REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).971-973 OF 2008

BHASKAR SHRACHI ALLOYS LTD.
ETC.ETC. ….APPELLANT(S)

VERSUS

DAMODAR VALLEY CORPORATION
& ORS. ETC. ….RESPONDENT(S)

WITH

CIVIL APPEAL NO(S). 1914 OF 2008
CIVIL APPEAL NO(S).4504-4508 OF 2008
CIVIL APPEAL NO(S).4289 OF 2008

J U D G M E N T

RANJAN GOGOI, J

1. This group of appeals arise out of a common judgment and order dated 23rd November, 2007 passed by the learned Appellate Tribunal for Electricity at New Delhi (hereinafter referred to as "learned Appellate Tribunal"). The challenge in the appeals before the learned Appellate Tribunal was against the order of the Central Electricity Regulatory Commission (hereinafter referred to as "CERC") dated 3rd October, 2006 determining the tariff chargeable by the Damodar Valley Corporation (hereinafter

referred to as "Corporation") from the consumers of electricity generated and transmitted by the Corporation. The tariff has been determined under the provisions of Section 61 and 62 of the Electricity Act, 2003 (hereinafter referred to as "2003 Act") read with such other provisions of the Damodar Valley Corporation Act, 1948 (hereinafter referred to as "Act of 1948") which have been found to be not inconsistent with the provisions of the 2003 Act. The appeals being under Section 125 of the 2003 Act are required to be answered only on such substantial questions of law that may arise for determination by this Court.

2. First, the facts.

The Corporation has been established under the Act of 1948 for the development of the Damodar Valley area falling within the States of West Bengal and Jharkhand. As evident from the provisions of Section 12 of the Act of 1948, three (03) major areas of activity undertaken by the Corporation under the Act of 1948 are: (i) power generation, transmission and distribution; (ii) flood control; and (iii) irrigation and some connected activities like soil conservation,

afforestation, etc.

3. Under Section 20 of the Act of 1948, the Corporation was empowered and authorised to determine the tariff chargeable by it from its consumers. Part IV of the Act of 1948 under the heading "Finance, Accounts and Audit" though, superficially, may appear to be dealing with the indoor management of the Corporation contain provisions which could have a relevant bearing to tariff fixation under Section 20 of the Act of 1948. Some of the said provisions are to be found in Sections 32, 37, 38, 39 and 40 of the Act of 1948 which deals with facets of expenditure, depreciation, allowances, payment of interest, etc. all of which would have a reasonable bearing on working out the tariff that the Corporation would be entitled to charge from its consumers after taking into account the said items of expenditure or allowances/disallowances, as may be.

4. Acting under the provisions of Section 20 of the Act of 1948, the Corporation had notified its own tariff order on 1st September, 2000. The 2003 Act came into force with effect from 10th June, 2003. Despite coming into force of the 2003 Act the Corporation had not

approached the CERC for determination of the tariff chargeable by it. Consequently, the CERC initiated suo motu proceedings by order dated 29th March, 2005 and directed the Corporation to submit an application for determination of tariff for the period from 1st April, 2004 to 31st March, 2009. In terms of the said order passed by the CERC, the Corporation made an application dated 8th June, 2005 before the CERC (i.e. Petition No.66 of 2005) for determination of tariff for the period in question. It appears that in view of the "complexity" of the issues involved, the CERC had requested one of its members to go into the necessary fact-finding exercise and to submit a report of the detailed facts that would be relevant for determination of tariff by the CERC. On the basis of the available inputs received from the aforesaid single member Bench of the CERC, the CERC issued a tariff order dated 3rd October 2006 determining the tariff for generation and transmission for the period from 1st April, 2006 to 31st March, 2009 by allowing a two-year transition period to the Corporation i.e. from 1st April, 2004 to 31st March, 2006.

5. At this stage, it may be appropriate to take note of the contents of the tariff order dated 3rd October, 2006 passed by the

CERC so as to appreciate and understand the grievances entertained by the respective appellants before this Court who were also the appellants before the learned Appellate Tribunal challenging the order of the CERC dated 3rd October, 2006.

6. The CERC by its order dated 3rd October, 2006 took the view that the matter of determination of tariff chargeable by the Corporation would be governed by the provisions of the 2003 Act and the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 (hereinafter referred to as "Tariff Regulations") framed thereunder. Accordingly, the CERC proceeded to determine the tariff after giving due weightage to the various relevant factors which are required to be considered for such determination as spelt out by the Regulations in force. A reading of the order of the CERC would go to show that in determining the tariff due consideration of the following issues was made by the CERC.

(i) Choice between GFA and NFA Method;

(ii) Capital Cost;

(iii) Extra Rupee Liability;

(iv) Additional Capitalisation;

(v) Debt-Equity Ratio;

(vi) Return on equity;

(vii) Interest on loan;

(viii) Depreciation including Advance against Depreciation;

(ix) O & M expenses;

(x) Pension and gratuity fund;

(xi) Interest on working capital;

(xii) Operational Norms;

(xiii) Energy charges and the fuel component for the thermal generating stations;

(xiv) Fuel Price Adjustment

7. Aggrieved by the aforesaid order dated 3rd October, 2006, the Corporation, insofar the exclusion of the provisions of the Act of 1948 while determining the tariff and refusal to grant claims of certain expenses thereunder; the consumers, namely, Bhaskar Shrachi Alloys Ltd., Impex Ferro Tech Ltd., Shyam Ferro Alloys Ltd., Maithan Alloys Ltd., Anjaney Ferro Alloys Ltd., Dayal Steel Ltd. and Castrol Technologies Ltd. insofar as transitory period is concerned and the

State of Jharkhand and West Bengal Electricity Regulatory Commission insofar as the exclusion of the power of the State Regulatory Commission to determine the intra-State transmission of electricity is concerned had approached the learned Appellate Tribunal by way of separate appeals.

8. The learned Appellate Tribunal by the impugned judgment and order dated 23rd November, 2007 took the view that by virtue of fourth proviso to Section 14 of the 2003 Act, while the Corporation continued to be a deemed licensee, the provisions of the Act of 1948, which are not inconsistent with the provisions of the 2003 Act, shall continue to apply to the Corporation. In other words, insofar as the inter-play between the provisions of the Act of 1948 and the 2003 Act is concerned, according to the learned Appellate Tribunal, it is only the provisions of the earlier Act inconsistent with the later Act that will cease to have effect and such provisions of the Act of 1948 that are consistent will continue to hold the field notwithstanding the enactment of the 2003 Act. Continuing further, the learned Appellate Tribunal held that while Section 20 of the Act of 1948 which empowers the Corporation to fix the tariff is inconsistent with Section

62 of the 2003 Act which authorised the "Appropriate Commission" to determine the tariff in accordance with the provisions of the 2003 Act, the specific provisions contained in Sections 32, 37, 38, 39 and 40 of Part IV of the Act of 1948 will continue to be relevant in the matter of determination of tariff in as much as there are no pari materia/parallel provisions in the 2003 Act. It was further held that though there are provisions in the Tariff Regulations framed by the CERC covering the same field, the said Regulations, being in the nature of subordinate legislation, cannot override the provisions of a law duly enacted (Act of 1948), particularly, in the absence of any legislative intention to the said effect in any of the provisions of the 2003 Act. Accordingly, the learned Appellate Tribunal while rejecting the following five claims and upholding the order of the CERC on the aforesaid counts thought it proper to remand the matter, for a *de novo* consideration of the remaining five issues by the CERC in the light of the findings recorded by it. The tabular chart, extracted below, would indicate the five issues that have been finalized by the learned Appellate Tribunal by upholding the order of the CERC dated 3rd October, 2006 and the other five issues which have been remanded for re-determination by the CERC.

	Issues finalized by the learned Appellate Tribunal by upholding the order of the CERC dated 3rd October, 2006		**Issues remanded for re-determination by the CERC**
(i)	Higher return on equity;	(i)	Additional capitalization for the period 2004-2005 and 2005-2006;
(ii)	Depreciation rate;	(ii)	Pension and Gratuity contribution;
(iii)	Resetting of operating norms at variance from the operating norms prescribed in the 2004 regulations;	(iii)	Revenue to be allowed to the DVC under the DVC Act;
(iv)	Return on capital investment on Head Office, Regional Offices, administrative and other technical centres, etc.; and	(iv)	Operation and Maintenance expenses;
(v)	Generation projects presently not operating.	(v)	Debt Equity Ratio

9. Three substantial questions of law would seem to arise for determination by this Court in exercise of its jurisdiction under

Section 125 of the 2003 Act. The same are enumerated below:

(a) Whether the view taken by the learned Appellate Tribunal with regard to the fourth proviso to Section 14 of the 2003 Act and the applicability of the provisions of Sections 32, 37, 38, 39 and 40 contained in Part IV of the Act of 1948 in the matter of tariff determination under the 2003 Act is correct?

(b) Whether it is the provisions of the Tariff Regulations (2004 Regulations) which alone would hold the field in the matter of determination of tariff to the exclusion of the provisions of Sections 32, 37, 38, 39 and 40 contained in Part IV of the Act of 1948?

(c) Whether the conclusions and findings of the learned Appellate Tribunal on any one or more of the claims made by any of the stakeholders in the matter of determination of tariff is vitiated by grave and apparent errors?

10. It will be useful to notice, at this stage, that in terms of the impugned order dated 23rd November, 2007 passed by the learned Appellate Tribunal the matter has been *de novo* considered and re-determined by the CERC by its order dated 6th August, 2009. This has

happened due to the absence of any interim restraint. The said order of the CERC dated 6th August, 2009 has since been affirmed by the learned Appellate Tribunal by a separate order dated 10th May, 2010 which is the subject matter of challenge in Civil Appeal No.4881 of 2010 presently pending before this Court. The said appeal (Civil Appeal No.4881 of 2010) has been ordered to be heard after disposal of the present appeals.

11. The arguments advanced by the respective appellants who are also the respondents in the connected appeals may be noted at this stage.

12. On behalf of the CERC, which is the appellant in Civil Appeal No.4289 of 2008, it has been contended that second part of the fourth proviso to Section 14 of the 2003 Act cannot be understood to mean, as has been held by the learned Appellate Tribunal, that the provisions of the Act of 1948 which are not inconsistent with the provisions of the 2003 Act so far as the determination of tariff is concerned would continue to hold the field. Two principal basis have been urged in support of the above. The first is that a proviso cannot

be understood to go beyond the main part of the Section which, in the present case, deals only with 'licensing' and not 'tariff determination'. Reliance in this regard has been placed on the decisions of this Court in ***Dwaraka Prasad*** vs. ***Dwarka Das Saraf***[1] and ***Union of India & Ors.*** *v*s. ***Dileep Kumar Singh***[2].

The second limb of the argument is based on the provisions contained in Section 174 of the 2003 Act which gives an overriding effect to the provisions of the 2003 Act notwithstanding any inconsistency with any other law for the time being in force.

13. Without prejudice to the above, it has been further contended on behalf of the CERC that the learned Appellate Tribunal was clearly in error in holding that in case of a conflict between the Act of 1948 and the Tariff Regulations framed under the 2003 Act the provisions of the Regulations will require to be ignored. The decisions of this Court in ***Bharathidasan University & Anr.*** vs. ***AICTE & Ors.***[3] and ***Samsthanan Chethu Thozhilali Union*** *v*s. ***State of***

1 (1976) 1 SCC 128 [para 18]
2 (2015) 4 SCC 421 [para20]
3 (2001) 8 SCC 676 [para 14]

***Kerala & Ors.*[4]**, *relied upon*, has been misconstrued by the learned Appellate Tribunal, it is urged on behalf of CERC. It is further contended on behalf of the CERC that Section 61 of the 2003 Act lays down the principles for tariff determination which finds detailed manifestation in the 2004 Regulations. The Regulations, it is contended, embody the principles on which tariff is required to be determined and the provisions thereof cannot be overridden by the provisions of any other statute and, that too, enacted at an anterior point of time i.e. the Act of 1948. The mandate of Section 174 of the 2003 Act which is subsequent in point of time will be compromised in the event such an interpretation is accepted.

14. So far as the specific heads of tariff fixation are concerned, it has been urged on behalf of the CERC that Section 40 of the Act of 1948 has been wrongly relied upon by the learned Appellate Tribunal in determining the question of the extent of depreciation allowable. It is emphasised that Section 40 leaves the question of the percentage of depreciation to be determined by the Central Government. It is contended that the purpose and intent behind the enactment of 2003 Act is to distance the Central Government from the determination of

4 (2006) 4 SCC 327 [Para 17]

tariff under the 2003 Act which is to be fixed by the Regulatory Commissions on the principles acknowledged in the Tariff Regulations. Regulation 21(1)(ii) of the Tariff Regulations, therefore, according to the CERC, should have been the basis for the determination of the extent of depreciation. In this regard, reliance has been placed on the decision of this Court in ***PTC India Ltd.*** vs. ***Central Electricity Regulatory Commission***[5] .

15. It is on the same basis that the findings of the learned Appellate Tribunal so far as the 'Sinking Fund' is concerned, which has been held to be recoverable through the tariff, has been assailed. It is urged that the Tariff Regulations do not make any provision for any 'Sinking Fund' and, therefore, the recovery of such fund through tariff is abhorrent to the provisions of Section 61 of the 2003 Act read with the Tariff Regulations.

16. Similarly, the finding of the learned Appellate Tribunal with regard to the allowability of charging the expenditure on projects other than electricity from the common fund as common expenditure has been assailed as being contrary to the spirit of the 2003 Act inasmuch

5 (2010) 4 SCC 603 [Para 17]

as it is opposed to the principle of allowance of cross-subsidy which the 2003 Act seeks to do away with. Reference has been made to different provisions of the 2003 Act to contend that recovery of expenditure unrelated to electricity generation from the electricity tariff is alien and contrary to the provisions of the 2003 Act.

17. The conclusions of the learned Appellate Tribunal with regard to the debt-equity ratio insofar as the projects completed prior to 1992 (which has been fixed at 50:50) has also been assailed on the ground that the sole basis thereof is the practice followed in the case of another PSU i.e. NTPC ignoring the fact that the Regulation 20 of the Tariff Regulations provide for a ratio of 70:30.

18. Likewise, the findings with regard to Pension and Gratuity Fund, particularly, the recovery of the entire fund from the consumers (in reversal of the decision of the CERC permitting recovery from consumers to the extent of 60% and contribution by the Corporation of the balance 40%) has been assailed on the ground that no discernible or rational basis is disclosed for the view taken, particularly when the Corporation has been permitted and, in fact, collected tariff at the rate fixed by the Corporation itself under the Act

of 1948 for the years 2004-2005 and 2005-2006 which constitute 40% of the tariff period.

19. The allowances of capital investment in respect of Head Office, Regional Offices, Administrative & other Technical Centres have also been assailed as being contrary to the provisions of the Tariff Regulations.

20. The above contentions made on behalf of the CERC has been reiterated on behalf of the consumers who are the appellants in Civil Appeal Nos. 971-973 of 2008. So far as the interpretation of the provisions contained in the fourth proviso to Section 14 of the 2003 Act is concerned, learned counsel for the said appellants (consumers) has additionally drawn the attention of the Court that in the course of the exercise leading to the enactment of 2003 Act, the Parliamentary Standing Committee on Energy had, in fact, recommended that the Corporation, having regard to the special responsibility entrusted to it under the Act of 1948, should be exempted from the application of the 2003 Act. Parliament, however, decided not to provide a blanket exemption in favour of the Corporation. It is pointed out that under Section 173 of the 2003 Act it is only such of the provisions of the

2003 Act which are inconsistent with the provisions of the Consumer Protection Act, 1986 or the Atomic Energy Act, 1962 or the Railways Act, 1989 that will not have any effect. Instead, insofar as the Corporation is concerned what was provided for is a limited exemption, the extent of which has been spelt out by Section 14 (fourth proviso) of the 2003 Act, which, necessarily, has to be understood to be circumscribed by the provisions of the main part of Section 14 of the 2003 Act which deals with licensing as distinguished from tariff determination. It is further urged on behalf of the appellants – consumers that the decision to keep in abeyance the tariff for a period of two years is ultra vires the provisions of the 2003 Act, there being no authority in law to order any such relaxation or to postpone the coming into effect of the tariff fixed under the 2003 Act. The fact that the provisions of the Act of 1948 do not find any mention in the proviso to Section 61 of the 2003 Act has also been stressed upon.

21. In so far as the pension and gratuity fund is concerned, in addition to the grounds urged in this regard on behalf of the CERC, it is further urged that almost 99% of the pension and gratuity liability,

as assessed by the Actuary, has been permitted to be loaded on to the electricity business without any reference or finding with regard to the percentage of man-power deployed in the electricity business. Such a decision which has been based on the sole submission of the Corporation is contended to be untenable in law.

The calculation and allowance of percentage of depreciation by following the provisions of Section 40 of the Act of 1948 has also been assailed as being contrary to the provisions of the Regulations which, according to the appellants – consumers should hold the field.

22. The Corporation which is the respondent in the appeals filed by the Regulatory Commissions and the Consumers had filed its cross-objections in the said appeals. Emphasis is laid on the status and peculiar characteristics of the Corporation as envisaged by the statute i.e. the Act of 1948 constituting the said body. Reference has been sought to be made to the various social welfare activities that the Corporation is statutorily mandated to perform over and above electricity generation and transmission. The aforesaid peculiar characteristics of the Corporation and its multifarious duties, according to the Corporation, would justify continuity of the due

application of the provisions of the Act of 1948 as are not inconsistent with the provisions of the 2003 Act. It is only such of the provisions of the Act of 1948 which are in clear conflict with the provisions of the 2003 Act that will give way. The provisions of the Act of 1948 that may be in conflict with those of the Tariff Regulations will however not have the same effect inasmuch as the provisions of a subsidiary legislation cannot have an overriding effect over the provisions of the parent or any other statute. It has been further urged that in a given situation the proviso to a statutory provision may act as a main provision itself going beyond the parameters of the matter of which the proviso may have been enacted as a part. In this regard, reliance has been placed on the decisions of this Court in ***State of Rajasthan*** vs. ***Leela Jain***[6], ***S. Sundaram Pillai & Others*** vs. ***V.R. Pattabhiraman & Others***[7], ***Shah Bhojraj Kuvarji Oil Mills & Ginning Factory*** vs. ***Subhash Chandra Yograj Sinha***[8], ***Motiram Ghelabhai*** vs. ***Jagan Nagar***[9].

23. Coming specifically to the rate of depreciation, sinking fund,

6 (1965) 1 SCR 276
7 (1985) 1 SCC 591 [Para 27 to 43]
8 (1962) 2 SCR 159 [Para 9 and 10]
9 (1985) 2 SCC 279 [Para 9]

interest on capital, etc., it has been urged that there being no provisions in the 2003 Act in respect of the aforesaid matters which are dealt with only by the Tariff Regulations in contra-distinction to specific provisions of the Act of 1948 covering the issue i.e. Section 40 of the Act of 1948, it is the provisions of Part IV of the Act of 1948 which will govern the matter. So far as the debt-equity ratio is concerned, it has been urged that the determination of the ratio at 50:50 for capital assets created prior to 30th March, 1992 and the ratio of 70:30 for the capital assets after 30th March, 1992 is consistent with the principles adopted for all Central Government Corporations like NTPC Limited, Powergrid Corporation of India Limited, NHPC etc.

24. Insofar as the pension and gratuity contribution required to be made by the Corporation is concerned, it is contended that the issue has been raised only at the stage of arguments by the HT-consumers i.e. appellants in Civil Appeal Nos. 971-973 of 2008. The same has not been raised by the Regulatory Commission at all or even by the HT-consumers before the forums below. That apart, it is contended that the break-up of the details of the percentage of employees called for by the CERC in this regard was made available

which fact is borne out by the documents placed before the learned Appellate Tribunal which has also been laid before this Court (Annexure 18 to the Memo of Appeal before the learned Appellate Tribunal).

25. Similarly, in so far as the Operation and Maintenance expenditure is concerned, it is contended that the same has been rightly allowed as per the Tariff Regulations in force.

26. Before delving into the issues arising in the appeals, two preliminary questions need to be answered which we propose to do at the outset. The first pertains to the grant of a transitory period making the tariff order effective from 1st April, 2006 instead of 1st April, 2004.

27. We have considered the reasons which had weighed with the CERC as well as the learned Appellate Tribunal in granting the aforesaid transitory period. The present dispute, regardless of the way it is resolved, would have relevance to the quantum of the tariff, depending on whether the determination is made on the basis of the provisions of Part IV of the Act of 1948 or the provisions of the Tariff Regulations, as may be. So far as the grant of the transitory period is

concerned, the same, we have noticed, has been so granted having due regard to the statutory functions/social responsibilities that the Corporation is mandated to undertake in terms of the Act of 1948. The tariff fixed is also lower than the tariff that has been fixed by the Jharkhand and West Bengal Electricity Regulatory Commission for the general/domestic classes of consumers. While it is correct that the classes of consumers served by the Corporation are HT-Industrial consumers like Steel, Coal, Railways, etc. beside bulk supply to main beneficiaries of State Electricity Boards of West Bengal and Jharkhand, the said fact, itself, is another peculiar feature which distinguishes the Corporation from other licenses. If in a situation where the Corporation in addition to generation, transmission and distribution of electricity is statutorily required to undertake certain social security/beneficial measures like flood control, control of soil erosion, afforestation, navigation, promotion of public health, etc. we do not see how the grant of transitory period can be faulted with. We, therefore, decline to interfere with the aforesaid part of the order of the learned Appellate Tribunal.

28. The learned Appellate Tribunal has also taken the view that

having regard to the provisions of Section 79 of the 2003 Act it is the CERC which would be the "Appropriate Commission" for determination of tariff inasmuch as the Damodar Valley Corporation is a Corporation owned and controlled by the Central Government. The detailed inputs to arrive at the aforesaid conclusion have been duly considered by us. On such consideration, we are of the view that the above conclusion recorded by the learned Appellate Tribunal is neither unreasonable nor irrelevant so as to warrant our interference, particularly, in exercise of the limited jurisdiction under Section 125 of the 2003 Act.

29. We may now turn to the other/larger issues arising in the appeals.

30. The Damodar Valley Corporation had been incorporated under the provisions of the Act of 1948. The facts antecedent to the incorporation of this entity would throw considerable light on the objects and reasons for its incorporation. Sometime in the year 1943, the Damodar River Valley had been affected by severe floods leading to wide-scale destruction of life and property. The Provincial Government of Bengal had constituted an Enquiry Committee to suggest ways and

means to avoid such catastrophes in the future. The Enquiry Committee had, inter alia, recommended that a statutory corporation, on the lines of the Tennessee Valley Authority of the USA, be incorporated to command and control the Damodar River. The then British Government accepted this proposal of the Committee and had called one Mr. W.L. Voorduin, a senior Engineer working for the Tennessee Valley Authority to make recommendations and suggestions in this regard.

31. The preamble to the Tennessee Valley Authority Act[10], 1933, reads that the statute has been enacted by the Congress "**to improve the navigability and to provide for the flood control of the Tennessee River; to provide for reforestation and the proper use of marginal lands in the Tennessee Valley; to provide for the agricultural and industrial development of said valley; to provide for the national defence by the creation of a corporation for the operation of Government properties at and near Muscle Shoals in the State of Alabama, and for other purposes.**" As can be observed, the primary objective of the Tennessee Valley Authority Act is to

10 16 U.S. Code § 831

prevent floods across the Tennessee River Valley and the generation of electricity is incidental to this activity of flood-control.

32. The objects and reasons behind the incorporation of the Act of 1948 may now be noticed:

> "The Damodar River rises in Western Bihar and flows generally in a south-easterly direction into Bengal. It is a seasonal river having a large flow of water during the rains which, apart from being generally wasted, at times causes great damage to life and property. It is now proposed to harness the water of this river and some of its tributaries and utilize it in multiple development of the Damodar Valley and the adjoining area.
>
> **This Bill seeks to set up a Corporation, called the Damodar Valley Corporation on the lines of the Tennessee Valley Authority in the USA. It will be an autonomous body within the framework of the enactment. Its objects, constitution and powers are laid down in the Bill. Briefly, its main function will be to control flood in the Damodar, generate electric power for distribution and provide water for irrigation and other purposes. In addition, the Corporation will, endeavour to promote economic development of the Damodar Valley and the adjoining areas.** It will consist of three members including the Chairman. These three members and the Secretary and the treasurer will be appointed by the Central Government. The Corporation will have the power to acquire land and construct or cause to be constructed such dams, barrages, reservoirs, power-houses and power structures, electrical transmission line, irrigation and navigation works as may be necessary. The capital required by the Corporation will be provided by the Central Government and the Government of Bihar and West Bengal. The profits and losses will be distributed between these three Governments in certain agreed proportions.
>
> The provisions of this Bill are designed to give effect to the broad outlines of the agreement reached between the

three Governments concerned."

33. Having noticed the objects and reasons behind the creation of the incorporated body and the main functions assigned to it by Parliament, we may now specifically revert to the issue of determination of tariff for supply/distribution of the electricity generated by the Corporation.

34. Insofar as the issue as to whether the Tariff Regulations would have an overriding effect to render the parallel provisions in the Act of 1948 ineffective, the reliance placed on behalf of the appellants on the decision of a Constitution Bench of this Court in ***PTC India Limited*** *(supra)* may now be considered. The primary issue that was considered by the Constitution Bench of this Court in ***PTC India Limited*** *(supra)* was *"**whether the Appellate Tribunal constituted under the Electricity Act, 2003 has jurisdiction under Section 111 of the Act to examine the validity of the Central Electricity Regulatory Commission (Fixation of Trading Margin) Regulations, 2006 framed in exercise of power conferred under Section 178 of the Electricity Act**?"*

35. The observations of this Court in ***PTC India Limited*** *(supra)* with regard to the efficacy of the Tariff Regulations in the light of its statutory character must necessarily be understood in the above context. The opinion rendered in ***PTC India Limited*** *(supra)* itself makes it clear that the Tariff Regulations though statutory in character are a species of subordinate delegated legislation, the purport of which has been described and dealt with in the following manner:

> **"52.** In *Indian Express Newspapers (Bombay) (P) Ltd.* v. *Union of India* this Court* held that subordinate legislation is outside the purview of administrative action i.e. on the grounds of violation of rules of natural justice or that it has not taken into account relevant circumstances or that it is not reasonable. However, a distinction must be made between delegation of legislative function and investment of discretion to exercise a particular discretionary power by a statute. In the latter case, the impugned exercise of discretion may be considered on all grounds on which administrative action may be questioned such as non-application of mind, taking irrelevant matters into consideration, etc. The subordinate legislation is, however, beyond the reach of administrative law. Thus,
>
> _____
> *(1985) 1 SCC 641
> delegated legislation - otherwise known as secondary, subordinate or administrative legislation - is enacted by the administrative branch of the government, usually under the powers conferred upon it by the primary legislation. Delegated legislation takes a number of forms and a number of terms - rules, regulations, by-laws etc; however, instead of the said labels **what is of significance is the provisions in the primary legislation which, in the first place, confer the**

> **power to enact administrative legislation. Such provisions are also called as "enabling provisions". They demarcate the extent of the administrator's legislative power, the decision-making power and the policy making power.** However, any legislation enacted outside the terms of the enabling provision will be vulnerable to judicial review and *ultra vires*."

36. The opinion of a seven Judge Bench of this Court, though of considerable vintage, in The Presidential Reference, The Delhi Laws Act, 1912[11] may usefully be recalled at this stage:

> "(In delegated legislation), a portion of the law-making power of the legislature is conferred or bestowed upon a subordinate authority and the rules and regulations which are to be framed by the latter constitute an integral portion of the statute itself. As said already, it is within powers of Parliament or any competent legislative body, when legislating within its legislative field, to confer subordinate administrative and legislative powers upon some other authority. The question is: What are the limits within which such conferment of bestowing of powers could be properly made?
>
> It is conceded by the learned Attorney-General that the legislature cannot totally abdicate its functions and invest another authority with all the powers of legislation which it possesses. Subordinate legislation, it is not disputed, must operate under the control of the legislature from which it derives its authority, and on the continuing operation of which, its capacity to function rests. **As was said by Dixton, J., (vide, *Victoria Stevedoring and General Contracting Company v. Dignan*, 46 C.L.R. 73) "a subordinate legislation cannot have the independent and unqualified authority which is an attribute of true legislative power".** It is pointed out by this learned Judge that several legal consequences flow from this doctrine of subordinate legislation. An offence against subordinate legislation is regarded as an offence against the statute and on the repeal of

11 A.I.R. 1951 S.C. 332; Coram: Hon'ble the Chief Justice H.J. Kania, Hon'ble Mr. Justice Syed Fazl Ali, Hon'ble Mr. Justice Patanjali Sastri, Hon'ble Mr. Justice M.C. Mahajan, Hon'ble Mr. Justice B.K. Mukherjea, Hon'ble Mr. Justice S.R. Das and Hon'ble Mr. Justice Vivian Bose

the statute the regulations automatically collapse. So far, the propositions cannot, and need not, be disputed. But, according to the learned Attorney-General, all that is necessary in subordinate legislation is that the legislature should not totally abdicate its powers and that it should retain its control over the subordinate agency which it can destroy later at any time it likes. If this is proved to exist in a particular case, then the character or extent of the powers delegated to or conferred upon such subordinate agent is quite immaterial and into that question the courts have no jurisdiction to enter. This argument seems plausible at first sight, but on closer examination, I find myself unable to accept it as sound. In my opinion, it is not enough that the legislature retains control over the subordinate agent and could recall him at any time it likes, to justify its arming the delegate with the legislative powers in regard to a particular subject. Subordinate legislation not only connotes the subordinate or dependent character of the agency which is entrusted with the power to legislate, but also implies to subordinate or ancillary character of the legislation itself, the making of which such agent is entrusted with. If the legislature hands over its essential legislative powers to an outside authority, that would, in my opinion, amount to a virtual abdication of its powers and such an act would be in excess of the limits of permissible delegation.

... On a consideration of all these decisions I have no hesitation in holding that as regards constitution of the delegation of legislative powers the Indian Legislature cannot be in the same position as the prominent British Parliament and how far delegation is permissible has got to be ascertained in India as a matter of construction from the express provisions of the Indian Constitution. **It cannot be said that an unlimited right of delegation is inherent in the legislature power itself. This is not warranted by the provisions of the Constitution and the legitimacy of delegation depends entirely upon its being used as an ancillary measure which the legislature considers to be necessary for the purpose of exercising its legislative powers effectively and completely. The legislature must retain in its own hands the essential legislative functions which consist in declaring the legislative policy and laying down the standard which is to be enacted into a rule of law, and what can be delegated in the task of subordinate legislation which by its very nature is ancillary to the statute which delegates the power to make it.**”

37. It may be wholly unnecessary to detract from the fundamental principles of law laid down in The Presidential Reference *(supra),* which would be an inevitable consequence, if the contentions advanced on behalf of the appellants to the effect that the Tariff Regulations must override the provisions of the Act of 1948 as the said regulations are statutory in character is to be accepted. This is also what has been subsequently emphasised by this Court in ***Bharathidasan University & Anr.*** (supra) and ***Samsthanan Chethu Thozhilali Union*** (supra). No error, therefore, can also be found in the implicit reliance placed on the ratio of the above decisions by the learned Appellate Tribunal in its order dated 23rd November, 2007.

38. This will bring us to a consideration of the purport and effect of the fourth proviso to Section 14 of the 2003 Act on which much debate and discussion have been generated in the course of prolonged hearing of the case that had taken place. Section 14 of the Act may usefully be extracted below at this stage:

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

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

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.

(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, insofar 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 1 (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."

39. It is contended on behalf of the appellants that the application of a proviso must always be confined and understood within the parameters of the provisions of the main section of which the proviso is a part and that a proviso, in no case, can be construed to have any general application. This argument would require some

examination. In this regard the decision of this Court ***Shah Bhojraj Kuvarji Oil Mills*** *(supra)* may be usefully recapitulated and the following observations may be specifically taken note of:

> "It is contended by the learned Attorney-General that the construction placed by the High Court upon the first proviso to Section 50 (of Bombay Rents, Hotel and Lodging House Rates Control Act of 1947) is erroneous. Though he concedes that the proviso must be read as qualifying what the substantive part of Section 50 enacts, he urges that the proviso goes beyond that purpose and enacts a substantive law of its own. He relies upon the following observations of Lord Loreburn, L.C., in *Rhondda Urban Council v. Taff Vale Railway*, (1909) A.C. 253, where a proviso to Section 51 of the Railway Clauses Consolidation Act, 1845, was under consideration:
>
> > "It is true that Section 51 is framed as a proviso upon preceding sections. But it is also true that the latter half of it, though in form a proviso, is in substance a fresh enactment, adding to and not merely qualifying that which goes before.",
>
> and contends that the latter portion of the proviso, in question, being a substantive enactment, comprehends not only those suits which were pending on the date of repeal but also those cases, which came within the language of the latter part of the proviso, whenever the Act was extended to new areas.....
>
> .....**As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule. But, provisos are often added not as exceptions or qualifications to the main enactment but as savings clauses, in which cases they will not be construed as controlled by the section.**"

40. Similarly in ***S. Sundaram Pillai*** *(supra)* this Court has

observed:

> "A very apt description and extent of a proviso was given by Lord Oreburn in *Rhondda Urban District Council v. Taff Vale Railway Co.*, (1909) A.C. 253, where it was pointed out that insertion of a proviso by the draftsman is not always strictly adhered to its legitimate use and at times a section worded as a proviso may wholly or partly be in substance a fresh enactment adding to and not merely excepting something out of or qualifying what goes before."

41. The fourth proviso to Section 14 of 2003 uses the expression "….and the provisions of the Damodar Valley Corporation Act, 1948 in so far as they are not inconsistent with the provisions of the Act, shall continue to apply to that Corporation…". On a careful reading of the aforesaid later part of the fourth proviso to Section 14 of the Act of 2003, it is seen that it is clearly a substantive provision to lay down something more than what a proviso generally deals with. If the intention of the proviso was to exclude DVC only from the main part of Section 14 of the Act of 2003 dealing with the requirement of obtaining licence for transmission/distribution/trade in electricity, the purpose is fully achieved by the first part recognising DVC as a 'deemed licensee' and not requiring to apply for and obtain licence. The Legislature could have simply stopped there. There was no necessity to incorporate the second part. The second part of the fourth

proviso is to bring in the continued application of some of the provisions of the Act of 1948 which are not inconsistent with the provisions of the Act of 2003. To elaborate it further, let us take the case of the third proviso to Section 14 of the Act of 2003 which provides "that in case an appropriate Government transmits electricity or distributes electricity or undertakes trading in electricity whether before or after the commencement of the Act, such Government shall be deemed to be a licensee under the Act but shall not be required to obtain licence under the Act". In so far as DVC is concerned, if the fourth proviso is to be confined only to licensing as in the case of third proviso, the fourth proviso also would have stopped with the first part of the proviso. There would have been no necessity to incorporate the second part of the proviso. The legislature does not incorporate any words which are irrelevant or redundant and every expression used in a statutory provision has some purpose.

42. A careful comparative reading of the third and the fourth provisos to Section 14 of the Act of 2003 clearly indicates the intention of the legislature that the second part of the fourth proviso is to bring in the continued application of some of the provisions of the Act of

1948 which are not inconsistent with the provisions of the Act of 2003. There are no licensing provisions in the Act of 1948 to be saved. The obvious reference in the second part of proviso is to provide for the continued application of the provisions of the Act of 1948 insofar as they are not inconsistent with the provisions of the Act of 2003.

43. In the course of arguments, the appellants made reference to Sections 18 and 19 of the Act of 1948 as being the provisions relating to licensing which could be said to be considered as saved by virtue of second part of the fourth proviso to Section 14 of the Act of 2003. A perusal of Sections 18 and 19 of the Act of 1948 show that they deal with the supply and generation of electrical energy and distribution of electricity within the Damodar Valley area. The provisions of the Act of 2003 which authorise the Regulatory Commissions to grant licence to persons (other than DVC) fully govern the field and there is no question of continued application of the Act of 1948 in that respect. Sections 18 and 19 of the Act of 1948 do not deal with licence to DVC. These provisions only deal with activities of other entities to distribute electricity within the Damodar Valley area. Further, the provisions of Electricity Act, 2003 authorizes the

Regulatory Commissions to grant licence to persons other than DVC. Therefore, there can be no question of continued application of the Act of 1948 over those provisions.

44. The fourth proviso to Section 14 which uses the expression "....and the provisions of the Damodar Valley Corporation Act, 1948 in so far as they are not inconsistent with the provisions of the Act, shall continue to apply to that Corporation...", in our view, is a positive provision enabling continued application of certain provisions of the Act of 1948 which are not inconsistent with the provisions of the Electricity Act, 2003. The intention behind both the provisions needs to be appreciated and given effect to.

45. There is yet another dimension of the case that has been urged and, therefore, will require our consideration. While dealing with the question as to whether Reports submitted by Parliamentary Standing Committee, can be taken as permissible external aids for interpretation of a statute, this Court in a recent decision in ***Kalpana Mehta & Ors.*** vs. ***Union of India & Ors.***[12] had occasion to observe as follows:

12 2018 (7) SCALE 106

> **"xxxx**
>
> **it clear as day that the Court can take aid of the report of the parliamentary committee for the purpose of appreciating the historical background of the statutory provisions and it can also refer to committee report or the speech of the Minister on the floor of the House of the Parliament if there is any kind of ambiguity or incongruity in a provision of an enactment.** Further, it is quite vivid on what occasions and situations the Parliamentary Standing Committee Reports or the reports of other Parliamentary Committees can be taken note of by the Court and for what purpose. Relying on the same for the purpose of interpreting the meaning of the statutory provision where it is ambiguous and unclear or, for that matter, to appreciate the background of the enacted law is quite different from referring to it for the purpose of arriving at a factual finding. That may invite a contest, a challenge, a dispute and, if a contest arises, the Court, in such circumstances, will be called upon to Rule on the same."

46. The proceedings of the Parliamentary Standing Committee on Energy (13th Lok Sabha), insofar as the Electricity Bill of 2001 presented before the Lok Sabha on 19-12-2002 is concerned, would go to indicate that various organisations like the Ministry of Railways, the Bhakra Beas Management Board (BBMB) and also the Corporation had requested for exemption from the operation of the provisions of 2003 Act citing the peculiar, sensitive and specialised nature of task that such bodies have been entrusted by the statutory enactments constituting and governing the said bodies/organizations. Specifically, in this regard, the peculiar duties and responsibilities cast on the DVC by Section 12 of the Act of 1948

had been highlighted before the Parliamentary Standing Committee. It had been urged before us that it was recommended by the Parliamentary Standing Committee that exemption from the provisions of the proposed 2003 Act should be granted to the Corporation in view of its special statutory status which may get eroded if the exemptions are not to be granted. The provisions of Section 58 of the Act of 1948 which is in the following terms were also placed before the Parliamentary Standing Committee while seeking exemption from the operation of the proposed 2003 Act:

> "58. **Effect of other laws :** The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act."

47. On the other hand, it would appear from the record of the proceedings of the Parliamentary Standing Committee that the Industry represented by Chhotanagpur Chamber of Commerce & Industry and The Bengal Chamber of Commerce & Industry as well as the States of Jharkhand and West Bengal had contested the claims made by the Corporation for exemption and had pleaded before the Parliamentary Standing Committee that the Act of 1948 itself be repealed/amended insofar as all non-power related activities are

concerned which constitute only about 10% of the total activities of the Corporation.

48. After considering the respective stands taken, the Parliamentary Standing Committee had recommended that the Corporation should be exempted from the operation of the provisions of the proposed 2003 Act in view of the special status and responsibilities of the Corporation as envisaged under the Parliamentary enactment constituting it (i.e the Act of 1948). However, it appears that Parliament was not inclined to provide a blanket/total exemption in favour of the Corporation and the 2003 Act did not include the Corporation as one of the entities in Section 173 of the 2003 Act which provides exemption in so far as the provisions of the Consumer Protection Act, 1986, the Atomic Energy Act, 1962 and the Railways Act, 1989 clearly excluding the provisions of the Act of 1948 therefrom. Instead, the fourth proviso to Section 14 of the 2003 Act was specifically incorporated, details of which have already been noted. Having regard to the legislative history behind the enactment of the provision of Section 173 and the provisions of Section 14 including the fourth proviso thereto, it may be more in consonance with the

Parliamentary intention to hold that the fourth proviso to Section 14 need not be understood to be confined only to the question of licensing which is dealt with by the main part of the Section 14. Rather, we are inclined to hold that Parliament had intended to provide partial exemption to the Corporation by mandating that such provisions of the Act of 1948 which are not inconsistent with the 2003 Act will continue to hold the field. Viewed thus, the fourth proviso to Section 14 of the Electricity Act 2003 has to be understood to be a legislative exercise in the nature of a substantial provision of law. Part IV of the Act of 1948 not being inconsistent with the provisions of the 2003 Act can, therefore, be taken into account for determination of tariff. Such provisions of the Act of 1948 will also have an overriding effect over the inconsistent provisions of the Tariff Regulations. Our view, as above, will also effectuate the provisions of the Act of 1948 in so far as the activities of the Corporation, other than generation and transmission of electricity, is concerned. We, therefore, affirm the above view taken by the Appellate Tribunal for the reasons afore-stated.

49. The specific heads of tariff fixation on which grievances

have been raised by the appellants in the present set of appeals are enumerated as hereunder:

(a) Depreciation rate;

(b) Sinking Fund;

(c) Debt Equity ratio;

(d) Pension & Gratuity Contribution;

(e) Return on Capital Investment on Head Office etc.;

(f) Revenue relating to afforestation etc., which are not relatable to power generation;

(g) Period of transition (two years) allowed for the tariff fixed by the CERC to come into effect;

(h) The treatment of entire transmission as inter-State transmission lines thereby divesting the Jharkhand and West Bengal State Electricity Regulation Commissions of the power to fix tariff insofar as intra-State transmission of electricity is concerned;

50. Insofar as the questions under the last two issues at (g) and (h) above is concerned, the same have already been dealt with in the present order. Of the remaining heads of tariff fixation, it appears that

so far as the 'depreciation rate' and 'sinking fund' is concerned it is the provisions of Section 40 of the Act of 1948 which have been held to be determinative. We have gone through the reasoning adopted by the learned Appellate Tribunal in this regard. Having clarified the manner in which the fourth proviso to Section 14 of the 2003 Act has to be understood, we do not find the reasoning adopted by the learned Appellate Tribunal on the issues relating to 'depreciation' and 'sinking fund' to be fundamentally flawed in any manner so as to give rise to a substantial question of law requiring our intervention/interference under Section 125 of the 2003 Act.

51. Insofar as the debt-equity ratio is concerned, we find that except for the projects which have been completed prior to 1992 in which case the ratio has been worked out at par with other public-sector organisation at 50:50, the ratio of 70:30 has been adopted following the prescription under Regulation 20 of the Tariff Regulations in the absence of any specific rate under the Act of 1948.

52. So far as the pension and gratuity fund is concerned, the only issue arising is whether the fund worked out on Actuary basis at Rs.1534.49 crores should be apportioned between the Corporation

and the consumers as held by the CERC in the ratio of 40:60 or the entire fund should be allowed to be recovered by way of tariff from the consumers as held by the learned Appellate Tribunal. The reasoning of the learned Appellate Tribunal in coming to the aforesaid conclusion is as follows:

> "D.3 As a general rule, once the Commission, after prudence check, has agreed with the need for funding the Pension and Gratuity Contribution funds, DVC should have been allowed to recover entire amount from the consumers through the tariff. Asking DVC to contribute out of its own resources would tantamount to denying it the return on equity as assured in terms of Tariff Regulations. However, if we look at it from the point of view of the consumers, the consumers, particularly the industrial and commercial ones, have now no option to adjust their sale price to take into consideration the need for meeting the accumulated liability. It is, therefore, an accepted fact that due to postponing of the creation of such fund, the consumers were enjoying lesser tariff than the legitimate tariff otherwise applicable to them."

53. A careful consideration of the reasoning adopted by the learned Appellate Tribunal would not disclose any such error so as to warrant interference of this Court. No error or fallacy, *ex facie*, is disclosed in the reasoning adopted so as to justify interference under Section 125 of the 2003 Act.

54. Insofar as the consumers (appellants in Civil Appeal Nos. 971-973 of 2008) are concerned, an additional issue has been struck, as noticed earlier. This is with regard to the number of employees

engaged in the power sector by the Corporation for whom alone proportionate recovery by way of tariff so far as the pension and gratuity is concerned, would be justifiable. Apart from the fact that the issue was not raised in any of the forums below and had been so raised before this Court for the first time and that too in the course of the arguments advanced, the materials on record do not justify a conclusion to be reached by us which will support the core basis of the contention made, namely, that the Corporation had not laid before the CERC any materials to show the extent of the work-force deployed in the power sector of the Corporation. In fact, in the counter arguments advanced on behalf of the Corporation this contention has been refuted and it is asserted that such materials were, indeed, laid before the CERC, a fact which we find to be correct.

55. Insofar as the issue of allowance of cost relating to other activities of the Corporation to be recovered through tariff on electricity is concerned, we have taken note of the objection(s) raised in this regard which in sum and substance is that Sections 32 and 33 of the Act of 1948 are in direct conflict with Sections 41 and 51 of the 2003 Act and, therefore, recovery of cost incurred in “other works”

undertaken by the Corporation through power tariff is wholly untenable. Apart from reiterating the basis on which we have thought it proper to affirm the findings of the learned Appellate Tribunal on the purport and scope of the fourth proviso to Section 14 of the 2003 Act and the continued operation of the provisions of the Act of 1948 which are not inconsistent with the provisions of the 2003 Act, we have also taken note of the specific provisions contained in Sections 41 and 51 of the 2003 Act which, *inter alia*, require maintenance of separate accounts of the other business undertaken by transmission/distribution licensees so as to ensure that the returns from the transmission/distribution business of electricity do not subsidize any other such business. Not only Sections 41 and 51 of the 2003 Act contemplate prior approval of the Appropriate Commission before a licensee can engage in any other business other than that of a licensee under the 2003 Act, what is contemplated by the aforesaid provisions of the 2003 Act is some return or earning of revenue from such business. In the instant case, the "other activities" of the Corporation are not optional as contemplated under Sections 41/51 of the 2003 Act but are mandatorily cast by the statute i.e. Act of 1948 which, being in the nature of socially beneficial measures, *per*

se, do not entail earning of any revenue so as to require maintenance of separate accounts. The allowance of recovery of cost incurred in connection with "other activities" of the Corporation from the common fund generated by tariff chargeable from the consumers/customers of electricity as contemplated by the provisions of the Act of 1948, therefore, do not collide or is, in any manner, inconsistent with the provisions of the 2003 Act. We will, therefore, have no occasion to interfere with the findings recorded by the learned Appellate Tribunal on the above score.

56. Having dealt with all the issues raised/arising in the appeals under consideration in the manner indicated above, we deem it proper to dismiss all the appeals and affirm the judgment and order dated 23rd November, 2007 passed by the learned Appellate Tribunal. We order accordingly.

....., J.
[RANJAN GOGOI]

....., J.
[R. BANUMATHI]

NEW DELHI
JULY 23, 2018

ITEM NO.1501 COURT NO.2 SECTION XVII
[FOR JUDGMENT]

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(S). 971-973/2008

BHASKAR SHRACHI ALLOYS LIMITED ETC.ETC. APPELLANT(S)

VERSUS

DAMODAR VALLEY CORPORATION & ORS.ETC. RESPONDENT(S)
WITH
C.A. NO. 1914/2008 (XVII)
C.A. NO. 4504-4508/2008 (XVII)
C.A. NO. 4289/2008 (XVII)

Date : 23-07-2018 These appeals were called on for pronouncement of judgment today.

For parties :

Mr. Shibashish Misra, AOR

Mr. Rajiv Yadav, AOR

Mr. Amit Kapur, Adv.
Mr. Pukhrambam Ramesh Kumar, AOR
Mr. K. Amrit Kumar Sharma, Adv.

Mr. Anupam Lal Das, AOR

Mr. K. V. Mohan, AOR

Mr. Nikhil Nayyar, AOR

Mr. Rajiv Shankar Dvivedi, AOR
Mr. S.K. Sarkar, Adv.
Ms. Arti Dvivedi, Adv.

Mr. Anil K. Jha, AOR

Mr. Vishal Arun, AOR

Hon'ble Mr. Justice Ranjan Gogoi pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mrs. Justice R. Banumathi

The appeals are dismissed in terms of the signed reportable judgment.

[VINOD LAKHINA] **[ASHA SONI]**
AR-cum-PS **BRANCH OFFICER**

[SIGNED REPORTABLE JUDGMENT IS PLACED ON THE FILE]