

## Supreme Court of India holds that the Indian Railways is not a deemed distribution licensee under the Electricity Act, 2003

The Hon'ble Supreme Court of India ("Supreme Court"), in the case of *Indian Railways vs. West Bengal State Electricity Distribution Company Limited and Ors.*<sup>1</sup>, considered the question(s) whether Indian Railways qualifies as a deemed distribution licensee under the third proviso<sup>2</sup> to Section 14<sup>3</sup> of the Electricity Act, 2003 ("Electricity Act"), and if so, whether it remains liable to pay Cross-Subsidy Surcharge ("CCS") and Additional Surcharge ("ASC") to different distribution licensees for availing open access under Section 42<sup>4</sup> of the Electricity Act.

### Brief facts

1. On March 17, 2015, the Indian Railways ("the Appellant") wrote a letter to the Maharashtra State Electricity Transmission Co. Limited ("MSETCL") seeking grant of connectivity to procure 100 (one hundred) megawatt power from Gujarat Urja Vikas Nigam for 16 (sixteen) traction substations of the Central and Western Railways through inter-State open access as per the Electricity Act. This request was refused by MSETCL. The Appellant was directed by MSETCL to obtain an appropriate order from the competent Commission regarding its status as a deemed distribution licensee.
2. The Appellant filed a petition before the Ld. Central Electricity Regulatory Commission ("CERC"), pursuant to the Letter<sup>5</sup> issued by the Ministry of Power, Government of India clarifying that the Appellant is a deemed distribution licensee under the third proviso to Section 14 of the Electricity Act. In this Petition, the Appellant *inter alia* prayed for the following:
  - a) declare that the Appellant is entitled to the grant of open access for the power to be procured from the generating station through the Inter-State Transmission System ("ISTS") of Central Transmission Utility and

<sup>1</sup> 2026 INSC 464 (decided on May 8, 2026)

<sup>2</sup> The third proviso to Section 14 of the Electricity Act states that in case an Appropriate Government transmits electricity or distributes electricity or undertakes trading in electricity, whether before or after the commencement of this Electricity Act, such Government will be deemed to be a licensee under the Electricity Act but will not be required to obtain a licence under this Electricity Act.

<sup>3</sup> Section 14 of the Electricity Act empowers the Appropriate Commission to grant licences for transmission, distribution and trading of electricity. It also recognises certain entities as deemed licensees and permits multiple distribution licensees in the same area, subject to prescribed conditions.

<sup>4</sup> Section 42 of the Electricity Act sets out the duties of distribution licensees and introduces the framework for open access in electricity distribution. It requires distribution licensees to develop and maintain an efficient distribution system, provide non-discriminatory open access to consumers and other entities, and establish mechanisms for consumer grievance redressal and dispute resolution.

<sup>5</sup> Letter No-25/19/2004-R&R dated May 6, 2014

ISTS of the States (*viz. Maharashtra, Gujarat, Jharkhand and West Bengal*), to its facilities, i.e., traction points and network of the Appellant; and

- b) direct that the Appellant in its capacity as an authorised entity to distribute and supply electricity is a separate participating entity, like any other State entity notified by the Commission for the purposes of scheduling and dispatch of electricity.
3. On November 5, 2015, the CERC ruled in favour of the Appellant, *inter alia* holding that in terms of Section 11(g) of the Railways Act, 1989 ("**Railways Act**"), the Appellant is an authorised entity to carry out transmission and distribution of electricity for its operations without requiring a separate licence from the appropriate commission; that it is entitled for open access as per the provisions applicable to a distribution licensee; and that it is a deemed distribution licensee under the Electricity Act, for which no separate declaration is required.
4. Various appeals were filed before the Hon'ble Appellate Tribunal for Electricity ("**APTEL**") challenging the CERC's Order dated November 5, 2015, as well as similar orders passed by various State Electricity Regulatory Commissions ("**SERCs**") on the same issue.
5. By the final Order/Judgment dated February 12, 2024 ("**Impugned Judgment**"), the APTEL set aside the CERC's Order dated November 5, 2015. The Impugned Judgment *inter alia* rejected the claim of Indian Railways to be a deemed distribution licensee under Section 14 of the Electricity Act, *inter alia* holding that: (a) the Appellant cannot be held to be a deemed distribution licensee, insofar as it does not distribute electricity; (b) clarificatory letter by the Ministry of Power is an administrative direction under Section 107 of the Electricity Act and is not mandatory in nature; (c) mere establishment of distribution installation does not authorise the Appellant to qualify as a deemed distribution licensee and supply electricity to consumers; (d) even if the Appellant is treated as a deemed distribution licensee or a transmission licensee and it seeks to avail open access, it is liable to pay CSS and ASC as the electricity procured by it, is for its own consumption and operation.
6. The Indian Railways challenged the APTEL's Judgment dated February 12, 2024, before the Supreme Court under Section 125 of the Electricity Act.

## Issues

1. Whether the activities provided under Section 11(g) and (h)<sup>6</sup> of the Railways Act pass muster of 'distribution' of electricity, and whether such activities are a necessary pre-requisite to qualify as a deemed distribution licensee under the Electricity Act?
2. Whether the Indian Railways, being an entity of the Central Government, falls within the ambit of 'Appropriate Government' under Section 14 of the Electricity Act?
3. Whether the Indian Railways, even if held to be a deemed distribution licensee under the Electricity Act, is exempt from the obligation to pay CSS or ASC for the grant of non-discriminatory open access as per Section 42 of the Electricity Act?
4. Whether a proposed legislation may be relied upon as an aid to statutory interpretation for addressing gaps in the existing framework, and to give effect to the parliamentary intent to remedy defects thereunder?

## Findings and analysis

### Re. Whether the activities provided under Section 11(g) and (h) of the Railways Act

<sup>6</sup>Section 11 of the Railways Act empowers a railway administration to undertake all acts necessary for constructing, maintaining, altering, repairing and operating a railway, notwithstanding anything contained in any other law.

Sub-Sections (g) and (h) authorise the railway administration to: (a) erect, operate, maintain or repair electric traction equipment and power supply or distribution installations connected with railway operations; and (b) undertake all other acts necessary for making, maintaining, altering, repairing or using the railway.

## pass muster of 'distribution' of electricity, and whether such activities are a necessary pre-requisite to qualify as a deemed distribution licensee under the Electricity Act

1. A combined reading of Section 2(17)<sup>7</sup>, Section 2(19)<sup>8</sup> and Section 14 of the Electricity Act indicates that an entity seeking the grant of a distribution license must satisfy 2 (two) requirements:
  - a) operate and maintain a distribution system for supply of electricity to consumers; and
  - b) supply electricity to its consumers within its designated 'area of supply'<sup>9</sup>.
2. These 2 (two) requirements have also been reiterated under Section 42(1)<sup>10</sup> of the Electricity Act and *Sesa Sterlite Limited vs. Orissa Electricity Regulatory Commission and Ors.*<sup>11</sup> Mere operation and maintenance of a distribution system is not the exclusive basis for the grant of a distribution license, unless it ultimately supplies electricity and connects to the point of connection of a consumer as its end use within its area of supply. Hence, the obligation of a distribution licensee/deemed distribution licensee to 'supply' electricity is mandatory in nature, being a necessary corollary to interpret the Electricity Act.
3. A 'distribution installation' by the Appellant is not equivalent to a 'distribution system' under the Electricity Act. A 'distribution system' ultimately terminates at the consumer's installation or at the point of last mile connectivity. While a 'distribution installation' solely conveys electricity within the integrated railway system for its own consumption.
4. An 'area of supply' with respect to a 'distribution system' is a specific area demarcated by the respective SERCs for the distribution license concerned. It cannot be equated with 'area of operation' which signifies operative dimensions of an entity. In the context of Indian Railways, it means the integrated railway system spread across the length and breadth of the country, however only limited to operational use and limit of the railway network. In this context, to constitute the pan-India operation footprint of the Appellant as a single 'area of supply' would be inconsistent with the Scheme of the Electricity Act.
5. The mere presence of non obstante clause in Section 11 of the Railways Act is not sufficient to override the licensing requirements under the Electricity Act, as there is no direct and irreconcilable inconsistency between the two Acts. Hence, they can be read harmoniously. Reliance was placed on *Central Bank of India vs. State of Kerala and Ors*<sup>12</sup>.
6. Sections 11(g) and (h) of the Railways Act have deliberately skipped the terms 'distribution' or 'supply' of electricity. Thus, the purpose of the distribution infrastructure installations has been confined to operational use of the Appellant. It does not authorise the Appellant to undertake a commercial distribution or supply of electricity.
7. The Appellant operates a closed and self-contained electricity network to meet its operational requirements. It is only when electricity is sold to consumers outside the operational domain of the Appellant that its activities may intersect with the obligations of a distribution licensee. Further, the purpose of a distribution licensee status, whether *vide* an application or by deemed fiction, is inherently lined with the supply of electricity against consideration, unlike the Appellant which is procuring electricity from the Respondent distribution companies primarily for its own use. The Supreme Court placing reliance on *K.C. Ninan vs. Kerala State Electricity Board and*

<sup>7</sup>Section 2(17) of the Electricity Act defines 'distribution licensee' to mean a licensee authorised to operate and maintain a distribution system for supplying electricity to consumers in its area of supply.

<sup>8</sup>Section 2(19) of the Electricity Act defines 'distribution system' to mean the system of wires and associated facilities between delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers.

<sup>9</sup>Section 2(3) of the Electricity Act defines 'area of supply' to mean the area within which a distribution licensee is authorised by his licence to supply electricity.

<sup>10</sup>Section 42(1) of the Electricity Act requires every distribution licensee to develop and maintain an efficient, coordinated and economical distribution system in its area of supply and to supply electricity in accordance with the provisions of the Electricity Act.

<sup>11</sup>[2014] 8 SCC 444

<sup>12</sup>[2009] 4 SCC 94

*Ors.*<sup>13</sup> reiterated that supply of electricity is a primary and defining function of a distribution licensee.

8. Electricity is a movable good<sup>14</sup> under the Sale of Goods Act, 1930. The charges paid to the distribution licensee by the consumer are the price of electricity supplied and consumed as goods. Such consumption is always through equipment or appliances installed within the consumer's premises.
9. The assumption that the Appellant, by virtue of being a Central Government entity would be deemed to be an 'Appropriate Government' under the third proviso to Section 14 of the Electricity Act is misplaced. The Appellant's claim to be recognised as a deemed distribution licensee is not based upon the nature of its activities, but primarily by the objective of availing open access from inter-state transmission utilities and other distribution licensees without the payment of CSS or ASC. It is reflected in the submissions made by the Appellant that it is not claiming to undertake any activity outside the purview of railways operations, including right to supply electricity to the third parties beyond the network of railways.

### **Re. Whether the Indian Railways, being an entity of the Central Government, falls within the ambit of 'Appropriate Government' under Section 14 of the Electricity Act:**

1. The claim of the Appellant to deemed distribution licensee status also depends upon whether it falls within the definition of 'Appropriate Government'<sup>15</sup> under the Electricity Act.
2. The term 'railways' in Section 2(5)(a)(ii) of the Electricity Act only appears as a relative reference, and a subject matter that triggers the application of the Central Government. It does not extend the status of 'Appropriate Government' to the Railways. It only expands the scope of the term to include the Central Government in matters relating to railways. Section 2(5)(a)(ii) merely provides a class of activities, not stand-alone entities that can be given the status of 'Appropriate Government'.
3. At the same time, the mere classification of an instrumentality or agency as 'State' under Article 12<sup>16</sup> of the Constitution of India does not automatically render it as an 'Appropriate Government'<sup>17</sup>. The determinative criterion is whether the industry is carried on under the authority of the Central Government, and not merely whether the entity qualifies as 'State' under Article 12 of the Constitution of India.
4. As per the 'Functionality Test', the Appellant operates as a functionary of the Central Government. The Railway Board constituted under the Railways Act functions as an extended arm of the Central Government. The electric installations of the Appellant are also owned by the Central Government. The electrical equipment are constructed and maintained from the public funds appropriated by the Parliament from the Consolidated Fund of India.
5. However, even if the Appellant were to fall within the ambit of 'Appropriate Government' under Section 2(5)(a), the benefit of being treated as a deemed distribution licensee cannot be extended to it. Under the Electricity Act, a distribution company is required to carry out the statutory obligation of supplying electricity to its consumers within its area of supply.
6. It was also clarified that the case of Appellant is different than Military Engineering Services ("MES"). MES is recognised as a deemed distribution licensee, not merely because it operates under the Central Government's authority, but because it actually performs the functions of a distribution licensee. In case of MES, it supplies

<sup>13</sup> [2023] 14 SCC 431

<sup>14</sup> *Commissioner of Sales Tax vs Madhya Pradesh Electricity Board* [1961] 1 SCC 200

<sup>15</sup> Section 2(5) of the Electricity Act defines 'Appropriate Government' to mean the Central Government in matters relating to: (a) generating companies wholly or partly owned by it; (b) inter-State generation, transmission, trading or supply of electricity and specified sectors or installations such as railways, national highways, airports, defence works and nuclear power installations; (c) the National Load Despatch Centre and Regional Load Despatch Centres; and (d) works or electrical installations belonging to or controlled by it. In all other cases, the Appropriate Government is the concerned State Government having jurisdiction under the Electricity Act.

<sup>16</sup> Under Article 12 of the Constitution, unless the context otherwise requires, 'the State' includes the Government, the Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

<sup>17</sup> *Steel Authority of India Limited and Ors. vs. National Union Waterfront Workers and Ors.*, (2001) 7 SCC 1

electricity to consumers which includes residents, personnel and establishments within the defined cantonment and defense areas, unlike the Appellant. Admittedly, the Appellant does not claim any right to supply electricity outside its operations and has no such analogous relationship with any consumer.

7. It was also clarified that the letters issued by the Ministry of Power (*supra*) have no binding legal force and they cannot override a statute.
8. The Supreme Court concluded that for the limited purpose of this analysis, the Appellant is regarded as falling within 'Appropriate Government' under Section 2(5)(a), but this has no effect on the relief sought by the Appellant. As the statutory status of being a deemed distribution licensee depends upon performing the substantive functions, not on the formal governmental character.

### **Re. Whether the Appellant, even if held to be a deemed distribution licensee under the Electricity Act, is exempt from the obligation to pay CSS or ASC for the grant of non-discriminatory open access as per Section 42 of the Electricity Act**

1. Section 42 of the Electricity Act directs the distribution licensees to develop and maintain an efficient, coordinated and economical distribution system in the area of supply, and to supply electricity to any consumer who demands it. To foster competition and consumer choice, the consumers have a choice to procure electricity either from the distribution licensee in their area of supply or from alternative sources through open access<sup>18</sup>. When electricity is availed through open access, 2 (two) distinct charges may arise: CSS and ASC to meet the fixed costs of the distribution licensee arising out of its obligation to supply.
2. Concessional tariffs are only provided to certain categories of consumers (*viz.* agricultural users and low-income households), this ensures equitable access to electricity, which is essential to the very existence of citizens<sup>19</sup>. However:
  - a) CSS is levied on open-access consumers to offset the revenue loss caused by the distribution licensees in providing these subsidised tariffs. This leads to equitable sharing of the financial burden across consumer categories; and
  - b) ASC is levied to mitigate the potential financial losses incurred by distribution licensees due to stranded costs. When high-volume, high-revenue consumers like the Appellant procure electricity through open-access, it may leave distribution licensees with underutilised infrastructure and stranded power purchase commitments, causing financial strain. Accordingly, the National Tariff Policy, 2016 also permits levy of ASC only upon availability of clear proof that a licensee's existing power purchase obligations in the capacity of a licensee, has generated precisely such stranded costs for the distribution licensees in whose areas its traction installations are located.
3. In view of the above, CSS and ASC are critical for maintaining the financial viability of the distribution sector. The Supreme Court has also relied upon the Sesa Sterlite<sup>20</sup> judgment to articulate the rationale of CSS and ASC.
4. As it has been established that the Appellant is a 'consumer'<sup>21</sup> under the Electricity Act, purchases electricity exclusively for its own use and does not supply it to outside consumers. It is therefore liable to pay CSS and ASC, like any other consumer.

<sup>18</sup> Section 2(47) defines 'open access' to mean the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission.

<sup>19</sup> *Anuj Kumar Agarwal vs. Registrar of Cooperative Societies and Ors.* 2024 SCC Online Del 5087

<sup>20</sup> [2014] 8 SCC 444

<sup>21</sup> Section 2(15) of the Electricity Act defines 'consumer' to mean any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under the Electricity Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be.

5. As per the functionality test adopted by Sesa Sterlite (*supra*), an entity with a status of deemed distribution licensee, but which utilises the entire quantum of electricity for its own consumption and does not have any customers, could not be a distribution licensee under the Electricity Act and would itself be a consumer for that purpose.
6. Hence, even if for the sake of argument, Railways is treated as deemed distribution licensee, its procurement of electricity through open access exclusively for its own consumption, renders it a consumer for that purpose, making it liable to pay CSS and ASC.

### **Re. Whether a proposed legislation may be relied upon as an aid to statutory interpretation for addressing gaps in the existing framework, and to give effect to the parliamentary intent to remedy defects thereunder**

1. It is no longer *res integra* that legislative history can be used as an aid to statutory construction<sup>22</sup>. The Supreme Court also held that a legislative proposal does not have a binding force on the interpretation of the existing statute, but its careful perusal may aid in resolving apparent incongruencies and identifying perceived gaps in the existing framework.
2. The Supreme Court took note of the following past and present legislative proposals which show that under the present regime, the Appellant is being treated as any other consumer:
  - a) Section 9 of the Electricity (Amendment) Bill, 2014 had proposed that the Appellant should be a deemed distribution licensee, but this was rejected and not passed by the Parliament. It shows the legislative intent that the Appellant does not constitute a deemed distribution licensee in terms of Section 14 of the Electricity Act;
  - b) in the Fourth Report of the Standing Committee on Energy dated May 7, 2015, the Appellant has unequivocally admitted that it is not a deemed distribution licensee under the Electricity Act;
  - c) in the 31<sup>st</sup> Report of the Parliamentary Standing Committee, the Appellant had sought exemption from the obligations of a deemed distribution licensee under Section 12, 42, and 47 of the Electricity Act. The request was neither acceded to by the Parliamentary Standing Committee nor accepted by the Parliament;
  - d) Section 12 of the Draft Electricity (Amendment) Bill, 2025 ("**Draft 2025 Bill**") seeks to amend Section 61(g)<sup>23</sup> of the Electricity Act and proposes a progressive reduction of CSS and ASC for the Appellant; and
  - e) Explanatory Note on the Draft 2025 Bill makes a specific mention that the Indian Railways and metro/monorail systems are currently burdened by CSS and surcharges and proposes to exempt them from CSS within 5 (five) years.
3. The Supreme Court observed that the nature of the proposed amendment under the Draft 2025 Bill is remedial in nature, i.e. it seeks to remove the existing burden. This indicates that the present statute does not provide for such an exemption to the Appellant. The Supreme Court relied upon *Vodafone International Holdings BV vs. Union of India and Anr.*<sup>24</sup>, whereby it was held that a legislative proposal introducing a specific provision or exemption is indicative that such provision, exemption, or privilege was not covered by the existing framework. Hence, an exemption which is not a part of the existing statute cannot be read into by adopting a purposive construction to the prevailing statute.

<sup>22</sup> *Kalpana Mehta vs. Union of India* [2018] 7 SCC 1

<sup>23</sup> Section 61(g) of the Electricity Act provides that the tariff reflects the cost of supply of electricity and also, progressively reduces cross subsidies in the manner specified by the Appropriate Commission; Provided that cross-subsidy with respect to Railways, Metro Railways and Manufacturing Enterprises shall be fully eliminated within 5 (five) years from the date of commencement of the Electricity (Amendment) Act, 2025.

<sup>24</sup> (2012) 6 SCC 757

4. The Supreme Court held that a legislative *casus omissus* cannot be supplied by judicial interpretation. Hence, the Appellant being a consumer availing open access for its own use, remains liable under the existing statute to pay CSS and ASC. The Appellant also stands bound by the principle of estoppel. Being a Central Government entity, it cannot be permitted to approbate and reprobate, by advancing contentions contrary to the position earlier adopted.
5. Consequent to the above discussion, the Supreme Court was pleased to:
  - a) dismiss the appeals and uphold the Impugned Judgment by the APTEL;
  - b) hold that the Appellant is not a deemed distribution licensee under the Electricity Act;
  - c) hold that the Appellant cannot escape liability on account of CSS and ASC as a consumer of electricity through open access; and
  - d) direct the SERCs to compute and issue a detailed calculation of the CSS and ASC amounts outstanding qua the Appellant.

## Conclusion

The Supreme Court has reinforced the conditions for qualifying as a deemed distribution licensee under the Electricity Act by applying the principles established in *Sesa Sterlite judgment (supra)*. The judgment clarifies that the ultimate test for a deemed distribution licensee status is the actual supply of electricity to consumers within a designated area of supply. As long as electricity is used only for internal consumption, the entity retains the character of a 'consumer' under the Electricity Act, instead of a deemed distribution licensee. Furthermore, the detailed analysis provided by the Supreme Court on the rationale behind the CSS and ASC provides welcome regulatory clarity. This Judgment will provide a long-term financial respite to already stressed distribution companies by protecting their revenue. The judgment reinforces the criticality of CSS and ASC in maintaining the financial viability of the distribution sector.

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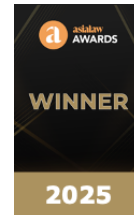
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