A R. BALAKRISHNA PILLAI

v.

STATE OF KERALA

FEBRUARY 28, 2003

B [R.C. LAHOTI AND BRIJESH KUMAR, JJ.]

Prevention of Corruption Act, 1947—Section 5(2) read with 5(1)(d)—Electricity (Supply) Act, 1948/ Kerala State Electricity Board Rules, 1957—
C *Section 43/Rule 68—Allegation that officials illegally selling electricity to a company—Conviction—High Court upholding the same—Justification of—Held, conviction not justified since sale negotiated between two State Governments thus, Section 43 and Rule 68 not violated—Inference of criminal liability could not be drawn for not executing an agreement in writing—Act not amounting to 'causing to obtain' valuable thing to company resulting in*
D *pecuniary advantage as well to the company—Mens rea and intention totally lacking, thus facts leading to charges not proved—Also sale during the period of crisis not objected to and prosecution failing to prove sale of electricity by the State to the company or the State or officials having caused profit to the company.*

E **According to the prosecution, appellant No.1-Minister for Electricity, Government of Kerala and appellant No.2-Technical Member/Chairman of the Kerala State Electricity Board (KSEB) illegally sold 1,22,41,440 units of electricity to company G outside the State without sanction of the State Government which amounted to causing to obtain valuable thing to**
F **company G and also resulting in pecuniary advantage. Appellants were convicted and sentenced under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947. High Court upheld the order. Hence the present appeals.**

Appellants contended that the ingredient of the offence under section
G **5(1)(d) of the Prevention of Corruption Act obtaining any valuable thing or pecuniary advantage for himself or for any other person is not there; and that if some profit has been caused to company G by lowering of the price by State of Karnataka/KEB it is not proximate or direct cause of anything done by A1 and A2.**

H **Respondents contended that there is no document or formal order**

of consent of State Government for arrangement of supply of electricity; that the supply of electricity was made without any agreement in writing or any other record of supplies; and that by supply of electrical energy to company G by KSEB in definite and earmarked quantity, A1 and A2 caused company G to obtain valuable thing namely, electricity which also resulted in an advantage to company G.

Allowing the appeals, the Court

HELD: 1.1. The agreement of sale and supply of electricity from Kerala to Karnataka has been negotiated at the higher level, at the level of the two State Governments through their respective Ministers. The Minister for Power, State of Karnataka had approached the Power Minister of the State of Kerala for exploring possibility of supply of electricity to the State of Karnataka which was then facing acute deficit of electric energy. The Chairman of the Electricity Boards of the two States have also been present during the negotiations along with Secretary, Power, Kerala Government. It was a transaction between State of Karnataka/KEB and State of Kerala/KSEB. Thus there was no occasion of any document being there showing consent of Government of Kerala for supply of energy to company G. The statement of the Chairman of KSEB that there was no sanction of the Government of Kerala to supply power to company G has no material bearing or relevance. Therefore, there is no violation of Section 43 of the Electricity (Supply) Act, 1948 and Rule 68 of Kerala State Electricity Board Rules, 1957. The supply of electricity made under the arrangement arrived at on negotiations entered into between two States does not need any prior constent and thus section 43 or under Rule 68 are not attracted. [457-H; 458-A-D]

1.2. The fact that arrangement entered into was not reduced into an agreement in writing, lost relevance for the purposes of the instant case since the same having been acted upon and the electricity having been supplied to the State of Karnataka/KEB for which there is no complaint that State of Kerala/KSEB has not received the agreed price. However, the requirement or necessity to execute an agreement in writing for any contract entered into for and on behalf of State or such bodies like KSEB is not undermined but such omission, in the facts and circumstances of the instant case, would not lead to any inference of commission of any offence. [464-C, D; 461-D]

1.3. In the instant case, the documentary as well as oral evidence

A establishes that the State of Karnataka/KEB contacted appellant No.1 for assistance in the matter of supply of electricity due to grim situation of shortage of energy in their State. Time and again in different meetings and otherwise the State of Karnataka/KEB had been emphasizing the requirement of electricity and supply of more energy stressing upon the need for their industry some of which were named including company G B and other Plant, so much so that they had even advised company G also to make effort and use their good offices with Kerala Authorities for supply of more electricity. The appellants had only told that they would look into their demands and would like to assist them maximum possible which would also depend upon the ensuing monsoon situation. It is not to C be found that the State of Kerala/KSEB, A1 or A2 ever made efforts to sell Kerala energy to KEB nothing to say of company G. Had that been so there was no occasion for the State of Karnataka/KEB to advise company G to use their good offices with Kerala Authorities for supply of energy. It is also evident that despite assurance on the request of Karnataka/KEB to assist it was not always possible for KSEB to make D supply. Whatever energy was exported from Kerala was taken in the general pool of electricity in the State of Karnataka/KEB and the distribution thereof used to be made by the State of Karnataka/KEB and the Chief Minister. Some stray utterances made in some letters or internal documents of the KEB that KSEB had agreed for certain quantity of E energy for company G would in no way lead to the inference that the State of Kerala/KSEB, A1 or A2 has earmarked any supply for company G. Even according to them, KSEB had only "agreed" to spare electrical energy for company G which definitely shows that initiative was on the part of the State of Karnataka/KEB. There is no case of initiative or effort on the part of KSEB for supply of energy, thus the reliance on such letters F or non-reply of certain letters is misplaced. The primary requisite of offence u/s 5(1)(d) of 'obtaining' any valuable thing or pecuniary advantage for any other person, in absence of any effort, initiative or request on the part of the appellants shatters the charge. With regard to causing pecuniary advantage or profit to company G, it was purely a G matter between the State of Karnataka/KEB and company G to decide what price was to be charged by KEB from company G for supply of imported energy. There is neither allegation nor evidence to show that the State of Kerala/KSEB or A1 and A2 had any say or hand in lowering of the price for company G by the State of Karnataka/KEB. Earlier also there have been instances of supply of imported energy at a lower rate to H company G and other Plant by KEB. In any case it was a matter between

the State of Karnataka/KEB and company G or other industries. Therefore, the appellants did not cause any profit to occur to company G. [467-B-H; 468-A-D]

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Subash Parbat Sonvane **v.** *State of Gujarat,* **[2002] 5 SCC 86, referred to.**

B

Ram Kishan **v.** *State of Delhi,* **AIR [1956] SC 476;** *M.W. Mohiuddin* **v.** *State of Maharashtra,* **[1995] 3 SCC 567 and** *C.K. Damodaran Nair* **v.** *Government of India,* **[1997] 9 SCC 477, referred to.**

Blackstone's Criminal Practice by Peter Murphy, **1992 p.64, referred to.**

C

1.4. Once the supplies were made to the State of Karnataka to help out during the period of scarcity of energy, as requested, it is not understandable how only a part of supply which the State of Karnataka/ KEB, amongst others allocated to company G that alone could be said to be illegal or that the appellants caused to be obtained valuable thing to company G illegally by abuse of their official position. KSEB did not sell energy to company G, all supplies were made to KEB. Therefore, the charge that the appellants had illegally sold energy to company G or caused it to be obtained by company G or they abused their position in supplying energy of Karnataka/KEB is rejected. [468-E, F]

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1.5. The act of the State of Karnataka/KEB intervenes between the supplies made by the State of Kerala/KSEB to KEB who in turn supplied the same to its consumers including company G at a lower price. It is not the direct effect or proximate cause to any benefit, if at all, accrued to company G. [469-B]

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Kurban Hussein Mohammedali Rangwalla **v.** *State of Maharashtra,* **[1965] 2 SCR 622, distinguished.**

1.6. The accused must have the mental state or degree of fault at the relevant time. It may differ from crime to crime according to the definition thereof. The mental state and the criminal act must coincide. The criminal act may be one which may be intended by the wrong doer. It is as well known mere intention is not punishable except when it is accompanied by an act or conduct of commission or omission on the part of the accused. Situation varies in respect of different kinds of crimes as

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A **in some of them even negligence or careless act may constitute an offence or there may be cases of presumptions and putting the accused to proof to the contrary. [469-H; 470-A-C]**

Blackstone's Criminal Practice by Peter Murphy, **1992 p.18;** *Criminal Law, J.C. Smith, Brian Hogan,* **6th Edition, p.31;** *Criminal Law by K.D. Gaur,* B **3rd Edition, p.23 and** *Criminal Law by Glanville Williams* **-The General Part- Second Edition, p.1, referred to.**

1.7. Under Section 5(1)(d) of the Act it is necessary that the act must have been done illegally abusing his position as public servant for obtaining C **benefit pecuniary or otherwise for himself or for someone else. This is an offence which would require an intention to accompany the act. The element of mental state would be necessary to do a conscious act to get the required result of pecuniary advantage or to obtain any valuable thing, even if it is for someone else, then too element of mental state must be there at the relevant time. Facts leading to charges are not proved and** D **the element of** *mens rea* **and intention is totally lacking. The electrical energy was exported to Karnataka/KEB at the request of State of Karnataka during the period of crisis of shortage of energy which is not objected to, so as to be illegal but for a part of it which is allocated by the State of Karnataka/KEB to company G constitutes no offence. The** E **prosecution failed to prove the case of sale of electricity by KSEB to company G or the KSEB or A1 and A 2 having caused profit to company G. Admittedly, appellants did not stand to gain in any manner nor they had any say in price fixation for company G by KEB. Thus the order of conviction and sentence passed against the appellants by the trial court and upheld by the High Court under Section 5(2) read with Section 5(1)(d)** F **of the Prevention of Corruption Act are set aside. [471-E-H; 472-A, B]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 372 of 2001.

From the Judgment and Order dated 2.3.2001 of the Kerala High Court G in Crl. A. No. 304 of 1996/S.

WITH

Crl. A. Nos. 373/01 and 725-727 of 2002.

H U.R. Lalit, P.P. Rao, Fazlin Anam, E.M.S. Anam, Ashok Kr. Pandey,

G. Balaji, V.K. Beeran, Additional Advocate General for State, K.R. Sasiprabhu, K.I. Abdul Rashid, Sushil Tekriwal for the appearing parties. A

The Judgment of the Court was delivered by

BRIJESH KUMAR, J. This is a case in which the appellants before us in Criminal Appeal No.372 of 2001 and Criminal Appeal No.373 of 2001 have been convicted under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 (for short 'the Act') for having caused, M/s. Graphite India Ltd. (for short 'M/s. GIL), Bangalore, to obtain valuable thing namely, electricity by selling it to the said company illegally and by abusing their official position as public servants which also resulted in pecuniary advantage to M/s. GIL to the tune of Rs.19 lakhs and odd. So far the said two appellants themselves are concerned, it is neither the case of the prosecution nor the finding of any court that they gained or acquired any kind of benefit, pecuniary or otherwise, out of the transaction in question. The High Court, on the other hand, finds that there is nothing to show that for obtaining Kerala electricity any illegal gratification was given to the appellants or any illegal means was employed by M/s. GIL. B C D

The two appellants for the aforesaid conviction have been sentenced to simple imprisonment for a period of one year and a fine of Rs. 10,000 each, in default, to undergo simple imprisonment for a further period of two months. The conviction and sentence as recorded by the Trial Court has been maintained by the High Court in appeal. The appellant in Criminal Appeal No.372 of 2001. Balakrishna Pillai is to be referred hereinafter as 'A-1' and the appellant in Criminal Appeal No. 373 of 2001 P. Kesava Pillai as 'A-2'. So far the appellant in Criminal Appeals Nos. 725-727 of 2002 Gopalakrishna Pillai is concerned, he has been examined as PW 45 in the case and is aggrieved by adverse comments made against him in the judgment of the High Court. E F

The main question which falls for our consideration in these appeals is as to whether the appellants A1 and A2 have illegally sold electricity to M/s. GIL by abusing their official position which amounted to "causing to obtain" valuable thing to M/s. GIL resulting in pecuniary advantage as well to M/s. GIL. G

During the relevant period namely, October 1984 to May, 1985, A-1 was Minister for Electricity, Government of Kerala and A-2 was Technical Member/Chairman of the Kerala State Electricity Board (for short 'KSEB'). H

A The two have been found to have illegally sold 1,22,41,440 units of Kerala electricity to M/s. GIL without sanction of the State Government as per the requirement under the law. It is also the prosecution case that no written agreement was entered into between the KSEB and the Karanataka Electricity Board (for short 'KEB') for supply of the electricity.

B Undisputedly KSEB supplied electricity to KEB at the rate of 42 paise per unit. KEB charged for the said high cost energy used by the industries in Karnataka at the rate of 80 paise per unit whereas for the electricity supplied to M/s. GIL the KEB charged at the rate of 64 paise per unit i.e. to say 16 paise less as compared to the rate charged by it from its other C consumers. It resulted in pecuniary benefit to M/s. GIL. According to the prosecution the KSEB earmarked a definite quantity of electricity and supplied the same to M/s. GIL without sanction of the State Government as required under the law before selling electricity to any industry outside the state. It could be possible only at the instance of the two appellants who are said to have abused their official position for the benefit of M/s. GIL.

D The appellants refuted the prosecution case and chose to contest. According to the defence case, the electricity was supplied by the KSEB to KEB on the basis of a decision taken at the State level by A-1 who was the Minister concerned and authorised to take such decisions according to the rules of business. The electricity was being supplied by the State of Kerala E much prior to the relevant period to different neighbouring States including Karnataka and Tamil Nadu. Such supplies have been made since prior to 1978 as and when it was possible to do so. During the relevant period the electricity was supplied to KEB at the rate of 42 paise per unit. Thereafter it was for the KEB to fix its tariff for its consumers. No amount of electrical F energy out of the supplies made by K.S.E.B. to State of Karnataka/KEB was earmarked or specifically provided for M/s. GIL. The request for supply of electricity was made by the State Government of Karnataka. The State of Kerala had assured it to help in the matter as much as possible. So far the question of rate of electricity is concerned KEB fixed the rate of high cost energy (Kerala electricity) @ 80 paise per unit and for M/s. GIL at 64 paise G per unit. The State of Kerala or KSEB had no concern whatsoever with fixation of rate of electricity supplied by KEB to its consumers including M/s. GIL. KSEB supplied the electricity to KEB/State of Karnataka at the rate of 42 paise per unit which was the highest rate ever charged before. There is no charge, allegation much less any evidence or finding of any kind H of pecuniary or other benefit accruing to the appellants. Rather it is not the

case of the prosecution that the appellants were benefitted by the transaction in any manner. It has also been the case of the appellants that no provision of law has been violated in making the supplies of energy to the State of Karnataka. As a matter of fact the supplies were being made since before and they have only been continued at a revised price. The supplies were made to the State of Karnataka/KEB and not to any particular industry or M/s. GIL. It was for the KEB to distribute the energy to its consumers according to its own policy and priorities. Lastly the defence case is that in any case, if at all, there was any irregularity or technical violation of any law it would not mean that the appellants are guilty of any criminal offence.

Coming to the charge as framed against the appellants for which they have been tried and convicted is as follows :

> "Secondly, that you the accused 1 and 2 being Minister for Electricity and Technical Member/Chairman of the K.S.E.B. during the period from October 1984 and May 1985 abused your official position as public servants and in pursuance of the above said conspiracy illegally sold 12241440 units of Kerala Electricity to M/s. Graphite India Ltd., Bangalore, Karnataka State and caused the said company obtain 'valuable' thing viz. Electricity and pecuniary advantage to the tune of Rs. 19,58,630.40 and also resultant profit and thereby committed an offence punishable under S.5(2) r/w 5(1)(d) of P.C. Act 1947 and within my cognizance."

As a matter of fact, initially two charges were framed. First of it read as follows :

> "Firstly, that you Sri R. Balakrishnan Pillai (A1) while functioning as Minister for Electricity, Govt. of Kerala from May 1982 to 5.6.1985 and P. Kesava Pillai (A2) while functioning as Technical Member/ Chairman of the K.S.E.B., Thiruvananthapuram from 1.2.1984 to 31.11.1985 and as such being public servants during the period from July 1984 to November 1985 entered into a criminal conspiracy to sell electricity to the State of Karnataka, to be supplied to M/s Graphite India Ltd., Bangalore, Karnataka State without the consent of the Govt. of Kerala, which is an illegal act under the provisions of the Electricity (Supply) Act, 1948 and Kerala Electricity Board Rules and in pursuance of the conspiracy abused your official position and illegally sold 1,22,41,440 units of Kerala Electricity to M/s. Graphite India Ltd., Bangalore, Karnataka State during the months of October

A 1984 and May 1985 and caused the said private industry obtain undue pecuniary advantage to the tune of Rs.19,58,630.40 and more by way of resultant profit to the industry, since Electricity being a valuable thing for the functioning of the State industries during the period of acute shortage of energy in Karnataka State and you the accused 1 and 2 thereby committed an offence punishable under S.120-B of I.P.C. and within my cognizance."

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But the first charge has been ultimately quashed by this Court due to lack of sanction *(Crl. A. No.1742/95 dt.5.12.1995, [1996] 1 SCC 478).*

C Thus, it is only the second charge which remained against the appellants and according to the same A-1 and A-2 (i) abused their official position as public servants (ii) they conspired and illegally sold 1,22,41,440 units of Kerala Electricity to M/s. GIL (iii) caused the said company (M/s. GIL) to obtain valuable thing namely electricity and pecuniary advantage (iv) hence committed offence punishable under Section 5(2) read with Section 5(1)(d) D of the Act. Thus, according to the charge also there is no accusation against the appellants for having obtained any advantage pecuniary or otherwise for themselves by causing the company (M/s. GIL) to obtain valuable thing namely, electricity.

It may be relevant to mention here that amongst others M/s. GIL, and E Wheel & Axle Plant (for short 'WAP') , an undertaking of the Indian Railways, seem to be quite important industries from the point of view of Karnataka State. It is said that M/s. GIL manufactures electrodes and such other items which are used by other industries in Karnataka and other neighbouring States including the State of Kerala. So far WAP is concerned there is evidence F on the record to show that in connection with supply of electricity to it, the Minister for Railways and Minister for Electricity, State of Kerala had been holding negotiations on the earlier occasions and electricity was supplied to WAP, before the period in question, at the rate of 35 paise per unit. The goods manufactured by WAP are for the use of the Indian Railways. It is only to indicate and emphasise the importance of the said industries running G in the State of Karnataka.

The findings as recorded by the High Court are that there was scarcity of electricity in Kerala itself during the relevant period of supplies namely, October 1984 to May 1985. The documentary evidence including letter written by the Chief Minister of Karnataka to A-1 and the DO Letter sent by PW 22 H to A-2 proved that they agreed to supply Kerala Electricity to M/s. GIL, more

particularly in view of the fact that the said letters were not replied by A1 and A2 to refute its contents. It was also found that by charging at a lower rate for supply of Kerala Electricity to M/s. GIL there was a total saving of more than Rs. 28 lacs to M/s. GIL. No sanction was given by Government of Kerala to supply electricity to M/s. GIL. It is also held specifically....."from the materials available on record it could be clearly seen that A1 and A2 *agreed* to give specific quantity of electricity to Graphite India Ltd. If A1 or A2 had not agreed to give specific quantity of electricity by K.S.E.B. to Graphite India Ltd. and electrical energy was not supplied to Graphite India Ltd. by K.S.E.B. through KEB, KEB would have charged for the imported energy supplied (Kerala energy) to Graphite India Ltd. at the rate payable for high cost energy (80 paise per unit) and Graphite India Ltd. would not have saved Rs.19,58,630.40 during the relevant period. The sale of electrical energy to Graphite India Ltd. without the sanction of the Government of Kerala was illegal". (emphasis supplied by us)

The High Court has further found in paragraph 216 as follows :

"From the evidence available, it is also possible to conclude that Graphite India Ltd. had also played an important role in getting the electricity supplied to it. It is evident from the statement of A1 under Section 313 Cr.P.C. no request was made by the Power Minister of Karnataka or any official KEB who had a meeting with him on 28.9.1984 for supplying electricity to Graphite India Ltd. Then why he had agreed to supply energy to Graphite India Ltd.? Inference is irresistible that he had agreed to supply electricity to Graphite India Ltd. at the instance of PW.47 who met him on the same day."

(emphasis supplied by us)

The High Court has also found as follows :

".....From Section 43 it is crystal clear that the Board can enter into an arrangement with any government or persons for the purchase or sale of electricity to be generated or used outside the state only if the sanctioned scheme provides for such sale or purchase. The proviso to Section 43 says that for entering into an arrangement for sale of electricity to a person or Government outside the State, consent of the State Government is necessary. It further provides that for entering into an arrangement with any person other than any Government, the sanction of the Government of the State within which the electricity

A is to be used is to be obtained."

It has also been held that A2 had no authority to agree or direct to supply energy to M/s. GIL without sanction of Government of Kerala. In paragraph 224 in the end it is observed as follows :

B "As no records were maintained by the Power Department of Kerala and K.S.E.B. regarding supply of electrical energy to Graphite India Ltd., it is only legitimate to infer that the factum of supplying electrical energy to Graphite India Ltd. was deliberately and intentionally suppressed by A1 and A2. A1 and A2 agreed to supply specific quantity of electrical energy to Graphite India Ltd. So, we have no C hesitation in holding that there was dishonest intention for A1 and A2 in agreeing to supply electrical energy to Graphite India Ltd."

We have heard Shri U.R. Lalit, learned senior counsel appearing for A1 and Shri P.P. Rao, learned senior counsel appearing for A2 at length. Shri K.R. Sasiprabhu has also made his submissions in regard to the adverse D observations made in the judgment against the appellant Shri G. Gopalakrishna Pillai in that appeal. Shri V.K. Beeran, Addl. Advocate General, State of Kerala made submissions on behalf of the respondents and has also furnished a brief note of his arguments.

E So as to be clear about the nature of grievance against the appellants, it is to be indicated that the learned counsel for the respondents has very fairly stated that it is not the case of the prosecution that the appellants were benefited in any manner financially or otherwise by supply of electricity to M/s. GIL. He has also indicated that so far the rate at which supply of electricity has been made to the State of Karnataka i.e. at the rate of 42 paise F per unit is also not a cause of any grievance. But the grievance is that by supply of electrical energy to M/s. GIL by K.S.E.B. in definite and earmarked quantity, A1 and A2 caused M/s. GIL to obtain valuable thing namely, electricity which also resulted in an advantage to M/s. GIL to the tune of Rs. 19 lacs and odd. The supply of electricity was made without any agreement G in writing or any other record of supplies, in violation of the relevant rules which leads to the conclusion that the supply of electricity was made illegally further leading to the inference of dishonest intention on the part of A 1 and A 2. At this stage it would also be appropriate to indicate one of the findings recorded in connection thereof by the High Court in its judgment:

H "We find nothing unusual in PW 47 approaching A1 or A2 for getting

electricity and if he succeeded in getting energy for his employer, it only indicated that he had faithfully and diligently performed his duty. There is no evidence to show that for obtaining Kerala energy during the relevant period, any illegal gratification was given to A1 or A2 by Graphite India Ltd. through PW 47 or any illegal means was employed by PW 47 or Graphite India Ltd. to obtain energy during the relevant period. It was for A1 and A2 to protect the interest of Kerala State and when there was scarcity of energy, they should not have agreed to supply energy to Graphite India Ltd.."

To a straight question put to the learned counsel for the respondent as to the evidence indicating scarcity of electricity in the State of Kerala during the relevant period he categorically replied that virtually there was no such evidence available on the record.

In the background of the prosecution case it may have to be seen as to whether it was supply/sale of electricity by K.S.E.B. to M/s. GIL or it was supply of electricity by State of Kerala to State of Karnataka through their respective electricity boards, namely, K.S.E.B. and K.E.B. It may also have to be seen in what circumstances arrangement of supply of electricity came about between KEB and K.S.E.B. It is not in dispute that the State of Kerala has quite often been supplying electricity to the neighbouring States namely, Karnataka, Tamil Nadu and Andhra Pradesh etc. A chart of supply of electricity by Kerala has been shown by Shri P.P. Rao which shows that such supplies were being made since at least 1978 with some intermittent gaps here and there. So it was not unusual indeed that such supplies were undertaken by K.S.E.B. in 1984-85. It has been stated by PWs 4, 6 and 8 that supply of electricity was being made by the State of Kerala to the State of Karnataka as Karnataka has generally been a deficit State so far as the electricity is concerned. Similarly, there is evidence on record which is not in dispute that supplies have been made to other States also; for example State of Tamil Nadu. There have been periods of surplus of electricity in the State of Kerala. Ext. P. 25(h) is a statement relating to supplies of electricity by the State of Kerala to other States during the period from April, 1982 to March, 1987. It also shows that at times the State of Kerala has also imported electricity from other States though significantly low in quantity during certain periods. It is thus clear that this practice of supply of electricity by the State of Kerala to the other States has been in vogue. There have been negotiations from time to time in that connection, between the Minister, Power & Energy, State of Kerala and Ministers of other States including Railway Minister for supply of electricity to Wheel and Axle plant.

A As it concerns the supply of electricity in question, we find that a meeting took place between the Minister for Power, State of Karnataka and the Minister for Power and Energy, State of Kerala on 28.9.1984 at the instance of the former. It is evident from Exh.P-56(a) a letter dated 28.9.84 written by the Chairman, K.E.B. (Karnataka Electricity Board) to the Secretary to the Government, Public Works and Electricity Department, Bangalore, B State of Karnataka informing that he alongwith Minister for Power, State of Karnataka had been to Kerala to explore the possibility of getting some assistance for supply of electricity and in that connection they had met the Minister A 1 on 28.9.1984. We feel it would be appropriate to reproduce the text of the letter since it has been heavily relied upon by the prosecution also C to show that the appellant had agreed to supply electricity to M/s. GIL. The text of the letter is quoted as below :

> "As you are kindly aware of the fact that the Hon'ble Minister for Power and myself had been to Kerala to explore the possibility of getting some assistance. We met the Minister on the evening of 28th D instant and the discussions were cordial. The Minister for Power in Kerala said that Kerala is still interested to assist Karnataka to the maximum extent possible. He also mentioned that due to poor rainfall in the recent weeks, the assistance to Tamil Nadu has been scaled down considerably. He said that if the North East monsoon improves, E it may be possible to give some assistance and this will be known only by the end of October 1984. When we raised the issue of Kerala share of 58 MWs from Ramagundam Thermal Project being passed on to Karnataka, he said, he has an open mind on this subject. He wanted the discussions to be continued at Bangalore with our Hon'ble Chief Minister to discuss this issue as well as of Mananthvady project. F He pointed out that if this project came through, the beneficiary would be, Karnataka itself, as most of this energy will have to be utilised in Karnataka as Malabar area though an industrial area, has not been fully developed. I do not know the merits and de-merits of this case but I am convinced that the Hon'ble Minister is particular about this.
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> G Though he has agreed to spare some energy to M/s. Graphite India, he expressed inability to give any power during the peak hours. But, M/s. Graphite India needs power during peak hours also. This problem will have to be sorted out after further examination....."

H It is clear from the above letter that the State of Karnataka was in need of

importing electricity and in that connection the Minister and the Chairman of the Electricity Board, Karnataka met A1. According to the said letter A1 had indicated that the State of Kerala would assist in the matter to the maximum possible and also indicated the fact that assistance to State of Tamil Nadu has been scaled down. It is also clear that it was given out that some assistance was possible depending upon improvement in North East monsoon, which will be known only by the end of October, 1984. Agreeing to this kind of assistance A1 had also made a reference to the issue of Kerala share of 58 MWs from Ramagundam Thermal Project as well as issue relating to Mananthvady project. It is significant to note that the Chairman, Electricity Board, Karnataka writes though A1 had agreed to spare some energy to M/s. GIL but he had expressed inability to give any power during the peak hours. The Chairman, KEB then informed the Secretary to the Government, Department of Power, Government of Karnataka that M/s. GIL needed power during peak hours also and this problem was to be sorted out. The above letter clearly shows that the State of Karnataka had approached the State of Kerala through A1 for assistance in supply of electricity. It also emerges from the above letter that emphasis was at the instance of the State of Karnataka for supply of energy to M/s. GIL in response whereof A1 is said to have agreed to spare some energy but expressed his inability to provide it during peak hours. The Karnataka authorities do not seem to have given up and decided to pursue with the State of Kerala to sort out the problem about the supply of energy to M/s. GIL during the peak hours. It was a talk at the Ministerial level between the two States. The Ext. P.56(a) however, does not indicate any assurance of supply of electricity to the State of Karnataka much less for M/s. GIL particularly. This letter hardly shows any interest on the part of A1 or A2 to take into account the requirement of M/s. GIL. The emphasis seems to be on the part of the State of Karnataka to stress upon the requirement of M/s. GIL. There seem to be representatives of the two States and their Electricity Boards. No other party seems to be there in the meeting.

The other relevant document upon which great emphasis has been made is Ext.P-22(a). It is a letter dated January 24, 1985 written by the Chief Minister of State of Karnataka to A1. It will again be beneficial to quote the letter written by the Chief Minister. It is as follows:

> "The power position in Karnataka is very acute due to several reasons including the poor monsoons in Sharavathi basin. I am thankful to you for having agreed to supply power for two specific industries situated in Karnataka.

A Three or four industries which are critical in importance and from the State point of view are suffering from the crippling shortage of power. These are M/s.Dandeli Ferro Alloys, Calcium Carbide at Bellary (M/s.Panyam) and one or two others. I understand the Speaker of Karnataka Legislature had a talk with you in this regard and the Secretary, Public Works & Electricity Department had sent a telex message. May I request you to kindly supply from your grid energy to an extent of only five million units per month for the next three months. I am sure since the quantum we need is insignificant you will be able to help us out."

C The above letter also depicts the scenario of shortage of electricity power in the State of Karnataka and it was requested to extend some more help. It is also evident that there was nothing which was kept secret in the matter of supply of electricity to the State of Karnataka by the State of Kerala. The negotiations were at the level of the Ministers concerned of the respective States and the Chief Minister of the State of Karnataka. There D seems to be nothing which could be said to be a guarded secret. Rather it appears that it was quite usual for such kind of import and export of electricity during the times of crisis. The prosecution however, draws an inference that A1 had agreed to supply electricity to two specific industries situated in Karnataka though none of the two are specifically named in the letter. Even E if they are taken to be M/s. GIL and Wheel and Axle Plant, it was the Chief Minister of Karnataka who expressed thanks for the same. The background as to what transpired in the meeting of 28.9.84 cannot be overlooked. It shows State of Karnatka was keen and interested in providing energy to its heavy industries. But it does not mean that KEB was not giving supplies to other industries out of imported Kerala energy viz. industries other than F M/s. GIL and Wheel and Axle Plant. According to the letter, A1 is only said to have agreed for supply which implies initiative and request from the other end viz. Karnataka authorities. Non-reply to the letter of the Chief Minister dated January 24, 1985 by A 1 is one of the main circumstance, the prosecution banks upon to infer that supply was made by the Kerala Electricity Board to M/s. GIL which inference we feel, cannot be drawn. Non-reply of letter is G inconsequential, more particularly in view of the letter referred to earlier, namely Ext.P-56(a). Agreement to supply electricity was to the State of Karnataka/KEB on the request made and need emphasised by the Karnataka Government and none else.

H On behalf of the prosecution Ext.P.44(m) is also referred to, which is

a letter dated 6.3.1995 containing the statement of supply of electricity to Wheel and Axle plant and M/s. GIL, Bangalore during the period from October, 1984 to January, 1985. From the said document it was sought to be shown that major part of the electricity supplied by Kerala State was consumed by Wheel and Axle and M/s. GIL but it is to be noted that it is not the total supply which has gone to M/s. GIL. A note contained on the foot of one of the pages of the said exhibit indicates that only 34% of the energy supplied to Karnataka by Kerala was utilised by M/s. GIL and 66% was utilised by other consumers. There is no dispute about the fact that electric energy was imported by the State of Karnataka from the State of Kerala out of which the State of Karnataka had made energy available to M/s. GIL and Wheel and Axle plant amongst its other consumers. M/s. GIL and Wheel and Axle plant seem to be heavy industries catering to the needs of the Indian Railways and to other industries in general including industries in the neighbouring States. Their consumption of electricity and requirement may be heavy. Therefore, the State of Karnataka seemed to be quite anxious for supply of energy keeping in view their requirement amongst other industries as indicated in the letter of the Chief Minister. Whatever may be the view of some officers of M/s. GIL but the fact remains that there is nothing to indicate that electricity was supplied by the State of Kerala to or exclusively for M/s. GIL. We feel that, it is hardly material for this case that the State of Karnataka supplies energy produced by itself to any particular industry or consumer and the energy imported from other States to other industries or vice-versa or both in some proportion, it is a matter of their policy. The State can always subsidize or fix the rates at which energy is to be supplied to its consumers. The electrical energy was supplied by the State of Kerala to the pool of Karnataka Electricity Board.

Next we find that so as to fasten the responsibility of quantifying the amount of energy to be supplied to M/s. GIL learned counsel for the respondent has heavily placed reliance upon Ext.P-56(e). It is a letter sent by PW-22 Shri Rudrappa, Chairman, Electricity Board, Karnataka dated 12.12.(sic.) to Chairman, KSEB i.e. A2 stating therein that KSEB had to supply about 25 MUs of energy per day to Karnataka towards energy assistance agreed for Wheel and Axle plant and M/s. GIL. A grievance was made that short supplies were being made and it was requested that instructions might be issued to increase the supplies to cover the assistance assured to the two industries and for further supply of energy to *meet the requirement in Kasargod area.* It is again not a statement of or on behalf of KSEB, A1 or A2 earmarking any definite amount of electricity to Wheel and Axle plant and M/s. GIL. This

A letter also talks of supply of energy by Kerala for Kasargod area. It is though mentioned in the letter "towards the energy assistance agreed to Wheel and Axle plant and M/s. GIL" but there is no document, letter or statement or material to indicate that any definite quantity was ever earmarked for supply to any of the two plants, namely Wheel and Axle plant or M/s. GIL. Supplies to WAP is not subject matter of charge. The energy was to be supplied to the B State of Karnataka on its request made to A 1. On their own showing as per Ext. P.25(a) no assurance was given by A1 and A2. All that was assured was that the State of Kerala would try to help out as much as possible keeping in view the monsoon situation. Non-reply to the letter Ext. P-56(e) is also sheet-anchor of the prosecution case. We find that non-reply to the said letter C is hardly of any consequence. On the contrary, the letter demonstrates that the KSEB/State of Kerala was not supplying the alleged assured electrical energy, how it can then be inferred that A1 or KSEB was interested or keen to supply energy to any one particular industry. Supply for Kasargod area is also demanded. Non- reply to the letter only shows disinterestedness of the KSEB, A1 and A2 to any such kind of demand raised on behalf of KEB. It D seems to be in conformity with the response of A1 given in the meeting held on 28.9.1984 with his counterpart of the State of Karnataka. The assistance was assured only to the extent possible and it was not for any particular industry. In our view Ext.P-56(e) also fails to lead to any inference that A1 or A2 had assured or promised or had earmarked any amount of quantity of E electrical energy to be supplied to the State of Karnataka much less to M/s. GIL.

We also find that in Exh.P-57 which contains the Minutes of the Meeting and the Resolutions of the KEB, at one place it is indicated KSEB agreeing to supply certain quantity of energy for M/s. GIL. Firstly, it is to be indicated F that such mention of KSEB agreeing for certain quantity of energy for M/s. GIL is based on their own discussion or deliberation in the meeting. Secondly, all that it is said is that "KSEB has agreed" i.e. to say the demand for supply, keeping in mind the needs of M/s. GIL, must have come from KEB. It is not that KSEB had been earmarking definite quantities of supplies of energy for G M/s. GIL. It is the way of writing which was completely an internal affair of KEB itself on the basis of which no inference can be drawn that KSEB had earmarked certain quantity of energy to be supplied to M/s. GIL. On the other hand there is a categorical denial that there was any commitment on the part of KSEB to supply energy for M/s. GIL. This would be evident from Exh.P-7(d), a letter written by the Chief Engineer (MMC), KSEB. It is also H evident that Kerala/KSEB had not been supplying energy according to what

is indicated in the Minutes of the Meeting and correspondence of KEB. Further, Exh.P-43(a) which is a letter written by M/s. GIL to the Chairman, KEB for fixing lower rate for imported energy and Exh.P-43(b) which is summary of proceedings of meeting held in the chamber of Minister for Finance (Karnataka) on 17.9.1984 to review the power position, clearly indicate that allocation of electrical energy as well as the price to be charged was a matter between the State of Karnataka/KEB and its consumers which included M/s. GIL as well. The Kerala State/KSEB has no say in the matter.

Coming to the oral evidence in support of prosecution case, a reference has been made to the statements of PWs 22, 23 and 45. As indicated earlier, it may be recalled that in his statement PW22 has stated about meeting between the Minister of Karnataka with the Power Minister of Kerala. He was present in the meeting with Minister of Karnataka. The main purpose was to request Kerala Government to help out Karnataka State in its crisis of power shortage. Learned State counsel draws our attention to the part of his statement where he said that he could not recollect definitely but some additional energy was given for M/s. GIL by KEB. He further stated that energy was supplied on KSEB account, i.e. to say from the energy supplied by Kerala to Karnataka. This statement of PW 22 does not lead to any conclusion of supply of energy to M/s GIL by KSEB. There is nothing which goes against A1 and A2. During the discussion on the question of supply of energy by Kerala State to Karnataka it is quite possible and natural as well, that Karnataka Minister may have mentioned the names of its big consumers of energy to emphasise the gravity of shortage situation and huge requirement of electricity. On such stray reference during the talks it cannot be concluded that the supply was made to M/s GIL. On such an analogy to whomsoever imported energy was disbursed or allocated or supplied by KEB or State of Karnataka, it could be said that electricity was supplied to each of them by Kerala State/KSEB, A1 or A2. Nothing has been indicated in the statements of PWs 23 and 45 to reach to a conclusion that the supplies were not made to the State of Karnataka on its request but to M/s GIL. On the other hand, we find that PW-23 has stated that the total current received from Kerala was taken to the general pool and was then allotted and distributed according to the instructions of the Chief Minister. He further stated that M/s. GIL was one amongst the eight industries to which Karanataka Government allotted and earmarked energy. PW-14 who is an officer of M/s. GIL stated in his statement "Kerala Government has never given any current to us. Kerala Government has not entered into any agreement with any authority to supply current to our industry".

A A reference may also be made to Ext.P-44(c), a letter written by the Chief Engineer, Electricity (General) KEB to M/s. GIL. Through this letter it was intimated to M/s. GIL that during the months of October and November, 1984 the import of energy from Kerala had been grossly inadequate. Cut in electricity consumption had to be imposed and in case supply of energy from Kerala was not resumed, M/s. GIL might have to restrict its consumption to B the entitlement fixed. It further said that M/s. GIL might consider the possibility of using its good offices with Kerala authorities for resumption of supplies. It is evident from this letter that it is not that Kerala was readily supplying energy as required by the State of Karnataka or as may have been needed for M/s. GIL, rather it goes to substantiate that Kerala authorities (A1) had C indicated that their help would only be to the extent maximum possible, depending upon the ensuing monsoon etc. What is more importantly revealed is that Karnataka authorities wanted M/s. GIL also to make efforts with Kerala authorities for supply of energy to Karnataka. In this background even if M/s. GIL is assumed to have made some efforts with the Kerala authorities on the asking of Karnataka authorities for supply of energy to Karnataka, so D that it may also be benefited, we feel it would not mean that the appellants or other authorities in Kerala supplied energy to M/s. GIL. It is evident that State of Karnataka was more keen and anxious about supply of energy from Kerala and had very much in its mind requirement of M/s. GIL as well. PW 45 who was also present at the time of meeting held on 28.9.1984 between E the Ministers of Power Karnataka and Kerala, stated that the Karnataka State had requested for supply of energy looking to the needs of power intensive industries including Wheel and Axle plant and M/s. GIL. The Minister A1 had only said to Karnataka Minister that he would look into the demand. In regard to the meeting held on 16.10.84 in the chamber of the Chief Minister, Karnataka and the Kerala authorities where PW 45 was present being Secretary, F Power, State of Kerala, stated that the meeting was in relation to inter-state waters. He further stated that specifically matter of supply of power to M/s. GIL was not told. Again in regard to another meeting stated to be held on 9.2.85, the witness stated that main topic of discussion was Mananthavady project and among other things discussed, Karnataka government had made G a request for supply of electricity for some industries in Karnataka which included M/s. GIL also , but no decision was taken. The witness also stated that Minutes of the Meeting held on 28.9.84 were not prepared but he specifically denied the suggestion that any instructions were given by A1 not to prepare the Minutes. The fact needs no mention that a Minister is not supposed to prepare the minutes of the meetings. PW 45 also stated that H Karnataka as deficit State had been taking power from Kerala based on

agreement entered into sometime in 1979-80. At yet another place the witness has stated that sometime in 1984 there was an agreement to supply power to Wheel and Axle plant, Bangalore at the instance of the Minister for Railways. PW 45 has also made a statement to the effect "it has not come to my notice that any condition was attached with respect to the current that was supplied by Kerala to Karnataka". He further stated that energy imported by Karnataka from Kerala could be utilised by Karnataka in any manner they wished. But Kerala could make recommendations as was indicated in Ext.D-7 (document marked subject to proof "it is a letter from Kerala Industries Department written in the year 1980"). To yet another question "Has Kerala got anything to do with the allotment made by Karnataka Govt. of the Kerala Power as stated in Ext.P.22(b)?". PW 45 replied : "The allocation was a matter for the Karanataka Electricity Board and not Kerala Govt." The witness denied that there was any undertaking by the Karnataka Govt. for supply of current to M/s. GIL. The above facts have been stated only by a prosecution witness.

From the evidence of prosecution as indicated above, it does not emerge that Kerala Govt./KSEB or A1 and A2 made any commitment or gave any assurance or earmarked any quantity of electrical energy to M/s. GIL, strictly speaking not even to the State of Karnataka. Once the supply is made by the State of Kerala it is for the State of Karnataka/K.E.B. to make distribution of the electricity received, in the manner it may deem fit and proper. It is for the State of Karnataka to consider the requirement of energy for different purposes, different sectors and industries looking to its priorities and policies and the need of industrial and economic growth of the State. It is quite evident from the material on the record that State of Karnataka had been quite concerned to make electricity available to the industries in the State particularly heavy industries like M/s. GIL and Wheel and Axle Plant etc.

Next we come to the question of fixation of price for supplies made to M/s. GIL by the KEB/Karnataka Govt. So far the State of Kerala is concerned it supplied electricity to the State of Karnataka at the flat rate of 42 paise per unit. Learned counsel for the respondents has at the outset submitted that there is no grievance about the rate of electricity, as agreed for supply of energy by Kerala to Karnataka. The supply of electricity imported from Kerala was called high cost energy. KEB had fixed its rate at 80 paise per unit for its consumers. The lower rate as charged by KEB from M/s. GIL is not even alleged to have been fixed at the instance of the Kerala authorities, KSEB or the A1 or A2. It appears that M/s. GIL wrote to the Chairman, KEB for supply of high cost energy to it at a lower rate and in that connection it

A referred to the rate charged in the year 1980. That part of the letter may be extracted as follows :

> "During 1980 second quarter we have received 27 lakh units of power per month from Kerala (Ref.T/COM/EC/55/5054 dt.7.6.80). We were charged on no loss no profit basis that is 37 paise per unit inclusive
> B of taxes when the Kerala rate was 28 paise on Karnataka. Due to two tier system of pricing for our normal allocation of power at the normal rate of 28 paise plus taxes and duties for 60% and 78 paise plus taxes and duties for 40% our average energy cost at present is 48 paise plus taxes and demand charges. Now. if we are charged 80 paise plus
> C extras for the additional 40 lacs, our cost of energy will go up beyond our capacity to pay which will cripple our unit to further sickness."

It has also been mentioned in the letter that M/s. GIL had also played some role in negotiating earmarked power on barter basis from Kerala for their industry as per the advise of the government and that fact should not be
D overlooked. It was also emphasised that being situated in Karnataka the industry was contributing to the industrial infrastructure of the State and providing employment and getting additional revenue to the State Government. It appears looking into the request made by M/s. GIL and the precedent in the year 1980, the KEB calculated the rate at which electricity could be
E supplied to M/s. GIL. Ext.P-57 is the copy of the resolution of KEB fixing the rate of energy for M/s. GIL. Wheeling charges were fixed by KEB at the rate of 20% as against 10% charged from Wheel and Axle plant since M/s. GIL was also to draw energy during peak hours. In this manner after making calculations a decision was taken by the KEB to supply the high cost energy to M/s. GIL at the rate of 64 paise per unit instead of 80 paise. It was the
F decision of the KEB itself which made its own calculation on the basis of which it decided to supply the energy received from KSEB at the rate of 42 paise per unit, to M/s. GIL at the rate of 64 paise per unit. It was 22 paise per unit more than, at which KEB was purchasing it from Kerala. In the matter of fixation of the price chargeable in Karnataka the KSEB or A1 and
G A2 had no role to play at all. It would also be evident from the representation made by M/s. GIL that on earlier occasions also concessional rate was charged by KEB from M/s. GIL on the supplies of imported energy. KEB may levy surcharge or subsidize any particular sector, it would be a matter relating to their policy. KSEB has not charged the State of Karnataka at lower rate for the energy made available by KEB to M/s. GIL out of the supplies of KSEB.
H The State of Karnataka does not seem to have made any grievance in any

quarter at all, for supply of high cost energy by it to M/s. GIL at a lower rate. For the concession made by Karnataka State/KEB, like on some earlier occasions, giving some benefit to M/s. GIL, there is hardly any reason to criminally prosecute the appellants for it. The charge as against A1 and A2 regarding pecuniary benefit caused to M/s. GIL has nothing to do whatsoever with A1 and A2 in any manner, none suggested much less proved. The State of Karnataka/KEB appear to have provided such concession to M/s. GIL and Wheel and Axle Plant and may be to others also on earlier occasions. It was a matter for the State of Karnataka/KEB alone to be concerned about.

Next, in support of their case that the appellants acted illegally and in violation of law in supplying the electricity to M/s. GIL, reliance has been placed on Section 43 of the Electricity (Supply) Act, 1948. Section 43 reads as under:

> **"43. Power of Board to enter into arrangements for purchase or sale of electricity under certain conditions.- (1) The** Board may enter into arrangements with any person producing electricity within the State for the purchase by the Board, on such terms as may be agreed, of any surplus electricity which that person may be able to dispose of. (2) Where a sanctioned scheme so provides, the Board may, on such terms as may be agreed upon, enter into arrangements with any Government or person for the purchase or sale of electricity to be generated or used outside the State: Provided that the Board may not enter into such arrangements with any such Government or person without the consent of the State Government, or into arrangements with any such person without the consent of the Government of the State within which the electricity is to be generated or used."

The other provision which has been pressed into service, to make out a case of violation of rules, Rule 68 of Kerala State Electricity Board Rules, 1957 has been referred to which provides "sale of electricity outside the State shall be with the prior consent of the government". It would be relevant to note that both the above noted provisions relate to the power of the Board to sell or purchase electricity. According to sub-section (2) of Section 43 the Board is authorised to enter into an arrangement with any government or person for sale or purchase of electricity for use outside the State provided the consent of the state government is taken for any such arrangement. Rule 68 also puts similar bar while providing for sale of electricity outside the

A State that it shall be with prior consent of the government. In the case in hand it is amply clear that the arrangement of sale and supply of electricity from Kerala to Karnataka has been negotiated at a level higher than the Electricity Board, to be specific at the level of the two state governments through their respective Ministers. Secretary, Power, Kerala Government was also there. It is evident from the documents referred to earlier that the Minister for Power, B State of Karnataka had approached the Power Minister of the State of Kerala for exploring possibility of supply of electricity to the State of Karnataka which was then facing acute deficit of electric energy. The Chairman of the KEB who was accompanying the Minister of Power, State of Karnataka apprised of whatever transpired in the meeting between the two, to the C Secretary, Department of Power, State of Karnataka. So also it is on the record that a subsequent meeting also took place between the Ministers as well as with the Chief Minister of Karnataka. The supply of electricity from Kerala to Karnataka was in pursuance of and under the arrangement arrived at, as an outcome of the negotiations between the Ministers of the two States and the Chief Minister of State of Karnataka. The Chairmen of the Electricity D Boards of the two States have also been present during the negotiations along with Secretary, Power, Kerala Government. In these circumstances, the provisions of Section 43 of the Electricity (Supply) Act, 1948 and Rule 68 of Kerala State Electricity Board Rules, 1957 relating to consent of State Government for any such arrangement would not be attracted. Learned counsel E appearing for the appellants have also drawn our attention to the Rules of Business of the Government of Kerala. Rules 4, 5 and 9 of the Rules of Business read as under :

> "4. The Business of the Government shall be transacted in the Department specified in the First Schedule, and shall be classified F and distributed between those departments as laid down therein.
>
> 5. The Governor shall, on the advice of the Chief Minister, allot the business of the Government among the Ministers by assigning one or more departments to the charge of a Minister :
>
> G Provided that nothing in this rule shall prevent the assigning of one department to the charge of more than one Minister.
>
> 9. Without prejudice to the provisions of Rule 7, the Minister in charge of a Department shall be primarily responsible for the disposal of the business appertaining to that Department."

H

First Schedule referrable to Rule 4 quoted above contains the Department of Power at Serial No.23 of the List. The Minister in charge of the Department is primarily responsible for disposal of business pertaining to that department as provided under Rule 9 of the Rules of Business. In this background it is submitted that none else but A1 as Minister, Power would be competent to give consent of any such arrangement. Learned counsel for A1 has referred to certain decisions on the point of Rules of Business, viz. *M/s. Bijoya Lakshmi Cotton Mills Ltd.* v. *State of West Bengal and Ors.*, AIR (1967) SC 1145, *Samsher Singh* v. *State of Punjab and Anr.*, AIR (1974) SC 2192, in support of the contention that ministerial decision according to Rules of Business would be the decision of the Governor. We do not think it would be necessary to go further into the detail as the position under Rules of Business is quite clear. It has not been denied by the other side that Minister would be competent to give consent according to the Rules of Business. But the submission is that there is no document or formal order of consent for arrangement of supply of electricity. A reference has been made to the statement of PW 17 the Chairman, KSEB during the period 1987-88, who stated that to his knowledge there was no sanction of the Government of Kerala to supply Kerala energy to M/s. GIL. At this stage it would also be necessary to point out that there has not been any arrangement of supply of electricity between the State of Kerala/KSEB and M/s. GIL. Like M/s. GIL, there would be many recipients and consumers of Kerala Electricity supplied to KEB/Karnataka. The Minister of Power, State of Karnataka had initiated the negotiations with A1, the Power Minister of State of Kerala for import of electrical energy. From the documents referred to earlier, it is also clear that the State of Karnataka has been emphasising about shortage of electricity keeping in view need of M/s. GIL as well, apart from other industries in Karnataka. The price of 42 paise per unit was settled with the State of Karnataka/KEB and it is nobody's case that the same was not being paid accordingly by Karnataka to the Kerala. On its part the State of Karnataka was selling high cost energy (imported energy) at the rate of 80 paise to its consumers in Karnataka in place of 42 paise at which rate it had bought from Kerala and so far M/s. GIL is concerned it was at the rate of 64 paise per unit. It was a transaction between State of Karnataka/KEB and its consumers including M/s GIL. There was thus no occasion of any document being there showing consent of government of Kerala for supply of energy to M/s. GIL. There would obviously be none. In this light, the statement of PW 17 who was the Chairman of KSEB during 1987-88, to the effect that there was no sanction of the Government of Kerala to supply power to M/s. GIL has no material bearing or relevance. The

A supplies were to the State of Karnataka/KEB and the decision had been taken at the higher level namely, at the level of the government itself. Therefore, it is not correct to say that there was violation of Section 43(2) of the Electricity (Supply) Act, 1948 or Rule 68 of the Rules. The supply of electricity made under the arrangement arrived at on negotiations entered into between two States does not need any prior consent u/s 43 of Electricity (Supply) Act, 1948 or under Rule 68 of the Rules. These provisions are not attracted. Hypothetically even it is assumed that prior consent of Government was required in the facts and circumstances of the case in hand, it would be irresistably taken to be implied.

C The other aspect of the matter which has been emphasised on behalf of the prosecution is that the appellants did not enter into any written agreement and that no memo of meetings was prepared. There is no denial of the fact on behalf of the appellants that no formal agreement was drawn or entered into nor the fact that no minutes of the meetings were prepared. Undoubtedly, it would have been only proper way to enter into such an arrangement and to act upon the same thereafter. But the fact is that no written agreement was prepared. At the same time, it is also a fact that an arrangement was arrived at and according to the same electricity was supplied to the State of Karnataka/ KEB at a price of 42 paise per unit. There is no denial or objection to the rate fixed nor there is any grievance that State of Karnataka had not paid for the electricity supplied by State of Kerala/KSEB. Energy has been supplied and agreed price has been paid. Out of the Kerala energy supplied to the State of Karnataka/KEB, a part of it was consumed by M/s. GIL also amongst its other consumers. KEB was paid for energy supplied by it to its consumers including M/s. GIL. Once the energy is supplied to the State of Karnataka/ KEB it would be for them to disburse it in the manner they may think it best in their interest. It would also be evident from a letter of the Chief Minister of Karnataka dated May 8, 1985 addressed to A1 filed as Annexure P-9 to the affidavit of Chairman, KSEB before the Enquiry Commission (Vol.II, P. 304 in Criminal Appeal No. 372 of 2001) that electricity was being earmarked by the Karnataka authorities to M/s. GIL and other industries.

There is nothing to indicate that there was any restriction from any corner limiting use of Kerala energy supplied to the State of Karnataka by any particular industry or M/s. GIL. As indicated earlier, the State of Karnataka itself was quite keen to have substantial supply of energy for its major industries including M/s. GIL and Wheel and Axle Plant etc. Loss if any at all, though there is no grievance to that effect was that of the Karnataka

Government while it decided to supply energy to M/s. GIL at a lower rate as compared to its other consumers. So far the State of Kerala is concerned it sold electricity to the State of Karnataka at the rate of 42 paise irrespective of the fact that the same was utilised by M/s. GIL and Wheel and Axle plant or any other sector or segment of the consumer and at whatever price. Therefore, the fact that no formal written agreement was entered into will not be of any significance particularly so far the criminal case is concerned. Per se it entails no criminal liability and in the set of facts of case in hand it does not even constitute any incriminating circumstance to lend any support to the prosecution case.

There is no occasion to draw any inference due to non-execution of a written agreement that the supplies have been illegally made with dishonest intention. There is nothing to indicate that Karnataka State/KEB could not make available electricity to M/s. GIL like it did to its other consumers. As a matter of fact electrical energy was only continued to be supplied to Karnataka/KEB during the relevant period as well with upward revised rates to the advantage of the State of Kerala.

We are not undermining the requirement or necessity to execute an agreement in writing for any contract entered into for and on behalf of State or such bodies like KSEB but such omission, in the facts and circumstances of the case, would not lead to any inference of commission of any offence. It is though always necessary that an act must be performed in a manner it ought to be under the law. The State Government may of course take steps as may be necessary to see that such omissions may not occur and such transactions may take place by means of a written agreement. Otherwise, there always remains a risk of the other party resiling from the contract or may raise disputes about the terms and conditions of the agreement. A written instrument avoids the scope of uncertainty and leaves no room for speculation about the terms and conditions of a contract.

Yet another circumstance which has been referred to and so found by the High Court is that A1 and A2 supplied electricity to the State of Karnataka at a time when there was scarcity of energy in the State of Kerala. We have already indicated earlier that learned counsel appearing for the respondents has very fairly submitted that virtually there was no evidence on the record to show that there was scarcity of electricity in Kerala during that period. On the other hand, it has been pointed out by the learned counsel for A 2 that there was no scarcity in Kerala. It has been pointed out that sometime during the period prior to the relevant period of supplies there had been some cut

A imposed on supply of electricity in Kerala but not during the relevant period. Prosecution could show nothing to substantiate the finding of the High Court regarding scarcity of electricity in Kerala during the relevant period. The finding is thus vitiated due to lack of evidence to substantiate the same.

A reference has been made to the statement of PW 37 Assistant Engineer, B in sub-Division, Bangalore, regarding meter reading about supplies made to M/s. GIL, out of the energy imported from Kerala as well as about the preparation of the bills on the basis thereof. It is a matter for the State of Karnataka or KEB to keep account of the energy supplied to M/s. GIL, since they have obviously to realise the charges of electricity consumed by M/s. C GIL It negatives the prosecution case that Kerala/KSEB sold energy to M/s. GIL. It is an exercise in futility to show and establish that the Kerala energy was being consumed by M/s. GIL as well. It is nobody's case that the imported energy could not at all be consumed by M/s. GIL like others do. The State of Karnataka/KEB had to keep an account of imported energy viz. high cost energy which was being supplied to its consumers so as to charge them for D the same accordingly.

We also find that there is nothing to indicate that KSEB, A1 and A2 had earmarked or fixed any quantity of electricity for M/s. GIL. One or two letters (referred to and dealt with earlier) in which officials of KEB have written that some particular quantity of electricity was to be supplied to E M/s. GIL and non-reply of such letters would hardly lead to any such inference or conclusion that any fixed quantity of electricity was earmarked for supply to M/s. GIL by Kerala/KSEB. Learned counsel for the respondent has particularly relied upon the statement of PW 22 which reads: "Whether any energy was spared as agreed to by A1 as stated in P.56(a) letter to be supplied F to M/s. GIL (Q)?" "I cannot recollect definitely. But some additional energy was given to M/s. GIL by KEB (A)". That energy was supplied on KSEB account. By KSEB account I mean from current supplied by Kerala to Karnataka". It only confirms the fact that Kerala/KSEB supplied energy to Karnataka/KEB alone. The above statement negatives the allegation of earmarking of any definite quantity of electrical energy to M/s. GIL by G KSEB, the additional energy was given to M/s. GIL by KEB. Right from the very beginning as indicated earlier, the State of Karnataka was quite anxious to make available the electricity to its heavy industries including M/s. GIL and Wheel and Axle plant. It is not understandable how it leads to inference or to the conclusion that Kerala State/KSEB sold energy to M/s. GIL. H Therefore, to fasten the responsibility or coming to any conclusion that any

amount of energy was earmarked and sold in definite quantity to M/s. GIL by KSEB or A1 and A2 would only be conjectural and based on surmises. Such a finding or inference cannot be sustained. A

On the basis of the discussion held by us, our conclusions are as follows:

1. That Electricity was being supplied by the State of Kerala to State of Karnataka and other States since long before the relevant period. B

2. That the Minister for Power and Energy, State of Karnataka along with Chairman of Karnataka Electricity Board approached the appellants seeking assistance to help out during the crisis of scarcity of electricity in their State. They had a meeting in that connection with A1 and A2 on 29.9.1984 and laid emphasis upon its dire need also keeping in view the need of its industries and M/s. GIL as well as Wheel and Axle Plant. C

3. That the letter written by the Chairman, KEB to the Secretary, Power, Government of Karnataka dated 29.9.84 indicates that no firm commitment was made by the State of Kerala/KSEB for supply of electricity except some assurance for assistance to the maximum possible. This letter also indicates that it was told that during peak hours it was not possible to provide electricity for M/s. GIL. D E

4. That the supply of electricity was continued in pursuance of the talks initiated by the Minister of Power and Energy, Karnataka but at a revised rate which was enhanced to 42 paise per unit.

5. That the imported Kerala energy was priced at 80 paise per unit as high cost energy by the State of Karnataka/KEB at which rate it supplied to its consumers. But on representation of M/s. GIL to the State of Karnataka/KEB after calculation, lowered the rate of high cost energy to 64 paise per unit for M/s. GIL. F

6. That it was concern of the State of Karnataka/KEB to fix any rate of imported energy and its disbursement to its consumers as it would find fit and proper. G

7. That no fixed quantity of electricity was earmarked or sold by the State of Kerala/KSEB to M/s. GIL. M/s. GIL was supplied electricity by the State of Karnataka/KEB @ 64 paise per unit as fixed by KEB. H

8. That it is nobody's case that State of Karnataka or anybody felt aggrieved by fixation of lesser rate of high cost energy by KEB for M/s. GIL.

9. That since the arrangement was arrived at, in pursuance of negotiations at the Ministerial level of the two States and the Minister of Power, State of Kerala as Minister in charge being authorised to take decisions under the Rules of Business of the State of Kerala, there was no occasion for taking any consent from the government. Provisions of Section 43 of the Electricity (Supply) Act, 1948 or Rule 68 are not attracted. There is no violation of the said provisions.

10. That the fact that arrangement entered into was not reduced into an agreement in writing, lost relevance for the purposes of this case since the same having been acted upon and the electricity having been supplied to the State of Karnataka/KEB for which there is no complaint that State of Kerala/KSEB has not received the agreed price. In any case, no inference of criminal liability could be drawn.

11. There is no evidence to support the conclusion of the High Court that during the relevant period there was scarcity of electricity in the State of Kerala.

12. That according to the prosecution as well as the findings of the Courts, the appellants have not benefited monetarily or otherwise as a result of arrangement or by M/s. GIL.

In the light of the above conclusions, it may now be examined as to what offence if at all, has been made out against the appellants. The charge and the conviction of the appellants is under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947. It reads as follows:

> **"5. Criminal misconduct in discharge of official duty** - (1) A public servant is said to commit the offence of criminal misconduct -
>
> xxx xxxx xxxx
>
> (d) if he, by corrupt or illegal means or by otherwise abusing his position as public servant, obtains for himself or for another person any valuable thing of pecuniary advantage.
>
> (2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall not be less than

one year but which may extend to seven years and shall also be liable to fine: A

Provided that the court may, for any special reasons recorded in writing, impose a sentence of imprisonment or less than one year."

The ingredients of the offence are (i) abuse of position as public servant; (ii) obtaining for himself or for another any valuable thing or pecuniary advantage; (iii) by corrupt or illegal means. Keeping in view the above ingredients of the provision, the charge as levelled against the appellants is that by abusing their official position as public servants they conspired and illegally sold 12241440 units of Kerala electricity to M/s. GIL, Bangalore and thus caused GIL to obtain a valuable thing, namely, electricity resulting in pecuniary advantage to the said company to the tune of Rs. 19,58,630.40 paise. At this stage it would be appropriate to indicate that the prosecution has not pursued the charge of conspiracy against A1 and A2. Nor it is their case that A1 and A2 obtained for themselves any valuable thing or pecuniary advantage out of the whole transaction. As a matter of fact the finding of the High Court is also to the same effect. The emphasis is only on illegal sale of energy by KSEB to M/s GIL thereby causing valuable thing namely electricity to be obtained by M/s. GIL which resulted in profit to M/s. GIL to the tune of Rs. 19,58,630.40 paise. B C D

One of the submissions advanced on behalf of the appellants is that the offence as provided under clause (d) of sub-section (1) of Section 5 of the Prevention of Corruption Act is to obtain any valuable thing or pecuniary advantage for himself or for any other person. There is no such ingredient constituting an offence by "causing" to obtain a valuable thing for any other person. In our view the argument is too technical to be appreciated. If a person obtains any valuable thing or pecuniary advantage for any other person can well be said to be causing "to obtain" to any particular person any benefit or advantage. Such an act may be covered by the concept of 'actus reus' that is to say an act of accessory, aiding, abetting, counselling and procuring an offence. But in comparison to *mens rea, actus reus* i.e. mental element is considerably narrower and more demanding than that required for the principal offender. The distinction between mens rea and actus reus is indicated in Blackstone's Criminal Practice[1]. In the case in hand however, obtaining any valuable thing or pecuniary advantage for any other person has also been brought within the definition of the offence. Therefore, it will have to be E F G

1. Blackstone's Criminal Practice 1992, edited by Peter Murphy, page 64, A-5.2. H

A examined as to whether there has been "obtainment" of a valuable thing or pecuniary advantage by the appellants for M/s. GIL. In this connection, learned counsel for the appellants have placed reliance upon a decision of this Court in the case of Subash Parbat Sonvane[2]. The facts of the case were different as the court was considering a case of bribery under Section 13(1)(d)(i) of the Prevention of Corruption Act, 1988. The meaning of the word 'obtain' B was considered and in that context referred to observations made in the case of Ram Kishan[3]. The word 'obtains' on which much stress was laid does not eliminate an idea of acceptance of what is given or offered to be given, *though it connotes also an element of effort on the part of the receiver.* M. *W. Mohiuddin's* case[4] was also referred to, which also related to a case of C bribery and while dealing with the meaning of the word 'obtains', it was observed : "whether there was an acceptance of what is given as a bribe and whether there was an effort on the part of the receiver to obtain the pecuniary advantage by way of acceptance of the bribe depends on the facts and circumstances of each case." It was found true in that case that the accused had made a demand for the money. In so far the cases covered under Section D 5(1)(d) of the Prevention of Corruption Act, 1947 we find a clearer picture from the decision in the case of C.K. Damodaran Nair[5] as relied upon by the learned counsel for the appellants and also considered in the case of *Subash Parbat Sonvane* (supra). It is laid down as follows :

> E "12. The position, will, however, be different so far as an offence under Section 5(1)(d) read with Section 5(2) of the Act is concerned. For such an offence prosecution has to prove that the accused 'obtained' the valuable thing or pecuniary advantage by corrupt or illegal means or by otherwise abusing his position as a public servant and that too without the aid of the statutory presumption under Section F 4(1) of the Act as it is available only in respect of offences under Section 5(1)(a) and (b) - and not under Sections 5(1)(c), (d) or (e) of the Act. 'Obtain' means to secure or gain (something) as the result of request or effort (Shorter Oxford Dictionary). *In case of obtainment the initiative vests in the person who receives and in that context a demand or request from him will be a primary requisite for an offence*

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2. [2002] 5 SCC p. 86 *Subash Parbat Sonvane* v. *State of Gujarat.*

3. *Ram Kishan* v. *State of Delhi,* AIR 1956 SC 476.

4. *M.W. Mohiuddin* v. *State of Maharashtra,* [1995] 3 SCC 567.

H 5. *C.K. Damodaran Nair* v. *Government of India,* [1997] 9 SCC 477.

under Section 5(1)(d) of the Act unlike an offence under Section 161 IPC, which, as noticed above, can be, established by proof of either 'acceptance' or 'obtainment'." (emphasis supplied by us)

In the light of the meaning of the word 'obtains' it may have to be seen as to whether there was any element of effort on the part of the appellants by reason of which it could be said that electricity was caused to be obtained by them to M/s. GIL that too on a lower rate causing pecuniary advantage to M/s. GIL. The position of the appellants has to be considered as that of a receiver or one who illegally obtained valuable thing. The documentary evidence as well as the oral evidence as referred to in the earlier part of this judgment clearly establishes that the State of Karnataka/KEB contacted the Minister of Power State of Kerala (A1) for assistance in the matter of supply of electricity due to grim situation of shortage of energy in their State. Time and again in different meetings and otherwise the State of Karnataka/KEB had been emphasising their requirement of electricity and supply of more energy stressing upon the need for their industry some of which were named including M/s. GIL and Wheel and Axle Plant, so much so that they had even advised M/s. GIL also to make effort and use their good offices with Kerala Authorities for supply of more electricity. So far the response of the appellants is concerned it is clear that they had only told that they would look into their demands and would like to assist to the maximum possible which would also depend upon the ensuing monsoon situation. The effort has throughout been on the part of the State of Karnataka/KEB to obtain more and more energy stressing the pressing need of the State on various counts. It is not to be found that the State of Kerala/KSEB, A1 or A2 ever made efforts to sell Kerala energy to KEB nothing to say of M/s. GIL. Had that been so there was no occasion for the State of Karnataka/KEB to advise M/s. GIL to use their good offices with Kerala Authorities for supply of energy. It is also evident from documentary evidence that despite assurance on the request of Karnataka/ KEB to assist it was not always possible for KSEB to make supply. It is also clear from the evidence that whatever energy was exported from Kerala was taken in the general pool of electricity in the State of Karnataka/KEB and the distribution thereof used to be made by the State of Karnataka/KEB and the Chief Minister. Some stray utterances made in some letters or internal documents of the KEB that KSEB had agreed for certain quantity of energy for M/s. GIL would in no way lead to the inference that the State of Kerala/ KSEB, A1 or A2 had earmarked any supply for M/s. GIL. Even according to them, KSEB had only "*agreed*" to spare electrical energy for M/s. GIL which definitely shows that initiative was on the part of the State of Karnataka/

A KEB. There is no case of initiative or effort on the part of KSEB for supply of energy. It is rather the other way round. The reliance placed by the prosecution on such letters or non-reply of certain letters is misplaced. The primary requisite of offence u/s. 5 (1)(d) of 'obtaining' any valuable thing or pecuniary advantage for any other person, in absence of any effort, initiative or request on the part of the appellants shatters the charge in view of decision B in the case of *Damodaran* (supra). So far causing pecuniary advantage or profit to M/s. GIL is concerned we have made a detailed discussion about the same that it was purely a matter between the State of Karnataka/KEB and M/s. GIL to decide what price was to be charged by KEB from M/s. GIL for supply of imported energy. There is no allegation nor evidence to show that C the State of Kerala/KSEB or A1 and A2 had any say or hand in lowering of the price for M/s. GIL by the State of Karnataka/KEB. It may be indicated that earlier also there have been instances of supply of imported energy at a lower rate to M/s. GIL and Wheel and Axle Plant by KEB. In any case it was a matter between the State of Karnataka/KEB and M/s. GIL or other industries. Therefore, it is also incorrect to say that the appellants caused any profit to D occur to M/s. GIL.

We have already recorded a finding that in the facts and circumstances of the case the provisions of Section 43 of the Electricity (Supply) Act, 1948 or Rule 68 of the Rules were not attracted. It cannot be said factually, that E electricity was sold by State of Kerala/KSEB, A1 or A2 to M/s. GIL nothing to say of illegally, nor it can be said that there was any abuse of their position by A1 and A2 in supply of energy to Karnataka/KEB. Once the supplies were made to the State of Karnataka to help out during the period of scarcity of energy, as requested, it is not understandable how only a part of supply which the State of Karnataka/KEB, amongst others allocated to M/s. GIL that F alone could be said to be illegal or that the appellants caused to be obtained valuable thing to M/s GIL illegally by abuse of their official position. KSEB did not sell energy to M/s GIL, all supplies were made to KEB. The charge that the appellants had illegally sold energy to M/s GIL or caused it to be obtained by M/s. GIL is not all substantiated and miserably fails.

G On behalf of the appellants reliance has also been placed upon a decision of this Court in the case of Kurban Hussein Mohammedali Rangwalh[6]. The case relates to Section 304A IPC i.e. in entirely different set of facts. The conviction was set aside under Section 304A and converted to one under

H 6. *Kurban Hussein Mohammedali Rangwalla* v. *State of Maharashtra*, [1965] 2 SCR 622.

Section 285 IPC. It is submitted that the limited purposes for which this decision is being relied upon is that an act which may be punishable must be proximate and direct cause of the injury caused. On this basis it is submitted that if some profit has been caused to M/s. GIL by lowering of the price by State of Karnataka/KEB it is not proximate or direct cause of anything done by A1 and A2. The act of the State of Karnataka/KEB intervenes between the supplies made by the State of Kerala/KSEB to KEB who in turn supplied the same to its consumers including M/s. GIL at a lower price. It is not the direct effect or proximate cause to any benefit, if at all, accrued to M/s. GIL. We feel that it would not be necessary to go further into this aspect in view of our findings recorded on the facts and relating to ingredients of the offence.

To consider yet another aspect, the general principle of criminal jurisprudence is that element of mens rea and intention must accompany the culpable act or conduct of the accused. In respect of this mental element generally, the Blackstone's Criminal Practice[7] describes it as under :

> "In addition to proving that the accused satisfied the definition of the actus reus of the particular crime charged, the prosecution must also prove mens rea, i.e., that the accused had the necessary mental state or degree of fault at the relevant time. Lord Hailsham of St. Marylebone said in *Director of Public Prosecutions* v. *Morgan,* [1976] AC 182 at p.213 : 'The beginning of wisdom in all the "mens rea" cases is as was pointed out by Stephen J in Tolson (1889) 23 QBD 168 at p.185, that 'mens rea' means a number of quite different things in relation to different crimes'. Thus one must turn to the definition of particular crimes to ascertain the precise mens rea required for specific offences."
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> The author then comments :
>
> "Criminal offences vary in that some may require intention as the mens rea, some require only recklessness or some other state of mind and some are even satisfied by negligence. The variety in fact goes considerably further than this in that not only do different offences make use of different types of mental element, but also they utilise those elements in different ways."

It is clear thus that the accused must have the mental state or degree of fault

7. Ibid A2.1 p.1.

A at the relevant time. It may of course differ from crime to crime according to the definition thereof. The matter of degrees may also differ. That is to say generally the mental state and the criminal act must coincide. The criminal act may be one which may be intended by the wrong doer. It is as well known mere intention is not punishable except when it is accompanied by an act or conduct of commission or omission on the part of the accused. As B indicated earlier, situation varies in respect of different kinds of crimes as in some of them even negligence or careless act may constitute an offence or there may be cases of presumptions and putting the accused to proof to the contrary. In the case in hand we have found that there is no sale of energy to M/s GIL by KSEB nor the appellants had any say in price fixation for C M/s GIL by KEB. In this light we may pass on to Criminal Law - J.C. Smith, Brian Hogan[8], where proposition of law is put as follows :

> "It is a general principle of criminal law that a person may be convicted of a crime unless the prosecution have proved beyond reasonable doubt both (a) that he caused a certain event or that responsibility is D to be attributed to him for the existence of a certain state of affairs, which is forbidden by criminal law, and (b) that he had a defined state of mind in relation to the causing of the event or the existence of the state of affairs. The event, or state of affairs, is called the actus reus ad the state of mind the mens rea of the crime."

E We further find the said principle of criminal jurisprudence stated in Criminal Law by K.D. Gaur[9], wherein it is stated as follows :

> "Criminal guilt would attach to a man for violations of criminal law. However, the rule is not absolute and is subject to limitations indicated in the Latin maxim, actus non facit reum, nisi mens sit rea. It signifies F that there can be no crime without a guilty mind. To make a person criminally accountable, it must be proved that an act, which is forbidden by law, has been caused by his conduct, and that the conduct was accompanied by a legally blameworthy attitude of mind. Thus, there are two components of every crime, a physical element and a G mental element, usually called actus reus and mens rea respectively."

8. Criminal Law, Smith, Hogan, 6th Edition, p.31.

9. Criminal Law - cases and materials, K.D.Gaur, Third edition, p.23.

H 10. Criminal Law - Glanville Williams - The General Part - Second Edition p.1.

Glanville Williams in Criminal Law[10] has also stated as follows in connection with the intention accompanying the act :

> "The chief problems in the general part of criminal law pertain to the requirement of a criminal state of mind, mens rea; but these cannot be adequately discussed without a preliminary exploration of the nature of an actus reus".

It is further stated :

> "Although thoughts are free, the uttering of them is another matter. Speaking or writing is an act, and is capable of being treason, sedition, conspiracy or incitement; indeed , almost any crime can be committed by mere words, for it may be committed by the accused ordering an innocent agent (e.g., a child under eight) to do the act. But to constitute a criminal act there must be (as said already) something more than a mere mental resolution. Apparent, but not real, exceptions to this proposition are treason and conspiracy. It is treason to compass the King's death, but the law requires an overt act manifesting the intention; and this act must be something more than a confession of the intention. It must be an act intended to further the intention; perhaps, too, it must actually do so"

Thus, looking to the definition of the crime in the case in hand namely, clause (d) of sub-section (1) of Section 5 of the Act, according to the principle indicated above it is necessary that the act must have been done illegally abusing his position as public servant for obtaining benefit pecuniary or otherwise for himself or for someone else. This is an offence which would require an intention to accompany the act. The element of mental state would be necessary to do a conscious act to get the required result of pecuniary advantage or to obtain any valuable thing, even if it is for someone else, then too element of mental state must be there at the relevant time. In view of the facts and circumstances indicated in the discussion held earlier in this judgment, and findings recorded on facts, we firstly hold that facts leading to charges are not proved and we also find that the element of mens rea and intention is totally lacking. The electrical energy was exported to Karnataka/KEB at the request of State of Karnataka during the period of crisis of shortage of energy which is not objected to, so as to be illegal but for a part of it which is allocated by the State of Karnataka/KEB to M/s. GIL which constitutes no offence. The prosecution failed to prove the case of sale of electricity by KSEB to M/s. GIL or the KSEB or A1 and A2 having caused profit to M/s.

A GIL. Admittedly, appellants did not stand to gain in any manner. The prosecution case thus fails.

In the result, the appeals No.372/01 and 373/01 are allowed and the judgment and order of conviction and sentence passed against the appellants by the Trial Court and upheld by the High Court under Section 5(2) read with
B Section 5(1)(d) of the Prevention of Corruption Act are set aside. The appellants need not surrender and their surety bonds are discharged.

In view of the fact that the judgment of the High Court has been set aside, no orders are required to be passed in Criminal Appeal Nos. 725-27/ 02, having rendered infructuous, they stand finally disposed of as such.
C

N.J. Appeals allowed.