**Reserved on : 25.04.2026**
**Pronounced on : 05.08.2026**

IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH

DATED THIS THE 05TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.104538 OF 2022 (GM- KEB)
C/W
WRIT PETITION No.100850 OF 2022 (GM – KEB)
WRIT PETITION No.100852 OF 2022 (GM - KEB)
WRIT PETITION No.100449 OF 2024 (GM - KEB)

**IN WRIT PETITION No.104538 OF 2022**

**BETWEEN:**

THE UGAR SUGAR WORKS LIMITED
A COMPANY REGISTERED UNDER
THE PROVISIONS OF THE COMPANIES ACT, 1956,
HAVING TIS REGISTERED OFFICE AT
MAHAVEER NAGAR, SANGLI,
MAHARASHTRA – 416 416,
REPRESENTED BY ITS
AUTHORIZED SIGNATORY,
SRI VINAY ARVIND DESHPANDE,
LIASSON OFFICER.

... PETITIONER



(BY SRI SHRIDHAR PRABHU, ADVOCATE)

**AND:**

1 . HUBLI ELECTRICITY SUPPLY COMPANY LIMITED

A COMPANY INCORPORATED UNDER
THE PROVISIONS OF THE COMPANIES ACT, 1956,
HAVING ITS REGISTERED,
OFFICE AT NAVANAGAR,
HUBBALLI – 580 025,
REPRESENTED BY ITS
MANAGING DIRECTOR,
E mail:md.hescom.kn @ gmail.com

2 . GULBARGA ELECTRICITY SUPPLY COMPANY LIMITED
A COMPANY REGISTERED UNDER
THE PROVISIONS OF COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE AT
STATION ROAD,
KALBURGI – 585 102,
REPRESENTED BY ITS
MANAGING DIRECTOR.

3. KARNATAKA ELECTRICITY REGULATORY COMMISSION
NO.16C-1, MILLER TANK BED AREA
VASANTHNAGAR
BENGALURU – 560 052
REPRESENTED BY ITS CHAIRMAN
E-MAIL:kerc-ka.nic.in

... RESPONDENTS

(BY SRI SHAHBAAZ HUSSAIN, ADVOCATE FOR R-1;
SRI C.R.HIREMATH, ADVOCATE FOR R2;
SRI B.S.KAMATE, ADVOCATE FOR R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO A) ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT ORDER DIRECTION DECLARING REGULATION 3(1) OF THE KARNATAKA ELECTRICITY REGULATORY COMMISSION (LICENSING) REGULATIONS, 2004, A TRUE COPY OF WHICH IS PRODUCED AS ANNEXURE-A PASSED BY THE 3RD RESPONDENT, SUFFERS FROM MANIFEST ARBITRARINESS, DISCRIMINATORY, OPPOSED TO

ARTICLE 14 OF THE CONSTITUTION OF INDIA, ILLEGAL, ULTRA VIRES THE SECTION 14 OF THE ELECTRICITY ACT, 2003 BEYOND THE LEGISLATIVE COMPETENCE OF THE 3RD RESPONDENT KARNATAKA ELECTRICITY REGULATORY COMMISSION AND CONSEQUENTLY QUASH THE SAME; B) ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION TO QUASH THE IMPUGNED ORDER DATED 03RD DECEMBER 2021 PASSED IN O.P. NO. 68/2020 AND O.P. NO. 69/2020 PASSED BY THE 3RD RESPONDENT KARNATAKA ELECTRICITY REGULATORY COMMISSION (KERC) A TRUE COPY OF SAME IS PRODUCED AT ANNEXURE-B;
C) ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT ORDER OR DIRECTION TO QUASH THE DEMAND LETTER BEARING NO. AEE/UGR/REV/HT/2096-2104 DATED 3 OCTOBER 2017 FOR RS. 9,73,71,689/-(RUPEES NINE CRORE SEVENTY THREE LAKH SEVENTY ONE THOUSAND SIX HUNDRED AND EIGHTY NINE ONLY) ISSUED BY THE 1ST RESPONDENT A TRUE COPY OF WHICH IS PRODUCED HEREIN AS ANNEXURE-C1; D) ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT ORDER OR DIRECTION TO QUASH THE DEMAND LETTER BEARING NO. GESCOM/CE(CP)EE(PIC) /AAO/2016-17/26089-97 DATED 24TH AUGUST, 2016 FOR RS. 2,83,49,821/- (RUPEES TWO CRORE EIGHTY THREE LAKH FORTY NINE THOUSAND EIGHT HUNDRED AND TWENTY ONE ONLY) ISSUED BY THE 2ND RESPONDENT, A TRUE COPY OF WHICH IS PRODUCED HEREIN AS ANNEXURE-C2; E) ISSUE ANY APPROPRIATE WRIT ORDER OR DIRECTION DECLARING THAT RESPONDENTS IS NOT AUTHORIZED TO COLLECT CROSS SUBSIDY SURCHARGE UNDER THE ELECTRICITY ACT, 2003 OR UNDER ANY OF THE ORDERS OR REGULATIONS PASSED THEREUNDER.

**IN WRIT PETITION No.100850 OF 2022**

**BETWEEN:**

SHRI HIRANYAKESHI SAHAKARI SAKKARE
KARKHANE NIYAMIT
A COMPANY REGISTERED UNDER
THE PROVISIONS OF THE COMPANIES ACT, 1959

HAVING ITS REGISTERED OFFICE AT
NIYAMIT SANKESHWAR,
HUKKERI, BELAGAVI – 591 314
KARNATAKA
(REPRESENTED BY ITS MANAGING DIRECTOR)

... PETITIONER

(BY SRI SHRIDHAR PRABHU, ADVOCATE)

**AND:**

1 . HUBLI ELECTRICITY SUPPLY COMPANY LIMITED
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF THE COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE
AT NAVANAGAR,
HUBBALLI – 580 025
REPRESENTED BY ITS
MANAGING DIRECTOR
E-MAIL. md.hescom.kh@gmail.com

2 . KARNATAKA ELECTRICITY REGULATORY COMMISSION
NO.16C-1, MILLER TANK BED AREA,
VASANTHANAGAR,
BENGALURU – 560 052
REPRESENTED BY ITS CHAIRMAN
E-MAIL. kerc-ka.nic.in

... RESPONDENTS

(BY SRI SHAHBAAZ HUSSAIN, ADVOCATE FOR R-1;
SRI B.S.KAMATE, ADVOCATE FOR R2;

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO A. ISSUE A WRIT OF CERTIORARI, OR ANY OTHER APPROPRIATE, WRIT, ORDER DIRECTION DECLARING REGULATION 3(1) OF THE KARNATAKA ELECTRICITY REGULATORY COMMISSION (LICENSING) REGULATIONS, 2004, SUFFERS FROM MANIFEST ARBITRARINESS,

DISCRIMINATORY, OPPOSED TO ARTICLE 14 OF THE CONSTITUTION OF INDIA, ILLEGAL, ULTRA VIRES THE SECTION 14 OF THE ELECTRICITY ACT, 2003 BEYOND THE LEGISLATIVE COMPETENCE OF THE 2ND RESPONDENT KARNATAKA ELECTRICITY REGULATORY COMMISSION AND CONSEQUENTLY QUASH THE SAME. A TRUE COPY OF THE KARNATAKA ELECTRICITY REGULATORY COMMISSION (LICENSING) REGULATION, 2004 IS PRODUCED AS ANNEXURE-A; B. ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION TO QUASH THE IMPUGNED ORDER DATED 03RD DECEMBER 2021 PASSED IN O.P NO.66/2020 BY THE 2ND RESPONDENT KARNATAKA ELECTRICITY REGULATORY COMMISSION (KERC). A TRUE COPY OF ORDER DATED 03RD DECEMBER 2021 PASSED IN O.P NO.66/2020 BY THE 2ND RESPONDENT KARNATAKA ELECTRICITY REGULATORY COMMISSION PRODUCED HEREIN AS ANNEXURE-B; C. ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION TO QUASH THE DEMAND LETTER BEARING NO.AEE(ELE)AAO/SA/EHT/1295, DATED 13TH JANUARY, 2017 ISSUED BY THE 1ST RESPONDENT. A TRUE COPY OF IMPUGNED DEMAND LETTER BEARING NO.NO.AEE(ELE)AAO/SA/EHT/1295, DATED 13TH JANUARY, 2017 ISSUED BY THE 1ST RESPONDENT IS PRODUCED HEREIN AS ANNEXURE-C; D. ISSUE ANY APPROPRIATE WRIT, ORDER OR DIRECTION DECLARING THAT RESPONDENT IS NOT AUTHORIZED TO COLLECT CROSS SUBSIDY SURCHARGE UNDER THE ELECTRICITY ACT, 2003 OR UNDER ANY OF THE ORDERS OR REGULATIONS PASSED THEREUNDER.

**IN WRIT PETITION No.100852 OF 2022**

**BETWEEN:**

GODAVARI BIOREFINARIES LIMITED
A COMPANY REGISTERED UNDER
THE PROVISIONS OF THE COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE AT
SOMAIYA BHAVAN, 45/47, MG ROAD,
FORT, MUMBAI – 400 001
(REPRESENTED BY ITS

AUTHORISED SIGNATORY)

... PETITIONER

(BY SRI SHRIDHAR PRABHU, ADVOCATE)

**AND:**

1 . HUBLI ELECTRICITY SUPPLY COMPANY LIMITED
(CIN. U31401KA2002SGC030437)
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF THE COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE
AT NAVANAGAR, HUBBALLI – 580 025
REPRESENTED BY ITS
MANAGING DIRECTOR
E-MAIL. md.hescom.kh@gmail.com

2 . KARNATAKA ELECTRICITY REGULATORY COMMISSION
NO.16C-1, MILLER TANK BED AREA,
VASANTHANAGAR,
BENGALURU – 560 052
REPRESENTED BY ITS CHAIRMAN
E-MAIL. kerc-ka.nic.in

... RESPONDENTS

(BY SRI SHAHBAAZ HUSSAIN, ADVOCATE FOR R-1;
SRI B.S.KAMATE, ADVOCATE FOR R2;

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO A. ISSUE A WRIT OF CERTIORARI, OR ANY OTHER APPROPRIATE, WRIT, ORDER DIRECTION DECLARING REGULATION 3(1) OF THE KARNATAKA ELECTRICITY REGULATORY COMMISSION (LICENSING) REGULATIONS, 2004, SUFFERS FROM MANIFEST ARBITRARINESS, DISCRIMINATORY, OPPOSED TO ARTICLE 14 OF THE CONSTITUTION OF INDIA, ILLEGAL, ULTRA VIRES THE SECTION 14 OF THE ELECTRICITY ACT, 2003 BEYOND THE LEGISLATIVE COMPETENCE OF THE 2ND RESPONDENT KARNATAKA ELECTRICITY REGULATORY COMMISSION AND CONSEQUENTLY QUASH THE

SAME. A TRUE COPY OF THE KARNATAKA ELECTRICITY REGULATORY COMMISSION (LICENSING) REGULATIONS, 02/12/2004 IS PRODUCED AS ANNEXURE-A; B. ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION TO QUASH THE IMPUGNED ORDER DATED 03$^{RD}$ DECEMBER 2021 PASSED IN O.P NO.65/2020 BY THE 2$^{ND}$ RESPONDENT KARNATAKA ELECTRICITY REGULATORY COMMISSION (KERC). A TRUE COPY OF ORDER DATED 03$^{RD}$ DECEMBER 2021 PASSED IN O.P NO.65/2020 BY THE 2$^{ND}$ RESPONDENT KARNATAKA ELECTRICITY REGULATORY COMMISSION PRODUCED HEREIN AS ANNEXURE-B; C. ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION TO QUASH THE DEMAND LETTER BEARING NO.MGP/AEE/SA/REV/HT/3759-61 DATED 16$^{TH}$ MARCH, 2018 ISSUED BY THE 1$^{ST}$ RESPONDENT. A TRUE COPY OF IMPUGNED DEMAND LETTER BEARING NO.MGP/AEE/SA/REV/HT/3759-61 DATED 16$^{TH}$ MARCH, 2018 ISSUED BY THE 1$^{ST}$ RESPONDENT IS PRODUCED HEREIN AS ANNEXURE-C; D. ISSUE ANY APPROPRIATE WRIT, ORDER OR DIRECTION DECLARING THAT RESPONDENT IS NOT AUTHORIZED TO COLLECT CROSS SUBSIDY SURCHARGE UNDER THE ELECTRICITY ACT, 2003 OR UNDER ANY OF THE ORDERS OR REGULATIONS PASSED THEREUNDER.

**IN WRIT PETITION No.100449 OF 2024**

**BETWEEN:**

GODAVARI BIOREFINARIES LIMITED
CIN: U67120MH1956PLC009707
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF COMPANIES ACT, 1956
HAVING THEIR REGISTERED OFFICE AT
SOMAIYA BHAVAN 45-47
MAHATMA GANDHI ROAD,
POST BOX NO. 384, FORT
MUMBAI – 400 001
(REPRESENTED BY ITS

AUTHORIZED SIGNATORY)

... PETITIONER

(BY SRI SRIDHAR PRABHU, ADVOCATE)

**<u>AND:</u>**

1 . UNION OF INDIA
MINISTRY OF POWER AND NEW AND
RENEWABALE ENERGY
SHRAM SHAKTI BHAWAN,
RAFI MARG,
NEW DELHI – 110 001
E-MAIL secy_power@nic.in
[REPRESENTED BY SECRETARY (POWER)]

2 . STATE OF KARNATAKA
DEPARTMENT OF ENERGY
ROOM NO. 236, 2ND FLOOR,
VIKASA SOUDHA,
DR. B.R.AMBEDKAR STREET
BENGALURU – 560 001
EMAIL: prs-energy@karnataka.gov.in
(REPRESENTED BY ITS
ADDITIONAL CHIEF SECRETARY)

3 . KARANATAKA ELECTRICITY REGULATORY
COMMISSION (KERC),
STATE ELECTRICTY REGULATORY COMMISSION
ESTABLISHED UNDER
SECTION 19 OF THE KER ACT, 1999
NO. 16C-1, MILLER TANK BED AREA
VASANTHANAGAR
BENGALURU – 560 052
EMAIL: chairmankerc@karnataka.gov.in.
(REPRESENTED BY ITS CHAIRMAN)

4 . HUBLI ELECTRICITY SUPPLY COMPANY LIMITED (HESCOM)

A COMPANY INCORPORATED UNDER
THE PROVISIONS OF COMPANIES ACT 1956
HAVING ITS REGISTERED OFFICE AT
CORPORATE OFFICE, HESCOM, NAVANAGAR
P.B.ROAD, HUBBALLI – 580 025
EMAIL-md.hescom.kn@gmail.com
(REPRESENTED BY ITS MANAGING DIRECTOR)

5 . BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED
(BESCOM)
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF COMPANIES ACT 1956
HAVING ITS REGISTERED OFFICE AT
CORPORATE OFFICE, BESCOM, K.R.CIRCLE,
BENGALURU – 560 001
EMAIL-md.bescom.co.in
(REPRESENTED BY ITS
MANAGING DIRECTOR)

6 . MANGALORE ELECTRICITY SUPPLY COMPANY LIMITED
(MESCOM)
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT
1ST FLOOR, MESCOM BHAVANA
CORPORATE OFFICE, MESCOM
KAVOOR CROSS ROAD, BEJAI,
MANGALURU – 575 004
EMAIL-mdmescom@rediffmail.com/md@mescom.in
(REPRESENTED BY ITS
MANAGING DIRECTOR)

7 . GULBARGA ELECTRICITY SUPPLY COMPANY LIMITED
(GESCOM)
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT
STATION ROAD, REVANSIDDESHWAR COLONY,

KHUBA PLOT, BRHAMPUR
KALABURAGI – 585 102
E-MAIL md@gescom.in
(REPRESENTED BY ITS
MANAGING DIRECTOR)

8 . CHAMUNDESHWARI ELECTRICITY COMPANY LIMITED
(CESC)
A COMPANY INCORPORATED UNDER
THE PROVISION OF COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT
CESC MYSORE
CORPORATE OFFICE
NO.29, VIJAYANAGAR 2ND STAGE
HINKAL, MYSURU – 570 017
E-MAIL: md@cescmysore.org
(REPRESENTED BY ITS
MANAGING DIRECTOR)

9 . KARNATAKA POWER TRANSMISSION CORPORATION
LIMITED (KPTCL)
A GOVERNMENT COMPANY INCORPORATED UNDER
THE PROVISION OF COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT
KARNATAKA POWER TRANSMISSION CORPORATION
LIMITED
CORPORATE OFFICE, KAVERI BHAVAN
K.G. ROAD, BENGALURU – 560 009
E-MAIL md@kptcl.com
(REPRESENTED BY ITS
MANAGING DIRECTOR)

... RESPONDENTS

(BY SRI M.B.KANAVI, ADVOCATE FOR R-1;
SRI T.HANUMAREDDY, ADVOCATE FOR R-2;
SRI B.S.KAMATE, ADVOCATE FOR R-3;
SRI SHAHBAAZ HUSSAIN, ADVOCATE FOR R4 TO R8;
SRI M.S.HALLKERI, ADVOCATE FOR R9)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO A) ISSUE A WRIT OF CERTIORARI OR ANY APPROPRIATE WRIT, ORDER OR DIRECTION TO QUASH THE IMPUGNED ELECTRICITY (AMENDMENT) RULES, 2023 DATED. 30$^{TH}$ JUNE 2023 NOTIFIED BY THE 1$^{ST}$ RESPONDENT UNION, PRODUCED AT ANNEXURE-A, WHEREIN THE LICENSE OF 4$^{TH}$ TO 9$^{TH}$ RESPONDENT WAS EXTENDED FOR A PERIOD OF TWENTY FIVE YEARS.

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 25.04.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

## CAV ORDER

Petitioners in Writ Petition Nos.100850 of 2022; 100852 of 2022; 104538 of 2022 and 100449 of 2024 would be referred to in the course of this order as petitioner Nos.1, 2, 3 and 4 respectively. Petitioner Nos.1 to 3 call in question the tariff order by which these petitioners were imposed tariff, namely the cross-subsidy surcharge ('the Surcharge' for short) and consequent demand notices issued by the Electricity Supply Companies ('the ESCOMs' for short). The challenge of petitioner No.4 is to the Electricity (Amendment) Rules, 2023 ('the impugned Rules' for short).

2. Heard Sri Sridhar Prabhu, learned counsel appearing for the petitioners; Sri Shahbaaz Hussain, learned counsel appearing for respondent No.1 in Writ Petition Nos.104538 of 2022, 100850 of 2022 and 100852 of 2022 and for respondent Nos.4 to 8 in Writ Petition No.100449 of 2024; Sri C.R. Hiremath, learned counsel appearing for respondent No.2 in Writ Petition No.104538 of 2022; Sri B.S.Kamate, learned counsel appearing for respondent No.3 in Writ Petition Nos.104538 of 2022 and 100449 of 2024 and for respondent No.2 in Writ Petition Nos.100850 of 2022 and 100852 of 2022; Sri M.B.Kanavi, learned counsel appearing for respondent No.1, Sri T. Hanumareddy, learned Additional Government Advocate appearing for respondent No.2 and Sri M.S.Hallikeri, learned counsel for respondent No.9 in Writ Petition No.100449 of 2024.

3. Facts, in brief, germane are as follows: -

**Writ Petition Nos.100850 of 2022, 100852 of 2022 and 104538 of 2022**

3.1. For the sake of convenience, facts obtaining in W.P.No.100850/2022 are narrated.

3.2. The petitioners are companies registered under the provisions of the Companies Act, 1956 and operate bagasse-based cogeneration power projects across Karnataka. These petitioners need electricity for operating their cogeneration plants and distillery units situated within the precincts of the cogeneration plant. The petitioners also generate electricity. Therefore, they are engaged in the business of import and export of electricity. The 1st respondent is the Hubli Electricity Supply Company ('the HESCOM' for short). The 2nd respondent is the Karnataka State Electricity Regulatory Commission (hereinafter referred to as 'the Commission' for short). On 13-01-2017, the HESCOM issues a demand notice to petitioner No.1 levying the Surcharge between 01-05-2013 and 31-10-2016 to the tune of Rs.1,19,72,620/-. The backdrop to the said demand notice was several tariff orders passed by the Commission, wherein it was held that the Surcharge would not be applicable to captive generating plants for carrying electricity to the destination for their own use and for those renewal energy generators, who are exempted from levy of the Surcharge by the Commission. This is where the Surcharge concept gets into the demand notice and the demand notice issued upon the petitioners. When things stood thus, petitioner No.1 enters into a power purchase/supply agreement with the 1st respondent/HESCOM, wherein petitioner No.1 supplied power from its cogeneration plant to the 1st respondent/HESCOM.

3.3. Petitioner No.1 then approaches this Court in Writ Petition No.11467 of 2019 and connected cases, seeking quashment of notices levying demand of Surcharge from petitioner No.1 and others alike the petitioner. A coordinate Bench of this Court on 04-11-2020 remits the matters back to the hands of the Commission, reserving liberty to the petitioners to avail of such remedy as is available in law, once they are re-heard in the matter. The Commission dismisses the petition filed by petitioner No.1 in O.P.No.66 of 2020, which forms the challenge in the said petition. Petitioners Nos. 2 and 3 challenge this very order of the Commission that is challenged by petitioner No.1. The petitioners also call in question Regulation 3(1) of the Karnataka Electricity Regulatory Commission (Licensing) Regulations, 2004 ('the Licensing Regulations' for short) as *ultra vires* to Section 14 of the

Electricity Act, 2003 ('the Act'). The prayer sought by petitioners Nos.1, 2 and 3 are common. The submissions, therefore, are common.

**<u>Writ Petition No.100449 of 2024:</u>**

3.4. Petitioner No.4 calls in question the impugned Rules, which were promulgated by respondent No.1/ Union of India as *ultra vires* to Section 14 of the Act. Rule 3 of the impugned Rules inserts Rules 4B and 4C to the Electricity Rules, 2005, which hold that the license granted under Section 14 of the Act would be valid for a period of 25 years where the duration of license is not specified and the licenses granted under the 1st, 2nd and 5th provisos of Section 14 of the Act would be deemed to be renewed, respectively.

4.1. Sri Sridhar Prabhu, learned counsel representing the petitioners contends that petitioners import energy from Indian Energy Exchange, which is a licensee of the Central Electricity Regulatory Commission ('CERC' for short) and the energy is transmitted by availing inter-State open access. The procedure for the same is provided by the CERC. Therefore, the learned counsel submits that the Surcharge cannot be imposed, since there is no provision for the same in the Regulations of the CERC and those Regulations are not applicable to inter-State exchanges. The learned counsel submits that during the period for which the impugned demand notices were issued by the ESCOMs, the petitioners were procuring energy from inter-State exchange through entities connected with the said exchange. The learned counsel would amplify his submission by contending that ESCOMs are not distribution licensees, since they are not licensees or deemed licensees under Section 14 of the Act.

4.2. The learned counsel by taking this Court through the provisions of the Act, would seek to differentiate between the license and the licensee and would demonstrate that to become a licensee under Section 14 of the Act, a person is required to obtain a licence unless they are appropriate Government. According to him, ESCOMs cannot be categorized as appropriate Government at all. The ESCOMs may be instrumentality of the State under Article 12 of the Constitution of India, but that would not render them to be akin to the position of the State Government. Insofar as the challenge to the Rules/Regulations is concerned, he would submit that the Regulations or the Rules framed under the Act are *ultra vires* to Sections 13 and 14 of the Act and therefore, become unenforceable. The learned counsel further submits that the Surcharge can be imposed only on a consumer of an ESCOM, who is utilizing the network of ESCOM and not who is connected with the inter-State exchange. Solar projects are exempted from the levy of the Surcharge and in the same breath, it is levied on cogeneration plants. The learned counsel submits that this amounts to discrimination and is in violation of Article 14 of the Constitution of India. The demands made by these ESCOMs are also barred by limitation as Section 56 of the Act limits the period for recovery from the hands of a distribution licensee upto two years.

4.3. The learned counsel would submit that Regulation 3(1) of the Licensing Regulations and the impugned Rules are *ultra vires* to the parent enactment - the Act. Learned counsel would further submit that there is hostile discrimination between the ESCOMs and other applicants seeking to apply for licenses under the Act.

5.1. The learned counsel representing the respondents - the ESCOMs in would vehemently refute the submissions in contending that the Surcharge is levied to compensate for the subsidized energy supplied to the poorer sections of the society. The consumers of ESCOMs are charged higher than the other consumers with the objective of neutralizing the subsidized supply of power to the weaker sections of the Society. He would submit that ESCOMs being a State under Article 12 of the Constitution of India, they would come within the ambit of the definition of 'appropriate Government' in terms of the Act. He would contend that the Karnataka Power Transmission Corporation Limited way back in the year 2002, informs the Commission that distribution companies were created by the Government of Karnataka and are responsible for distribution of electricity in the entire State. Accordingly, the Commission assigned part of the supply license to the newly formed distribution companies/ESCOMs.

5.2. The argument regarding validity of the ESCOMs' distribution license is put up now only to avoid payment of the Surcharge. The petitioners having entered into power purchase agreement with the ESCOMs cannot now say that they, despite having valid distribution license, should be exempted from the levy of the Surcharge. The learned counsel would further contend that ESCOMs are Government companies incorporated by the Government of Karnataka and under the 3rd proviso to Section 14 of the Act, which indicates that if the appropriate Government undertakes transmission or distribution of electricity, then the appropriate Government is a deemed licensee and would not be required to obtain separate license.

5.3. Learned counsel would contend that the petitioners are consumers under the Act and, therefore, are liable to pay the Surcharge regardless of the fact that they are using ESCOMs infrastructure or otherwise.

6. The learned counsel appearing for the respondents in all these petitions would adopt the submission of Sri Shahbaaz Hussain, learned counsel appearing for the ESCOMs.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material available on record.

8. In the light of the submissions and contra-submissions, it becomes necessary to notice whether petitioners are liable to pay the Surcharge as is demanded in the notices. The sheet anchor of the petitioners' submissions is that, the Surcharge cannot be levied on the petitioners as they are not the consumers of ESCOMs and electricity distribution is not undertaken by the State Government directly to make a demand.

9. The Apex Court in the case of **SESA STERLITE LIMITED v. ORISSA ELECTRICITY REGULATORY COMMISSION**[1] considers the issue of whether the Surcharge can be levied and holds as follows:

"…. …. ….

***(2) Open access and Cross-Subsidy Surcharge (CSS)***

**23.** Open access implies freedom to procure power from any source. Open access in transmission means freedom to the licensees to procure power from any source. The expression "open access" has been defined in the Act to mean:

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[1] **(2014) 8 SCC 444**

> "the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the appropriate Commission".

**24.** The Act mandates that it shall be duty of the transmission utility/licensee to provide non-discriminatory open access to its transmission system to every licensee and generating company. Open access in transmission thus enables the licensees (distribution licensees and traders) and generating companies the right to use the transmission systems without any discrimination. This would facilitate sale of electricity directly to the distribution companies. This would generate competition amongst the sellers and help reduce, gradually, the cost of generation/procurement.

**25. While open access in transmission implies freedom to the licensee to procure power from any source of his choice, open access in distribution with which we are concerned here, means freedom to the consumer to get supply from any source of his choice. The provision of open access to consumers, ensures right of the consumer to get supply from a person other than the distribution licensee of his area of supply by using the distribution system of such distribution licensee. Unlike in transmission, open access in distribution has not been allowed from the outset primarily because of considerations of cross-subsidies. The law provides that open access in distribution would be allowed by the State Commissions in phases. For this purpose, the State Commissions are required to specify the phases and conditions of introduction of open access.**

**26.** However open access can be allowed on payment of a surcharge, to be determined by the State Commission, to take care of the requirements of current level of cross-subsidy and the fixed cost arising out of the licensee's obligation to supply. Consequent to the enactment of the Electricity (Amendment) Act, 2003, it has been mandated that the State Commission shall within five years necessarily allow open access to consumers having demand exceeding one megawatt.

***(3) Cross-Subsidy Surcharge (CSS)—Its rationale***

**27.** The issue of open access surcharge is very crucial and implementation of the provision of open access depends on judicious determination of surcharge by the State Commissions. There are two aspects to the concept of surcharge — one, the cross-subsidy surcharge i.e. the surcharge meant to take care of the requirements of current levels of cross-subsidy, and the other, the additional surcharge to meet the fixed cost of the distribution licensee arising out of his obligation to supply. The presumption, normally is that generally the bulk consumers would avail of open access, who also pay at relatively higher rates. As such, their exit would necessarily have adverse effect on the finances of the existing licensee, primarily on two counts — one, on its ability to cross-subsidise the vulnerable sections of society and the other, in terms of recovery of the fixed cost such licensee might have incurred as part of his obligation to supply electricity to that consumer on demand (stranded costs). The mechanism of surcharge is meant to compensate the licensee for both these aspects.

**28.** Through this provision of open access, the law thus balances the right of the consumers to procure power from a source of his choice and the legitimate claims/interests of the existing licensees. Apart from ensuring freedom to the consumers, the provision of open access is expected to encourage competition amongst the suppliers and also to put pressure on the existing utilities to improve their performance in terms of quality and price of supply so as to ensure that the consumers do not go out of their fold to get supply from some other source.

**29. With this open access policy, the consumer is given a choice to take electricity from any distribution licensee. However, at the same time the Act makes provision of surcharge for taking care of current level of cross-subsidy. Thus, the State Electricity Regulatory Commissions are authorised to frame open access in distribution in phases with surcharge for:**

> **4. (*vi*)(*a*) current level of cross-subsidy to be gradually phased out along with cross-subsidies; and**
>
> **(*b*) obligation to supply."**
>
> **30. Therefore, in the aforesaid circumstances though CSS is payable by the consumer to the distribution licensee of the area in question when it decides not to take supply from that company but to avail it from another distribution licensee. In a nutshell, CSS is a compensation to the distribution licensee irrespective of the fact whether its line is used or not, in view of the fact that, but for the open access the consumer would pay tariff applicable for supply which would include an element of cross-subsidy surcharge on certain other categories of consumers. What is important is that a consumer situated in an area is bound to contribute to subsidising a low-end consumer if he falls in the category of subsidising consumer. Once a cross-subsidy surcharge is fixed for an area it is liable to be paid and such payment will be used for meeting the current levels of cross-subsidy within the area. A fortiori, even a licensee which purchases electricity for its own consumption either through a "dedicated transmission line" or through "open access" would be liable to pay cross-subsidy surcharge under the Act. Thus, cross-subsidy surcharge, broadly speaking, is the charge payable by a consumer who opt to avail power supply through open access from someone other than such distribution licensee in whose area it is situated. Such surcharge is meant to compensate such distribution licensee from the loss of cross-subsidy that such distribution licensee would suffer by reason of the consumer taking supply from someone other than such distribution licensee."**

9.1. The law as declared by the Apex Court in the afore-quoted judgement in **SESA STERLITE LIMITED** is further amplified by the Apex Court in the case of **RAMAYANA ISPAT**

**PRIVATE LIMITED. v. STATE OF RAJASTHAN**[2]**,** wherein it is held as follows:

"…. …. ….

**I.** ***Whether RERC had the jurisdiction to regulate inter-State open access under the 2003 Act?***

**46.** The primary contention of the appellants regarding the jurisdiction of RERC to regulate inter-State open access is without any merit. **The 2003 Act establishes a clear distinction between the regulatory functions of the CERC and State Commissions. While inter-State transmission falls within the domain of the CERC under Section 79(1)(*c*), the power of the State Commission to regulate intra-State transmission and distribution under Section 86(1)(*c*) is well established.** Furthermore, the appellants' argument that the 2016 Regulations have an extraterritorial effect is misplaced. The 2016 Regulations do not seek to regulate inter-State transmission per se but rather ensure that transactions impacting the Rajasthan grid remain under the oversight of the State Commission.

**47.** Section 79(1)(*c*) of the 2003 Act, defines the regulatory authority of the CERC over inter-State transmission of electricity. **However, this provision does not strip State Commissions, including RERC, of their jurisdiction over intra-State aspects of open access. Section 42(2) of the 2003 Act expressly empowers State Commissions to regulate open access within their respective States, ensuring fair and non-discriminatory access to transmission and distribution networks within the State. Further, Section 42(3) of the 2003 Act provides that whenever a consumer, with premises within the area of supply of a distribution licensee, requires supply of electricity from a generating company other than such distribution licensee, such transmission and supply shall be in accordance with the regulations made by the State Commission.**

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[2] **(2025) 8 SCC 747**

**48.** **The respondents have, in their submissions, drawn a relevant and appropriate parallel with the regulation of National Highways in the country, which also run across State borders. It has been rightly analogised by RERC that even though National Highways falls under Entry 23 of List I of the Seventh Schedule to the Constitution of India and is a Central subject, nevertheless when it passes through the respective States it is subject to tolls under the respective State laws as per Entry 59 of List II of the Seventh Schedule. Therefore, when "electricity" which is a subject-matter of Entry 38 of List III is wheeled from outside the State and distributed within the State, the regulations governing such distribution within the State cannot, by any stretch, be termed to be suffering from any excess of jurisdiction.**

**49.** The key determinant is not the source of power but its delivery, end-user, and consumption within Rajasthan's intra-State grid. **The 2003 Act provides a framework for demarcating responsibilities between CERC and State Commissions, ensuring that intra-State aspects of electricity regulation remain within the purview of State Commissions. The appellants' interpretation would render Section 42 redundant and contradict the legislative intent behind decentralising regulatory authority to the State Commissions. Thus, the claim that only CERC has the authority to regulate inter-State open access cannot be accepted in light of the legislative intent behind the 2003 Act. Therefore, RERC retains jurisdiction over intra-State transactions even if the power originates from another State.**

**50.** **Further, Section 2(47) of the 2003 Act defines "open access" as non-discriminatory access to transmission and distribution systems, encompassing both inter-State and intra-State transactions. The respondents argue that the statute does not differentiate between them for regulatory purposes, meaning that State Commissions naturally retain authority over open access within their jurisdictions. This interpretation aligns with Section 42, which explicitly grants State Commissions the power to regulate open access for consumers in their States. Additionally, Section 2(15) of**

> **the 2003 Act defines a "consumer" as any person who receives electricity from a licensee or whose premises are connected to a distribution system. Since distribution licensees operate within State boundaries, the regulation of open access for consumers falls squarely within the State Commission's jurisdiction. Section 2(17) further strengthens this position by defining a "distribution licensee" as an entity authorised to distribute electricity within a specific area, reinforcing the role of State Commissions in regulating transactions that ultimately facilitate electricity supply to consumers within the State."**

9.1.1. The Apex Court holds that transmission and supply shall be in accordance with the Regulations of the State Electricity Regulatory Commissions. Since the distribution licensees operate within the State boundaries, the regulation of open access for consumer falls within the State Electricity Regulatory Commissions' jurisdiction and they are empowered to impose these tariffs/ the Surcharge.

9.2. The Apex Court again considers this issue in the case of **JAIPUR VIDYUT VITARAN NIGAM LIMITED v. RAJASTHAN TEXTILE MILLS ASSOCIATION**[3]**,** wherein it is held as follows:

"…. …. ….

> **13. In the present case, the appellants are the distribution licensees. The duties of the distribution**

**[3] 2025 SCC OnLine SC 976**

**licensees have been specified in Section 42. Sub-Section (2) of Section 42 provides for the State Commission introducing open access. The first proviso to Sub-Section (2) provides that such open access shall be allowed on payment of a surcharge in addition to the charges for wheeling as may be determined by the State Commission. The said surcharge is the CSS. The second proviso to Sub-Section (2) provides that the CSS shall be utilised to meet the requirements of the current subsidy level within the distribution licensee's supply area.**

**14. As far as the CSS is concerned, this Court in the case of *Sesa Sterlite Ltd.* v. *Orissa Electricity Regulatory Commission*[4]., has laid down the rationale and purpose of levying the CSS. Paragraphs 25 to 29 of the said decision read thus:**

> **25. While open access in transmission implies freedom to the licensee to procure power from any source of his choice, open access in distribution with which we are concerned here, means freedom to the consumer to get supply from any source of his choice. The provision of open access to consumers, ensures right of the consumer to get supply from a person other than the distribution licensee of his area of supply by using the distribution system of such distribution licensee. Unlike in transmission, open access in distribution has not been allowed from the outset primarily because of considerations of cross-subsidies. The law provides that open access in distribution would be allowed by the State Commissions in phases. For this purpose, the State Commissions are required to specify the phases and conditions of introduction of open access.**
>
> **26. However open access can be allowed on payment of a surcharge, to be determined by the State Commission, to take care of the requirements of current level of cross-subsidy and the fixed cost arising out of the licensee's obligation to supply. Consequent to the enactment of the Electricity (Amendment) Act, 2003, it has been mandated that the State Commission shall within five years necessarily allow open access to**

**consumers having demand exceeding one megawatt.**

***(3) Cross-Subsidy Surcharge (CSS)—Its rationale***

**27. The issue of open access surcharge is very crucial and implementation of the provision of open access depends on judicious determination of surcharge by the State Commissions. There are two aspects to the concept of surcharge — one, the cross-subsidy surcharge i.e. the surcharge meant to take care of the requirements of current levels of cross-subsidy, and the other, the additional surcharge to meet the fixed cost of the distribution licensee arising out of his obligation to supply. The presumption, normally is that generally the bulk consumers would avail of open access, who also pay at relatively higher rates. As such, their exit would necessarily have adverse effect on the finances of the existing licensee, primarily on two counts — one, on its ability to cross-subsidise the vulnerable sections of society and the other, in terms of recovery of the fixed cost such licensee might have incurred as part of his obligation to supply electricity to that consumer on demand (stranded costs). The mechanism of surcharge is meant to compensate the licensee for both these aspects.**

28. Through this provision of open access, the law thus balances the right of the consumers to procure power from a source of his choice and the legitimate claims/interests of the existing licensees. Apart from ensuring freedom to the consumers, the provision of open access is expected to encourage competition amongst the suppliers and also to put pressure on the existing utilities to improve their performance in terms of quality and price of supply so as to ensure that the consumers do not go out of their fold to get supply from some other source.

29. With this open access policy, the consumer is given a choice to take electricity from any distribution licensee. However, at the same time the Act makes provision of surcharge for taking care of current level of cross-subsidy. Thus, the State Electricity Regulatory

Commissions are authorised to frame open access in distribution in phases with surcharge for:

4. (*vi*)(*a*) current level of cross-subsidy to be gradually phased out along with cross-subsidies; and
(*b*) obligation to supply."

(emphasis added)

... ... ...

**19.** We find no basis for the opinion expressed by the APTEL that determination of the CSS should coincide with the tariff determination. In the Rajasthan Tariff Regulations, 2014, under Regulation 2(a)(60), tariff has been defined as under:

"(60) "Tariff" means the schedule of charges for generation, transmission, wheeling and supply of electricity together with terms and conditions for application thereof;"

Thus, the determination of CSS is not necessarily a part of the tariff determination process. The CSS can be determined along with the tariff. But, it can be determined separately in accordance with Regulation 90 based on the prevailing rate of tariff. In fact, as per Regulation 90, the tariff payable by the relevant category of consumers is the basis for the CSS. Therefore, the APTEL committed an error by holding that the determination of the tariff and the determination of the CSS should always coincide. While determining rates of the CSS with effect from 1st December 2016, the commission relied upon the tariff fixed in terms of the order dated 22nd September 2016, which was the prevailing tariff as of 1st December 2016. The CSS is in the nature of compensation *qua* the tariff, which the distribution licensees would have received from the open access consumers but for their availing power from other sources. Hence, the CSS must be based on the applicable retail tariff recoverable during the relevant period. That is precisely provided in Regulation 90. The State Commission determined the CSS based on the data and financials provided in the order dated 22nd September 2016. As provided in the said order dated 22nd September 2016, the same was to be in force until there was a fresh tariff determination. The order dated 22nd September 2016 continued to be in force till 2nd November 2017. Moreover, the perusal of the order dated 22nd September 2016 shows that the determination of the CSS was not undertaken while doing the exercise of tariff determination. In fact, by the further order dated 2nd November 2017 passed by the State Commission, the determination of the CSS has been made along with the determination of the tariff. Thus, the determination made by order dated 1st December 2016 remained in force until 2nd November 2017. The effect of the determination of the CSS from 1st December 2016 is that the respondents-consumers were not charged the CSS as per the order from 22nd September 2016 till 1st December 2016. We may also note that the petition for the determination of the CSS was filed when the petition for fixing the F.Y. 2015-2016 tariff was pending.

**20. When the CSS was determined based on the prevailing rates of tariff, the APTEL ought not to have found fault with the Commission's determination of rates of the CSS.**

**21.** In the circumstances, we find that the view taken by the APTEL is erroneous. Therefore, the impugned judgment of the APTEL cannot be sustained, and the same is accordingly set aside. Accordingly, the order dated 1st December 2016 passed by the State Commission is restored. Needless to add that the order dated 1st December 2016 was to remain in force only till 2nd November 2017."

9.2.1. The facts obtaining in the said judgment of **JAIPUR VIDYUT VITARAN NIGAM** *supra* are that the Rajasthan Electricity Regulatory Commission ('RERC' for short) had passed an order allowing the distribution licensee to impose the Surcharge on industrial units who were drawing power directly from the State grid. The order of the RERC was challenged before the Appellate Tribunal for Electricity ('APTEL' for short) and the order of the RERC was reversed. Thereafter, the appellant challenged the order of

APTEL before the Apex Court. The Apex Court set aside the order of APTEL and restored the order of the RERC.

10. In the light of the Apex Court considering every substratum of law interpreting all the provisions of the Act that have now been questioned before this Court, a deeper delving into the matter would not arise. Suffice it is to state that the petitioners are drawing power from ESCOMs’ distribution lines and they are operating or supplying in the State of Karnataka.

11. The contention that solar power projects are exempted while bagasse-based cogeneration plants are levied with huge Surcharge being discriminatory, is a submission that is noted only to be rejected. The petitioners should pay the Surcharge and the contention that Solar power is exempted is neither here nor there. Therefore, the demand notices so issued, which are called in question in the petitions filed by the petitioner Nos.1, 2 and 3 stand sustained and the challenge or contentions advanced against the said demand notice fail.

12. The petitioners have also challenged Regulation 3(1) of the Licensing Regulations and the impugned Rules in all these petitions contending that it runs counter to Sections 14 and 16 of the Act. Sections 14 and 16 of the Act read as follows:

> "**14. Grant of licence**.—The Appropriate Commission may, on an application made to it under Section 15, grant a licence to any person—
>
> (*a*) to transmit electricity as a transmission licensee; or
>
> (*b*) to distribute electricity as a distribution licensee; or
>
> (*c*) to undertake trading in electricity as an electricity trader,
>
> in any area as may be specified in the licence:
>
> Provided that any person engaged in the business of transmission or supply of electricity under the provisions of the repealed laws or any Act specified in the Schedule on or before the appointed date shall be deemed to be a licensee under this Act for such period as may be stipulated in the licence, clearance or approval granted to him under the repealed laws or such Act specified in the Schedule, and the provisions of the repealed laws or such Act specified in the Schedule in respect of such licence shall apply for a period of one year from the date of commencement of this Act or such earlier period as may be specified, at the request of the licensee, by the Appropriate Commission and thereafter the provisions of this Act shall apply to such business:
>
> Provided further that the Central Transmission Utility or the State Transmission Utility shall be deemed to be a transmission licensee under this Act:
>
> Provided also that in case an Appropriate Government transmits electricity or distributes electricity or undertakes trading in electricity, whether before or after the commencement of this Act, such Government shall be deemed

to be a licensee under this Act, but shall not be required to obtain a licence under this Act:

Provided also that the Damodar Valley Corporation, established under sub-section (1) of Section 3 of the Damodar Valley Corporation Act, 1948 (14 of 1948), shall be deemed to be a licensee under this Act but shall not be required to obtain a licence under this Act and the provisions of the Damodar Valley Corporation Act, 1948 (14 of 1948), in so far as they are not inconsistent with the provisions of this Act, shall continue to apply to that Corporation:

Provided also that the Government company or the company referred to in sub-section (2) of Section 131 of this Act and the company or companies created in pursuance of the Acts specified in the Schedule, shall be deemed to be a licensee under this Act:

Provided also that the Appropriate Commission may grant a licence to two or more persons for distribution of electricity through their own distribution system within the same area, subject to the conditions that the applicant for grant of licence within the same area shall, without prejudice to the other conditions or requirements under this Act, comply with the additional requirements relating to the capital adequacy, creditworthiness, or code of conduct as may be prescribed by the Central Government, and no such applicant, who complies with all the requirements for grant of licence, shall be refused grant of licence on the ground that there already exists a licensee in the same area for the same purpose:

Provided also that in a case where a distribution licensee proposes to undertake distribution of electricity for a specified area within his area of supply through another person, that person shall not be required to obtain any separate licence from the concerned State Commission and such distribution licensee shall be responsible for distribution of electricity in his area of supply:

Provided also that where a person intends to generate and distribute electricity in a rural area to be notified by the State Government, such person shall not require any licence for such generation and distribution of electricity, but he shall

> comply with the measures which may be specified by the Authority under Section 53:
>
> Provided also that a distribution licensee shall not require a licence to undertake trading in electricity.
>
> … … …
>
> **16. Conditions of licence**.—The Appropriate Commission may specify any general or specific conditions which shall apply either to a licensee or class of licensees and such conditions shall be deemed to be conditions of such licence:
>
> Provided that the Appropriate Commission shall, within one year from the appointed date, specify any general or specific conditions of licence applicable to the licensees referred to in the first, second, third, fourth and fifth provisos to Section 14 after the expiry of one year from the commencement of this Act."

Section 14 of the Act deals with grant of licence. Section 16 of the Act deals with conditions for grant of licence. Both these provisions refer the Commission as the Appropriate Commission. The Appropriate Commission shall within one year from the appointed date specify in general or specific conditions which shall apply either to a licensee or class of licensees. The grant of licence is for transmission of electricity, distribution of electricity and undertaking trading in electricity. Therefore, the petitioners cannot now contend that Regulation 3(1) of the Licensing Regulations and the impugned Rules are *ultra vires* to Section 14 of the Act. It becomes apposite to notice the judgment of the Apex Court in the case of **SUNDEW PROPERTIES LIMITED v. TELANGANA STATE ELECTRICITY REGULATORY COMMISSION**[4], wherein it is held as follows:

"…. …. ….

**32. Further, the provisos to Section 14 of the Electricity Act distinguish between entities that are ipso facto deemed distribution licensees and those that are merely declared as deemed licensees without clarity on the necessity of making an application to obtain a licence. For instance, the third and fourth provisos to Section 14 not only confer the status of deemed licensees to the State Government and the Damodar Valley Corporation, respectively, but also explicitly exempt them from the requirement to obtain a licence. Entities not covered by these specific provisos would, therefore, be required to obtain a licence. The requirement of obtaining a licence has to be read into the other provisos to Section 14 since, for instance, the second and fifth provisos to Section 14 grant deemed licensee status to Central/State Transmission Utility and a government company, respectively, but neither specifies the requirement to obtain a licence nor exempts them from obtaining licence.**

**33.** As far as the 2010 Notification is concerned, the proviso to Section 14(*b*) introduced by the said Notification, confers deemed licensee status on SEZ developers. However, such conferment does not explicitly exclude the requirement of obtaining a licence. This lack of specificity, especially when compared with the clear provisions for other entities, suggests that the legislative intent was not to ipso facto grant SEZ developers the status of deemed distribution licensees, thereby obliging them to obtain a licence by making an application in terms of Regulation 13. TSERC is, therefore, empowered to scrutinise such applications in accordance with law, however, only limited to the provisions which are applicable to deemed

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**[4] (2024) 6 SCC 443**

> licensees. Verification and acceptance recognise their status as deemed licensees."

(Emphasis supplied at each instance)

The Apex Court considers the purport of Section 14 of the Act and the notifications issued thereunder. Therefore, there is no inkling that either Regulation 3(1) of the Licensing Regulations or the impugned Rules are inconsistent with the Act. The petitioners are liable to pay the Surcharge and shall disburse such payment as the challenge to the order of the Commission on the aforesaid grounds would straight fail, for the reason that the Apex Court has already considered the aforesaid contentions and answered in favour of the Commission or the ESCOMs, as the case may be.

13. Finding no merit in these petitions, the petitions stand rejected.

All pending I.As.' stand disposed, as a consequence.

**SD/-**
**(M.NAGAPRASANNA)**
**JUDGE**

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CT:MJ