IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Appellate Side

Present:
The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

MAT 970 of 2025
with
IA No.: CAN 1 of 2025
Damodar Valley Corporation
Vs.
Metsil Exports Private Limited & Ors.
with
MAT 1308 of 2025
With
IA No.: CAN 1 of 2025
With
IA No.: CAN 2 of 2025
West Bengal Electricity Regulatory Commission
Vs.
Metsil Exports Private Limited & Ors.
With
MAT 926 of 2025
With
IA No.: CAN 1 of 2025
Metsil Exports Limited (formerly Metsil Exports Private Limited) & Anr.
Vs.
West Bengal Electricity Regulatory Commission & Ors.

For the appellant-DVC in MAT 970 of 2025, for the respondent nos.4 and 5 in MAT 1308 of 2025 and MAT 926 of 2025.	: Mr. Sakya Sen, Ld. Sr. Adv. Mr. Rajarshi Dutta, Adv. Mr. Sourjya Ganguly, Adv. Ms. Pooja Chakraborti, Adv. Ms. Debomita Sadhu, Adv. Mr. Sagnik Aditya, Adv.

For the appellant- West Bengal Electricity Regulatory Commission in MAT 1308 of 2025, for the respondent no.3 in MAT 970 of 2025 and for the respondent no.1 in MAT 926 of 2025	:	Mr. Jayanta Mitra, Ld. Sr. Adv. Mr. Raja Saha, Adv. Mr. Sanjay Mukherjee, Adv. Ms. Bahnidipa Ray, Adv.
For the appellants in MAT 926 of 2025, for the respondent nos.1 and 2 in MAT 970 of 2025 and MAT 1308 of 2025	:	Mr. Tanoy Chakraborty, Adv. Mr. Siddharth Shroff, Adv.
Hearing Concluded on	:	September 3, 2025
Judgement on	:	September 26, 2025

DEBANGSU BASAK, J.:-

1. Two appeals have been heard analogously as they have emanated from the same impugned judgment and order dated May 2, 2025 passed in WPA 4669 of 2023. Damodar Valley Corporation (DVC) has filed MAT 970 of 2025 while, West Bengal Electricity Regulatory Commission (WBERC) has filed MAT 1308 of 2025.

2. By the impugned judgment and order, learned Single Judge has, struck down Regulation 4.4 of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011. Learned Single Judge has directed WBERC to frame appropriate fresh regulations, for curbing excess drawals and issued various guidelines with regard thereto.

3. Learned Senior Advocate appearing for DVC has submitted that, DVC is a licensee within the meaning of Section 14 of the Electricity Act, 2003 and is statutorily empowered to impose drawal restrictions.

4. Learned Senior Advocate appearing for DVC has contended that, WBERC is the State Commission responsible for determining tariff for the consumers of DVC in the State of West Bengal. WBERC in exercise of powers under Section 61, 62 and 181 of the Act of 2003, amongst others, has formulated the Regulations of 2011.

5. Learned Senior Advocate appearing for DVC has referred to Regulation 4.3.6 and 4.4 of the Regulations of 2011. He has contended that Regulation 4.4 is a penal consequence of breach of Regulation of 4.3.6 which vests on the distribution licensees the power to impose penalties in case of overdrawal during periods of load restrictions. He has contended that, Regulation 4.4 has been struck down without noticing that, Regulation 4.3.6 was not under challenge.

6. Learned Senior Advocate appearing for DVC has referred to the provisions of Section 48 and 53 of the Act of 2003. He has also referred to Section 70 of the Act of 2003 and contended that, the Central Electricity Authority is empowered to devise suitable measures to protect the public confidence in respect of transmission and distribution of electricity and maintenance of any electrical lines or plants. He has referred to Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations, 2023. He has also referred to Regulation 36 (3) (c) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulation, 2023. He has contended that, the statute and the regulations framed thereunder contains inbuilt provisions for the purpose of imposition of load restriction and/or shut down.

7. Learned Senior Advocate appearing for DVC has contended that, Regulation 4.4 of the Regulations of 2011 does not grant unbridled or unfettered power to a licensee. He has contended that, Regulation 4.4 is a penal provision in case of overdrawal during periods of load restrictions. Such power of the licensee to impose load restriction is derived from

Regulation 4.3.6 which has stipulated the specific circumstances in which load restrictions can be imposed and the methodology for computation of energy charges during the respective periods of load restriction in case there is no overdrawal.

8. Learned Senior Advocate appearing for DVC has contended that the Act of 2003 provides a consumer a forum to challenge the proprietary of the action taken for the imposition of load restriction. Therefore, according to him, neither Regulation 4.4 nor Regulation 4.3.6 of the Regulations of 2011 can be classified as granting unrestricted power to the licensee. He has contended that, the use or the alleged misuse of such powers is justiciable within the framework of the Act of 2003.

9. Learned Senior Advocate appearing for DVC has contended that, on previous occasions, the writ petitioner had approached the Commission with regard to the load restriction, when the WBERC has adjudicated as against the DVC.

10. Learned Senior Advocate appearing for DVC has contended that, the Power Purchase Agreement (PPA) is not inconsistent with the Regulation 4.4 with the Regulations of 2011. He has referred to various clauses of PPA. He has contended that, imposing load restrictions does not serve financial interest of DVC since it affects the income of DVC. He has relied upon ***2020 Volume 5 Supreme Court Cases 185 (CLP India Private Limited vs. Gujarat Urja Vikas Nigam Limited and Another)*** for the proposition that the terms of the PPA are subservient to the statutory regulations.

11. Learned Senior Advocate appearing for the DVC has contended that, apart from Regulation 4.4 of the Regulations of 2011, Regulation 4.3.1 of the West Bengal Electricity Regulatory Commission (Electricity Supply Board) Regulation, 2013 vests power upon the licensee to disconnect electricity when the usage of the consumer may endanger the supply of the licensee.

12. Learned Senior Advocate appearing for the DVC has contended that, the mechanism devised for load restrictions by the licensee is based on scientific basis to safeguard public interest. Load restriction is imposed only in exceptional situations when there is a mismatch in the demand and supply in a grid. The same can be acted upon only by a licensee based on real time assessment of the balance between drawal and supply and cannot be subject to prior approval. He has contended that Regulation 4.4 of the Regulations of 2011 are in public interest as unchecked drawal during periods of reduced supply may endanger grid safety.

13. Relying upon ***2008 Volume 4 Supreme Court Cases 720 (Government of Andhra Pradesh and Others vs. Laxmi Devi (Smt)*** and ***2019 Volume 7 Supreme Court Cases 172 (Vasavi Engineering College Parents Association vs. State of Telengana and Others)***, learned Senior Advocate appearing for DVC has contended that scope of judicial review in matters of regulatory policy is limited.

14. Learned Senior Advocate appearing for DVC has contended that, there are various practical difficulties as a consequence of the impugned order. He has referred to Regulation 4.3.6 of the Regulations of 2011 which was not challenged and which still remains. However, by the impugned judgment and order, learned Singe Judge has directed that all load restriction shall stand rescinded from the date of the impugned judgment and order with immediate effect. He has pointed out that in absence of the right to impose load restrictions, the licensee in case of grid failure will be required to shut down completely. In case of routine maintenance the licensee will be required to or continue to supply in absence of load restrictions thereby forgoing maintenance. In both cases public safety and interest will be hampered as the supply through grid will be affected. Routine maintenance is required to maintain optimum health of the supply and therefore periodic restrictions on drawal has to be put in place.

15. Learned Senior Advocate appearing for the WBERC has submitted that, Regulation 4.4 of the Regulations of 2011 should not be considered as a stand alone regulation. He has contended that, such regulation should be read in the context of the Act of 2003 as also other regulations under the Act of 2003.

16. Learned Senior Advocate appearing for WBERC has submitted that, the regulations enacted from time to time under the Act of 2003 are for the purpose of giving effect to the objects of the Act of 2003. He has contended that, production, distribution and transmission of electricity along with other ancillary matters are governed by the Act of 2003.

17. Learned Senior Advocate appearing for WBERC has submitted that, in the power system operation, frequency is a key indicator of the stability and balance between electricity generation and demand in a power system. He has pointed out that, the national reference frequency of power is 50 hertz. The actual frequency however can vary slightly above or below 50 hertz depending on real time operation balance between electricity supply and consumption. He has pointed out that, in terms of the provisions of the Act of 2003, system operators are created to monitor the Grid Operations and optimum scheduling and Despatch (balancing Generation and Demand) and other functions at the national, regional level and state levels. At the national level is the National Load Despatch Centre in terms of Section 26 of the Act of 2003. There are 5 Regional Load Despatch Centres (RLDC) in terms of Sections 27, 28 and 29 of the Act of 2003 and that, there are 33 State Load Despatch Centres (SLDC) including for the area in which DVC operates, in terms of Sections 31, 32 and 33 and the Act of 2003.

18. Learned Senior Advocate appearing for WBERC has contended that, the National Grid comprising of the State and the Regional power system is operating as a single synchronous system since December, 2013. System operators issue directions which are to be complied with by all power utilities, transmission company and distribution company by balancing the load and generation on real time basis. Every licensee being power utilities under real time operations of power system is duty bound to obey the instruction given from the operators such as NLDC, RLDC or SLDC as the case may be.

19. Learned Senior Advocate appearing for WBERC has contended that, in terms of Section 29 of the Act of 2003 the RLDC may give instruction and exercise such supervision and control as may be required for ensuring stability of grid operation and for achieving the maximum economy and efficiency in operations of the power system in the region under its control. Every licensee generating company or generating station, sub-station and any other person connected with the operation of the power has to comply with the direction issued by the RLDC. Similarly, in terms of Section 33 of the Act of 2003, direction issued by SLDC has to be complied with. SLDC has to comply with the directions of

RLDC. If any dispute arises with reference to the quality of electricity or safe, secure and integrated operations of State Grid or in relation to any direction given under Section 33 of the Act of 2003, then it has to be referred to the State Commission for a decision. If any licensee, generating company, or any other person fails to comply with the directions issued under Section 33 of the Act of 2003, it shall be liable to a penalty.

20. Learned Senior Advocate appearing for WBERC has pointed out that every distribution company has an area load despatch centre to look after the operation in its controlled area as per directions of the system operator. In real time operation, power system is categorised under normal state, alert state, emergency state, extreme emergency state and restorative state under Regulation 35 of the Central Electricity Regulation Commission (Indian Electricity Grid Code), 2003. Therefore states are to monitored at every level. Power supply to end consumer may be hampered or stopped or restricted due to failure of generation or failure of the transmission lines/substation or failure of distribution lines/pole/transformer or any equipment as the case may be.

21. Learned Senior Advocate appearing for WBERC has contended that, in terms of Regulation 36 of the Regulation of 2003, the demand and load shall be managed by ensuring grid security and SLDC in coordination in State Transmission Utility and distribution licensee and shall develop automatic demand management with emergency control at SLDC. Whenever the Power System is in Alert or Emergency State, as assessed by SLDC or as advised by RLDC or NLDC, SLDC shall direct taking of corrective measures which includes imposition of restrictive drawals.

22. Learned Senior Advocate appearing for WBERC has contended that distribution licensee executes Power Purchase Agreements with generators to obtain power for consumers. Distribution licensee also executes transmission service agreement for use of the transmission corridors to get power supply of contracted quantum from the generating station through transmission corridors. In sudden power shortfall or power surplus situation for real time demand supply matching, distribution company, may purchase or sell power to power exchange, if on the other side, any other distribution licensee is available at that point of time to purchase such surplus power of generator is ready to supply power to meet the shortfall.

23. Learned Senior Advocate appearing for WBERC has contended that the operations of power utilities are monitored by the system operator at all times and that, power utilities are required to abide by the regulation system by the Authority, Central Commission and State Commission. Moreover, in terms of the Section 48 of the Act of 2003, a distribution licensee may require any person who requires a supply of electricity to accept any restriction which may be imposed for the purpose of enabling distribution licensee to comply with the regulations made under Section 53.

24. Learned Senior Advocate appearing for WBERC has contended that at any point of time any person including a consumer of electricity becomes aggrieved by any decision of a licensee including a decision of restriction upon drawal contravening any provision of the Act or Rules or Regulations, it may approach the appropriate commission as defined under Section 2(4) of the Act of 2003 for redressal of its grievance and in that case the appropriate commission upon being satisfied about the contravention of law may impose punishment in terms of Section 142 of the Act of 2003.

25. Learned Senior Advocate appearing for WBERC has contended that under Section 146 of the Act of 2003 there is a provision of punishment of imprisonment for non compliance of any order or direction issued under the Act of 2003, rules or regulations framed thereunder. In addition thereto Regulation 8.4 of the Regulations of 2011 has prescribed the inherent power of the Commission to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the commission.

26. Learned Senior Advocate appearing for WBERC has contended that there are adequate checks and balances within the statute to prevent any arbitrary exercise of any of the provisions of the Act of 2003, including the provisions of the Regulations of 2011 and in particular Regulation 4.4.

27. Learned Senior Advocate appearing for WBERC has contended that, since there are sufficient redressal mechanisms already available under the Act of 2003 as well as in the regulatory provisions, interference by the Writ Court may not be warranted. He has contended that the learned

Single Judge has erred in holding that Regulation 4.4 of the Regulation of 2011 gives unbridled power.

28. In support of the contentions, learned Senior Advocate appearing for WBERC has relied upon ***AIR 1951 SC 41 (Charanjit Lal Chowdhury vs. Union of India and Others)***, ***1997 Volume 7 Supreme Court Cases 592 (M. P. Oil Extraction and Another vs. State of M.P. and Others)*** , ***1990 Volume 1 Supreme Court Cases 613 (Charanlal Sahu vs. Union of India)*** , ***2007 Volume 4 Supreme Court Cases 737 (Directorate of Film Festivals and Others vs. Gaurav Ashwin Jain and Others)***, ***2024 Supreme Court Cases Volume 4 Supreme Court Cases 115 (Vishal Tiwari vs. Union of India and Others)***, ***AIR 1962 SC 316 (Collector of Customs, Madras vs. Nathella Sampathu Chetty and Anr.)***, ***2003 Volume 4 Supreme Court Cases 104 (Public Services Tribunal Bar Association vs. State of UP and Another)***, ***2004 Volume 2 Supreme Court Cases 476 (People's Union For Civil Liberties and Another vs. Union of India and Others)***, ***2008 Volume 2 Supreme Court Cases 254 (Karnataka Bank Ltd. vs. State of***

Andhara Pradesh and Others) and ***2024 INSC 136 (Anun Dwawan & Ors vs. Union of India & Ors)***.

29. Learned advocate appearing for writ petitioner has contended that challenge to Regulation 4.4 of the Regulation of 2011 is based primarily on three grounds. He has contended that such regulation lacks a clear basis for imposing restrictions, as there is no mention of the specific grounds or situation in which such a restriction can be applied. It confers unrestricted power to the licensee to curtail the contract demand at its own discretion and that the sub delegation of power to the licensee is without proper authority.

30. Learned advocate appearing for writ petitioner has relied upon ***AIR 1958 SC 538 (Shri Ram Krishna Dalmia vs. Shri Justice S. R. Tendolkar & Others)***, ***1959 Supreme Court Cases OnLine Cal 94 (S. M. Nawab Ariff vs. The Corporation of Calcutta and Ors.)***, ***2003 Volume 7 Supreme Court Cases 151 (Krishna Mohan (P) Ltd. vs. Municipal Corporation of Delhi and Others)***, in support of such proposition.

31. Learned advocate appearing for writ petitioner has relied upon ***1994 Volume 5 Supreme Court Cases 346***

(Sahini Silk Mills (P) Ltd. and Another vs. Employees' State Insurance Corporation) on the proposition of delegation.

32. Learned advocate appearing for writ petitioner has pointed out that, there is no guideline on how the licensee will impose a restriction. There is no predecisional hearing given to any person before imposition of penalty.

33. Learned advocate appearing for writ petitioner has contended that demand charges which are based on the contract demand as defined in the West Bengal Electricity Commission (Electricity Supply Board), Regulation 2013 and electricity charges are based on meter readings and consumption. Regulation 4.3.6 of the Regulations of 2011 addresses situations where a consumer is not required to pay demand charges due to interruption, load shedding or partial restrictions. This regulation however does not specify the grounds or methods for imposing restricted drawal. Regulation 4.4 of the Regulations of 2011 which governs situation where a consumer's electricity consumption is restricted in accordance with their contract demand and also outlines penalties for operating such restrictions.

34. Learned advocate appearing for writ petitioner has contended that the net effect is that there is no parameter under which Regulation 4.4 of the Regulations of 2011 is to operate. He has contended that the learned Single Bench has rightly held Regulation 4.4 of the Regulations of 2011 to be ultra vires the Constitution.

35. The writ petitioner has approached the Writ Court assailing the vires of Regulation 4.4 of the Regulations of 2011 and also challenging a bill raised by DVC on the writ petitioner No. 1 on account of violation of Regulation 4.4 of the Regulations of 2011.

36. DVC as a distribution licensee had entered into a Power Purchase Agreement (PPA) with the Writ petitioner no. 1 for supply of electricity at the unit of the writ petitioner no. 1 located in the State of West Bengal.

37. The unit of the Respondent No. 1, in respect of which, the impugned bill of DVC had been raised is located at Barjora in the district of Bankura. DVC had imposed load restrictions at Barjora high tension consumers including the writ petitioner no. 1 on January 5, 6, 10, 11 and 21, 2023.

According to DVC such load restrictions had been imposed for the purpose of routine overall maintenance of the supply line.

38. DVC had from time to time imposed load restrictions on its consumers in West Bengal. Action of DVC in imposing load restriction had been assailed by consumers under DVC from time to time. Such complaints had been lodged with the WBERC. In one of such complaints being Case no B-5/2(a) which was disposed of by an order December 11, 2020 WBERC had found DVC guilty of making unjustified demands after imposing drawal restrictions. WBERC, by its order dated December 11, 2020 passed in Case No. B-5/2(a) had held that restrictions on power drawal imposed by DVC as also the imposition of penal charges for overdrawal during such restrictions were bad. WBERC had by such order directed setting aside of the bills raised by DVC in that regard. It had also directed that in any event if any consumer had paid such bill, such over payment was to be adjusted against future bills of DVC.

39. Effective statutory alternative remedy by way of complaints to WBERC is available in respect of the scenario as alleged in the writ petition and the writ petitioner had availed of such statutory alternative remedy successfully as noted above.

40. Learned Single Judge has not interfered with the bill raised by DVC after having held Regulation 4.4 of the Regulations of 2011 to be unconstitutional and ultra vires.

41. It is in this factual matrix that the law on the issues raised have to be considered. Parties have cited a number of authorities and relied on various Regulations promulgated under the Act of 2003.

42. ***Charanjit Lal (Supra)*** has held that, the Court should prima facie lean in favour of constitutionality and support the legislation if it is possible to do so, on any reasonable ground and it is for the party challenging the legislation to place all materials before the Court which would go to show that the statute is arbitrary and unsupportable.

43. ***M. P. Oil Extraction and Another (supra)*** has held that, judicial review of policy matters and decisions are limited. It has held that, unless policy decision is absolutely capricious, unreasonable and arbitrary and based on some ipsi dixit of the executive authority or is violative of the

Constitution of India, interference of the Court is not called for.

44. ***Charanlal Sahu (Supra)*** has considered the provisions of the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 and held the same to be constitutionally valid.

45. In ***Gaurav Ashwin Jain and Others (supra)*** the Supreme Court has held that, the scope of judicial review of Governmental policy does not permit a Court to act as an appellate authority examining the correctness, suitability and appropriateness of a policy. It has held that, the Courts are not advisors to the Executive on matters of policy which the Executive is entitled to formulate. The scope of judicial review when examining the policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed by the provisions of the Constitution or opposed to any statutory provision or is manifestly arbitrary. Courts cannot interfere with the policy either on the grounds that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy and not the wisdom or soundness of the policy is the subject matter of judicial review.

46. ***Vishal Tiwari (supra)*** on the scope of judicial review has held as follows :-

> *17. From the above exposition of law, the following principles emerge:*
>
> *(a) Courts do not and cannot act as appellate authorities examining the correctness, suitability, and appropriateness of a policy, nor are courts advisors to expert regulatory agencies on matters of policy which they are entitled to formulate;*
>
> *(b) The scope of judicial review, when examining a policy framed by a specialised regulator, is to scrutinise whether it : (i) violates the fundamental rights of the citizens; (ii) is contrary to the provisions of the Constitution; (iii) is opposed to a statutory provision; or (iv) is manifestly arbitrary. The legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review;*
>
> *(c) When technical questions arise — particularly in the domain of economic or financial matters — and experts in the field have expressed their views and such views are duly considered by the statutory regulator, the resultant policies or subordinate legislative framework ought not to be interfered with;*
>
> *(d) SEBI's wide powers, coupled with its expertise and robust information-gathering mechanism, lend a high level of credibility to its decisions as a regulatory, adjudicatory and prosecuting agency; and*

> *(e) This Court must be mindful of the public interest that guides the functioning of SEBI and refrains from substituting its own wisdom in place of the actions of SEBI.*
>
> *We have made a conscious effort to keep the above principles in mind while adjudicating the petitions, which contain several prayers that require the Court to enter SEBI's domain.*

47. ***Nathella Sampathu Chetty and Anr. (supra)*** has upheld the constitutional validity of Section 14 of the Sea Customs Act, 1878.

48. ***Public Services Tribunal Bar Association (supra)*** has held that, Court must be conscious to start with the presumption regarding constitutional validity of the legislation. The burden of proof is upon the shoulder of the person who has challenged it.

49. ***Peoples Union For Civil Liberties and Another (supra)*** has held that, there is presumption of constitutionality of a legislation and that, such presumption extends in relation to law which has been enacted for imposing reasonable restrictions on a fundamental right as also presumption in favour of executive acts. It has also held that further presumption may be drawn that the statutory authority would not exercise the power arbitrarily.

50. ***Karnataka Bank Ltd. (supra)*** has held that, the presumption or constitutional validity is in favour of the legislation. It has held that, while adjudicating the validity of statutes, the Court is not concerned with the wisdom of the legislation and that, if the legislation is within the framework of the Constitution it must be upheld irrespective of the Courts own view.

51. In ***Anun Dwawan & Ors (supra)*** Supreme Court has held that, scope of judicial review in examining the policy matters is very limited. Courts cannot direct the State to implement a particular policy or scheme on the ground that a better, fairer or wiser alternative is available.

52. ***Laxmi Devi (Smt) (supra)*** has held that, there is difference in approach with regard to judicial review of a legislation relating to fiscal, taxing or economic measures and other legislation. It has held that, greater latitude is given to the legislature by the Court in respect of fiscal or taxing statutes or in case of economic measures. In the facts of that case, Section 47A of the Stamp Act, 1899 has been held to be constitutionally valid.

53. In ***Krishna Mohan (P) Ltd. (supra),*** Supreme Court has held that, Section 116(3) of the Delhi Municipal Corporation Act, 1957 delegates unguided and uncanalised legislative power to the Commissioner to declare plant or machinery as part of the land or building for the purpose of determination of the rateable value thereof and that the same suffers from no provision for appeal against the exercise of discretion by the Commissioner.

54. ***Shri Ram Krishna Dalmia (supra)*** has held that, if a law is administered with an evil eye and an unequal manner or for an oblique or unworthy purpose, the same can be struck down. It has also held that a discretionary power is not necessarily a discretionary power and that abuse of process is not to be easily assumed where the discretion is vested with the Government and not any minor official.

55. ***S. M. Nawab Ariff (supra)*** has held that, in determining the question of the validity or otherwise of a statute, the Court will not strike down a law out of hand only because no classification appears on its face or because a discretion is given to the Government to make a selection or classification. Court has to examine and ascertain, if the statute lays down any principle or policy for guidance of the exercise of discretion by the Government.

56. ***Sahini Silk Mills (P) Ltd. and Another (supra)*** has considered the provisions of the Employees State Insurance Corporation Act, 1948 and held that, the resolution dated February 28, 1976 of the ESI Corporation delegating power to the Director General or any other officer authorised by him was ultra vires Section 94A of the Act of 1948.

57. ***CLP India Private Limited (supra)*** has held that, notifications issued under Section 43A of the Electricity (Supply) Act, 1948 are statutory in nature and binding on the parties. Any PPA between a generating company and the purchaser of electricity is subject to such statutory notification and that parties by agreement cannot override statutory provisions or notifications so far as they relate to matters of tariff.

58. ***Vasavi Engineering College Parents Association (supra)*** has held that, Court can neither act as an Appellate Authority nor can usurp jurisdiction of the decision maker and make the decision itself. It has held that judicial review lies against the decision making process and not on the merits of the decision itself.

59. While considering a challenge to the vires of a statute, Court has to lean in favour of its constitutionality unless, it is established that, the statute in question violates the fundamental rights of the citizen or is contrary to the provisions of the Constitution. Greater latitude has to be afforded in respect of statutes relating to fiscal, revenue and economic matters. Where a policy is under challenge before a Court, Courts do not and cannot act as an Appellate Authority, examining correctness, suitability and appropriateness of the policy concerned nor are Courts to advice on matters of policy although, the Court may have a different opinion with regard to the concerned policy.

60. In respect of economic and financial matters involving technical issues, particularly when experts in the field have expressed their views and such views are duly considered by statutory regulator the resultant policy or supporting legislative framework ought not to be interfered with.

61. Judicial review of a policy matter is available if the person challenging it establishes that it violates the fundamental rights or is contrary to any provision of the constitution or opposed to a statutory provision or manifestly arbitrary.

62. Applying such tests to the facts of the present case, we find that, there is a PPA between DVC and the writ petitioner, which has a prescribed contract load. Relationship between DVC and the writ petitioner No. 1 is governed by the Act of 2003 and the rules and regulations framed thereunder. PPA between DVC and writ petitioner No. 1 is obviously subservient to the Act of 2003 and the Rules and Regulations thereunder.

63. Under the scheme of the Act of 2003, a distribution licensee such as DVC is empowered to impose drawal restrictions upon its consumers notwithstanding the contract load specified in the PPA. Power to impose drawal restriction has been embodied in Regulations 4.3.6 and 4.4 of the Regulations of 2011 amongst others. Regulations of 2011 have been framed in exercise of powers conferred under the Act of 2003. Regulations of 2011 have sought to regulate the terms and conditions of tariff that a power utility is legitimately entitled to charge and a consumer is obliged to pay. It has sought to regulate quantum of tariff chargeable and payable in different situations. Such being a specialised field, and the Act of 2003 contemplating statutory regulator with regard to every aspect of the same, Courts should be extremely slow in interfering with any Regulation framed under the Act of 2003.

64. In the facts of the present case, for several days in the month of January, 2022, DVC had imposed a drawal restriction ostensibly on the ground of maintenance of the transmission line. Drawal restriction was not limited to the writ petitioner No. 1 alone but it had encompassed all PPA consumers supplied by the subject transmission line.

65. There are instances where the writ petitioner No. 1 along with others have questioned the restrictions imposed by DVC successfully.

66. In the writ petition, the writ petitioners have assailed the restriction imposed by DVC. Writ petitioners have statutory alternative remedy with regard to the grievance canvassed in the writ petition.

67. Two regulations out of the Regulations of 2011 have been canvassed before us, namely, Regulation 4.3.6 and 4.4 which are as follows:-

"4.3.6 No demand charge shall be payable by any consumer for that period when load of the consumer is interrupted/ totally shed/ partially restricted because of any fault of the licensee or its system or for non-availability of power with the licensee due to lower availability of power from its own generating station and / or its other suppliers of power or imposition of any restriction by the licensee on drawal of power by consumer. However, such exemption from demand charge shall not be available if the interruption is caused by grid failure or automatic under-frequency relay tripping or any force majeure event not related to licensee or due to disconnection of supply for any fault on the part of the consumer. Accordingly, after taking into consideration regulations 4.3.2, 4.3.3, 4.3.4, and 4.3.5, the demand charge in a billing period for a consumer shall be determined in accordance with the following formula:

$$DC = DC_A \times \frac{(H - \Sigma H_i) \times MD + \Sigma(H_i \times RD_i)}{H}$$

Where

DC = Computed Demand Charge applicable to a consumer for billing period

DC_A = Applicable rate of demand charge for a consumer.

H = Total hours in the billing period.

H_i = The duration involved for ith incidence of interruption / total shed / partial restriction in supplying power to the consumer which is not to be considered as per this regulation.

MD = Maximum Demand considered for levying demand charge as per regulation 4.3.5.

RD_i = Restricted load imposed on the consumer corresponding to ith incidence or actual drawal during the period of such restriction whichever is higher.

4.4 If in a 15 minutes time block a consumer draws power more than the restricted drawal, if any, imposed by a licensee then the consumer will pay additional energy charge at a rate twice the applicable rate for that consumer at that time block. Such additional energy charge shall be payable in addition to the amount that is payable as energy charge for consumption of energy in that particular time block."

68. Regulation 4.3.6 of the Regulations of 2011 has stipulated that no demand charge shall be payable by any consumer for that period when the load of the consumer is interrupted/totally shed/ partially restricted because of any fault of the licensee or a system or non availability of power with the licensee due to lower availability of power from its own generating station and/or its other suppliers of power or imposition of any restriction by the licensee on drawal of power by consumer.

69. Regulation 4.3.6 of the Regulations of 2011 therefore, has postulated that, a licensee can impose a restriction on drawal of power by the consumer.

70. Regulation 4.4 of the Regulations of 2011 has prescribed a financial deterrent on the consumer violating the imposition of the drawal of power. In other words, should the consumer, violate the drawal of power restriction imposed by a licensee, then, the consumer is made liable to pay twice the amount of energy charge.

71. In a given situation, therefore, there can arise a dispute as to whether or not, the restriction on drawal of power imposed by the licensee is legal and valid. If the answer to such issue is in the negative then, the licensee cannot charge at the rate prescribed under Regulation 4.4.

72. The issue therefore, when, a licensee raises a bill on the basis of Regulation 4.4 of the Regulations of 2011, which would fall for consideration, is whether the restriction applied by the licensee is valid and legal within the meaning of the Act of 2003 and the Rules and Regulations framed thereunder or not. Such issue can be adequately, efficaciously and effectively determined by the mechanism for adjudication of such disputes provided under the aegis of the Act of 2003 by virtue of the Regulations framed thereunder. As has been noted above, on several occasions, the writ petitioners had approached such authority namely, the WBERC for adjudication of the disputes between the writ petitioners and the DVC, successfully.

73. Records placed before us have suggested that, the load restriction imposed by the DVC was uniform. Writ petitioner No. 1 was one of the consumers who had come within the scope and ambit of the load restriction. Records placed before us have not suggested that, the writ petitioner No. 1 had been singled out by DVC and made to pay the charges for overdrawal.

74. Regulation 4.4 of the Regulations of 2011 has empowered the licensee to raise a Bill in the prescribed manner for the part of the overdrawal on a consumer. Although, principles of natural justice, if not expressly excluded, has been judicially noticed, to apply, when, decision of an authority within the meaning of Article 12 affects any rights of the parties, nonetheless, in a situation where there is a demand raised on the basis of a prescribed regulation, particularly when, such demand is justiciable under the statutory provisions, the need for pre-decisional hearing is not failed. Principles of natural justice cannot be applied mechanically across every format purely on the basis that the same stands attracted to an action taken by Article 12 authority. Whenever, it is alleged that, the decision of the

Article 12 authority has breached the principles of natural justice, it has been incumbent on the person making such allegation not only to establish such breach but also to establish that any prejudice has been caused by the alleged breach.

75. In the facts and circumstances of the present case, the writ petitioner No. 1 has a different perspective on the quantum charged and the basis for the quantum charged than DVC. The statutory provisions have prescribed a mechanism for resolving such difference of opinion, if so raised before such adjudicating forum.

76. In view of the discussions above, the judgment and order is set aside.

77. MAT 970 of 2025 and MAT 1308 of 2025 are allowed. MAT 926 of 2025 is dismissed. All connected applications in all the three appeals stand disposed of.

[DEBANGSU BASAK, J.]

78. I agree.

[MD. SHABBAR RASHIDI, J.]