in written form only and not by way of oral representation. The scheme of the Act and the regulations framed thereunder make it amply clear that the State Commission is not duty bound to give oral hearing to objectors to the tariff application but only to the licensee in the event it chooses to reject its application. Oral hearing is however reserved for the parties at the appellate stage under section 111 of the Act.

In **PTC India Ltd. (supra)** the Apex Court has held that exercise of tariff fixation under section 62 is a quasi-judicial act as such fixation of tariff is made appealable under section 111 of the said Act. No doubt, principles of natural justice are attracted whenever a decision is taken by a quasi-judicial authority affecting the rights of a person. However, what procedure is to be adopted by the authority so that the same is just, fair and reasonable and satisfies the principles of natural justice would depend on the facts of each case including the scheme of the legislation under which such decision is taken, nature of enquiry, subject

matter which is dealt with nature of the decision taken and prejudice, if any, caused to the affected person by such procedure adopted under the statute.

It is pertinent to note that neither vires of section 64 of the Act nor that of regulation 2.4 has been challenged. Nowhere in the pleadings in the writ petition the writ petitioners have sought for an opportunity of oral hearing. No pleading is placed before us demonstrating how the writ petitioners would be prejudiced if the procedure under the aforesaid statutory scheme is adopted by the appellant Commission in the matter of tariff fixation.

On the other hand, the scheme of the Act and the regulations, as aforesaid, make it evident that only the licensee is to be given oral hearing during tariff determination under section 64 of the Act of 2003 in the event his application for tariff fixation is rejected. Any objector to the application is entitled to make written representation only.

Natural justice is not a strait jacketed formula. Oral hearing may be a constituent of natural justice but is not an inalienable facet in all cases. Even otherwise whether it is oral or written objection as long as such opportunity is provided . There is no question of violation of principles of natural justice . However the procedure contemplates oral hearing only if decision is to reject application for tariff fixation submitted by the license.

Reference in this regard may be made to the observations of **Hamilton L.J.** in **Rex v. Local Government Board, Ex parte Arlidge (1914) 1 K.B. 160 at 191 :-**

“the question whether the deciding officer ‘hears’ the appellant audibly addressing him or ‘hears’ him only through the medium of his written statements, is in a matter of this kind one of pure procedure.”

Statutory scheme under which the decision is taken, nature and subject matter of enquiry, nature of the decision taken and prejudice, if any, caused to a

party in course of such decision making process if only written representation is considered are relevant parameters to decide whether oral hearing is a mandatory requirement in a decision making process.

In many cases it has been held that notwithstanding absence of an opportunity of oral hearing, decision making process cannot be faulted on the anvil of fairness or breach of principles of natural justice. Whether denial of oral hearing amounts to a breach of principles of natural justice and fair procedure is to be decided on the factual matrix of each case.

In **Gorkha Security Services Vs. Government (NCT of Delhi) & Ors., (2014)9 SCC 105** the Apex Court held that although principles of natural justice are attracted to a case of blacklisting of a contractor which amounted to his "civil death", the same need not necessarily require oral hearing.

In **Chief General Manager, Calcutta Telephones District, Bharat Sanchar Nigam Limited & Ors. Vs. Surendra Nath Pandey & Ors., (2011)15 SCC 81** the Apex Court held, while considering a case of cancellation of a departmental examination on the allegation of mass copying, the requirements of oral hearing are not attracted.

It observed as follows :-

"28. We are of the considered opinion that the procedure adopted by the appellants cannot be said to be unfair or arbitrary. It was a reasonable and fair procedure adopted in the peculiar circumstances of the case. It cannot be said to be in breach of rules of natural justice. It must be remembered that rules of natural justice are not embodied rules. They cannot be put in a straitjacket. The purpose of rules of natural justice is to ensure that the order causing civil consequences is not passed arbitrarily. It is not that in every case there must be an opportunity of oral hearing."

Similarly, in **Oriental Bank of Commerce & Anr. Vs. R.K. Uppal, (2011)8 SCC 695** the Apex Court held that oral hearing cannot be demanded as of right in appeal from a disciplinary proceeding unless the appellate authority is inclined to enhance the punishment.

Reference may also be made to **Carborundum Universal Ltd. (supra)** in this regard. In the said report the Apex Court, inter alia, held that exclusion of opportunity of hearing may either be by a clear provision of law or could be inferred from the scheme of the Act itself. The ratio of the said decision (though cited by the respondent/writ petitioners), in fact, helps the cause of the appellant.

We are of the opinion that the scheme of the legislation in the instant case gives rise to an irresistible inference that the objection of consumers and other members of the public before the State Commission under section 64 of the Act are to be made in written form only and no right of oral hearing is reserved in their favour.

Furthermore, although the determination of tariff under section 64 has been held to be a quasi-judicial act, it cannot be said to be an adversarial exercise so far as respondent/writ petitioners are concerned, since they have not been charged with any accusation which they are required to defend.

On the other hand, the decision making process partakes the nature of a statutory inquiry where the authority is called upon to arrive at an informed decision as to tariff fixation after considering the objections or suggestions of all stakeholders including the consumers who may be affected by such decision so taken. The nature of such enquiry is therefore not adversarial in nature as in the course of a disciplinary proceeding against a particular delinquent.

In view of the aforesaid nature of the proceeding and the fact that the Commission is required to arrive at an informed decision relating to tariff fixation within a time frame under a statutory scheme which requires

considering written objections/representations only of the objectors including consumers, it is difficult to come to a conclusion that it was the intention of the legislature to provide oral hearing to objectors/consumers at the time of determination of tariff by the State Commission under section 64 of the Act of 2003.

Authorities cited by the respondent/writ petitioners are of no assistance in view of the present factual matrix.

In **D.P. Jadav (supra)** the Apex Court held that principles of natural justice were attracted in the case of termination of a private employee and hence a departmental enquiry under the Certified Standing Orders necessitated an opportunity of hearing to the delinquent.

In **Institute of Chartered Accountants of India (supra)** the Apex Court was dealing with the termination of a delinquent professional in the course of a disciplinary proceeding. Relying on **Megarry, J in Leary Vs. National Union of Vehicle Builders (1971) Ch. 34**, the Court held that the failure to grant an opportunity of hearing at the initial stage cannot be remedied by giving an opportunity of hearing at the appellate stage.

It may be apposite to mention that in a subsequent decision **Calvin Vs. Carr (1980) AC 574 (P.C.) at page 597 B-C**, the Privy Council had observed that the view of **Megarry (J) in Leary v. National Union of Vehicle Builders (supra)** was too broadly stated and cannot be said to have universal application.

This view was reiterated by the House of Lords in **Lloyd Vs. McMahon, (1989)AC 625 at page 669 C-F** wherein **Lord Woolf** observed as follows :-

“.....if Parliament makes provision for an initial hearing followed by appeal then what Parliament should be presumed to intend is that the persons affected by those proceedings should be treated fairly in the proceedings as a whole. Where there are

shortcomings in the initial proceedings but the appellant has in fact been dealt with fairly when the proceedings as a whole are considered, to regard the proceedings as invalid would be to condemn something as being unfair because of a flaw in a part when if the whole was considered the flaw would be sufficiently insignificant to enable the whole procedure to be regarded as unblemished. Expressing the matter slightly differently, if the whole procedure is properly regarded as being fair, then to strike that procedure down because of a flaw in part will be to apply an unduly technical approach.”

Similar view appears to have been expressed by the Apex Court in **Canara Bank & Ors. Vs. Debasis Das & Ors**, (2003) 4 SCC 557 wherein the Court held that an opportunity of oral hearing granted by the appellate authority amounted to a post-decisional hearing which obliterated the procedural deficiency of a pre-decisional hearing provided no prejudice in the facts situation of the case is demonstrated. The Apex Court held as follows :-

“10. It is to be further noted that in the appeal before the Appellate Authority findings of the Inquiry Officer were challenged and, therefore, the question of any prejudice does not arise. Since employee had the opportunity to meet the stand of the Bank, it was to his advantage, and opportunity for personal hearing was also granted, though Regulation 6(18) does not even speak to grant such an opportunity. Keeping in view what was observed in B. Karunakaran's case (supra) there was no question of violation of principles of natural justice.

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23. As was observed by this Court we need not go into 'useless formality theory' in detail; in view of the fact that no prejudice

has been shown. As is rightly pointed out by learned counsel for the appellants unless failure of justice is occasioned or that it would not be in public interest to dismiss a petition on the fact situation of a case, this Court may refuse to exercise said jurisdiction (see *Gadde Venkateswara Rao v. Govt. of A.P. and Ors.* (AIR 1966 SC 828). It is to be noted that legal formulations cannot be divorced from the fact situation of the case. Personal hearing was granted by the Appellate Authority, though not statutorily prescribed. In a given case post- decisional hearing can obliterate the procedural deficiency of a pre-decisional hearing. ([See Charan Lal Sahu v. Union of India](#) etc. (AIR 1990 SC 1480).”

Hence, in view of *Canara Bank (supra)*, it appears that in a given case where a party is given full opportunity of hearing before an Appellate Tribunal (as in section 111 of the Act of 2003) both on facts and in law, procedural defect in the initial order would not vitiate the decision making process unless prejudice is demonstrated. As to how respondent/writ petitioners may be prejudiced if oral hearing is not given to them by the State Commission while considering their written objections has not been made out on facts in the instant case.

Be that as it may, both the aforesaid cases relied by the respondents deal with applicability of principles of natural justice in an adversarial disciplinary proceeding scenario, whereas in the instant case we are concerned with a quasi-judicial exercise in price fixation wherein the statutory scheme provides for written objections of consumers are only to be considered to arrive at a informed decision which is subject to an appeal both on facts and law under section 111 of the Act of 2003.

In view of the aforesaid statutory scheme and other attending facts and circumstances including the fact that innumerable objectors/consumers may file suggestions/objections and insist on a personal hearing in respect of each objector/consumer in the course of a time bound process for fixation of tariff by the State Commission under section 64 of the Act of 2003, we are not impressed by the submission of learned counsel for the respondent/writ petitioners that a right of oral hearing ought to be read into the statute.

It has been further argued that opportunity of hearing was, in fact, provided by CERC to stakeholders while determining generation and inter-state transmission tariffs in the instant case. One must bear in mind that there is a gulf of difference between a claim of oral hearing as a matter of right and the discretion of the tribunal to give such opportunity on its own volition. The number of stakeholders/objectors are far numerous before the State Commission while considering the matter of determination of retail tariff than those before CERC. Procedure adopted by CERC cannot override the clear words of the statute and the legislative intent arising therefrom. In view of the statutory scheme, subject matter of enquiry, nature of the decision taken by the State Commission and other relevant factors we hold that no right of oral hearing can be said to subsist in the objectors and there is no corresponding legal duty in the Commission to provide such hearing in the course of determination of tariff fixation under section 64 of the Act. In other words, denial of oral hearing to the respondent/writ petitioners by the State Commission at the time considering their written objections under section 64 of the Act by itself would not be a ground to invalidate the decision making process. More particularly when grievance, if any, against the order of the State Commission is remediable by way of a full hearing on facts and in law before the Appellate Tribunal under section 111 of the Act as per the statutory scheme.

Next comes the issue as to whether the writ petitioners in the instant case ought to be given an opportunity of hearing on an equitable premise as they have been saddled with the liability of furnishing bank guarantee by the order of the First Court. The writ petitioners had approached this Court out of their own volition and order was passed staying the impugned demand notices raised upon them in respect of differential tariff claimed by DVC on condition they secured the differential tariff of Rs. 3.75 crores by way of bank guarantee. Direction to furnish bank guarantee was a condition for stay of realization of the differential tariff impugned in the writ petition and not a ground to justify an opportunity of oral hearing during tariff determination under section 64 of the Act.

It is trite law that all consumers are to be treated equally and fairly by the State Commission in the matter of determination of tariff under section 64 of the Act. Merely because the writ petitioners have been directed to furnish bank guarantee they cannot be held to have better rights and treated differently from other consumers/objectors.

Direction upon the writ petitioners to furnished bank guarantee cannot be a ground to vary the statutory scheme under the Act and the regulations framed so as to justify an opportunity of oral hearing in favour of the respondent/writ petitioners on that score. We are therefore unable to sustain the order on this score also.

In view of the aforesaid discussion, we hold that the respondent/writ petitioners are not entitled to oral hearing either as of right or on equitable principles in the instant case in the course of fixation of retail/distribution tariff under the Act of 2003. Hence, the orders dated 20.12.2013 and 31.07.2014 are modified to the extent that the appellant State Commission is not duty bound to

give oral hearing to the respondent/writ petitioners in the course of such tariff fixation.

It is however directed that the Appellate Commission shall fix the retail tariff on the tariff application of DVC after duly considering all the suggestions/objections raised by the respondent/writ petitioners and others in accordance with law within two months from the date of communication of this order.

With the aforesaid directions, the appeals are disposed of.

I agree.

(Manjula Chellur, C.J.)

(Joymalya Bagchi, J.)