HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 15316 OF 2025 (GM-KEB)

BETWEEN:

1. SOHAM INFRASTRUCTURE PRIVATE LIMITED,
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE
AT: SHOP NO.9, B WING, SAI PARK,
NAVGHAR ROAD, BHAYANDER EAST THANE,
MAHARASHTRA-401 105.
CORPORATE OFFICE AT: #37,
RMJ MANDOTH TOWERS,
7TH CROSS, VASANTH NAGAR,
BENGALURU-560 001,
R/BY ITS AUTHORIZED SIGNATORY,
VICE-PRESIDENT,
MR. SUCHINDRA S. SHETTY.

2. SUCHINDRA S. SHETTY,
DIRECTOR, SOHAM INFRASTRUCTURE
PRIVATE LIMITED, OFFICE AT: 37,
RMJ MANDOTH TOWERS, 7TH CROSS,
VASANTH NAGAR, BENGALURU-560 001.

... PETITIONERS

(BY SRI. ADITYA NARAYAN, ADVOCATE)

AND:

1. THE KARNATAKA ELECTRICITY
REGULATORY COMMISSION,
NO.16, C-1, MILLERS TANK BED AREA,
VASANTHNAGAR, BENGALURU-560 052,
R/BY ITS CHAIRPERSON.

2. HUBLI ELECTRICITY SUPPLY COMPANY LIMITED
(HESCOM), A COMPANY INCORPORATED UNDER

THE COMPANIES ACT, NAVANAGAR, PB ROAD,
HUBLI-580 025, R/BY ITS MANAGING DIRECTOR.

3. BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED
(BESCOM), A COMPANY INCORPORATED UNDER THE
COMPANIES ACT, 1956,
CORPORATE OFFICE AT: K.R. CIRCLE,
BENGALURU-560 001,
R/BY ITS MANAGING DIRECTOR.

4. MANGALORE ELECTRICITY SUPPLY COMPANY LIMITED
(MESCOM), A COMPANY INCORPORATED UNDER THE
COMPANIES ACT, 1956,
CORPORATE OFFICE,
MESCOM BHAWANA, KAVOOR CROSS ROAD,
BEJAI, MANGALORE-575 004,
R/BY ITS MANAGING DIRECTOR.

5. CHAMUNDESHWARI ELECTRICITY SUPPLY
CORPORATION (CESC), CORPORATE OFFICE,
#29, VIJAYANAGAR, 2ND STAGE, HINKAL,
MYSURU-570 017,
R/BY ITS MANAGING DIRECTOR.

6. GULBARGA ELECTRICITY SUPPLY
COMPANY LIMITED (GESCOM),
CORPORATE OFFICE, STATION ROAD,
KALABURGI, R/BY ITS MANAGING DIRECTOR.

… RESPONDENTS

(BY SRI. PRAKASH B.N., ADVOCATE FOR R1;
SRI. SHAHBAAZ HUSSAIN, ADVOCATE FOR R2 TO R6)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE AN APPROPRIATE WRIT, ORDER OR DIRECTION DECLARING REGULATION 12(C) OF THE KARNATAKA ELECTRICITY REGULATORY COMMISSION (TERMS AND CONDITIONS FOR OPEN ACCESS) REGULATIONS, 2025, (ANNEXURE-D) NOTIFIED IN THE OFFICIAL GAZETTE DATED 26.03.2025 BEARING NO. KERC-2-TR-2024-25/1805 AS MANIFESTLY ARBITRARY AND ULTRA VIRES THE ELECTRICITY ACT AND ETC.,

THIS PETITION HAVING BEEN HEARD AND RESERVED THROUGH VC AT DHARWAD FOR ORDERS ON 11.06.2026, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CAV ORDER

(PER: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM)

The petitioner, a company engaged in the generation and supply of renewable energy, has called in question the validity of Regulation 12(c) of the Karnataka Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2025, contending that the impugned provision prescribing Cross-Subsidy Surcharge (CSS) is ex facie arbitrary, contrary to the statutory framework governing Open Access, and violative of the mandate contained under Section 42 of the Electricity Act, 2003.

2. The gist of the challenge is that the respondent-Commission, while framing the impugned regulation, has treated the ceiling of 20% prescribed under the applicable statutory framework as a fixed and mandatory surcharge, instead of construing the same as the upper permissible limit subject to progressive reduction. It is the specific contention of the petitioner that the impugned regulation imposes an excessive and rigid surcharge burden upon

Open Access consumers procuring renewable energy, thereby frustrating the very object underlying the liberalized electricity regime envisaged under the Electricity Act, 2003.

3. The petitioner further contends that the impugned Regulation 12(c) runs contrary to the scheme and object of the Electricity Rules, 2005 and the National Tariff Policy, both of which emphasize gradual reduction of cross-subsidies and encouragement of competition in electricity procurement. According to the petitioner, the statutory framework never contemplated perpetual retention of surcharge levels at the maximum permissible threshold and, on the contrary, envisages a phased diminution of cross-subsidy burdens so as to facilitate consumer choice and promote market efficiency. It is urged that by mechanically adopting the outer limit of 20% as the operative rate of surcharge, the respondent-Commission has acted contrary to the legislative intent

and has effectively converted a regulatory cap into a fixed fiscal levy.

4. The petitioner also asserts that the impugned regulation disproportionately prejudices consumers procuring renewable energy through Open Access arrangements. It is contended that the excessive surcharge structure renders renewable procurement commercially unviable and defeats the larger constitutional and statutory objectives of promoting clean and sustainable sources of energy. The petitioner would submit that renewable energy generators and consumers stand on a distinct footing and are entitled to a regulatory framework that incentivizes transition towards green energy, instead of imposing fiscal burdens that discourage adoption of renewable sources. The impugned levy, according to the petitioner, therefore suffers from manifest arbitrariness and is liable to be declared ultra vires the parent enactment.

5. Placing reliance upon the principles laid down by the Hon'ble Supreme Court of India in ***Sesa Sterlite Ltd. v. Orissa Electricity Regulatory Commission and other***[1] subsequent pronouncements governing Cross-Subsidy Surcharge, the petitioner would contend that CSS is intended only as a compensatory mechanism to offset demonstrable revenue loss suffered by distribution licensees and cannot be transformed into a revenue profit that effectively nullifies the right of Open Access. It is therefore contended that the respondent-Commission, while exercising delegated legislative powers, was required to harmonize the financial interests of distribution licensees with the statutory objective of promoting competition, consumer choice, and renewable energy adoption. The petitioner accordingly seeks declaration that Regulation 12(c), insofar as it mandates surcharge at the impugned rate, is unconstitutional, arbitrary, and liable to be struck down.

[1] (2014) 8 SCC 444

6. Learned counsel appearing for the petitioners, assailing Regulation 12(c) and the proviso thereto contained in the Karnataka Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2025, would vehemently contend that the impugned provision travels beyond the scope of the parent enactment and is liable to be struck down as being contrary to the Electricity Act, 2003, the Electricity Rules, 2005 and the National Tariff Policy.

7. The learned counsel would submit that the impugned tariff order itself demonstrates that the cross-subsidy embedded in the tariff applicable to HT-2A consumers availing supply from the ESCOMs is only Rs.0.47/- per unit, whereas the Cross-Subsidy Surcharge payable by Open Access consumers has been fixed at Rs.1.87/- per unit by applying the formula prescribed under Regulation 12(c). It is therefore contended that Open Access consumers are burdened with a surcharge nearly four times the actual cross-subsidy borne by

similarly situated consumers procuring power from the distribution licensee.

8. The petitioners would contend that Cross-Subsidy Surcharge, by its very nomenclature, must necessarily bear a direct nexus to the cross-subsidy component embedded in the tariff structure. According to the petitioners, the impugned formula severs the connection between "cross-subsidy" and "cross-subsidy surcharge" by permitting determination of surcharge based on variables wholly unrelated to the actual subsidy component. The result, according to the petitioners, is that surcharge ceases to be compensatory and assumes the character of a punitive impost intended to discourage Open Access.

9. The learned counsel would further submit that the impugned methodology is directly contrary to the third proviso to Section 42(2) of the Electricity Act, 2003, which mandates progressive reduction of cross-subsidy and

Cross-Subsidy Surcharge. It is argued that levy of surcharge substantially exceeding the subsidy component itself cannot by any stretch of imagination be regarded as progressive reduction. According to the petitioners, the impugned regulations effectively perpetuate and aggravate the surcharge burden in derogation of the legislative mandate.

10. The petitioners would further place strong reliance on Sections 61(c), 61(h) and 86(1)(e) of the Electricity Act, 2003. It is contended that the Commission is statutorily obligated to promote competition, efficiency, economical use of resources and generation of electricity from renewable energy sources. By imposing an excessive surcharge burden upon consumers procuring renewable energy through Open Access, the Commission is alleged to have acted contrary to the legislative policy of encouraging renewable energy generation and market competition.

11. The petitioners would also contend that Rule 13 of the Electricity Rules, 2005 does not permit imposition of surcharge beyond the limits contemplated therein. According to the petitioners, the proviso to Regulation 12(c), prescribing a cap linked to 20% of the applicable tariff, has been erroneously construed by the Commission as authorizing levy of surcharge up to the maximum permissible level. It is submitted that the said provision is inconsistent with Rule 13 and therefore liable to be struck down.

12. The petitioners would further contend that the impugned regulations are violative of Article 14 of the Constitution of India. It is argued that consumers procuring electricity through Open Access and consumers procuring electricity from ESCOMs belong to the same consumer category and therefore cannot be subjected to differential treatment without a rational basis. The petitioners would submit that levy of surcharge four times

higher than the subsidy burden borne by ESCOM consumers constitutes hostile discrimination.

13. Reliance is placed on the judgments of the Hon'ble Supreme Court in ***Sesa Sterlite Ltd. v. Orissa Electricity Regulatory Commission*** (supra)***, Vikram Cement v. State of Madhya Pradesh***[2]***, State of Uttar Pradesh v. Deepak Fertilizers & Petrochemical Corporation Ltd.***[3]***, A.P. Krishnaswami Naidu v. State of Madras***[4]***, Lakshman v. State of Madhya Pradesh***[5] ***and Union of India v. N.S. Ratnam and Sons***[6]***,*** apart from the decision of this Court in ***Renew Wind Energy (Karnataka) Pvt. Ltd. v. Union of India***[7].

14. Per contra, learned counsel appearing for the respondent No.1-Commission would support the impugned regulations and tariff order. It is contended that Section 42(2) of the Electricity Act itself recognizes the concept of

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[2] (2015) 11 SCC 708
[3] (2007) 10 SCC 342
[4] 1964 SCC Online SC 44
[5] (1983) 3 SCC 275
[6] (2015) 10 SCC 681
[7] W.P.No.43244 of 2024

Cross-Subsidy Surcharge and authorizes the Regulatory Commission to determine the same. The surcharge is not intended to represent the exact arithmetic equivalent of subsidy embedded in a consumer tariff, but is designed to compensate the distribution licensee for the larger financial consequences resulting from migration of high-paying consumers to Open Access.

15. The Commission would contend that the impugned formula is substantially borrowed from the National Tariff Policy framed under Section 3 of the Electricity Act. The methodology adopted under Regulation 12(c) takes into account the weighted average cost of top 5% marginal power procurement, transmission charges, wheeling charges and losses. The said methodology, according to the Commission, has been evolved nationally to balance the competing objectives of promoting Open Access and preserving the financial sustainability of distribution licensees. It is further contended that State Regulatory Commissions are statutorily obligated under

Section 61(i) to be guided by the National Tariff Policy. Therefore, adoption of the policy formula cannot be characterized as arbitrary or ultra vires.

16. The Commission would submit that Open Access is purely voluntary. Consumers who choose to migrate to Open Access cannot thereafter claim parity with consumers continuing under the supply framework of the distribution licensee. The distinction between the two classes is recognized by Parliament itself under Section 42(2) and therefore no Article 14 challenge can be sustained.

17. The Commission further relies on the judgment of the Appellate Tribunal for Electricity in ***Tata Steel Limited v. Orissa Electricity Regulatory Commission***[8], wherein computation of cross-subsidy by reference to average cost of supply and tariff differential was expressly upheld.

[8] Appeal No.102 of 2010

18. Learned counsel appearing for the distribution licensees would adopt the submissions advanced on behalf of the Commission and additionally contend that the entire challenge proceeds on an erroneous understanding of the concept of Cross-Subsidy Surcharge. It is submitted that distribution licensees continue to bear statutory obligations of universal supply, maintenance of distribution infrastructure, power purchase commitments, subsidy support to agricultural and domestic consumers and network expansion costs. Migration of industrial consumers to Open Access results in loss of substantial revenue contribution which would otherwise support these obligations.

19. The ESCOMs would further contend that the surcharge is not merely a subsidy recovery mechanism but a compensatory charge intended to preserve the financial viability of the distribution system. If the petitioners' interpretation is accepted, the entire cross-subsidy structure recognized under the Electricity Act would

collapse. The ESCOMs further point out that the petitioners initially alleged that the tariff order generated surplus revenue of Rs.423,54,73,503/-. However, upon respondents placing detailed calculations on record through memo dated 24.03.2026, demonstrating that the figures relied upon by the petitioners were factually and arithmetically incorrect, the petitioners consciously abandoned the said contention. According to the respondents, this itself demonstrates the infirmity in the factual foundation of the challenge.

20. The ESCOMs would therefore submit that the writ petitions deserve to be dismissed as being devoid of merit.

21. Having heard learned counsel appearing for the petitioner and learned counsel appearing for the respondents, the following points arise for consideration:

(i) Whether Regulation 12(c) and the proviso thereto contained in the Karnataka

Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2025 are ultra vires the Electricity Act, 2003, the Electricity Rules, 2005, the National Tariff Policy and violative of Article 14 of the Constitution of India?

(ii) Whether the consequential tariff order determining Cross-Subsidy Surcharge on Open Access consumers is liable to be interfered with in exercise of writ jurisdiction under Articles 226 and 227 of the Constitution of India?

(iii) What order?

Finding on Point No.(i) and (ii):

22. The learned counsel appearing for the petitioners has placed strong reliance upon the judgment of the Hon'ble Supreme Court of India in ***Sesa Sterlite Ltd. v. Orissa Electricity Regulatory Commission*** (supra), as also the judgment rendered by this Court in ***Renew Wind Energy (Karnataka) Pvt. Ltd. v. Union of India*** and the judgments in ***Vikram Cement v. State of Madhya Pradesh***, ***State of Uttar Pradesh v. Deepak***

Fertilizers and ***Petrochemical Corporation Ltd.***, ***A.P. Krishnaswami Naidu v. State of Madras***, ***Lakshman v. State of Madhya Pradesh*** and ***Union of India v. N.S. Ratnam and Sons*** (supra) to contend that the impugned Regulation 12(c) and the consequential tariff determination suffer from hostile discrimination, arbitrariness, and violation of Article 14 of the Constitution of India. This Court has meticulously examined the principles laid down in the aforesaid judgments. However, this Court is of the considered opinion that the ratio laid down in the aforesaid decisions has no application whatsoever to the peculiar facts and statutory framework governing the present *lis*.

23. The petitioners contend that the impugned regulations violate the third proviso to Section 42(2) of the Electricity Act, 2003 which contemplates progressive reduction of cross-subsidy and Cross-Subsidy Surcharge. It is also argued that the impugned methodology frustrates the statutory mandate contained under Sections

61(c), 61(h) and 86(1)(e) of the Electricity Act requiring promotion of competition, efficiency and renewable energy generation.

24. The respondents have stoutly opposed the petitions. The respondent-Commission contends that the impugned regulations merely adopt the formula prescribed under the National Tariff Policy framed under Section 3 of the Electricity Act. It is further contended that Cross-Subsidy Surcharge is not a tax nor a penal levy but a compensatory mechanism expressly recognized under Section 42(2) of the Act. According to the respondents, the surcharge compensates distribution licensees for loss of contribution toward cross-subsidy, stranded costs, network obligations and universal service liabilities arising from migration of high-paying consumers to Open Access.

25. At the outset, it is necessary to examine the statutory framework. Section 42(2) of the Electricity Act, 2003 expressly confers a right upon eligible consumers to

avail Open Access. However, the right is not absolute. The provision itself makes Open Access subject to payment of surcharge and additional surcharge as may be determined by the State Commission. The proviso to Section 42(2) specifically recognizes the necessity of surcharge as a compensatory mechanism. Therefore, the statutory legitimacy of Cross-Subsidy Surcharge is not open to debate. Parliament itself has recognized the need for such surcharge while introducing the Open Access regime.

26. The challenge mounted by the petitioners proceeds on the assumption that Cross-Subsidy Surcharge must always correspond to the exact cross-subsidy reflected in the tariff of a similarly situated ESCOM consumer. This Court is unable to accept such a proposition. The statutory framework does not contemplate such a narrow construction. The surcharge envisaged under Section 42(2) is intended to compensate distribution licensees for broader economic consequences resulting from migration of high-paying consumers. The

compensatory element extends beyond the mere subsidy component embedded in retail tariffs.

27. The National Tariff Policy, framed under Section 3 of the Electricity Act, recognizes this reality. The policy prescribes a formula for determination of Cross-Subsidy Surcharge which takes into account tariff differential, weighted average cost of marginal power procurement, transmission charges, wheeling charges and system losses. The formula is founded on the principle that when a consumer migrates to Open Access, the distribution licensee avoids only the cost of procuring marginal power and not the entirety of its cost structure. The remaining contribution towards fixed costs, network obligations and cross-subsidy support stands lost. The surcharge therefore seeks to bridge this gap.

28. The significance of the National Tariff Policy cannot be understated. Section 61(i) requires the Regulatory Commission to be guided by the National

Electricity Policy and the National Tariff Policy. The tariff policy is therefore not a mere executive guideline devoid of statutory significance. It constitutes an important normative instrument intended to ensure uniformity and consistency in tariff determination across the country. Consequently, when the first respondent-Commission adopts a formula substantially traceable to the National Tariff Policy, it cannot be said that the Commission has acted dehors the statutory framework.

29. The contention founded upon Rule 13 of the Electricity Rules, 2005 also does not merit acceptance. Rule 13 contemplates rationalization and progressive reduction of cross-subsidy. The rule does not prescribe any rigid formula for surcharge determination. Nor does it prohibit adoption of the methodology recognized under the National Tariff Policy. A harmonious reading of Rule 13, Section 42(2) and the National Tariff Policy clearly indicates that surcharge determination must proceed in a gradual and economically sustainable manner. Therefore,

the proviso to Regulation 12(c) prescribing a cap linked to 20% of the applicable tariff cannot be characterized as inconsistent with Rule 13.

30. The petitioners placed heavy reliance on Sections 61(c), 61(h) and 86(1)(e) of the Electricity Act. No doubt, the Commission is obligated to encourage competition, efficiency and renewable energy generation. However, these provisions cannot be read in isolation. The Electricity Act is a balancing legislation. It simultaneously seeks to promote renewable energy, protect consumer interests, encourage competition and preserve the financial viability of distribution utilities. The promotional mandate under Sections 61 and 86 cannot be interpreted in a manner that renders Section 42(2) otiose. The statute contemplates coexistence of Open Access and surcharge obligations. Therefore, the petitioners cannot invoke renewable energy promotion as a ground to invalidate a surcharge mechanism expressly recognized by the parent enactment.

31. This Court also finds considerable force in the reliance placed by the respondents on the judgment of the Appellate Tribunal for Electricity in ***Tata Steel Limited v. Orissa Electricity Regulatory Commission*** (supra). The Tribunal therein upheld determination of cross-subsidy by reference to tariff differential and average cost of supply for the State as a whole. The Tribunal specifically approved the methodology of working out average tariff for HT and EHT consumers on the basis of assumed load factors rather than actual tariff realization. The underlying principle recognized by the Tribunal is that surcharge determination is an exercise involving broad regulatory considerations and not a simple accounting comparison. The said principle squarely applies to the present controversy.

32. Similarly, the judgment of the Hon'ble Supreme Court in ***Sesa Sterlite Ltd. v. Orissa Electricity Regulatory Commission*** (supra) recognizes Cross-Subsidy Surcharge as a legitimate compensatory

mechanism. Far from supporting the petitioners, the said judgment reinforces the statutory validity of surcharge determination under Section 42(2).

33. The challenge founded upon Article 14 is equally unsustainable. Consumers availing electricity directly from ESCOMs and consumers voluntarily opting for Open Access do not constitute a homogeneous class. The latter category consciously exits the conventional supply framework while continuing to derive benefit from the transmission and distribution ecosystem. Such migration deprives the distribution licensee of substantial revenue contribution. The distinction therefore bears a rational nexus to the object sought to be achieved. Consequently, the classification is constitutionally valid.

34. This Court must also bear in mind the limitations governing judicial review in tariff matters. Tariff fixation and surcharge determination fall within the specialized domain of expert statutory bodies possessing

technical and economic expertise. Courts exercising jurisdiction under Article 226 do not sit in appeal over tariff calculations. Unless manifest arbitrariness, patent illegality or clear statutory violation is established, judicial interference is impermissible.

35. In the present case, the petitioners have failed to establish that Regulation 12(c) is arbitrary, discriminatory or contrary to the Electricity Act. On the contrary, the material placed on record demonstrates that the impugned regulation substantially adopts the methodology recognized under the National Tariff Policy and supported by judicial precedent. The surcharge mechanism bears a direct nexus to the statutory object underlying Section 42(2) and therefore survives constitutional scrutiny.

36. Insofar as the judgment in ***Sesa Sterlite Ltd. v. Orissa Electricity Regulatory Commission*** (supra) is concerned, the Hon'ble Supreme Court was principally

examining the nature and scope of Open Access under Section 42 of the Electricity Act, 2003 and the permissibility of levy of Cross-Subsidy Surcharge upon consumers availing power through dedicated transmission lines. Far from supporting the petitioners' case, the said judgment in fact recognizes and reiterates the statutory legitimacy of Cross-Subsidy Surcharge as a compensatory mechanism intended to offset the financial impact suffered by distribution licensees due to migration of high-paying consumers toward Open Access. The Hon'ble Apex Court categorically observed that Open Access is a matter of consumer choice and that the distribution licensee is entitled to compensation for loss of cross-subsidizing consumers. Therefore, the very foundation of the petitioners' challenge seeking to invalidate surcharge determination stands substantially diluted by the principles laid down in ***Sesa Sterlite*** itself. The said judgment nowhere lays down that surcharge must be mathematically confined to the exact subsidy component

reflected in the tariff applicable to a particular consumer category, nor does it prohibit adoption of formula-based methodologies contemplated under the National Tariff Policy.

37. Equally misplaced is the reliance placed upon the judgment of this Court in ***Renew Wind Energy (Karnataka) Pvt. Ltd. v. Union of India*** (supra). The issues involved in the said writ petition arose in an entirely different factual and regulatory backdrop concerning renewable energy policy implementation and the scope of executive action vis-à-vis renewable procurement mechanisms. The said judgment did not involve adjudication upon the constitutional validity of a formula-based surcharge mechanism framed under Section 42(2) of the Electricity Act nor did it examine the validity of Regulation 12(c) of the Karnataka Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2025. Therefore, the ratio laid down therein cannot be mechanically transplanted into the present

controversy involving highly technical questions of tariff architecture and surcharge determination.

38. The reliance placed upon ***Vikram Cement v. State of Madhya Pradesh*** (supra) is equally misconceived. In the said case, the Hon'ble Supreme Court was examining discriminatory levy under a taxation statute and the impermissibility of hostile classification between similarly situated industrial units. The principle laid down therein is that differential fiscal treatment lacking intelligible differentia and rational nexus would offend Article 14. However, in the present case, Open Access consumers and ordinary ESCOM consumers do not constitute similarly situated classes. Open Access consumers voluntarily migrate outside the conventional supply framework while continuing to utilize the transmission and distribution infrastructure established and maintained by the distribution licensees. Such migration directly results in erosion of cross-subsidy contribution and network cost recovery otherwise

receivable by the distribution utility. Therefore, the statutory classification itself flows from Section 42(2) of the Electricity Act and bears direct nexus to the object sought to be achieved. Consequently, the principles governing hostile discrimination under general taxation statutes, as discussed in ***Vikram Cement***, have no application to the specialized regulatory framework governing Cross-Subsidy Surcharge.

39. The judgment in ***State of Uttar Pradesh v. Deepak Fertilizers and Petrochemical Corporation Ltd.*** (supra) also does not carry the petitioners' case any further. The said decision concerned discriminatory grant of tax concessions resulting in unequal treatment between similarly placed industries within the same class. The Hon'ble Supreme Court in the said case examined whether the State had arbitrarily extended fiscal incentives to one category while excluding another without rational basis. In the present case, however, the differentiation between ESCOM consumers and Open Access consumers is

expressly recognized by the parent statute itself. The surcharge imposed upon Open Access consumers is not a concession-denial mechanism but a compensatory regulatory measure statutorily contemplated under Section 42(2). Therefore, the ratio concerning arbitrary denial of tax incentives in ***Deepak Fertilizers*** has no bearing upon the present challenge.

40. The principles laid down in ***A.P. Krishnaswami Naidu v. State of Madras*** and ***Lakshman v. State of Madhya Pradesh*** (supra) are also distinguishable on facts and law. Those decisions primarily reiterate the constitutional doctrine that classification must rest upon intelligible differentia having nexus with the object sought to be achieved. There can be no quarrel with the aforesaid proposition. However, as already discussed supra, the distinction between Open Access consumers and consumers availing supply from distribution licensees is founded upon substantial economic and structural considerations expressly recognized under the Electricity

Act, 2003. The classification is therefore neither artificial nor arbitrary. On the contrary, it directly subserves the object of protecting the financial sustainability of distribution utilities entrusted with universal public obligations. Therefore, the constitutional principles enunciated in the aforesaid judgments do not render the impugned regulations vulnerable to challenge.

41. Likewise, the reliance placed upon ***Union of India v. N.S. Ratnam and Sons*** (supra) is wholly misplaced. The said judgment dealt with delegated legislation and the limits of executive discretion in the matter of granting exemptions under customs law. The Supreme Court therein reiterated that subordinate legislation may be invalidated if manifestly arbitrary or contrary to the parent enactment. There cannot be any dispute regarding the aforesaid proposition. However, in the present case, the petitioners have utterly failed to demonstrate that Regulation 12(c) is inconsistent with the Electricity Act, 2003 or the National Tariff Policy. On the

contrary, the material placed on record unmistakably indicates that the impugned regulation substantially adopts the formula and policy framework contemplated under the National Tariff Policy framed under Section 3 of the Electricity Act. Therefore, the challenge based upon delegated legislation principles also necessarily fails.

42. This Court is therefore of the considered opinion that none of the judgments relied upon by the petitioners advance their case in the peculiar factual and statutory context governing the present writ petitions. The present dispute arises within the specialized domain of electricity tariff regulation involving technical and economic considerations specifically entrusted by Parliament to expert statutory bodies such as the State Regulatory Commission. The impugned surcharge mechanism is directly traceable to Section 42(2) of the Electricity Act and the National Tariff Policy. The petitioners have failed to establish that the impugned regulations create hostile discrimination between similarly situated classes or that

the formula adopted by the Commission lacks rational nexus to the object sought to be achieved. Consequently, the reliance placed upon the aforesaid judgments is wholly misconceived and the same do not render the impugned regulations unconstitutional or ultra vires.

43. The respondent-Regulatory Commission has also placed strong reliance upon the judgment rendered by the Appellate Tribunal for Electricity in ***Tata Steel Limited v. Orissa Electricity Regulatory Commission*** (supra). This Court has carefully perused the principles laid down in the aforesaid judgment. The dispute before the Appellate Tribunal in the said case principally revolved around the methodology adopted by the Orissa Electricity Regulatory Commission in determination of Cross-Subsidy Surcharge and computation of tariff differential for High Tension (HT) and Extra High Tension (EHT) consumers availing Open Access. The challenge therein was substantially similar to the one urged in the present writ petitions, namely that the Regulatory Commission had allegedly adopted an

erroneous methodology in determining surcharge by reference to average cost of supply and assumed load factors instead of confining the exercise to actual tariff realization from the concerned consumer categories.

44. The Appellate Tribunal, while examining the statutory framework governing Cross-Subsidy Surcharge under Section 42(2) of the Electricity Act, 2003 and the National Tariff Policy, categorically upheld the methodology adopted by the State Commission in computing cross-subsidy as the differential between the tariff applicable to the consumer category and the average cost of supply for the State as a whole. The Tribunal specifically recognized that determination of surcharge cannot be restricted to a simplistic comparison with actual tariff realization alone, but necessarily requires adoption of broader economic and technical parameters reflective of the overall tariff architecture and distribution cost structure. The Tribunal further upheld the methodology of working out average tariff for HT and EHT consumers on

the basis of energy consumption calculated at an assumed load factor of 80%, instead of strictly relying upon average tariff realization reflected in the Annual Revenue Requirement (ARR). The Tribunal was of the view that such methodology constituted a permissible regulatory approach intended to ensure uniformity, rationality, and consistency in tariff determination and surcharge computation.

45. The Appellate Tribunal further observed that the State Regulatory Commission, while exercising powers under Sections 61, 62, and 86 of the Electricity Act, possesses considerable regulatory discretion in evolving suitable methodologies for determination of tariff and surcharge structures, provided such methodology bears nexus to the statutory object and the policy framework embodied under the National Tariff Policy. The Tribunal categorically recognized that tariff determination and surcharge computation involve complex economic and technical considerations which are best left to the expert

wisdom of the Regulatory Commission and ordinarily ought not to be interfered with unless shown to be manifestly arbitrary or contrary to the parent enactment.

46. This Court is of the considered opinion that the principles laid down by the Appellate Tribunal in ***Tata Steel Limited v. Orissa Electricity Regulatory Commission*** (supra) squarely apply to the present case on hand. In the instant case also, the principal grievance of the petitioners is that the Cross-Subsidy Surcharge determined under Regulation 12(c) allegedly exceeds the actual cross-subsidy component borne by similarly placed ESCOM consumers and that the formula adopted by the first respondent-Commission improperly relies upon broader parameters such as average cost of supply and tariff differentials. However, the very methodology now assailed by the petitioners substantially stands recognized and approved by the Appellate Tribunal in ***Tata Steel Limited***. The Tribunal has authoritatively held that surcharge determination is not confined to actual tariff

realization or direct subsidy component alone, but may legitimately take into account average cost of supply for the State as a whole and standardized assumptions relating to consumption and load factor.

47. The rationale underlying the aforesaid approach is neither arbitrary nor irrational. Electricity tariff determination necessarily operates upon aggregated economic and technical assumptions intended to preserve uniformity and regulatory certainty across consumer categories. If surcharge computation were to be confined solely to actual tariff realization from individual consumers or isolated subsidy components, the entire regulatory architecture governing Open Access and tariff balancing would become unstable and incapable of addressing the broader financial implications arising from migration of high-paying consumers toward Open Access procurement. The methodology recognized in ***Tata Steel Limited*** therefore advances the statutory objective underlying Section 42(2), namely preservation of financial equilibrium

of distribution licensees while facilitating gradual liberalization of the electricity market.

48. This Court further finds that the methodology adopted by the Karnataka Electricity Regulatory Commission under Regulation 12(c) substantially mirrors the principles approved by the Appellate Tribunal in ***Tata Steel Limited***. The impugned formula proceeds upon determination of surcharge by reference to tariff differential, average cost of supply, and contribution toward network and fixed obligations rather than limiting the exercise to narrow tariff subsidy arithmetic. Such methodology is directly traceable to the National Tariff Policy framed under Section 3 of the Electricity Act and therefore carries strong statutory and precedential support. The petitioners' attempt to distinguish the present case from the principles laid down in ***Tata Steel Limited*** does not merit acceptance, particularly when the underlying challenge in both cases concerns the

permissibility of adopting broader formula-based methodologies for surcharge determination.

49. This Court is therefore of the considered opinion that the judgment rendered by the Appellate Tribunal for Electricity in ***Tata Steel Limited v. Orissa Electricity Regulatory Commission*** (supra) lends substantial support to the stand taken by the respondent-Regulatory Commission and fortifies the validity of Regulation 12(c) and the tariff determination undertaken pursuant thereto. The principles laid down therein clearly demonstrate that determination of Cross-Subsidy Surcharge based on average cost of supply, tariff differential, and standardized regulatory assumptions is a legally recognized and judicially approved methodology consistent with the Electricity Act, 2003 and the National Tariff Policy. Consequently, the petitioners' challenge to the impugned formula and surcharge determination necessarily fails.

Accordingly, Point Nos.(i) and (ii) are answered in the ***Negative*** and against the petitioners and in favour of the respondents.

Finding on Point No.(iii)

50. For the reasons assigned supra, this Court is of the considered opinion that Regulation 12(c) and the proviso thereto contained in the Karnataka Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2025 do not suffer from any constitutional or statutory infirmity warranting interference under Articles 226 and 227 of the Constitution of India. The impugned regulation is traceable to the powers conferred upon the State Regulatory Commission under Sections 42, 61, 62 and 86 of the Electricity Act, 2003 and substantially adopts the methodology contemplated under the National Tariff Policy for determination of Cross-Subsidy Surcharge. The challenge founded upon Section 42(2), Sections 61(c) and 61(h), Section 86(1)(e) of the

Electricity Act, Rule 13 of the Electricity Rules, 2005 and Article 14 of the Constitution of India is wholly misconceived and untenable.

51. Open Access consumers and consumers availing supply from the distribution licensee do not constitute a homogeneous class, and the distinction recognized by the impugned regulation bears a direct nexus to the statutory object of compensating distribution licensees for loss of cross-subsidizing consumers and preserving the financial viability of the distribution sector. The surcharge determination mechanism embodied in Regulation 12(c) is compensatory in character, founded upon relevant economic and technical considerations recognized under the National Tariff Policy, and cannot be confined merely to the actual cross-subsidy component reflected in the tariff applicable to a particular consumer category. The petitioners have failed to establish that the formula adopted by the first respondent-Commission is arbitrary, discriminatory, manifestly unreasonable or contrary to the

parent enactment. On the contrary, the material placed on record demonstrates that the impugned methodology is consistent with the statutory framework and the principles recognized by the Appellate Tribunal for Electricity and the Supreme Court governing determination of Cross-Subsidy Surcharge.

52. This Court further finds that tariff fixation and surcharge determination lie within the specialized domain of expert regulatory bodies and, in the absence of patent illegality, arbitrariness or lack of jurisdiction, judicial review remains extremely limited. Consequently, Regulation 12(c) and the consequential tariff order determining Cross-Subsidy Surcharge are held to be intra vires the Electricity Act, 2003, the Electricity Rules, 2005 and the National Tariff Policy, and do not violate Article 14 of the Constitution of India.

53. **CONCLUSION:**

(i) Section 42(2) of the Electricity Act expressly authorizes levy of Cross-Subsidy Surcharge upon Open Access consumers.

(ii) Cross-Subsidy Surcharge is compensatory in nature and not confined to the exact subsidy component reflected in retail tariffs.

(iii) The National Tariff Policy provides a legally recognized methodology for surcharge determination and State Regulatory Commissions are statutorily required to be guided by the same.

(iv) Regulation 12(c) substantially adopts the formula recognized under the National Tariff Policy and therefore cannot be said to be ultra vires the parent enactment.

(v) Rule 13 of the Electricity Rules, 2005 does not prohibit the methodology adopted under Regulation 12(c).

(vi) Sections 61(c), 61(h) and 86(1)(e) do not create an absolute exemption from surcharge liability in favour of renewable energy generators or Open Access consumers.

(vii) Open Access consumers and ESCOM consumers do not constitute similarly situated classes and therefore no violation of Article 14 is made out.

(viii) The petitioners have failed to establish manifest arbitrariness or constitutional infirmity warranting interference with the impugned regulations.

(ix) The scope of judicial review in tariff and regulatory matters being limited, no ground is made out for exercise of writ jurisdiction.

56. For the foregoing reasons, this Court proceeds to pass the following:

ORDER

(i) The writ petitions are ***dismissed***;

(ii) Regulation 12(c) and the proviso thereto contained in the Karnataka Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2025 are held to be intra vires the Electricity Act, 2003, the Electricity Rules, 2005 and the National Tariff Policy;

(iii) The challenge to the consequential tariff order determining Cross-Subsidy Surcharge is rejected;

(iv) All pending interlocutory applications stand disposed of;

(v) No order as to costs.

Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE

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