



CERC Annual Day Lecture

by

Hon'ble Justice Shri Madan Bhimrao Lokur

24th July 2017, New Delhi



Central Electricity Regulatory Commission

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Justice Shri Madan Bhimrao Lokur

Justice Shri Madan Bhimrao Lokur is a serving Judge of the Supreme Court of India. He has practiced in the Supreme Court of India and in the Delhi High Court. Justice Lokur served as the Standing Counsel for the Central Government from December, 1990 to December, 1996. He was designated as Senior Advocate in February, 1997 and appointed as Additional Solicitor General of India on 14th July 1998 and continued as such till appointed as an Additional Judge of Delhi High Court on 19th February 1999 and Permanent Judge of Delhi High Court on 5th July 1999. He also functioned as the Acting Chief Justice of the Delhi High Court before being transferred as the Chief Justice of Guwahati High Court and High Court of Andhra Pradesh.

He has vast experience in Civil, Criminal, Constitutional, and Revenue and Service laws. He is committed towards various issues such as judicial reforms, computerization of courts, judicial education, legal aid and services, juvenile justice. He has been a Member of the Mediation & Conciliation Project Committee of the Supreme Court of India since its inception in 2005.

Justice Shri Lokur studied at St. Joseph's Collegiate, Allahabad, St. Stephen's College, Delhi University and Law Faculty, Delhi University.

Speech by Justice Shri Madan Bhimrao Lokur



(left to right: Shri A.K. Singhal, Member, CERC; Shri Gireesh B. Pradhan, Chairperson, CERC; Justice Shri Madan Bhimrao Lokur, Judge, Supreme Court of India; Shri A.S. Bakshi, Member, CERC; Dr. M.K. Iyer, Member, CERC; Shri Sanoj Kumar Jha, Secretary, CERC)

Thank you Mr. Chairman, Hon'ble Members and the entire community and staff of the CERC. I am very glad to have been invited - for more than one reason. Firstly, since I am not too familiar with issues pertaining to electricity supply and the regulatory functions, so this invitation gave me an opportunity to understand the functions of the CERC and of other regulatory bodies in the country. The second reason is that a little earlier I was given a brief demonstration of the online e-filing system that you have introduced. I must say the achievement is revolutionary. Probably the least I can say is that the CERC has made very good use of technology and I am sure that this system will be of great assistance to the Commission as a whole, the State Commissions and more importantly, the people who are in different parts of country. I believe you will introduce this system, if not already introduced, in the North-East, Kerala and some other parts of the country. It is a great step and I must congratulate all of you for the excellent initiative you have taken.

There are a few things that I would like to share you. The Chairman has in a sense pre-empted what I had wanted to share with you, which is about the work load.

As time passes, people are becoming familiar with the functioning of various adjudicatory bodies in our country - it could be the conventional courts, consumer courts, insurance claims, or the CERC. With greater knowledge and awareness of these adjudicatory authorities, there is increasing confidence in approaching them for the enforcement of rights. For example, a person working in the government is superseded or has not been given the promotion that is due, he/she will go to the appropriate Tribunal to get that benefit which the person thinks is a right. You could also call this a grievance which that person wants redressed. Similarly, if somebody has a problem with an insurance company – for instance, if goods are insured and they get damaged, the insured will approach the insurance company with a claim and if the claim is repudiated, the insured will approach the consumer forum. So with the passage of time and greater awareness, every institution that has some element of public dealing will have an increase in work load. There is only one way of tackling the problem of increased workload - to try, within the existing constraints, to improve the functioning of the adjudicatory body through the use of technology.

Sometime back, I had occasion to deliver a judgment in a case which we had heard in April this year, which collaterally concerned the National Human Rights Commission, which is chaired by a former Chief Justice of India. The NHRC also has a retired Supreme Court judge who is a member and a retired Chief Justice of a High Court who is also a member. So it is a very high powered body. However, the NHRC filed an affidavit in that case saying that it was having management problems because it was receiving more complaints than could be handled. In a sense this is good because people now appreciate that they have certain rights which they can enforce and the NHRC can help them in the enforcement of those rights. So while the NHRC receives thousands of complaints, they do not have the staff to deal with them. The NHRC had written to the government with the staff requirements for assistance, investigation and so on. However, there was no response which is why they had ventilated their

grievance in court. Hence, this work load problem and staff crunch is not something unique that you will be facing. If you have a workload problem or a staff crunch, the solution is to use technology. I believe the CERC has been able to use technology very effectively since April of this year. I am certain that as the system develops, you will realize your capacity to handle the same or greater amount of work load more efficiently.

We in the judiciary are also facing the problem of increased workload. We have millions of cases pending and thousands of cases pending for many years in different parts of the country. If we do not utilize technology to tackle the problem, the justice delivery system will collapse. Litigants wait in the queue for several years for their case to come up – how long they are going to wait? Today we dealt with the case of a person who was appointed in 1974 and was still fighting for seniority in appointment. The dispute was pending for more than 40 years. Situations like this cannot go on. Therefore, the judiciary needs to effectively use technology and I hope to learn something from what you have developed, so that we can deliver justice to people much quicker than we have been doing at the moment. So this is really what I have to say about the management aspect of the workload, whether it is the CERC or whether it is any other body.

Now, so far as the CERC is concerned, of course your primary function is regulatory like many other regulatory bodies in the country, some of which have more than one function. There is the Insurance Regulatory & Development Authority (IRDA), for example. They have a function which is not only regulatory but also in a sense, investigative. For instance, if some fraud has been committed, the IRDA can look into it. It can also look into the functioning of the insurance intermediaries. There is the Telecom Regulatory Authority (TRAI). Their function is also regulatory, but they too have an additional power to impose a fine. If they pass an order that is not complied with, they can

impose a penalty. There are several other kinds of regulatory bodies, such as the Reserve Bank of India which regulates the functioning of banks. There are public interest regulatory bodies like the Bureau of Indian Standards, which lays down the standards on a variety of things; for issues of environmental regulation, there is the Central Pollution Control Board that also has regulatory functions. If the CPCB takes a wrong decision, it lays down a wrong standard and the city gets polluted. Who are the persons who suffer? It is persons like you and me who suffer. Therefore, a regulatory mechanism becomes a very important aspect of any decision making process. It is for this reason that the CERC has been given the independence to do what is proactive without any interference.

Of the various kinds of regulatory bodies, some such as the IRDA and the TRAI also carry out certain watchdog functions, as earlier mentioned. Similarly, the Advertising Standards Council of India too keeps a check on objectionable advertisements. The Competition Commission of India is another such regulatory body which ensures that the limits of competition are kept within certain bounds and that there is no cartelization and consumers are not cheated. There are thus many varieties of regulatory bodies.

So, there are different kinds of regulatory bodies, which primarily perform regulatory functions, but also have additional functions or powers. As I understand it, the CERC's core function continues to remain regulatory and that is where its responsibility lies, in that the orders of the CERC affect hundreds of people, if not thousands. Therefore, there is a need to have a very balanced and professional approach by the CERC.

I have not dealt with too many cases concerning electricity supply and regulations but of those that I have, I do recall having to go through long, very learned orders that had a lot of substance, in the sense that they were well researched. The research may have been undertaken in those decisions by the DERC on their own, through their lawyers or through the parties appearing before

them. So really, it is a very professional job that the regulatory authority is required to perform as indeed are the other State regulatory authorities and the CERC. One has to maintain a certain balance and that is important because of the impact it is going to have on thousands of people. To maintain the balanced approach that I have adverted to, the statute provides that there will be no interference by the Executive. The Executive cannot tell the CERC what to do. Ultimately, it is for the CERC to take a call on what should be done and take responsibility for it.

The second important function of the CERC is quasi-legislative because you are laying down the tariff, certain rules, certain conditions and certain terms. Traditionally, it is the work of Parliament or of the Central Government or State Government to lay down those rules and regulations. But the CERC, as a regulatory body, lays down terms and conditions required to be followed. So yours is a mixture, in a sense, of all three wings of governance. You have quasi-legislative functions, non-interference from the Executive and yet, a sort of judicial function in the sense of balancing the rights and duties of those who are before you. So, it is a very critical function, which is why professionalism is absolutely important and therefore everyone has to work with one another because the onus is not really on the Members or the Chairman of the Commission - it is on the supporting officers, who have to provide the correct information. There would be lawyers projecting a particular point of view because of the parties that they represent and therefore you might not get the full picture but only one side of the picture. That is where collective wisdom comes in. This is not unusual and even in the Supreme Court there are occasions where lawyers have not looked at the matter from a wider perspective. Ultimately therefore, we have to do some homework in such instances, find out the correct position and then deliver judgment. So, this balancing act is omnipresent and very important. This is where the collective support of the staff and other persons in the CERC is very important in enabling the Commission to arrive at the right decision.

But why do we need regulatory bodies? They are certainly relevant today in a society that has a very large number of lobbies, such as the builders' lobby, to give one example. We read in the newspapers about builders taking consumers for a ride. There are manufacturers who are said to over-price their goods. There are instances of cartelization of bids to be given to a particular item. I remember dealing with a case many years ago as a lawyer, where the Railways wanted to purchase wagons and the wagon manufacturers formed a cartel and only agreed to supply at a very high rate. The Railways realized that there was a cartel. Ultimately, the matter was decided by the Supreme Court which upheld the finding of the existence of a cartel. So you and I as citizens, as consumers of goods and services need protection from certain lobbies which may not necessarily be working in the interest of the consumers, but instead, in their own interest. Hence, the need for establishing regulatory bodies.

I would like to end by saying that the CERC as a whole is doing a wonderful job and I have no doubt that you will continue to do so. I am particularly delighted that you have taken the lead in the use of technology. As far as I know, you are probably the first, if not the only organization which is doing outstation e-filing. We in the Supreme Court are trying to get into it. Hopefully we will be second, but you will continue to remain the first. So, congratulations on a wonderful achievement and I wish you a wonderful Annual Day and better times to come in the future. Thank you very much.
