Important Judgments of Supreme Court and Appellate Tribunal

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Layout of this Presentation

- Supreme Court Judgments
  - Judgments related to power sector
  - Judgments laying some important principles
- Appellate Tribunal (APTEL) Judgments will be discussed during the discussions on Supreme Court Judgments.

Important Judgment of Supreme Court On Electricity Matters

- West Bengal ERC Vs CESC
- PTC India Ltd Vs CERC
- MERC Vs Reliance Energy Limited
- Tata Power Company Vs MERC
- Tata Power Company Vs MERC
- BEST Vs MERC
- Sesa Sterlite Vs OERC
- T.N. Gen & Dist Corp Vs PNP Power Gen

WEST BENGAL ELECTRICITY REGULATORY COMMISSION & OTHERS

VS

CALCUTTA ELECTRICITY SUPPLY COMPANY

(2002)8SCC715

Facts

- The WBERC by an order dated 7.11.2001 determined the tariff for the sale of electricity by the CESC for the year 2000-2001 and 2001-2002.
- Being aggrieved by the said determination of tariff, the Company preferred an appeal before the High Court of Calcutta under Section 27 of the Electricity Regulatory Commissions Act, (the 1998 Act).
- **The High Court by the impugned judgment allowed the appeal of the Company by itself re-determining the tariff and enhancing the same.**

Facts

- WBERC preferred Appeal before Supreme Court specifically
- **For the reason that it was aggrieved by the interpretation by the High Court of some of the provisions of the 1998 Act**
- **As also the High Court's finding in regard to the validity of the Regulations and the procedure to be followed in fixing the tariff**
- **Which, according to the WBERC, would make the Commission nugatory and defeat the very object of the 1998 Act.**

Facts

- Bharat Chamber of Commerce also preferred Appeal against the order made by the High Court dated 23.4.2002, whereby the High Court **rejected the application filed by the appellant, seeking the refusal of the Judges from hearing the appeal on the ground of bias**
- and also against an order made by the High Court on 7.5.2002, whereby the High Court declined to hear the arguments of the appellants on merits, on the ground that the said appellants were not entitled to the heard by the High Court, because of the objections raised by the said appellants attributing bias to the Judges.

Facts

- Some other consumers also filed appeals being aggrieved, not only by the order of their non impleadment, but also by the final order of the High Court dated 7-14/5/02, by which the High Court set aside the tariff fixed by the Commission and re-fixed and enhanced the tariff.

Commission's Tariff Order

- The Commission before which the Company had filed its application for fixing of tariff for the year 2002-2003, did not entertain the said application, on the ground that the same was belated.

- But on the Company's application for the year 2000-01, the Commission after hearing the parties and taking into consideration other materials on record, including the report of the consultants, fixed the tariff for the year 2000-01 and also for the year 2001-2002.

- While so determining the tariff, the Commission followed the provisions of the 1998 Act and the relevant regulations framed by the Commission.

High Court's Judgment

- The High Court rejected the impleadment application of the some of the Consumers, set aside the tariff order and proceeded to re-fix the tariff by only following the principles of Schedule VI to the 1948 Act and to the exclusion of other requirements of Section 29 of the 1998 Act.

- The High Court also came to the conclusion that the regulations framed by the Commission, especially the ones pertaining to the right of the consumers to be heard in the proceedings, as also the principles to be followed in determining the tariff, were contrary to law and

High Court's Judgment

- Directed the Commission, in no uncertain terms, that the Commission's Regulations will have to be modified to bring them in conformity with its (High Court's) observations in the judgment, and further stated that failure to do so might result in the invocation of the High Court's power under the Contempt of Courts Act. In deciding the validity of the regulations,

High Court's Judgment

- How could the High Court examine the validity of regulations in a Appeal under Appellate Jurisdiction?
- The High Court proceeded on the basis that while entertaining the power of appeal under Section 27 of the 1998 Act, it also has the power vested in it under Article 226 and 227 of the Constitution of India.
- It also held that the non-obstante clause found in Section 29 of the 1998 Act and the other overriding provisions found in the 1998 Act could not come in the way of the application of the VI Schedule to the 1948 Act, while determining the tariff by the Commission. On factual aspects, it reversed many of the findings of the Commission .

Issues before Supreme

- Locus Standi: Whether consumers have right to be heard before the Commission and before the Appellate Forum.
- Vires of the Regulations: Whether the Appellate Forum has jurisdiction to examine the legality of the Regulations framed by the Commission under its Appellate jurisdiction.
- Who is authorized to determine the tariff under the Act

Locus standi

- The question before the Supreme Court for consideration was whether the consumers have a legal right or not to be heard in the proceedings before the Commission under Section 29(2) of the 1998 Act, as also in an appeal under Section 27 of the said Act.

- The High Court in the course of its judgment has denied this right to the consumers, primarily on the ground that permitting a large number of consumers who in the instant case are to the extent of 17 lacs would amount to an indiscriminate representation.

- The High Court observed that permitting such large scale interference in the proceedings would lead to absurdity.

- **The high Court also held that normally a rate payer is not heard before such a rate is fixed on the basis of public policy. In support of this conclusion, the High Court relied upon the procedure for fixing the rate of income-tax wherein a tax-payer had no such say in such fixation of the rate of income-tax.**

Locus standi

- The Supreme Court observed that though generally it is true that the price fixation is in the nature of a legislative function and no rule of natural justice is applicable, the said principle cannot be applied where the statute itself has provided a right of representation to the party concerned.

- The Court held that 1998 Act having conferred a right on the consumer to be heard in the matter pertaining to determination of the tariff, the High Court was in error in denying that right to the consumers. Consequently, the right of the consumer of prefer an appeal under Section 27 of the 1998 Act to the High Court is similar, if they are in any manner aggrieved by any order made by the Commission. Similarly, if the company is an aggrieved party and prefers an appeal, **then it has to make such of those consumers who have been heard by the Commission, as party respondent, and such consumers will have the right of audience before the appellate court.**

Vires of the Regulations

- The question: whether the High Court sitting as **an appellate court** under Section 27 of the Act has the jurisdiction to go into the validity of the Regulations framed under the Act and if so, factually the Regulations as found by the High Court are contrary to the statute.

- The High Court has proceeded to declare the regulations contrary to the Act in a proceeding which was initiated before it in its appellate power under Section 27 of the Act. The appellate power of the High Court in the instant case is derived from the 1998 Act.

- The Regulations framed by the Commission are under the authority of subordinate legislation conferred on the Commission in Section 58 of the 1998 Act. **The Regulations so framed have been placed before the West Bengal Legislature, therefore it has become a part of the statute.**

- **That being so, in our opinion the High Court sitting as an appellate court under the 1998 Act could not have gone into the validity of the said Regulations in exercise of its appellate power.**

Vires of the Regulations

- Referring to Supreme Court's decision the case of K.S. Venkataraman & Co. v. State of Madras [1966]60ITR112(SC) in para 45 of its judgment further held that

  "45. This Court in after discussing the judgment of the Calcutta High Court in the cases of … held:

- ***"There is, therefore, weighty authority for the proposition that a tribunal, which is a creature of a statute, cannot question the vires of the provisions under which it functions."***

Appeal Nos. 42 of 2005 before Full Bench of APTEL

- Relying of Hon'ble Supreme Court's judgment in WBSERC case the APTEL held "Accordingly, on the first point we hold that the Regulations framed under Electricity Act 2003, are in the nature of subordinate legislation and on second point we hold that the challenge to their validity falls outside the purview of the Tribunal."
- However, Full Bench of APTEL in para 21 of the Judgment has observed:
- "21. Before parting with the judgment, we would like to point out that this Tribunal ought to have been conferred with the power to determine the question of validity of the Regulations framed under the Electricity Act, 2003 as otherwise the purpose for which the Tribunal was constituted is being frustrated. In most of the appeals, the questions relating to the validity of the Regulations framed by the various Electricity Regulatory Commissions are involved. Since the Tribunal cannot examine the validity of the Regulations, it may not possible to render relief to the aggrieved parties even though Regulations may be contrary to the provisions of the Electricity Act, 2003. In such a situation, the appeals are liable to be dismissed and the appellants will have to go before the concerned High Courts for challenging the Regulations under Article 226 of the Constitution. **Therefore, it is eminently fit and proper to introduce necessary amendments to Article 323(B) of the Constitution and the Electricity Act, 2003 for conferring power on the Tribunal to examine the vires of the Regulations."**

Tariff Determination

- The next question: Who determines the tariff under the 1998 Act
- The Supreme Court in Para 58 of the judgment observed that

  "Having carefully considered the provisions of the Act as also the arguments advanced in this regard, we are of the opinion that under the 1998 Act, **it is the Commission concerned and in the instant case the State Commission of West Bengal, which is the sole authority to determine the tariff, of course as per the procedure in the said Act**."

An effective appellate forum

- The Court at the end of the judgments observed the following:

  "*The Commission constituted under Section 17 of the 1998 Act is an expert body and the determination of tariff which has to be made by the Commission involves a very highly technical procedure, requiring working knowledge of law, engineering, finance, commerce, economics and management.*

  Therefore, we think it would be more appropriate and effective if a statutory appeal is provided to a similar expert body, so that the various questions which are factual and technical that arise in such an appeal, get appropriate consideration in the first stage also.

An effective appellate forum

Therefore, we recommend that the appellate power against an order of the State Commission under the 1998 Act should be conferred either on the Central Electricity Regulatory Commission or on a similar body.

We notice that under the Telecom Regulatory Authority of India Act, 1997 in Chapter IV, a similar provision is made for an appeal to a special Appellate Tribunal and thereafter a further appeal to the Supreme Court on questions of law only. We think a similar appellate provisions may be considered to make the relief of appeal more effective.

Decisions of the Court

1) All stake holders have right to participate in tariff proceedings before the Commissions as well as before the Appellate forum.
2) Regulations once framed by the Commission and placed before the legislature becomes part of the parent statute
3) Higher Court under its Appellate jurisdictions do not have power to look in to the vires of the such regulations
4) It is only the Commission which is the sole authority to determine the tariff as per the procedure in the said Act.
5) There should be an expert Appellate Forum.

POWER TRADING CORPORATION INDIA LTD.

VS

CENTRAL ELECTRICITY REGULATORY COMMISSION

Facts

- In this civil appeal, the appellants had challenged the vires of the Central Electricity Regulatory Commission (Fixation of Trading Margin) Regulations, 2006 as null and void before the Appellate Tribunal for Electricity and had prayed for quashing of the said Regulations.

- The Tribunal, however, dismissed the appeals holding that it does not have jurisdiction to look in to the vires of the Regulations. The Tribunal held that the appropriate course of action for the appellants is to proceed by way of judicial review under the Constitution.

QUESTIONS OF LAW

(i) Whether the Appellate Tribunal constituted under the Electricity Act, 2003 has jurisdiction under Section 111 to examine the validity of Central Electricity Regulatory Commission (Fixation of Trading Margin) Regulations, 2006 framed in exercise of power conferred under Section 178 of the 2003 Act?

(ii) Whether Parliament has conferred power of judicial review (writ jurisdiction) on the Appellate Tribunal for Electricity under Section 121 of the 2003 Act?

(iii) Whether capping of trading margins could be done by the CERC by making a Regulation in that regard under Section 178 of the 2003 Act?

Whether capping of trading margins could be done by the CERC by making a Regulation in that regard under Section 178 of the 2003 Act?

- Law comes into existence not only through legislation but also by regulation and litigation. Laws from all three sources are binding. According to *Professor Wade*, "between legislative and administrative functions we have regulatory functions". A statutory instrument, such as a rule or regulation, emanates from the exercise of delegated legislative power which is a part of administrative process resembling enactment of law by the legislature whereas a quasi-judicial order comes from adjudication which is also part of administrative process resembling a judicial decision by a court of law.

Whether capping of trading margins could be done by the CERC by making a Regulation in that regard under Section 178 of the 2003 Act?

- Price fixation exercise is really legislative in character, unless by the terms of a particular statute it is made quasi-judicial as in the case of Tariff fixation under Section 62 made appealable under Section 111 of the 2003 Act.

Whether capping of trading margins could be done by the CERC by making a Regulation in that regard under Section 178 of the 2003 Act?

- In the case of Narinder Chand Hem Raj and Ors. v. Lt. Governor, Administrator, Union Territory, Himachal Pradesh and Ors. reported in (1971) 2 SCC 747 it has been held that **no court can direct a subordinate legislative body or the legislature to enact a law or to modify the existing law and if Courts cannot so direct, much less the Tribunal, unless power to annul or modify is expressly given to it.**

Whether capping of trading margins could be done by the CERC by making a Regulation in that regard under Section 178 of the 2003 Act?

- To regulate is an exercise which is different from making of the regulations. However, making of a regulation under Section 178 is not a pre-condition to the Central Commission taking any steps/measures under Section 79(1). As stated, if there is a regulation, then the measure under Section 79(1) has to be in conformity with such regulation under Section 178.
- For example, under Section 79(1)(g) the Central Commission is required to levy fees for the purpose of the 2003 Act. An Order imposing regulatory fees could be passed even in the absence of a regulation under Section 178. If the levy is unreasonable, it could be the subject matter of challenge before the Appellate Authority under Section 111 as the levy is imposed by an Order/decision making process.

Whether capping of trading margins could be done by the CERC by making a Regulation in that regard under Section 178 of the 2003 Act?

- Making of a regulation under Section 178 is not a pre-condition to passing of an Order levying a regulatory fee under Section 79(1)(g). However, if there is a regulation under Section 178 in that regard then the Order levying fees under Section 79(1)(g) has to be in consonance with such regulation.
- Similarly, while exercising the power to frame the terms and conditions for determination of tariff under Section 178, the Commission has to be guided by the factors specified in Section 61. It is open to the Central Commission to specify terms and conditions for determination of tariff even in the absence of the regulations under Section 178. **However, if a regulation is made under Section 178, then, in that event, framing of terms and conditions for determination of tariff under Section 61 has to be in consonance with the regulation under Section 178.**

Whether capping of trading margins could be done by the CERC by making a Regulation in that regard under Section 178 of the 2003 Act?

- One must keep in mind the dichotomy between the power to make a regulation under Section 178 on one hand and the various enumerated areas in Section 79(1) in which the Central Commission is mandated to take such measures as it deems fit to fulfil the objects of the 2003 Act.
- Applying this test to the present controversy, it becomes clear that one such area enumerated in Section 79(1)(j) refers to fixation of trading margin. Making of a regulation in that regard is not a pre- condition to the Central Commission exercising its powers to fix a trading margin under Section 79(1)(j), however, if the Central Commission makes a regulation fixing a cap on the trading margin under Section 178 then whatever measures a Central Commission takes under Section 79(1)(j) has to be in conformity with Section 178.

Whether capping of trading margins could be done by the CERC by making a Regulation in that regard under Section 178 of the 2003 Act?

- Further, it is important to bear in mind that making of a regulation under Section 178 became necessary because a regulation made under Section 178 has the effect of interfering and overriding the existing contractual relationship between the regulated entities. A regulation under Section 178 is in the nature of a subordinate Legislation. **Such subordinate Legislation can even override the existing contracts including Power Purchase Agreements which have got to be aligned with the regulations under Section 178** and which could not have been done across the board by an Order of the Central Commission under Section 79(1)(j).

Whether capping of trading margins could be done by the CERC by making a Regulation in that regard under Section 178 of the 2003 Act?

- It is clear that fixation of the trading margin in the inter-State trading of electricity can be done by making of regulations under Section 178 of 2003 Act. Power to fix the trading margin under Section 178 is, therefore, a legislative power and the Notification issued under that section amounts to a piece of subordinate legislation, which has a general application in the sense that even existing contracts are required to be modified in terms of the impugned Regulations.
- **These Regulations make an inroad into contractual relationships between the parties. Such is the scope and effect of the impugned Regulations which could not have taken place by an Order fixing the trading margin under Section 79(1)(j). Consequently, the impugned Regulations cannot fall within the ambit of the word "Order" in Section 111 of the 2003 Act.**

Whether the Appellate Tribunal has jurisdiction under Section 111 to examine the validity of Regulations, 2006 framed in exercise of power conferred under 2003 Act?

- A regulation under Section 178 is made under the authority of delegated legislation and consequently its validity can be tested only in judicial review proceedings before the courts and not by way of appeal before the Appellate Tribunal for Electricity under Section 111 of the said Act.
- If a dispute arises in adjudication on interpretation of a regulation made under Section 178, an appeal would certainly lie before the Appellate Tribunal under Section 111, however, no appeal to the Appellate Tribunal shall lie on the validity of a regulation made under Section 178.

Whether Parliament has conferred power of judicial review on the ATE under Section 121 of the 2003 Act?

- Section 121 of the 2003 Act does not confer power of judicial review on the Appellate Tribunal. The words "orders", "instructions" or "directions" in Section 121 do not confer power of judicial review in the Appellate Tribunal for Electricity. In this judgment, we do not wish to analyse the English authorities as we find from those authorities that in certain cases in England the power of judicial review is expressly conferred on the Tribunals constituted under the Act. In the present 2003 Act, the power of judicial review of the validity of the Regulations made under Section 178 is not conferred on the Appellate Tribunal for Electricity.

Decisions of the Court

- Regulations framed by the Commission under the Act are subordinate legislations and therefore can be challanged only under judicial review.
- APTEL do not have powers of judicial review both under Section 111 as well as under section 121.
- Existing contracts (PPAs) would have to be amended to bring in line with the Regulations.
- Framing of regulations is not a precondition for performing its functions under the Act. However, once Regulations have been framed by the Commission, it is bound by such regulations.

MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

VS

RELIANCE ENERGY LTD. & ORS.

Appeal (civil) 2846 of 2006

Facts

- The Maharashtra Commission on 3.8.2004 addressed a notice to all its licensees/distribution companies in Maharashtra and made an inquiry from them with regard to raising of the bills by the said licensees/distribution companies on the basis other than the actual meter reading for the relevant period, when large variations in consumption were noticed, or for other reasons.
- Aggrieved by this order an appeal under Section 111 of the of the Electricity Act, 2003 was filed by Reliance Energy limited Contending that the Commission has no jurisdiction to entertain the consumer's complaints .

Facts

- APTEL, by an order dated 29th March 2006 set aside the Commission order on the ground that the Act has made specific provisions under Section 42(5) and 42(6) by establishing the office of CGRF and Ombudsman and accordingly, the Commission has no jurisdiction over individual consumer's complaints
- Aggrieved by this order of APTEL the Maharashtra Commission filed an Appeal before the Supreme Court.

Court's Observations

- Perusal of Section 86(1)(f) of the Act that the State Government has only power to adjudicate upon disputes between licensees and generating companies. It follows that the Commission cannot adjudicate disputes relating to grievances of individual consumers. The adjudicatory function of the Commission is thus limited to the matter prescribed in Section 86(1)(f).
- A comprehensive reading of all these provisions leaves no manner of doubt that the Commission is empowered with all powers right from granting licence and laying down the conditions of licence and to frame regulations and to see that the same are properly enforced and also power to enforce the conditions of licence under sub- section (6) of Section 128.

Court's Observations

- There can be no manner of doubt that the Commission has full power to pull up any of its licensee or distribution company to see that the rules and regulations laid down by the Commission are properly complied with. After all, it is the duty of the Commission under Sections 45(5), 55(2), 57, 62, 86, 128, 129, 181 and other provisions of the Act to ensure that the public is not harassed.

Court's Observations

- The Commission did not get an investigation made under Section 128(1) which it could have done, and without that, and without getting a report under Section 128(5) it passed an order directing refund of the amounts collected by the licensees/distribution companies, which in our opinion was not permissible, since such a direction could, if at all, be given after getting a report of the investigation agency.
- The Commission could have made an investigation and got a report from the investigation agency and on that basis directions could have been given. However, that was not done.

Court's decision

- In these circumstances, in our opinion, the view taken by the Appellate Authority in the impugned order to that extent is correct that the individual consumers should have approached the appropriate forum under Section 42(5) of the Act.

TATA POWER COMPANY

VS

MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

2009ELR(SC)246

Facts

- TPC has been generating power and supplying to licensees viz., BEST and REL in Mumbai for more than half century.
- Indisputably, however, no agreement in writing had ever been entered into by and between TPC and RInfra. It must be noted in this regard that since its inception and till a very long time RInfra continued to buy its entire requirement of power from TPC.

Facts

- However in 1978 RInfra's distribution license was amended to permit it to put up a generation station to supply power only to its own consumers. In or about 1995, RInfra commissioned its 500MW generating plant at Dahanu, pursuant whereto the quantum of power purchased by it from TPC was reduced by about 54%. Even then RInfra had been buying nearly 42% of the energy generated by TPC. It had continued to purchase its remaining requirements of power from TPC.
- RInfra took the stand that it wanted to supply to its existing consumers with the power generation from its own Dahanu and proposed project at Palghar (495 MW) instead of providing power from TPC

Facts

- `Principles of Agreement' (POA) was executed between TPC and RInfra on or about 31st January, 1998 inter alia providing that there be a minimum power purchase (`off-take') on the basis of `pay or take' in each financial year by RInfra on the basis of its consumer demand forecast. The POA also envisaged execution of a detailed Power Purchase Agreement by the parties. However, no such agreement ever fructified.
- Thereafter the 2003 Act came into force with effect from 26th May, 2003. Under the new Act the `Generating Companies' have been given freedom of choice to sell power to any person or licensee.

Facts

- The Act also introduced the concept of `open access' which allows the distribution licensee to source its power from any generating company. The distributors accordingly under the changed law do not have to depend upon state based generators to meet their needs.
- On or about 16th March, 2006, TPC (D) entered into a PPA with TPC (G) for 477 MW power which was submitted for approval of MERC on 27th December, 2006.

Facts

- in the meanwhile TPC proposed to enter into PPA with RInfra for its balance quantity after meeting the contractual requirement of BEST for 800 MW and of TPC (D) for 477 MW of electricity . The offer was made by TPC to RInfra for supply of 600 MW which was not accepted. The later instead insisted on obtaining a much higher quantum of power based on its consumer demand. TPC rejected the said demand keeping in view its continuing obligation to its own consumers and also those of BEST.

Facts

- in the meanwhile TPC proposed to enter into PPA with RInfra for its balance quantity after meeting the contractual requirement of BEST for 800 MW and of TPC (D) for 477 MW of electricity . The offer was made by TPC to RInfra for supply of 600 MW which was not accepted. The later instead insisted on obtaining a much higher quantum of power based on its consumer demand. TPC rejected the said demand keeping in view its continuing obligation to its own consumers and also those of BEST.

Facts

- RInfra in the meantime initiated a proceeding under Section 86 of 2003 Act before MERC seeking direction against TPC (G) to allocate 762 MW to it and to enter into a PPA. By an order dated 6th November, 2007 the Commission approved PPA between TPC (G) and BEST and the arrangement between TPC (G) and TPC (D) for supply of 800 MW and 477 MW of power respectively with effect from 1st April, 2008.

Facts

- On the question of direction to generating company, the Commission opined that it can issue direction upon the generating companies in terms of Section 23 of 2003 Act.
- All the three parties preferred appeals against this order in APTEL
- BEST and TPC questioned the interpretation of Section 23 of 2003 Act by the Commission.

APTEL's Observations and Directions

- *"… We note from the above regulations that the Commission itself recognizes an agreement or an arrangement for long-term power procurement by a Distribution Licensee. Regulations require prior approval of the Commission for any change to an existing arrangement or agreement for long term procurement. When an arrangement for power procurement between TPC and BEST as also between TPC and REL does exist, how the Commission failed to consider the claim of REL.*
- *… We conclude from the aforementioned that the Commission has wide powers to regulate the quantity of energy that may be supplied by a generating company to a distribution licensee when both are under the jurisdiction of the same Commission."*

APTEL's Observations and Directions

- *"…It is not in dispute that the claims of REL have not been considered by the Commission while approving the PPA between the TPC(G) and BEST and arrangement between TPC(G) and TPC(D). It is also not in dispute that the approval of PPA and the arrangement has affected the allocation of power to REL. The interests of REL have been adversely affected by the Commission in violation of the principle of natural justice. The Commission ought to have considered the claim of REL for allocation of power while considering the approval of PPAs between TPC(G) and BEST and arrangement between TPC(G) and TPC(D)."*

APTEL's Observations and Directions

- *"... In the circumstances, appeal No. 143 of 2007 is allowed and order dated November 06, 2007 of the MERC approving the PPA of TPC and BEST and arrangement between TPC and TPC(D) with reference to allocation of power to BEST and TPC(D) is set aside. The Commission is directed to consider the question of approval of PPA and the arrangement afresh after taking into consideration the claims of BEST, REL and TPC(D).* ***While considering the case of the parties the Commission shall have regard to the fact that the consumers of respective areas have been bearing the Depreciation and Interest on Loan elements of the Fixed Cost of tariff and also consider all other submissions of the parties which are permissible in the law."***

Supreme Court's PRELIMINARY OBSERVATIONS

91. Before adverting to the rival contentions of the parties we may observe:

- The Tribunal committed a factual error in so far as it failed to notice that no long term PPA exists between TPC (G) and RInfra. It furthermore was not correct in opining that the Commission had not considered the claim of RInfra while approving the arrangements between TPC (G) and TPC (D), despite the fact that REL (RInfra) not only filed objections to the application for grant of approval of PPA filed by the parties herein, it also filed independent application; took part in the deliberations and all its contentions had been considered. On what basis the Tribunal opined that the decision of the Commission is in violation of the principle of natural justice is beyond anybody's comprehension.

Supreme Court's PRELIMINARY OBSERVATIONS

- It furthermore took into consideration an irrelevant fact, namely that the Commission in determining the issue between the parties should have regard to the fact that the consumers of respective areas have been bearing the `depreciation' and interest on loan elements of the Fixed Cost of tariff. It furthermore without assigning any reason dismissed the appeals of BEST and TPC(D).

Supreme Court's Observations

- *"100 The core question which, therefore, arises for consideration is as to whether despite the Parliamentary intent of giving a go-bye to its licensing policy to generating companies, whether through imposing stringent regulatory measures the same purpose should be allowed to be achieved?*
- *101. The Act is a consolidating statute. It brings within its purview generation, transmission, distribution, trade and use of electricity.* ***Whereas generation of electricity has been brought outside the purview of the licensing regime,*** *the transmission, distribution and trading are subject to grant of licence are kept within the regulatory regime."*

Supreme Court's Observations

- "108. The primary object, therefore, was to free the generating companies from the shackles of licensing regime. The 2003 Act encourages free generation and more and more competition amongst the generating companies and the other licensees so as to achieve customer satisfaction and equitable distribution of electricity.
- 109. The generation company, thus, exercises freedom in respect of choice of site and investment of the generation unit; choice of counter-party buyer; freedom from tariff regulation when the generating company supplies to a trader or directly to the consumer.

Supreme Court's Observations

- *"110. If de-licensing of the generation is the prime object of the Act, the courts while interpreting the provisions of the statute must guard itself from doing so in such a manner which would defeat the purpose thereof. It must bear in mind that licensing provisions are not brought back through the side door of Regulations."*

SUPPLY - CONTEXTUAL MEANING

- 128. It was submitted by the respondents that in any event the word `supply' as used in Section 23 should be given the same meaning as is given to it in Section 2(70) of the Act i.e. the sale of electricity to a licensee or consumer. Accordingly by its very nature, supply would have a supplier and a receiver and any direction which is aimed at ensuring or regulating supply by its very nature would have to be directed to both the supplier and the receiver.
- 129. However, when the question arises as to the meaning of a certain provision in a statute, it is not only legitimate but proper to read that provision in its context.

SUPPLY - CONTEXTUAL MEANING

- 130. The legal principle is that all statutory definitions have to be read subject to the qualification variously expressed in the definition clause which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have some what different meaning in different sections of the Act depending upon the subject or context. That is why all definitions in statutes generally begin with the qualifying words `unless there is anything repugnant to the subject or context'.

SUPPLY - CONTEXTUAL MEANING

- 131. Accordingly the word `supply' contained in Section 23 refer to `supply to consumers only' in the context of Section 23 and not to supply to licensees. On the other hand, in Section 86(1)(a) `supply' refers to both consumers and licensees. In Section 10(2) the word `supply' is used in two parts of the said Section to mean two different things. In the first part it means `supply to a licensee only' and in the second part `supply to a consumer only'. Further in first proviso to Section 14, the word `supply' has been used specifically to mean `distribution of electricity'. In Section 62(2) the word `supply' has been used to refer to `supply of electricity by a trader‘.

SUPPLY - CONTEXTUAL MEANING

- 132. To assign the same meaning to the word "supply" in Section 23 of the Act, as is assigned in the interpretation section, it is, in our opinion, necessary to take recourse to the doctrine of harmonious construction and read the statute as a whole. Interpretation of Section indisputably must be premised on the scheme of the statute. For the purpose of construction of a statute and in particular for ascertaining the purpose thereof, the entire Act has to be read as a whole and then chapter by chapter, section by section and word by word.

SUPPLY - CONTEXTUAL MEANING

- 139. Furthermore in the scheme of the Act wherever regulation of generating companies is necessary the same has been provided for. Section 11 and Section 60 provide for adequate indication in this behalf. They deal with extra ordinary situations.
- 140. Transmission of electrical energy does not come within the purview of Section 23. Trading therein also does not per say come within the purview thereof.

CONCLUSION

1) Activities of a generating company are beyond the purview of the licensing provisions.
2) The Parliament therefore did not think it necessary to provide for any regulation or issuance of directions except that which have expressly been stated in the Act.
3) Section 23 occurs in the chapter of "licensing" under which the generating companies would not be governed.
4) As almost all the sections preceding Section 23 as also Section 24 talk about licensee and licensee alone, the word "supply" if given its statutorily defined meaning as contained in Section 2(70) of the Act would lead to an anomalous situation as by reason thereof supply of electrical energy by the generating company to the consumers directly in terms of Section 12(2) of the Act as also by the transmission companies to the consumers would also come within its purview.
5) In a case of this nature the principle of exclusion of the definition of Section by resorting to "unless the context otherwise requires" should be resorted to

TATA POWER COMPANY

VS

MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

2009ELR(SC)246

The Question and brief Facts

- The Question before the Hon'ble Supreme Court was whether the Tata Power Company had license to distribute power to consumers in the city of Mumbai.
- Respondent Rinfra, before APTEL and the Supreme Court had contended that TPC had license to supply power in bulk to other licensees in city of Mumbai and to bilk consumers having more than 1000 kVA contract demand.
- The Commission its order held that the TPC had distribution license to supply power to all the consumers and also gave some other directions, inter alia, TPC and BSES should file the terms of reference for engaging a consultancy firm to study the issues relating to Sections 42 and 14 of the Electricity Act, 2003.

The Tribunal

- Aggreived by the Commission's Order both parties approached the APTEL in Appeal No. 31 &43 of 2005.
- In the opening para of its judgment dated 22nd May 2006 the APTEL observed as under:
- "One man discovers electricity and all humanity benefits from it"– so goes the common saying. Yet for Reliance and Tatas, "Electricity means eternal litigation from forum to forum in the game of generation and distribution of Electricity."

Findings of the Tribunal

- 38…On a reading of the Licenses, as amended from time to time, with respect to the purpose, area of supply and the definition of “licensee” as well as “other licenses”, it is amply clear that the Tata Power has been conferred with privilege of supplying power in bulk to other licensees for distribution.
- 39. In other words, when all the licenses granted in favour of Tata Power squarely falls within clause IX and when clauses IV, V, VI, VII, VIII and XII are excluded, it follows automatically that Tata Power has been conferred with a privilege under the licenses to supply power in bulk to other licensees for distribution, subject to the exception, if any, set out in the very licenses granted in their favour. …
- ….

Findings of the Tribunal

- ....
- 45. Clause IX in the Schedule appended to the Indian Electricity Act, 1910 which provides for supply by bulk licensees, as incorporated in the licenses of Tata power and its predecessors, clinchingly establish that Tata Power is only a bulk licensee and it has no privilege to supply in retail or distribute power, as the other schedules have been excluded, in the areas where REL has been authorized to distribute power. It is conclusive by virtue of the deeming incorporation of the clause in terms of license condition, namely, clause IX, read with Section 3(2)(f). Hence, the Tata Power could claim only a license to supply in bulk to other licensees, namely, REL which is a licensee as defined in Section 2(h) and as incorporated in licenses.

Ratio of APTEL's Judgment

- Tata Power has not been granted license to undertake retail distribution of electricity in the area within which REL has been distributing power in retail to customers directly. The point is answered in favour of REL and against Tata Power. The order and findings recorded by the Regulatory Commission are set aside.
- It is clear that Tata Power has licenses only to undertake bulk supply to licensees like REL as contended by REL.

Supreme Court's Findings

- 75.Regarding Mr. Venugopal's other submission relating to Section 42 of the 2003 Act, we are unable to appreciate how the same is relevant for interpreting the provisions of the licences held by TPC. It is no doubt true that Section 42 empowers the State Commission to introduce a system of open access within one year of the appointed date fixed by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling having due regard to the relevant factors, but the introduction of the very concept of wheeling is against Mr. Venugopal's submission that not having a distribution line in place, disentitles T.P.C. to supply electricity in retail directly to consumers even if their maximum demand was below 1000 KVA.

Supreme Court's Findings

- The concept of wheeling has been introduced in the 2003 Act to enable distribution licensees who are yet to instal their distribution line to supply electricity directly to retail consumers, subject to payment of surcharge in addition to the charges for wheeling as the State Commission may determine. We, therefore, see no substance in the said submissions advanced by Mr. Venugopal.

Supreme Court's ruling

- 77.Having regard to the above and the terms and conditions of the licences held by Tata Power, we have no hesitation in holding that the Appellate Tribunal for Electricity erred in coming to a finding that under its licences Tata Power was entitled to supply energy only in bulk and not for general purposes and in retail to all consumers, irrespective of their demand, except for those consumers indicated in Sub-clause (I) of clause 5 of the several licenses held by Tata Power.

Supreme Court's ruling

- 78.Having earlier held that MERC had overstepped its jurisdiction in making out a third case which had not been made out by BSES and had on the basis thereof issued orders which had not even been prayed for by BSES, we quash the orders passed both by MERC and the Appellate Tribunal for Electricity and allow all these three appeals upon holding that under the terms and conditions of the licences held by it, Tata Power Company Ltd. is entitled to effect supply of electrical energy in retail directly to consumers, whose maximum demand is less than 1000 KVA, apart from its entitlement to supply energy to other licensees for their own purposes and in bulk, within its area of supply as stipulated in its licences and also subject to the constraints indicated in relation to Sub-Clause (I) of Clause 5 in relation to factories and the Railways.

BRIHANMUMBAI ELECTRIC SUPPLY & TRANSPORT UNDERTAKING (BEST)

VS.

MAHRASHTRA ELECTRICITY REGULATORY COMMISSION (MERC) & ORS.

CIVIL APPEAL NO.4223 OF 2012

Basic Facts

- One Guru Prasad Shetty, a consumer of electricity whose premises are situated within area of supply of the BEST approached TPC in April 2009 with a request that he be supplied the electricity by TPC.

- In response to his request, TPC advised the consumer to approach the BEST for its permission to use its distribution network of the BEST to enable TPC to supply electricity to the consumer using that network. The consumer, accordingly, turned to BEST requesting it to give the said permission. It was, however, denied by BEST

- After receiving this rejection, the consumer approached MERC with petition seeking the direction that the Commission may direct TPC to provide electricity supply to the Petitioner and make such supply available as early as possible, either on BEST Network or by extending its own network, as may be necessary, failing which TPC's distribution license should be cancelled by the Commission

Before the Commission

- Best filed following objections to the petition
  a) The Regulatory Commission did not have the jurisdiction to entertain a dispute between the consumer and a distribution licensee;
  b) TPC was not a deemed distribution licensee for the area in question and therefore was not permitted to supply the electricity to any consumer in that area;
  c) Unlike other distribution licensees, BEST being a local authority, no persons situated in BEST's area of supply could avail electricity from any other licensee, on account of BEST invoking a statutory exemption available to a local authority under Section 42(3) of The Electricity Act, 2003 Act
  d) Since TPC had clarified that it was willing to extend its network and supply electricity, BEST also contended that TPC could not extend its network in BEST's area of supply, without BEST's consent and agreement.

Before the Commission

- After hearing all the parties, Regulatory Commission passed orders dated 22.2.2010 holding that TPC was bound to supply electricity in terms of applicable Regulations and therefore direction was given to the TPC to supply electricity to the consumers either through BEST wires or its own wires.
- The Commission also rejected BEST's contentions and held that Tata Power had a duty under the Act to extend its distribution network and supply electricity, if the consumers so required, in the South Mumbai area.
- In light of TPC's position that it was willing to extend its network and supply electricity, the MERC held that there was no requirement to give any directions to it.
- The Regulatory Commission also held that TPC would be deemed distribution licensee for the area in question.

Appeal Before The Tribunal

- BEST challenged this order of the Regulatory Commission by filing appeal before the Appellate Tribunal for Electricity, New Delhi . This appeal was dismissed by the Appellate Tribunal vide orders dated 4.4.2012, thereby affirming the findings and direction of the Regulatory Commission. Not satisfied, BEST has filed the 2nd appeal statutorily before the Supreme Court provided under Section 125 of the Electricity Act.

- The four contentions which were raised by BEST before the Regulatory Commission were raised before the Appellate Tribunal, which were the submissions before the Supreme Court as well.

On Jurisdiction of the Commission

- The Commission's jurisdiction was challenged primarily on the ground that there was an alternative remedy provided to the consumer to raise his grievances before the Consumer Grievances Redressal Forum (CGRF) established under Section 42 (5) of the Act. Therefore, the consumer should have approached the said Forum instead of filing petition before the Regulatory Commission.

- SC Held : This contention is totally misconceived and rightly rejected by the authorities below. As noted above, petition was filed by the consumer seeking direction against TPC to supply electricity to him. Thus, he approached the Regulatory Commission to enforce a distribution licensee obligation under the Act. As on that date, he was not the consumer of TPC but wanted to become its consumer.

TPC being Deemed Licensee

- TPC claimed that by virtue of first proviso to Section 14 of the Act, it was a deemed licensee for Mumbai including the area of supply of BEST and its license is valid up to 15.8.2014 as per MERC (Specific Conditions of License applicable to the Tata Power Company Limited) Regulations, 2008.
- The argument of BEST, on the other hand, is that the Appellate Tribunal was wrong in holding TPC was a deemed licensee under the first proviso to Section 14, as well as a parallel licensee under the sixth proviso to Section 14 of the Act 2003.

TPC being Deemed Licensee

- BEST Aurguments before the Supreme Court

- The Appellate Tribunal gravely erred in failing to appreciate that network of TPC cannot be allowed or extended within the area of supply of BEST in the absence of distribution licensee which TPC failed to obtain from Regulatory Commission, though it is a necessary requirement under sections 14 and 15 read with Section 12 of the Act.
- It was argued that as per the first proviso to Section 14, a person is treated deemed licensee only if it is engaged in the business of supply of electricity under the provisions of the repealed laws and it is for such period “as may be stipulated in the licence granted to him under the repealed laws”.
- It was argued that the protection was only for that period which is stipulated in the licence and not on the basis of licence and there is no such period specified in the in the licence.

TPC being Deemed Licensee

- After detailed discussion in para 16 & 17 of the Judgment the Supreme Court concluded that:
- Once, we come to the conclusion that TPC can be treated as deemed distribution licensee under the first proviso to Section 14 of the Act 2003 and the area of the licence is the same which overlaps with the area covered by BEST, argument predicated on sixth proviso to Section 14 would not be available to the BEST.

AVAILABILLITY OF OPEN ACCESS TO TPC IN THE AREA COVERED BY
BEST, WHICH IS A LOCAL AUTHORITY
AND
PERMISSIBILITY OF TPC TO EXTEND ITS NETWORK IN BEST AREA OF SUPPLY WITHOUT ITS APPROVAL/CONSENT

BEST's main Contentions

- Under the Act neither open access can be allowed nor distribution system or network of a purported parallel licensee (such as TPC) can be laid or extended within area of supply of BEST.
- Admittedly, BEST was a Public Sector Undertaking and such bodies are given due recognition of and grant of exemption and/or protection to a special category of licensee being a local authority in the business of distribution of electricity before the appointed day. He submitted that as BEST would be covered by the expression " a local authority" protected measures provided under the Act would be applicable to it as well. According to him, a local authority was always placed on a special footing under Act, 1910 as well as Act, 1948 and now under Act, 2003 which was clear from the provisions of Section 42 (3) of the Act:

TPC's main Contentions

- TPC submitted that BEST was mixing the otherwise two distinct concepts, namely that of open access under Section 42 (3) of the Act and that of Universal Service of Relations contained in Section 43 of the Act.
- Under the Act, there are two ways in which a consumer situated in a particular area can avail supply of electricity: (i) from a distribution licensee authorized to supply electricity in that area under Section 43; or (ii) from any other supplier through the distribution network of a distribution licensee by seeking "open access" in terms of Section 42(3).
- In the first option, the distribution licensee operating in a particular area is required to lay down its network if required, in order to supply electricity to a consumer seeking supply.
- The second option, which is known as open access is provided under Section 42 read with Section 2(47) of the 2003 Act. Under Section 42(3) of the 2003 Act, a consumer has the right to require a distribution licensee to make its network available for wheeling electricity to such consumer from a third party supplier (i.e. a supplier of electricity not being a distribution licensee in the area where the consumer is situated).
- Section 42(3) carries out an exception in favour of local authority only qua open access which would mean that a consumer is disallowed from seeking open access from a distribution licensee which is a local authority like BEST.

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- **Section 42(3) carries out an exception in favour of local authority only qua open access which would mean that a consumer is disallowed from seeking open access from a distribution licensee which is a local authority like BEST.**

Supreme Court's ruling

- After considering the rival contentions, the Supreme Court has opined that the interpretation suggested by Mr. Mehta needs to prevail and therefore did not find any fault with the view taken by the Appellate Tribunal.
- Sub-sections (2) &(3) of Section 42 provides for open access and casts a duty upon the distribution licensee in this behalf. Here, it excludes local authority, as distributor of electricity from such an obligation.
- However, when it comes to the duty of distribution licensee to supply the electricity under section 43, it mandates that same is to be given to the owner or occupier of any premises on his application within one month from the receipt of the said application. This duty under Section 43 imposed upon a distribution licensee does not distinguish between a local authority and other distribution licensee.

Supreme Court's ruling

- It becomes clear that there are two ways in which a consumer stated in a particular area can avail supply of electricity. When an application is made by a consumer to a distribution licensee for supply of electricity, such a distribution licensee for supply of electricity, such a distribution licensee can request other distribution licensee in the area to provide it network to make available for wheeling electricity to such consumers and this open access is to be given as per the provisions of section 42 (3) of the Act.

Supreme Court's ruling

- It is only under Section 42(3) that local authority is exempted from such an obligation and may refuse to provide it network available under open access.
- Second option is, under section 43 of the Act, to provide the electricity to the consumer by the distribution licensee from its own network. Therefore, if in a particular area local authority has its network and it does not permit wheeling of electricity from by making available its network, the other distribution licensee will have to provide the electricity from its own network. For this purpose, if it is not having its network, it will have to lay down its network if it requires in order to supply electricity to a consumer seeking supply.

M/S. SESA STERLITE LTD

VS.

ORISSA ELECTRICITY REGULATORY COMMISSION & ORS.

CIVIL APPEAL NO. 5479 OF 2013

The Case

- The Appellant has its unit in Special Economic Zone (SEZ) and it is a Developer in the said SEZ area As such it is a deemed distribution licensee. It is not drawing or utilizing any electricity from the Distribution Licensee viz. WESCO for its unit namely VALE-SEZ. In fact, the Appellant had entered into a Power Purchase Agreement (PPA) dated 18th August, 2011 with M/s. Sterlite Energy Ltd over its own Dedicated Transmission Line.
- The Appellant had filed application for getting approval of the said PPA. However the Odisha State Commission, instead of granting the approval, rejected the said PPA and directed the Appellant to pay CSS to WESCO holding the Appellant to be a 'Consumer'

Findings of The Tribunal

- i)Govt.of India notification dated 3.3.2010 by modifying clause(b) of Section 14 of the Electricity Act by inserting a proviso that Developer of SEZ notified under the SEZ Act,2005 shall be deemed to be licensee for the purpose of this clause. This notification does not exempt the Developer of SEZ to obtain licence from the State Commission.
- ii) Notification dated 21.3.2012 by the Ministry of Commerce and Industry has clarified that all provisions of the Electricity Act,2003 and electricity Rules,2005 will be applicable to generation, transmission and distribution of power in the Special Economic Zones.
- iii) This Tribunal in Appeal No. 3 of 2011 dated 23.3.2012 has observed that harmonious construction of both SEZ Act 2005 and Electricity Act,2003 means to give effect to the provisions of both the Acts so long as these are not inconsistent with each other. Accordingly, in view of the provision of SEZ Act,2005 and consequent notification dated 21.3.2012 by Ministry of Commerce and Industry, the deemed distribution licensee status as claimed by the Appellant shall also be tested through other provisions of the Electricity Act, 2003 and Electricity Rules, 2005 for certifying its validity and converting it into a formal distribution licensee.

Findings of The Tribunal

- iv) As correctly indicated by the State Commission, the definition of term "distribution licensee" as enumerated under Section 2(17) of the Electricity Act,2003 emphasises upon the distribution licensee to operate and maintain a distribution system and supply electricity to the consumers. Considering the definition of 'supply' in Section 2(70) here supply means sale of electricity to consumers. By merely authorised to operate and maintain a distribution system as a deemed licensee, would not confer the status of a distribution licensee to any person. The purpose of such establishment is for supply of power to consumers. Mere fact that the Appellant claims to be a deemed distribution licensee is of no consequence since admittedly the entire power is purchased by the Appellant is for its own use and consumption and not for the purpose of distribution and supply/sale to consumers.

Contentions of the Appellant

- It is deemed distribution licensee as per SEZ Act 2005 and Govt. of India Notification. Therefore, it need not get distribution license from the Commission.
- It does not draw any power from the distribution licensee nor uses the network of such distribution licensee.
- It receives power from its sister generating company over a dedicated transmission line laid down by the generating company.
- Accordingly, it is not liable to pay any cross subsidy surcharge to the distribution licensee.

Contentions of the Respondents

- Even though the Appellant was possessed of notification issued under Proviso to Section 14(b) of the Electricity Act, which treats the Appellant as of Deemed Distribution Licensee, the concept of Distribution Licensee under the Electricity Act pre-supposes supply/distribution of power. An entity which utilizes the entire quantum of electricity for its own consumption and does not have any other consumers cannot be deemed to be a Distribution Licensee, even by a legal fiction.
- As per the definitions of “consumer” in Section 2(15), “Distribution Licensee” as contained in Section 2(17) and “supply” in relation to electricity to the consumers in Section 2(70) Section 42 of the Act which spells out the duties of Distribution Licensee and open access a person who distributes Electricity can be deemed to be a distribution licensee even though he does not have a distribution license by virtue of the legal fiction created by the Notification dated 3rd March, 2010.

Contentions of the Respondents

- But the legal fiction cannot go further and make a person who does not distribute electricity can be termed as a distribution licensee.
- If a ‘Distribution Licensee’ is equated with ‘Consumer’ the provisions of Section 2(15), 2(17), 42 and 43 of the Electricity Act, 2003 would be rendered otiose and nugatory.
- There is no stipulation in the Notification that other provisions of the Electricity Act will not apply to the Developer of a SEZ.

Question before the Supreme Court

- The primary dispute relates to the CSS which the Appellant is called upon to pay to WESCO. As per the Appellant no such CSS is payable and the PPA which was submitted by the Appellant to the State Commission for approval, should have been accorded due approval by the State Commission.

CSS: Its Rationale

- 25. 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.

CSS: Its Rationale

- In 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 subsidizing a low and consumer if he falls in the category of subsidizing consumer.
- A fortiorari, 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.

Application of the CSS Principle

- In the present case, admittedly, the Appellant (which happens to be the operator of an SEZ) is situate within the area of supply of WESCO. It is seeking to procure its entire requirement of electricity from Sterlite (an Independent Power Producer ("IPP") (which at the relevant time was a sister concern under the same management) and thereby is seeking to denude WESCO of the Cross Subsidy that WESCO would otherwise have got from it if WESCO were to supply electricity to the Appellant.
- In order to be liable to pay cross subsidy surcharge to a distribution licensee, it is necessary that such distribution licensee must be a distribution licensee in respect of the area where the consumer is situated and it is not necessary that such consumer should be connected only to such distribution licensee but it would suffice if it is a "consumer" within the aforesaid definition.

Nature of the line supplying power to Appellant

- The Appellant contended that they are not using the distribution system of the distribution licensee. They are receiving power at 200 kV directly from the generator over a 200 kV line constructed and owned by them.
- After analyzing the arrangement for receving supply and referring to Regulation 27 of OERC (Conditions of Supply Code) 2004, Rule 4 of Electricity Rules 2005, Section 2(19) and Section 2(72) the Supreme Court held that the line would be deemed to be part of Distribution System of the Distribution Licensee.

Appellant deemed distribution Licensee?

- After carrieng out detailed analysis of various provisions of the SEZ Act 2005, Electricity Act 2003, Govt. of India Notifications dated 3.3.2010 amending the Section 14 of EA 2003 by inserting clause 14(b) and notification dated 21.3.2012 clarifying that all other provisions of EA 2003 would be applicable to SEZ developer and findings of APETL, the Supreme Court concurred with judgment of the APTEL and held as under:

- No doubt by virtue of the status of a developer in the SEZ area, the Appellant is also treated as deemed Distribution Licensee. However with this, it only gets exemption from specifically applying for licence under Section 14 of the Act. In order to avail further benefits under the Act, the Appellant is also required to show that it is in fact having distribution system and has number of consumers to whom it is supplying the electricity. That is not the case here. For its own plant only, it is getting the electricity from Sterlite Ltd. for which it has entered into PPA.

Ratios of the case

- Following ratios emerges from the decision of the Supreme Court in this case:
  - Supply of Electricity to consumers is must to be a distribution licensee.
  - Where a distribution licensee is supllying power to any other consumer but receiving power for its own consumption such a licensee is a consumer.
  - CSS is compensatory charge and payable by any consumer to the distribution licensee.
  - The line, irrespective of voltage and the who paid the cost of such line, connecting to the consumers premises is a part of distribution system of the distribution licensee

T.N. GENERATION & DISTRIBUTION CORPORATION

VS

PNP POWER GEN CO.

CIVIL APPEAL NO. 4126 OF 2013

Appointment to the State Commission

- 45 the State of Tamil Nadu ought to make necessary appointments in terms of Section 84(2) of the Act. We have been informed that till date no judicial Member has been appointed in the Tamil Nadu State Commission. We are of the opinion that the matter needs to be considered, with some urgency, by the appropriate State authorities about the desirability and feasibility for making appointments, of any person, as the Chairperson from amongst persons who is, or has been, a Judge of a High Court.

Appointment to the State Commission

- 46. We have noticed earlier that Section 113 of the Act mandates that the Chairman of APTEL shall be a person who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court. A person can be appointed as the Member of the Appellate Tribunal who is or has been or is qualified to be a Judge of a High Court. This would clearly show that the legislature was aware that the functions performed by the State Commission as well as the Appellate Tribunal are judicial in nature. Necessary provision has been made in Section 113 to ensure that the APTEL has the trapping of a court. This essential feature has not been made mandatory under Section 84 although provision has been made in Section 84(2) for appointment of any person as the Chairperson from amongst persons who is or has been a Judge of a High Court. In our opinion, it would be advisable for the State Government to exercise the enabling power under Section 84(2) to make appointment of a person who is or has been a Judge of a High Court as Chairperson of the State Commission.

Supreme Court Judgments Laying some Important Principles

- Binding Nature of Superior Court's Directions
- Binding nature of Precedents
- Binding nature of court's judgments on other bench of same court
- Binding nature of Policy Directions issued by the Appropriate Government
- Expressio Unius Est Exclusio Alterious
- Interpretation of Statute
- Term 'To Regulate/Regulations' explained
- Procedures are handmaids of justice.

Binding Nature of Directions of Superior Court.

- **Smt. Kausalya Devi Bogra and Ors. Vs. Land Acquisition Officer, Aurangabad and Anr. (1984)2 SCC 324**
  - **In the hierarchical system of courts which exist in this country, it is necessary for each lower tier, including the Court of Appeal, to accept loyally the decisions of the higher tier.**
- **The Bhopal Sugar Industries Ltd. Vs. The Income Tax Officer, Bhopal (1961)1SCR 474**
  - By that order the respondent virtually refused to carry out the directions which a superior tribunal had given to him in exercise of its appellate powers in respect of an order of assessments made by him. **Such refusal is in effect a denial of justice, and is furthermore destructive of one of the basic principles in the administration of justice based as it is in this country on a hierarchy of courts. If a subordinate tribunal refuses to carry out directions given to it by a superior tribunal in the exercise of its appellate powers, the result will be chaos in the administration of justice**

Binding Nature of Directions of Superior Court.

- **Shri Baradakanta Mishra Ex-Commissioner of Endowments Vs. Shri Bhimsen Dixit (1973) SCC(Cri)360**
  - 12. It is a commonplace that where the superior court's order staying proceedings is disobeyed by the inferior court to whom it is addressed, the latter court commits contempt of court for it acts in disobedience to the authority of the former court. The act of disobedience is calculated to undermine public respect for the superior court and jeopardise the preservation of law and order.
  - 13. The remark in the appellant's order found objectionable by the High Court is this : "Further, against the order we have moved the Supreme Court, and as such the matter can be safely deemed to be subjudice." It may be observed that on the date of the order nothing was pending in the Supreme Court; only a petition was pending in the High Court for a certificate to appeal to the Supreme Court from the decision in Bhramarbar Santra. I.L.R. 1970 Cutt 54. The appellant has thus made a wrong statement of fact. Secondly, the use of the personal pronoun "We" is also significant. It indicates that the appellant identified himself as a litigant in the case and did not observe due detachment and decorum as a quasi judicial authority.

Binding Nature of Directions of Superior Court.

- **RBF Rig Corporation Vs The Commissioner of Customs (2011)3SCC 573**
  - 18. …It is not open to the subordinate Tribunal to examine whether a direction issued by the High Court under its writ powers was correct and refuse to carry it out as such amounts to denial of justice and destroys the principle of hierarchy of courts in the administration of justice. This Court in Bishnu Ram Borah v. Parag Saikia MANU/SC/0033/1983 : (1984) 2 SCC 488, has held:
  - *11. It is regrettable that the Board of Revenue failed to realize …it was subject to the writ jurisdiction of the High Court under Article 226 of the Constitution. Just as the judgments and orders of the Supreme Court have to be faithfully obeyed and carried out throughout the territory of India under Article 142 of the Constitution, so should be the judgments and orders of the High Court by all inferior courts and tribunals subject to their supervisory jurisdiction within the State under Articles 226 and 227 of the Constitution.*
  - **19. We hasten to add, if for any reason, the subordinate authority is of the view that the directions issued by the Court is contrary to statutory provision or well established principles of law, it can approach the same Court with necessary application/petition for clarification or modification or approach the superior forum for appropriate reliefs.**

Expressio Unius Est Exclusio Alterious

- **Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Anr. (1975)SuppSCC1**
  - 588. The well recognised rule of construction of statutes, which must apply to the intepretation of the Constitution as well, is : "Expressio Unius Est Exclusio Alterius". From this is derived the subsidiary rule that an expressly laid down mode of doing something necessarily prohibits the doing of that thing in any other manner. The broad general principle is thus summarised in CRAWFORD'S "Statutory Constructions" (1940) at p. 334:
  - Express Mention and Implied Exclusion (Expressio Unius Est Exclusio Alterius)-As a general rule in the interpretation of statutes, the mention of one thing implies the exclusion of another thing. I therefore logically follows that if a statute enumerates the things upon which it is to operate, everything else must necessarily, and by implication, be excluded from its operation and effect. For instance, if the statute in question enumerats the matters over which a court has jurisdiction, no other matters may be included. Similarly, where a statute forbids the performance of certain things, only those things expressly mentioned are forbidden.

Expressio Unius Est Exclusio Alterious

- **Selvi J. Jayalalithaa and Ors. Vs. State of Karnataka and Ors.** 2013(12)SCALE234, 2013(4)SCT624(SC)
  - There is yet an uncontroverted legal principle that when the statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of the same. In other words, where a statute requires to do a certain thing in a certain way, the thing must be done in that way and not contrary to it at all. Other methods or mode of performance are impliedly and necessarily forbidden. The aforesaid settled legal proposition is based on a legal maxim "*Expressio unius est exclusio alterius*", meaning thereby that if a statute provides for a thing to be done in a particular way, then it has to be done in that manner and in no other manner and following any other course is not permissible.

Expressio Unius Est Exclusio Alterious

- **State of Uttar Pradesh v. Singhara Singh and Ors.** AIR 1964 SC 358
  - *8. The rule adopted in **Taylor v. Taylor** (1876) 1 Ch D 426 is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted.*

Binding Nature of Precedents

- In ***Government of Andhra Pradesh and Ors. v. A.P. Jaiswal and Ors.*** : AIR 2001 SC 499 a three-Judge Bench of Supreme Court has observed thus:
- Consistency is the cornerstone of the administration of justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect to the rule of finality. It is with a view to achieve consistency in judicial pronouncements, the Courts have evolved the rule of precedents, principle of stare decisis etc. These rules and principle are based on public policy....

Binding Nature of Precedents

- **Padmasundara Rao and Ors. Vs. State of Tamil Nadu and Ors.** (2002)3SCC533
  - 9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board (1972) 2 WLR 537. Circumstantial flexibility, **one additional or different fact may make a world of difference between conclusions in two cases.**

Binding Nature of Precedents

- **Bharat Petroleum Corporation Vs N R Vairamani (2004) 8 SCC 579**
  - 9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

Binding Nature of Precedents

- **Bharat Petroleum Corporation Vs N R Vairamani (2004) 8 SCC 579**
  - 12. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

    "Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.“
  - "Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

Binding Nature of Precedents

- Krishena Kumar Vs Union of India (1990)4SCC207
  - ***"... The doctrine of precedent, that is being bound by a previous decision, is limited to the decision itself and as to what is necessarily involved in it. It does not mean that this Court is bound by the various reasons given in support of it, especially when they contain "propositions wider than the case itself required".*** *This was what Lord Selborne said in Caledonian Railway Co. v. Walker's Trustees [(1882) 7 App Cas 259 : 46 LT 826 (HL)] and Lord Halsbury in Quinn v. Leathem [1901 AC 495, 502 : 17 TLR 749 (HL)] . Sir Frederick Pollock has also said : "Judicial authority belongs not to the exact words used in this or that judgment, nor even to all the reasons given, but only to the principles accepted and applied as necessary grounds of the decision...."*
- Regional Manager Vs Pawan Kumar Dubey(1976)3SCC334
  - ***It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts....."***

Binding Nature of Precedents

- Union of India Vs Dhanwanti Devi (1996)6SCC44
  - It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates—(i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein.

Binding Nature of Precedents

- *State of Punjab v.Baldev Singh*(1999) 6 SCC 172
  - *…3. …**It is a well-settled proposition of law that a decision is an authority for what it decides and not that everything said therein constitutes a precedent.** The courts are obliged to employ an intelligent technique in the use of precedents bearing it in mind that a **decision of the court takes its colour from the questions involved in the case in which it was rendered**.*
  - *44. In CIT v. Sun Engg. Works (P) Ltd. [(1992) 4 SCC 363] this Court rightly pointed out: (SCC pp. 385-86, para 39)*

    *"It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be complete 'law' declared by this Court. **The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings**."*

Binding Nature of Precedents

Binding Nature of Precedents

- **Union of India and another Vs.Paras Laminates (P) Ltd. (1990)4SCC453**
  - 9. It is true that a Bench of two members must not lightly disregard the decision of another Bench of the same Tribunal on an identical question. This is particularly true when the earlier decision is rendered by a larger Bench. The rationale of this rule is the need for continuity, certainty and predictability in the administration of justice. Persons affected by decisions of Tribunals or Courts have a right to expect that those exercising judicial functions will follow the reason or ground of the judicial decision in the earlier cases on identical matters. …
  - **It is, however, equally true that it is vital to the administration of justice that those exercising judicial power must have the necessary freedom to doubt the correctness of an earlier decision if and when subsequent proceedings being to light what is perceived by them as an erroneous decision in the earlier case. In such circumstances, it is but natural and reasonable and indeed efficacious that the case is referred to a larger Bench**

Binding Nature of Precedents

- **P Ramachandra Rao Vs State of Karnataka (2012)9SCC 430**
  - The other reason why the bars of limitation enacted in Common Cause (I), (1996) 4 SCC 32, … cannot be sustained is that in these decisions though two or three-Judge Bench decisions run counter to that extent to the dictum of Constitution Bench in A. R. Antulay's case and, therefore, cannot be said to be good law to the extent they are in breach of the doctrine of precedents. **The well-settled principle of precedents which has crystalised into a rule of law is that a Bench of lesser strength is bound by the view expressed by a Bench of larger strength and cannot take a view in departure or in conflict there from.** …

Term Regulation Explained

V S Rice and Oil Mills Vs State of Anfhra Pradesh (1964)7 SCR 456

- **The word "regulate" is wide enough to confer power on the respondent to regulate either by increasing the rate, or decreasing the rate,** the test being what is it that is necessary or expedient to be done to maintain, increase, or secure supply of the essential articles in question and to arrange for its equitable distribution and its availability at fair prices.
- **Indeed, it is not disputed and cannot be disputed that if electrical energy is produced by a private licensee and is then supplied to the consumers, such a supply would fall within the mischief of s. 3(1), and the terms on which it can and should be made to the consumers can be regulated by a notified order. …If that be so, on a plain reading of s. 3(1) it seems very difficult to accept the argument that the supply of electrical energy which is included in s. 3(1) if it is made by a private producer should go outside the said section as soon as it is produced by the State Government.**

Term Regulation Explained

- Deepak Theatre, Dhuri Vs State of Punjab 1992 Supp(1)SCC 684
  - 5. It is settled law that the rules validly made under the Act, for all intents and purposes, be deemed to be part of the statute. The conditions of the licence issued under the rules form an integral part of the Statute. The question emerges whether the word regulation would encompass the power to fix rates of admission and classification of the seats…. Therefore, the power to regulate a particular business or calling implies the power to prescribe and enforce all such proper and reasonable rules and regulations as may be deemed necessary to conduct the business in a proper and orderly manner. It also includes the authority to prescribe the reasonable rules, regulations or conditions subject to which the business may be permitted or conducted.
  - **"the power to regulate includes the power to restrain, which embraces limitations and restrictions on all incidental matters connected with the right to trade or business under the existing licence. …**

Interpretation of Statute

- **Padmasundara Rao and Ors. Vs. State of Tamil Nadu and Ors.** (2002)3SCC533
  - 12... It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the Legislation must be found in the words used by the Legislature itself.
  - 13. In Dr. R. Venkatchalam and Ors. etc. v. Dv. Transport Commissioner and Ors. etc. [1977]2SCR392 **it was observed that Courts must avoid the danger of apriority determination of the meaning of a provision based on their own pre-conceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation**.
  - **14. While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. …The legislative casus omissus cannot be supplied by judicial interpretative process.**

Interpretation of Statute

Kuldeep Nayar Vs Union of India (2006) 7 SCC 1

- But, the object of interpretation and of "construction" (which may be broader than "interpretation") is to discover the intention of the law-makers in every case …This object can, obviously, be best achieved by first looking at the language used in the relevant provisions. Other methods of extracting the meaning can be resorted to only if the language used is contradictory, ambiguous, or leads really to absurd results. This is an elementary and basic rule of interpretation as well as of construction processes which, from the point of view of principles applied, coalesce and converge towards the common purpose of both which is to get at the real sense and meaning, so far as it may be reasonably possible to do this, of what is found laid down. The provisions whose meaning is under consideration have, therefore to be examined before applying any method of construction at all....
- …It may be desirable to give a broad and generous construction to the Constitutional provisions, but while doing so the rule of "plain meaning" or "literal" interpretation, which remains "the primary rule", has also to be kept in mind. In fact the rule of "literal construction" is the safe rule unless the language used is contradictory, ambiguous, or leads really to absurd results.

Interpretation of Statute

Kuldeep Nayar Vs Union of India (2006) 7 SCC 1

- 182. In above context, the Counsel referred to the following words of Dr. B.R. Ambedkar on the issue as to how the dignity of an individual should be upheld in the political system:
- The second thing we must do is to observe the caution which John Stuart Mill has given to all who are interested in the maintenance of democracy, namely, not **"to lay their liberties at the feet of even a great man, or to trust him with powers which enable him to subvert their institutions". There is nothing wrong in being grateful to great men who have rendered life-long services to the country. But there are limits to gratefulness. As has been well said by the Irish patriot Daniel O'Connel, no man can be grateful at the cost of his honour, no women can be grateful at the cost of her chastity and no nation can be grateful at the cost of its liberty. This caution is far more necessary in the case of India than in the case of any other country. For in India, Bhakti or what may be called the path of devotion or hero-worship, plays a part in its politics of any other country in the world. Bhakti in religion may be a road to the salvation of the soul. But, in politics, Bhakti or hero-worship is a sure road to degradation and to eventual dictatorship.**

Interpretation of Statute

- **Harbhajan Singh Vs Press Council of India (2002)3SCC722**
  - **Legislature does not waste its words. Ordinary, grammatical and full meaning is to be assigned to the words used while interpreting a provision to honour the rule -- Legislature chooses appropriate words to express what it intends, and therefore, must be attributed with such intention as is conveyed by the words employed so long as this does not result in absurdity or anomaly or unless material -- intrinsic or external -- is available to permit a departure from the rule.**

Interpretation of Statute

- **Lucknow Development Authority Vs M K Gupta (1994)1SCC243**
  - 2… To begin with the preamble of the Act, which can afford useful assistance to ascertain the legislative intention, it was enacted, 'to provide for the protection of the interest of consumers'. Use of the word 'protection' furnishes key to the minds of makers of the Act. Various definitions and provisions which elaborately attempt to achieve this objective have to be construed in this light without departing from the settled view that a preamble cannot control otherwise plain meaning of a provision….
  - …**The provisions of the Act thus have to be construed in favour of the consumer to achieve the purpose of enactment as it is a social benefit oriented legislation. The primary duty of the court while construing the provisions of such an Act is to adopt a constructive approach subject to that it should not do violence to the language of the provisions and is not contrary to attempted objective of the enactment.**

Interpretation of Statute

- **K. RamanathanVs. State of Tamil Nadu and Anr.** (1985)2SCC116
  - It would seem that the rule of construction is clearly well recognized that a word may be used in two different senses in the same section of an Act.
  - 19. It has often been said that the power to regulate does not necessarily include the power to prohibit, and ordinarily the word 'regulate' is not synonymous with the word 'prohibit'. …the power to regulate carries with it full power over the things subject to regulation and in absence of restrictive words, the power must be regarded as plenary over the entire subject. …It would therefore appear that the word 'regulation' cannot have any inflexible meaning as to exclude 'prohibition'. It has different shades of meaning and must take its colour from the context in which it is used having regard to the purpose and object of the legislation, and the Court must necessarily keep in view the mischief which the legislature seeks to remedy.

Interpretation of Statute

- **Hotel and Restaurant Assocn. and Anr. Vs. Star India Pvt. Ltd. and Ors.** (2006)13SCC753
  - ….It has been repeatedly said by this Court that it is not safe to pronounce on the provisions of one Act with reference to decisions dealing with other Acts which may not be in pari materia.
  - But while construing a word which occurs in a statute or a statutory instrument in the absence of any definition in that very document it must be given the same meaning which it receives in ordinary parlance or understood in the sense in which people conversant with the subject matter of the statute or statutory instrument understand it. It is hazardous to interpret a word in accordance with its definition in another statute or statutory instrument and more so when such statute or statutory instrument is not dealing with any cognate subject.
  - The definition of the term in one statute does not afford a guide to the construction of the same term in another statute and the sense in which the term has been understood in the several statutes does not necessarily throw any light on the manner in which the term should be understood generally...

Orders of judicial body to be a speaking order.

- **Mohinder Singh Gill Vs Chief Election Commissioner (1978)1SCC 405**
  - 8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji A.I.T. 1952 S.C. 16.
  - Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to effect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.
  - Orders are not like old wine becoming better as they grow older :

Regulations

- **Bharathidasan University Vs All India Council for Technical Education (2001)8SCC 676**
  - 14. The fact that the Regulations may have the force of law or when made have to be laid down before the legislature concerned do not confer any more sanctity or immunity as though they are statutory provisions themselves. Consequently, when the power to make Regulations are confined to certain limits and made to flow in a well defined canal within stipulated banks, those actually made or shown and found to be not made within its confines but outside them, the Courts are bound to ignore them when the question of their enforcement arise and the mere fact that there was no specific relief sought for to strike down or declare them ultra vires, particularly when the party in sufferance is a Respondent to the lis or proceedings cannot confer any further sanctity or authority and validity which it is shown and found to obviously and patently lack. It would, therefore, be a myth to state that Regulations made under Section 23 of the Act have "Constitutional" and legal status, even unmindful of the fact that anyone or more of them are found to be not consistent with specific provisions of the Act itself.

Procedures are handmaids of justice.

- Kailash Vs Nanhku (2005)4SCC480
  - 28. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of Proconsul law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice.
  - 29. In ***The State of Punjab and Anr.*** v. ***Shamlal Murari and Anr.*** [1976]2SCR82, the Court approved in no unmistakable terms the approach of moderating into wholesome directions what is regarded as mandatory on the principle that **"Proconsul law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice."** In ***Ghanshyam Dass and Ors.*** v. ***Dominion of India and Ors.*** [1984]3SCR229, the Court reiterated the need for interpreting a part of the **adjective law dealing with procedure alone in such a manner as to subserve and advance the cause of justice rather than to defeat it as all the laws of procedure are based on this principle.**

Procedures are handmaids of justice.

- Mahadev Govind Garge Vs Special Land Acquisition officer (2011)8SCR829
  - The provisions of Order XLI Rule 22 of the Code are akin to the provisions of the Limitation Act, 1963, i.e. when such provisions bar a remedy, by efflux of time, to one party, it gives consequential benefit to the opposite party. Before such vested benefit can be taken away, the Court has to strike a balance between respective rights of the parties on the plain reading of the statutory provision to meet the ends of justice.
  - 29. In Justice G.P. Singh's Principles of Statutory Interpretation …, the learned author while referring to judgments of different Courts states … that procedural laws regulating proceedings in court are to be construed as to render justice wherever reasonably possible and to avoid injustice from a mistake of court. ...
  - 30. The learned author while referring to the judgments of this Court in the case of Sangram Singh v. Election Tribunal, Kotah (1955) 2 SCR 1 recorded (at page 384) that "while considering the non-compliance with a procedural requirement, it has to be kept in view that such a requirement is designed to facilitate justice and further its ends and therefore, if the consequence of non-compliance is not provided, the requirement may be held to be directory..."
  - 31. This Court in the case of Byram Pestonji Gariwala v. Union Bank of India and Ors. (1992) 1 SCC 31 referred to Crawford's Statutory Construction (para 254) to say that:
  - Statutes relating to remedies and procedure must receive a liberal construction 'especially so as to secure a more effective, a speedier, a simpler, and a less expensive administration of law'.

Procedures are handmaids of justice.

- Sardar AmarjitSingh Kalra Vs Smt Pramod Gupta [2002]SUPP5SCR350
  - …laws of procedure are meant to regulate effectively, assist and aid the object of doing substantive and real Justice. Procedural laws must be liberally construed to really serve as handmaid of justice, make them workable and advance the ends of justice. Technical objections which tend to be stumbling blocks to defeat and deny substantial and effective justice should be strictly viewed for being discouraged, except where the mandate of the law inevitably necessitates it.

Miscellaneous

- Smt Shalini Soni Vs Union of India (1980)4SCC544
  - **It is an unwritten rule of the law, constitutional and administrative, that whenever a decision making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only eschewing the irrelevant and the remote.** Where there is further an express statutory obligation to communicate not merely the decision but the grounds on which the decision is founded, It is a necessary corollary that the grounds communicated, that is, the grounds so made known, should be seen to pertain to pertinent and proximate matters and should comprise all the constituent facts and materials that went in to make up the mind of the statutory functionary and not merely the inferential conclusions.

Miscellaneous

- Union of India Vs M/s Jesus Sales Corporation (1996)4SCC69
  - 5. …It need not be pointed out that under different situations and conditions the requirement of compliance of the principles of natural justice vary. The courts cannot insist that under all circumstances and under different statutory provisions personal hearings have to be afforded to the persons concerned. If this principle of affording personal hearing is extended whenever statutory authorities are vested with the power to exercise discretion in connection with statutory appeals, it shall lead to chaotic conditions. … **When principles of natural justice require an opportunity to be heard before an adverse order is passed on any appeal or application, it does not in all circumstances mean a personal hearing. The requirement is complied with by affording an opportunity to the person concerned to present his case before such quasi-judicial authority who is expected to apply his judicial mind to the issues involved**.
  - **In view of the settled position that whenever a statutory authority has to form an opinion on a question, it does not mean that it has to be formed in a subjective or casual manner. That opinion must be formed objectively on relevant considerations. Same is the position in respect of the exercise of discretion.** …

THANK YOU