M/S Sundew Properties Limited vs Telangana State Electricity ... on 17 May, 2024

Author: Dipankar Datta

Bench: Dipankar Datta

REPOR

2024 INSC 439

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8978/2019

M/S SUNDEW PROPERTIES LIMITED …APPELL

VERSUS

TELANGANA STATE ELECTRICITY REGULATORY

COMMISSION & ANR. …RESPONDEN

JUDGMENT

DIPANKAR DATTA, J.

THE CHALLENGE

1. This is a statutory appeal before us under section 125 of the Indian Electricity Act, 20031. It registers a challenge to the judgment and order dated 27th September, 2019 passed by the Appellate Tribunal for Electricity2 Electricity Act APTEL dismissing an appeal carried under section 111 of the Electricity Act by the appellant from the judgment and order dated 15th February, 2016 passed by the Telangana State Electricity Regulatory Commission3. Consequently, the impugned judgment and order of the TSERC was upheld. BRIEF FACTS

2. The basic facts giving rise to this appeal are not disputed. A brief overview of the facts and the trajectory of proceedings, relevant for a decision on the present appeal, are set out hereunder:

> a) The appellant was notified by the Ministry of Commerce & Industry (Department of Commerce), Government of India4 as a 'Developer', in terms of sections 3 and 4 of the Special Economic Zones Act, 20055, to establish a sector-specific Special Economic Zone6 unit for Information Technology/Information Technology Enabled Services sector in Madhapur, Ranga Reddy District, Hyderabad, in the former State of Andhra Pradesh.
>
> b) MoCI, vide a Notification bearing No.SO 528(E) dated 3rd March, 20107 introduced a proviso to section 14(b) of the Electricity Act. The proviso accords upon the developer of a SEZ, the status of a deemed distribution licensee under the provisions of the Electricity Act.

TSERC MoCI SEZ Act SEZ 2010 Notification

c) Pursuant to the 2010 Notification, the appellant filed an application8 before the erstwhile Andhra Pradesh Electricity Regulatory Commission seeking identification as a deemed distribution licensee, in terms of the proviso to section 14(b) of the Electricity Act read with regulation 13 and Schedule-2 of the Andhra Pradesh Electricity Regulatory Commission (Distribution Licence) Regulations, 20139 and section 49 of the SEZ Act. Upon the Andhra Pradesh Reorganisation Act, 2014 coming into force, the application was transferred to the TSERC.

d) By its aforesaid judgment and order dated 15th February, 2016, the TSERC identified and accorded the status of a deemed licensee to the appellant. However, this grant of status was made conditional upon the appellant satisfying the requirements stipulated in rule 3 of the Distribution of Electricity Licence (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 200510, compliance whereof was mandatory per regulation 12 [which stipulates that an applicant for grant of distribution licence shall, in addition to regulations 4 to 11, comply with the 2005 Rules] read with regulation 49 of the 2013 Regulations [which stipulates that all the general conditions applicable to a 2013 Regulations 2005 Rules distribution licensee are also equally applicable to a deemed licensee]. The appellant was, therefore, directed to infuse an additional capital of Rs. 26.90 crore as equity share capital, contributed by its promoters, into its power distribution business via account payee cheques by 31st March, 2016. The relevant part of the judgment and order of the TSERC is extracted hereunder:

> "16. [...] On a close reading of the provisions of section 14, we are of the view that the 'provisos' to section 14 are not applicable to a deemed licensee. The status of a deemed licence to a person under Section 14(b) of the Electricity Act, 2003 emanates from the Notification given under Section 49(1) of the SEZ Act to a developer of SEZ provided the deemed Licensee satisfies the other provisions of the Act.
>
> [...]

18. We are of the view that the provisions contained in sub-

section (2), (3), (4), (5) & (6) of Section 15 of the Act are not applicable to a deemed licensee. Moreover, [A.P. Distribution Licence Regulations] contains the Rules relating to procedure for granting of a distribution licensee from Rules 4 to 11 [...] The Rule 13 of the Regulation stipulates that Rules contained in 4 to 11 are not applicable to a deemed licensee and these Rules contain the procedure for granting of a distribution licence to a person. [...]

19. The Rule 13 of the [A.P. Distribution Licence Regulations] stipulates that a deemed licensee shall make an application in the form specified in Schedule - 2 to the Commission to get identified as a deemed licensee and rules 4 to 11 in the Regulations are not applicable to a deemed licensee, Thus, the Rule 13 [...] has excluded the application of Rules laid down from Rules 4 to 11 [...] As observed earlier, the Rules 4 to 11 basically deal with the procedure to be followed by a person for obtaining a licence from the Commission. By implication, Rule 12 is applicable to a deemed licensee also [...]

20. We are not able to appreciate the argument of the petitioner that Rule 12 is not applicable to a deemed licensee. In our view, Rule 49 stipulates that all the general conditions applicable to a distribution licensee are also equally applicable to a deemed licensee. Thus, in our view, the Rule 12 is applicable to the petitioner.

21. The next issue that arises is whether the petitioner has complied with the provisions of Rule 12? [...] As a stand- alone entity the petitioner does riot fulfil the. conditions laid down in Rule 3 of the Capital Adequacy Rules. However, the Rule 3(2) also stipulates that the net worth of the promoters of the petitioner can be considered for the purpose of computation of the Debt Equity ratio of 30:70 [...].

26(A). The [Commission], in exercise of the powers conferred under Section 14 (b) of the Electricity Act, hereby identifies and recognises M/s. Sundew Properties Ltd. [...] as a deemed licensee.

26(D). [...] the promoters have to contribute 30% of the total anticipated investment of Rs. 89.53 Crores which works out to Rs.26.9 Crores on or before 31.03.2016."

e) Aggrieved, the appellant carried an appeal11 from the aforesaid order of the TSERC to the APTEL. According to the appellant, the directions of the TSERC were in excess of jurisdiction. APTEL dismissed the appeal, as noticed above. It held that the TSERC was justified in ordering infusion of additional equity by the appellant to the tune of Rs.26.90 crore (being 30% of the total anticipated investment of Rs.89.53 crore) as a pre- condition for being identified as a deemed distribution licence. The operative part of the judgment and order passed by the APTEL reads as follows:

> "8.14 [...] while the Appellant is not required to apply for grant of license but being a deemed distribution licensee has to fulfil other technical and financial requirements as per prevailing rules and regulations of the State Commission which is mandated to regulate the Electricity business in the state whether it is a DISCOM or any other deemed distribution licensee as in the present case.

Accordingly, we are of the opinion that the State Commission has passed the impugned order with careful consideration and proper interpretation of the statute and also considering the judgments passed by Hon'ble Supreme Court in Sesa Sterilite [sic] case (supra) [...]"

f) It is this judgment and final order that the appellant has subjected to challenge in this statutory appeal by invoking the appellate jurisdiction of this Court under section 125 of the Electricity Act.

SUBMISSIONS

3. Mr. Singh, learned senior counsel appearing for the appellant, challenged the validity of the orders of the TSERC and the APTEL by advancing the following submissions:

a) The TSERC and the APTEL erred in failing to recognize that under section 14(b) of the Electricity Act, a developer of an SEZ is ipso facto and unconditionally deemed to be a distribution licensee, thus eliminating the need for a separate licence application. Recognition of the status of a deemed distribution licensee is a ministerial act, effected automatically upon fulfilment of conditions laid down in the SEZ Act, independent of rule 3(2) of the 2005 Rules read with regulation 12 of the 2013 Regulations.

b) The status of deemed distribution licensee stands bestowed upon the appellant by virtue of the 2010 Notification, requiring no further action. This position has been recognized and approved by both the TSERC and the APTEL.

c) Under the 2013 Regulations, there are two types of licensees:

first, those who apply for a distribution licence under regulations 2(d) and 12, and secondly, those already deemed licensees, seeking recognition of their status as such, under regulations 2(h) and 13. The appellant belongs to the latter category.

d) Regulation 12 of the 2013 Regulations applies to general applicants seeking a distribution licence, mandating compliance with both the 2005 Rules and the procedures prescribed in regulations 4 to 11. It cannot apply to a deemed licensee under regulation 13. The TSERC's finding, as approved by the APTEL, that the 2005 Rules are in-built into the 2013 Regulations and therefore have to be satisfied by the appellant because of implied application of regulation 12 to deemed licensees, is contrary to the provisions of the Electricity Act and the very scheme of the 2013 Regulations.

e) APTEL erred by agreeing with the TSERC's reasoning that the requirement to infuse Rs. 26.90 crore in equity was imposed on the appellant under section 16 of the Electricity Act, despite recognising the appellant as a deemed distribution licensee.

Conditions under section 16, whether general or specific, must be 'specified' by the Appropriate Commission through regulations according to section 2(62) of the Electricity Act.

4. Resting on the aforesaid submissions, learned senior counsel urged this Court to allow the appeal and set-aside the orders of the TSERC and the APTEL to the extent requiring the appellant to comply with the conditions stipulated in rule 3 of the 2005 Rules and infuse additional capital to gain the status of a deemed licensee.

5. Per contra, Mr. Vaidyanathan, learned senior counsel appearing for the second respondent (Southern Power Distribution Company of Telangana Limited), joined by Mr. Goud, learned counsel appearing for respondent no. 1 (TSERC), supported the impugned judgment and order and advanced the following submissions:

> a) No doubt, the appellant, a SEZ developer, may be granted the status of a deemed licensee; however, the 2005 Rules and the 2013 Regulations will be applicable to the appellant as per the law laid down by this Court in Sesa Sterlite Limited. v.

Orissa Electricity Regulatory Commission and others12.

b) The appellant cannot be deemed to be a distribution licensee on its own without making an application under regulation 13.

c) There is a necessity to harmoniously interpret the SEZ Act and the Electricity Act to uphold the provisions of both enactments. (2014) 8 SCC 444 The appellant cannot argue that the 2005 Rules and the 2013 Regulations do not apply to it, being a SEZ developer.

d) TSERC is empowered to impose general and specific conditions at its discretion. The purpose of requiring the appellant to infuse an additional capital under the 2005 Rules was to assess the credit-worthiness of the appellant as it had accumulated losses at the end of the financial year 2013-2014 and more than 50% of its net-worth has been wiped-out, a fact which is reflected from the Statutory Auditor's report.

6. No case for interference having been set up by the appellant, learned counsel for respondents prayed for dismissal of the appeal. STATUTORY FRAMEWORK

7. Before proceeding further, it is imperative to refer to certain statutory provisions.

8. Section 14 of the Electricity Act deals with the grant of a licence:

> "14. Grant of Licence – The Appropriate Commission may, on an application made to it under section 15, grant a licence to any person –
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> (a) to transmit electricity as a transmission licensee; or

(b) to distribute electricity as a distribution licensee; or

(c) to undertake trading in electricity as an electricity trader, in any area as may be specified in the licence:

Provided that any person engaged in the business of transmission or supply of electricity under the provisions of the repealed laws or any Act specified in the Schedule on or before the appointed date shall be deemed to be a licensee under this Act for such period as may be stipulated in the licence, clearance or approval granted to him under the repealed laws or such Act specified in the Schedule, and the provisions of the repealed laws or such Act specified in the Schedule in respect of such licence shall apply for a period of one year from the date of commencement of this Act or such earlier period as may be specified, at the request of the licensee, by the Appropriate Commission and thereafter the provisions of this Act shall apply to such business:

Provided further that the Central Transmission Utility or the State Transmission Utility shall be deemed to be a transmission licensee under this Act:

Provided also that in case an Appropriate Government transmits electricity or distributes electricity or undertakes trading in electricity, whether before or after the commencement of this Act, such Government shall be deemed to be a licensee under this Act, but shall not be required to obtain a licence under this Act:

Provided also that the Damodar Valley Corporation, established under sub-section (1) of section 3 of the Damodar Valley Corporation Act, 1948, shall be deemed to be a licensee under this Act but shall not be required to obtain a licence under this Act and the provisions of the Damodar Valley Corporation Act, 1948, in so far as they are not inconsistent with the provisions of this Act, shall continue to apply to that Corporation:

Provided also that the Government company or the company referred to in sub-section (2) of section 131 of this Act and the company or companies created in pursuance of the Acts specified in the Schedule, shall be deemed to be a licensee under this Act:

Provided also that the Appropriate Commission may grant a licence to two or more persons for distribution of electricity through their own distribution system within the same area, subject to the conditions that the applicant for grant of licence within the same area shall, without prejudice to the other conditions or requirements under this Act, comply with the additional requirements [relating to the capital adequacy, credit- worthiness, or code of conduct] as may be prescribed by the Central Government, and no such applicant, who complies with all the requirements for grant of licence, shall be refused grant of licence on the ground that there already

exists a licensee in the same area for the same purpose:

Provided also that in a case where a distribution licensee proposes to undertake distribution of electricity for a specified area within his area of supply through another person, that person shall not be required to obtain any separate licence from the concerned State Commission and such distribution licensee shall be responsible for distribution of electricity in his area of supply:

Provided also that where a person intends to generate and distribute electricity in a rural area to be notified by the State Government, such person shall not require any licence for such generation and distribution of electricity, but he shall comply with the measures which may be specified by the Authority under section 53:

Provided also that a distribution licensee shall not require a licence to undertake trading in electricity."

9. To determine who qualifies as a deemed licensee under the Electricity Act, we may refer to the 2013 Regulations.

10. Regulation 2(i)(h) of the 2013 Regulations defines "deemed licensee" as follows:

"(h) 'Deemed Licensee' means a person authorised under sub- section (b) of Section 14 and also under the first, second, third, and fifth provisos to section 14 of the Act to operate and maintain a distribution system for supply of electricity to the consumers in his area of supply."

11. Regulation 13 of the 2013 Regulations stipulates the procedure to get identified as a deemed distribution licensee. It reads:

"13. The deemed licensees shall make application in the form specified in Schedule- 2 to the Commission to get identified as the deemed Licensee. Provided that nothing in Regulations 4 to 11 shall apply to deemed licensees."

12. Insofar as a developer under the SEZ Act is concerned, a reference may be made to the scheme of the SEZ Act to ascertain its status as deemed distribution licensee.

13. The policy for SEZs was introduced with an objective to create a competitive export environment and to attract foreign investment. It levels the playing field for domestic businesses globally and introduces favourable policies in investment, taxation, trade, customs, and labour regulations. In line with this, for the purpose of ensuring consistent and high-quality power supply to these SEZ units, the MoCI, vide the 2010 Notification [under clause (b) of sub-section (1) of section 49 of the SEZ Act] has specified that the 'developer' of the SEZ shall be deemed to be a 'distribution licensee' under the provisions of the Electricity Act. The proviso inserted in clause (b) of section 14 of the Electricity Act, vide the 2010 Notification, reads as follows:

> "Provided that the Developer of a Special Economic Zone notified under sub-section (1) of Section 4 of the Special Economic Zones Act, 2005, shall be deemed to be a licensee for the purpose of this clause, with effect from the date of notification of such Special Economic Zone."

14. With the inclusion of the aforementioned proviso to section 14(b) of the Electricity Act, it is evident that a SEZ developer is deemed to be a distribution licensee.

15. The main contention of the parties that whether the TSERC imposed condition to infuse additional capital per rule 3(2) of the 2005 Rules read with regulation 12 of the 2013 Regulations is justifiable or extraneous is deliberated at length in a later part of this judgment. Regulation 12 provides that a person applying for a grant of a distribution licence shall, in addition to regulations 4 to 11, comply with the 2005 Rules. Regulation 12 is extracted below:

> "12. Application for grant of Distribution Licence in the area of supply of an existing Distribution Licensee – A person applying for grant of a licence for distribution of electricity through his own distribution system within the same area of supply of an existing Distribution Licensee shall, in addition to the provisions of Regulation 4 to 11, comply with "Distribution of Electricity Licence (additional requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005" issued by the Central Government."

16. Rule 3 is extracted hereunder:

> "3. Requirements of capital adequacy and creditworthiness. –

(1) The Appropriate Commission shall, upon receipt of an application for grant of licence for distribution of electricity under sub-section (1) of section 15 of the Electricity Act, 2003, decide the requirement of capital investment for distribution network after hearing the applicant and keeping in view the size of the area of supply and the service obligation within that area in terms of section 43.

(2) The applicant for grant of licence shall be required to satisfy the Appropriate Commission that on a norm of 30% equity on cost of investment as determined under sub-rule (1), he including the promoters, in case the applicant is a company, would be in a position to make available resources for such equity of the project on the basis of net worth and generation of internal resources of his business including of promoters in the preceding three years after excluding his other committed investments." ISSUES

17. Having noticed the relevant statutory framework, we are now tasked with deciding two short issues:

> a) Whether the designation of an entity as a SEZ developer by the MoCI ipso facto qualifies the entity to be a deemed distribution licensee, obviating the need for an

application under section 14 of the Electricity Act?

b) Whether regulation 12 of the 2013 Regulations, and by implication rule 3(2) of the 2005 Rules, are applicable to a SEZ developer recognised as a deemed distribution licensee under the proviso to section 14(b) of the Electricity Act read with regulation 13 of the 2013 Regulations?

ANALYSIS

18. We have considered the submissions advanced by learned counsel for the parties and have also perused the materials on record.

Issue (a)

19. It would not be inapt to be reminded of what was stated by a Bench of two Hon'ble Judges of this Court in State of Bombay v. Pandurang Vinayak Chaphalkar 13 nearly seventy years ago:

> "11. [...] When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion."

20. In view of the existing facts, we are inclined to the view that the very purpose of the deeming fiction in the proviso to section 14(b) of the Electricity Act is to confer upon an entity like the appellant a status which is otherwise available in accordance with the Electricity Act. In other words, as an effect of the 2010 Notification inserting the proviso to section 14(b), the appellant is entitled to the privilege of being acknowledged as a (deemed) distribution licensee under the Electricity Act for supply of power within its SEZ area. Once the appellant is a (deemed) distribution licensee, certain benefits and/or privileges do enure in its favour.

21. The respondents have heavily relied on Sesa Sterlite Limited (supra) to assert that there has to be a harmonious construction of both (1953) 1 SCC 425 the SEZ Act and the Electricity Act to give effect to the provisions of both the enactments, so long as they are not inconsistent with each other.

22. A Bench of two Hon'ble Judges of this Court in Sesa Sterlite Limited (supra) held:

> "43. The reading of Section 49 of the SEZ Act would reveal that the Central Government has got the authority to direct that any of the provisions of a Central Act and the rules and regulations made thereunder would not apply or to declare that some of the provisions of the Central Acts shall apply with exceptions, modifications and adaptation to the special economic zone. So, under the scheme of the Special Economic Zones Act, the Central Government has to first notify as to what extent the provision of the other Acts are to be made applicable or applicable with modification

> or not applicable for the special economic zone area. It is in furtherance thereto, the Government of India, Ministry of Commerce and Industry through its Notification dated 21-3-2012, with regard to power generation in special economic zone, has declared that all the provisions of the Electricity Act, 2003 and the Electricity Rules, 2005 shall be applicable to the generation, transmission and distribution of power, whether stand-alone or captive power. This notification would clarify that there is no inconsistency between the Special Economic Zones Act, 2005 and the Electricity Act, 2003.
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> [...]
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> 46. To recapitulate briefly, in the present case no doubt by virtue of the status of a developer in the SEZ area, the appellant is also treated as deemed distribution licensee. However with this, it only gets exemption from specifically applying for licence under Section 14 of the Act."

23. The question in Sesa Sterlite Limited (supra), was whether the appellant - a deemed distribution licensee, being a developer of Special Economic Zone (SEZ) and having a unit in the SEZ, is liable to pay Cross- Subsidy Surcharge (CSS). It was held that the appellant would be liable to pay CSS for several reasons, including on the facts that it was using dedicated transmission lines belonging to the distribution licensee for the area in question. This Court interpreted the expression 'open access' and the rationale behind CSS and additional surcharge to observe that the former was payable by a distribution licensee and the latter was to meet the fixed cost of the distribution licensee of the area. The provision of open access, it is observed, balances the right of the consumers to purchase from a source of their choice. The rationale and the ratio of the decision, therefore, is that a deemed distribution licensee is treated at par and not different from a distribution licensee. Accordingly, if CSS is payable by a distribution licensee, the deemed distribution licensee is equally liable to pay the same. This decision, in other words, equates deemed distribution licensee with the distribution licensee for the purpose of supply of electricity to the consumers. Sesa Sterlite Limited (supra) is not a decision for the proposition that deemed distribution licensee, to qualify as a deemed distribution licensee, must meet the criteria, including the capital requirements as applicable by regulations to a distribution licensee.

24. Further, the provisos to section 14 of the Electricity Act distinguish between entities that are ipso facto deemed distribution licensees and those that are merely declared as deemed licensees without clarity on the necessity of making an application to obtain a licence. For instance, the third and fourth provisos to section 14 not only confer the status of deemed licensees to the State Government and the Damodar Valley Corporation, respectively, but also explicitly exempt them from the requirement to obtain a licence. Entities not covered by these specific provisos would, therefore, be required to obtain a licence. The requirement of obtaining a license has to be read into the other provisos to section 14 since, for instance, the second and fifth provisos to section 14 grant deemed licensee status to Central/State Transmission Utility and a government company, respectively, but neither specifies the requirement to obtain a license nor exempts them from obtaining license.

25. As far as the 2010 Notification is concerned, the proviso to section 14(b) introduced by the said Notification, confers deemed licensee status on SEZ developers. However, such conferment does not explicitly exclude the requirement of obtaining a licence. This lack of specificity, especially when compared with the clear provisions for other entities, suggests that the legislative intent was not to ipso facto grant SEZ developers the status of deemed distribution licensees, thereby obliging them to obtain a licence by making an application in terms of regulation 13. TSERC is, therefore, empowered to scrutinise such applications in accordance with law, however, only limited to the provisions which are applicable to deemed licensees. Verification and acceptance recognise their status as deemed licensees.

Issue (b):

26. Issue (b) revolves around rule 3(2) of the 2005 Rules, which per the TSERC and the APTEL, the appellant is bound to adhere by infusing additional capital in order to qualify as a deemed licensee. While the appellant contends that the 2010 Notification, by necessary consequence, grants upon the appellant the status of a deemed licensee, the respondents submit that the identification of the appellant as a deemed distribution licensee is conditional upon the appellant satisfying the other requirements of the Electricity Act, specifically the sixth proviso to section 14 of the Electricity Act which provides for compliance with additional requirements like capital adequacy which as per the respondents includes rule 3 of the 2005 Rules read with regulation 12 of the 2013 Regulations.

27. It is contended by the respondents that the application of 2005 Rules to the appellant, a SEZ developer, stems from the sixth proviso to section 14 read with regulation 12 of the 2013 Regulations.

28. Let us now deal with the provisos to section 14. Upon a bare reading of the provision, it becomes crystal clear that not only does the sixth proviso, but none of the nine provisos to section 14, apply to the appellant, a SEZ developer. Even the TSERC and the APTEL are ad idem with this view. The status of a SEZ developer as a deemed licensee emanates from the 2010 Notification, which introduced the proviso to section 14(b), conferring deemed licensee status to SEZ developers. Reading anything beyond this would defeat the very purpose of the proviso and the concept of the deemed licence. The sixth proviso does not pertain to deemed licensees and, therefore, the 2005 Rules are not applicable to the appellant.

29. Upon closer examination of regulation 12, it becomes apparent that its application does not extend to applicants who are otherwise deemed licensees. The interpretation of regulation 12 as requiring additional capital infusion for an applicant for acceptance of a deemed licensee status appears to be at odds with the language and intent of the 2013 Regulations itself. TSERC has, in essence, interpreted regulation 12 by reading it up to mean that it also applies to a person who is a deemed licensee, and in doing so, the TSERC has aimed to achieve indirectly what it could not directly.

30. Reading down and reading up are two principles often discussed in legal contexts, particularly in the realm of statutory interpretation. Reading down, which has been firmly ingrained in our

jurisprudence, refers to the practice of interpreting a statute narrowly, limiting its scope or application to specific situations or individuals. This approach is commonly employed when the language of a statute is ambiguous or when there is a need to avoid potential conflicts with other laws or constitutional provisions. For example, if a law is unclear about whether it applies to certain types of businesses, a court may choose to read down the statute to only include those businesses explicitly mentioned in the text. On the other hand, reading up involves interpreting a statute broadly, extending its scope or application beyond what is expressly stated in the text. Reading up is a concept that is invoked with great caution within our legal framework because it can lead to judicial activism or judicial overreach, where courts expand the reach of laws beyond what the legislature intended.

31. A Constitution Bench of this Court in B.R. Kapur v. State of Tamil Nadu14, while stating that reading up of a statute is not permissible, held thus:

> "39. Section 8(4) opens with the words 'notwithstanding anything in sub-section (1), sub-section (2) or sub-section (3)', and it applies only to sitting members of Legislatures. There is no challenge to it on the basis that it violates Article 14. If there were, it might be tenable to contend that legislators stand in a class apart from non-legislators, but we need to express no final (2001) 7 SCC 231 opinion. In any case, if it were found to be violative of Article 14, it would be struck down in its entirety. There would be, and is no question of so reading it that its provisions apply to all, legislators and non-legislators, and that, therefore, in all cases the disqualification must await affirmation of the conviction and sentence by a final court. That would be 'reading up' the provision, not 'reading down', and that is not known to the law."

32. The literal rule of interpreting a statute empowers courts to iron out the creases within legislation but without altering the very fabric of which it is made. The practice of reading up a provision can only be justified when it aligns with legislative intent, maintains the fundamental character of the law, and ensures that the resulting interpretation remains consistent with the original context to which the law applies. This holds especially true for subordinate legislation, which require greater scrutiny in this regard. Reading up a provision of subordinate legislation in a manner that it militates against the primary legislation is not permissible.

33. The authority to craft subordinate legislation is derived from the enabling/primary legislation and it is imperative that such legislation harmonizes with the provisions outlined in the enabling/primary legislation. The Electricity Act has conferred power on the Central Government to make Rules [see section 175], and on the Central Electricity Authority and the Central Commission to make Regulations [see sections 176 and 177, respectively]. All such rules/regulations are to be made consistent with the Electricity Act. Section 181 of the Electricity Act confers power on the State Commissions to make Regulations but such regulations too must be consistent with the provisions of the primary enactment and the rules framed thereunder generally. Rules and Regulations are enacted to supplement the main provision, not to supplant it. They serve the crucial role of bridging potential gaps within the primary legislation, yet, their function is not to create webs and voids

merely to clog and hamper their implementation. Any gaps addressed by Rules and Regulations must be discernible within the framework of the primary legislation.

34. In the present case, the TSERC, in paragraph 19, asserted that regulation 12 applies implicitly to a deemed licensee as well. We do not agree with this reasoning, mainly for two reasons. First, the primary legislation, the Electricity Act, through the proviso inserted in section 14(b), confers deemed licensee status upon SEZ developers without imposing any specific conditions. Secondly, the 2013 Regulations make a clear distinction between an applicant seeking a licence [as defined under regulation 2(d)] and a deemed distribution licensee seeking recognition as such [as defined under regulation 2(h)]. Regulation 2(d) defines an "applicant" as "a person who has submitted an application to the Commission for the grant of a distribution licence". In contrast, regulation 2(h) defines a "deemed licensee" as "a person authorized under sub-section (b) of Section 14, and also under the first, second, third, and fifth provisos to section 14 of the Act, to operate and maintain a distribution system for supplying electricity to consumers in their area of supply". The 2013 Regulations clearly delineate distinct categories of licensees. Regulation 12 pertains solely to regular distribution licensees as defined under regulation 2(h), not to deemed licensees. 'Reading up' regulation 12 so as to expand its ambit to include within it deemed licensees, especially when the Electricity Act does not stipulate any such inclusion, runs counter to the subsequently inserted proviso to clause (b) of section 14 of the Electricity Act—an exercise which is impermissible and which we cannot approve. Therefore, the recognition of the status of a deemed distribution licensee cannot hinge on compliance with rule 3(2) of the 2005 Rules read with regulation 12 of the 2013 Regulations.

35. The language of regulation 12 merits careful scrutiny. It states that an applicant shall, "in addition to the provisions of Regulation 4 to 11", comply with the provisions of the 2005 Rules. It is evident that it is a normal applicant [as defined under regulation 2(d)], which is tasked with complying with regulations 4 to 11, that has to comply with the 2005 Rules. However, the appellant herein, as discussed previously, is not a regular applicant but a deemed distribution licensee [as defined under regulation 2(h)], and is governed by regulation 13, the proviso to which specifically states that nothing in regulations 4 to 11 would apply to deemed licensees. Having thus been statutorily exempted from complying with regulations 4 to 11, we are of the opinion that the appellant, being a deemed licensee, would also be exempt from the concomitant obligation of complying with regulation 12, in view of the language of the provision, which imposes the burden of complying with regulation 12 only on those applicants who come within the purview of regulations 4 to 11. The appellant falling outside the scope of the latter, would thus necessarily fall outside the scope of the former too.

36. TSERC's reliance on regulation 49 of the 2013 Regulations to enforce the applicability of regulation 12 also appears to be flawed. Regulation 49, situated within Chapter-4 [General Conditions of Distribution Licence] of the 2013 Regulations, specifies that "these general conditions shall apply to distribution licensees and to all deemed distribution licensees". A straightforward reading reveals that the term 'general conditions' in regulation 49 pertains exclusively to the general conditions outlined in Chapter-4. By no stretch of imagination could the scope of this provision be widened so as to include within its ambit regulation 12, which forms part of Chapter-3 [Procedure

for Grant of Distribution Licence] of the 2013 Regulations.

CONCLUSION

37. To sum up, being a SEZ developer in terms of the 2010 Notification does not ipso facto confer upon the appellant the status of a deemed licensee without any scrutiny and without being under any requirement to apply; it is required to make an application in accordance with the 2013 Regulations. We have been apprised that this condition has been fulfilled as the status of the appellant as a deemed licensee has already been upheld pursuant to the application made in accordance with rule 13 of the 2013 Regulations. The first issue is answered accordingly. As far as the second issue is concerned, the condition stipulated in rule 3(2) of the 2005 Rules, as imposed by the TSERC with a direction to infuse an additional capital of Rs. 26.90 crore is not justified and contrary to the statutory scheme as discussed aforesaid. The judgments and orders of the TSERC and the APTEL are set aside to this extent. The order of the TSERC, which grants the status of a deemed licensee to the appellant, however, subject to the condition that its promoters infuse additional capital is accordingly modified to the extent of excluding such condition.

38. The appeal is partly allowed in the aforesaid terms. No costs.

.....J (SANJIV KHANNA) .....J (DIPANKAR DATTA) New Delhi;

17th May, 2024.