

Municipal Corporation Of Delhi vs Gagan Narang on 2 January, 2025

Author: B.R. Gavai

Bench: B.R. Gavai

2025 INSC 2

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 7463-7464 OF 2023

MUNICIPAL CORPORATION OF DELHI

...APPELLANT(S)

VERSUS

GAGAN NARANG & ORS. ETC.

...RESPONDENT(S)

JUDGMENT

B.R. GAVAI, J.

1. The present appeals filed under Section 125 of the Electricity Act, 2003¹ arise out of the Impugned common final judgment and order of the Appellate Tribunal for Electricity at New Delhi² dated 31st August 2023 passed in DFR No. 245 of 2023 and DFR No. 247 of 2023 which were both filed by the Respondent No. 1 herein- Mr. Gagan Narang. The APTEL 'The Act' hereinafter 'APTEL' hereinafter disposed of the appeals and set aside the orders of the Delhi Electricity Regulatory Commission³ dated 6th and 7th March 2023. Vide the order dated 6th March 2023 the DERC had dismissed the petition filed by Waste to Energy Research & Technology Council⁴ challenging the authority of the Appellant herein - Municipal Corporation of Delhi⁵, to issue the tariff- based bid and Request for Proposal⁶ for setting up the Waste to Energy⁷ project at Narela Bawana, Delhi. Vide order of 7th March 2023, the DERC had approved the bid tariff of Rs. 7.38/KWh for the project and had directed the Distribution Licensee to negotiate the terms of the Power Purchase Agreement⁸ with the Appellant-MCD.

2. Shorn of details, the facts leading to the present appeals are:

2.1 The Appellant-MCD organized a meeting with the Distribution Licensees in Delhi

and other stakeholders on 14 th May 2022. It was agreed that a tariff-based bidding model may be adopted and the details about the same, including the volume ‘DERC’ hereinafter ‘WTERT’ hereinafter ‘Appellant-MCD’ hereinafter ‘RfP’ hereinafter ‘WTE’ hereinafter ‘PPA’ hereinafter of waste, total power generation, and other considerations for the proposed project were decided. It was further decided that the sale of power be distributed amongst the Distribution Licensees as per their ‘Renewable Purchase Obligation’. The Appellant was authorized to conduct the bidding process as per the regulations and requirements of Section 63 of the Act for the proposed WTE project. The same was put in writing and was detailed in the Minutes of Meeting dated 30th May 2022.

2.2 The Appellant-MCD, issued the Notice Inviting Tender⁹ and the RfP dated 15th July 2022 whereby the tariff-based bids for procurement of power under WTE project for Solid WTE Processing Facility with a minimum 28 MW capacity in Narela Bawana, New Delhi, for 3000 (+/- 20%) TPD of MSW¹⁰ were invited. The documents for the same were sent to the DERC for its consideration.

2.3 The DERC, vide letter dated 24th August 2022 directed the Appellant-MCD to file a petition for approval of PPA, RfP, etc. The letter also contained the details of the petitions filed by South Delhi Municipal Corporation and the East Delhi Waste ‘NIT’ hereinafter ‘Project’ hereinafter Processing Co. Ltd. seeking similar approvals, which were granted by the DERC through separate orders. An evaluation committee was also constituted for the evaluation of bids and other related issues. The Appellant-MCD issued a notice that the bidding process dated 15th July 2022 were closed and a new NIT was issued on 21st October 2022 with identical terms as the earlier NIT.

2.4 The WTERT filed a Petition No. 65 of 2022 before the DERC inter alia challenging the authority of the Appellant-MCD for issuing the tariff-based bid and the RfP in setting up the Project.

During the pendency of this petition, the bidding process was undertaken, and on 14th November 2022, bids were received from M/s JITF Urban Infrastructure Ltd. and M/s JBM Renewables Pvt. Ltd. A meeting of the Evaluation committee was held, and the documents submitted by the bidders keeping in mind the requirement of the RfP document were discussed, and on recommendation of the committee, the bids of both the bidders were declared to be technically qualified and their bids were allowed to be opened. The Regional Centre for Urban & Environmental Studies¹¹ calculated the levelized tariff based on the RfP and the same was communicated and calculated as:

Name of the Bidder Levelized Tariff (Rs/KWh) M/s JITF Urban Infrastructure Limited 7.380 M/s JBM Renewable Pvt. Limited 9.909 2.5 The Financial Bids were evaluated by the Evaluation Committee and its recommendation report dated 26th November 2022 was issued. It was stated in the report that in accordance with the terms of the RfP, the “Lowest Bidder” for a project was to be the qualified bidder and

the lowest evaluated levelized tariff shall be the selected bidder for the Project. M/s JITF Urban Infrastructure Limited was selected to be the lowest bidder with a levelized tariff bid of Rs. 7.380/KWh. It was further mentioned that a meeting of the Evaluation Committee was held on 6th October 2022 for the consideration of the Financial Model for price bid evaluation prepared by RCUES. The representative of RCUES presented the financial model and after deliberation, the committee reached a consensus on the key assumptions taken 'RCUES' hereinafter and had arrived at a levelized tariff of Rs. 6.73/KWh. Since, there existed a difference between the tariff according to the financial model and the tariff by the lowest bidder, a justification/calculation for arriving at the quoted bid was requested from M/s JITF Urban Infrastructure Limited, and the same was considered by the committee. It was further mentioned, that after detailed deliberations, the committee was of the opinion that the bids had been received through a competitive bidding process and the lowest bid of Rs.

7.380/KWh was arrived at, through a competitive and transparent bidding process. It was further mentioned that the Appellant-MCD herein has no benefit or loss accruing out of this as the power is to be procured by the Distribution Companies in accordance with the approval of tariff by DERC. The report was then forwarded to the DERC as the final approval was to be given by it.

2.6 Pursuant to the same, the Appellant-MCD filed a Petition No. 72 of 2022 before the DERC for the approval of the bidding process of the Project.

2.7 The DERC, vide order dated 6th March 2023, dismissed the Petition No. 65 filed by WTERT and inter alia held that the Appellant-MCD is mandated under the Solid Waste Management Rules, 2016¹² to construct, operate, and maintain the solid waste processing facilities. Vide order dated 7th March 2023, the DERC in Petition No. 72 filed by the Appellant-MCD herein, approved the bid tariff of Rs. 7.38/KWh for the project and directed the Distribution Licensee to negotiate terms of the PPA with the Appellant-MCD and place a signed copy of the PPA before the DERC within three months.

2.8 Aggrieved, two separate appeals were filed by the Respondent No. 1 herein bearing DFR Nos. 245 of 2023 and 247 of 2023 against the orders dated 7th March 2023 and 6th March 2023 respectively.

2.9 The APTEL, vide the Impugned common final judgment and order dated 31st August 2023 disposed of the appeals and set aside both the orders dated 6th and 7th March 2023 passed by the DERC on the ground that the DERC lacked jurisdiction to entertain and adjudicate upon a petition filed by the Appellant-

MCD herein.

2.10 Aggrieved, the present appeals are filed under Section 125 of the Electricity Act, 2003.

‘SWM Rule 2016’ hereinafter

3. We have heard Mr. Ramji Srinivasan, learned Senior Counsel appearing for the Appellant and Mr. Basava Prabhu Patil, learned Senior Counsel appearing for the Respondent No.1, Mr. Krishna M. Singh, Ms. Ishita Jain, Mr. Buddy Ranganathan, Mr. Suresh Chandra Tripathi, learned counsel appearing for Respondent Nos. 2, 3, 4 & 5, and 9 respectively and Mr. Pukhrambam Ramesh Kumar, learned counsel for the applicant.

4. Mr. Ramji Srinivasan, learned Senior Counsel appearing for the Appellant submits that the APTEL has grossly erred in restricting the applicability of Sections 63 and 86(1)(b) of the Act only to the distribution licensee¹³ or generating company insofar as the filing of application for adoption of tariff is concerned. He submits that the provisions of Section 86(1)(b) of the Act would reveal that a wide power is bestowed upon the State Commission to regulate electricity purchase and procurement process of Discoms including the price at which electricity shall be procured from the generating companies or licensees or from other sources.

‘Discoms’ hereinafter

5. Learned Senior Counsel further submits that the Appellant-MCD, which is a statutory body under the Delhi Municipal Corporation Act, has been put under statutory obligation under Rule 15(v)(b) of the SWM Rules 2016 to proceed for setting up of the WTE projects. It is submitted that this statutory duty has also been recognized by this Court in the case of Pune Municipal Corporation v. Sus Road Baner Vikas Manch and others¹⁴.

6. The learned Senior Counsel further submits that Rule 6.4(1)(ii) and (2) of the National Tariff Policy 2016 mandates Discoms to procure 100% of the power produced from all WTE plants either through Section 62 (normative tariff process) or through Section 63 (competitive based mechanism).

7. It is further submitted that Section 175 of the Act itself provides that the provisions of the Act are in addition to and not in derogation of any other law for the time being in force. It is, therefore, submitted that the mandate for setting up the WTE project by MCD has to be read in consonance with the provisions of the Environment (Protection) Act, 1986 and the Rules framed thereunder.

(2024) 9 SCC 1

8. It is submitted that for WTE projects, no guidelines have been framed by the Central Government for conducting the bidding and accordingly the DERC has exercised its powers to regulate under Section 86(1)(b) of the Act to approve the bidding process and adopt the tariff. It is submitted that this is in tune with the judgment of this Court in the case of Energy Watchdog v. Central Electricity Regulatory Commission and others¹⁵, wherein this Court has held that in a situation when there are no guidelines, then the general regulatory powers under Section 79(1)(b) can be exercised by the

Commission. It is, therefore, submitted that by the same analogy the State Commission can exercise such powers in view of Section 86(1)(b) of the Act.

9. The learned Senior Counsel submits that the APTEL has failed to take into consideration the larger issue of public interest. It is submitted that WTE project was necessary for processing the unprocessed municipal solid waste which is increasing day by day.

10. It is further submitted that the DERC vide its order dated 6th March 2023 had held that the Appellant-MCD under Rule (2017) 14 SCC 80 15(v) of the SWM Rules 2016 was performing its statutory functions to conduct the bidding process for the Project and that there is no bar in the National Tariff Policy that WTE project cannot be set up under Section 63 of the Act. It is submitted that on an earlier occasion also the DERC has approved the bidding process with regard to Tehkhand WTE at Okhla which is under operation and supplying electricity to all Delhi Discoms.

11. Mr. Basava Prabhu Patil, learned Senior Counsel appearing for the Respondent No.1, on the contrary, submits that the APTEL has rightly held that the Appellant-MCD was not entitled to make an application for adoption of tariff under Section 63 of the Act. It is submitted that the APTEL rightly held that it is only the Discoms or generating companies who are entitled to invoke the provisions of Section 63 of the Act. The learned Senior Counsel submits that in view of Rule 6.4(2) of the National Tariff Policy, 2016, it is exclusively for the Ministry of Power to provide a mechanism for adoption of tariff for WTE projects. It is, therefore, submitted that the DERC has no jurisdiction to entertain the application filed by the present Appellant-MCD. He, therefore, prays for the dismissal of the present appeals.

12. The limited question that falls for consideration in the present appeals is that, whether the application under Section 63 of the Act could have been made by the present Appellant- MCD which is a “local authority” within the meaning of Section 2(41) of the Act.

13. For appreciating the rival controversy, it will be necessary to consider the nature of the Project which the Appellant-MCD was implementing. For the said purpose, it will be relevant to refer to clauses (q) and (v) of Rule 15 of the SWM Rules 2016, which read thus:

“15. Duties and responsibilities of local authorities and village panchayats of census towns and urban agglomerations.—The local authorities and Panchayats shall— ***

(q) transport segregated bio-degradable waste to the processing facilities like compost plant, biomethanation plant or any such facility. Preference shall be given for on site processing of such waste; ***

(v) facilitate construction, operation and maintenance of solid waste processing facilities and associated infrastructure on their own or with private sector participation or through any agency for optimum utilisation or various components of solid waste adopting suitable technology including the following technologies and adhering to the guidelines issued by the Ministry of Urban Development from time to

time and standards prescribed by the Central Pollution Control Board. Preference shall be given to decentralised processing to minimise transportation cost and environmental impacts such as—

(a) bio-methanation, microbial composting, vermi-composting, anaerobic digestion or any other appropriate processing for bio-stabilisation of biodegradable waste;

(b) waste to energy processes including refused derived fuel for combustible fraction of waste or supply as feedstock to solid waste based power plants or cement kilns;”

14. It could thus be seen that the SWM Rules 2016 require that, while making provisions for solid waste disposal, the authorities shall give a preference to decentralized processing to minimize transportation cost and environmental impacts such as, waste to energy processes including refused derived fuel for combustible fraction of waste or supply as feedstock to solid waste based power plants or cement kilns.

15. It is further to be noted that the “Tariff Policy” notified by the Ministry of Power on 28th January 2016 is in compliance with the mandate of Section 3 of the Act. It could further be seen that under the said “Tariff Policy”, a provision has been made for renewable sources of energy generation including Co- generation from renewable energy sources. It will be relevant to refer to Rule 6.4 of the said “Tariff Policy”, which reads thus:

“6.4 Renewable sources of energy generation including Co-generation from renewable energy sources:

(1) Pursuant to provisions of section 86(1)(e) of the Act, the Appropriate Commission shall fix a minimum percentage of the total consumption of electricity in the area of a distribution licensee for purchase of energy from renewable energy sources, taking into account availability of such resources and its impact on retail tariffs. Cost of purchase of renewable energy shall be taken into account while determining tariff by SERCs. Long term growth trajectory of Renewable Purchase Obligations (RPOs) will be prescribed by the Ministry of Power in consultation with MNRE.

Provided that cogeneration from sources other than renewable sources shall not be excluded from the applicability of RPOs.

(i) Within the percentage so made applicable, to start with, the SERCs shall also reserve a minimum percentage for purchase of solar energy from the date of notification of this policy which shall be such that it reaches 8% of total consumption of energy, excluding Hydro Power, by March 2022 or as notified by the Central Government from time to time.

(ii) Distribution Licensee(s) shall compulsorily procure 100% power produced from all the Waste-to-Energy plants in the State, in the ratio of their procurement of power from all sources including their own, at the tariff determined by the Appropriate Commission under Section 62 of the

Act.

(iii) It is desirable that purchase of energy from renewable sources of energy takes place more or less in the same proportion in different States. To achieve this objective in the current scenario of large availability of such resources only in certain parts of the country, an appropriate mechanism such as Renewable Energy Certificate (REC) would need to be promoted. Through such a mechanism, the renewable energy based generation companies can sell the electricity to local distribution licensee at the rates for conventional power and can recover the balance cost by selling certificates to other distribution companies and obligated entities enabling the latter to meet their renewable power purchase obligations.

The REC mechanism should also have a solar specific REC.

(iv) Appropriate Commission may also provide for a suitable regulatory framework for encouraging such other emerging renewable energy technologies by prescribing separate technology based REC multiplier (i.e. granting higher or lower number of RECs to such emerging technologies for the same level of generation).

Similarly, considering the change in prices of renewable energy technologies with passage of time, the Appropriate Commission may prescribe vintage based REC multiplier (i.e. granting higher or lower number of RECs for the same level of generation based on year of commissioning of plant).

(2) States shall endeavor to procure power from renewable energy sources through competitive bidding to keep the tariff low, except from the waste to energy plants. Procurement of power by Distribution Licensee from renewable energy sources from projects above the notified capacity, shall be done through competitive bidding process, from the date to be notified by the Central Government.

16. It can thus be seen that clause (1) of Rule 6.4 provides that the Appropriate Commission shall fix a minimum percentage of the total consumption of electricity in the area of a distribution licensee for purchase of energy from renewable energy sources, taking into account availability of such resources and its impact on retail tariffs. It further provides that the cost of purchase of renewable energy shall be taken into account while determining tariff by SERCs and that the long-term growth trajectory of Renewable Purchase Obligations (RPOs) will be prescribed by the Ministry of Power in consultation with Ministry of New and Renewable Energy (MNRE).

17. Certain exceptions have been made to the applicability of the said clause. One of the exceptions is that, the Distribution Licensee(s) shall compulsorily procure 100% of the power produced from all the Waste-to-Energy plants in the State, in the ratio of their procurement of power from all sources including their own, at the tariff determined by the Appropriate Commission under Section 62 of the Act.

18. It is further to be noted that the following provision has been made in SWM Rules 2016:

“9. Duties of the Ministry of Power.- The Ministry of Power through appropriate mechanisms shall,-

(a) decide tariff or charges for the power generated from the waste to energy plants based on solid waste.

(b) compulsory purchase power generated from such waste to energy plants by distribution company.”

19. It could thus be seen that under the SWM Rules 2016, a duty is cast upon the Ministry of Power to decide tariff or charges for the power generated from the waste to energy plants based on solid waste and compulsory purchase of power generated from such waste to energy plants by distribution company.

20. Thus, it is to be noted that the Project, for which bids were invited by the Appellant-MCD, was proposed to be set up by the Appellant-MCD in pursuance of its statutory obligations under the SWM Rule 2016.

21. A perusal of the record would reveal that the Appellant- MCD issued NIT for the competitive tariff bidding process for setting up of the Project for procurement of power by Discoms in the NCT of Delhi as part of Discom’s Renewal Purchase Obligation¹⁶. The said project was on Design, Build, Finance, and Operate basis and was to be transferred back to the Appellant-MCD after 25 years.

“RPO” for short

22. It is further to be noted that after the bid was conducted in consonance with the decision taken in the meeting dated 14th May 2022, wherein the Discoms authorized the Appellant- MCD to proceed with the same, on 3rd August 2022, the bidding documents were sent to the DERC for its consideration. Based on the same, the DERC vide letter dated 24th August 2022 directed the Appellant-MCD to file a Petition for adoption of tariff. The DERC, further informed the Appellant-MCD about similar petitions filed by East Delhi Processing Limited seeking similar approvals.

23. After M/s JITF Urban Infrastructure Ltd. emerged as a L- 1 bidder at the levelized tariff of Rs.7.380/KWh, the Appellant- MCD filed a Petition No. 72 of 2022 before the DERC for adoption of tariff and approving the draft PPA. The DERC vide its order dated 7th March 2022 adopted the tariff of Rs.7.380/KWh and directed the Discoms and the successful bidder to renegotiate the terms of the PPA.

24. Insofar as the petition of the WTERT is concerned, the DERC specifically rejected the contention of the WTERT to the effect that since the Appellant-MCD was not an authorized distribution licensee, it cannot float the impugned tender. It was further sought to be argued that the Bidding procurement under Section 63 of the Act was impermissible in case of ‘waste to energy’ power.

25. The DERC relying on the provisions of Rule 15 of the SWM Rules 2016 specifically rejected the said contention and held that the Appellant-MCD was performing its statutory obligations.

26. While allowing the applications filed by the Respondent No. 1, the APTEL interpreted Section 63 of the Act and held that since the Appellant-MCD was neither a distribution licensee nor a generating company, it had no jurisdiction to file an application under Section 63 of the Act for adoption of tariff.

27. For appreciating the correctness of the findings of the APTEL, it will be apposite to refer to Section 63 of the Act, which reads thus:

“63. Determination of tariff by bidding process.- Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.”

28. It could thus be seen that under Section 63 of the Act, the Appropriate Commission is entitled to adopt the tariff if such tariff has been determined through a transparent process of bidding in accordance with the guidelines issued by the Central Government.

29. It could be seen that a plain reading of Section 63 of the Act would reveal that it does not restrict invoking of the provisions of Section 63 only to Discoms or generating companies.

30. It is a settled principle of law that the first and foremost principle of interpretation is that of literal interpretation. When the statute read in a literal manner is capable of giving meaning to the provision that the legislation intended to and does not lead to any absurdity, it is not permissible by judicial interpretation to add, alter, or delete any words to such a statute. Reliance in this respect could be placed on the judgment of this Court in the case of Punjab State Power Corporation Limited and another vs. Emta Coal Limited¹⁷ wherein this Court has observed thus:

“23. The principle of giving a plain and literal meaning to the words in a statute is well-recognised for ages. Though there are a number of judgments, we may gainfully refer to the judgment of this Court delivered by Das, J. as early as 1955 (2022) 2 SCC 1 in *Jugalkishore Saraf v. Raw Cotton Co.*

Ltd. [*Jugalkishore Saraf v. Raw Cotton Co. Ltd.*, (1955) 1 SCR 1369 : AIR 1955 SC 376] : (AIR p. 381, para 6) “6. ... The cardinal rule of construction of statutes is to read the statute literally, that is by giving to the words used by the legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning the Court may adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation.”

24. Though there are various authorities on the said subject, we do not wish to burden the present judgment by reproducing those. In our considered view, if the words used in Section 11 of the said

Act are construed in plain and literal term, they do not lead to an absurdity and as such, the rule of plain and literal interpretation will have to be followed. We find that in case the interpretation as sought to be placed by Shri Rohatgi is to be accepted, it will do complete violence to the language of Section 11 of the said Act. If it is held that under Section 11 of the said Act, a prior contractor is entitled to continue if his performance is found to be satisfactory and if there is nothing against him, then it will be providing something in Section 11 of the said Act which the statute has not provided for. It will also lead to making the words “may elect, to adopt and continue” redundant and otiose.

25. It is a settled principle of law that when, upon a plain and literal interpretation of the words used in a statute, the legislative intent could be gathered, it is not permissible to add words to the statute. Equally, such an interpretation which would make some terms used in a statute otiose or meaningless, has to be avoided. We therefore find that if an interpretation as sought to be placed by EMTA is to be accepted, the same would be wholly contrary to the principle of literal interpretation. There are number of authorities in support of the said proposition. However, we refrain from referring to them in view of the following observations made by this Court in a recent judgment in *Ajit Mohan v. Delhi Legislative Assembly* [*Ajit Mohan v. Delhi Legislative Assembly*, (2022) 3 SCC 529 :

2021 SCC OnLine SC 456] : (SCC para

240) “240. ... In our view if the proposition of law is not doubted by the Court, it does not need a precedent unless asked for. If a question is raised about a legal proposition, the judgment must be relatable to that proposition — and not multiple judgments.” As such, the contention in that regard is found to be without merit.”

31. Upon a plain reading of Section 63 of the Act, it would reveal that the power of the Appropriate Commission thereunder is, notwithstanding anything contained in Section

62.

32. It can thus be seen that the intention of the legislature is to empower the Appropriate Commission to adopt the tariff if such tariff has been determined through a transparent process of bidding in accordance with the guidelines issued by the Central Government.

33. The legislative purpose appears to be that when the power is being produced through a process of bidding it has to be done in a transparent manner. Another requirement is that the same must be done in accordance with the guidelines issued by the Central Government.

34. This Court in the case of *Energy Watchdog* (supra) has held that when there are no guidelines, then the Central Commission can exercise power under Section 79(1)(b) of the Act. The provisions of Section 86(1)(b) of the Act are analogous with Section 79(1)(b) of the said Act.

35. A plain reading of Section 63 of the Act would not show that the legislature intended to restrict the invocation of the jurisdiction of the State Commission only by the Discoms or generating companies. In our view, the interpretation as placed by the APTEL is adding words in the provisions of Section 63 of the Act which the legislature did not intend to.

36. As already stated herein above, when a provision in the statute upon its plain reading is capable of giving a meaning to it as intended by the legislature, then it will not be permissible for the courts to add, alter, or delete the words to the said provision. In any case, upon a plain reading of the provisions of Section 63 of the Act, the meaning which we gather does not result in any absurdity. In such a situation, addition of words in the statute by judicial interpretation is wholly impermissible.

37. Apart from that, we are of the view that APTEL could not have read the provisions of Section 63 of the Act in isolation. The provisions of Section 63 will have to be read in harmony with the provisions of Section 86(1)(b) of the Act, which reads thus:

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

(a)

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

38. A perusal of the provision of Section 86(1)(b) of the Act would reveal that a duty is cast upon the State Commission to regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State.

39. It could thus be seen that the duty cast upon the State Commission is to regulate:

(i) the electricity purchase and procurement process of distribution licensees;

(ii) the price at which electricity shall be procured from the generating companies or licensees, or;

(iii) from other sources through agreements for purchase of power for distribution and supply within the State.

40. The legislative intent behind Section 86(1)(b) of the Act is to empower the State Commission to regulate all matters regarding the electricity purchase and procurement processes.

41. As held by this Court in the case of Jaipur Vidyut Vitran Nigam Limited and others v. MB Power (Madhya Pradesh) Limited and others¹⁸, the State Commission is not a mere post office, but a duty is cast upon it to balance the interests of consumers on one hand and that of generators or Discoms on the other hand. If the provisions of Section 63 of the Act are read in harmony with the provisions of Section 86(1)(b) of the Act, the legislative intent that could be gathered is that the State Commission while exercising its powers under Section 63 of the Act shall adopt the tariff when it has been determined in the bidding process. However, while adopting the same it will have to be satisfied that the same is done in a transparent manner. It will also have to be examined as to whether the interests of the generators/Discoms on one hand are balanced with the interests of the consumers.

42. In our view, reading the Section 63 of the Act in the manner in which it has been interpreted by the APTEL, would impose unnecessary restrictions on the powers and duties of the State Commission under Section 86(1)(b) of the Act, which (2024) 8 SCC 513 are of a very wide amplitude.

43. In this respect, we may refer to the judgment of this Court in the case of Sanjay Ramdas Patil v. Sanjay and others¹⁹ wherein this Court after referring to the earlier judgments of this Court has observed thus:

“25. In Balasinor Nagrik Coop. Bank Ltd. v. Babubhai Shankerlal Pandya [Balasinor Nagrik Coop. Bank Ltd. v. Babubhai Shankerlal Pandya, (1987) 1 SCC 606] , this Court observed thus : (SCC p. 608, para 4) “4. ... It is an elementary rule that construction of a section is to be made of all parts together. It is not permissible to omit any part of it. For, the principle that the statute must be read as a whole is equally applicable to different parts of the same section.”

26. Again in Mohan Kumar Singhania v. Union of India [Mohan Kumar Singhania v. Union of India, 1992 Supp (1) SCC 594 : 1992 SCC (L&S) 455] , this Court observed thus : (SCC p. 624, para

67) “67. We think, it is not necessary to proliferate this judgment by citing all the judgments and extracting the textual passages from the various textbooks on the principles of Interpretation of Statutes. However, it will suffice (2021) 10 SCC 306 to say that while interpreting a statute the consideration of inconvenience and hardships should be avoided and that when the language is clear and explicit and the words used are plain and unambiguous, we are bound to construe them in their ordinary sense with reference to other clauses of the Act or the Rules as the case may be, so far as possible, to make a consistent enactment of the whole statute or series of statutes/rules/regulations relating to the subject-matter.

Added to this, in construing a statute, the Court has to ascertain the intention of the law-making authority in the backdrop of the dominant purpose and the underlying intendment of the said statute and that every statute is to be interpreted without any violence to its language and applied as

far as its explicit language admits consistent with the established rule of interpretation.”

27. In *Sultana Begum v. Prem Chand Jain* [*Sultana Begum v. Prem Chand Jain*, (1997) 1 SCC 373] , this Court observed thus : (SCC pp. 381-82, para 15) “15. On a conspectus of the case-law indicated above, the following principles are clearly discernible:

(1) It is the duty of the courts to avoid a head-on clash between two sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner as to harmonise them.

(2) The provisions of one section of a statute cannot be used to defeat the other provisions unless the court, in spite of its efforts, finds it impossible to effect reconciliation between them.

(3) It has to be borne in mind by all the courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is the essence of the rule of “harmonious construction”.

(4) The courts have also to keep in mind that an interpretation which reduces one of the provisions as a “dead letter” or “useless lumber” is not harmonious construction.

(5) To harmonise is not to destroy any statutory provision or to render it otiose.”
(emphasis in original)

28. In *Jagdish Singh v. Lt.*

Governor [*Jagdish Singh v. Lt. Governor*, (1997) 4 SCC 435] , this Court observed thus : (SCC p. 441, para 7) “7. ... It is a cardinal principle of construction of a statute or the statutory rule that efforts should be made in construing the different provisions, so that, each provision will have its play and in the event of any conflict a harmonious construction should be given. Further a statute or a rule made thereunder should be read as a whole and one provision should be construed with reference to the other provision so as to make the rule consistent and any construction which would bring any inconsistency or repugnancy between one provision and the other should be avoided. One rule cannot be used to defeat another rule in the same rules unless it is impossible to effect harmonisation between them.

The well-known principle of harmonious construction is that effect should be given to all the provisions, and therefore, this Court has held in several cases that a construction that reduces one of the provisions to a “dead letter” is not a harmonious construction as one part is being destroyed and consequently court should avoid such a construction.”

29. In *CIT v. Hindustan Bulk Carriers* [*CIT v. Hindustan Bulk Carriers*, (2003) 3 SCC 57] , this Court observed thus : (SCC pp. 73-74, paras 16-21) “16. The courts will have to reject that construction

which will defeat the plain intention of the legislature even though there may be some inexactitude in the language used.

(See *Salmon v. Duncombe* [*Salm on v. Duncombe*, (1886) LR 11 AC 627 (PC) : 55 LJPC 69 : 55 LT 446] , AC at.

634, *Curtis v. Stovin* [*Curtis v. S tovin*, (1889) LR 22 QBD 513 (CA) : 58 LJQB 174 : 60 LT 772] referred to in *S. Teja Singh case* [*CIT v. S. Teja Singh*, AIR 1959 SC 352 : (1959) 35 ITR 408] .)

17. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility, and should rather accept the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result. (See *Nokes v. Doncaster Amalgamated Collieries Ltd.* [*Nokes v. Doncaster Amalgamated Collieries Ltd.*, 1940 AC 1014 : (1940) 3 All ER 549 (HL) : 109 LJKB 865 : 163 LT 343] referred to in *Pye v. Minister for Lands for New South Wales* [*Pye v. Minister for Lands for New South Wales*, (1954) 1 WLR 1410 : (1954) 3 All ER 514 (PC)] .) The principles indicated in the said cases were reiterated by this Court in *Mohan Kumar Singhania v. Union of India* [*Mohan Kumar Singhania v. Union of India*, 1992 Supp (1) SCC 594 : 1992 SCC (L&S) 455] .

18. The statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute.

19. The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with other parts of the law and the setting in which the clause to be interpreted occurs. (See *R.S. Raghunath v. State of Karnataka* [*R.S. Raghunath v. State of Karnataka*, (1992) 1 SCC 335 :

1992 SCC (L&S) 286] .) Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between two different sections or provisions of the same statute. It is the duty of the court to avoid a head-on clash between two sections of the same Act. (See *Sultana Begum v. Prem Chand Jain* [*Sultana Begum v. Prem Chand Jain*, (1997) 1 SCC 373] .)

20. Whenever it is possible to do so, it must be done to construe the provisions which appear to conflict so that they harmonise. It should not be lightly assumed that Parliament had given with one hand what it took away with the other.

21. The provisions of one section of the statute cannot be used to defeat those of another unless it is impossible to effect reconciliation between them.

Thus a construction that reduces one of the provisions to a “useless lumber” or “dead letter” is not a harmonised construction. To harmonise is not to destroy.”

30. It could thus be seen that it is more than well settled that it is the duty of the Court to construe the statute as a whole and that one provision of the Act has to be construed with reference to other provisions so as to make a consistent enactment of the whole statute. It is the duty of the Court to avoid a head-on clash between two sections and construe the provisions which appear to be in conflict with each other in such a manner so as to harmonise them. It is further equally settled that while interpreting a particular statutory provision, it should not result into making the other provision a “useless lumber” or a “dead letter”. While construing the provisions, the Court will have to ascertain the intention of the law-making authority in the backdrop of dominant purpose and the underlying intentment of the statute.”

44. We are, therefore, of the considered view that when the provisions of Section 63 of the Act are read in harmony with the provisions of Section 86(1)(b) of the Act, the powers of the State Commission cannot be curtailed by interpreting that the same can be invoked only by the Discoms or the generating companies.

45. It will further be relevant to refer to the provisions of Section 174 and 175 of the Act, which read thus:

“174. Act to have overriding effect.- Save as otherwise provided in section 173, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

175. Provisions of this Act to be in addition to and not in derogation of other laws.- The provisions of this Act are in addition to and not in derogation of any other law for the time being in force.”

46. A perusal of Section 174 of the Act would reveal that, save as otherwise provided in Section 173, the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than the Act.

47. Section 175 of the Act provides that the provisions of the said Act are in addition to and not in derogation of any other law for the time being in force.

48. In our view, there is no inconsistency between the provisions of Section 63 of the Act and Rule 15 of the SWM Rules 2016. The provisions of Rule 15 of the SWM Rules 2016, which are enacted under the Environment (Protection) Act, 1986, mandate the appellant to undertake WTE project(s).

49. It can thus be seen that insofar as the WTE projects are concerned, the provisions under the Act will have to be read in addition to the provisions under Rule 15 of the SWM Rules 2016 and not in derogation thereof.

50. Apart from that, Rule 6.4 of the Tariff Policy, which is notified in compliance with the mandate of Section 63 of the Act, the distribution licensees are mandated to compulsorily procure 100% of the power produced from all the WTE plants in the State in the ratio of their procurement of power from all sources including their own. Not only that, the Appropriate Commission is also required to provide suitable regulatory framework for encouraging such other emerging renewable energy technologies.

51. It will also be relevant to refer to the provisions of Section 86(1)(e) of the Act, which read thus:

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

(a)

(e) promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;”

52. It can thus be seen that the provisions of Section 86(1)(e) of the Act read with Rule 6.4 of the Tariff Policy provide for promoting cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee.

53. We are of the considered view that the APTEL has failed to take into consideration all these aspects of the matters.

54. In any case, the APTEL has grossly erred in treating the present Appellant-MCD as a total stranger. The WTE project was on Design, Build, Finance and Operate basis. The ownership of the said Project was always to be with the Appellant-MCD and the operation of the facility is required to be transferred back to the Appellant-MCD after 25 years. The reasoning given by the APTEL, that if the application of the Appellant-MCD for adoption of tariff was held to be tenable, then it would amount to permitting any stranger to apply under Section 63 of the Act, is factually not correct. The APTEL failed to take into consideration that the Appellant-MCD was establishing the said Project in order to perform its statutory obligations. The plain reading of Section 63 of the Act would reveal that the Appropriate Commission has to adopt the tariff only after being satisfied that such a tariff has been determined through a transparent process of bidding in accordance with the guidelines issued by the Central Government.

55. The DERC, after taking into consideration all the relevant factors, had granted its approval to the tariff with certain conditions. The relevant factors which were taken into consideration by the DERC while granting the approval were:

- (i) the mandate of Rule 15 of the SWM Rules 2016;
- (ii) the financial evaluation report which was sent by the Bidding Evaluation Committee;
- (iii) the certificate on the conformity that the bidding process had been completed by following the transparent process; and
- (iv) that there was a mandate under the NTP to the effect that the entire power generated by the WTE project was to be procured by the Discoms.

However, the same has been upset by the APTEL only on a hyper-technical ground.

56. The APTEL also failed to take into consideration that the WTE project in question was in the larger public interest thereby providing for disposal of the huge quantity of waste generated in the city of Delhi.

57. Since we are inclined to allow the appeals of the appellant on the aforesaid grounds, we do not find it necessary to go into the contention of the appellant with regard to locus of the Respondent No.1 in filing the appeals before the APTEL.

58. In the result, we pass the following order:

- (i) the appeals are allowed;
- (ii) the Impugned common final judgment and order of the

Appellate Tribunal for Electricity at New Delhi dated 31st August 2023 passed in DFR No. 245 of 2023 and DFR No. 247 of 2023 is quashed and set aside;

(iii) the orders of the Delhi Electricity Regulatory Commission dated 6th March 2023 in Petition No. 65 of 2022 and 7th March 2023 in Petition No. 72 of 2022 are affirmed.

59. Pending application(s), if any, shall stand disposed of.

.....J (B.R. GAVAI)J (K.V. VISWANATHAN) NEW DELHI;

JANUARY 02, 2025