

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12th DAY OF JUNE, 2026

BEFORE

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

WRIT PETITION No.13316/2025 (GM-KEB)

C/W

WRIT PETITION No.14646/2025 (GM-KEB),

WRIT PETITION No.26022/2025 (GM-KEB),

WRIT PETITION No.30238/2025 (GM-KEB)

IN W.P.NO.13316/2025

BETWEEN:

DISTRIBUTED SOLAR POWER ASSOCIATION
THROUGH ITS AUTHORIZED
REPRESENTATIVE FAIZA ZIA
REGISTERED OFFICE OF THE
SOCIETY IS AT A-57,
DDA SHEDS, OKHLA INDUSTRIAL,
PHASE-II, NEW DELHI-110020.

...PETITIONER

(BY SRI C.K. NANDAKUMAR, SENIOR COUNSEL FOR
SRI MOHAMMED SHAMEER, ADVOCATE)

AND:

1. KARNATAKA ELECTRICITY REGULATORY COMMISSION
REGISTERED OFFICE NO.16, C-1,
MILLERS TANK BUND RD,
BED AREA, VASANTH NAGAR,
BANGALORE-560052.
THROUGH SECRETARY.
2. CENTRAL ELECTRICITY AUTHORITY
REGISTERED OFFICE AT SEWA BHAWAN,
RAMA KRISHNA PURAM,

SECTOR-1, NEW DELHI-110066.
THROUGH CHAIRPERSON.

... RESPONDENTS

(BY SMT. PRATIBHANU SINGH KHAROLA, ADVOCATE FOR R-1;
SRI ARAVIND KAMATH, ASG FOR R-2;
SRI K.N. PHANEENDRA, SENIOR COUNSEL FOR
SRI SHIVAPRASAD SHANTHANAGOUDAR, ADVOCATE FOR IMPEADING
APPLICANT ON I.A.NO.2/2025)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227
OF THE CONSTITUTION OF INDIA, PRAYING TO ORDER OR DIRECTION
SETTING ASIDE / QUASH THE SUO-MOTU ORDER PASSED BY LD. KERC
DATED 28.03.2025 VIDE ANNEXURE-A WHEREBY LD. KERC HAS LAID
DOWN THE PROCEDURE FOR DATA COLLECTION, SCRUTINY AND
VERIFICATION OF INTRA-STATE CAPTIVE STATUS OF GENERATING
PLANTS AND CAPTIVE USERS, CHALLENGED HEREIN AND ETC.

IN W.P.NO.14646/2025

BETWEEN:

JSW ENERGY LIMITED
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT
JSW CENTRE, BANDRA KURLA COMPLEX,
BANDRA (EAST), MUMBAI-400051
REPRESENTED BY ITS
AUTHORIZED SIGNATORY
MR. KARTIKEYA MISRA,
Email: kartikeya.misra@jsw.in

...PETITIONER

(BY SRI DHYAN CHINNAPPA, SENIOR COUNSEL FOR
SRI LOMESH KIRAN N., ADVOCATE)

AND:

KARNATAKA ELECTRICITY REGULATORY COMMISSION
TANK BED AREA, 16C-1,
MILLERS TANK BUND RD,
KAVERAPPA LAYOUT, VASANTH NAGAR,
BENGALURU, KARNATAKA-560052

REPRESENTED THROUGH ITS SECRETARY
Email: kerc-ka@nic.in

...RESPONDENT

(BY SMT. PRATIBHANU SINGH KHAROLA, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDER DATED 28.03.2025 PASSED BY THE LD. COMMISSION AS BEING, PRODUCED AT ANNEXURE-A; QUASH THE KERC CAPTIVE VERIFICATION PROCEDURE FOR VERIFICATION OF CAPTIVE STATUS OF CAPTIVE GENERATING PLANT AND ITS CAPTIVE USER(S) LOCATED WITHIN STATE OF KARNATAKA ALONG WITH ITS ANNEXURES AS SET OUT IN THE IMPUGNED ORDER DATED 28.03.2025 PASSED BY THE LD. COMMISSION.

IN W.P.NO.26022/2025

BETWEEN:

1. SEMBCORP GREEN INFRA PRIVATE LIMITED
(PREVIOUSLY KNOWN AS GREEN
INFRA WIND ENERGY LIMITED)
A COMPANY REGISTERED UNDER
THE COMPANIES ACT, 2013
THROUGH ITS AUTHORIZED REPRESENTATIVE
SHRIKANTH SHANTESHRAO KULKARNI,
ASSISTANT VICE PRESIDENT
REGISTERED OFFICE AT BUILDING 7A,
LEVEL 5, DLF CYBER CITY,
GURUGRAM-122002.
2. GREEN INFRA WIND POWER GENERATION LIMITED
A COMPANY REGISTERED UNDER
THE COMPANIES ACT, 2013
THROUGH ITS AUTHORISED REPRESENTATIVE
SHRIKANTH SHANTESHRAO KULKARNI
ASSISTANT VICE PRESIDENT
BUILDING 7A, LEVEL 5, DLF CYBER CITY,
GURUGRAM-122 002, HARYANA.
3. GREEN INFRA CLEAN SOLAR ENERGY LIMITED,
A COMPANY REGISTERED UNDER
THE COMPANIES ACT, 2013
THROUGH ITS AUTHORIZED REPRESENTATIVE

SHRIKANTH SHANTESHRAO KULKARNI
ASSISTANT VICE PRESIDENT
REGISTERED OFFICE AT BUILDING 7A,
LEVEL 5, DLF CYBERCITY,
GURUGRAM, HARYANA-122002.

4. GREEN INFRA SOLAR POWER PROJECTS LIMITED
A COMPANY REGISTERED UNDER
THE COMPANIES ACT, 2013
THROUGH ITS AUTHORIZED REPRESENTATIVE
SHRIKANTH SHANTESHRAO KULKARNI
ASSISTANT VICE PRESIDENT
REGISTERED OFFICE AT BUILDING 7A,
LEVEL 5, DLF CYBERCITY,
GURUGRAM, HARYANA-122002.
5. GREEN INFRA CLEAN WIND POWER LIMITED
A COMPANY REGISTERED UNDER
THE COMPANIES ACT, 2013
THROUGH ITS AUTHORIZED REPRESENTATIVE
SHRIKANTH SHANTESHRAO KULKARNI
ASSISTANT VICE PRESIDENT
REGISTERED OFFICE AT BUILDING 7A,
LEVEL 5, DLF CYBERCITY,
GURUGRAM, HARYANA-122002.

...PETITIONERS

(BY SRI VISHROV MUKHARJEE AND SRI YASHASWI KANT, ADVOCATES)

AND:

KARNATAKA ELECTRICITY REGULATORY COMMISSION
THROUGH ITS SECRETARY,
REGISTERED OFFICE NO.16, C-1,
MILLERS TANK BUND RD, BED AREA,
VASANTH NAGAR, BANGALORE-560052.

...RESPONDENT

(BY SMT. PRATIBHANU SINGH KHAROLA, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227
OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECTION SETTING
ASIDE/QUASHING THE SUO-MOTU ORDER PASSED BY LD. KERC DATED
28.03.2025 (ANNEXURE-A) WHEREBY LD. KERC HAS LAID DOWN THE
PROCEDURE FOR DATA COLLECTION, SCRUTINY AND VERIFICATION OF

INTRA-STATE CAPTIVE STATUS OF GENERATING PLANTS AND CAPTIVE USERS, TO THE EXTENT CHALLENGED HEREIN AND ETC.

IN W.P.NO.30238/2025

BETWEEN:

JSW STEEL LIMITED
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT
JSW CENTRE, BANDRA KURLA COMPLEX,
BANDRA (EAST), MUMBAI-400 051
REPRESENTED BY ITS
AUTHORISED SIGNATORY
MR. ASHISHKUMAR NAIR
Email: ashishkumar.nair@jsw.in
DESIGNATION: GENERAL MANAGER-LEGAL.

...PETITIONER

(BY SMT. TWINKLE J. CHADWA AND SRI AJAY T., ADVOCATES FOR
SRI LOMESH KIRAN N., ADVOCATE)

AND:

KARNATAKA ELECTRICITY REGULATORY COMMISSION
TANK BED AREA, 16C-1,
MILLERS TANK BUND RD,
KAVERAPPA LAYOUT, VASANTH NAGAR,
BENGALURU, KARNATAKA-560052.
REPRESENTED THROUGH ITS SECRETARY.
Email: kerc-ka@nic.in

...RESPONDENT

(BY SMT. PRATIBHANU SINGH KHAROLA, ADVOCATE;
SRI SHAHABAAJ HUSAIN, ADVOCATE FOR IMPEADING APPLICANT)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDER
DATED 28.03.2025 PASSED BY THE KERC AS BEING, PRODUCED AT
ANNEXURE-A AND ETC.

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED
FOR ORDERS ON 08/04/2026, COMING ON FOR PRONOUNCEMENT THIS
DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MRS JUSTICE K.S. HEMALEKHA

CAV O R D E R

These writ petitions are filed challenging the order dated 28.03.2025 passed by the Karnataka Electricity Regulatory Commission (KERC) (Annexure-A), whereby the "Procedure for Data Collection, Scrutiny and Verification of Captive Status", in respect of the captive generating plants and captive users within the State of Karnataka has been introduced. The petitioners principally challenge Clause 6.7 of the impugned order prescribing procedure relating to proportionality test and "Unitary Qualifying Ratio" (UQR) applicable to the group active users.

2. The petitioners in these writ petitions are entities engaged in captive generation, captive consumption, renewal energy regeneration and association of captive users within the State of Karnataka.

3. The petitioner in W.P.14646/2025 is "*JSW Energy Limited*", a company engaged in power generation and operation of captive generating plants.

4. The petitioner in W.P.No.30238/2025 is "*JSW Steel Limited*", is a captive user and beneficiary of captive power arrangements.

5. The petitioners in W.P.No.13316/2025 include associations and stakeholders representing distributed solar power producers, renewal captive generators and captive users, who contend that the impugned procedure adversely affect the captive status and surcharge exemption available to their members under the Electricity Act, 2003 ('Act, 2003' for short).

6. The petitioners in W.P.No.26022/2025 are 'Sembcorp Geen Infra Pvt. Ltd', 'Green Infra Wind Power Generation Ltd', 'Green Infra Clean Solar Energy Ltd', 'Green Infra Solar Power Projects Ltd' and 'Green Infra Clean Wind

Power Ltd' are power generation and operation of captive generating plants.

7. The impleading applicant, who is Orient Cement Limited, supporting the petitioners also state that the impugned order is contrary to the scheme of Act, 2003 and Rule 3 of the Electricity Rules, 2005 ('Rules, 2005' for short) and law declared in the case of ***M/s. Dakshin Gujarat Vij Company Limited Vs. M/s. Gayatri Shakti Paper and Board Limited and Another***¹ (*Dakshin Gujarat*).

8. I.A.No.5/2025 is filed by the BESCO, who seeks to come on record as an impleading applicant supporting the impugned KERC order dated 28.03.2025.

9. The petitioners and the impleading applicant i.e., Orient Cement Limited, challenged the impugned order contending that the impugned order (Annexure-A) is contrary to Section 9 of the Act, 2003 and Rule 3 of the

¹ 2023 SCC Online 1276

Rules, 2005 and the law declared by the Apex Court in the case of ***Dakshin Gujarat***.

10. The petitioners state that the impugned order suffers from lack of jurisdiction, retrospective operation and violation of principles of natural justice and excessive delegation.

11. Learned Senior counsel C. K. Nanda Kumar, appearing for the petitioners in W.P.No.13316/2025 submits that the petitioners are group active users within the meaning of Rule 3 of the Rules, 2005 and satisfy the statutory requirements governing "Captive Generating Plants", and "Captive Users". It is contended that the impugned order dated 28.03.2025 passed by the KERC, particularly Clause 6.7 of the Captive Verification Procedure, is contrary to the provisions of the Act, 2003, Rule 3 of the Rules, 2005 and the law declared by the Apex Court in ***Dakshin Gujarat*** judgment. It is submitted that the Apex Court in ***Dakshin Gujarat***, while affirming ***Kadodara***

Power Pvt. Ltd. and Others Vs. Gujarat Electricity Regulatory Commission and Another² (Kadodara Power Pvt. Ltd.), interpreted Rule 3 and recognized "UQR", based on 51% consumption and 26% ownership, referring to the paragraph Nos.25, 26, 27, 28, 42, 43, 44, 45 and 48 of the said judgment, it is contended that the proportionality requirement applies only for satisfying the qualifying threshold of 51% captive consumption and cannot be extended to total actual consumption.

12. According to the learned Senior counsel, Rule 3 only prescribes minimum qualifications requirements and does not contemplate any maximum cap or continuing ceiling on consumption. It is argued that KERC, by introducing a dynamic UQR formula, based on total actual consumption and total ownership, has effectively rewritten Rule 3 and introduced a new substantive condition not contemplated by the statute or by the Apex Court's Judgment.

² 2009 SCC Online APTEL 119

13. It is further contended that paragraph No.26 of the ***Dakshin Gujarat*** specifically uses the expression "*not less than*", thereby prescribing only a minimum threshold. According to the petitioners, once 26% ownership and 51% consumption are satisfied, the captive user qualifies and the Rule does not permit any upper limit restriction or disqualification mechanism on total consumption. Learned Senior counsel submits that Rule 3 (3), inserted by the amendment, specifically empowers the Central Electricity Authority (CEA) to frame procedures for verification of captive status in respect of interstate captive generating plants and captive users. Therefore, KERC has no jurisdiction to independently adopt or formulate a verification mechanism for intrastate captive projects by borrowing the CEA procedure.

14. It is contended that KERC initially proposed draft regulation in 2023 and revised draft regulation in 2024 under Section 181 of the Act, 2003 and invited public objections. However, the impugned order came to be issued without

fresh public notice, consultations or hearing, thereby violating Section 86(3) of the Act, 2003 and principles of natural justice.

15. Learned Senior counsel for the petitioner further contends that the impugned order retrospectively applies the new methodology to financial year 2024-25, though procedure itself was issued subsequently. Such retrospective operation, according to the petitioners, is impermissible and seriously prejudices captive generators and captive users in Karnataka. It is argued that the Karnataka captive generators are being discriminated against and exposed to disqualification contrary to the statutory scheme and the Apex Court's judgment.

16. Learned Senior counsel, Sri Dyan Chinnappa, appearing for the petitioners in W.P.No.14646/2025 and the petitioners in W.P.No.30238/2025 submits that notwithstanding the alternative remedy as contended by the respondents, the impugned order is:

- i. Without jurisdiction.
- ii. The impugned order violates principles of natural justice.
- iii. The challenge is to the delegated legislation procedure framework itself.
- iv. The impugned order violates the binding law declared by the Apex Court.

17. In addition, learned Senior counsel submits that the KERC has no substantive power under Sections 9, 86 or 181 of the Act, 2003 to redefine the captive qualification norms already prescribed under Rule 3. It is contended that once Rule 3 occupies the field, the stands interpreted by the Apex Court, subordinate authorities cannot introduce a different qualifying methodology.

18. Learned Senior counsel, Sri K.N. Phaneendra, learned Senior counsel for Sri Shivaprasad Shanthanagoudar, learned counsel for impleading applicant, supports the

petitioners and contend that the impugned order is contrary to the scheme of Act, 2003, Rule 3 of the Rules, 2005 and the law declared in ***Dakshin Gujarat***.

19. *Per contra*, learned counsel appearing for respondent No.2-KERC submits that the writ petitions are liable to be dismissed as the impugned order merely operationalises Rule 3 of the Rules, 2005 and does not introduce any new substantive condition. It is contended that Rule 3 contains:

- i. Two group level thresholds namely:
 - a. Minimum 26% ownership and
 - b. Minimum 51% aggregate captive consumption.
- ii. An additional proportionality requirement applicable to association of persons.

20. According to KERC, the second proviso to Rule 3 (1)(a) independently mandates that captive users consume

electricity in proportion to their ownership within $\pm 10\%$ variation. It is contended that the proportionality necessarily implies both lower and upper limits. If, no upper limit is recognized, insignificant shareholder may consume disproportionate electricity and misuse capital benefits, thereby “gaming” the system. Referring to paragraph Nos.43 to 47 of the ***Dakshin Gujarat***, learned counsel submits that the Apex Court recognized:

- i. Proportionality.
- ii. Annual determination.
- iii. Anti-gaming principles.
- iv. Weighted average ownership.
- v. Continuous compliance throughout the financial year.

21. Learned counsel submits that the petitioners incorrectly treated the illustrative figure of 1.96% as a universal fixed ratio. It is contended that 1.96% merely

represents a baseline qualifying illustration derived from $51\% \div 26\%$ and cannot be mechanically applied in all factual situations. It is submitted that the dynamic "UQR" formula is only a mathematical expression of proportionality already embedded in Rule 3 and is necessary to prevent misuse by captive users holding insignificant shares but consuming disproportionate electricity. It is further contended that Rule 3(3) does not oust the jurisdiction of State Commission. According to the learned counsel, Rule 3(3) merely enables the CEA to prescribe procedure to interstate projects and does not prohibit State Commission from determining captive status of intrastate projects in exercise of their statutory powers under Sections 42 and 86 of the Act, 2003. It is submitted that the State Commission necessarily determines captive sub-status while examining surcharge exemption under Section 42(2) and therefore possesses incidental and ancillary jurisdiction to prescribe verification methodology. It is further contended that the impugned procedure is merely procedural and not delegated legislation requiring prior

publication under Section 181(3). Therefore, the absence of fresh consultation does not invalidate the order. It is submitted that the writ petitions are premature, as no final determination, disqualifying the petitioners has yet been made and no surcharge liability has crystallized.

22. It is further submitted that the petitioners have an alternative effective remedy before the Appellate Tribunal for Electricity (APTEL) under Section 111 of the Act, 2003.

23. *Per contra*, Sri Aravind Kamath, learned ASG appearing for respondent No.2, submits that the concept of captive generating plants was being misused by several entities through “gaming” and therefore, strict verification of proportionality became necessary. It is contended that Rule 3 itself emphasizes proportionality between ownership and consumption and CEA was specifically empowered under Rule 3(3) to frame procedure in respect of interstate captive projects. According to the learned ASG, the CEA procedure merely operationalises Rule 3 and gives effect to the

principles recognized in ***Dakshin Gujarat*** judgment. It is admitted that the illustrations contained in the Apex Court's judgment are merely explanatory and cannot be treated as a rigid universal formula applicable in all factual scenarios.

24. It is contended that the impugned procedure is intended to prevent misuse by insignificant shareholders consuming disproportionate electricity while availing exemption from cross subsidiary surcharge and additional surcharge. The impleading applicant namely the BESCOM is led by the Senior counsel Sri Shashikiran Shetty, who supports the impugned order and contends that under Section 42(2) of the Act, 2003, BESCOM is ordinarily entitled to collect:

- i. Cross Subsidiary Surcharge (CSS) and
- ii. Additional Surcharge (ASC) from open access consumer.

25. It is submitted that the captive generating plants are exempted from payment of CSS and ASC and therefore,

strict verification of captive status becomes necessary to prevent misuse of statutory exemptions.

26. Referring to Rule 3 and Judgment in ***Dakshin Gujarat***, it is contended that:

- i. Proportionality principle is mandatory.
- ii. Rule intends to prevent misuse of insignificant shareholders.
- iii. The impugned provisions are designed to detect non-genuine captive arrangements.

27. It is submitted that the petitioners have an alternative effective remedy before the APTEL under Section 111 of the Act, 2003 and technical issues concerning captive verification should not be examined in a writ jurisdiction.

28. This Court has carefully considered the contentions and perused the material on record. The points that arise for consideration are:

- i. *Whether the impugned order dated 28.03.2025 passed by the KERC, prescribing the "test of proportionality for group active users", is contrary to Rule 3 of the Electricity Rules, 2005 and the law declared by the Apex Court in Dakshin Gujarat?*
- ii. *Whether the KERC could prescribe a dynamic "UQR" based on total actual captive consumption and total ownership, contrary to the proportionality formula recognized by Apex Court in paragraph No.43 of the **Dakshin Gujarat**?*
- iii. *Whether the impugned order travels beyond the scope of Rule 3 of the Rules, 2005 and introduce a new substantive qualification mechanism not contemplated under the Rules?*

29. In order to answer the aforesaid points for consideration, it is necessary to refer to the relevant definitions and provisions of the Act and the Rules. Section 2(8) of the Act, 2003 defines "Captive Generating Plant" as under:

"Section 2. (Definitions): --- In this Act, unless the context otherwise requires,--

(8) "Captive generating plant" means a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any co-operative society or association of persons for generating electricity primarily for use of members of such cooperative society or association;"

30. The person definition is defined under Section 2(49), which reads as under:

"(49) "person" shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person;"

31. Section 9 of the Act, 2003 reads as under:

"Section 9. (Captive generation):

(1) Notwithstanding anything contained in this Act, a person may construct, maintain or operate a captive generating plant and dedicated transmission lines:

Provided that the supply of electricity from the captive generating plant through the grid shall be regulated in the same manner as the generating station of a generating company.

[Provided further that no licence shall be required under this Act for supply of electricity generated from a captive generating plant to any licensee in accordance with the provisions of this Act and the rules and regulations made thereunder and to any consumer subject to the regulations made under subsection (2) of section 42.]

(2) Every person, who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use:

Provided that such open access shall be subject to availability of adequate transmission facility and such availability of transmission facility shall be determined by the Central Transmission Utility or the State Transmission Utility, as the case may be:

Provided further that any dispute regarding the availability of transmission

*facility shall be adjudicated upon by the
Appropriate Commission."*

32. Rule 3 is being extracted for ready reference:

"3. Requirements of Captive Generating Plant.-

*(1) No power plant shall qualify as a 'captive
generating plant' under section 9 read
with clause (8) of section 2 of the Act
unless-*

(a) in case of a power plant –

*(i) not less than twenty six percent of
the ownership is held by the
captive user(s),*

*(ii) not less than fifty one percent of
the aggregate electricity generated
in such plant, determined on an
annual basis, is consumed for the
captive use:*

*Provided that in case of power
plant set up by registered
cooperative society, the conditions
mentioned under paragraphs at (i)
and (ii) above shall be satisfied*

collectively by the members of the cooperative society:

Provided further that in case of association of persons, the captive user(s) shall hold not less than twenty six percent of the ownership of the plant in aggregate and such captive user(s) shall consume not less than fifty one percent of the electricity generated, determined on an annual basis, in proportion to their shares in ownership of the power plant within a variation not exceeding ten percent;

(b) in case of a generating station owned by a company formed as special purpose vehicle for such generating station, a unit or units of such generating station identified for captive use and not the entire generating station satisfy (ies) the conditions contained in paragraphs (i) and (ii) of sub-clause (a) above including –

Explanation :-

(1) The electricity required to be consumed by captive users shall be determined with reference to such generating unit or units in aggregate identified for captive use and not with reference to generating station as a whole; and

(2) the equity shares to be held by the captive user(s) in the generating station shall not be less than twenty six per cent of the proportionate of the equity of the company related to the generating unit or units identified as the captive generating plant.

Illustration: In a generating station with two units of 50 MW each namely Units A and B, one unit of 50 MW namely Unit A may be identified as the Captive Generating Plant. The captive users shall hold not less than thirteen percent of the equity shares in the company (being the twenty six percent proportionate to Unit A of 50 MW) and not less than fifty one percent of the electricity generated in Unit A determined on an annual basis is to be consumed by the captive users.

- (2) *It shall be the obligation of the captive users to ensure that the consumption by the Captive Users at the percentages mentioned in sub-clauses (a) and (b) of sub-rule (1) above is maintained and in case the minimum percentage of captive use is not complied with in any year, the entire electricity generated shall be treated as if it is a supply of electricity by a generating company.*
- (3) *The captive status of such generating plants, where captive generating plant and its captive user(s) are located in more than one state, shall be verified by the Central Electricity Authority as per the procedure issued by the Authority with the approval of the Central Government.*

Explanation.-

- (1) *For the purpose of this rule.-*
- a. "Annual Basis" shall be determined based on a financial year;*
 - b. "Captive User" shall mean the end user of the electricity generated in a Captive Generating Plant and the term*

"Captive Use" shall be construed accordingly;

Provided that the consumption of electricity by the captive user may be either directly or through Energy Storage System:

Provided further that the consumption by a subsidiary company as defined in clause (87) of Section 2 of the Companies Act, 2013 (18 of 2013) or the holding company as defined in clause (46) of Section 2 of the Companies Act, 2013 (18 of 2013), of a company which is a captive use, shall also be admissible as captive consumption by captive user;

c. "Ownership" in relation to a generating station or power plant set up by a company or any other body corporate shall mean the equity share capital with voting rights. In other cases ownership shall mean proprietary interest and control over the generating station or power plant;

d. "Special Purpose Vehicle" shall mean a legal entity owning, operating and maintaining a generating station and with no other business or activity to be engaged in by the legal entity."

33. Rule 3 of the Rules, 2005 has been *inter alia* amended by the Central Government in 2023. The generating plant has to be established in accordance with Section 2(8) and has to fulfill the conditions under Rule 3 of the Rules, 2005 with respect to share holding pattern and consumption pattern in order to be qualified as a captive generator users. The KERC published the draft KERC (Verification of Captive Status of Generating Plants/ Consumers in the State of Karnataka), Regulations 2023 ('draft Regulations, 2023' for short), under Section 181 of the Act, 2003. Subsequent to the publication of the draft Regulations 2023, the Apex Court, in the case of **Dakshin Gujarat**, interpreted Rule 3 of the Rules, 2005 and laid down the eligibility criteria for captive plants and captive users to claim captive status under the Act, 2003.

34. The Apex Court at paragraph Nos.43 and 44 has held as under:

"43. *The last portion of the second proviso to Rule 3(1)(a) of the Rules, that is, the proportionality principle, specifies an unitary qualifying ratio. The unitary qualifying ratio is the consumption requirement divided by the shareholding requirement, that is, 51% divided by 26%. This means that the owner of every 1% shareholding of the CGP should have minimum consumption of 1.96% of the electricity generated by the CGP, with a variation of $\pm 10\%$ being permissible. Therefore, the unitary qualifying ratio has to be within a range of 1.764% to 2.156%. In other words, we do not take into consideration 100% of the electricity generated. Instead, we apply the shareholding requirement, which should not be less than 26% in aggregate, to the electricity consumed, which should not be less than 51%, and thereby compute whether the ownership criteria and the proportionate consumption criteria is satisfied. Benefit of variation by 10% either way is to be a given.*

44. *For clarity, the illustrations provided Mr. M.G. Ramachandran, Senior Advocate, are reproduced below:*

Total Generation			100%	Unitary Qualifying Ratio is Consumption Requirement divided by Shareholding Requirement (with a variation of 10%) i.e. 51% divided by 26% which equals to 1.96% consumption by a captive user for every 1% shareholding	
Consumption Requirement (Not less than)			51%		
Shareholding Requirement (Not less than)			26%		
Shareholder	Actual Consumption	Actual Shareholding	Unitary Ratio Achieved	Remarks	Result
Illustration 1					
A	20	10.2	1.96	A, B, C, D, and E (all) consume not less than 1.96% for 1% shareholding and therefore all qualify as captive users. All collectively own more than 26% shareholding.	A to E qualify as captive users
B	20	10.2	1.96		
C	20	10.2	1.96		
D	20	10.2	1.96		
E	20	10.2	1.96		
Others	0	49	0		
Illustration 2					
A	15	7	2.14	<u>A, B, C, D, and E (all) consume more than 1.96% for 1% shareholding and therefore all qualify as captive users. All collectively own 26% shareholding.</u>	<u>A to E qualify as captive users</u>
B	15	6	2.5		
C	15	5	3		
D	15	4	3.75		
E	15	4	3.75		
Others	25	74	-		
Illustration 3					
A	30	10	3	<u>A, B and C qualify the captive consumption qua their shareholding in the ratio of not less than 1.96% of 1% shareholding. The ratio of D is not above 1.96, yet it qualifies on account of its ratio being within the permissible limit of 10% variation. E does not qualify as unitary consumption is 1.67% only, i.e. less</u>	<u>A to D qualify as captive users. E is not a captive user.</u>
B	30	10	3		
C	20	10	2		
D	5.75	3	1.92		
E	5	3	1.67		

Others	9.25	64	-	<u>than 1.96% per 1% shareholding and the same does not fall within 10% variation. Excluding E, the shareholding held by A, B, C and D is 33% i.e. not less than 26%. Hence A, B, C and D qualify as Captive users.</u> <u>The disqualification of E will not affect A, B, D and D as they cumulatively consume more than 51% and hold 33% i.e. not less than 26%.</u>	
Illustration 4					
A	25	6	4.17	A, B, C and D qualify the captive consumption qua their shareholding in the ratio of not less than 1.96% for as captive user as unitary consumption is 1% only, i.e. less than 1.96% per 1% shareholding. Excluding E, the shareholding held by A, B, C and D however is only 21%. Since cumulatively A, B, C, and D do not hold not less than 26%, by virtue of Rule 3(2) of Electricity Rules, 2005, they cannot claim captive user status.	No one qualifies as captive user
B	20	5	4		
C	15	5	3		
D	10	5	2		
E	5	5	1		
Others	25	74	-		
Illustration 5					
A	30	1	30	Neither of A or B qualify as captive user even though they collectively satisfy the requirements of minimum shareholding of not less than 26% and minimum consumption of not less than 51%. B does not qualify as unitary consumption is less than 1.95% and not within the 10% variation. A or B independently do not satisfy the shareholding and consumption requirements. By virtue of Rule 3(2) of Electricity Rules, 2005, they cannot claim captive user status	No one qualifies as captive user
B	21	25	0.84		
Others	49	74	-		

Once the above standard is met and satisfied, the person satisfying the requirement will be treated as a member of the group captive users."

Emphasis supplied

35. The Apex Court considered the second proviso to Rule 3 (1)(a) of the Rules, 2005 relating to association of persons/group captive users and explained the proportionality requirement. The Apex Court held that Rule 3 prescribes:

- i. Minimum 26% ownership and
- ii. Minimum 51% captive consumption.

36. The Apex Court, further observed that if the proportionality principle has to be examined with reference to the qualifying requirement under Rule 3 and not with reference to 100% of total electricity generated. The Apex Court recognized "UQR" as $51\% \div 26\% = 1.96\%$, meaning thereby for every 1% ownership, there should be corresponding qualifying captive consumption of 1.96% subject to permissible variation of $\pm 10\%$.

37. The Apex Court, further clarified that:

- a. The benchmark for proportionality is qualifying captive consumption requirement under Rule 3.
- b. And not total actual generation or total actual consumption.

38. By the impugned order, the KERC provides at Clause 6.7 as under:

"6.7 Test of proportionality for Group Captive User [As per 2nd provisio of clause (a) (ii) of sub-rule (1) of Rule 3 of Electricity Rules, 2005]:

(i) The test of proportional consumption in case of the Group Captive Users except Cooperative Society, shall be on actual energy consumption by Captive Users, determined on an annual basis and in proportion to the shares in ownership of the power plant within a variation not exceeding ten percent. In order to calculate the proportionate energy consumption requirement of Captive Users a term called Unitary Qualifying Ratio (UQR) is

used, which is the ratio of percentage of total consumption by Captive Users (Y) and the percentage of total ownership of Captive Users in the CGP (X). Thus, $UQR=Y/X$

(ii) The proportional consumption requirement by a Captive User in a CGP, except the Co-operative Society, shall be calculated on the basis of following formula:

Proportionate consumption of a Captive User = $UQR * \text{Percentage ownership of that Captive User.}$

Variation of $\pm 10\%$ in the Proportionate consumption of a Captive User is allowed. This formula is applicable for all Group Captive Users, except Co-operative Society

An illustration, in this regard, is provided at Annexure II.

(iii) In case of the change in shareholding during the year under consideration, the weighted average shareholding shall be used for calculation of proportional consumption requirement. Two illustrations, in this regard, are provided at Annexure III."

39. Under Clause 6.7, KERC provides the formula $UQR = Y \div X$, where;

- a. "Y" is equal to percentage of total consumption by captive users.
- b. "X" is equal to percentage of total ownership of captive users in the CGP.

40. Thus, under the impugned procedure:

- i. Proportionality is determined with reference to total actual captive consumption and total ownership.
- ii. And not with reference to the qualifying threshold of 51% captive consumption as recognized in paragraph No.43 of the ***Dakshin Gujarat***.

41. According to the petitioners, paragraph No.43 of the ***Dakshin Gujarat***'s judgment recognizes a UQR derived from $51\% \div 26\% = 1.96\%$, and the Apex Court specifically

rejected taking 100% generation or total consumption as a benchmark and that the KERC under Clause 6.7 applies proportionality to:

- a. Total actual captive consumption and
- b. Total ownership.

Thereby, introducing a fluctuating or dynamic “UQR” and therefore, it is contended that the KERC has substituted the statutory qualifying ratio recognized by the Apex Court with an entirely different methodology, and thereby rewriting Rule 3 through a procedural order.

42. According to the petitioners, once the Rule 3 and paragraph No.43 of the ***Dakshin Gujarat***’s judgment prescribe proportionality with reference to qualifying consumption, KERC could not have introduced a new formula based on total actual consumption and that the Clause 6.7 of the impugned order is directly contrary to the law declared by the Apex Court.

43. The KERC, however, contends that the petitioners are selectively reading paragraph No.43 without considering the entire judgment, particularly paragraph Nos.45 to 47. Paragraph Nos.45 to 47 of the ***Dakshin Gujarat*** reads as under:

"45. The aforesaid interpretation checks, "gaming", by owners, which would amount to misuse and abuse of the Rule 3(1)(a) of the Rules. Instances of gaming are where a 1% or an insignificant shareholder of the CGP disproportionately uses the electricity generated, in which case he should not be treated as a group captive user and, therefore, should be denied the benefits that are given under the Act to the captive users. Gaming or misuse should be checked to protect interests of the Distribution Licensee.

46. This brings us to the question of applicability of the second proviso of Rule 3(1)(a) in cases where there is a change in ownership or shareholding of the CGP. An issue arises with respect to calculation of proportional consumption of electricity under the second proviso to Rule 3(1)(a) of the Rules when an existing captive user exits/transfers their shareholding/ownership to a new captive user. It

may happen in multiple situations. The APTEL in Tamil Nadu Power had postulated that such issue would be resolved if the minimum consumption and shareholding requirements are verified only at the end of the financial year. However, we have held that the minimum consumption and shareholding requirement are required to be maintained continuously and not just at the end of the year. It is only with respect to determining the ownership proportionate to consumption of electricity that requires our attention, with respect to the second proviso to Rule 3(1)(a) of the Rules.

47. In case of change of ownership, shareholding, or consumption, the principle of weighted average should be applied to ensure compliance of the proportional electricity consumption requirement stipulated under the second proviso to Rule 3(1)(a). For instance, if a captive consumer exits or drops out in the middle of the year, transferring its shareholding to another or new captive user, it would be fair to hold that the captive user who has become a shareholder in the middle of the year, is required to consume proportionately to the electricity generated. In a given case, existing captive users taking advantage of the variation, may enhance their consumption. The concept of weighted average shareholding comes in aid to calculate the relevant

average shareholding of the captive user in the year and the proportionate electricity required to be consumed by him. To borrow from the illustrations provided by learned Senior Advocate Mr. Basava Prabhu Patil, appearing on behalf of Tata Power Company Limited, this comes in aid in instances where the shareholding of a captive user in a CGP fluctuates, provided that the minimum ownership requirement of 26% in aggregate is not being breached. Further, a shareholder may hold 30% of shares of the CGP for 3 months, 40% of shares for 4 months, and 50% of the shares for the balance 12 months. The weighted average shareholding method is applied by taking average shareholding held by particular shareholder for the year for the purpose of calculating proportionate electricity required to be consumed by it in terms of the second proviso of Rule 3(1)(a)."

44. According to KERC, 1.96% is only illustrative and contends that 1.96% is not a rigid universal formula and it merely illustrates the statutory relationship between 51% and 26% and that Clause 6.7 of the impugned order merely operationalises the proportionality requirement already embedded in Rule 3 and does not create any new

substantive conditions. The KERC strongly relies upon the Apex Court's observation regarding "gaming" by insignificant shareholders and contends that if unless actual consumption is proportionally linked to ownership, captive users may misuse surcharge exemption benefits. Therefore, the core issue for determination is "whether paragraph No.43 of the ***Dakshin Gujarat***'s judgment limits proportionality only to qualifying consumption requirement under Rule 3?" or "whether, the judgment read as a whole permits proportionality verification with reference to total actual captive consumption as prescribed under Clause 6.7 of the impugned KERC order?"

45. A careful reading of the judgment of the Apex Court in ***Dakshin Gujarat***, particularly the above referred paragraphs, would indicate that the Apex Court interpreted Rule 3 of Rules, 2005 in the context of:

- i. Minimum qualifying ownership of 26%.
- ii. Minimum qualifying captive consumption of 51%.

iii. Proportionality between ownership and consumption in association of persons/group captive structures.

iv. Prevention of misuse or “gaming”, by insignificant shareholders.

46. The Apex Court observed that a fix, constant baseline of “UQR” by deriving the figure $51\% \div 26\% = 1.96\%$. The Apex Court observed that for every 1% ownership there shall be a corresponding qualifying captive consumption of 1.96% variation of $\pm 10\%$. The illustrations contained in paragraph No.44 of the judgment and the subsequent observation explain the working methodology of proportionality principle with reference to the qualifying requirement under Rule 3. The petitioners contend that the Apex Court thereby confirmed proportionality only to qualifying captive consumption requirement of 51% and not to total actual consumption. According to the petitioners, once Rule 3 of Rules 2005 prescribes only minimum

qualification thresholds and the Apex Court, itself used qualifying benchmark of $51\% \div 26\%$, KERC, could not have substituted the same by introducing a fluctuating or dynamic UQR based on "total actual captive consumption". It is further contended that the impugned KERC order, which prescribes UQR as " $Y \div X$," is contrary to the law laid down by the Apex Court, since under the illustration adopted by KERC, the UQR itself fluctuates depending upon the total actual consumption. According to the petitioners, this approach departs from paragraph of the Apex Court judgment.

47. The illustrations referred in paragraph Nos.43 and 44 indicate that the Apex Court examined proportionality with reference to qualifying captive consumption requirement under Rule 3 and not with reference to total actual consumption and Clause 6.7 of the impugned order departs from the above methodology and recalculates the UQR dynamically on the basis of total actual captive consumption and total ownership. Rule 3 nor paragraph No.43 of the ***Dakshin Gujarat***'s judgment, expressly contemplates such

fluctuating or dynamic UQR, the Rule prescribed qualifying thresholds, and the Apex Court explained proportionality with reference to those qualifying thresholds. Though the KERC seeks to justify the impugned methodology by relying upon the anti-gaming observations contained in paragraph Nos.45 to 47 of ***Dakshin Gujarat***'s judgment, such observations cannot be read in isolation so as to substitute the qualifying ratio expressly explained by the Apex Court in paragraph No.43. The illustration furnished in the impugned order substantially alters the basis of proportionality by treating total actual captive consumption as the benchmark. This results in introduction of a new verification mechanism not expressly found either in Rule 3 or in judgment of the Apex Court.

48. Further, the KERC had earlier issued draft regulation during 2023 and revised draft regulation during 2024 inviting stakeholder objections. However, the impugned order introducing a materially different methodology cannot be issued without fresh consultation or hearing the

petitioners. Thus, cannot be non-suited solely on the ground of an alternative remedy, particularly, when the challenge is to the jurisdiction and legality of the impugned framework itself.

49. The contention of the KERC that the impugned order is merely procedural and also cannot be accepted in its entirety, since methodology prescribed directly impacts determination of captive status and consequent liability towards cross subsidy surcharge and additional surcharge. Accordingly, the points framed for consideration are answered and this Court is of the considered view that the impugned order introduces a dynamic "UQR" based on actual captive consumption contrary to the qualifying benchmark explained in paragraph No.43 of the ***Dakshin Gujarat***'s judgment and the same cannot be sustained and this Court pass the following:

ORDER

- i. The writ petitions are ***allowed.***

- ii. The impugned Order dated 28.03.2025 (Annexure-A) passed by the KERC is hereby ***quashed***.
- iii. The KERC to reconsider the matter and frame an appropriate procedure consistent with Rule 3 of the Electricity Rules, 2005 and law declared by the Apex Court in ***Dakshin Gujarat***'s judgment, after following the due consultative process and principles of natural justice.
- iv. Till such consideration, no coercive action shall be taken against the petitioners.

Pending IAs, if any, would not survive for consideration.

Sd/-

JUSTICE K.S. HEMALEKHA

AT