2026 INSC 464

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4652 OF 2024

INDIAN RAILWAYS ...APPELLANT(S)

VERSUS

WEST BENGAL STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED & ORS. …RESPONDENT(S)

WITH

CIVIL APPEAL NOS. 4653-4659 OF 2024

J U D G M E N T

SATISH CHANDRA SHARMA, J.

1. This is a batch of statutory Appeals under Section 125 of the Electricity Act, 2003 (for short, hereinafter referred to as, "***The Electricity Act***") assailing the common judgment and order dated 12.02.2024 passed by the Appellate Tribunal for Electricity at New Delhi, ("**APTEL**"), in Appeal Nos. 276/2015, 320/2018, 114/2020, 73/2021, 213/2021, 170/2019, 343/2019 and 133/2020.

2. By the said judgment, APTEL has set aside the Order dated 05.11.2015 passed by the Central Electricity Regulatory Commission ("**CERC**") in Petition No. 197/MP/2015 along with connected appeals arising from Orders passed by other State Electricity Regulatory Commissions ("**SERCs**").

3. The proceedings before APTEL were contested by multiple Distribution Companies (**DISCOMS**) and SERCs, including the West Bengal State Electricity Distribution Company Ltd. (**WBSEDCL**), Odisha Electricity Regulatory Commission (**OERC**), Kerala State Electricity Regulatory Commission (**KSERC**), Madhya Pradesh Electricity Regulatory Commission (**MPERC**), Rajasthan Electricity Regulatory Commission (**RERC**), Maharashtra Electricity Regulatory Commission (**MERC**), Haryana Electricity Regulation Commission (**HERC**), Punjab State Electricity Regulatory Commission (**PSERC**), as against the Indian Railways, the Appellant herein.

4. The controversy pertained to common issues: *(i) whether Indian Railways qualifies as a deemed distribution licensee (DDL) under the third proviso to Section 14 of the Electricity Act; and (ii) if so, whether it remains liable to pay Cross-Subsidy Surcharge to different distribution licensees for availing open access in terms of Section 42 of the Electricity Act.* Five out of the eight State Electricity Regulatory Commission (**SERCs**) had held that the

Indian Railways is not a DDL ("**DDL**") in terms of the third proviso to Section 14 of the Electricity Act.

Factual matrix

5. The facts in the case are undisputed and are succinctly mentioned as under:

5.1. The Appellant, Indian Railways *vide* Letter dated 17.03.2015 to the Maharashtra State Electricity Transmission Co. Ltd. ("**MSETCL**") sought grant of connectivity for procuring 100 MW power from Gujarat Urja Vikas Nigam ("**GUVNL**") for 16 traction substations of the Central and Western railways through inter-state open access in terms of the Electricity Act. MSETCL refused to grant connectivity and directed the Indian Railways to obtain an appropriate order from the competent commission regarding its status as a DDL.

5.2. The Appellant approached the CERC by way of a petition, *inter-alia* seeking declaration that the Indian Railways is entitled to the grant of open access for the power to be procured from the Generating Station through the Inter-State Transmission System ("**ISTS**") of Central Transmission Utility and Intra-State Transmission System of the States (*viz. Maharashtra, Gujarat, Jharkhand and West Bengal*), to its facilities, i.e., traction points and network of the Indian Railways, and direct that the Indian Railways in its capacity as an authorised entity to distribute and

supply electricity is a separate participating entity, like any other State entity notified by the Commission for the purposes of scheduling and dispatch of electricity. The petition was filed against the backdrop of the Letter No-25/19/2004-R&R dated 06.05.2014 issued by the Ministry of Power, Government of India[1] which clarified that the Appellant i.e. the Indian Railways is a deemed licensee under the third proviso to Section 14 of the Electricity Act and for all purposes thereunder. It was urged by the Appellant that:

> *(a) Firstly,* it is a DDL under Section 14 of Electricity Act, and that being a Department of the Ministry of Railways, Government of India, the Appellant qualifies as the "Appropriate Government" and therefore has the deemed licensee status under the third proviso to Section 14 of the Electricity Act. Reliance was placed on Letter dated 06.05.2014 issued by the Ministry of Power, Government of India that clarified that "*Railways is a deemed licensee under the third proviso to Section 14 of the Electricity Act*". It contended that the deeming fiction in the proviso confers upon it, the status of a DDL and by virtue thereof shall be subject to benefits and/or privileges

[1] *Letter No-25/19/2004-R&R dated 06.05.2014 issued by the Ministry of Power, Government of India*

emanating therefrom. It was their unilateral assertion that as regards the grant of open access, a DDL shall be granted non-discriminatory open access without the obligation to pay Cross-Subsidy Surcharge and the Additional Surcharge under the Electricity Act; and

(b) *Secondly*, it operates the rail systems in India as per the provisions of the Railways Act ("**Railways Act**"), which constitutes a complete code in itself and overrides the provisions of the Electricity Act by virtue of the *non-obstante* provision in Section 11 of the Railways Act and Section 173 of the Electricity Act. Therefore, its operations are independent of its status under the Electricity Act, and it is entitled to distribute and supply electricity under Section 11 of the Railways Act.

5.3. The West Bengal State Electricity Distribution Company Ltd. ("**WBSEDCL"**) impleaded as a party before the CERC *vide* Order dated 12.10.2015, challenged the maintainability of the Petition filed by the Appellant on the grounds that, since no application for open access had been filed in the respective States, and that the process for the grant of inter-state open access as per the extant regulations had not been necessarily complied with, therefore, the question of dispute with respect to the open access did not arise.

5.4. The CERC *vide* Order dated 05.11.2015 observed that Section 11(g) of the Railways Act authorizes the Railway Administration "*to erect, operate or repair any electric traction equipment, power supply and distribution installation in connection with the working of the railway*." It held that the use of terms "power supply and distribution installations" indicates that the Railway Administration is entrusted with the function of establishing and operating a distribution network for supply of power to the various railway installations. Placing reliance on the judgment of ***General Manager, Northern Railways rep. by Union of India v. Chairman, Uttar Pradesh State Electricity Board & Ors.***[2] and the Letter dated 06.05.2014 issued by the Ministry of Power, it further held that Indian Railways was authorised under the Railways Act to undertake transmission and distribution activities with relation to its operations. Accordingly, the CERC held:

> (a) Indian Railways/Appellant is an authorised entity under the Railways Act for carrying out transmission and distribution activities for ensuring supply of power in connection with the working of the railways, without having to obtain a license from the appropriate Commission.

[2] [2012] 3 SCC 329

(b) Being an authorized entity, it shall be entitled for grant of open access in connection with the working of the Railways, as per provisions applicable to a distribution licensee.

(c) It is a DDL under the third proviso to Section 14 of Act and is bound by the terms and conditions for a licensee as specified under Section 16. Hence, no separate declaration to this effect was required.

5.5. Aggrieved by the observations of the CERC, the WBSEDCL filed Appeal no. 276/2015 before the Appellate Tribunal. Subsequently, seven appeals as enlisted hereunder were filed by the Appellant and relevant distribution companies (**DISCOMS**), challenging Orders by the respective SERCs on the identical issue. The following Appeals were heard together by the APTEL:

WBSEDCL v. CERC & Ors; Appeal No. 276/2015	CERC Order dated 05.11.2025 Held: Indian Railways is a DDL under the third proviso to Section 14 of the Electricity Act.
Indian Railways v. MERC & Ors.; Appeal No. 343/2019	MERC Order dated: 05.04.2019. Held: Indian Railways is a DDL.
Indian Railways v. Kerala State Electricity Board Limited & Ors.; Appeal No. 73 of 2021	KSERC Order dated: 12.12.2019. Held: Indian Railways is a DDL and was directed to pay charges as applicable for open access.

Punjab State Power Corporation Ltd v. PSERC & Ors.; Appeal No. 320 of 2018	PSERC Order dated: 28.02.2018. Held: Indian Railways is not a DDL.
Indian Railways v. Odhisa Power Transmission Corporation Ltd & Ors; Appeal No. 114 of 2020	OERC Order dated: 25.02.2020. Held: Indian Railways is not a DDL.
Indian Railways v. MP Poorv Kshetra Vidyut Vitran Company Ltd & Ors.; Appeal No. 213 of 2012	MPERC order dated: 05.05.2021. Held: Indian Railways is not a DDL.
Indian Railways v. Jaipur Vidyut Vitaran Nigam Ltd & Ors.; Appeal No. 170 of 2019	RERC Order dated: 23.04.2019. Held: Indian Railways is not a DDL.
Indian Railways v. Dakshin Haryana BijliVitran Nigam Ltd & Ors.; Appeal No. 133 of 2020	HERC Order dated: 17.06.2020. Held: Indian Railways is not a DDL.

5.6. At the outset, APTEL passed an interim Order dated 16.12.2015 in favour of the Appellant, whilst *prima facie* observing that:

(a) By virtue of Section 11 of the Railways Act, the Appellant appears to have full authority to undertake distribution and supply of electricity. Section 11 cannot be given a restricted meaning in light of the decision in *Northern Railways (supra);*

(b) The power to erect, maintain and operate traction equipment, lines, power supply and

distribution installation under the said provision necessarily implies the use of such equipment to distribute and supply electricity;

(c) The decision in ***Sesa Sterlite Limited v. Orissa Electricity Regulatory Commission & Ors.***[3], which laid an emphasis upon a distribution licensee to operate and maintain a distribution system and supply power to consumers, is not applicable to the Appellant herein as Section 173 of the Electricity Act makes it clear that in case of inconsistencies in the Railways Act, the latter shall prevail over the Electricity Act;

(d) The relief sought by the Railways was for the grant of open access through the Inter-State Transmission Network of the Central Transmission Utility, to which it is entitled on a non-discriminatory basis. For this reason, the Petition before the CERC was maintainable despite the absence of any independent applications to State Transmission Utilities or distribution licensees. The distribution licensees of various States were also held to be not necessary or proper parties to the said petition.

[3] [2014] 8 SCC 444

5.7. *Vide* its Final Judgment and Order ("**Impugned Judgment**") dated 12.02.2024, however, APTEL rejected the claim of the Appellant to be recognised as a deemed distribution licensee within the ambit of the third proviso to Section 14 of the Electricity Act. It further held that since the entire electricity received by the Railways is consumed for its own use and its constituents, it is liable to pay Cross-Subsidy Surcharge and Additional Surcharge to the respective distribution licenses as any other consumer under Section 42 of the Electricity Act. The following are the key observations by APTEL:

(a) Appellant cannot be held to be a DDL, insofar as it does not distribute electricity. A distribution licensee defined under Section 2(17) of the Electricity Act must (i) operate and maintain a distribution system, and (ii) supply electricity to consumers in its area of supply. The distribution installation and electric traction of the Appellant is not a distribution system within Section 2(19) of the Electricity Act, insofar as a distribution system must connect the delivery point on a transmission line to the point of connection or installation of the consumer. Locomotives, signal equipment, and station facilities are constituents of the Appellant itself and do not qualify as consumers within the meaning of Section 2(15) of the Electricity Act. Thus, the Appellant itself is a consumer. It receives electricity at its traction sub-stations (**TSSs**) from distribution licensees, supply authorities, and then conveys it

to locomotives, stations and other installations within its operational domain. Conveyance of electricity within this internal network is for the own consumption of the Appellant and does not constitute distribution.

(b) The Clarificatory Letter dated 06.05.2014 issued by the Ministry of Power, relied upon by the Appellant is an administrative directive under Section 107 of the Electricity Act, and is not mandatory in nature.

(c) The statutory powers granted to the Railways administration under Section 11 of the Railways Act are confined to the construction and maintenance of railway works for running railway operations. Mere establishment of distribution installation does not authorise the Appellant to qualify as a DDL and supply electricity to consumers.

(d) In light of the decision in ***Sesa Sterlite (supra)***, even if the Appellant was treated as a DDL or transmission licensee and seeks to avail open access, it is still liable to pay Cross-Subsidy Surcharge and additional surcharge as the electricity procured by it, is for its own consumption and operation.

(e) The contents of the 31st Report of the Parliamentary Standing Committee on Energy dated 19.12.2002 reflect that the Appellant had sought exemption from the obligations of distribution licensees under Sections 12, 42, and 47 of the

Electricity Act. The request by the Appellant seeking such an exemption itself demonstrates that it was well aware that Section 2(31)(c) read with Section 11(g) & (h) of the Railways Act did not absolve it from obtaining a distribution license and/or discharging the obligations of a distribution licensee under the Electricity Act.

6. Aggrieved, the Appellant has approached this Court challenging the legality and correctness of the Impugned Judgement of APTEL dated 12.02.2024. The captioned Appeal was accompanied by IA no. 80269/2024 seeking stay of the Judgment under challenge passed by APTEL. *Vide* Order dated 06.05.2024, this Court had directed that subject to the final adjudication of the present Appeals, the Appellant shall not be required to pay either the Cross-Subsidy Surcharge or Additional Surcharge to the distribution licensees, and it was made clear that the open access shall not be denied to the Appellant for that reason.

Submissions on behalf of Railways

7. Mr. M.G. Ramachandran, learned Senior Counsel for the Appellant challenged the observations of APTEL as unsustainable in law for the following reasons:

(a) It is the case of the Appellant that it is vested with the statutory authority under Section 11 read with Section 2(31)(c) of the Railways Act, to lay down an electrical system, including a transmission and distribution system

within its area of operation. The authority under the Railways Act expressly includes executing all necessary works, including laying down an electric distribution system over the length and breadth of the country, and extends to the activities of conveying electricity necessary for use at different places, points, and purposes for the operations of the railways, which cannot be interfered with by the operation of the Electricity Act.

(b) Section 11 of the Railways Act begins with a *non-obstante clause*, and the statutory power thereunder is absolute in nature. Placing reliance on the decision of ***Northern Railways (supra),*** it is contended that APTEL erred in distinguishing that the authority under Section 11 was confined only to transmission and not distribution. The Appellant submits that ***Northern Railways (supra)*** authoritatively laid down that the act of constructing its transmission lines, and drawing power from external power sources, falls within the statutory domain of the Railways Act.

(c) Section 11 has an overriding effect, and several High Courts across the country have observed that the Railways Act consolidates the law and is not a mere regulatory statute.[4] It is contended that enactments such as the Environment

[4] *Ganv Bhavancho Ekvott v. South Western Railways [2022] SCC Online Bom 7184*

Protection Act have no application over works undertaken by the Railways in exercise of the powers under Section 11 of the Railways Act. Learned Senior Counsel submits that APTEL made a fatal error in construing Section 11 and other allied provisions of the Railways Act, with reference to the Act.

(d) Reliance was passionately placed on ***Ganv Bhavancho Ekvott v. South Western Railways***[5] whereby the High Court had held that the Southern Railway (SWR) and the Rail Vikas Nigam Limited (RVL) were not under any statutory compulsion to obtain environmental clearances or any building permission from authorities and agencies under the other legislations. It was held that the exemption for railway administration to execute the works of construction and maintenance of railway is conferred by the *non-obstante* clause which has an overriding effect on all other laws except for the Railways Act[6] and the legislation referred to in Section 11 itself. The Appellant herein submitted that power under section 11 is thus unfettered and unqualified, and the status of the Appellant under the Electricity Act is inconsequential, insofar as the authority to distribute electricity is

[5] *Ganv Bhavancho Ekvott (supra)*
[6] *Union of India (Western Railway) vs MCGM [2017] SCC Online Bom 9424; Goa Foundation & Anr. vs Konkan Railway Corporation & Ors. [AIR] 1992 Bom 471; Village Panchayat of Velsao vs Ministry of Railways [2022 SCC Online Bom 3526]*

independently conferred under the Railways Act. The *non-obstante* clause under Section 11 of the Railways Act implies that the powers under the provision are exclusive. Section 173 of the Electricity Act further settles the dispute by providing that, in the event of any inconsistencies, only the Railways Act shall prevail.

(e) The Railways Act is a complete code in itself. The statute expressly authorises the Appellant to lay down a "distribution installation" for the operation of railways. By their very nature, such installations are intended for the purpose of distribution, thereby implying that the Appellant is statutorily empowered to distribute electricity. Since this power flows directly from the parent statute, no separate authorization or license under any other law is required.

(f) Without prejudice, the Appellant is a DDL as per the third proviso to Section 14 of the Electricity Act. Being an entity of the Central Government, the Appellant is an Appropriate Government within the definition of Section 2(5) and is therefore exempt from obtaining a license in terms of the third proviso to Section 14 of the Electricity Act. Further, electric traction equipment, power supply systems, and distribution installation used for the purposes of, or in connection with a railway, fall within the statutory definition of railways under Section 2(31) of the Railways Act. Thus,

distribution of electricity is an inherent function of the Appellant.

(g) Although the term "distribution" is not defined under the Railways Act or under the Electricity Act, in the ordinary and natural sense, the term "distribute" means spreading of goods anywhere by whatever means, and in the context of the present case, it would mean any activity that involves the conveyance of electricity from one point to another for use at different locations. Accordingly, any activity involving the conveyance of electricity from one source to another would fall within the ambit of "distribution." It is argued that in the context of railways, the conveyance of electricity from traction and non-traction substations through wires and associated electrical systems to points of end use does not merely amount to transmission or consumption in its area of operation, but constitutes "distribution of electricity" within the meaning and scope of the Electricity Act.

(h) Section 2(70) that defines "supply" as the sale of electricity, is not a licensed activity under the Electricity Act. Under the previous regime of the Indian Electricity Act, 1910, its Section 3 specifically provided for the grant of a license to a person for the supply of energy within a specified area, along with the laying of electric supply lines for the conveyance and transmission of energy.

(i) The statutory scheme of the Electricity Act consciously departed from this position and distinguishes the two terms of "distribution" and "supply". The present statutory framework under the Electricity Act reflects a deliberate legislative shift by excluding "supply of electricity" as a licensed activity, while retaining the licensing requirement for "distribution", thereby maintaining a clear distinction between the two activities. It is submitted that the distinction has been overlooked by APTEL, as it held that the Appellant cannot claim the status of a DDL under Section 14 of the Act, as it is not in the business of selling electricity to consumers, and is only an end user of electricity. Being an entity of the Central Government, it is an Appropriate Government and has the status of a DDL as per the third proviso to Section 14 of the Electricity Act. Section 2(5)(a) of the Electricity Act contains no restriction that the reference to the Central Government should be only with the references to the activities of other agencies, supervised or regulated by the Central Government.

8. Ms. Aishwarya Bhati, learned ASG appearing for the Union of India, submitted that:

(a) The Indian Railways is integrated with the Central Government, and qualified as the "Appropriate Government" under Section 2(5)(a)(ii), of insofar as:

(i) Railways is a union subject in terms of the Seventh Schedule of the Constitution of India;

(ii) Rail Budget is part of the General Budget, and its receipts and expenditure form part of the Annual Financial Statement under Article 11;

(iii) Revenue generated by the Railways is credited to the Consolidated Fund of India, confirming its status as a departmentally run undertaking of the Union.

(b) The Government of India (Allocation of Business), Rules, 1961 and the Government of India (Transaction of Business) Rules, 1961 further reflect the sovereign status of the Ministries of the Government of India. It is argued that the fiscal identity of the Ministry of Railways is inseparable from the Union of India and the national exchequer. The status of the Appellant flows from the sovereign executive power of the Union under Article 73 of the Constitution.

9. Based on the aforesaid submissions, learned senior counsels urged this Court to allow the Appeal and set aside the Impugned Judgment of APTEL, and further grant non-discriminatory open access to the Appellant, recognizing its status as a DDL in terms of the third proviso to Section 14 of the Electricity Act.

Submissions on behalf of Respondents

10. Per *contra*, it has been asserted by the Respondents' DISCOMS that the Indian Railways is not a DDL under the Electricity Act. It is submitted that the Appellant is misconstruing Section 11 read with Section 2(31) of the Railways Act to contend that it is authorized to distribute electricity. As per the said contention, the statutory framework under the Railways Act, only empowers the Appellant to consume electricity for its own use, and does not extend to the supply of electricity to consumer.

11. The DISCOMS were represented by learned Senior Counsels Mr. C.A. Sundaram, Mr. Vaidyanathan, Mr. Maninder Singh, Mr. S. Poovayya, Mr. Parag Tripathi, appearing on behalf of their respective Respondents. The present submissions are common to all the Respondents herein and are being advanced collectively under a single head for the sake of brevity and convenience.

12. The submissions advanced on behalf of the Respondent-DISCOMS collectively and individually are summarized as follows:

(a) Mr. Vaidyanathan, learned Senior Counsel for WBSEDCL submitted that distribution is inextricably linked with the supply by way of sale of electricity to consumers within an area of supply, and that the levy of Cross-Subsidy Surcharge and Additional Surcharge is a statutory

consequence of a consumer availing open access from a source other than the distribution licensee within its area.

(b) Section 11(g) of the Railways Act is a provision appearing under the Chapter titled "Construction and Maintenance of Works". It merely authorizes the Appellant to erect, operate, maintain or repair any electric traction equipment, power supply and distribution installation in connection with the working of the railways. The non-obstante provision therein would only be restricted to clauses (a) to (h). Furthermore, there is no inconsistency between Sections 14 and 42 of the Electricity Act and Section 11 of the Railways Act in terms of Sections 173 of the Electricity Act. Thus, the Electricity Act shall apply.

(c) Mr. S. Poovayya, learned Senior Counsel for various TP Odisha DISCOMS, submitted that a system that does not ultimately connect to the installation of a consumer is not a distribution system at all under the Electricity Act as Section 2(19) of the Electricity Act defines "distribution system" as under:

> ***"distribution system"*** *means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers;*

(d) He submitted that the definition itself indicates that a distribution system is intended for connection to the installation of the consumer or last-mile connectivity. In the context of Railways, only if the system of wires and facilities is connected to the end point of transmission lines or a generator with the point of connection to a consumer, will it fall within the specific definition of a distribution system under the Electricity Act.

(e) Adverting to the activities of the Indian Railways, he submitted that an installation laid down for the functioning of the Railways, which does not ultimately connect to the premises of a consumer cannot be considered a consumer under the Electricity Act. For this reason alone, the Railways' internal network and conveyance of electricity within its area of operation, falls outside the scope of a distribution system set up for the supply of electricity.

(f) He further submitted that "conveyance" of electricity does not constitute "distribution" of electricity. Even if the sub-station serves as the delivery point or the final point of connection, it is only an additional point of internal distribution installation, and the power procured by the Railways continues to be consumed solely by itself.

(g) Mr. Maninder Singh, learned Senior Counsel appearing on behalf of KSEBL submitted that the Petition O.P. No.

31/2019 filed by the Appellant before the KSERC had sought the grant of open access to avail power supply from a generating station in Bihar or any other source to the Railway traction substations. It is argued that the nature of relief sought by the Appellant was itself for its own consumption, and not for the further distribution or supply to consumers. Thus, the Appellant is a consumer as it procures electricity for its own end-use and operations. Hence, KSERC *vide* Order dated 12.12.2019 had directed that the DISCOM/KSEBL shall issue a No-Objection Certificate in favour of the Appellant to avail open access subject to the payment of charges applicable to consumers.

(h) Mr. Singh further argued that the Appellant is not an Appropriate Government in terms of the third proviso to Section 14 as the definition is context dependent and does not fulfil the statutory scheme of the Electricity Act. In particular, Section 2(5)(ii) provides twin conditions that for the Central Government to be the Appropriate Government there must be any Inter-State generation, transmission, trading or sale with respect to the Railways. None of the four activities are undertaken by the Railways. Accordingly, it is not the Appropriate Government.

(i) He further submitted that the electricity provided by the Railways within its premises to its vendors, contractors or

agencies is not supply of electricity, as "supply" is defined under Section 2(70) to mean sale of electricity to consumers. In the present case, the Railways admittedly does not sell the electricity to consumers, nor does it have any consumers. The reliance on ***Northern Railways (supra)*** is misplaced as the judgment dealt with the power of the Railways to construct its own transmission lines, emphasising the non-obstante provision in Section 11. It is nowhere held that while consuming the electricity supplied directly by a Generating Company, it would be treated as engaged in distribution of electricity. In fact, the issue of distribution was never considered or dealt with.

(j) Mr. Singh, also brought our attention to the Draft Electricity Amendment Bill, 2025, and placed reliance on ***Board of Control for Cricket in India v. Kochi Cricket Pvt. Ltd. & Ors.***[7] to assert that the proposed bill to amend a provision demonstrates that the provision cannot be interpreted in terms of the proposed amendment which has not been passed, and buttress the submission of the Appellant that the exemption in the proposed Electricity Amendment Bill, 2025 shall be applicable to the Appellant even before the enactment.

[7] [2018] 6 SCC 287

(k) Mr. Parag Tripathi, learned Senior Counsel appearing on behalf of PSPCL, while re-iterating the submission by other Senior Counsels specifically brought our attention to the Handbook on Power Supply Installation in Electric Traction issued by the Indian Railway Engineering Institute which provided that though the power supply and distribution system is maintained by the Appellant, power is availed by the Railways from the 'supply authority' either as a consumer of a distribution licensee or through a bilateral transaction *via* open access. This factum alone establishes that the Appellant is a consumer under the Electricity Act.

(l) Mr. C.A. Sundaram, learned Senior Counsel for SBPDCL reiterating the submissions made by the other Counsels, has further vociferously argued that the Railways is not the Appropriate Government for the purposes of the third proviso to Section 14 of the Electricity Act. He submitted that the mere fact that the Central Government is running the Railways, it will not convert the activity of carrying on of a business into an activity of the Central Government as a sovereign body. It was urged that the "appropriate Government" would necessarily mean the Government in its sovereign capacity and not the Government

running its business and in exercise of its powers vested under Article 298 of the Constitution[8].

(m) Mr. Sundaram further brought our attention to the definition of "railway administration" under section 2(32) of the Railways Act, and that the mere fact that the Central Government oversees the operations of the Railways does not transform the Railways or the railway administration into the Central Government itself. He further urged that the supply of electricity by the Appellant to its entities due to a jural relationship is not supply of electricity.

(n) He further submitted that the proposal of a Draft Electricity Amendment Bill, 2025 seeks to amend Section 61(g) of the Electricity Act insofar as it aims to reduce and eliminate the Cross-Subsidy Surcharge for railways within five years. It is contended that the legislative proposal to amend the existing legal framework and reduce the Cross-Subsidy Surcharge for the Indian Railways, itself denotes that no such provision or privilege exists under the current statute that absolves the Appellant from payment of the Cross-Subsidy Surcharge applicable to any consumer in terms of Section 42 of the Electricity Act.

[8] *Union of India & Anr. v. Sri Ladulal Jain [1963 SCC Online SC 133]*

13. Based on the aforesaid submissions, learned Senior Counsels urged this Court to dismiss the Appeal and uphold the Impugned Judgment of APTEL.

Issues

14. Based on the submissions of the parties, the specific issues which arise for determination are:

(i) *Whether the activities provided under Section 11(g) and (h) of the Railways Act pass muster of "distribution" of electricity, and whether such activities are a necessary pre-requisite to qualify as a DDL under the Act?*

(ii) *Whether the Indian Railways, being an entity of the Central Government, falls within the ambit of "Appropriate Government" under Section 14 of the Act?*

(iii) *Whether the Indian Railways, even if held to be a DDL under the Act, is exempt from the obligation to pay Cross-Subsidy Surcharge or additional surcharge for the grant of non-discriminatory open access as per Section 42 of the Act?*

(iv) *Whether a proposed legislation may be relied upon as an aid to statutory interpretation for addressing gaps in the existing framework, and to give effect to the parliamentary intent to remedy defects thereunder?*

Analysis

Issue (i): *Whether the activities provided under Section 11(g) and (h) of the Railways Act pass muster of "distribution" of electricity, and whether such activities are a necessary pre-requisite to qualify as a DDL under the Act?*

15. Before examining whether the activities of the Appellant fall within the purview of a distribution licensee (or a deemed distribution licensee, as the case may be), it is crucial to examine the statutory scheme of the Electricity Act to understand the framework governing the grant of a license as well as obligations accrued to such licensee.

16. The distribution of electricity under the Electricity Act is subject to a strict licensed framework. Section 2(17) defines "distribution licensee" as a licensee authorised to operate and maintain a distribution system for supplying electricity to consumers in its area of supply. The term "distribution system" is separately defined under Section 2(19) as the system of wires and associated facilities between delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers. A conjoint reading of the two provisions makes it clear that any person or entity seeking the grant of a distribution license under Section 14 of the Electricity Act must mandatorily fulfil the twin requirements- (a) operating and maintaining a distribution system for supply of electricity to

consumers and (b) supplying electricity to consumers within their area of supply.

17. These twin requirements reiterated under Section 42(1) of the Electricity Act and ***Sesa Sterlite (supra)***, mandate that it is the duty of a distribution licensee to develop and maintain a distribution system in his area of supply and to supply electricity in accordance with the Electricity Act. The term "area of supply" defined under Section 2(3) of the Act, means the area within which a distribution licensee is authorised by his license to supply electricity. A bare reading of the provision indicates that the mere operation and maintenance of a distribution system is not the exclusive basis for the grant of a licence for distribution of electricity. Such a system must ultimately supply electricity and connect to the point of connection of a consumer as its end-use.

18. A plain reading of the provisions mentioned hereinabove makes it evident that the obligation of a distribution or a DDL to supply electricity is mandatory in nature, and is a necessary corollary of the interpretation of the current statute. For this reason, the argument raised by the Appellant that 'supply' of electricity is not a licensed activity under the current statutory regime of the Electricity Act and was a feature only under the Indian Electricity Act, 1910, is a semantic issue at best.

19. Be that as it may, the Appellant claims it is a DDL in terms of the third proviso to Section 14 of the Electricity Act. It differentiates

between the two terms “distribute” and “supply”, and asserts that the Railways Act statutorily empowers the Appellant to undertake distribution of electricity. Section 11(g) of the Railways Act authorises the Railway Administration to erect, operate, maintain or repair electric power supply, and distribution in connection with the working of the railway; and Section 11(h) authorises doing all other acts necessary for making, maintaining, altering or repairing and using the railway. Both provisions, empower the Railways to lay, maintain and operate power supply infrastructure for its operations. It is contended by the Appellant that the express use of the term “distribution installation” in Section 11 is equivalent to the term “distribution system” under the Electricity Act and constitutes an independent legislative recognition that the Railways is statutorily empowered to distribute electricity.

20. The submission of the Appellant is that there is no distinction between a “distribution system” under the Electricity Act or a “distribution installation” under the Railways Act. The term “distribution installation” is not defined under either of the statutes, whereas the term “distribution system” has been specifically defined as a system of wires and associated facilities between delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers.

21. Even if we consider that the term “distribution installation” as the term suggests, refers to a distribution or electric infrastructure

authorised to be set up by the Appellant to ensure power supply for railway operations, it cannot be considered akin to a distribution system. The definition of a distribution system is two pronged, it is a system of wires and associated facilities between the delivery points on transmission lines or generating companies, which ultimately terminates at the installation of a consumer or the point of last-mile connectivity. For this very reason, a distribution installation which merely conveys electricity within the integrated railway system, from the overhead equipment to the power locomotives, communication systems, signals and station facilities, for its own consumption and use, and does not translate into sale or supply of electricity to a consumer against consideration, cannot be held to be within the meaning and scope of a distribution system under the Electricity Act.

22. Additionally, a distribution system also extends to a definite and specific area of supply. The term 'area of supply' defined under Section 2(3) of the Electricity Act, refers to the area within which the distribution licensee is authorised by his license to supply electricity. The Appellant has contended that the area of supply under the Electricity Act, would mean the same as the area of operation used under the Railways Act.

23. At the outset, although, the parallels drawn by the Appellant may *prima-facie* seem justiciable, the two terms area of supply and area of operation cannot denote the same meaning. The area of

supply necessarily refers to a designated or authorised area, where a distribution licensee has been granted the exclusive (or non-exclusive) right to supply electricity. As such, the Respondent DISCOMs hold licences granted by their respective State Commissions demarcating precise territorial limits within which they are authorised to distribute electricity.

24. On the other hand, an area of operation refers to the operative dimensions of an entity. In the context of Railways, it would mean the integrated railway system spread across the length and breadth of the country, however only limited to operational use and limit of the railway network. The Appellant's contention that boundaries, fences or gates earmarked by the Central Government under Section 18 of the Railways Act, defines the area of supply for the Appellant is wholly misconceived. To accept this submission of the Appellant would be to hold that the pan-India operational footprint of the Indian Railways, constitutes a single area of supply under the Electricity Act. This is wholly absurd and inconsistent with the scheme of the Act, insofar as the term "area of supply" is clearly defined as a subject of the licensing obligations of a distribution licensee and not an area of operation.

25. Notably, under certain sub-delegated legislations issued by the respective State Commissions, the area of supply is also referred as the area of distribution. In the context that the terms "distribution" and "supply" have been used interchangeably save as otherwise

provided, they refer to the salient act of sale of electricity to a consumer. In context thereof, it appears that the Appellant has taken refuge under the two terms of 'distribution installation' and 'area of operation' under the Railways Act to suggest that it distributes electricity and, hence, is a DDL under the Electricity Act.

26. Furthermore, the submission of the Appellant that the *non-obstante* clause under Section 11 of the Railways shall override the licensing requirements of the Electricity Act, is premature and untenable. It is settled that Section 11 of the Railways Act cannot be given a restrictive meaning, however it cannot be read so expansively as to dispense with the mandatory licensing framework under Section 12 and 14 of the Electricity Act. A *non-obstante* clause operates only in the event of a direct and irreconcilable inconsistency and cannot function as a blanket dispensation from the applicability of a subsequent and special regulatory statutory framework *qua* a specific subject matter. This Court in ***Central Bank of India v. State of Kerala & Ors.***[9] had clearly opined that the mere introduction of a non-obstante clause in the legislation is not sufficient to clothe a provision with an overriding effect, and what must further be established is that the two provisions are so inconsistent that they cannot stand together. The Appellant in the present case has failed to demonstrate that there is a irreconcilable conflict between the Railways Act and the Electricity Act. There is

[9] [2009] 4 SCC 94

neither any provision under the Railways Act that prohibits obtaining a license, nor any provision of the Electricity Act exempts the railways from being a DDL in terms of section 14. The Appellant can exercise their operational powers under section 11, while simultaneously comply with the licensing framework under the Electricity Act. It is a cardinal principle of statutory interpretation that when two statutes are capable of being read harmoniously, the judicial endeavour must be to read them together. [10]

27. We further deem it appropriate to also clarify that the reliance of the Appellant on ***Ganv Bhavancho Ekvott (supra)*** is misconceived. The import and independence of section 11 recognised therein was limited to the exemption to the Railways from procedural permissions including general environmental clearances, and local body legislations. The exemption can in no manner be construed as a blanket immunity from regulatory, procedural and legislative requirements as noticed in the cited decision itself. The judgment is distinguishable both on facts, and on the nature of the conflicting statute, and offers no authority for the proposition that the Appellant is exempted from the regulatory framework under the Electricity Act. Additionally, the authority vested in the Appellant to distribute electricity within its operational domain cannot be said to be unfettered insofar as it has to meet the

[10] Sri Venkataramana Devaru & Ors. v. State of Mysore &Ors. [1957 SCC OnLine SC 138]

fundamental requirements of distribution of electricity, within the meaning and scope of the Electricity Act. Section 11 on the facts and circumstances of the present case, cannot be read as a provision of unlimited sweep, and it is therefore incorrect to contend that Section 11 of the Railways Act operates as an absolute and unrestricted shield guarding the appellant from its obligations.

28. We are also of the considered view that the omission of the words "distribution" or "supply" of electricity in Sections 11(g) and (h) is deliberate and intentional. The legislature while framing these provisions certainly intended to empower the Appellant solely to erect and operate a distribution infrastructure necessary for railway operations. The language clearly confines the purpose of these installations to the operational use of Railways and does not extend any authority to the Appellant to undertake a commercial distribution or supply of electricity, beyond the railway's internal domain.

29. We further agree with the observation of APTEL and the submissions made by the Respondents that the reliance of the Appellant on the decision of ***General Manager, Northern Railways (supra)*** is misplaced. The decision in the said case expressly dealt with the power of the Railways to construct transmission lines for the purpose of its operations, and described the expansive scope of the *non-obstante* clause under Section 11 of the Railways Act. The said decision however, did not construe the scope of Section 11 as

being so expansive that it justifies an act that the Railways is not inherently empowered to do. The erection of transmission lines or distribution lines as argued by the Appellant, cannot bestow upon the Appellant the authorisation to carry out supply of electricity that is procured by it, to third party consumers.

30. At this juncture, we deem it appropriate to also observe that the submission of the Appellant that it is a deemed distribution licensee, lacks any substantial basis. The statutory regime under the Electricity Act regulates the commercial supply of electricity to consumer through a licensed distribution network.

31. The Appellant, operates a closed and self-contained electricity network which is for the purposes of meeting the operational requirements of the railway system, including traction, signalling, stations. It is only when electricity is sold or provided to consumers outside the operational domain of the railway, that the activities undertaken by the Appellant could intersect with the obligation of a distribution licensee.

32. Further, the purpose of a status of a distribution licensee, whether obtained vide an application or is extended to the entity through a deemed fiction, is to supply electricity against consideration. The term ‘consideration’ for distribution licensees with generators would mean tariff, and as consumers payable to licensees would mean additional surcharge/Cross-Subsidy Surcharge. In the present case, the Railways is procuring electricity

from the Respondent DISCOMs in various states for its own use and for consumption to its constituents.

33. The judgment in ***K.C. Ninan v. Kerala State Electricity Board & Ors.***[11] has authoritatively re-iterated that supply of electricity is a primary and defining function of a distribution licensee. The regulatory regime under the Indian Electricity Act, 1910 also posed an obligation on every licensee to supply energy to every person within the area of supply. Hence, the statutory regime/regulatory regime under the Electricity Act has been consistent. Additionally, electricity is a movable good[12] under the Sale of Goods Act, 1930. The charges paid by the consumer to the distribution licensee is essentially the price paid for goods supplied and consumed. The consumption of electricity by a consumer is always effected through equipment or appliances installed within the premises.

34. The tenuous claim of the Appellant is merely based on a thin-iced assertion that being an entity of the Central Government, the deeming fiction of an Appropriate Government, as meant to be under the third proviso to Section 14 of the Electricity Act would *ipso facto* devolve upon them without much effort.

[11] [2023] 14 SCC 431
[12] Commissioner of Sales Tax vs Madhya Pradesh Electricity Board [1961] 1 SCC 200

35. *More-so*, the arguments made by the Appellant are more in the nature of asserting this misplaced notion than being rooted in the conviction that the activities carried out by it pass muster for a distribution license in the first place. Hence, the claim of the Appellant that it is a DDL is not borne from the activities or functions performed by the railways, but is aimed at the recognition of being a distribution licensee under the Act, insofar as it is entitled to non-discriminatory open access from inter-state transmission utilities and other distribution licensees, without the payment of Cross-Subsidy Surcharge or additional surcharge.

36. In light thereof, it is pertinent to reflect on the submissions made by the Appellant whereby it asserts that it is not claiming the right to do any other activity outside the purpose of the Railways operations or unconnected with the workings of the Railways, including the right to supply electricity to third parties beyond the network of Railways or enter into any business or trade of distributing or using the electricity outside its area of operation. This stated position, in fact, answers the controversy, and underscores that the Appellant does not seek to assume the scope of functions associated with a distribution licensee. In effect, the Appellant does not seek to assume, nor does it accept, the role and obligations of a distribution licensee under the Electricity Act, 2003 and instead selectively relies on such status only to the extent it is beneficial.

37. This conduct further substantiates the apprehension of the Respondents that the Appellant's claim to be treated as a DDL is to merely circumvent the obligation of payment of the Cross-Subsidy Surcharge and to evade the corresponding statutory and regulatory obligations *qua* a distribution licensee.

Issue No. (ii) *Whether the Indian Railways, being an entity of the Central Government, falls within the ambit of "Appropriate Government" under section 14 of the Electricity Act, 2003?*

38. The Appellant's claim to be treated as a deemed distribution licensee under the third proviso to Section 14 of the Electricity Act, 2003 hinges upon whether it is squarely covered by the definition of 'Appropriate Government' defined under section 2(5) of the Act, 2003, which reads as under:

> *"(5) Appropriate Government" means-*
>
> *(a) the Central Government-*
>
> *(i) in respect of a generating company wholly or partly owned by it;*
>
> *(ii) in relation to any inter-State generation, transmission, trading or supply of electricity and with respect to any mines, oil-fields, railways, national highways, airports, telegraphs, broadcasting stations and any works of defence, dockyard, nuclear power installations;*
>
> *(iii) in respect of the National Load Despatch Centre and Regional Load Despatch Centre;*

(iv) in relation to any works or electric installation belong to it or under its control;

(b) in any other case, the State Government having jurisdiction under this Act."

39. The Appellant contends that it is entitled to the status of a deemed distribution licensee by operation of law, on the ground that it qualifies as an appropriate Government being an instrumentality of the State under Article 12 of the Constitution. In contrast, the rival contention of the Respondent argues that section 2(5) of the Electricity Act restricts the scope of "Appropriate Government", and that an entity can fall within the statutory domain only if it satisfies the conditions laid down under section 2(5)(a), particularly clause (ii), having regard to the nature and functions of the entity in question.

40. Before we advert to the functional test, a plain reading of section 2(5)(a)(ii) makes it evident that the subject of the definition is the Central Government, and the term "railways" appears only as a relative reference, and a subject-matter that triggers the application of the Central Government. Insofar as the provision does not extend that the Railways itself is the Appropriate Government, it only expands the scope of the term to include the Central Government in matters relating to railways.

41. This distinction at the very outset is critical to the identification of an entity claiming to be clothed with governmental authority. In arguendo, if the term "railways" in section 2(5)(a)(ii) were read as conferring the status of an "Appropriate Government" to the Appellant, the deeming fiction shall extend to all other authorities mentioned in the provision including mines, oil-fields, airports, dockyards and nuclear installations. This clearly does not reflect the legislative intent of this provision. The categories of functionaries mentioned in section 2(5)(a)(ii) merely reflect a class of activities, and not stand-alone entities that can be conferred the status of an "appropriate Government" for the purposes of the statute.

42. It is also a well-settled principle of law that the mere classification of an instrumentality or agency as "State" under Article 12 of the Constitution of India does not automatically render it as an "Appropriate Government". This position was authoritatively settled by this Court in the ***Steel Authority of India Ltd. & Ors. v. National Union Waterfront Workers & Ors.***[13] This Court distilling from its earlier decisions in ***Sukhdev Singh & Ors. v. Bhagatram Sardar Singh Raghuvanshi & Anr.***[14] and ***Ajay Hasia & Ors. v. Khalid Mujib Sehravardi & Ors.***[15], laid down a functional test holding that the determinative criterion is whether the industry

[13] (2001) 7 SCC 1
[14] (1975) 1 SCC 421
[15] (1981) 1 SCC 722

is carried on under the authority of the Central Government, and not merely whether the entity qualifies as "State" under Article 12 of the Constitution. The relevant extract of the judgment reads as under:

> *"38.From the above discussion, it follows that the fact of being an instrumentality of a Central/State Government or being 'State' within the meaning of Article 12 of the Constitution cannot be determinative of the question as to whether an industry carried on by a company/corporation or an instrumentality of the Government is by or under the authority of the Central Government for the purpose of or within the meaning of the definition of 'appropriate Government' in the CLRA Act….Further, the definition of establishment in the CLRA Act takes in it fold purely private undertakings which cannot be brought within the meaning of Article 12 of the Constitution. In such a case, how is 'appropriate Government' determined for the purposes of the CLRA Act or the Industrial Disputes Act? In our view, the test which is determinative is: whether the industry carried on by the establishment in question is under the authority of the Central Government. Obviously, there cannot be one test for one part of the definition of 'establishment' and another test for another part. Thus, it is clear that the criterion is whether an undertaking/instrumentality of the Government and not whether the undertaking is an instrumentality or agency of the Government for purposes of Article 12 of the Constitution, be it of the Central Government or the State Government."*

43. Upon applying the aforesaid test, it is evident that the Appellant operates as a functionary of the Central Government. Although, the mention of 'railways' in Para 38 of the Court in *SAIL (supra)* is cursory and illustrative in nature, the statutory scheme of the Railways Act and the Statement of Objects and Reason thereunder confirm that the entire railway system has become part of the Government of India. The Railway Board constituted under the Act, functions as an extended arm of the Central Government, with the powers delegated to it by the Government itself. It is no doubt that the Central Government has an authoritative control over the Railways.

44. A *fortiori*, the Central Government exercises control over the Appellant insofar as the electric installations comprising traction sub-stations, the overheard catenary systems, high voltage transmission lines, the 25 kV and 1.5 kV alternating current systems etc., are owned by the Central Government. The construction and maintenance work of these equipments are carried out from public funds appropriated by the Parliament from the Consolidated Fund of India.

45. It is thus evident that the nominal, pervasive, administrative as well as fiscal control of the Appellant lies in the clutches of the Central Government. The submission of the Respondents to draw a distinction between the 'Central Government' and 'railway administration' is therefore untenable, as such a distinction does not

dilute the overarching control exercised by the Central Government and borders on technicality.

46. We agree with the observation made by APTEL that the submission urged on behalf of the Respondent merits rejection. However, we cannot assert enough that even if the Appellant is held as falling within the ambit of Appropriate Government, under section 2(5)(a), the benefit of being treated as a deemed distribution licensee cannot be extended to it. The scheme of the Electricity Act makes it clear that a distribution licensee is under the statutory obligation to supply electricity to its consumers within its area of supply.

47. Notably, the Appellant's electrical infrastructure including traction sub-stations, overhead catenary systems, and 25kV alternating current systems, exists entirely for captive self-consumption for traction purposes and not for supply to third party consumers. The case of the Appellant cannot be held in equivalence with the Military Engineering Services (MES) which is a recognized deemed distribution licensee and equally operates under the authority of the Central Government as much as the Appellant. The distinction between the two entities is apparent such that MES supplies electricity to consumers which include residents, personnel and establishment within the defined cantonment and defense areas, unlike the Appellant. As a matter of fact, it is the own admission on behalf of the Appellant that it is not claiming the right to give supply

or provide electricity to third parties unconnected with the working of the railways or outside the area of operation of the Railways or enter into any business or trade of distributing electricity or using electricity outside its area of operations.

48. Therefore, the deemed status attached to the MES is not by virtue of it being a government entity, but it is a governmental entity that actually performs the function of distribution within the meaning and scope of the Electricity Act. It is apparent on the face of record that the Appellant has no such analogous relationship with any consumer, and its claim to the deemed distribution licensee status fails at the very threshold.

49. At this juncture, we deem it appropriate to clarify that the Letters dated 06.05.2014 and 03.04.2023 issued by the Ministry of Power, are not authoritative in nature, and carry no binding legal force. They are no more than executive communications that neither amend nor override the statutory provisions under the Act, and certainly cannot be relied upon to confer or negate jurisdiction. It is rather unfortunate that the Appellant has pursued this *lis* for over 10 years based solely on the tenuous claim that, as a Central Government entity, it automatically qualifies as the "Appropriate Government" under the third proviso to section 14 of the Electricity Act. This argument is more a reliance on a misplaced notion than a demonstration that the Appellant's activities satisfy the criteria for a distribution licensee.

50. For the reasons mentioned hereinabove and for the limited purpose of this analysis, the Appellant is regarded as falling within the ambit of "Appropriate Government" under section 2(5)(a) of the Act, but the observation carries no determinative consequence for the relief sought by the Appellant. Nominal virtue, however firmly established, cannot substitute for the substantive functions that the statute demands.

Issue No. (iii) *Whether the Indian Railways, even if held to be a deemed distribution licensee under the Act, is exempt from the obligation to pay Cross-Subsidy Surcharge or Additional Surcharge for the grant of non-discriminatory open access as per section 42 of the Act?*

51. Section 42 of the Electricity Act mandates the distribution licensees to develop and maintain an efficient, co-ordinated and economical distribution system in the area of supply, and to supply electricity to any consumer, who demands it. To foster competition and consumer choice, the Electricity Act enables consumers to procure electricity either from the distribution licensee in their area of supply or from alternative sources through open access. Section 2(47) defines "open access" as follows:

> *"(47) "open access" means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with*

the regulations specified by the Appropriate Commission"

52. Where any consumer avails electricity through open access, two distinct surcharges arise under the Electricity Act. Section 42(2) levies a Cross-Subsidy Surcharge to meet the requirements of the current level of cross-subsidy within the area of supply, while section 42(4) levies an Additional Surcharge to meet the fixed costs of the distribution licensee arising out of its obligation to supply.

53. Distribution licensees are mandated, as a matter of social policy, to supply electricity at concessional tariffs to certain categories of consumers, such as agricultural users and low-income households. These subsidised tariffs ensure equitable access to electricity, which is essential to the very existence of citizens, as held in ***Anuj Kumar Agarwal v. Registrar of Cooperative Societies & Ors.***[16]

54. Cross-Subsidy Surcharge is levied on open-access consumers to off-set the revenue shortfall experienced by distribution licensees in providing these subsidised tariffs. Thereby, the financial burden is equitably shared across different consumer categories instead of burdening the existing consumer base. Additional Surcharge operates on a distinct footing and is levied to mitigate the potential financial losses incurred by distribution licensees due to stranded

[16] *2024 SCC OnLine Del 5087*

costs. When high-volume, high-revenue consumers such as the Indian Railways choose to procure electricity through open-access, distribution licensees may be left with underutilised infrastructure and power purchase commitments, leading to financial strain. The National Tariff Policy, 2016 specifically provides that Additional Surcharge becomes applicable only upon the conclusive demonstration that a licensee's existing power purchase obligations in the capacity of a licensee, has generated precisely such stranded costs for the distribution licensees in whose areas its traction installations are located.

55. Thus, the Cross-Subsidy Surcharge and the Additional Surcharge are critical for maintaining the financial health and operational capacity of the distribution sector, enabling it to invest in infrastructure upgrades, ensure reliable service, and continue to meet its obligations to all consumer categories.

56. The rationale underlying Cross-Subsidy Surcharge and Additional Surcharge has been authoritatively articulated in *Sesa Sterlite* as follows:

> *"(3) Cross-Subsidy Surcharge (CSS)—Its rationale*
>
> *27. The issue of open access surcharge is very crucial and implementation of the provision of open access depends on judicious determination of surcharge by the State Commissions. There are two aspects to the concept of surcharge — one, the cross-subsidy surcharge i.e. the surcharge meant to take care of the requirements of current levels of*

cross-subsidy, and the other, the additional surcharge to meet the fixed cost of the distribution licensee arising out of his obligation to supply. The presumption, normally is that generally the bulk consumers would avail of open access, who also pay at relatively higher rates. As such, their exit would necessarily have adverse effect on the finances of the existing licensee, primarily on two counts — one, on its ability to cross-subsidise the vulnerable sections of society and the other, in terms of recovery of the fixed cost such licensee might have incurred as part of his obligation to supply electricity to that consumer on demand (stranded costs). The mechanism of surcharge is meant to compensate the licensee for both these aspects.

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

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

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

(b) obligation to supply."

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

reason of the consumer taking supply from someone other than such distribution licensee."

57. The legal chain that flows from the foregoing is direct and clear. As established in Issues (i) and (ii), the Appellant is a consumer within the meaning and scope of section 2(15) of the Electricity Act. It purchases electricity exclusively for its own use and supplies it to no one but its own constituents. Thus, like any other consumer, Cross-Subsidy Surcharge and Additional Surcharge are applicable to the Appellant.

58. *In arguendo,* even if the Railways is treated as a deemed distribution licensee (DDL), its procurement of electricity through open access exclusively for its own consumption renders it a consumer for that purpose. *Sesa Sterlite* adopted a functionality test and held that an entity which has been accorded the status of a DDL, but which utilises the entire quantum of electricity for its own consumption and does not have any customers, could not be a distribution licensee under the Electricity Act and would itself be a consumer. Thus, a functionality test was adopted, and the operations of a distribution licensee as a consumer were recognised. Accordingly, such an entity, like the Railways in the present case, would be liable to pay Cross-Subsidy Surcharge and Additional Surcharge if it procures electricity through open access.

59. The Appellant cannot escape this conclusion by inverting the argument and contending that as a deemed distribution licensee, it is free from any payment obligations applicable to any consumer. In this respect, the Appellant is claiming a privileged treatment as compared to other consumers, which is impermissible in law.

Issue No. (iv) *Whether a proposed legislation may be relied upon as an aid to statutory interpretation for addressing gaps in the existing framework, and to give effect to the parliamentary intent to remedy defects thereunder?*

60. The use of legislative history as an aid to statutory construction is no longer *res integra*[17]. This Court, in a catena of decisions has held that in understanding the legislative intent and scheme of a statute, recourse to legislative material is permissible. In the present case, reliance is placed on a legislative proposal which seeks to substantially alter the statutory scheme of the Electricity Act. We are conscious that a legislative proposal does not have a binding force on the interpretation of the existing statute, but a careful perusal of the proposed enactment may aid in resolving apparent incongruencies and identifying perceived gaps in the existing framework.

61. In the present case, the legislative history of the Electricity Act reflects that previous proposals in 2014 and 2018 had sought to

[17] *Kalpana Mehta vs Union of India [2018] 7 SCC 1*

confer the statutory status of a licensee in favour of the Appellant, seeking to save it from the binding statutory obligations of paying Cross-Subsidy Surcharge and additional surcharge. Insofar as, Section 9 of the Electricity (Amendment) Bill, 2014 sought to clarify that the Railways shall be a DDL by adding the following proviso after the present third proviso to Section 14:

> *"Provided also that the Railways as defined under the Indian Railways Act and the Metro Rail Corporation established under the Metro Railways (Operation and Maintenance) Act, 2002 be deemed to be a licensee under this Act, and shall not be required to obtain a licence under this Act"*

Be that as it may, this provision of the 2014 Amendment Bill was rejected and not passed by the Parliament, showing the legislative intent that the Railways does not constitute a licensee in terms of Section 14 of the Electricity Act.

62. The Respondents' DISCOMS brought our attention to the Fourth Report of the Standing Committee on Energy dated 07.05.2015, which recorded the unequivocal admission by the Appellant that it is not a DDL under the scheme of the Electricity Act. APTEL had also placed reliance on the 31st Report of the Parliamentary Standing Committee, which recorded that the Appellant had sought exemption from the obligations of distribution licensees under Section 12, 42, and 47 of the Electricity Act. The request for exemption from the applicability of the Electricity Act

was neither acceded to by the Parliamentary Standing Committee nor accepted by the Parliament.

63. The latest Draft Electricity (Amendment) Bill, 2025, particularly seeks to amend Section 61(g) of the existing statutory regime under the Act, to progressively reduce and ultimately eliminate the Cross-Subsidy Surcharge and Additional Surcharge for the Appellant.. The proposed provision under Section 12 reads as under:

> *"(g) that the tariff reflects the cost of supply of electricity and also, progressively reduces cross-subsidies in the manner specified by the Appropriate Commission;*
>
> *Provided that cross-subsidy with respect to Railways, Metro Railways and Manufacturing Enterprises shall be fully eliminated within five years from the date of commencement of the Electricity (Amendment) Act, 2025."*

64. The Explanatory Note on the proposed Amendment Bill makes a specific mention that the Indian Railways and metro/monorail systems are currently burdened by cross-subsidies and surcharges, and proposes to exempt the Appellant from cross-subsidy within five years. A bare reading of the Note confirms that under the extant regime, the Appellant is treated like any other consumer. It reads as under:

> *"2.2. Reducing Logistics and Mass Transit Cost: Electricity tariffs for Indian Railways and Metro/Mono Rail systems are currently burdened by*

cross-subsidies and surcharges, which increase costs of transporting goods and people. These higher costs ultimately raise the price of goods and services across the economy. To alleviate this burden, it is proposed to exempt Manufacturing Enterprises, Railways, and Metro Railways from cross-subsidy within five years. This measure will help lower transport and logistics costs, improve efficiency, and enhance India's competitiveness in global markets."

Further, the Comparative Statement to the Draft Electricity (Amendment) Bill, 2025, in contrast with the current Act as it stands, states the following:

"13. Cross Subsidy and Surcharges on manufacturing and clean/public transport: State Commissions impose substantial cross-subsidies and surcharges on industrial consumers. Industrial electricity tariffs in India remain considerably higher than those in developed countries such as the United States and emerging economies like China, Vietnam, and Indonesia. This practice significantly undermines the global competitiveness of Indian manufacturers by inflating electricity costs. Elevated electricity costs not only hinder industrial growth but also stunt employment generation, and deter foreign investments. Simultaneously, there is a need to create significant number of job opportunities in the manufacturing sector. Micro, Small, and Medium Enterprises (MSMEs) have a high job creation potential in the manufacturing sector. Reducing industrial electricity tariffs can significantly accelerate the growth of the manufacturing sector

MSMEs and enable absorption of the large agricultural workforce. Access to affordable power would lower production costs, enhance competitiveness of Indian manufactured goods, and facilitate their scale-up from micro to small or medium enterprises. This, in turn, would strengthen their contribution to employment generation and gross value added (GVA), supporting the national goal of achieving "Viksit Bharat @ 2047". Addressing the high industrial tariff handicap is crucial to enhancing India's global industrial competitiveness, and driving economic growth. The logistics cost in India constitutes nearly 14 percent of GDP as opposed to about 8 percent in most major economies. There is a need to reduce this cost in line with the National Logistics Policy and make Indian industry cost competitive. Despite being energy efficient and running on electricity, Indian Railways and Metro/Mono rail systems across the country are subjected to elevated electricity tariffs owing to the imposition of cross-subsidies and surcharges. This does not align with the goal of electrifying the transport sector as part of India's energy transition and increasing the rate of energy efficiency improvement. The higher tariffs result in higher transportation and logistics costs besides discouraging goods and passenger modal shifts. Public transport costs, particularly in urban and semi-urban areas, impact the wage rates and standards of living of working classes. The proposed amendment seeks to address these challenges by exempting Indian Railways, Metro rail and manufacturing industries, from payment of cross-subsidy and surcharges, not later than five years. This reform aligns with the vision of "Viksit

Bharat @ 2047". It will help in fostering industrial expansion, attracting investments, and generating employment opportunities. It reduces the transport costs for urban commuters and promotes sustainable economic growth."

65. On a *prima-facie* view itself, the nature of the proposed amendment under the Draft Electricity (Amendment) Bill, 2025 is remedial in nature. The language used is clear and simple, to address the existing burden of Cross-Subsidy Surcharge payable by the Appellant by exempting them from payment of cross-subsidy and surcharges, within the next five years. By this very objective, an inference can be made that there was a gap or deficiency that needed to be filled by legislative action and the shift in the statutory regime would not have been warranted if the existing statute already provided for such exemption.

66. As already dealt with hereinabove, it is clear that the Appellant is a consumer and that it procures electricity for its own consumption and use. In terms of the Act, open access shall be granted by the distribution licensee subject to the payment of cross-subsidy and surcharges as decided by the appropriate Commission.

67. This Court, in ***Vodafone International Holdings BV v. Union of India & Anr.***[18], had held that a legislative proposal introducing a specific provision or exemption is indicative that such provision,

[18] (2012) 6 SCC 757

exemption, or privilege was not covered by the existing framework. In the present case as well, the very fact that such legislative actions to exempt the Appellant from payment of Cross-Subsidy Surcharges have been proposed to be taken, indicate a coherent, consistent, and current legislative intent about the absence of such exemption under the prevailing statute. This absence further implies that even by adopting a purposive construction to the prevailing statute, such an exemption cannot be read into the statute.

68. It was urged by the Appellant that since the proposed amendment grants an exemption from payment of Cross-Subsidy Surcharge and AS, the same should be read into a liberal and purposive interpretation in its favour. Otherwise, an interpretation to impose Cross-Subsidy Surcharge and Additional Surcharge under the current regime would render the proposed amendment otiose. We are unable to accept this approach.

69. It is a settled canon of statutory interpretation that a legislative *casus omissus* cannot be supplied by a judicial interpretative process. Be that as it may, the proposed legislative framework in the present case explicates that the legislative intent of the Parliament under the Electricity Act was not to exempt the Appellant from the obligations under the Electricity Act. *More so,* it puts the controversy to rest as the Appellant, procuring electricity for its own use and consumption, is an industrial consumer and for availing

open access, it is liable to pay Cross-Subsidy Surcharge and additional surcharge, like any other consumer.

70. Although we are conscious that the proposed legislation is only a draft amendment bill which has not been enacted by the Parliament, and lacks any force of law as of today, reliance thereupon has been crucial to determine the legislative intent of the Government. Further, the Appellant stands bound by the principle of estoppel. Being an entity of the Central Government, the Appellant cannot be permitted to approbate and reprobate or blow hot and cold, by advancing contentions contrary to the position adopted under the proposed statutory scheme.

CONCLUSION

71. It is clear, for the reasons elaborated hereinabove, that the Appellant does not pass muster as a deemed distribution licensee under the Act, and it can in no circumstances escape the liability from payment of cross-subsidy surcharge and additional surcharge as a consumer of electricity through open access.

72. The Respondents are accordingly directed to compute and issue a detailed calculation of the Cross-Subsidy Surcharge and Additional Surcharge amounts outstanding qua the Appellant, disaggregated by the area of supply and the period of availing such open access. The Appellant shall be afforded a reasonable opportunity to respond to the said calculations, and be granted time

to furnish and respond to such outstanding amount at the discretion of the respective distribution licensees/companies, subject to the judicial scrutiny of the Appropriate Commission. Ordered accordingly.

73. Consequently, all the Appeals are dismissed and the common judgment and order dated 12.02.2024 passed by the Appellate Tribunal for Electricity at New Delhi ("**APTEL**") in Appeal Nos. 276/2015, 320/2018, 114/2020, 73/2021, 213/2021, 170/2019, 343/2019 and 133/2020 is upheld. Pending application(s), if any, shall also stand disposed of.

74. No order as to costs.

....……J.
[DIPANKAR DATTA]

....……J.
[SATISH CHANDRA SHARMA]

New Delhi
May 08, 2026.