

The learned senior counsel appearing for the appellant has attacked the impugned order on the following twin grounds:

1. The CERC did not have the jurisdiction to introduce ABT for generating stations supplying power within the State of Andhra Pradesh; and
2. The CERC failed to provide an opportunity of hearing to the appellant whose interests have been adversely affected by the impugned order.

We have considered the submissions advanced on behalf of the appellant.

2. In so far as the first submission of the learned senior counsel appearing for the appellant is concerned, we find no merit in it. As per Section 76 of the Electricity Act, 2003 (for short the 'Act ') the CERC is required to exercise the powers conferred on, and discharge the functions assigned to, it. Section 79 of the Act, inter *alia*, provides that the CERC shall discharge the functions of regulating the tariff for generating companies owned or controlled by the Central Government. It also casts an obligation on the CERC to adjudicate upon disputes involving generating companies or transmission licensees in regard to the matters specified therein including the matter of regulation of tariff of generating companies owned or controlled by the Central Government. Section 79 of the Electricity Act to the extent relevant may be set out for the purpose of immediate reference.

79. 1. The Central Commission shall discharge the following functions, namely:-

- a. To regulate the tariff of generating companies owned or controlled by the Central government;
- b. To regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;
- c. To regulate the inter-State transmission of electricity;
- d. To determine tariff for inter-State transmission of electricity;
- e. To issue licenses to persons to function as transmission licensee and electricity trader with respect to their inter-State operations;
- f. To adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;
- g. To levy fees for the purpose of this Act;
- h. To specify Grid Code having regard to Grid Standards;
- i. To specify and enforce the standards with respect to quality continuity and reliability of service by licensees

- j. To fix the trading margin in the inter-State trading of electricity, if considered, necessary;
 - k. To discharge such other functions as may be assigned under this Act.
2. The Central Commission shall advise the Central Government on all or any of the following matters, namely:-
- 1. Formulation of National Electricity Policy and tariff policy;
 - 2. Promotion of competition, efficiency and economy in activities of this electricity industry;
 - 3. Promotion of investment in electricity industry; and
 - 4. Any other matter referred to the Central Commission by that Government.
3. The Central Commission shall ensure transparency while exercising its powers and discharging its functions.
4. In discharge of its functions, the Central Commission shall be guided by the National Electricity Policy, National Electricity Plan and Tariff Policy published under Section 3.
3. Thus, it is clear that the CERC has to discharge various functions. One of the functions is to regulate the tariff of generating companies owned or controlled by the Central Government. It is not in dispute that the NTPC is a generating company controlled by the Central Government. It is also not

disputed that Simhadri is a generating station set up and owned by the NTPC. This being so the tariff for the electricity generated by aforesaid generating station is required to be fixed by the CERC.

4. Learned senior counsel for the appellant submitted that according to Section 86 of the Act, it is the function of the State Commission to determine tariff for generation, supply, transmission and wheeling of electricity within the State. Contention of the learned senior counsel overlooks the provisions relating to the constitution and powers and functions of CERC. As already pointed out under Section 79 of the Act the CERC has been vested with the power to regulate the tariff of generating companies owned or controlled by the Central Government. Since, the special provision relating to fixation of tariff of generating companies owned or controlled by the Central government is being dealt with under Section 79 read with Section 76 of the Act, Section 86 which is a general provision, cannot be read to confer power on the State Commission to determine the tariff of a generating company owned or controlled by the Central Government supplying power to the transmission company within the State. Where there is a special provision specifically dealing with a subject, a general provision, howsoever widely worded must yield to the former. This principle is expressed in the maxim *Generalia specialibus non derogant*.

5. The aforesaid rule of construction was applied by the Supreme Court in Venkataramana Devaru Vs State of Mysore, AIR 1958 Supreme Court 255. In that case the Supreme Court applied the rule to resolve conflict between Article 25 (2)(b) and 26 (b) of the Constitution. It was held that the right of every religious denomination or any Section thereof to manage its own affairs in matter of religion is subject to a law made by a State providing for social welfare and reform or throwing open to Hindu religious institution of a public character to all classes and sections of Hindus. In South India Corporation (P) Ltd. Vs Secretary, Board of Revenue, Trivandrum AIR 1964 Supreme Court 207, it was held that the general provision under Article 372 of the Constitution regarding continuance of existing laws is subject to Article 277 of the Constitution, which is a special provision relating to taxes, duties, cesses or fees lawfully levied at the commencement of the Constitution. In this regard, the Supreme Court observed as follows:-

“With this background let us now consider the following two questions raised before us: (i) whether Article 372 of the Constitution is subject to Article 277 thereof; and (ii) whether Article 372 is subject to Article 278 thereof. Article 372 is a general provision; and Article 277 is a special provision. It is settled law that special provision should be given effect to the extent of its scope, leaving the general provision to control cases where the special provision does not apply. The earlier discussion makes it abundantly clear that the constitution gives a separate treatment to the subject of finance and Article 277 saves the existing taxes etc. levied by states, if the conditions mentioned therein are complied with. While Article 372 saves all pre-Constitution valid laws, Article 277 is confined only to taxes,

duties, cesses or fees lawfully levied immediately before the Constitution. Therefore, Article 372 cannot be construed in such a way as to enlarge the scope of the savings of taxes, duties, cesses or fees. To state it differently, Article 372 must be read subject to Article 277. We have already held that an agreement can be entered into between the Union and the States in terms of Article 278 abrogating or modifying the power preserved to the State under Article 277”.

In State of Gujarat Vs. Ramji Bhai – AIR 1979 Supreme Court 1098

taking note of the principle observed as follows:

“ Generalia Specialibus non derogant is a cardinal principles of interpretation. It means that the general provisions must always yield to the special provisions. Construed in accordance with this fundamental principle, the special class of unregistered dealer covered by Section 33 (6) must be taken to have been excluded from the purview of the general provisions in Section 35. Thus considered, it is clear that the case of an unregistered dealer who evade tax by committing the double default specified in Section 33(6), action can be taken only under that Section and not under Section 35”.

Again in Maharashtra State Board of Secondary and Higher Secondary Education Vs. Pritosh Bhupeshkumar Sheth (1984) 4 SCC 27, the Supreme Court while considering the aforesaid principle held as follows:

“ We consider that the above approach made by the High Court is totally fallacious and is vitiated by its failure to follow the well established doctrine of interpretation that the provisions can change in a Statutory enactment or in rules/ regulations framed thereunder have to be so construed as to be in harmony with each other and that where under specific sections or rule a particular subject has received special treatment, such special provision will exclude the applicability”.

(emphasis supplied)

In Gujarat State Co-operative Land Development Bank Vs P.R. Mankad, (1979) 3 SCC 123, the Supreme Court applying the maxim generalia specialibus non-derogant held that a general provision must yield to the special provision.

Lord Hobhouse in Barker Vs Edgar (1898) AC 749 opined that when the legislature had given its consent to a separate subject and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly.

6. Thus, it is well settled that if a special provision is made on a certain matter, that matter is excluded from the general provision. In the event of conflict between a general and a special provision, the latter must prevail. Differently stated the principle is that general words in a Statute should not be held to repeal or rip up a specific provision upon a particular matter. A general rule though stated in wide terms must be taken to be not interfering with matters covered by a special provision.

7. In view of the aforesaid discussion, we have no hesitation in rejecting the plea of the appellant that the CERC lacked the jurisdiction to introduce ABT for Simhadri thermal station.

8. As regards the second submission of the appellant that no opportunity of hearing was provided to it before the CERC passed the impugned order is of

no avail to the appellant. The impugned order specifically point out that the CERC in its earlier order dated January 4, 2000 in petition No.2/99 (suo moto) after going through a transparent process of hearing and consultations with all concerned had resolved to implement the ABT regime in all the regions of the country in a phased manner. Therefore, it is clear that at the time of the earlier decision the concerned agencies were heard. The decision to implement the ABT scheme was taken as far back as January 4, 2000. The impugned order is a logical step towards the implementation of the earlier order. Earlier the scheme of ABT was implemented in a phased manner in the case of generating stations supplying electricity to more than one State as per the following details:

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|----|----------------------|-----------|
| a. | Western Region | 1.7.2003 |
| b. | Northern Region | 1.12.2002 |
| c. | Southern Region | 1.1.2003 |
| d. | Eastern Region | 1.4.2003 |
| e. | North-Eastern Region | 1.11.2003 |

9. It has also been noted in the impugned order that ABT has been applicable in all the regions of the country for sufficient time and the results point to its beneficial effect. As per the Commission, the beneficial results of ABT are evident in the scheduling and despatch of generating capacity and maintenance of grid frequency within the optimum frequency band. The

appellant has not placed any material on record to controvert the opinion of the Commission or to show any baneful effect of the ABT.

10. The Central Government on February 12, 2005 has notified National Electricity Policy. Para 5.7.1 (b) of the Policy needs to be taken note of. The said para reads as follows:

“The ABT regime introduced by CERC at the national level has had a positive impact. It has also enabled a credible settlement mechanism for intra-day power transfers from licenses with surpluses to Licenses experiencing deficits. SERCs are advised to introduce the ABT regime at the State level within one year.”

Thus, the National Electricity Policy, which is required under sub-Section 4 of Section 79 of the Act to guide the CERC in discharge of its functions, also recognizes the positive impact of the ABT regime.

11. Though the appellant has been heard by us, it has not been able to show as how it has suffered any prejudice because of the CERC not providing an opportunity of hearing to it before passing the impugned order. The appellant was also not able to point out any illegality attached to the ABT regime. Under the ABT, the fixed cost is charged pro rata from the beneficiaries in the ratio of their capacity entitlement for power from the stations. Since the Simhadari generating station has been created for catering to the needs of the beneficiaries, it is logical that the fixed cost should be borne by them as per their share in the capacity created by the generating station. The variable cost of the generating station is charged to the

beneficiaries as per the earlier practice in proportion to the actual energy consumed by them during that period. We find nothing wrong with the application of ABT regime to the generation of electricity by the Simhadari generating station within the State.

In view of the aforesaid discussion, there is no merit in the appeal. Accordingly, the appeal fails and is hereby dismissed.

(Justice Anil Dev Singh)
Chairperson

(A.A. Khan)
Technical Member

Dated: the 3rd January, 2006