

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**IA No. 79/2019**  
**in**  
**Petition No. 155/MP/2019**

Subject : Interlocutory Application under Section 94(b) and Section 142 of the Electricity Act, 2003 and Regulations 54, 55 and 74 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 read with principles of Section 30 and Order XI, XII and XIII of the Code of Civil Procedure, 1908.

Petitioner : Udupi Power Corporation Limited (UPCL)

Respondents : Power Company of Karnataka Limited (PCKL) & Ors.

Date of Hearing : 12.12.2019

Coram : Shri P. K. Pujari, Chairperson  
Dr. M. K. Iyer, Member  
Shri I.S. Jha, Member

Parties present : Ms. Aparajita Upadhyay, Advocate, UPCL  
Shri Arunav Patnaik, Advocate, PCKL  
Shri Shikhar Saha, Advocate, PCKL

**Record of Proceedings**

Learned counsel for the Applicant, Udupi Power Corporation Limited (UPCL) submitted that the present IA has been filed by the Applicant seeking direction to the Respondent, Power Company of Karnataka Limited (PCKL) to place on record copies of (i) PCKL Technical Committee Report, (ii) Report of Mr. V. J. Talwar, and (iii) Report of M/s. Ramraj & Co. in compliance of the direction of the Commission vide Record of Proceedings dated 23.7.2019. Learned counsel for the Applicant handed over copy of note of arguments and mainly submitted as under:

(a) The Respondent, PCKL has failed to comply with the Commission's direction dated 23.7.2019. Without there being any challenge to the aforesaid direction before the Appellate Tribunal, PCKL cannot continue to be in non-compliance of the direction of the Commission.

(b) As regards contentions of PCKL that these reports being confidential, in terms of Section 162 of the India Evidence Act, 1872 ('Evidence Act'), it is for the Court/this Commission to decide upon the production of the evidence and accordingly, PCKL may be asked to submit these reports before the Commission in a sealed envelope so that the Commission may take a view on the question of confidentiality.

(c) Reliance on the Section 129 of the Evidence Act by PCKL to contend that the report of Mr. V.J. Talwar is professional legal advice is misplaced. Section 129 of the Evidence Act only prohibits disclosure of confidential communication between a party and his legal professional



adviser. The Evidence Act does not define the term 'professional legal advisor'. Therefore, in terms of the view taken by the Hon'ble Supreme Court in the case of *State of Punjab v. Sodhi Sukhdev Singh* [(1961) 2 SCR 371] that in case of ambiguity in interpretation of any provision in the Evidence Act, courts may look at the relevant English common law for ascertaining its true meaning. The judgment of the Hon'ble Supreme Court of UK in *Regina (Prudential plc and another) v. Special Commissioner of Income Tax & Anr.* [as reported in (2013) 2 WLR 325], may be relied upon wherein it has been held that application of Legal Advice Privilege (LAP) is restricted to legal advice given by practicing lawyers. It cannot be extended to any other professional advice. Accordingly, privilege under Section 129 of the Evidence Act can be claimed only to lawyers practicing the legal profession pursuant to licence to practice granted by the Bar Council of India. According to the Applicant, the report of Mr. V. J. Talwar was sought and given as technical expert and not in the capacity of a lawyer.

(d) Legal advice may only be given by a person who is an Advocate under the Advocates Act, 1961 and as per definition of the said Act, 'advocate' means an advocate entered in any roll under the provisions of the Advocates Act. As per the information furnished by PCKL, Mr. V.J. Talwar cannot be construed as an 'advocate' in terms of the Advocates Act, 1961. In support of her contention, learned counsel relied upon the judgment of Hon'ble Bombay High Court in the case of *L&T Limited v. Prime Displays Pvt. Ltd. and Ors.* [as reported in 2002 SCC Online Bom 267].

(e) The question of privilege does not arise at all in respect of the Technical Committee report and M/s Ramraj & Co. report and same ought to be produced before the Commission.

(f) UPCL has been party to the proceedings before the Committees and submitted all the data sought by the Committees. The committees were constituted for the sole purpose of resolution of payment disputes between PCKL and UPCL. Therefore, UPCL must be allowed to go through the reports submitted by the Committees.

2. Learned counsel for PCKL mainly submitted as under:

(a) Direction of the Commission to provide copies of (i) PCKL Technical Committee Report, (ii) Report of Mr. V. J. Talwar, and (iii) Report of M/s. Ramraj & Co. have been obtained based on the erroneous submission that the PCKL has relied upon these reports to reject or disallow the claims of UPCL.

(b) UPCL is trying to confuse the Section 126 with Section 129 of the Evidence Act. Section 126 of the Evidence Act pertains to the professional communications between the barrister, attorney, pleader or vakil with his client whereas Section 129 Act pertains to communication between a client and his legal professional advisor from whom he seeks legal professional advice.

(c) Hon'ble Supreme Court in its judgment in the case of *State of Punjab v. Sodhi Sukhdev Singh*, [(1961) 2 SCR 371], as relied upon by the UPCL, at para 28, has observed that the position in India in regard to the Court's power and jurisdiction is different from the position under the English Law as it obtained in England in 1872. Therefore, the reliance placed by the



Applicant on the judgment of Hon`ble Supreme Court of UK in the case of Regina (Prudential plc and another) v. Special Commissioner of Income Tax & Anr. [as reported in (2013) 2 WLR 325], is misplaced.

(d) For legal professional advisor, under Section 129 of the Evidence Act, there is no need to be an advocate having entered into any roll under the provisions of the Advocates Act, 1961 and person having a law degree is eligible to give legal professional advice. Further, in terms of Section 129 of the Evidence Act, there is also restriction in disclosing the communication that has taken place between a person and his legal professional adviser, even before a Court.

(e) In support of his contentions, learned counsel relied upon the judgment of Hon`ble High Court of Allahabad in the case of Sunil Kumar v. Naresh Chandra Jain [as reported in 1985 SCC Online All 1118].

3. In response to the Commission's query regarding whether PCKL has placed on record any documents in support of its contentions that Mr. V. J. Talwar was appointed in capacity of legal professional advisor and his report being legal professional advice, learned counsel for PCKL sought permission to file written submissions and to place on record the appointment letter, terms of reference of engagement of Mr. V. J. Talwar.

4. Based on the request of learned counsel for PCKL, the Commission directed the Respondent, PCKL to file its written submission along with the necessary details by 24.12.2019 with copy to the Applicant, who may file its written submission, if any, within one week thereafter.

5. Subject to the above, the Commission reserved order in IA.

**By order of the Commission**

**Sd/-  
(T.D. Pant)  
Deputy Chief (Legal)**

