



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 20<sup>TH</sup> DAY OF DECEMBER, 2024**

**BEFORE**

**THE HON'BLE MR JUSTICE N S SANJAY GOWDA**

**WRIT PETITION NO. 11235 OF 2024 (GM-KEB)**

**C/W**

**WRIT PETITION NO. 22770 OF 2023 (GM-KEB)**

**WRIT PETITION NO. 23729 OF 2023 (GM-KEB)**

**WRIT PETITION NO. 24270 OF 2023 (GM-KEB)**

**WRIT PETITION NO. 28604 OF 2023 (GM-KEB)**

**WRIT PETITION NO. 28659 OF 2023 (GM-KEB)**

**WRIT PETITION NO. 29091 OF 2023 (GM-KEB)**

**WRIT PETITION NO. 1117 OF 2024 (GM-KEB)**

**WRIT PETITION NO. 6100 OF 2024 (GM-KEB)**

**WRIT PETITION NO. 15429 OF 2024 (GM-KEB)**

**WRIT PETITION NO. 15626 OF 2024 (GM-KEB)**

**WRIT PETITION NO. 15805 OF 2024 (GM-KEB)**

**WRIT PETITION NO. 17475 OF 2024 (GM-KEB)**

**WRIT PETITION NO. 19035 OF 2024 (GM-KEB)**

**WRIT PETITION NO. 19665 OF 2024 (GM-KEB)**



**IN W.P. No.11235 OF 2024:**

**BETWEEN:**

- 1 . BRINDAVAN HYDROPOWER PRIVATE LIMITED  
A PRIVATE LIMITED COMPANY REGISTERED AND  
INCORPORATED UNDER THE PROVISIONS OF THE



**NC: 2024:KHC:53048**  
**WP No. 11235 of 2024**  
**C/W WP No. 22770 of 2023**  
**WP No. 23729 of 2023**  
**And 12 other cases**

COMPANIES ACT 1956  
HAVING ITS REGISTERED OFFICE AT NO.20, 1ST  
FLOOR, ROOM NO.103, EDEN PARK  
VITTAL MALLYA ROAD  
BENGALURU-560001  
REPRESENTED BY ITS DIRECTOR  
MR AJIT S R

...PETITIONER

(BY SRI. SHRIDHAR PRABHU, ADVOCATE)

**AND:**

- 1 . UNION OF INDIA  
MINISTRY OF POWER AND NEW AND  
RENEWABLE ENERGY  
SHRAM SHAKTI BHAWAN  
RAFI MARG, NEW DELHI-110001  
Secy power@nic.in  
REPRESENTED BY SECRETARY (POWER).
- 2 . STATE OF KARNATAKA  
DEPARTMENT OF ENERGY  
ROOM NO.236, 2<sup>ND</sup> FLOOR, VIKASA SOUDHA  
DR B R AMBEDKAR VEEDHI  
BENGALURU-560001.  
prs-energy@karnataka.gov in  
REPRESENTED BY ITS  
ADDITIONAL CHIEF SECRETARY.
- 3 . STATE LOAD DISPATCH CENTER  
MANAGED BY KARNATAKA POWER  
TRANSMISSION CORPORATION LIMITED,  
A NODAL AGENCY ESTABLISHED UNDER SECTION 31  
OF THE ELECTRICITY ACT 2003  
HAVING ITS OFFICE AT SLDC,  
RACECOURSE CROSS ROAD,  
ANAND RAO CIRCLE, BENGALURU-560009  
EMAIL: ceeldckptcl@yahoo.com  
REPRESENTED BY ITS CHIEF ENGINEER.



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- 4 . KARNATAKA POWER TRANSMISSION CORPORATION LIMITED (KPTCL)  
A GOVERNMENT COMPANY  
INCORPORATED UNDER THE PROVISIONS OF THE COMPANIES ACT 1956  
KAVERI BHAVAN, PALACE ROAD  
BENGALURU-560009.  
REPRESENTED BY ITS MANAGING DIRECTOR.
- 5 . KARNATAKA ELECTRICAL REGULATORY COMMISSION (KERC)  
A REGULATORY BODY ESTABLISHED UNDER SECTION 19 OF THE KARNATAKA ELECTRICITY REFORM ACT 1999  
HAVING ITS OFFICE AT NO.16C-1, MILLER TANK BED AREA, VASANTHANAGAR  
BENGALURU-560052.  
EMAIL: kerc-ka.nic.in  
REPRESENTED BY ITS CHAIRMAN.
- 6 . MANGALORE ELECTRICITY COMPANY LIMITED (MESCOM)  
A GOVERNMENT COMPANY INCORPORATED UNDER THE PROVISIONS OF THE COMPANIES ACT 1956  
HAVING ITS REGISTERED OFFICE AT 1<sup>ST</sup> FLOOR, MESCOM BHAVAN  
CORPORATE OFFICE, MESCOM, KAVOOR CROSS ROAD, BEJAI  
MANGALORE-575004.  
EMAIL: mdmescom.@rediffmail.com  
md@mesco.in  
REPRESENTED BY ITS MANAGING DIRECTOR.
- 7 . BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED (BESCOM)  
A GOVERNMENT COMPANY  
INCORPORATED UNDER THE PROVISIONS OF THE COMPANIES ACT 1956  
HAVING ITS REGISTERED OFFICE AT CORPORATE OFFICE AT K R CIRCLE, BENGALURU-560001.



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EMAIL: md@bescom.co.in  
REPRESENTED BY ITS MANAGING DIRECTOR.

- 8 . HUBLI ELECTRICITY SUPPLY COMPANY LIMITED  
(HESCOM)  
A GOVERNMENT COMPANY INCORPORATED  
UNDER THE PROVISIONS OF THE COMPANIES ACT 1956  
HAVING ITS REGISTERED OFFICE AT CORPORATE  
OFFICE AT HESCOM, NAVANAGAR,  
PB ROAD, HUBBALLI-580025  
EMAIL: md.hescom.kn@gmail.com  
REPRESENTED BY ITS MANAGING DIRECTOR.
  
- 9 . GULBARGA ELECTRICITY SUPPLY COMPANY  
LIMITED(GESCOM)  
A GOVERNMENT COMPANY INCORPORATED  
UNDER THE PROVISIONS OF THE COMPANIES ACT 1956  
HAVING ITS REGISTERED OFFICE AT  
STATION ROAD, REVANASIDDDESHWAR COLONY,  
KHUBA PLOT, BRAHMPUR, KALABURAGI-585102.  
EMAIL: md.@gescom.in  
REPRESENTED BY ITS MANAGING DIRECTOR.
  
- 10 . CHAMUNDESHWARI ELECTRICITY SUPPLY COMPANY  
LIMITED (CESC)  
A GOVERNMENT COMPANY INCORPORATED UNDER THE  
PROVISIONS OF THE COMPANIES ACT 1956  
HAVING ITS REGISTERED OFFICE AT  
CESC MYSORE CORPORATE OFFICE AT NO.29  
VIJAYANAGAR 2ND STAGE  
HINKAL MYSURU-570017  
EMAIL: kc@cescmysore.org  
REPRESENTED BY ITS MANAGING DIRECTOR

...RESPONDENTS

(BY SRI. ARAVIND KAMATH, ASG FOR  
SRI. H.SHANTHI BHUSHAN, DSGI FOR R-1;  
SMT. HEMALATHA.V., AGA FOR R-2;  
SRI.DHYAN CHINNAPPA, SENIOR COUNSEL FOR  
SRI.SHAHBAAZ HUSSAIN, ADVOCATE FOR R-3, 4, 6 TO 10;  
SRI. B.N.PRAKASH, ADVOCATE FOR R-5)



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THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED THE ELECTRICITY (PROMOTING RENEWABLE ENERGY THROUGH GREEN ENERGY OPEN ACCESS) RULES, 2022, NOTIFIED IN THE OFFICIAL GAZETTE DATED 06<sup>TH</sup> JUNE 2022 ISSUED BY THE R1 UNION PRODUCED AT ANNEXURE-A CONSEQUENTLY, ETC.

**IN W.P. No.22770 OF 2023:**

**BETWEEN:**

1. GHODAWAT ENERGY PRIVATE LIMITED  
A COMPANY REGISTERED UNDER  
THE PROVISION, OF THE COMPANIES ACT, 1956  
HAVING ITS REGISTERED OFFICE AT NO. 358  
POST MAJALE TALUK  
HATKANGALE KOTHAPUR DISTRICT  
MAHARASHTRA 416 109.  
(REPRESENTED BY ITS AUTHORISED SIGNATORY)
  
2. GHODAWAT REALTY PRIVATE LIMITED  
A COMPANY REGISTERED UNDER  
THE PROVISIONS OF THE COMPANIES ACT 1956,  
HAVING ITS REGISTERED OFFICE GROUND FLOOR,  
204, 28th CROSS, 7<sup>TH</sup> BLOCK, JAYANAGAR,  
BENGALURU (BANGALORE) URBAN,  
KARNATAKA 560 082.  
  
ALSO PALNT OFFICE AT GAT NO. 438, CHIPRI,  
KOLHAPUR, MAHARASHTRA 416 101.
  
3. SANJAY D GHODAWAT HUF  
A COMPANY REGISTERED UNDER  
THE PROVISIONS OF THE  
COMPANIES ACT, 1956  
HAVING ITS REGISTERED OFFICE AT  
GAT NO. 379/2, A/P KONDIGRE,  
CHIPRI KOLHAPUR,



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MAHARASHTRA 416101.  
(REPRESENTED BY ITS  
AUTHORISED SIGNATORY).

...PETITIONERS

(BY SRI. SHRIDHAR PRABHU, ADVOCATE)

**AND:**

- 1 . GOVERNMENT OF INDIA  
MINISTRY OF POWER,  
NEW DELHI 110 003  
REPRESENTED BY ITS SECRETARY
  
- 2 . STATE OF KARNATAKA  
DEPARTMENT OF ENERGY  
VIKASA SOUDHA,  
DR. AMBEDKAR VEEDHI,  
BENGALURU 560 001  
(REPRESENTED BY ITS  
ADDITIONAL CHIEF SECRETARY)
  
- 3 . STATE LOAD DISPATCH CENTRE KARNATAKA  
A NODAL AGENCY UNDER THE CENTRAL  
ELECTRICITY REGULATORY,  
COMMISSION (OPEN ACCESS IN INTER  
STATE TRANSMISSION)  
REGULATION 2008 HAVING OFFICE AT  
KARNATAKA POWER TRANSMISSION,  
CORPORATION LIMITED  
RACE COURSE ROAD,  
A R CIRCLE, BANGALURU 560 001.  
(REPRESENTED BY ITS CHIEF ENGINEER ELECTRICITY)
  
- 4 . KARNATAKA POWER TRANSMISSION  
CORPORATION LIMITED  
A COMPANY REGISTERED AND GOVERNED  
UNDER THE PROVISIONS OF THE  
COMPANIES ACT, 1956  
HAVING ITS REGISTERED OFFICE AT



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KAVERI BHAVAN K G ROAD,  
BENGLAURU 560 009  
(REPRESENTED BY ITS MANAGING DIRECTOR)

- 5 . KANRATAKA ELECTRICITY REGULATORY COMMISSION  
A STATE ELECTRICITY REGULATORY COMMISSION  
CONSTITUTED UNDER THE PROVISIONS OF THE  
KARNATAKA ELECTRICITY REFORMS ACT, 1999  
HAVING ITS OFFICE AT NO. 16C-1  
MILLERS TANK BED AREA VASANTH NAGAR  
BENGLURU 560 052  
REPRESENTED BY ITS CHAIRPERSON

...RESPONDENTS

(BY SRI. ARAVIND KAMATH, ASG FOR  
SMT. SINCHANA.M.R., CSG FOR RESPONDENT No.1;  
SMT. HEMALATHA.V., AGA FOR R-2;  
SRI. DHYAN CHINNAPPA, SENIOR COUNSEL FOR  
SRI. SHAHBAAZ HUSSAIN, ADVOCATE FOR R-3 & R-4;  
SRI. B.N.PRAKASH, ADVOCATE FOR R-5)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF  
THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE  
ELECTRICITY (PROMOTING RENEWABLE ENERGY THROUGH  
GREEN ENERGY OPEN ACCESS) RULES, 2022, NOTIFIED IN  
THE OFFICIAL GAZETTE DATED 06/06/2022 ISSUED BY THE R1  
PRODUCED HEREIN AS ANNEXURE-A CONSEQUENTLY, ETC.

**IN W.P.No.23729 OF 2023:**

**BETWEEN:**

M/s SOHAM RENEWABLE ENERGY INDIA PVT LTD.,  
No.37, RMJ MADOTH TOWERS,  
7<sup>TH</sup> CROSS, VASANTH NAGAR,  
BENGALURU-560 052.  
REPRESENTED BY ITS DIRECTOR,  
SRI.SUCHINDRA.S.SHETTY  
A COMPANY REGISTERED UNDER  
COMPANIES ACT 1956



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...PETITIONER

(BY SRI. UDAYA HOLLA., SENIOR COUNSEL FOR  
SRI. VIVEK HOLLA., ADVOCATE)

**AND:**

1. KARNATAKA ELECTRICITY REGULATORY COMMISSION  
No.16 c-1, MILLERS TANK BED AREA,  
VASANTHAGAR,  
BENGALURU-560 052.  
BY ITS CHAIRMAN.

2. KARNATAKA POWER TRANSMISSION  
CORPORATION LIMITED,  
KAVERI BHAVAN,  
BENGALURU-560 009  
REPRESENTED BY ITS MANAGING DIRECTOR

...RESPONDENTS

(BY SRI. RAYAPPA. Y.HADAGALI, ADVOCATE FOR R-1;  
SRI. DHAYAN CHINNAPPA., SENIOR COUNSEL FOR  
SRI. SHAHBAAZ HUSSAIN, ADVOCATE FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226  
AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO  
DECLARE THAT PROVISIO TO REGULATION 6 AND REGULATION  
11, 12 AND 16 OF THE KARNATAKA REGULATION COMMISSION  
(TERMS AND CONDITIONS FOR GREEN ENERGY OPEN ACCESS)  
RULES 2022 ANNEXURE-F IS WHOLLY ILLEGAL AND VOID, ETC.

**IN W.P. No.24270 OF 2023:**

**BETWEEN:**

1 . M/S SAVITHA OIL TECHNOLOGIES LIMITED  
A COMPANY REGISTERED UNDER  
THE PROVISIONS OF THE COMPANIES ACT 1956,  
HAVING REGISTERED OFFICE AT NO 66/67,  
NARIMAN POINT,MUMBAI 400021.  
REPRESENTED BY ITS AUTHORIZED SIGNATORY  
MR PURVA SOOD





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(HEAD RENEWABLE ENERGY)

...PETITIONER

(BY SRI. SHRIDHAR PRABHU, ADVOCATE)

**AND:**

- 1 . UNION OF INDIA  
MINISTRY OF POWER  
NEW DELHI 110003  
REPESENTED BY ITS SECRETARY
  
- 2 . STATE OF KARNATAKA  
DEPARTMENT OF ENERGY,  
VIKASA SOUDHA,  
DR AMBEDKAR VEEDHI,  
BENGALURU 560001  
REPRESENTED BY ITS ADDITIONAL  
CHIEF SECRETARY.
  
- 3 . STATE LOAD DISPATCH CENTRE KARNATAKA  
A NODAL AGENCY UNDER THE CENTRAL ELECTRICITY  
REGULATORY COMMISSION (OPEN ACCESS IN INTER  
STATE TRANSMISSION)  
REGULATION 2008 HAVING OFFICE AT  
KARNATAKA POWER TRANSMISSION  
CORPORATION LIMITED, RACE COURSE ROAD,  
A R CIRCLE, BENGALURU 560001.  
REPRESENTED BY ITS  
CHIEF ENGINEER ELECTRICTY.
  
- 4 . KARNATAKA POWER TRANSMISSION  
CORPORATION LIMITED  
A COMPANY REGISTERED AND  
GOVERNED UNDER THE PROVISIONS OF THE  
COMPANIES ACT 1956  
HAVING ITS REGISTERED OFFICE AT  
KAVERI BHAVAN K G ROAD,  
BENGALURU 560009  
REPRESENTED BY ITS MANAGING DIRECTOR



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5 . KARNTAKA ELECTRICITY  
REGULATORY COMMISSION  
A STATE ELECTRICITY REGULATORY COMMISSION  
CONSTITUTED UNDER THE PROVISIONS OF THE  
KARNATAKA ELECTRICITY REFORMS ACT 1999  
HAVING ITS OFFICE AT NO 16C-1,  
MILLERS TANK BED AREA, VASANTH NAGAR,  
BENGALURU 560052  
REPRESENTED BY ITS CHAIRPERSON.

...RESPONDENTS

(BY SRI. ARAVIND KAMATH, ASG FOR  
SRI. VINAY.V., CSG FOR RESPONDENT No.1;  
SMT. HEMALATHA.V., AGA FOR R-2;  
SRI. DHYAN CHINNAPPA, SENIOR COUNSEL FOR  
SRI. SHAHBAAZ HUSSAIN, ADVOCATE FOR R-3 & R-4;  
SRI. B.N.PRAKASH, ADVOCATE FOR R-5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226  
AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO  
QUASH THE ELECTRICITY (PROMOTING RENEWABLE ENERGY  
THROUGH GREEN ENERGY OPEN ACCESS) RULES, 2022,  
NOTIFIED IN THE OFFICIAL GAZETTE DATED 06/06/2022  
ALONG WITH THE ELECTRICITY (PROMOTING RENEWABLE  
ENERGY THROUGH GREEN ENERGY OPEN ACCESS)  
AMENDMENT RULES, 2023 NOTIFIED IN THE OFFICE GAZETTE  
DATED 27/01/2023 ISSUED BY THE R1 PRODUCED HEREIN AS  
ANNEXURE-A (COLLECTIVELY), CONSEQUENTLY, ETC.

**IN W.P. No.28604 OF 2023:**

**BETWEEN:**

1 . RAMGAD MINERALS AND MINING LIMITED  
A COMPANY REGISTERED UNDER THE PROVISIONS OF  
THE COMPANIES ACT 1956/2013  
HAVING ITS REGISTERED OFFICE BALDOTA ENCLAVE,  
ABHERAJ BALDOTA ROAD, HOSPETE-583203  
(REPRESENTED BY ITS AUTHORIZED SIGNATORY)  
PRAVEEN SINGHAL.



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AGED ABOUT 55 YEARS

...PETITIONER

(BY SRI. SHRIDHAR PRABHU, ADVOCATE)

**AND:**

- 1 . UNION OF INDIA  
MINISTRY OF POWER,  
NEW DELHI-110003  
REPRESENTED BY ITS SECRETARY.
- 2 . STATE OF KARNATAKA  
DEPARTMENT OF ENERGY,  
VIKASA SOUDHA,  
DR. AMBEDKAR VEEDHI,  
BENGALURU-560001  
REPRESENTED BY ITS ADDITIONAL CHIEF SECRETARY.
- 3 . STATE LOAD DISPATCH CENTRE-KARNATAKA  
A NODAL AGENCY UNDER THE CENTRAL ELECTRICITY  
REGULATORY COMMISSION (OPEN ACCESS IN INTER  
STATE TRANSMISSION)  
REGULATION 2008 HAVING OFFICE AT  
KARNATAKA POWER TRANSMISSION  
CORPORATION LIMITED,  
RACE COURSE ROAD, A R CIRCLE,  
BENGALURU-560001.  
REPRESENTED BY ITS CHIEF ENGINEER -ELECTRICITY.
- 4 . KARNATAKA POWER TRANSMISSION  
CORPORATION LIMITED  
A COMPANY REGISTERED AND GOVERNED  
UNDER THE PROVISIONS OF THE COMPANIES ACT 1956,  
HAVING ITS REGISTERED OFFICE AT  
KAVERI BHAVAN, K.G.ROAD,  
BENGALURU-560009.
- 5 . KARNATAKA ELECTRICITY REGULATORY COMMISSION  
A STATE ELECTRICITY REGULATORY COMMISSION  
CONSTITUTED UNDER THE PROVISIONS OF THE



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KARNATAKA ELECTRICITY REFORMS ACT 1999,  
HAVING ITS OFFICE AT No.16C-1,  
MILLER'S TANK BED AREA, VASANTH NAGAR,  
BENGALURU-560 052.  
REPRESENTED BY ITS CHAIRPERSON.

...RESPONDENTS

(BY SRI. ARAVIND KAMATH, ASG FOR  
SMT. SADHANA.S.DESAI, CSG FOR R-1;  
SMT. HEMALATHA.V., AGA FOR R-2;  
SRI. DHYAN CHINNAPPA, SENIOR CONSEL FOR  
SRI. SHAHBAAZ HUSSAIN, ADVOCATE FOR R-3 & 4;  
SRI. B.N.PRAKASH, ADVOCATE FOR R-5)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF  
THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE  
ELECTRICITY (PROMOTING RENEWABLE ENERGY THROUGH  
GREEN ENERGY OPEN ACCESS) RULES, 2022, NOTIFIED IN  
THE OFFICIAL GAZETTE DATED 06/06/2022 (ISSUED BY THE  
R1 PRODUCED HEREIN AS ANNEXURE-A CONSEQUENTLY, ETC.

**IN W.P. No.28659 OF 2023:**

**BETWEEN:**

1 . MSPL LIMITED

A COMPANY REGISTERED UNDER THE PROVISIONS  
OF THE COMPANIES ACT , 1956/2013  
HAVING ITS REGISTERED OFFICE AT NO. 117  
BALDOTA BHAVAN, MAHARSHI KARVE ROAD,  
MUMBAI 400 020.

(REPRESENTED BY ITS VICE PRESIDENT (POWER))

...PETITIONER

(BY SRI. SHRIDHAR PRABHU, ADVOCATE)

**AND:**

1 . GOVERNMENT OF INDIA  
MINISTRY OF POWER,  
NEW DELHI 110 003



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(REPRESENTED BY ITS SECRETARY)

- 2 . STATE OF KARNATAKA  
DEPARTMENT OF ENERGY,  
VIKASA SOUDHA,  
DR. AMBEDKAR VEEDHI,  
BENGALURU 560 001  
(REPRESENTED BY ITS  
ADDITIONAL CHIEF SECRETARY)
- 3 . STATE LOAD DISPATCH CENTRE KARNATAKA  
A NODAL AGENCY UNDER THE  
CENTRAL ELECTRICITY REGULATORY  
COMMISSION (OPEN ACCESS IN INTER STATE  
TRANSMISSION)  
REGULATION 2008 HAVING OFFICE AT  
KARNATAKA POWER TRANSMISSION  
CORPORATION LIMITED RACE COURSE ROAD,  
A R CIRCLE, BENGALURU 560 001.  
(REPRESENTED BY ITS CHIEF ENGINEER ELECTRICITY).
- 4 . KARNATAKA POWER TRANSMISSION  
CORPORATION LIMITED  
A COMPANY REGISTERED AND GOVERNED  
UNDER THE PROVISIONS OF THE COMPANIES ACT 1956  
HAVING ITS REGISTERED OFFICE AT  
KAVERI BHAVAN, K G ROAD,  
BENGALURU 560 009.  
(REPRESENTED BY ITS MANAGING DIRECTOR).
- 5 . KARNATAKA ELECTRICITY REGULATORY COMMISSION  
A STATE ELECTRICITY REGULATORY COMMISSION  
CONSTITUTED UNDER THE PROVISIONS OF THE  
KARNATAKA ELECTRICITY REFORMS ACT, 1999  
HAVING ITS OFFICE AT NO. 16C-1  
MILLERS TANK BED AREA  
VASANTHA NAGAR,  
BENGALURU 560 052  
(REPRESENTED BY ITS CHAIRPERSON)

...RESPONDENTS



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(BY SRI.ARVIND KAMATH, ASG FOR  
SMT.SADHANA S.DESAI, CSG FOR R-1;  
SMT. HEMALATHA.V., AGA FOR R-2;  
SRI. DHYAN CHINNAPPA, SENIOR COUNSEL FOR  
SRI. SHAHBAAZ HUSSAIN, ADVOCATE FOR R-3 & R-4;  
SRI. B.N. PRAKASH, ADVOCATE FOR R-5)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ELECTRICITY (PROMOTING RENEWABLE ENERGY THROUGH GREEN ENERGY OPEN ACCESS) RULES, 2022, NOTIFIED IN THE OFFICIAL GAZETTE DATED 06/06/2022) ISSUED BY THE R1 PRODUCED HEREIN AS ANNEXURE-A CONSEQUENTLY, ETC.

**IN W.P. No.29091 OF 2023:**

**BETWEEN:**

1 . M/S SRI KUMARASWAMY MINERA EXPORTS PVT LTD  
A COMPANY REGISTERED AND GOVERNED UNDER  
THE PROVISIONS OF THE COMPANIES ACT, 1956,  
NO.61, CUNNINGHAM CROSS ROAD,  
VASANTHNAGAR, BENGALURU - 560052  
REPRESENTED BY MR. SHIRABI PRAKASH.

...PETITIONER

(BY SRI. D.L.N.RAO, SENIOR COUNSEL FOR  
SRI. ANIRUDH ANAND, ADVOCATE FOR PETITIONER)

**AND:**

1 . UNION OF INDIA  
MINISTRY OF POWER,  
RING ROAD, MANY A PARI  
NEW DELHI - 110 064.

2 . STATE OF KARNATAKA  
DEPARTMENT OF ENERGY  
VIKASA SOUDHA,



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DR. AMBEDKAR VEEDHI,  
BANGALORE - 560001  
(REPRESENTED BY ADDITIONAL  
CHIEF SECRETARY)

- 3 . STATE LOAD DISPATCH CENTRE KARNATAKA  
A NODAL AGENCY UNDER THE CENTRAL ELECTRICITY  
REGULATORY COMMISSION (OPEN ACCESS IN INTER  
STATE TRANSMISSION) REGULATION 2008 HAVING  
OFFICE AT KARNATAKA POWER TRANSMISSION  
CORPORATION LIMITED  
RACE COURSE ROAD, A.R. CIRCLE,  
BANGALORE - 560 001  
(REPRESENTED BY ITS CHIEF ENGINEER ELECTRICITY).
- 4 . KARNATAKA POWER TRANSMISSION  
CORPORATION LIMITED  
A COMPANY REGISTERED AND  
GOVERNED UNDER THE PROVISIONS OF THE  
COMPANIES ACT 1956  
HAVING ITS REGISTERED OFFICE AT  
KAVERI BHAVAN, K G ROAD,  
BANGALORE - 560 009  
REPRESENTED BY ITS MANAGING DIRECTOR.
- 5 . KARNATAKA ELECTRICITY REGULATORY COMMISSION  
A STATE ELECTRICITY REGULATORY COMMISSION  
CONSTITUTED UNDER THE PROVISIONS OF THE  
KARNATAKA ELECTRICITY REFORMS ACT 1999  
HAVING ITS OFFICE AT 16/C-1,  
MILLER TANK BED AREA, VASANTHNAGAR,  
BENGALURU - 560 052.  
REPRESENTED BY ITS CHAIRPERSON.

...RESPONDENTS

(BY SRI. ARAVIND KAMATH, ASG FOR  
SMT. SADHANA.S.DESAI, CSG FOR R-1;  
SMT. HEMALATHA.V., AGA FOR R-2;  
SRI. DHYAN CHINNAPPA, SENIOR COUNSEL FOR  
SRI. SHAHBAAZ HUSSAIN, ADVOCATE FOR R-3 & 4;  
SRI. B.N.PRAKASH, ADVOCATE FOR R-5)



**NC: 2024:KHC:53048**  
**WP No. 11235 of 2024**  
**C/W WP No. 22770 of 2023**  
**WP No. 23729 of 2023**  
**And 12 other cases**

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECTION TO QUASH THE ELECTRICITY (PROMOTING RENEWABLE ENERGY THROUGH GREEN ENERGY OPEN ACCESS) RULES, 2022, NOTIFIED IN THE OFFICIAL GAZETTE DATED 06/06/2022, ISSUED BY THE R1 PRODUCED HEREIN AS ANNEXURE-A CONSEQUENTLY, ETC.

**IN W.P. No.1117 OF 2024:**

**BETWEEN:**

- 1 . M/S SUMUKH RENEWABLE SOLUTIONS  
( A PARTNERSHIP CONCERN REGISTERED  
UNDER THE PROVISIONS OF  
INDIAN PARTNERSHIP ACT 1932)  
NO 29, RR RESIDENCY, 100 FEET ROAD ,  
VIVESWARAYA LAYOUT  
BENGALURU 560091.  
(REPRESENTED BY ITS AUTHORIZED SIGNATORY  
(HEAD OPERATIONS)  
SHRI SHIVAKUMAR L  
S/O LALYANAIAK  
(AGED ABOUT 53 YEARS)

...PETITIONER

(BY SRI. PRAKASH.D., ADVOCATE FOR)

**AND:**

- 1 . UNION OF INDIA  
(REPRESENTED BY ITS SECRETARY)  
MINISTRY OF POWER  
NEW DELHI 110003.
- 2 . STATE OF KARNATAKA  
(REPRESENTED BY ITS ADDITIONAL  
CHIEF SECRETARY)  
DEPARTMENT OF ENERGY VIKASA SOUDHA  
DR AMBEDKAR VEEDHI





**NC: 2024:KHC:53048**  
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BENGALURU 560001.

- 3 . STATE LOAD DISPATCH CENTRE - KARNATAKA  
(REPRESENTED BY ITS  
CHIEF ENGINEER - ELECTRICITY)  
OFFICE OF THE CHIEF ENGINEER(ELECTY)  
RACE COURSE ROAD , A R CIRCLE  
BENGALURU 560009.
- 4 . KARNATAKA POWER TRANSMISSION  
CORPORATION LIMITED  
(REPRESENTED BY ITS MANAGING DIRECTOR)  
KAVERI BHAVAN, K G ROAD  
BENGALURU 560009.
- 5 . KARNATAKA ELECTRICITY REGULATORY COMMISSION  
(REPRESENTED BY ITS CHAIRPERSON)  
NO 16C-1, MILLERS TANK BED AREA,  
VASANTH NAGAR, BENGALURU 560052.

...RESPONDENTS

(BY SRI. ARAVIND KAMATH, ASF FOR  
SRI. VINAY VENUGOPAL, CSG FOR R-1;  
SMT. HEMALATHA.V., AGA FOR R-2;  
SRI. DHYAN CHINNAPPA, SENIOR COUNSEL FOR  
SRI. SHAHBAAZ HUSSAIN, ADVOCATE FOR R-3 & R-4;  
SRI. B.N.PRAKASH, ADVOCATE FOR R-5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226  
AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO  
QUASH THE IMPUGNED DEMAND NOTICE IN  
CEE/SLDC/SEE/TBC/EE-1/AEE-1/5155-56 DATED 19/06/2023  
ISSUED BY R3 AT ANNEXURE-H, ETC.

**IN W.P. No.6100 OF 2024:**

**BETWEEN:**

- 1 . MANSUKHMAL INVESTMENT PRIVATE LIMITED  
A COMPANY REGISTERED UNDER THE



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**WP No. 11235 of 2024**  
**C/W WP No. 22770 of 2023**  
**WP No. 23729 of 2023**  
**And 12 other cases**

PROVISIONS OF THE COMPANIES ACT 1956/2013  
HAVING ITS REGISTERED OFFICE AT NO 66/67,  
NARIMAN BHAVAN NARIMAN POINT,  
MUMBAI 400021  
REPRESENTED BY ITS AUTHORIZED SIGNATORY

...PETITIONER

(BY SRI. SHRIDHAR PRABHU, ADVOCATE)

**AND:**

- 1 . GOVERNMENT OF INDIA  
MINISTRY OF POWER  
NEW DELHI 110003  
REPRESENTED BY ITS SECRETARY.
- 2 . STATE OF KARNATAKA  
DEPARTMENT OF ENERGY  
VIKASA SOUDHA,  
DR AMBEDKAR VEEDHI,  
BENGALURU 560001  
REPRESENTED BY ITS  
ADDITIONAL CHIEF SECRETARY.
- 3 . STATE LOAD DISPATCH CENTRE KARNATAKA  
A NODAL AGENCY UNDER THE  
CENTRAL ELECTRICITY REGULATORY  
COMMISSION(OPEN ACCESS IN INTER STATE  
TRANSMISSION)REGULATION 2008  
HAVING OFFICE AT  
KARNATAKA POWER TRANSMISSION  
CORPORATION LIMITED,  
RACE COURSE ROAD, A R CIRCLE,  
BENGALURU 560001.  
REPRESENTED BY ITS CHIEF ENGINEER ELECTRICITY.
- 4 . KARNATAKA POWER TRANSMISSION  
CORPORATION LIMITED  
A COMPANY REGISTERED AND  
GOVERNED UNDER THE PROVISIONS OF THE  
COMPANIES ACT 1956



**NC: 2024:KHC:53048**  
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**And 12 other cases**

HAVING ITS REGISTERED OFFICE AT  
KAVERI BAHAVAN K G ROAD,  
BENGALURU 560009  
REPRESENTED BY ITS MANAGING DIRECTOR.

- 5 . KARNATAKA ELECTRICITY REGULATORY COMMISSION  
A STATE ELECTRICITY REGULATORY COMMISSION  
CONSTITUTED UNDER THE PROVISIONS OF THE  
KARNATAKA ELECTRICITY REFORMS ACT 1999  
HAVING ITS OFFICE AT NO 16C-1  
MILLERS TANK BED AREA, VASANTH NAGAR,  
BENGALURU 560052  
REPRESENTED BY ITS CHAIRPERSON

...RESPONDENTS

- (BY SRI. ARAVIND KAMATH, ASG FOR  
SMT. NAYANA TARA.B.G., CSG FOR R-1;  
SMT. HEMALATHA.V., AGA FOR R-2;  
SRI. DHYAN CHINNAPPA, SENIOR COUNSEL FOR  
SRI. SHAHBAAZ HUSSAIN, ADVOCATE FOR R-3 & R-4;  
SRI. B.N.PRAKASH, ADVOCATE FOR R-5)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF  
THE CONSTITUTION OF INDIA, PRAYING TO DIRECTION TO  
QUASH THE ELECTRICITY (PROMOTING RENEWABLE ENERGY  
THROUGH GREEN ENERGY OPEN ACCESS) RULES, 2022,  
NOTIFIED IN THE OFFICIAL GAZETTE DATED: 06.06.2022  
(ISSUED BY THE R-1 PRODUCED HEREIN AS ANNEXURE-A,  
CONSEQUENTLY, ETC.

**IN W.P. No.15429 OF 2024:**

**BETWEEN:**

- 1 . RADIANCE KA SUNRISE THREE PRIVATE LIMITED  
A PRIVATE LIMITED COMPANY INCORPORATED  
UNDER THE PROVISIONS OF THE  
COMPANIES ACT 2013  
HAVING ITS REGISTERED OFFICE  
611, SYNERGY COURT, OFF RAMACHANDRA LANE



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**C/W WP No. 22770 of 2023**  
**WP No. 23729 of 2023**  
**And 12 other cases**

KANCHPADA, MALAD WEST, MUMBAI CITY  
MUMBAI, MAHARASHTRA, INIDA 400 064.  
(REPRESENTED BY ITS DIRECTOR )  
MR. MANIKKAN SANGAMESHWARAN

...PETITIONER

(BY SRI. SHRIDHAR PRABHU, ADVOCATE)

**AND:**

- 1 . UNION OF INDIA  
MINISTRY OF POWER AND NEW  
AND RENEWABLE ENERGY  
SHARAM SHAKTI BHAWAN, RAFI MARG  
NEW DELHI 110 001.  
secy power @ nic .in  
(REPRESENTED BY SECRETARY (POWER)).
- 2 . STATE OF KARNATAKA  
DEPARTMENT OF ENERGY  
ROOM NO. 236, 2ND FLOOR  
VIKASA SOUDHA, DR. B.R. AMBEDKAR VEEDHI,  
BENGALURU 560 001.  
prs energy @ karnataka .gov.in  
(REPRESENTED BY ITS ADDITIONAL  
CHIEF SECRETARY)
- 3 . KARNATAKA ELECTRICITY  
REGULATOR COMMISSION (KERC)  
A REGULATOR BODY ESTABLISHED  
UNDER SECTION 19 OF THE KARNATAKA ELECTRICITY  
REFORMS ACT 1999 HAVING ITS OFFICE AT  
NO. 16C-1, MILLER TANK BED AREA  
VASANTHANAGAR, BENGLAURU 560 052  
EMAIL kerc-kar.nic.in  
(REPRESENTED BY ITS CHAIRMAN)
- 4 . KARNATAKA POWER TRANSMISSION  
CORPORATION LIMITED (KPTCL)  
A GOVERNMENT COMPANY  
INCORPORATED UNDER THE PROVISIONS OF THE



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**And 12 other cases**

COMPANIES ACT, 1956  
KAVERI BHAVAN, PALACE ROAD  
BENGALURU 560 009  
REPRESENTED BY ITS MANAGING DIRECTOR.

- 5 . STATE LOAD DISPATCH CENTER  
MANAGED BY KARNATAKA POWER TRANSMISSION  
CORPORATION LIMITED  
A NODAL AGENCY ESTABLISHED UNDER SECTION 31  
OF THE ELECTRICITY ACT 2003  
HAVING ITS OFFICE AT  
SLDC RACECOURSE CROSS ROAD,  
ANAND RAO CIRCLE BENGALURU 560 009  
EMAIL: ceeldckptcl@ yahoo.com  
(REPRESENTED BY ITS CHIEF ENGINEER)
  
- 6 . BANGALORE ELECTRICITY SUPPLY  
COMPANY LIMITED (BESCOM)  
A GOVERNMENT COMPANY INCORPORATED  
UNDER THE PROVISIONS OF COMPANIES ACT 1956  
HAVING ITS REGISTERED OFFICE AT  
CORPORATE OFFICE K R CIRCLE  
BENGALURU 560 001.  
EMAIL: md@bescom.co. in  
(REPRESENTED BY ITS MANAGING DIRECTOR)
  
- 7 . JUNIPER NETWORKS INDIA LIMITED  
A COMPANY INCORPORATED UNDER  
THE COMPANIES ACT 1956  
HAVING ITS REGISTERED OFFICE AT  
UNITG NO. 103, 1ST FLOOR, PLATINA  
PLOT NO. C-59, G BLOCK  
BANDRA KURLA COMPLEX  
BANDRA EAST, MUMBAI 400 051.  
(REPRESENTED BY ITS MANAGING DIRECTOR)

...RESPONDENTS

(BY SRI. ARAVIND KAMATH, ASG FOR  
SMT. NAYANA TARA B.G., CSG FOR R-1;  
SMT. HEMALATHA.V., AGA FOR R-2;



**NC: 2024:KHC:53048**  
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SRI. B.N.PRAKASH, ADVOCATE FOR R-3;  
SRI. DHYAN CHINNAPPA, SENIOR COUNSEL FOR  
SRI. SHAHBAAZ HUSSAIN, ADVOCATE FOR R-4 TO R-6)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION TO QUASH THE IMPUGNED THE ELECTRICITY (PROMOTING RENEWABLE ENERGY THROUGH GREEN ENERGY OPEN ACCESS) RULES, 2022, NOTIFIED IN THE OFFICIAL GAZETTE DATED 06TH JUNE 2022 ISSUED BY THE 1ST RESPONDENT UNION PRODUCED AT ANNEXURE – A, ETC.

**IN W.P. No.15626 OF 2024:**

**BETWEEN:**

1 . MSPL LIMITED  
A PUBLIC LIMITED COMPANY REGISTERED  
UNDER THE PROVISIONS OF THE COMPANIES ACT 1956,  
HAVING ITS REGISTERED OFFICE AT NO. 117,  
BALDOTA BHAVAN, MAHARSHI KARVE ROAD,  
MUMBAI-400 020.  
(REPRESENTED BY ITS VICE PRESIDENT) (POWER)  
MR. PRAVEEN SINGHAL

...PETITIONER

(BY SRI. SHRIDHAR PRABHU, ADVOCATE)

**AND:**

1 . UNION OF INDIA  
MINISTRY OF POWER AND  
NEW AND RENEWABLE ENERGY,  
SHRAM SHAKTI BHAWAN,  
RAFI MARG, NEW DELHI-110 001,  
secy\_power@nic.in  
(REPRESENTED BY SECRETARY (POWER))



**NC: 2024:KHC:53048**  
**WP No. 11235 of 2024**  
**C/W WP No. 22770 of 2023**  
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**And 12 other cases**

- 2 . STATE OF KARNATAKA  
DEPARTMENT OF ENERGY,  
ROOM NO. 236,  
2ND FLOOR, VIKASA SOUDHA,  
DR. B. R. AMBEDKAR VEEDHI,  
BENGALURU-560 001,  
EMAIL prs-energy@karnataka.gov.in  
(REPRESENTED BY ITS  
ADDITIONAL CHIEF SECRETARY)
- 3 . KARNATAKA ELECTRICITY  
REGULATORY COMMISSION (KERC)  
A REGULATORY BODY ESTABLISHED  
UNDER SECTION 19 OF THE  
KARNATAKA ELECTRICITY REFORMS ACT,  
1999 HAVING ITS OFFICE AT  
NO. 16C-1, MILLER TANK BED AREA,  
VASANTHANAGAR, BENGALURU-560 052  
EMAIL kerc-ka.nic.in  
(REPRESENTED BY ITS CHAIRMAN).
- 4 . KARNATAKA POWER TRANSMISSION  
CORPORATION LIMITED (KPTCL)  
A GOVERNMENT COMPANY INCORPORATED  
UNDER THE PROVISIONS OF  
THE COMPANIES ACT, 1956  
KAVERI BHAVAN, PALACE ROAD,  
BENGALURU-560 009.  
(REPRESENTED BY ITS MANAGING DIRECTOR)
- 5 . STATE LOAD DISPATCH CENTER  
MANAGED BY KARNATAKA POWER  
TRANSMISSION CORPORATION LIMITED  
A NODAL AGENCY ESTABLISHED  
UNDER SECTION 31 OF THE ELECTRICITY ACT 2003,  
HAVING ITS OFFICE AT SLDC,  
RACECOURSE CROSS ROAD,  
ANAND RAO CIRCLE,  
BENGALURU-560 009.  
E MAIL ceeldckptcl@yahoo.com



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**WP No. 23729 of 2023**  
**And 12 other cases**

(REPRESENTED BY ITS CHIEF ENGINEER)

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

...RESPONDENTS

- (BY SRI. ARAVIND KAMATH, ASG FOR  
SRI. SHANTHI BHUSAHAN.H., DSGI FOR R-1;  
SMT. HEMALATHA.V., AGA FOR R-2;  
SRI. B.N.PRAKASH, ADVOCATE FOR R-3;  
SRI. DHYAN CHINNAPPA, SENIOR COUNSEL FOR  
SRI.SHAHBAAZ HUSSAIN, ADVOCATE FOR R-4 TO 6)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226  
AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO  
ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE  
WRIT, ORDER OR DIRECTION TO QUASH THE IMPUGNED THE  
ELECTRICITY (PROMOTING RENEWA-BLE ENERGY THROUGH  
GREEN ENERGY OPEN ACCESS) RULES, 2022, NOTIFIED IN  
THE OFFICIAL GAZETTE DATED 06TH JUNE 2022 ISSUED BY  
THE 1 RESPONDENT UNION PRODUCED AT ANNEXURE – A TO  
A1, ETC.

**IN W.P. No.15805 OF 2024:**

**BETWEEN:**

- 1 . RAMGAD MINERALS AND MINING LIMITED  
A PUBLIC LIMITED COMPANY INCORPORATED  
UNDER THE PROVISIONS OF THE COMPANIES  
ACT 2013 HAVING ITS REGISTEREE OFFICE AT





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**And 12 other cases**

BALDOTA ENCLAVE, ABHERAJ BALDOTA ROAD,  
HOSPETE, VIJAYANAGAR DISTRICT,  
KARNATAKA-583203  
(REPRESENTED BY ITS AUTHORIZED SIGNATORY)  
MR PARAVEEN SIGBAL

...PETITIONER

(BY SRI. SHRIDHAR PRABHU, ADVOCATE)

**AND:**

- 1 . UNION OF INDIA  
MINISTRY OF POWER AND NEW AND  
RENEWABLE ENERGY,  
SHARM SHAKTI BHAWAN, RAFI MARGE,  
NEW DELHI-110001  
secy power @ nic.in  
(REPRESENTED BY SECRETARY(POWER))
- 2 . STATE OF KARNATAKA  
DEPARTMENT OF ENGERGY,  
ROOM NO. 236 2ND FLOOR, VIKASA SOUDHA,  
DR B R AMBEKDAR VEEDHI,  
BENGALRU-560001  
EMAIL: prs-engergy@ karnataka.gov.in  
(REPRESENTED BY ITS  
ADDITIONAL CHIEF SECRETARY)
- 3 . KARNATAKA ELECTRICITY REGULATORY  
COMMISSION(KERC)  
A REGULATOR BODY ESTABLISHED  
UNDER SECTION 19 OF THE  
KARNATAKA ELECTRICITY REFORMS ACT, 1999  
HAVING ITS OFFICE AT NO. 16C-1  
MILLER TANK BED AREA, VASANTHANAGAR  
BENGALURU-560052.  
EMAIL: kerc-ka.nic.in  
(REPRESENTED BY ITS CHAIRMAN)
- 4 . KARNATAKA POWER TRANSMISSION



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**C/W WP No. 22770 of 2023**  
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**And 12 other cases**

CORPORATION LIMITED (KPTCL)  
A GOVERNMENT COMPANY  
INCORPORATED UNDER THE  
PROVISIONS OF THE COMPANIES ACT 1956  
KAVERI BHAVAN, PALACE ROAD,  
BENGALURU-560009.  
(REPRESENTED BY ITS MANAGING DIRECTOR)

5 . STATE LOAD DISTPATCH CENTRE  
MANAGED BY KARNATAKA POWER  
TRANSMISSION CORPORATION LIMITED  
A NODAL AGENCY ESTABLISHED UNDER SECTION 31,  
OF THE ELECTIRCITY ACT 2003  
HAVING ITS OFFICE AT  
SLDC, RACECOURSE CROSS ROAD, ANAND RAO  
CIRCLE, BENGALURU-560009  
EMAIL: ceeldckptcl@yahoo.com  
(REPRESENTED BY ITS CHIEF ENGINEER)

6 . BANGALORE ELECTRICITY SUPPLY  
COMPANY LIMITED (BESCOM)  
A GOVERNMENT COMPANY  
INCORPORATED UNDER THE PROVISIONS OF  
COMPANIES CT 1956  
HAVING ITS REGISTERED OFFICE  
AT CORPORATED OFFICE K R CIRCLE,  
BENGALURU-560001  
EMIAL: md@bescom.co.in  
(REPRESENTED BY ITS MANAGING DIRECTOR)

...RESPONDENTS

(BY SRI. ARAVIND KAMATH, ASG FOR  
SMT. NAYANA TARA B.G., CSG FOR R-1;  
SMT. HEMALATHA.V., AGA FOR R-2;  
SRI. B.N.PRAKASH, ADVOCATE FOR R-3;  
SRI. DHYAN CHINNAPPA, SENIOR COUNSEL FOR  
SRI. SHAHBAAZ HUSSAIN, ADVOCATE FOR R-4 TO R-6)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226  
AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO  
QUASH THE IMPUGNED THE ELECTRICITY (PROMOTING



**NC: 2024:KHC:53048**  
**WP No. 11235 of 2024**  
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**WP No. 23729 of 2023**  
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RENEWABLE ENERGY THROUGH GREEN ENERGY OPEN ACCESS) RULES, 2022, NOTIFIED IN THE OFFICIAL GAZETTE DATED 06TH JUNE 2022 ISSUED BY THE 1ST RESPONDENT UNION PRODUCED AT ANNEXURE - A TO A5, ETC.

**IN W.P. No.17475 OF 2024:**

**BETWEEN:**

- 1 . GHODAWAT ENERGY PRIVATE LIMITED  
A PRIVATE LIMITED COMPANY INCORPORATED UNDER THE PROVISIONS OF THE COMPANIES ACT 1956 HAVING ITS REGISTERED OFFICE AT F NO. D 2, 4<sup>TH</sup> FLOOR, STAR RESIDENCY, GAT NO 285, KOLHAPUR SANGLI ROAD, MAJALE, TAL HATKA, NANGALE, HATKANANGALE, MAHARASHTRA, INDIA 416 109.  
REPRESENTED BY ITS AUTHORIZED SIGNATORY MR. PRASHANTH KUMRA.J.
  
- 2 . GHODAWAT REALTY PRIVATE LIMITED  
A PRIVATE LIMITED COMPANY INCORPORATED UNDER THE PROVISIONS OF THE COMPANIES ACT 1956 HAVING ITS REGISTERED OFFICE AT 438 AT CHIPRI POST JAYSINGPUR, TAL SHIROL DIST, KOLHAPUR, CHIPRI, KOLHAPUR, HATKANANGALE, MAHARASHTRA, INDIA 416 101.  
  
ALSO HAVING OFFICE AT NO 204, 28TH CROSS, 7TH BLOCK, JAYANAGAR, BENGALURU 560 082.  
REPRESENTED BY ITS AUTHORIZED SIGNATORY MR. PRASHANTH KUMAR.J.
  
- 3 . SANJAY D. GHODAWAT HUF  
A HINDU UNDIVIDED FAMILY,  
HAVING ITS OFFICE AT GAT NO 379/2  
A/P KONDIGRE, CHIPRI KOLHAPUR,  
MAHARASHTRA-416 101.



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**And 12 other cases**

...PETITIONERS

(BY SRI. SHRIDHAR PRABHU, ADVOCATE)

**AND:**

- 1 . UNION OF INDIA  
MINISTRY OF POWER AND NEW  
AND RENEWABLE ENERGY,  
SHIRAM SHAKTI BHAWAN, RAFI MARG,  
NEW DELHI-110 001.  
secy power@nic.in  
REPRESENTED BY SECRETARY (POWER)
- 2 . STATE OF KARNATAKA  
DEPARTMENT OF ENERGY,  
ROOM NO. 236, 2ND FLOOR,  
VIKASA SOUDHA, DR BR AMBEDKAR VEEDHI,  
BENGALURU-560 001  
E-MAIL: prs-energy@karnataka.gov.in  
REPRESENTED BY ITS  
ADDITIONALL CHIEF SECRETARY
- 3 . KARNATAKA ELECTRICITY  
REGULATORY COMMISSION (KERC)  
A REGULATORY BODY  
ESTABLISHED UNDER SECTION 19  
OF THE KARNATAKA ELLECTRICITY REFORMS  
ACT 1999 HAVING ITS OFFICE AT NO.16C-1.  
MILLER TANK BED AREA,  
VASANTHANAGAR, BENGALURU - 560 052  
E-MAIL: kenc-ka.nic.in  
REPRESENTED BY ITS CHAIRMAN
- 4 . KARNATAKA POWER TRANSMISSION CORPORATION  
LIMITED (KPTCL),  
A GOVERNMENT COMPANY INCORPORATED  
UNDER THE PROVISIONS OF THE COMPANIES ACT, 1956  
KAVERI BHVAN, PALACE ROAD,  
BENGALURU - 560 009



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REPRESENTED BY ITS MANAGING DIRECTOR.

5 . STATE LOAD DISPATCH KARNATAKA CENTER  
MANAGED BY KARNATAKA POWER TRANSMISSION  
CORPORATION LIMITED  
A NODAL AGENCY ESTABLISHED  
UNDER SECTION 31 OF THE  
ELECTRICITY ACT 2003,  
HAVING ITS OFFICE AT SLDC,  
RACECOURSE CROSS ROAD, ANAND RAO CIRCLE,  
BENGALURU - 560 009  
E-MAIL: ceeldckptcl@yahoo.com  
REPRESENTED BY ITS CHIEF ENGINEER

6 . BANGALORE ELECTRICITY SUPPLY  
COMPANY LIMITED (BESCOM),  
A GOVERNMENT COMPANY INCORPORATED  
UNDER THE PROVISIONS OF COMPANIES ACT, 1956  
HAVING ITS REGISTERED OFFICE AT CORPORATE  
OFFICE, K.R. CIRCLE, BENGALURU - 560001  
E-MAIL md@bescom.co.in  
REPRESENTED BY ITS MANAGING DIRECTOR

...RESPONDENTS

(BY SRI. ARAVIND KAMATH, ASG FOR  
SMT. SINCHANAM.R., CSG FOR R-1;  
SMT. HEMALATHA.V., AGA FOR R-2;  
SRI. B.N.PRAKASH, ADVOCATE FOR R-3;  
SRI. DHYAN CHINNAPPA, SENIOR COUNSEL FOR  
SRI. SHAHBAAZ HUSSAIN, ADVOCATE FOR R-4 TO R-6)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226  
AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO  
QUASH THE IMPUGNED THE ELECTRICITY (PROMOTING  
RENEWABLE ENERGY THROUGH GREEN ENERGY OPEN  
ACCESS) RULES, 2022, NOTIFIED IN THE OFFICIAL GAZETTE  
DATED 06TH JUNE 2022 ISSUED BY THE 1 RESPONDENT  
UNION PRODUCED AT ANNEXURE- A, ETC.



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**C/W WP No. 22770 of 2023**  
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**And 12 other cases**

**IN W.P. No.19035 OF 2024:**

**BETWEEN:**

SAVITA OIL TECHNOLOGIES LIMITED,  
A PUBLIC LIMITED COMPANY INCORPORATED  
UNDER THE PROVISIONS OF THE  
COMPANIES ACT, 1956  
HAVING ITS REGISTERED OFFICE AT  
66/67, NARIMAN BHAVAN  
NARIMAN POINT, MUMBAI, MAHARASHTRA,  
INDIA-400 021.  
E-MAIL: legal@savita.com  
REPRESENTED BY ITS GENERAL POWER OF  
ATTORNEY HOLDER  
MRS. PURVA SOOD.

...PETITIONER

(BY SRI. SHRIDHAR PRABHU, ADVOCATE)

**AND:**

1. UNION OF INDIA,  
MINISTRY OF POWER AND  
NEW & RENEWABLE ENERGY,  
SHRAM SHAKTI BHAWAN,  
RAFI MARG, NEW DELHI-110 001.  
Secy power@nic.in  
REPRESENTED BY SECRETARY (POWER)
2. STATE OF KARNATAKA,  
DEPARTMENT OF ENERGY,  
ROOM No.236, 2<sup>ND</sup> FLOOR,  
VIKASA SOUDHA,  
DR. B.R.AMBEDKAR VEEDHI,  
BENGALURU-560 001.  
EMAIL:prs-energy@karnataka.gov.in  
REPRESENTED BY ITS ADDITIONAL  
CHIEF SECRETARY.
3. KARNATAKA ELECTRICITY,  
REGULATORY COMMISSION (KERC)



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A REGULATORY BODY ESTABLISHED  
UNDER SECTION 19 OF THE KARNATAKA  
ELECTRICITY REFORMS ACT, 1999  
HAVING ITS OFFICE AT No.16C-1,  
MILLER TANK BED AREA,  
VASANTHANAGAR,  
BENGALURU-560 052.  
EMAIL:kerc-Karnataka.nic.in  
REPRESENTED BY ITS CHAIRMAN

4. KARNATAKA POWER TRANSMISSION  
CORPORATION LIMITED (KPTCL)  
A GOVERNMENT COMPANY,  
INCORPORATED UNDER THE PROVISIONS  
OF THE COMPANIES ACT, 1956  
KAVERI BHAVAN, PALACE ROAD,  
BENGALURU-560 009  
REPRESENTED BY ITS MANAGING DIRECTOR.
5. STATE LOAD DISPATCH CENTER  
MANAGED BY KARNATAKA POWER  
TRANSMISSION CORPORATION LIMITED  
A NODAL AGENCY ESTABLISHED UNDER SECTION  
31 OF THE ELECTRICITY ACT 2003,  
HAVING ITS OFFICE AT SLDC,  
RACECOURSE CROSS ROAD, ANAND RAO CIRCLE,  
BENGALURU-560 009  
EMAIL: ceeldckptcl@yahoo.com  
REPRESENTED BY ITS CHIEF ENGINEER
6. BANGALORE ELECTRICITY SUPPLY  
COMPANY LIMITED (BESCOM),  
A GOVERNMENT COMPANY INCORPORATED  
UNDER THE PROVISIONS OF COMPANIES ACT,  
1956  
HAVING ITS REGISTERED OFFICE  
AT CORPORATE OFFICE, K.R.CIRCLE  
BENGALURU-560 001.  
EMAIL:md@bescom.co.in  
REPRESENTED BY ITS MANAGING DIRECTOR  
...RESPONDENTS



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**WP No. 23729 of 2023**  
**And 12 other cases**

(BY SRI. ARAVIND KAMATH, ASG FOR  
SMT. NAYANA TARA.B.G., CGC FOR R-1;  
SMT. HEMALATHA.V. AGA FOR R-2;  
SRI. B.N.PRAKASH, ADVOCATE FOR R-3;  
SRI. DHYAN CHINNAPPA, SENIOR COUNSEL FOR  
SRI. SHAHBAAZ HUSSAIN, ADVOCATE FOR R-4 TO R-6)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED THE ELECTRICITY (PROMOTING RENEWABLE ENERGY THROUGH GREEN ENRGY OPEN ACCESS) RULES, 2022, NOTIFIED IN THE OFFICIAL GAZETTE DATED 06<sup>TH</sup> JUNE 2022 ISSUED BY THE 1<sup>ST</sup> RESPONDENT UNION PRODUCED AT ANNEXURE-A, ETC.

**IN W.P. No.19665 OF 2024:**

**BETWEEN:**

MANSUKHMAL INVESTMENTS PRIVATE LIMITED  
A PRIVATE LIMITED COMPANY,  
HAVING ITS REGISTERED OFFICE  
AT 66/67, NARIMAN BHAVAN  
NARIMAN POINT, MUMBAI,  
MAHARASHTRA, INDIA - 400 021  
[REPRESENTED BY ITS  
GENERAL POWER OF ATTORNEY HOLDER]  
MRS. PURVA SOOD.

...PETITIONER

(BY SRI. SHRIDHAR PRABHU., ADVOCATE)

**AND:**

1. UNION OF INDIA,  
MINISTRY OF POWER AND  
NEW AND RENEWABLE ENERGY,  
SHRAM SHAKTI BHAWAN,  
RAFI MARG,





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**WP No. 23729 of 2023**  
**And 12 other cases**

NEW DELHI-110 001  
E-MAIL: SECY POWER@NIC.IN  
[REPRESENTED BY SECRETARY (POWER)]

2. STATE OF KARNATAKA  
DEPARTMENT OF ENERGY,  
ROOM NO. 236, 2ND FLOOR,  
VIKASA SOUDHA,  
DR B.R AMBEDKAR VEEDHI,  
BENGALURU-560 001.  
E-MAIL: PRS-ENERGY@KARNATAKA.GOV.IN  
[REPRESENTED BY ITS  
ADDITIONAL CHIEF SECRETARY.]
3. KARNATAKA ELECTRICITY REGULATORY  
COMMISSION (KERC)  
A REGULATORY BODY ESTABLISHED  
UNDER SECTION 19 OF THE KARNATAKA  
ELECTRICITY REFORMS ACT, 1999  
HAVING ITS OFFICE AT NO.16C-1.  
MILLER TANK BED AREA,  
VASANTHANAGAR,  
BENGALURU-560052.  
E-MAIL: KERC-KA.NIC.IN  
[REPRESENTED BY ITS CHAIRMAN]
4. KARNATAKA POWER TRANSMISSION  
CORPORATION LIMITED (KPTCL),  
A GOVERNMENT COMPANY  
INCORPORATED UNDER THE PROVISIONS  
OF THE COMPANIES ACT, 1956  
KAVERI BHAVAN, PALACE ROAD,  
BENGALURU - 560 009  
[REPRESENTED BY ITS MANAGING DIRECTOR]
5. STATE LOAD DISPATCH CENTER,  
MANAGED BY KARNATAKA POWER  
TRANSMISSION CORPORATION LIMITED  
A NODAL AGENCY ESTABLISHED  
UNDER SECTION 31 OF THE  
ELECTRICITY ACT 2003,



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HAVING ITS OFFICE AT SLDC,  
RACECOURSE CROSS ROAD,  
ANAND RAO CIRCLE, BENGALURU - 560009  
E-MAIL: CEELDCKPTCL@YAHOO.COM  
[REPRESENTED BY ITS CHIEF ENGINEER]

6. BANGALORE ELECTRICITY SUPPLY  
COMPANY LIMITED (BESCOM),  
A GOVERNMENT COMPANY INCORPORATED  
UNDER THE PROVISIONS OF  
COMPANIES ACT, 1956  
HAVING ITS REGISTERED OFFICE  
AT CORPORATE OFFICE, K.R. CIRCLE,  
BENGALURU - 560001  
E-MAIL: MD@BESCOM.CO.IN  
[REPRESENTED BY ITS MANAGING DIRECTOR]

...RESPONDENTS

(BY SRI. ARAVIND KAMATH, ASG FOR  
SMT. SADANA S. DESAI, CGC FOR R-1,  
SMT. HEMALATHA V., AGA FOR R-2,  
SRI. B.N.PRAKASH, ADV. FOR R-3.)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226  
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QUASH THE IMPUGNED THE ELECTRICITY (PROMOTING  
RENEWABLE ENERGY THROUGH GREEN ENERGY OPEN  
ACCESS) RULES, 2022, NOTIFIED IN THE OFFICIAL GAZETTE  
DATED 06 JUNE 2022 ISSUED BY THE 1 RESPONDENT UNION  
PRODUCED AT ANNEXURE-A, IN SO FAR AS PETITIONER IS  
CONCERNED ETC.

THESE PETITIONS HAVING BEEN HEARD AND RESERVED  
FOR ORDERS ON **25.07.2024**, COMING ON FOR  
PRONOUNCEMENT THIS DAY, THE COURT MADE THE  
FOLLOWING:

**CORAM: THE HON'BLE MR JUSTICE N S SANJAY GOWDA**



## **CAV ORDER**

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**I. BRIEF FACTS:**

1. Petitioners are the Companies engaged in the business of Hydro Power generation who had entered into agreements for Wheeling and Banking with the transmission and distribution licensees.
2. They are before this Court challenging the validity of the Rules framed by the Central Government in the year 2022 called the Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules 2022, ("**the GEOA Rules**").
3. They are also challenging the Regulations framed by the Karnataka Electricity Regulatory Commission ("**KERC**") in the year 2022 called the Karnataka Regulatory Commission (Terms and Conditions for Green Energy Open access) Regulations, 2022 ("**KERC Regulations, 2022**").
4. Two of the petitioners established Mini Hydel Plants pursuant to orders passed by the Government of



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Karnataka before the enactment of the Karnataka Electricity Regulations, 1999 (“**the KER, 1999**”) and the Electricity Act, 2003 (“**the Electricity Act**” or “**the Act**”).

5. They had also entered into agreements with the Government of Karnataka which were stated to be valid for a period of 30 years and which contained clauses stating that they would be liable to pay wheeling and banking charges as stipulated in the Government Order and the banking would be on a water year basis (annual banking) with a grace period of one month.

## **II. CHRONOLOGY OF EVENTS RELATING TO OPEN ACCESS IN RESPECT OF MINI HYDEL PLANTS:**

6. In the year 1995, in two cases in this batch of petitions, the State Government had accorded permission for establishment of mini-hydel plants even before the KER Act had been enacted and the State had entered into agreements with the petitioners, containing clauses stating that the term of the contract would be for 30 years and



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the charges for wheeling would be as per the Government orders. The agreements also stated that the companies would be entitled to annual banking facilities with a grace period of one month.

7. Pursuant to the enactment of the Electricity Act in the year 2003, the KERC, in exercise of the powers conferred under Section 181 of the Electricity Act, framed the Karnataka Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2004 ("**the 2004 Regulations**"). These Regulations have been amended in 2006, 2014, 2015, 2017 and 2023.
8. The 2004 Regulations provided for 20 Regulations including Regulation 11 which provided for determination of Open Access Charges i.e., the Transmission Charges, Wheeling Charges, Surcharge, Additional surcharge and other charges.
9. On 09.06.2005, KERC passed an order determining the transmission charges, wheeling charges and cross-subsidy



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charges under Open Access. By this order, KERC taking into consideration that the Renewable Energy projects could not compete with conventional sources of energy had decided to continue the concessional wheeling charge which had been levied earlier at 5%. KERC also decided to allow annual banking facility in respect of wind and mini-hydel projects subject to the payment of difference of charges between the time of injection and time of withdrawal of the power, with banking charges of 2%.

10. On 11.07.2008, KERC approved the Standard Wheeling and Banking Agreement for all renewable energy projects. It also ordered that the overall wheeling charges payable by renewable energy projects would be 5% and they would not be liable to pay any transmission charges either in cash or in kind, but a surcharge was payable if the wheeling of energy was for uses other than their own.
11. Wheeling and banking charges were made applicable for a period of ten years from the date of commercial operation



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of the project and the order was stated to be valid for a period of five years from 11.07.2008 for renewable energy projects which were commissioned between 11.07.2008 and 10.17.2013. However, it was made clear that for existing projects where agreements had already been signed and were in subsistence, the terms of those agreements would apply till their expiry and the order would become applicable only after the expiry of those agreements.

12. On 10.07.2013 — the validity of this order was extended by a period of three months, on 10.10.2013 — it was extended till 31.03.2014, and on 24.04.2014 — it was extended till 30.06.2014 or until a revised order was passed.
13. It may be pertinent to state here that the petitioner in Writ Petition No.3729 of 2023 and the petitioner in Writ Petition No.11235 of 2024 entered into a Wheeling and Banking Agreement with KPTCL and the concerned Electricity





Supply Companies (**"the ESCOMS"**) on 04.01.2014 and 28.06.2014, respectively. These agreements were valid for a period of 10 years and had provided for an annual banking facility.

14. On 04.07.2014, KERC, in exercise of the powers conferred under Clause 11 of the 2004 Regulations, passed an order to the effect that wheeling charges would be 5% of the injected energy for wind, mini-hydel, bagasse-based co-generation plants and bio-mass based projects, and held that the banking charges of 2% of the injected energy would be applicable only to wind and mini-hydel projects. It also continued the annual banking facility for wind, mini-hydel and social energy, and the unutilized energy would be deemed to have been purchased by the distribution licensee of the area where the generator was located and would be paid for at 85% of the generic tariff.
15. On 08.07.2014, KERC also approved the standard Wheeling and Banking Agreement for Renewable Energy



projects and also made it clear that Wheeling and Banking Agreement would be applicable only for wind, mini-hydel and solar power plants.

16. On 12.09.2014, KERC passed an order clarifying that its earlier order dated 04.07.2014 regarding payment of 85% of the generic tariff in respect of the unutilized energy at the end of the financial year or wind year would be applicable to both existing and to the new projects commissioned on or before 31.03.2018 and the standard WBA approved on 08.07.2014 would be applicable to all agreements executed after 08.07.2014.
17. On 26.02.2015, the KERC passed an order approving the amendments to the standard WBA.
18. On 09.01.2018, the KERC passed an order reducing the Banking from 1 year to 6 months, and this order was challenged before the Appellate Tribunal for Electricity ("the **APTEL**") in Appeal No.42 of 2018 and the APTEL by an order dated 29.03.2019 set aside this order curtailing



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the banking facility to six months on the ground that existing contracts could not be modified. As against said order of APTEL, it is stated that the matter was carried to the Apex Court and the same is pending consideration in C.A. No.9619 of 2019, and the Apex Court had not granted any interim order staying the order passed by the APTEL.

19. On 06.06.2022, the Central Government framed the Electricity (Promoting Renewable Energy through Green Energy Open Access) Rules, 2022 ("**the Central Government GEOA Rules**" or "**the impugned Rules**") purportedly in exercise of its powers conferred under Sections 176(1) and 176(2)(z) of the Act.
20. These Rules are made applicable for generation, purchase and consumption of green energy i.e., electrical energy from renewable sources of energy and provides for renewable purchase obligations on all obligated entities as well as GEOA and prescribes a procedure for the same.



Furthermore, it also provides for the establishment of a Nodal Agency and provides that banking shall be permitted only up to a month, at charges to be fixed by the appropriate Commission, in addition to also prescribing the manner in which charges are to be levied for Open Access for GEOA Consumers.

21. These Rules also provide for Rule 12 which prescribes a model regulation on methodology for calculation of open access charges and for also banking charges to be framed by the Forum of Regulators, with a rider that the methodology should not be onerous and should meet the prudent cost of the distribution licensee so as to fulfil the objective of promoting the procurement of green energy by the GEOA consumers.
22. Rule 5 of the Rules states that in order to provide GEOA to consumers of Green Energy, the Appropriate Commission may, if necessary, amend the relevant Regulations made



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by it and such Regulations are required to be consistent with the impugned GEOA Rules.

23. It is these Rules which are under challenge in this batch of writ petitions (except in Writ Petition No.23729 of 2023), principally, on the ground that the Central Government did not have the legislative competence to frame the Rules and did not have the power under the provisions of the Act to issue a directive to the Regulatory Commissions and thereby act as a supervisory body to them.
24. The KERC, in light of the Central Government GEOA Rules framed by the Central Government, proceeded to issue the draft Regulations, invited comments from the stakeholders, conducted a public hearing, considered the comments / suggestions / objections / views of the stakeholders and has thereafter framed the Karnataka Electricity Regulatory Commission (Terms and Conditions for Green Energy Open Access) Regulations, 2022 ("**The KERC GEOA Regulations**" or "**the impugned Rules**")



collectively, along with the above-mentioned “**the Central Government GEOA Rules**”) in exercise of the powers conferred under Sections 181, 39(2)(d), 40 (c), 42 (2) and (3), and 86(1)(c) of the Act.

25. These Regulations are also under challenge in this batch of writ petitions (including Writ Petition No.23729 of 2023).
26. The Forum of Regulators appear to have framed Model Regulations specifying the methodology for calculating open access energy charges and the KERC has passed an order, pending the adoption of the methodology and determination of charges by it in accordance with the methodology specified by the Forum of Regulators, and has fixed charges for availing open access. These orders are also under challenge in some of the petitions in this batch, while there are also prayers challenging the demands made individually against the petitioners.

### **III. SUBMISSIONS OF THE PETITIONERS:**

27. The petitioners are represented by Learned Senior



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Counsels Sriyuths Uday Holla, D.L.N. Rao and the irrepressible counsel Sri. Sridhar Prabhu.

28. They basically contend that:

- i. The Central Government does not possess the power to frame the GEOA Rules and hence they are liable to be struck down.
- ii. The Central Government had no role to play under the provisions of the Act in the matter of granting open access to the generating companies and hence the Rules framed by it were invalid.
- iii. The provisions of the Act specifically state that in the matter of granting open access, it is the appropriate Commission which has been conferred the exclusive power to regulate open access and no other entity, much less the Central Government, which has a limited role to play under the Act, could be permitted to frame any rule in that regard.
- iv. The Central Government, by framing the Rules, had basically taken over the functions which had statutorily



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been reserved exclusively to the Appropriate Commission and it had made the Commission secondary and subservient to it, and that this was fundamentally violative of the statutory framework and the basic objective of the Act — which was to distance the Government from the functioning of the electricity sector.

- v. The provisions of the Act specifically entrust the function of regulating the generation, transmission and supply of electricity to a regulator i.e., the appropriate Commissions, and it, in fact, excludes the Central or State Government from playing any role in the regulation of the electricity sector and the Central Government by framing the impugned Rules was basically destroying the entire statutory framework and it was thus liable to be struck down.
- vi. The Central Government has not been entrusted with any statutory function under the Act in relation to the transmission of electricity by generating companies and





it cannot therefore frame Rules on the premise that it was doing so for carrying out the provisions of the Act.

29. It was highlighted that:

- i. Section 42(2) of the Electricity Act conferred on the Appropriate Commission the exclusive obligation to provide for open access to a distribution licensee — including the extent of open access, the phases in which they were to be provided, and also determining the charges for wheeling;
- ii. Section 62 of the Electricity Act cast the responsibility of determining the tariff for transmission and wheeling of electricity on the appropriate State Commission;
- iii. Section 86(1)(a) of the Electricity Act made it the function of the State Commission to determine the tariff for wheeling of electricity for the category of customers who had been permitted open access;
- iv. Section 86(1)(c) of the Electricity Act made it a function of the Commission to facilitate the intra-State transmission of electricity.



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30. Thus, these provisions made it absolutely clear that in the matter of granting open access, every aspect of open access was to be regulated by the Commission and Section 181(2)(p) to (s) of the Act empowered only the Commission to frame regulations and thus every aspect of relating to open access under Act was exclusively under the domain of the Commission, and the Central Government could therefore have no power to play any role in the matter of open access and its reliance on the residual power available under Section 176(2)(z) of the Act to frame the Rules was wholly misconceived.
31. The impugned Regulations framed by KERC pursuant to the impugned Rules of the Central Government are also liable to be struck down since they were framed only because the Rules mandated them to frame the Regulations in accordance with the Rules. The KERC Regulations were framed to be in conformity with the Central Government Rules and were not framed in



exercise of the powers conferred to the Commission independently, and cannot thus survive by themselves.

32. Learned Senior counsels and Counsel also relied upon the following citations:

- i. **Sundew Properties Limited v. Telangana State Electricity Regulatory Commission & Anr., 2024 SCC Online 976** — Power of the State Commission to frame Regulations under Section 181 of the Act;
- ii. **Tamil Nadu Spinning Mills Association v. Tamil Nadu Electricity Regulatory Commission & Ors., 2021 SCC OnLine APTEL 51** — banking of electricity;
- iii. **Fortune Five Hydel Projects Pvt. Ltd. v. Karnataka Electricity Regulatory Commission & Ors, 2019 SCC Online APTEL 51** — banking of electricity;
- iv. **Maharashtra State Electricity Distribution Company Limited v. JSW Steel Limited & Ors., (2022) 2 SCC 742** — additional surcharge & cross-subsidy;
- v. **SESA Sterlite Limited v. Orissa Electricity Regulatory Commission & Ors., (2014) (8) SCC 444** — additional surcharge & cross-subsidy;



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- vi. **Sri. Dhanraj v. Gulbarga University & Anr., ILR 1999 Kar 3880** — Central rules to prevail over State rules.

#### **IV. SUBMISSIONS OF THE RESPONDENTS:**

33. Sri. Aravind Kamath, learned Additional Solicitor General appearing for the Central Government, sought to repel the arguments of the generating companies and contended as follows:

- i. The Central Government had framed the impugned GEOA Rules by virtue of Entry No.14 of the Union List and Entry 38 of the Concurrent List, in view of the fact that it had signed a treaty at an international convention to that effect and, therefore, it could not be contended that the Central Government had no legislative competence.
- ii. The Central Government was obligated to carry out the provisions of the Electricity Act and since it was one of the objectives of the Electricity Act to promote the



generation of green energy, it was empowered to frame Rules under Section 176(1) of the Electricity Act.

- iii. The Central Government was basically framing a set of Rules which only laid out a standard and uniform procedure to be followed in the matter of granting open access to green energy producers and consumers, and this was essentially an exercise undertaken in carrying out the provisions of the Act and, therefore, it possessed the power to frame Rules.
- iv. The Central Government wanted to standardise the manner in which open access was granted to green energy producers and this set of Rules granted an element of certainty to all such generating companies and ensured greater investment in the field of green energy, which was in the ultimate interest of the public and the Rules cannot thus be questioned.
- v. The Rules were beneficial to not only the generating companies but also to the consumers and, hence, there was no justification to nullify it.



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34. Sri. Dhyan Chinnappa, Learned Senior Counsel appearing for the KPTCL, submitted that:

- i. Banking was not statutorily provided for or guaranteed under the provisions of the Electricity Act;
- ii. The standard form of Contract for Wheeling and Banking Agreements had been altered several times and does not confer any right on the petitioners;
- iii. The Central Government GEOA Rules apply to generators of green energy and banking is available only to them;
- iv. The KERC GEOA Regulations would apply to all entities, whether they are new or are seeking renewal of Wheeling and Banking Agreements;
- v. Statutory charges are payable in terms of the Regulations framed and the argument that they should be supported by data cannot be considered in light of the Regulations being an exercise of statutory power;



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- vi. The Central Government did possess the powers to frame the Rules by virtue of Section 176(1) of the Act, which was the general power available to the Central Government to frame Rules to carry out the provisions of the Act. He submitted that Section 176(2) of the Act provided for framing Rules for the specific purposes enumerated therein and this did not curtail the general power to frame Rules under Section 176(1) of the Act;
- vii. The Act contemplated the framing of Rules by the Central and State Government and these Rules would prevail over the Regulations framed by the appropriate Commission as — *firstly*, the Commissions were not superior to the Government; and *secondly*, the power to frame Regulations, by itself, stated that the Regulations framed by the Commission should be in conformity with the provisions of the Electricity Act and also the Rules framed thereunder. He therefore submitted that the Central Government GEOA Rules would have to be the guiding factor in carrying out the



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provisions of the Electricity Act and they had an overriding effect on the Regulations;

- viii. He submitted that since the Central Government GEOA Rules framed under the Act stood on a higher footing, the Commission was required to abide by the Rules and it did not have an absolute dominion to frame regulations, even if the substantive provisions cast a responsibility on carrying out certain functions under the Electricity Act;
- ix. He submitted that the Central Government GEOA Rules essentially brought about a certainty in the manner of granting open access to green energy producers and the same should therefore be welcomed, and there was no justification to strike them down.

35. Sri. Chinnappa relied upon the following citations:

- i. **Dhahran v. Vikram Singh & Ors., 2023 SCC Online SC 724** — Presumption of constitutionality in favour of a statutory instrument;





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- ii. **Juniper Hotels Private Limited v. Delhi Electricity Regulatory Commission & Anr., 2023 SCC Online Del 7100** — Claiming exemption in the matter of wheeling, transmission and additional surcharge for open access customers;
- iii. **M/s. Gokak Power and Energy Limited v. Karnataka Electricity Regulatory Commission & Ors., 2014 SCC Online APTEL 89** — No stipulation either under the Regulations of the Central Commission or the Regulations of State Commission for allowing Banking facility for a particular period;
- iv. **M/s. Fortune Five Hydel Projects Pvt. Ltd. v. Karnataka Electricity Regulatory Commission & Ors., Appeal No 42 of 2018 by the APTEL** — modification of Wheeling and Banking Agreements before the expiry of the validity period of 10 years of the agreement;



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**v. PTC India Limited v. Central Electricity  
Regulatory Commission, Through Secretary,**

**(2010) 4 SCC 603** — The power to frame Regulations under Section 178 of the Act are wider than the functions enumerated of the Commission under Section 79(1) and a Regulation framed under Section 178 of the Act intervenes and even overrides the existing contracts between the regulated entities and it casts a statutory obligation on the regulated entities to align their existing and future contracts with the Regulations.

36. Sri. Prakash, learned counsel appearing for the KERC supported the arguments of Sri. Kamath and Sri. Chinnappa to submit that there was no legal infirmity in the Rules framed by the Central Government.



**V. QUESTIONS WHICH ARISE FOR CONSIDERATION IN THE SUBJECT PETITIONS:**

37. In light of the submissions advanced, the following issues arise for consideration in this batch of writ petitions:

- I. *Whether the provisions of the Electricity Act enable the Central Government to frame the impugned GEOA Rules of 2022;***
- II. *Whether the Central Government – by the framing of said GEOA Rules of 2022 – could have directed the KERC to frame the impugned KERC Regulations of 2022, thereby depriving it of its statutory function of being the Regulator, and whether these KERC Regulations would survive in view of the answer to this issue; AND***
- III. *Whether the consequential orders passed by the KERC fixing the charges for open access in exercise of its powers under said KERC Regulations can be sustained.***



**VI. BASIC PRINCIPLES TO DETERMINE THE VALIDITY OF A DELEGATED/SUBORDINATE LEGISLATION:**

38. In order to appreciate the contentions advanced by the Learned Counsel, the architecture of the Electricity Act and the contours of the applicability and effect of the provisions of the Act would have to be analysed.

39. In a recent judgment of the Hon'ble Supreme Court rendered in ***Naresh Chandra Agrawal***<sup>1</sup>, the Apex Court, after considering earlier decisions on the point, has laid down the law regarding a challenge made to a subordinate legislation in the following terms:

*"21. In **State of Tamil Nadu and Anr. vs. P. Krishnamurthy and Ors. (2006) 4 SCC 517**, this Court recollected the following principles while adjudging the validity of subordinate legislation, including regulations:*

*There is a presumption in favour of constitutionality or validity of a subordinate*

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<sup>1</sup> Naresh Chandra Agrawal v. The Institute of Chartered Accountants of India & Ors., (2024) 2 SCR 194.



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*legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognized that a subordinate legislation can be challenged under any of the following grounds:*

- (a) Lack of legislative competence to make the subordinate legislation.*
- (b) Violation of fundamental rights guaranteed under the Constitution of India.*
- (c) Violation of any provision of the Constitution of India.*
- (d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.*
- (e) Repugnancy to the laws of the land, that is, any enactment.*
- (f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules).*  
*(emphasis supplied)*

*22. Of the six available grounds for challenging subordinate legislation, it is quite clear that the scope of the challenge raised in this petition is restricted to one ground in the instant case; that the Rule exceeds the limits of authority conferred by the enabling Act. Therefore, it becomes important to examine the scope of power available under the Act before we can adjudge whether the Rules exceed the limits of authority conferred by the enabling Act.*



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*24. Experience of legislative drafting in India has shown that, generally, the delegation of power to formulate rules follows a standardized pattern within statutes. Typically, a section of the statute grants this authority in broad terms, using phrases like 'to carry out the provisions of this Act' or 'to carry out the purposes of this Act.' Subsequently, another sub-section details specific matters or areas for which the delegated power can be exercised, often employing language such as 'in particular and without prejudice to the generality of the foregoing power.' Judicial interpretation of such provisions underscores that the specific enumeration is illustrative and should not be construed as limiting the scope of the general power. This approach allows for flexibility in rulemaking, enabling the authorities to address unforeseen circumstances. A key principle emerges from this interpretation: even if specific topics are not explicitly listed in the statute, the formulation of rules can be justified if it falls within the general power conferred, provided it stays within the overall scope of the Act. This mode of interpretation has been categorised as the 'generality versus enumeration' principle in some precedents of this Court. This delicate balance between specificity and generality in legal*



*delegation is crucial for effective governance and adaptability to evolving legal landscapes.*

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*32. From reference to the precedents discussed above and taking an overall view of the instant matter, we proceed to distil and summarise the following legal principles that may be relevant in adjudicating cases where subordinate legislation are challenged on the ground of being 'ultra vires' the parent Act:*

- (a) The doctrine of ultra vires envisages that a Rule making body must function within the purview of the Rule making authority, conferred on it by the parent Act. As the body making Rules or Regulations has no inherent power of its own to make rules, but derives such power only from the statute, it must necessarily function within the purview of the statute. Delegated legislation should not travel beyond the purview of the parent Act.*
- (b) Ultra vires may arise in several ways; there may be simple excess of power over what is conferred by the parent Act; delegated legislation may be inconsistent with the provisions of the parent Act; there may be non-compliance with the procedural requirement as laid down in the parent Act. It is the function of the courts to keep all authorities within the confines of the law by supplying the doctrine of ultra vires.*
- (c) If a rule is challenged as being ultra vires, on the ground that it exceeds the power*



*conferred by the parent Act, the Court must, firstly, determine and consider the source of power which is relatable to the rule. Secondly, it must determine the meaning of the subordinate legislation itself and finally, it must decide whether the subordinate legislation is consistent with and within the scope of the power delegated.*

- (d) Delegated rule-making power in statutes generally follows a standardized pattern. A broad section grants authority with phrases like 'to carry out the provisions' or 'to carry out the purposes.' Another sub-section specifies areas for delegation, often using language like 'without prejudice to the generality of the foregoing power.' In determining if the impugned rule is intra vires/ultra vires the scope of delegated power, Courts have applied the 'generality vs enumeration' principle.*
- (e) The "generality vs enumeration" principle lays down that, where a statute confers particular powers without prejudice to the generality of a general power already conferred, the particular powers are only illustrative of the general power, and do not in any way restrict the general power. In that sense, even if the impugned rule does not fall within the enumerated heads, that by itself will not determine if the rule is ultra vires/intra vires. It must be further examined if the impugned rule can be upheld by reference to the scope of the general power.*
- (f) The delegated power to legislate by making rules 'for carrying out the purposes of the Act' is a general delegation, without laying down any guidelines as such. When such a power is given, it may be permissible to find out the object of the enactment and then see if the rules framed satisfy the Act of having*





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*been so framed as to fall within the scope of such general power confirmed.*

*(g) However, it must be remembered that such power delegated by an enactment does not enable the authority, by rules/regulations, to extend the scope or general operation of the enactment but is strictly ancillary. It will authorize the provision of subsidiary means of carrying into effect what is enacted in the statute itself and will cover what is incidental to the execution of its specific provision. In that sense, the general power cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself.*

*(h) If the rule making power is not expressed in such a usual general form but are specifically enumerated, then it shall have to be seen if the rules made are protected by the limits prescribed by the parent Act."*

40. A reading of said judgment would indicate that the rule-making body would have to function within the limits of the power granted to it under the statute and the rule-making authority, by itself, has no inherent power of its own to frame rules and only derives its power under the statute, and it would therefore have to necessarily function within the parameters laid down in the statute.



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41. Thus, in order to ascertain whether the prayers made in the writ petitions — relating to the challenge made to the Rules framed by the Central Government in exercise of powers under Section 176(1)(c) of the Rules and framing of the legislation by the KERC — are valid or not, it will have to firstly be ascertained whether the Central Government possessed the legislative competence to frame the Central Government GEOA Rules, and whether the Rules so framed failed to conform to the statute under which it was made.

42. Before examining the contentions of the petitioners, an overview of the electricity laws would be necessary.

## **VII. HISTORY OF ELECTRICITY LAWS & THE ROLE OF THE STATE AS PRESCRIBED THEREUNDER:**

43. The generation, transmission and distribution of electricity were initially governed by the Electricity Supply Act, 1910. This Act dealt with the supply and use of electrical energy and the rights and obligations of the licencees.



44. In the year 1948, the Electricity Supply Act was enacted creating the Central Electricity authorities, the State Electricity Boards and the generating Companies. Under these enactments, the generation, supply and distribution were a monopoly of the State.
45. In the year 1991, the 1910 Act was amended to widen the scope of private participation. This amendment enabled the private sector to become generating companies. Amendments were made enabling the private sector to become generating companies, which were hitherto only companies formed by the Central and State Governments. A provision was also made setting forth terms and conditions for sale of electricity by generating companies.
46. Thus, until 1991, the Governments basically controlled every aspect of the electricity sector.
47. In the year 1998, the Electricity Regulatory Commissions Act was enacted wherein the Regulatory Commissions were set up at the national level as well as the state level.



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This Act, for the first time, entrusted the task of determining the tariff, which was hitherto being done by the States, to the Regulatory Commission. The objects and reasons for enacting the Electricity Act are as follows:

### **"STATEMENT OF OBJECTS AND REASONS**

An Act to provide for the establishment of a Central Electricity Regulatory Commission and State Electricity Regulatory Commissions, rationalization of electricity tariff, transparent policies regarding subsidies, promotion of efficient and environmentally benign policies and matters connected therewith or incidental thereto.

India's power sector is beset by problems that impede its capacity to respond to the rapidly growing demand for energy brought about by economic liberalisation. Despite the stated desire for reform and the initial measures that have been implemented, serious problems persist. As the problems of the Power Sector deepen, reform becomes increasingly difficult underscoring the need to act decisively and without delay. It is essential that the Government exit implement significant reforms by focusing on the fundamental issues facing the power sector, namely the lack of rational retail tariffs, the high level of cross-subsidies, poor planning and operation, inadequate capacity, the neglect of the consumer, the limited involvement of private sector skills and resources and the absence of an independent regulatory authority, Considering the paramount importance of restructure power sector, Government of India organised two Conferences of Chief Ministers to discuss the whole gamut of issues in the power sector and the outcome of these meetings was the adoption of the Common Minimum National Action Plan for Power (CMNPP).

2. The CMNPP recognised that the gap between demand and supply of power is widening and acknowledged that the financial



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position of State Electricity Boards is fast deteriorating and the future development in the power sector cannot be sustained without viable State Electricity Boards and improvement of their operational performance. The CMNPP identified creation of regulatory Commission as a step in this direction and specifically provided for establishment of the Central Electricity Regulatory Commission (CERC) and State Electricity Regulatory commissions (SERCs). After the finalisation of the, national agenda contained in CMNPP, the Ministry of Power assigned the task of studying the restructuring needs of the regulatory system to Administrative Staff College of India (ASCI), Hyderabad. The ASCI report strongly recommended the creation of independent Electricity Regulatory Commissions both at the Centre and the States.

3. To give effect to the aforesaid proposals, the Electricity Regulatory Commissions Bill, 1997 was introduced in the Lok Sabha on 14th August, 1997, However it could not be passed due to the dissolution of the Eleventh Lok Sabha. This has resulted in delay in establishing the Regulatory Commissions leading to confusion and misgivings in various sections about the commitment of the Government to the reforms and restructuring of the power sector. Needless to say, this has also slowed down the flow of public and private investment in power sector. Since it was considered necessary to ensure the speedy establishment of the Regulatory Commissions and as Parliament was not in session, the President promulgated the Electricity Regulatory Commissions Ordinance, 1998 on 25th day of April, 1998."

*(Emphasis supplied)*

48. One of the reasons for this enactment, as could be seen from the statement of objects and reasons, was that it was felt that the participation of the Government in determining the tariff was detrimental to the growth of



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electricity industry and had resulted in poor financial health of the Electricity Boards. It was therefore thought that it was essential that the Government exit from this exercise.

49. Thus, in the year 1991, the legislative intent was made clear that the Government should not be involved in the matter of determining the tariff and this task should be entrusted to a specialised body i.e., the Regulator.
50. On the basis of this 1998 Act, the Karnataka Electricity Reforms Act, 1999 ("**the KER Act**") was enacted under which initially, the KPTCL was tasked with both transmission and distribution functions but subsequently, the KPTCL was restricted to only performing transmission duties, and the distribution and supply portion was unbundled and was entrusted to ESCOMs, which were incorporated companies.
51. The KER Act also provided for establishment of a Regulatory Commission which was tasked with discharging



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the regulatory function of distribution, supply, utilisation of electricity, quality of services, tariff, and charges payable. Thus, in the year 1999, virtually, all aspects relating to the electricity were to be administered by the Regulatory Commission.

52. It may be pertinent to state here that though the State Government had the power to issue Policy Directives to the Commission, this power was, however, subjected to the condition that these Directives would be consistent with the objectives sought to be achieved under the KER Act. Thus, the power of the State Government to control the functioning of the Regulators was minimised and subjected to the condition that the power to issue directions should not adversely affect the functions and powers of the KERC.

53. In the year 2003, the Electricity Act was enacted by the Parliament and this sought to consolidate the laws relating



to generation, transmission, distribution and creating and use of the electricity.

54. This Act dealt with all aspects of the electricity, including generation, licensing, transmission, distribution, tariff, etc. under the provisions of the Act.

55. The Electricity Act has been divided into XVIII parts.

56. Part II of the Act deals with the National Electricity Policy and National Electricity Plans to be framed thereunder. Section 3 of this Part states that the Central Government is to prepare a National Electricity Plan and a National Tariff Plan, and Section 4 of this part states that it is the duty of the Central Government to frame a National Policy on standalone systems for rural areas and for non-conventional energy systems. Section 5 provides for framing of National Policy on electrification and local distribution in rural areas.

57. Thus, essentially, the role of the Central Government under Sections 3 to 5 of the Act has been confined to the





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formulation of a policy on electricity, its tariff, standalone systems in rural areas, and for electrification and local distribution in rural areas. In other words, the role of the Central Government has been confined to formulating policies.

58. It may be noticed at this juncture that the Central Government does not have the independent power to frame the National Electricity Policy or the Tariff Policy and it is statutorily required to consult the State Governments and the Central Electricity Authority. Even for a revision of the policy, it is required to once again consult the State Governments and the concerned authority. The authority on the basis of the policy was required to prepare a National Electricity Plan and notify the same every five years.

59. In other words, the statute has designed a two-tier mechanism, one to formulate a policy and another to prepare a plan. The Central Government, after consulting



the State Government, is required to frame the policy and the authority is required to prepare a plan in line with the policy.

60. A joint responsibility is also cast on the State Government and the Central Government in the matter of rural electrification. The legislative mandate is that both the Governments should jointly endeavour to provide access to electricity to all areas including villages and hamlets through rural electrification infrastructure and electrification of households.
61. A reading of the provisions of Part-II would therefore leave no room for doubt that the role of the Central Government is fundamentally only to formulate a policy which would guide the authority to frame a plan.
62. At this stage, it would be useful to refer to the Policy and Plan formed under Section 3 of the Electricity Act, insofar as it relates to the aspect of granting open access.



63. The Central Government has, in fact, formulated a National Electrical Policy in 2005 and the Authority has also prepared four National Electricity Plans from 2007 i.e., in 2007, 2013, 2015 and 2018.

64. In the Electricity Policy of the year 2005, the Central Government has stated as follows with regard to open access and the role of the Commissions:

*"5.3.3 Open access in transmission has been introduced to promote competition amongst the generating companies who can now sell to different distribution licensees across the country. This should lead to availability of cheaper power. The Act mandates non-discriminatory open access in transmission from the very beginning. **When open access to distribution networks is introduced by the respective State Commissions for enabling bulk consumers to buy directly from competing generators, competition in the market would increase the availability of cheaper and reliable power supply. The Regulatory Commissions need to provide facilitative framework for non-discriminatory open access.** This requires load dispatch facilities with state-of-the art communication and data acquisition capability on a real*



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*time basis. While this is the case currently at the regional load dispatch centers, appropriate State Commissions must ensure that matching facilities with technology upgrades are provided at the State level, where necessary and realized not later than June 2006.*

*5.3.4 The Act prohibits the State transmission utilities/transmission licensees from engaging in trading in electricity. Power purchase agreements (PPAs) with the generating companies would need to be suitably assigned to the Distribution Companies, subject to mutual agreement. To the extent necessary, such assignments can be done in a manner to take care of different load profiles of the Distribution Companies. **Non-discriminatory open access shall be provided to competing generators supplying power to licensees upon payment of transmission charge to be determined by the appropriate Commission. The appropriate Commissions shall establish such transmission charges no later than June 2005.***

*5.3.6 **The necessary regulatory framework for providing non-discriminatory open access in transmission as mandated in the Electricity Act 2003 is essential for signaling efficient choice in locating generation capacity and for encouraging trading in electricity for optimum utilization of***



**generation resources and consequently for reducing the cost of supply.**

5.4.5 The Electricity Act 2003 enables competing generating companies and trading licensees, besides the area distribution licensees, to sell electricity to consumers when open access in distribution is introduced by the State Electricity Regulatory Commissions. **As required by the Act, the SERCs shall notify regulations by June 2005 that would enable open access to distribution networks in terms of sub-section 2 of section 42 which stipulates that such open access would be allowed, not later than five years from 27th January 2004 to consumers who require a supply of electricity where the maximum power to be made available at any time exceeds one mega watt.** Section 49 of the Act provides that such consumers who have been allowed open access under section 42 may enter into agreement with any person for supply of electricity on such terms and conditions, including tariff, as may be agreed upon by them. **While making regulations for open access in distribution, the SERCs will also determine wheeling charges and cross-subsidy surcharge as required under section 42 of the Act.**

## **5.12 COGENERATION AND NON-CONVENTIONAL ENERGY SOURCES**



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*5.12.1 Non-conventional sources of energy being the most environment friendly there is an urgent need to promote generation of electricity based on such sources of energy. For this purpose, efforts need to be made to reduce the capital cost of projects based on non-conventional and renewable sources of energy. Cost of energy can also be reduced by promoting competition within such projects. At the same time, adequate promotional measures would also have to be taken for development of technologies and a sustained growth of these sources.*

***5.12.2 The Electricity Act 2003 provides that co-generation and generation of electricity from non-conventional sources would be promoted by the SERCs by providing suitable measures for connectivity with grid and sale of electricity to any person and also by specifying, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee. Such percentage for purchase of power from non-conventional sources should be made applicable for the tariffs to be determined by the SERCs at the earliest. Progressively the share of electricity from non-conventional sources would need to be increased as prescribed by State Electricity Regulatory Commissions. Such purchase by distribution companies shall be through competitive***



*bidding process. Considering the fact that it will take some time before non-conventional technologies compete, in terms of cost, with conventional sources, **the Commission may determine an appropriate differential in prices to promote these technologies.***"

65. The above-highlighted portions of the Electricity Policy make it absolutely clear and leave no room for doubt that even under the policy framed (as prescribed in the statute) by the Central Government in consultation with the State Governments, the responsibility and obligation to facilitate non-discriminatory open access is only on the Regulatory Commissions.

66. The policy also describes the role of the Central Government, the State Governments and the Regulatory Commissions in relation to the electricity sector, as a whole, in the following terms:

## **6.0 CO-ORDINATED DEVELOPMENT**

*6.1 Electricity being a concurrent subject, a well-coordinated approach would be necessary for*



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*development of the power sector. This is essential for the attainment of the objective of providing electricity-access to all households in next five years and providing reliable uninterrupted quality power supply to all consumers. **The State Governments have a major role, particularly in creation of generation capacity, state level transmission and distribution. The Central Government would assist the States in the attainment of this objective. It would be playing a supportive role in fresh capacity addition and a major role in development of the National Grid. The State Governments need to ensure the success of reforms and restoration of financial health in distribution, which alone can enable the creation of requisite generation capacity. The Regulatory Commissions have the responsibility of ensuring that the regulatory processes facilitate the attainment of this objective. They also have a developmental role whose fulfilment would need a less formal and a consultative process.***

*The Electricity Act, 2003 also provides for mechanisms like "Coordination forum" and "Advisory Committees" to facilitate consultative process. **The***





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***Act also requires the Regulatory Commissions to ensure transparency in exercise of their powers and in discharge of their functions. This in no way means that the Regulatory Commissions should follow formal judicial approach. In fact, quick disposal of matters would require an approach involving consultations with stakeholders.***

***6.2 Under the Act, the Regulatory Commissions are required to perform wide-ranging responsibilities. The appropriate Governments need to take steps to attract regulatory personnel with required background. The Govt. of India would promote the institutional capability to provide training to raise regulatory capacity in terms of the required expertise and skill sets. The appropriate Governments should provide financial autonomy to the Regulatory Commissions. The Act provides that the appropriate Government shall constitute a Fund under section 99 or Section 103 of the Act, as the case may be, to be called as Regulatory Commission Fund. The State Governments are advised to establish this Fund expeditiously.***



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67. It is therefore clear that the Electricity Policy clearly spells out the responsibilities and obligations of the Central Government, State Government and Regulatory Commissions, and under this policy, it is only the Commission that is bestowed with the responsibility of being the exclusive entity to regulate and administer the working of the electricity sector, and the Central and the State Government are only required to provide a supportive role.
68. Now coming to the provisions of the Act, as under the earlier regime of requiring a licence to start generation of electricity, the provisions of Part III basically de-licensed the generation of electricity.
69. Section 7 of the Electricity Act declared that any generating company could establish, operate and maintain a generating station without obtaining licence so long as it complies with the technical standards relating to connectivity with the grid.



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70. In respect of Hydro-electric generation, a generating company intending to set-up a hydrogenating station is required to submit a scheme to the Authority for its concurrence and this scheme was required to involve a capital expenditure above the sums specified by the Central Government.
71. In respect of the captive generation, Section 9 of the Act granted liberty to any person to construct, maintain or operate a captive generating plant and dedicated transmission lines. However, the supply of electricity so generated through the grid was subject to regulation in the same manner as the generating station of a generating company.
72. It may also be noticed here that a person who constructed a captive generating plant, maintained and operated it, was conferred with the right of open access for the purpose of carrying electricity from his captive generating



plant to the destination of his use under sub-section (2) of Section 9 of the Electricity Act.

73. The generating companies set up under the Act were given the duty of establishing, operating and maintaining generating stations, tie-lines, sub-stations and dedicated transmission lines connected therewith, in accordance with the provisions of the Electricity Act and the rules / regulations made under Section 10.
74. The Appropriate Government was given the power under Section 11 to specify that a generating company would have to operate and maintain any generating station in accordance with its directions in extraordinary circumstances.
75. Thus, the 2003 Act, basically, unshackled the electricity industry and permitted any person to start a generating station without requiring a licence.
76. Part IV of the Act dealt with licensing and it stipulated that no person could transmit, distribute or undertake trading



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of electricity unless the Appropriate Commission granted him a licence to transmit electricity as a transmission licensee; *or* to distribute electricity as a distribution licensee; *or* to undertake trading in electricity as an electricity trader. The Commission was also empowered to give exemption by issuance of a notification the requirement of obtaining a licence in respect of the local authority, Panchayat Institution, etc.

77. The provision also stated that the persons engaged in the business of transmission and supply of electricity under the earlier enactments were deemed to be licencees and were required to apply for licences within a period of one year. It also made the Central Transmission Utility or the State Transmission Utility to be a deemed transmission licensee under the Act and similarly, if an appropriate Government was transmitting or distributing or undertook trading in electricity, they were also deemed to be licensee under the Electricity Act. Thus, the provisions of Part IV restricted the licensing only to transmission, distribution



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and trading in electricity and the power to grant licences vested exclusively with the Appropriate Commission.

78. It is to be noticed here that the Central Government has not been provided with any role to play in the grant of licences and the provisions only permit the Central Transmission Utility or the State Transmission Utility to be deemed licencees.
79. It may also be pertinent to state here that the Commission has been conferred with the power to impose specific conditions, amend the licences, revoke or suspend licences. It has also been given the power for the sale of utilities of licensees and vesting of utility in purchaser. The Commission has been conferred with the power to issue directions for maintaining efficient supply, securing equitable distribution of electricity and promoting competition.
80. To put it differently, the appropriate commission has been empowered to deal with all aspects of electricity i.e., the



transmission, distribution or trading of electricity and neither the Central Government nor the State Government have any role to play in it.

81. As regards the transmission, the transmission of electricity has been provided for under Part V of the Act. Under the provisions of this Part, the Central Government has been empowered to make a region-wise demarcation of the country for the efficient, economical and integrated transmission, supply of electricity, and to facilitate voluntary inter-connections and co-ordination of facilities for inter-State, regional and inter-regional generation and transmission of electricity.

82. The Central Government is required to establish a National Load Despatch Centre for optimum scheduling and despatch of electricity among the Regional Load Despatch Centres. The Central Government is also required to establish a Regional Load Despatch Centre having territorial jurisdiction for the purposes of exercising powers



and discharging the functions enumerated under the provisions of this Part.

83. The Regional Load Despatch Centre has been entrusted with the function of being responsible for the optimum scheduling and despatch of electricity within the region in accordance with the contracts entered into with the licensees or the generating companies operating in the region, to monitor grid operations, and to keep accounts of quantity of electricity transmitted through the regional grid.
84. It is also required to exercise supervision and control over the inter-State transmission system and also be responsible for carrying out real time operations for grid control and despatch of electricity within the region. The Regional Load Despatch Centre is conferred with the power to give such directions to ensure stability of grid operations and for achieving the maximum economy and efficiency.





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85. Thus, in respect of inter-State systems, the Central Government has been entrusted with the task of establishing a National Load Despatch Centre and Regional Load Despatch Centre. However, in respect of the intra-State transmission, the State Commission has conferred with the duty of facilitating and promoting transmission, wheeling and inter-connection arrangements within its territorial jurisdiction for the transmission and supply of electricity.
86. The State Government, in turn, is required to establish the State Load Despatch Centre for the same purpose as the Regional Load Despatch Centre, but in respect of the intra-State transmission.
87. Thus, the role of the Central Government and the State Governments under the provision of Part V has been restricted to establishing Load Despatch Centres which have been tasked with the function of being responsible for optimum scheduling and despatch of electricity.



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88. The provisions of this part also provide for the Central Government and the State Government to notify a Government Company as Central or a State Transmission Utility, as the case may be, and these utilities are entrusted with the function of undertaking transmission of electricity through inter-State transmission system and the intra-State transmission system.
89. They are also required to discharge all functions of planning and co-ordination relating to intra-State transmission system with (i) State Transmission Utilities; (ii) Central Government; (iii) State Governments; (iv) Generating Companies; (v) Regional Power Committees; (vi) Authority; (vii) licensees, etc. One of the tasks is to ensure development of an efficient, co-ordinated and economical system of inter-State transmission lines for smooth flow of electricity from generating stations to the load centres.



90. These transmission utilities are also required to provide non-discriminatory open access to their transmission systems for use by of any licensee or generating company on payment of the transmission charges. In the event of any consumer being provided with open access by the Commission, they are required to provide non-discriminatory open access on payment of the transmission charges and a surcharge thereon, as may be specified by the Commission.
91. Thus, the statute has created an obligation on the transmission utilities to provide non-discriminatory open access to its transmission system and transmission charges for open access are to be as specified by the appropriate Commission.
92. Section 40(1) of the Act specifically states that it would be one of the duties of transmission system licensees to provide non-discriminatory open access to its transmission system for use by — (i) any licensee or generating



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company or (ii) any open access consumer subject to payment of the transmission charges and surcharge thereon.

93. Part VI of the Act provides for distribution of electricity.

Section 42 of the Electricity Act reads as follows:

**“Section 42. (Duties of distribution licensee and open access):** --- (1) It shall be the duty of a distribution licensee to develop and maintain an efficient, coordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.

(2) The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:

Provided that such open access shall be allowed on payment of a surcharge in addition to the charges for wheeling as may be determined by the State Commission:

Provided further that such surcharge shall be utilised to meet the requirements of current



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level of cross subsidy within the area of supply of the distribution licensee :

Provided also that such surcharge and cross subsidies shall be progressively reduced in the manner as may be specified by the State Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use:

Provided also that the State Commission shall, not later than five years from the date of commencement of the Electricity (Amendment) Act, 2003, by regulations, provide such open access to all consumers who require a supply of electricity where the maximum power to be made available at any time exceeds one megawatt.

(3) Where any person, whose premises are situated within the area of supply of a distribution licensee, (not being a local authority engaged in the business of distribution of electricity before the appointed date) requires a supply of electricity from a generating company or any licensee other than such distribution licensee, such person may, by notice, require the distribution licensee for wheeling such electricity in accordance with regulations made by the State Commission and the duties of the distribution licensee with respect to such supply shall be of a common carrier providing non-discriminatory open access



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(4) Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply.

(5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

(6) Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.

(7) The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.

(8) The provisions of sub-sections (5), (6) and (7) shall be without prejudice to right which the consumer may have apart from the rights conferred upon him by those sub-sections."

94. As could be seen from sub-section (1) of Section 42 of the Electricity Act, it would be the duty of the distribution licensee to develop and maintain an efficient, co-ordinated



and economical distribution system in his area of supply and to supply electricity in accordance with the provisions of the Electricity Act.

95. Sub-section (2) of Section 42 of the Electricity Act — with which we are mainly concerned with in this batch of writ petitions — makes it obligatory for the State Commission to introduce open access in such phases and, subject to such conditions as may be specified, within one year of the appointed date by it, the Commission is required to specify the extent of open access in successive phases.
96. In the matter of determining the charges for wheeling, the Commission is required to have due regard to all relevant factors including such cross-subsidies, and other operational constraints.
97. The proviso also enables the availment of open access on payment of a surcharge, in addition to the charges for wheeling. It is made clear that the surcharge should be utilised to meet the requirements of current level of cross



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subsidy and this surcharge, and cross-subsidies are to be progressively reduced in the manner specified by the State Commission.

98. Sub-section (3) of Section 42 of the Act obligates a distribution licensee, when put on notice by any person whose premises are situated within the area of supply of a distribution licensee, to supply electricity from a generating company or any other licensee for wheeling of electricity in accordance with the regulations made by the State Commission.
99. Sub-section (4) thereof provides for payment of additional surcharge on the charges of wheeling, whenever the State Commission permits a consumer to receive supply of electricity from a person other than the distribution licensee of his area of supply.
100. Sub-section (5) obligates every distribution licensee to establish a forum for redressal of grievances of the consumers in accordance with the guidelines specified by





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the State Commission and any consumer who is aggrieved by non-redressal of his grievance(s) can make a representation for the redressal of his grievance(s) to an Ombudsman, who is to be appointed or designated by the State Commission.

101. A reading of Section 42 of the Act would clearly indicate that in the matter of distribution of electricity, especially in the matter of providing open access, it is the exclusive responsibility of the State Commission to deal with all aspects of distribution, especially in the matter of providing open access. In the matter of distribution of electricity and open access, apart from the State Commission, no other entity has been given with any role to play.
102. The fact that it is the State Commission alone which is conferred with the responsibility of introducing open access, determining charges for wheeling and payment of surcharge, would, by itself, clearly indicate that no other



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entity apart from the State Commission can even attempt to get involved in the matters of distribution and, more importantly, providing open access.

103. Section 49 of Part VI states that whenever the Appropriate Commission has allowed open access to certain consumers under Section 42, such consumers could enter into an agreement with any person for supply or purchase of electricity on such terms and conditions, including tariff, as may be agreed upon by them.
104. Thus, whenever open access is provided by the Commission, the consumer who has been allowed open access can enter into an independent contract for supply or for purchase of electricity on such terms and conditions as may be agreed upon mutually. The charges for transmission (including surcharge) and the charges for wheeling will, however, have to be determined only by the State Commission.



105. In other words, even if the open access consumer decides to purchase or supply electricity, such consumer will have to necessarily pay the charges for transmission and for wheeling, including the payment of surcharge as may be specified by the Commission, notwithstanding the fact that he can enter into an agreement for supply and purchase as regards electricity in any manner that they deem fit. In other words, the aspect of transmission and wheeling charges in respect of open access consumers is completely governed by the specifications i.e., regulations to made by the Regulator i.e., the appropriate State Commission.
106. It is also to be kept in mind that the main purpose of creating a Regulatory Commission is to ensure that there is an independent and impartial body to deal with the charges that can be levied in the matter of open access, and this is obviously with the intent that the Regulatory Commission would ensure a fair determination of the charges that would become payable.



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107. The fact that this task is entrusted to the Commission would also ensure that there is no governmental interference of any kind in providing open access and levying a charge for availing open access. In essence, it is the deliberate statutory intent that neither the State nor the Central Government should not have any role in the matter regarding provision of open access.
108. This part also provides for provisions with respect to electricity traders in terms of supply as well as consumer protection and standards of performance.
109. Thus, the entire ambit of electricity supply is to be administered by the Regulatory Commission and the Government (either State or Central) has not been conferred with any power or responsibility to interfere or interject in this process. In other words, all aspects of the supply of electricity are to be administered or governed by the Regulatory Commission and not by any other authority.



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110. Part VII of the Electricity Act provides for tariff and the provisions of this part empower only the appropriate commission to specify the terms and conditions for the determination of tariff and it is the Appropriate Commission which is required to determine tariff for the supply of electricity by a generating company or distribution / transmission / wheeling of electricity and for retail sale of electricity.
  
111. A specific procedure is prescribed for passing a tariff order and this requires an application to be made by the generating company, and this application is required to be published inviting suggestions and objections and the Appropriate Commission is required to consider all suggestions and objections received from the public and issue a tariff order accepting the application with such modifications or conditions. It is also empowered to reject the application for determination of the tariff.



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112. The Commission is required to send a copy of the tariff order to the Government, the concerned agencies, and to other persons concerned. The tariff order which is accepted and passed by the State Commission would continue to be in force for such period as may be specified in the order, and this order is also capable of being amended or revoked.
113. As could be noticed from Section 64 of the Electricity Act, the appropriate Commission is not required to consult the State Government or secure its concurrence for passing a tariff order, but it is required to communicate the order that it has passed to the State Government.
114. Section 65 of the Act under Part VII states that in the event of the State Government requiring grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission, the State Government shall pay the subsidy amount in advance and in such manner as may be specified, to compensate the



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person affected by the grant of subsidy as a condition for the licence or any other person concerned to implement the subsidy. It is therefore clear that the State Government does not have the power to tinker with a tariff order accepted and passed by the Commission in any manner, and if it decides to give subsidy to a particular class of consumers who are affected by the tariff order, it is required to pay in advance the amount which it is granting as subsidy.

115. Section 66 of the Act also categorically clarifies that it is the Appropriate Commission which shall endeavour to promote the development of a market in power in such manner as may be specified and it shall be guided by the National Electricity Policy.
116. Part IX of the Act provides for creation for the Central Electricity Authority. It provides that the Central Electricity Authority established under Section 3 of the Electricity (Supply) Act, 1948 shall be deemed to be the Central



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Electricity Authority under the Electricity Act, and the power to appoint members to that authority is conferred on the Central Government. The functions of the authority are essentially to advise the Central Government on the matters relating to the National Electricity Policy, formulate short-term and perspective plans for development of the electricity system, co-ordinate the activities of the planning agencies as well as specify the technical standards, grid standards and the conditions for installation of meters for transmission and supply of electricity.

117. In essence, the authority is an advisory body to the Central Government and it does not in any way monitor the generation, transmission or distribution of the electricity and deals only with technical aspects.
118. Section 75 in Part IX states that in the discharge of its functions, the Authority shall be guided by such directions in the matters of policy involving public interest as the





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Central Government may provide in writing. It is to be noticed here that the directions issued by the Central Government are not binding on the authority and the directions so issued will only be a guiding factor for the authority.

119. Part X of the Act deals with the Regulatory Commissions.

It contemplates the constitution, powers and functions of the Central Commission or State Commission or even a Joint Commission.

120. The Central Commission is given the function of regulating the tariff of generating companies owned or controlled by the Central Government and also to regulate the tariff of generating companies other than those owned or controlled by the Central Government as specified in clause (a) of Section 79 of the Electricity Act, if such generating companies enter into or have a composite scheme for generation and sale of electricity in more than one State as provided in clause (d) of Section 79. It has



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also given the function to regulate the inter-State transmission of electricity and to determine tariff for inter-State transmission of electricity as per clauses (c) and (d) of Section 79 of the Electricity Act.

121. In short, the Central Commission is required to regulate the tariff for Central Government companies or for Companies which have a scheme for generation and sale of electricity in more than one State and, ultimately, to regulate inter-state transmissions.
122. The proviso to S. 82 states that the State Electricity Regulatory Commission established under the Electricity Regulatory Commissions Act, 1998 would be the State Commission under the 2003 Act. Thus, the Regulatory Commission which were already established under the earlier laws have been continued as the Regulatory Commission in the 2003 Act.



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123. The State Commission, on the other hand, is entrusted with the following functions as enumerated in the following provision:

**"Section 86. (Functions of State Commission): --**

- (1) The State Commission shall discharge the following functions, namely: -

(a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State:

Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;

(c) facilitate intra-State transmission and wheeling of electricity;

(d) issue licenses to persons seeking to act as transmission licensees, distribution licensees and electricity traders with respect to their operations within the State;

(e) promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also



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specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;

(f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;

(g) levy fee for the purposes of this Act;

(h) specify State Grid Code consistent with the Grid Code specified under clause (h) of sub-section (1) of section 79;

(I) specify or enforce standards with respect to quality, continuity and reliability of service by licensees;

(j) fix the trading margin in the intra-State trading of electricity, if considered, necessary;

(k) and discharge such other functions as may be assigned to it under this Act.

The State Commission shall advise the State Government on all or any of the following matters, namely: -.

(i) promotion of competition, efficiency and economy in activities of the electricity industry;

(ii) promotion of investment in electricity industry;

(iii) reorganization and restructuring of electricity industry in the State;

(iv) matters concerning generation, transmission, distribution and trading of electricity or any other matter



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referred to the State Commission by that Government.

(3) The State Commission shall ensure transparency while exercising its powers and discharging its functions.

(4) In discharge of its functions, the State Commission shall be guided by the National Electricity Policy, National Electricity Plan and tariff policy published under section 3.”

124. As could be seen from above, the State Commission is entrusted with the function of determining the tariff for generation, supply, transmission and wheeling of electricity. The proviso to Section 86 makes it clear that where open access has been permitted to a category of consumers under Section 42, the State Commission is required to determine the wheeling charges and surcharge thereon.

125. The State Commission is also given the task of regulating electricity purchase and procurement process of distribution licensees, including the price at which electricity shall be procured from the generating companies through agreements for purchase of power for



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distribution and supply within the State. To facilitate intra-State transmission and wheeling of electricity is also the function of State Commission, apart from the power to issue licences for transmission, distribution and electricity trading. In short, all aspects of determination of tariff and regulation of electricity purchase and the facilitation of intra-State transmission is to be monitored by the State Commission.

126. Unlike the Central Commission, Section 86 (1)(e) of the Electricity Act casts an obligation to promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee.
127. As stated above, the Central Commission, which is constituted under Section 76 and whose functions are



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enumerated in Section 79, does not give any responsibility on the Central Commission regarding generation of electricity from renewable energy sources.

128. In other words, by virtue of Section 86(1)(e), the generation of electricity from renewable energy sources — insofar as it relates to providing suitable measures for connectivity with the grid and sale of electricity to any person including specifying a percentage of the total consumption of electricity in the area of a distribution licensee — is cast statutorily only on the State Commission.

129. The effect of not giving a similar function to the Central Commission, as stated in Section 76 of the Act, is that in the matter of generation of electricity from renewable sources of energy, it is the State Commission alone which will have to monitor and administer the generation of such electricity.



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130. Sections 107 and 108 of the Electricity Act under Part X provide for issuance of directions by the Central Government and the same reads as under:

**“Section 107. (Directions by Central Government):** --- (1) In the discharge of its functions, the Central Commission shall **be guided** by such directions in matters of policy involving public interest as the Central Government may give to it in writing.

(2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the Central Government thereon shall be final.

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**Section 108. (Directions by State Government):** ---- (1) In the discharge of its functions, the State Commission shall **be guided** by such directions in matters of policy involving public interest as the State Government may give to it in writing.

(2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the State Government thereon shall be final.”

*(Emphasis supplied)*

131. As could be seen from the above, in the discharge of its functions, the Commission (Central or State) is required to be guided by such directions in matters of policy involving





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public interest, if they are given to it in writing by the respective Governments. The use of the phrase "**be guided**" in both the provisions would indicate that the directions given in writing will not be binding on the respective Commissions but they would only act as guiding factors.

132. A three-Judge Bench of the Hon'ble Supreme Court in a recent decision rendered in **Kerala State Electricity Board<sup>2</sup>** has, while interpreting Section 108 of the Electricity Act, has held as follows:

"16. We are in agreement with the judgment of APTEL insofar as it holds that the directive which was issued by the State government under Section 108 could not have displaced the adjudicatory function which was entrusted to KSERC. The State government while issuing a policy directive in the exercise of its power under Section 108 cannot impinge on the adjudicatory discretion which is vested in an authority under the Act. In this regard, we may helpfully refer to the observations of this Court in **A.P. TRANSCO v. Sai Renewable**

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<sup>2</sup> Kerala State Electricity Board v. Jhabua Power Limited & Ors., in Civil Appeal Nos.10046-47 of 2024 (disposed of on 30.09.2024)



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***Power (P) Ltd., (2011) 11 SCC 34***, in the context of a similar provision in the erstwhile Andhra Pradesh Electricity Reforms Act 1998 (which was repealed by the Electricity Act 2003). A two-judge bench of this Court, speaking through Justice Swatanter Kumar, observed:

“59. Section 12 of the Act vests the State Government with the power to issue policy directions on matters concerning electricity in the State including the overall planning and coordination. **All policy directions shall be issued by the State Government consistent with the objects sought to be achieved by this Act and, accordingly, shall not adversely affect or interfere with the functions and powers of the Regulatory Commission including, but not limited to, determination of the structure of tariffs for supply of electricity to various classes of consumers.** The State Government is further expected to consult the Regulatory Commission in regard to the proposed legislation or rules concerning any policy direction and shall duly take into account the recommendation by the Regulatory Commission on all such matters. Thus **the scheme of these provisions is to grant supremacy to the Regulatory Commission and the State is not expected to take any policy decision or planning which would adversely affect the functioning of the Regulatory Commission or interfere with its functions.** This provision also clearly



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**implies that fixation of tariff is the function of the Regulatory Commission and the State Government has a minimum role in that regard."**

17. That the state regulatory commissions are **not 'bound'** by the directions of the state government, or the Central Government is also evident from the text of Section 108. The provision reads: "*In the discharge of its functions, the State Commission shall be guided by such directions in matters of policy ...*". This indicates that the state commission shall only be '**guided**' by the directions issued by the state government and is not automatically bound by them. This interpretation is strengthened by the divergence in the language used in other provisions of the Act, such as Section 11 of the Act which reads as follows:

**"Section 11. (Directions to generating companies): --- (1)** Appropriate Government may specify that a generating company shall, in extraordinary circumstances operate and maintain any generating station in accordance with the directions of that Government. Explanation. - For the purposes of this section, the expression "*extraordinary circumstances*" means circumstances arising out of threat to security of the State, public order or a natural calamity or such other circumstances arising in the public interest. ..."



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18. The above provision uses mandatory language and provides that the generating company “*shall ... operate and maintain any generating station in accordance with the directions of that Government*” in extraordinary circumstances. This can be distinguished from the language in Section 108, which merely requires that the state commission “***be guided by***” the directions of the State Government. The provision, in no manner, seeks to control the exercise of quasi-judicial power by the state commissions based on directions issued by the state government.”

*(Emphasis supplied)*

133. Thus, the directions given in writing by the Central or State Government can only be a guiding factor and the same will not bind the Commissions. It will have to be kept in mind that the function of the Commission is essentially to act as a neutral body and ensure that there is an efficient distribution network in which the interests of all the stakeholders are safeguarded.

134. The Regulator, by its very nature, is required to be an impartial body which can regulate the functioning of the distribution and supply of electricity in a fair manner and



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ensure that public interest does not suffer, and, at the same time, also ensure that the interest of generators, transmitters and distributors are not affected in any manner.

135. Part XVIII of the Electricity Act deals with miscellaneous provisions. Section 176 confers power on the Central Government to make rules. Sub-section (1) thereof states that the Central Government may make rules for carrying out the provisions of the Act, while Sub-section (2) states that without prejudice to the generality of the power to make Rules under Sub-section (1), it may make rules which provide for several matters including, as stated in clause (z) of Sub-section (2), any other matter which is required to be, or may be, prescribed.

136. Sub-section (52) of Section 2 defines "**prescribed**" as prescribed by rules made by the Appropriate Government under the Act, while Sub-section (62) defines "**specified**" to mean specified by the regulations made by the



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Appropriate Commission or the Authority, as the case may be, under the Act. Sub-section (57) defines "**regulations**" to mean the regulations made under the Act.

137. Section 177 of the Act empowers the authority to make regulations which are consistent with the Act and the Rules to carry out the provisions of the Act. Sub-section (2) thereof confers the powers in respect of several matters mentioned thereunder.

138. Section 178 of the Electricity Act deals with the powers of Central Commission to make regulations, and Section 180 confers power on the State Government to make Rules.

139. Section 181 deals with the powers of the State Commission to make regulations. Clauses (i), (j), (k), (l), (m), (n), (o), (p), (q) and (r) of Subsection (2) of Section 181, which are relevant for these cases, reads as under:

**"Section 181. (Powers of State Commissions to make regulations):** --- (1) The State Commissions may, by notification, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act.



(2) In particular and without prejudice to the generality of the power contained in sub-section (1), such regulations may provide for all or any of the following matters, namely:

(a) x x x

- (i) payment of the transmission charges and a surcharge under sub-clause (ii) of clause(d) of sub-section (2) of section 39;
- (j) reduction of surcharge and cross subsidies under second proviso to sub-clause (ii) of clause (d) of sub-section (2) of section 39;
- (k) manner and utilisation of payment and surcharge under the fourth proviso to sub-clause(ii) of clause (d) of sub-section (2) of section 39;
- (l) payment of the transmission charges and a surcharge under sub-clause(ii) of clause (c) of section 40;
- (m) reduction of surcharge and cross subsidies under second proviso to sub-clause (ii) of clause (c) of section 40;
- (n) the manner of payment of surcharge under the fourth proviso to sub-clause (ii) of clause (c) of section 40;
- (o) proportion of revenues from other business to be utilised for reducing the transmission and wheeling charges under proviso to section 41;
- (p) reduction of surcharge and cross-subsidies under the third proviso to sub-section (2) of section 42;



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- (q) payment of additional charges on charges of wheeling under subsection (4) of section 42;
- (r) guidelines under sub-section (5) of section 42; the time and manner for settlement of grievances under sub-section (7) of section 42;"

140. As could be seen from the above, the power to frame regulations in respect of charges for transmission, open access and the charges for wheeling and surcharge is specifically conferred on the State Commission.

141. If the power to frame regulation in the matter of determination of charges in respect of transmission and wheeling is conferred on the Commission and the substantive provision also categorically states that the aspects of transmission and distribution, especially in relation to open access, are to be determined by the State Commission, it is obvious that no other authority can have a role to play nor can any other authority have even a supervisory role in these matters.





142. Since the power to regulate the transmission, determination and, more specifically, all aspects relating to open access is conferred exclusively on the State Commission under Sections 42(2) and 181 of the Electricity Act, it is obvious that all aspects of open access lie within the exclusive domain of the State Commission. Since the power to administer and monitor open access is conferred on the State Commission, it is obvious that the Central Government does not have the power to frame any Rules.
143. The Central Government cannot, in the guise of exercising its residual power under Section 176(2) of the Act, contend that it can frame rules to carry out the provisions of the Act.
144. As already extracted and enunciated above, the Apex Court in the case of ***Naresh Chandra Agarwal*** (*supra*) has laid down the law that a rule-making body must function within the purview of the authority conferred to it.



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While dealing with the phrases used in the rule making power i.e., **“to carry out the provisions of the Act”** or **“to carry out the purposes”** and **“without prejudice to the generality of the foregoing power”**, the Apex Court has laid down the principle that where a statute confers particular powers without prejudice to the generality of a power already conferred, the particular powers are only illustrative of the general power, and do not, in any way, restrict the general power.

145. The Apex Court has stated that even if the Rules framed can be related to general powers, it must be remembered that such power delegated by an enactment does not enable the authority, by rules or by regulations, to extend the scope or general operation of the enactment and it is strictly ancillary. In fact, it is stated that the Rules will authorize the provision of subsidiary means of carrying into effect what is enacted in the statute itself and will cover what is incidental to the execution of its specific provision and, as a consequence, the general power



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cannot be exercised so as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Electricity Act itself.

146. If the provisions of the Electricity Act exclude the Central Government from playing any role in the matter pertaining to granting open access and specifically confers the powers in relation to open access only to the Appropriate Commission, this substantive provision of administering open access cannot be usurped by the Central Government by placing reliance on the residuary powers granted to frame rules to carry out the purposes of the Electricity Act.

147. If the substantive provision of the statute specifically enables a particular authority to monitor all aspects of a particular matter, another rule-making authority cannot frame rules which have the effect of amending the substantive provision itself.



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148. If the impugned Rules framed by the Central Government are accepted, then the aspect of providing open access to renewable sources of energy as specified by the State Commissions stands nullified. As a consequence, the powers of State Commission to administer all aspects of open access to green energy producers will also be nullified. In effect, the Rules framed by the Central Government would amend Section 42(2) of the Electricity Act in its entirety. It cannot be in dispute that a piece of subsidiary or a delegated legislation cannot have the effect of amending a substantive provision.
149. In a case where the power to make rules and regulations are separately specified for different authorities, one authority cannot frame a rule which has the effect of obliterating or diluting the substantive power granted to another authority under the Act.
150. It is to be noticed that the architecture of the Electricity Act has been designed in such a way that specific roles are



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carved out for different authorities with the ultimate objective of ensuring the creation of a fair, transparent and vibrant electricity sector which would be beneficial to the nation as a whole.

151. It is therefore clear that it is only the State Commission which has the power to make regulations and the Central Government lacks the legislative competence to frame rules in this regard.
152. It will therefore have to be held that the impugned GEOA Rules, 2022 framed by the Central Government is beyond its competence and it lacks legal authority to do so, and the said Rules will thus have to be struck down.
153. Another factor which has to be noticed here is that Rule 5 of the GEOA Rules that have been framed by the Central Government positively directs the State Commissions to amend the State Regulations to conform to the impugned GEOA Rules. Rule 5 of said Rules reads as follows:

**"5. Green Energy Open Access.**– (1) To provide Green Energy Open Access to consumers of green



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energy, the appropriate Commission may, if necessary, amend the relevant regulations made by it and such regulations **shall** be consistent with these rules.

(2) All applications for open access of green energy in this regard shall be allowed by the nodal agency within a period of fifteen days:

Provided that only consumers who have contracted demand or sanctioned load of hundred kW and above shall be eligible to take power through Green Energy Open Access and there shall be no limit of supply of power for the captive consumers taking power under Green Energy Open Access:

Provided further that reasonable conditions such as the minimum number of time blocks, which shall not be more than twelve-time blocks, for which the consumer shall not change the quantum of power consumed through open access may be imposed so as to avoid high variation in demand to be met by the distribution licensee.”

154. As could be seen from the above, the Central Government has framed a rule which has the effect of directing a State Commission (which is statutorily made responsible for dealing with all aspects of distribution of electricity) to amend its own regulations to ensure it is in conformity with the GEOA Rules framed by the Central Government. The Regulatory Commissions have, in effect, been specifically directed under the Central Government Rules



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to amend their Regulations, which is clearly impermissible under the Act.

155. As already noticed above, the concept of a Regulatory Commission was brought in under the 2003 Act to ensure that the electricity sector is monitored by an independent and impartial regulator, and the role of the Governments would be restricted only to the framing of policies which would guide the Appropriate Commissions. A rule which basically directs the statutory Regulatory Commission to frame Regulations would nullify the powers of State Commission granted under the substantive provisions of the Electricity Act, and, on this score also, the rules will have to be struck down.
156. It is not in serious dispute that pursuant to the rules framed by the Central Government, the KERC proceeded to frame regulations so as to have its regulations to be in conformity with the 2022 Rules.



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157. The preamble to the Regulations also indicates that the Regulations were framed only because of the Rules framed by the Government in the year 2022. It is hence clear that the Regulations are framed only as a consequence of the 2022 Rules and they are not regulations framed independently by the Commission. Therefore, the consequent Regulations framed by the KERC will also have to be struck down.

**VIII. BANKING OF ELECTRICITY — PROVISION OF BANKING FACILITY AND THE GRIEVANCE RAISED BY THE PRESENT PETITIONERS:**

158. The petitioners, by virtue of challenging the impugned Central Government GEOA Rules and the consequential KERC Regulations, have also raised a question regarding banking facility to be provided to them. It was their contention that the agreement entered into with the Government under the 2004 Regulations provided them with an annual banking facility which enabled them to bank their energy which they generated through





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renewable sources such as water, wind and air, but under the impugned Regulations the banking facility was curtailed to a monthly facility. They also contended that the KERC, being entrusted with the task of promoting the generation of renewable energy, was bound to provide them with annual banking facility and this was sought to be nullified by the regulations.

159. The KERC as well as the distribution licensees contended that the petitioners have no statutory right of banking and, in fact, the concept of banking is not even provided for in the statute. It is contended that in order to encourage generation of green energy, the Regulator had provided for banking as a promotional measure. It is contended that the provision for banking was only related to the contract and not to any statutory regulations, and since the contract with the petitioners had come to an end, they could not demand that they be provided with banking facility as before.



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160. The Act does not contain any provision which entitles the generating company to demand a banking facility. The banking facility is, in essence, a process where a generating company injects the energy that it has generated into the grid and withdraws the same at a subsequent point in time, as per its choice and convenience. Electricity generated by a generating company, euphemistically speaking, is deposited in a Bank i.e., the Grid and this energy is withdrawn from the bank (i.e., the Grid) whenever the generating company desires.
161. This is because the electricity once generated will have to be consumed and cannot be stored, but the concept of banking enables the generating company to inject energy into the grid, which is utilised by the distribution licencees or any other entity, and when this energy is sought to be withdrawn by the generating company at a later point in time, necessarily, the distribution licencee will have to provide that energy either from its own generative source or by purchasing the electricity from another source.



162. It has to be stated here that a renewable energy generator can generate energy only during certain periods. A solar energy producer can only produce electricity during the day; a wind energy generator can generate only when there is wind; and similarly, a hydel power generator can generate energy only when there is abundance of water, which is normally only during the monsoon season.
163. In other words, the green energy that is generated is usually not perennial and is available only during certain periods. Since green energy is a clean source of energy, the generators of green energy are given the facility of banking so that the energy they generate could be profitably sold when the price for electricity (vis-à-vis its demand and supply) is higher.
164. For example, hydel power generators can generate power during the monsoon when the demand for energy is low and, consequently, the price of electricity is also low. However, when the demand for energy is high, i.e., during



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peak summer months, hydel power generators would be entitled to utilise the energy that it had banked and sell the same to its consumers for much higher price. The consequence of providing banking facility is that the distribution licencees would have consumed the power that the hydel power generating company had generated when the energy price was low but would have to provide energy to the hydel power generating company by procuring electricity at a higher rate during the peak summer months. This, therefore, necessarily causes a huge financial burden on the licencees.

165. It has to be stated here that the provision of the Electricity Act only statutorily obligates the regulators to provide for open access as providing open access is essential to encourage private sector participation in the generation of electricity. It is to be noticed here that if the same private generator is called upon also to lay transmission lines for the distribution of electricity generated by it, that would



cause a huge burden on them resulting in their generation of electricity being unviable for commercial exploitation.

166. Consequently, the law provides for such generator to utilise the transmission network as well as distribution network which has already been established by the Central Government as well as by the respective State Electricity Boards and this would also result in better and optimal utilisation of the State's infrastructure with the consequential saving a huge amount of capital expenditure.
167. The law, while providing access to these transmission and distribution network, basically provides for transmission licences and distribution licences to monetise their respective networks by facilitating the collection of transmission and wheeling charges, which is to be determined by the Regulatory Commission. This would enable the transmission licensee to secure charges for transmitting the energy generated by the private sector



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generating company, while the distribution company would be entitled to claim wheeling charges for wheeling the energy generated by the private generating company through its distribution network. This would help the generators, transmitters and also the distributors.

168. As already noticed above, the wheeling and transmission charges are both required to be determined by the Regulatory Commissions.
169. The statute, as stated above, does not really contemplate banking facility to be provided to a private generating company. Thus, while the generating company has the statutory right, subject to the regulations framed by the KERC, to inject the energy that is generated into the grid and have the same to be transmitted and distributed to its consumers, it would not have any statutory right to bank its energy. If the statute does not provide for a statutory right to bank the energy so generated, the private power



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generator, such as the green energy producer, cannot demand that he be provided with banking facility.

170. However, the Regulator has provided for banking facility by means of passing an order while determining the transmission charges, wheeling charges and cross-subsidy surcharges under open access. In the first of its order dated 09.06.2005, the Commission — taking note of the fact that the stake-holders including the Government of Karnataka and utilities were in favour of the banking for renewable source of energy — decided to allow banking facility in respect of wind and mini-hydel projects in the following terms:

**“7.06 Banking facility to be provided for Renewable Sources of Energy:**

**Commission’s Proposal:**

The Commission had observed that, due to the nature of electricity, it would be difficult to match the demand at the consumer end with that of the supply from the contracted source in real time operation under open access. Especially, in case of wind and mini hydel projects the generation is infirm and is dependent on nature such as wind or rainfall as the case may be and hence scheduling and balancing will not be practicable on a real time basis under open access. In this contest



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commission had opined that in such cases banking facility for a period of 1 month needs to be provided without carry over to the next financially year.

#### **Comments received**

Special Secretary Gok is of the view that banking can be allowed only when both the input and drawal of energy is based on TOD meters and seasonal tariff. ESCOMs are not in favour of giving Banking facility to renewable sources of every. KPTCL has stated that it is agreeable to provide banking facility to wind and mini-hydel projects on the condition that they pay the difference between the UI charge at the time of injection and the UI charge at the time of drawal without any time limit. IPPAI and IWPA also agreed to the said proposal of KPTCL. REDAK have suggested if banking is allowed, banking charges of 0.5% in kind shall be levied. Reliance Energy is in favour of providing Banking only for NCE and infirm sources of power. IWPA has stated that banking facility is bare necessity for the viability of the wind projects. Kalayni steels is in favour of Banking facility at no or minimal charges. Similar views are expressed by Knowledge infrastructure & Energy Consulting Engineers. BEL states that for banking the charges should be 2%. Bangalore Chamber of Industry & Commerce states that banking facility should be based on commercial considerations. Sri Venkata Subba Rao is in favour of providing banking facility on a quarterly basis.

#### **Commission's Views/Decision:**

The Commission notes that most of the stakeholders including the GOK and utilities are in favour of banking to infirm sources of energy. After considering the above views, **the**





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**commission hereby decides to allow banking facility in respect of wind and mini-hydel projects subject to payment of difference of UI charges between the time of injection and time drawal of the power from these sources, as suggested by KPTCL and also payment of banking charges @ 2% of the input energy.**

In case the UI charges are negative, KPTCL/ESCOMs are not liable to pay the difference in UI charges. KPTCL/ESCOM shall ensure that appropriate metering is provided both at injection and drawal points to facilitate computation of UI charges. However, merit order despatch and scheduling shall not be applicable for these sources of energy.”

171. Thereafter, on 11.07.2008, the Regulator approved the standard wheeling and banking commission for renewable energy projects, which was to be valid for a period of ten years from the date of commercial operation of the project. In respect of the projects which had been commissioned between 11.07.2008 to 10.07.2013, the agreements would be valid only for a period of five years.
172. Subsequently, the validity of the order dated 11.07.2008 was extended by three months and thereafter, by another order dated 09.10.2013, it was continued till 31.03.2014



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and by another order dated 24.04.2014, it was further extended till 30.06.2014 or till a revised order was passed.

173. Ultimately, on 04.07.2014, the Regulator passed an order stating that the existing annual banking facility was to be continued for renewable energy projects as a promotional measure and the wheeling charges would be at 5% of the injected energy for wind, mini-hydel, bagasse-based co-generation plants and biomass based projects, while the banking charges would be at 2% of the injected energy applicable for wind and mini-hydel projects only.
174. The annual banking facility was also continued with a condition that if the banking energy was unutilised at the end of the wind year, water year or financial year, it was deemed to have been purchased by the distribution licencees of the area where the generator was located and the generator would be paid 85% of the generic tariff determined by the Commission.



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175. It is on the basis of this order that the petitioners have entered into wheeling and banking agreements which were valid for a period of ten years, and the same have admittedly expired. Since the banking facility was a creation of the contract, which is approved by the Regulatory Commission, upon expiry of the contract, the contractual right of the generators to demand banking facility would also cease.
176. As already stated above, the generators have entered into an agreement, and the terms of the agreement read as follows:

"Article 11

TERM, TERMINATION AND DEFAULT

**11.1 Term of the Agreement:** This Agreement shall become effective upon the execution and delivery thereof by the Parties hereto and unless terminated pursuant to other Provisions of the Agreement, **shall continue to be in force for such time until the completion of a period of ten (10) years from the date of execution and may be renewed for further period on the terms and conditions as may be mutually agreed upon between the Parties and as approved by Commission.**



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### **11.2 Events of Default:**

Company's Default: The occurrence of any of the following events at any time during the Term of this Agreement shall constitute an Event of Default by Company:

- a. If the COMPANY does not generate and wheel energy continuously for period of 8 months in a water/wind year.
- b. Failure or refusal by COMPANY to perform its material obligations under this Agreement.
- c. If the Company draws energy over and above the injection in any month other than zero injection.
- d. Continuous overdraw of power from the grid by exclusive consumers for more than 15 days.
- e. Company indulges in any malpractice.

### **11.3 Termination:**

Termination for Company's Default:

- i. Upon the occurrence of an event of default as set out in sub-clause 11.2 above, CESC may deliver a Default Notice to the COMPANY in writing, which shall specify in reasonable detail the Event of Default giving rise to the default notice. And calling upon the COMPANY to remedy the same within a month, failing which the present agreement gets terminated automatically.



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- ii. In case of breach of any of the terms of this agreement the party not in default may terminate this agreement after filing 3 months notice in writing. However, termination shall not affect the rights that have already accrued to the other party to the date of termination.
- iii. Upon termination of this agreement, CESC shall stand discharged of its entire obligation. However, the Parties shall meet all payment obligations as per the Agreement prior to the date of termination.”

*(Emphasis supplied)*

177. As could be seen from the above, the agreement would come to an end on the completion of ten years from the date of its execution and was capable of renewal on such terms as may be agreed upon by the parties. Thus, if the agreements are not renewed, as a matter of course, the contractual right to bank the electricity generated will automatically expire along with the agreement.

178. An argument is, however, advanced by Sri. Uday Holla, learned Senior counsel and also by Sri. Shridhar Prabhu, learned counsel, in respect of two cases, i.e., in the petitions filed by M/s. Soham Renewable Energy India Private Limited—W.P. No.23729 of 2023 and in the writ



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petition filed by M/s.Brindavan Hydropower Private Limited—W.P. No.11235 of 2024 to the effect that the petitioners therein were signatories to an agreement of the year 1995 which guaranteed them the right of annual banking facility for a period of thirty years and, therefore, the Regulator could not reduce the banking facility to a period less than a year.

179. It is also contended by them that the agreement entered into by the petitioners is saved under the provisions of KER Act and therefore, these agreements should be adhered to and not the subsequent agreements.
180. This argument was countered by the respondents to the effect that though the agreements were entered into in the year 1995 i.e., prior to the enactment of the Electricity Act of 2003, subsequently, on the enactment coming into force, the Regulator was obligated to frame statutory regulations to administer the entire process of granting open access and the Regulator in exercise of its statutory



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power had framed Regulations and had also approved the standard Wheeling and Banking Agreement, which the petitioners had admittedly accepted and executed. It is contended that since the petitioners have entered into subsequent agreements pursuant to the regulations framed by the Regulator, reliance placed upon the earlier agreement would be untenable.

181. It is contended that the agreements entered into pursuant to the statutory regulations and the order passed by the Commission basically rescind the earlier contract and create a new contract, and by virtue of Section 62<sup>3</sup> of the Indian Contract Act of 1872, it is the subsequent contract which should prevail and not the earlier agreement.

182. The petitioners have admitted entering into an agreement in the year 2004 which conferred a right on them to avail of banking facility, annually, for a period of ten years. The

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<sup>3</sup> **62. Effect of novation, rescission, and alteration of contract.**—If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract, need not be performed.



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petitioners, having entered into this agreement, cannot be permitted to contend that the earlier agreement would prevail. The petitioners have also acted in terms of the agreement for the past ten years and have taken complete advantage of the terms of the agreement and they cannot now contend that they are still entitled to rely upon the terms of the earlier agreement of the year 1995.

183. Once an agreement in respect of banking is superseded by another agreement, which is statutory in character, which changes the terms and conditions of the first agreement, it is only the later agreement which would prevail and not the earlier one. The agreements entered into in the year 2014 are, essentially, statutory agreements since they are prescribed by the Regulator in terms of its regulation-making power and it will have to be therefore held that the earlier contracts that the petitioners entered into with the Government stood superseded by the statutory contract.





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184. It may also be noticed here that the petitioners cannot be permitted to put forth this contention that the earlier agreement would prevail after having enjoyed the benefits of the agreement that they had entered into in the year 2004 for a period of ten years. At any rate, the petitioners cannot be permitted to contend after the expiry of the 2014 agreement in 2024 that they are entitled to fall back upon the 1995 agreement. The arguments of the petitioners, who were the executants of the 1995 agreement, cannot therefore be accepted and the same are **rejected**.
185. Another argument was advanced by the petitioners to the effect that the APTEL in the case of **Fortune Five Hydel Projects Pvt. Ltd.** (*supra*) has held that the Regulations cannot alter the terms of the Wheeling and Banking Agreement. As already observed above, the Regulator has passed an order on 09.01.2018 by which it had reduced the banking period from one year to six



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months and ordered levy of additional surcharge on open access customers.

186. This order was the subject matter of an appeal before the APTEL in Appeal No.42 of 2018. The APTEL while deciding the appeal took note of the fact that there was an existing Wheeling and Banking Agreement which provided for annual banking and in light of this agreement, it was impermissible for the Regulator to reduce the banking period from one year to six months, especially in the absence of sufficient data and analysis of the said data.
187. Obviously, a decision rendered by the APTEL — to the effect that the terms of an existing Wheeling and Banking Agreement cannot be modified by an order of the Regulator in the absence of data to back the order — cannot be relied upon to contend that the generating companies have an absolute right to demand banking facility and, that too, for a year.



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188. In my view, since the order of the APTEL was essentially determining the right of the Regulator to modify the existing Wheeling and Banking Agreement, said decision can have no application in the present cases when, admittedly, the Wheeling and Banking Agreements have expired and with the concept of banking being a contractual right, the petitioners who would have no right to demand banking under the subsisting agreement.
189. An argument is also advanced by the Union of India that it was a party to the 26<sup>th</sup> Conference of the Parties held in November of 2021<sup>4</sup>, wherein it had committed to achieving net-zero emission by 2017 as per the Paris Agreement – 2015 which was signed by 175 countries, including India, on 22.04.2016 and to give effect to this pledge, it was imperative that the Union of India framed the requisite policies and Rules.

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<sup>4</sup>**The 2021 United Nations Climate Change Conference**, more commonly referred to as **COP26**, was the 26th United Nations Climate Change conference held at the SEC Centre in Glasgow, Scotland, United Kingdom, from the 31<sup>st</sup> of October, 2021 to the 13<sup>th</sup> of November, 2021.



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190. It has to be stated here that Article 253 of the Constitution of India (and Entry Nos.13 and 14 of the Union List of the Constitution of India) does confer power on the Parliament to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, Association or other body.
191. The underlying intent of Article 253 of the Constitution of India is basically to ensure that the Union should abide by any treaty that it has entered into with a foreign country or countries at any international conference.
192. The commitment of the country to achieve net-zero emission would therefore entitle the Union to frame a law in that regard. However, this power to enact a law to achieve net-zero emission cannot empower the Central Government to transgress an existing law and frame



rules/regulations in contravention of a law that the Parliament had enacted in the year 2003.

193. To put it differently, the Parliament is empowered to amend the Electricity Act if it is of the view that the nation has to implement any international treaty that it had signed. Unless the Electricity Act is amended and the Central Government is empowered to frame Rules under the said amendment, the Union cannot use the commitment given by it to achieve net-zero emission to frame rules in transgression of an existing law.
194. As already stated above, the Parliament has enacted the Electricity Act with the underlying purpose of de-licensing the entire electricity Sector and one of the important facets of the de-licensing is to establish a Regulator which would be able to promote, co-ordinate and administer the generation, transmission and distribution of the electricity generated.



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195. If the Parliament made a law specifically conferring power on the Regulator to frame Regulations which governed every aspect of open access, it is inconceivable that the Central Government can side-step the requirement of the Parliament enacting a law in that regard and straight away proceed to frame the impugned Rules.
196. If Article 253 of the Constitution of India contemplates a law to be made by the Parliament, necessarily, the Parliament has to pass the enactment. The Central Government cannot use the power to frame Rules — which is only a piece of sub-ordinate or delegated legislation — to side-step the Parliament. I am therefore of the view that this argument of the Union also does not merit acceptance.
197. As already observed above, the role of the Government under the Act is essentially to frame a policy and it can only issue directions to the Regulator, and the Regulator



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can only be guided by such directions and not be bound by it.

198. The Electricity Policy framed by the Central Government does not contain any policy directive to facilitate the manner of granting open access or banking. It will be open for the Central Government to incorporate the manner of granting open access to green energy generation in its policy and when that is done, the Regulator would obviously have to be guided by such policy while framing its regulations. Since, the electricity policy, as it stands, does not contain any specific policy directive in the manner of granting open access, the Central Government cannot get over this anomaly by falling upon the residuary power to frame rules and create a set of rules to regulate the open access to green energy generators and consumers.

199. **The questions for consideration are answered accordingly.**



**IX. CONCLUSION:**

200. In the result, I **allow** these writ petitions **in part**, and hold and direct as follows:

- (i) The impugned Rules as well as the Regulations framed by the Central Government and the KERC are **struck down**.
- (ii) The KERC is directed to frame appropriate Regulations if it so desires in the matter of granting of open access to green energy generators and consumers.
- (iii) During this exercise, the Commission will only be guided by the National Electricity Policy and the Tariff Policy framed by the Central Government, and shall independently consider the interests of all the stakeholders before framing the Regulations.
- (iv) This direction will, however, not mean that the KERC will have to necessarily frame fresh Regulations and if it so desires, it can continue with the 2004 Regulations.

201. Taking cognizance of the fact that this order would leave a vacuum till the Regulations are framed by the KERC





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independently as observed above, an interim arrangement would therefore have to be made to ensure that the wheeling and banking facilities availed hitherto by the petitioners are facilitated.

202. This Court had granted an interim order permitting the petitioners to pay 50% of the transmission charges determined by the KERC *vide* its order dated 08.06.2023. In my view, interest of justice would be met if the petitioners are directed to pay 50% of the transmission charges as per the interim order dated 05.07.2024 passed in these writ petitions.
203. The petitioners, under the orders of the KERC pursuant to which they had entered into Wheeling and Banking Agreements, were also required to pay wheeling charges at 5% till the KERC frames regulations for open access to the green energy generators pending framing regulations. The petitioners shall continue to pay wheeling charges at 5%.



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204. The petitioners were also permitted to bank their energy annually, subject to payment of 2% under the Wheeling and Banking Agreement. However, by virtue of the Regulations which have now been invalidated, they were required to pay 8%.
205. Since these regulations have been struck down and liberty is given to the KERC to frame regulations for grant of open access to green energy generators and consumers, the petitioners shall be permitted to avail banking facility subject to payment of 4%.
206. The petitioners had the benefit of annual banking facility from 2014 in the standard Wheeling and Banking Agreement. Since the Wheeling and Banking Agreements have expired, they obviously would not have a contractual right to demand annual banking facility. Till the KERC frames regulations regarding banking as aforesaid, the petitioners shall be entitled to a monthly banking facility.



**X. DIRECTIONS AND SUGGESTIONS TO THE KERC:**

207. Before parting with the case, it would be appropriate to direct the KERC to examine the possibility of providing the annual banking facility as sought by the generating companies in this manner.
208. The KERC could ensure that the generators do not take advantage of the annual banking facility, by holding that the generators would be entitled to energy charges as was prevailing on the date of injection into the grid and not the charges that are prevailing on the date they seek to withdraw the energy from the grid.
209. This would ensure that the green energy generators do not hedge their profits by taking advantage of the annual banking facility and entitle themselves to a higher energy charge during periods when the demand for electricity is high and, consequently, higher electricity prices would be prevailing in the market.



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210. This is, however, only a suggestion made by this Court and would not, in any way, bind the KERC while framing Regulations in this regard. It is also clarified that the KERC can and should take an independent view on the matter relating to banking, including whether it desires to provide for a banking facility.

**XI. ORDER ON THE SUBSEQUENT INTERLOCUTORY APPLICATIONS FILED BY THE PETITIONERS:**

211. After the arguments were heard and judgment was reserved, application in I.A. No.2 of 2024 (in WP No.11235 of 2024) has been filed by the petitioner seeking a direction to respondent Nos.4 and 5 to make payment at the rate of INR 4.86/- per unit for the energy supplied by the petitioner during the period from 27.06.2024 to 26.07.2024.

212. An argument was also advanced that the respondents were not making the payments for the energy injected to the grid on the ground that they did not have a subsisting



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contract to inject energy to the grid and, consequently, the payment could not be made.

213. It has to be stated here that so long as the transmission licensee and distribution licensee permit the injection of electric energy to the grid, they would be required to pay charges for the energy so injected and they cannot take shelter under the fact that there is no subsisting contract.
214. It is therefore made clear that in respect of the energy that is injected by the petitioners, even after the expiry of their contract, the respondents would be bound to pay the electrical energy charges on the basis of the generic tariff that was applicable as on the date the energy was injected into the grid by the petitioners.
215. Subsequently, one more application in I.A. No.2 of 2024 (in WP No.19035 of 2024 & other cases) was filed seeking directions to the SLDC and the KPTCL to grant unhindered and un-obstructive open access pending final disposal of these writ petitions.



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216. A grievance was put forth that the respondents were raising demands for payment of arrears in contravention of the interim order passed on 05.07.2024 (in WP No.11235 of 2024) by which the generating companies i.e., the petitioners were directed to pay only 50% of the monthly charges.
217. In response to said application, learned counsel appearing for the KPTCL and the distribution licencees stated that if demands had been made for payment of transmission charges prior to the interim order, the same could not be enforced and the demand would continue only in respect of the period after the interim order has been passed.
218. Until the directions issued above are complied with, the respondents shall continue to collect the transmission charges in terms of the interim order dated 05.07.2024 i.e., 50% of the transmission charges that had been determined by the KERC in its order dated 08.06.2023.



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219. An oral request for grant of stay of this order was made at the time of pronouncement of this order, and the same is refused since it has been held that Central Government lacked the competence to frame the GEOA Rules and therefore the question of permitting it to continue would be illegal.

**Sd/-**  
**(N S SANJAY GOWDA)**  
**JUDGE**

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CT: SN  
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