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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4495 OF 2025

SOUTHERN POWER DISTRIBUTION COMPANY OF ANDHRA PRADESH LIMITED & ANR. ...APPELLANT(S)

VERSUS

GREEN INFRA WIND SOLUTIONS LIMITED & ORS. …RESPONDENT(S)

J U D G M E N T

Contents

I. Introduction

1. We are called upon to decide if the State Electricity Regulatory Commission (SERC) while exercising its power to determine tariff can "consider and factor in" the "Generation Based Incentive" (GBI) granted under a financial policy designed by the Ministry of New and Renewable Energy (MNRE) for incentivising actual renewable energy generation by the renewable energy generating companies (GENCOs). While GENCOs contend that there is no such power, the SERC and the distribution companies (DISCOMs) insist that tariff fixation is the exclusive province of the SERCs and that this power cannot be denuded by operation of an incentive scheme formulated in exercise of executive power. On facts, the Andhra Pradesh Electricity Regulatory Commission (APERC) determined the tariff of the GENCOs by factoring in the GBI granted by the MNRE, but in appeal the APTEL took a different view and held that the SERC has no such power. The well-refined arguments of the learned counsels appearing before us maintained the same stand of either total and exclusive province of the SERC to determine tariff, or absolute non-existence of power to "consider and take into account" GBI for fixation of tariff.

1.1 We have answered the question holding that tariff determination must, of course, be the exclusive province of SERCs and those powers

are not denuded because Parliament assented to the estimates/demands of the MNRE and the Government transferred the GBI to the GENCOs. However, even when the SERC has the power and jurisdiction to "consider and factor in" GBI while determining tariff, the decision must be based on relevant principles governing tariff fixation and be in consonance with statutory policy. For the reasons to follow, we have held that the GBI is designed to subserve a very important policy consideration effecting energy security as well as the obligation to transition from fossil fuels to renewable energy. In this context, we found it necessary to indicate how sectoral regulators like the SERCs have to work in tandem with other duty bearers to subserve the purpose of the Electricity Act, 2003. While interpreting regulatory statutes, Constitutional Courts will not choose any of the conflicting claims but will balance plurality of interests such as energy security, consumer interests, developers' stability as well as environmental concerns, such as global warming.

2. We will first examine the powers of the SERC to determine tariff. Thereafter, we will consider the endeavour of MNRE in reducing dependence on fossil fuels and the compelling need to shift gear towards renewable energy. We will then consider the competing submissions about the regulatory treatment of GBI and make our interpretative choice.

II. Facts

3. The Ministry of New and Renewable Energy (MNRE) was formed through an evolution of departments, commissions and ministries in response to the 1970s energy crisis. Severe petroleum shortages accompanied by hike in prices in the 1970s led to the establishment of the Commission for Additional Sources of Energy (CASE) in the Department of Science and Technology in March, 1981. CASE was constituted to frame policies and to implement them through programs for development of new and renewable energy. Thereafter, the Department of Non-Conventional Energy Sources (DNES) was created within the then Ministry of Energy, in 1982, and CASE came to be integrated with it. DNES went on to become a full-fledged ministry in 1992 as the Ministry of Non-Conventional Energy Sources. The Ministry was renamed as the Ministry of New and Renewable Energy in 2006.

4. MNRE is aimed at developing new and renewable energy technologies, processes, materials, components, at par with international standards. It is to ensure and support transition from fossil-fuel based power generation to renewable energy.

5. One such measure is the Generation Based Incentive introduced vide Notification dated 17.12.2009. The relevant portion of the Scheme is reproduced below –

"1. Objectives:

(i) To broaden the investor base and create a level playing field between various classes of investors.

(ii) To incentivise higher efficiencies with the help of a generation/outcome based incentive.

(iii) To facilitate entry of large independent power producers and foreign direct investors to the wind power sector.

2. Incentive and Duration:

2.1 Under the scheme, a GBI will be provided to wind electricity producers @ Rs. 0.50 per unit of electricity fed into the grid for a period not less than 4 years and a maximum period of 10 years in parallel with accelerated depreciation on a mutually exclusive manner with a cap of Rs. 62 lakhs per MW. The total disbursement in a year will not exceed one fourth of the maximum limit of the incentive i.e. Rs. 15.50 lakhs per MW during the first four years. The scheme will be applicable to a maximum capacity limited to 4000 MW during the remaining period of 11th Plan period. The provision of GBI will continue till the end of 11th Plan period. However, provision of accelerated depreciation in parallel with GBI will continue till the 11th Plan period or introduction of Direct Tax Code, whichever is earlier.

4. Implementation Arrangements:

4.1 The GBI would be implemented through Indian Renewable Energy Development Agency (IREDA). IREDA will also assist the Ministry in organizing business meets, awareness programmes and other related activities, as considered necessary for promotion of the scheme.

4.2 The funds provided in the budget of MNRE will be released upfront as advance to IREDA to ensure timely release and flow of funds to the projects. The existing system followed by various state utilities for data collection/metering and billing on the generation of electricity for the purpose of payment to the power producers with modification, if any as deemed necessary, would be followed as the basis of disbursal of the amount

due to the power producer for the new turbine(s) to be set up under the GBI.

4.5 The IREDA would disburse the GBI to the developers through their designated bank account periodically through e-payment.

4.6 This incentive is over and above the tariff that may be approved by the State Electricity Regulatory Commissions in various States. In other words, this incentive that is sanctioned by the Union Government to enhance the availability of power to the grid will not be taken into account while fixing tariff by State Regulators.

5. Financial Outlay

5.1 The financial liability during the 11th Plan is estimated to be Rs. 380 crore, which would be met by the Ministry from its existing Plan allocation.

6. Evaluation of the Scheme:

6.1 The GBI would be evaluated during the last year of the 11th Plan and if the response of the GBI exceeds the expectation, further upscaling would be considered based on the evaluation."

6. The GBI Scheme granted wind power generators a benefit of Rs.0.50 per unit of electricity fed into the grid for four to ten years, up to Rs.62 lakhs per megawatt. The Scheme has been designed to run parallel with the benefit of Accelerated Depreciation (AD), but on a mutually exclusive manner. Thus, only those wind power projects which have not been availing the benefit of AD and which have duly registered with the Indian Renewable Energy Development Agency (IREDA) would be entitled to GBI.

7. The grant of GBI to wind power projects is intended to attract investment in wind energy sector and increase the quantum of grid-interactive renewable power. GBI has been envisaged to be a benefit that is *over and above* the tariff approved by the SERC. The GBI is therefore *complementary* to the tariff approved by the SERCs, intended to encourage larger investment in renewable energy projects.

III. APERC's Tariff Regulations of 2015

8. In exercise of its statutory powers under Sections 61 and 86 read with Section 181 of the Electricity Act, 2003, APERC notified the Andhra Pradesh Electricity Regulatory Commission (Terms and Conditions for Tariff Determination for Wind Power Projects) Regulations, 2015 on 31.07.2015.

9. The 2015 Tariff Regulations have a very detailed structure stipulating and factoring in all costs, loans, return on equity, operation and maintenance of expenses, etc. The same becomes apparent from Regulation 7, which envisages a single part tariff inclusive of costs components like, return on equity, interest on loan capital, depreciation, interest on working capital, and operation and maintenance expenses. Regulation 8 stipulates levelized tariff. Regulation 10 provides that norms of capital cost shall generally be inclusive of all capital work and in addition to this, provides a detailed indexation mechanism. Regulation 11 specifies

normative debt-equity ratio to be 70:30. Regulation 12 while dealing with loan and finance charges, stipulates a normative interest rate @ 300 basis points (i.e. 3%) above the *SBI base rate* in sub-Section (2)(b). Regulation 13 prescribes depreciation for the first 10 years by a straight-line method at the rate of 7% per annum. Regulation 14 stipulates a return on the equity component of 30% of the capital cost, and grants a return on equity of 16% with MAT/Income Tax as pass through, i.e. the DISCOM reimburses the tax paid to the GENCOs. Regulation 15 confers interest on working capital at the rate of 350 basis points (i.e. 3.5%) above the SBI rate. Regulation 16 deals with operational and maintenance expenses. Regulation 17 grants rebates for payment of bills of the generating company at the rate of 2% when paid through a letter of credit; and of 1% when paid within a period of 1 month of presentation of bills. Regulation 18 provides for sharing the proceeds of carbon credit between the generating company and the concerned beneficiaries. Regulations 19 expressly provides that taxes and duties levied by the Government are exclusive of and over and above the determined tariff. Finally, Regulation 20[1] obligates the Commission to take into consideration any incentive or subsidy offered by the Central or the State Government and availed by

[1] Regulation 20 Subsidy or incentive by the Government: *The Commission shall take into consideration any incentive or subsidy offered by the Central or State Government, including accelerated depreciation (AD) benefit, if availed by the generating company, for Wind Power Projects while determining the tariff under these Regulations…*

the Wind Power Projects, as has been extensively analysed by the APERC and the APTEL.

IV. Tariff Orders

10. APERC notified the levelized generic preferential tariff dated 01.08.2015 for wind power projects set up between 31.07.2015 to 31.03.2016. Notably, herein the APERC did not take into account GBI being availed by the respondent GENCOs and other similarly situated wind power generators. A similar Tariff Order was passed by the APERC on 26.03.2016 for the period 01.04.2016 to 31.03.2017.

11. On 10.12.2016, the appellant DISCOMs requested APERC to amend the aforesaid Tariff Orders by taking into account the GBI. However, as no action was taken, appellants filed an Original Petition on 14.02.2017.

V. Order of the APERC

12. The APERC allowed appellant's Original Petition by Order dated 28.07.2018 and permitted deduction of the amounts so claimed and availed towards GBI from out of the monthly bills payable since the filing of the Petition on 14.02.2017, based on the following reasons -

12.1 Regulation 20 specifically provides that the Commission shall take into account any incentive or subsidy offered by the Central or State

Government, if availed by the GENCOs for wind power projects, while determining tariff.

12.2 The GBI Scheme of the Government of India is a mere executive or administrative action which cannot overrule power of the Commission to determine tariff as per a subordinate legislation, that is, the 2015 Tariff Regulations. Regulation 20 makes no exceptions in respect of any subsidy or incentive and in fact, makes it mandatory that benefits like the GBI "shall" be taken into account.

12.3 The Commission possesses the power to deviate from or relax the provisions of the 2015 Tariff Regulations and to give appropriate and required effect to the Regulations.[2]

12.4 The power of the Commission to determine tariff includes the power to vary, modify, alter, amend or appropriately mold the tariff as per law.

12.5 Claim that the Tariff Orders are beyond interference for 25 years omits reference to words "unless amended or revoked" from Section 64(6) of the Electricity Act, 2003.

12.6 In the Tariff Orders in question, while the benefit of AD was deducted, the benefit of GBI was not, despite the two being mutually

[2] See Regulations 23-26.

exclusive and carrying the same purpose of incentivizing renewable power generation through wind.

12.7 The Tariff Orders carry no reference to the GBI and there was no conscious application of mind to the issue of factoring in said benefit while fixing tariff. Request proffered by the DISCOMs to factor in GBI was neither looked into nor specifically considered.

12.8 The Commission has the jurisdiction to revise the tariff in public interest. Regardless, the relief sought by DISCOMs is neither in the nature of an amendment nor a review of the Tariff Orders, rather, only a supplementary tariff order is being sought for giving effect to Regulation 20 by taking into consideration GBI.

12.9 Factoring in GBI will only have the effect of enforcing Regulation 20 and will not amount to revisiting terms and conditions of the PPA, which only binds the parties to the tariff payable as per the 2015 Tariff Regulations.

12.10 Arguments of promissory estoppel and legitimate expectation are extraneous for present consideration.

12.11 If the economic consequences are considered, factoring in GBI will only help the DISCOMs to further serve larger consumer interest.

VI. Judgment of the APTEL

13. Aggrieved by the decision of APERC, the respondent GENCOs filed an appeal before the APTEL. The same came to be allowed vide Judgement impugned before us, dated 19.12.2024, and the appellant DISCOMs were directed to refund amounts deducted for adjustment of GBI from the tariff paid, along with interest @12% per annum, based on the following reasons –

13.1 When a Tariff Order is passed determining tariff for 25 years of a plant's life and PPAs have been executed with DISCOMs, then it is not open to the APERC to amend or vary the levelized tariff except in exceptional circumstances or in clear cases of infringement of statutory regulations.[3] While the power to amend is available to the APERC, a tariff that has been determined as per the 2015 Tariff Regulations and in discharge of the statutory function under Section 86(1)(e) and Section 61(h) to promote generation of electricity from renewable sources of energy, cannot be amended at mere asking of the DISCOMs.

13.2 The APERC has the power to amend the tariff once every financial year, as provided under Section 62(4) of the Electricity Act, 2003, but it is important to delve into the circumstances as to when said power can be exercised "ordinarily". Section 64(6) stipulates that a tariff order shall,

[3] See Regulations 2(p) and 5(a).

unless amended or revoked, continue to be in force for such period as specified in said order. If any of the parties are aggrieved by any of the clauses in the tariff order, they are at liberty to seek its amendment or revocation under Section 64(6).[4] The mode, manner and the circumstances in which such a tariff order may be amended or revoked is not stipulated either in Section 64(6) or in any other provision of the Electricity Act.

13.3 By virtue of Section 21 of the General Clauses Act, 1897, when a power is conferred on an authority to do a particular act, it includes in such power, the power to withdraw, modify, amend or cancel the notifications/orders earlier issued, which can be exercised in the like manner and subject to like conditions, if any, attached with the exercise of the power. Thus, while the power to amend or revoke a tariff order is available to the APERC under Section 64(6) of the Electricity Act read with Section 21 of the General Clauses Act, however, the manner of exercise of such power has to be in terms of the 2015 Tariff Regulations.

13.4 In the proceedings concerned, the DISCOMs had requested APERC to amend its earlier Tariff Orders in terms of Regulation 20 and the APERC interpreted the words “shall be taken into consideration” as an obligation to deduct GBI from the preferential tariff. Use of the words “shall

[4] *BSES Rajdhani Power Ltd v. Delhi Electricity Regulatory Commission*, (2023) 4 SCC 788.

take into consideration" in Regulation 20 would only mean that the APERC "should think over, reflect on, bestow attentive thought upon" the GBI Scheme and upon such exercise it was the discretion of the APERC to determine tariff with or without factoring in said benefit.

13.5 It was the understanding of DISCOMs as well as APERC, as appears from combined reading of letters dated 30.10.2015 and 15.02.2016, that 2015 Tariff Regulations do not provide for factoring in GBI while determining tariff. Thereby, Tariff Order dated 26.03.2016 was passed in line with Tariff Order dated 01.08.2015, without factoring in GBI.

14. Thus, the APTEL was of the considered view that since Regulation 20 only requires APERC to consider and be conscious of any incentive offered by the Government, APERC was wrong to state that its failure to factor in GBI at the time of tariff determination was in infringement of said Regulation. Therefore, it was concluded that in the absence of any infringement of the 2015 Tariff Regulations, APERC was not entitled to exercise its power to amend under Section 64(6) of the Electricity Act read with Section 21 of the General Clauses Act.

VII. Issues

i) Scope and ambit of the SERC's power and jurisdiction to determine tariff.

ii) Given the power and exclusive jurisdiction to determine tariff, what are the duties and obligations of the SERCs while determining tariff.

VIII. Re: Issue: i) Scope and ambit of the Electricity Regulatory Commission's power and jurisdiction to determine tariff.

15. We will start with the hypothesis that the Electricity Act, 2003 is a complete code and with its advent there is no unallocated regulatory residue left outside the SERC's jurisdiction and tariff determination is its exclusive province.

16. The Electricity Act, 2003 is a complete and comprehensive code for generation, transmission, distribution, trading and use of electricity. One of the core features of the Act is that it unbundles the functions of electricity generation, transmission, and distribution that were commonly performed by the erstwhile State Electricity Boards (SEBs) into separate utilities, and provides for their regulation through independent Regulatory Commissions.[5]

17. The compelling need for efficient independent and transparent regulatory mechanism was felt due to the regulatory failures under the pre-existing legal regime[6], wherein Electricity Boards constituted by the

[5] *PTC India Ltd. v. Central Electricity Regulatory Commission* (2010) 4 SCC 603, para 17.
[6] Electricity Act, 1910 (hereinafter "the 1910 Act"); the Electricity (Supply) Act, 1948 (hereinafter "the 1948 Act").

State Governments were controlling the sector.[7] Various problems faced by the power sector, such as lack of rational retail tariffs, high level of cross-subsidies, poor planning and operation, inadequate capacity, neglect of consumer interest, and limited involvement of the private sector's skills[8] led to the enactment of the Electricity Regulatory Commissions Act, 1998[9] to initiate reform *by establishing an independent and transparent regulatory mechanism*.[10] Within a few years, the Electricity Act, 2003 was enacted as a comprehensive legislation for regulating the sector and it replaced the 1910 Act, the 1948 Act, and the 1998 Act.[11] The following are the salient features of the Electricity Act[12]:

17.1 The Act *consolidates laws*, and therefore comprehensively deals with all aspects of the electricity sector, from production to usage.

17.2 Electricity being a public good[13] and a basic amenity[14], it has been recognised as a part of the right to shelter and right to life[15]. In this light, the Act covers the entire process of production, transfer, and sale of

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[7] *K.C. Ninan v. Kerala State Electricity Board*, (2023) 14 SCC 431, para 6.
[8] Statement of Objects and Reasons of the Electricity Regulatory Commissions Act, 1998.
[9] Hereinafter "the 1998 Act".
[10] *W.B. Electricity Regulatory Commission v. CESC Ltd.*, (2002) 8 SCC 715, para 52; *PTC* (supra), para 17; *Sesa Sterlite Ltd. v. Orissa Electricity Regulatory Commission*, (2014) 8 SCC 444, para 22.
[11] Section 185 of the Electricity Act.
[12] The Preamble of the Electricity Act reads:

> "*An Act to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalisation of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto*."

[13] *K.C. Ninan v. Kerala State Electricity Board,* (2023) 14 SCC 431, para 93.
[14] *Dilip v. Satish*, 2022 SCC OnLine SC 810, para 9.
[15] *Chameli Singh v. State of U.P.*, (1996) 2 SCC 549, para 8.

electricity and also deals with the utilisation of electricity. These are covered under *generation, transmission, distribution, trading and use of electricity*.

17.3 The Act is also concerned with the development of the electricity sector and to ensure that there is sufficient amount of electricity available to all. In furtherance of this goal of enhancing the availability of electricity, the Act envisages private sector participation and promotion of competition.

17.4 These measures are ultimately intended to protect and subserve consumer interests by making electricity supply accessible at cheaper rates for those who cannot afford it, as well as making supply accessible in all areas and regions. In this vein, the Act provides for the need for transparent subsidy policies.

17.5 Taking into account the ecological impact of the electricity sector and its activities, the Act provides for promotion of efficient and environmentally benign policies. Generation of electricity from renewable sources of energy is an important guiding principle.[16]

17.6 Finally, the Act provides for the constitution of permanent expert bodies, i.e., Central and State Electricity Regulatory Commissions, to regulate the production, transfer and use of electricity, as well as for the

[16] Section 61(h)

development of the sector through private sector participation and competitiveness to subserve consumer interests. Considering the specialised nature of functions performed by these bodies, the Act also provides for an appellate forum to challenge the Central and State Commissions' decisions, i.e., the APTEL, which can appreciate the technicalities and nuances of the sector.

18. Administration through independent and expert bodies, referred to as regulators, has attained popularity as it is a better means of good governance. Independent regulators, armed with statutory powers reduce government's control, interface market, safeguard consumer interest, prevent abuse of monopoly. Regulators also have socio-economic obligations of ensuring accessibility of goods and services and also duties towards development of the industry by promoting efficiency and competition.[17] The nature of functions and the jurisdiction of these regulatory bodies are wide and extensive as they perform a mix of legislative, executive and administrative, and judicial functions.[18] Statutes constituting these regulatory bodies invariably ensure that legislative, executive and adjudicatory powers are telescoped into them as one institution. These regulators have the power to lay down enforceable regulations, issue licenses, fix prices, scope areas of operation,

[17] H.W.R. Wade and C.F. Forsyth, *Administrative Law* (11th edn, Oxford University Press 2014), 116-117.
[18] *Ibid*, 124.

investigate and prosecute offences, impose penalties, adjudicate disputes and interpret the laws, implement and enforce the statutory mandate, and also exercise incidental and ancillary powers in furtherance of the Act.[19]

19. The Electricity Act unbundled generation, distribution and transmission of electricity, and at the same time, institutionalised important functions such as grant of licenses and determination of tariff through the establishment of Regulatory Commissions. These Regulatory Commissions are intended to have autonomy through freedom from control, expertise through human resource, continuation through seal and succession, diversity by composition, and accountability by transparency. With the powers that they are granted, coupled with autonomy that they enjoy, these Commissions are the primary duty bearers to implement the provisions of the Act.

20. Tariff determination is the exclusive province of the Regulatory Commissions. In performance of their functions, the Central and State Electricity Regulatory Commissions determine tariff for supply of electricity by generating companies to distribution licensees, for transmission, wheeling, and also for retail sale of electricity.[20] Section 61 provides the

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[19] *Ibid*; *Cellular Operators Assn. of India v. Union of India*, (2003) 3 SCC 186, para 33; *U.P. Power Corpn. Ltd. v. NTPC Ltd.*, (2009) 6 SCC 235, paras 4, 22, 48.

[20] Section 62 Determination of tariff**:**

(1) The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for –

(a) supply of electricity by a generating company to a distribution licensee:

Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a

guiding principles for good governance for development, sale, and distribution of power and also emphasises the overarching principle of subserving the interests of consumers. The journey as well as the destination of tariff determination process under the statute indicates that the Commissions shall ensure that utilities will adopt commercial principles, encourage competition, promote efficiency, use resources economically, perform efficiently and optimise investments. The purpose of adopting such measures is to "*safeguard and protect the interest of the consumers*". Section 61 also recognises the vulnerability of the electricity sector to undue political posturing, and therefore emphasises that the

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licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;

(b) transmission of electricity;

(c) wheeling of electricity;

(d) retail sale of electricity:

Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.

Sections 79 sets out the functions of the Central Commission. The relevant portion is as follows:

Section 79 Functions of Central Commission:

(1) The Central Commission shall discharge the following functions, namely:-

(a) to regulate the tariff of generating companies owned or controlled by the Central Government;

(b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;

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(d) to determine tariff for inter-State transmission of electricity;…

Section 86 sets out the functions of the State Commission. The relevant portion is as follows:

Section 86 Functions of State Commission:

(1) The State Commission shall discharge the following functions, namely:-

(a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State:…

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

Commission shall ensure that "*the tariff progressively reflects the cost of supply of electricity and also, reduce cross-subsidies*".[21] In this endeavour the National Electricity Policy and the National Tariff Policy shall also be guiding factors.[22]

21. There is, thus, no unallocated regulatory residue left outside the Electricity Regulatory Commissions' jurisdiction and tariff determination is their exclusive province.

22. Regulation 20 of the 2015 Regulations, framed in exercise of power under Section 181 read with Section 61, provides that the Commission "*shall take into consideration any incentive or subsidy offered by the Central or State Government… if availed by the generating company… while determining the tariff*." The use of the expression "*shall*" is significant. It denotes a statutory obligation to consider the impact of such incentive in the process of tariff determination.

23. If an incentive impacts the economic position of the GENCO in relation to generation and supply of electricity, the Commission is entitled, and indeed obligated under Regulation 20, to consider its bearing on tariff. Such consideration does not invalidate or nullify the grant.

[21] Section 61(1)(g) of the Electricity Act.
[22] Section 61(1)(i) of the Electricity Act.

24. The primary submission of Mr. P. Chidambaram, Senior Advocate, has been that, what is intended and voted on by the Parliament to be a *generator incentive* cannot be diverted, rather subverted as a *consumer incentive*. As per Mr. Chidambaram, the Union Government under Article 282[23] is entitled to make a grant for a public purpose, notwithstanding that the purpose is not with respect to which Parliament can make laws. He would further submit that following the procedure prescribed in Article 112[24] of the Constitution and as soon as the estimates as relates to "other expenditure" is submitted in the form of demands for grants are assented

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[23] Article 282 *Expenditure defrayable by the Union or a State out of its revenues: The Union or a State may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or, the Legislature of the State, as the case may be, may make laws.*

[24] Article 112 Annual financial statement*: (1) The President shall in respect of every financial year cause to be laid before both the Houses of Parliament a statement of the estimated receipts and expenditure of the Government of India for that year, in this Part referred to as the "annual financial statement".*

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

(a) the sums required to meet expenditure described by this Constitution as expenditure charged upon the Consolidated Fund of India; and

(b) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of India,

and shall distinguish expenditure on revenue account from other expenditure.

(3) The following expenditure shall be expenditure charged on the Consolidated Fund of India—

(a) the emoluments and allowances of the President and other expenditure relating to his office;

(b) the salaries and allowances of the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the People;

(c) debt charges for which the Government of India is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;

(d) (i) the salaries, allowances and pensions payable to or in respect of Judges of the Supreme Court;

(ii) the pensions payable to or in respect of Judges of the Federal Court;

(iii) the pensions payable to or in respect of Judges of any High Court which exercises jurisdiction in relation to any area included in the territory of India or which at any time before the commencement of this Constitution exercised jurisdiction in relation to any area included in a Governor's Province of the Dominion of India;

(e) the salary, allowances and pension payable to or in respect of the Comptroller and Auditor General of India;

(f) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;

(g) any other expenditure declared by this Constitution or by Parliament by law to be so charged.

to by the House of the People under Article 113(2)[25], there shall be introduced a bill under Article 114[26] to provide appropriation out of the Consolidated Fund of India. Reference to Article 282, followed by Articles 112, 113 and 114 by Mr. Chidambaram is only to indicate that under sub-article (2) of Article 114, the amount so assented from out of the Consolidated Fund of India shall not be varied or its destination shall not be altered even by way of an amendment to the Appropriation Bill. He would therefore reiterate that GBI voted on by the Parliament as an expenditure charged on the Consolidated Fund of India as a *generator incentive* cannot be altered as a *consumer incentive* even by legislation. If that be so, he argues, the constitutional mandate of Parliamentary Assent translating into the GBI scheme, intended to reach wind power generators, cannot be converted as a consumer incentive by the SERC.

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[25] Article 113 Procedure in Parliament with respect to estimates:

...

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the House of the People, and the House of the People shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

[26] Article 114 Appropriation Bills: *(1) As soon as may be after the grants under article 113 have been made by the House of the People, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of India of all moneys required to meet—*

(a) the grants so made by the House of the People; and

(b) the expenditure charged on the Consolidated Fund of India but not exceeding in any case the amount shown in the statement previously laid before Parliament.

(2) No amendment shall be proposed to any such Bill in either House of Parliament which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of India, and the decision of the person presiding as to whether an amendment is inadmissible under this clause shall be final.

(3) Subject to the provisions of articles 115 and 116, no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with the provisions of this article.

25. We will answer this submission by restructuring Article 114(2) in three parts; i) prohibition is with respect to proposing any amendment to the Appropriation Bill; ii) in the case a grant (under Article 114(1)(a)) if it has the effect of varying the amount or altering the destination and, iii) in the case of expenditure (under Article 114(1)(b)) if it has the effect of varying the amount.

26. It is true, under Article 114(2), that if a legislation cannot vary or alter the destination of a grant, a subordinate legislation too cannot alter its destination. However, it is an admitted fact that the incentive was released or credited directly in favour of the GENCOs. There has been no diversion, much less subversion, of the sums allocated and assented to as GBI to a destination other than the one intended under the scheme. In other words, the grant reached its destination when it was released in favour of the wind GENCOs. The submission is not that from out of the right destination that the grant has reached, it is not to be subjected to any other law, rule or regulation. In other words, the submission is for a perpetual immunity from any subjugation even from out of the destination that it has reached as intended.

27. The submission that factoring GBI into tariff would amount to altering the beneficiary of a Parliamentary grant proceeds on a misconception. The beneficiary of the GBI remains the GENCO. The incentive continues

to be disbursed by the Union Government in accordance with the Scheme. The Commission does not intercept or redirect the payment; it merely determines the tariff payable by the DISCOM to the GENCO.

28. We are, therefore, of the considered view that the SERC does possess the power to take into consideration the benefit offered under GBI while determining tariff, provided, such exercise is within the statutory framework of the Electricity Act and the Regulations framed thereunder. The contrary proposition urged by the respondents would curtail the statutory power of the Commission. The issue no. 1 is accordingly answered by holding that the regulatory power of the SERC extends to considering and, where warranted, factoring into the tariff any incentive or subsidy availed by the GENCO, including those granted by the Union Government. The Commission's authority in this regard flows directly from the Electricity Act and the Regulations framed thereunder and is not excluded by the mere existence of a Union grant.

IX. Re: Issue: ii) Given the power and exclusive jurisdiction to determine tariff, what are the duties and obligations of the Electricity Regulatory Commission while determining tariff.

29. The Electricity Act recognises plurality of duty bearers, the Central Government, the State Governments, Regulatory Commissions, the Appellate Tribunal, the Central Electricity Authority, the Ministry of New and Renewable Energy (MNRE), statutory policy makers, and the utilities.

These authorities collaborate to ensure that the purpose and object of the Act is subserved and, in this endeavour, the Regulatory Commissions also share the social justice obligations of the State. Since electricity is a public good,[27] Regulatory Commissions must undertake joint and collaborative efforts with the other authorities to enable access to electricity across urban and rural areas[28] and ensure affordability through rationalisation of tariffs[29]. The statutory authorities must work in cohesion and steer towards a common goal of ensuring supply of electricity across regions and terrains, supply cheaper and affordable power to those sections of society who cannot afford it. At the same time, the Regulatory Commissions maintain their independence and autonomy and ensure that the final decision with respect to fixation of tariff will be that of the Regulatory Commissions alone.

30. Laying down the guiding principles for determination of tariff as per Part VII of the Electricity Act, Section 61(h) obligates the Regulator to determine tariff keeping in mind promotion of generation of electricity from renewable sources of energy.[30]

[27] See *K.C. Ninan v. Kerala State Electricity Board*, (2023) 14 SCC 431, para 93.
[28] See Preamble of the Electricity Act; Section 6 of the Electricity Act that places the responsibility of rural electrification jointly on the Central and State Governments.
[29] See Preamble of the Electricity Act.
[30] Refer to Para 10.

31. As noted earlier, the MNRE introduced the GBI Scheme to achieve reduced dependence on fossil fuels as an energy source and to move on to renewable sources of energy.[31] More specifically, the grant of GBI to wind power projects was started with the intention to attract investment in wind energy sector and increase the quantum of grid-interactive renewable power. GBI Notification makes this purpose clear, it was designed keeping in view the market realities and was intended to reach the generating companies as a direct performance-linked benefit.

32. The statutory and regulatory mandate of the SERC and the intent and goal of the GBI Scheme are both in touch with the felt realities of our times and the pressing need to take effective and firm action towards sustainable development. This Court has also examined the importance of, coupled with international obligations to, transit from fossil fuel to green energy in *M.K. Ranjitsinh and Ors.* v. *Union of India and Ors.*[32]. In this decision, the Court highlighted the measures taken by India as a participating nation and has indicated how the international obligations have translated into statutory as well as policy mandates that are implemented through executive orders.

33. The objective was to build consensus on a binding and universal agreement which would limit greenhouse gas emissions to levels that

[31] The stated objectives of the GBI Scheme have been earlier noted in para 22.
[32] (2024) 19 SCC 139.

would prevent global temperatures from increasing more than 2 degrees Celsius (3.6 degrees F) above the temperature benchmark set before the Industrial Revolution[33]. Before the Paris meeting, the UN had called upon parties to submit their plans on how they intended to reduce their greenhouse emissions.[34] India submitted its Intended Nationally Determined Contribution (NDC) to the UNFCC on 2-10-2015. The Paris Agreement mandates that each party communicate a nationally determined contribution every five years.[35]

34. India communicated an update to its first NDC submitted earlier on 2-10-2015, for the period up to 2030.[36] One of the key strategies in India's efforts towards sustainability is the ambitious target for renewable energy capacity installation.[37] By 2022, India aimed to achieve an installed renewable energy capacity (excluding large hydro) of 175 Gigawatts, a goal that signifies the country's commitment to clean energy adoption.[38] Looking ahead, India has set target for 2030, aiming to ramp up its installed renewable energy capacity to 450 GW. This long-term goal underscores India's recognition of the urgent need to accelerate the

[33] *Id n.* 32, para 14.
[34] *Id n.*32, para 15.
[35] *Ibid.*
[36] *Ibid.*
[37] *Id n.* 32, para 16.
[38] *Ibid.*

transition towards renewable energy to mitigate the impacts of climate change and achieve sustainable development.[39]

35. To achieve these targets, India has implemented various policy measures and initiatives to promote renewable energy investment, innovation, and adoption.[40] India's commitment to transitioning to non-fossil fuels is not merely a strategic energy goal but a fundamental necessity for environmental preservation.[41] Investing in renewable energy not only addresses urgent environmental concerns but also yields a plethora of socio-economic benefits. By shifting towards renewable energy sources, we enhance our energy security, reduce reliance on volatile fossil fuel markets and mitigate the risks associated with energy scarcity. Additionally, the adoption of renewable energy technologies helps in curbing air pollution, thereby improving public health and reducing healthcare costs.[42]

36. Where environmental protection is weighed in to make electricity policy, it is necessary for regulators to take a holistic approach which balances competing interests without any sacrifices. Further, policy decisions taken on the basis of the national and international goals must

[39] *Ibid.*
[40] *Id n.* 32, para 17.
[41] *Ibid.*
[42] *Ibid.*

be incorporated at various stages to ensure that investment in renewable energy is continually promoted.

37. Regulatory bodies constituted under an Act with autonomy and independence, are specifically empowered thereunder to exercise powers which can be said to have the features of legislative, executive and even judicial functions. While these regulators are constituted to undertake specified functions, make laws and enforce them, they are not expected to act in silos. It is necessary for the regulators to adopt a holistic approach which does not sacrifice complementary values for the development of the sector. A delicate balance between competing values is to be maintained. It is necessary for all stakeholders, be it the Central or the State Government, the authorities under the Act and even the Regulatory Commissions to ensure that the goals within their domain are met without compromising one another. The approach to be adopted is to supplement and complement one another rather than contesting to succeed in their solitary perspective.

38. Domain regulators constituted under a statute could positively be influenced by other national and international authorities and policy makers on the very same subject. In this context, when we examine the powers and functions of domain regulators, we can identify a clear distinction between regulation as *controlled* and regulation as *enterprise*

and these facets have different characteristics[43]. Regulation as controlled is based on the principle that a domain regulator is empowered to take such action as may be necessary and could intrude into private activity for reasons that are specified in the statute, either to develop the sector or to prevent abuse. The primary objective of such domain regulators is to ensure efficiency and development of the sector. However, social justice obligations and distributive concerns are regarded as the province of Government, not the regulatory agency. The distinction between these two functions is to ensure independence of regulatory authority, which in turn promotes stability of the system by removing it from vagaries of day-to-day politics.

39. On the other hand, regulation as an *enterprise* conceives regulators as "Government's in Miniature" for which efficiency and distributive goals are both legitimate concerns. Autonomy and independence that they enjoy as regulators is not central to their functioning as their powers and jurisdiction would be exercised in collaboration with other stakeholders. When regulation is exercised as an enterprise, it is seen as "delegation by Government of the inherent powers to act in the public interest"[44]

[43] T. Prosser, 'Models of Economic and Social Regulation', in Oliver, Prosser and Rawlings, The Regulatory State: Constitutional Implications, pp. 37-9.
[44] *Id n.*43, p. 38

40. When the domain regulator acts in the larger interest and in coordination with other duty bearers under the Act and those responsible for development of the concerned sector, they coordinate with different stakeholders and work towards a common enterprise and for larger public purpose; this approach has the virtue of integrating and effectuating regulatory power in areas having social justice and/or environmental considerations.

41. While discussing the subject relating to regulatory competence and regulatory object and design, Paul Craig has formulated the issue in the following terms as under;

> *"Regulation as control is predicated on regulation being an intrusion into private autonomy, which is justified for reasons of market failure. The principal regulatory objective is efficiency to be achieved through promotion of competition and the correction of externalities. Distributive concerns are regarded as the province of government, not the regulatory agency, and the very fact that such concerns are hived off serves to justify the independence of the regulatory authority. This in turn is said to promote stability of the system, by removing it from the vagaries of day-to-day politics. This stability is then further enhanced through rules to guide the behaviour of those who come within the agency's remit, although this may be in tension with desires to keep public intervention to a minimum through the fostering of social co-ordination.*
>
> *Regulation as an enterprise conceives regulators as governments in miniature, in 'which efficiency and distributive goals are both legitimate regulatory concerns, and anyway are inseparable?[45] The regulatory goals may include social cohesion, and this function may be shared with government. Regulatory independence is not regarded as central, because regulation is conceived as a collaborative project between agencies and other organs of government. Regulation in this mould is seen as 'delegation by government of its inherent powers to act in the public interest.[46] The emphasis is on different actors working towards*

[45] *Ibid.*
[46] *Ibid.*

a common enterprise, with accountability conceived primarily in terms of public law mechanisms such as proceduralization, judicial review and parliamentary scrutiny. For Prosser this model has the virtue of rendering it easier to understand in areas where regulation has a social rationale, and is not driven by considerations of economic efficiency."

42. Thus, while interpreting statutes, rules or regulations that fall within a regulator's domain, Constitutional Courts ought to bear in mind the need to enable the regulator to exercise their jurisdiction holistically. This principle was articulated by this Court in *State of Himachal Pradesh v. JSW Hydro Energy Ltd.*[47] The relevant paragraphs are reproduced herein;

"32. This Court has time and again emphasised that since tariff determination, including the power to make regulations for this purpose has been entrusted to a specialised and expert regulator constituted under the statute itself, it would not be proper for constitutional courts to interfere and assume these functions, or to examine tariff fixation on its merits and substitute its own determination for the one made by the expert body after duly considering all material circumstances. We are of the opinion that this is necessary not only to ensure that these specialised functions are performed by expert regulators but to also facilitate a systematic and consistent development of sectoral laws.

33. In this light, <u>when a constitutional court is interpreting statutes, rules, or regulations that fall within the regulator's domain, it must bear in mind the need to enable the regulator to exercise comprehensive jurisdiction. Courts must not impair the functioning of the regulator by taking away certain aspects of the sector outside the regulator's scope, thereby fragmenting regulation and creating plurality of jurisdictions</u>. It is in the interest of good governance through regulation to ensure that there is no proliferation of remedies and there are no parallel, multiple remedial forums. Further, this also ensures that the sectoral law is developed in a coordinated and systematic fashion by the regulator that is equipped to deal with not only legal issue but also has specialised knowledge in other areas."

(emphasis supplied)

[47] 2025 INSC 857.

X. Conclusion

43. Hence, it is restated that the Parliamentary allocation and grant of generator incentive does not ipso facto exclude the regulatory mechanism, nor does it denude the Regulatory Commission of its tariff determination power. However, while we hold that the Commission has the last word in determination of tariff, we are in disagreement with its treatment of the GBI while determining tariff in the present case. Regulatory authority cannot be exercised in a manner that nullifies the legislative or policy intent or the intent of the grant, just because power and jurisdiction to determine tariff is exclusively vested in the Regulatory Commission. Under Regulation 20, while determining tariff the Regulatory Commission, “shall take into consideration any incentive or subsidy offered by the central or state government”. However, the need to “take into account” does not mechanically translate into either a mandatory deduction or automatic pass-through. It requires a contextual and purposive treatment. Factoring in the incentive into tariff cannot be divorced from its underlying objective. The importance of the policy to encourage investment in renewable energy sources has already been explained. If a scheme was not intended as a “consumer subsidy”, but as a “generator-focused incentive” and the scheme is integrally linked to realization of national and international policies, the Commission must respect and give effect to it.

44. The electricity sector functions through the coordinated action of the Union Government, State Governments and independent Regulatory Commissions. The powers of these duty bearers must be read harmoniously so that each operates within their sphere without rendering the other irrelevant.

45. For the reasons stated above, we are of the opinion that the APERC was obligated to apply GBI in furtherance of the purpose for which it was designed, that is, to incentivise renewable power generators and give the benefit as intended in the scheme.

46. From the aforesaid discussion two principles emerge and are reiterated as follows -

i) Regulatory Commissions have plenary power over tariff determination and there is no unallocated regulatory residue remaining outside its power to determine tariff. The argument that Regulatory Commissions do not have the power to take into account a Grant made by the Central Government under Article 282 is rejected. Tariff determination is the exclusive province of the Regulatory Commissions.

ii) However, this regulatory power must be exercised as a collaborative enterprise. It must not be exercised in a manner that ignores the purpose and object of a policy or grant by other stakeholders.

47. With the declaration of the powers and jurisdiction of the Electricity Regulatory Commission in determination of tariff as indicated in the judgment, we dismiss the Civil Appeal No. 4495 of 2025 filed against the judgment and order dated 19.12.2024 passed by the APTEL in Appeal No. 284 of 2018 by holding that the GBI is intended to be disbursed to the GENCOs over and above the tariff.

48. Applications filed for intervention/ impleadment are allowed. Other pending applications, if any, are disposed of in terms of the judgement.

…….J.
[PAMIDIGHANTAM SRI NARASIMHA]

…….J.
[ATUL S. CHANDURKAR]

NEW DELHI;
MARCH 25, 2026