

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
AT NEW DELHI**

**(APPELLATE JURISDICTION)**

**APPEAL NO. 5 OF 2016 &  
IA NOS. 531 OF 2016, 309 OF 2017 &  
IA NO. 504 OF 2018**

**Dated:** 7<sup>th</sup> February, 2020

**Present:** HON'BLE MR. RAVINDRA KUMAR VERMA, TECHNICAL MEMBER  
HON'BLE MR. JUSTICE R.K. GAUBA, JUDICIAL MEMBER

**IN THE MATTER OF**

**M/s Singareni Collieries Co. Ltd.**

Having its registered office at:

Kothagudem Colieries,

Khammam District – 507101

Represented by its G.M. (E&M) PHs & Ws

..... Appellant

**VERSUS**

1. **Andhra Pradesh Electricity Regulatory  
Commission**

4<sup>th</sup> & 5<sup>th</sup> Floors, Singareni Bhawan,

Red Hills,

Hyderabad - 500004

..... Respondent No.1

2. **Northern Power Distribution Company of A.P.  
Ltd.,**

[Re-named as The Northern Power Distribution  
Company of Telangana Limited (TNSPDCL)]

H.No. 2-5-31/2, Corporate Office,

Vidyut Bhavan, Nakkalgutta,

Hanamkonda,

Warangal – 506001

..... Respondent No.2

Counsel for the Appellant ...

Mr. Sanjay Sen, Sr. Adv.

Mr. Hemant Singh

Mr. Tushar Srivastava

Mr. Shreyansh Khemka

Counsel for the Respondent(s)... Mr. K.V. Mohan  
Mr. K.V. Balakrishnan  
Mr. Rahul Kumar Sharma for R-1

Mr. Anand K. Ganesan  
Ms. Swapna Seshadri  
Ms. D. Bharathi Reddy for R-2

## **J U D G M E N T**

### **PER HON'BLE MR. JUSTICE R.K. GAUBA, JUDICIAL MEMBER**

1. The core question on which this appeal is to be decided is as to whether the appellant, a “*consumer*” of electricity who had been granted conditional exemption from obtaining a supply license for specified purposes under the Andhra Pradesh State Electricity Reforms Act, 1998 (AP Reforms Act) acquired on such basis the status of “*deemed distribution licensee*” rendering it immune from action by “*Distribution Licensee*” in the event of it being found indulging in “*unauthorized use of electricity*”.

2. Claiming the status of a “*Distribution Licensee*” on the strength of “*exemption*” as granted by Andhra Pradesh Electricity Regulatory Commission (APERC), in exercise of its power under Section 16 of AP Reforms Act, the Appellant had approached the APERC by Original Petition No. 52 of 2013 challenging the Assessment Order DAT No. 1 of 05/2012 on account of “*un-authorized use of electricity*” under Section 126 of Electricity Act, 2003 passed by the second Respondent i.e. Northern Power Distribution Company of A.P. Ltd. (Discom), imposing a liability to pay an amount of Rs. 3,05,00,952/- with supervision charges (Rs. 300/-).

The petition was presented before APERC referring to its jurisdiction under Section 86(1)(f) and Section 86(1)(b) of the Electricity Act, 2003. The APERC, by its decision rendered on 23.08.2014, held the petition to be not maintainable returning a finding that the Appellant could not be treated as a licensee, its status being that of a consumer who had been granted exemption from the requirement to have a supply license, the remedies under the aforementioned provisions of law not being available to him *vis-a-vis* an Order under Section 126 of Electricity Act, 2003.

3. The Appeal at hand brings a challenge to the Order dated 23.08.2014 of APERC on the ground that the conclusion that the appeal could not be maintained was erroneous, exemption from the requirement of license to supply electricity conferring upon the Appellant the status of a deemed distribution licensee, and consequently the Respondent Discom could not have passed the assessment order on the grounds set out therein. It is also the grievance of the Appellant that having returned a finding that the petition under Section 86 of Electricity Act, 2003 was not maintainable before the State Commission, it was improper on the part of the Commission to render decision on the merits of the other issues that concern the liability fastened under Section 126 of the Electricity Act, 2003.

4. It may be mentioned here that the proceedings on the Original Petition had commenced before APERC prior to the bifurcation of the erstwhile State of Andhra Pradesh by the Andhra Pradesh Reorganization

Act, 2014 which came into effect from 02.06.2014. Pursuant to the law then in place, the erstwhile State Electricity Regulatory Commission (SERC) had continued as the Joint Regulatory Commission for the States of Andhra Pradesh and Telangana. Thus, the decision which is impugned before us was rendered by the said Joint Commission. Subsequently, the State of Telangana, within whose territorial jurisdiction both the contesting parties have been operating, established its own Commission – Telangana State Electricity Regulatory Commission (TSERC) on 03.11.2014. The TSERC (hereinafter “*State Commission*”), being the successor, joined the proceedings upon being so impleaded during the pendency of this appeal.

5. It may further be noted that the second Respondent (Discom) has also undergone some change in that it has since been renamed as the Northern Power Distribution Company of Telangana Limited (TSNPDCL). It was so described in the cause title of the Appeal at hand. The TSNPDCL (hereinafter “*Discom*”) has contested the appeal, being the successor of the entity which had passed the assessment order, the validity of which was questioned before the State Commission.

6. For dealing with the issues that arise, it will be proper to first take note of the relevant provisions of law.

7. Prior to the enactment of the Electricity Act, 2003, the relevant provisions thereof came into force on 10.06.2003, the electricity supply

industry in India was governed by the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commission Act, 1998. The Indian Electricity Act, 1910 had created the basic framework including for the purposes of laying down the transmission network and other works relating to supply of electricity, the Electricity (Supply) Act, 1948 mandating creation of State Electricity Boards conferring upon them the responsibility of arranging such supply within each State. In order to address the difficulties that arose for various reasons, and to provide for distancing of Governments from determination of tariffs, the Electricity Regulatory Commissions Act, 1998 was enacted. The Electricity Act, 2003 replaced all the said three statutes, repealing each of them by Section 185, to put in position a self-contained comprehensive legislation and to bring in certain reforms with the prime objective of encouraging private sector participation in generation, trading and distribution. It may be added here that notwithstanding the repeal of the earlier (three) Central enactments, the State Electricity Regulatory Commissions (SERCs), as indeed the Central Electricity Regulatory Commission (CERC), established under Electricity Regulatory Commissions Act, 1998, and functioning as such immediately before commencement of the new law were conceived to continue (by virtue of Sections 76 and 82) for discharge of the functions envisaged in the new enactment.

8. Prior to the enactment of Electricity Act, 2003, certain States had brought in their own reforms for the purposes of electricity supply industry. These included the State of Andhra Pradesh which had enacted the Andhra Pradesh Electricity Reforms Act, 1998 (AP Act No. 30 of 1998). The repeal of the three central statutes by Section 85(1) of Electricity Act, 2003 was accompanied by a saving clause contained in Section 185(3) for the purposes of the reform laws adopted by the States – which included Andhra Pradesh Electricity Reforms Act, 1998 – though with a rider that provisions of such State Law would apply to the State in which it had been enacted to the extent it was “*not inconsistent with the provisions of Electricity Act, 2003*”.

9. The Andhra Pradesh Electricity Reforms Act, 1998 prohibited engagement by any person in the business of “*transmitting*” or “*supplying*” electricity within the State unless “*authorized to do so by license or by virtue of exemption*” under the said law or under Electricity (Supply) Act, 1948. The power to grant a license for aforesaid purposes was vested in the SERC by virtue of Section 15. The SERC was also conferred with the power to grant exemption from the requirement to have a license, and also to make regulations for such purposes, by Section 16 which may be quoted as under:

“16. (1) The Commission may make regulations to grant exemption from the requirement to have a supply licence, but subject to compliance with such conditions if any, as may be specified in the order:

Provided that the Commission shall not, under any such regulation, grant any exemption except with the consent,-

*(i) of the local authority, if any, constituted in the area where energy is to be supplied;*

*(ii) in any case where energy is to be supplied in any area forming part of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or any building or place in the occupation of the Central Government for defence purposes, of the Central Government;*

*(iii) in any area falling within the area of supply of a licensee, of that licensee:*

*Provided that, except in a case falling under clause (ii) no such consent shall be necessary if the Commission is satisfied that such consent has been unreasonably withheld.*

*(2) An exemption may be granted,-*

*(a) to persons of a particular category; or*

*(b) to a particular person; or*

*(c) for a particular period;*

*and an exemption to persons of a particular category or to a particular person shall be published in such manner as the Commission considers appropriate for bringing it to the attention of that person or persons of that category and of the public in general.*

*(3) The exemption granted may be revoked by the Commission at any time for reasons to be recorded in writing.*

*(4) An exemption, unless previously revoked, shall continue in force for such period as may be specified in or determined by or under the exemption.*

*(5) Every regulation or exemption made by the Commission under this Act shall be published in the Official Gazette.”*

***[Emphasis supplied]***

**10.** The Electricity Act, 2003, by Section 12, inhibits transmission, distribution or trading in electricity by any person unless he is authorized to do so by a license issued under Section 14, or is exempted under Section 13. The power to grant exemption is conferred on the Electricity Regulatory Commission (ERC), on the recommendation of the Government (Central or State, as the case may be), the provision reading thus:

***“13. Power to exempt. – The Appropriate Commission may, on the recommendations of the Appropriate Government, in accordance with the national policy formulated under section 5 and in the public interest, direct, by notification that subject to such conditions and restrictions, if any, and for such period or periods, as may be specified in the notification, the provisions of section 12 shall not apply to any local authority, Panchayat Institution, users’ association, co-operative societies, non-governmental organizations, or franchisees.”***

***[Emphasis supplied]***

11. A bare comparison of Section 13 of the Central enactment with the corresponding exemption clause in the State Law (AP Electricity Reform Act) shows that the former is restrictive. Be that it as it may, there is no argument raised of “*inconsistency*” and consequently, we proceed on the understanding that the State Law would have continued to apply and be enforced for the relevant period, notwithstanding coming into force of the Central enactment.

12. The Appellant is a Government company constituted under the provisions of the Companies Act, 1956, primarily involved in the activity of coal mining at Kothagudem, Bhupalpally, Mandamarri, Bellampali, Srirampur, Ramagundam I, II and III, Manuguru and Yellandu, supplying the coal thus mined to certain generating companies, then in the erstwhile State of Andhra Pradesh. It has been stated that in compliance with its statutory obligations, the Appellant provides certain amenities to its employees and has developed and built townships and colonies which have the requisite facilities in the nature of banking, schools, hospitals, etc. For the purposes of its various activities, the Appellant had obtained several HT Category-I service connection for its different mines and HT

Category-VI service connections for different townships/residential colonies adjacent to such coal mines. This concededly would render it an HT Category consumer of the respondent Discom.

13. The Appellant had approached the State Commission by Original Petition no. 5 of 1999 invoking its jurisdiction under Section 16 of AP Electricity Reform Act seeking “*exemption*” from the requirement of having a supply license for the purposes of distribution of electricity within its premises including townships/colonies of its staff and other connected/incidental utilities. The State Commission granted such exemption for a period of ten years by its Exemption Order dated 31.01.2000, with certain conditions.

14. The Commission’s Order granted on 31.01.2000 concededly continued, notwithstanding enactment of the Electricity Act, 2003 and was renewed by a fresh Exemption Order passed on 15.09.2011 on Original Petition No. 55 of 2011, the date of its coming into force being 01.02.2010, its expiry stated to be 31.03.2015.

15. It may be appropriate to quote verbatim (to the extent necessary) the Exemption Order dated 31.01.2000 as under:-

*“In exercise of the Powers under Section 16 and other applicable provisions of the Andhra Pradesh Electricity Reform Act, 1998 (Act 30 of 1998) (hereinafter ‘the Act’) the Commission hereby grant to M/s Singareni Collieries Company Limited, Kothagudem Collieries – 507101, Bhadrachalam Road Station, S.C. Railway (hereinafter called the “Exemptee.) an Exemption from the requirement to have a supply licence under the Act and subject to the terms and conditions contained herein authorise M/s Singareni Collieries Company Limited, to engage in the business of supplying electricity restricted*

to their mining leased areas and colonies constructed by it for its employees namely; (1) Bellampalli (2) Mandamarri (3) Ramakrishnapur (4) Sree Rampur (5) Ramagundam I (6) Ramagundam II (7) Ramagundam III (8) Ramagundam IV (9) Manuguru (10) Yellandu (11) Kothagudem (12) Bhophaipally.

The grant of the Exemption to M/s Singareni Collieries Company Limited has been consented to by Transmission Corporation of Andhra Pradesh Limited (APTRANSCO) the supply licensee of the area.

*Terms and conditions of the grant of Exemption*

- (i) The Exemption granted shall come into force with effect from 01.02.2000 and unless determined or revoked earlier, shall remain in force for a period of 10 years. The Commission may, at the instance of M/s Singareni Collieries Company Limited renew the Exemption for such further period and on such terms and conditions as the Commission may consider appropriate.
- (ii) The tariff/price for the supply of energy/capacity by M/s Singareni Collieries Company Limited shall be no higher than the amounts that would be charged by the supply licensee of nearby areas to corresponding categories of consumers.
- (iii) M/s Singareni Collieries Company Limited is not authorised to and shall not supply or provide electricity to any other person for any purpose without the prior approval of the Commission.
- (iv) M/s Singareni Collieries Company Limited shall not engage in the business of supplying electrical energy inside their premises to any third party.
- (v) The installations of M/s Singareni Collieries Company Limited shall be accessible for inspection by APTRANSCO officials at all reasonable times.
- ...
- (ix) M/s Singareni Collieries Company Limited shall within (60) days from the date of grant of Exemption establish and submit for the approval of the Commission the procedure for resolution of the complaints of the consumers being its mines and Colonies constructed by it for its employees. The Commission may approve the procedure with such modification, as the Commission may consider necessary in the interest of the consumers.
- (x) M/s Singareni Collieries Company Limited shall keep separate record of its activities of supply of electricity permitted under this order and furnish to the Commission six – monthly reports of its activities with such information and detail as the Commission may require.

...”

**[Emphasis supplied]**

16. The Exemption Order dated 15.09.2011 renewing exemption for further period till 31.03.2015 was more or less on similar terms and conditions, the conditions with some difference being as under:

“ ...

- (i) *The Exemption renewal granted shall come into force with effect from 01.02.2010 and unless determined or revoked earlier, shall remain in force till 31.03.2015. The Commission may, at the instance of M/s Singareni Collieries Company Limited renew the Exemption for such further period and on such terms and conditions as the Commission may consider appropriate.*
- (ii) *M/s Singareni Collieries Company Limited is authorised to and shall supply or provide electricity to any other person for any purpose with the prior approval of the M/s APNPDCL.*
- (iii) *M/s Singareni Collieries Company Limited shall levy the tariff to their consumers as per the tariff order specified by the Commission from time to time. The tariff for the supply of energy/capacity by M/s Singareni Collieries Company Limited shall be equal to the amounts that would be charged by the APNPDCL, the distribution licensee, to corresponding categories of consumers.*
- (iv) *In cases where Singareni Collieries is extending power supply for other categories, other than the specified category, for which supply is provided, the company shall pay the difference amount i.e., (Tariff collected – Tariff levied by DISCOM) to M/s APNPDCL.*
- (vi) *M/s Singareni Collieries Company Limited shall not make any profit in the business of supplying electricity inside their premises to any third party.*

“ ...”

**[Emphasis supplied]**

17. The Electricity Act, 2003 deals, *inter-alia*, with “*unauthorized use of electricity*” and makes detailed provisions for “*investigation*” and “*enforcement*” by Part-XII. Section 126 on the subject of “*assessment*” confers upon the Assessing Officer the power and jurisdiction to provisionally assess, by his best judgment, the electricity charges payable for such unauthorized use of electricity and to call upon the person who has indulged in such activity to respond. There is a detailed procedure set

out in Section 126, taking care of the rules of natural justice, for final assessment order to be passed in terms of which the person found having indulged in unauthorized use of electricity may be burdened with the liability to pay, as a penalty, charges double than the tariff ordinarily payable for the electricity thereby consumed.

18. It was conceded at the hearing that the Assessing Officer on whom such jurisdiction to pass the assessment order is conferred by Section 126 would, in the case of a Discom, be an Assessing Officer nominated by such entity, though required to be designated as such by the State Government.

19. The expression “*unauthorized use of electricity*” is defined by *explanation (b)* appended to Section 126 as under:-

“126. ...

...

(b) “*unauthorised use of electricity*” mean the usage of electricity –

(i) *by any artificial means; or*

(ii) *by a means not authorised by the concerned person or authority or licensee; or*

(iii) *through a tampered meter; or*

(iv) *for the purpose other than for which the usage of electricity was authorised; or*

(v) *for the premises or areas other than those for which the supply of electricity was authorised.*”

***[Emphasis supplied]***

20. On 30.11.2011, the Assistant Divisional Engineer (Electrical) of the Discom, he concededly being the Assessing Officer qua the Appellant for the purpose of Section 126 of the Electricity Act, issued a provisional

assessment order recording the view that the Appellant was guilty of unauthorised use of electricity for the reason it had been used “*for the purposes other than sanctioned purpose*”, assessing the electricity charges payable in terms of Section 126 to be Rs. 27,33,63,157.01, setting out at length certain facts and circumstances noticed during inspection to be incriminating.

**21.** The Appellant contested the provisional assessment order by submitting a detailed response denying the allegations on which basis unauthorized use had been attributed. The Assessing Officer passed the final assessment order on 30.05.2012 fastening the liability mentioned earlier calling upon the Appellant to pay.

**22.** There is no dispute as to the statutory scheme of the Electricity Act, 2003 that an assessment order under Section 126 may be challenged by an appeal under Section 127 before the Appellate Authority. The statute does not specify the “*Appellate Authority*” for the purposes of Section 127 but leaves it to the executive branch to prescribe the same. It is an admitted case of both sides that Chief Engineer/Warrangal Zone has been prescribed as the “*Appellate Authority*” under Section 127 of Electricity Act, 2003 for the purposes of the parties in question. The final assessment order made a specific mention of the remedy of appeal being available before such Appellate Authority.

**23.** Admittedly, the Appellant did not carry the matter to the Appellate Authority statutorily prescribed.

**24.** The assessment proceedings were based on the following observations recorded during inspection by the officers of Discom:

“ ...

- (i) *The consumer has knowingly misled the NPDCL officers by way of segregating only a small portion of Lights & Fans load by installing 12 nos. tested meters and left major portion of L&F, colony load un-segregated (un-metered) from the month of June-2006 causing heavy loss of revenue to NPDCL.*
- (ii) *Before June-2006, 15% of total consumption was billed at additional rate for non segregation of lights and fans load.*
- (iii) *The L&F load of about 2.26 MW is existing on the service no. KMM-028 which comes about 17.41% on total sanctioned CMD and out of 17.41% the L&F load of about 14% is un metered. Hence 15% of the total consumption shall be billed under L&F tariff and loss of revenue is proposed to be recovered from July-2006 to Oct-2011.*
- (iv) *Colony load incident on the service of about 2.59 MW is not segregated which comes about 19.9% on total sanctioned CMD. Hence another 15% of the total consumption shall be billed under colony tariff and loss of revenue is proposed to be recovered from July-2006 to Oct-2011.*
- (v) *Most of the L&F loads are of non domestic nature.*
- (vi) *Power supply is extended to private consumers (M/s AMR private contractor, Super bazaar, commercial shops etc.) without prior intimation to NPDCL.*
- (vii) *The consumer has utilized 16,12,720 units on 33 KV emergency supply point from 1/2002 to Aug-2011, hence voltage surcharge is to be penalized as per tariff order.”*

**25.** The Appellant in its representation, and request for assessment proceedings to be dropped, stated thus:

“ ...

1. *Total L&F loads of industrial circuits will be covered to the possible extent under existing L&F NPDCL approved meters. For other L&F*

*loads of industrial circuits meters are already provided by SCCL and approval is to be taken from NPDCL authorities.*

2. *The reasons for giving power supply to domestic loads of Birley pit feeder (generally fed from BPH) from industrial circuit (HT Cat-I) whenever BPH generation decreases are:*
  - *33 KV Domestic feeder II is not reliable,*
  - *Industrial loads are in the circuit,*
  - *Important loads like main hospital, corporate office, CMD, Directors and chiefs bungalows are in the same circuit.*
3. *Power supply to Birley pit feeder loads is being fed through industrial feeder from 2009-10 onwards only when BPH generation decreased.*
4. *Private consumers to whom supply is being given from domestic and industrial circuit of SCCL will be handed over to DISCOM to the possible extent.*
5. *Suitable energy meters with NPDCL approval will be provided to CWS feeder at BPH switch yard.*
6. *As per the energy consumption data collected from the existing SCCL/Approved NPDCL meters the L&F loads consumption is assessed to be less than 10% of total industrial energy consumption.*
7. *As per the energy consumption data collected from the existing SCCL/Approved NPDCL meters the Domestic loads consumption from FY 2006-07 onwards is assessed to be Rs. 52,13,436/-.*
8. *Regarding payment of 50% of provisional assessment amount to have continuance of power supply and also to represent further, SCCL, being a Govt organization, the amount has to be got approved by the competent authority.*
9. *Estimation cost for segregation of non Singareni consumers will be born by SCCL if segregated by NPDCL.”*

**26.** The Final Assessment Order modified the penal charges payable to the extent mentioned above recording thus:

“...

iv) *The SCCL is selling power to private consumers at commercial tariff (other than SCCL consumers and most of them are commercial in nature), without prior approval of NPDCL, as per APERC terms and conditions prior approval must be taken from NPDCL and hence, assessment of those private consumers consumption to be done under section 126 of EA-2003. Malpractice as it is a case of usage of electricity for purpose other than sanctioned purpose.*

v) The SCCL has accepted in appeal resale of power to private consumers and also accepted usage of power from 132 KV HT Cat-I service through CWS feeder to industrial loads including water supply, colony loads, Main Hospital, corporate office, CMD, Directors Bungalows, SCCL & private commercial loads.

Hence for item no. (vi) & (v) the revised assessment amount (as it is a case of usage of electricity for purpose other than sanctioned purpose) of Rs. 3,05,00,952 (Rupees Three crores five lakhs nine hundred and fifty two only) towards resale of power to private consumers is here with confirmed as final assessment amount after thoroughly examining the case with reference to the facts and field inspection.”

**[Emphasis supplied]**

27. The above Final (Revised) Assessment Order reserved the matter for separate revised billing to be issued on account of non-segregation of L&F lights, colony lights and voltage surcharge penalty.

28. As mentioned earlier, the Appellant had approached the State Commission invoking its jurisdiction under Section 86(1)(b) and (f) of Electricity Act, 2003. The provision contained under Section 86 to the extent relevant here reads thus:

**“86. Functions of State Commission – (1) The State Commission shall discharge the following functions, namely:--**

...

(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;

...

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

...”

**[Emphasis supplied]**

**29.** It is fairly conceded that the above clauses would come into play in the context of dispute at hand only if the Appellant can be classified as a “*licensee*” but not otherwise.

**30.** It has been the contention of the Appellant that by virtue of the exemption granted under Section 16 of the AP Electricity Reform Act it is to be treated as a “*deemed distribution licensee*” and, therefore, it was within its rights to approach the State Commission in the matter for questioning primarily the jurisdiction of the respondent Discom to exercise power under Section 126 of Electricity Act, 2003 in the given facts and circumstances.

**31.** *Per contra*, the respondent Discom contended, which position has been accepted by the State Commission, that the exemption from taking out a supply license does not confer upon the Appellant – a consumer – the status of a distribution licensee.

**32.** Pertinent to mention at this stage that the learned counsel for the Appellant repeatedly submitted – fairly conceding – that there is no factual dispute raised, this implying that the grounds on which unauthorized use of electricity has been attributed actually existed. This is vivid even from the bare perusal of the grounds taken in the representation against provisional assessment order which were more of a justification or assurance for corrective steps to be taken for future but definitely not to deny that the electricity supply had been put to use for extraneous

purposes. Pertinent to add, and crucially so, the misuse on which account liability was fastened under section 126 by the final assessment order was due to “sale” to “*private consumers at commercial tariff ... without prior approval*”. That this activity was outside the terms of exemption order is not denied.

**33.** The State Commission by the impugned order upheld the contention of the respondent as to non-maintainability of the appeal setting out its reasons thus:

*“28. The Commission notes that the exemption given to the petitioner under section 16 of the Reform Act merely provides them to distribute power to its employees residences without a distribution licence. It does not provide to the petitioner the status of a licensee with its attendant privileges and obligations. These obligations of the petitioner, as a person exempted, have been stipulated in the terms and conditions of the exemption order issued by Commission. Section 86(1)(f) of the Act 2003 applies to a dispute between licensees and Generating Companies. The petitioner is neither a licensee nor generating company and therefore, cannot seek shelter of Section 86(1)(f) of the Act 2003. Further, since the petitioner is not a licensee, Section 86(1)(b) of the Act 2003 also does not apply to him. On both these grounds, the Commission holds that the petitioner is not maintainable.”*

***[Emphasis supplied]***

**34.** The submission of the Appellant that it is a distribution licensee was rejected holding it to be a consumer (as well as an exemptee), the reasons being articulated thus:

*“33. The principal contention of the petitioner that it should be treated differently from other consumers, because of three reasons. First, it is a Government Company; second, it is exempted from a licence and third, it is a bulk consumer of power. None of these three reasons provide any basis for special treatment of the petitioner. The fact that it is a Government Company does not provide it with insulation from penalties. The fact that it is exempted from licence does not dilute the fact that it is a bulk consumer of power and therefore, a consumer. The fact that it is a bulk consumer of power does not entitle it to special treatment. Perusal of the Commission exemption order dt. 15.09.2011 reveals that*

*exemption from the requirement to have supply licence was granted to the petitioner subject to a number of conditions. Failure to comply with the terms and conditions would entitle the Commission to withdraw or modify the exemption granted, at any time and prohibit / restrict the petitioner from supplying or providing electricity. Nowhere in the said exemption order, it is mentioned that the petitioner is not liable for violation of provisions, either under the Reform Act or the Act 2003. On the other hand, it is clearly mentioned that provisions of the enactments, Regulations/Orders/Directions that may be issued by the Commission from time to time, are applicable to the petitioner. As mentioned supra, the petitioner is only a licence exemptee authorized to conduct business of supplying /distributing electricity within its mining leased areas and colonies and it cannot be treated on par with the respondent, which is the distribution licensee. In this regard, it is necessary to note that distribution licence was granted to the respondent by the Commission after following the procedure prescribed u/s 15(2) of the Reform Act, whereas while granting exemption u/s 16 of the Reform Act, a different procedure is required to be followed by the Commission. Therefore, on this ground also petitioner cannot claim that it is a licensee on par with the respondent.”*

***[Emphasis supplied]***

**35.** The Commission repelled the contentions of the Appellant based on the general duties and powers of licensees as set out in Section 17 of AP Electricity Reform Act on the following reasoning:

*“38. As seen from Section 17 of the Reform Act, the role of a licensee is extensive and obligated to provide supply to all categories whereas under section 16 of the Reform Act, the role of an exemptee (from the requirement to have a licence) is very limited to providing supply to the areas which are limited to its area of operation. In case such exemptee needs to extend supply to any other person, it is required to take permission from the Commission or the respondent. Further, the petitioner herein has service connections under HT category and even though it is an exemptee the petitioner is also a consumer. The Petitioner plays two roles; as a consumer and as an exemptee. In its primary role as consumer, it cannot claim waiver from the provisions of the Act 2003. In its secondary role as distribution of power, it is bound by the conditions stipulated in the exemption order.”*

***[Emphasis supplied]***

**36.** We have already noted earlier the provision contained in Section 13 of the Electricity Act, 2003 on the subject of exemption. It has been the

argument of the Appellant that, it being a Government Company with control and management of an area of operations of vast magnitude, it is entitled to the status of a “*local authority*” within the meaning of expression used in Section 13 and thus be treated as exempted even under the said provision of law. The State Commission rejected such arguments as well holding that the operations in which the Appellant is engaged would not confer a claim for exemption from need for licencing under the Electricity Act, 2003.

**37.** The last noted submission with reference to Section 13 of the Electricity Act, 2003 need not detain us much since we find no error in the view taken by the State Commission for the simple reason the exemption was taken by the Appellant not under Section 13 of the Electricity Act, 2003 but under Section 16 of the AP Electricity Reforms Act.

**38.** There can be no denial of the fact that the HT connection was obtained by the Appellant from the respondent Discom primarily for purposes of its mining activities and incidental uses. The said arrangement would apparently render it a “*consumer*” within the meaning of the expression defined by Section 2(15) of Electricity Act, 2003. There is no denial also to the fact that the consumer procures electricity for the purposes of “*own use*” from the distribution licensee and that, in such capacity, the consumer has no right to distribute or supply electricity to anyone else. The provision contained in Section 16 was envisaged as an exception to the general inhibition of Section 14 of AP Electricity Reforms

Act for license to be obtained, *inter-alia*, for supplying electricity. The power vested by the State Law in the State Commission to grant exemption from the requirement to have a licence was not restricted to the category of consumers. It could be used to facilitate supply of electricity by anyone – not necessarily a consumer – by obtaining exemption. The exemption, as the provision itself makes it clear, was dependent upon, generally speaking, the precondition of “*consent*” of the distribution licensee. Naturally so, because conferment of such power to distribute electricity would work against the business interests of the distribution licensee allocated the particular area. The exemption, as sub-section (2) of Section 16 shows, may be granted by the State Commission to a particular category, to a particular person or for a specified period. What stands out, however, is the fact that exemption would generally be not unconditional. The State Commission is empowered to add such conditions as may be found to be appropriate for meeting the requirements of the situation for purposes of which such arrangement, by way of exception to the general rule of mandatory distribution license, is put in position.

**39.** Coming to the facts of the case in hand, it is an admitted position of the Appellant that it required to make available electricity supply to its various colonies and townships which had been developed to house its employees as also for arranging facilities in the nature of banking, hospital, schools, etc for them. But the exemption which was granted to

the Appellant on 31.01.2000, as was extended for five years by subsequent Order dated 15.09.2011, which has been quoted earlier, shows that the exemption from requirement of obtaining license for supplying electricity did not extend to “*any other person for any purpose without the prior approval of the Commission*”. The final assessment order, the validity of which was questioned by the Appellant before the State Commission held the Appellant accountable as a consumer essentially for the reason that no “*prior approval*” had been obtained. The resale of power by the appellant to private consumers at commercial tariff are acts admittedly indulged in, the same apparently not being acts of an exemptee in absence of any move to obtain “*prior approval*”.

**40.** The grant of exemption under Section 16 of AP Electricity Reforms Act does not change the status of the Appellant. Notwithstanding such grant, it continued to be a “*consumer*” of the respondent Discom to the extent of electricity supply drawn by it in the HT category. As pointed out by the respondent Discom, the relationship of consumer and Discom between these parties *vis-a-vis* the HT connections in question is regulated by a tariff order in terms of which bills were issued and the Appellant made payments there against for the electricity procured from time to time. Mere accord of consent by the distribution licensee to the grant of exemption by the State Commission would not suffice to confer upon the consumer the status of a distribution licensee.

41. The claim of the Appellant for protection of its interest as a “*deemed distribution licensee*” on account of exemption is misconceived. In this context reference has to be made to the ruling of the Hon’ble Supreme Court reported in the matter of *Sesa Sterlite Limited v Orissa Electricity Regulatory Commission and Others (2014) 8 SCC*.

42. The Appellant before the Hon’ble Supreme Court in *Sesa Sterlite Limited* (supra) was developer of a unit in Special Economic Zone (SEZ). It had entered into Power Purchase Agreement (PPA) with a Discom and had approached the State Commission for approval. The request was declined, it having been held that the Appellant was a “*consumer*”. The SEZ developer claimed the status of a “*deemed distribution licensee*” for the purposes of the Electricity Act, 2003 referring to the provisions of Special Economic Zones Act, 2005. The contention was rejected by this Tribunal in appeal. The Hon’ble Supreme Court upheld the view taken by this Tribunal and dismissed the Civil Appeal by the ruling which has been relied upon by the respondent Discom, the relevant part of the observations and conclusions whereof may be quoted as under:

“44. ...

*44.2 The Appellate Tribunal pointed out that there are nine provisos to Section 14(b) of the Electricity Act and another is added in respect of the appellant vide Notification dated 3-3-2010. A reading of these provisos would indicate that some of them confer status of deemed distribution licensee on certain specified entities who are not required to take separate licence from the State Commission under this Act whereas some other provisos merely declare the party as deemed licensee and nothing specified as to whether they are required to obtain the licence or not. However when it is specially provided in Proviso 4 and Provisos 8 and 2 that Damodar Valley Corporation and the State Government are*

not required to obtain licence, and other provisos do not confer such privilege, they would be required to obtain licence.

45. Further discussion on this aspect by the Appellate Tribunal is as under

...

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

50. An entity which utilises the entire quantum of electricity for its own consumption and does not have any other consumers, can not, by such a notification, be deemed to be distribution licensee, even by a legal fiction. By virtue of the legal fiction created by the notification dated 3.3.2010, the Developer of SEZ notified under the SEZ Act, who distributes electricity can be deemed to be a distribution licensee. Thus, this legal fiction can not go further and make a person who does not distribute electricity to the consumers as a distribution licensee. Therefore there is no merit in the contention of the appellant”.

46. We are in agreement with the aforesaid rationale in the impugned order of the Appellate Tribunal as that is the only manner in which the two Acts can be harmoniously construed. To recapitulate briefly, in the present case no doubt by virtue of the status of a developer in the SEZ area, the appellant is also treated as deemed distribution licensee. However with this, it only gets exemption from specifically applying for licence under Section 14 of the Act. In order to avail further benefits under the Act, the appellant is also required to show that it is in fact having distribution system and has number of consumers to whom it is supplying the electricity. That is not the case here...

....”

**[Emphasis supplied]**

**43.** The role and responsibilities of a distribution licensee are set out by detailed provisions contained in Sections 42 to 51 of the Electricity Act, 2003. Just as a sample of the said stipulations, it may be noted that it is the duty of a distribution licensee, under Section 42, to develop and maintain a distribution system in its area of supply and to supply electricity in accordance with law. It is expected to introduce non-discriminatory “*open access*” for such parties as may be interested in the same and be subject to determination of charges that can be levied for such services by the State Commission. It is under duty, by virtue of Section 43, to supply electricity “*on request*” by the owner or occupier of any premises within the area allocated to it. The Appellant has not demonstrated in any manner engagement in such activities. Supply of power to its own facilities is supply to itself and, therefore, for own consumption by the consumer. Since prior approval as envisaged was not taken, the supply of electricity (procured by the consumer) to others was not under the cover of exemption order but outside it. The restricted permission granted by the exemption orders clearly does not vest the Appellant with such role or responsibilities and, therefore, it is not correct on the part of the Appellant to contend that the exemption under Section 16 of AP Electricity Reforms Act conferred upon it the status of a deemed distribution licensee. The plea of the Appellant to that effect has been rightly rejected by the State Commission and we endorse the said conclusion.

**44.** Since the factual inquiry has brought out that the Appellant continued to be merely a “consumer”, it having supplied electricity to private parties without prior approval, charging them at commercial tariff, the argument of “estoppel” raised by the Appellant, placing reliance on *Andhra Pradesh Electricity Regulatory Commission v. R.V.K. Energy Private Limited and Anr. (2008) 17 SCC 769*, does not appeal to us. The fact remains that prior approval was not taken and, therefore, the supply of electricity was not in terms of the authorization by the exemption orders which consequently were not even invoked by the Appellant for such purposes.

**45.** As noted earlier, it is also the grievance of the Appellant that the State Commission having concluded that the Appellant was a consumer and not a deemed distribution licensee it should not have returned any finding on issues other than that of maintainability. Reliance in this context is placed on the rulings of the Hon’ble Supreme Court reported as *Sri Athamanathaswami Devasthanam v. K. Gopaldaswami Ayyangar, (1964) 3 SCR 763; Kiran Singh and Others v. Chaman Paswan and Others (1955) 1 SCR 117* and *Balvant N. Viswamitra and Others v. Yadav Sadashiv Mule (dead) Through Lrs. And Others, (2004) 8 SCC 706*.

**46.** In above respect, suffice it to say that factual inquiry by the State Commission was essential to reach a just and fair conclusion on the objection to maintainability of the petition brought under Section 86 of Electricity Act, 2003. The Appellant itself had approached the

Commission and had raised the issues concerning not only the merits of the assessment order but also propriety of levy of tariff imposed on it “as a consumer”. Having elected the said remedy, it does not lie in the mouth of the Appellant now to begrudge the adverse observations that came to be recorded while repelling its contentions.

**47.** We find no merit in the appeal and hence the instant appeal, being Appeal No. 5 of 2016, and pending applications are dismissed.

**PRONOUNCED IN THE OPEN COURT ON THIS 7<sup>TH</sup> DAY OF FEBRUARY, 2020.**

**(Justice R.K. Gauba)**  
Judicial Member

**(Ravindra Kumar Verma)**  
Technical Member

*vt*