REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 9252-9253 OF 20222
(arising out of SLP(C) Nos. 7860-7861 of 2018)

KERALA STATE ELECTRICITY BOARD & ORS. ……APPELLANT(S)

VERSUS

THOMAS JOSEPH ALIAS THOMAS M. J. & ORS. …….RESPONDENT(S)

WITH

Civil Appeal Nos. 9256-9257 of 2022 @ SLP(C) Nos. 7886-7887 of 2018
Civil Appeal Nos. 9254-9255 of 2022 @ SLP(C) Nos. 7875-7876 of 2018
Civil Appeal Nos. 9262 -9263 of 2022 @ SLP(C) Nos. 7880-7881 of 2018
Civil Appeal Nos. 9264 -9265 of 2022 @ SLP(C) Nos. 7863-7864 of 2018
Civil Appeal Nos. 9266 -9267 of 2022 @ SLP(C) Nos. 7882-7883 of 2018
Civil Appeal Nos. 9268 -9269 of 2022 @ SLP(C) Nos. 7884-7885 of 2018
Civil Appeal Nos. 9270 -9271 of 2022 @ SLP(C) Nos. 7870-7871 of 2018
Civil Appeal Nos. 9258 -9259 of 2022 @ SLP(C) Nos. 7873-7874 of 2018
Civil Appeal Nos. 9260 -9261 of 2022 @ SLP(C) Nos. 7878-7879 of 2018

J U D G M E N T

J.B. PARDIWALA, J.,

1. Leave granted in all the captioned Special Leave Petitions.

2. Since the issues raised in all the captioned petitions are the same and the challenge is also to the self-same judgment and order passed by the High Court of Kerala dated 12.04.2017 deciding a batch of writ applications filed by the

respondents herein, those were taken up for hearing analogously and are being disposed by this common judgment and order.

3. This batch of petitions is at the instance of the Kerala State Electricity Board ("Board" or "KSEB") and is directed against the judgment and order passed by Division Bench of the High Court of Kerala dated 12.04.2017 in Writ Petition (C) No. 22644 of 2015 and allied petitions by which the High Court declared that in case of unauthorised use of electricity in a higher tariff the assessment shall be made at the rate equal to twice the tariff applicable for the relevant category of services attracting such higher tariff for which electricity supplied was unauthorisedly used and not the relevant category of services to which the consumer belongs. The High Court proceeded further to hold that the exception to the above would be in the case of a consumer who is guilty of overdrawal of electricity in excess of the sanctioned/connected load in the very same premises and for the very same purpose which does not involve any change in the tariff applicable for the relevant category of services, which consumption has already been metered and paid by the consumer, as such use being not by any artificial means or through the tampered meter, the assessment under Section 126(6) of the Electricity Act 2003 (for short, 'the Act 2003') could only be called to twice the fixed charges payable and such consumer cannot be saddled with the liability to pay twice the energy charges applicable for the relevant category of services, unless regularisation of such additional connected load or enhancements of contract demand necessitates upgradation of the existing distribution system or enhancement of the voltage level of supply.

FACTUAL MATRIX

4. The neat question of law that falls for the consideration of this Court is whether the consumption of electricity by the respondents (consumers) in excess of the connected load/contracted load would amount to 'unauthorised use of electricity' under explanation (b) to Section 126(6) of the Act 2003.

5. The appellant Board is a company incorporated under the Companies Act, 1956 (for short, ‘the Act 1956’) and is controlled by the Government of Kerala. It is engaged in the business of generation, transmission and distribution of electricity in the State of Kerala.

6. In the present litigation, all the respondents are commercial/industrial consumers having LT (Law Tension) connections. It is not in dispute that at the time of the inspection undertaken by the officials of the Appellant Board, all the consumers were found to be drawing electricity in excess of the connected/contracted load. The issue that arises is whether the respondents (consumers) can be assessed at the rate equal to twice the tariff applicable as stipulated in Section 126(6) of the Act 2003?

7. The consumers went before the High Court of Kerala and preferred respected writ petitions seeking an authoritative pronouncement on the quantification of penalty under Section 126(6) of the Act 2003. It may not be out of place to state at this stage that the Division Bench of the High Court took up the petitions for hearing on the strength of an order of reference made by a learned Single Judge of the High Court dated 17.08.2015 observing that an authoritative pronouncement on the quantification of penalty under Section 126(6) of the Act 2003 was necessary as everyday many petitions were being filed in the High Court with a challenge to the orders imposing penalty involving ‘excess/additional load’ falling under explanation (b)(ii) to Section 126 of the Act 2003 and ‘unauthorised use of electricity’ falling under explanation (b)(iv) to Section 126 of the Act 2003, in which cases, the energy charges are already metered and paid by the consumers. The learned Single Judge of the High Court while passing an order of reference observed that a different yardstick may have to be applied to cases falling under the explanation (b)(i), (iii) and (v) to Section 126 of the Act 2003 as the energy charges are not metered.

8. The Division Bench of the Kerala High Court heard all the consumers concerned and held as under:

> ***"7.16.*** *Accordingly, in Para. 87 of the judgment in* ***Seetharam Rice Mill's case (supra)****, the Three-Judge Bench of the Apex Court concluded that, wherever the consumer commits the breach of the terms of the agreement, Regulations and the provisions of the Act by consuming electricity in excess of the sanctioned and connected load, such consumer would be 'in blame and under liability' within the ambit and scope of Section 126 of the Electricity Act, 2003. The expression 'unauthorised use of electricity means' as appearing in Section 126 of the Act is an expression of wider connotation and has to be construed purposively in contrast to contextual interpretation while keeping in mind the object and purpose of the Act. The cases of excess load consumption than the connected load inter alia would fall under Explanation (b)(iv) to Section 126 of the Act, besides it being in violation of Regulations 82 and 106 of the Regulations and terms of the agreement.*
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> ***8.*** *Following the law laid down by the Apex Court in Seetharam Rice Mill's case (supra), a Division Bench of this Court in which one among us (AKN J) was a member, held in* ***M/s. Classic Color Lab v. Assistant Engineer and others (2014 (3) KLT 57)*** *that, while interpreting the provisions of Section 126 of the Electricity Act, 2003 this Court would have to apply the principle of purposive interpretation in preference to textual interpretation, keeping in mind the purpose to be achieved by that Section, i.e., to put an implied restriction on unauthorised use of electricity. Therefore, a construction which will improve the workability of the Statute, to be more effective and purposive, would have to be preferred to any other interpretation which may lead to undesirable results.*
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> ***8.1.*** *In* ***Classic Color Lab's case (supra)****, in the site inspection conducted on 3.3.2005, unauthorised use of electricity was detected by the APTS in the premises in question where the appellant/consumer was having a Colour Photo Processing Unit and Lab. The APTS found that the appellant/consumer was misusing electricity for industrial purpose under LT-IV tariff for commercial use, attracting higher tariff under LT-VIIA. Accordingly, the appellant/consumer was issued with a demand notice, demanding energy charges at a rate equal to one and a half times LT-VIIA tariff*

for a period of 6 months, less the amount already paid under LT-IV tariff.

8.2. *After referring to Explanation (b) to Section 126 of the Act, this Court held that, once it is found that the appellant/consumer had indulged in unauthorised use of electricity, the penal assessment contemplated under Section 126 of the Act has to follow. As per Section 126(6), as it stood prior to the Amendment Act 26 of 2007, such assessment shall be made at a rate equal to one and a half times the tariff applicable for the relevant category of services specified in sub-section (5).*

8.3. *In* ***Classic Color Lab's case (supra)****, it was contended on behalf of the appellant/consumer that, assessment under Section 126 of the Act should be made at a rate equal to one and a half times the tariff applicable for industrial connection. Per contra, it was contended on behalf of the Board that, such assessment should be made at a rate equal to one and a half times the tariff applicable for commercial connection, for which a higher tariff is applicable.*

8.4. *After taking note of the law laid down by the Apex Court in* ***Seetharam Rice Mill's case (supra)****, this Court held that, once it is found that the appellant/consumer had indulged in unauthorised use of electricity supplied under industrial tariff, the entire consumption in that service connection will have to be assessed under Section 126(6) of the Act and as such, the contention of the appellant/consumer that the consumption through the light meter alone should have been charged under LT-VIIA is untenable. This Court held further that, the only interpretation that can be given to Section 126(6) of the Act is that, in an assessment under Section 126 for unauthorised use of electricity, assessment shall be made at a rate equal to one and a half times (two times with effect from 15.6.2007) the tariff applicable for the relevant category of services attracting higher tariff for which the electricity supplied was unauthorisedly used, and not the relevant category of service to which the consumer belongs. Paras.15 and 16 of the judgment read thus;*

> *"15. On 3.3.2005, the appellant's premises was inspected by the APTS. As evident from Ext. P1 site mahazar, the APTS found that, the power supply through the light meter under industrial tariff LT-IV was being used for the neon lights and air conditioners in the studio, which are under commercial tariff LT-VIIA. The finding in Ext. P1 site mahazar is to the effect that, the appellant was*

indulging in unauthorised use of electricity for industrial purpose under the tariff LT-IV for commercial purpose, attracting a higher tariff under LT-VIIA. As the appellant used the electricity supplied for industrial use under LT-IV tariff for commercial use under LT-VIIA tariff it amounts to 'unauthorised use of electricity' falling under Clause (b) to the Explanation to Section 126. For such unauthorised use the appellant is liable to be assessed under Section 126(6), as it stood prior to the Amendment Act 26 of 2007, at a rate equal to one and half times the tariff applicable for the relevant category of service. On 27.10.2005, the appellant segregated the commercial load in the industrial connection and thereafter, the connected load of service connection under commercial tariff was enhanced from 5KW to 28KW and the connected load of service connection under industrial tariff was reduced from 88KW to 44KW. This makes it abundantly clear that, the appellant was indulging in unauthorised use electricity, thereby using a major portion of the electricity supplied under industrial tariff for commercial use. Once it is found that, the appellant had indulged in unauthorised use of the electricity supplied under industrial tariff the entire consumption in that service connection will have to be assessed under Section 126(6). Therefore, the contention of the appellant that the consumption through the light meter alone should have been charged under LT-VIIA is absolutely untenable.

16. The KSEB is supplying electricity for industrial purpose, under LT-IV tariff, at a subsidised rate, whereas, supply of electricity for commercial purpose, under LT-VIIA tariff attracts a higher rate. As evident from the calculations made in Ext.P5 demand, the commercial tariff under LT-VIIA during the relevant period was Rs. 8.25 per unit. As pointed out by the learned Standing Counsel for the KSEB, the industrial tariff under LT-IV during the relevant period was only Rs.4.25 per unit. Therefore, if the appellant is assessed under Section 126(6) for the unauthorised use of electricity, taking LT-IV industrial tariff @Rs. 4.25 per unit as the basis for calculating the rate equal to one and half times the tariff applicable for the relevant category of service, then the appellant need pay only Rs. 6.37 per unit for unauthorised use of electricity for commercial purpose, as against the prevailing rate of Rs.8.25 per unit applicable for the commercial tariff under LT-VIIA. If such an interpretation is given, it would defeat the very purpose that Section 126 has to achieve, i.e., to put an implied restriction on unauthorised consumption of electricity. On the other hand, if the

appellant is assessed for the unauthorised use of electricity, taking LT-VIIA industrial tariff @Rs.8.25 per unit as the basis for calculating the rate equal to one and half times the tariff applicable for the relevant category of service, the appellant has to pay only Rs.12.37 per unit for unauthorised use of electricity for commercial purpose, as against the prevailing rate of Rs.8.25 per unit applicable for the commercial tariff under LT-VIIA. Therefore, the only interpretation that can be given to Section 126(6) of the Electricity Act, 2003, is that, in an assessment under Section 126 for unauthorised use of electricity, assessment shall be made at a rate equal to one and half times (two times with effect from 15.6.2007) the tariff applicable for the relevant category of service attracting higher tariff for which the electricity supplied was unauthorisedly used and not the relevant category of service to which the consumer belongs, and we hold so."

8.5. *In Classic Color Lab's case (supra), after taking note of the arguments advanced on behalf of the appellant/consumer relying on the judgment of this Court in* ***J.D.T. Islam Orphanage Committee v. Assistant Engineer, KSEB (2007 (3) KLT 388)*** *and that of the Calcutta High Court in* ***Sk. Jafar Ali v. West Bengal State Electricity Distribution Company Limited (AIR 2010 Cal. 84)*** *this Court observed that,* ***J.D.T. Islam Orphanage Committee's case (supra)*** *is a case under the Electricity Act, 1910, in which an orphanage under LT-VI tariff was assessed for unauthorised extension, by levying LT-VIII tariff applicable to temporary extension. It was not a case in which electricity supplied under LT-VI tariff was used by the consumer for any other purpose attracting higher tariff. That decision was rendered on an entirely different set of facts and it does not in any way support the case of the appellant/consumer.*

8.6. *In* ***Sk. Jafar Ali's case (supra)*** *the electricity supplied under domestic tariff was used for commercial purpose attracting a higher tariff. The Court found that the meter used for commercial purpose situated in the consumer's premises has not been tampered with and it is the meter relating to domestic consumption that has been tampered with. The learned Judges of the Calcutta High Court, interpreting Section 126(6) of the Act held that, the phrase 'applicable for the relevant category of the services specified in sub-section (5)' appearing in Section 126 should be reasonably construed as the rate 'applicable for the relevant category of the services to which the consumer belongs'. Though, the judgment of the Calcutta High Court does support the view as propounded by the learned counsel for the*

appellant/consumer, the Division Bench of this Court disagreed with that view of the Calcutta High Court, stating that, if the above interpretation is accepted, a consumer under LT-V Agriculture tariff at the rate of around ₹1/- per unit need pay only ₹1.50 per unit for unauthorised use of electricity for commercial purpose, as against the prevailing rate of ₹ 8.25 per unit applicable for LT-VIIA commercial tariff.

9. *In* ***Maria Plana Society v. KSEB and others*** *(judgment dated 21.5.2009 in W.P.(C). No. 12068 of 2009) a learned Judge of this Court held that, as can be seen from Section 126 of the Electricity Act, 2003 as amended, once the assessing officer reaches the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period and the assessment shall be at the rate equal to twice the tariff applicable for the relevant category of services. A reading of Section 45(3)(a) of the Act shows that, charges for electricity supplied by a distribution licensee include fixed charges in addition to the charges for the actual electricity supplied and consumed. In the light of the above statutory provisions, the irresistible conclusion is that, tariff includes both fixed charges and energy charges and that, once the assessing officer has reached the conclusion that unauthorised used of electricity has taken place, he is bound to make assessment at the rate equal to twice the tariff applicable, which includes the dues payable towards energy charges also. In the judgment dated 3.4.2014 in W.A.No.1149 of 2009 arising out of the judgment in W.P.(C).No.12068 of 2009 the Division Bench, without interfering with the judgment of the learned Single Judge, disposed of the Writ Appeal leaving open the question of law as to whether the penalty under Section 126 of the Act is applicable to energy charges also in the case of unauthorised additional load.*

10. *In* ***Seetharam Rice Mill's case (supra)*** *the Apex Court has stated that, Section 126 of the Act, which embodies a complete process for assessment, determination and demand has a purpose to achieve, i.e., to put an implied restriction on such unauthorised consumption of electricity. The provisions of Section 126 of the Act are self-explanatory, which are intended to cover situations other than the situations specifically covered under Section 135 of the Act; which would be applicable to cases where there is no theft of electricity but the electricity is being consumed in violation of the terms and conditions of supply leading to malpractices, which may squarely fall within the expression 'unauthorised use of electricity'. Section 135 of the Act deals with an offence of theft of electricity, which squarely*

falls within the dimensions of criminal jurisprudence, and mens rea is one of the relevant factors for finding a case of theft. On the contrary, Section 126 of the Act does not speak of any criminal intendment, which does not have features or elements which are traceable to the criminal concept of mens rea. Thus, the expression 'unauthorised use of electricity' under Section 126 of the Act deals with cases of unauthorised use, even in absence of intention. As such, intention is not the foundation for invoking powers of the competent authority and passing of an order of assessment under Section 126 of the Act.

11. *As held by the Apex Court in* ***Seetharam Rice Mill's case (supra)****, 'unauthorised use of electricity' means the usage of electricity by the means and for the reasons stated in Explanation (b)(i) to (v) to Section 126 of the Act, which would mean what is stated under that Explanation, as well as such other unauthorised use, which is squarely in violation of the statutory or contractual provisions in the Act, Regulations framed thereunder and the terms and conditions of supply in the form of contract or otherwise. Unauthorised use of electricity brings the consumer 'under liability and in blame' within the ambit and scope of Section 126 of the Act. The blame is in relation to excess load while the liability is to pay on a different tariff for the period prescribed in law and in terms of an order of assessment passed by the assessing officer.*

12. *After referring to the expression 'means' used in Explanation (b) to Section 126 of the Act, the Apex Court held that, the primary object of that expression is intended to explain the term 'unauthorised use of electricity' which, even from the plain reading of the provisions of the Act or on a common sense view cannot be restricted to the examples given in the Explanation. Section 126(5) and clause (iv) of Explanation (b) to Section 126 of the Act were amended by the Electricity (Amendment) Act, 2007 with a purpose and object of preventing unauthorised use of electricity not amounting to theft of electricity within the meaning of Section 135 of the Act, which has to be given its due meaning, which will fit into the scheme of the Act and would achieve its object and purpose.*

13. *Taking note of the fact that electricity supply to a consumer is restricted and controlled by the terms and conditions of supply, Regulations and the provisions of the Act, the Apex Court held that, unauthorised use of electricity cannot be restricted to the stated clauses under Explanation to Section 126 but has to be given a wider meaning so as to cover cases of violation of terms and conditions of*

supply and the Regulations and provisions of the Act governing such supply. Therefore, the Apex Court concluded that, consumption of electricity in excess of the sanctioned/connected load shall be an 'unauthorised use of electricity' in terms of Section 126 of the Act, since overdrawal of electricity amounts to breach of the terms and conditions of the contract and the statutory conditions; besides such overdrawal being prejudicial to the public at large, as it is likely to throw out of gear the entire supply system, undermining its efficiency, efficacy and even increasing voltage fluctuations.

14. *The provisions under Section 126 of the Act, as it stood prior to the amendment by the Electricity (Amendment) Act, 2007 provided for assessment of unauthorised use of electricity 'one and a half times' the tariff applicable for the relevant category of service, for a period of three months immediately preceding the date of inspection in the case of domestic and agricultural services and for a period of six months immediately preceding the date of inspection for all other categories of services, unless the onus is rebutted by the person, occupier or possessor of such premises or place.*

15. *In tune with the provisions under Section 126 of the Act, Regulation 51(1) of the Conditions of Supply, 2005 provides for assessment of unauthorised additional load in terms of Regulation 50(5) and (6), i.e., at a rate equal to one and half times the tariff applicable for the relevant category of services specified in Regulation 50(5), for a period of three months immediately preceding the date of inspection in case of domestic and agricultural services and for a period of six months immediately preceding the date of inspection for all other categories of services, unless the onus is rebutted by the person/occupier or possessor of such premises or place. Though Regulation 51(1) of the Conditions of Supply, 2005 employs the term 'penalised', what is contemplated under the said Regulation is only assessment of unauthorised use of electricity in terms of Section 126 of the Act for the period specified in Section 126(5) and at the rate specified in Section 126(5) of the Act. In that view of the matter, Regulation 51(1) of the Conditions of Supply, 2005 is neither ultra vires the provisions of Section 126 of the Act nor unenforceable, and we hold so.*

16. *The provisions under Section 126 of the Act underwent a substantial change by the Electricity (Amendment) Act, 2007. After the amendment, if the period during which unauthorised use of electricity has taken place cannot be ascertained by the assessing*

officer, such period shall be limited to a period of 'twelve months' immediately preceding the date of inspection and assessment shall be made at a rate equal to 'twice' the tariff applicable for the relevant category of services specified in sub-section (5). The said amendment made to Section 126(5) and (6) of the Act, with a purpose and object of preventing unauthorised use of electricity not amounting to theft of electricity within the meaning of Section 135 of the Act has to be given its due meaning, which will fit into the scheme of the Act and would achieve its object and purpose. In the absence of any challenge against the said amendment made to Section 126(5) of the Act, the petitioners/consumers cannot now contend that the period of 'twelve months' prescribed therein is unreasonable, in as much as, for theft of electricity the period prescribed in Section 135 of the Act is only 'three months'.

17. *When 'unauthorised use of electricity' under Section 126 of the Act deals with cases of unauthorised use even in absence of intention, it cannot be contended that, in the absence of mens rea, assessment at the maximum rate, i.e. at the rate equal to twice the tariff applicable to the relevant category of service is legally impermissible. In all cases of 'unauthorised use of electricity' falling under Explanation (b) to Section 126 of the Act, the assessing officer is empowered to assess such unauthorised use of electricity, at the rate prescribed in Section 126(6) and for the period specified in Section 126(5), as amended by the Electricity (Amendment) Act, 2007. In that view of the matter, we find no merit in the contention of the learned counsel for the petitioners/consumers, relying on the judgment of a Division Bench of this Court in* ***KSEB and others v. M/s. Alukkas Jeweller****y (judgment dated 9.11.2005 in W.A.No.1262 of 2004) that, in cases where no damage has been caused to the Board's installation due to overdrawal of electricity, assessment at the rate equal to twice the tariff applicable to the relevant category of service is unwarranted.*

18. *In* ***Seetharam Rice Mill's case (supra)*** *the Three-Judge Bench of the Apex Court laid down that, consumption of electricity in excess of the sanctioned/connected load would be squarely covered under Explanation (b)(iv) to Section 126 of the Act. Once this factor is established, then the assessing officer has to pass the final order of assessment in terms of Section 126(6) of the Act, which shall be at a rate equal to twice the tariff applicable for the relevant category of services specified in sub-section (5).*

19. *In* ***PTC India Ltd. v. Central Electricity Regulatory Commission (2010 (4) SCC 603)*** *the Apex Court held that, the term 'tariff', though not defined in the Electricity Act, 2003, it includes within its ambit not only the fixation of rates but also the rules and regulations relating to it.*

20. *Section 45(1) of the Act provides that, subject to the provisions of Section 45, the prices to be charged by a distribution licensee for the supply of electricity by him in pursuance of Section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his licence. Section 45(3) provides further that, the charges for electricity supplied by a distribution licensee may include a fixed charge in addition to the charge for the actual electricity supplied; and a rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee.*

21. *The provisions under Section 45(3) of the Act makes it explicitly clear that, the term 'tariff' in Section 45(1), which is the price to be charged by the distribution licensee for the supply of electricity, includes the fixed charge in addition to the charge for the actual electricity supplied. If that be so, it can be safely concluded that, the term 'tariff' in Section 126(6) of the Act includes both fixed charges and charges for the electricity supplied, which has to be assessed in the case of a consumer indulged in unauthorised use of electricity, at a rate equal to twice the tariff applicable for the relevant category of services specified in sub-section (5). Therefore, once the assessing officer has reached the conclusion that the consumer has indulged in unauthorised use of electricity, he is bound to make assessment of such consumer at the rate equal to twice the tariff applicable, which includes both fixed charges and energy charges.*

22. *Relying on the decisions in* ***JDT Islam Orphanage Committee v. Assistant Engineer, KSEB (2007 (3) KLT 388), George Joseph and another v. KSEB and others (2008 (4) KLT 610),*** *etc. the petitioners/consumers contended that, when the energy consumed through meter having been billed and payment having been made, assessment of penal charges for such consumption of energy is legally impermissible and the only liability that can be fastened upon the consumers found indulging in unauthorised use of electricity is penal charges on fixed charges. The said contention can only be repelled in view of our finding made hereinbefore, with reference to the provisions under Sections 45 and 126 of the Act and*

the law laid down by the Apex Court in ***Seetharam Rice Mill's case (supra)*** *and that laid down by this Court in* ***Classic Color Lab's case (supra)*** *that, the assessment of a consumer Section 126(6) of the Act, at the rate equal to twice the tariff applicable, includes both fixed charges and energy charges.*

23. *In Board Order dated 7.2.2008, which was made applicable with effect from 15.6.2007, it was ordered that, the field officers shall strictly follow the provisions of Section 126(5) and (6) of the Act, as amended by the Electricity (Amendment) Act, 2007, i.e., two times the respective tariff for the entire period, and in case the said period cannot be ascertained for a period of twelve months, for assessing penalty in the case of misuse of energy including unauthorised additional load, unauthorised extension and meter tampering cases detected. It was also made clear that, the penalty rate shall be applicable to both fixed and energy charges for the unauthorised use. Penalty charges for current charges shall be levied for proportionate energy charge and normal current charge collected shall be deducted.*

24. *Though Board Order dated 7.2.2008 employs the term 'penalty', what is contemplated under the said order is only assessment of unauthorised use of electricity in terms of Section 126 of the Act, as amended by the Electricity (Amendment) Act, 2007, for the period specified in Section 126(5) and at the rate specified in Section 126(6) of the Act. In that view of the matter, Board Order dated 7.2.2008 is neither ultra vires the provisions of Section 126 of the Act nor unenforceable, and we hold so.*

25. *In* ***Seetharam Rice Mill's case (supra)*** *the Apex Court was dealing with a case in which the tariff applicable to the consumer was changed from 'medium industry' to tariff applicable for 'large industry'. Similarly, in* ***Classic Color Lab's case (supra)*** *this Court was dealing with a case in which electricity supplied at a subsidised rate for industrial purpose under LT-IV tariff, was unauthorisedly used for commercial purpose, which attracts a higher rate under LT-VIIA tariff. In the said decision, while upholding the demand for fixed charges and energy charges made under Section 126(6) of the Act, this Court held that, in an assessment under Section 126 for unauthorised use of electricity, assessment shall be made at a rate equal to one and a half times (two times with effect from 15.6.2007) the tariff applicable for the relevant category of services attracting higher tariff for which the electricity supplied was unauthorisedly*

used, and not the relevant category of service to which the consumer belongs.

26. *As far as domestic consumers are concerned, the fixed charge for single phase connection is ₹20/- per month and it is ₹ 60/- per month for three phase connection, irrespective of the connected load. Therefore, a domestic consumer is paying fixed charge at the specified rate irrespective of the connected load and the energy charge for the actual consumption at the rates specified in the tariff order. Even if there is excess connected load in the premises of a domestic consumer, the electricity charges realisable from the consumer do not change and as such, additional connected load would not result in any financial loss to the licensee as per the terms and conditions of the tariff orders in force. That may be the reason which persuaded the Electricity Regulatory Commission not to penalise domestic consumers for additional loads in their premises, by incorporating Regulation 153(15) of the Supply Code, 2014, which provides that, unauthorised additional load in the same premises and under same tariff shall not be reckoned as unauthorised use of electricity. Such domestic consumers will have the option either to regularise such additional load or to get such additional load removed at the discretion of the licensee. If the consumer fails to remove the additional load as directed by the licensee, the supply to the premises can be disconnected by the licensee.*

27. *Regulation 153(15) of the Supply Code, 2014 has undergone amendment by the Kerala Electricity Supply (Amendment) Code 2016, which came into force on 4.2.2016, by adding the words 'except in the case of consumers billed on the basis of connected load' at the end of that sub-regulation. Such an amendment was made when it was found that, the application of Regulation 153(15) to the consumers who are charged on connected load basis, would result in the licensees incurring financial loss in as much as, for the additional connected load the licensees are entitled for charges demanded on connected load basis.*

28. *In cases falling under Explanation (b) to Section 126 of the Act, the assessing officer is empowered to assess unauthorised use of electricity at the rate prescribed in Section 126(6) and for the period specified in Section 126(5), as amended by the Electricity (Amendment) Act, 2007 for both fixed charges and energy charges. Penalty charges for current charges shall be levied for proportionate energy charge and normal current charge collected shall be deducted.*

In case of unauthorised use of electricity in a higher tariff, such assessment shall be made at the rate equal to twice the tariff applicable for the relevant category of services attracting such higher tariff for which electricity supply was unauthorisedly used and not the relevant category of service to which the consumer belongs.

29. *A different yardstick has to be applied in cases of consumption of electricity in excess of the sanctioned/connected load in the very same premises and for the very same purpose, which do not involve any change in tariff applicable for the relevant category of services, which consumption has already been metered and paid by the consumer, since such usage being not by any artificial means or through a tampered meter. This is for the reason that, in such cases request made by the consumer for regularisation of unauthorised connected load or enhancement of contract demand will be acceded to by the Board, as a matter of course, once the consumer fulfills the statutory requirements, unless such regularisation of connected load or enhancement of contract demand necessitates upgradation of the existing distribution system or enhancement of voltage level of supply.*

30. *As held by the Apex Court in* ***Seetharam Mill's case (supra)****, in the case of unauthorised use of electricity, the blame on the consumer is in relation to excess load while the liability is to pay on a different tariff for the period prescribed in law and in terms of the order of assessment passed by the assessing officer under the provisions of Section 126 of the Act. In that view of the matter, in the case of a consumer, who is blamed with overdrawal of electricity in excess of sanctioned/connected load in the very same premises and for the very same purpose, which do not involve any change in tariff applicable for the relevant category of services, which consumption has already been metered and paid by the consumer, since such usage being not by any artificial means or through a tampered meter, assessment under Section 126(6) of the Act can only be equal to twice the fixed charges payable and such consumer cannot be saddled with the liability to pay twice the energy charges applicable for the relevant category of services, unless regularisation of such additional connected load or enhancement of contract demand necessitate upgradation of the existing distribution system or enhancement of voltage level of supply."*

(Emphasis supplied)

9. After holding as aforesaid, the High Court summarised its final conclusion, as under:

> ***"31.*** *For the reasons stated hereinbefore, we hold as follows;*
>
> ***(i)*** *The presence of the assessing officer at the time of inspection and detection of unauthorised use of electricity in the premises of a consumer is not a mandatory requirement for initiating assessment proceedings under Section 126(1) of the Act.*
>
> ***(ii)*** *The expression 'unauthorised use of electricity' under Section 126 of the Act deals with cases of unauthorised use even in the absence of intention. Hence, the intention of the consumer is not the foundation for invoking powers of the competent authority and passing of an order of assessment under Section 126 of the Act.*
>
> ***(iii)*** *Whenever a consumer commits the breach of the terms of the agreement, Regulations and the provisions of the Act by consuming electricity in excess of the sanctioned/connected load, such consumer would be in blame and under liability to pay at the rate equal to twice the tariff applicable for the relevant category of services in terms of Section 126 of the Act.*
>
> ***(iv)*** *The term 'tariff' in Section 126(6) of the Act includes both fixed charges and charges for the electricity supplied, which has to be assessed in the case of a consumer indulged in unauthorised use of electricity, at a rate equal to twice the tariff applicable for the relevant category of services specified in sub-section (5).*
>
> ***(v)*** *In case of unauthorised use of electricity in a higher tariff, such assessment shall be made at the rate equal to twice the tariff applicable for the relevant category of services attracting such higher tariff for which electricity supplied was unauthorisedly used and not the relevant category of service to which the consumer belongs.*
>
> ***(vi)*** *<u>However, in the case of a consumer, who is blamed with overdrawal of electricity in excess of sanctioned/connected load in the very same premises and for the very same purpose, which do not involve any change in tariff applicable for the relevant category of services, which consumption has already been metered and paid by the consumer, since such usage being not by any artificial means or through a tampered meter, assessment under Section 126(6) of the Act can only be equal to twice the fixed charges payable and such</u>*

consumer cannot be saddled with the liability to pay twice the energy charges applicable for the relevant category of services, unless regularisation of such additional connected load or enhancement of contract demand necessitates upgradation of the existing distribution system or enhancement of voltage level of supply.

(vii) *In all other cases falling under Explanation (b) to Section 126 of the Act, the assessing officer is empowered to assess unauthorised use of electricity at the rate prescribed in Section 126(6) and for the period specified in Section 126(5), as amended by the Electricity (Amendment) Act, 2007 for both fixed charges and energy charges. Penalty charges for current charges shall be levied for proportionate energy charge and normal current charge collected shall be deducted.*

(viii) *Though Regulation 51(1) of the Conditions of Supply, 2005 employs the term 'penalised', what is contemplated under the said Regulation is only assessment of unauthorised use of electricity in terms of Section 126 of the Act for the period specified in Section 126(5) and at the rate specified in Section 126(6) of the Act. As such, Regulation 51(1) of the Conditions of Supply, 2005 is neither ultra vires the provisions of Section 126 of the Act nor unenforceable.*

(ix) *What is contemplated under Board Order dated 7.2.2008 is only assessment of unauthorised use of electricity in terms of Section 126 of the Act, as amended by the Electricity (Amendment) Act, 2007, for the period specified in Section 126(5) and at the rate specified in Section 126(5) of the Act. As such, the said Board Order is neither ultra vires the provisions of Section 126 of the Act nor unenforceable."*

(Emphasis supplied)

10. Thus, the High Court, as evident from para 31(vi) as above, took the view that 'unauthorised additional load' in the same premises and under the same tariff shall not be reckoned as 'unauthorised use of electricity' except in cases of consumers billed on the basis of the connected load. The High Court took such view, relying upon Regulation 153(15) of the Kerala Electricity Supply Code, 2014 (for short, 'the Code 2014').

11. The appellant Board being dissatisfied with the judgment and order passed by the High Court, preferred review applications in the individual writ

petitions filed by the consumers. The review applications also came to be rejected, wherein, the High Court held as under:

> ***"10.*** *What follows from the above is that, in order to come within the purview of clause (vi) of Para.31 of the judgment, a consumer who is blamed with overdrawal of electricity in excess of sanctioned/connected load must satisfy the following conditions;*
>
> ***(i)*** *Such overdrawal of electricity should be in the very same premises and for the very same purpose, which do not involve any change in tariff applicable for the relevant category of services;*
>
> ***(ii)*** *Such consumption must have already been metered and paid by the consumer, since such usage being not by any artificial means or through a tampered meter; and*
>
> ***(iii)*** *Regularisation of such additional connected load or enhancement of contract demand should not necessitate upgradation of the existing distribution system or enhancement of voltage level of supply."*

12. Being dissatisfied with the judgment and order passed by the High Court in the main matter as well as the order passed in the review applications, the appellant Board has come up with the present appeals.

SUBMISSIONS ON BEHALF OF THE APPELLANT BOARD

13. Mr. R. Basant, the learned Senior Counsel appearing for the appellant Board vehemently submitted that the High Court committed a serious error in deciding the issue in question by relying upon Regulation 153(15) of the Code 2014. He pointed out that the State Regulations have been enacted in exercise of the powers conferred under Section 50 read with Section 181 of the Act 2003. The principal argument of Mr. Basant is that while framing Regulation 153(15), the Kerala State Electricity Regulatory Commission ("Commission") could be said to have transgressed into the realm of Section 126 of the Act 2003 which is not provided for either under Section 50 or Section 181. In other words, the

argument of the learned Senior Counsel is that if Section 50 and Section 181 resply, of the Act are read closely, then, the two Sections do not provide any power for such clarification/explanation. The learned Senior Counsel invited the attention of this Court to Regulation 153(15) which provides that an unauthorised additional load in the same premises and under the same tariff shall not be reckoned as 'unauthorised use of electricity' except in cases of consumers billed on the basis of connected load.

14. The learned Senior Counsel further submitted that the regulation making power cannot be used to bring into existence substantive rights which are not contemplated under the Act 2003.

15. The learned Senior Counsel invited the attention of this Court, to a three-Judge Bench decision of this Court in the case of ***Executive Engineer, Southern Electricity Supply Company of Orissa Limited (Southco) and Another v. Sri Seetaram Rice Mill*** reported (2012) 2 SCC 108, wherein, this Court in clear terms has said that cases of excess load consumption other than the connected load would fall within the Explanation (b)(iv) to Section 126 Act 2003.

16. The learned Senior Counsel would argue that this Court in ***Seetaram Rice Mill*** (supra) has said so many words that Section 126 of the Act 2003 is a complete code in itself. Consumption in excess of sanctioned/connected load is unauthorised use under Section 126 of the Act 2003. Such an act of consumption in excess of the sanctioned/connected load is prejudicial to the public at large, as the same would affect the entire system.

17. The learned Senior Counsel further submitted that the finding of the High Court in para 31(vi) of the impugned judgment is erroneous and if upheld may result in the entire collapse of the grid. He would argue that the appellant Board needs to plan its affairs and ensure that it is able to supply the required electricity to its consumers. The connected load/contracted load ensures that the Board knows how much electricity is to be supplied to each consumer.

18. The learned senior counsel further submitted that the overdrawal of excess electricity from the grid would result into a penalty to the Board, while purchasing electricity from the Central grid. The connected load is calculated based on the number of devices connected by the consumer at its premises. The same would become evident during inspection. Therefore, if the consumer agrees for a connected load of 10 KW and thereafter, connects many more devices resulting in the connected load, becoming 20 KW, the same would amount to 'unauthorised use of electricity' under Section 126(6) of the Act 2003 in accordance with the dictum laid by this Court in ***Seetaram Rice Mill*** (supra).

19. The learned Senior Counsel made us understand something important. According to Mr. Basant, the finding of the High Court that it becomes unauthorised use only if the said usage leads to necessitation of upgradation of the system, could be termed as perverse as the same will end up penalising only the last consumer responsible for causing the disruption of distribution system and not the collective lot of consumers who are also unauthorised users. The learned Senior Counsel submitted that the collapse of the system would be as a result of many consumers drawing electricity in excess of the connected load/ contracted load and therefore, to penalise only the last consumer/customer for the collapse of the system would be unworkable and would not act as a deterrent for the consumers from drawing excess electricity.

20. In such circumstances referred to above, Mr. Basant, the learned Senior Counsel prays that there being merit in his appeals, those may be allowed and the impugned judgment and order passed by the High Court to the extent, it relies upon Regulation 153(15) of the Code 2014 may be set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENT (CONSUMERS)

21. The submissions canvassed on behalf of the respondent (consumers) may be summarised, as under:-

1. The learned counsel appearing for the respondent (consumers) vehemently submitted that no error not to speak of any error of law could be said to have been committed by the High Court in taking the view that if the overdrawal of electricity is detected in the same premises and for the very same purpose, then, the same would not amount to unauthorised use of electricity within the meaning of Section 126 of the Act 2003.

2. Moreover, the Regulation 153 of the 2014 Code deals with estimation and regularisation of unauthorised additional load. The regulation defines the threshold for the additional loads to be considered as unauthorised additional load. It is also provided that the licensee may, *suo motu* or on an application from the consumer, regularise such additional load mentioned in clause (a) and clause (b) of Regulation 153(4).

3. Regulation 153(15) provides further that the unauthorised additional load in the same premises and under the same tariff shall not be reckoned as unauthorised use of electricity, except in the case of consumers billed on the basis of connected load. Regulation 153(15) of the Code 2014 has undergone amendment by way of the Kerala Electricity Supply (Amendment) Code 2016, which came into force on 04.02.2016, by adding the words 'except in the case of consumers billed on the basis of connected load' at the end of that sub-regulation. Such an amendment was made when it was found that, the application of Regulation 153(15) to the consumers who are charged on connected load basis, would result in the licensees incurring financial loss in as much as, for the additional connected load the licensees are entitled for charges demanded on connected load basis. Even this amendment as on date is sought to be rendered nugatory by the appellant Board with its plea to strike down the Regulation (s) as *ultra vires*.

4. To understand the letter and spirit of the impugned judgment it is imperative to note that at paragraph 26 of the impugned judgement, the High Court has observed that as far as domestic consumers are concerned, the fixed charges are imposed at a specified rate irrespective of the connected load or the energy charges for actual consumption. It is stated by the Court that even if there is excess connected load in the premises of a domestic consumer, the electricity charges realisable from the consumer do not change and as such, additional connected load would not result in any financial loss to the licensee. Essentially the domestic consumer would have to pay for the actual energy consumed. Notably, there is no variation in the fixed charges.

5. The Regulations in the Code 2014 seek to contextualise the Act 2003 to the prevalent local conditions and a conjoint (purposive) reading of the Act and the Code is paramount. Any other reading (including reading as *ultra vires*) renders the Code 2014 an empty vessel. The aforesaid reasoning of the High Court does not supplant the provisions of either Section 126 or Section 135, but only seeks to supplement the same, by reading (in conjunction) the relevant Regulations of the Code 2014.

6. Regulation 2(24) of the Code 2014 states that "**connected load"** expressed in KW or KVA means aggregate of the rated capacities of all energy consuming devices or apparatus which can be simultaneously used, excluding the standby load if any, in the premises of the consumer, which are connected to the service line of the distribution licensee. Regulation 2(78) defines **'unauthorised connected load'** to mean the connected load in excess of the contract connected load and Regulation 2(79) defines **'unauthorised use of electricity'** to mean the usage of electricity as explained in Section 126 of the 2003 Act. As shall be shown Regulation 2(78) is connected load which is in excess of [Regulation 2 (24)]. And Regulation 2(78) is

unauthorised use of electricity. The distinction is crucial and has been analysed by the High Court at Para 5.18 of the impugned judgment.

7. The High Court was well within its scope when it rendered the Regulations intra vires. This Court has emphasised that the Legislature and its delegate are the sole repositories of the power to take decisions. Further, there is no scope of interference by the Court unless the particular provision impugned suffers from (i) any legal infirmity, or (ii) being wholly beyond the scope of regulation-making power, or (iii) being inconsistent with any of the provisions of the parent enactment. The impugned judgment of the High Court correctly read and applied the law in the light of the settled judicial position.

8. The stance of the appellant Board that the regularisation is ultra vires, is against its very own Full Board decision. A Full Board of the KSEB, as early as on 27.07.2002 decided to modify Regulation 42(d) of the Conditions of Supply, 1990 for relaxation of penalty in the case of unauthorised additional loads in the following manner:

(i)[...]

(ii) *In the case of LT customers other than domestic consumers, the penalty for unauthorised additional load shall be levied at the rate of twice the fixed charges per KW of additional load per month or part thereof* ***till the said unauthorised additional load is removed or regularised as per rules.***

(iii) In the case of HT and EHT consumers the penalty for unauthorised additional load shall be levied at the rate of twice the demand charges per KVA for the additional load till the ***said unauthorised additional load is removed or regularised as per rules.***

9. In such circumstances referred to above, learned counsel appearing for the respondent (consumers) prayed that there being no merit in the appeals filed by the appellant Board, those may be dismissed.

SUBMISSIONS ON BEHALF OF THE KERALA STATE ELECTRICITY REGULATORY COMMISSION (RESPONDENT NO. 3)

22. It is submitted on behalf of the Commission i.e., respondent No. 3 in SLP (C) No. 7886-7887 of 2018, that there are two kinds of billing contemplated:

(a) Connected load based billing – in case of connected load based billing, if additional/excess load is connected, then the same would be treated as unauthorised use. The same is indicated in Regulation 153(15) itself, as amended on 11.01.2016.

(b) Contract demand based billing – It is submitted however that in case of contract demand based billing, connecting additional load will not amount to "unauthorised use" under Section 126 of the Act.

23. It is further submitted that contract demand is the maximum demand that is agreed to be supplied by the licensee to the consumer. The same is indicative of the maximum load that can be drawn at the premises of the consumer at any given point of time. It is possible that the maximum demand of a consumer may be higher than the contract demand at any given point of time. However, as per Regulation 153(15), such excess demand will not be construed as unauthorised use of electricity. Rather, Regulation 101 of the Code 2014 provides the consequences where the maximum demand exceeds the contract demand. The said regulation stipulates that if the maximum demand exceeds the contract demand in 3 billing periods during the previous financial year, the distribution licensee shall issue a notice of enhancement of contract demand to such consumer. Furthermore, as already indicated, the present Tariff Order provides that where maximum demand exceeds contract demand, the Fixed/Demand Charges will be collected at 150% of the applicable demand charges for such excess demand. Insofar as Energy Charges are concerned, the consumer would be billed as per actual usage. Furthermore, as per Regulation

153(12) of the Code 2014 where the infrastructure does not allow for the excess load of a consumer to be regularised or the contract demand to be enhanced, such consumers are required to disconnect such load or restrict their demand to the contract limit, failing which supply of electricity can be disconnected. Therefore, the Code 2014 and the Tariff Order adequately address concerns of both (i) revenue loss; and (ii) infrastructural constraints in cases of excess load / excess demand. The exception is where such excess load/ excess demand results in change of purpose or change of tariff, in which case, it would fall within the ambit of Section 126 of the Act 2003. It is relevant to point out that there is no challenge to the *vires* of any of the provisions of the Code 2014 in the present proceedings.

24. It is further submitted that the observations of this Court in ***Seetaram Rice Mill*** (supra) were made specifically in the context of the Orissa Electricity Regulatory Commission Distribution (Conditions of Supply) Regulations, 2004 and the Standard Agreement Form for Supply of Electrical Energy by the Grid Corporation of Orissa Ltd. The observations made in the said judgement cannot be uniformly applied to the present matter. The Explanation to Section 126 of the Act 2003 is reproduced as below (emphasis supplied):

> *"Explanation.- For the purposes of this section,-*
> *(b)"unauthorised use of electricity" means the usage of electricity-*
> *(i)by any artificial means; or*
> *(ii) by a means <u>not authorised by the concerned person or authority or licensee</u>; /or*
> *(iii)through a tampered meter; or*
> *(iv**)** for <u>the purpose other than for which the usage of electricity was authorised</u>**;** or*
> *(v) for the premises or areas other than those for which the supply of electricity was authorized."*

25. It is evident that insofar as Kerala is concerned, the Code 2014 specifically provides a certain leeway for excess load / excess demand, within the same premises and under the same tariff, subject to the rigours of Regulation

101 and Regulation 153, and penal demand charges at 1.5 times the regular rates in respect of the excess demand under the relevant Tariff Order. It is submitted that the supply regulations applicable to the State of Orissa may not be applied in a straitjacketed manner to Kerala. Each State has its own generation, supply and distribution capacities and other relevant considerations before the Supply Code regulations are framed by the respective State Commissions.

26. In such circumstances referred to above, the learned counsel appearing for the Commission prayed that there being no merit in the appeals filed by the Board, those may be dismissed.

ANALYSIS

27. Having heard the learned counsel for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned judgment and order more particularly, the finding recorded in para 31(vi) of the impugned judgment?

28. It is necessary for us to clarify at this stage itself that the appeals have been filed by the appellant Board, essentially, being aggrieved and dissatisfied with the finding recorded by the High Court in para 31(vi) of the impugned judgment. The High Court, over and above para 31(vi), has dealt with many other issues arising between the parties. There is no cross appeal at the instance of any of the consumers. We propose to look into and decide only the legality and validity of the finding recorded by the High Court so far as para 31(vi) is concerned. We shall not go into any other issue decided by the High Court other than para 31(vi).

29. Before adverting to the rival submissions canvassed on either side, we must look into the scheme and various relevant provisions of the Act 2003 as well as the Code 2014 framed by the Commission in exercise of the powers conferred by the Section 50 read with Section 181 of the Act 2003.

ELECTRICITY ACT, 2003

30. Before the enactment of the Act 2003, the Indian electricity sector was governed by the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998. The Indian Electricity Act, 1910 created a basic framework for the electricity supply industry in India. The Electricity (Supply) Act, 1948 mandated the creation of State Electricity Boards, which had the responsibility of facilitating supply of electricity within states. However, the State Electricity Boards were unable to use their power to fix tariffs judiciously. It was noted that the State Governments were in practice fixing tariffs. To distance the State Governments from the exercise of tariff fixation, the Electricity Regulatory Commissions Act, 1998 was enacted.

31. Parliament enacted the Act 2003 to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity; to develop the electricity industry; and to promote competition. The Act 2003 was enacted with the objective of encouraging the participation of the private sector in the generation, transmission, and distribution of electricity, and to harmonise and consolidate the provisions into a self-contained code. The Statement of Objects of Reasons for the Act 2003 reads as follows :

> *"With the policy of encouraging private sector participation in generation, transmission and distribution and the objectives of distancing the regulatory responsibilities from the Government to the Regulatory Commissions, the need for harmonising and rationalising the provisions of the Electricity Act 1910, the Electricity (Supply) Act 1948 and the Electricity Regulatory*

Commissions Act 1948 in a new self-contained comprehensive legislation arose."

32. The long title of the Act 2003 indicates that its object is to consolidate the laws relating to generation, transmission, distribution, trading, and use of electricity and to take measures conducive to the development of the electricity industry; promote competition and protect the interests of consumers; ensure the supply of electricity to all areas; rationalise electricity tariffs and ensure transparent policies. The Statement of Objects and Reasons of the Act 2003 states that "it gives the States enough flexibility to develop their power sector in the manner they consider appropriate."

33. Section 3 of the Act 2003 provides for the formulation of a National Electricity Policy and National Tariff Policy:

> *"**3. National Electricity Policy and Plan.**—(1) The Central Government shall, from time to time, prepare the National Electricity Policy and tariff policy, in consultation with the State Governments and the Authority for development of the power system based on optimal utilisation of resources such as coal, natural gas, nuclear substances or materials, hydro and renewable sources of energy.*
> *(2) The Central Government shall publish National Electricity Policy and tariff policy from time to time.*
> *(3) The Central Government may, from time to time, in consultation with the State Governments and the Authority, review or revise, the National Electricity Policy and tariff policy referred to in sub-section (1) .*
> *(4) The Authority shall prepare a National Electricity Plan in accordance with the National Electricity Policy and notify such plan once in five years:*
>
> *Provided that the Authority while preparing the National Electricity Plan shall publish the draft National Electricity Plan and invite suggestions and objections thereon from licensees, generating companies and the public within such time as may be prescribed:*
>
> *Provided further that the Authority shall –*

(a) notify the plan after obtaining the approval of the Central Government;
(b) revise the plan incorporating therein the directions, if any, given by the Central Government while granting approval under clause (a).

(5) The Authority may review or revise the National Electricity Plan in accordance with the National Electricity Policy."

In terms of the above provision, the Union Government has to formulate the National Electricity Policy and National Tariff Policy, in consultation with the State Governments and the Central Electricity Authority.

34. Part III of the Act 2003 deals with the generation of the electricity; Part IV deals with licensing; Part V with transmission; Part VI with distribution and Part VII with tariff.

35. Section 38 of the Act 2003 provides that the Central Government may notify any government company as the Central Transmission Utility (CTU). The CTU is statutorily empowered to undertake the transmission of electricity through inter-State transmission systems. The CTU has to also discharge functions of planning and coordination relating to inter-State transmission systems. For this purpose, the CTU is required to coordinate with the State Transmission Utility (STU), Central and State Governments, generating companies, authorities and licensees.

36. Section 39 of the Act 2003 stipulates that the State Government may notify the Board or any government company as the STU. The STU shall undertake transmission of electricity through the intra-State transmission system and discharge functions relating to the planning and coordination of the intra-State transmission system. While discharging its functions, the STU is required to reflect the planning initiatives of intra-State transmission system by publishing a five-year plan periodically.

37. Sections 76 and 82 of the Act 2003 constitute the Central Electricity Regulatory Commission and State Electricity Regulatory Commission respectively. The Central and State Electricity Regulatory Commissions shall among other functions, determine and regulate the tariff for inter-State transmission of electricity and intra-State transmission of electricity respectively. Sections 79(3) & (4) and 86(3) & (4) of the Act 2003 stipulate that the Central and State Commissions shall while discharging their functions ensure transparency, and 'shall be guided' by the National Electricity Policy, National Electricity Plan and Tariff Policy. The Central and State Commissions also discharge advisory functions, whereby they advise the Central Government and State Government respectively on, *inter alia*, promotion of competition in activities related to the electricity industry and in matters concerning generation, transmission, and distribution of electricity. Section 25 states that the Central Government may make a region-wise demarcation of the country for the purpose of integrated transmission of electricity to facilitate inter-State, regional and inter-regional transmission of electricity. Section 30 provides that the State Commission shall facilitate and promote transmission, wheeling and inter-connection arrangements within its territorial jurisdiction for the transmission and supply of electricity.

38. Section 14 of the Act 2003 envisages that the Appropriate Commission, defined in Section 2(4) to mean the Central or as the case may be the State Regulatory Commission, may grant a licence to any person:

(a) to transmit electricity as a transmission licensee; or

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

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

39. Section 15 of the Act 2003 prescribes the procedure to be followed for the grant of licence. The application for a licence under Section 14 has to be filed in such a form and in such manner as may be prescribed by the Appropriate Commission. The person who has applied for the grant of a licence must publish a notice of the application. The licence shall not be granted by the Appropriate Commission until the objections, if any received, are considered by the Appropriate Commission. The application shall also be forwarded to the CTU or the STU, as the case may be. The CTU or STU must send its recommendations to the Appropriate Commission. The recommendations of the CTU or the STU are however, not binding on the Appropriate Commission. The Appropriate Commission is also required to publish a notice of the application if it proposes to issue the licence. The Appropriate Commission has to consider the objections and the recommendations of the Transmission Utility before granting the licence.

40. In enacting the above provisions of law, the Parliament has made a clear demarcation between intra-state and inter-state transmission of electricity. While the CTU, Central Government and the Central Regulatory Commission are responsible for the facilitation of inter-state transmission of electricity, the State Commission and the STU have been granted full autonomy with respect to intrastate transmission of electricity.

41. Part VII of the Act 2003 deals with Tariff. Part VII comprises of Section 61(Tariff regulations), Section 62 (Determination of tariff), Section 63 (Determination of tariff by bidding process), Section 64 (Procedure for tariff order), Section 65 (Provision of subsidy by the State Government) and Section 66 (Development of market). In terms of Section 61, the Appropriate Commission is entrusted, subject to the provisions of the Act 2003, to specify the terms and conditions for the determination of tariff. While specifying the terms and conditions, the Appropriate Commission shall be guided by the

requirements specified in clauses (a) to (i). Amongst them, in clause (i) is the National Electricity Policy and tariff policy, while clause (c) emphasises the need to encourage competition, efficiency, economical use of the resources, good performance and optimum investments. Section 62(1) empowers the Appropriate Commission to determine the tariff "*in accordance with the provisions of this Act*" for :

a. supply of electricity by a generating company to a distribution licensee;

b. transmission of electricity;

c. wheeling of electricity;

d. retail sale of electricity.

Section 63 provides that notwithstanding anything contained in Section 62, the Appropriate Commission shall adopt the tariff determined through the bidding process if the tariff has been determined through a transparent process in accordance with the guidelines issued by the Central Government.

42. However, what is relevant for our purpose is Section 50, Section 126 and Section 181 resply of the Act 2003. Section 50 is in regard to the Electricity Supply Code. The same reads thus:

> *"**50. The Electricity Supply Code.**–The State Commission shall specify an Electricity Supply Code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity, measures for preventing tampering, distress or damage to electrical plant or electrical line or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter, entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters."*

43. Section 126 falls in Part XII of the Act 2003. Part XII is in regard to investigation and enforcement. Section 126 provides for assessment. Section 126 reads thus:

> *"**126. Assessment.**—(1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorised use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.*
>
> *(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.*
>
> *(3) The person, on whom an order has been served under sub-section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.*
>
> *(4) Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him.*
>
> *(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorised use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.*
>
> *(6) The assessment under this section shall be made at a rate equal to twice the tariff applicable for the relevant category of services specified in sub-section (5).*

Explanation.─For the purposes of this section,─

(a) "assessing officer" means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

(b) "unauthorised use of electricity" means the usage of electricity─

(i) by any artificial means; or
(ii) by a means not authorised by the concerned person or authority or licensee; or
(iii) through a tampered meter; or
(iv) for the purpose other than for which the usage of electricity was authorised; or
(v) for the premises or areas other than those for which the supply of electricity was authorised."

44. Section 181 of the Act 2003 confers powers to the State Commissions to frame regulations. Section 181(2)(x) reads thus:

*"**181. Powers of State Commissions to make regulations.─***

xx xx xx

(2) In particular and without prejudice to the generality of the power contained in sub-section (1), such regulations may provide for all or any of the following matters, namely:-

xx xx xx

(x) electricity supply code under section 50;…."

45. We shall now look into the Code 2014. Regulation 1 reads thus:

*"**1. Short title, extent and commencement.** - (1) This Code shall be called the Kerala Electricity Supply Code, 2014.*

(2) This Code shall be applicable to,-

(i) all distribution licensees including deemed licensees and all consumers and users in the State of Kerala; and

(ii) all other persons and institutions who are exempted under Section 13 of the Act.

(3) It shall come into force with effect from the first day of April, 2014."

46. Regulation 2 provides for the definitions. The phrase 'contracted connected load' as defined under Regulation 2(27) reads thus:

> *"**2. Definitions. -** In this Code, unless it is repugnant to the context,-*
>
> *xx xx xx*
>
> *(27) "**contracted connected load**" means the connected load installed by the consumer at the time of executing the service connection agreement and recorded in kW / kVA in the schedule to the said agreement or the connected load duly revised thereafter;"*

47. Regulation 2(28) defines the terms 'contracted load' or 'contract demand'. The same reads thus:

> *"**2. Definitions.-** In this Code, unless it is repugnant to the context,-*
>
> *xx xx xx*
>
> *(28) "**contracted load**" or "**contract demand**" means the maximum demand in kW or kVA, agreed to be supplied by the distribution licensee and indicated in the agreement executed between the licensee and the consumer; or the contracted load or contract demand duly revised thereafter;"*

48. Regulation 2(78) defines the phrase 'unauthorised connected load'**.** The same reads thus:

> ***"2. Definitions.-** In this Code, unless it is repugnant to the context,-*
>
> *xx xx xx*
>
> *(78) "**unauthorised connected load**" means the connected load in excess of the contracted connected load;"*

49. Regulation 2(79) defines the phrase 'unauthorised use of electricity'. The same reads thus*:*

"2. Definitions.- *In this Code, unless it is repugnant to the context,-*

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*(79) "**unauthorised use of electricity**" means the usage of electricity as explained in Section 126 of the Act;"*

50. Regulation 153 falls within Chapter IX of the Code 2014. Chapter IX is in respect of theft, unauthorised use and other irregularities. The Regulation 153 reads thus:

*"**153. Estimation and regularisation of unauthorised additional load.-**(1) If it is detected, on inspection, that additional load in excess of the sanctioned load has been connected to the system without due sanction from the licensee, further action shall be taken in accordance with the following subregulations.*

(2) The difference between the total connected load in the premises of the consumer at the time of inspection and the sanctioned load of the consumer shall be reckoned as unauthorised additional load.

(3) Connected load shall be determined as per the following clauses:-

(a) the rated capacities of all energy consuming devices and apparatus which can be simultaneously used, excluding stand-by load if any, in the premises of the consumer and found connected to the system shall be considered for estimating the total load of the consumer;

(b) while estimating the total load of a consumer, the loads of the following equipment and apparatus shall not be taken into account:-

i. standby equipment of consumers, when they are operated through a change over switch;

ii. firefighting equipment;

iii. un-interrupted power supply equipment (UPS), switch mode power supply system (SMPS), transformer, voltage stabilizer, inverter, rectifier and measuring devices:

Provided that the rated capacities of the equipment and apparatus connected to the UPS or SMPS or voltage stabilizer or inverter or rectifier shall be considered for computation of the connected load.

(4) (a) If the additional load in the case of domestic consumers is of and below twenty percent of the sanctioned load it shall not be reckoned as unauthorised additional load.

(b) If the additional load in the case of other consumers is of and below ten percent of the sanctioned load, it shall not be reckoned as unauthorised additional load.

(c) The licensee may, suo motu or on application from the consumer, regularise such additional load mentioned in clause (a) and clause (b) above.

(5) When the load in excess of sanctioned load exceeds the limit as provided in subregulation (4) above, the entire load in excess of the sanctioned load shall be treated as unauthorised additional load, if express sanction or deemed sanction under clause (c) of subregulation (4) has not been obtained for it.

(6) In the case of consumers billed under demand based tariff, the total load declared in the test cum completion report of the installation of the consumer, submitted at the time of availing connection or the load mentioned in the energisation approval granted by the Electrical Inspector or the load at the time of revising contract demand or revising the connected load may be taken as the sanctioned connected load.

(7) If it is found that any additional load has been connected without due authorisation from the licensee or in violation of any of the provisions of the Central Electricity Authority (Measures relating to safety and electric supply) Regulations, 2010, as amended from time to time, the licensee shall direct the consumer to disconnect forthwith such additional load and the consumer shall comply with such direction, failing which the supply of electricity to the consumer shall be disconnected by the licensee.

(8) If it is found that no additional load has been connected and recorded maximum demand has been exceeded, the demand charges may be collected for the recorded maximum demand at the rates as approved by the Commission and steps may be initiated to enhance the contract demand as specified in regulation 99 of the Code.

(9) If it is found that additional load has been connected without any increase in the contract demand, steps may be initiated to regularise the connected load in accordance with the provisions in the agreement within a time frame as stipulated by the licensee.

(10) If it is found that additional load has been connected without due authorisation from the licensee and contract demand has been exceeded, steps may be initiated to regularise the additional load and to enhance the contract demand in addition to collection of demand charges as per the agreement conditions, for the recorded maximum demand at the rates approved by the Commission:

Provided that such regularisation of additional load and enhancement of contract demand shall be done only after ensuring that wiring has been done in conformity with the provisions of Central Electricity Authority (Measures relating to safety and electric supply) Regulations, 2010 as amended from time to time.

(11) The proceedings specified in subregulations (9) and (10) above, are applicable in the cases where the regularisation of unauthorised connected load or enhancement of contract demand will not necessitate enhancement of voltage level of supply or upgradation of the existing distribution system or both.

(12) In case such regularisation of unauthorised connected load or enhancement of contract demand will necessitate upgradation of the existing distribution system or enhancement of voltage level of supply, the licensee shall direct the consumer to disconnect forthwith such additional load and to restrict the contract demand within the agreed limit and the consumer shall comply with such direction, failing which the supply of electricity to the consumer shall be disconnected by the licensee.

(13) The regularisation of unauthorised additional load as per the subregulations (9) and (10) above shall be subject to realisation of a fee at the rates notified by the Commission in schedule 1 of the Code.

(14) The provisions relating to unauthorised additional load in subregulations (1) to (13) above shall not be applicable to any domestic consumer if his total connected load including the additional load detected is of and below 10kW.

(15) Unauthorised additional load in the same premises and under same tariff shall not be reckoned as 'unauthorised use of electricity'.*"*

51. We shall now look into the decision of this Court in the case of ***Seetaram Rice Mill*** (supra).

52. The respondent in ***Seetaram Rice Mill*** (supra) was a partnership firm engaged in the production of rice. For supply of electricity, it had entered into an Agreement dated 09.12.1997 with the appellant therein. The respondent therein was classified as 'Medium industry' category, which dealt with contract demand of 99 KVA and above but below 110 KVA. On 10.06.2009, the Executive Engineer, Jeypore Electrical Division and SDO, Electrical MRT Division, Jeypore inspected the business premises of the respondent's unit and dump was conducted. On 25.07.2009, provisional assessment order was issued by the appellant therein to the respondent therein. Intimation was issued to the respondent therein that there was unauthorised use of electricity falling squarely within the ambit of Section 126 of the Act 2003. In the dump report, it was stated that there was unauthorised use of electricity and maximum demand had been consumed upto 142 KVA. On this basis, the provisional assessment order was passed by taking the contracted demand as that applicable to large industry. The respondent therein did not file objections but challenged the provisional assessment order on the ground of lack of authority and jurisdiction on the part of the Executive Engineer to frame the provisional assessment by alleging unauthorised use of electricity since 04.06.2008. The respondent therein contended that since it was classified as medium scale industry, provisional assessment could not have been made on the basis of the dump charges relating to large industry. The High Court held that overdrawal of maximum demand would not fall within the scope of 'unauthorised use of electricity' as defined by sub-clause (b) to the Explanation to Section 126 of the said Act. The High Court set aside the provisional assessment order. While dealing with the challenge to the High Court's order, this Court, *inter alia*, examined the scope of Sections 126, 127 and 135 resply of the said Act against the backdrop of the scheme of the Act 2003 and summed up its conclusions as under:

> *"1. Wherever the consumer commits the breach of the terms of the Agreement, Regulations and the provisions of the Act by consuming*

electricity in excess of the sanctioned and connected load, such consumer would be "in blame and under liability" within the ambit and scope of Section 126 of the 2003 Act.

2. The expression "unauthorised use of electricity means" as appearing in Section 126 of the 2003 Act is an expression of wider connotation and has to be construed purposively in contrast to contextual interpretation while keeping in mind the object and purpose of the Act. The cases of excess load consumption than the connected load inter alia would fall under Explanation (b)(iv) to Section 126 of the 2003 Act, besides it being in violation of Regulations 82 and 106 of the Regulations and terms of the Agreement.

3. In view of the language of Section 127 of the 2003 Act, only a final order of assessment passed under Section 126(3) is an order appealable under Section 127 and a notice-cum-provisional assessment made under Section 126(2) is not appealable.

4. Thus, the High Court should normally decline to interfere in a final order of assessment passed by the assessing officer in terms of Section 126(3) of the 2003 Act in exercise of its jurisdiction under Article 226 of the Constitution of India.

5. The High Court did not commit any error of jurisdiction in entertaining the writ petition against the order raising a jurisdictional challenge to the notice/provisional assessment order dated 25-07-2009. However, the High Court transgressed its jurisdictional limitations while travelling into the exclusive domain of the assessing officer relating to passing of an order of assessment and determining the factual controversy of the case.

6. The High Court having dealt with the jurisdictional issue, the appropriate course of action would have been to remand the matter to the assessing authority by directing the consumer to file his objections, if any, as contemplated under Section 126(3) and require the authority to pass a final order of assessment as contemplated under Section 126(5) of the 2003 Act in accordance with law."

53. In our opinion, the first two conclusions quoted hereinabove completely support the appellant Board. The learned counsel appearing for the consumers and the Commission tried to distinguish ***Seetaram Rice Mill*** (supra) from the

present case on the ground that there was a change in the classification/category which is not so in this case inasmuch as here the consumers remain commercial/industrial having LT connection and, therefore, there is no issue of unauthorised use within the meaning of Section 126 of the Act 2003. We see no force in the submission that change of category would not attract Section 126 of the Act 2003. In ***Seetaram Rice Mill*** (supra), it was contended that only cases of change of user would be covered under Section 126 of the Act 2003. While rejecting such contention, this Court clarified that the explanation to Section 126 is not exhaustive and any use of electricity which is not permissible and beyond the contract demand amounts to unauthorised use of electricity and the blame contemplated under Section 126 of the Act 2003 is not dependent on whether the overdrawal transgresses into another tariff category or not. We may quote the relevant paragraphs from ***Seetaram Rice Mill*** (supra):

> *"**18.** It is true that fiscal and penal laws are normally construed strictly but this rule is not free of exceptions. In given situations, this Court may, even in relation to penal statutes, decide that any narrow and pedantic, literal and lexical construction may not be given effect to, as the law would have to be interpreted having regard to the subject-matter of the offence and the object that the law seeks to achieve. The provisions of Section 126, read with Section 127 of the 2003 Act, in fact, become a code in themselves. Right from the initiation of the proceedings by conducting an inspection, to the right to file an appeal before the appellate authority, all matters are squarely covered under these provisions. It specifically provides the method of computation of the amount that a consumer would be liable to pay for excessive consumption of the electricity and for the manner of conducting assessment proceedings. In other words, Section 126 of the 2003 Act has a purpose to achieve i.e. to put an implied restriction on such unauthorised consumption of electricity.*
>
> *Xxx xxx xxx*
>
> ***22.** The relevancy of objects and reasons for enacting an Act is a relevant consideration for the court while applying various principles of interpretation of statutes. Normally, the court would not go behind these objects and reasons of the Act. The discussion*

of a Standing Committee to a Bill may not be a very appropriate precept for tracing the legislative intent but in given circumstances, it may be of some use to notice some discussion on the legislative intent that is reflected in the substantive provisions of the Act itself. The Standing Committee on Energy, 2001, in its discussion said, "the Committee feels that there is a need to provide safeguards to check the misuse of these powers by unscrupulous elements". The provisions of Section 126 of the 2003 Act are self-explanatory, they are intended to cover situations other than the situations specifically covered under Section 135 of the 2003 Act. This would further be a reason for this Court to adopt an interpretation which would help in attaining the legislative intent.

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24. *Upon their plain reading, the marked differences in the contents of Sections 126 and 135 of the 2003 Act are obvious. They are distinct and different provisions which operate in different fields and have no common premise in law. We have already noticed that Sections 126 and 127 of the 2003 Act read together constitute a complete code in themselves covering all relevant considerations for passing of an order of assessment in cases which do not fall under Section 135 of the 2003 Act.*

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37. *Wherever the assessing officer arrives at the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorised use of electricity has taken place and if such period cannot be ascertained, it shall be limited to a period of 12 months immediately preceding the date of inspection and the assessment shall be made at the rate equal to twice the tariff applicable for the relevant category of service specified under these provisions. This computation has to be taken in terms of Sections 126(5), 126(6) and 127 of the 2003 Act. The complete procedure is provided under these sections. Right from the initiation of the proceedings till preferring of an appeal against the final order of assessment and termination thereof, as such, it is a complete code in itself.*

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44. *The unauthorised use of electricity in the manner as is undisputed on record clearly brings the respondent "under liability and in blame" within the ambit and scope of Section 126 of the*

2003 Act. The blame is in relation to excess load while the liability is to pay on a different tariff for the period prescribed in law and in terms of an order of assessment passed by the assessing officer by the powers vested in him under the provisions of Section 126 of the 2003 Act.

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50. *In other words, the purpose sought to be achieved is to ensure stoppage of misuse/unauthorised use of the electricity as well as to ensure prevention of revenue loss. It is in this background that the scope of the expression "means" has to be construed. If we hold that the expression "means" is exhaustive and cases of unauthorised use of electricity are restricted to the ones stated under Explanation (b) of Section 126 alone, then it shall defeat the very purpose of the 2003 Act, inasmuch as the different cases of breach of the terms and conditions of the contract of supply, Regulations and the provisions of the 2003 Act would escape the liability sought to be imposed upon them by the legislature under the provisions of Section 126 of the 2003 Act. Thus, it will not be appropriate for the courts to adopt such an approach.*

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60. *The expressions "means", "means and includes" and "does not include" are expressions of different connotation and significance. When the legislature has used a particular expression out of these three, it must be given its plain meaning while even keeping in mind that the use of other two expressions has not been favoured by the legislature. To put it simply, the legislature has favoured non-use of such expression as opposed to other specific expression. In the present case, the Explanation to Section 126 has used the word "means" in contradistinction to "does not include" and/or "means and includes". This would lead to one obvious result that even the legislature did not intend to completely restrict or limit the scope of this provision.*

61. *Unauthorised use of electricity cannot be restricted to the stated clauses under the Explanation but has to be given a wider meaning so as to cover cases of violation of terms and conditions of supply and the Regulations and provisions of the 2003 Act governing such supply. "Unauthorised use of electricity" itself is an expression which would, on its plain reading, take within its scope all the misuse of the electricity or even malpractices adopted while using electricity. It is difficult to restrict this expression and*

limit its application by the categories stated in the Explanation. It is indisputable that the electricity supply to a consumer is restricted and controlled by the terms and conditions of supply, the Regulations framed and the provisions of the 2003 Act.

Xxx *xxx* *xxx*

64. *Minimum energy charges are to be levied with reference to "contract demand" at the rate prescribed under the terms and conditions. These clauses of the Agreement clearly show that the charges for consumption of electricity are directly relatable to the sanctioned/connected load and also the load consumed at a given point of time if it is in excess of the sanctioned/connected load. The respondent could consume electricity up to 110 kVA but if the connected load exceeded that higher limit, the category of the respondent itself could stand changed from "medium industry" to "large industry" which will be governed by a higher tariff.*

65. *Chapter VIII of the Conditions of Supply classifies the consumers into various categories and heads. The electricity could be provided for a domestic, LT industrial, LT/HT industrial, large industry, heavy industries and power intensive industries, etc. In terms of Regulation 80, the industry would fall under LT/HT category, if it relates to supply for industrial production with a contract demand of 22 kVA and above but below 110 kVA. However, it will become a "large industry" under Regulation 80(10) if it relates to supply of power to an industry with a contract demand of 110 kVA and above but below 25,000 kVA. Once the category stands changed because of excessive consumption of electricity, the tariff and other conditions would stand automatically changed. The licensee has a right to reclassify the consumer under Regulation 82 if it is found that a consumer has been classified in a particular category erroneously or the purpose of supply as mentioned in the agreement has changed or the consumption of power has exceeded the limit of that category etc. The Conditions of Supply even place a specific prohibition on consumption of excessive electricity by a consumer.*

66. *Regulation 106 of the Conditions of Supply reads as under:*

> *"**106.** No consumer shall make use of power in excess of the approved contract demand or use power for a purpose other than the one for which agreement has been executed or shall dishonestly abstract power from the licensee's system."*

67. *On the cumulative reading of the terms and conditions of supply, the contract executed between the parties and the provisions of the 2003 Act, we have no hesitation in holding that consumption of electricity in excess of the sanctioned/connected load shall be an "unauthorised use of electricity" in terms of Section 126 of the 2003 Act. This, we also say for the reason that overdrawal of electricity amounts to breach of the terms and conditions of the contract and the statutory conditions, besides such overdrawal being prejudicial to the public at large, as it is likely to throw out of gear the entire supply system, undermining its efficiency, efficacy and even increasing voltage fluctuations.*

Xxx xxx xxx

71. *Consumption in excess of sanctioned load is violative of the terms and conditions of the agreement as well as of the statutory benefits. Under Explanation (b)(iv), "unauthorised use of electricity" means if the electricity was used for a purpose other than for which the usage of electricity was authorised. Explanation (b) (iv), thus, would also cover the cases where electricity is being consumed in excess of sanctioned load, particularly when it amounts to change of category and tariff. As is clear from the agreement deed, the electric connection was given to the respondent on a contractual stipulation that he would consume the electricity in excess of 22 kVA but not more than 110 kVA. The use of the negative language in the condition itself declares the intent of the parties that there was an implied prohibition in consuming electricity in excess of the maximum load as it would per se be also prejudiced. Not only this, the language of Regulations 82 and 106 also prescribe that the consumer is not expected to make use of power in excess of approved contract demand otherwise it would be change of user falling within the ambit of "unauthorised use of electricity".*

72. *Again, there is no occasion for this Court to give a restricted meaning to the language of Explanation (b)(iv) of Section 126. According to the learned counsel appearing for the respondent, it is only the actual change in purpose of use of electricity and not change of category that would attract the provisions of Section 126 of the 2003 Act. The contention is that where the electricity was provided for a domestic purpose and is used for industrial purpose or commercial purpose, then alone it will amount to change of user or purpose. The cases of excess load would not fall in this*

category. This argument is again without any substance and, in fact, needs to be noticed only to be rejected.

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***87.** Having dealt with and answered determinatively the questions framed in the judgment, we consider it necessary to precisely record the conclusions of our judgment which are as follows:*

1. Wherever the consumer commits the breach of the terms of the Agreement, Regulations and the provisions of the Act by consuming electricity in excess of the sanctioned and connected load, such consumer would be "in blame and under liability" within the ambit and scope of Section 126 of the 2003 Act.

2. The expression "unauthorised use of electricity means" as appearing in Section 126 of the 2003 Act is an expression of wider connotation and has to be construed purposively in contrast to contextual interpretation while keeping in mind the object and purpose of the Act. The cases of excess load consumption than the connected load inter alia would fall under Explanation (b)(iv) to Section 126 of the 2003 Act, besides it being in violation of Regulations 82 and 106 of the Regulations and terms of the Agreement…."

54. The principles of law discernible from the aforesaid may be summarised as under:

(1) The provisions of Section 126, read with Section 127 of the Act 2003 become a Code in themselves. It specifically provides the method of computation of the amount that a consumer would be liable to pay for excessive consumption of electricity and for the manner of conducting assessment proceeding. Section 126 of the Act 2003 has been enacted with a purpose to achieve i.e., to put an implied restriction on such unauthorised consumption of electricity.

(2) The purpose of Section 126 of the Act 2003 is to provide safeguards to check the misuse of powers by unscrupulous elements. The provisions of Section 126 of the Act 2003 are self-explanatory. They are intended to cover

situations, other than, the situations specifically covered under Section 135 of the Act 2003. In such circumstances, the Court should adopt an interpretation which should help in attaining the legislative intent.

(3) The purpose sought to be achieved with the aid of the provisions of Section 126 of the Act 2003 is to ensure stoppage of misuse/unauthorised use of the electricity as well as to ensure prevention of revenue loss.

(4) The overdrawal of electricity is prejudicial to the public at large, as it is likely to throw out of gear the entire supply system, undermining its efficiency, efficacy and even-increasing voltage fluctuations.

(5) The expression 'unauthorised use of electricity' means as it appears in Section 126 of the Act 2003. It is an expression of wider connotation and principle construed purposively in contrast to contextual interpretation, while keeping in mind the object and purpose of the Act 2003.

55. Having read and re-read the decision of this Court in the case of ***Seetaram Rice Mill*** (supra), we are clear in our mind that the High Court in its impugned judgment has carved out an exception, which does not find a place in Section 126(6) of the Act 2003. Paras 18 & 37 resply of the judgment, in the case of ***Seetaram Rice Mill*** (supra) referred to above categorically hold that Section 126 and 127 resply of the Act 2003 read together constitute a complete code in themselves. Para 50 of the said judgment holds that the purpose of Section 126 is to ensure stoppage of misuse/ unauthorised use of electricity. Para 61 of ***Seetaram Rice Mill*** (supra) referred to above makes the picture abundantly clear.

56. In para 67 of ***Seetaram Rice Mill*** (supra) referred to above, it was categorically held that the consumption of electricity in excess of the sanctioned/connected load shall be an 'unauthorised use of electricity' in terms of Section 126 of the Act 2003. According to us, the observations made by this

Court in ***Seetaram Rice Mill*** (supra) as contained in para 67 goes to the root of the matter. ***Seetaram Rice Mill*** (supra) in para 67 has said in so many words that overdrawal of electricity amounts to breach of the terms and conditions of the contract and the statutory conditions, besides such overdrawal being prejudicial to the public at large, as it is likely to throw out of gear the entire supply system undermining its efficiency, efficacy and even-increasing voltage fluctuations. This aspect of the matter has been completely overlooked by the High Court. It is not just a matter of overdrawal of electricity in excess of sanctioned/connected load in the very same premises and for the very same purpose, which does not involve any change in the tariff applicable for the relevant category of services. The tariff applicable may remain the same; the overdrawal may be in the same premises and for the very same purpose, there may not be any loss of revenue but it may lead to a disastrous situation being prejudicial to the public at large, as such overdrawal of electricity in excess of sanctioned/connected load may disturb the entire supply system, undermining its efficiency, efficacy and even-increasing voltage demand.

57. In para 72 of ***Seetaram Rice Mill*** (supra), a contention was raised by the consumer that it is only the actual change in purpose of use of electricity that would attract Section 126 of the Act 2003. The contention was that where the electricity was provided for domestic purpose but was actually used for industrial or commercial purpose, then alone it will amount to change of user or purpose and accordingly a contention was raised that a case of usage of excess load would not fall in this category. This Court rejected the said contention in para 72. Para 72 states as follows:

> *"**72.** Again, there is no occasion for this Court to give a restricted meaning to the language of Explanation (b)(iv) of Section 126. According to the learned counsel appearing for the respondent, it is only the actual change in purpose of use of electricity and not change of category that would attract the provisions of Section 126 of the 2003 Act. The contention is that where the electricity*

> *was provided for a domestic purpose and is used for industrial purpose or commercial purpose, then alone it will amount to change of user or purpose. The cases of excess load would not fall in this category. This argument is again without any substance and, in fact, needs to be noticed only to be rejected."*
>
> *(Emphasis supplied)*

58. In view of para 72 of ***Seetaram Rice Mill*** (supra) referred to above, the High Court could be said to have erred in coming to the conclusion that the consumer cannot be charged twice the energy charges if the consumer uses in excess of the sanctioned/connected load in the very same premises and for the very same purpose, which do not involve any change in the tariff. Para 87(2) in ***Seetaram Rice Mill*** (supra) categorically holds that consumption in cases of the connected load would fall in Explanation (b)(iv) to Section 126 of the Act 2003.

59. This Court in ***Punjab State Electricity Board v. Vishwa Caliber Builders Private Limited*** reported in (2010) 4 SCC 539 had the occasion to consider the Punjab State Electricity Regulatory Commission (Forum and Ombudsman) Regulations, 2005. In the said case, the challenge was to the order passed by a Division Bench of the Punjab and Haryana High Court whereby it had dismissed the writ petition filed by the appellant therein against the order of Ombudsman, Electricity, Punjab who in turn reversed the decision of the Disputes Settlement Authority and directed refund of the amount recovered from the respondent therein towards Advance Consumption Deposit (ACD) service connection charges and load sur charge. In para 13, 14 and 15 this Court observed as under:

> *"**13.** We have considered the arguments of the learned counsel and agree with him that in the absence of any provision in the Act or the Regulations framed by the appellant, the Ombudsman committed jurisdictional error by directing regularisation of unauthorised use of electricity by the respondent and refund of the alleged excess amount charged by the appellant.*

> ***14.*** *The fact that the appellant could not release connection with a load of 2548 kW on account of non-availability of transformer necessary for transfer of 8 MVA load from 66 kV Sub-Station, GT Road, Ludhiana had no bearing on the issue of consumption of electricity by the respondent beyond the sanctioned load. Undisputedly, in terms of the request made by the respondent, the Chief Engineer had sanctioned connection on the existing system with a load of 1500 kW, but the respondent used excess load to the tune of 481.637 kW and this amounted to unauthorised use of electrical energy.*
>
> ***15.*** *It is also not in dispute that after installation of a new transformer, the respondent could not avail the balance load within the stipulated time of six months and when the authority concerned issued notice dated 13-12-2001 and reminder dated 23-5-2002, its representative refused to submit fresh A&A form necessary for release of the balance load. This being the position, the fault, if any, for non-release of the balance load lay at the doors of the respondent and the Ombudsman committed serious error by directing the appellant to refund the alleged excess amount collected from the respondent on account of use of electricity over and above the sanctioned load."*
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> *(Emphasis supplied)*

60. Thus, in the aforesaid case, the excess load to the tune of 481.637 KW was assessed as unauthorised use of electrical energy.

REGULATION 153(15) OF THE CODE 2014

61. We shall now look into the main limb of the submission canvassed on behalf of the consumers that the Regulation 153(15) of the Code 2014 makes all the difference and the ratio and the principles as propounded in ***Seetaram Rice Mill*** (supra) should be understood in the light of the Regulation 153(15) of the Code 2014. We have quoted Regulation 153(15) of the Code 2014 in the earlier part of our judgment. We do not find any merit in the submission canvassed on behalf of the consumers in regard to the applicability of Regulation 153(15) of the Code 2014. The Code 2014 is framed under Section 50 read with Section 181(x) of the Act 2003.

62. This Court in ***Uttar Pradesh Power Corporation Limited and Others v. Anis Ahmad*** reported in (2013) 8 SCC 491, held that the Supply Code cannot provide for nor does it relate to assessment of charges for 'unauthorised use of electricity' under Section 126 of the Act 2003. Paras 53 and 54 resply of the said judgment state as follow:

> ***"53.*** *Section 50 of the Electricity Act, 2003 empowers the State Commission to specify an Electricity Supply Code to provide for recovery of electricity charges, intervals for billing of electricity charges, measures for preventing damage to electrical plant or electrical line or meter, entry of distribution licensee, etc. and it reads as follows:*
>
> > *"**50. The Electricity Supply Code**.—The State Commission shall specify an Electricity Supply Code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity, measures for preventing tampering, distress or damage to electrical plant or electrical line or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter, entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters."*
>
> ***54.*** *From reading Section 50, it is clear that under the Electricity Supply Code provisions are to be made for recovery of electricity charges, billing of electricity charges, disconnection, etc. and measures for preventing tampering, distress or damage to the electrical plant or line or meter, etc. But the said Code need not provide provisions relating to it/do not relate to assessment of charges for "unauthorised use of electricity" under Section 126 or action to be taken against those committing "offences" under Sections 135 to 140 of the Electricity Act, 2003."*
>
> (Emphasis supplied)

63. Thus, reliance on Regulation 153(15) of the Code 2014 framed under Section 50 of the Act 2003 by the respondent (consumers) is thoroughly misconceived, as the same does not conform to the provisions of the Act 2003. In any event, Regulation 153(15) travels much beyond Section 126 and Section 50 resply of the Act 2003. It is settled law that the regulation making power

cannot be used to bring into existence substantive rights, which are not contemplated under the Act 2003.

64. At this stage, it is apposite to state about the rule making powers of a delegating authority. If a rule goes beyond the rule making power conferred by the statute, the same has to be declared *invalid*. If a rule supplants any provision for which power has not been conferred, it becomes *invalid*. The basic test is to determine and consider the source of power, which is relatable to the rule. Similarly, a rule must be in accord with the parent statute, as it cannot travel beyond it.

65. Delegated legislation has come to stay as a necessary component of the modern administrative process. Therefore, the question today is not whether there ought to be delegated legislation or not, but that it should operate under proper controls so that it may be ensured that the power given to the Administration is exercised properly; the benefits of the institution may be utilised, but its disadvantages minimised. The doctrine of *ultra vires* envisages that a rule making body must function within the purview of the rule making authority conferred on it by the parent Act. As the body making rules or regulations has no inherent power of its own to make rules, but derives such power only from the statute, it has to necessarily function within the purview of the statute. Delegated legislation should not travel beyond the purview of the parent Act. If it does, it is *ultra vires* and cannot be given any effect. *Ultra vires* may arise in several ways; there may be simple excess of power over what is conferred by the parent Act; delegated legislation may be inconsistent with the provisions of the parent Act or statute law or the general law; there may be non-compliance with the procedural requirement as laid down in the parent Act. It is the function of the courts to keep all authorities within the confines of the law by supplying the doctrine of *ultra vires*.

66. In this context, we may refer with profit to the decision in ***General Officer Commanding-in-Chief and Another v. Dr. Subhash Chandra Yadav and Another*** reported in (1988) 2 SCC 351, wherein it has been held as follows:-

> *"**14.** ….before a rule can have the effect of a statutory provision, two conditions must be fulfilled, namely, (1) it must conform to the provisions of the statute under which it is framed; and (2) it must also come within the scope and purview of the rule making power of the authority framing the rule. If either of these two conditions is not fulfilled, the rule so framed would be void….."*

67. In ***Additional District Magistrate (Rev.) Delhi Admn. v. Siri Ram*** reported in (2000) 5 SCC 451, it has been ruled that it is a well recognised principle that the conferment of rule-making power by an Act does not enable the rule-making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto.

68. In ***Sukhdev Singh and Others v. Bhagatram Sardar Singh Raghuvanshi and Another*** reported in (1975) 1 SCC 421, the Constitution Bench has held that:

> *"**18**. …. These statutory bodies cannot use the power to make rules and regulations to enlarge the powers beyond the scope intended by the Legislature. Rules and regulations made by reason of the specific power conferred by the statute to make rules and regulations* establish the *pattern of conduct to be followed. …"*

69. In ***State of Karnataka and Another v. H. Ganesh Kamath and Others*** reported in (1983) 2 SCC 402, it has been stated that:

> *"**7.** …..It is a well-settled principle of interpretation of statutes that the conferment of rule-making power by an Act does not enable the rule-making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto."*

70. In ***Kunj Behari Lal Butail and Others v. State of H.P. and Others*** reported in (2000) 3 SCC 40, it has been ruled thus:-

> *"**13.** It is very common for the legislature to provide for a general rule-making power to carry out the purpose of the Act. When such a power is given, it may be permissible to find out the object of the enactment and then see if the rules framed satisfy the test of having been so framed as to fall within the scope of such general power confirmed. If the rule-making power is not expressed in such a usual general form then it shall have to be seen if the rules made are protected by the limits prescribed by the parent act……"*

71. In ***St. Johns Teachers Training Institute v. Regional Director, National Council for Teacher Education and Another*** reported in (2003) 3 SCC 321, it has been observed that:

> *"**10.** A regulation is a rule or order prescribed by a superior for the management of some business and implies a rule for general course of action. Rules and regulations are all comprised in delegated legislation. The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details….."*

72. In ***Global Energy Limited and Another v. Central Electricity Regulatory Commission*** reported in (2009) 15 SCC 570, this Court was dealing with the validity of clauses (b) and (f) of Regulation 6-A of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for Grant of Trading Licence and other Related Matters) Regulations, 2004. In that context, this Court expressed as under:-

> *"**25.** It is now a well-settled principle of law that the rule-making power "for carrying out the purpose of the Act" is a general delegation. Such a general delegation may not be held to be laying*

down any guidelines. Thus, by reason of such a provision alone, the regulation-making power cannot be exercised so as to bring into existence substantive rights or obligations or disabilities which are not contemplated in terms of the provisions of the said Act.

73. In the aforementioned case, while discussing further about the discretionary power, delegated legislation and the requirement of law, the Bench observed thus:

> "***73.*** *The image of law which flows from this framework is its neutrality and objectivity: the ability of law to put sphere of general decision-making outside the discretionary power of those wielding governmental power. Law has to provide a basic level of "legal security" by assuring that law is knowable, dependable and shielded from excessive manipulation. In the contest of rule-making, delegated legislation should establish the structural conditions within which those processes can function effectively. The question which needs to be asked is whether delegated legislation promotes rational and accountable policy implementation. While we say so, we are not oblivious of the contours of the judicial review of the legislative Acts. But, we have made all endeavours to keep ourselves confined within the well-known parameters*."

74. In this context, it would be apposite to refer to a passage from ***State of T.N. and Another v. P. Krishnamurthy and Others*** reported in (2006) 4 SCC 517 wherein it has been held thus:-

> *"**16.** The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity."*

75. In ***Pratap Chandra Mehta v. State Bar Council of Madhya Pradesh and others*** reported in (2011) 9 SCC 573, while discussing about the conferment of extensive meaning, it has been opined that:

> *"**58.** ….The Court would be justified in giving the provision a purposive construction to perpetuate the object of the Act, while ensuring that such rules framed are within the field circumscribed by the parent Act. It is also clear that it may not always be absolutely necessary to spell out guidelines for delegated legislation, when discretion is vested in such delegatee bodies. In such cases, the language of the rule framed as well as the purpose sought to be achieved, would be the relevant factors to be considered by the Court."*

76. In ***Dr. Mahachandra Prasad Singh v. Chairman, Bihar Legislative Council and Others*** reported in (2004) 8 SCC 747, this Court explained the concept of delegated legislation thus:

> *"**13.** …..Underlying the concept of delegated legislation is the basic principle that the legislature delegates because it cannot directly exert its will in every detail. All it can in practice do is to lay down the outline. This means that the intention of the legislature, as indicated in the outline (that is the enabling Act), must be the prime guide to the meaning of delegated legislation and the extent of the power to make it. The true extent of the power governs the legal meaning of the delegated legislation. The delegate is not intended to travel wider than the object of the legislature. The delegate's function is to serve and promote that object, while at all times remaining true to it. That is the rule of primary intention. Power delegated by an enactment does not enable the authority by regulations to extend the scope or general operation of the enactment but is strictly ancillary. It will authorise the provision of subsidiary means of carrying into effect what is enacted in the statute itself and will cover what is incidental to the execution of its specific provision. But such a power will not support attempts to widen the purposes of the Act, to add new and different means of carrying them out or to depart from or vary its ends. (See Section 59 in chapter "Delegated Legislation" in Francis Bennion's Statutory Interpretation, 3rd Edn.)……"*

77. In ***McEldowney v. Forde*** reported in (1971) AC 632 : (1969) 3 WLR 179, Lord Diplock explained the role of the Courts in this area in the following words :

> *"The division of functions between Parliament and the courts as respects legislation is clear. Parliament makes laws and can delegate part of its power to do so to some subordinate authority. The courts construe laws whether made by Parliament directly or by a subordinate authority acting under delegated legislative powers. The view of the courts as to whether particular statutory or subordinate legislation promotes or hinders the common weal is irrelevant. The decision of the courts as to what the words used in the statutory or subordinate legislation mean is decisive. Where the validity of subordinate legislation made pursuant to powers delegated by Act of Parliament to a subordinate authority is challenged, the court has a threefold task: first, to determine the meaning of the words used in the Act of Parliament itself to describe the subordinate legislation which that authority is authorised to make, secondly, to determine the meaning of the subordinate legislation itself and finally to decide whether the subordinate legislation complies with that description."*

78. A delegated power to legislate by making rules or regulations 'for carrying out the purpose of the Act', is a general delegation without laying down any guidelines; it cannot be exercised so as to bring into existence the substantive rights or obligations or disabilities not contemplated by the provisions of the Act 2003 itself. The Court, considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power as has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute.

79. It is important to keep in mind that where a rule or regulation is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the Court is simple and easy. But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific

provision of the enabling Act, but with the object and scheme of the parent Act, the Court should proceed with caution before declaring the same to be invalid.

80. Rules or regulation cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinating legislative functions, or, what is fictionally called, a power to fill up details.

81. A Constitution Bench of this Court in the case of ***Sukhdev Singh*** (supra), while explaining the fine distinction between a rule and regulation and also the power of the delegate authority to frame such rules or regulations has made few very important observations which we must take notice of and quote as under:

> ***"11.*** *The contentions on behalf of the employees are these. Regulations are made under the statute. The origin and source of the power to make regulations is statutory. Regulations are self-binding in character. Regulations have the force of law inasmuch as the statutory authorities have no right to make any departure from the regulations.*
>
> ***12.*** *Rules, regulations, schemes, bye-laws, orders made under statutory powers are all comprised in delegated legislation. The need for delegated legislation is that statutory rules are framed with care and minuteness when the statutory authority making the rules is after the coming into force of the Act in a better position to adapt the Act to special circumstances. Delegated legislation permits utilisation of experience and consultation with interests affected by the practical operation of statutes.*
>
> *xx* *xx* *xx*
>
> ***14.*** *Subordinate legislation is made by a person or body by virtue of the powers conferred by a statute. By-laws are made in the main by local authorities or similar bodies or by statutory or other undertakings for regulating the conduct of persons within their areas or resorting to their undertakings. Regulations may determine the class of cases in which the exercise of the statutory power by any such authority constitutes the making of statutory rules.*

15. *The words "rules" and "regulations" are used in an Act to limit the power of the statutory authority. The powers of statutory bodies are derived, controlled and restricted by the statutes which create them and the rules and regulations framed thereunder. Any action of such bodies in excess of their power or in violation of the restrictions placed on their powers is ultra vires. The reason is that it goes to the root of the power of such corporations and the declaration of nullity is the only relief that is granted to the aggrieved party.*

xx *xx* *xx*

18. *The authority of a statutory body or public administrative body or agency ordinarily includes the power to make or adopt rules and regulations with respect to matters within the province of such body provided such rules and regulations are not inconsistent with the relevant law. In America a "public agency" has been defined as an agency endowed with governmental or public functions. It has been held that the authority to act with the sanction of Government behind it determines whether or not a governmental agency exists. The rules and regulations comprise those actions of the statutory or public bodies in which the legislative element predominates. These statutory bodies cannot use the power to make rules and regulations to enlarge the powers beyond the scope intended by the Legislature. Rules and regulations made by reason of the specific power conferred on the statute to make rules and regulations establish the pattern of conduct to be followed. Rules are duly made relative to the subject-matter on which the statutory bodies act subordinate to the terms of the statute under which they are promulgated. Regulations are in aid of the enforcement of the provisions of the statute. Rules and regulations have been distinguished from orders or determination of statutory bodies in the sense that the orders or determination are actions in which there is more of the judicial function and which deal with a particular present situation. Rules and regulations on the other hand are actions in which the legislative element predominates.*

xx *xx* *xx*

136. *The regulations framed under the regulation-making power conferred by the three Acts in question are not the regulations as defined in the General Clauses Act. In interpreting Indian statutes it is unnecessary and might sometimes be misleading to refer to the provisions of English law in connection with subordinate legislation. We have to refer only to the General Clauses Act and*

the Indian legislative practice. Though "rule" is defined as including a regulation made as a rule, it cannot be said that regulation-making power conferred on the three organisations in question is a rule-making power. Under the legislative practice in India the rule-making power is conferred on the State and the power to make regulations is conferred on bodies or organisations created by the statute.

xx *xx* *xx*

161. *I have gone through the various statutes only to point out that under the Indian legislative practice rules are what the Central Government or the State Governments make and the regulations are made by any institution or organisation established by a statute and where it is intended that the regulation should have effect as law the statute itself says so. It is, therefore, as I stated earlier, unnecessary and may be even misleading to refer to the English practice in interpreting the word 'regulation'."*

(Emphasis supplied)

82. If we have to set right the impugned judgment and order of the High Court and bring in tune with the principles embodied in the decision of this Court in the case of ***Seetaram Rice Mill*** (supra), then we have no other option but to declare that Regulation 153(15) of the Code 2014 framed by the Commission is inconsistent with Section 126 of the Act 2003. If the Regulation 153(15) is to be given effect, then the same would frustrate the very object of Section 126 of the Act 2003. The High Court in its impugned judgment says that Regulation 153(15) does not lead to any loss of revenue. The stance of the Commission also is that there is no loss of revenue if the Regulation 153(15) is permitted to be operated. However, we are of the view that it is not just the question of loss of revenue. At the cost of repetition, we emphasis on the fact that overdrawal of electricity is prejudicial to the public at large as it may throw out of gear the entire supply system, undermining its efficiency, efficacy and even-increasing voltage fluctuations.

83. The material on record indicates something very startling. During the year 2014-15, total unauthorised use of electricity in the State of Kerala was detected in 1662 units and the total amount assessed comes to Rs.14,40,82,176/- (Rupees Fourteen Crore Forty Lakhs Eighty Two Thousand One Hundred and Seventy Six only). The corresponding figures during the years 2015-16 and 2016-17 were 1262 and 1875 units resply and the total amount assessed comes to around Rs.10,63,76,776/- (Rupees Ten Crore Sixty Three Lakhs Seventy Six Thousand Seven Hundred and Seventy Six only) and Rs. 34,64,80,421/- (Rupees Thirty Four Crore Sixty Four Lakh Eighty Thousand Four Hundred and Twenty One only) resply.

84. In the revenue petitions filed by the appellant Board, it was pointed to the High Court that the total amount assessed for all the three years referred to above, came to Rs.59,69,39,373/- (Rupees Fifty Nine Crore Sixty Nine Lakh Thirty Nine Thousand Three Hundred and Seventy Three only).

85. In addition to the above, an amount of Rs. 41,14,858/- (Rupees Forty One Lakh Fourteen Thousand Eight Hundred and Fifty Eight only) and Rs.1,42,09,148/- (Rupees One Crore Forty Two Lakh Nine Thousand and One Hundred Forty Eight only) were assessed during the years 2015-16 and 2016-17 resply, by Regional Audit Office (RAO) Inspection.

86. We are really taken by surprise that despite the aforesaid, the High Court while rejecting the review applications declared that the regularisation of additional connected load or enhancement of contract demand should not necessitate upgradation of the existing distribution system.

87. At this stage, we may also refer to Section 45(3)(a) of the Act 2003. The same reads thus:

> *"**45. Power to recover charges.** —*
>
> *xx xx xx*

(3) The charges for electricity supplied by a distribution licensee may include—

(a) a fixed charge in addition to the charge for the actual electricity supplied;"

88. A plain reading of Section 45(3)(a) of the Act 2003 referred to above would indicate that the charges for electricity certified by a distribution licensee include the fixed charges, in addition to the charges for the actual electricity supplied and consumed. In such circumstances, it can be said that the tariff includes both, fixed charges and energy charges and once the assessing officer arrives at the conclusion that unauthorised use of electricity has taken place, he is obliged to make the assessment charge equal to twice the tariff applicable, which includes the dues payable towards the energy charges also.

89. In overall view of the matter, we have reached to the conclusion that the finding recorded by the High Court in para 31(vi) is not sustainable in law. We have also reached to the conclusion that the Regulation 153(15) deserves to be declared invalid being inconsistent with the provisions of Section 126 of the Act 2003.

90. The order passed by the High Court in the review applications more particularly para 10(i), 10(ii) and 10(iii) resply is also hereby set aside.

91. In the result, all the appeals succeed and are hereby allowed to the aforesaid extent. The declaration issued by the High Court, as contained in para 31(vi) of the impugned judgment is hereby set aside.

92. Regulation 153(15) of the Code 2014 is declared to be invalid being inconsistent with the provision of Section 126 of the Act 2003.

93. No order as to costs.

……..……..……..J.
(DINESH MAHESHWARI)

……J.
(J.B. PARDIWALA)

New Delhi;
Date: December 16, 2022.