APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI (APPELLATE JURISDICTION)

APPEAL NO. 134 OF 2024 & IA NO. 350 OF 2024

Dated: 27th March, 2025

Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon'ble Ms. Seema Gupta, Technical Member (Electricity)

In the matter of:

NUCLEAR POWER CORPORATION OF INDIA
16th Floor, Centre-1, World Trade Centre,
Cuffee Parade, Mumbai, PIN – 400005. … Appellant

VERSUS

1. **CENTRAL ELECTRICITY REGULATORY COMMISSION**
   Represented by its Secretary
   3rd & 4th Floor, Chanderlok Building,
   36, Janpath, New Delhi – 110001. … Respondent No.1

2. **GUJARAT URJA VIKAS NIGAM LIMITED**
   Through its Managing Director
   Sardar Patel Vidyut Bhavan, Race Course,
   Vadodara – 390007, Gujarat. … Respondent No.2

Counsel for the Appellant(s): Tavinder Pal Sidhu
A. P. Singh
Neetica Sharma
Akshada
Shrinkhla Tiwari

Counsel for the Respondent(s): Ranjitha Ramachandran
Anand K. Ganesan
Swapna Seshadri
Srishti Khindaria
Kriti Soni
for Res.2

JUDGEMENT

PER HON'BLE MR. JUSTICE RAMESH RANGANATHAN, CHAIRPERSON

I. INTRODUCTION:

This Appeal is preferred by Nuclear Power Corporation of India Limited (hereinafter referred to as the "Appellant") against the interim order passed by the Central Electricity Regulatory Commission ("CERC" for short) in Petition No. 98/MP/2023 dated 13.01.2024. The relief sought for in the present Appeal is to set aside the said interim order.

In the Impugned Order, the CERC has, after construing the provisions of the Atomic Energy Act, 1962 (the "1962 Act") and the Electricity Act, 2003 (the "2003 Act"), held that the Commission had jurisdiction, under Section 79(1)(f), to adjudicate disputes, between the 2nd Respondent-Gujarat Urja Vikas Nigam Limited (GUVNL), the licensee procuring electricity, and the Appellant-Nuclear Power Corporation of India Limited (NPCIL), the generating company supplying electricity, under the two PPAs dated 22.09.2005 and 16.12.2008, from Kakrapar Atomic Power Station-KAPS Unit and Tarapur Atomic Power Station- TAPS Unit.

The question, which necessitates examination in the present Appeal, is whether the CERC is vested with the jurisdiction and functions under Section 79(1)(f) of the Electricity Act, 2003 to adjudicate disputes, between the Appellant- NPCIL and the Respondent- GUVNL, relating to the effective tax rate on Return on Equity applicable under the Tariff Notification dated 08.02.2012, and other notifications of the Central Government (Department of Atomic Energy (DAE)). The Appellant and the 2nd Respondent had entered into a Power Purchase Agreement on 22.09.2005 for supply of 125 MW capacity of power from the Appellant's Kakrapur Atomic Power Stations Units

1 and 2, and 274 MW capacity of power from their Tarapur Atomic Power Station Units 3 and 4. They also entered into a Power Purchase Agreement dated 16.12.2008 for supply of power from the Tarapur Atomic Power Station Units 1 and 2 for the allocated capacity of 160 MW of power. The subject PPAs provided for the charges for supply as per the tariff notification, issued by the Department of Atomic Energy, Government of India, in accordance with the Atomic Energy Act, 1962; and for the tariff rates so fixed to be subject to adjustment charges as advised by the Department of Atomic Energy, from time to time, as stipulated in Clause 7 of the subject PPA.

II. RELEVANT CLAUSES OF THE PPA:

Clause 7.0 of the PPA, executed by the Appellant with the 2nd Respondent on 22.09.2005, relates to Rates of Supply. Clause 7.1 records that it is agreed between NPCIL (the Appellant) & GUVNL (the 2nd Respondent) that the charges for supply of energy shall be as per the tariff notification issued by Department of Atomic Energy (DAE), Government of India, from time to time, in accordance with Section 22(1)(b) of the Atomic Energy Act, 1962 as amended from time to time; the tariff rate so fixed shall be subject to the fuel and heavy water adjustment charge as advised by DAE from time to time; and variations in effective rates as a result of the fuel cost adjustment charges and heavy water cost adjustment charge shall not be deemed to be a change or revision of the tariff.

Clause 7.2 provided that the Bulk Power Beneficiaries, including GUVNL, shall reimburse to NPCIL, modification in respect of the decommissioning provision component of the tariff rate or any levy in respect of nuclear energy as may be notified by the Department of Atomic Energy from time to time or any other such impositions, and these shall not be deemed. to be a revision of the tariff. Clause 7.3 stipulated that, in the event of any additional investment made with the approval of DAE, towards the

modification of the 'Power Stations facilities, to meet the safety requirements, the tariff will be revised as per notification issued by the Government of India. However, in case of any additional investment towards modifications / improvement of operational efficiency, the GUVNL/ Bulk Power Beneficiaries shall be consulted and informed. Clause 7.4 provided that, as on date, the tariff Notification issued by DAE for the power stations were: (1) 1/2(7)/03-Power/675 dated. September 15, 2003 for KAPS Units Nos.- 1&2; and (2) 2/9(1)/2005-Power/288 dated. May 10, 2005 for TAPP Unit Nos.-3&4.

Clause 7.5 of the subject PPA related to Taxes, Levies, Duties, Cess, etc. Clause 7.5.1 provided that the above tariff was exclusive of any statutory taxes, levies, duties, cess or any other kind of impositions(s) whatsoever imposed/ charged by any Government (Central/ State) and/or any other local bodies/authorities on generation of electricity excluding auxiliary consumption or on any other types of consumption, transmission, sale or on supply of power/energy and/or in respect of any of its installations associated with Generating Stations and/or on Transmission System. Clause 7.5.2 provided that the total amount of such taxes/duties/cess etc, payable by NPCIL to the authorities concerned in any month on account of the said taxes/ duties/ cess etc. as referred to above, shall be borne and additionally paid by GUVNL to NPCIL, and the same shall be charged in the monthly bills raised by NPCIL in the proportion of energy drawal by GUVNL from NPCIL. Clause 7.5.3 provided that the incidence of tax liability on NPCIL, as per the Income Tax Act in force from time to time, shall be recovered from GUVNL/Bulk Power Beneficiaries duly certified by the Statutory Auditors of NPCIL; and the Income Tax allocated to GUVNL/Bulk Power Beneficiaries will be in proportion to their energy drawal during the year to which the Income Tax pertains.

Clause 12.0 of the subject PPA related to Arbitration. Clause 12.1 stipulated that the parties agreed to attempt to resolve all disputes arising hereunder promptly, equitably and by entering into good faith discussions to resolve the disputes at a chief engineer level; in the event the respective representatives of the Parties were unable to reach an amicable settlement of the disputes, the said disputes shall be referred to internal committee comprising of two senior level representatives from each party; and the Parties further agreed to provide each other copies of any and all non-privileged records, information and data pertaining to any such dispute.

Clause 12.2 provided that, if the Parties were unable to resolve any dispute in accordance with Clause 12.1 above within 30 days, all such disputes shall be settled exclusively and finally by arbitration following the procedure laid down herein, and the rules provided in the Arbitration and Conciliation Act, 1996; accordingly, on a specific written request of the aggrieved party, all disputes shall be referred to a sole arbitrator/ arbitrators to be appointed as per the terms of Arbitration and Conciliation Act, 1996, as amended from time to time. Clause 12.3 stipulated that, in an arbitration invoked at the instance of either Party to this Agreement, the arbitrator shall be free to consider the counter-claim(s) of the other party even though they were not mentioned in the reference to arbitration.

Clause 12.4 provided that the place of the arbitration shall be Mumbai, India. Clause 12.5 stipulated that, notwithstanding the existence of any disputes and differences referred to arbitration, the parties hereto shall continue to perform their respective obligations under this Agreement and the payment of any bill referred shall not be withheld by GUVNL for any reason whatsoever including the pendency of arbitration proceedings.

III. CONTENTS OF PETITION NO.98/MP/2023: TO THE EXTENT RELEVANT:

The 2nd Respondent filed Petition No. 98/MP/2023 before the CERC, under Section 79(1)(f) of the Electricity Act, 2003, disputing their liability with respect to Minimum Alternate Tax, and recovery of the excess amount paid by them towards Minimum Alternate Tax, for the Financial Years 2011-2012 to 2021-2022, in relation to the Power Purchase Agreements ("PPA" for short) dated 22.09.2005 and 16.12.2008. In Petition No. 98/MP/2023, the 2nd Respondent stated that, since the subject stations were nuclear power stations, the PPA provided for the charges for supply as per the Tariff Notifications issued by the Department of Atomic Energy, Government of India, in accordance with the Atomic Energy Act, 1962; however such rates of supply, to be fixed, were exclusive of taxes, and the PPA provided for recovery of the actual tax liability from the 2nd Respondent. After extracting Clause 7.0 of the PPA, relating to rates of supply (i.e. from Clauses 7.1 to 7.4), and Clause 7.5 which related to taxes, levies, duties, cess etc. (from Clauses 7.5.1 to 7.5.3), the 2nd Respondent stated that, in terms of the tariff notifications prevailing at that time, the tariff rate was fixed and the income tax liability was considered separately; however, from 2012, the notification for the tax component became a part of the post-tax return on equity, and the tariff notified included the component of income tax in the return on equity itself; and this was in keeping with the shift even in the Tariff Regulations, notified by the Commission, for grossing up of return on equity with the applicable tax rate.

After referring to the Tariff Notification dated 08.02.2012, the 2nd Respondent stated that, once the Tariff Notification incorporated the return on equity and the tax component in the tariff itself, there could not be any further recovery of the tax component under Article 7.5.2 and 7.5.3 of the PPA; recovery of tax cannot be on double accounting basis, namely, be included in the post-tax return on equity and also recovery under Articles 7.5.2 and 7.5.3 of the PPA; the Appellant had been claiming equity

adjustment charges for the Period FY 2011-12 to FY 2021-22 on an erroneous formulation, and without providing details of the equity adjustment charge as per the above formula; they had also not provided the formula for computation of the effective tax rate which was claimed to be higher than the base rate considered in the Tariff Notifications; the Appellant had not provided for computation of the equity adjustment charge and effective tax rate in terms of the Tariff Notifications; the 2nd Respondent had sought for detailed workings of the effective tax rates by the Appellant; however, the Appellant failed to furnish such details.

The 2nd Respondent further stated that they came to know of the mistake in the billing of the amount towards taxes by the Appellant being higher than the amount of taxes actually paid by the Appellant; the Appellant never disclosed about the discrepancy before 2020; the 2nd Respondent wrote to the Appellant seeking explanation of the computation of the effective tax rate by the Appellant; it was only in 2021 that the Appellant responded by attempting to provide an explanation regarding computation; it was only by e-mails dated 30.07.2022 and 08.12.2022 that it was made clear that the effective tax rate had been arrived at by 'trial and error' method, and was not the same as the actual tax rate at which tax had been paid by the Appellant; it became clear thereafter that the Appellant had been seeking higher rate than the actual tax rate for the entire period in question; therefore, the 2nd Respondent had to file the present Petition; and the Tariff Notifications, for the period 01.07.2015 to 31.03.2017, were issued only in August 2021 and November 2021 which provided for return on equity to be grossed up by tax at 21.34%, and the formula for equity adjustment charges was provided.

The reliefs, sought by the Appellant in the said Petition, were (a) to declare that the recovery of tax component by NPCIL (Appellant) was to be only as per Tariff Notifications issued by the Department of Atomic Energy,

Government of India, and not de-hors the same in the manner NPCIL was purporting to recover the amount of taxes as set out hereinabove; (b) to hold and clarify that the effective tax rate was the rate at which the tax was actually paid by NPCIL as per the statute i.e. the percentage of profit paid as tax; (c) to direct NPCIL to raise future invoices considering the tax component only on the return on equity as provided in the Tariff Notification issued by the Department of Atomic Energy, Government of India; (d) to direct NPCIL to refund the excess amount of tax component recovered by NPCIL from GUVNL of Rs.119,95,88,504.00 for the period FY 2011-12 to FY 2021-22 and any further amounts recovered subsequent to the said period, along with applicable interest; and (e) to pass an ad interim ex parte order to direct NPCIL to raise the invoices based in terms of the prayer.

IV. IMPUGNED ORDER: ITS CONTENTS:

In the impugned order, passed in Petition No. 98/MP/2023 dated 13.01.2024, the CERC noted that, during the hearing of the said Petition on admission on 10.08.2023, elaborate submissions were made on behalf of the 2nd Respondent-GUVNL on the issue of jurisdiction of the CERC to adjudicate the dispute; and the Commission had, therefore, directed the Appellant to file its reply on the maintainability of the Petition, and for completion of pleadings by the parties; in its reply filed before the CERC, the Appellant had submitted that the Petition ought to be dismissed in limine on the ground of maintainability, as it did not fall within the scope of Section 79(1)(a) to (d) of the Electricity Act, 2003; the 2nd Respondent could not invoke the jurisdiction of the CERC; the actual issue raised by the 2nd Respondent was regarding interpretation of the Tariff Notification issued by the Department of Atomic Energy, though the 2nd Respondent had sought to disguise the said issue as an alleged breach of the PPA; the Atomic Energy Act, 1962 was amended in 1987 conferring powers on the Central

Government to implement the provisions of the Atomic Energy Act, 1962, for generation of electricity through Atomic Energy, either by itself or by a statutory Corporation or a Government Company; in the exercise of the powers vested in it, the Central Government had incorporated the Nuclear Power Corporation of India Limited, as a Government Company wholly owned by the Central Government, on 04.09.1987; the Appellant was functioning under the administrative control of the Department of Atomic Energy, Government of India; the Department of Atomic Energy was empowered, by Section 22 of the 1962 Act, to issue a Notification; Clause 7 of the PPA provided for the rates for supply of energy as per the tariff notification issued, by the Department of Atomic Energy, Government of India, from time to time; the jurisdiction of the CERC had been invoked by the 2nd Respondent to interpret the tariff notification issued by the Department of Atomic Energy, though any such interpretation/ clarification could only be provided by the author i.e. the Department of Atomic Energy; it is only disputes, which fall under clauses (a) to (d) of Section 79(1) of the Electricity Act, 2003, which can be adjudicated under Section 79(1)(f); the present dispute did not relate to determination of tariff, and the tariff notification had not been challenged in the Petition; the dispute related to the interpretation of a clause in a Tariff Notification pertaining to the calculation of taxes; clauses (a) to (d) of Section 79(1) were not attracted; the power to determine the tariff, with respect to nuclear power plants, is vested in the Department of Atomic Energy under Section 22(1)(b) of the 1962 Act; in view of Sections 173 and 184 of the Electricity Act, 2003, inconsistency in the provisions of the Electricity Act and the 1962 Act would result in the 1962 Act prevailing; further, the provisions of the Electricity Act will not apply to the departments or ministries dealing with the Atomic Energy Act; and, in the present case, the Tariff Notifications were issued by the Central Government for generation of electricity by the Appellant.

After extracting Section 79(1) of the Electricity Act, 2003, the CERC observed that, under clauses (a) to (d) of Section 79(1), the Commission is required to regulate the tariff of generating stations owned or controlled by the Central Government, the tariff of the generating stations which had a composite scheme for generation and sale of electricity in more than one State, to regulate inter-State transmission of electricity, and to determine the tariff of inter-State transmission systems; under Section 79(1)(f) of the Electricity Act, 2003, the Commission has the power to adjudicate disputes involving a generating company or a transmission licensee in respect of matters connected with clauses (a) to (d) of Section 79(1); the word used in Section 79(1)(f) is *"involving"* a generating company; in other words, if one of the parties to the dispute is a generating company or a transmission licensee, and the dispute can be related to any of the functions under clause (a) to (d) of Clause 79(1), adjudication of the dispute would lie before the CERC; the jurisdiction of the CERC, to adjudicate the dispute, gets activated if the dispute involves either a generating company or a transmission licensee, and the dispute pertains to the regulation of tariff; the Appellant is a generating company, which was fully owned and controlled by the Central Government, in terms of Section 79(1)(a) of the Electricity Act, 2003; the electricity, generated from the units of the generating stations of the Appellant, was being supplied to the distribution licensees, including the 2nd Respondent, in more than one State; and the tariff, of the generating stations of the Appellant, was being determined by the Department of Atomic Energy through various Tariff Notifications issued, from time to time, under the provisions of Section 22 of the 1962 Act.

After extracting Section 22, the CERC observed that the said Section started with a non-obstante clause with regard to the provisions of the Electricity (Supply) Act, 1948; the said non-obstante clause provided that, despite the provisions in the Electricity (Supply) Act, 1948 with regard to

generation, supply and transmission of electricity, the provisions of Section 22 shall have full operation in so far as electricity generated from atomic energy is concerned, and the provisions of the Electricity (Supply) Act, 1948 shall not be an impediment to Section 22; as per Section 22(3), the provisions of the Atomic Energy Act are in addition to and not in derogation of the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948; both the said Acts had been repealed by the 2003 Act; therefore, the provisions of the 1962 Act and the 2003 Act had to be harmoniously interpreted in so far as the provisions pertaining to electricity were concerned; further, Section 22(2) of the 1962 Act recognized that the 1962 Act would prevail only in case of inconsistency; neither the 1962 Act nor the 2003 Act completely excluded the application of the 2003 Act to the Appellant; it was only to the extent of any inconsistency, between the two Acts, that the 1962 Act would apply to the exclusion of the 2003 Act; and, if there was no such inconsistency, the provisions of the 2003 Act were equally applicable, and the Appellant was bound by the same.

The CERC then observed that, under Section 22(1)(b) of the 1962 Act, the Department of Atomic Energy had been empowered to fix the rates for, and to regulate the supply of electricity from, atomic power plants, which corresponds to Section 79(1)(a) of the 2003 Act; thus the powers of the Department of Atomic Energy, as covered under Section 22(1)(b) of the 1962 Act, were confined to fix the rates, and to regulate the supply of electricity; they were not related to the adjudication of disputes or matters connected therewith; under Section 79(1)(f) of the 2003 Act, the CERC was vested with the function of adjudicating disputes, involving generating companies and transmission licensees, in matters covered under Section 79(1) (a) to (d) of the 2003 Act; thus, a harmonious construction of the 1962 Act and the 2003 Act required that those functions, which were not covered under Section 22 of the 1962 Act, should fall under the jurisdiction of the CERC under Section

79 of the 2003 Act, in the absence of which, the atomic power generating stations would remain largely unregulated; thus, while the tariff, of the atomic power generating stations, shall continue to be determined by the Department of Atomic Energy in terms of Section 22 of the 1962 Act, issues relating to regulation of generation tariff, and adjudication of disputes thereof, shall fall within the jurisdiction of the Central Commission; the *'power to regulate'* was very wide, and included any issue, incidental or consequential thereto, so as to make the *'power to regulate'* purposeful and effective; and, while explaining the scope of the term *'regulate'* under Section 79(1)(a) of the 2003 Act, APTEL had, in **DVC vs. BRPL & Ors. (Judgment in Appeal No. 161 of 2009 dated 10.12.2009)**, held that the Commission can adjudicate disputes between licensees and generating companies in regard to implementation, application or interpretation of the provisions of the agreement, and the same will encompass fixation of rates at which the generating company has to supply power to the Discoms.

After taking note of the contention of the Appellant, that the power to issue notifications/ tariff determination would include the power to issue necessary clarification/ interpretation by the author Department, the CERC observed that the dispute, raised in the petition filed before it, pertained only to the interpretation of a clause in a Tariff Notification issued by the Department of Atomic Energy relating to the calculation of taxes; the issue raised by the 2nd Respondent was not merely for a clarification of the tariff notifications, issued by the Department of Atomic Energy, but for adjudication of the disputes, which involved consideration/ interpretation of the said tariff notifications; in the Tariff Notification, issued by the Department of Atomic Energy, the tariff included Return On Equity component with grossing up of the tax rate, and a formula was provided for the Return on Equity adjustment charge, to be calculated based on the applicable tax rate for the period; in the Petition, the 2nd Respondent had raised a dispute in relation to the

computation of the Return on Equity payable by GUVNL to the Appellant, recovery of the excess amount claimed by the Appellant, and paid by GUVNL towards Return on Equity adjustment charges (due to change in effective tax rate) for the Financial Years 2011-12 to 2021-22; and as the issue, in the present case, related to the tariff components-tax component on Return on Equity, the Commission had jurisdiction to adjudicate the dispute in relation to the tariff, in terms of Section 79(1)(a) read with Section 79(1)(f) of the 2003 Act, either by itself or by referring such disputes to arbitration.

The CERC further observed that the scope of Section 79(1)(a) of the 2003 Act, providing for regulating the tariff of a generating company, was wider and not synonymous with the determination or fixing of rates; it would also involve the terms and conditions of supply as held by APTEL in **BRPL vs. DERC & Ors: (Judgment in Appeal Nos. 94 & 95 of 2012 dated 04.09.2012, Paras 32 to 34)**; as per the said Judgment, Sections 61 and 79 of the 2003 Act do not only deal with tariff, but also the terms and conditions of tariff which have an impact on tariff, billing, payment, surcharge, rebate, payment security mechanisms such as a letter of credit and escrow arrangement, termination and suspension of supply etc; in the present case, the claim of GUVNL was for refund of the excess amount recovered by the appellant; it also related to future invoices to be raised in relation to the tax component, and the same was traceable to the tariff; keeping in view the scope of the power of CERC, under Section 79 of the 2003 Act as interpreted by APTEL, they were of the view that any money claim, which was otherwise traceable to tariff for the supply of electricity from the generating station of the Appellant to the 2nd Respondent-GUVNL, shall be subject to adjudication under Section 79(1)(f) of the 2003 Act. Relying on its earlier order, in **MPPMCL vs. NPCIL** (Order in Petition No. 12/MP/2019 dated 26.08.2020), the CERC held that the said order was applicable to the present case where the dispute raised by the 2nd Respondent was traceable to tariff.

The CERC also observed that the issue raised by the 2nd Respondent, in the case before it, was not merely for a clarification of the Tariff Notifications issued by the Department of Atomic Energy, but for adjudication of disputes which involved construction/ interpretation of the said tariff notifications; since the issue in the present case was relatable to the tariff components-tax component on Return on Equity, and were traceable to tariff, the Commission had necessary jurisdiction to adjudicate disputes in relation to tariff, in terms of Section 79(1)(a) read with Section 79(1)(f) of the 2003 Act, by itself or by referring such disputes to arbitration; the PPAs, entered into between the parties, provided for reference to arbitration or for settlement in terms of the OM; in terms of Clause 12 of the PPA, the disputes between the parties were to be resolved initially at the Chief Engineer level, and thereafter through arbitration in accordance with the Arbitration & Conciliation Act, 1996, as amended; the Office Memorandum dated 22.05.2018, issued by the Department of Public Enterprises, Government of India, provided for settlement of commercial disputes between CPSEs inter-se, and between CPSEs and the Government Departments through the Administrative Mechanism for Resolution of CPSEs Disputes; in order to invoke the alternative dispute resolution mechanism, such as arbitration, there must be an initial element of settlement which may be acceptable to both parties for a matter being referred to arbitration; and, in **GUVNL vs ESSAR POWER LIMITED: (2008 4 SCC 755),** the Supreme Court, on a harmonious construction of the provisions of the 2003 Act and the Arbitration and Conciliation Act, 1996, had held that, whenever there was a dispute between a licensee and a generating company, only the State Commission or the Central Commission (as the case may be), or the arbitrator or arbitrators nominated by them, could resolve such disputes.

After extracting Paras 58 and 59 of the Judgment of the Supreme Court, in **GUVNL vs ESSAR POWER LIMITED: (2008 4 SCC 755)**, the

CERC observed that Section 79(1)(f) was in pari-materia with Section 86(1)(f) of the 2003 Act; therefore, the Judgment of the Supreme Court, in **GUVNL vs ESSAR POWER LIMITED: (2008 4 SCC 755),** was applicable in the case of the CERC also; as per the said Judgment, where a dispute falls under the adjudicatory jurisdiction of the Commission, the Commission may either adjudicate the dispute or refer it to arbitration; the CERC would take a view on whether to adjudicate the dispute or refer the same for adjudication after completion of pleadings by the parties; and the contention of the Appellant that the 2nd Respondent was estopped, from denying its agreement to the dispute resolution mechanism mentioned in the PPA, was not acceptable.

The CERC concluded holding that it had the necessary jurisdiction to deal with the issues, involved in the Petition, under Section 79(1)(f) read with Section 79(1)(a) of the 2003 Act; and the Petition was, therefore, maintainable. The CERC, however, clarified that the order passed by it was limited to the determination of the issue of jurisdiction of the CERC to decide the dispute; and they had not expressed any view on the merits of the issues raised in the Petition. Having held that the Petition was maintainable, the CERC directed that the matter shall be heard on merits, and called upon the Appellant to file its reply on merits, and for the 2nd Respondent to file its rejoinder thereto.

V. RIVAL CONTENTIONS:

Elaborate submissions, both oral and written, were put forth by Sri Sitesh Mukherjee, Learned Senior Counsel appearing on behalf of the Appellant and Sri M.G. Ramachandran, Learned Senior Counsel appearing on behalf of the 2nd Respondent. It is convenient to examine the rival contentions under different heads.

VI. SECTION 184 OF THE ELECTRICITY ACT: ITS SCOPE:

A. SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

Sri Sitesh Mukherjee, Learned Senior Counsel appearing on behalf of the Appellant, would submit that the Appellant NPCIL is implementing schemes for generation of electricity, using atomic power, as a delegate/ agent of the Central Government under Section 22(1)(a) of the Atomic Energy Act; Section 184 of the Electricity Act would, therefore, stand attracted; and Section 184 is a bar on the application of the provisions of the Electricity Act "*to the ministry or department of the Central Government dealing with"… "atomic energy*". Reliance is placed by the Learned Senior Counsel on "***Tata Memorial Hospital Workers Union vs Tata Memorial Centre and Anr."*** (2010) 8 SCC 480 in this regard.

B. SUBMISSIONS URGED ON BEHALF OF THE 2nd RESPONDENT

Sri M.G, Ramachandran, Learned Senior Counsel appearing on behalf of the 2nd Respondent, would submit that the appellant cannot claim non-application of the Electricity Act in terms of Section 184 thereof; NPCIL is, admittedly, a company incorporated under the Companies Act, and is not a Ministry or a department of the Central Government; no notification has been produced by NPCIL to show that it is covered within Section 184; there is no delegation of essential Governmental function to NPCIL; NPCIL sought to rely on the judgment in **G Sundarrajan** to contend that NPCIL is an agent of the Central Government; firstly, the decision does not say so; further, Section184 does not refer to agents of the Central Government; reliance on **Tata Memorial** judgment is misplaced as it was interpreting a completely different expression under the Industrial Disputes Act; NPCIL's stand is also

contradictory to its own action; NPCIL itself has been availing the facility provided in the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 under the 2003 Act and uploading invoices in the PRAAPTI Portal, which provides for regulation of supply to procurers for non-payment of invoices; and NPCIL cannot claim benefits under the 2003 Act while refusing to submit to the jurisdiction of the Regulatory Commissions under the 2003 Act.

C. JUDGEMENT RELIED ON BEHALF OF THE APPELLANT:

The appellant, in **Tata Memorial Hospital Workers Union v. Tata Memorial Centre, (2010) 8 SCC 480,** was a trade union registered under the Trade Unions Act, 1926, and under Chapter III of the MRTU Act, as the recognised union for employees under the first respondent. Two applications were filed before the Industrial Court, Mumbai under Sections 13 and 14 of the MRTU Act, 1971. Section 13 dealt with cancellation of recognition and suspension of rights of a recognised union on the conditions stipulated therein. Section 14 dealt with recognition of other unions in place of a union already registered as a recognised union and conditions therefor. The question which arose for consideration was whether the two applications filed under Sections 13 and 14 of the MRTU Act were maintainable or not, and the same dependent upon whether the State Government was the "appropriate Government" for the first respondent. Under the Industrial Disputes Act, the Central Government was the "appropriate Government" in relation to industrial disputes concerning industries specified under Section 2(a)(i), and for the industries carried on by or under the authority of the Central Government. Excluding these two categories of industries, in relation to any other industrial dispute, it was the State Government which was the "appropriate Government.

On the tests applicable for determining whether the industry was carried on under the authority of the Central Government or the State Government, the Supreme Court held that industry “carried on by the Central Government” were industries such as the Railways or the Posts and Telegraphs, which were carried on departmentally by the Central Government itself; difficulty arose while deciding the industry which was carried on not by, but “under the authority of the Central Government”; the phrase “under the authority” meant “pursuant to the authority” such as where an agent or servant acts under authority of his principal or master; where a statute setting up a corporation so provides specifically, it can easily be identified as an agent of the State; the inference that a corporation was an agent of the Government might also be drawn where it was performing in substance governmental and non-commercial functions; even a corporation which is carrying on commercial activities can also be an agent of the State in a given situation; merely because the government companies/corporations and societies are discharging public functions and duties does not, by itself, make them agents of the Central or the State Government; the industry or undertaking has to be carried under the authority of the Central Government or the State Government; that authority may be conferred either by a statute or by virtue of a relationship of principal and agent, or delegation of power; and the question whether the undertaking is functioning under authority is a question of fact which has to be decided on the facts and circumstances of each case.

It is only with respect to Ministries or Departments of the Central Government, that too dealing with defense, atomic energy or such other scheduled ministries or departments or undertakings or Boards or Institutions under the control of such ministries or departments as may be notified by the Central Government, that Section 184 of the Electricity Act, 2003 stipulates that the provisions of the Electricity Act, 2003 shall not apply. As the Central

Govt has not issued any such notification under Section 184, it is only the ministry or department of defence or atomic energy to which the Electricity Act is inapplicable.

The distinction between ministries and departments of the Central Govt on the one hand, and agents of the Central Govt on the other, should be borne in mind. Agents of the Central Govt are also not exempt from the application of the Electricity Act under Section 184 thereof. Reliance placed on behalf of the Appellant on **Tata Memorial Hospital Workers Union v. Tata Memorial Centre, (2010) 8 SCC 480**, wherein the tests to determine when a corporation/company can be said to be an agent of the Central Govt was considered, is therefore wholly misplaced.

D. ANALYSIS:

Section 184 of the Electricity Act, 2003 stipulates that the provisions of the Electricity Act, 2003 shall not apply to the Ministries or Departments of the Central Government dealing with defense, atomic energy or such other scheduled ministries or departments or undertakings or Boards or Institutions under the control of such ministries or departments as may be notified by the Central Government. The Appellant herein, ie the Nuclear Power Corporation of India Limited, was incorporated and registered as a public limited company, under the Companies Act, 1956 in September, 1987, with the object of operating atomic power plants and implementing atomic power projects for generation of electricity in pursuance of schemes and programmes of the Government of India under the Atomic Energy Act, 1962. The Appellant is a public sector undertaking owned and controlled by the Central Government and is responsible for design, construction, commissioning and operation of nuclear power plants. The Appellant operates 24 commercial nuclear power reactors for generation and supply of electricity all over the country for generation and supply of electricity.

A company, registered under the Companies Act, is a legal entity, separate and distinct from its individual members and the property of the company is not the property of the shareholders. **(*Western Coalfields Ltd. v. Special Area Development Authority*, (1982) 1 SCC 125; *Rustom Cavasjee Cooper* v. *Union of India* [(1970) 1 SCC 248).** An incorporated company has a separate legal existence and the law recognises it as a juristic person, separate and distinct from its members. **(*Western Coalfields Ltd. v. Special Area Development Authority*, (1982) 1 SCC 125; *Heavy Engineering Mazdoor Union* v. *State of Bihar*: (1969) 1 SCC 765**). In the eyes of the law, the corporation is its own master and is answerable as fully as any other person or corporation. ***(Western Coalfields Ltd. v. Special Area Development Authority*, (1982) 1 SCC 125; *A.P.S.R.T.C.* v. *ITO* : AIR 1964 SC 1486; *Tamlin* v. *Hannaford* [1950 KB 18 : (1949) 2 All ER 327 (CA))**. A company is a separate legal persona and the fact that all its shares are owned by one person or by the parent company has nothing to do with its separate legal existence. ***(Vodafone International Holdings BV v. Union of India*, (2012) 6 SCC 613).**

Section 3 of the Road Transport Corporations Act enabled a State Government, by notification in the official gazette, to establish a Road Transport Corporation for the whole or any part of the State under name as may be specified in the notification and, by Section 4, every Corporation was made a body corporate by the name notified under Section 3 having perpetual succession and a common seal, and could sue and be sued in that name. Among the questions, which arose for consideration before the Supreme Court in **Andhra Pradesh State Road Transport Corporation v. Income-tax Officer, Hyderabad, and Another., (1963) 47 ITR 101**, was whether the income of the Corporation was the income of the State, and therefore exempt from tax.

In this context, the Supreme Court held that the Corporation, under the Road Transport Corporations Act, is a body corporate and is an independent legal entity apart from the Government; it is not necessarily owned by the Government, though the Government may contribute to its capital; and it can sue and be sued in its name.

While the Appellant is no doubt a public sector enterprise/undertaking under the administrative control of the Department of Atomic Energy, Government of India, it is, by virtue of having been incorporated and registered under the Companies Act, 1956, an independent legal entity, distinct and different from that of the Central Government, capable of suing or being sued in its own name.

The Government of India functions under various ministries such as Defence, Power. Finance etc. and, unlike the Appellant herein, the Department of Atomic Energy is a Department of the Government of India. Reference in Section 184 is only to Ministries/departments of the Central Government dealing in defence and atomic energy. The provisions of the Electricity Act, 2003, in view of Section 184 thereof, do not apply to the Department of Atomic Energy, since it is a department of the Government of India under the first limb of Section 184 of the Electricity Act. Unlike the Department of Atomic Energy, the Appellant, an undertaking having a separate legal existence apart from that of the Central Government, is neither a Ministry nor a Department of the Central Government which alone are exempt from application of the provisions of the Electricity Act in view of Section 184 thereof.

It is unnecessary for us to delve into whether or not the Appellant is an agent of the Department of the Atomic Energy, Government of India for it is only departments and ministries of the Central Government which are

exempt from application of the provisions of the Electricity Act, and not agents of the Central Government.

It is only such undertakings/institutions, under the control of ministries/departments of the Government of India, in case they are so notified by the Central Government, which are exempt from the provisions of the Electricity Act, 2003. The Appellant is undoubtedly an undertaking under the control of the Department of Atomic Energy. It would, in case it is notified by the Central Government under the second limb of Section 184, be exempt from application of the provisions of the Electricity Act, 2003.

In the absence of any such notification having been issued, it is not possible for us to agree with the submission, urged on behalf of the Appellant, that the provisions of the Electricity Act are inapplicable to the Appellant in view of Section 184 thereof.

VII. SECTION 22(1) OF ATOMIC ENERGY ACT: ITS SCOPE:

A. SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

Sri Sitesh Mukherjee, Learned Senior Counsel appearing on behalf of the Appellant, would submit that, in terms of clause (a) of sub-section (1) of Section 22 of the Atomic Energy Act, the following regulatory powers have been conferred on the Central Government in relation to atomic power stations – ***(i)*** to develop a sound and adequate national policy in regard to atomic power and to co-ordinate such policy with the Central Electricity Authority, the State Electricity Boards, and other similar statutory corporations concerned with the control and utilisation of other power resources; ***(ii)*** to implement schemes for the generation of electricity in pursuance of such policy; ***(iii)*** to operate (either by itself or through any authority or corporation established by it or a Government Company) atomic

power stations in the manner determined by it in consultation with the Boards or Corporations concerned; ***(iv)*** enter into agreement with Boards or Corporation concerned regarding supply of electricity so produced; reading the words *"generating companies owned and controlled by the Central Government"* in clause (a) of sub-section (1) of Section 79 of the Electricity Act, to include an atomic power station owned and controlled by the Central Government, would clothe the CERC with the power to regulate tariff of atomic power stations at the least; and to further (as argued by the Respondent) regulate supply of electricity generated from atomic power stations including the terms and conditions of such supply; and such a reading of Section 79(1)(a), as posited by the Respondent, would create a head-on conflict between the functions of the CERC and the authority of the Central Government under Section 22(1)(a) & (b) of the Atomic Energy Act.

Sri Sitesh Mukherjee, Learned Senior Counsel, would further submit that Section 22(1)(b) of the Atomic Energy Act vests authority on the Central Government to "*fix rates for*" and "*regulate supply of electricity from atomic power stations*"; the authority vested in the Central Government, under Section 22(1)(b), can be exercised either by the Central Government itself or through any authority or corporation established by it or a Government Company in consultation with the Central Electricity Authority; the Respondents have contended that CERC's power to *"regulate tariff",* under Section 79(1)(a), includes the power to regulate "supply" of electricity from a generating company and to fix the terms and conditions of supply thereof; assuming such a power is available with the CERC, the conflict between Section 79(1)(a) and Section 22(1)(b) would remain irreconcilable if a Nuclear Power Plant is held to fall within the category of generating companies owned and controlled by the Central Government under Section 79(1)(a) of the Electricity Act; Section 22(1)(b) of the Atomic Energy Act vests the Central Government with the authority to *"fix rates for" and "regulate*

supply of electricity from atomic power stations"; and this power is vested with the Central Government, by the opening words of sub-section (1) of Section 22, *"notwithstanding anything contained in the Electricity (Supply) Act, 1948"*

B. SUBMISSIONS URGED ON BEHALF OF THE RESPONDENT:

Sri M.G, Ramachandran, Learned Senior Counsel appearing on behalf of the 2nd Respondent, would submit that an analysis of Section 22 of the 1962 Act would make it clear that: (a) sub-section (1) does not by itself deal with inconsistency; it only confers power on the Central Government to fix tariff and regulate supply of electricity from Nuclear Power Stations, notwithstanding any provisions of the 1948 Act; this only means that, if there is any express or implied provision in the 1948 Act restricting, prohibiting or regulating fixation of tariff and regulation of supply from Nuclear Power Stations, the Central Government, under Section 22 of the 1962 Act, would have the power to exercise such functions; (b) this enabling provision, under Section 22 of the 1962 Act, cannot be construed to exclude application of Section 79(1)(a) of the 2003 Act to Nuclear Power Stations completely or absolutely, as if existence of such a provision is to be ignored for all purposes; sub-section (3) of Section 22 of the 1962 Act provides for Section 22 to be read in addition to, and not in derogation of, the 1948 Act; a plain reading of Section 22 of the 1962 Act, therefore, does not suggest any such effect as pleaded by the Appellant NPCIL, and rather supports the submissions of the 2nd Respondent-GUVNL; (c) sub-section (2), dealing with inconsistency, does not even refer to the 1948 Act; it only refers to the 1910 Act; prior to the 2003 Act, and the 1998 Act, sale of electricity by a generator to a licensee was governed by Section 43A of the 1948 Act, and the notifications issued thereunder; the Schedules to the said Act dealt with various aspects including

purchase of electricity from the generating station; Section 76A of the 1948 Act provided for Arbitration to resolve disputes and differences; and, after the 1998 Act and then the 2003 Act, CERC and SERC were constituted and have various powers including regulation and adjudication.

C. ANALYSIS:

The Atomic Energy Act, 1962, is an Act to provide for the development, control and use of atomic energy for the welfare of the people of India and for other peaceful purposes, and for matters connected therewith. Section 2(1)(b) thereof defines *"Government Company"* to mean a company in which not less than fifty one percent of the paid-up share capital is held by the Central Government. Section 22 contains special provisions as to electricity.

(i) NON OBSTANTE CLAUSE: ITS SCOPE:

Section 22(1) of the Atomic Energy Act, 1962 begins with the words *"Notwithstanding anything contained in the Electricity (Supply) Act, 1948".* A non-obstante clause is a legislative device to give effect to the enacting part of the Section in case of conflict over the provisions mentioned in the non-obstante clause. **(State (NCT of Delhi) v. Narender, (2014) 13 SCC 100; State of Karnataka v. K.A. Kunchindammed : (2002) 9 SCC 90).** A clause beginning with the expression 'notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force' is more often than not appended to a Section in the beginning with a view to give the enacting part of the Section, in case of conflict, an overriding effect over the provision of any other law. It is equivalent to saying that, inspite of the provisions of the Act or any other law as stated therein, the non-obstante clause, mentioned in the enactment following it, will have its full operation or that the provisions embraced in the non-obstante clause would not be an impediment for operation of the

enactment. **(Ganv Bhavancho Ekvott vs South Western Railways : 2022 SCC OnLine Bom 7184; Chandavarkar Sita Ratna Rao v. Ashalata S. Guram: (1986) 4 SCC 447 : AIR 1987 SC 117; South India Corpn. (P) Ltd. v. Secretary, Board of Revenue, Trivandrum, AIR 1964 SC 207**).

Normally the use of the phrase 'notwithstanding anything contained in any other law' is equivalent to saying that the other law shall be no impediment to the measure. Use of such an expression is another way of saying that the provision, in which the *non obstante* clause occurs, would usually prevail over the other law. **(State of Bihar v. Bihar Rajya M.S.E.S.K.K. Mahasangh, (2005) 9 SCC 129; Ganv Bhavancho Ekvott vs South Western Railways : 2022 SCC OnLine Bom 7184).** It is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found in some other enactment, that is to say, to avoid the operation and effect of all contrary provisions. **(Union of India v. G.M. Kokil, 1984 Supp SCC 196*).***

It is equivalent to saying that, inspite of the laws mentioned in the non-obstante clause, the provision following it will have full operation, or the laws embraced in the non-obstante clause will not be an impediment for the operation of the enactment or the provision in which the non obstante clause occurs. **(*State of Bihar v. Bihar Rajya M.S.E.S.K.K. Mahasangh, (2005) 9 SCC 129*; *South India Corpn. (P) Ltd. v. Secy., Board of Revenue, (1964) 4 SCR 280).*** Use of such an expression is another way of saying that the provision, in which the non-obstante clause occurs, would wholly prevail over the other provisions of the Act. Non-obstante clauses are to be regarded as clauses which remove all obstructions which might arise out of any of the other provisions of the other Act in the way of operation of the principal enacting provision to which the non-obstante clause is attached. **(*State of Bihar v. Bihar Rajya M.S.E.S.K.K. Mahasangh, (2005) 9 SCC 129*; *South***

India Corpn. (P) Ltd. v. Secy., Board of Revenue, (1964) 4 SCR 280*; *Iridium India Telecom Ltd. v. Motorola Inc., (2005) 2 SCC 145).

The expression *"notwithstanding anything contained in"* is appended to Section 22(1) of the Atomic Energy Act in the beginning with a view to give the enacting part of the said Section, in case of conflict, an overriding effect over the provisions of the Electricity (Supply) Act, 1948 referred to in the non obstante clause (and as shall be elaborated later, in view of Section 8 of the General Clauses Act, the Electricity Act, 2003). It is equivalent to saying that, inspite of the provisions of the Act mentioned in the non obstante clause, Section 22(1) will have its full operation or that the enactment embraced in the non obstante clause would not be an impediment for operation of Section 22(1). **(South India Corpn. (P) Ltd. v. Secretary, Board of Revenue, Trivandrum: AIR 1964 SC 207; Chandavarkar Sita Ratna Rao v. Ashalata S. Guram, (1986) 4 SCC 447).** In other words, Section 22(1) will operate with full vigour, notwithstanding anything to the contrary, or any provision inconsistent therewith, in the Electricity (Supply) Act, 1948 **(Orient Paper and Industries Ltd. v. State of Orissa, 1991 Supp (1) SCC 81)** or (as shall be detailed later) the Electricity Act, 2003.

As a result of the non-obstante clause in Section 22(1), the authority of the Central Government, under clauses (a) to (c) thereunder, would prevail notwithstanding anything contrary thereto contained in the Electricity (Supply) Act, 1948. Section 185(1) of the Electricity Act, 2003 stipulates that, save as otherwise provided in Electricity Act, 2003, the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998 are repealed.

(ii) SECTION 8(1) OF THE GENERAL CLAUSES ACT: ITS SCOPE:

Section 8(1) of the General Clauses Act,1897 reads thus:-

"8. (1) Where this Act, or any Central Act or Regulation made after the Commencement of this Act, repeals and re-enacts, with or without modification, any provision, of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted."

The question which necessitates examination is whether, in view of Section 8(1) of the General Clauses Act, 1897, it is permissible for us to read the opening words of Section 22(1) of the Atomic Energy Act, 1962 as *"Notwithstanding anything contained in the Electricity Act, 2003".,* It is useful, therefore, to refer to the law declared by the Supreme Court in this regard.

(iii) JUDGEMENTS UNDER SECTION 8(1) OF THE GENERAL CLAUSES ACT:

1. It was contended on behalf of the Respondent, in **Mohan Chowdhury vs Chief Commissioner, Union Territory of Tripura: 1963 SCC OnLine SC 45**, that, under Section 8 of the General Clauses Act, 1897, Section 48 of the Defence of India Act, 1962, which repealed Ordinances 4 and 6 of 1962 and which saved anything done or any action taken under those Ordinances, had to be construed as continuing the detention order made under Rule 30 of the Defence of India Rules, even after repeal of the Ordinances under which they were promulgated.

It is in this context that the Supreme Court held that, by operation of Section 48 of the Defence of India Act, 1962, the Ordinances aforesaid had been repealed, but all action taken and all rules made thereunder had been continued in operation by introducing the fiction that they shall be deemed to have been made or taken under the Act, which is deemed to have

commenced on October 26, 1962, the date Ordinance 4 was promulgated; the President's Order of November 3, 1962, suspending the petitioner's rights under Articles 21 and 22 of the Constitution, was made when Ordinance 4 of 1962 was in operation; the President's Order would, even after the repeal of the Ordinances aforesaid, continue to govern cases of detention made under Rule 30 aforesaid, under the Ordinances; there was no substance in the contention that the petitioner's detention originally made under the Rule under the Ordinance would not be deemed to have continued under the 1962 Act, or that the same order should have been repeated by the President after the enactment of the Act; a proper construction of the provisions of Section 48 of the Act, which has replaced the Ordinances aforesaid, read in the light of the provisions of Section 8 of the General Clauses Act, leaves no room for doubt that the detention order passed against the petitioner was intended to be continued even after repeal of the Ordinances which were incorporated in the 1962 Act.

2. Sub-section (1) of Section 28-A of the Uttar Pradesh Sales Tax Act required that any person (referred to as importer) who intends to bring, import or otherwise receive, into the State from any place without the State any goods liable to tax under the Act in excess of the specified quantity shall obtain the prescribed form of declaration upon payment of prescribed fee from the assessing authority having jurisdiction over the area where his principal place of business is situated or, in case there is no such place, where he ordinarily resides. Sub-section (3) provided, inter alia, that where such goods are consigned by rail, the importer shall not, after taking delivery, carry the goods away or cause the goods to be carried away from the Railway Station unless a copy of the declaration duly endorsed by such officer is carried with the goods. Violation of the said provisions rendered the goods concerned liable to be seized, and the person concerned liable to the consequences provided by law. Sub-section (8) of Section 28-A, however,

stated that “nothing contained in this section shall be construed to impose any obligation on any railway administration or railway servant or the post office or any officer of the post office, or to empower any search, detention or seizure of any goods while on a railway as defined in the Indian Railways Act, 1890 or in a post office as defined in the Indian Post Office Act, 1898”. When the subject dispute arose, the Indian Railways Act, 1890 stood repealed by the Railways Act, 1989.

The case of the Union of India, represented by the railway officials before the Supreme Court, in **STO vs Union of India : 1995 Supp (1) SCC 410**, was that the City Booking Agency is included within the definition ‘Railway’ and hence the goods being transported from Railway Station to City Booking Agency need not be accompanied by the documents/forms prescribed by the Uttar Pradesh Act. While taking note of the definition of ‘Railway’ both in the Indian Railways Act, 1890 as also in the Railways Act, 1989 which had replaced the 1890 Act, the Supreme Court observed that, by virtue of Section 8 of the General Clauses Act, 1897, reference to the Indian Railways Act, 1890, in sub-section (8) of Section 28-A of the Uttar Pradesh Act, should be read as a reference to the 1989 Act, after its enactment.

3. By the definition of a Commercial Establishment, in Section 2(3) of the United Provinces Shop and Commercial Establishment Act, 1947, the clerical and other establishments of a factory to whom the provisions of the Factories Act, 1934 did not apply, were included in the connotation of that expression.

The Supreme Court, in **State of UP vs M.P.Singh: 1959 SCC Online SC 25**, held that it was true that the reference in the definition, by which clerical and other establishments of factories were included was to the Factories Act of 1934, but by virtue of Section 8 of the General Clauses Act, 1897, it must be construed as a reference to the provisions of the Factories

Act,1948 which repealed the Factories Act, 1934 and re-enacted it; and the contention that, since the Factories Act, 1934 was repealed, all clerical and other establishments of a factory were included in Section 2(3) of the United Provinces Shop and Commercial Establishment Act, 1947 without any exemption, had therefore no force.

4. In **Collector of Customs vs Nathella Sampathu Chetty: 1962 SCC OnLine SC 30,** the Supreme Court held that the distinction between a mere reference to, or a citation of, one statute in another, and an incorporation which in effect means the bodily lifting of the provisions of one enactment and making it part of another so much so that the repeal of the former leaves the latter wholly untouched, could not be ignored; and, in the case of a reference or a citation of one enactment by another without incorporation, the effect of a repeal of the one "referred to" is that set out in Section 8(1) of the General Clauses Act.

5. New Central Jute Mills Co. Ltd vs CCE, (1970) 2 SCC 820, it was contended that the Sea Customs Act, 1878, having been repealed, it was not open to the Central Government under Section 12 of the Central Excise and Salt Act,1944 to apply Section 105(1) of the Customs Act, 1962 to the Central Excise and Salt Act, 1944 and the notification dated May 4, 1963, by which this was done, was illegal and ultra vires.

While holding that this contention had hardly any merit, the Supreme Court observed that, by virtue of Section 8(1) of the General Clauses Act, it could not be disputed that, in Section 12 of the Central Excise and Salt Act, 1944, the Customs Act, 1962, can be read in the place of the Sea Customs Act, 1878; Section 12 of the Central Excise and Salt Act, 1944 did not bodily lift, as it were, certain provisions of the Sea Customs Act, 1878, and incorporate them as an integral part of the 1944 Act; it only empowered the Central Government to apply the provisions of the Sea Customs Act, 1878,

with such modifications and alterations as might be considered necessary or desirable by the Central Government for the purpose of implementation and enforcement of Section 3 of the 1944 Act; and no exception could be taken to the view of the High Court that Section 12 contained a provision delegating limited powers to the Central Government to draw upon the provisions of the Sea Customs Act, 1878, for the purpose of implementing Section 3 of the 1944 Act; in **Collector of Customs, Madras v. Nathella Sampathu Chetty: AIR 1962 SC 316,** , it was pointed out that Section 8(1) of the General Clauses Act dealt with reference or citation of one enactment in another without incorporation; a comparison of the recognised formulae with the text of Section 12 of the Act showed that the provisions of the Sea Customs Act, 1878, were not meant to be incorporated in the 1944 Act and were only to be applicable to the extent notified by the Central Government for the purpose of the duty leviable under Section 3.

6. A notification was issued by the Government of Gujarat dated November 29, 1974 ("the 1974 Notification" for short), under Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957, amending the Gujarat Minor Mineral Rules, 1966 Rules so as to enhance the rates of royalty and dead rent in respect of leases of minor minerals.

The Supreme Court, in **D. K.Trivedi & Sons vs State of Gujarat: 1986 SCC OnLine SC 374**, held that the Explanation to Rule 21 provided that "for the purpose of this rule, Schedule I means Schedule I as substituted by the Gujarat Minor Minerals (Third Amendment) Rules, 1966"; thus, the reference to Schedule I in Rule 21 was to Schedule I as substituted by the notification dated November 25, 1966; that Schedule was, however, again substituted by the 1974 Notification; the effect of such substitution was to repeal the 1966 Schedule I and to substitute it by a new Schedule I; though Section 8(1) of the General Clauses Act does not, in express terms, refer to rules made

under an Act, the same principle of construction would apply in the case of rules made under an Act; thus, after the coming into force of the 1974 Notification, the Explanation to Rule 21 must be read as “for the purpose of this rule Schedule I means Schedule I as substituted by the Gujarat Minor Mineral (Fourth Amendment) Rules, 1974”, and references to Schedule I in Rule 21 must be construed as references to Schedule I as so substituted and not as references to Schedule I as substituted by the Gujarat Minor Minerals (Third Amendment) Rules,

7. The question that arose for consideration, in **Mahindra & Mahindra Ltd vs Union of India: (1979) 2 SCC 529**, was regarding the true scope and ambit of an appeal under Section 55 of the Monopolies and Restrictive Trade Practices Act, 1969. That Section provided, inter alia, that any person aggrieved by an order made by the Commission under Section 13 may prefer an appeal to this Court on “one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908”. On the date when Section 55 was enacted, namely, December 27, 1969, being the date of coming into force of the Act, Section 100 of the Code of Civil Procedure specified three grounds on which a second appeal could be brought to the High Court and one of these grounds was that the decision appealed against was contrary to law. It was sufficient under Section 100 as it stood then that there should be a question of law in order to attract the jurisdiction of the High Court in second appeal and, therefore, if the reference in Section 55 were to the grounds set out in the then existing Section 100, then an appeal would lie to the Court under Section 55 on a question of law. But subsequent to the enactment of Section 55, Section 100 of the Code of Civil Procedure was substituted by a new section by Section 37 of the Code of Civil Procedure (Amendment) Act, 1976 with effect from February 1, 1977 and the new Section 100 provided that a second appeal shall lie to the High Court only if the High Court is satisfied that the case involves a substantial question of

law. The three grounds on which a second appeal could lie under the former Section 100 were abrogated, and in their place only one ground was substituted which was a highly stringent ground, namely, that there should be a substantial question of law. This was the new Section 100 which was in force on the date when the present appeal was preferred by the appellant and the argument of the respondents was that the maintainability of the appeal was, therefore, required to be judged by reference to the ground specified in the new Section 100 and the appeal could be entertained only if there was a substantial question of law. The respondents leaned heavily on Section 8(1) of the General Clauses Act, 1897, and contended that the substitution of the new Section 100 amounted to repeal and re-enactment of the former Section 100 and, therefore, on an application of the rule of interpretation enacted in Section 8(1), the reference in Section 55 to Section 100 must be construed as reference to the new Section 100 and the appeal could be maintained only on ground specified in the new Section 100, that is, on a substantial question of law.

In this context, the Supreme Court held that this contention was not well founded as It ignored the distinction between a mere reference to or citation of one statute in another and an incorporation which in effect means bodily lifting a provision of one enactment and making it a part of another; where there is mere reference to or citation of one enactment in another without incorporation. Section 8(1) applies and the repeal and re-enactment of the provision referred to or cited has the effect set out in that section and the reference to the provision repealed is required to be construed as reference to the provision as re-enacted; such was the case in **Collector of Customs v. Nathella Sampathu Chetty: AIR 1962 SC 316** and **New Central Jute Mills Co. Ltd. v. Assistant Collector of Central Excise: (1970) 2 SCC 820;** but where a provision of one statute is incorporated in another, the repeal or amendment of the former does not affect the latter; the

effect of incorporation is as if the provision incorporated were written out in the incorporating statute and were a part of it; legislation by incorporation is a common legislative device employed by the legislature, where the legislature for convenience of drafting incorporates provisions from an existing statute by reference to that statute instead of setting out for itself at length the provisions which it desires to adopt; once the incorporation is made, the provision incorporated becomes an integral part of the statute in which it is transposed, and thereafter there is no need to refer to the statute from which the incorporation is made; any subsequent amendment made in it has no effect on the incorporation statute; Section 55 was an instance of legislation by incorporation and not legislation by reference; Section 55 provided for an appeal to the Court on "one or more of the grounds specified in Section 100; it was obvious that the legislature did not want to confer an unlimited right of appeal, but wanted to restrict it and turning to Section 100; it found that the grounds there set out were appropriate for restricting the right of appeal and hence it incorporated them in Section 55; the right of appeal was clearly intended to be limited to the grounds set out in the then existing Section 100; those were the grounds which were before the Legislature and to which the Legislature could have applied its mind and it is reasonable to assume that it was with reference to those specific and known grounds that the Legislature intended to restrict the right of appeal; the Legislature could never have been intended to limit the right of appeal to any ground or grounds which might from time to time find place in Section 100 without knowing what those grounds were; the grounds specified in Section 100 might be changed from time to time having regard to the legislative policy relating to second appeals and it was difficult to see any valid reason why the Legislature should have thought it necessary that these changes should also be reflected in Section 55 which dealt with the right of appeal in a totally different context.

In the light of the law declared by the Supreme Court, in **State of UP vs M.P.Singh: 1959 SCC Online SC 25** and **STO vs Union of India : 1995 Supp (1) SCC 410**, by virtue of Section 8(1) of the General Clauses Act, 1897, reference to the Electricity (Supply) Act, 1948 in Section 22(1) of the Atomic Energy Act, 1962 must be read as a reference to the Electricity Act, 2003 whereby the Electricity (Supply) Act, 1948, along with other enactments, was repealed and re-enacted, with modifications.

The distinction between a mere reference to or citation of one statute in another and an incorporation which in effect means bodily lifting a provision of one enactment and making it a part of another must be borne in mind. In case of a reference or a citation of one enactment by another without incorporation, the effect of a repeal of the one "referred to" is that set out in Section 8(1) of the General Clauses Act. (**Collector of Customs vs Nathella Sampathu Chetty: 1962 SCC OnLine SC 30; New Central Jute Mills Co. Ltd vs CCE, (1970) 2 SCC 820).** The Electricity (Supply) Act, 1948 has only been referred to and cited in Section 22(1) of the Atomic Energy Act, 1962 without incorporation. The provisions of the Electricity (Supply) Act, 1948 have neither been incorporated nor bodily lifted into the Atomic Energy Act, 1962 making the 1948 Act a part of the 1962 Act. Consequently, the effect of repeal of the Electricity (Supply) Act, 1948 by Section 185 of the Electricity Act, 2003, and application of Section 8(1) of the General Clauses Act, 1897, is that reference to or citation of the Electricity (Supply) Act, 1948 in Section 22(1) of the Atomic Energy Act, 1962, must, after repeal of the 1948 Act, be read as a reference to the Electricity Act, 2003. The opening part of Section 22(1) of the Atomic Energy Act, 1962 must therefore now be held to read as: *"Notwithstanding anything contained in the Electricity Act, 2003".*

It is unnecessary for us to delve into this aspect any further since Learned Senior Counsel on either side are in agreement that, in view of

Section 8(1) of the General Clauses Act, 1897, the opening words of Section 22(1) of the Atomic Energy Act should be read as *"notwithstanding anything contained in the Electricity Act, 2003"*

In view of the non obstante clause used therein, and in the light of Section 8(1) of the General Clauses Act, clauses (a) to (c) of Section 22(1) of the Atomic Energy Act would prevail over any provision inconsistent therewith contained in the Electricity Act, 2003, and the Electricity Act, 2003 would not be an impediment for the operation of clauses (a) to (c) of Section 22(1) of the Atomic Energy Act, 1962. If the power exercised by the Central Government specifically falls under any one of clauses (a) to (c) of Section 22(1), the non-obstante clause would apply and, consequently, exercise of power by the Central Government under clauses (a) to (c) of Section 22(1) of the Atomic Energy Act, 1962 would not suffer any impediment on account of a corresponding obligation under any of the provisions of the Electricity Act, 2003.

As shall be elaborated later in this order, "fixation of rates" for, and regulation of, supply of electricity from atomic power stations falls within the authority of the Central Government under Section 22(1)(b) of the Atomic Energy Act, exercise of power by the CERC, under Section 79(1)(a) of the Electricity At, 2003, to regulate the tariff (ie determine the price at which electricity should be supplied) of the Appellant's atomic power stations, would be inconsistent therewith. Consequently, the CERC is not entitled to exercise jurisdiction either to determine the tariff of the Appellant or to tinker with the rates fixed by the Central Govt.

Section 22(2) of the Atomic Energy Act, 1962 makes it clear that no provision of the Indian Electricity Act, 1910 or any rule made thereunder or any instrument having effect by virtue of such law or rule shall have effect so far as it is inconsistent with the provisions of the Atomic Energy Act, 1962.

The entire 1910 Act, including any rule or order made thereunder, shall have no effect if it is inconsistent with any of the provisions of the Atomic Energy Act, 1962. Consequently, in case of any inconsistency between the 1910 Act and the Atomic Energy Act, it is the latter Act which shall prevail to the extent of inconsistency between the provisions of these two enactments.

While the provisions of the Electricity (Supply) Act, 1948 had to yield to the extent it was inconsistent with the authority conferred on the Central Government under any one of clauses (a) to (c) of Section 22(1) of the Atomic Energy Act, 1962, the Indian Electricity Act, 1910 Act, and the rules, regulations and orders made thereunder, had to yield in its entirety, in the light of Section 22(2), to the extent they were inconsistent with any of the provisions of the Atomic Energy Act, 1962, and not merely Section 22(1) thereof.

Section 22(3) stipulates that, save as otherwise provided under the Atomic Energy Act, the provisions of the Atomic Energy Act shall be in addition to, and not in derogation of, among others, the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948. Since both the 1910 Act and the 1948 Act were repealed by the Electricity Act, 2003, the provisions of the Atomic Energy Act, 1962 must, in view of Section 8(1) of the General Clauses Act, be held to be in addition to and not in derogation of the Electricity Act, 2003.

(iv) 'SAVE AS OTHERWISE PROVIDED": ITS SCOPE:

What we must, however, also bear in mind is that Section 22(3) begins with the words *"save as otherwise provided in this Act"* ie in the Atomic Energy Act, 1962. In **Lalu Prasad Yadav v. State of Bihar, (2010) 5 SCC 1,** the Supreme Court referred with approval to **Williams v. Milotin: (1957) 97 CLR 465,** wherein the High Court of Australia, while construing the words

"save as otherwise provided in this Act" stated: "… *In fact the words 'save as otherwise provided in this Act' are a reflexion of the words 'except'—or 'save'—'as hereinafter excepted'."*

The words *"save as otherwise provided in this Act",* used in Section 22(3) of the 1962 Act, qualify the operation of sub-section (3) and take out of its purview those provisions of the 1962 Act which stipulate otherwise. In other words, except if it is otherwise provided in the 1962 Act, the provisions of the 1962 Act shall be in addition to and not in derogation of the 1910 Act and the 1948 Act. (**Lalu Prasad Yadav v. State of Bihar, (2010) 5 SCC 1).** Section 22(3) would only apply save as otherwise provided in the Atomic Energy Act, 1962, including Section 22(1) thereof. As a result, clauses (a) to (c) of Section 22(1) of the Atomic Energy Act,1962 would prevail over any provision inconsistent therewith in the Electricity Act, 2003; and it is only if there is no inconsistency would both the Atomic Energy Act, 1962 and the Electricity Act, 2003 operate.

VIII. IS THE SCHEME OF THE ELECTRICITY ACT, RELATING TO GENERATION, INAPPLICABLE TO ATOMIC ENERGY PLANTS?

A. SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

Sri Sitesh Mukherjee, Learned Senior Counsel appearing on behalf of the Appellant, would submit that the judgement of the Supreme Court, in ***Tata Power Company Limited vs Reliance Energy Limited & Ors*****: (2009) 16 SCC 659,** is an authority for the following: - (a) the primary object of the Electricity Act, 2003 is to free the generating company from the shackles of the license regime; (b) for the purpose of deciphering the object and purport of the Electricity Act, the Court can look to the Statement of Objects and

Reasons thereof; and (c) the Electricity Act provides for establishment of Electricity Regulatory Commission aimed at encouraging private sector participation in generation, transmission and distribution of electricity; Independent Electricity Regulatory Commissions were set up under the Electricity Act so that the role of the State Electricity Boards, in determining tariff (and by implication, the Government), could be taken over by the independent body; the freedom given to generating companies (Sections 7 and 10 (2) of the Electricity Act) to set up and supply electricity to any licensee following the regulatory process under Section 62 & 63 read with Section 86(1)(b), or to supply to any consumer directly at a freely negotiated rate under Section 49 of the Electricity Act, is completely foreign to the statutory frame work within which atomic power stations are conceived, set-up and operated; the obligation of generation companies to submit technical details regarding its generating stations, to the appropriate commission under sub-section (3) of Section 10, also has no application to atomic power plants; one of the primary *"objectives"* of the Electricity Act is *'..distancing the regulatory responsibilities from the government to the Regulatory Commission.." (Para 3 of the Statement of Objects and Reasons); another headline objective has to do with the "Policy of encouraging private sector participation in generation…".* ; a perusal of the objective and purpose makes it clear that Parliament did not intend to provide CERC with any role regarding atomic power plants which are entirely within the control of the Central Government, including the scheme for setting up, implementation, operation and finally with agreements for supply of electricity to nominated distribution companies such as the Appellant; the rates, for such supply of electricity, from atomic power stations of the Appellant is also worked out based on the tariff notifications issued by the Central Government; and the present dispute, raised by the Respondent, pertains to the interpretation of

one such tariff notification issued by the Central Government's Department of Atomic Energy.

Sri Sitesh Mukherjee, Learned Senior Counsel appearing on behalf of the Appellant, would rely on (i) ***Shri Sarwan Singh Vs Shri Kasturi Lal*** (1977) 1 SCC 750**-** para 22; (2) ***Municipal Corporation of Delhi vs Gagan Narang & Ors. Etc.*** (2025 INSC 2) (Judgement in Civil Appeal No. 7463-7464 of 2023- para 43 *(and the judgments cited at quoted paras 26 and 27);* (3) Railways Judgment of this Tribunal – Compilation **page nos. 51-52** (Judgement page no. 132-133); and (4) **Dr. Abraham Patani of Mumbai & Anr. vs State of Maharashtra & Ors:** (2023) 11 SCC 79 **– para 29,** to submit that the principle of harmonious construction, which is employed by Courts to steer away from a conflict, and in doing so, Courts consider each of the statues according to its subject matter and its own terms, should be followed.

B. SUBMISSIONS OF THE 2ND RESPONDENT:

Sri M.G, Ramachandran, Learned Senior Counsel appearing on behalf of the 2nd Respondent, would submit that, in the context of Section 22(1) of the 1962 Act being a provision to enable exercise of powers without in any manner taking away the powers of the authorities under the Electricity Laws, a harmonious construction of the 1962 Act and the 2003 Act, on the principle of inconsistency, would be when exercise of powers by the Central Commission under the Electricity Act would collide with the powers exercised by the Central Government (Refer: **Basti Sugar Mills v State of UP: (1979) 2 SCC 88)** which specifically refers to adjudication versus administration while construing inconsistency. (Also **MCD v. Gagan Narang 2025 INSC 2**); the Central Government, in the exercise of powers under Section 22 of the 1962 Act, has been issuing tariff notifications specifying the tariff, terms and conditions and, to the extent specified therein, CERC cannot issue any order contradicting or colliding with the Tariff Notification of the Central

Government; and this is consistent with the well settled principle of inconsistency that one cannot obey the CERC decision without disobeying the Tariff Notification of the Central Government.

C. JUDGEMENTS RELIED UNDER THIS HEAD"

1. Tata Power Company Limited vs Reliance Energy Limited & Ors: (2009) 16 SCC 659, the Supreme Court held that Parliament, by making the 2003 Act, acknowledged the necessity of providing a greater room for generation of electrical energy so as to enable the country to meet its requirements; it is only in that view of the matter that the liberalisation policy of the State provided for delicensing of generating companies; the Government intended to have an independent body for determining the tariff which was required to be carried on in a professional and independent manner; the enactment provided for establishment of the Electricity Regulatory Commissions; encouraging private sector participation, generation, transmission and the distribution of electricity became the statutory policy; delicensing of generation as also grant of free permission for captive generation is one of the main features of the 2003 Act; in terms of Section 7 of the 2003 Act, all persons are permitted to establish, operate and maintain a generating station; it can, in terms of Section 62(1)(*a*) of the 2003 Act, supply electricity to any licensee i.e. distribution licensee or trading licensee; the 2003 Act permits the generating company to supply electricity directly to a trader or a consumer; in terms of Section 42(2) of the 2003 Act even for the said purpose no tariff is required to be determined; the primary object was to free the generating companies from the shackles of the licensing regime; the 2003 Act encourages free generation and more and more competition amongst the generating companies and the other licensees so as to achieve customer satisfaction and equitable distribution of electricity; and the generation company exercises freedom in respect of

choice of site and investment of the generation unit, choice of counter-party buyer, and freedom from tariff regulation when the generating company supplies to a trader or directly to the consumer.

2. The questions which arose for consideration before the Supreme Court, in **Shri Sarwan Singh Vs Shri Kasturi Lal** (1977) 1 SCC 750**,** was whether the provisions of the Slum Areas (Improvement and Clearance) Act, 1956, override those of the Delhi Rent Control Act, 1958, for if they did, no person could institute any suit or proceeding for eviction of a tenant from any building or land in a slum area without the previous permission in writing of the competent authority.

In this context the Supreme Court observed that for resolving such inter se conflicts, one test which may be applied is that the later enactment must prevail over the earlier one; Section 14-A and Chapter III-A having been enacted with effect from December 1, 1975 were later enactments in reference to Section 19 of the Slum Clearance Act which, in its present form, was placed on the statute book with effect from February 28, 1965 and in reference to Section 39 of the same Act, which came into force in 1956 when the Act itself was passed; the legislature gave overriding effect to Section 14-A and Chapter III-A with the knowledge that Sections 19 and 39 of the Slum Clearance Act contained *non-obstante* clauses of equal efficacy; therefore, the later enactment must prevail over the former; bearing in mind the language of the two laws, their object and purpose, and the fact that one of them is later in point of time and was enacted with the knowledge of the non-obstante clauses in the earlier law, it must be concluded that the provisions of Section 14-A and Chapter III-A of the Rent Control Act must prevail over those contained in Sections 19 and 39 of the Slum Clearance Act.

3. Municipal Corporation of Delhi vs Gagan Narang & Ors. Etc. (2025 INSC 2) (Judgement in Civil Appeal No. 7463-7464 of 2023, the

Supreme Court held that it is the duty of the Court to construe the statute as a whole, and that one provision of the Act has to be construed with reference to other provisions so as to make a consistent enactment of the whole statute; it is the duty of the Court to avoid a head-on clash between two sections and construe the provisions which appear to be in conflict with each other in such a manner so as to harmonise them; it is equally settled that, while interpreting a particular statutory provision, it should not result into making the other provision a "useless lumber" or a "dead letter"; while construing the provisions, the Court should ascertain the intention of the law-making authority in the backdrop of dominant purpose and the underlying intendment of the statute.

4. In **Dr. Abraham Patani of Mumbai & Anr. vs State of Maharashtra & Ors:** (2023) 11 SCC 79**,** the Supreme Court held that, when the legislature knowingly allows two statutes to operate in the same space, it is a reasonable presumption that the legislative design would have been for both to remain operative without any overriding effect, save and except when a contrary intent is explicitly provided; and, in other words, the Court shall steer two statutes away from a direct collision with each other, even if their areas of operation are broadly similar.

5. In **Basti Sugar Mills v State of UP: (1979) 2 SCC 88,** the Supreme Court held that "Inconsistent", according to *Black's Legal Dictionary*, means "mutually repugnant or contradictory; contrary, the one to the other so that both cannot stand, but the acceptance or establishment of the one implies the abrogation or abandonment of the other"; it had to be seen whether mutual coexistence between Section 34 of the Bonus Act and Section 3(*b*) of the U.P. Act was impossible; if they related to the same subject-matter, to the same situation, and both substantially overlapped and were co-extensive, and at the same time so contrary and repugnant in their

terms and impact that one must perish wholly if the other were to prevail at all — then, only then, were they inconsistent; “inconsistency” between the two provisions is the produce of ingenuity , and consistency between the two laws flows from imaginative understanding informed by administrative realism; the Bonus Act was a long-range remedy to produce peace; the U.P. Act provided a distress solution to produce truce; the Bonus Act *adjudicated* rights of parties; the U.P. provision met an emergency situation on an *administrative basis*; and these social projections and operational limitations of the two statutory provisions must be grasped to resolve the legal conundrum.

6. In **MCD v. Gagan Narang 2025 INSC 2,** the Supreme Court held that, when the provisions of Section 63 of the Electricity Act are read in harmony with the provisions of Section 86(1)(b) of the Act, the powers of the State Commission cannot be curtailed by interpreting that the same can be invoked only by the Discoms or the generating companies; a perusal of Section 174 of the Act would reveal that, save as otherwise provided in Section 173, the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than the Act; Section 175 of the Act provides that the provisions of the said Act are in addition to and not in derogation of any other law for the time being in force; there is no inconsistency between the provisions of Section 63 of the Act and Rule 15 of the SWM Rules 2016; the provisions of Rule 15 of the SWM Rules 2016, which are enacted under the Environment (Protection) Act, 1986, mandate the appellant to undertake WTE project(s); and, insofar as WTE projects are concerned, the provisions under the Electricity Act will have to be read in addition to the provisions under Rule 15 of the SWM Rules 2016, and not in derogation thereof.

D. ANALYSIS:

The Statement of Objects and Reasons for introduction of the Electricity Bill, which culminated in the Electricity Act, 2003 being passed later, notes that the policy was to encourage private sector participation in generation, transmission and distribution, and the objective was to distance the regulatory responsibilities from the Government to the Regulatory Commissions. The Statement of Objects and Reasons records the main features of the Bill to include (i) generation being delicensed and captive generation being freely permitted; (v) distribution licensees would be free to undertake generation, and generating companies would be free to take up distribution licenses; and (vi) the State Electricity Regulatory Commissions may permit open access in distribution in phases.

Section 7 of the Electricity Act, 2003 enables any generating company to establish, operate and maintain a generating station without obtaining a license under the Electricity Act, if it complies with the technical standards relating to connectivity with the grid under Section 73(b). Section 10(2) enables the generating company to supply electricity to any licensee in accordance with the Electricity Act and the rules and regulations made thereunder and, subject to the regulations made under Section 42(2), to supply electricity to any consumer. The process of determination of tariff under Sections 62 and 63 of the Electricity Act is to be undertaken by the Regulatory Commissions. Where open access is allowed by the Appropriate Commission, such consumers are entitled to enter into an Agreement with any person for supply and purchase of electricity on such terms and conditions (including tariff) as may be agreed upon (Section 49).

Section 10(3) of the Electricity Act, 2003 requires every generating company to (a) submit technical details regarding its generating stations to the Appropriate Commission and the Central Electricity Authority. The

freedom given to generating companies under the Electricity Act, 2003 is not extended to atomic power generating stations. Apart from the fact that the power to fix rates for and regulate supply of electricity from atomic power stations lies only with the Central Government under Section 22(1)(b) of the Atomic Energy Act, and no such power is available to be exercised by the Appropriate Commissions, Section 18 of the 1962 Act places restrictions on disclosure of information. Section 19 also prevents entry into prohibited areas of the atomic power plants. As the 1962 Act was in force when the 2003 Act was enacted, and continues to remain in force as on date, it is evident that, to the extent governed by the provisions of the 1962 Act, the provisions of the Electricity Act, 2003 do not apply to atomic power generating stations.

While it is no doubt true that the Electricity Act, 2003 was enacted to provide for independent Electricity Regulatory Commissions, and to encourage private sector participation in the generation of electricity, it does not extend to electricity generated from atomic power plants which continue to be governed by the provisions of the Atomic Energy Act, 1962, and are strictly regulated by the Central Government through its Department of Atomic Energy.

Section 43-A of the Electricity (Supply) Act, 1948 related to the terms, conditions and tariff for electricity generated by a generating company, and sub-section (1) thereof enabled the generating company to enter into a contract for the sale of electricity generated by it - (a) with the Board constituted for the State or any of the States in which a generating station owned or operated by the company is located; (b) with the Board constituted for any other State in which it is carrying on its activities in pursuance of sub-section (3) of Section 15-A; and (c) with any other person with the consent of the competent Government or Governments. The freedom of contract

available to a generating company under Section 43-A of the 1948 Act would have, in the light of the non-obstante clause in Section 22(1) of the Atomic Energy Act, 1962, yielded to Clauses (a) to (c) of Section 22(1) of the 1962 Act.

The dispute, in the present case, involves interpretation of the Tariff Notifications issued by the Central Government under Section 22(1)(b) of the Atomic Energy Act. As shall be detailed later in this order, the power to issue Notification under Section 22(1)(b) of the 1962 Act would, in view of Section 21 of the General Clauses Act, include the power to vary/ amend/ modify/ rescind any such Notification. The CERC would, therefore, lack jurisdiction to undertake the exercise of interpretation of the notification as, in the guise of such interpretation, it cannot tinker with or modify the Tariff Notification issued by the Central Government.

It is true that effort should be made to construe the provisions of both the 1962 Act and the 2003 Act harmoniously with a view to avoid conflict/ inconsistency, As shall be detailed later in this order, it is difficult to avoid inconsistency/ conflict between the jurisdiction conferred on the Central Government under Section 22(1)(b) of the Electricity Act and on the Central Commission under Section 79(1)(a) of the 2003 Act. As rightly submitted on behalf of the 2nd Respondent, by Mr. M. G. Ramachandran, Learned Senior Counsel, the CERC cannot issue any order contradicting or colliding with the Tariff Notification issued by the Central Government as any such order issued either in the exercise of its regulatory powers under Section 79(1)(a) or its adjudicatory power under Section 79(1)(f) would be inconsistent with the power of the Central Government under Section 22(1)(b) of the 1962 Act to fix rates for, and regulate, supply of electricity from atomic power stations.

IX. IS SECTION 79(1)(a) OF THE ELECTRICITY ACT INCONSISTENT WITH SECTION 22(1)(b) OF THE ATOMIC ENERGY ACT?

A. SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

Sri Sitesh Mukherjee, Learned Senior Counsel appearing on behalf of the Appellant, would submit that, in ***West Bengal State Electricity Distribution Company Limited vs Central Electricity Commission & Ors.*** (Judgement in Appeal No. 276 of 2015 dated **(*Railways Judgement*)** at para 'O', this Tribunal, while construing the potential conflict between the Railways Act and the Electricity Act, has considered the trio of Section 173, 174 and 175 as under *"On a conjoint reading of Section 173, 174 and 175 of the Electricity Act, it is clear that, while the provisions of the Railways Act would prevail in case of any inconsistency with respect to the provision of the Electricity Act, in the absence of any such inconsistency, the provisions of both the enactments would apply."*; similar to the Railways Act, Section 173 of the Electricity Act gives overriding effect to the Atomic Energy Act also; hence, in case of inconsistency between the provisions of the Electricity Act and the Atomic Energy Act, the Atomic Energy Act would prevail and, in the absence of inconsistency, both enactments would operate in their respective spheres; in this regard, sub-section (2) of Section 22(1) of the Atomic Energy Act (in view of Section 8 of the General Clauses Act, 1897, any reference to the 1910 Act would be construed as also referring to the Electricity Act 2003-the re-enacted statute) and Section 28 of the Atomic Energy Act are also relevant.

B. SUBMISSIONS OF THE 2ND RESPONDENT:

On the issue, whether there is any inconsistency between Section 22 of 1962 Act and the 2003 Act in application of Section 79(1)(a), Sri M.G, Ramachandran, Learned Senior Counsel appearing on behalf of the 2nd Respondent, would submit that Section 173 of the 2003 Act provides that, in case of such inconsistency, the 1962 Act shall prevail; Section 22 of the 1962 Act deals with 'Electricity', and refers to the 'Electricity (Supply) Act, 1948 Act, and the Indian Electricity Act, 1910, which were the two prevailing Electricity Laws at the time the 1962 Act came into force; subsequently, the Electricity Regulatory Commissions Act, 1998, along with amendments to the above two Electricity Laws, came into force in 1998; finally on 10.06.2003, the 2003 Act came into force consolidating the above three earlier Electricity Laws; the above historical developments has been dealt in **Tata Power Company Ltd v Reliance Energy Ltd: 2009 16 SCC 659;** reference in Section 22 of the 1962 Act is to the statute itself, and not to any specific provision in the statute; and, therefore, reference in Section 22 to the 1948 Act and the 1910 Act should be read as the 2003 Act for all intents and purposes (Refer: Section 8(1) of the General Clauses Act; **Collector of Customs v. Nathella Sampathu Chetty 1962 SCC Online SC 30)**; and **New Central Jute Mills Co Ltd v. Assistant Collector of Central Excise Allahabad (1970) 2 SCC 820.**

C. JUDGEMENTS UNDER THIS HEAD:

1. In **Collector of Customs v. Nathella Sampathu Chetty 1962 SCC Online SC 30,** the Supreme Court held that the distinction between a mere reference to or a citation of one statute in another and an incorporation which in effect means the bodily lifting of the provisions of one enactment and making it part of another so much so that the repeal of the former leaves the latter wholly untouched, cannot be ignored; In the case of a reference or a citation of one enactment by another without incorporation, the effect of a

repeal of the one “referred to” is that set out in Section 8(1) of the General clauses Act; and where a statute is incorporated, by reference, into a second statute the repeal of the first statute by a third does not affect the second.

2. In **New Central Jute Mills Co Ltd v. Assistant Collector of Central Excise Allahabad (1970) 2 SCC 820,** the Supreme Court held that**,** in Section 12 of the Central Excise and Salt Act, the Customs Act, 1962 can be read in place of the Sea Customs Act, 1878; in ***Secretary of State for India in Council* v. *Hindusthan Cooperative Insurance Society Ltd.*** **[58 IA 259]** it was accepted as a settled rule of construction that where a statute is incorporated by reference into a statute, the repeal of the first statute does not affect the second; Section 12 of the Central Excise and Salt Act did not bodily lift, as it were, certain provisions of the Sea Customs Act, 1878, and incorporate them as an integral part of the Act; it only empowered the Central Government to apply the provisions of the Sea Customs Act, 1878, with such modifications and alterations as might be considered necessary or desirable by the Central Government for the purpose of implementation and enforcement of Section 3 of the Act; no exception could be taken to the view of the High Court that Section 12 contained a provision delegating limited powers to the Central Government to draw upon the provisions of the Sea Customs Act, 1878, for the purpose of implementing Section 3 of the Act; in **Collector of Customs, Madras v. Nathella Sampathu Chetty [AIR 1962 SC 316 : 1962 (3) SCR 786 : (1962) 1 SCJ 68]** this court examined at length the meaning and effect of incorporation by reference of one statute into another; Section 8(1) of the General Clauses Act, it was pointed out, dealt with reference or citation of oneenactment in another without incorporation; the usual or recognised formulae generally employed to effect incorporation were considered; and a comparison of the recognised formulae with the text of Section 12 of the Act showed that the provisions of the Sea Customs Act, 1878, were not meant to be incorporated in the Act and were only to be

applicable to the extent notified by the Central Government for the purpose of the duty leviable under Section 3.

D. ANALYSIS:

In examining the issues which arise for consideration in the present appeal, it is useful to refer to Section 173 to 175 of the Electricity Act, 2003. Section 173 relates to inconsistency in laws and stipulates that nothing contained in the Electricity Act or any rule or regulations made thereunder or any instrument having effect by virtue of the Electricity Act, rule or regulation shall have effect in so far as it is inconsistent with any other provisions of, among others, the Atomic Energy Act, 1962. Section 174 gives overriding effect to the Electricity Act and stipulates that, save as otherwise provided in Section 168, the provisions of the Electricity Act, 2003 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any law other than the Electricity Act, 2003. Section 175 stipulates that the provisions of the Electricity Act, 2003 are in addition to and not in derogation of any other law for the time being in force.

(i) SECTIONS 173 TO 175 OF THE ELECTRICITY ACT: ITS SCOPE:

Section 173 of the Electricity Act besides referring to Rules and Regulations also refers to *"instruments"* having effect by virtue of the Electricity Act, 2003, Rule or Regulation. Stroud's Judicial Dictionary of Words/Phrases describes "instrument" to mean an "instrument" in writing and to generally import a document of a formal legal kind. The expression is also used to signify a deed inter-parties or a charter or a record or other writing of a formal nature. A similar expression "instrument: is also to be found in Section 8(1) of the General Clauses Act. In this context, the word "instrument"

should be understood as including a reference to a formal legal writing like an order made under a statute or subordinate legislation or any document of a formal character made under statutory authority. In **Mohan Chaudhary vs The Chief Commissioner, the Union Territory of Tripura 1963 SCC Online SC 45,** the Supreme Court held that the expression "instrument" in Section 8 of the General Clauses Act included reference to an order made by the President in the exercise of his constitutional power.

In the context of the present dispute, an order made by the CERC, under the Electricity Act (other than framing "*Regulations"*, which are in the nature of subordinate legislation and have the force of law) would be an "instrument" as it is an order made in the exercise of its statutory powers under the Electricity Act, 2003. Such an order would be an "instrument", and must give way in so far it is inconsistent with the provisions of any one of clauses (a) to (c) of Section 22(1) of the Atomic Energy Act, 1962.

As noted hereinabove, while Section 22(1) of the Atomic Energy Act gives it overriding effect over the provisions of the Electricity Act, 2003, Section 174 of the Electricity Act gives the Electricity Act overriding effect over anything inconsistent therewith contained in any other law for the time being in force. It is unnecessary for us to examine the consequences of competing non-obstante clauses in the two enactments, since Section 173 of the Electricity Act itself provides that the provisions of the Atomic Energy Act,1962 would prevail in case of any inconsistency between any of its provisions and the provisions of the Electricity Act, 2003.

On a conjoint reading of Sections 173 to 175 of the Electricity Act, it is clear that, in case of inconsistency, the provisions of the Electricity Act, 2003 or any rule or regulations made thereunder or any instrument having effect by virtue of the Electricity Act, 2003 or rule or regulation, must yield to the provisions of Section 22(1) of the Atomic Energy Act, 1962. However, the

provisions of the Electricity Act,2003 shall have overriding effect over any other law (apart from the three laws mentioned in Section 173 which includes the Atomic Energy Act) inconsistent therewith. In case there is no inconsistency, the provisions of the Electricity Act, 2003 shall, in view of Section 175 thereof, also apply in addition to the provisions of the Atomic Energy Act, 1962. Consequently, It is only if the provisions of Section 79(1) of the Electricity Act is held to be inconsistent with any one of clauses (a) to (c) of Section 22(1) of the Atomic Energy Act, would Section 79(1) yield to the extent of such inconsistency. In case no inconsistency is found to exist, then the afore-said provisions of both these enactments would apply.

Parliament may provide, (as in Section 175 of the Electricity Act and Section 22(3) of the Atomic Energy Act, 1962), that its legislation shall be in addition to and not in derogation of other laws without elucidating specifically any other legislation. In such cases, where the competent legislation has been enacted by the same legislature, techniques such as a harmonious construction can be resorted to in order to ensure that the operation of both the statutes can co-exist. (**Forum for People's Collective Efforts v. State of W.B., (2021) 8 SCC 599).** As both the Atomic Energy Act, 1962 and the Electricity Act,2003 have been enacted by Parliament, save inconsistency, both the afore-said Statutes would co-exist.

Section 22(1) (b) of the Atomic Energy Act is a source of power for the Central Government to fix rates for, and regulate, the supply of electricity from atomic power stations. The power so conferred can not only be exercised by the Central Government itself, but also through any authority or Corporation established by it, or through a Government company. The only requirement is for the Central Government or its delegate to consult the Central Electricity Authority before it fixes the rates or regulates supply of electricity from atomic power stations. The power conferred under Section

22(1)(b) does not extend to electricity generated from other than atomic power stations. In the light of the non-obstante clause in Section 22(1) of the Atomic Energy Act, 1962, read with Section 173 of the Electricity Act, 2003 which deals with inconsistency in laws, the power to fix the rates for supply of electricity from atomic power stations cannot be exercised by the CERC as the jurisdiction to do so vests exclusively with the Central Government or its delegate under Section 22(1)(b) of the Atomic Energy Act, 1962.

Reliance placed on behalf of the 2nd Respondent on Section 22(3) of the Atomic Energy Act is misplaced for Section 22(3) begins with the words *"save as otherwise provided in this Act"* meaning *"save as otherwise provided in the Atomic Energy Act, 1962".* In the light of Section 22(3) of the Atomic Energy Act, 1962 read with Section 8(1) of the General Clauses Act, the provisions of the Atomic Energy Act would be in addition to the Electricity Act, 2003 save as otherwise provided in the Atomic Energy Act itself. In other words, except as otherwise provided in Section 22(1)(b) of the Atomic Energy Act, 1962, the provisions of both the Atomic Energy Act and the Electricity Act, 2003 would operate. Since Section 22(1)(b) expressly confers jurisdiction, on the Central Government and its delegate, to fix the rates for, and regulate, supply of electricity from atomic power stations, such a power cannot be exercised by the CERC, as exercise of the power to regulate tariff, under Section 79(1)(a) of the Electricity Act, would be clearly inconsistent with the authority conferred on the Central Government under Section 22(1)(b) of the Atomic Energy Act, 1962.

It is because Section 22(1) gives overriding effect to clauses (a) to (c) there-under, notwithstanding anything contrary thereto contained in the Electricity (Supply) Act, 1948, was it wholly un-necessary to again refer to the Electricity (Supply) Act, 1948 in Section 22(2) also. While clauses (a) to (c) of Section 22(1) prevailed in case of inconsistency between these

provisions and the provisions of the 1948 Act, any provision of the 1910 Act inconsistent with any provision (not necessarily only Clause (a) to (c) of Section 22(1)) of the 1962 Act was required to yield to the latter Act. Both the Acts referred in Section 22(3) were permitted to operate along with the Atomic Energy Act except as otherwise provided in the Atomic Energy Act itself. On a harmonious construction of sub-sections (1) to (3) of Section 22, it is clear that, inconsistent provisions in the 1910 and the 1948 Acts apart, all these enactments operated along with the Atomic Energy Act in their respective spheres.

As Parliament has, in its wisdom, conferred power only on the Central Government to fix the rates for, and to regulate, supply of electricity from atomic power stations, such a power is not available to be exercised by the Central Electricity Regulatory Commission, even though the atomic power stations from which electricity is generated may be wholly owned and controlled by the Central Government and may, otherwise, have fallen within the ambit of Section 79(1)(a) of the Electricity Act, 2003. When the Electricity Act, 2003 was enacted by it, Parliament was conscious of the provisions of the Atomic Energy Act, 1962 which was then in force, and yet it chose not to repeal Section 22(1)(b), clearly indicating thereby that the power to fix rates for, and regulate, supply of electricity from atomic power stations would continue to be exercised by the Central Government, and not by the Central Electricity Regulatory Commission.

In the light of Section 22(3) of the Atomic Energy Act, 1962 and Section 175 of the Electricity Act, 2003, every endeavour should be made by courts/ tribunals to harmoniously construe the provisions of both the 1962 and the 2003 Acts, and to avoid inconsistency between the provisions of both these enactments, except where it cannot be so construed. As shall be elaborated a little later in this order, in whichever manner Section 79(1)(a) of the 2003

Act is read, the power to regulate tariff (i.e. to determine/fix the price at which electricity is to be supplied by a generating company, owned and controlled by the Central Government) would be inconsistent with Section 22(1)(b) of the Atomic Energy Act , for such a power, to fix the price (rate) at which electricity should be supplied from atomic power stations, lies thereunder only with the Central Government, and is an area with respect to which the CERC cannot exercise jurisdiction.

The distinction between existence of jurisdiction and its exercise must also be borne in mind. It is only where Parliament has, by law, conferred authority/jurisdiction, can such power be exercised by the authority on whom such a power/jurisdiction has been legislatively conferred. As Section 22(1)(b) of the Atomic Energy Act has conferred jurisdiction on the Central Govt to fix the rates for, and to regulate, supply of electricity from atomic power stations, failure of the Central Govt to exercise the jurisdiction, conferred on it by Section 22(1)(b) of the Atomic Energy Act, would not denude it of its jurisdiction to do so later. Existence of jurisdiction in the CERC is independent of, and cannot be made contingent or dependent upon, whether or not the Central Government has exercised or chooses to exercise its power/jurisdiction under Section 22(1)(b) of the 1962 Act.

Under Section 64(1) of the Electricity Act, an application is required to be made by a generating company, in the manner provided by the Regulations made by the CERC, seeking determination of tariff Accepting the submission, urged on behalf of the 2nd Respondent, would require the Appellant to keep making applications to the CERC for determination of tariff knowing fully well that the Central Government may, at any time, issue a notification fixing the rates for supply of such electricity, defeating the very purpose of making an application under Section 64(1) of the Electricity Act, 2003 requesting the CERC to determine its tariff. Such a convoluted

construction of Section 79(1)(a) of the 2003 Act read with Section 22(1)(b) of the 1962 Act does not merit acceptance.

(ii) IS SECTION 79(1)(a) OF THE ELECTRICITY ACT INCONSISTENT WITH SECTION 22(1)(b) OF THE ATOMIC ENERGY ACT?

Let us now examine whether Section 79(1)(a) of the Electricity Act is inconsistent with Section 22(1)(b) of the Atomic Energy Act, and whether the said provision of the Electricity Act should yield to the aforesaid provision of the Atomic Energy Act to the extent of such inconsistency. As noted hereinabove, Section 173 of the Electricity Act relates to inconsistency in laws and stipulates that nothing contained in the Electricity Act, or any rule or regulation made thereunder or any instrument having effect by virtue of the Electricity Act, rule or regulation shall have effect in so far as it is inconsistent with any other provisions of, among others, the Atomic Energy Act, 1962.

Section 28 of the Atomic Energy Act stipulates that the provisions of the Atomic Energy Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the Atomic Energy Act or any other instrument having effect by virtue of any enactment other than the Atomic Energy Act.

(iii) INCONSISTENCY: ITS MEANING:

Black's Law Dictionary defines "inconsistent" to mean lacking consistency; not compatible with another fact or claim. **(State of U.P. v. Daulat Ram Gupta, (2002) 4 SCC 98).** *"Inconsistent",* according to *Black's Legal Dictionary*, means "mutually repugnant or contradictory; contrary, the one to the other so that both cannot stand, but the acceptance or establishment of the one implies the abrogation or abandonment of the

other". One of the meaning of the expression "inconsistent" is mutually repugnant or contradictory. Things are inconsistent when they cannot stand together at the same time, and one law is inconsistent with another law, when the command or power or provision in the law conflicts directly with the command or power or provision in the other law. (**Basti Sugar Mills Co. Ltd. v. State of Uttar Pradesh, (1979) 2 SCC 88; Parmar Samantsinh Umedsinh vs State of Gujarat: 2021 SCCONLINE SC138).** Things are said to be inconsistent when they are contrary to one another. (**Premchand Jain vs Regional Transport Authority: 1967 Jab LJ 885).**

One law is inconsistent with another law, when the command or power or provision in the law conflicts directly with the command or power or provision in the other law. (**M. Karunanidhi v. Union of India:(1979) 3 SCC 431).** Inconsistency between two statutory provisions would arise only if both the provisions relate to the same subject matter, and one such provision is inconsistent with the other. If two statutory provisions deal with two distinct and different subjects, the question of one provision being inconsistent with the other would not arise.

In view of the non-obstante clause in Section 28 of the Atomic Energy Act, and in the light of Section 173 of the Electricity Act, the provisions of the 1962 Act would prevail over the provisions of the Electricity Act or an order made thereunder to the extent the provisions of the Electricity Act or the orders made there-under are inconsistent with any of the provisions of the Atomic Energy Act, 1962. Not only does Section 22(1) of the 1962 Act give overriding effect to Clauses (a) to (c) there-under over the provisions of the 1948 Act (which, in view of Section 8(1) of the General Clauses Act would include the Electricity Act, 2003), Section 28 of the 1962 Act and Section 173 of the Electricity Act give the provisions of the 1962 Act overriding effect over anything inconsistent therewith contained in the Electricity Act, 2003.

If both Section 22(1)(b) of the Atomic Energy Act and Section 79(1)(a) of the Electricity Act are held to deal with the same subject matter it can then be said that, in view of the non- obstante clause in Sections 22(1) and 28 of the Atomic Energy Act as also Section 173 of the Electricity Act, Section 22(1)(b) of the Atomic Energy Act would prevail to the extent Section 79(1)(a) of the Electricity Act is inconsistent therewith.

What has to be seen is whether or not Section 79(1)(a) of the Electricity Act and Section 22(1)(b) of the Atomic Energy Act can mutually co-exist. If they relate to the same subject-matter, to the same situation, and both substantially overlap and are co-extensive and at the same time so contrary and repugnant in their terms and impact that one must perish wholly if the other were to prevail at all — then they are inconsistent. It is in this sense that the two provisions should be examined. **(Basti Sgar Mills Co. Ltd. v. State of U.P., (1979) 2 SCC 88; Parmar Samantsinh Umedsinh vs State of Gujarat: 2021 SCC OnLine SC 138).**

While Section 79(1)(a) confers power on the Central Commission to regulate tariff of generating companies owned and controlled by the Central Government, the said provision must, in view of Section 173 of the Electricity Act and Section 22(1) of the Atomic Energy Act, yield to, in case of and to the extent of, inconsistency with any one of clauses (a) to (c) of Section 22(1) of the Atomic Energy Act, 1962.

The authority conferred on the Central Government by Section 22(1)(a) is (i) to develop a sound and adequate national policy in regard to atomic power; (ii) to coordinate such policy with the Central Electricity Authority and the State Electricity Boards constituted under Sections 3 and 5 of the Electricity (Supply) Act, 1948 and others similar statutory corporations concerned with the control and utilization of other power resources. The second Respondent is the successor of the erstwhile State Electricity Board

in view of Section 131(1) and (2) of the Electricity Act, 2003; (iii) to implements schemes for the generation of electricity in pursuance of such policy and; (iv) to operate either by itself or through any authority or corporation established by it or a government company, atomic power station in the manner determined by it in consultation with the Boards or Corporation concerned with whom it shall enter into agreements regarding the supply of electricity so produced.

In view of the fourth limb of clause (a) of Section 22(1) the Central Government, through the Appellant, has been empowered to operate atomic power stations in the manner determined by it. In the present case the Appellant, a government company, has entered into an agreement, for supply of the electricity produced by it, with the second Respondent.

The dispute, in the present case, revolves mainly around the scope and ambit of clause (b) of Section 22(1) of the Atomic Energy Act, 1962. Clause (b) of Section 22(1) confers, on the Central Government, the authority (i) to fix rates for the supply of electricity from atomic power station and (ii) to regulate the supply of electricity from atomic power stations. The authority, conferred in terms of (i) and (ii) above, can be exercised (i) by the Central Government either by itself or (ii) through any authority established by it or (iii) a government company. In the present case, the rates for supply of electricity, from the Appellant's atomic power station to the second Respondent, has been fixed by the Central Government in exercise of the powers conferred under Section 22(1)(b) of the Atomic Energy Act, 1962. The manner in which the rates should be fixed for, and to regulate, supply of electricity from atomic power stations, is left, by Section 22(1)(b) of the Atomic Energy Act. 1962, to the discretion of the Central Government. The pre-condition for exercise of such power is consultation with the Central Electricity Authority.

(iv) "RATES" AND "TARIFF": THEIR MEANING:

In examining whether the power conferred on the Central Commission under Section 79(1)(a) of the Electricity Act, to regulate the tariff of the Appellant (a Government Company owned and controlled by the Central Government), is inconsistent with the power conferred on the Central Government, under clause (b) of Section 22(1) of the Atomic Energy Act, 1962 to fix rates for and regulate supply of electricity from the atomic power plants operated by the Appellant, it is necessary for us to first understand what the words *"Rates"* and *"Tariff"* mean.

P. Ramanatha Iyer, Advanced Law Lexicon, 3rd Edition 2005 defines *"Rate"* as often used in the sense of a standard or measure. (***Sundaram & Co. v. Commissioner of Income Tax*, AIR 1968 SC 124, 128)**; the expression 'rate' is generally used in the same sense as the expression 'cess.' (***Sarojini Tea Co. (P) Ltd. v. Collector of Dibrugarh*, AIR 1992 SC 1264**); a 'Rate' generally is an impost, usually for current or recurrent expenditure, spread over a district or other local area; and is distinct from an amount payable for work done upon or in respect of particular premises. (per BRETT. L.J., *Budd v. Marshall*, 50 LJQB 24:5 CPD 481); and "RATE" is defined by Webster to be the price or amount stated or fixed for anything.

The powers and functions of the Central Commission, under Section 79(1)(a) of the Electricity Act, is to regulate the tariff of generating companies owned or controlled by the Central Government. Section 61 of the Electricity Act confers power on the Commission to specify the terms and conditions for determination of tariff. Section 62(1)(a) requires the appropriate Commission to determine the tariff, in accordance with the provisions of the Electricity Act, for supply of electricity by a generating company to a distribution licensee, and Section 64 prescribes the procedure for determination of tariff. While

the power conferred on the appropriate Commission under Section 62(1)(a) is to determine tariff for supply of electricity by a generating company to a distribution licensee, the power conferred on the Central Government under Section 22(1)(b) is to fix the rates for and regulate the supply of electricity from atomic power stations.

The word "tariff", used in Sections 62, 64 and clauses (a) & (b) of Section 79(1), has not been defined in the Electricity Act, 2003. Tariff means a schedule of standard/prices or charges provided to the category or categories for procurement by the licensee from the generating company, **(*Gujarat Urja Vikas Nigam Ltd.* v. *Solar Semiconductor Power Company (India) Pvt. Limited*, (2017) 16 SCC 498; Ginni Global Ltd. v. H.P. ERC, 2022 SCC OnLine APTEL 124).** The term "tariff" includes within its ambit not only the fixation of rates but also the rules and regulations relating to it. (**PTC India Ltd. v. Central Electricity Regulatory Commission, (2010) 4 SCC 603).**

Clauses (a), (b) and (d) of Section 79(1) specifically relate to tariff. While Clause (a) empowers the Central Commission to regulate tariff of Central Government generating companies, Clause (b) confers power on the CERC to regulate the tariff of other generating companies provided such generating companies have a composite scheme for generation and sale of electricity in more than one State. Clause (d), which also relates to determination of tariff, is inapplicable since it pertains to determination of tariff for inter-State transmission of electricity, and not for generation and supply to a distribution licensee. It is, at all events, reasonable to presume that the same meaning is implied by the use of the same expression in every part of an Act.

(Maxwell's Interpretation of Statutes, Edn. 10, p. 522). Ordinarily, the rule of construction is that the same expression where it appears more

than once in the same statute must receive the same meaning unless the context suggests otherwise, **(Suresh Chand v. Gulam Chisti, (1990) 1 SCC 593),** or there is something repugnant in the context (**Bhogilal Chunnilal Pandya vs State of Bombay: AIR 1959 SC 356**), in which event, they may also have a different meaning in different provisions of the same statute. (**CIT v. Venkateswara Hatcheries (P) Ltd., (1999) 3 SCC 632).** The word *"tariff"* is common to Sections 62, 64 and 79(1) of the Electricity Act and, since the context does not suggest otherwise and there is nothing repugnant in the context of these provisions requiring a meaning being given to the word "tariff" in Section 79(1) different from that to be given to the said word in Sections 62 and 64, the word "tariff" must carry the same meaning in all these provisions.

As noted hereinabove, the word "rate" is normally understood to be the price or the amount stated or fixed for anything. Fixation of rates, under Section 22(1)(b) of the Atomic Energy Act, is to fix the price for the electricity supplied from atomic power stations. This power is exercised by the Central Govt by issuing notifications from time to time.

(v) NOTIFICATION FIXING THE RATES:

"Government of India
Department of Atomic Energy
Power Section

No.7/22/2011-Power/1604 *February 8, 2012*

Sub: Sale price of power supplied from Kakrapur Atomic Power Station, Units 1&2 effective from July 01, 2010 onwards

In exercise of the powers vested under Section 22(1)(b) of the Atomic Energy Act, 1962 (Act 33 of 1962), amended in 1987 and in partial modification of this Department's Notification No.1/2(3)/2006/Power/409 dated June 1, 2006, the Central Government

in consultation with the Central Electricity Authority (CEA) hereby fixes the tariff for power supplied from the Kakrapar Atomic Power Station, Units 1&2 (KAPS 1 & 2) as under:-

I. TARIFF EFFECTIVE FROM July 01, 2010 onwards

a) The tariff effective from July 01, 2010 to June 30, 2015 is fixed at 228.13 paise/kWh

The above tariff, is excluding excise duty and insurance but including decommissioning levy of 2 paise/kWh and income tax component in Return on Equity and is subject to fuel and heavy water adjustment charges as described in clause (b) (ii), adjustment for the charges for insurance of the station as described in in clause II, adjustment for return on Equity component based on change in applicable tax rates as described in clause III and any increase in the decommissioning charges notified by the Department of Atomic Energy. The levies of Research & Development (R&D) and Renovation and Modernization (R&M) have been discontinued with effect from December 2003.

(b) (i) The base rates taken into account for computation of fuel and heavy water charges are:

Fuel (UO2	*: Rs.25925/kg*
Heavy Water inventory rate	*: Rs.11921/kg*
Heavy Water makeup rate	*: Rs. 15146/kg*
Heavy Water lease charges	*: 9.29% per annum*

The corresponding rates in the base tariff rate of 228.13 paise/kWh are 79.32 paise/kWh towards fuel consumption, 11.70 paise/kWh towards heavy water make-up and 27.33 paise/kWh for heavy water lease charges.

(ii) Fuel and heavy water adjustment charges (paise/kWh) applicable for any period will be worked out as follows:

Fuel adjustment charge (in paise/kWh)

$\frac{79.32}{25925}$ *X (Rate in /Kg UO, applicable for the period - 25925)*

Heavy Water make-up adjustment charges (in paise/kWh)

$\frac{11.70}{15146}$ *X (Rate in /kg D_2O applicable for the period - 15146)*

Heavy Water lease adjustment charges (in paise/kWh)

$\frac{27.33}{(11921 \times 9.29\%)}$ *X [(Rate in /kg D_2O applicable for the period X lease rate D_2O applicable for the period) – 11921 X 9.29%)]*

The applicable fuel and heavy water charges will be determined by KAPS Units 1&2

(c) Fuel consumption base charge of 79.32 Paise/kWh is computed on the basis of a base rate of ₹25925/kg UO2. Weighted average rate of fuel in /kg is calculated evert time the station receives fresh stock of fuel. fuel adjustment charge will be calculated every time KAPS Units 1 & 2 receive fresh fuel of stocks, after taking into the account the consumption up-to the end of the month in which stocks are received. Fuel KARL Units 1&2. The revised fuel rate (the weighted average rate) will be adopted from the first of the following month for calculation of fuel adjustment charges.

II. *The tariff calculation does not include insurance charges. In case NPCIL takes an insurance policy for the station, the tariff will be increase to cover the premium. The corresponding increase in tariff for insurance charges is 0.4292 Paise/kWh per 1 crore premium per annum. The increase in tariff to cover the insurance premium will be determined by KAPS Units 1&2 based on the*

premium finalized with the insurance company and it will not be deemed as a revision in tariff.

III Return on Equity adjustment on account of tax rate

The Return on Equity is considered as 15.50% which is grossed up with tax rate of 20.008% and after grossing up the Return on Equity comes to 19.38%.

The formula for adjustment charge for return on equity due to change in tax rate is given below:

$$\frac{36.23 \text{ X } (1-20008)}{(1-\text{new effective tax rate applicable})} - 36{,}23$$

The return on equity adjustment charges on account change in tax rate will be determined by the KAPS Units 1&2. The increase or decrease in tariff on account of such adjustment will not be deemed as revision in tariff.

IV. *Any change in the heavy water rates, fuel rates and tax rates having retrospective effect will be applied and recovered from the beneficiary electricity board/s, utilities/purchasers.*

V. *The rates mentioned in clause I above i.e. 228.13 paise/kWh shall be applicable from July 01, 2010 to June 30, 2015 and shall remain in force until June 30, 2015. Bills based on these rates shall be payable on a monthly basis.*

VI*. In case a new tariff for the period beyond June 30, 2015 is not finalized before that date, the beneficiary Electricity Boards/utilities shall continue to pay for the power supplied beyond this date on adhoc basis in the manner detailed in the above clauses."*

(vi) SECTION 21 OF THE GENERAL CLAUSES ACT:

It is well settled that the purpose of the General Clauses Act is to place in one single statute different provisions as regards interpretation of words and legal principles which would otherwise have to be specified separately in many different Acts and Regulations. Whatever the General Clauses Act says, whether as regards the meaning of words or as regards legal principles, has to be read into every statute to which it applies. **(Shree Sidhbali Steels Ltd. v. State of U.P., (2011) 3 SCC 193).**

Section 21 of the General Clauses Act, 1897 reads as under:

> **"*21. Power to issue, to include power to add to, amend, vary or rescind, notifications, orders, rules or bye-laws.***
>
> *Where, by any Central Act or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and* conditions *(if any), to add to, amend, vary or rescind any, orders, rules or bye-laws so issued".*

Section 21 of the General Clauses Act embodies a rule of construction. The nature and extent of its application must be governed by the relevant statute which confers the power to issue notifications, orders etc. **(Shree Sidhbali Steels Ltd. v. State of U.P., (2011) 3 SCC 193),** and must have reference to the context and subject-matter of the particular statute to which it is being applied. (**Kamla Prasad Khetan v. Union of India, 1957 SCC OnLine SC 27).** The said provision is based on the principle that power to create includes the power to destroy and also the power to alter what is created. Section 21, amongst others, specifically deals with the power to add to, amend, vary or rescind notifications/orders. **(Shree Sidhbali Steels Ltd. v. State of U.P., (2011) 3 SCC 193).**

By virtue of Section 21 of the General Clauses Act, when a power is conferred on an authority to do a particular act, it includes in such power, the power to withdraw, modify, amend or cancel the notifications/orders earlier issued, which can be exercised in the like manner and subject to like conditions, if any, attached with the exercise of the power. **(Shree Sidhbali Steels Ltd. v. State of U.P., (2011) 3 SCC 193).** The authority, which has the power to issue Notifications/pass orders, undoubtedly, has the power to rescind or modify or amend those notifications/orders in a like manner and subject to like conditions, if any. **(Pahwa Plastics (P) Ltd. v. Dastak NGO, (2023) 12 SCC 774).** In view of Section 21 of the General Clauses Act, the amending or modifying order has to be made in the same manner as the original order and is subject to the same conditions that govern the making of the original order. **(Rajeev Suri v. DDA, (2022) 11 SCC 1; Kamla Prasad Khetan v. Union of India, 1957 SCC OnLine SC 27).**

The power, vested in the Central Government to fix “rates”. would include, in view of Section 21 of the General Clauses Act, the power to add, amend, vary or rescind in a like manner, and subject to like conditions, the rates fixed by the Central Government earlier. The Central Government, which has been conferred the power by Section 22(1)(b) of the Atomic Energy Act, to fix rates, would have the power, even in the absence of an express provision in this regard in the Atomic Energy Act, to amend or vary or revoke the notifications issued by it earlier fixing the rates at which electricity should be supplied from the Atomic Power Stations operated by the Appellant.

(vii) “REGULATE”: ITS MEANING:

The word ‘regulate’ is difficult to define as having any precise meaning. It is a word of broad import, having a broad meaning, and is comprehensive in its scope. There is a diversity of opinion as to its meaning and its

application to a particular state of facts, some Courts giving to the term a somewhat restricted, and others giving to it a liberal construction. The different shades of meaning are brought out in **Corpus Juris Secundum, Vol. 76 at p. 611:** '"Regulate" is variously defined as meaning to adjust; to adjust, order, or govern by rule, method, or established mode; to adjust or control by rule, method, or established mode, or governing principles or laws; to govern; to govern by rule; to govern by, or subject to, certain rules or restrictions; to govern or direct according to rule; to control, govern, or direct by rule or regulations; "Regulate" is also defined as meaning to direct; to direct by rule or restriction; to direct or manage according to certain standards, laws, or rules; to rule; to conduct; to fix or establish; to restrain; to restrict.'(**Webster's Third New International Dictionary, Vol. 2, p. 1913** and **Shorter Oxford Dictionary, Vol. 2, 3rd Edn., p. 1784**). (**BSNL v. TRAI: (2014) 3 SCC 222; K. Ramanathan v. State of T.N., (1985) 2 SCC 116).** The word *"regulate"* is wide enough to confer power on the State to regulate either by increasing the rate or decreasing the rate, the test being what is it that is necessary or expedient to be done to maintain, increase, or secure supply. **(V.S. Rice & Oil Mills v. State of A.P: AIR 1964 SC 1781).**

The power to regulate carries with it full power over the thing subject to regulation and, in the absence of restrictive words, the power must be regarded as plenary over the entire subject. It implies the power to rule, direct and control, and involves the adoption of a rule or guiding principle to be followed, or the making of a rule with respect to the subject to be regulated. The power to regulate implies the power to check and may imply the power to prohibit under certain circumstances, as where the best or only efficacious regulation consists of suppression. (**BSNL v. TRAI: (2014) 3 SCC 222; K. Ramanathan v. State of T.N., (1985) 2 SCC 116).** The Court, while interpreting the expression "regulate", must necessarily keep in view the object to be achieved and the mischief sought to be remedied. (**Jiyajeerao**

Cotton Mills Ltd. v. M.P. Electricity Board: 1989 Supp (2) SCC 52; BSNL v. TRAI: (2014) 3 SCC 222; K. Ramanathan v. State of T.N., (1985) 2 SCC 116).

The word "regulation" has no fixed connotation. Its meaning differs according to the nature of the thing to which it is applied.'. In modern statutes, concerned as they are with economic and social activities, 'regulation' must, of necessity, receive a wide interpretation. **(G.K. Krishnan v. State of T.N: (1975) 1 SCC 375).** The word 'regulation' has different shades of meaning and must take its colour from the context in which it is used having regard to the purpose and object of the legislation, and the Court must necessarily keep in view the mischief which the legislature seeks to remedy. (**BSNL v. TRAI: (2014) 3 SCC 222; K. Ramanathan v. State of T.N., (1985) 2 SCC 116)**

The word "regulate" has been stated in **"Supreme Court (Words and Phrases) (1950-2004) (2004 Edition)"** to have different shades of meaning and that it must take colour from the context in which it is used, having regard to the purpose and object of the relevant provisions. The Shorter Oxford Dictionary defines the word *"regulate"* to mean to control, govern or direct by Rule or Regulations; to be subject to guidance or restrictions.

The manner in which supply of electricity from atomic power stations is controlled, governed or directed would fall within the ambit of *"Regulate supply of electricity from atomic power stations"* which power has been conferred on the Central Government under Section 22(1)(b) of the Atomic Energy Act, 1962. Likewise, the power to regulate tariff under Section 79(1)(a) of the Electricity Act would include the power to control, govern or direct the price at which the generating companies, owned or controlled by the Central Government, should supply electricity. As noted hereinabove, the

Appellant is a generating company owned and controlled by the Central Government.

But for Section 22(1)(b) of the Atomic Energy Act, the tariff of the Appellant would have been determined by the CERC under Section 62(1)(a) read with Section 79(1)(a) of the Electricity Act, 2003. It is only because of the non-obstante clause in Sections 22(1) and 28 of the Atomic Energy Act, which Act has been given over-riding effect under Section 173 of the Electricity Act, 2003, that the Central Commission has been denuded the power either to determine or to regulate the tariff (fix the rates) for supply of electricity from atomic power stations which power is to be exercised exclusively by the Central Government, and not by the Central Commission either by itself or concurrently along with the Central Government.

As noted hereinabove, the word "tariff" not only includes fixation of rates but also Rules and Regulations relating to such fixation. (**PTC INDIA LTD VS CERC: (2010) 4 SCC 603)**. What is permitted to be done by the Central Commission under Section 79(1)(a) is not only to regulate the tariff (ie fix the rates) for supply of electricity by a generating company owned or controlled by the Central Government but also to make subordinate legislation, in the form of Regulations, for the regulation of tariff (ie fixing the rates).

The word "regulate" is used both in Section 22(1)(b) of the Atomic Energy Act and Section 79(1)(a) of the Electricity Act. While the power conferred on the Central Government under Section 22(1)(b) is to regulate supply of electricity from atomic power stations, the power conferred on the Central Commission under Section 79(1)(a) is to regulate the tariff of generating companies owned or controlled by the Central Government.

Use of the word “tariff” in Section 79(1)(a) would permit the Central Commission to regulate fixation of rates at which generating companies owned or controlled by the Central Government would be entitled to supply electricity. A similar power is conferred on the Central Government under Section 22(1)(b) of the Atomic Energy Act to regulate the tariff for supply of electricity from atomic power stations as such a power would fall within the ambit of *“fix rates for the supply of electricity from atomic power stations”* under Section 22(1)(b) of the Atomic Energy Act.

The power conferred on the Central Govt under Section 22(1)(b) of the Atomic Energy Act is wider than the power conferred on the CERC under Section 79(1)(a) of the Electricity Act. While both the Central Government and the CERC have been conferred the power to regulate tariff/fix rates for supply of electricity from generating companies, the Central Government has, in addition, also been conferred the authority to regulate supply of electricity from atomic power stations. In other words, the Central Govt has not only been conferred the power to fix the rates for supply of electricity generated from atomic power stations, but also to regulate such supply.

In view of the non-obstante clauses in Sections 22(1) and 28 of the Atomic Energy Act, and since Section 173 of the Electricity gives the Atomic Energy Act overriding effect over the provisions of the Electricity Act to the extent the latter is inconsistent with the former, it is evident that the power of the appropriate commission to determine tariff for supply of electricity by a generating company to a distribution licensee under Section 62(1)(a), and the power conferred on the CERC to regulate the tariff of generating companies owned or controlled by the Central Government under Section 79(1)(a) of the Electricity Act, would not extend to supply of electricity by a generating company to a distribution licensee from an atomic power station.

(viii) GENERALIA SPECIALIBUS NON DEROGANT:

When a general law and a special law, dealing with some aspect dealt with by the general law, are in question, the rule adopted and applied is one of harmonious construction whereby the general law, to the extent dealt with by the special law, is impliedly repealed. This principle finds its origins in the Latin maxim *generalia specialibus non derogant* i.e. a general law yields to special law should they operate in the same field on the same subject. (**CTO v. CTO, (2014) 8 SCC 319**). This principle has found vast application in cases of there being two statutes: general or specific with the latter treating the common subject-matter more specifically or minutely than the former. *Corpus Juris Secundum*, 82 C.J.S. Statutes § 482 states that, when construing a general and a specific statute pertaining to the same topic, it is necessary to consider the statutes as consistent with one another, and such statutes therefore should be harmonized, if possible, with the objective of giving effect to a consistent legislative policy. On the other hand, where a general statute and a specific statute relating to the same subject-matter cannot be reconciled, the special or specific statute ordinarily will control. The provision more specifically directed to the matter at issue prevails as an exception to or qualification of the provision which is more general in nature, provided that the specific or special statute clearly includes the matter in controversy (**CTO v. Binani Cements Ltd., (2014) 8 SCC 319**).

The maxim *generalia specialibus non derogant*, means that a general later law does not abrogate an earlier special one by mere implication. In other words, where there are general words in a later Act capable of reasonable and sensible application, without extending them to subjects specially dealt with by the earlier Legislation, it should not be held that the earlier special legislation is indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. In such cases it is presumed to have only general cases in view, and not particular cases which have been already otherwise provided

for by the special Act. (***Maxwel on the Interpretation of Statutes***, **Eleventh Edition, page 168**; **NTPC Ltd. v. CERC, 2023 SCC OnLine APTEL 27)**

This principle has also been applied to resolve any conflict between general and special provisions in the same legislative instrument, and it has been held that in case of conflict, between a special provision and a general provision, the special provision prevails over the general provision, and the general provision applies to such cases which are not covered by the special provision. (**Kureti Venkateswarlu, President v. State of Andhra Pradesh, 1970 SCC OnLine AP 33; NTPC Ltd. v. CERC, 2023 SCC OnLine APTEL 27).**

Having already given its attention to the particular subject and provided for it, the legislature is reasonably presumed not to intend to alter that special provision by a subsequent general enactment unless that intention be manifested in explicit language or there be something which shows that the attention of the legislature had been turned to the special Act, and that the general one was intended to embrace the special cases provided for by the previous one, or there be something in the nature of the general one making it unlikely that an exception was intended as regards the special Act. In the absence of these conditions, the general statute is read as silently excluding from its operation the cases which have been provided for by the Special one. (***Maxwel on the Interpretation of Statutes*, Eleventh Edition, page 168; NTPC Ltd. v. CERC, 2023 SCC OnLine APTEL 27**).

This rule of construction resolves the conflict between the general provision in one statute and the special provision in another. (**J.K. Cotton Spg. & Wvg. Mills Co. Ltd. v. CTO, (2014) 8 SCC 319**). In case of conflict, the specific provision prevails over the general provision and the general provision applies only to such cases which are not covered by the special provision. (**J.K. Cotton Spg. & Wvg. Mills Co. Ltd. v. State of U.P.**

CTO v. Binani Cements Ltd., (2014) 8 SCC 319). This well-known rule, which has application, is that a subsequent general Act does not affect a prior special Act by implication. In the third edition of Maxwell, the principle of *generalia specialibus non derogant* i.e. general provisions will not abrogate special provisions is stated thus" *When the legislature has given its attention to a separate subject and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject-matter and its own terms*.' (**Craies on Statute Law (6th Edn., 1963) pp. 376-77; LIC v. D.J. Bahadur: (1981) 1 SCC 315; CTO v. Binani Cements Ltd., (2014) 8 SCC 319).**

In **UPSEB v. Hari Shankar Jain, (1978) 4 SCC 16,** the Supreme Court concluded that, if Section 79(c) of the Electricity (Supply) Act generally provides for the making of regulations providing for the conditions of service of the employees of the Board, it can only be regarded as a general provision which must yield to the special provisions of the Industrial Employment (Standing Orders) Act in respect of matters covered by the latter Act.

While determining the question whether a statute is general or special, focus must be on the principal subject-matter coupled with a particular perspective with reference to the intendment of the Act. With this basic principle in mind, the provisions must be examined to find out whether it is possible to construe harmoniously the two provisions. If it is not possible then effort should be made to ascertain whether the legislature had intended to accord a special treatment vis-à-vis the general entries and a further endeavour should be made to find out whether the specific provision excludes the applicability of the general. Once it is concluded that the intention of the legislation is to exclude the general provision then the rule

"general provision should yield to special provision" is squarely attracted. (**Gobind Sugar Mills Ltd. v. State of Bihar, (1999) 7 SCC 76; CTO v. Binani Cements Ltd., (2014) 8 SCC 319).**

The rule of statutory construction that the specific governs the general is particularly applicable where the legislature has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions. A subject-specific provision relating to a specific and defined subject is regarded as an exception to, and would prevail over a general provision relating to a broad subject. (**CTO v. Binani Cements Ltd., (2014) 8 SCC 319).** In view of Section 173 of the Electricity Act, it is permissible for us to presume that Atomic Energy Act, 1962 is a prior special law and the Electricity Act, 2003 is a subsequent general law.

Even otherwise, the Electricity Act, 2003, an Act whereby the earlier electricity laws were consolidated and modified, is a law applicable to all aspects of the electricity sector, whereas the Atomic Energy Act, 1962 applies only to electricity generated from atomic power stations. The 1962 Act is a prior special law and the 2003 Act is a later general law. As noted hereinabove, when construing a general and a specific statute, it is necessary to consider the statutes as consistent with one another and for such statutes to be harmonized, if possible, with the objective of giving effect to a consistent legislative policy. Each enactment must be construed in that respect according to its own subject-matter and its own terms. However, as both statutes cannot be read as consistent with one another, Section 79(1)(a) of the 2003 Act must yield to Section 22(1)(b) of the 1962 Act.

While the Electricity Act, 2003 is, no doubt, a legislation made subsequent to the Atomic Energy Act, 1962, it is the 1962 Act which is a special legislation relating to electricity generated from atomic power stations, while the subsequent Electricity Act, 2003 is a general law

applicable to all generating stations (other than atomic power stations). While enacting a law providing for the constitution of independent regulatory bodies such as the CERC and the State Regulatory Commissions, Parliament was conscious of the need to keep atomic power generating companies away from its ambit and, hence, chose not to repeal Section 22 of the 1962 Act.

To the extent the Central Government has been conferred jurisdiction under Section 22(1)(b) of the Atomic Energy Act to fix the rates for supply of electricity from atomic power stations, the Central Commission must be held to lack jurisdiction to undertake any such exercise under Section 79(1)(a) of the Electricity Act as Section 79(1)(a) of the Electricity Act, being inconsistent with Section 22(1)(b) of the Atomic Energy Act, must yield to the latter. Consequently, Section 79(1)(a) of the Electricity Act must be held to confer power on the Central Commission to regulate the tariff (fix the rates) for supply of electricity, by generating companies owned or controlled by the Central Government, other than generating companies supplying electricity from atomic power stations.

X. SECTION 79(1)(f) OF THE ELECTRICITY ACT: ITS SCOPE:

A. SUBMISSIONS ON BEHALF OF THE APPELLANT:

Sri Sitesh Mukherjee, Learned Senior Counsel appearing on behalf of the Appellant, would submit that the powers and functions of the CERC "*to adjudicate upon disputes involving generating companies*" under Section 79(1)(f) is expressly confined "*to matters connected with clauses (a) to (d)"* of sub-section (1) of Section 79 of the Electricity Act, 2003; Clauses (c) & (d) of Section 79 (1) pertain to transmission, and are not relevant for the present dispute; and as the Appellant's Nuclear Power Plants do not come under the

purview of clauses (a) or (b) of Section 79(1), they would, concomitantly, not fall within the purview of clause (f) of Section 79(1).

B. SUBMISSIONS URGED ON BEHALF OF THE RESPONDENT:

Sri M.G, Ramachandran, Learned Senior Counsel appearing on behalf of the 2nd Respondent, would submit that, in the context of the 2003 Act, the adjudicatory power/ dispute resolution by the CERC has been independently provided in Section 79(1)(f), and the CERC exercises varied powers - legislative, regulatory and adjudicatory (Ref: **UPPCL v. NTPC (2009) SCC 235**); Section 22(1)(b) of the 1962 Act provides for fixing rates and regulating the supply, but does not cover the issue of adjudication of disputes; adjudicatory powers, under Section 79(1)(f), can be exercised by the CERC even if any part of the power under Section 79(1)(a) cannot be exercised, in view of the same being inconsistent with the powers exercised by the Central Government under Section 22 of the 1962 Act; the conditions to be fulfilled in order to fall within Section 79(1)(f) of the 2003 Act are that it should (a) involve generating company; (b) in regard to matters connected with inter alia clause (a), and the same are duly satisfied in the present case; the term *"in regard to matters connected with"* in Section 79(1)(f) has to be interpreted broadly (**Ref: Renu Sagar Power Company v. GEC (1984) 4 SCC 679; Mansukhlal Dhanraj Jain v. Eknath Vithal Ogale (1995) 2 SCC 665);** there are, therefore, two aspects (i) Regulatory power under Section 79(1)(a) is not exhausted by Section 22 of the 1962 Act; and (ii) Section 79(1)(f) does not require actual exercise of power under Section 79(1)(a), and would apply so long as the dispute is connected to matters concerning a Central Government company, including NPCIL; the 2003 Act is a specialized legislation providing for a specific jurisdiction of specialized commissions/Tribunals; the 2003 Act has been recognized as a

comprehensive legislation (Ref: **CSEB v. CERC, 2010 5 SCC 23);** and the need for such Commissions/Tribunals also has to be seen from the perspective of consumer interest, where any adjudication of dispute may have an impact on consumer tariff.

C. JUDGEMENTS UNDER THIS HEAD:

1. The powers and functions of the Commission, under Section 13 of the 1998 Act, were extensive. Section 13(a) of the 1998 Act is in pari-materia with Section 79(1)(a) of the Electricity Act, 2003, and Section 13(h) of the 1998 Act is similar to Section 79(1)(f) of the Electricity Act, 2003.

While examining the scope of Section 13 of the 1998 Act, the Supreme Court, in **UPPCL v. NTPC (2009) SCC 235**, observed that a regulatory commission not only makes regulations but in view of its extensive powers but also is in charge of implementation thereof; it furthermore, in the event of any dispute or difference arising between several players involved in the framing of tariff for the consumers of electrical energy, has also an adjudicatory role to play; the Central Commission, in terms of the 1998 Act as also the Regulations framed thereunder, exercises diverse powers; it exercises legislative power, power of enforcement of the Regulations as also the adjudicatory power; each of its functions although are separate and distinct, but may be overlapping; and the power of the Central Commission is extensive.

2. In **Renu Sagar Power Company v. GEC (1984) 4 SCC 679,** the Supreme Court held that expressions such as “arising out of” or “in respect of” or “in connection with” or “in relation to” or “in consequence of” or “concerning” or “relating to” the contract are of the widest amplitude and content and include even questions as to the existence, validity and effect (scope) of the arbitration agreement.

3. In **Mansukhlal Dhanraj Jain v. Eknath Vithal Ogale (1995) 2 SCC 665,** the Supreme Court held that there is a good deal of difference between the words "relating to the recovery of possession" on the one hand and the terminology "for recovery of possession of any immovable property"; the words 'relating to' are of wide import and can take in their sweep any suit in which the grievance is made that the defendant is threatening to illegally recover possession from the plaintiff-licensee; suits for protecting such possession of immovable property against the alleged illegal attempts on the part of the defendant to forcibly recover such possession from the plaintiff, can clearly get covered by the wide sweep of the words "relating to recovery of possession" as employed by Section 41(1); in *Blacks' Law Dictionary*, Super Deluxe 5th Edition, at page 1158 of the said Dictionary, the term 'relate' is defined as under: *"to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with; 'with to'.";* in ***Renusagar Power Co. Ltd.* v. *General Electric Co.* [(1984) 4 SCC 679 : (1985) 1 SCR 432],** the Supreme Court held that the expressions such as 'arising out of' or 'in respect of' or 'in connection with' or 'in relation to' or 'in consequence of' or 'concerning' or 'relating to' the contract are of the widest amplitude and content and include even questions as to the existence, validity and effect (scope) of the arbitration agreement; in **Doypack Systems (P) Ltd. v. Union of India [(1988) 2 SCC 299]** , the Supreme Court held that the words 'pertaining to' and 'in relation to' had the same wide meaning and have been used interchangeably for among other reasons, which may include avoidance of repetition of the same phrase in the same clause or sentence, a method followed in good drafting; the word 'pertain' is synonymous with the word 'relate', see *Corpus Juris Secundum*, Vol. 17, page 693; the expression 'in relation to' (so also 'pertaining to'), is a very broad expression which presupposes another subject-matter; these are words of comprehensiveness which might have both a direct significance as

well as an indirect significance depending on the context, (**State Wakf Board v. Abdul Azeez [AIR 1968 Mad 79 : (1967) 1 MLJ 190] , following and approving Nitai Charan Bagchi v. Suresh Chandra Paul [66 CWN 767] , Shyam Lal v. M. Shyamlal [AIR 1933 All 649 : 1933 All LJ 728] and 76 Corpus Juris Secundum 621);** reference may be made to 76 *Corpus Juris Secundum* at pages 620 and 621 where it is stated that the term 'relate' is also defined as meaning to bring into association or connection with; it has been clearly mentioned that 'relating to' has been held to be equivalent to or synonymous with as to 'concerning with' and 'pertaining to'; The expression 'pertaining to' is an expression of expansion and not of contraction."; the phrase "relating to recovery of possession" as found in Section 41(1) of the Small Cause Courts Act is comprehensive in nature and takes in its sweep all types of suits and proceedings which are concerned with the recovery of possession of suit property from the licensee and, therefore, suits for permanent injunction restraining the defendant from effecting forcible recovery of such possession from the licensee-plaintiff would squarely be covered by the wide sweep of the said phrase.

4. In **CSEB v. CERC, 2010 5 SCC 23,** the Supreme Court held that the Electricity Act is a self-contained comprehensive legislation, which not only regulates generation, transmission and distribution of electricity by public bodies and encourages public (*sic* private) sector participation in the process but also ensures creation of special adjudicatory mechanism to deal with the grievance of any person aggrieved by an order made by an adjudicating officer under the Act except under Section 127 or an order made by the appropriate Commission. Section 110 provides for establishment of a Tribunal to hear such appeals; the object underlying establishment of a special adjudicatory forum i.e. the Tribunal to deal with the grievance of any person who may be aggrieved by an order of an adjudicating officer or by an appropriate Commission with a provision for further appeal to this Court and

prescription of special limitation for filing appeals under Sections 111 and 125 is to ensure that disputes emanating from the operation and implementation of different provisions of the Electricity Act are expeditiously decided by an expert body and no court, except the Supreme Court, may entertain challenge to the decision or order of the Tribunal; and the exclusion of the jurisdiction of the civil courts (Section 145) qua an order made by an adjudicating officer is also a pointer in that direction.

D. ANALYSIS:

Before examining the question whether the CERC has jurisdiction to adjudicate the present dispute under Section 79(1)(f) of the Electricity Act, it is useful to understand the scope and ambit of the jurisdiction conferred on the CERC under the said provision.

(i) JURISDICTION IS CONFERRED ONLY BY A LAW MADE BY THE COMPETENT LEGISLATURE:

A Tribunal, which is a creation of a Statute, has only the powers expressly conferred on it, or resulting directly from the powers so conferred. Acting otherwise goes to the very existence of the power. Statutory Tribunals, set up under an Act of Parliament, are creations of the Statute, (**R.K. Jain v. Union of India, (1993) 4 SCC 119**), and should be guided by the conditions stipulated in the statutory provisions while exercising powers expressly conferred or those incidental thereto. (**Commissioner of Central Excise v. Sri Chaitanya Educational Committee, 2011 SCC OnLine AP 1078**). Statutory Tribunals, created by an Act of Parliament, have limited jurisdiction and must function within the four-corners of the Statute which created them. (**O.P. Gupta v. Dr. Rattan Singh, (1964) 1 SCR 259**). It is not open to such Tribunals to travel beyond the provisions of the statute. (**D.**

Ramakrishna Reddy v. Addl. Revenue Divisional Officers, (2000) 7 SCC 12).

The power to create or enlarge jurisdiction is legislative in character. Parliament alone can do it by law and no court, be it superior or inferior or both combined, can enlarge the jurisdiction of a court (or statutory tribunal). Jurisdiction can be exercised only when provided for either in the Constitution or in the laws made by the legislature. The Court or Tribunal cannot confer a jurisdiction on itself which is not provided in the law. Thus, jurisdiction can be conferred by statute, and Courts cannot confer jurisdiction or an authority on a tribunal. (**Chiranjilal Shrilal Goenka v. Jasjit Singh, (1993) 2 SCC 507; and A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602; Bhadreshwar Vidyut (P) Ltd. v. Maharashtra ERC, 2024 SCC OnLine APTEL 47).**

If the court/Tribunal, passing an order/decree, has no jurisdiction over the matter, it would amount to a nullity as the matter would go to the root of the cause. The finding of a court or tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction. Equally, acquiescence of a party should not be permitted to defeat the legislative animation. (**United Commercial Bank Ltd. v. Workmen, 1951 SCC 364 : AIR 1951 SC 230; Nai Bahu v. Lala Ramnarayan [(1978) 1 SCC 58; Natraj Studios (P) Ltd. v. Navrang Studios, (1981) 1 SCC 523; Sardar Hasan A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602; Union of India v. Deoki Nandan Aggarwal, 1992 Supp (1) SCC 323; Karnal Improvement Trust v. Parkash Wanti, (1995) 5 SCC 159; U.P. Rajkiya Nirman Nigam Ltd. v. Indure (P) Ltd., (1996) 2 SCC 667; State of Gujarat v. Rajesh Kumar Chimanlal Barot, (1996) 5 SCC 477; Kesar Singh v. Sadhu, (1996) 7 SCC 711; Kondiba Dagadu Kadam v. Savitribai Sopan Gujar, (1999) 3 SCC 722; CCE v. Flock**

(India) (P) Ltd., (2000) 6 SCC 650; and Kanwar Singh Saini v. High Court of Delhi, (2012) 4 SCC 307; Bhadreshwar Vidyut (P) Ltd. v. Maharashtra ERC, 2024 SCC OnLine APTEL 47).

As Statutory tribunals, including the Regulatory Commissions-both central and state, are required to function in accordance with the provisions of the Electricity Act, the restriction placed on the exercise of their jurisdiction, by the provisions of the said Act, cannot be said to interfere with their quasi-judicial functions under the Act. (**Tirupati Chemicals v. Deputy Commercial Tax Officer, 2010 SCC OnLine AP 1189**; **State of Telangana v. Md. Hayath Uddin, 2017 SCC OnLine Hyd 356).** Wherever jurisdiction is given to a court (or Tribunal) by an Act of Parliament, and such jurisdiction is only given upon certain specified terms contained in that Act, these terms must be complied with, in order to create and confer jurisdiction on it for, if they be not complied with, it would lack jurisdiction. (**Nusserwanjee Pestonjee v. Meer Mynoodeen Khan** [LR (1855) 6 MIA 134 (PC); **Mohd. Hasnuddin v. State of Maharashtra, (1979) 2 SCC 572).** As it derives its powers from the express provisions of the Electricity Act, the powers, which have not been expressly given by the said Act, cannot be exercised by the Regulatory Commissions. (***Rajeev Hitendra Pathak* v. *Achyut Kashinath*, (2011) 9 SCC 541**).

An authority created by a statute must act under the Act and not outside it. As it is a creation of the statute, it can only decide the dispute in terms of the provisions of the Act. (***K.S. Venkataraman & Co.* v. *State of Madras*, AIR 1966 SC 1089; *Mysore Breweries Lt.* v. *Commissioner of Income-Tax*, (1987) 166 ITR 723 (KAR)**). The Central Electricity Regulatory Commission can exercise jurisdiction only when the subject matter of adjudication falls within its competence, and the order that may be passed is within its authority, and not otherwise. (**Dakshin Haryana Bijli**

Vitaran Nigam Ltd. v. Princeton Park Condominium: 2007 Aptel 764; BSES Rajdhani Power Limited v. Delhi Electricity Regulatory Commission, 2009 SCC OnLine APTEL 52). Consequently, it is only when it is specifically authorized by the Electricity Act, can the Central Electricity Regulatory Commission entertain a petition from an entity which is statutorily entitled to file such a petition.

Since the Central Commission is a creation of the Electricity Act under Section 76(1), and a body corporate under Section 76(3) thereof, its jurisdiction is limited to those specifically conferred on it under the provisions of the Electricity Act, and not beyond. The Central Electricity Regulatory Commission exercises adjudicatory functions, and its tariff orders are both regulatory and quasi-judicial in nature (**BSES Rajdhani Power Ltd vs DERC: (Judgement of the Supreme Court in Civil Appeal No.4324 of 2015 dated 18.10.2022**). Such Tribunals exercise limited jurisdiction. (**S.D. Joshi v. High Court of Bombay, (2011) 1 SCC 252)** strictly in terms of the Electricity Act by which they are governed. Every tribunal of limited jurisdiction is bound to determine whether the matter, in which it is asked to exercise its jurisdiction, comes within the limits of its special jurisdiction, and whether the jurisdiction of such a tribunal is dependent on the existence of certain facts or circumstances. Its obvious duty is to see that these facts and circumstances exist to invest it with jurisdiction, and where a tribunal derives its jurisdiction from the statute that creates it, and that statute also defines the conditions under which the tribunal can function, it goes without saying that, before that tribunal assumes jurisdiction in a matter, it must be satisfied that the conditions requisite for its acquiring seisin of that matter have in fact arisen. **(Mohd. Hasnuddin v. State of Maharashtra, (1979) 2 SCC 572).**

(ii) DISTINCTION BETWEEN EXISTENCE OF JURISDICTION AND ITS EXERCISE:

Jurisdiction is the authority or power of the court to deal with a matter and make an order carrying binding force in the facts. (**Chiranjilal Shrilal Goenka v. Jasjit Singh, (1993) 2 SCC 507; and A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602; Bhadreshwar Vidyut (P) Ltd. v. Maharashtra ERC, 2024 SCC OnLine APTEL 47).** Statutory Tribunals cannot derive jurisdiction apart from the statute. (**Bhadreshwar Vidyut (P) Ltd. v. Maharashtra ERC, 2024 SCC OnLine APTEL 47).**

The law does not permit any court/tribunal/authority/forum to usurp jurisdiction on any ground whatsoever, in case, such an authority does not have jurisdiction on the subject-matter. (**Jagmittar Sain Bhagat v. Health Services, Haryana, (2013) 10 SCC 136).** The powers, which have not been expressly given thereby, cannot be exercised by them. (***Rajeev Hitendra Pathak* v. *Achyut Kashinath*, (2011) 9 SCC 541**). An authority created by a statute must act under the Act and not outside it. As it is a creation of the statute it can only decide the dispute in terms of the provisions of the Act. (***K.S. Venkataraman & Co.* v. *State of Madras*, AIR 1966 SC 1089; *Mysore Breweries Lt.* v. *Commissioner of Income-Tax*, (1987) 166 ITR 723 (KAR)**). The Central Electricity Regulatory Commission can exercise jurisdiction only when the subject matter falls within its competence, and the order that may be passed is within its authority, and not otherwise. (**Dakshin Haryana Bijli Vitaran Nigam Ltd. v. Princeton Park Condominium: 2007 Aptel 764; BSES Rajdhani Power Limited v. Delhi Electricity Regulatory Commission, 2009 SCC OnLine APTEL 52).**

Since these tribunals are required to function in accordance with the provisions of the Act, the restriction placed on the exercise of their jurisdiction, by the provisions of the Act, cannot be said to interfere with their quasi-judicial functions under the Act. (**Tirupati Chemicals v. Deputy**

Commercial Tax Officer, 2010 SCC OnLine AP 1189; **State of Telangana v. Md. Hayath Uddin, 2017 SCC OnLine Hyd 356).**

A statutory Tribunal cannot go beyond the jurisdiction conferred by the Statute under which it is constituted and derives its power from, and cannot confer itself with jurisdiction. Jurisdiction to a statutory tribunal also cannot be conferred by an agreement or consent of the parties. **(Allain Duhangan Hydro Power Limited v. Everest Power Private Limited, 2013 SCC OnLine APTEL).** Conferment of jurisdiction on a Tribunal is distinct from its exercise. As the CERC is a tribunal of limited jurisdiction, it must exercise its jurisdiction strictly within the limits of what the Electricity Act, 2003 has expressly conferred/stipulated, **and not beyond.**

(iii) SECTION 79(1)(f): ITS SCOPE:

Section 79(1)(f) of the Electricity Act requires the Central Commission to discharge the function of adjudication of disputes involving generating companies or transmission licensees in regard to matters connected with clauses (a) to (d) of Section 79(1), and to refer any dispute for arbitration. The power conferred on the Central Commission to adjudicate disputes is confined only to those disputes involving (1) generating companies or (2) transmission licensees. As long as the dispute involves a generating company or a transmission licensee, and even if the other parties to the dispute are neither generating companies nor transmission licensees, the Central Commission would have jurisdiction to to adjudicate disputes. In the present case the Appellant is a generating company.

Section 79(1)(f) further requires that such disputes should be "*in regard to matters connected with*" clauses (a) to (d) of Section 79(1). It is not every dispute involving a generating company which can be adjudicated by the Central Commission, but only those disputes which involve a generating

company and are in regard to matters connected with clauses (a) to (d) of Section 79(1). Clauses (c) and (d) of Section 79(1) relate to regulation of inter-State transmission of electricity and determination of tariff for inter-State transmission of electricity. Clauses (c) and (d) of Section 79(1) are, therefore, inapplicable to the facts to the present case. The Appellant is a generating company owned and controlled by the Central Government, and Section 79(1)(a) would have, but for Section 22(1)(b) of the Atomic Energy Act, possibly been attracted, Clauses (b) of Section 79(1) which relates to regulation of tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a) would again have no application since the Appellant is a generating company owned and controlled by the Central Government, through its department of Atomic Energy. Consequently, it is only if the dispute between the Appellant and the second respondent is in regard to matters connected with Section 79(1)(a) would the CERC have jurisdiction to entertain and adjudicate such disputes.

(iv) JURISDICTIONAL FACTS:

A 'jurisdictional fact' is a fact which must exist before a court, tribunal or an authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends the jurisdiction of a court, a tribunal or an authority. **(Arun Kumar vs. Union of India:(2007) 1 SCC 732; *Ramesh Chandra Sankla v. Vikram Cement*, (2008) 14 SCC 58).** The fact or facts upon which the jurisdiction of a court, a Tribunal or an authority, depends can be said to be a "jurisdictional fact". If the "jurisdictional fact" exists, a court, Tribunal or authority has jurisdiction to decide other issues. If such fact does not exist, a court, Tribunal or authority cannot act. A court or a Tribunal cannot wrongly assume the existence of a jurisdictional fact, and proceed to decide a matter. The underlying principle is that, by erroneously assuming existence of a jurisdictional fact, a subordinate

court or an inferior Tribunal cannot confer upon itself jurisdiction which it otherwise does not possess. The existence of a jurisdictional fact is thus the sine qua non or the condition precedent for the assumption of jurisdiction by a court or Tribunal of limited jurisdiction. Once such a jurisdictional fact is found to exist, the court or Tribunal has the power to decide adjudicatory facts or facts in issue. (**Carona Ltd. v. Parvathy Swaminathan & Sons (2007) 8 SCC 559; *Ramesh Chandra Sankla v. Vikram Cement*, (2008) 14 SCC 58; Halsbury's Laws of England (Fourth Edition), Volume 1, para 55, page 61 ; Reissue, Volume 1(1), para 68, pages 114-15, Chaube Jagdish Prasad v. Ganga Prasad Chaturvedi AIR 1959 SC 492; Arun Kumar v. Union of India [2006] 286 ITR 89 (SC) ; (2007) 1 SCC 732; BGR Energy Systems Ltd. v. ACCT, 2009 SCC OnLine AP 238; Bharat Electronics Ltd. v. Deputy Commr., (CT), 2011 SCC OnLine AP 1080; K. G. F. Cottons (P) Ltd. v. Asst. Commr. (CT): 2015 SCC OnLine Hyd 46; and Ad Age Outdoor Advertising P. Ltd. v. Govt., A. P., 2011 SCC OnLine AP 1077).** No authority, much less a quasi-judicial authority, can confer jurisdiction on itself by deciding a jurisdictional fact wrongly. **(Raza Textiles Ltd. v. ITO, (1973) 1 SCC 633).**

As existence of a ‘jurisdictional fact’ is the *sine qua non* for the exercise of power, the CERC can proceed with the case and take an appropriate decision in accordance with law if the jurisdictional fact exists. Once the authority has jurisdiction in the matter, on existence of ‘jurisdictional facts’, it can decide the ‘fact in issue’ or ‘adjudicatory fact’. A wrong decision on ‘fact in issue’ or on ‘adjudicatory fact’ would not make the decision of the authority without jurisdiction or vulnerable provided essential or fundamental fact as to the existence of jurisdiction is present. **(Arun Kumar v. Union of India:(2007) 1 SCC 732; *Ramesh Chandra Sankla v. Vikram Cement*, (2008) 14 SCC 58; Carona Ltd. v. Parvathy Swaminathan & Sons, (2007) 8 SCC 559)**.

For assumption of jurisdiction by a court or a tribunal, existence of jurisdictional facts is a condition precedent. But once such jurisdictional fact is found to exist, the court or tribunal has power to decide on the adjudicatory facts or facts in issue. (**Setrucherla Ramabhadraraju v. Maharaja of Jeypore: AIR 1919 PC 150; State of Gujarat v. Rajesh Kumar Chimanlal Barot: (1996) 5 SCC 477; Harshad Chiman Lal Modi v. D.L.F. Universal Ltd: (2005) 7 SCC 791; Carona Ltd. v. Parvathy Swaminathan & Sons: (2007) 8 SCC 559; and *Jagmittar Sain Bhagat v. Health Services, Haryana*, (2013) 10 SCC 136).**

The jurisdictional facts, necessary for the CERC to exercise its powers of adjudication of the dispute under Section 79(1)(f) read with Section 79(1)(a), is firstly that the dispute involves a generating company owned or controlled by the Central Government; secondly that the dispute is in regard to matters connected with the power of the CERC to regulate the tariff of such a generating company. The first requirement of the appellant being a generating company owned or controlled by the Central Govt is satisfied in the present case. It is only if the second jurisdictional fact is satisfied, can the CERC then exercise jurisdiction to adjudicate the dispute considering the adjudicatory facts involved in such a lis.

(v) IN REGARD TO: ITS MEANING:

Let us now examine what the expressions “in regard to” and “matters connected with”, used in Section 79(1)(f) mean. The expressions ‘in respect of’ or ‘in connection with’ or ‘in relation to’ or ‘relating to’ or ‘regard to’ are of the widest amplitude. (***Renusagar Power Co. Ltd.* v. *General Electric Co:* (1984) 4 SCC 679; Mansukhlal Dhanraj Jain v. Eknath Vithal Ogale (1995) 2 SCC 665).** In *Blacks' Law Dictionary*, Super Deluxe 5th Edition, at page 1158, the term ‘relate’ (which is similar to the term ‘regard’) is defined as under: *“to stand in some relation; to have bearing or concern; to pertain;*

refer; to bring into association with or connection with; 'with to'." (**State Wakf Board v. Abdul Azeez: AIR 1968 Mad 79 : (1967) 1 MLJ 190; Nitai Charan Bagchi v. Suresh Chandra Paul: 66 CWN 767; Shyam Lal v. M. Shyamlal [AIR 1933 All 649 : 1933 All LJ 728).** In **76 Corpus Juris Secundum** at pages 620 and 621 it is stated that the term 'relate' is also defined as meaning to bring into association or connection with. 'relating to' has been held to be equivalent to or synonymous with as to 'concerning with' and 'pertaining to'. (**Doypack Systems (P) Ltd. v. Union of India: (1988) 2 SCC 299).** In **Royal Talkies v. ESI Corpn., (1978) 4 SCC 204,** the Supreme Court held that the expression "*in connection with the work of an establishment"* only postulates some connection between what the employee does and the work of the establishment; it is enough if the employee does some work which is ancillary, incidental or has relevance to or link with the object of the establishment; the question is whether such amenity or facility, even peripheral may be, has not a link with the establishment; it is not a legal ingredient that such adjunct should be *exclusively* for the establishment if it is mainly its ancillary.

Section 79(1)(f), which confers on the CERC the power to adjudicate disputes *"involving"* generating companies, is *"in regard to"* matters *"connected with"* clauses (a) to (d) of Section 79(1) of Electricity Act 2003. The word *"involve",* according to the *Shorter Oxford Dictionary,* means "to enwrap in anything, to enfold or envelop; to contain or imply". **(CIT v. Surat Art Silk Cloth Manufacturers' Assn., (1980) 2 SCC 31).** It is stated, in the **Advanced Law Lexicon, P Ramanatha Aiyer 3rd Edition, 2005, Book 2, Pg 2455,** that the primary significance of the word *"involve"* is "to roll up or envelop; and it also means to comprise, to contain, to include by rational or logical construction.

The words *'in regard to',* occurring in a statute, must be given the interpretation justified by the context in which they occur. These words, ordinarily, mean 'for' or 'for the purpose of'. **(M.A. Jaleel v. State of Mysore, AIR 1961 Mys 210).** The word *"connected"* means intimately connected or connected in a manner so as to be unable to act independently. **(Kashi Nath Misra v. University of Allahabad, 1965 SCC OnLine All 416).** The connection, contemplated by the words *"connected with*", must be real and proximate, not far-fetched or problematical. **(Rex v. Basudev, 1949 SCC OnLine FC 26).** In **STRONG & CO., OF ROMSEY, LIMITED APPELLANTS AND WOODIFIELD (SURVEYOR OF TAXES) RESPONDENT., [1906] A.C.448,** it has been held that the words "connected with" are used in the sense that they are really incidental to the subject of the provision itself, and not if they are mainly incidental to some other subject other than what the provision relates to.

By use of the words *'in regard to',* in Section 79(1)(f), Parliament has made it clear that the disputes, to which a generator is a party to, can be adjudicated by the CERC only 'for the purposes of' clauses (a) to (d) of Section 79(1), and not otherwise. By use of the words "connected with", in Section 79(1)(f), Parliament has stipulated that the dispute should be really incidental or in close proximity to clauses (a) to (d) of Section 79(1). As clauses (b), (c) and (d) of Section 79(1) have no application to the facts of the present case, it is only if the jurisdictional facts disclose that the dispute, in the present case, is inter-twined with clause (a) of Section 79(1), can the CERC then exercise jurisdiction under Section 79(1)(f) to adjudicate the present dispute. In other words, the dispute, which can be adjudicated by the CERC, must be an integral part of clause (a) of Section 79(1), and should be incidental to or in close proximity thereto.

It is only if the CERC had the jurisdiction to regulate the tariff of the Appellant under Section 79(1)(a), could it, in regard to matters connected with the regulation of such tariff, have been entitled to adjudicate such a dispute in which the Appellant is involved. What the 2nd Respondent has sought, by way of the petition filed by them before the CERC, is for adjudication of a dispute regarding interpretation of the tariff notification issued by the Central Govt fixing the rates for supply of electricity from the appellant's atomic power stations. In other words, the dispute raised in the petition filed before the CERC, by the 2nd Respondent herein, is regarding regulation of tariff (fixing the rates) of the Appellant by the Central Government under Section 22(1)(b) of the Atomic Energy Act, and not for adjudication of a dispute regarding regulation of tariff (fixing the price/rates at which electricity should be supplied by the Generator) by the CERC Since the CERC lacks jurisdiction to regulate the tariff, of electricity generated from the Appellant's atomic power stations, any dispute connected with such regulation of tariff cannot be adjudicated by the CERC in the exercise of its jurisdiction under Section 79(1)(f) of the Electricity Act. However, widely Section 79(1)(f) is construed, the dispute must be in regard to matters connected with regulation of tariff under Section 79(1)(a), and not a dispute independent of matters connected with Section 79(1)(a) of the Electricity Act. It is only if the CERC had the authority to regulate tariff for the electricity supplied from atomic power stations could it then have, with regard to and in connection with a dispute relating to such regulation of tariff, exercised its jurisdiction to adjudicate the dispute under Section 79(1)(f).

As the jurisdiction to adjudicate disputes under Section 79(1)(f), involving generating companies, can only be in regard to matters connected with clauses (a) to (d) of Section 79(1), it is only if the CERC is empowered to exercise jurisdiction under Section 79(1)(a) can it then also adjudicate such disputes. In so far as atomic power plants are concerned, the CERC

lacks jurisdiction to regulate tariff under Section 79(1)(a) and, consequently, it cannot adjudicate disputes in regard to matters connected with fixation of rates for and regulation of supply of electricity from atomic power stations in the exercise of its adjudicatory jurisdiction under Section 79(1)(f) of the Electricity Act.

The CERC cannot usurp jurisdiction, which has not been conferred on it by Parliament, under the guise of protecting consumer interest. Parliament has, in its wisdom, chosen not to confer jurisdiction on the CERC to fix tariff (rates) for supply of electricity from atomic power stations. Consequently, the CERC lacks jurisdiction to adjudicate disputes with regard to matters connected with the regulation of tariff of electricity generated from atomic power stations. Permitting the CERC to exercise its adjudicatory powers under Section 79(1)(f), even with respect to fixation of tariff for electricity generated from atomic power stations, would give it the power to sit in judgment over the jurisdiction exercised by the Central Government in fixing the rates for supply of electricity from atomic power stations, which power Parliament has chosen to confer exclusively on the Central Govt, and not on the CERC. The requirement of protecting public interest is adequately safeguarded by Clause (b) of Section 22(1) of the Atomic Energy Act itself, which requires the Central Government to fix the rates only in consultation with the Central Electricity Authority, an expert body which has been conferred wide powers even under the Electricity Act, 2003.

Accepting the submission of the 2nd Respondent that protection of consumer interest would require the CERC to exercise jurisdiction even with respect to fixation of rates for atomic power stations would render Section 22(1)(b) of the 1962 Act redundant for, under the guise of adjudication, the CERC could also undertake a tariff determination exercise for, and regulate the tariff of, such atomic power stations.

As the nexus, between the dispute and clause (a) of Section 79(1), must be real and not remote, and as the CERC lacks jurisdiction to regulate the tariff of the appellant, the CERC must be held to lack jurisdiction to entertain and adjudicate such disputes.

XI. CONDITIONAL EXERCISE OF JURISDICTION BY CERC: IS IT PERMISSIBLE?

A. SUBMISSIONS OF THE APPELLANT:

Sri Sitesh Mukherjee, Learned Senior Counsel appearing on behalf of the Appellant, would submit that the interpretation posited by the respondent, that the jurisdiction of the CERC under Section 79(1)(a) depends on the extent of the authority "actually" exercised by the Central Government under Section 22(1)(a) & (b), is untenable; such an interpretation would lead to perineal conflict between the provisions of Section 79(1)(a) of the Electricity Act and Section 22(1)(a) & (b) of the Atomic Energy Act; such an interpretation would give CERC some sort of residuary jurisdiction to regulate atomic power stations to the extent regulatory power is not exercised by the Central Government under Section 22 of the Atomic Energy Act; and the situation of constant regulatory overlap between CERC and the Central Government, over atomic power plants- their implementation, operation, regulation of rates and supply including commercial contracting (through PPAs), would lead to a continuous uncertainty which Parliament could never have intended.

B. SUBMISSIONS OF THE RESPONDENT:

Sri M.G, Ramachandran, Learned Senior Counsel appearing on behalf of the 2nd Respondent, would submit that Section 79(1)(a) of the 2003 Act cannot be said to be inapplicable to Nuclear Power Stations owned and controlled by the Central Government, except that, notwithstanding Section

79(1)(a), the Central Government can exercise powers under Section 22 of the 1962 Act to fix the tariff and regulate supply from Nuclear Power Stations; under the scheme, objective and purpose of the 1962 Act, the Central Government has retained the above power in the context of generation and supply of power from Nuclear Power Stations namely in regard to activities till the electron generated is injected into the grid i.e. activities within the Nuclear Power Station or input goods/services for generation, and not activities after injection of power into the grid and, in particular, adjudication of disputes which have no bearing on the generation and supply.

Sri M.G, Ramachandran, Learned Senior Counsel, would further submit that the scope of Section 79(1)(a) of the 2003 Act is wider than the scope of Section 22(1) of the 1962 Act (Refer: Decision in **BRPL case** ie Judgement in Appeal 94 and 95 of 2012 dated 04.09.2012); the word "tariff" as used in Section 79(1)(a) is wider than "rates" under Section 22 (**AP Transco v Sai Renewable (2011) 11 SCC 34**); the Appellant-NPCIL has referred to the words *"regulate the supply"* used in Section 22; the term "regulate" should be interpreted contextually in the light of the intent of the statute (**BSNL v. TRAI: (2014) 3 SCC 222** inter alia citing **K Ramanathan**]; the intent of the 1962 Act is not to completely oust the jurisdiction of Electricity Statutes; this is also clear from the fact that transmission is to be excluded from regulation under Section 22(1); even NPCIL admits to being bound by the Electricity Laws relating to transmission/grid connectivity etc; at the time of the 1962 Act, transmission was considered part of supply (Section 3 of the 1910 Act); further, in **Tata Power Company Ltd v. Reliance Energy Ltd (2009) 16 SCC 659,** it was recognized that transmission would come within the purview of supply; in the said judgment, the term "Supply" in Section 23 of the 2003 Act was contextually applied, based on a purposive construction, to exclude generation and transmission; in the present case, the words *"regulate the supply"* should, on a purposive construction, be read in a

restricted manner so as not to exclude the regulatory jurisdiction of the CERC under Section 79.

Sri M.G, Ramachandran, Learned Senior Counsel, would also submit that “Regulation” may involve matters where there is no reason for the Central Government, under the 1962 Act, to interfere as there may be no impact on matters for exercising such authority; if there was a necessity to interfere, in a great deal of matters, the tariff notifications issued by the Central Government under Section 22(1) would be much more elaborate and detailed; the Central Government, in the case of Atomic Energy plants, has not entered into such issues as are being dealt with under the 2003 Act; matters such as payment security mechanism to be established by the procurers, rebate, delayed payment surcharge, recovery through PRAAPTI portal, Grid Code, dispute resolution mechanism, other than those requiring details of price fixation etc, have nothing to do with the scheme, objective and purpose of requiring the Central Government to determine under the authority of Section 22(1) of the 1962 Act; obviously and rightly, the Tariff Notifications of the Central Government have not dealt with such commercial and adjudicatory matters, and there will be no inconsistency if such matters are addressed under the 2003 Act; the Central Government, in the exercise of its power under Section 22, has not prohibited NPCIL to go for arbitration, proceed with recovery through PRAAPTI Portal, or to comply with the Grid Code; thus it is clearly recognized that regulation of supply under Section 22(1)(b) has not been a subject of authority in a complete manner, excluding the 2003 Act.

C. JUDGEMENTS UNDER THIS HEAD:

1. In **BSES Rajdhani Power Limited v. Delhi Electricity Regulatory Commission and Anr. case (**Judgement in Appeal 94 and 95 of 2012 dated 04.09.2012), this Tribunal held that Section 79 (1) (a) provides

for the functions of the Central Commission to regulate the tariff of the Generating Companies owned or controlled by the Central Commission like the NTPC; the terms uses is “regulate” and not merely the determination of tariff; Sections 61 and 79 deal with the Terms and Conditions of the tariff and not merely with the tariff; in other words, the Terms and Conditions would necessarily include all the terms related to tariff; accordingly, the billing, the payment, the consequences of delay in the payment by way of surcharge, rebate for payment within a specified period, termination or suspension of supply, payment security mechanism etc., include the terms and conditions of supply; the Central Commission has not only the power to notify the regulations with reference to the terms and conditions of tariff but also to implement such Regulations in all respects; Section 79(1)(f) of the Electricity Act, 2003 provides for the adjudication of disputes involving a generating company or a transmission licensee in matters connected with clauses (a) to (d) of Section 79; thus, anything involving a generating station covered under clauses (a) and (b) as to the generation and supply of electricity will be a matter governed by Section 79 (1) (f) of the Electricity Act.

2. In **AP Transco v Sai Renewable (2011) 11 SCC 34,** the Supreme Court held that, under the Electricity Act, 2003 “tariff” has neither been defined nor explained in any of the provisions of the Act; Explanation (*b*) to Section 26 of the Reform Act, 1998 states what is meant by “tariff”; this provision states that “tariff” means a schedule of standard price or charges or specified services which are applicable to all such specified services provided to the type or types of customers specified in the “tariff” notification; this is an Explanation to Section 26 which deals with licences, revenues and tariffs; in other words, this Explanation may not be of greater help to the Court in dealing with the case of generating companies; similarly, the expression “purchase price” has neither been defined nor explained in any of the afore-stated Acts; therefore, in the absence of any specific definition in any of these

Acts we will have to depend upon the meaning attached to these expressions under the general law or in common parlance; the expression “tariff” has been explained in *Law Lexicon With Legal Maxims, Latin Terms And Words & Phrases* (2nd Edn., 1997) as “determination, ascertainment, a table of rates of export and import duties, in which sense the word has been adopted in English and other European languages and as defined by the law dictionaries the word ‘tariff’ is a cartel of commerce; a book of rates; a table or catalogue, drawn usually in alphabetical order, containing the names of several kind of merchandise, with the duties or customs to be paid for the same as settled by the authority or agreed between the several princes and States that hold commerce together.”; it has also been explained as a schedule, system, or scheme of duties imposed by the Government of a country upon goods imported or exported; published volume of rate schedules and general terms and conditions under which a product or service will be supplied; a document approved by the responsible regulatory agency listing the terms and conditions including a schedule of prices, under which utility services will be provided.

The Supreme Court further observed that the expression “purchase price” has to be given its limited meaning i.e. the price paid for purchasing goods and in the context of the present case, price at which generated electricity will be sold to the specified agencies; the term “purchase price” indicated in the PPAs, as such, would be a matter within the realm of contract but this is subject to the changes which are contractually and/or even statutorily permissible; purchase price ultimately would form part of the tariff, as tariff relatable to a licensee or a consumer would have essentially taken into account, the purchase price; and the purchase price may not include tariff but tariff would always or is expected to include purchase price.

3. In **BSNL v. TRAI: (2014) 3 SCC 222,** the Supreme Court held that the terms “regulate” and “regulation” have been interpreted in large number of judgments; in **V.S. Rice & Oil Mills v. State of A.P. [AIR 1964 SC 1781]**, the Supreme Court had held that the word regulate is wide enough to confer power on the State to regulate either by increasing the rate or decreasing the rate, the test being what is it that is necessary or expedient to be done to maintain, increase, or secure supply of the essential articles in question and to arrange for its equitable distribution and its availability at fair prices; the power to regulate can be exercised for ensuring the payment of a fair price; in **State of T.N. v. Hind Stone [(1981) 2 SCC 205] ,** the Supreme Court held that the word “regulate” must be interpreted to include “prohibition” within its fold; in **G.K. Krishnan v. State of T.N. [(1975) 1 SCC 375],** it was held that the word “regulation” has no fixed connotation; Its meaning differs according to the nature of the thing to which it is applied.’; in modern statutes concerned as they are with economic and social activities, ‘regulation’ must, of necessity, receive a wide interpretation; in **K. Ramanathan v. State of T.N., (1985) 2 SCC 116,** the Supreme Court held that the word ‘regulate’ is difficult to define as having any precise meaning; it is a word of broad import, having a broad meaning, and is very comprehensive in scope; there is a diversity of opinion as to its meaning and its application to a particular state of facts, some courts giving to the term a somewhat restricted, and others giving to it a liberal, construction; the different shades of meaning are brought out in *Corpus Juris Secundum*, Vol. 76 at p. 611: ‘“Regulate” is variously defined as meaning to adjust; to adjust, order, or govern by rule, method, or established mode; to adjust or control by rule, method, or established mode, or governing principles or laws; to govern; to govern by rule; to govern by, or subject to, certain rules or restrictions; to govern or direct according to rule; to control, govern, or direct by rule or regulations; “Regulate” is also defined as meaning to direct; to direct by rule or restriction; to direct or manage

according to certain standards, laws, or rules; to rule; to conduct; to fix or establish; to restrain; to restrict.'(See also *Webster's Third New International Dictionary*, Vol. 2, p. 1913 and *Shorter Oxford Dictionary*, Vol. 2, 3rd Edn., p. 1784); the power to regulate carries with it full power over the thing subject to regulation and in absence of restrictive words, the power must be regarded as plenary over the entire subject; it implies the power to rule, direct and control, and involves the adoption of a rule or guiding principle to be followed, or the making of a rule with respect to the subject to be regulated; the power to regulate implies the power to check and may imply the power to prohibit under certain circumstances, as where the best or only efficacious regulation consists of suppression; the word 'regulation' cannot have any inflexible meaning as to exclude 'prohibition'; it has different shades of meaning and must take its colour from the context in which it is used having regard to the purpose and object of the legislation, and the Court must necessarily keep in view the mischief which the legislature seeks to remedy; the question essentially is one of degree; and it is impossible to fix any definite point at which 'regulation' ends and 'prohibition' begins; and, in **Jiyajeerao Cotton Mills Ltd. v. M.P. Electricity Board [1989 Supp (2) SCC 52]** , the Supreme Court held that the Court while interpreting the expression "regulate" must necessarily keep in view the object to be achieved and the mischief sought to be remedied.

4. In **Tata Power Company Ltd v. Reliance Energy Ltd (2009) 16 SCC 659,** the Supreme Court held that Transmission of electrical energy does not come within the purview of Section 23; trading therein also does not per se come within the purview thereof; it has to be construed harmoniously with other powers; had the power of the Commission to issue directions in regard to supply of electrical energy was so pervasive, Section 23 could have been appropriately worded. It could have been placed in an appropriate chapter and not in the chapter dealing with licensing; there was also no

necessity to bring out transmission of electricity from the purview thereof as the same would also come within the purview of supply of electricity; if transmission of electricity can be kept outside the purview of directions by the Commission, there is no reason why generation thereof would not be; and they were of the opinion that Section 23 of the 2003 Act does not contemplate issuance of any direction by the Commission.

D. ANALYSIS:

It is only if jurisdiction is statutorily conferred, can the jurisdiction, so conferred, be exercised. Conferment of power can only be by and under a Statute. Since the jurisdiction to fix rates for, and regulate, supply of electricity from atomic power stations, is conferred by Parliament exclusively on the Central Government, it matters little whether or not the Central Government has exercised such a power. Since the Central Government has exclusive jurisdiction in this regard, it is impermissible for the CERC to exercise jurisdiction merely because the Central Government has chosen not to exercise such jurisdiction, and to refrain from exercising the power whenever the Central Government chooses to exercise it. Since such power has been explicitly conferred on the Central Government under Section 22(1)(b) of the Atomic Energy Act, it is impermissible for the Central Commission to exercise such a power irrespective of whether or not the Central Government has chosen to exercise the power conferred on it, since exercise of jurisdiction follows its conferment. Fixation of rates, for supply of electricity from atomic power stations, is beyond the jurisdiction of the CERC in view of Section 22(1)(b) of the Atomic Energy Act read with Section 173 of the Electricity Act, and the CERC cannot exercise jurisdiction depending on whether or not the Central Government chooses to exercise the power conferred on it.

Parliament has, in its wisdom, chosen not to confer concurrent jurisdiction on the Central Government and the CERC by inserting a non-obstante clause both in Section 22(1) and Section 28 of the 1962 Act, Parliament has indicated its intention to confer exclusive jurisdiction, with respect to fixation of rates for supply of electricity from atomic power stations, on the Central Government, and not concurrently on the CERC. It is impermissible for the CERC, therefore, to entertain or adjudicate disputes which are connected with the regulation of tariff of the Appellant i.e. with respect to fixation of rates/price at which electricity, generated from the atomic power stations of the appellant, should be supplied.

We find force in the submission, urged on behalf of the Appellant, that the CERC has not been conferred residuary jurisdiction to regulate the tariff of atomic power stations in situations where regulatory power is not exercised by the Central Government under Section 22 of 1962 Act, for such constant overlap would only result in continuous uncertainty. We must express our inability to agree with the submission, urged on behalf of the Respondent, that the scope of Section 79(1)(a) of the 2003 Act is wider than the scope of Section 22(1) of the 1962 Act in as much as the power conferred on the Central Government under Section 22(1)(b) is not only to fix the rates for, but also to regulate, supply of electricity from atomic power stations. We find no merit in the submission, urged on behalf of the Respondent, that the word “tariff”, used in Section 79(1)(a) of the Electricity Act, is wider than the word “rates” used in Section 22(1)(b) of the Atomic Energy Act or that the words “regulate supply” in Section 22(1)(b) of the 1962 Act. should be read more restrictively than the words “regulate tariff” in Section 79(1)(a) of the 2003 Act. The power conferred on the CERC is only to regulate tariff which, as noted hereinabove, is similar to the power conferred on the Central Govt under Section 22(1)(b) to fix rates for supply of electricity from atomic power stations. Section 22(1)(b) gives the Central Govt power, in addition thereto,

to also regulate supply of electricity from atomic power stations. It does appear, therefore, that the power conferred on the Central Govt under Section 22(1)(b) of the Atomic Energy Act is wider than the power conferred on the CERC under Section 79(1)(a) of the Electricity Act.

In this context it is relevant to note that disclosure of information contained in any document, drawing, photograph, plan, model etc. can be restricted under Section 18(1) by the Central Government. Restrictions are also placed under Section 18(2) on persons who have knowledge of restricted information. This also goes to show that, unlike other generating companies owned and controlled by the Central Government, atomic power stations are treated as a separate category; and fixation of rates, for electricity supplied from atomic power stations, is made immune from either regulatory or adjudicatory intervention by the CERC. It is un-necessary for us to delve on whether the power conferred on the Central Government is confined only till the electricity generated is injected into the grid in as much as fixation of rates, for electricity generated from atomic power stations, is evidently an activity which is prior, in point of time, to power being injected into the Grid. Likewise, the distinction sought to be made between the word "rate" used in Section 22(1) of the 1962 Act and the word "tariff" used in Section 79(1)(a) of the Electricity Act, 2003 matters little, since Section 22(1)(b) not only confers authority on the Central Government to fix rates for supply of electricity from atomic power stations, but also to regulate supply of electricity from atomic power stations. Fixation of rates for, and to regulate, supply of electricity from atomic power stations are both matters which fall within the exclusive jurisdiction of the Central Government and, in these specific areas, the jurisdiction of the CERC is ousted. Since we are not concerned in the present appeal with a dispute relating to transmission, it is wholly un-necessary for us to examine the contentions urged on behalf of the 2nd Respondent in this regard. Likewise, the present dispute does not relate

either to payment security mechanism, or delayed payment surcharge or recovery through the Praapti portal etc., and we may not be justified in expressing any opinion on academic issues unconnected with the present lis.

The intendment of the 1962 Act is not to render the Electricity Act, 2003 inapplicable to the Appellant Company in its entirety for, if such were to be the intention, then Section 184 would have included not only Ministries of Departments of the Central Government dealing with atomic energy, but also companies owned and controlled by the Central Government dealing with atomic energy. It is only to the extent of inconsistency between the Electricity Act, 2003 and the Atomic Energy Act, 1962, would the latter Act prevail, and in areas where there is no inconsistency or overlap, both the Acts can operate.

XII. PROVISION IN THE PPA FOR ARBITRATION: ITS EFFECT:

A. SUBMISSIONS URGED ON BEHALF OF THE 2ND RESPONDENT:

Sri M.G, Ramachandran, Learned Senior Counsel appearing on behalf of the 2nd Respondent, would submit that, with regard to the claim of arbitration, the issue to be decided is only whether the CERC has jurisdiction; if Regulatory Commissions (CERC or SERC) under the 2003 Act have jurisdiction, then as per **GUVNL v. Essar Power Limited (2008) 4 SCC 755**, the dispute is not arbitrable by virtue of interpretation of the 2003 Act vis-à-vis the Arbitration Act; it is the case of GUVNL that, when the same dispute is not arbitrable in the context of other generating companies, there is no reason why it is arbitrable in the context of NPCIL; neither the 1962 Act nor the Tariff Notifications make any provision in regard to adjudication of any dispute between nuclear power stations, and the procurer of power from the

said stations, and no forum for such adjudication has either been prescribed or prohibited; NPCIL itself claims that the disputes are arbitrable; and thus, clearly, there is no issue or bar on disputes involving NPCIL being adjudicated by or under any provisions of the 1962 Act or any notification issued thereunder.

B. ANALYSIS:

As noted hereinabove, Clause 12.0 of the subject PPA related to Arbitration. Clause 12.1 stipulated that the parties agreed to attempt to resolve all disputes by entering into good faith discussions to resolve the disputes at a chief engineer level; in the event the respective Parties were unable to reach an amicable settlement, the said disputes shall be referred to internal committee comprising of two senior level representatives from each party.

Clause 12.2 provided that, if the Parties were unable to resolve any dispute in accordance with Clause 12.1 above within 30 days, all such disputes shall be settled exclusively and finally by arbitration following the procedure laid down herein, and the rules provided in the Arbitration and Conciliation Act, 1996; accordingly, on a specific written request of the aggrieved party, all disputes shall be referred to a sole arbitrator/ arbitrators to be appointed as per the terms of Arbitration and Conciliation Act, 1996, as amended from time to time.

In ***Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd.*, (2008) 4 SCC 755,** on which reliance is placed on behalf of the 2nd Respondent, the Supreme Court held that Sections 174 and 175 of the Electricity Act, 2003 could be read harmoniously by holding that when there is any express or implied conflict, between the provisions of the Electricity Act, 2003 and any other Act, then the provisions of the Electricity Act, 2003 will prevail, but when

there is no conflict, express or implied, both the Acts are to be read together; in the present case, there is an implied conflict between Section 86(1)(*f*) of the Electricity Act, 2003 and Section 11 of the Arbitration and Conciliation Act, 1996 since, under Section 86(1)(*f*), the dispute between licensees and generating companies is to be decided by the State Commission or the arbitrator nominated by it, whereas under Section 11 of the Arbitration and Conciliation Act, 1996, the court can refer such disputes to an arbitrator appointed by it; on harmonious construction of the provisions of the Electricity Act, 2003 and the Arbitration and Conciliation Act, 1996 it was clear that, whenever there is a dispute between a licensee and the generating companies, only the State Commission or the Central Commission (as the case may be) or arbitrator (or arbitrators) nominated by it can resolve such a dispute, whereas all other disputes (unless there is some other provision in the Electricity Act, 2003) would be decided in accordance with Section 11 of the Arbitration and Conciliation Act, 1996; and, except for Section 11, all other provisions of the Arbitration and Conciliation Act, 1996 will apply to arbitrations under Section 86(1)(*f*) of the Electricity Act, 2003 (unless there is a conflicting provision in the Electricity Act, 2003, in which case such provision will prevail).

The Supreme Court further held that all disputes, and not merely those pertaining to matters referred to in Clauses (*a*) to (*e*) and (*g*) to (*k*) in Section 86(1), between the licensee and generating companies can only be resolved by the Commission or an arbitrator appointed by it; the Electricity Act, 2003 will prevail over Section 11 of the Arbitration and Conciliation Act, 1996 only with regard to the authority which can adjudicate or arbitrate disputes; however, as regards the procedure to be followed by the State Commission (or the arbitrator nominated by it) and other matters related to arbitration (other than appointment of the arbitrator) the Arbitration and Conciliation Act, 1996 will apply (except if there is a conflicting provision in the Act of 2003);

Section 86(1)(*f*) is only restricted to the authority which is to adjudicate or arbitrate between licensees and generating companies; and the procedural and other matters relating to such proceedings will of course be governed by the Arbitration and Conciliation Act, 1996, unless there is a conflicting provision in the Electricity Act.

All that the Supreme Court has held, in **GUVNL vs. Essar Power Limited: (2008) 4 SCC 755,** is that, the provisions of the Electricity Act, 2003 would prevail over any provisions inconsistent therewith in the Arbitration and Conciliation Act 1996, in view of Section 174 of the Electricity Act; and, since reference of disputes to arbitration is governed by Section 86(1)(f) of the Electricity Act, 2003, an application under Section 11 of the Arbitration and Conciliation Act, 1996, for appointment of an Arbitrator for resolution of disputes which fall within the jurisdiction of the State Electricity Regulatory Commission, is not maintainable.

As noted hereinabove, in the present case, it is Section 173 which applies and not Section 174 of the Electricity Act and consequently, in case of any inconsistency between the 1962 Act and the 2003 Act, it is the former Act which would prevail in view of Section 173. As the CERC lacks jurisdiction to adjudicate disputes relating to fixation of rates for supply of electricity by and regulation of supply of electricity from the Appellant's atomic power stations, and in as much as the PPA executed between the parties provide for resolution of disputes by arbitration, the remedy of having the disputes resolved through arbitration cannot be said to be barred.

Section 76 of the Electricity (Supply) Act, 1948 related to arbitration. Since the 1948 Act was repealed by Section 185 of the Electricity Act, 2003, in so far as the provisions of the Electricity Act, 2003 applies, the power to refer disputes to arbitration would be available only with the Appropriate Commission. As the CERC lacks jurisdiction under Section 79(1)(a) to

regulate the tariff for electricity supplied from the Appellant's atomic power stations, any dispute, regarding fixation of rates by the Central Government under Section 22(1)(b) of the Atomic Energy Act, 1962, cannot be adjudicated by the CERC under Section 79(1)(f) of the Electricity Act, 2003. As the adjudicatory jurisdiction, under Section 79(1)(f) of the Electricity Act, cannot be exercised by the CERC with respect to any such dispute, the remedy, if any available, to a party to such a dispute, for redressal of its legal grievances, would only be in terms of either the contract executed inter-se between the parties, or under Section 9 of the Civil Procedure Code by filing a civil suit before the Civil Court of competent jurisdiction, for it It is settled law that, if the dispute does not relate to enforcement of any right under a Statute, the remedy lies only in the Civil Court and, in the absence of any special remedy governed by the Statute, it is only the remedy of a civil suit which is available to be invoked by a person aggrieved. (**Premier Automobiles Limited vs. K. S.Wadhke: (1976) 1 SCC 496).**

As noted hereinabove, the CERC lacks jurisdiction to adjudicate disputes in regard to matters connected with fixation of rates for electricity supplied from atomic power stations and, consequently, it would not be justified in entertaining any such dispute raised before it by the 2nd Respondent. While it is no doubt true that the PPA provides for resolution of disputes through arbitration and, in the absence of a statutory remedy for resolution of disputes being provided in the Atomic Energy Act, the provisions of Section 9 of the Civil Procedure Code may also apply, it is un-necessary for us to go into these aspects, as the dispute in the present appeal is confined only to the question whether or not the CERC has jurisdiction to entertain a dispute relating to and connected with the fixation of rates for electricity supplied from atomic power stations.

XIII. CONCLUSION:

Since the CERC lacks jurisdiction, under Section 79(1)(f) of the Electricity Act, to adjudicate the present dispute, the impugned order, whereby CERC held that it could entertain and adjudicate the present dispute, is without jurisdiction. The impugned order must be, and is accordingly, set aside. It is, however, made clear that the order now passed by us shall not disable the 2nd Respondent from availing such other remedies as are available to them in law for redressal of the grievance which it had raised by way of the petition filed before the CERC.

The Appeal is allowed and all the IAs therein stand disposed of.

Pronounced in the open court on this the **27th day of March, 2025**.

(Seema Gupta)	(Justice Ramesh Ranganathan)
Technical Member	Chairperson

REPORTABLE / ~~NON-REPORTABLE~~

tpd