R

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 19TH DAY OF DECEMBER, 2025**

**PRESENT**

**THE HON'BLE MRS. JUSTICE ANU SIVARAMAN**

**AND**

**THE HON'BLE MR. JUSTICE RAJESH RAI K**

**WRIT APPEAL NO. 529 OF 2024 (GM-KEB)**

**C/W**

**WRIT APPEAL NO. 526 OF 2024 (GM-KEB)**

**WRIT APPEAL NO. 530 OF 2024 (GM-KEB)**

**WRIT APPEAL NO. 557 OF 2024 (GM-KEB)**

**WRIT APPEAL NO. 623 OF 2024 (GM-KEB)**

**IN WA NO.529 OF 2024**

**BETWEEN**

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Location: HIGH COURT OF KARNATAKA

STATE LOAD DISPATCH CENTER,
OPERATED BY KARNATAKA POWER
TRANSMISSION CORPORATION LIMITED,
A BODY ESTABLISHED UNDER
SECTION 31 OF THE ELECTRICITY ACT 2003
SLDC, RACECOURSE CROSS ROAD
ANAND RAO CIRCLE, BENGALURU-560 009
CEELDCKTCL@YAHOO.COM
(REPRESENTED BY ITS CHIEF ENGINEER)

...APPELLANT

(BY SRI. S.S. NAGANAND, SENIOR COUNSEL FOR
SMT. SUMANA NAGANAND, ADVOCATE)

**AND**

1 . NSL SUGARS LIMITED
A PUBLIC LIMITED COMPANY INCORPORATED

AND REGISTERED UNDER COMPANIES ACT 2013
HAVING ITS REGISTERED OFFICE AT
NO.60/1, SECOND CROSS,
RESIDENCY ROAD, BENGALURU-560 025
(REPRESENTED BY ITS AUTHORISED SIGNATORY)

2 . UNION OF INDIA
MINISTRY OF POWER AND NEW &
RENEWABLE ENERGY,
SHRAM SHAKTI BHAWAN,
RAFI MARG, NEW DELHI 110 0014
Secy _power@nic.in
(REPRESENTED BY SECRETARY POWER)

3 . CENTRAL ELECTRICITY REGULATORY COMMISSION
A STATUTORY BODY FUNCTIONING UNDER
SECTION 76 OF THE ELECTRICITY ACT 2003
3rd & 4th FLOOR, CHANDERLOK BUILDING,
36, JANPATH, NEW DELHI-110 001

EMAIL. info@cercind.gov.in
(REPRESENTED BY ITS CHAIRMAN)

4 . SOUTHERN REGIONAL LOAD
DISPATCH CENTER, MANAGED BY
GRID CONTROLLER OF INDIA LIMITED,
A BODY ESTABLISHED UNDER SECTION 27
OF THE ELECTRICITY ACT 2003
29, RACE COURSE CROSS ROAD,
BENGALURU-560 009
SRLDCCR@POSOCO.IN
(REPRESENTED BY ITS CHIEF ENGINEER)

5 . STATE OF KARNATAKA
DEPARTMENT OF ENERGY
ROOM NO.236
2nd FLOOR, VIKASA SOUDHA,
DR. B.R AMBEDKAR STREET,
BANGALORE-560 001
prs-energy@ karnataka .gov.in

REPRESENTED BY ITS ADDITIONAL CHIEF SECRETARY

6 . PTC INDIA LIMITED
(CIN NO.L40105DL1999PLC099328)
A PUBLIC LIMITED COMPANY
INCORPORATED AND REGISTERED
UNDER THE COMPANIES ACT, 1956
2nd FLOOR, NBCC TOWER 15
BHIKAJICAMA PLACE,
NEW DELHI-110 066
E MAIL -info@ptcindia.com
(REPRESENTED BY ITS MANAGING DIRECTOR)

7 . INDIAN ENERGY EXCHANGE LIMITED (IEX)
(CIN NO.L74999DL2007PLC277039)
A PUBLIC LIMITED COMPANY INCORPORATED AND
REGISTERED UNDER COMPANIES ACT, 1956
FIRST FLOOR, UNIT NO.1.14(a)
AVANTA BUSINESS CENTRE, SOUTHERN PARK
D-2, DISTRICT CENTRE, SAKET,
NEW DELHI-110017
E-MAIL-CONTACT@IEXINDIA.COM

…RESPONDENTS

(BY SRI. SHRIDHAR PRABHU, ADVOCATE FOR C/R1,
SRI. H. SHANTHIBHUSHAN, DSGI FOR R2 & R3
SRI. SHASHIKIRAN SHETTY, AG A/W
SMT. MAMATHA SHETTY, AGA FOR R5,
VIDE ORDER DATED 03.07.2024, NOTICE TO R3, R4, R6 & R7 ARE DISPENSED WITH)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER DATED 11.03.2024 PASSED BY THE LEARNED SINGLE JUDGE IN WP No. 24998/2023 (GM-KEB) AND CONSEQUENTLY DISMISS THE WRIT PETITION, IN THE INTEREST OF JUSTICE.

**IN WA NO.526 OF 2024**

**BETWEEN**

STATE LOAD DISPATCH CENTER,
OPERATED BY KARNATAKA POWER
TRANSMISSION CORPORATION LIMITED,
A BODY ESTABLISHED UNDER
SECTION 31 OF THE ELECTRICITY ACT 2003
SLDC, RACECOURSE CROSS ROAD
ANAND RAO CIRCLE, BENGALURU-560 009
CEELDCKTCL@YAHOO.COM
(REPRESENTED BY ITS CHIEF ENGINEER)

...APPELLANT

(BY SRI. S.S. NAGANAND, SENIOR COUNSEL FOR
SMT. SUMANA NAGANAND, ADVOCATE)

**AND**

1 . ALTILIUM ENERGIE PRIVATE LIMITED
(CIN NO.U40200DL2020PTC363593)
A PRIVATE LIMITED COMPAY REGISTERED
UNDER COMPANIES ACT 2013
HAVING ITS REGISTERED OFFICE AT
#1303, PKT-A
THE SLEUTHS CGHS LTD
PLOT NO 6, SECTOR 19 B
DWARKA, NEW DELHI
DELHI-110 075
(REPRESENTED BY ITS DIRECTOR AMIT KUMAR)

2 . UNION OF INDIA
MINISTRY OF POWER AND NEW &
RENEWABLE ENERGY,
SHRAM SHAKTI BHAWAN,
RAFI MARG, NEW DELHI 110 0014
Secy _power@nic.in
[REPRESENTED BY SECRETARY (POWER)]

3 . CENTRAL ELECTRICITY REGULATORY COMMISSION

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SRLDCCR@POSOCO.IN
(REPRESENTED BY ITS CHIEF ENGINEER)

5 . STATE OF KARNATAKA
DEPARTMENT OF ENERGY
ROOM NO.236
2nd FLOOR, VIKASA SOUDHA,
DR. B.R AMBEDKAR STREET,
BANGALORE-560 001
prs-energy@ karnataka .gov.in
REPRESENTED BY ITS ADDITIONAL CHIEF SECRETARY

6 . ENERGY DEVELOPMENT COMPANY LTD
(CIN NO.L85110KA1995PLCO17003)
A PUBLIC LIMITED COMPANY REGISTERED
UNDER THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT
EDCL POWER STATION
VILL-HULUGUNDA, TALUKA
SOMAWARPET, KUSHALNAGAR-571 233
(REPRESENTED BY ITS MANAGING DIRECTOR)

…RESPONDENTS

(BY SRI. SHRIDHAR PRABHU, ADVOCATE FOR C/R1,
SRI. H. SHANTHIBHUSHAN, DSGI FOR R2 & R3

SRI. SHASHIKIRAN SHETTY, AG A/W
SMT. MAMATHA SHETTY, AGA FOR R5,
R4 & R6 - SERVED, UNREPRESENTED)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER DATED 11.03.2024 PASSED BY THE LEARNED SINGLE JUDGE IN WP No. 24239/2023 (GM-KEB) AND CONSEQUENTLY DISMISS THE WRIT PETITION, IN THE INTEREST OF JUSTICE.

**IN WA NO.530 OF 2024**

**BETWEEN**

STATE LOAD DISPATCH CENTER,
MANAGED BY KARNATAKA POWER
TRANSMISSION CORPORATION LIMITED,
A BODY ESTABLISHED UNDER
SECTION 31 OF THE ELECTRICITY ACT 2003
SLDC, RACECOURSE CROSS ROAD
ANAND RAO CIRCLE, BENGALURU-560 009
CEELDCKTCL@YAHOO.COM
(REPRESENTED BY ITS CHIEF ENGINEER)

...APPELLANT

(BY SRI. S.S. NAGANAND, SENIOR COUNSEL FOR
SMT. SUMANA NAGANAND, ADVOCATE)

**AND**

1 . NSL SUGARS LIMITED
A PUBLIC LIMITED COMPANY INCORPORATED
AND REGISTERED UNDER COMPANIES ACT 2013
HAVING ITS REGISTERED OFFICE AT
NO.60/1, SECOND CROSS
RESIDENCY ROAD, BENGALURU-560 025
HAVING ITS UNIT AT ALAND
BHUSANOOR VILLAGE, ALAND TALUK
GULBARGA DISTRCT, KARNATAKA -585 302
(REPRESENTED BY ITS AUTHORISED SIGNATORY)

2. NSL SUGARS (TUNGABHADRA) LIMITED
[CIN U40102KA1983PLC058128]
A PUBLIC LIMITED COMPANY INCORPORATED
AND REGISTERED UNDER COMPANIES ACT 2013
HAVING ITS REGISTERED OFFICE AT
FACTORY PREMISES,
NSL SUGARS (TUNGABHADRA) LIMITED
SIRUGUPPA TALUK, SIRUGUPPA, DASANUR
BELLARY, KARNATAKA-583140
ALOS HAVING OFFICE AT
NSL ICON, 8-2-684/2/A
ROAD MO.12, BANJARA HILLS
HYDERABAD-560 034
(REPRESENTED BY ITS AUTHORISED SIGNATORY)

3. UNION OF INDIA
MINISTRY OF POWER AND NEW &
RENEWABLE ENERGY,
SHRAM SHAKTI BHAWAN,
RAFI MARG, NEW DELHI 110 0014
Secy _power@nic.in
[REPRESENTED BY SECRETARY (POWER)]

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3rd & 4th FLOOR, CHANDERLOK BUILDING,
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EMAIL. info@cercind.gov.in
[REPRESENTED BY ITS CHAIRMAN]

5. SOUTHERN REGIONAL LOAD
DISPATCH CENTER, MANAGED BY
GRID CONTROLLER OF INDIA LIMITED,
A BODY ESTABLISHED UNDER SECTION 27
OF THE ELECTRICITY ACT 2003
29, RACE COURSE CROSS ROAD,
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SRLDCCR@POSOCO.IN
(REPRESENTED BY ITS CHIEF ENGINEER)

6. STATE OF KARNATAKA
DEPARTMENT OF ENERGY
ROOM NO.236, 2nd FLOOR,
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DR. B.R AMBEDKAR STREET,
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prs-energy@ karnataka .gov.in
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(CIN NO.L40105DL1999PLC099328)
A PUBLIC LIMITED COMPANY
INCORPORATED AND REGISTERED
UNDER THE COMPANIES ACT, 1956
2nd FLOOR, NBCC TOWER 15
BHIKAJICAMA PLACE,
NEW DELHI-110 066
E MAIL -info@ptcindia.com
[REPRESENTED BY ITS MANAGING DIRECTOR]

8. ANDHRA PRADESH CENTRAL POWER
DISTRIBUTION CORPORATED LIMITED
[CIN NO.U40108AP2019SGC113717]
A PUBLIC LIMITED COMPANY INCORPORATED
AND REGISTERED UNDER COMPANIES ACT, 2013
HAVING ITS REGISTERED OFFICE AT CORPORATE
OFFICE BESIDE GOVERNMENT
POLYTECHNIC, ITI ROAD, KRISHNA
VIJAYAWADA, ANDHRA PRADESH
INDIA-520008
EMAIL-premeela.ranics@gmail.com
[REPRESENT BY ITS MANAGING DIRECTOR]

…RESPONDENTS

(BY SRI. SHRIDHAR PRABHU, ADVOCATE FOR C/R1 & R2,
SRI. H. SHANTHIBHUSHAN, DSGI FOR R3)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER DATED

11.03.2024 PASSED BY THE LEARNED SINGLE JUDGE IN WP No. 26833/2023 AND CONSEQUENTLY DISMISS THE WRIT PETITION.

**IN WA NO.557 OF 2024**

**BETWEEN**

KARNATAKA POWER TRANSMISSION
CORPORATION LIMITED (STATE LOAD
DISPATCH CENTRE)
27/1, RACE COURSE ROAD
MADHAVA NAGAR, GANDHINAGAR
BENGALURU-560 001
[REPRESENTED BY ITS CHIEF ENGINEER]

...APPELLANT

(BY SRI. S.S. NAGANAND, SENIOR COUNSEL FOR
SMT. SUMANA NAGANAND, ADVOCATE)

**AND**

1 . SRI CHAMUNDESHWARI SUGARS LIMITED
HAVING ITS REGISTERED OFFICE AT 88/5
RICHMOND ROAD, BANGALORE-560025
KARNATAKA, INDIA
[REPRESENTED BY ITS PRESIDENT
SRI. K.R NACHIAPPAN]

2 . STATE OF KARNATAKA
DEPARTMENT OF ENERGY
2ND FLOOR, VIKASASOUDHA
DR B.R AMBEDKAR STREET
BANGALORE -560 001
PRS-ENERGY@KARNATAKA.GOV.IN
[REPRESENTED BY ITS ADDITIONAL
CHIEF SECRETARY]

...RESPONDENTS

(BY SRI. ADITHYA NARAYAN, ADVOCATE FOR C/R1

SRI. SHASHIKIRAN SHETTY, AG A/W
SMT. MAMATHA SHETTY, AGA FOR R2)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER DATED 11.03.2024 PASSED BY THE LEARNED SINGLE JUDGE IN WP No. 26324/2023 (GM-KEB) AND CONSEQUENTLY DISMISS THE WRIT PETITION, IN THE INTEREST OF JUSTICE.

**IN WA NO.623 OF 2024**

**BETWEEN**

STATE OF KARNATAKA
DEPARTMENT OF ENERGY
ROOM NO.236
2nd FLOOR, VIKASA SOUDHA,
DR. B.R AMBEDKAR STREET,
BANGALORE-560 001
prs-energy@ karnataka .gov.in
[REPRESENTED BY ITS
ADDITIONAL CHIEF SECRETARY]

...APPELLANT

(BY SRI. SHASHIKIRAN SHETTY, AG A/W
SMT. MAMATHA SHETTY, AGA AND
SMT. ADOORYA BOMAKKA HARISH, ADVOCATE)

**AND**

1 . ALTILIUM ENERGIE PRIVATE LIMITED
(CIN NO.U40200DL2020PTC363593)
A PRIVATE LIMITED COMPAY REGISTERED
UNDER COMPANIES ACT 2013
HAVING ITS REGISTERED OFFICE AT
#1303, PKT-A
THE SLEUTHS CGHS LTD
PLOT NO 6, SECTOR 19 B
DWARKA, NEW DELHI

DELHI-110 075
(REPRESENTED BY ITS
DIRECTOR AMIT KUMAR)

2 . UNION OF INDIA
MINISTRY OF POWER AND NEW &
RENEWABLE ENERGY,
SHRAM SHAKTI BHAWAN,
RAFI MARG, NEW DELHI 110 0014
Secy _power@nic.in
[REPRESENTED BY SECRETARY (POWER)]

3 . CENTRAL ELECTRICITY REGULATORY COMMISSION
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DISPATCH CENTER, MANAGED BY
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5 . STATE LOAD DISPATCH CENTER,
OPERATED BY KARNATAKA POWER
TRANSMISSION CORPORATION LIMITED,
A BODY ESTABLISHED UNDER
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SLDC, RACECOURSE CROSS ROAD
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(CIN NO.L85110KA1995PLCO17003)
A PUBLIC LIMITED COMPANY REGISTERED
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HAVING ITS REGISTERED OFFICE AT
EDCL POWER STATION
VILL-HULUGUNDA, TALUKA
SOMAWARPET, KUSHALNAGAR-571 233
(REPRESENTED BY ITS MANAGING DIRECTOR)

…RESPONDENTS

(BY SRI. SHRIDHAR PRABHU, ADVOCATE FOR C/R1,
SRI. H. SHANTHIBHUSHAN, DSGI FOR R2
SMT. NIDHI GUPTA, ADVOCATE FOR R5)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO ISSUE A WRIT OF CERTIORARY OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION SETTING ASIDE THE IMPUGNED ORDER DATED 11/03/2024 IN WP NO.24239/2023 ON THE FILE OF THE KARNATAKA HIGH COURT, BENGALURU AND ETC.

THESE APPEALS HAVING BEEN RESERVED FOR JUDGMENT ON 14.11.2025 COMING ON FOR PRONOUNCEMENT THIS DAY, ***RAJESH RAI K, J.,*** DELIVERED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE RAJESH RAI K

**CAV JUDGMENT**

(PER: HON'BLE MR. JUSTICE RAJESH RAI K)

1. Writ Appeals No.529/2024, 526/2024 and 530/2024 are by State Load Despatch Centre (SLDC), Writ Appeal No.557/2024 is by the Karnataka Power Transmission Corporation Limited (KPTCL) and Writ Appeal No.623/2024 is by the State of Karnataka, challenging the common order dated 11.03.2024 passed by the learned Single Judge in W.P.No.24998/2023, 24239/2023, 26833/2023 and 26324/2023, whereby the learned Single Judge has allowed the said petitions as under:

> *"The petitions are allowed quashing the impugned State Government's Order dated 16.10.2023 in No. ENERGY 82 PPT 2023 insofar as it extends to those engaged in inter-state transmission of electricity and the following consequential withdrawal of approval / No-Objections issued by M/s KPTCL [the State Load Dispatch Centre] to the respective petitioners.*
>
> *[A] the Communication dated 18.09.2023 [Annexure - B in WP No.24998/2023]*
>
> *[B] the Communication dated 17.10.2023 [Annexure - B in WP No. 26324/2023]*
>
> *[C] the Communication dated 18.10.2023 [Annexure - B in WP No. 26833/2023]*

> *Consequentially, M/s KPTCL, the State Load Dispatch Centre, is directed to reinstate the corresponding approvals/No-objection issued to the petitioners in W.P.No.24998/2023 and W.P.No.23624/2023, and insofar as the petitions in W.P.No.24239/2023 and W.P.No.26833/2023, M/s KPTCL is directed to consider the respective requests in the light of this order."*

2. The abridged facts for disposal of these collective Writ Appeals are as under:

Electricity generation in the State of Karnataka is primarily dependent on renewable and hydel sources. Owing to depleted reservoir levels in major dams, the State Load Dispatch Centre was compelled to implement load management measures since the August of 2023. As the Electricity Supply Companies' effort to procure power from exchanges at maximum cap rates proved insufficient, the Government of Karnataka issued the Government Order dated 16.10.2023 under Section 11(1) of the Electricity Act, 2003 (hereinafter referred to as "the Act") directing all generators within the State to operate and maintain generating stations at maximum exportable

capacity and supply all electricity generated to the State Grid at a provisional tariff of Rs.4.86 per unit, subject to final determination by KERC under Section 11(2) of the Act, which reads as under:

**GOVERNMENT ORDER No. ENERGY 82 PPT 2023,**

**BENGALURU, Dated 16.10.2023**

*In the circumstances explained in the Preamble and in exercise of the power conferred under Section.11 of Electricity Act, 2003, the State Government in the public interest hereby issues the following Directions, with immediate effect and until further orders.*

*1. All the Generators in the State of Karnataka shall operate and maintain their generating stations to maximum exportable capacity and supply all the electricity generated to State Grid subject to the following conditions:*

*[a] ESCOMs shall pay at Rs.4.86/unit provisionally subject to KERC orders thereon.*

*[b] The balance capacity of UPCL plant, over and above the contracted capacity with the ESCOMs under the PPA shall be supplied to State Grid at PPA rates.*

*[c] Joint meter readings shall be the basis for raising the monthly invoices.*

*[d] Rebate of 2% shall be allowed on the bill amount if payment is made within 5 days from the date of presentation of bill or otherwise 1% shall be allowed if the payments are made within 30 days.*

*[e] Due date for making payment shall be 30 days from the date of presentation of the bill.*

*[f] Late Payment Surcharge shall be payable at oneyear marginal cost of lending rate (MCLR) of the State Bank of India issued as on 1st April plus 350 basis points; per month, if the payments are made beyond due date.*

*[g] The Jurisdictional Distribution Licensee shall deduct the energy at 115% for the energy, if imported by the Generators covered by this Section 11 order.*

*[h] Energy injected by Generators under Section 11 shall be allocated amongst ESCOMs as per the quantum approved by KERC in the Tariff order dated 12.05.2023 for the FY 24 is as follows:*

| | |
|---|---|
| BESCOM | 46.51% |
| MESCOM | 8.57% |
| CESC | 11.14% |
| HESCOM | 20.60% |
| GESCOM | 13.18% |
| *Total* | *100.00%* |

*[j] The generators shall raise the bills in the above portion to respective ESCOMs*

*2. The above directions shall not be applicable for the Intra-Sate Generators who are having valid PPA's with the Distribution Licensees in the State of Karnataka.*

*3. All the State Electricity Supply Companies (ESCOMs) shall file a petition within 15 days from date of this order before the Karnataka Electricity*

*Regulatory Commission (KERC) for approval of tariff specified in this order.*

3. Before the learned Single Judge, the respective generating companies i.e., respondent No.1 in all the appeals had challenged the above Government Order and the learned Single Judge allowed the Writ Petitions and quashed the above Government Order dated 16.10.2023 as stated supra. Hence, these Writ Appeals.

4. Before delving into the merits of the case it is appropriate to narrate the background of the generating companies who have challenged the Government Order dated 16.102023:

(i) **M/s Altilium Energie Private Limited**-[**M/s Altilium**], holding a Category V electricity trading license bearing No. 85/2021 dated 23.05.2021 issued by the Central Electricity Regulatory Commission, entered into a Power Purchase Agreement on 01.02.2022 with M/s Energy Development Corporation to purchase up to 9 MW of renewable energy for a period of two years. M/s Altilium

asserted that it trades nearly 98 MWh of power on an everyday basis on the Indian Energy Exchange [**IEX**]. The KPTCL refused interstate power-sale clearance to M/s Energy Development Corporation on 29.09.2023, citing that the State Government's invocation of Section 11 of the Act**,** restricted inter-state transactions. Owing to this refusal and the subsequent Government Order dated 16.10.2023, M/s Altilium is unable to trade electricity power despite the PPA dated 01.02.2022. Following which M/s Altilium filed **W.P. No.24239/2023**.

(ii) **M/s NSL Sugars Limited-**[**M/s NSL-Koppa**], operates a sugar factory at Koppa a bagasse-based co-generation plant with a 26-MW at 66-kv voltage. It entered into a Power Purchase Agreement dated 01.06.2022 with M/s PTC India Ltd [**M/s PTC**] for three years. Under the said PPA, M/s NSL–Koppa had conceded to instruct on M/s PTC's online bidding software to periodically specify the quantum and price at which it intended to sell electricity. M/s NSL–Koppa stated that,

under its PPA with M/s PTC, it is obligated to supply electricity to Military Engineering Services, Delhi [‘MES, Delhi’]; this supply is routed through the Indian Energy Exchange (IEX). However, owing to the State Government’s Order dated 16.10.2023 and KPTCL’s withdrawal of transmission clearance on 18.09.2023, M/s NSL–Koppa is unable to meet the afore supply commitments as stipulated in the agreement. Aggrieved by this, M/s NSL–Koppa filed **W.P.No.24998/2023**, stating M/s NSL–Koppa had agreed to supply electricity contingent to change in law or restriction imposed by Central/State Electricity Regulator or by Central/State Government or by any Appellate Tribunal on any aspect of the purchase of power and the jurisdiction of the State Electricity Regulatory Commission.

(iii) **M/s NSL Sugars Limited and M/s NSL Sugars [Tungabhadra] Limited**-[***M/s NSL Aland*** *and* ***M/s NSL Tungabhadra***], both are Public Limited Companies primarily engaged in sugar manufacturing and bagasse-

based power generation. M/s NSL Aland operates a 34-MW plant at 110-KV level at Bhusnoor Village, Aland Taluk, Kalaburagi District. M/s NSL Tungabhadra operates 28-MW at 110-KV plant at Siraguppa, Desanur, Bellary. M/s NSL Aland and M/s NSL Tungabhadra asserted that in performing the terms of the Letter of Intent dated 08.09.2023 they are obligated to supply power to Andhra Pradesh Central Power Distribution Corporation Limited [M/s APCPDCL] through M/s PTC.

Further, M/s NSL Aland relies on PTC's communication dated 26.09.2023 to contend that it is obligated to supply 17 MW each day to APCPDCL from 01.12.2023 to 29.02.2024, and 20 MW each day from 01.03.2024 to 31.03.2024 and M/s NSL Tungabhadra asserts that it is obligated to supply 6 MW each day to APCPDCL from 01.12.2023 to 31.12.2023, and 9 MW each day from 01.01.2024 to 29.02.2024. M/s KPTCL had issued Communication dated 18.10.2023, consequent to the State Government's Order dated 16.10.2023, refusing

inter-state transmission permission to both M/s NSL, Aland and M/s NSL, Tungabhadra. Aggrieved by this they filed **W.P.NO.26833/2023**.

(iv) **Sri Chamundeshwari Sugars Limited-**[**M/s Chamundeshwari**] established a sugar factory at KM Doddi, Maddur Taluk, Mandya District, with a crushing capacity of 5000 TCD and a bagasse-based co-generation plant of 26 MW with a maximum exportable capacity of 18 MW. It entered into a Power Sale Agreement dated 29.03.2022 with M/s Tata Power Trading Company Ltd. [**M/s TPTCL**] agreeing to sell 13.5 MW out of the maximum exportable capacity of 18MW of power via the power exchange. As stipulated in Clause 15 of the said agreement, the onus is on M/s TPTCL to supply power for two years, starting from 01.07.2022.

Further, M/s KPTCL issued NOC[s] and standing clearances to M/s Chamundeshwari to enable its registration on the National Open Access Registry and supply power interstate

via a power exchange. Subsequent to the State Government's Order dated 16.10.2023, M/s KPTCL withdrew the NOC[s] and clearances granted earlier by its Communication dated 17.10.2023. Aggrieved by this, M/s Chamundeshwari challenged the State Government's Order and KPTCL's withdrawal in **W.P.No.26324/2023**.

5. The learned Single Judge allowed the above Writ Petitions primarily on emphasizing the following two grounds:

(i) The inter-state transmission of power has to be governed by the Central Government as appropriate government, while exercising power available under Section 11 of the Act when the transmission is for establishments/installations/institutions as stipulated under Section 2(5)(a)(ii) of the Act.

(ii) The ratio laid down in the case of ***ENERGY WATCHDOG VS. CENTRAL***

***ELECTRICITY REGULATORY COMMISSION - (2017) 14 SCC 80*** is that the Central Government would be involved when there is interstate transmission. This remains an established precedent should the cohesion of the scheme of the Act demands that the interstate transmission must be the decisive factor even for the purpose of ascertaining which would be the appropriate Government for the purpose of exercising jurisdiction under Section 11 of the Act.

6. We have heard Sri S.S.Naganand, learned Senior Counsel appearing for SLDC and KPTCL, Sri Sridhar Prabhu and Sri Adithya Narayan, learned counsel for caveator/respondent-No.1, Sri H.Shanthibhushan, learned DSGI and Sri Shashikiran Shetty, learned Advocate General along with Smt.Mamatha Shetty and Smt.Adoorya Bomakka Harish and perused the impugned order and the material placed before us.

7. The primary contention of the learned Advocate General Sri. Shashi Kiran Shetty for the appellant-State is that the cardinal principal governing statutory interpretation is that each provision shall not be read in isolation and that it should be read in harmony bearing in mind its context, the statute's object and purpose. Section 11 of the Act is an exclusive emergency power designed to address extraordinary circumstances threatening the State's security and public order arising from natural calamities or other public interest considerations.

8. According to the learned AG, the introductory words of Section 2 of the Act recognizes the principle by stating *'In this Act, unless the context otherwise requires'* as such the definition clause must read contingent to the opening phrase. It is further contended that Section 11 of the Act demands interpretation beyond the rudimentary application of definition as stipulated under Section 2(5) of the Act. The provision is placed in Part III of the Act dealing with the generation of electricity, and stands as an

idiosyncratic exception to the general deregulation and delicensing regime established. Albeit Section 9 of the Act permits captive generation without license and Section 7 of the Act allows generating companies to establish stations without license, however, Section 11 of the Act empowers the appropriate government to override these liberties during '*extraordinary circumstances*'. By emphasizing the Judgment passed in ***M/s GMR Energy Limited v. Government of Karnataka-ILR 2010 KAR 2620***, by the Coordinate Bench of this Court, he submitted that Section 11 of the Act is in the nature of exception to the general rule of deregulation, applicable specifically when extraordinary circumstances justify government intervention. A failed monsoon, reservoir depilation, agricultural demands spikes or regional heat waves are qualified as archetypical extraordinary circumstances. In such events, it is unreasonable and irrational to hold that the onus shall lie on the Central Government alone to respond to such State[s] during

specific emergencies as stipulated under Section 11 of the Act. He further contended that, the contractual interpretation of Section 11 of the Act is reinforced by Section 11(2) of the Act which provides that the appropriate commission may offset the adverse financial impact of directions on any generating companies. The interlocking of Section 11(1) & (2) of the Act demonstrates that *'appropriate government'* and *'appropriate commission'* must be read in tandem.

9. According to the learned Advocate General, Section 11(1) of the Act empowers *'the appropriate Government'* without further qualification and Section 11(2) of the Act empowers *'the appropriate commission'* to offset adverse financial impact. The use of singular definite article *'the'* before *'appropriate government'* and *'appropriate commission'* suggests that these are to be determined functionally based on which government and which commission have effective jurisdiction over the generating companies in question. According to him, undisputedly,

the State Government is the government having effective jurisdiction over their physical operations, licensing and day-to-day regulation, and the State Commission is the commission having jurisdiction to provide financial redress under Section 11(2) of the Act. However, the impugned judgment's interpretation is seemingly absurd as the State Government, despite having jurisdiction over generators physically located in its territory is powerless to act during state-specific extraordinary circumstances merely because the generators sell some power inter-state, while the Central Government, not facing any emergency is conferred with such jurisdiction which they are ill equipped to exercise.

10. The learned Advocate General further attempted to persuade by delving into Section 2(5)(a)(ii) of the Act and reiterated that, the Central Government is the appropriate government *"in relation to any inter-state generation, transmission, trading or supply of electricity and with respect to any mines, oil-fields, railways, national*

*highways, airports, telegraphs, broadcasting stations and any works of defence, dockyard, nuclear power installations".* According to him, a small captive generating plant in Karnataka selling occasional surplus power to a neighbouring State through power exchange cannot fall within the purview of Central Government's jurisdiction when the State Government is specifically facing crisis of shortage of electricity. He further contended that, Section 2(5)(a)(ii) of the Act must be interpreted strictly and conjunctively to mean that the Central Government is the appropriate government when inter-state generation, transmission, trading or supply is with respect to the specific installations mentioned in that sub-clause alone. For all other cases including embedded generations within a State that may sell power inter-state to ordinary consumers or distribution companies not falling within specified installations, the State Government is the appropriate government under Section 2(5)(b) of the Act.

11. He also contended that, following the ***GMR Energy*** Judgment, the State Government issued several Orders under Section 11 of the Act, albeit some of such Orders were challenged by the generating companies involving the determination of tariff before the KERC under Section 11(2) of the Act, however, those appeals were disposed of by remand or dismissal as withdrawn. As such, the legal position settled in the case of ***GMR Energy*** was disturbed by the Order of learned Single Judge, as such the same is liable to be set aside. He finally contended that, on analysis of the finding in ***Energy Watchdog***, the same does not constitute *ratio decidendi* binding on the interpretation of Section 11 of the Act, however are mere *obiter dicta* made in an entirely different context concerning tariff determination under Section 63 of the Act and the concept of composite schemes under Section 79 of the Act. He also submitted that the respondent M/s Altilium is a licensed electricity trader operating under a trading license issued by the Central Electricity Regulatory

Commission CERC pursuant to Section 14 of the Act. It is neither a generating company nor is it maintaining generating station, as such there is no *locus standi* to challenge the Order issued by the government. With these submissions he prays to allow the Writ Appeal.

12. The learned Senior Counsel Sri S.S. Naganad appeared on behalf of SLDC, KPTCL adopted the arguments advanced by the learned AG, and additionally contended that the learned Single Judge has erroneously applied the decision laid down in the ***Energy Watchdog*** while discarding the binding precedent laid by the Coordinate Bench of this Court in ***GMR Energy***. According to the learned senior counsel the principal question involved in ***Energy Watchdog*** with respect to the jurisdiction of Central Commission Exercising Power under Section 79(b) of the Act and adoption of tariff discovered through the process stipulated under Section 53 of the Act. He further contended that, as per Section 2(5)(b) of the Act, other than the categories mentioned under Section 2(5)(a) of

the Act, the State Government will be the appropriate government. As such he elucidated that whenever there is inter-state generation or supply of electricity it is the Central Government which is involved and when there is an intra-state generation or supply, the State Government or the State Commission is involved. He further contended it is a settled position of law that whenever *'and'* is used in authoritative text and judicial decisions, it is seemingly used in a conjunctive sense, meaning it is used to join the words, phrases, or clauses together as per the Judgment in the case of ***Commissioner Customs Central Excise and Service Tax Patna M/s. Shapoorji Paloonji and Company Pvt Ltd, - 2024 3 SCC 358*** with these submissions he prays to allow the appeal.

13. Refuting the above contentions, the learned counsel Sri Sridhar Prabhu for the respondents in WA 526/2024, 529/2024, 530/2024 and 623/2024 for respondent No.1, contended that, the M/s NSL is a Public Limited company and it has a contractual obligation to supply electricity

through respondent No.6 - M/s PTC via respondent No.7-IEX which manage transactions schedule and settlements. The statutory framework in respect of Electricity Act which came into force on 10.06.2003 repealing Indian Electricity Act, 1910, under Section 2(5) of the Act, the Central Government is the appropriate government for the matters relating to inter-state generation, transmission, trading or supply whereas the State Government is the appropriate government in all other cases. Section 2(36) of the Act defines inter-state transmission system, as the conveyance of electricity from one state to another including incidental conveyance. Whereas Section 2(37) of the Act defines intra-state transmission system, further, Section 79(1) of the Act empowers the CERC to regulate inter-state transmission and generation involving multiple States while Section 86(1) of the Act empowers the SERC to regulate intra-state generation supply and transmission. As such there appears categorical distinction between

intra-state and inter-state generation, transmission and trading.

14. According to the learned counsel, the Government Order dated 16.10.2023, further culminated with a corrigendum issued by the State dated 20.11.2023 clarifying that, distribution licensees include distribution licensees/consumers. Further, the corrigendum effectively exempted intra-state generators holding PPA's to ESCom's and consumers from the GO's direction. As such it is clear the corrigendum acknowledges that the GO does not apply to the inter-state transactions and the State Authority is limited to intra-state transactions. He further contended that, since the order passed by the State Government, the appellant-SLDC lacks *locus* to challenge the said Order for the reason that in Karnataka the State through KPTCL operates the SLDC which cannot defend the State actions, unless the State establishes that the same is an autonomous entity as required under the proviso to Section 31 of the Act. It was also contended that the

learned Single Judge has rightly addressed the issue *'the appropriate government'* which is intrinsically *'appropriate commission'* both issues were pertaining to the classification of inter-state and intra-state transmission.

15. He further contended that, the respondent supplies the power to the MES with all applicable inter-state charges duly paid by the respondent No.1 the same expressly clarifies that they are the subject to the provisions of the CERC, Regulations 2008. He further contended that, the location neither decides jurisdiction nor transmission classification solely on the geographical location of the generating company and power station. Such a view nullifies the statutory definition of inter-state transmission under the Act. The correct test for determination of the same under section 2(36) of the Act is the destination on nature of transmission of electricity not the location of generation of electricity. Emphasizing para-24 of the ***Energy Watchdog***, he submitted that the State Commission is the commission's jurisdiction alone

when the generation and supply takes place within the State. On other hand, the moment generation and sale takes place involving more than single State the Central Government becomes the appropriate authority. Same analogy has to be applied while interpreting Section 11 of the Act. He also contended that the ***GMR Energy*** decision is not applicable to the present case as the question of law remain open, and by relying on the judgment of the Apex Court in ***Kunhayammed v. State of Kerala - (2000) 6 SCC 359,*** he submitted that when a superior forum affirms, modifies or reverses an Order, the subordinate forum's Order merges into the superior forum's Order and becomes binding under Article 141 of the Constitution. As such, the judgment in ***GMR Energy*** has no binding finality as the same was dismissed as withdrawn, without any merits. He also contended that there is no extraordinary circumstance established by the State Government justifying invocation of Section 11 of the Act. Mere power shortage, scarcity does not constitute an extraordinary

circumstance. The doctrine of *'Ejusdem Generis'* applies to the phrase *'such other circumstances'* in explanation to Section 11 of the Act limits to those akin to specified examples (threat to security, natural calamity, public order). He also contended that, Section 11 of the Act is applicable to a specific generating company as such the appropriate government can issue directions to a generating company and generating station alone, thereby requiring specificity and precluding issuance of blanket Orders covering all generators. The Government Order dated 16.10.2023 neither identified specific generating companies nor stations. By relying on the communication dated 23.10.2023 by the Central Government he submitted that the same exemplifies the right approach by explicitly enumerating the coal based generating stations subject to Section 11 of the Act directions thereby confirming to the statutory mandate.

16. Further it is contended that, the force *majure* clause in the PPA has been erroneously interpreted and applied

by the appellant-LDC, the PPA is a private contract exclusively between respondent No.1 and respondent No.6-PTC. The force *majure* clause therein protects these parties from liability arising out of State imposed restrictions. However, it neither extends to the State nor agency. He also contended that, the respondent No.3-SRLDC regulated by the CERC is the competent authority to issue standing clearance for inter-state transaction and the appellant-SLDC governed by KERC lacks jurisdiction over inter-state clearance, since the respondent No.1 is the inter-state generator. Further, in view of the establishment of national grid on 31.12.2013 the State Governments are not obligated to issue direction under Section 11 of the Act as the Central Government is responsible for assessing and addressing the national power. Further, he contended that there is neither perversity nor illegality in the Order passed by learned Single Judge and the interference by this Court in the

impugned judgment does not call for. Accordingly, he prays to dismiss the Writ Appeals.

17. To fortify his arguments he relied on the following judgments:

1. *Syed Yakoob v. K.S. Radhakrishnan-1963 SCC OnLine SC 24*
2. Energy Watchdog *v. CERC-(2017) 14 SCC 80*
3. *Gojer Bros. (P) Ltd. v. Ratan Lal Singh-(1974) 2 SC 453*
4. *Kunhayammed v. State of Kerala-(2000) 6 SCC 359*
5. *Narendra & Co. (P) Ltd. v. Workmen-(2016) 3 SCC 340*
6. *Baddula Lakshmaiah v. Sri Anjaneya Swami Temple-(1996) 3 SCC 52*

18. Having heard the learned counsel for the respective parties and on perusal of the documents on record, the points that arise for our consideration are:

1. *Whether the observations in the judgment of the Hon'ble Supreme Court in* ***Energy Watchdog v. CERC - (2017) 14 SCC 80****, regarding appropriate government constitute ratio decidendi binding on the interpretation of Section 11 of the Act, or*

*whether they are obiter dicta made in the context of tariff determination and the findings of the learned Single Judge on the judgment of* ***GMR Energy*** *require interference?*

2. *Whether Section 11 of the Act is a standalone independent provision conferring emergency powers that must be interpreted contextually in light of its specific object and purpose, rather than being instinctively governed by general definition clause in Section 2(5) of the Act and whether respondent-generating companies qualify as inter-state generating companies within the meaning of Section 2(36) of the Act, and whether as per Section 2(5)(a)(ii) of the Act, the Central Government is the only appropriate government and can issue directions to them under Section 11 of the Act?*

3. *Whether the respondent - M/s.Altilium Enegry Private Limited, is merely a licensed electricity trader and not a generating company, has the locus standi to challenge directions issued under Section 11(1) of the Act which are expressly addressed to generating companies alone?*

19. Ahead of answering the above questions it is imperative to ponder into the object of enactment of the new Electricity Act, 2003, which reads as under:

> *"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, rationalization 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."*

20. Likewise, it is vital to note that, Electricity is a subject in the concurrent list (Entry-38 List 3 of the Seventh Schedule of the Indian Constitution), indicating that both the Parliament and the State Legislatures are competent to legislate on this subject, and the Parliamentary Legislation will prevail in the case of conflict. This constitutional placement reflects Electricity's character as a subject requiring both national co-ordination and state level management. Thus, Electricity, as a subject,

must be interpreted in a manner that respects binary structure.

21. Against this backdrop, when analysing the initial challenge to the State Government Order dated 31.12.2008 (i.e. the similar notification as that of Government Order dated 16.10.2023) in different Writ Petitions i.e. W.P Nos.590/2009, 591/2009, 4693/2009, and 9721/2009, culminated in the final decision rendered by the Co-ordinate Bench of this Court in the case of ***GMR Energy*** has categorically considered and decided the question, whether the State Government or the Central Government is the appropriate government under Section 11 of the Act for issuing emergency directions to generating companies located within the State but engaged in inter-state transmission of Electricity.

22. The decision in ***GMR Energy*** was appealed to the Hon'ble Supreme Court, which heard submissions and ultimately disposed of the appeals by Order dated 16.08.2023 observing that, "the matters are rendered

infructuous in as much as exercise of power under Section 11 of the Act as worked itself out". The Hon'ble Supreme Court further observed that, "we would however record that the question of law relating to interpretation of Section 11 r/w section 2(5) of the Act are kept open". Hence, it is gathered that the Hon'ble Supreme Court disposed of the appeals as infructuous and not on merits. As such the judgment in ***GMR Energy*** is neither affirmed nor reversed. Further, keeping open a question of law by the Hon'ble Supreme Court, having decided not to adjudicate the question owing to the infructuous nature of the appeals, seemingly reserves its right to examine and pronounce upon that question when it arises in future controversy. For the time being, the law declared by the Division Bench remains in force, intact and binding on the Co-ordinate Benches unless the Division Bench is persuaded to refer the matter to a larger bench.

23. This position of law was decided by the Co-ordinate Bench of the Gujarat High Court in the case of ***COLLECTOR***

***V/S. LIQUIDATOR PETROFILS CO-OPERATIVE LTD., MIS.CIVIL.APPLICATION (REVIEW) No. 1412/2015*** observed that, "….there is neither confirmation nor dilution of the ratio of the judgment under challenge it only means that the Hon'ble Supreme Court has refused to bind itself or put its seal on the ratio propounded by the High Court in the judgment". It is equally important to note that, the Hon'ble Supreme Court has repeatedly emphasised on the significance of judicial precedents that the rule of 'Judicial Discipline and Propriety' and the Doctrine of precedents has a merit of promoting certainty and consistency in judicial decisions providing assurance to individuals as to the consequences of their actions. The Constitution benches of this court have time and again reiterated the rules emerging from Judicial Discipline. Accordingly, when a decision of a coordinate Bench of same High court is brought to the notice of the bench, it is to be respected and is binding subject to right of the bench of such co-equal quorum to take a different view and refer the

question to a larger bench. It is the only 2 course of action open to a bench of co-equal strength, when faced with the previous decision taken by a bench with same strength.

24. In the impugned Order, the learned Single Judge while interpreting the above position primarily considered, the decision rendered by the Hon'ble Supreme Court in the case of ***Energy Watchdog*** as enumerated supra that the Central Government would be involved when the inter-state transmission of electricity would be a binding precedent if the cohesion of the scheme of the Act demands that the inter-state transmission must be the decisive factor even for the purpose of ascertaining when the Central Government and the State Government will be the appropriate government under Section 11 of the Act. In this context, it appropriate to delve into the facts and law decided by the Hon'ble Supreme Court in the ***Energy Watchdog*** supra.

25. The factual matrix in the ***Energy Watchdog*** involved large generating companies that had established power

plants specifically for inter-state sale through long-term power purchase agreements with the distribution companies in the multiple states signed prior to commercial operation of the projects. Though companies are inter-state generating companies with composite schemes across multiple States and not captive generators or co-generation plants primarily serving their own consumption and selling occasional surplus power alone. Thus, the question decided in ***Energy Watchdog*** concerning: (1) Whether Central Commission has jurisdiction to regulate tariff under Section 79 of the Act when there is a composite scheme for generation and sale of electricity in more than one State? (2) Whether the Central Commission's adoption of tariff under Section 63 of the Act after competitive bidding was subject to its general regulatory powers under Section 79(1)(b) of the Act ? For these questions the Hon'ble Supreme Court held that, when there is a composite scheme defined as generation and sale in more than one State under power

purchase agreements signed before Commercial Operation, the Central Commission has jurisdiction to regulate tariff, and that Section 63 of the Act must be read harmoniously with Section 79(1)(b) of the Act to allow regulatory supervision, even in case of competitive bidding. Para-24 of the ***Energy Watchdog*** judgment reads thus:

> *"**24**. The scheme that emerges from these Sections is that whenever there is inter-State generation or supply of electricity, it is the Central Government that is involved, and whenever there is intra-State generation or supply of electricity, the State Government or the State Commission is involved. This is the precise scheme of the entire Act, including Sections 79 and 86. It will be seen that Section 79(1) itself in sub- sections (c), (d) and (e) speaks of inter-State transmission and inter- State operations. This is to be contrasted with Section 86 which deals with functions of the State Commission which uses the expression "within the State" in sub-clauses (a), (b), and (d), and "intra-state" in sub- clause (c). This being the case, it is clear that the PPA, which deals with generation and supply of electricity, will either have to be governed by the State Commission or the Central Commission. The State Commission's jurisdiction is only where generation and supply takes place within the*

> *State. On the other hand, the moment generation and sale takes place in more than one State, the Central Commission becomes the appropriate Commission under the Act. What is important to remember is that if we were to accept the argument on behalf of the appellant, and we were to hold in the Adani case that there is no composite scheme for generation and sale, as argued by the appellant, it would be clear that neither Commission would have jurisdiction, something which would lead to absurdity. Since generation and sale of electricity is in more than one State obviously Section 86 does not get attracted. This being the case, we are constrained to observe that the expression "composite scheme" does not mean anything more than a scheme for generation and sale of electricity in more than one State..*"

26. Whereas, the Co-ordinate Bench in the ***GMR Energy*** while dealing with Section 11 of the Act along with Section 2(5) of the Act discussed in para No.98 to 100 are quoted verbatim as under:

> ***"98****. Section 11 of the Act empowers the appropriate Government to issue directions. The appropriate Government is defined under Section 2(5) of the Act. Appropriate Government means Central Government or State Government. In what cases directions can be issued by the Central Government is clearly set out in Clause (a) sub-Section 2(5) of Section 2.*

*In any other case, it is the State Government. Sub-Clause (i) (iii) and (iv) of Clause (a) is clear, and no interpretation is called for. By giving the words their plain and ordinary meaning, the intention of the parliament could be gathered. In respect of a generating company wholly or partly owned by it, or in relation to any works or electric installation belonging to it or under its control or in respect of National Load Despatch Centre and Regional Load Despatch Centre, the Appropriate Government under Section 11 is the Central Government.*

***99.*** *Section 2 (5)(a)(ii) is in relation to any interstate generation, transmission, trading or supply of electricity and with respect to any mines, oil fields, railways, national highways, airports, telegraphs, broadcasting stations and any works of defence, dockyard, nuclear power installations, the Central Government would be the appropriate Government*

***100.*** *In the said sub-Clause the word "supply of electricity" is used. The argument is the word '**inter state** is to be prefixed to the said word. Then it reads as '**inter state supply of electricity**'. The argument is that in respect of inter state supply of electricity, the appropriate Government is the Central Government and, therefore, the State Government has no power to issue direction under Section 11 of the Act. In order to appreciate this contention we have to read the sub-Clause as a whole. It states the Central Government in relation to any inter state generation, transmission, trading or supply of electricity and with respect to any mines, oil*

*fields, railways, national highways, airports, telegraphs, broadcasting stations and any works of defence, dockyard, nuclear power installations. The word interstate is to be prefixed to the words generation, transmission, trading or supply of electricity. Then only the said provision could be read to mean inter-state supply of electricity. After referring to generation, transmission, trading or supply of electricity, the legislature has used the word '**and**', and thereafter they have set out the installations exclusively belonging to the Central Government Therefore, generation, transmission, trading or supply of electricity is on the one side and specific installations belonging to the Central Government are on the other side and they are connected by the word '**and**'. Normally, the word '**and**' signifies that it has to be read conjuntively. In other words the connecting words have to be read together. If so read the interstate generation, transmission, trading or supply of electricity, would fall within the jurisdiction of the Central Government. If only when the inter-state generation, transmission, trading or supply of electricity, is with respect to the installations mentioned specifically in the sub-Clause. Then the appropriate Government would be the Central Government. The reason is not far to seek. All the installations referred to in sub-Clause firstly belong to the Central Government. They are maintained by the Central Government for the public of the country and they are key installations. Where-ever the electricity is generated, it is supplied to those installations which may be located outside the State. To*

*ensure the proper working of those installations in extra-ordinary circumstances the Central Government can exercise the power under Section 11. Therefore, inter state supply of electricity has to be understood in the context in which it is used in the said sub-clause, namely inter-state supply of electricity to the installations specifically mentioned in that sub-clause which exclusively belongs to the Central Government. In other words, in respect of inter-state supply of electricity, installations other than those mentioned in the said sub-clause, the Central Government has no role to play. It is not concerned. The location of the generating company and the power stations within the geographical jurisdiction of a State is a critical factor because the State's jurisdiction cannot extend beyond its boundaries. The mere existence of de-minimus supply inter-state would not take away the jurisdiction of the State Government which has to deal with the extra-ordinary circumstances existing within the State. However, even in cases where a generating station is situated within a State and if that generating station is supplying electricity outside the State to a Central Government establishment as mentioned in sub-Clause (ii) of Clause (a) of sub-Section (5) of Section 2 the jurisdiction of the State Government to issue direction under Section 11 of the Act stands excluded. If so interpreted there is no conflict of interest between the State Government and State Government's power under the Act as both the Governments can exercise this power in public interest or under the circumstances narrated in the explanation to Section 11(1) of*

> *the Act Therefore, in the instant case, the Appropriate Government under Section 11 of the Act, is the State Government, as such the power is properly exercised."*

27. On a careful perusal of the findings of the Hon'ble Supreme Court in the case of ***Energy Watchdog***, it could be gathered that, the observations were made specifically in the context of explaining the tariff determination for the composite scheme involved in multiple States by the Central Commission and not in the context of explaining Section 11 of the Act - emergency powers or the definition of "appropriate government" in Section 2(5) of the Act for purpose of Section 11 of the Act. Further, even within the context of tariff jurisdiction, the Supreme Court's observation must be understood as referring to the specific situation of composite schemes involving generation and sale to multiple States under pre-existing Power Purchase Agreements (PPAs) as such schemes inherently involve multi-state operations requiring uniform regulatory supervision that cannot be effectively provided

by individual State Commissions with jurisdiction limited to their territories. The observations held in ***Energy Watchdog*** supra need not necessarily address Section 2(5)(a)(ii) of the Act in the context of Section 11 of the Act and also it does not address the question of emergency powers over the embedded generators.

28. Besides, the Co-ordinate Bench in ***GMR Energy*** has interpreted Section 11 along with Section 2(5) of the Act, it specifically and comprehensively analysed Section 2(5)(a)(ii) of the Act in the context of Section 11 of the Act with respect to inter-state v/s intra-state transaction. It further clarified the position involving 'exceptional power' during 'extraordinary circumstance' under Section 11 r/w Section 2(5) of the Act by referring to the scheme[s] of the Act, in a much diverse context rather than confining to the findings of the Hon'ble Supreme Court in ***Energy Watchdog***.

29. The Hon'ble Supreme Court in the case of **Carrier *Institute Educational Society v/s Om Shree Thakur Ji***

***Educational Society – (2023) SCC OnLine SC 586***, while distinguishing *'ratio'* from *'obiter'* held that, the *ratio decidendi* of a judgment alone i.e., ideally, the principles of law applied to the material facts which form the basis of the judgment constitute binding precedent under Article 141 of the Constitution. The observations made to elucidate a judgment involving illustrations and discussions of legal principles constitute *obiter dicta,* which merely hold a persuasive disposition and therefore is not binding on the Courts below with the force tantamount to *ratio decidendi*.

30. Further, the Hon'ble Apex Court in the case of ***Padma Sundara Rao v/s State of Tamilnadu –(2002) Vol-3 SCC 533***, while examining each judicial utterance as *ratio decidendi*, emphasized that, "*…there is always peril in treating the words of a speech or judgment as though they have words in a legislative enactment that judicial utterance is made in the setting of the facts of a particular case*". It is further noted that, "*circumstantial flexibility,*

*one additional or different fact make a world of difference between conclusion in two cases*".

31. By applying these principles to the instant case, as discussed supra, we are afraid we are unable to accept the findings reached by the learned Single Judge's preposition held in ***Energy Watchdog*** that, whenever there involves an inter-state transmission the Central Government would be involved and Section 11 of the Act cannot be viewed as egressing expanse. Thus, we answer point No.1 that, the observation in the ***Energy Watchdog*** are mere *obiter dicta* and not a binding precedent; the findings of the Co-ordinate Bench in ***GMR Energy*** ought not to have been departed by the learned Single Judge while deciding the issues involved in the instant Writ Petitions as the core issue in the instant case and the ***GMR Energy*** are similar.

32. Ahead of delving into point No.2 raised above, it is imperative to quote verbatim Section 2(5)(i) and Section 11 of the Act, as under:

> ***Section 2. (Definitions)****: --- In this Act, unless the context otherwise requires,--*
>
> *(5) "Appropriate Government" means, -*
>
> *(a) the Central Government, -*
>
> *(i) in respect of a generating company wholly or partly owned by it;*
>
> ***Section 11. (Directions to generating companies):*** *(1) Appropriate Government may specify that a generating company shall, in extraordinary circumstances operate and maintain any generating station in accordance with the directions of that Government.*
>
> *Explanation. - For the purposes of this section, the expression "extraordinary circumstances" means circumstances arising out of threat to security of the State, public order or a natural calamity or such other circumstances arising in the public interest.*
>
> *(2) The Appropriate Commission may offset the adverse financial impact of the directions referred to in sub-section (1) on any generating company in such manner as it considers appropriate.*

33. The cardinal principle governing statutory interpretation is that, each provision of law must be read in its true sense and in harmony with the statute's object and purpose. As discussed supra the objective of the new Act is the generation of electricity to be de-licensed and captive generators to be freely permitted except in case of

Hydro projects. Creation of transmission, utility at the Central as well as State, would be a government company and they collectively have the responsibility of ensuring that the transmission network is developed in a planned and coordinated manner to meet the requirements of the sector. The National Electricity Policy aims at laying guidelines for accelerated development of the power sector, providing supply of electricity to all areas and protecting the interests of consumers and other stake holders while being mindful and keeping a track of the availability of energy resources, technology available to exploit the resources, economic generation using different resources and energy security issues.

34. The opening words of Section 2 of the Act reads, "*In this act, unless the context otherwise requires*". The Hon'ble Apex Court in the case of ***K.V Muttu v/s Angamuttu Amal – (1997) 2 SCC 53*** held that, despite usage of conclusive words, "means" definition clause must

be read subject to the opening phrase "Unless the context, otherwise requires".

35. Section 7 of the Act allows for setting up of generating station by the generating companies without license and Section 9 of the Act permits to maintain or operate the captive generating plant; dedicated transmitted lines provide the supply of electricity through the grid shall be regulated in the similar manner as the generating station of a generating company. Section 11 of the Act empowers the appropriate government to override the above liberties during "extraordinary circumstance", as those arising from threat to security of the State, public order, natural calamity or such other circumstance arising in the public interest. The circumstance incorporated in explanation to Section 11 of the Act, has to be interpreted to mean extraordinary circumstance, the State–specific or region–specific situations require immediate local response by the government having jurisdiction over the affected geographical area. The Co-ordinate Bench of this Court in

the case of ***GMR Energy*** in Para-59 to Para-69 while discussing the extraordinary circumstance held as under:

> ***"59. "Such other circumstances"*** *is a general word or statement, if it follows an enumeration of circumstances of a particular or specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to circumstances of the same kind or class as those specifically mentioned. It is a cannon of statutory construction that where general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated. In the instant case the said expression is used in an explanation where the word* ***"Extra Ordinary Circumstances"*** *is defined, only for the purpose of Section 11(1) of the Act. It sets out three circumstances constituting Extra ordinary circumstances. They are:*
>
> *(a) Threat to security of the State, Public order;*
>
> *(b) A natural calamity;*
>
> *(c) Such other circumstances arising in public interest.*
>
> ***60.*** *Firstly the words* ***"such other circumstances"*** *are not used after the words* ***"Public Interest"****, which is the third category constituting an extra ordinary circumstance. It is used after the two categories. The question is whether the first two categories constitute the same class or kind. If the answer is no, the principle of ejusdem generis has no*

*application in construing the words 'such other circumstances'.*

***61.*** *Let us take the first category. Threat to security of State. It may be from outside the country or inside the country. Similarly, there may be threat to public order. This threat to the security of the State, and Public order constitute one class or kind and they are put together because, between these two words the word* ***OR*** *is conspicuously missing. Such a circumstance is man made one. Generally it is an act of enemy may be from out side or inside the country. Unity and integrity of the country is threatened. The phrase used in Section 11 of the Act is "in extra ordinary circumstances". i.e., it is only to meet an extra ordinary circumstance such as threat to the security of the State or public order, if electricity is needed and not available at the disposal of the Government this power could be exercised to procure electricity from private hands. To meet such a circumstance, if electricity is needed and it is available in plenty, the question of Government exercising the power under Section 11 would not arise. Only when the electricity is not available, it is in the hands of private persons, the Electricity is needed to face the threat to the security of the State or public order, this power could be exercised. However, it does not mean when there is a threat to the security of the State or public order, this power could be exercised even though there is no scarcity of electricity. In other words threat to the security of the State or public order is not the cause for scarcity of electricity. After the word 'public order' the word* ***'OR'*** *is used. The word* ***OR*** *is normally disjunctive. It is an indication that the first category constitutes a class or kind by itself, and the second category is an alternative. The second category is a natural calamity. It is a*

*natures fury. It is an act of God. It is class by itself, as well understood in legal terminology as **VISMAJOR**. Again unless there is shortage of electricity the question of Government exercising this power do not arise. It is only when the challenge posed by such natural calamity it is to be met, electricity is required and if sufficient electricity is not available at the disposal of the Government, the Government could exercise this power to procure the electricity from private generating companies. This constitute a separate category or genus. There is no connection whatsoever between the first category and second category. These two categories do not constitute a class, or kind or genus.*

***62.*** *These were the only two categories which were found in the Section when the Bill was moved in the parliament. The draftsmen did not provide for any general words. It was not in his contemplation at all. When the Bill was moved in the parliament, the representatives of the people in their wisdom thought that the said provision would not adequately meet all situation. Even in the absence of the aforesaid two circumstances, if there is severe scarcity of electricity and the public at large, in particular, the farmers, people living in the villages or hamlets, or below the poverty line or working class and even people belonging to middle class, who cannot afford to pay higher tariff, cannot be denied electricity supply. The National Policy envisages an obligation on the Government to supply electricity to rural areas under Section 6 of the Act. India is still a Socialistic State. Electricity is an essential requirement of all facets of our life. It is a basic human need, as food, clothing and shelter. Though the Act liberalizes the market economy but is not a lazzie faire provision, which seeks to limit the operation of the public interest and directions*

*related thereto. Therefore a member of the parliament proposed an amendment to cover the interest of the common man of this country by an addition of an independent category apart from the existing two categories namely "such other circumstances arising in public interest". The amendment was allowed and it became part of the Section. The subsequent amendment to Section 6 of the Act makes the intention clear. By the Electricity (Amendment) Act, 2007 the old Section 6, is substituted by new Section 6 which provides that the concerned State Government and the Central Government shall jointly endeavor of provide access to electricity to all areas including villages and hamlets through rural electricity infrastructure and electrification of households.*

***63.*** *Therefore the third category is "such other circumstances affecting public interest". Thereby meaning circumstances other than the earlier two categories. Therefore, the word* ***OR*** *is again used after the word calamity, making the intention clear that the third category is yet another alternative and to be read disjunctively. The only common feature running underneath these three categories is an extra ordinary circumstance requiring electricity, justifying invoking the power under Section 11 of the Act. Therefore, that is not a general word used to follow the specific words constituting a genus and restricted to things ejusdem generis with those preceding them.*

***64.*** *The cardinal rule of interpretation is to allow the general words to take their natural wide meaning. When this general word is added by way of amendment, the intention of the parliament is clear, that these words are in addition to the other two circumstances, in the Bill before amendment, as an independent category or genus. Any other interpretation*

*would negate the parliamentary intention and would not conform to the parliaments intended meaning of the enactment. The application of the rule would produce a result contrary to the legal meaning taking to be intended by parliament. More over this principle of ejusdem generis is pressed into service to resolve the ambiguity or uncertainty and reconcile incompatibility between specific and general words. In the instant case there is no ambiguity. There is no incompatibility between specific words and general words. The general words used itself constitutes an independent category or genus. "Public interest" itself is a category. If this rule is applied to define and restrict the meaning of public interest, it would lead to absurd result. In the absence of the specific words constituting a genus, there is no room for the application of the rule.*

***65.*** *This Act was passed with the fond hope to increase the production of electricity supply. By mere passing a legislation the same cannot be achieved. Reasonable time is required to achieve the object of the Act. Probably a step in the right direction is taken. Over night results cannot be expected. Therefore, it will take some more time to have enough supply of electricity produced to meet the demands of the society. Supply of electricity at reasonable rate to rural India is essential for its overall development. Equally important is availability of reliable and quality power at competitive rates to Indian industry to make it globally competitive and to enable it to exploit the tremendous potential of employment generation. Electricity is an essential requirement for all facets of our life. It has become a basic human need. It is a critical infrastructure on which the socio-economic development of the country depends. No Legislature ever intends to favour one section of*

*the population against the other. Its ostensible and proclaimed intention is always that it is doing justice between the various sections of the population. No rule is better established than that where two meanings are possible, we must take the more reasonable one. If the choice is between the two interpretations the narrower of which would fail to achieve the manifest purpose of the legislation, Courts should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view the Parliament would legislate only for the purpose of bringing about one effective result. When the Court is called upon to give a wide or limited interpretation to a particular expression and when that expression is capable of both these interpretations, it is open to the Court to consider what was the object of the Legislature and what was the mischief aimed at and the Court must try and give that construction to particular expression which will be more consistent with the suppression of the mischief rather man that mischief being allowed to continue uncontrolled. When material words of a statute are capable of two constructions, one of which is likely to defeat or impair the policy of the Act whilst the other construction is likely to assist the achievement of the said policy, then the Courts would prefer to adopt the latter construction. It is more probable that Legislature should have used the word in that interpretation which least offends against 'our sense of justice'. If it appears that one of the two constructions will do injustice, and the other avoid injustice, men it is the bounden duty of the Court to adopt the second, and not adopt the first, of those constructions. Where one constructions leads to absurdity, and the other makes the statute logical, the latter construction is to be preferred*

*as every effort should be made to make sense and not nonsense of legislation.*

***66.*** *It was next contended that, in Section 62 of the Act while dealing with determination of tariff, they have provided determination of tariff in case of shortage of supply for a period not exceeding one year. Therefore, shortage of electricity is not an extra-ordinary circumstance and that is how though in Section 62 the word 'shortage of power' is used, such a word is conspicuously missing in Section 11. Part VII of the Act deals exclusively with tariff. Section 61 speaks of tariff regulations. It provides that, the Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the criteria which are set out in the said section from Clause (a) to Clause (i). One of the criteria to be taken note of is safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner. Also, it should bear in mind the National Electricity Policy and tariff policy. Section 63 of the Act makes it very clear the Appropriate Commission shall adopt tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government. Then Section 62 provides for determination of tariff. It empowers the Appropriate Commission to determine the tariff in accordance with the provisions of the Act for supply of electricity by a generating company to a distribution licensee; transmission of electricity; wheeling of electricity and retail sale of electricity. In case of shortage of supply of electricity, the Appropriate Commission is empowered to 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 licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity. Therefore, the proviso which empowers fixation of tariff in case of shortage of supply of electricity is only between a generating company and a licensee and not in other case. Therefore, Section 11(2) provides that, when there is a direction to supply electricity to a State grid and the price is fixed for such supply by the Appropriate Government results in adverse financial impact on such generating company, the Appropriate Commission has been conferred the power to offset the adverse financial impact. Therefore, the argument that the word 'shortage of supply of electricity' is specifically used in Section 62 and the same is conspicuously absent in Section 11, the shortage of supply of electricity cannot be a ground to exercise power under Section 11 or fix the tariff for such power to be supplied is without any substance. Section 62 applies to a case where there is no direction under Section 11. Once the direction is granted it is Section 11(2) which is attracted and not Section 62.*

***67.*** *It was contended what the Court has to keep in mind is not the effect but the cause for shortage of scarcity of electricity. Only a circumstance such as threat to the State, public order, natural calamity should result in scarcity of electricity. Then only the Government has the power to invoke Section 11 of the Act. The circumstances set out in the order viewed in that context was in existence prior to the passing of the enactment. It is only because of that, this Act was passed liberalizing the production of electricity by introducing the concepts like open access, delicensing, etc., and, therefore, the facts stated in the order do not constitute an extra-ordinary circumstance in public interest justifying the exercise of power under Section 11*

*of the Act. If there is sufficient supply of electricity and there is a breach to the security of the State or public order to meet such a threat if the Government wants electricity it could procure the same and meet such a situation. Similarly, when there is a natural calamity and the electricity is available in plenty, the question of the Government invoking Section 11 would not arise. What the Section meant is not that scarcity of electricity shall result on account of threat to security of the State or public order or natural calamity. It is to meet a situation of that nature, if electricity is required and it is not available at the disposal of the Government and if it is in the hands of private generators, then it becomes necessary for the Government to compel those private generators to supply the electricity to the Government to face its challenge. Therefore, what is provided in the explanation is not the cause for scarcity. They are the circumstances which require to be faced, by the Government for which electricity is required. Therefore the parliament by way of Explanation has set out three circumstances, under which the Government can exercise its power under Section 11 of the Act.*

***68.*** *The impugned order clearly sets out the circumstances under which the same came to be passed. It is stated that Karnataka is facing a severe power shortage in the year 2008-2009. There is a glaring demand—supply gap in the State. According to the Energy Power Survey of the Union Ministry of Power, in 2008, while demand is expected to be 8228 MW, supply is of the order of 5939 MW, leading to a gap of about 2300 MW. One of the reasons for such deficit situation is poor water inflows to the major hydel reservoirs of Linganamakki, Supa and Manl Dams respectively. These reservoirs reached only 62% of their levels, as against*

*88% in the previous year. Karnataka is hydel dependent. Daily power generation from the major Hydros was 21 MU, compared to 32 MU per day in the same period last year. There was a drastic reduction in power availability from its share of central generating stations. As against the expected share of 1542 MW daily, on an average only about 1000 MW was received, resulting in a shortage of 500 MW. The Bellary Thermal Power Station of 500 MW, commissioned at the end of July, 2008 unit experienced 35 trips in the period August to October, 2008. At present the unit is operating at part capacity, resulting in further power shortages to the grid. Demand for power is expected to increase in the period January 2009 to May 2009. Then a tabular column is given showing the availability of electricity, electricity required and the deficit for the months January to May 2009. They have also introduced power cuts in the State. It is in those circumstances, special measures were required to protect the public interest. In that context they felt it is imperative that all power generated in the State, including power from those who have gone on Open Access and are exporting power outside the State, be made available to the State Grid. When this is facilitated, nearly 500 MW of power will be available to the State. Therefore, as a matter of policy, in public interest, to mitigate the severe power crisis in the State, all generators of the State were directed to operate, maintain the generating stations and supply all the electricity thus generated to the State Grid for the consumption of all the consumers of electricity within the State to bridge the demand-supply gap. It is only a stop gap arrangement. It is for a limited period. It is not a permanent phenomenon. The supply of electricity is sought to be regulated during crisis in public interest.*

> ***69.*** *Keeping in mind these well settled principles of interpretation of statutes, the purpose of the legislation, the circumstances under which the amendment was done and for the reasons set out in the impugned order, we are of the view that the circumstances set out in the impugned order constitute an 'extra-ordinary circumstance' justifying the exercise of power under Section 11 of the Act in public interest."*

36. The Co-ordinate Bench of this Court further observed that, Section 11 of the Act is in the nature of an exception to the general rule of deregulation, applicable specifically when extraordinary circumstances justify government intervention. Albeit extraordinary circumstances have not left discretion with the appropriate government to decide what constitutes and qualifies to be extraordinary circumstances, however, it has unilaterally elucidated and defined them with reference to threats to the State security, public order, natural calamities or public interest i.e., matter quintessentially within the purview of the State Government.

37. In our considered view, the observation of the Coordinate Bench on this aspect is well reasoned and well-

thought-out one. Nonetheless, failed monsoon, reservoir depletion, agricultural demand spikes or regional heat waves, essentially creates an indigenous extraordinary circumstance and contextual interpretation of Section 11 of the Act must recognize it. The electricity crises are the archetypical regional or State specific phenomenon. During a drought induced power crises in the State, the State Government is compelled to handle the situation by exercising emergency power stipulated under Section 11 of the Act over generators embedded in the State when those generators occasionally sell the surplus power to other States. Here, we find it essential and relevant to refer the proceedings of the Government of Karnataka dated 16.10.2023, wherein the preamble of the notification reads as under:

**PROCEEDINGS OF THE GOVERNMENT OF KARNATAKA**

**Preamble:**

> *1. The State electricity demand is presently met from KPCL Thermal & Hydel Plants, CGS, UPCL, RE, Swapping from other States and*

*different segments of Power Exchanges. Due to increase in demand, the State is experiencing a major power crisis on account of failed monsoon and increased demand from agricultural consumers.*

*2. The demand and energy requirement in the State is increasing day by day and at present the State ESCOMs are facing severe shortage of power to an extent of 3000 to 3500 MW. The State is likely to reach a peak load of 18214 MW and around 357 MU/day during the coming months i.e., from November, 2023 to May, 2024.*

*3. Even though the installed capacity in the State is around 32,000 MW, meeting the increased demand during the coming months would be a challenging task because, more than 50% of the installed capacity is from renewal energy source which is infirm/uncertain in terms of meeting the RTC demand.*

*4. The failure of monsoon has resulted in drought situation, resulting in less availability of water in the hydro reservoirs, increased demand of loads, non-availability of required quantum of power in the market even after making all out efforts by ESCOMs to buy power in the market including from the Energy exchange at the maximum cap rate.*

*5. The State has recorded peak demand of 16,950 MW and energy consumption of 294 MU in the month of August, 2023 due to deficit monsoon, leading to distress situation forcing the SLDC to take Load Management measures since August' 2023. Dependence on power market to meet the increased State demand alone, may lead to uncertainty in availability. The monthly State demand has increased as compared to previous year to an extent of 32%.*

*6. Due to increase in demand, State is expecting a daily energy shortfall to an extent of 40 — 50 MU.*

*7. All the market segments are being explored on a day ahead as well as real time basis to meet the unprecedented rise in demand. The entire country is also facing a high demand situation and has recorded a demand of 240 GW in September, 2023 as notified by Grid India Ltd. The availability of power in the market is minimal due to continued dry spells in the absence of normal monsoon and increased demand in all the States.*

*8. In the prevailing increased State demand situation, one of the options left before the Government is to curtail the load to an extent of 1500 to 2000 MW to maintain grid stability as mandated by CERC & KERC Regulations and orders. However, the curtailment of load may give rise to other unforeseen problems.*

*9. Thermal units having PPA with ESCOMs are very crucial to meet the state peak demand by running them to their full capacity, however poor quality of coal is leading to non- availability of thermal units/under generation.*

*10. Moreover, due to sub normal rainfall in the State, the reservoir levels are very low as compared to the last year and over-dependency on hydro generation runs the risk the further depletion of major hydel reservoirs which would affect future power availability. The present energy available from major hydel reservoirs for the current year is short by about 3000 MU. The storage levels in major reservoirs and the generation availability, as compared to previous year is shown below:*

| Reservoir Name | % storage as on 10.10.2022 | % storage as on 07.10.2023 | Generation loss in MU |
|---|---|---|---|
| Lingamakki | 90.60% | 45.40% | 2060 |
| Supa | 71.57% | 54.37% | 543 |
| Varahi | 73.79% | 36.26% | 365 |
| | | Total | 2968 |

*11. The KERC has approved bilateral purchase of 1000MW-RTC and 250 MW- peak power from October, 2023 to May, 2024 from the power markets and through Deep- e- Portal, which is being pursued.*

*12. State Government has also requested the MoP, Government of India to allocate 600 MW of unallocated power of Central Generating Stations (CGS) to Karnataka from October, 2023 to May, 2024 considering the severe power crisis in the State.*

*13. From the facts indicated in the pre-paras, it is evident that, though all efforts are being made to source the power from the various available resources, the day-to-day demand is not being met on account of wide gap in demand and availability, owing to failed monsoon, unforeseen/foreseen outages and under generation of Conventional generators and uncertainty from RE sources.*

*14. It has been noted that many generators within the State are exporting power outside the State through power exchange and short-term*

*open access. In view of similar power supply crises in the past also, the GoK had invoked its power under Section, 11 of Electricity Act, 2003 and the State availed the supply of power from intra State generators who are availing Open Access to mitigate the power crisis.*

*15. Hon'ble Chief Minister reviewed the power situation in the State on 13.10.2023 and directed to impose section, 11 of Electricity Act, 2003 with immediate effect for all intra State generators to inject power into the State grid.*

*16. Section, 11 of Electricity Act, 2003 provides that:*

*"Appropriate Government may specify that a generating company shall, in extraordinary circumstances operate and maintain any generating station in accordance with the directions of that Government"*

*17. It is observed from IEX data, in the short-term market of the last six months, average rate is around Rs.4.86/unit excluding transmission and other related cost.*

*18. As a matter of policy and in the public interest and to mitigate the severe power shortage in the State, Government of Karnataka hereby direct that all the Generators operating in the State of Karnataka shall run their plants to full exportable capacity and inject all the energy generated to the State Grid for utilization within the State to bridge the demand supply gap. Hence this order.*

38. On rudimentary reading of the above notification, it could be gathered that the notification was issued in an

extraordinary circumstance, the public order arising from natural calamities, such as failed monsoon, reservoir depilation, recorded peak demand 16,950 Mega Watt and energy consumption of 294 Mega Unit in the month of August 2023 owing to a monsoon deficit which paved way to a dire situation. It is pivotal to note that the State Government took the decision as a remedial and protective one in the State's interest. As discussed supra, Section 11(2) of the Act is a remedial mechanism ensuring that generators are compensated for financial prejudice arising from emergency directions. When Sections 11(1) and 11(2) of the Act are read harmoniously it elucidates that, "appropriate government" and "appropriate commission" in these provision must be read in tandem and that the government empowered to issue emergency directions must be the same government whose Regulatory Commission has jurisdiction over the affected generators and can provide effective financial redressal.

39. In the case of ***GMR Energy***, the Co-ordinate Bench of this Court while discussing the operation and maintenance of electricity, defined the terms electricity, generate, generating station, generating company, grid, license, consumer and supply in paras 80 to 84, the same are quoted verbatim as under:

> *"**80**. The word "generate" means to produce electricity from a generating station for the purpose of giving supply to any premises or enabling a supply to be so given. In the word 'generate' both production and supply is implicit. The direction to operate and maintain any generating station means a direction to produce and supply • electricity. Though the Parliament took pains to define the aforesaid words, they have not defined the word 'operate' and 'maintain'. Therefore, we have to go by the dictionary meaning of those words. The word 'operate' according to the Oxford Dictionary means "to work in a particular way". The word 'maintain' means, the act of keeping in good condition by checking or repairing it regularly; to continue at the same level, standard; to keep something in good condition; to carry on or continue; to keep unimpaired or in proper condition. The direction is given to a generating company. Generating company means any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person, which owns or operates or maintains a generating station. So, the direction is not given only to the person who owns generating station.*

*It is also given to a person who operates or maintains a generating station. Therefore, the direction to operate and maintain a generating station means direction to produce electricity from a generating station for the purposes of giving supply and supply the same in a particular way and continue to supply at the same level and keep the generating station in good condition by checking and repairing it regularly i.e., to keep it unimpaired or in proper condition.*

***81.*** *The word 'supply' has been defined under Section 2(70) meaning the sale of electricity to a licensee or consumer. The consumer, means any person, who in turn shall include a company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person, who is supplied with electricity for his own use by a licence or the Government or by any other person engaged in the business of supplying electricity to the public under this 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 licencee, the Government or such other person, as the case may be. Similarly, the word 'licensee' means a person who has been granted a licence under Section 14 to transmit electricity or distribute electricity or undertake trading electricity. It is in this context the word 'supply' as defined under the Act is to be understood. Therefore, 'supply' means supply to these two category of persons. It does not take within its stride supply of electricity to a Government and supply of electricity to a 'grid' which means the high voltage backbone system of inter-connected transmission lines, sub-station and generating plants. Therefore, the word 'supply'*

*as defined under the Act which is used in sub-Section (2) of Section 10 is confined only to commercial supply of electricity. The word 'supply' has been specifically used in Section 10(2) of the Act which deals with duties of generating companies. Sub-Section (2) of Section 10 specifically provides that, a generating company may supply electricity to any licensee in accordance with this Act and the rules and regulations made thereunder and may, subject to the regulations made under sub-Section (2) of Section 42, supply electricity to any consumer.*

***82.*** *When the generating company produces electricity, the said power generated cannot be stored by the generating company at its generating station. The power generated is to be supplied to the grid.*

*The word "supply" as defined under Section 2(70) of the Act do not refer to supply of the electricity from the generating company to the State Grid. In this context it is necessary to keep in mind the opening words of Section 2 of the Act which says in this Act, 'unless the context otherwise requires'. Therefore, in the context in which the word "supply" is used in the Act, it means supply of electricity to any licencee or a consumer only. It is used in a very narrow sense. Therefore, when electricity is produced by a generating company, before the electricity produced is supplied to a licencee or a consumer, it has to pass through the transmission lines or the distribution systems or operating facilities. The electricity produced by a generating company cannot be supplied to a customer or a licencee of their choice directly. It has to pass through the State Grid. In other words, the electricity produced is to be supplied to the State Grid first and thereafter from the*

*State Grid it is supplied to the customer. The word 'supply' defined in the Act refers to the second stage, i.e., supply from the State Grid to the customer.*

***83.*** *The word "supply" of electricity is conspicuously missing in Section 11. The reason is not far to seek. If the word 'supply' found in sub-Section (2) of Section 10 were to be introduced in Section 11 also, it means the electricity generated by virtue of the direction to operate and maintain is to be supplied to the licencee or customer of the generating company only. It serves no purpose. For that Government's intervention is not required. Therefore, the legislature advisedly has not used the word 'supply' in Section 11. It is because when a generating station is operated and maintained properly it results in production of electricity. The electricity thus produced has to be transmitted by means of transmission lines to the grid. The extraordinary power cannot be exercised by the State Government or the Central Government only for the purpose of increasing generation, only for the purpose of operation and maintenance of a generating station. When de-licensing, liberalisation is the object of the Act, the private entrepreneurs who are operating and maintaining these generating stations do not need any direction from the Government. It is a commercial venture. If there is a demand in the market, they are bound to put these generating stations to the optimum use and scrupulously maintain the station so that any hurdle in running of the generating station would cause financial loss to them. If no electricity is produced the question of supplying the electricity as per the direction of the Government would not arise. The condition precedent for supply of electricity as per the direction of the Government is electricity should*

*be produced. For its production the generating station should be operated and maintained. In order to supply the electricity as per the direction, a further direction is issued to operate and maintain because if they do not operate and maintain a generating station properly they would not produce electricity. The Government has the power to issue direction to operate and maintain the generating station. Therefore, when the Government issues a direction to a generating company to operate and maintain a generating station and further states the electricity so produced shall be supplied to the State Grid only, it means the electricity supplied is regulated so that the entire electricity produced is available to the State for being distributed in order to meet a situation envisaged in Section 11 of the Act. In other words, right of producer of the electricity to supply to his customer or licencee is curtailed. In this context, the word 'supply' used in the impugned order is a general word and not a word as defined under the Act. Therefore, when the word 'supply' is conspicuously missing in Section 11 of the Act, the direction issued to a generating station to operate and maintain a generating station includes a direction to supply the electricity produced by such generation to the State Grid. This does not mean supply in a commercial sense as indicated in the definition of supply in Section 2(70) as contra distinguished by the meaning of supply in Section 2(29). Section 11 is not meant for supply of electricity to a licencee or a consumer. It is only when electricity is to be supplied to a person other than a licencee or a customer Section 11 is invoked.*

***84.*** *This meaning is implied from the words used in sub-Section (2) of Section 11. It provides that the Appropriate Commission may*

> *offset the adverse financial impact of the directions referred to in sub-Section (1) on any generating company in such manner as it considers appropriate. If the direction given by the Government is only to be understood as operate and maintain a generating station and not supply of electricity, the generating company cannot complain of any adverse financial impact, because the electricity so supplied is supplied to its customer or a licencee for the market price agreed to between the parties. Similarly, no such direction requires to be given by any Government if it is for commercial supply. Adverse financial impact means the electricity generated by virtue of the direction issued by the Government is not fetching the generating company the price which it would have fetched in the event of their supplying to the licencee or a customer, i.e., less than the same. It has adverse financial impact. Their interest is protected under the said provision. It implies if the electricity so produced is supplied to the Government at a price lesser than the commercial price, the said provision intends to protect the generating company from such adverse financial impact. The supply of electricity in pursuance of the direction by the Government could be clearly gathered from the aforesaid provision. What is intended is appropriate compensation as a consequence of non-commercial supply as considered appropriate."*

40. We unambiguously and explicitly concede with the view expressed by the Co-ordinate Bench as above. In our view the internal coherence of Section 11 of the Act is a

bulwark interpretation in circumstances when the embedded generators operate within a State, although trades/sells power inter-state, the State Government is the appropriate government capable of both issuing directions and ensuring compensation through the State Commission. Against this backdrop, we are of the view that, "appropriate government" as defined in Section 11 of the Act must be interpreted contextually to mean the State Government for embedded generators facing State specific extraordinary circumstances, rather than rigidly applying the definition stipulated under Section 2(5)(a)(ii) of the Act, which defines "appropriate government" for the purpose of the legislation. It is to be taken with a pinch of salt that this definition is explicitly contingent to contextual variation as could be inferred by the opening words of Section 2 of the Act. Hence, Section 2(5) of the Act cannot be permitted to defeat or restrict the exercise of the emergency powers stipulated in Section 11 of the

Act, were the provision's object and the purpose require a broader reading.

41. In light of the discussion supra, we collectively hold that, ideally "extraordinary circumstances" in context of Section 11 of the Act are archetypically regional and confer jurisdiction on the State Government over generators physically located within the State during state specific crises.

42. An additional reasoning for our above conclusion to avoid future abstrusity is that, admittedly, the respondents are captive and cogeneration plants operated by sugar manufacturing companies, they were primarily established to meet their individual power requirements for sugar production and the surplus power alone was sold externally. These entities neither have composite schemes for generation and sale of electricity in multiple States nor do they operate as standalone independent power producers with dedicated inter-state supply arrangements, established prior to commercial operation of their plants.

M/s Chamundeshwari Sugars Limited operates a sugar factory with an installed cogeneration capacity of 26 MW with a maximum exportable capacity of 18 MW. NSL Sugars operate similar cogeneration plants. These plants use bagasse (sugarcane waste) as fuel which are pivotal in the sugar manufacturing process. The primary purpose of these plants is not generation of electricity for sale but captive consumption for sugar production. It is upon meeting the plants' own requirements and auxiliary consumptions is any surplus available for trade. Even this surplus is not sold under long-term Power Purchase Agreements signed before commercial operation of the plants, however, it is sold opportunistically through power exchanges or short-term arrangements when surplus is available and market prices are favourable. Thus, the respondents' characterization of themselves as inter-state generating companies engaged in inter-state generation, transmission, trading, and supply is a legal conclusion not supported by operational facts. The respondents obtained

No Objection Certificates from the State Load Dispatch Centre for scheduling power through open access and registered on power exchanges to sell surplus power. However, obtaining NOCs for short-term open access and making spot sales through exchanges does not transform a captive generator into an inter-state generating company under a composite scheme. Albeit the regulatory framework permits captive generators and cogeneration plants to sell surplus power through myriad mechanisms, however, this flexibility does not alter their fundamental character as embedded State generators primarily serve captive load.

43. The concept of "composite scheme" as discussed in ***Energy Watchdog*** and defined in the revised Tariff Policy notified under Section 3 of the Act refers to generating companies that establish power plants specifically for generation and sale of electricity in more than one State, having signed long-term or medium-term PPAs prior to commercial operation for sale of at least 10% of capacity

to distribution licensees outside the State. The Respondent companies do not meet these criteria. They are sugar companies that happen to have cogeneration facilities, not power companies with composite schemes. Their power sales are incidental to their primary business and are made on a short-term, opportunistic basis, not pursuant to pre-existing multi-state sale commitments. Furthermore, the operational control and regulatory supervision onus of the respondent generating companies lie with the State authorities. The State Load Dispatch Centre exercises scheduling and dispatch control, conducts metering and energy accounting, and issues the No Objection Certificates required for their operations. The Regional Load Despatch Centre and National Load Despatch Centre, while involved in facilitating inter-state transactions, do not exercise direct operational control over these embedded generators. Schedule deviations, grid management issues, and compliance with grid codes are managed by the SLDC in coordination with other SLDCs

and RLDC, but the primary responsibility and control remains with the SLDC. This operational reality reflects the embedded nature of these generators within the State's power system.

44. The distinction between true inter-state generating companies under composite schemes and embedded captive/cogeneration plants that occasionally sell surplus power interstate is significant for the jurisdictional purposes of Section 11 of the Act. The former are entities whose entire business model and corporate purpose is inter-state generation and supply, typically involving large dedicated power plants, long-term PPAs with multiple state utilities, and operation as independent power producers. Such entities, exemplified by the generating companies in ***Energy Watchdog***, are appropriately subject to Central Government and Central Commission jurisdiction because their operations inherently span multiple States and require uniform central supervision. The latter the respondents in the present case are embedded within a

particular State's power system, primarily serve captive or local needs, and engage in interstate transactions marginally and opportunistically. These entities are appropriately subject to State Government jurisdiction under Section 11 of the Act as their operations are cantered within the State, they depend on the State's transmission infrastructure, and any extraordinary circumstances justifying Section 11 of the Act intervention are typically state-specific conditions affecting their captive operations.

45. It is equally important to note that, the Central Government has issued Section 11 of the Act directions specifically to large imported coal-based power plants (ICB plants) such as those operated by JSW Energy and Udupi Power Corporation Limited, which are dedicated power generation companies with significant capacities and established inter-state supply arrangements. The Central Government has not issued directions under Section 11 of the Act to small captive and cogeneration plants

collectively across the country that may occasionally sell power interstate.

46. On careful perusal of Section 2(28) of the Act defines "generating company" to mean "any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person, which owns or operates or maintains a generating station." Section 2(29) of the Act defines "generate" to mean "to produce electricity from a generating station for the purpose of supplying to any premises or enabling a supply to be so given." These definitions are broad and encompassing, including both dedicated power companies and industrial concerns with captive generation. However, the statutory scheme distinguishes between different categories of generators based on their operational characteristics, ownership and the nature of the supply arrangements.

47. In the case of ***GMR Energy***, the Co-ordinate Bench of this Court while discussing the concept of open access

under Section 2(47) of the Act, transmission lines under Section 2(72) of the Act and distribution system under Section 2(19) of the Act observed in paragraph No.104 as under:

> "**104.** *It is to be remembered on the day the Act came into force these transmission lines and distribution system exclusively belonged to the Government or statutory authorities. It is exclusively used by the generating stations and generating companies belong to the Government. When once the law provided for private participation in the generation, the electricity generated by them had to be simultaneously transmitted to the licencee and consumers. If the existing transmission lines and distribution systems are not made available to private players they could not have established generating stations, therefore, they have to be assured that they would be provided the transmission lines and distribution systems and that there would be no discrimination between the Governmental establishment and these private agencies. However, such an open access is also should be in accordance with the regulations specified by the Appropriate Commission. If a particular transmission line or a distribution line is overcrowded and it cannot take any more load it is not possible to grant open access. However, subject to the availability of the facility for transmission of electricity there cannot be any discrimination between a Governmental agency and these private players. Therefore, open access means these private players would be entitled to use transmission lines or distribution systems as these facilities*

> *are enjoyed by the Governmental agencies and they are assured that there would not be any discrimination between them. Therefore, it is a non-discriminatory provision for the use of transmission lines or distribution system or associated facilities. It is nothing to do with the liberty or the right to supply electricity to a customer or a licencee of their choice, which is regulated under the Act Therefore, 'open access' does not mean unbridled right or absolute right to supply electricity by the generating company of their choice."*

48. On careful perusal of the above observation of the Co-ordinate Bench of this Court, we are of the considered view that, the respondents' state embedded generators cannot claim an absolute right of transmission/supply of electricity to any licensee and the same is subject to directions of the Government i.e. the State Government in an extraordinary circumstance, arising in the public interest. Accordingly, we answer point No.2 that, the respondents'–generating companies do not qualify as interstate generating companies within the meaning of Section 2(36) of the Act and the Central Government is not only the appropriate government to issue direction

under Section 11 of the Act but also the State government has such power under Section 11 of Act under extraordinary circumstances.

49. Coming to the next aspect of the matter that, the respondent Altilium Energie Private Limited in W.P. No. 24239/2023 is a licensed electricity trader operating under a trading license issued by the Central Electricity Regulatory Commission pursuant to Section 14 of the Act. Altilium is not a generating company and does not own, operate, or maintain any generating station. Section 11(1) of the Act specifically and exclusively addresses generating companies, empowering the appropriate government to direct "a generating company" to "operate and maintain any generating station" in accordance with the government's directions during extraordinary circumstances. Thus, it is clarified that as per Section 11 of the Act power is exercisable over generating companies, not over traders, distribution licensees, transmission licensees or consumers. In the instant case, admittedly, the State Government's Order dated 16.10.2023 imposed no obligation on Altilium, conferred no right on Altilium, and

did not name or address Altilium. The Order was directed exclusively to generating companies, requiring them to operate at maximum capacity and supply power to the State grid.

50. The generating company with which Altilium had a Power Purchase Agreement-M/s Energy Development Corporation-complied with the State Government's Order under Section 11 of the Act and supplied power to the State grid. Energy Development Corporation did not challenge the Order and has not claimed that the Order was unlawful or that it should be exempted from compliance. When the direct addressee of a government Order accepts and complies with the Order, a third party who is commercially affected cannot maintain a Writ Petition to challenge the Order. Altilium's position is analogous to that of a contractor whose contract is frustrated by government action directed at the other contracting party; the frustration may cause economic loss, but it does not give the contractor standing to

challenge the government's action in writ jurisdiction unless the contractor's own independent legal rights are violated.

51. The statutory scheme of the Act makes clear distinctions between generators, transmission licensees, distribution licensees, and traders, with separate provisions governing each category. Traders are addressed in Section 12 of the Act (requirement of license for trading). Section 14 of the Act (grant of license including for trading), and are subject to regulatory supervision by the appropriate Commission regarding trading margins and conditions of license. However, traders are conspicuously absent from Section 11 of the Act, which speaks only of generating companies and generating stations. This deliberate limitation indicates Parliament's intent that Section 11 of the Act powers be exercisable directly over generators, not over the entire commercial chain. Permitting traders to challenge Orders passed under Section 11 of the Act would effectively give them a veto

over the government's exercise of emergency powers, contrary to legislative intent and public interest. Furthermore, Altilium's trading license, contains specific conditions including Condition 6 which states: "The licensee may with prior intimation to the Commission, engage in any business for optimum utilization of assets. Provided that the licensee shall not engage in the business of transmission of electricity." This condition confirms that Altilium's statutory role is limited to trading and does not extend to generation or transmission.

52. The Co-ordinate Bench in ***GMR Energy*** specifically addressed and rejected the *locus standi* of traders to challenge Section 11 directions. Additionally, the Power Purchase Agreement between Altilium and Energy Development Corporation stipulates and provides for the current situation. Clause 15(g) of the agreement expressly enumerated that "any restriction imposed by any relevant State Government on sale of power from Project under this agreement" would constitute force *majeure*. The

learned Single Judge noted this provision, and although the judgment enumerates that the petitioners cannot be held to have waived their right to challenge the Order based on contractual provisions, this analysis fails to distinguish between the right to challenge an Order affecting one's own legal rights and the lack of standing to challenge an Order directed at others. Altilium's contractual acknowledgment that government restrictions on the generator would constitute force *majeure* confirms that Altilium understood and accepted that its commercial expectations under the PPA were subject to lawful government action directed at the generator. This contractual framework reinforces the conclusion that Altilium has no independent legal right to challenge directions issued to the generators under Section 11 of the Act. Accordingly, we answer the point No.3 in the "negative".

53. For the forgoing discussion, we are of the view that, the interference called for in the impugned judgment

passed by the learned Single Judge. According, we pass the following:

**ORDER**

i. The Writ Appeals are allowed.

ii. The impugned judgment dated 11.03.2024 passed by the learned Single Judge is hereby set aside.

iii. State Government Order dated 16.10.2023 is restored.

iv. Consequently, the following communications are restored:

[A] The Communication dated 18.09.2023 in WP No.24998/2023.

[B] The Communication dated 17.10.2023 in WP No. 26324/2023.

[C] The Communication dated 18.10.2023 in WP No. 26833/2023.

**SD/-**
**(ANU SIVARAMAN)**
**JUDGE**

**SD/-**
**(RAJESH RAI K)**
**JUDGE**

PKS/List No.: 1 Sl No.: 2