A.P. GAS POWER CORPN. LTD.

v.

A.P. STATE REGULATORY COMMISSION AND ANR.

MARCH 23, 2004

[BRIJESH KUMAR AND ARUN KUMAR, JJ.]

Andhra Pradesh Electricity Reforms Act, 1998:

Sections 14, 15 and 16—Licence—Requirement for—Captive consumption and supply and distribution of electricity—Difference between—Power station established by private participation for generation of electricity—participating companies allowed to share electricity generated to the extent of their shareholding—Participating companies also entitled to transfer their shares and the transferee entitled to consume electricity to the extent of its shareholding—Supply also permitted to sister concerns of participating industries—Held, no licence required for consumption by participating industries or transferees of shares as it would be captive consumption—Licence required for supply of electricity to sister concerns as it would be supply/ distribution of electricity—Indian Electricity Act, 1910—Sections 3 and 28.

Sections 56(3)(vi) and 21(4)—Exclusion of provisions of Section 43A of Electricity (Supply) Act, 1948 by Section 21(4)—Held, the two provisions deal with two different aspects—Section 43A of the 1948 Act is an enabling provision whereas Section 21(4) is a prohibition—Hence Section 43A not excluded by Section 21(4) by virtue of Section 56(3)(vi)—Electricity (Supply) Act, 1948—Section 43A.

Electricity (Supply) Act, 1948—Section 43A(1)(c)—"Any other person"—Meaning of—"Any other person" does not mean individual or end-consumer but persons/bodies discharging function of generations, transmission, distribution or supply of electricity—Words & phrases.

The State of Andhra Pradesh and the Andhra Pradesh State Electricity Board (APSEB) decided to set up a power station with private participation, and for that purpose the appellant company was incorporated in 1988. The shares of the appellant company were held by

Andhra Pradesh State Electricity Board and certain participating industries who were to share the power generated by the company in proportion to their respective paid-up share capital. Memorandum of Understanding was signed between the parties which provided that the shareholding companies could supply power to their sister concerns provided that the said sister concern was located within the State of Andhra Pradesh and a High Tension consumer of the APSEB.

Under the A.P. Electricity Reforms Act, 1998 for transmission and supply of electricity a licence was required under Section 14. Under Section 16 of the Act, the Andhra Pradesh Electricity Regulatory Commission was empowered to grant exemptions from the requirement to have a licence. Section 56(3)(vi) of the said Act provided that certain Sections of the Electricity (Supply) Act, 1948 would not apply to the extent Andhra Pradesh Electricity Reforms Act, 1998 had made specific provisions therefore.

The appellant applied under Section 16 of the A.P. Electricity Reforms Act, 1998 for grant of exemption from licence for supply of generated power to its shareholders and their sister concerns. The application for exemption was rejected by the Regulatory Commission established under the provisions of the Andhra Pradesh Electricity Reforms Act, 1998. The Regulatory Commission held that no licence was required for the generating company but a generating company was confined only to generation of power and would not extend to distribution and supply of electricity. Relying upon the provisions of Sections 3 and 28 of the Electricity Act, 1910, it was held that the appellant was required to have licence as it was supplying energy. It was further held that the exemption granted to the generating companies under Section 26A of the Electricity (Supply) Act, 1948 would not be available to the appellant company as its function was not confined only to generation of power but extended to distribution and supply thereof to the participating industries and the sister concerns.

The appellant filed writ petition before the High Court. The High Court dismissed the writ petition and confirmed the order passed by the Regulatory Commission. Hence the appeals.

The main question that arose for consideration by this Court was whether the appellant was required to take a licence under the law for utilization/sale or supply of power generated by it to the participating

A industries, their sister concern and the companies to whom shares of the appellant have been transferred by the participating industries.

Partly allowing the appeals, the Court

HELD: 1.1. The undisputed position under the law is that no licence
B is required for generation of electricity. The electricity generated is to be consumed, sold, distributed or supplied since there is no way to store it. Sections 3 and 28 of the Electricity Act, 1910 are for the purpose of being engaged in the business of supply of energy and does not cover the cases of generation of electricity or its use and consumption by the generating group itself. Thus, no licence is required to be taken by a generating
C company consuming the electricity generated by itself. The activity of generating electricity may be by an individual or by a group of persons, no distinction is envisaged on that account to exclude a group of persons, coming together to establish and generate electricity for their own purpose. [444-A-B; 447-B-D]

D 1.2. Merely because Sections 12 to 19 of the Electricity Act, 1910 and certain provisions of the Schedule of the Electricity Act, 1910 have been made applicable to the generating company as well by virtue of provision of sub-section (2) of Section 26A of the Electricity (Supply) Act, 1948, no inference can be drawn that any licence is required to be taken by a
E generating company under the provisions of the Electricity Act, 1910. [447-D-E]

1.3. Consumption of electricity by the participating industries in their units to the extent of their shareholding amounts to captive consumption for which no licence would be required as it would neither be a supply
F nor distribution of the electricity produced. It is utilization of the product by the manufacturer itself. There would be no sale, supply or distribution to the self so long as the power produced is utilized by those who are participating in the activity of generating electricity. In the case when it is not a single owner but a joint or collective venture for generation of electricity for their own captive consumption obviously the self
G consumption of the power generated would be amongst those who are participating in the activity of generation and it shall not be confine to any one industry. This position is not in view of equity in favour of the participating industries but under the law there is no such requirement for them to have a licence. [453-H; 454-A-B, 448-D]

H 2.1. So far the sister concern or concerns which have been defined

as those under the same group as participating industries, it would require to have a licence if the electricity is made available or provided to them for consumption as it shall fall within the ambit of distribution, sale or supply of the electricity and not captive consumption of power. It would be permissible without licence only in case of exemption if granted in that behalf, by the competent authority. [455-G-H; 456-A]

2.2. Consumption of power, generated by a generating company, by a concern which may be under the same group as any of the participating industries cannot be said to be consumption or use of the power by the participating industry itself. In absence of the element of self consumption by the generating company, it would not fall in the category of "captive consumption". It would surely be a supply to a non-participating industry and in that event it would be necessary to have a licence under the relevant provisions of law. [449-D-E]

2.3. If there is a legal requirement, merely an agreement amongst certain parties would not exclude the application of law. Provisions of law regulating the situation, would prevail over any kind of agreement amongst some individuals as or group or otherwise. A clause in the Memorandum of Understanding would not do away with the requirement of having a licence for supply of electricity generated by appellant to such concerns which may be under the same group as the participating industries but not the participating industries themselves. [449-E-G]

State of Uttar Pradesh and Ors. v. *Renusagar Power Company and Ors.*, [1988] 4 SCC 59 and *State of U.P.* v. *Hindustan Aluminium Corpn. Ltd.*, [1979] 3 SCC 229, referred to.

2.4. It is not permissible to transfer or supply the electrical energy to a sister concern out of the share of the participating industry. [451-D]

3. After transfer of shares of appellant, the transferee company or industry would not remain an outsider but a shareholding company and it is entitled to utilize the power generated by appellant and would be confined to the extent of the value of the shares transferred to it. Holding of share capital in appellant company is the basis of participating in the generating activity of appellant and utilization of the power produced to the extent of the shareholding, it would only amount to captive consumption and self supply or distribution of the power and it would not require a licence under Section 3 and 28 of the Electricity Act, 1910 or

A under Sections 15 and 16 of the Andhra Pradesh Electricity Reforms Act, 1998. However, as soon as the electricity generated by the appellant goes to anyone who has no shareholding in the company or beyond the extent of the shareholding it would certainly amount to supply or distribution to the public entailing the liability of obtaining a licence under Sections 3 and 28 of the Electricity Act, 1910 or for that matter under Sections 15 B and 16 of the Reform Act, 1998. [454-C-F]

4. Section 21(4) of the Andhra Pradesh Electricity Retorms Act, 1998 and Section 43A(1)(c) of the Electricity (Supply) Act, 1948 deal with different situations; whereas Section 43A(1)(c) of the Electricity (Supply) C Act, 1948 enables a generating company to sell electricity to any person with the consent of the State Government, Section 21(4) of the Andhra Pradesh Electricity Reforms Act, 1998 is meant for holder of a supply or transmission licence to purchase the electricity from a generating company. It is not the same thing as provided for under Section 43A(1)(c) of the Electricity (Supply) Act, 1948. Sub-section (4) of Section 21 of the D Reform Act, 1998 is restricted to the holder of a licence for supply or transmission of the electricity but it would not apply to any other purchaser whereas Section 43A(1)(c) of the Electricity (Supply) Act, 1948 permits a generating company to sell electricity to any person, which is a wider connotation not necessarily a licencee. A generating company will E not be able to sell electricity on the basis of permission taken by a licencee under Section 21(4) of the Andhra Pradesh Electricity Reforms Act, 1998 for purchase of electricity. Therefore, sale of electricity to any person other than a licencee as provided under Section 43A(1)(c) of the Electricity (Supply) Act, 1948 is not covered by Section 21(4) of the Reform Act, 1998. The two provisions have different implications altogether. The provisions F under Section 43A(1)(c) of the Electricity (Supply) Act, 1948 is an enabling provision to sell electricity to any person with the consent of the State Government, whereas the provision contained under Section 21(4) of the Reform Act, 1998 pertains to the prohibition on purchase of electricity which is restricted to a licencee. Hence, Section 43A(1)(c) of the Electricity (Supply) Act, 1948 is not dis-applied by virtue of Section 56(3)(vi) of the G Andhra Pradesh Electricity Reforms Act, 1998 and the consent granted by the State Government will hold good for the sale of electricity to any person. [458-E-H; 459-A-C]

5.1. The expression "any other person" used in clause (c) of sub-H section (1) of Section 43A of the Electricity (Supply) Act, 1948 may be

persons or bodies discharging the functions of generation, transmission, distribution or supply of electricity. Clause (c) of sub-section (1) of Section 43A of the Electricity (Supply) Act, 1948 does not envisage a generating company selling/supplying electricity for use in household or domestic purpose or to the small shops, to the showrooms or an individual running flour mill or a welding workshop etc. [465-E-F] A B

Mysore State Electricity Board v. *Bangalore Woollen, Cotton and Silk Mills Ltd. and Ors.*, AIR (1963) SC 128, referred to.

5.2. If the intention was to include all under the expression "any other person" it was not necessary to specify Electricity Board in clauses (a) and (b). Looking to the provisions of the Electricity (Supply) Act, 1948 in totality it cannot mean an individual consumer since such a supply to individual consumers is not envisaged nor dealt with under the Electricity (Supply) Act, 1948. Therefore, to assign a wide meaning to the word "any other person", meaning thereby, to any end consumers would be spreading the meaning too wide going beyond the subject matter dealt with under the Electricity (Supply) Act, 1948 and not connected with the intent and object of legislation. [463-G; 464-D-F; 465-F-G] C D

5.3. It is true that as a general principle a plain meaning is to be attached to a word or expression used in the legislation but it cannot be divorced of the context and an isolated meaning attached to it. In such circumstances, it becomes necessary to assign a meaning which may be reasonably and harmoniously derived from the company of the words and phrases preceding such expression. In this view of the matter, it can well be said that the meaning of the expression "any other person" as used in clause (c) of sub-section (1) of Section 43A of the Electricity (Supply) Act, 1948 denotes such bodies or entities which would further the purpose for which the electricity board have been constituted. [465-G-H; 466-A] E F

Kavalappara Kottarathil Kochuni v. *State of Madras,* AIR (1960) SC 1080; *Tribhuwan Prakash Nayyar* v. *Union of India,* AIR (1970) SC 540 and *Amar Chandra* v. *Collector of Excise, Tripura.*, AIR (1972) SC 1863, referred to. G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4660 of 2001.

From the Judgment and Order dated 8.6.2001 of the Andhra Pradesh High Court in C.M.A. No. 1970 of 2000. H

A WITH

C.A. Nos. 4661, 4662, 5208 and 6338 of 2001.

K.K. Venugopal, G.I. Sanghi, Ranjit Kumar, V.R. Reddy, V.A. Bobde, Ashok Grover, P.S. Narasimha, C.V. Nagarjuna Reddy, P. Sridhar, Ananga B Bhattacharya, Ms. Seema Bengani, G. Seshagiri Rao, Mrs. Prabha Swami, Krishnamurthi Swami, T. Mathivanan, Ms. Binu Tamta, Gopal Chaudhary, Ms. Deepa Vishwanathan, Ms. Shilpi Srivastava, Ms. Indu Malhotra, M.G. Ramachandran, K.V. Mohan, K.V. Balakrishnan, Sakya Singha Chaudhuri, Ms. Anupama Grover and Rakesh K. Sharma for the appearing parties.

C The Judgment of the Court was delivered by

BRIJESH KUMAR, J. The above noted appeals have been preferred against the common judgment of the Andhra Pradesh High Court, upholding the order passed by the Andhra Pradesh State Regulatory Commission and its finding that the extended activities of supply of energy to the sister concern D of the participating industries of A.P. Gas Power Corporation Ltd. (for short, 'APGPCL') would require Licence or exemption therefrom under the provisions of Sections 15 or 16 of the Andhra Pradesh Electricity Reform Act 1998 (for short 'the Reform Act, 1998').

E Shortage of power is felt in most of the parts of the country which, apart from disrupting day-to-day life of the people, quite often than not, creates problem for industries. The States or the Electricity Boards managing the power sector find it difficult to meet the ever increasing demand of electricity. In such circumstances, captive generation of power is not unknown and it is getting quite in vogue but generally it is done in a manner that the F factory or industry would generate and consume the power confining it in its premises to run its manufacturing/processing unit. In such circumstances, finding a via media, it appears that the State Government of Andhra Pradesh and the Andhra Pradesh Electricity Board mooted the idea of setting up of a 3 X 33 MW gas based combined cycle power station at Vijjeswaram for establishing a generating station which required high amount of investment, G hence they decided to invite private participation in the venture which attracted some of the heavy industries to the proposal. They entered into a Memorandum of Understanding (MOU-1) on 17.10.1988 and another MOU on 19.4.1997, according to which, the Andhra Pradesh State Electricity Board (for short 'APSEB') had to have 26% share in the new company to come up viz. H APGPCL, and the rest of the participating industries were to have different

percentage of shares and the power so generated by the company was to be shared proportionately amongst the share holding participating industries and their sister concerns. The Central Electricity Authority is also said to have acceded to the request made to treat APGPCL as collective captive power generation company.

The new company, APGPCL, as indicated above, came into being and started power generation and distribution of the same according to the MOUs to the participating industries in proportion to their share holding. The power so generated was taken to the grid of APSEB wherefrom it was being wheeled on payment of wheeling charges to the APSEB in the shape of electricity to the extent of the charges for wheeling the electricity. The State Government is also said to have issued consent under Section 43A(1)(c) of the Electric Supply Act, 1948 (for short 'the Supply Act') to sell the power generated to the share holders of the company and their sister concerns. Later on a second unit of 160 MW capacity of power generation was also set up.

While the APGPCL has been generating power in the manner indicated above the Reform Act, 1998 was passed and enforced with effect from 1.2.1999.

Before entering into the legal position as to whether it is necessary for the appellant to have licence for sale or supply of the electricity to participating industries and its sister-concerns, it would be better to have an idea about the Memo of Understandings entered into amongst the parties and the Articles of Association incorporating the appellant as a Company under the Companies Act. The First Memorandum of Understanding was entered into on 17.10.1988 between the APSEB of the First Part and (1) the Andhra Sugars Limited, (2) Sri Vishnu Cement Ltd. (3) Nava Bharat Ferro Alloys Limited, (4) VBC Ferro Alloys Limited, (5) Mishra Dhatu Nigam Limited and (6) Panyam Cements & Mineral Industries Limited of the Second Part. The purpose of formation and registration of a new company, under the name and style of APGPCL was to set up a Natural Gas based power generation station in the State of Andhra Pradesh. The APSEB and the various medium and large-scale industries located in Andhra Pradesh had agreed to invest in equity capital of APGPCL. The APSEB joined the parties of the second part namely, the participating industries to form a working group for raising capital of APGPCL and regulation of power generated by it and other related matters. The power and energy to be generated by APGPCL was agreed to be shared amongst the participating industries and the APSEB, in proportion to their

paid-up share capital. It was further agreed that the energy sharing shall be pro-rata of actual energy generated.

In clause (4) of the Memorandum of Understanding it was provided that the participating industries may transfer their share of energy and power to their sister-concern subject to the condition that the said sister-concern, being located within the State of Andhra Pradesh and a High Tension (HT) consumer of electricity of APSEB. The explanation to clause (4) provided that the sister-concern means a concern under the "same group:. We further find that clause (6) provided that the participating industries may transfer all of their capital or part thereof only with prior approval of the Board of Directors of APGPCL subject to the condition that the transferee shall be High Tension consumer of APSEB and shall agree to abide by all the obligations regarding use and payment for electric power. Clause (10)(a) provided that the power station of APGPCL will work parallel with the A.P.System and APSEB agreed to transmit the power generated by APGPCL to the Participating Industries for which the APGPCL is to get wheeling charges in kind namely, a part of energy put into the A.P.System at the generating station of APGPCL. It was further agreed that the participating industries will be common consumers of APSEB and APGPCL. The APGPCL was free to formulate its tariff taking into account its financial commitments and costs etc. It was agreed that if power generated by APGPCL could not be utilized by the participating industries in full or part then the APSEB shall have first claim to utilize such power. In pursuance of the aforesaid Memorandum of Understanding the APGPCL was incorporated as a Company on October 31, 1988.

The Memorandum of Association though appears to have adopted a very wide object as indicated in clause 1 i.e. to generate, harness, develop, use, sell, supply and distribute electricity anywhere in India and transmit power to industries and other consumers either directly or through facilities of APSEB.

It will be relevant to mention that an Extraodinary General Meeting of APGPCL was held on November 24, 1989 for amendment of Memorandum of Association in view of the letter dated 11.9.1989 received from Department of Power with comments by Central Electricity Authority in connection with issuance of the concurrence under Section 44 of the Electricity (Supply) Act.1948 (For short 'Supply Act'). The resolution mentions that according to the comments of the Central Electricity Authority the objects illustrated in

the Memorandum of Association are too wide ranging; therefore to satisfy the Central Electricity Authority it was proposed to amend the Memorandum of Association. Accordingly, a Resolution was passed amending clause (1) of the Memorandum of Association and substitute the existing Clause(1) as follows:

> "To obtain approval from APSEB under Section 44 of the Electricity (Supply) Act, 1948, for establishment of Gas Based Thermal Power station at any place in the State of Andhra Pradesh to generate and supply electrical energy exclusively for the use of shareholders of the Company through transmission lines of APSEB to take over any gas based Thermal power station whether under construction or in operation at any place in Andhra Pradesh for the said purpose, either from Andhra Pradesh State Electricity Board or from any other person."

It is thus evident that the aims and objects as indicated in the Original Articles of Association were amended and restricted. Accordingly, with the approval and concurrence of the concerned authorities, the power generating plant started its functioning and has been utilising the power generated according to the Memorandum of Understanding which formed part of the Articles of Association.

Later it appears that APGPCL made a proposal for extension of the project and thus set up a Combined Cycle Power Plant of 160 MW Gas Turbine station at Vijjeswaram - stage 2. The Central Electricity Authority, Ministry of Power by its letter dated April 26, 1996 conveyed its no objection to the extension. While conveying its approval and no objection to the Chairman, APSEB, the Central Electricity Authority referred to the earlier letter dated 15.1.1996 and Section 44 of the Supply Act and it also mentioned "M/s.APGPCL has been formed on the basis of collective captive generation principle. The main objective of the company is to set up, operate and supply power from the proposed station to all the industries who are shareholders of the Company." With the sanction of extension of the project by setting up another generating station at Vijjeswaram itself a second Memorandum of Understanding was executed on 19.4.1997 amongst APGPCL, APSEB and 22 other private sector undertakings. The conditions of the Second Memorandum of Understanding are similar to the earlier one and Article 2 Clause 2 provides for transfer of energy providing that the APGPCL agrees that the participating industries may transfer their share of energy to their sister concerns, located within the State of Andhra Pradesh and being High

A Tension consumers of APSEB.

On the basis of the facts indicated above, the case of the appellant is that the appellant Company has been generating power and sharing the same amongst its shareholding participating industries as per terms and conditions agreed upon amongst the parties, namely APGPCL, APSEB and other private B sector High Tension consumer industries in Andhra Pradesh. According to the appellant, it is a collective captive power generation company generating power for captive consumption of the participating/shareholding industries.

The case of the appellant is that since the power generating company did not require any licence either under the Indian Electricity Act, 1910 (for C short 'the Act of 1910')or under the Supply Act therefore, no licence was ever taken. However, the controversy arose with coming into force of the Reform Act, 1998 with effect from 1.2.1999. Section 3 of the said Act provided for establishment of Andhra Pradesh Electricity Regulatory Commission. One of the functions as indicated in clause (c) of Section 11(1) of the Act is to D issue licences in accordance with the Act and clause (e) thereof provides as follows :

> "to regulate the purchase, distribution, supply and utilization of electricity, the quality of service, the tariff and charges payable keeping in view both the interest of the consumer as well as the consideration E that the supply and distribution cannot be maintained unless the charges for the electricity supplied are adequately levied and duly collected."

So far the State Government is concerned, under Section 12 it has power to issue policy directions on matters concerning electricity in the State including the overall planning and co-ordination. Section 13 relates to the establishment F of Transmission Corporation of Andhra Pradesh Limited (for short 'APTRANSCO') with the objects of engaging in the business of procurement, transmission and supply of electric energy. APTRANSCO was to perform the functions as were used to be performed by APSEB prior to coming into force of the Act. Part VI of the Act deals with licensing of transmission and supply. G The relevant clauses of Section 14 of the Reform Act 1998 are reproduced below.

> "14. Licensing:- (1) No person, other than those authorized to do so by licence or by virtue of exemption under this Act or authorized to or exempted by any other authority under the Supply Act, shall engage H in the State in the business of,-

(a) transmitting electricity; or

(b) supplying electricity.

(2) and (3) xxx xxx

(4) Notwithstanding anything contained in any other provisions of this Act and until the establishment of the Commission in terms of Section 3, the State Government shall have the power to grant provisional licences under this Section having a duration not exceeding twelve months to any person or persons to engage in the State in the business of transmission or supply of electricity on such terms and conditions as the State Government may determine consistent with the provisions of this Act, subject to the following conditions, namely:-

(a) upon the establishment of the Commission, each of the provisional licences granted by the State Government shall be placed before the Commission and shall be deemed to constitute an application for grant of a licence by the Commission under the provisions of this Act; and

(b) each provisional licence granted under this section shall cease to be valid from the date notified by the Commission.

xxx xxx"

The appellant was accordingly granted a provisional licence by the State Government under sub-section (4) of Section 14 on 01.02.1999 for a period of 12 months. The relevant clauses of Section 15 are reproduced below :

"15. Grant of licences by the Commission :- (1) The Commission may on an application made in such form and on payment of such fee, as may be prescribed grant a licence authorizing any person to,-

(a) transmit electricity in a specified area of transmission; or

(b) supply electricity in a specified area of supply including bulk supply to licencees or any person.

(2) to (4) xxx xxx

(5) Without prejudice to the generality of sub-section (3), the conditions included in a licence granted by the Commission may require the holder of such a licence to establish a tariff or to calculate its charges from time to time in accordance with the requirements prescribed by

A the Commission."

Section 16 of the Act provides as follows :

"16. Exemptions from the requirement to have a licence:- (1) The Commission may make regulations to grant exemption from the
B requirement to have a supply licence, but subject to compliance with such conditions, if any, as may be specified in the order:

Provided that the Commission shall not, under any such regulation, grant any exemption except with the consent,-

C (i) of the local authority, if any, constituted in the area where energy is to be supplied;

(ii) in any case where energy is to be supplied in any area forming part of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or any building or place in the occupation of the Central Government for defence purposes, of the Central Government;

D

(iii) in any area falling within the area of supply of a licensee, of that licensee:

Provided that, except in a case falling under Clause (ii) no such consent shall be necessary if the Commission is satisfied that such
E consent has been unreasonably withheld.

(2) An exemption may be granted,-

(a) to persons of a particular category; or

(b) to a particular person; or

F

(c) for a particular period;

and an exemption to persons of a particular category or to a particular person shall be published in such manner as the Commission considers appropriate for bringing it to the attention of that person or persons of that category and of the public in general.

G

(3) The exemption granted may be revoked by the Commission at any time for reasons to be recorded in writing.

(4) An exemption, unless previously revoked, shall continue in force for such period as may be specified in or determined by or under the
H exemption.

(5) Every regulation or exemption made by the Commission under this Act shall be published in the Official Gazette." A

The State Government granted provisional licence to the appellant by order dated 30.1.1999 to be effective from 1st February, 1999 for a period of 12 months. The relevant notification is reproduced below : B

"G.O.MS.No.23 Dated: 30.01.1999

ORDER

The following notification regarding Provisional Licence under Section 14(4) of the Andhra Pradesh Electricity Reform Act, 1998 will be published in the Extra-ordinary issue of the Andhra Pradesh Gazette dated the 1st February, 1999. C

NOTIFICATION

In Exercise of the powers conferred by sub-section (4) of section 14 of the Andhra Pradesh Electricity Reform Act, 1998 [Act No.30 of 1998], the Governor of Andhra Pradesh, hereby grants to A.P.Gas Power Corporation Limited at Vijjeswaram [herein after the licensee] provisional licence to undertake activities as specified in G.O.Ms.No.167 EFES&T (Pr.I) Department dated 15.05.1989 and G.O.Ms.No.158, Energy (Power-I) Department, dated 21.12.1995 on the following terms and conditions. D E

1. the supply of electricity shall be restricted to the area and extent to which the licensee was authorized in terms of the licence granted under section 3 of the Indian Electricity Act, 1910 in the above Government Order. F
2. The licensee shall, upon the establishment of the Andhra Pradesh Electricity Regulatory Commission (hereinafter the Commission) place this provisional licence before the Commission as required under sub-section (4) of section 14 of the said Act for appropriate orders of the Commission. G
3. This licence shall come into force on the First day of February, 1999 and shall cease to be valid and effective.

   a. on completion of twelve months from the said date of enforcement; or H

A b. on the date notified by the Commission under clause (b) of sub-section (4) of section (14) of the said Act;

whichever is earlier.

4. The licensee shall have the same rights, privileges, duties and obligations as provided in the G.O.Ms.No.167 dated 15.05.1989 and in G.O. Ms. No. 158 dt.21.12.1995.

5. The licensee shall comply with the requirements of the provisions of the said Act and the applicable provisions of the Indian Electricity Act, 1910 and Electricity (Supply) Act, 1948, the Indian Electricity Rules, 1956 and other laws and regulations.

[BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH]

Sd/-

V.S. SAMPATH
SECRETARY TO GOVERNMENT"

But before the expiry of the date of the provisional licence, the appellant moved an application under Section 16 of the Act for grant of exemption from licence for supply of generated power to its shareholders and their sister concerns. The reason for seeking exemption, as indicated was that energy was being supplied to sister concerns and the equity shareholders only and that the operation and maintenance of the power station is carried out by APTRANSCO. The wheeling of the power is also carried on by APTRANSCO. The A.P. Electricity Regulatory Commission, however, rejected the application by order dated 7.7.2000.

The Regulatory Commission recorded a finding that Govt. of Andhra Pradesh had granted a licence to the appellant under Section 3 of the Act of 1910. This inference has been drawn on the basis of a letter dated 21.12.1995 sent by the appellant making a request for setting up a generating plant for captive consumption. In this connection, however, it may be indicated that grant of any licence under Section 3 of the Act of 1910 has been denied by the appellant. No such licence has been placed on record. A perusal of Section 3 of the Act of 1910 would indicate that licence was required for supply of energy in any specified area and to lay electric supply lines for conveyance and transmission of energy. The appellant company was set up on the proposal of the Government, by the APSEB and the private industries as participating

industries. It was to generate power and energy for captive consumption of the participating industries and its shareholders and sister concerns. The Regulatory Commission also held that the case of the appellant was not correct that it was not necessary for it to have a licence in view of Section 26A of the Supply Act and Section 14 of the Reform Act, 1998. The appellant was not covered under the above provision. It is pointed out that in terms of Section 28 of the Act of 1910, no person other than a Licensee could engage in business of supplying of energy to the public except with the previous sanction of the State Government. The Regulatory Commission further held that prior to coming into force of the Reform Act 1998, a person intending to supply energy to the public should have had a licence under Section 3 or Section 28 of the Act of 1910. Exception was provided under Section 26A (1) of the Supply Act, namely, no such licence was required for a generating company. However, the Commission also observed that APGPCL is correct in submitting that generation of electricity does not require a licence under Section 3 of the Act of 1910 or under Section 14 of the Reform Act 1998. Referring to the provisions contained under Section 15A and 18A of the Supply Act, it has been held that a generating station confined to generation of power and their functions do not extend to distribution and supply of electricity. Therefore a generating company supplying electricity, would not be covered by the exception provided under Section 26A of the Supply Act. The Commission took note of the fact that the appellant, under the Memorandum of Association, provides for supply and distribution of power to the sister concern of the participating industries. It has been held that in case of supply of electricity, Sections 26 and 27 of the Reform Act 1998 would automatically be applicable. Thus the appellant would also be subject to tariff and charges as regulated by the Commission.

The Commission then deals with contention of the appellant that a generating company could with consent of the competent government sell electricity to any person in view of Section 43A(1)(c) of the Supply Act. In this connection, the Commission refers to a letter dated 11.5.2000 issued by the Government of Andhra Pradesh that the appellant was carrying on operation of generation and supply of energy to participating industries and their sister concerns as per Memorandum of Understanding. A letter of formal consent to that effect was also issued by the Government of Andhra Pradesh on 23.6.2000 consenting to sale of energy by the appellant to company's shareholders and their sister concern under Section 43A(1)(c) of the Supply Act. It was further mentioned in the letter that the arrangement was to be continued in future also. The Commission held that it was incorrect that

A APGPCL had any authorization, express or implied, at the time when the Reform Act of 1998 was enforced and that the letter on the subject was issued by the Andhra Pradesh Government on 11.5.2000 for the first time and specific authorization was made on 23.6.2000. The Regulatory Commission further held that Section 43A of the Supply Act was disapplied by Section 56(3)(vi) of the Reform Act 1998, and that the expression 'any B other person' used in clause (c) of sub-section(1) of Section 43A is not referable to an individual consumer like participating industry of APGPCL company or their sister concern. The "other person" referred to in Section 43A could only be any licensee or an exemptee. The Commission has referred to two decisions of this Court viz. AIR (1963) SC 1128, *Mysore State* C *Electricity Board* versus *Bangalore Woolen, Cotton and silk Mills Ltd. and ohters* on the point as to the meaning of the expression 'any person' under Section 43A of the Supply Act and AIR (1979) SC 1459, *Hindustan Aluminium Corporation* v. *State of U.P.* where it has been held that supply of power to even a hundred per cent subsidiary would amount to supply to the public. An apprehension has been expressed that in case Section 43A (1)(c) of the Supply D Act is interpreted in a manner as to allow a generating company to supply electricity directly to consumers then all generating companies will take away the industrial consumers from the area of supply of licensees, and it being more remunerative to supply electricity to such consumers, in that event licensee would be left only with domestic and agricultural consumers who E would pay subsidized rate of electricity. Such an interpretation would be inconsistent with Section 3 and 28 of the Act of 1910 and Section 2(6) of the Supply Act. It also found that any arrangement as provided by the Government of Andhra Pradesh by letter dated 23.6.2000 for supply of energy to sister concern for future was not permissible after coming into force of the Reform Act 1998 with effect from 1.2.1999.

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The Regulatory Commission, however, in its order, after referring to some correspondence exchanged between the parties, observed that permission was granted by the Govt. of Andhra Pradesh under Section 3 of the Act of 1910 for setting up additional unit which also mentions about such a permission having been granted earlier which was only for setting up and maintenance G of generating station. It is not understandable after having found that it was not necessary to have a licence under Section 3 of the Act of 1910 for establishing a generating station, how could it also be said that any licence/ permission was granted under Section 3 in 1990 and 1995 for the purpose of establishment of a generating station. We have already indicated that grant of H any such licence under section 3 of the Act of 1910 has been denied by the

appellant and no such licence has been placed on record by any of the parties for ascertaining that such a licence was ever granted. The appellant denies issuance of any such licence. The Commission also found that Section 44 does not conceive of a group captive consumption plant and in any case permission is granted only for establishment of a generating station and not a supply company. Initially, in stage one there were 6 participating industries and 21 new concerns were added between 1995 to 2000 whereas in the second stage initially 20 participating industries apart from APSEB were there and 10 more were added. It shows that participating industries were not availing the supply but they were diverting the same to their a group/sister concern.

The Commission however considered the fact that the scheme of generation of electricity for utilization by the participating industries was approved by the Government of Andhra Pradesh and also by the Govt. of India. In this view of the matter, equity was in favour of APGPCL and as an exception, it may be allowed to supply electricity generated by it to the participating industries only in proportion to their shareholding. There would be no right to supply electricity to others, including sister concerns of the participating industries or to other. It is observed that it would be inconsistent with the orders made by the Govt. of Andhra Pradesh and the Govt. of India. The Commission also took note of the fact that sister concerns are not parties to the Memorandum of Understanding. The equity was in favour of the participating industries and not in favour of their group or sister concerns.

It has also been directed that all excess power from the project should be supplied by APGPCL to APTRANSCO at a rate to be mutually agreed subject to the approval of the Commission. The Commission further held that exemption was separately required from having a supply licence, to facilitate supply of power to participating industries in proportion to their shareholding.

The above order of the Regulatory Commission has been upheld by the High Court in the writ petition preferred by the present appellant.

We have heard submissions made at length by APGPCL, the counsel for the sister concerns and the companies to whom shares have been transferred by the participating industries as well as the learned counsels appearing for the A.P. Electricity Regulation Commission and the APTRANSCO.

On consideration of the rival submissions made by the learned counsel for the respective parties, in our view, the main question which obviously

A falls for consideration in these appeals is as to whether the APGPCL is required to take a licence under the law for utilization/sale or supply of power generated by it to the participating industries, their sister concern and the companies to whom shares of APGPCL have been transferred by the participating industries. The undisputed position under the law, as also found by the Regulatory Commission is that no licence is required for generation B of electricity. The electricity generated is to be consumed, sold, distributed or supplied since there is no way to store it. According to the appellants, the generation of electricity by APGPCL is for captive consumption. That is to say, for own consumption of the generating company, hence no licence was required. In the alternative, the appellant's case is that even if any licence is C required, it was exempted in view of the provisions contained under Section 26-A of the Supply Act, 1948 and in any case there was consent of the State Government in compliance with the provision of section 43 A(1)(c) of the Supply Act, 1948. That being so, the APGPCL was not required to have any licence in view of Section 14 of the Reform Act 1998. The finding of the Commission, it is submitted on behalf of the appellants, that Section 43 D A(1)(c) stood dis-applied by virtue of Section 56(3)(vi) read with Section 21(4) of the Reform Act, 1998, is erroneous.

We think that it will be appropriate to consider the question separately in respect of three categories of users of the electricity generated by APGPCL, E namely, the participating industries, their sister concern and the companies which are transferees of shares by the participating industries of APGPCL.

The background in which the company APGPCL was incorporated has already been noticed. It was a group captive generating venture as was also mentioned by the central government/Central Electricity Authority. That is to F say, the company was set up by a group of persons to generate electricity for their consumption. The Regulatory Commission in its order has found that in equity it would be appropriate that the APGPCL may not be required to have licence for sale of electricity to the participating industries. We, however, feel that it would not be a matter of concession but under the law as well that there would be no requirement to take a licence for use or consumption of G the electricity which is self-generated. The phrase "captive consumption", as it may be commonly understood, would mean that any thing which is manufactured or produced, would not go out of the hands of the manufacturers but they consume it for their own purpose. Certainly, in case such a venture, as established for manufacture of goods or a thing for its own consumption, H sells it to outsiders for use and consumption by them, it may require to have

a licence for such an activity. We may at this juncture have a look at the provisions for licence under different Acts. Section 3 of the Act of 1910 provides for grant of licence. Relevant part of Section 3 is quoted below :

> Section 3. Grant of Licenses: - (1) The State Government may, on application in the prescribed form and on payment of the prescribed fee (if any) [grant after consulting the State Electricity Board, a license to any person] to supply energy in any specified area, and also to lay down or place electric supply lines for the conveyance and transmission of energy:
>
> (a) where the energy to be supplied is to be generated outside such area, from a generating station situated outside such area to the boundary of such area, or
>
> (b) Where energy is to be conveyed or transmitted from any place in such area to any other place therein , across an intervening area not included therein, across such area.
>
> Xxx xxx xxx"

The above noted provision is only in respect of supply of energy in any specified area. The other relevant provision under the Act of 1910 is Section 28 which reads as under :

> "Section 28. Sanction required by non-licensees in certain cases:
>
> (1) No person, other than a licensee, shall engage in the business of supplying energy to the public except with the previous sanction of the State Government and in accordance with such conditions as the State Government may fix in this behalf, and any agreement to the contrary shall be void.
>
> xxx xxx xxx"

The above provision is also for the purposes of being engaged in the business of supply of energy to public and does not cover the cases of generation of electricity or its use and consumption by the generating group itself.

We find that the term "generating company" was introduced for the first time in the Supply Act, 1948 by the Amending Act 115 of 1976 and substituted by Act 50 of 1991. Clause (4-A) of Section 2 as amended in

A 1991, defines "generating company" as below :

> "A "generating company" means a company registered under the Companies Act 1956 (1 of 1956) and which has among its objects establishment, operation and maintenance of generating stations;"

B The word "licensee" has been defined under clause (6) of Section 2 which reads as under :

> Section 2 (6) "Licensee" means a person licensed under Part II of the Indian Electricity Act, 1910 (9 of 1910) to supply energy or a person who has obtained sanction under section 28 of that Act to engage in
C the business of supplying energy [but the provisions of section 26 or 26A of this Act notwithstanding, does not include the Board or a Generating Company].

Section 26-A was also introduced by the Amending Act 115 of 1976. Relevant part of Section 26-A is quoted below :

D

> "**26A. Applicability of the provisions of Act 9 of 1910 to Generating Company**. (1) Notwithstanding anything contained in sub-section (2), nothing in the Indian Electricity Act, 1910 shall be deemed to require a Generating Company to take out a license under that Act, or to obtain sanction of the State Government for the purpose of carrying
E on any of its activities.
>
> (2) Subject to the provisions of this Act, Section 12 to 19 (both inclusive) of the Indian Electricity Act 1910 and Clauses XIV to XVII (both inclusive) of the Schedule thereto, shall, as far as may be, apply in relation to a Generating Company as they apply in relation
F to a licensee under that Act (hereinafter in this section referred to as the licensee) and in particular a Generating Company may, in connection with the performance of its duties, exercise:
>
> (a) all or any of the powers conferred on a licensee by sub-section (1) of Section 12 of the Indian Electricity Act, 1910, as if
G
>
> (i) the reference therein to licensee were a reference to the Generating Company;
>
> (ii) the reference to the terms and conditions of license were reference to the provisions of this Act and to the articles of association of the
H Generating Company; and

(iii)the reference to the area of supply were a reference to the area specified under sub-section (3) of Section 15-A in relation to the Generating Company. A

Xxx xxx xxx"

It is thus clear from the above provision that a generating company is not required to have a licence under the Act of 1910 for carrying on any of its activities. The provisions regarding jurisdiction and duties of generating company have also been introduced under Section 15-A and 18-A of the Supply Act. Thus looking to the relevant provisions under the law, we are of the view that no licence is required to be taken by a generating company consuming the electricity generated by itself. The activity of generating electricity may be by an individual or by a group of persons, no distinction is envisaged on that account to exclude a group of persons, coming together to establish and generate electricity for their own purpose. B C

Needless to emphasise that by virtue of sub-section (2) of Section 26-A of the Supply Act, no inference can be drawn that any licence is required to be taken by a generating company under the provisions of the Act of 1910 merely because Sections 12 to 19 and certain provisions of the schedule of the said Act have been made application to the generating company as well. Such a provision as contained under sub-section (2) of Section 26-A of the Supply Act has been made only with a view that a generating company may also have to lay electricity lines for carrying electricity from the point of generation to the place of its consumption or from where it may be diverted to the place of consumption of other participating industries. Therefore, for such matters the same requirements may be applicable as are applicable to the licensees etc. but by no stretch of imagination it can be contended that a licence is required to be taken by the generating company under the Act of 1910. The captive consumption may be in the same premises or at some distance is immaterial. D E F

We find that later on, the term "captive generating plant" has been defined under clause (8) of Section 2 of Electricity Act, 2003, which reads as under : G

""Captive generating plant means" a power plant set up by any person to generate electricity primarily for his own use and includes the power plant set up by any co-operative society or association of persons for generating electricity primarily for use of members of H

such co-operative society or association."

It is pointed out by the learned counsel for the respondents that this definition of captive generating plant which came later on in the provisions of the Electricity Act, 2003, cannot be taken aid of to assign any meaning to the expression "captive consumption" or "group captive consumption generating plant". We, however, find that there is nothing to exclude the natural and obvious meaning which flows from the expression itself. Therefore, even before the term "captive generating plant" was defined it would carry the same meaning. That is to say, generation of power for the use of the holder of the plant, may be one single person or a joint venture collectively by many as one unit. We, therefore, hold that the electricity generated by APGPCL and consumed by the participating members setting up the plant under the Memorandum of Association incorporating the company, does not require to have any licence for self-utilisation of the power generated by the company. All that we want to clarify is that it is not in view of equity in favour of the participating industries as held by the Regulatory Commission and the High Court but under the law there is no such requirement for them to have a licence.

We then come to the next question regarding the sister concern, as to whether there was any requirement to have a licence for supply of electricity to them or not. It is no doubt mentioned in para 4 of the Memorandum of Understanding dated October 17, 1988 as follows :

> "The participating industries may transfer their share of energy and power from APGPCL to their sister concern subject to the sister concern being located within the State of Andhra Pradesh and is a HT consumer of electricity of APSEB. Provided also such transfer shall be on month to month basis viz. from the beginning of the month to the end of the month and not a part of the month. For such transfer, application shall be made to APGPCL and prior approval of APGPCL shall be obtained before actual availment. Such transfer shall also be informed to APSEB in advance.
>
> Explanation A - "Sister concern" means "a concern under the same group".

At this very juncture it may also be relevant to have a look at the provision as contained under para 17(a) of the Memorandum of Understanding. It reads as follows :

"It is agreed that if the power generation by APGPCL could not be utilized by the Participating Industries either in full or in part, then APSEB shall have first claim to utilize such power. The price for such surplus energy shall be mutually settled between APSEB and APGPCL based on fuel cost plus O & M charges plus depreciation but not exceeding rate for energy as per HT category-I of APSEB"

From a perusal of para 4 of the Memorandum of Understanding it is clear that a participating industry has been given a right to transfer its share of energy and power to its sister concern. The term "sister concern" has been explained as "a concern under the same group". There is no further clarification or clue as to which are those concerns which may be considered under the same group. The expression 'sister concern' used in para 4 of Memorandum of Understanding certainly does not mean a concern which is owned or is a subsidiary of the participating industry. It would be a concern or unit different from the participating industry and not a part of it. Maybe that the same group may manage two different independent units carrying on the same nature of activities. They may be addressed as sister concerns but would definitely have separate entity and identity of their own. Consumption of power, generated by a generating company, by a concern which may be under the same group as any of the participating industry cannot be said to be consumption or use of the power by the participating industry itself. In absence of the element of self-consumption by the generating company, it would not fall in the category of "captive consumption". It would surely be a supply to a non-participating industry and in that event it would be necessary to have a licence under the relevant provisions of law. If there is such a legal requirement, merely an agreement amongst certain parties would not exclude the application of law. Provisions of law regulating the situation, would prevail over any kind of agreement amongst some individuals as a group or otherwise. We are, therefore, of the view that such a clause in the Memorandum of Understanding would not do away with the requirement of having a licence for supply of electricity generated by APGPCL to such concerns which may be under the same group as the participating industries but not the participating industries themselves.

To support the view taken by us, a decision of this Court referred to by the respondents may be cited as reported in [1988] 4 SCC p. 59, *State of Uttar Pradesh and Ors.* v. *Renusagar Power Company and Ors.* This case, however, was decided in a slightly different fact situation. M/s.Hindustan Aluminium Corporation Ltd. was established in 1959 on assurance of providing

A cheap electricity to it. In the year 1964 however, M/s.Renusagar Power Co. Ltd. was established as a wholly owned and subsidiary of M/s.Hindustan Aluminium Corporation Ltd. It was generating electricity, but incorporated separately and had its own separate Memorandum of Understanding and Articles of Association. To raise the revenue for the State, the U.P. Electricity (Duty) Act, 1952, was enforced to levy a duty on the consumption of B electricity. Several amendments were however, incorporated from time to time and ultimately a provision was inserted providing that there would be levied and paid to the state government the duty called electricity duty on the energy sold to a consumer by a licensee/board/the Central Government. The duty on consumption of electricity was leviable even though it may be from C his own source of generation. The Renusagar Power Co. Ltd. had also obtained a licence under Section 28 of the Act of 1910. In such circumstances, it was held that even though Renusagar Power Co. Ltd. was a subsidiary company owned by M/s.Hindustan Aluminium Co. Ltd. yet it would amount to supply of electricity by a licensee to a consumer in view of the provisions of the U.P. Act of 1952 which levied duty on consumption of electricity. The situation D in the case in hand is similar only to the extent that the participating industries and the sister concerns are different entities and separately incorporated. Distinction may be there in view of the statutory provisions intervening under the U.P. Act of 1952 but that is not material for this case.

E Yet another case, namely, [1979] 3 SCC 229, *State of U.P.* v. *Hindustan Aluminimum Corpn. Ltd.*, was referred to on behalf of the respondent in which same parties are involved namely, M/s.Hindustan Aluminium Corporation Ltd. and the Renusagar Power Co. Ltd. The company held licence under Section 28 of the Indian Electricity Act, 1910. Here also the case was considered in the light of the provisions of the U.P. Electricity (Regulation F of Supply, Distribution, Consumption and Use) Order, 1977 and certain provisions were made even in regard to the energy utilized out of its own generating sources etc. This case will not be relevant for the case in hand.

On behalf of the appellant it has been submitted that the participating industry would be transferring energy to the sister concern only out of its G own share of the energy and not over and above to what, it would be entitled to, depending upon the investment in the company, namely, APGPCL. Therefore, it is immaterial that the participating industry itself utilizes the electricity or allows it to be utilized by the sister concern. The argument is though attractive, but it does not bear scrutiny. Supply, distribution and H utilization of electricity is a matter covered under the statutory provisions of

different enactments. Therefore, any transaction or any understanding will only have to be subject to such statutory provisions. There cannot be any mutual settlement on a subject which would otherwise be a matter to be governed by the provisions of an Act. A generating company, as soon as it allows another separate entity, company or establishment to utilize the power generated by it, the matter would be covered by the provisions of different Acts on the subject.

There is yet another aspect of the matter that normally a participating industry would not allow its share of electrical energy to be utilized by any other company even though it may be a sister concern, unless the energy may be over and above its own requirement. For such surplusage there is yet another clause in the Memorandum of Understanding dated 17.10.1988 namely, clause 17(a), quoted earlier, which says that if power generation by APGPCL could not be utilized by the participating industries in full or part then APSEB shall have first claim to utilize such power. The two clauses of the Memorandum of Understanding may not perhaps go together smoothly. We are, therefore, for the reasons indicated above, unable to accept the contention raised on behalf appellant that it would be permissible to transfer or supply of electrical energy to a sister concern out of the share of the participating industry.

We may now come to the question relating to the industries to whom shares have been transferred by the participating industries.

So far transfer of shares is concerned clause (6) of Memorandum of Understanding -I provides as follows :

> "(6) The participating industries may transfer all of their capital or part thereof only with the prior approval of the Board of Directors of APGPCL and subject to the condition that (a) the transferee shall be a HT consumer of APSEB and shall agree to abide by all the obligations regarding use and payment for power which shall be guaranteed by the transferor viz. participating industry, who proposes to transfer the share(s). (b) in case of such transfer wheeling charges (dealt with separately in para 10 hereinafter) will then be with reference to the voltage of supply of the transferee."

Clause 15(a) which also relates to the shareholders provides as follows:

> "15(a) it is agreed that such of the consumers of APSEB who become

A shareholders of APGPCL and who desire to reduce their Contracted Maximum Demand (CMD) with APSEB up to the extent of their share of power in APGPCL, may apply to APSEB for reduction of CMD, APSEB will examine and agree for reduction of CMD. From the day the revised CMD comes into force the contractual obligations shall be as per revised CMD."

B

The above quoted two provisions of Memorandum of Understanding I indicate that subject to the approval of the Board of Directors the participating industry is entitled to transfer their shares or capital subject to condition that the transferee should be a HT consumer of APSEB and must abide by all the C obligations regarding use and payment for power which shall be guaranteed by the transferor and further that such consumers may reduce their contracted maximum demand. Thus it is clearly envisaged that the transferee of the shareholders of APGPCL who are HT consumers of APSEB shall get electrical power generated by APGPCL to the extent of their share value transferred to them. In the Memorandum of Understanding II under Article 4 titled as D "Contribution to Capital etc.", provides under clause (5) as follows :

"5. Right of participating industries to transfer shares : Subject to the provisions of clause (2) of Article—3, the participating industries may transfer all or part of their shares to outsiders only with the prior approval of the Board of Directors of the Company and subject to the E conditions that :

(a) the transferee shall be a HT consumer of APSEB and shall agree to abide by all the obligations regarding use and payment of power charges, which shall also be guaranteed by the transferor viz., participating industry, who proposes to transfer the share(s).

F

(b) in case of such transfer, wheeling charges (mentioned above in clause (1) of Article - 3) will then be with reference to the voltage of supply of the transferee."

Coming to the relevant provisions of the Articles of Association, "participating G industries" has been defined as :

"(g) "Participating Industries" means member Companies who have agreed to subscribe to the share capital of the Company."

Clause (3) provides as under :

H

"3. The Members of the Company have entered into a Memorandum

of Understanding interse, which entered being the basis upon which the power generation shall be shared between the Participants.

The New MOU shall form part of Articles of Association, as in the case of existing MOU and shall be referred to as MOU-II, whereas the existing MOU shall be named as MOU-I on and from the date of signing of the new MOU."

The Memorandum of Understanding provides for the basis upon which power generation is to be shared by the participating industries.

With the above provisions in the Memorandum of Understandings and the Articles of Association, it is submitted that the participating industries have been defined as those companies who have subscribed to the share capital of the APGPCL. Such companies have been given a right to transfer their shares to any other company who fulfils certain conditions; mainly that it should be a HT consumer of APSEB and abides by all obligations of the Memorandum of Understandings and Articles of Association. It is submitted that transferee of shares to the extent of shares transferred by the participating industries enters into the shoes of the participating industry. Therefore, if the transferee companies utilize the power for their own industry, their position would be the same as that of the participating industry. The utilization of power generated by APGPCL to the extent of the shareholding of a transferee company, would be on the same footing as captive consumption and does not amount to supply of electricity. The Regulatory Commission, after discussing various provisions has arrived at a conclusion that if a generating company wants to carry out the activity of supply of electricity which is beyond the scope as specified under Sections 15-A and 18-A of the Supply Act, 1948, it shall have to obtain a licence under Section 3 or a sanction under Section 28 of the Act of 1910 or under Sections 15 and 16 of the Reform Act 1998. It has been found that the Memorandum of Association of the APGPCL provides for supply and distribution of power to the participating industries and the sister concern. As a fact it is also held that it is being done so by the APGPCL.

We have however, already discussed about the participating industries that consumption of electricity by them in their units to the extent of their shareholding amounts to captive consumption for which no licence would be required as it would neither be a supply nor distribution of the electricity produced. It is utilization of the product by the manufacturer itself. There would be no sale, supply or distribution to the self so long as the power

A produced is utilized by those who are participating in the activity of generating electricity. In a case where it is not a single owner but a joint or collective venture for generation of electricity for their own captive consumption obviously the self-consumption of the power generated would be amongst those who are participating in the activity of generation and it shall not be confined to any one industry. A participating industry subject to certain B conditions as agreed upon is entitled to transfer its shares to any other company who is necessarily to be a HT consumer of APSEB. Any existing participating industry may decide to transfer all of its shares or part thereof. We are not concerned here, as discussed by the Regulatory Commission, about the activities of APGPCL which may have been indicated in the Memorandum C of Association. We are particularly dealing with the consumption or utilization of power generated by APGPCL by those to whom the participating industry have transferred their shares. After transfer of shares of APGPCL the transferee company or industry would not remain an outsider but a shareholding company and it is entitled to utilize the power generated by APGPCL and would be confined to the extent of the value of the shares transferred to it. Holding of D share capital in the APGPCL is the basis of participating in the generating activity of APGPCL and utilization of the power produced to the extent of the shareholding, it would only amount to captive consumption and self supply or distribution of the power and it would not require a licence under Section 3/28 of the Act of 1910 or under Sections 15 and 16 of the Reform E Act, 1998. We may, however, clarify here that as soon as the electricity generated by APGPCL goes to any one who has no shareholding in the company or beyond the extent of the shareholding it would certainly amount to supply or distribution to the public entailing the liability of obtaining a licence under Section 3/28 of the Act of 1910 or for that matter under Sections 15 and 16 of the Reform Act, 1998.

F

It has been submitted on behalf of the respondents, including APTRANSCO that even self-consumption of power generated by APGPCL should not be allowed to a company which has obtained shares by transfer by a participating industry and in that connection certain figures have been G placed before the Court to indicate that number of such transferee industries has substantially increased. On that basis it is submitted that APGPCL is expanding its net which shall be detrimental to the interest of APSEB and the public at large. It is submitted that if the energy is supplied to more and more consumers it shall attract many bulk consumers and APSEB may be left with only domestic or agricultural consumers in respect of whom there are subsidies H which are meted out from supply of energy to the industrial sector. We are

not impressed by the argument. So long the amount of power supply is confined to the extent of the shareholding, it is immaterial as to the number of such transferee companies. Once they are in the category of those whose capital in the shape of shares is invested in the APGPCL they cannot be treated as outsiders and self-consumption/ utilization of electricity by them within the limits of their shareholding, would not amount to sale, supply or distribution of electricity. The prohibition under the legal provisions is as against sale, supply or distribution of electricity without a licence. Captive consumption being outside the pale of the above expressions, there is no justification for raising such an objection that the number of shareholders is increasing so long it is restricted within the shareholding of the participating industry. This apart, it has also been indicated on behalf of the appellant that taking the total figures, it will make negligible difference on the subsidies provided to the agricultural sector or any other sector.

As a matter of fact, no such argument has been raised nor even an effort was made to submit that captive consumption by a generating company, would require a licence under any provision of the law and we think rightly. It is one industry setting up its own generating plant or more than one jointly doing so for catering their needs of self-consumption, would not be of any real difference. The reality of situation cannot be and it has not been denied that most of the part of the country suffers from scarcity of power. There are breakdowns and load-shedding of power affecting the industries. There may be number of examples where some small industries remained a non-starter because of non-availability of power. In such a situation if an individual industry or some of them collectively generate power for their own consumption, there is no reason to subject them to licences, which, under the law are not required. But the power so generated cannot be supplied to or consumed by the outsiders without a license to supply electricity.

As a result of the discussions held above and the findings as recorded by us, the position that emerges is that participating industries and the industries to whom participating industries have transferred their shares, consumption of electricity by them within the limits of the value of their share capital in APGPCL would only amount to captive consumption and for such utilization or consumption of self-generated electricity no licence would be required under any provision of law. So far the sister concern or concerns which have been defined as those under the same group as participating industries, it would require to have a licence if the electricity is made available or provided to them for consumption as, in our view, it shall fall within the ambit of

A distribution, sale or supply of the electricity and not captive consumption of power. It would be permissible without licence only in case of exemption, if granted in that behalf, by the competent authority. Hereinafter we shall discuss that aspect of the matter.

The submission made on behalf of the appellant is that even though it B may be taken that a licence was required to be taken, they would be treated as having been authorized to sell electricity to sister concern of participating industries with the consent of the Government of Andhra Pradesh as provided under Section 43-A(1)(c) of the Supply Act, 1948. In this connection Section 14 of the Reform Act, 1998 has been pressed into service which provides as C under :

> "Licensing 14 : (1) No person, other than those authorized to do so by licence or by virtue of exemption under this Act or authorized to or exempted by any other authority under the Electricity (Supply) Act, 1948, shall engage in the State in the business of,-
>
> D (a) transmitting electricity; or
>
> (b) supplying electricity,
>
> (2) where any difference or dispute arises as to whether any person is engaged or is not engaged or about to engage in the business of E transmitting or supplying electricity as specified in sub-section (1), the matter shall be referred to the Commission and the decision of the Commission shall be final.
>
> Xxxx xxx xxx"

F The case of the appellant is that they were authorized by the State Government for sale and supply of the electricity to the sister concern of the participating industries and the companies holding shares of the APGPCL, under Section 43 A(1)(c) of the Supply Act which provides as under :

> *"Section 43-A: Terms, conditions and tariff for sale of electricity by* G *Generating Company:*
>
> (1) A Generating Company may enter into a contract for the sale of electricity generated by it-
>
> (a) with the Board constituted for the State or any of the States in which a generating station owned or operated by the company is
>
> H

located; A

(b) with the Board constituted for any other State in which it is carrying on its activities in pursuance of sub-section (3) of Section 15A; and

(c) with any other person with consent of the competent government or governments." B

The fact as to whether there was any such authorization/consent or not, we may examine the argument raised on behalf of the respondents and the findings as recorded by the Regulatory Commission, that Section 43 A(1)(c) stood dis-applied in view of Section 56(3)(vi) of the Reform Act, 1998, which provides as under: C

"56(3)subject to sub-section (1) and (2) of this section upon the establishment of the Commission the provisions of the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 shall in so far as the State is concerned, shall be read subject to the following modifications and reservations. D

Indian Electricity Act, 1910 xxx xxx xxx

Electricity (Supply) Act, 1948

(vi) in respect of matters provided in sections 5 to 18, 19, 20, 23 to 27, 37, 40 to 45, 46 to 54, 56 to 69, 72 and 75 to 83 of the Electricity (Supply) Act, 1948, to the extent this Act has made specific provisions, the provisions of the Electricity (Supply) Act, 1948 shall not apply in the State; E

xxx xxx xxx" F

In view of the above provision, it is clear that Section 43-A(1)(c) , would not be applicable to the extent the Reform Act, 1998 makes a specific provision in respect of matters as contained under Section 43-A(1)(c). It is to be examined, as to whether the Reform Act, 1998 makes any specific provision in respect of the matters covered under Section 43-A(1)(c) or not. In this connection our attention has been drawn to Section 21(4) of the Reform Act, 1998 which provides as under : G

"**21. Restrictions on licensees and generating companies.**(1) No licensee or Generating Company shall at any time, without the previous consent in writing of the Commission, acquire by purchase or otherwise H

A the licence or the undertaking of, or associate himself with, so far the business of generating, transmitting distribution or supply of energy is concerned, any other licensee or person generating, transmitting, supplying or intending to generate, transmit or supply electricity;

Provided that before granting the consent the Commission shall
B hear such person or authority as the Commission shall consider appropriate.

Xxx xxx xxx

(4) A holder of a supply or transmission licence may, unless expressly,
C prohibited by the terms of its licence, enter into arrangements for the purchase of electricity from, -

(a) the holder of a supply licence which permits the holder of such licence to supply energy to other licensees for distribution by them; and

D (b) any person or Generating Company with the consent of the Commission.

Xxx xxx xxx"

It is submitted that a holder of a supply license or a transmission licence may
E enter into an arrangement for purchase of electricity from any person or a generating company with the consent of the Commission. Therefore, the aforesaid provision covers the subject matter as provided under Section 43-A (1)(c) of the Supply Act. It is submitted on behalf of the appellant that the two provisions deal with different situations; whereas Section 43-A(1)(c) enables a generating company to sell electricity to any person with the consent
F of the state government, Section 21(4) is meant for holder of a supply or transmission licence to purchase the electricity from a generating company. It is not the same thing as provided for under Section 43-A(1)(c). Sub-section (4) of Section 21 of the Reform Act 1998 is restricted to the holder of a licence for supply or transmission of the electricity but it would not apply to
G any other purchaser, whereas Section 43-A(1)(c) permits a generating company to sell electricity to any person, which is a wider connotation not necessarily a licencee. A generating company will not be able to sell electricity on the basis of permission taken by a licensee under Section 21 (4) of 1998 Act for purchase of electricity. Therefore, sale of electricity to any person other than a licencee as provided under Section 43-A(1)(c) is not covered by Section
H 21(4) of the Reform Act 1998. The difference between the two provisions is

that while a licensee would purchase electricity from a generating company it shall have to obtain the permission of the Commission whereas a generating company while entering into a contract to sell electricity to any person, will have to obtain the consent of the state government. The two provisions have different implications altogether. The provision under Section 43 A(1)(c) of the Supply Act is an enabling provision to sell electricity to any person with the consent of the state government, whereas the provision contained under Section 21(4) of the Reform Act, 1998 pertains to the prohibition on purchase of electricity which is restricted to a licensee. Hence, it is submitted, and in our view rightly, that Section 43-A(1)(c) is not dis-applied by virtue of Section 56(3)(vi) of the Reform Act 1998 and the consent granted by the state government will hold good for sale of electricity to any person.

The next contention is that "any person" as provided under clause (c) of sub-section (1) of Section 43-A of the 1948 Act would not mean an individual or an end-consumer of the electricity. By application of the doctrine of *ejusdem generis* it would mean a body or an organization like one as enumerated in the preceding clauses, namely, any organization or body like Board constituted for the State or States. The term "board" has been defined under clause(2) of Section 2 of the Supply Act, 1948 to mean a State Electricity Board constituted under Section 5 of the Act. Apart from other functions, the Board may undertake generation of electricity or the supply of the same. Learned counsel for the respondents have relied upon a decision of this Court reported in AIR 1963 SC p.128, *Mysore State Electricity Board* v. *Bangalore Woollen, Cotton and Silk Mils Ltd. and others*, wherein, the Regulatory Commission observes, this Court held that the Supply Act, 1948 does not deal with, other matters relating to supply and use of electricity which are governed by the Act of 1910. Consumers find no place in the Supply Act and hence the words "other person" occurred in the 1948 Act would invariably mean those who generate or supply electricity and not those who consume it.

We, however, find that this is not a correct position depicted by the Regulatory Commission about the ratio of the decision in the case of *Mysore State Electricity Board* (supra). Firstly, it may be noted that the reason as to why the expression "other person" occurring in Section 76 of the Supply Act be read *ejusdem generis* was that the word preceding the expression 'other person' was 'licensee'. Therefore, the meaning of the word 'other person' would take colour from the word used preceding the aforesaid expression. This Court did not express any opinion on the aforesaid question in the judgment. S.K. Das, J. on his behalf and on behalf of other three Hon'ble

A Judges of the Bench. concluded as follows :

> "These contentions urged on both sides would require careful consideration in a more appropriate case where a dispute arises under the 1948 Act. In view of our finding, however, that the dispute in the present case does not arise under the 1948 Act, the question whether
B the rule of ejusdem generis applies or not in interpreting S.76 is purely academic. We do not propose to determine that academic question here."

Hidayatullah, J. in his opinion recorded separately, has made such observations as indicated in the order of the Regulatory Commission. But at the same time
C it was also observed that one of the sections which deals with consumers is Section 49 which requires the Board to supply electricity to any person not being a licensee and ultimately, it was also observed, the learned Judge would not wish to pronounce any opinion upon the question, the character of the dispute being different in nature. The order of the High Court was set
D aside but on different grounds. Thus, a whole reading of the decision in the case of *Mysore State Electricity Board* (supra) makes it clear that no pronouncement has been made on the question relating to meaning of the expression 'any person' occurring in the Supply Act applying the doctrine of *ejusdem generis* to mean a 'licensee' or a body of the same colour and
E character.

It is submitted that literal meaning of words and certain phrases cannot always be assigned to it and sometimes it becomes necessary to assign a meaning to a particular word keeping in view the whole purpose and intent of the legislation. If the plain meaning of a word is far and distant from the
F purpose for which the legislation has been made it would only be appropriate to give meaning to a particular phrase or word considering the company of the expression it keeps preceding the use of the word. A particular term or word takes colour from the expressions used in earlier part or the clauses of the particular phrase as used in a given provision. As indicated earlier, so far the expression used "any person" in clause (c) of Section 43-A(1) of the
G Supply Act, it is submitted that in previous two clauses, i.e. clauses (a) and (b), a reference has been made to the Electricity Board to whom a generating company can sell the electricity. Therefore, the term used 'any person' in clause (c) will have the meaning having the same colour i.e. denoting somebody similar in character as the Electricity Board. It is submitted that
H the end-consumer of electricity is not subject matter of the legislation of the

Supply Act, 1948. It mainly deals with generation of electricity, its management, distribution and transmission and the licensees who are given licenses for supply of electricity to a particular area. The aims and objects of the Supply Act are :

> "The co-ordinated development of electricity in India on a regional basis is a matter of increasingly urgent importance for post-war reconstruction and development. The absence of co-ordinated system, in which generation is concentrated in the most efficient units and bulk supply of energy centralized under the direction and control of one authority is one of the factors that impedes the healthy and economical growth of electrical development in this country. Besides, it is becoming more and more apparent that if the benefits of electricity are to be extended to semi-urban and rural areas in the most efficient and economical manner consistent with the needs of an entire region, the area of development must transcend the geographical limits of a Municipality, a Cantonment Board or a Notified Area Committee, as the case may be. It has, therefore, become necessary that the appropriate Governments should be vested with the necessary legislative powers to link together under one control electrical development in contiguous areas by the establishment of what is generally known as the "Grid-System". In the circumstances of this country such a system need not necessarily involve inter-connection throughout the length and breadth of a Province; regional co-ordination inclusive of some measure of inter-connection may be all that is needed. An essential pre-requisite is, however, the acquisition of necessary legislative power not only to facilitate the establishment of this system in newly licensed areas but also to control the operations of existing licensees so as to secure fully co-ordinated development.
>
> Government feel that it is not possible to legislate for this purpose within the framework of the Indian Electricity Act, 1910, which was conceived for a very different purpose. In their view what is needed is specific legislation on the broad lines of the Electricity (Supply) Act, 1926, in force in the United Kingdom, which will enable Provincial Governments to set up suitable organizations to work out "Grid Schemes" within the territorial limits of the Provinces. Although executive power under the proposed Bill will necessarily vest in the Provinces, two considerations indicate the necessity for Central legislation,-

A (i) the need for uniformity in the organization and development of the "Grid System", and

(ii) the necessity for the constitution of semi-autonomous bodies like Electricity Boards to administer the "Grid Systems". In the view of Government it is bodies like these which are likely to be the
B most suitable organizations for working the "Grid Systems" on quasi-commercial lines. Such Boards cannot, however, be set up by Provincial Governments under the existing Constitutional Act as they would be in the nature of trading corporations within the meaning of Entry 33 of the Federal Legislative List."

C The purpose of legislation is to establish and strengthen the Grid System so as to make the electricity available by co-ordination and inter-connecting the distribution system in the entire region in a most efficient and economical manner for co-ordination of all the activities for the purposes of generation of electricity and for establishment of Grid System and control of operation of existing licensees with a view to achieve and secure fully coordinated
D development the electricity boards sought to be established for the above purpose to oversee the broad activities relating to electricity. The learned counsel appearing for the respondent Regulatory Commission has drawn our attention to the decision reported in *Mysore State Electricity Board* case (supra). The said decision has also been noticed by the Regulatory
E Commission. The question in the above case was as to whether a dispute between the electricity board/licensee and an individual consumer can be referred for arbitration under Section 76 of the Supply Act and would an individual consumer be covered under the expression "other person" or not. Hidayatullah, J. while separately dealing with the question, made some observations throwing light on the above point, which we quote as follows:

F

"34. The Electricity (Supply) Act 1948 (54 of 1948) was passed in 1948 and it was a measure, as the long title and the preamble show, to rationalize the production and supply of electricity and generally for taking measures conducive to electrical development. The Act deals with the supply of electrical energy and its rationalization,
G whether such energy be generated by a State Government, State Electricity Board, a licensee under the Indian Electricity Act, 1910 (9 of 1910) or a person whom having obtained sanction under S.28 of the 1910 Act, engages in the supply of electrical energy. The Electricity (Supply) Act 1948 does not deal with other matters relating to the
H supply and use of electrical energy which are governed by the earlier

> Act of 1910. The latter Act deals with the grant of licenses to produce electrical energy, and contains provisions for the supply, transmission and use of electrical energy by licensees and non-licensees and generally with matters connected thereto.....
>
> 35.....It is, therefore, quite plain that one must read a qualification into the section that the dispute must be one touching a matter within the Supply Act....."

It is rightly submitted on behalf of the appellants that no such proposition has been laid down in the above noted case i.e. *Mysore State Electricity Board* (supra) holding that the expression 'other person' occurring in Section 76 of the Supply Act would not mean any individual consumer but a person like a licensee. Yet the fact remains that from the discussion which has been made, the purpose of enactment of the Supply Act has been clarified that the Act is not on the subject of consumption of electricity by end-consumer or an individual consumer. It is also rightly observed that the meaning which is to be assigned to a particular phrase or word should be such as may be covered by the subject dealt with or sought to be brought within the sweep of the legislation in question.

This Court, while considering the application of principle of ejusdem generis in *Kavalappara Kottarathil Kochuni* v. *State of Madras*, AIR (1960) SC 1080 p.1103, observed that "when particular words pertaining to a class, category or genus are followed by general words, the general words are construed as limited to things of the same kind as those specified". In the case in hand, we find that clauses (a) and (b) of Section 43-A(1) specify as to with whom a generating company can enter into a contract to sell electricity namely, the electricity board of the State concerned or in given circumstances to the electricity board of another State and the said clauses (a) and (b) are followed by clause(c) providing for having the contract of sale with "any person" with the consent of the State Government. It is to be noticed that in case contract of sale of electricity could be entered into by a generating company with any person, whomsoever it may be, an individual consumer or any one else, it was then not at all necessary to have specified class of persons as indicated under clauses (a) and (b) preceding clause (c). If the intention was to include all under the expression 'any person' it was not necessary to specify Electricity Board in clauses (a) and (b). The principle of interpretation in such matters as laid down in *Tribhuwan Prakash Nayyar* v. *Union of India*, AIR (1970) SC 540 is that "to reconcile incompatibility between the specific and general words in view of the other rules of

A interpretation that all words in a statute are given effect if possible, that a statute is to be construed as a whole and that no words in a statute are presumed to be superfluous." In the case of *Amar Chandra* v. *Collector of Excise, Tripura,* AIR (1972) SC 1863 it is held that "the rule applies when "(1) the statute contains an enumeration of specific words; (2) the subjects of enumeration constitute a class or category; (3) that class or category is not
B exhausted by the enumeration; (4) the general terms follow the enumeration; and (5) there is no indication of a different legislative intent". In the case in hand, we find the above ingredients present barring the one mentioned as condition no.3 above that the class or category is not exhausted by enumeration but that by itself may not lead to the reverse inference. The fact remains that
C the legislation in question has not dealt with nor purpose of its being legislated is to deal with supply of electricity to the end consumers. Rather the subject dealt with in the Supply Act is different. It is to be noticed that the power generation was initially confined to government companies, maybe central or the state government. Later by an amendment in 1976 it could be jointly, both by the central and the state government. Later, however, generation was
D opened up for any company registered under the Companies Act. Earlier, therefore, the sale of electricity generated was confined to the electricity boards but in view of opening up generation to any company a third category was introduced by the amendment of 1991 as contained in clause (c) of Section 43-A (1) of the Supply Act, namely, to any other person. But looking
E to the provisions of the Act in totality it can't mean an individual consumer since such a supply to individual consumers is not envisaged nor dealt with under the Supply Act. We find that the functions and duties of the electricity board are enumerated under Section 18 of the Supply Act. The same reads as under :

F "**Powers and Duties of [State Electricity Boards and Generating Companies] - 18. General duties of the Board.**- Subject to the provisions of this Act, the Board shall be charged with the following general duties, namely: -

(a) to arrange, in co-ordination with the Generating Company or
G Generating Companies, if any, operating in the State, for the supply of electricity that may be required within the State and for the transmission and distribution of the same in the most efficient and economical manner with particular reference to those areas which are not for the time being supplied or adequately supplied with electricity;

H

(b) to supply electricity as soon as practicable to a licensee or other person requiring such supply if the Board is competent under this Act so to do;

(c) to exercise such control in relation to the generation, distribution and utilization of electricity within the State as is provided for by or under this Act;

(d) to collect data on the demand for, and the use of, electricity and to formulate perspective plans in co-ordination with the Generating Company or Generating Companies, if any, operating in the State, for the generation, transmission and supply of electricity within the State;

(e) to prepare and carry out schemes for transmission, distribution and generally for promoting the use of electricity within the State; and

(f) to operate the generating stations under its control in co-ordination with the Generating Company or Generating Companies, if any, operating in the State and with the Government or any other Board or agency having control over a power system."

The above provision deals with supply of electricity as may be required within the State for transmission and distribution in a most efficient and economical manner. Further, to supply electricity as soon as practicable to a licensee. With the aid of the above provision, read with clauses (a) and (b) of sub-section (1) of Section 43-A it can well be inferred that the expression 'any person' used maybe persons or bodies discharging the functions of generation, transmission, distribution or supply of electricity. Clause (c) of sub-section (1) of Section 43-A does not envisage a generating company selling/supplying electricity for use in household or domestic purpose or to the small shops, to the show-rooms or an individual running a flour mill or a welding workshop etc. Therefore, to assign a wide meaning to the word 'any person', meaning thereby, to any end consumer would be spreading the meaning too wide going beyond the subject matter dealt with under the Supply Act and not connected with the intent and object of legislating the said legislation. It is true that as a general principle a plain meaning is to be attached to a word or expression used in the legislation but it cannot be divorced of the context and an isolated meaning attached to it. In such circumstances, it becomes necessary to assign a meaning which may be reasonably and harmoniously derived from the company of the words and

A phrases preceding such expression. In this view of the matter, it can well be said that the meaning of the expression 'any person' as used in clause (c) of sub-section (1) of Section 43-A denotes such bodies or entities which would further the purpose for which the electricity boards have been constituted. It is for the board to coordinate different activities in discharge whereof to make available the electricity to the licensees, distributors or those who transmit
B the electricity. It would be reasonable to infer that the consent of the state government may be necessary to have a contract of sale of electricity generated by it with any of such bodies discharging any of such functions like that of the Board indicated above or any other body or entity established for similar purpose.

C

In view of the finding recorded above regarding meaning of the word 'any person' occurring in clause (c) of sub-section (1) of Section 43-A of the Act, it becomes wholly unnecessary to go into the question as to in fact any consent was given by the state government, if so, when and the effect of the same for supply of electricity to the sister concern of the participating
D industries.

We, therefore, hold that no licence is necessary for utilization of energy generated by APGPCL and utilized by the participating industries and the concerns holding shares of APGPCL transferred to them by the participating industries to the extent of value of the shares so transferred. It would, however,
E be necessary to have a licence for supply of energy to the sister concerns. In the result, the appeals are partly allowed and the judgment and order passed by the High Court stands modified in the manner indicated above. Parties to bear their own costs.

F B.K.M. Appeal partly allowed.