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Petitioner No. 1

Petitioner No. 2

Through

**HSA Advocates,**

Counsel for the Petitioners

**HSA Advocates**

81/1, Adchini,

Sri Aurobindo Marg,

New Delhi - 110017

Place :

Dated :

**BEFORE THE HON'BLE JHARKHAND ELECTRICITY  
REGULATORY COMMISSION, RANCHI**

CASE NO. \_\_\_\_\_ OF 2016

**IN THE MATTER OF:**

Joint petition of the Petitioners herein seeking this Hon'ble Commission to provide a roadmap to create a level playing field between the Petitioners in order to promote free and fair competition in distribution of electricity in their common area of supply so as to subserve the larger consumer interests.

P + A 21-27  
An 28-295  
P & J  
19/8/16

**AND**

**IN THE MATTER OF:**

1. Damodar Valley Corporation  
DVC Headquarters,  
DVC Towers, VIP Road,  
Kolkata - 700054
2. Jharkhand Bijli Vitran Nigam Ltd.  
Engineer's Building  
Dhurwa, Ranchi  
834004

...Petitioners

Versus

1. Union of India

Through  
Ministry of Power  
Rafi Marg, Sansad Marg Area,  
New Delhi, Delhi 110001

2. State of Jharkhand  
Through  
Department of Energy  
Ground Floor, Engineer's Hostel - I,  
Near Golchakkar, Dhurwa,  
Ranchi, Jharkhand.

...Respondents

**MOST RESPECTFULLY SHOWETH:**

**I. CONSPECTUS OF THE PETITION**

1. The Petitioners above named have approached this Hon'ble Commission invoking its expansive regulatory jurisdiction and inherent power under Reg. 40 of the Jharkhand State Electricity Regulatory Commission (Conduct of Business) Regulations, 2011 read with the powers available to the Hon'ble Commission under Sections 23, 60 and 86 of the Electricity Act, 2003 (the '2003 Act') thereby seeking this Hon'ble Commission to provide a roadmap to create a level playing field between the Petitioners in order to promote free and fair competition in distribution of electricity in their common area of supply so as to subserve the larger consumer interests.

**II. DESCRIPTION OF PARTIES**

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2. Damodar Valley Corporation ('DVC'), the Petitioner No. 1 herein, is a statutory body incorporated under the Damodar Valley Corporation Act, 1948 ('DVC Act') and undertakes multifarious functions. As part of its functions under the DVC Act, DVC undertakes generation of electricity and is therefore a generating company within the meaning of Section 2 (28) of the Electricity Act, 2003. DVC also undertakes transmission of electricity in the Damodar Valley area which falls within the territorial limits of the two states namely, West Bengal and Jharkhand. It, therefore, undertakes inter-state transmission of electricity and operates inter-state transmission system within the meaning of Section 2 (36) of the Electricity Act, 2003. DVC also undertakes the sale of electricity to West Bengal State Electricity Distribution Company Limited and Jharkhand Bijli Vitran Nigam Ltd., the Petitioner No. 2 herein, in its capacity generally as a generating company. This is bulk sale of electricity by a generating company to a distribution licensee within the meaning of Section 62 (1) (a) of the Electricity Act, 2003. Copy of the DVC Act is annexed herewith as **Annexure P-1**.
3. In addition to the above, DVC undertakes the retail sale and supply of electricity to the consumers in the Damodar Valley area. With regards to the retail sale and supply of electricity, DVC covers the entire Damodar Valley area which falls in two contiguous States, namely, the State of West Bengal and the State of Jharkhand. Thus, tariff for retail sale and supply of electricity in the Damodar Valley area is governed by the provisions of Section 62 (d) read with Section 86 (1) of the Electricity Act, 2003 by the respective Electricity Regulatory Commissions in the states of West Bengal and Jharkhand. In this regard it is important to highlight that the Electricity Act,

2003 recognizes DVC as a deemed licensee and accordingly DVC has been exempted from obtaining a license under the Act. Fourth proviso to Section 14 of the Electricity Act, 2003 provides as follows:

*"Provided also that the Damodar Valley Corporation, established under sub-section (1) of section 3 of the Damodar Valley Corporation Act, 1948, shall be deemed to be a licensee under this Act but shall not be required to obtain a licence under this Act and the provisions of the Damodar Valley Corporation Act, 1948, in so far as they are not inconsistent with the provisions of this Act, shall continue to apply to that Corporation:"*

4. Petitioner No. 2, Jharkhand Bijli Vitran Nigam Ltd. ('JBVNL'), has been incorporated under Indian Companies Act, 1956 pursuant to decision of Government of Jharkhand to reorganize erstwhile Jharkhand State Electricity Board. JBVNL is a Distribution Licensee under the provisions of the Electricity Act, 2003 having license to supply electricity in the State of Jharkhand. It is accordingly engaged in the business of distribution of electricity to its consumers situated over the entire State of Jharkhand.

### **III. FACTUAL BACKDROP TO THE PETITION**

5. The facts and circumstances that have led to the filing of the present petition are set out and described here below:
  - (a) DVC was established on 07.07.1948 by an Act of the Constituent Assembly of India (DVC Act of 1948) as the first multipurpose river valley project of

independent India. The original mandate of DVC included the construction and operation of irrigation facilities, water supply, drainage, hydro-electric and thermal power generation, flood control, navigation, afforestation, control of soil erosion, public health, as well as job creation for the socio-economic well-being of the people residing in and around areas affected by DVC projects. Section 12 of the DVC Act stipulates the functions of DVC and reads as follows:

**"12. Functions of the Corporation:** *The functions of the Corporation shall be-*

- a) *The promotion and operation of schemes for irrigation, water supply and drainage,*
- b) *The promotion and operation of schemes for the generation, transmission and distribution of electrical energy, both hydro-electric and thermal,*
- c) *The promotion and operation of schemes for flood control in the Damodar river and its tributaries and the channels, if any, excavated by the Corporation in connection with the scheme and for the improvement of flow conditions in the Hooghly river,*
- d) *The promotion and control of navigation in the Damodar river and its tributaries and channels, if any,*
- e) *The promotion of afforestation and control of soil erosion in the Damodar Valley, and*
- f) *The promotion of public health and the agricultural, industrial, economic and general well-being in the Damodar Valley and its area of operation."*

- (b) In consonance with the altruistic objectives with which it was constituted, DVC has been bestowed with certain rights and privileges under the DVC Act,

which are meant to enable DVC to function efficaciously towards attainment of its stated goals. Section 18 of the DVC Act which deals with supply and generation of electrical energy is one such provision. It grants exclusive power to DVC to distribute or transmit electricity in the Damodar Valley Area at 30 kV and does not allow DVC to supply electricity to consumers requiring supply at less than 30 kV voltage unless so permitted by the State Government. Relevant extract of Section 18 of the DVC Act is as under:

***"18 - Supply and generation of electrical energy***

*Notwithstanding anything contained in the Indian Electricity Act, 1910 (9 of 1910) or any licence granted thereunder—*

*(i) No person shall without the permission of the Corporation –*

*(a) sell electrical energy to any consumer in the Damodar Valley where the energy is taken by the consumer at a pressure of 30,000 volts or more;*

*(b) transmit electrical energy in the Damodar Valley at a pressure of 30,000 volts or more;*

*... ..*

*(ii) The Corporation may sell electrical energy to any consumer in the Damodar Valley but no such sale shall, except with the permission of the State Government concerned, be made to any consumer requiring supply at a pressure of less than 30,000 volts.*

*(iii) The Corporation may, with the permission of the State Government concerned, extend its transmission system to any area beyond the*



*Damodar Valley and sell electrical energy in such area."*

- (c) In accordance with the above statutory mandate, DVC has been supplying electricity to seven districts in the State of Jharkhand, namely, Dhanbad, Bokaro, Ramgarh, Hazaribagh, Koderma, Giridih, Chhatra, (hereinafter referred to as '**DVC Area of Supply**'), covering a total area of 17226 sq. km. As per the prescription of Section 18 of the DVC Act, DVC has historically been catering only to the consumers who take supply at 30kV or above voltage level, who are generally high tension (HT) or bulk consumers comprising mainly of industrial and commercial loads. The load profile of DVC and its consumer mix in the DVC Area of Supply are as follows:

		DVC	
		LOAD (MVA)	No. of Consumers
<b>HT</b>	(I) Industrial *	837	113
	(II) Traction	251	14
	<b>Total HT (I + II )</b>	<b>1088</b>	<b>127</b>
<b>LT</b>	(III) Domestic	8.675	1120
	(IV) Commercial		403
	(V) Agriculture		NIL
	<b>Total (III + IV+V)</b>	<b>8.675</b>	<b>1523</b>

\*Excludes 36 no. off-take points supplied to JBVNL by DVC

Note: DVC during the year 2015-16 has supplied LT Load of 106 MU to its colony of different power stations & substations.

(Source: JSERC Tariff order for DVC dated 04.09.2014 and JSERC Order for JBVNL dated 14.12.2015)

- (d) In order to serve its consumers, DVC has over the years developed a well-laid out high voltage distribution system across the DVC Area of Supply required to supply consumers at 30 kV and above. The network details of DVC are as follows:

**DVC Sub-Stations**

33kV	132kV	220kV
1	10	5

(Source:

[http://www.dvc.gov.in/dvcwebsite\\_new1/478-2/substations/](http://www.dvc.gov.in/dvcwebsite_new1/478-2/substations/))

**Transmission/Distribution Line in Circuit Kilometer**

33kV	132kV	220kV	400kV
947.65	2555.01	1037.15	-

(Source:[http://www.dvc.gov.in/dvcwebsite\\_new1/478-2/transmission-lines/](http://www.dvc.gov.in/dvcwebsite_new1/478-2/transmission-lines/))

- (e) Petitioner No. 2, JBVNL, in its capacity as a distribution licensee supplies electricity to the entire State of Jharkhand, excepting few pockets of supply which are served by Tata Steel Ltd., Steel Authority of India Ltd., Jamshedpur Utility & Services Company and MES. JBVNL supplies electricity to all categories of consumers at different voltage levels, including low-end subsidized consumers comprising of agricultural, Below Poverty Line (BPL) and domestic loads. The load profile of JBVNL and its consumer mix are as follows:

		JBVNL	
		LOAD (MVA)	No. of Consumers
<b>HT</b>	(I) Industrial	1242.179	1486
	(II) Traction	262.5	13
	<b>Total HT (I + II)</b>	<b>1504.679</b>	<b>1499</b>
<b>LT</b>	(III) Domestic	3580.66	2610271
	(IV) Commercial	493.52	166219
	(V) Agriculture	68.11	36406
	<b>Total (III + IV+V)</b>	<b>4142.29</b>	<b>2812896</b>

(Source: JSERC Order for JBVNL dated 14.12.2015)

- (f) Since JBVNL supplies electricity to consumers at different voltage levels across the length and breadth of the State, it has accordingly created vast network of distribution lines and infrastructure at both HT and LT levels. The details of JBVNL's distribution system are as follows:

Particulars	Numbers	Capacity (MVA)
<b>Transformation Capacity</b>		
11 KV/ LT Distribution Transformers	66,836	3,448
33 KV/11 KV Substations	320	3565
132 KV Substation	29	2655
220 KV Substation	6	2220
400KV Substation	NIL	

#### Transmission Lines

Particulars	Length (cKM)
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132 KV	1867.63
220KV	1295
400 KV	180

### Distribution Lines

Particulars	Length (cKM)
33 KV	7520.74
11KV	52884.41
LT Line	79761.09

- (g) As may be noted from above, both DVC and JBVNL have evolved historically under different statutory dispensations, namely, DVC Act and the Electricity Laws respectively. This has resulted in significant differences between DVC and JBVNL in relation to consumer mix, consumer load, infrastructure, cost of supply, cross subsidy levels etc. as briefly discussed below.

### Re. Consumer Mix

		DVC		JBVNL	
		Load (MVA)	No. of Consumers	Load(MVA)	No. of Consumer
<b>HT</b>	(I) Industrial*	837	113	1242.179	1486
	(II) Traction	251	14	262.5	13
	<b>Total HT (I + II)</b>	<b>1088</b>	<b>127</b>	<b>1504.679</b>	<b>1499</b>
<b>LT</b>	(III) Domestic	8.675	1120	3580.66	261027 1
	(IV) Commercial		403	493.52	166219
	(V)		NIL	68.11	36406

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	Agriculture				
	<b>Total (III + IV+V)</b>	<b>8.675</b>	<b>1523</b>	<b>4142.29</b>	<b>2812896</b>

\*Excludes 36 no. off-take points supplied to JBVNL by DVC

Note: DVC during the year 2015-16 has supplied LT Load of 106 MU to its colony of different power stations & substations.

(Source: JSERC Tariff order for DVC dated 04.09.2014 and JSERC Order for JBVNL dated 14.12.2015)

#### Re. LT-HT Ratio

<b>DVC</b>	<b>JBVNL</b>
1 : 84.49	1.59 : 1

(Source: JSERC Tariff order for DVC dated: 04.09.2014 & JSERC Order for JBVNL dated 14.12.2015)

#### Re. Consumption Levels

<b>Consumption (MU)</b>			
	<b>DVC</b>	<b>JBVNL</b>	<b>Total</b>
<b>LT</b>	76	5060	5136
<b>HT</b>	6422	3184	9606

(Source: JSERC Tariff order for DVC dated: 04.09.2014 & JSERC Order for JBVNL dated 14.12.2015)

#### Re. Network Spread

##### Sub-Stations

1) —

	33kV	132kV	220kV
<b>DVC</b>	1	10	5
<b>JBVNL</b>	320	29	6

(Source:

[http://www.dvc.gov.in/dvcwebsite\\_new1/478-2/substations/](http://www.dvc.gov.in/dvcwebsite_new1/478-2/substations/))& Data collected from JBVNL)

**Transmission/Distribution Line in Circuit Kilometer**

	33kV	132kV	220kV	400kV
<b>DVC</b>	947.65	2555.01	1037.15	-
<b>JBVNL</b>	7520.74	1867.63	1295	180

(Source:[http://www.dvc.gov.in/dvcwebsite\\_new1/478-2/transmission-lines/](http://www.dvc.gov.in/dvcwebsite_new1/478-2/transmission-lines/))

Data collected from JBVNL

**Re. Average Cost of Supply (Rs./kWh)**

<b>DVC</b>	<b>JBVNL</b>
4.64	5.54

(Source: JSERC Tariff order for DVC dated: 04.09.2014 & JSERC Order for JBVNL dated 14.12.2015)

**Re. Cross Subsidy Levels**

<b>DVC</b>	<b>JBVNL</b>
--	Rs. 1126.77 crores

(Source: JSERC Tariff order for DVC dated: 04.09.2014 & JSERC Order for JBVNL dated 14.12.2015)

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- (h) The coming into force of the Electricity Act, 2003 has brought significant reforms and changes in the electricity sector with increased focus on safeguarding consumer interest and ensuring free and fair competition amongst utilities. In line with the above objectives, certain significant changes have been also introduced in the distribution and supply of electricity, namely:
- i. Unbundling of State Utilities into separate generation, transmission and distribution companies;
  - ii. Introduction of parallel licensing within the same area of supply allowing more than one distribution licensee to supply power through its own network;
  - iii. Introduction of distribution franchisee;
  - iv. Regulation of distribution activities including licensing and tariff fixation by an autonomous regulatory commission;
  - v. Introduction of open access in distribution.
- (i) As regards the effect of the 2003 Act on the functioning of DVC under the DVC Act, the Hon'ble Appellate Tribunal has held as follows in its judgment dated 23.11.2007 passed in Appeal No. 271 of 2006 & batch:

*"Thus, it is clear from the fourth proviso to Section 14 of the Act of 2003 that DVC (the appellant in Appeal No. 273/06), after coming into operation of the Act of*

2003, is deemed to be a licensee. This being so, it is not required to obtain licence for transmission of electricity. At the same time, fourth proviso to Section 14 keeps those provisions of the DVC Act alive insofar as they are not inconsistent with the provisions of the Act of 2003. In other words, such of the provisions of the DVC Act which are not on collision course with the Electricity Act have been left untouched and they continue to apply. Only those provisions of the DVC Act which are inconsistent with the provisions of the Act of 2003, have been put out of operation."

"Suffice it to say that the provisions of the DVC Act that are inconsistent with the Act of 2003 have been rendered inoperative and the provisions which are not inconsistent with the DVC Act have to be given their full sway."

It may be clarified here that the above decision of the Hon'ble Tribunal is subject matter of challenge before the Hon'ble Supreme Court and the matter is presently pending.

Copy of the judgment dated 23.11.2007 passed by the Hon'ble Appellate Tribunal in Appeal No. 271 of 2006 is annexed herewith as **Annexure P-2**.

- (j) Under the provisions of the 2003 Act, both DVC and JBVNL are parallel distribution licensees with respect to the DVC Area of Supply. This Hon'ble Commission from time to time has been directing DVC to supply electricity to all consumers within its area without any discrimination to any voltage level. The relevant



extracts from this Hon'ble Commission's order dated November 2012 are reproduced below:

*"DVC, being a "deemed distribution licensee" in the State of Jharkhand, has a Universal Service Obligation (USO) under the Electricity Act, 2003 and accordingly it has to supply electricity on an application by the owner or occupier of any premises within one month, after receipt of the application from the applicant requiring such supply. The Act of 2003 does not differentiate between consumers of different categories as far as supply of electricity is concerned. Thus, the Commission is of the view that DVC must supply to consumers within its area and willing to take supply from it, without any discrimination to any voltage level."*

6. Therefore, without prejudice to its contentions raised before the Hon'ble Supreme Court, the APTEL judgments and orders of this Hon'ble Commission requires DVC to connect and supply electricity to any consumer who seeks supply from it subject to the availability and feasibility of the existing network. However, it needs to be appreciated that for historical reasons development of DVC network has happened at a particular voltage level and above, which can only cater to high voltage consumers. Therefore, to augment and expand the network at LT level requires DVC to re-plan its distribution activities in a manner that network expansion takes place in synergic, coordinated and optimum manner. In this regard, it may be appreciated that network planning and development is a time consuming exercise that is dependent on a number of factors some of which are beyond the reasonable control of the utility. Further,

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the 2003 Act does not envisage a distribution licensee to be 'network ready' at all times throughout its area of supply. Further, as regards network development in the case of parallel licensee, as in the present case, the Hon'ble Appellate Tribunal in Appeal No. 246 of 2012 and batch matters has held as under:

*"58. .... Practical difficulties in laying down the network and extending the 11/0.4 kV network all around the congested areas in multi-storeyed buildings and narrow lanes of slums and the extremely high cost involved in making an unnecessary expenditure has to be considered. In some areas it may be practically impossible to lay down the parallel network by Tata Power due to space constraints. Tata Power itself has stated that it is facing practical difficulties to lay down the distribution network. Tata Power at the same time cannot maintain its right to lay down distribution network selectively even in areas where a reliable network of RInfra is existing. Tata Power should therefore, be restricted to lay down its network only in areas where laying down of parallel network would improve the reliability of supply and benefit the consumer and also for extending supply to new consumers who seek connection from Tata Power. Tata Power's Rollout Plan should therefore, be restricted to only such areas. This may also require amendment in the licence condition of Tata Power, after following due process as per law. The Rollout Plan shall be approved by the State Commission only after hearing RInfra and the consumers. In the meantime, Tata Power should be restrained to lay down distribution network in the distribution area common to RInfra."*

Copy of order dated 28.11.2014 of the Hon'ble Appellate Tribunal in Appeal No. 246 of 2012 is annexed herewith as **Annexure P-3**.

7. The present consumer mix of DVC consisting only of high voltage consumers that has resulted under the DVC Act is expected to continue at least in the near future, and for DVC to have a high HT/LT ratio till it develops extensive low voltage distribution network having regard to the demand for such supply and the need to develop such distribution network in line with the principles set out by the Hon'ble Tribunal in Appeal No. 246 of 2012. During such period DVC will continue to have a minimal or no cross-subsidy burden on account of retail supply in contra-distinction to JBVNL which has substantial cross-subsidy burden of more than Rs. 1100 crores out of its total ARR of Rs. 4566 crores during the period 2015-16. It is also pertinent to point out in this regard that majority of the high voltage heavy duty bulk consumers are concentrated in the DVC Area of Supply and continue to draw supply from DVC due to the absence of cross-subsidy burden. It is also pertinent that even though there are various high voltage consumers also situated in the JBVNL area of supply, the average load and consumption of such consumers are significantly lower even though they contribute about 1/3<sup>rd</sup> of the entire cross-subsidy burden of JBVNL. The position can be demonstrated from the following details:

Area of Supply	Number of HT	Total load (MVA)	Average load per
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	<b>consumers</b>		<b>consumer</b>
DVC	127	1088	8.57
JBVNL	1499	1504.67	1.003
<u>JBVNL in</u> <u>DVC Area</u> <u>of Supply</u>	<u>520</u>	<u>197.48</u>	<u>0.380</u>

Thus, as seen herein above, there is a natural tendency on the part of heavy duty bulk HT consumers to avail supply of power from DVC. It is also important to note that since majority of the high voltage power is generally consumed by large manufacturing and industrial utilities, there has been a marked preference for such industries to be located within the DVC Area of Supply to avail the benefits of more reasonable pricing in terms of power.

8. The above phenomena has a significant bearing on the wholesome economic and social development of the State considering its geographical, economic and demographic profile. In this regard the following facts may be kindly appreciated by this Hon'ble Commission:

<b>Area of Jharkhand</b>	79,714 sq. kms.
<b>Demographic and geographic profile</b>	
Forest area	29.61%
Districts having been identified as left wing Extremism affected districts.	21 out of 24
Breakup of: General population SC/ST/OBC population	SC 12.08%; ST 26.11%; OBC Rural 40.2% OBC Urban 19.1%
<b>Economic development</b>	

Extent of electrification	56% of rural households yet to be connected to electricity
Rural population	75.95%
SC population	12.08%
ST population	26.21%
BPL population	37.0%
Literacy	66.41%
Share in national GDP	1.65%

The socio economic indicators showing the difference in development in DVC Area and other areas is annexed herewith as **Annexure P-4**.

The above facts clearly show that the State is currently faced with the challenge of economic development and social welfare of a large portion of the population which is living below poverty levels. Further, Jharkhand being a predominantly rural State having extensive forest areas, is faced with a challenge of electrification of these areas to bring them within the fold of economic, social and commercial development that is expected to finally address the militancy issues that have currently plagued the State. The supply of power to these less developed and rural areas can ensure a rapid and constant growth of these areas at par with the districts falling within the DVC area of supply. These areas are serviced by JBVNL as the State distribution utility supplying power to the entire State, and therefore the responsibility of securing supply to such far flung and under developed areas falls squarely on JBVNL as the State distribution utility. It is respectfully submitted that the development of

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network in such far-flung forest and rural areas is a capital intensive activity and will require significant levels of investment, apart from recurring cross-subsidy. These aspects have to be viewed in a holistic manner having regard to the requirement to address certain State specific concerns of development.

9. In the above backdrop, the absence of level playing field and pricing disadvantage which JBVNL is faced with qua DVC has resulted in a situation where the ability of JBVNL to (i) supply power to its low end consumers at reasonable and affordable prices; (ii) invest in system strengthening and expansion of network to reach out to far flung and less developed areas; (iii) carryout distribution in a sustainable and financially viable manner on a long term basis; and (iv) secure adequate quantum of power to carryout quality supply of power and meet the requirements of the State.
  
  10. In this regard, to appreciate the prejudice and predicament which JBVNL is presently faced with, it is also important to understand the manner in which the tariff for the two competing licensees are worked out. It is submitted that retail tariff of a utility is a direct function of its consumer mix, capital expenditure and operational costs. Further, in order to ensure equitable distribution of power, certain categories of consumers such as domestic, agricultural, BPL consumers are charged with lower and affordable tariff while the cost of subsidizing these categories are generally passed on to high end consumers like industrial and commercial entities. Naturally, therefore, considering the favorable consumer mix that DVC has historically been
- L<sub>o</sub> —————

endowed with coupled with the fact that its capital investment has also been restricted to network development at high voltage and its consequential benefits in terms of low operational costs and AT&C losses, DVC is presently having an advantage in terms of price competitiveness over the other parallel/competing licensee namely JBVNL. The pricing advantage enjoyed by DVC is a consequence of the peculiar status enjoyed by it under DVC Act, which has put it in a significantly advantageous position qua supply to HT consumers. While there are other parallel licensees in the State eg. JUSCO, Tata Steel or Bokaro Steel, they are supplying consumers at all voltage levels under their USO under Section 43 of the 2003 Act. This has a natural consequence of distorting the level playing field amongst the competing licensees. This is also against the letter and spirit of 2003 Act which seeks to promote free and fair competition between the competing licensees. This is also resulting in an iniquitous situation where high voltage consumers belonging to DVC have a clear price advantage over those high voltage consumers who receive supply from JBVNL, which in turn further incentivizes HT consumers to migrate from JBVNL to DVC and thus cause further prejudice to JBVNL and dents its ability to run its distribution operations in an economic and sustainable manner.

11. In light of the above circumstances and having regard to the need to address the socio-economic development of the State and the people situated in the lesser developed and rural areas, it is absolutely imperative that the Hon'ble Commission in exercise of its wide and overarching regulatory powers under the 2003 Act addresses the anomalous situation as

2) —

discussed above, by working out an appropriate mechanism by which such distortion in the competitive framework under the 2003 Act is prevented during the interregnum period when DVC continues to have a price edge over JBVNL pending development of an extensive distribution network at all voltage levels.

12. In our respectful submission one possible mechanism that this Hon'ble Commission may consider for remedying the afore-described situation is levying of a regulatory surcharge on all high voltage consumers situated in the common supply area of DVC and JBVNL, and utilizing such amount to meet the cross-subsidy burden for JBVNL.
13. The petition has been made bonafide and in the interest of justice.

**PRAYER**

In light of the abovementioned facts and submissions, it is most respectfully prayed that this Hon'ble Commission may be pleased to-

- a. Admit the present Petition;
- b. Work out a mechanism / roadmap to create a level playing field between the Petitioners in order to promote free and fair competition in distribution of electricity in their common area of supply so as to subserve the larger consumer interests;
- c. Issue such other/further order(s) as the Hon'ble Commission may consider appropriate in the facts and circumstances of the present case.

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*R. Goswami*

[PETITIONER NO. 1]

*Jc Jc Venu*

[PETITIONER NO. 2]

Through : *y* *y datt/4th d/ent 1 x 2*  
*HSA Advocates*  
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*11-8-16*

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Counsel for the Petitioners

81/1, Adchini,

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New Delhi - 110017

Place :

Dated :

*S.M. 23242*

solemnly affirmed before me by *R. Goswami*  
who is identified by *A.K. Venu*  
I have satisfied my self by examining the deponent that  
understands the Contents of this affidavit which has been  
read..... by..... me and over  
explained which he acknowledges as to be correct  
Jharkhand High Court, Ranchi  
Dated *19/8/16* *P. Jey*  
The Advocate Oath-Commissioner

*19/8/16*

**BEFORE THE HON'BLE JHARKHAND ELECTRICITY  
REGULATORY COMMISSION, RANCHI**

CASE NO. \_\_\_\_ OF 2016

**IN THE MATTER OF:**

Joint petition of the Petitioners herein seeking this Hon'ble Commission to provide a roadmap to create a level playing field between the Petitioners in order to promote free and fair competition in distribution of electricity in their common area of supply so as to subserve the larger consumer interests.

AND

**IN THE MATTER OF:**

Damodar Valley Corporation & Anr  
.....Petitioners

Vs.

Union of India & Anr  
.....Respondents

**AFFIDAVIT**

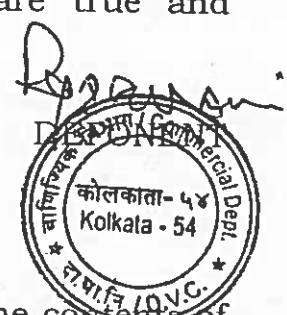
I, Rajib Goswami son of S/o Sri Nirmal Goswami aged 55 years, residing at 82, Garfa Main Road, Kolkata, 700075 Police Station Garfa do solemnly affirm and state as follows:

1. That I am working as Dy Chief Engineer (Comm) in the office of Petitioner No. 1 and well conversant with

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the facts of the case, hence competent to swear to this affidavit.

- 2. I have gone through the accompanying petition and I say that the facts stated therein are based on the records of the Petitioner No.1 maintained in the normal course of business and believed by me to be true.
- 3. The annexure filed to the petition are true and correct copies of the original.



**VERIFICATION:**

I, the deponent above named do verify that the contents of my above affidavit are true to the knowledge of the deponent and believed by the deponent to be true, no part of it is false and nothing material has been concealed there from.

Handwritten signature 'R. Goswami' and the printed word 'DEPONENT'.



Verified at .....  
On the ..... day of August, 2016

Serial 23243

By Deponent's Advocate  
Ashu / Anurag /  
Sudhir / Anurag  
19/8/16 19/8/16

... who is identified by..... R. Goswami  
 ... have satisfied my self by examining the records that  
 understands the Contents of this affidavit which has been  
 read..... by..... me and over  
 explained which he acknowledges as to be correct  
 Jharkhand High Court, Ranchi  
 Dated . . . . . 19/8/16 P. D. D.  
 The Advocate Oath-Commissioner  
19/8/16

**BEFORE THE HON'BLE JHARKHAND ELECTRICITY  
REGULATORY COMMISSION, RANCHI**

CASE NO. \_\_\_\_\_ OF 2016

**IN THE MATTER OF:**

Joint petition of the Petitioners herein seeking this Hon'ble Commission to provide a roadmap to create a level playing field between the Petitioners in order to promote free and fair competition in distribution of electricity in their common area of supply so as to subserve the larger consumer interests.

AND

**IN THE MATTER OF:**

Damodar Valley Corporation & Anr  
.....Petitioners

Vs.

Union of India & Anr  
.....Respondents

**AFFIDAVIT**

I, Kamleshwar Kant Verma son of S/o Sri Brij Mohan Prasad aged 53 years, residing at Flat No. A- 301, Shahdeo Tower, PP Impound Ranchi,834001, Police Station Ranchi do solemnly affirm and state as follows:

26 —

1. That I am working as Chief Engineer (Comm & Rev) in the office of Petitioner No. 2 and well conversant with the facts of the case, hence competent to swear to this affidavit.
2. I have gone through the accompanying petition and I say that the facts stated therein are based on the records of the Petitioner No.1 maintained in the normal course of business and believed by me to be true.
3. The annexure filed to the petition are true and correct copies of the original.

T K T C Verma

DEPONENT

**VERIFICATION:**

मुख्य अभियन्ता (सामान्य एवं टन्डर)  
इ. वि. वि. वि. वि. वि.

I, the deponent above named do verify that the contents of my above affidavit are true to the knowledge of the deponent and believed by the deponent to be true, no part of it is false and nothing material has been concealed there from.

T K T C Verma

DEPONENT

मुख्य अभियन्ता (सामान्य एवं टन्डर)  
इ. वि. वि. वि. वि. वि.

Verified at .....  
On the ..... day of August, 2016

Y Identity the deponent  
Ashok Kumar Ambastha  
A. Sudhakar Kumar  
19/8/2016  
19/8/2016

Serial 23244

Sworn and affirmed before me by deponent K.K. Verma  
who is identified by A.K. Ambastha  
I have satisfied my self by examining the deponent that  
he understands the Contents of this affidavit which has been  
read ..... by ..... me and over  
explained which he acknowledges as to be correct

Meerkhana High Court, Ranchi  
dated 19/8/16 P 202  
19/8/16

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**DAMODAR VALLEY CORPORATION ACT.**

**ACT NO. XIV OF 1948**

*An Act to provide for the establishment and regulation of a Corporation for the development of the Damodar Valley in the Provinces of Bihar and West Bengal.*

**Whereas** it is expedient to provide for the establishment and regulation of a Corporation for the development of the Damodar Valley in the provinces of Bihar and West Bengal.

**And Whereas** in pursuance of section 103 of the Government of India Act, 1935 (26 Geo. 5, c. 2), resolutions have been passed by all the Chambers of the Provincial Legislatures of the said Provinces to the effect that certain matters dealt with in this Act. Which are enumerated in the Provincial Legislative List should be regulated in those Provinces by Act of the Dominion Legislature :

It is hereby enacted as follows :—

**PART – I**

**INTRODUCTORY**

**1. Short title, extent and commencement :**

- 1) This Act may be called the Damodar Valley Corporation Act, 1948.
- 2) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint in this behalf.

**2. Interpretation : In this Act, unless there is anything repugnant in the subject or context —**

- 1) "Corporation" means the Damodar Valley Corporation;
- 2) "Damodar Valley" includes the basin of the Damodar river and its tributaries;
- 3) "member" means a member of the Corporation and includes the Chairman;

- 4) "Participating Governments" means the Central Government, the Provincial Government of Bihar and the Provincial Government of West Bengal;
- 5) "Prescribed" means prescribed by rules made under section 59;
- 6) "Provincial Government" means the Government of Bihar or as the case may be of West Bengal, and "Provincial Governments" means the Governments of Bihar and of West Bengal;
- 7) "regulations" means the regulations made by the Corporation under section 60.

## PART - II

### ESTABLISHMENT OF THE CORPORATION

#### 3. Incorporation :

- 1) With effect from such date as the Central Government may, by notification in the official Gazette, appoint in this behalf, there shall be established a Corporation by the name of the Damodar Valley Corporation.
- 2) The said Corporation shall be a body corporate having perpetual succession and a common seal, and shall by the said name sue and be sued.

#### 4. Constitution of the Corporation :

- 1) The Corporation shall consist of a Chairman and two other members appointed by the Central Government after consultation with the Provincial Governments.
- 2) A person shall be disqualified for being appointed, or for continuing as, a member of the Corporation —
  - a) if he is a member of the Central or any Provincial Legislature; or

- b) if he has, directly or indirectly, any interest in a subsisting contract made with, or in any work being done for, the Corporation except as a shareholder (other than a director) in an incorporated company provided that where he is a shareholder, he shall disclose to the Government the nature and extent of shares held by him in such company,
- 3) No act or proceeding of the Corporation shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the appointment of a member thereof.
- 5. **Conditions of service of members :**
  - 1) Omitted.\*
  - 2) The remuneration and other conditions of service of the members shall be such as may be prescribed.
- 6. **Appointment of officers and servants :**
  - 1) The secretary and the financial adviser of the Corporation shall be appointed by the Central Government.
  - 2) The Secretary shall be the chief executive officer of the Corporation.
  - 3) The Corporation may appoint such other officers and servants as it considers necessary for the efficient performance of its functions.
- 7. **Conditions of service of officers and servants :** The pay and other conditions of service of the officers and servants of the Corporation shall —
  - a) as respects the secretary and financial adviser, be such as may be prescribed; and
  - b) as respects the other officers and servants, be such as may be determined by the regulations.
- 8. **Functions and duties of the financial adviser :** The functions and duties of the financial adviser shall be such as may be prescribed.
- 9. **General disqualification of all officers and servants :** No person who has directly or indirectly, by himself or his partner or agent, any share or interest in any contract, by or on behalf of the Corporation or in any employment under, by

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\* Vide Damodar Valley Corporation (Amendment) Act, 1967 (No. 59 of 1957)>



or on behalf of the Corporation otherwise than as an officer or servant thereof, shall become or remain an officer or servant of the Corporation.

10. **Appointment of Advisory Committee** : Subject to any rules made under section 59 the Corporation may from time to time appoint one or more Advisory Committees for the purpose of securing the efficient discharge of the functions of the Corporation, and in particular for the purpose of securing that those functions are exercised with due regard to the circumstances and requirements of particular local areas.

### **PART – III**

#### **FUNCTIONS AND POWERS OF THE CORPORATION**

##### *General*

11. **Limits of Damodar Valley and area of operation** :
- 1) The Central Government shall, by notification in the official Gazette, specify the limits of the Damodar Valley.
  - 2) The Corporation shall carry out all or any of its functions and exercise all or any of its powers within the Damodar Valley.
  - 3) The Central Government may, after consultation with the Provincial Governments by notification in the official Gazette, direct that the Corporation shall carry out such function and exercise such power in such other area as may be specified therein and the area so specified shall be called the "area of operation" of the Corporation.
12. **Functions of the Corporation** : The functions of the Corporation shall be —
- a) the promotion and operation of schemes for irrigation, water supply and drainage,
  - b) the promotion and operation of schemes for the generation, transmission and distribution of electrical energy, both hydro-electric and thermal,
  - c) the promotion and operation of schemes for flood control in the Damodar river and its tributaries and the channels, if any, excavated by the Corporation in connection with the scheme and for the improvement of flow conditions in the Hooghly river,

- d) the promotion and control of navigation in the Damodar river and its tributaries and channels, if any,
- e) the promotion of afforestation and control of soil erosion in the Damodar Valley, and
- f) the promotion of public health and the agricultural, industrial, economic and general well-being in the Damodar Valley and its area of operation.

***Irrigation and water-supply***

13. **Provision for irrigation and water-supply** : The Corporation may, with the approval of the Provincial Government concerned which shall not be unreasonably withheld, construct canals and distributaries and maintain and operate them :
- Provided that the Provincial Government may, after giving notice and subject to the payment of fair compensation, take over the maintenance and operation of any such canal or distributary.
14. **Rates for supply of water for irrigation** :
- 1) The Corporation may, after consultation with the Provincial Government concerned, determine and levy rates for the bulk supply of water to that Government for irrigation, and fix the minimum quantity of water which shall be made available for such purpose.
  - 2) The rates at which such water shall be supplied by the Provincial Government to the cultivators and other consumers shall be fixed by that Government after consultation with the Corporation.
15. **Rates for supply of water for industrial and domestic purposes** : The Corporation may determine and levy rates for bulk supply and retail distribution of water for industrial and domestic purposes and specify the manner of recovery of such rates.
16. **Supply of water to those whose supply has been stopped or reduced** : If, with a view to operating its schemes, the Corporation has stopped or reduced the supply of water to any person for agricultural, industrial or domestic

purposes which such persons was, prior to such stoppage or reduction, enjoying by virtue of any prescriptive right the Corporation shall arrange such supply of water on the same terms as before.

17. **Construction of dam etc., prohibited except with approval of the Corporation :** Save as otherwise prescribed, no person shall construct, operate or maintain in the Damodar Valley any dam or other work or any installation for the extraction of water without the consent of the Corporation.

***Supply and generation of electrical energy***

18. **Supply and generation of electrical energy :** Notwithstanding anything contained in the Indian Electricity Act, 1910 (IX of 1910) or any licence granted thereunder —

- i) No person shall without the permission of the Corporation —
- a) sell electrical energy to any consumer in the Damodar Valley where the energy is taken by the consumer at a pressure of 30,000 volts or more;
  - b) transmit electrical energy in the Damodar Valley at a pressure of 30,000 volts or more;
  - c) generate any electrical energy at an installation having an aggregate capacity of more than 10,000 kilowatts in any part of the Damodar Valley lying to the north of a straight line drawn east to west passing through a point at latitude twenty-two degrees, fourteen minutes and forty-seven seconds and longitude eighty-seven degrees, fifty-one minutes and forty-two seconds except such portion of the municipal area of Burdwan as may lie to the north of such straight line :

Provided that nothing in sub-clause (c) shall apply to any person who was, at the commencement of this Act, generating electrical energy at an installation having an aggregate capacity of more than 10,000 kilowatts, so long as the capacity of such installation is not increased :

Provided further that nothing in sub-clause c) shall apply to the power station installation of the fertiliser factory at Sindri having an aggregate capacity of 80,000 kilowatts so long as the capacity of such installation is not increased beyond 80,000 kilowatts.

- ii) The Corporation may sell electrical energy to any consumer in the Damodar Valley but no such sale shall, except with the permission of the Provincial Government concerned, be made to any consumer requiring supply at a pressure of less than 30,000 volts.
- iii) The Corporation may, with the permission of the Provincial Government concerned, extend its transmission system to any area beyond the Damodar Valley and sell electrical energy in such area.

**19. Effect on existing licences :**

- 1) Where any licence granted under the Indian Electricity Act, 1910 (IX of 1910), becomes inoperative wholly or partly by virtue of the provisions of section 18, the licence shall be deemed to have been revoked or modification so as to be consistent with those provisions.
- 2) Where a licence is deemed to have been revoked under sub-section (1), the Corporation shall purchase the undertaking of the licensee and where a licensee is modified under that sub-section, the Corporation shall, at the option of the licensee, either purchase the undertaking or pay fair compensation to the licensee.
- 3) The purchase price or the amount of compensation payable by the Corporation under sub-section (2) shall be such as may be agreed to between the Corporation and the licensee or, in the event of disagreement, as may be determined by arbitration.

**20. Charges for supply of electrical energy :** The Corporation shall fix the schedule of charges for the supply of electrical energy, including the rates for bulk supply and retail distribution, and specify the manner of recovery of such charges :

Provided that the Corporation may in any contract for bulk supply of electrical energy impose such terms and conditions including a retail rate schedule as it may deem necessary or desirable to encourage the use of electrical energy.

**Other activities**

**21. Other activities of the Corporation :**

- 1) The Corporation may establish, maintain and operate laboratories, experimental and research stations and farms for conducting experiments and research for
  - a) utilising the water, electrical energy and other resources in the most economical manner for the development of the Damodar Valley,
  - b) determining the effect of its operations on the flow conditions in the Hooghly river,
  - c) making improvements in navigation conditions in the port of Calcutta, and
  - d) carrying out any other function specified under section 12.
- 2) The Corporation may set up its own planning, designing, construction and operating agencies, or make arrangements therefore with the participating Governments, local authorities, educational and research institutions or any person carrying on the business of an architect, an engineer or a contractor.

**Powers**

**22. General powers of the Corporation :**

- 1) The Corporation shall have the power to do anything which may be necessary or expedient for the purposes of carrying out its functions under this Act.
- 2) Without prejudice to the generality of the foregoing provision, such power shall include the power —

- i) to acquire and hold such movable and immovable property as it may deem necessary and to lease, sell or otherwise transfer any such property;
- ii) to construct or cause to be constructed such dams, barrages, reservoirs, power houses, power structures, electrical transmission lines and sub-stations, navigation works, irrigation, navigation and drainage canals and such other works and structures as may be required;
- iii) to prevent pollution of any water under its control and to take all measures to prevent discharges into such water effluents which are harmful to water supply, irrigation, public health or fish life;
- iv) to stock its reservoirs or water courses with fish and to regulate or prohibit taking out fish from the water under its control;
- v) to undertake resettlement of the population displaced by the dams, acquisition of land for reservoirs, and protection of watersheds;
- vi) to aid in the establishment of co-operative societies and other organisations for the better use of facilities made available by the Corporation;
- vii) to undertake measures for the prevention of malaria.

**23. Power to close roads and open spaces :**

- 1) The Corporation may, after giving notice to the persons concerned or to the public generally —
  - a) turn, divert or discontinue the public use of, or permanently close, any road or any part thereof, or
  - b) discontinue the public use of, or permanently close, any open space, or any part thereof.
- 2) Whenever the Corporation discontinues the public use of, or permanently closes, any road or open space, the Corporation shall pay reasonable compensation to every person —

- a) who was entitled, otherwise than as a licensee, to use such road or open space or part thereof as a means of access, or
- b) whose immovable property was receiving air and light on account of such open space or part,

and who has suffered damage —

- i) in any case falling under clause (a) from such discontinuance or closure and
  - ii) in any case falling under clause (b) from the use to which the Corporation has put such open space or part.
- 3) In determining the compensation payable to any person under sub-section (2), the Corporation may take into consideration any benefit accruing to such person from the construction, provision or improvement of any other road, or open space at or about the same time that the road or open space or part thereof, on account of which the compensation is to be paid, is discontinued or closed.
- 4) When any road or open space or any part thereof, is permanently closed under sub-section (1), the Corporation may sell or lease such part of it as is not required for its purposes.

**24. Power under certain other enactments :**

- 1) Notwithstanding anything contained in the Acts specified in column one of Part-I of the Schedule, the Corporation may carry out all or any of the functions and exercise all or any of the powers of a Provincial Government in the Damodar Valley under the provisions of such Acts specified in column two thereof against each item of column one.
- 2) Notwithstanding anything contained in the Acts specified in column one of Part-II of the Schedule, any officer authorised by the Corporation may carry out all or any of the functions and exercise all or any of the powers of a Canal Officer-Collector or Forest Officer, as the case may be, in the Damodar Valley under the provisions of such Acts specified in column two thereof against each item of column one.

***Co-operation and avoidance of submersion***

25. **Co-operation with other authorities to minimise inconvenience caused by submersion** : The Corporation shall co-operate with the participating Governments, railway authorities and local authorities and bodies with a view to minimising the inconvenience likely to be caused by the submersion of roads and communications and shall bear the cost of any realignment thereof or resettlement of any population rendered necessary by such submersion.
26. **Submersion of coal mines to be avoided by the Corporation** : The Corporation shall make every endeavour to avoid submersion of coal or mineral deposits and shall co-operate with the coal mining industry and the bodies set up by the participating Governments to ensure the maintenance of supplies of sand for stowing purposes in coal mines and in other ways to minimise the inconvenience to the coal mining industry.

**PART – IV**

**FINANCE, ACCOUNTS AND AUDIT**

27. **Expenditure till the Corporation is established** : All expenditure incurred by the Central Government for and in connection with the establishment of the Corporation up to the date of its establishment shall be treated as the capital provided by the Central Government to the Corporation and such capital shall be adjusted between the participating Governments in accordance with the provisions of sections 30 to 36.
28. **Vesting of property in the Corporation** : All property acquired and works constructed for the purposes of the Damodar Valley scheme before the establishment of the Corporation shall vest in the Corporation and all income derived and expenses incurred in this behalf shall be brought into the books of the Corporation.
29. **Fund of the Corporation** :
- 1) The Corporation shall have its own fund and all receipts of the Corporation shall be carried thereto and all payments by the Corporation shall be made there from.



- 2) Except as otherwise directed by the Central Government, all moneys belonging to that fund shall be deposited in the Reserve Bank of India or the Agents of the Reserve Bank of India or invested in such securities as may be approved by the Central Government.
30. **Liabilities of participating Governments to provide capital to the Corporation :** The participating Governments shall, as hereinafter specified, provide the entire capital required by the Corporation for the completion of any project undertaken by it.
31. **Payment by participating Government on specified date :** Each participating Government shall provide its share of the capital on the dates specified by the Corporation and if any Government fails to provide such share on such dates the Corporation may raise loan to make up the deficit at the cost of the Government concerned.
32. **Expenditure on objects other than irrigation, power and flood control :** The Corporation shall have power to spend such sums as it thinks fit on objects authorised under this Act other than irrigation, power and flood control and such sums shall be treated as common expenditure payable out of the Fund of the Corporation before allocation under Section 33.
33. **Allocation of expenditure chargeable to project on main objects :** The total capital expenditure chargeable to a project shall be allocated between the three main objects, namely, irrigation, power and flood control as follows, namely :
  - 1) expenditure solely attributable to any of these objects, including a proportionate share of overhead and general charges, shall be charged to that object, and
  - 2) expenditure common to two or more of the said objects, including a proportionate share of overhead and general charges shall be allocated to each of such objects in proportion to the expenditure which, according to the estimate of the Corporation, would have been incurred in constructing a separate structure solely for that object, less any amount determined under clause (1) in respect of that object.

34. **Capital allocated to irrigation :** The total amount of capital allocated to irrigation shall be shared between the Provincial Governments as follows, namely :—

- 1) the Government concerned shall be responsible for the capital cost of the works constructed exclusively for irrigation in its Province; and
- 2) the balance of capital cost under irrigation for both the Provinces of Bihar and West Bengal shall be shared by the Provincial Governments in the proportion to their guaranteed annual off-takes of water for agricultural purposes :

Provided that the divisible capital cost under this clause shall be provisionally shared between them in accordance with their previously declared intentions regarding their respective guaranteed off-takes and any payments made accordingly shall be adjusted after the determination of the guaranteed off-takes.

35. **Capital allocated to power :** The total amount of capital allocated to power shall be shared equally between the three participating Governments.

36. **Capital allocated to flood control :** The total amount of capital up to fourteen crores of rupees allocated to flood control shall be shared equally between the Central Government and the Government of West Bengal and any amount in excess thereof shall be the liability of the Government of West Bengal.

37. **Disposal of profits and deficits :**

- 1) Subject to the Provisions of sub-section (2) section 40, the net profit, if any, attributable to each of the three main objects, namely, irrigation, power and flood control, shall be credited to the Participating Governments in proportion to their respective shares in the total capital cost attributed to that object.
- 2) The net deficit, if any, in respect of any of the objects shall be made good by the Governments concerned in the proportion specified in sub-section (1) :

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Provided that the net deficit in respect of flood control shall be made good entirely by the Government of West Bengal and the Central Government shall have no share in such deficit.

38. **Payment of interest :** The Corporation shall pay interest on the amount of capital provided by each participating Government at such rate as may, from time to time, be fixed by the Central Government and such interest shall be deemed to be part of the expenditure of the Corporation.
39. **Interest charges and other expenses to be added to and receipts taken for reduction of capital cost :** For a period, not exceeding fifteen years, from the establishment of the Corporation, if the Corporation runs in deficit, the interest charges and all other expenditure shall be added to the capital cost and all receipts shall be taken in reduction of such capital cost.
40. **Provision for depreciation and reserve and other funds :**
  - 1) The Corporation shall make provision for depreciation and for reserve and other funds at such rates and on such terms as may be specified by the Auditor General of India in consultation with the Central Government.
  - 2) The net profit for the purposes of section 37 shall be determined after such provision has been made.
41. **Corporation's share in betterment levy by Provincial Government :** In the event of any betterment levy being imposed by a Provincial Government, the proportionate proceeds thereof in so far as they are attributable to the operations of the Corporation shall be credited to the Corporation.
42. **Borrowing of money :** The Corporation may, with the approval of the Central Government, borrow money in the open market or otherwise for the purposes of carrying out its functions under this Act.
43. **Liability to pay Central taxes :**
  - 1) The Corporation shall be liable to pay any taxes on income levied by the Central Government in the same manner and to the same extent as a company.
  - 2) The Provincial Governments shall not be entitled to any refund of any such taxes paid by the Corporation

**44. Budget :**

- 1) The Corporation, in consultation with the financial adviser, shall in October each year prepare in such form as may be prescribed a budget for the next financial year showing the estimated receipts and expenditure and the amounts which would be required from each of the three participating Governments during that financial year.
- 2) Printed copies of the budget shall be made available to each of the three participating Governments by the 15<sup>th</sup> day of November each year.
- 3) The budget shall be laid before the Central and the Provincial Legislatures concerned as soon as may be after it is prepared.

**45. Annual Report :**

- 1) The Corporation shall prepare, in such form as may be prescribed, an annual report within six months after the end of each financial year giving a true and faithful account of its activities during the previous financial year, with particular reference to —
  - i) irrigation;
  - ii) water supply;
  - iii) electrical energy;
  - iv) flood control;
  - v) navigation;
  - vi) afforestation;
  - vii) soil erosion;
  - viii) use of lands;
  - ix) resettlement of displaced population;
  - x) sanitation and public health measures; and
  - xi) economic and social welfare of the people
- 2) The annual report shall also give a true and faithful account of the income and expenditure during the previous financial year, the net amounts attributable to each of the three main objects and the

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distribution of the capital cost between the three participating Governments and show the progressive totals from the inception of the Corporation and the up to date financial results.

- 3) The payments provisionally made by each of the three participating Governments on the basis of the budget estimates shall be adjusted as soon as possible in accordance with the allocation made in the annual report.
  - 4) Printed copies of the annual report shall be made available to each of the three participating Governments by the 15<sup>th</sup> day of October each year.
  - 5) The annual report shall be laid before the Central and the Provincial Legislatures concerned as soon as may be after it is prepared.
46. **Other annual financial statements :**
- 1) The Corporation shall also prepare such other annual financial statements in such form and by such dates as may be prescribed.
  - 2) Printed copies of each such annual financial statements shall be made available to each of the three participating Governments by such date as may be prescribed.
47. **Accounts and Audit :** The accounts of the Corporation shall be maintained and audited in such manner as may, in consultation with the Auditor General of India, be prescribed.

#### PART - V

#### MISCELLANEOUS

48. **Directions by the Central Government :**
- 1) In discharge of its functions the Corporation shall be guided by such instructions on questions of policy as may be given to it by the Central Government.
  - 2) If any dispute arises between the Central Government and the Corporation as to whether a question is or is not a question of policy, the decision of the Central Government shall be final.

**49. Disputes between the Corporation and Governments :**

- 1) Save as otherwise expressly provided in this Act, any dispute between the Corporation and any participating Government regarding any matter covered by this Act touching or arising out of it shall be referred to an arbitrator who shall be appointed by the Chief Justice of India.
- 2) The decision of the arbitrator shall be final and binding on the parties.

**50. Compulsory acquisition of land for the Corporation :** Any land required by the Corporation for carrying out its functions under this Act shall be deemed to be needed for a public purpose and such land shall be acquired for the Corporation as if the provisions of Part VII of the Land Acquisition Act, 1894 (1 of 1894) were applicable to it and the Corporation were a company within the meaning of clause (e) of section 3 of the said Act.\*

**51. Control of Central Government :**

- 1) The Central Government may remove from the Corporation any member who in its opinion —
  - a) refuses to act,
  - b) has become incapable of acting,
  - c) has so abused his position as a member as to render his continuance on the Corporation detrimental to the interest of the public, or
  - d) is otherwise unsuitable to continue as member.
- 2) The Central Government may suspend any member pending an enquiry against him.
- 3) No order of removal under this section shall be made unless the member concerned has been given an opportunity to submit his explanation to the Central Government, and when such order is passed the seat of the member removed shall be declared vacant and another member may be appointed under section 4 to fill up the vacancy.
- 4) A member who has been removed shall not be eligible for reappointment as member or in any other capacity to the Corporation.
- 5) The Central Government may declare void any transaction in connection with which a member has been removed under sub-section (1).

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\* In its application to West Bengal, Section 50 has been amended by the DVC (West Bengal Amendment) act., 1955 (West Bengal Act III of 1959) by substitution of the words "by the State Government under any law for the time being in force" for the words "for the Corporation as if the provisions of Part VII of the Land Acquisition Act, 1894 (1 of 1894) were applicable to it and the Corporation were a company within the meaning of clause (e) of section 3 of the said Act."

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Government shall have the power to remove the Chairman and the members of the Corporation and appoint a Chairman and members in their places.

52. **Application of certain provisions of the Indian Forest Act, 1927, to the forests of the Corporation :** All acts prohibited in respect of a reserved forest under section 26 of the Indian Forest Act, 1927 (XVI of 1927) shall be deemed to be prohibited in respect of any forest owned by or under the supervision or control of the Corporation and all offences in respect of such forest shall be punishable under the said Act, as if they were committed in respect of a reserved forest.
53. **Penalty :** Whoever contravenes the provisions of sections 17 and 18 of this Act or any rule made thereunder shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.
54. **Procedure for prosecution :** No Court shall take cognisance of an offence under this Act except on the complaint of an officer of the Corporation authorised by it in this behalf.\*\*
55. **Power of entry :** Any officer or servant of the Corporation generally or specially authorised by the Corporation may at all reasonable times enter upon any land or premises and there do such things as may be reasonably necessary for the purpose of lawfully carrying out any of its works or of making any survey, examination or investigation preliminary or incidental to the exercise of powers or the performance of functions by the Corporation under this Act.
56. **Members, officers and servants of the Corporation to be public servants :** All members, officers and servants of the Corporation, whether appointment by the Central Government or the Corporation, shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act to be public servants within the meaning of section 21 of the Indian Penal Code (XLV of 1860).

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\*\* In exercise of the powers vested under section 54 of the Damodar Valley Corporation Act (Act XIV of 1948), the Damodar Valley Corporation has authorised the Forest Officer in the employ of the Corporation to file complaints in the Court of the Sub-divisional Magistrate or any Magistrate of the First or Second Class having jurisdiction in the area and specially empowered in that behalf by the State Government in respect of offences under Section 26 of the Indian Forest Act (Act XVI of 1927), read with Section 52 of the Damodar Valley Corporation Act. (DVC Notification No. 6 dated the 4<sup>th</sup> February, 1957).

**57. Protection of action taken under the Act :**

- 1) No suit, prosecution or legal proceeding shall lie against any person in the employment of the Corporation for anything which is in good faith done or purported to be done under this Act.
- 2) Save as otherwise provided in the Act no suit or other legal proceeding shall lie against the Corporation for any damage caused or likely to be caused by anything in good faith done or purported to be done under this Act.

**58. Effect of other laws :** The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.

**59. Power to make rules :** The Central Government may, by notification in the official Gazette, make rules to provide for all or any of the following matters, namely —

- 1) the salaries and allowances and conditions of service of members, the secretary and the financial adviser;
- 2) the functions and duties of the financial adviser;
- 3) the dams or other works or the installations which may be constructed without the approval of the Corporation;
- 4) the forms of the budget, the annual report and the annual financial statements and the dates by which copies of the annual financial statements shall be made available to the Participating Governments;
- 5) the manner in which the accounts of the Corporation shall be maintained and audited;
- 6) the appointment of an Advisory Committee; and
- 7) the punishment for breach of any rule made under this Act.



**60. Power to make regulations :**

- 1) The Corporation may, with the previous sanction of the Central Government, by notification in the Gazette of India, make regulations for carrying out its functions under this Act.
- 2) In particular and without prejudice to the generality of the foregoing power, in such regulation the Corporation may make provision for —
  - a) making of appointments and promotions of its officers and servants;
  - b) specifying other conditions of service of its officers and servants;
  - c) specifying the manner in which water rates and charges for electrical energy shall be recovered;
  - d) preventing the pollution of water under its control;
  - e) regulating the taking out of fish from the water under its control;
  - f) regulating its proceedings and business;
  - g) prescribing punishment for breach of any regulation.
- 3) All regulations made under sub-section (1) and (2) shall, as soon as possible, be published also in the official Gazettes of the Provincial Governments.

## THE SCHEDULE

(See section 24)

## PART - I

	Acts (1)	Provisions of the Acts specified in column (1) (2)
1.	The Canals Act, 1864 (Ben. Act. V of 1864)	Section 6 (Power of Provincial Government to fix and alter rates of tolls). Section 8 (Power of Provincial government to appoint persons to collect tolls who may farm collection).
2.	The Indian Forest Act, 1927 (XVI of 1927)	Section 35 (Protection of forests for special purposes). Section 36 (Power to assume management of forests).

## PART - II

	Acts (1)	Provisions of the Acts specified in column (1) (2)
1.	The Bengal Irrigation Act, 1876 (Ben. Act III of 1876)	Part-III (Power of the maintenance of canals). Section 41 of Part-IV (Power of Canal Officer to issue notice to person causing obstruction). Section 42 of Part-IV (Power of Canal Officer to cause obstructions to be removed).
2.	The Bengal Embankment Act, 1882 (Ben. Act, II of 1882)	Part-II (Powers of Collector and procedure thereon). Part-III (Powers of Collector in cases of imminent danger of life or property).
3.	The Indian Forest Act, 1927 (XVI of 1927)	Section 36 (Power to assume management of forests).

~~SECRET~~

Appeal Nos. 271, 272, 273, 275 of 2006 & 8 of 2007

**Before the Appellate Tribunal for Electricity  
(Appellate Jurisdiction)**

**Appeal Nos. 271, 272, 273, 275 of 2006 & 8 of 2007**

**Dated: 23<sup>rd</sup> November, 2007.**

**Present: Hon'ble Mr. Justice Anil Dev Singh, Chairperson  
Hon'ble Mr. A.A. Khan, Technical Member**

**Appeal No.273 of 2006  
and I.A nos. 59 and 60 of 2007**

**Damodar Valley Corporation  
DVC Towers, VIP Road,  
Kolkata-700054.**

**-Appellant(s)**

**V/s.**

1. Central Electricity Regulatory Commission,  
Core 3, Floor-6, Scope Complex,  
Lodhi Road, New Delhi-110003.
2. State of West Bengal,  
Deptt. Of Energy, Secretariat,  
Kolkata.
3. State of Jharkhand,  
Deptt. Of Energy , Secretariat,  
Ranchi, Jharkhand.
4. West Bengal State Electricity Board,  
Bidyut Bhawan, Bidhan Nagar,  
Block- DJ, Sector-II,  
Salt Lake City, Kolkata.
5. Jharkhand State Electricity Board,  
Energy Building, HEC,  
Dhurwa, Ranchi-834 004.
6. Union of India,  
Ministry of Power, Shram Shakti Bhawan,  
Rafi Marg, New Delhi-1.
7. Bhaskar Shrachhi Alloys Ltd,  
8/1, Middleton Row,  
Kolkata-700 071.

8. Bihar Foundary and Castings Limited,  
Main Road, Ranchi-834 001.

**-Respondent(s)**

Counsel for the Appellant(s) : Mr. M.G. Ramachandran ,  
Mr. Anand K. Ganeshan & Ms Swapna Seshadri, Advocate

Counsel for the Respondent(s) : Mr. S.B. Upadhyay, Sr. Adv, Mr. R.R. Dubey ,  
Mr. S.M. Sharma & Mr. Santosh Mishra , Advocate for JSEB  
Mr. Sudarshan Srivastava & Mr. A.K. Mehta, Secy for JSERC.  
Mr. Suchit Mohanty, & Mr. Jaydip Kar Advocate for WBSEB.  
Mr. Sitesh Mukherjee, & Mr. Rajiv Yadav, Advocate  
for State of Jharkhand.  
Mr. Sakya Singh Chaudhari &  
Mr. Sapan Kumar Mishra  
Mr. C.S. Vaidyanathan, Sr. Advocate  
Mr. Sanujit Mishra, Mr. Shyamal Sarkar,  
Mr. Gautam Shroff  
and Mr. K.P. Ray for Maithan Alloys & Bhaskar Shrachi.  
Mr. T. Rout, Jt. Chief (L), CERC.

Appeal No. 271 of 2006

1. Maithan Alloys Ltd.  
3 F, India House, 20, British India Street,  
Kolkata.
2. Anjaney Ferro Alloys Ltd,  
3 F, India House, 20, British India Street,  
Kolkata
3. Dayal Steel Ltd.  
Bhartiya Palacc, Bander Bagicha,  
Fraser Road, Patna-800 001.
4. Castron Technologies Ltd,  
8 Waterloo Street, Kolkata-700 069. -Appellant(s)

V/s.

1. Central Electricity Regulatory Commission,  
Core 3, Floor-6, Scope Complex,  
Lodhi Road, New Delhi-110003.
2. Damodar Valley Corporation  
DVC Towers, VIP Road,  
Kolkata-700054.
3. State of West Bengal,  
Deptt. Of Energy, Secretariat,  
Kolkata.
4. State of Jharkhand,  
Deptt. Of Energy , Secretariat,  
Ranchi, Jharkhand.
5. West Bengal State Electricity Board,  
Bidyut Bhawan, Bidhan Nagar,  
Block-DJ, Sector-II,

Appeal Nos. 271, 272, 273, 275 of 2006 &amp; 8 of 2007

Salt Lake City, Kolkata.

6. Jharkhand State Electricity Board,  
Energy Building, HEC,  
Dhurwa, Ranchi-834 004.7. Union of India,  
Ministry of Power, Shram Shakti Bhawan,  
Rafi Marg, New Delhi-1.

..... Respondent(s)

Counsel for the Appellant(s)

: Mr. C.S. Vaidyanathan, Sr. Advocate  
Mr. Shymal Sarkar, Mr. Gautam Shroff &  
Mr. D.P. Mohanty & Mr. K.P. Ray

Counsel for the Respondent(s) :

Mr. M.G. Ramachandran and Mr. Anand K. Ganeshan  
Ms. Swapna Seshadri for DVC  
Mr. R.R. Dubey & Mr. Santosh Mishra for JSEB.  
Mr. Jaydip Kar & Mr. Suchit Mohanty for  
State of West Bengal  
Mr. Sudarshan Srivastava for JSERC.  
Mr. A.K. Mehta, Secy, JSERC.  
Mr. Sitesh Mukherjee & Mr. Sakya Singh ChaudhariAppeal No. 272 of 2006

1. Bhaskar Shrachi Alloys Ltd.,  
8/1, Middle Ton Row, Kolkata
2. Impex Ferro Tech Ltd.  
35, Chitranjan Avnue, Kolkata
3. Shyam Ferro Alloys Ltd.  
23-A, N.S. Road Room No. 22, Kolkata

-Appellant(s)

V/s.

1. Central Electricity Regulatory Commission,  
Core 3, Floor-6, Scope Complex,  
Lodhi Road, New Delhi-110003
2. Damodar Valley Corporation  
DVC Towers, VIP Road,  
Kolkata-700054.
3. State of West Bengal,  
Deptt. Of Energy, Secretariat,  
Kolkata
4. State of Jharkhand,  
Deptt. Of Energy, Secretariat,  
Ranchi, Jharkhand.
5. West Bengal State Electricity Board,  
Bidyut Bhawan, Bidhan Nagar.

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Appeal Nos. 271, 272, 273, 275 of 2006 & 8 of 2007

Block- DJ, Sector-II,  
Salt Lake City, Kolkata.

6. Jharkhand State Electricity Board,  
Energy Building, HEC,  
Dhurwa, Ranchi-834 004.
7. Union of India,  
Ministry of Power, Shram Shakti Bhawan,  
Rafi Marg, New Delhi-I.

-Respondent(s)

Counsel for the Appellant(s) : Mr. C.S. Vaidyanathan, Sr. Advocate  
Mr. Shymal Sarkar, Mr. Gautam Shroff &  
Mr. D.P. Mohanty & Mr. K.P. Ray  
Counsel for the Respondent(s) : Mr. M.G. Ramachandran and Mr. Anand K. Ganeshan  
Ms. Swapna Seshadri for DVC  
Mr. R.R. Dubey & Mr. Santosh Mishra for JSEB.  
Mr. Jaydip Kar & Mr. Suchit Mohanty for  
State of West Bengal  
Mr. Sudarshan Srivastava for JSERC.  
Mr. A.K. Mehta, Secy, JSERC.  
Mr. Sitesh Mukherjee & Mr. Sakya Singh Chaudhari

**Appeal No. 275 of 2006**

State of Jharkhand  
Through the Secretary  
Department of Energy  
Secretariat, Ranchi

-Appellant(s)

V/s.

1. Damodar Valley Corporation  
DVC Towers, VIP Road,  
Kolkata-700054.
2. Central Electricity Regulatory Commission,  
Core 3, Floor-6, Scope Complex,  
Lodhi Road, New Delhi-110003.
3. State of West Bengal,  
Deptt. Of Energy, Secretariat,  
Kolkata.
4. West Bengal State Electricity Board,  
Bidyut Bhawan, Bidhan Nagar,  
Block- DJ, Sector-II,  
Salt Lake City, Kolkata.
5. Jharkhand State Electricity Board,  
Energy Building, HEC,  
Dhurwa, Ranchi-834 004.

.. Respondent

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Appeal Nos. 271, 272, 273, 275 of 2006 & 8 of 2007

Counsel for the Appellant(s) : Mr. Sakya Singha Chaudhuri, Mr. Stesh Mukherjee,  
MR. Rajiv Yadav,  
Counsel for the Respondent(s) : Mr. C.S. Vaidyanathan, Sr. Adv.  
Mr. S.B. Upadhyay, Sr. Adv, Mr. R.R. Dubey and  
Mr. S.M. Sharma, Mr. Santosh Mishra for JSEB  
Mr. M.G. Ramachandran and Mr. Anand K. Ganeshan,  
Ms. Swapna Seshadri, Mr. Shyam Sarkar  
Mr. Sanujit Mishra and Mr. K.P. Rai  
Mr. Mr. Jaydip Kar with Mr. Suchit Mohanty for State of  
West Bengal

Appeal No.08 of 2007 & I.A. Nos. 57, 58 and 116 of 2007

1. West Bengal Electricity Regulatory Commission,  
FD-415A, Paura Bhawan,  
3<sup>rd</sup> Floor, Sector-III,  
Bidhannagar,  
Kolkata-700 106.

-Appellant(s)

V/s.

1. Central Electricity Regulatory Commission,  
Core 3, Floor-6, Scope Complex,  
Lodhi Road, New Delhi-110003.
2. Damodar Valley Corporation  
DVC Towers, VIP Road,  
Kolkata-700054.
3. State of West Bengal,  
Deptt. Of Energy, Secretariat,  
Kolkata.
4. State of Jharkhand,  
Deptt. Of Energy, Secretariat,  
Ranchi, Jharkhand.



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Appeal Nos. 271, 272, 273, 275 of 2006 &amp; 8 of 2007

5. West Bengal State Electricity Board,  
Bidyut Bhawan, Bidhan Nagar,  
Block-DJ, Sector-II,  
Salt Lake City, Kolkata.
6. Jharkhand State Electricity Board,  
Energy Building, HEC,  
Dhurwa, Ranchi-834 004.
7. Union of India,  
Ministry of Power, Shram Shakti Bhawan,  
Rafi Marg, New Delhi-I.

-Respondent(s)

Counsel for the Appellant(s) : Mr. Pratik Dhar and Mr. C.K. Rai  
Mr. Sakya Singh Chaudhuri.

Counsel for the Respondent(s) : Mr. S.B. Upadhyay, Sr. Adv., Mr. R.R. Dubey and  
Mr. S.M. Sharma, Mr. Santosh Mishra for JSEB  
Mr. M.G. Ramachandran and Mr. Anand K. Ganeshan,  
Ms. Swapna Seshadri, Mr. Shyam Sarkar  
Mr. Sanujit Mishra and Mr. K.P. Rai  
Mr. Jaydip Kar with Mr. Suchit Mohanty  
for State of West Bengal  
Mr. T. Rout, Jt. Chief (L) &  
Mr. B. Sreekumar, Astt. Chief (L).  
Mr. P.K. Awasti, Dy. Chief (F).  
Mr. S. Ramalingam, Dy. Chief (L)

**Per Hon'ble Mr. Justice Anil Dev Singh, Chairperson**

I have had the advantage of going through the judgment in draft of my learned brother, Mr. A.A. Khan, Technical Member. I respectfully agree with the conclusions arrived at by him. I would, however, like to say a few words of my own with regard to the impact of the fourth proviso to Section 14 and effect of Sections 61, 62 and the relevant provisions of the Electricity Act, 2003 (for short Act of 2003) on the provisions of the DVC Act, 1948 having a

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bearing on the tariff, particularly Part-IV of the DVC Act. In this context, it will be necessary to set out Section 14 of the Electricity Act, 2003:

*14. Grant of Licence- The Appropriate Commission may, on an application made to it under section 15, grant any person licence to any person –*

- a. to transmit electricity as a transmission licensee; or*
- b. to distribute electricity as a distribution licensee; or*
- c. to undertake trading in electricity as an electricity trader, in any area which may be specified in the licence:*

*Provided that any person engaged in the business of transmission or supply of electricity under the provisions of the repealed laws or any Act specified in the Schedule on or before the appointed date shall be deemed to be a licensee under this Act for such period as may be stipulated in the licence, clearance or approval granted to him under the repealed laws or such Act specified in the Schedule, and the provisions of the repealed laws or such Act specified in the Schedule in respect of such licence shall apply for a period of one year from the date of commencement of this Act or such earlier period as may be specified, at the request of the licensee, by the Appropriate Commission and thereafter the provisions of this Act shall apply to such business:*

*Provided further that the Central Transmission Utility or the State Transmission Utility shall be deemed to be a transmission licensee under this Act:*

*Provided also that in case an Appropriate Government transmits electricity or distributes electricity or undertakes trading in electricity, whether before or after the commencement of this Act, such Government shall be deemed to be a licensee under this Act, but shall not be required to obtain a licence under this Act:*

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*Provided also that the Damodar Valley Corporation, established under sub-section (1) of section 3 of the Damodar Valley Corporation Act, 1948, (14 of 1948), shall be deemed to be a licensee under this Act but shall not be required to obtain a licence under this Act and the provisions of the Damodar Valley Corporation Act, 1948, in so far as they are not inconsistent with the provisions of this Act, shall continue to apply to that Corporation:*

*Provided also that the Government company or the company referred to in sub-section (2) of section 131 of this Act and the company or companies created in pursuance of the Acts specified in the Schedule, shall be deemed to be a licensee under this Act:*

*Provided also that the Appropriate Commission may grant a licence to two or more persons for distribution of electricity through their own distribution system within the same area, subject to the conditions that the applicant for grant of licence within the same area shall, without prejudice to the other conditions or requirements under this Act, comply with the additional requirements (relating to the capital adequacy, credit-worthiness, or code of conduct) as may be prescribed by the Central Government, and no such applicant who complies with all the requirements for grant of licence, shall be refused grant of licence on the ground that there already exists a licensee in the same area for the same purpose:*

*Provided also that in a case where a distribution licensee proposes to undertake distribution of electricity for a specified area within his area of supply through another person, that person shall not be required to obtain any separate licence from the concerned State Commission and such distribution licensee shall be responsible for distribution of electricity in his area of supply:*

*Provided also that where a person intends to generate and distribute electricity in a rural area to be notified by the State Government, such person shall not require any licence for such*

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*generation and distribution of electricity, but he shall comply with the measures which may be specified by the Authority under section 53:*

*Provided also that a distribution licensee shall not require a licence to undertake trading in electricity.*

2. Thus, it is clear from the fourth proviso to Section 14 of the Act of 2003 that DVC (the appellant in Appeal No. 273/06), after coming into operation of the Act of 2003, is deemed to be a licensee. This being so, it is not required to obtain licence for transmission of electricity. At the same time, fourth proviso to Section 14 keeps those provisions of the DVC Act alive insofar as they are not inconsistent with the provisions of the Act of 2003. In other words, such of the provisions of the DVC Act which are not on collision course with the Electricity Act have been left untouched and they continue to apply. Only those provisions of the DVC Act which are inconsistent with the provisions of the Act of 2003, have been put out of operation. Section 20 of the DVC Act is one such provision.

3. Section 20 of the DVC Act provides that the corporation shall fix the schedule of charges for the supply of electrical energy, including their rates for bulk supply and retail distribution. It also requires the DVC to specify the manner of recovery of such charges. This provision is inconsistent with Section 62(1) of the Act of 2003. As per Section 62 of the Act of 2003, the tariff is to be determined by the appropriate Commission. Sub-section (1) of Section 62 of the Act of 2003 reads as under:-

**62. Determination of Tariff – (1)** The Appropriate Commission shall determine the tariff in accordance with provisions of this Act for –

(a) supply of electricity by a generating company to a distribution licensee:

Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;

(b) transmission of electricity ;

(c) wheeling of electricity;

(d) retail sale of electricity.

Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.

4. According to the above said provision, it is the appropriate Commission, which is required to determine tariff. Section 20 of the DVC Act providing for determination of tariff by the DVC being incompatible with Section 62 of the Act of 2003, cannot apply. Reading fourth proviso to Section 14 alongwith Section 62, leaves no manner of doubt that the appropriate Commission shall determine tariff in accordance with the provisions of the Act of 2003, which includes the provisions of the DVC Act that are not inconsistent with the provisions of the Act of 2003.

5. Thus, it must be held that under Section 62 of the Act of 2003, it is the appropriate Commission, which is required to determine the tariff and the contrary provision contained in Section 20 of the DVC Act, which empowers

the DVC to fix the schedule of charges is not applicable as per fourth proviso to Section 14 of the Act of 2003. But the Act of 2003 read in the light of the fourth proviso to Section 14 has not given a go-by to such of the provisions of the DVC Act which may be dealing with any of the facets of tariff in case they are not contrary to the Act of 2003.

6. Fourth proviso to Section 14 of the Act of 2003 has also not given any over-riding effect to the Rules and Regulations framed under the Act of 2003 over the statutory provisions of the DVC Act. It does not contemplate that the Rules and Regulations framed under the Electricity Act shall also have a over-riding effect in case of any inconsistency between the DVC Act and the rules and Regulations framed under the Act of 2003.

7. The provisions of the DVC Act which are consistent and inconsistent with the provisions of the Act of 2003 have been brought out in the Judgment of my learned Brother. Therefore, in this regard, it is not necessary for me to undertake an extensive survey. Suffice it to say that the provisions of the DVC Act that are inconsistent with the Act of 2003 have been rendered inoperative and the provisions which are not inconsistent with the DVC Act have to be given their full sway.

8. The CERC framed Regulations called Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 and notified the same on March 26, 2004. The Regulations, *inter alia*, provide for debt-equity ratio, interest on loan capital, depreciation, return on equity etc. In so far as debt equity ratio and return on equity is concerned, there is no provision in the DVC Act for computing the same for the purposes of determination of

tariff. But in so far as depreciation and interest on capital provided by each participating State is concerned, the DVC Act contains specific provisions.

9. Section 40 of the DVC Act makes a provision for depreciation and reserve and other funds. Section 40 reads as under:-

“ 40. Provision for depreciation and reserve and other funds:-

- (1) The Corporation shall make provision for depreciation and for reserve and other funds at such rates and on such terms as may be specified by the Auditor General of India in consultation with the Central Government.
- (2) The net profit for the purposes of section 37 shall be determined after such provision has been made”.

10. In view of the aforesaid provision, DVC has been authorized to make provision for depreciation and for reserve and other funds at such rates as fixed by the Auditor General of India in consultation with the Central Government. It needs to be noted that in the Act of 2003, there is no provision relating to depreciation. Therefore, Section 40 is not inconsistent with the Act of 2003. As per Section 62 of the Act of 2003 read with fourth proviso to Section 14 thereof, the appropriate Commission is required to determine tariff in accordance with the provisions of the Act of 2003, which includes the provisions of the DVC Act that are not inconsistent therewith (Act of 2003). The CERC however, by framing Regulations created a conflict between Section 40 of the DVC Act and the Regulation 21(ii) of the Regulations. Regulation 21(ii) reads as follows:-

“21. (ii) Depreciation, including Advance against Depreciation

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(a) Depreciation

*For the purpose of tariff, depreciation shall be computed in the following manner, namely:*

- (i) *The value base for the purpose of depreciation shall be the historical cost of the asset;*
- (ii) *Depreciation shall be calculated annually, based on straight line method over the useful life of the asset and at the rates prescribed in Appendix II to these Regulations.*

*The residual life of the asset shall be considered as 10% and depreciation shall be allowed up to maximum of 90% of the historical capital cost of the asset. Land is not a depreciable asset and its cost shall be excluded from the capital cost while computing 90% of the historical cost of the asset. The historical capital cost of the asset shall include additional capitalization on account of Foreign Exchange Rate Variation up to 31.3.2004 already allowed by the Central Government/Commission.*

- (iii) *On repayment of entire loan, the remaining depreciable value shall be spread over the balance useful life of the asset.*
- (iv) *Depreciation shall be chargeable from the first year of operation. In case of operation of the asset for part of the year, depreciation shall be charged on pre rata basis.*

(b) Advance Against Depreciation

*In addition to allowable depreciation, the generating company shall be entitled to Advance Against Depreciation, computed in the manner given hereunder:-*

AAD= *Loan repayment amount as per Regulation 21(i) subject to a ceiling of 1/10<sup>th</sup> of loan amount as per Regulation 20 minus depreciation as per schedule*



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*Provided that Advance Against Depreciation shall be permitted only if the cumulative repayment up to a particular year exceeds the cumulative depreciation up to that year;*

*Provided further that Advance Against Depreciation in a year shall be restricted to the extent of difference between cumulative repayment and cumulative depreciation up to that year”.*

A perusal of Regulation 21(ii) of the Regulations and Section 40 of the DVC Act, clearly reveal the inconsistencies between these two provisions.

11. In case the Parliament, while enacting the Act of 2003, wanted the Rules and Regulations framed thereunder to prevail over provisions of the DVC Act which were inconsistent therewith, it would have expressly stated so. That's, however, is not the case. The Parliament did not confer such a privilege to the Rules and Regulations framed under the Act of 2003 so as to nullify the statutory provisions of the DVC Act. The operation of Section 40 and other provisions cannot be curtailed by Regulations framed by the CERC. Such of the Regulations which are restricting the operation of the provisions of the DVC Act that are not inconsistent with the provisions of the Act of 2003 must be ignored as the Regulations or Rules cannot prevail over the legislation.

12. The learned counsel for the respondent (hereinafter called the respondent in Appeal No. 273/06) submitted that Regulations framed by the CERC have a statutory flavour and they have a force of a statute and such provisions of the DVC Act that are contrary to the Regulations must yield and give way to the Regulations. We cannot countenance this argument. The fourth proviso to Section 14 clearly implies that only such of the provisions of the DVC Act

which are inconsistent with the Electricity Act shall not apply. The inconsistency envisaged is between the provisions of the DVC Act and the provisions of the Electricity Act and not between the provisions of the DVC Act and the rules and the Regulations framed under the Electricity Act. The CERC cannot frame Regulations for determination of tariff of DVC which are inconsistent with the provisions of the DVC Act that do not collide with the Electricity Act.

13. The Supreme Court In the case of Kerala Samasthana Chetu Thozhilali Union Vs. State of Kerala (2006) 4 SCC 327 para 17 at page 337, held that a rule is not only required to be made in conformity with the provisions of the Act, whereunder it is made, but the same must be in conformity with the provisions of any other Act, as a subordinate legislation cannot be violative of any legislation made by the Parliament or the State Legislature.

14. In saying that the Regulations cannot be framed in violation of the statute, we are not holding them to be ultra-virus of the DVC Act but we are ignoring such of the Regulations which are contrary to the DVC Act as DVC Act being a legislation made by the Parliament must operate in so far as its provisions are not contrary to the provisions of the Act of 2003.

15. In Bharathidasan University vs. All India Council for Technical Education, (2001) 8 SCC 676, the Supreme Court held that the courts are bound to ignore the Rules or Regulations which are not in conformity with the statutory provisions. In this regard it was observed as follows:-

*" The fact that the Regulations may have the force of law or when made have to be laid down before the legislature concerned does not confer any more sanctity or immunity as though they are statutory provisions themselves. Consequently, when the power to make Regulations is*



on main objects, namely irrigation, power and flood control.

Section 34 Capital allocated to irrigation

Section 36 Capital allocated to flood control

Section 37 Disposal of profits and deficits

17. These provisions contained in Part-IV of the DVC Act can be read with the Act of 2003 as there is no conflict between the two. Therefore, the existence of these provisions and their application are not in any manner endangered or affected by the Act of 2003. Therefore, the force of these provisions cannot be curbed by any Regulations or Rules framed under the Act of 2003. In the event of any inconsistency between the Regulations and the above said provisions of the DVC Act, the latter provisions cannot be said to be falling foul of the fourth proviso to Section 14 of the Act of 2003. It appears to us that the Parliament, while enacting the Act of 2003, was conscious of the special responsibilities of the DVC, conferred on it by the DVC Act.

18. The preamble to the DVC Act reflects that the Act was enacted to provide for the establishment and regulation of DVC for the development of the Damodar Valley consisting of certain provinces of Bihar (presently Jharkhand) and West Bengal. The provisions of the DVC Act impose various obligations on the DVC in respect of Damodar Valley and in the area of its operation. These are:-

- (a) the promotion and operation of schemes for irrigation, water supply and drainage;

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- (b) the promotion and operation of schemes for the generation, transmission and distribution of electrical energy, both hydro-electric and thermal;
- (c) the promotion and operation of schemes for flood control in the Damodar river and its tributaries and the channels, excavated by the DVC in connection with the scheme and for the improvement of flow conditions in the Hooghly river;
- (d) the promotion and control of navigation in the Damodar river and its tributaries and channels;
- e) the promotion of afforestation and control of soil erosion; and
- f) the promotion of public health and the agricultural, industrial, economic and general well-being.

19. The DVC is also required to perform the following activities as per Section 21 of the DVC Act:-

1. It may establish, maintain and operate laboratories, experimental and research stations and farms for conducting experiments and research for following purposes-

- (a) utilizing water, electrical energy and other resources in the most economical manner for the development of the Damodar Valley;
- (b) determining the effect of its operations on the flow conditions in the Hooghly river;

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- (c) making improvements in navigation conditions in the port of Calcutta, and
- (d) carrying out any other function specified under Section 12.

Besides, it is authorized to own plan, design, construct and operate agencies, or make arrangements therefor with the participating Governments, local authorities, educational and research institutions or any person carrying on the business of an architect, an engineer or a contractor.

20. In a nutshell the DVC is concerned with generation of electricity, irrigation, water supply, electrical energy, flood control, navigation, afforestation, soil erosion, use of lands, and resettlement of displaced population, sanitation and public health measures and economic and social welfare of the people in the Damodar Valley and in the area of its operation.

21. It appears that in view of the peculiar nature of duties and obligations of the DVC, the Parliament through fourth proviso to Section 14 clearly mandated that the provisions of the DVC Act that are not inconsistent with the Act of 2003 shall continue to apply to the DVC so that multifarious activities assigned to it under the DVC Act are not affected. The provisions of the DVC Act that are not in conflict with the Act of 2003, particularly Sections 38, 39 and 40 of the former Act which have tariff implications, were not repealed by the Act of 2003. Nothing prevented the Parliament from specifically and directly providing the repeal of Sections 38, 39 and 40 of the DVC Act. Again nothing prevented the Parliament from giving over-riding effect to the Regulations over these provisions. On the contrary the Parliament left these sections intact and

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only such provisions were affected which were contrary to the provisions of the Act of 2003.

22. Though the participating State Governments have been made responsible for bearing the cost of activities entrusted to the DVC, it is a hard reality that initially, after the seed money contributed by them, nothing has come from the States. At the same time, it is also true that the profits of the DVC and the interest on the amount of capital provided by the participating Governments is being adjusted in the accounts of the DVC and nothing has been made over to the States.

23. Undoubtedly under Section 37(1) of the DVC Act, the DVC is required to credit its net profit to the participating Governments in proportion of their respective shares in the total capital cost attributable to the main objects of the DVC. This can be done by the following two methods:-

- (i) Actual dispersal of the share to each of the participating Governments; or
- (ii) Adjustment of the shares in the accounts of the DVC as the contribution of the participating States.

24. Section 40(2) of the DVC Act makes provision for determination of net profit after making provision for depreciation and for reserve and other funds. Such like benefits may not be available to other transmission utilities under the Regulations framed under the Act of 2003 but DVC stands on a separate footing as none of the transmission companies are discharging obligations of the nature that are being discharged by the DVC. Some surplus or profit on account of operation of these provisions of the DVC Act are helpful in meeting the

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expenses incurred by it for discharging its statutory social obligations that it is still required to perform under the DVC Act. In view of the special nature of the DVC Act, sections 37(1), 38, 39, 40 etc. have been left unscathed by the Act of 2003.

25. It was submitted in opposition on behalf of the respondents in appeal no. 273 of 2006 that Regulations are part and parcel of the Act of 2003 as having been framed under Section 178(1)(u) read with Section 62(5) thereof. As a sequitur, it was contended that depreciation being one of the elements for calculating expected revenue stand covered by the Regulations. It was urged that this being so, Regulations would prevail, being part and parcel of the Act of 2003, over Section 40 of the DVC Act. On the parity of reasoning, it was argued that the other elements for calculating expected revenue covered by Sections 38 and 39 of the DVC Act would also have to be ignored being repugnant to the Regulations.

26. The arguments though attractive, are devoid of merit. As already pointed out, Regulations should be in conformity not only with the provisions of the Act under which they are made but the same must be in conformity with the provisions of any other Act which is not repealed. Rules or Regulations cannot be elevated to a level higher than an enactment as a sub-ordinate legislation must remain subordinate to the legislation made by the Parliament or a State legislature.

27. It was also argued for the respondents in appeal no. 273/06 that according to Section 64 of the Act of 2003, an application for determination of tariff under Section 62 is required to be made by a generating company or a licensee in such



a manner as may be specified by Regulations including the Regulations relating to depreciation etc. The argument loses sight of the fact that Section 64 envisages Regulations that are in conformity with the Statute and does not conceive of Regulations that are repugnant to the statutory provisions.

28. It was canvassed on behalf of Maithan Alloys & Bhaskar Shrachi that part-IV of the DVC Act deals with finance, accounts and audit and does not deal with determination of tariff. Therefore, Regulations framed under the Act of 2003 are only provisions for determination of tariff. The argument appears to be based on heading of Part-IV. It is well-settled that Headings and head notes do not control the width of the provisions. Sections 38, 39 and 40 of the DVC Act specifically deal with elements of tariff. Their strength and vigor is not whittled down or diminished by the heading of Part-IV of the DVC Act.

29. In view of the aforesaid discussion, it must be held that the Act of 2003 does not rob Sections 38, 39 and 40 of the DVC Act and the provisions thereof dealing with social obligations and activities of the DVC of their force and efficacy.

30. It was argued on behalf of the respondents in Appeal no. 273 of 2006 that under Section 61 of the Act of 2003, tariff Regulations are required to be framed by seeking guidance from the principles specified in clauses (a) to (i) of Section 61 of the Act of 2003. According to the respondents, the principles specified in Section 61 exclude other factors or activities for being taken into consideration for determining the tariff. It was canvassed that clauses (d) and (g) of Section 61 envisage that Regulations should be framed in such a manner so that the interests of the consumers are safeguarded and at the same time

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recovery of the cost of electricity in a reasonable manner is effected and the tariff progressively reflects the cost of supply of electricity and also, reduces cross-subsidies in the manner specified by the Appropriate Commission. Therefore, it was concluded by the learned counsel for the respondents that the Tariff Regulations under Section 61 of the Act of 2003 expressly exclude factors or activities of the utilities which are not connected with electricity. Learned counsel pointed out that sub-Regulation (3) of Regulation 4 which, *inter alia*, provides that in relation to multi purpose hydro project with irrigation, flood control and power components, the capital cost chargeable to the power component shall be only considered for determination of tariff. Our attention was also invited to other clauses of Section 61 of the Act of 2003 for raising the same arguments and for pointing out that the factors to be considered for determination of tariff have to be inconsonance with the National Electricity Policy and Tariff Policy. It was also pointed out that there is no mention in the Act of 2003 that the tariff will be determined in accordance with the DVC Act.

31. The submissions over-look the fact that Section 61 of the Act of 2003 empowers the Commission to specify the terms and conditions for determination of tariff subject to its provisions. One cannot lose sight of the fact that fourth proviso to Section 14 of the Act of 2003 only knocks off the operation of such of the provisions of the DVC Act that are inconsistent with the provisions of the Act of 2003. Therefore, the words 'subject to the provisions of this Act' occurring in Section 61 of the Act of 2003 are very significant, when viewed in the context of fourth proviso to Section 14 thereof. As already pointed out fourth proviso to Section 14 allows the operation of the provisions of the DVC Act which are not inconsistent with the provisions of the Act of 2003. Such of the factors or activities envisaged in the DVC Act that are

not excluded by the Act of 2003 are relevant and cannot be ignored. While framing Regulations under the Act of 2003, the appropriate Commission cannot over-look the statutory provisions of the DVC Act which are not inconsistent with the provisions of the Act of 2003. We do not find that the applicable provisions of the DVC Act allow recovery cost of electricity in an unreasonable manner or they do not safeguard the interest of the consumers. Cost of electricity would also include actual cost of supply of electricity plus reasonable profit of the utility, since as per the principle enshrined in clause (b) of Section 61, the generation, transmission, distribution and supply of electricity are to be conducted on commercial principles. In case generation, transmission, distribution and supply of electricity are not to be conducted on commercial principles, no one would invest in electricity sector, which will not be in the national interest. Without an element of reasonable profit, no business can run. But this does not mean that the interest of the consumers have not to be taken into consideration. A right equilibrium has to be maintained between the interests of the consumers and the interests of the entrepreneurs so that the entrepreneurs are not deterred from making investment in the electricity sector and at the same time the consumers get electricity at a reasonable price. It needs to be pointed out that DVC does not seek enhancement of tariff and is satisfied with the tariff that was prevailing before the impugned determination of tariff by the CERC. The tariff of the West Bengal Electricity Board and the Jharkhand Electricity Board are admittedly higher than the tariff of the DVC.

32. The respondents also pressed into service the provisions of Sections 173, 174 and 175 of the Act of 2003 in support of their contention that the Regulations prevail over the statutory provisions of the DVC Act, which have

an impact on tariff determination particularly Sections 38, 39 and 40 of the DVC Act. The contention is devoid of any force.

33. Section 173 of the Act of 2003 declares that nothing contained in this Act or any rule or regulation made thereunder or any instrument having effect by virtue of this Act, rule or regulation shall have effect in so far as it is inconsistent with any other provisions of the Consumer Protection Act, 1986 or the Atomic Energy Act or the Railways Act, 1989. In other words, Section 173 specifically allows Consumer Protection Act, Atomic Energy Act and the Railways Act to prevail over the provisions of the Act of 2003 and the Rules and Regulations framed thereunder. At the same time it does not provide that the Act of 2003 or Rules or Regulations framed therein shall prevail over any other enactment. It cannot be deduced from Section 173 that the provisions of the DVC Act are to give way to Rules and Regulations framed under the Act of 2003. In case of inconsistency between the provisions of the Act of 2003 and the DVC Act, there is no doubt that the provisions of the Act of 2003 shall prevail, as envisaged by the fourth proviso to Section 14 of the Act of 2003. But there is nothing to suggest that the Rules and Regulations framed under the Act of 2003 shall be given precedence over the statutory provisions of the Act of 2003. Section 174 also does not advance the case of the respondent. It only gives over-riding effect to the provisions of the Act of 2003. Even Section 175 does not help the respondents. It declares the provisions of the Act of 2003 to be in addition to and not in derogation of other laws for the time being in force.

34. The other important aspect of the matter which needs to be tackled relates to the question as to which Regulatory Commission is empowered to determine the generation and transmission tariffs of the DVC.

35. In connection with the aforesaid question, it is relevant to look at Section 79 of the Act of 2003. Section 79 of the Act of 2003, *inter alia*, provides that the Central Commission will regulate tariff of generating companies owned or controlled by the Central Government.

36. The control of the Central Government over the DVC is manifest from various provisions of the DVC Act.

37. Section 3 of the DVC Act deals with incorporation of the DVC. Clause (1) of Section 3 provides that with effect from such date as the Central Government may, by notification in the official Gazette, appoint in this behalf, there shall be established a Corporation by the name of the Damodar Valley Corporation. There is no doubt that the DVC was established by a notification issued by the Central Government in consonance with Section 3 of the DVC Act.

38. As per Section 4 of the DVC Act, the Corporation shall consist of a Chairman and two other members appointed by the Central Government after consultation with the two Provincial Governments of West Bengal and Jharkhand (earlier State of Bihar before creation of State of Jharkhand).

39. According to Section 6, appointment of Secretary and the Financial Adviser of the Corporation is to be made by the Central Government.

40. Section 11 provides for the limits of Damodar Valley and area of operation of the DVC. Again it is the Central Government, which is required to specify the limits of Damodar Valley. The functions and powers of the DVC

are also required to be specified by the Central Government in accordance with clause (3) of Section 11.

41. Section 27 deals with expenditure until the establishment of the DVC. It, *inter alia*, provides that all expenditure incurred by the Central Government upto the date of establishment of the DVC is to be treated as capital provided by the Central Government to the Corporation and such capital is required to be adjusted by the participating Governments in accordance with the provisions of Sections 30 to 36.

42. Section 29, *inter alia*, requires that all monies belonging to the fund shall be deposited in the Reserve Bank of India or the Agents of the Reserve Bank of India or invested in such securities as may be approved by the Central Government.

43. Thus, the Central Government is assigned a role even in the approval of securities in which the DVC may invest. Section 47 provides for audit of the accounts of the DVC. The accounts of the DVC are to be maintained and audited in such manner as may, in consultation with the Auditor General of India, be prescribed by rules made by the Central Government.

44. Section 48 mandates that in discharge of its functions, the Corporation shall be guided by such instructions on questions of policy as may be given to it by the Central Government.

45. Section 51 confers power on the Central Government to remove from the Corporation any member for the reasons specified therein. The Central

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Government is also competent to suspend any member pending an enquiry against him. Besides, the Central Government has the power to declare void any transaction in connection with which a member has been removed. That apart, Central Government has been empowered to remove the Chairman and the members of the Corporation and appoint a Chairman and Members in their places, where Corporation fails to carry out its functions, or follow the directions issued by the Central Government under the DVC Act.

46. By virtue of Section 59, the Central Government has the power to make rules to provide for all or any of the following matters:-

- i) the salaries and allowances and conditions of service of members, the secretary and the financial adviser;
- ii) the functions and duties of the financial adviser;
- iii) the dams or other works or the installations which may be constructed without the approval of the Corporation;
- iv) the forms of the budget, the annual report and the annual financial statements and the dates by which copies of the annual financial statements shall be made available to the participating Governments;
- v) the manner in which the accounts of the Corporation shall be maintained and audited;

- vi) the appointment of an Advisory Committee; and
- vii) the punishment for breach of any rule made under this Act.

47. Section 60 makes provision for framing of Regulations. The Corporation can frame Regulations but only with the previous sanction of the Central Government.

48. Thus, there is no doubt that the DVC, which is a generating company, was established by the Central Government and it is the Central Government which has pervasive control over the DVC. This being so, under Section 79, the Central Commission is required to regulate tariff of the DVC as it is controlled by the Central Government. The mere fact that it is also a transmission licensee does not detract from the fact that it is basically a generating company controlled by the Central Government. Thus, neither the West Bengal State Electricity Regulatory Commission nor the Jharkhand State Electricity Regulatory Commission has the power to regulate tariff of the DVC. My learned brother has also held that it is only the Central Electricity Regulatory Commission which has the jurisdiction to regulate tariff of the DVC as a generating company. I also endorse the reasoning of my learned brother whereby he has concluded that it is the Central Electricity Regulatory Commission which has the jurisdiction to regulate the tariff of the DVC relating to transmission of electricity.



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**Per Hon'ble Mr. A.A. Khan, Technical Member**

49. The above appeals have been preferred against the final order dated October 3, 2006 passed by the Central Electricity Regulatory Commission (hereinafter referred to as CERC/Central Commission) in Petition No. 66 of 2005 filed by the Damodar Valley Corporation (hereinafter referred to as 'DVC' or the 'Corporation') wherein the Central Commission has determined the tariff relating to generation and transmission activities applicable with effect from April 1, 2006. While Appeal No. 273 of 2006 and I.A. No. 59 and 60 of 2007 have been filed by DVC, Appeal Nos. 271, 272, 273 and 275 of 2006 and Appeal No. 08 of 2007 and I.A. No. 57, 58 and 116 of 2007 have been filed by the beneficiaries of the power generation and distribution functions of the DVC. Since the issues raised in all the aforesaid appeals are of common nature emanating from the impugned order of the Central Commission, we have taken Appeal No. 273 of 2006 as the lead appeal to address the various disputes raised by these appeals.

**BACKGROUND**

**Major issues of Grievances**

50. Appellant, DVC, is a statutory body constituted under the provisions of the Damodar Valley Corporation Act, 1948 passed by the Parliament with the object of the development of the Damodar Valley geographically situated in the territories of West Bengal and Jharkhand. DVC, in terms of the Damodar Valley Corporation Act, 1948 (DVC Act), has been promoted and established with equal participation of the Central Government, State Governments of West Bengal and Jharkhand (prior to re-organization of the State of Bihar, the erstwhile State of Bihar was the promoter) and the aforesaid States are the

principal beneficiaries of the DVC. DVC is functioning under the administrative control of Respondent NO.6, Government of India (hereinafter referred to as the 'GOI') and, Respondent Nos. 2 and 3 namely States of West Bengal and Jharkhand, each having representation in the DVC Board for managing its operations. The Respondent No. 1 is the Central Electricity Regulatory Commission (to be called as Central Commission) constituted under the Electricity Act 2003 (hereinafter referred to as 'the Act') and is mandated with the functions, *inter-alia*, as provided in Sections 61, 62, 64 and 79 of the Act. The Respondent Nos. 4 and 5 are the State Electricity Boards of West Bengal and Jharkhand respectively. The Respondent Nos. 2 and 3 are the consumers of DVC who along with other Respondents had participated in the proceedings before the Central Commission. Respondent Nos. 7 & 8 are the HT- consumers who seem to have grievances against the impugned order.

51. The functions of DVC have been mandated under section 12 of the DVC Act. Its major functions are in the areas of promotion and operation of schemes for irrigation, water supply, drainage, electricity generation, transmission and distribution and flood control. The Appellant has submitted that it had been operating in line with the provisions of the DVC Act read with applicable provisions of the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 and was not regulated by the Electricity Regulatory Commissions Act, 1998. With the enactment of the Electricity Regulatory Commissions Act, 1998, the tariff determination powers of the Governments (Central Government in the case of CPSUs and State Governments in the case of SEBs) stood vested with the appropriate commissions. However, the Appellant has submitted that it continued to determine tariff for supply of electricity on its own and was not subjected to determination of tariff by the Commission.

52. With the enactment of the Act, which came into force with effect from June 10, 2003, the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and The Electricity Regulatory Commission Act, 1998 have been repealed. The Appellant has claimed that even after the Act coming into effect, the operation of the DVC should continue to be governed by the provisions of the DVC Act provided they are not inconsistent to the provisions of the Act.

53. Section 12 of the DVC Act lays down the functions of the Corporation as extracted hereunder :

*"12. Functions of the Corporation:*

*The functions of the Corporation shall be-*

- (a) the promotion and operation of schemes for irrigation, water supply and drainage,*
- (b) the promotion and operation of schemes for the generation, transmission and distribution of electrical energy, both hydroelectric and thermal,*
- (c) the promotion and operation of schemes for flood control in the Damodar river and its tributaries and the channels, if any, excavated by the Corporation in connection with the schemes and for the improvement of flow conditions in the Hooghly river.*
- (d) The promotion and control of navigation in the Damodar river and its tributaries and channels, if any,*
- (e) The promotion of afforestation and control of soil erosion in the Damodar Valley, and*

*(f) The promotion of public health and the agricultural, industrial, economic and general well-being in the Damodar Valley and its area of operation"*

54. As seen from the para 53 above the DVC is mandated to perform multifarious functions which, apart from the generation, transmission and sale/supply of electricity, also include the activities for the promotion and operation of schemes for irrigation; water supply; drainage; flood control and improvement of flow conditions in the Hoogly river; navigation in Damodar river and its tributaries and channels; afforestation and control of soil erosion in Damodar Valley; promotion of public health; agriculture; industrial and economic and general well being in the Damodar Valley under its area of operation. It is also observed that the number of activities such as drainage, flood control, improvement in the flow conditions, navigations, afforestations, control of soil erosion or the promotion of public health are primarily state's functions and are not commercial in nature. The main earning activities of the DVC is the generation and supply of electricity. In terms of the provisions of the DVC Act, the participating Governments had contributed a total sum of Rs. 214.72 crores as capital up to the year 1968-69. Thereafter, DVC, instead of distributing the surplus revenue to the participating Governments, has been ploughing it back into the operations.

55. Section 14 of the DVC Act provides that the Corporation may, after consultation with the Provincial Government concerned, *determine and levy rates for the bulk supply of water to the participating State Governments for irrigation*, and fix the minimum quantity of water, which shall be made available for such purpose. Similarly section 20 of the DVC Act empowers

DVC to fix the tariff for supply of electricity. Before the enactment of the Act, tariff determination pertaining to generation and supply of electricity by DVC was regulated in terms of the provisions of section 20 of the DVC Act, which provided that DVC shall fix the schedule of charges for the supply of electrical energy, including the rates for bulk supply and retail distribution, and specify the manner of recovery of such charges. The DVC has been operating under the aforesaid provisions of the DVC Act. However, after coming into force of the Act, the tariff related matters are to be governed by the Act subject to the Fourth proviso of Section 14 of the Act.

56. Fourth proviso of Section 14 of the Act reads as :

*'Provided also that the Damodar Valley Corporation, established under sub-section (1) of section 3 of the Damodar Valley Corporation Act, 1948 shall be deemed to be a licensee under this Act but shall not be required to obtain a license under this Act and the provisions of the Damodar Valley Corporation Act, 1948, in so far as they are not inconsistent with the provisions of this Act, shall continue to apply to that Corporation.'* (Emphasis supplied)

57. In June 2005 DVC filed the Petition No. 66 of 2005 before the Central Commission for determination of tariff for its generation and inter-state transmission of electricity. The Central Commission finally decided the tariff for the period April 1, 2004 to March 31, 2009 in respect of the said Petition by an order dated October 3, 2006. It is observed that the tariff so determined was lower than the tariff proposed by the Petitioner and also lesser than the tariff prevailing prior to April 1, 2004. The Appellant has also averred that the prevailing tariff of DVC is also lower than the tariff of West Bengal Electricity

Board; CESC Ltd. a private utility located in West Bengal and Jharkhand State Electricity Board. However, a strict comparison cannot be made between the tariffs of these entities due to different consumer load profile amongst other things.

58. Aggrieved by the order of the Central Commission on various counts DVC has approached this Tribunal seeking to set aside the order dated October 3, 2006 of the Central Commission.

Details

59. The Appellant has submitted that in terms of Section 20 of the DVC Act, the DVC had been fixing the schedule of tariff for supply of power including the rates of bulk supply and retail distribution. It has submitted in paragraph XXV of the Appeal that the *"tariff structure of DVC was all along on cost plus basis based on budgetary norms, which as far as practicable is aimed at incentivising the efficiency. The tariff determined by DVC in September 2000 has been continued without revision except fuel surcharges for five years till 2004-05."*

60. It is further submitted by the Appellant that the tariffs were not determined based on any standard norms of operation. The Appellant in Paragraph XXXI has submitted that unique position of DVC requires that the tariff and other regulations framed by the Central Commission for the other Central Electricity Utilities or the manner of determination of tariff adopted for such other utilities cannot *ipso facto* be applied to DVC. The Appellant submits that the Central Commission should determine electricity tariff for DVC by

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reading down the provisions of Part-IV (Finance, Accounts and Audit) of the DVC Act as these are not inconsistent with the provisions of the Act.

61. The Appellant also highlights the distinguishing features of operations of DVC in contrast to other Central Power Utilities, wherein DVC is mandated to carryout certain functions such as flood control, irrigation, social integration project, soil conservation activities, multi-purpose dams, aforestation, etc. which normally are the functions of the States of Jharkhand and West Bengal.

62. The Appellant has also raised the following specific grounds of appeal while challenging the impugned order:

- A. Debt Equity ratio
- B. Disallowance of additional capitalization for the period 2004-2009
- C. Higher Return on Equity
- D. Pension and Gratuity Contribution
- E. Revenues to be allowed to DVC under the DVC Act
- F. Depreciation Rate
- G. Re-setting of operating norms at variance from the operating norms prescribed in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 (hereinafter referred to as 'Regulations, 2004').
- H. O&M Expenses
- I. Return on capital Investment on Head Office, Regional Offices, Administrative and other Technical centers, etc.
- J. Generation Projects presently not operating

63. Before taking up the aforesaid grounds of appeal we will first examine the legal validity of the claim of the Appellant that, in spite of the enactment of the Act, the provisions of Part-IV (Finance, Account and Audit) of the DVC Act shall continue to apply for determination of both bulk supply and retail supply of tariff for DVC.

64. The main provisions of the DVC Act, under Part IV, which we feel are relevant for better appreciation of the issues under consideration, are reproduced below:

***“SECTION 30: Liabilities of participating Governments to provide Capital to the Corporation:***

*The Participating Government shall, as hereinafter specified, provide the entire capital required by the Corporation for the completion of any project undertaken by it.*

***SECTION 31: Payment by participating Government on specified date:***

*Each Participating Government shall provide its share of the capital on the dates specified by the Corporation and if any Government fails to provide such share on such dates the Corporation may raise loan to make up the deficit at the cost of the Government concerned.*

***SECTION 32: Expenditure on objects other than irrigation, power and flood control:***

*The Corporation shall have power to spend such sums as it thinks fit on objects authorized under this Act other than irrigation, power and flood control and such sums shall be treated as*



*common expenditure payable out of the Fund of the Corporation  
before allocation under Section 33*

**SECTION 33:** *Allocation of expenditure chargeable to project on  
main objects:*

*The total expenditure chargeable to a project shall be  
allocated between the three main objects, namely, irrigation,  
power and flood control as follows, namely:*

- i. Expenditure solely attributable to any of these objects,  
including a proportionate share of overhead and general  
charges, shall be charged to that object, and*
- ii. Expenditure common to two or more of the said objects,  
including a proportionate share of overhead and general  
charges, shall be allocated to each of such objects in  
proportion to the expenditure which, according to the  
estimate of the corporation, would have been incurred in  
constructing a separate structure solely for that objects  
less any amount determined under clause (1) in respect  
of that object.*

**SECTION 34:** *Capital allocated to irrigation:*

*The total amount of capital allocated to irrigation shall be  
shared between the Provincial Governments as follows,  
namely:*

- i. *The Government concerned shall be responsible for the capital cost of the works constructed exclusively for irrigation in its Province; and*
- ii. *The balance of capital cost under irrigation for both the Provinces of Bihar and West Bengal shall be shared by the Provincial Governments in the proportion to their guaranteed annual off-takes of water for agricultural purposes:*

*Provided that the divisible capital cost under this clause shall be provisionally shared between them in accordance with their previously declared intentions regarding their respective guaranteed off-takes and any payments made accordingly shall be adjusted after the determination of the guaranteed off-takes.*

**SECTION 35: Capital allocated to power:**

*The total amount of capital allocated to power shall be shared equally between the three Participating Governments.*

**SECTION 36. Capital Allocated to flood control:**

*The total amount of capital up to fourteen crores of rupees allocated to flood control shall be shared equally between the Central Government and the Government of West Bengal and any amount in excess thereof shall be the liability of the Government of West Bengal."*

**SECTION 37: Disposal of profits and deficits:**

*(1) Subject to the provision of sub-section (2) of Section 40, the net profit, if any, attributable to each of the three main objects, namely, irrigation, power and flood control, shall be credited to the participating Governments in proportion to their respective shares in the total capital cost attributed to that object.*

*(2) The net deficit, if any, in respect of any of the objects shall be made good by the Governments concerned in the proportion specified in sub-section(1):*

*Provided that the net deficit in respect of flood control shall be made good entirely by the Government of West Bengal and the Central Government shall have no share in such deficit.*

**SECTION 38: Payment of interest:**

*The Corporation shall pay interest on the amount of the capital provided by each Participating Government at such rate as may, from time to time, be fixed by the Central government and such interest shall be deemed to be part of the expenditure of the Corporation.*

**SECTION 40: Provision for depreciation and reserve and other funds:**

*(1) The Corporation shall make provision for depreciation and for reserve and other funds at such rates and on such terms as may be specified by the Auditor General of India in consultation with the Central Government.*

*(2) The net profit for the purpose of section 37 shall be determined after such provision has been made.*

### **LEGAL ISSUES AND ANALYSIS**

#### **Extent of Applicability of DVC Act**

65. The Respondents have contended that insofar as the electricity related matters are concerned, the provisions of the DVC Act being inconsistent with the provisions of the Act, the former stands repealed by the Act and, therefore, cannot be invoked by the DVC while dealing with the tariff determination for generation and supply of electricity by the Central Commission. In the nutshell, the primary legal issue to be resolved is whether or not the tariff for the DVC is to be determined by the Central Commission according to the Act and the Regulations, 2004, framed under it without giving any regard to the provisions of the DVC Act not inconsistent with the Act. The Appellant has advanced the argument that if the inconsistency between any rule and regulations framed under the Act and the DVC Act would have also been the ground for non-application of the DVC Act, the Parliament would have expressly and specially provided for the same, both in Fourth Proviso in Section 14 and Section 174 of the Act. In support of this line of argument, the Appellant has cited several Acts enacted by the Parliament where such specific provisions have been made

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for giving overriding supremacy to Rules and Regulations framed under the Act over the provisions of other legislations. The Acts quoted by the Appellant are:

- (a) Section 173 of Electricity Act, 2003.
- (b) Section 32 of the Sick Industrial Companies (special Provisions) Act, 1995,
- (c) Section 24 of the Environment Protection Act, 1986.
- (d) Section 14 of the Payment of Gratuity Act, 1972
- (e) Section 25 of the Terrorists and Disruptive Activities (Protection) Act, 1987.

66. The Appellant has reasoned that the Parliament consciously allowed, pre-existing DVC Act relating to electricity to continue to apply while at the same time gave powers to Central Commission to frame regulations under Section 61 and 178 of the Act. It has averred that the Central Commission by framing regulations, subsequently, should not have made Para IV of the DVC Act, insofar as it related to power-object of the Corporation, non-applicable by making regulations inconsistent to the DVC Act. The Appellant further submitted that regulation-making power of Section 61 of the Act vested in the Central Commission is subject to the provisions of the Electricity Act 2003 and does not mention that it can frame overriding regulations, notwithstanding the provisions of other Acts. The Appellant, in support of that, has cited Section 29 of the Electricity Regulatory Commissions Act, 1998 and Section 11(2) of the Telecom Regulatory Authority of India Act, 1997, which contain non-obstante clauses for overriding the provisions of any other Acts. The Appellant argues that in the absence of any reference to 'Rules and Regulations' in Fourth Proviso of Section 14 and Section 178 of the Act, the Parliament has made it

clear that it did not wish to give supremacy to Regulations, 2004, of the Central Commission over other plenary legislations including the provisions of DVC Act and on the other hand Fourth Proviso of Section 14 specifically provided for **continued application of the provisions which are not inconsistent to the provisions of the Act.**

67. The Appellant has additionally submitted that it is a well settled principle that a delegated legislation or subordinate legislation should not only be consistent with the provisions of the parent Act but also with the provisions of other Acts, to whom the same is applied. In the case of **Kerala Samasthana Chetu Thozhilali Union Vs. State of Kerala (2006) 4 SCC 327 para 17 at page 337**, the Hon'ble Supreme Court dealing with Subordinate Legislation (Rule) under an Act being contrary to Industrial Disputes Act, 1947 has held thus:

*"17. A rule is not only required to be made in conformity with the provisions of the Act whereunder it is made, but the same must be in conformity with the provisions of any other Act, as a subordinate legislation cannot violate of any plenary legislation made by the Parliament or the State Legislature."*

68. The Appellant accordingly states that the Central Commission cannot make or enforce any tariff regulation (implying Tariff Regulations, 2004) inconsistent to those provisions of DVC Act (i.e. provision of Part IV of the DVC Act.) that are not inconsistent with the provisions of the Act. Appellant, therefore, proposes that the Tariff Regulations, 2004, under the circumstances, are required to be read down and effect to the provisions of Part IV of the DVC

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Act be given. To re-inforce the proposition, the Appellant has made reference to a judgment delivered by the Hon'ble Supreme Court in the Case of **Bharathidasan University Vs. All India Council for Technical Education, (2001) 8 SCC 678**, holding as under :

*"The fact that Regulations may have the force of law or when made have to be laid down before the legislature concerned does not confer any more sanctity or immunity as though they are statutory provisions themselves. Consequently, when the power to make regulations is confined to certain limits and made to flow in a well-defined canon within stipulated banks, those actually made or shown and found to be not made within its confines but outside them, the courts are bound to ignore them when the question of their enforcement arises and the mere fact that there was no specific relief sought for to strike down or declare them ultra vires, particularly when the party in sufferance is a Respondent to the lis or proceeding cannot confer any further sanctity or authority and validity when it is shown and found to obviously and patently lack"*

69. In order to establish the relevance of Part IV of the DVC Act for tariff determination of generation and supply of electricity, we have examined the provisions made in Part IV. The said Part IV specifies the capital structure; source of fund; cost of capital by levy of interest; depreciation reserve; redemption reserve etc. beside rule for allocation of expenditure to various objects of the Corporation, recovery of charges through power tariff from the beneficiaries and distribution of profit out of the surplus amongst the participating governments. The Part IV of the DVC Act does not loose the

legitimacy for sourcing essential information required for tariff-setting just because it also contains instructions regarding preparation of budget, accounts and its audit. The Books of Accounts essentially are the legal source of the basic parameters on which the accounts of an entity are kept and maintained. The Respondents, before us, have themselves, extensively relied on the audited accounts and balance sheet of the Corporation, in their attempts to demolish the appropriateness of the claims of the Appellant regarding aforesaid financial parameters used in tariff. We find that the aforesaid financial parameters are essentially required in formulation of power tariff regardless of who undertakes it. As a matter of fact, the Regulations, 2004, notified under the Act lay down some of these parameters beside operational norms for determining the tariff for generation and transmission projects.

70. Prior to coming into effect of the Act, DVC was using these provisions in Part IV of the DVC Act in the process of determination of the power-tariff authorized by Section 20 in Part-III. Thus, the action under Section 20 in Part III of the DVC Act is a function of the provisions of Part IV and is dependent on them. The stand taken by the Respondents that the provisions of Part IV of the DVC Act merely deal with the preparation of budget, Accounts and Audit and are distinct and independent of Part III and are not needed for determination of power-tariff is found to be not sustainable and is rejected.

71. We have now to examine the validity of the demand made by the Appellant that the Central Commission ought to have given effect to the provisions in Part IV of DVC Act in the Regulations, 2004, for determination of tariff under the Act.



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72. The Respondent(s) in their submissions and oral arguments presented before us have vehemently argued that the Regulations framed by the Central Commission being in the nature of subordinate legislations are statutory in character and shall have the same force as the Act; that the Regulations framed by the Central Commission under the provisions of the Act (Sections 173 and 174 read with Sections 61, 62, 79, 178, etc.) will have supremacy over the provisions of Part IV of the DVC Act; that the provisions of the Part IV of the DVC Act cannot be assumed to have been incorporated in the Act as Section 14 does not use the expression such as 'incorporated', 'deemed to be incorporated', 'as if they have been enacted' as contained in some other statutes and the regulations notified by the Central Commissions are to be uniformly applied to all utilities including DVC.

#### Analysis

73. For convenience, we will consider all the aforesaid points, made by the Appellant and Respondents in written submissions alongwith their oral arguments, together.

74. At the outset, we would like to make it clear that this Tribunal in its judgement passed on November 9, 2005, in the case of **Nayveli Lignite Corporation Ltd. Vs Tamil Nadu Electricity Board and Ors**, has held that the regulations framed under Sections 61 and 178 of the Act are in the nature of subordinate legislation and this Tribunal has no jurisdiction to examine the validity of the Regulations in exercise of its appellate jurisdiction under Section 111 of the Act. The Appellant, has also submitted that it is not challenging the vires of the regulations but is aggrieved that the Central Commission ought to

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have given effect to the provisions of Part IV of the DVC Act to the extent it related to electricity matters either during framing of the Regulations, 2004 or by exercising residuary power vested in it by the regulations itself.

75. It appears to us that the Electricity Act 2003, as stated in the Fourth Proviso of Section 14, is only impacting those provisions of the DVC Act which are not compatible with it. We will notice the impact of the Electricity Act, 2003 on such of the provisions of the DVC Act which have a bearing with the controversy in question. Sections 3 to 11, 12(a), (c) to (f), 13 to 17, 21 to 26, 27 to 29, 34, 36, 41, 43 to 47, 49 to 57 and 59 of the DVC Act having no implications, therefore, being ignored. The relevant provisions of the DVC Act can be clarified into two sets of provisions, one being the provisions which are inconsistent with provisions of the Act and the second being those, which are not inconsistent with the provisions of the Act and shall continue to apply. The aforesaid determination is to be made on the basis of well-settled principles of interpretation of statutes.

76. One of the basic principles of interpretation of statutes is, that all the sections in an Act should be harmoniously construed. The following observations at pages 354-355 of N.S. Bindra's Commentary on Interpretation of statutes would be relevant.

*"It is settled rule of interpretation that all the provisions would be read together harmoniously so as to give effect to all the provisions as a consistent whole, rendering no part of the provisions as surplus usages. Otherwise, by process of interpretation a part of the provisions or a Clause would be*

*rendered otiose. Any other view would defeat the object of the Act. The well-known principle of harmonious construction is that, effects shall be given to all the provisions and for that any provision of the statute should be construed with reference to the other provisions so as to make it workable. A particular provision cannot be picked up and interpreted to defeat another provision made in that behalf under the statute. It is the duty of the court, whenever it is possible to do so to construe provisions which appear to conflict so that they harmonize. It is equally well-settled that if two constructions are possible, the court must adopt that which will implement and which ensures that smooth and harmonious working of the Act or the Rule, and reject the other that stultifies the apparent intention and therefore, eschew that which leads to absurdity or gives rise to practical inconvenience or makes well-established provisions of law nugatory. Where there are two provisions in an enactment and one cannot be reconciled with the other, they should be so interpreted that if possible, effect could be given to both. This is what is known as the rule of harmonious construction.'*

77. In view of the above principles of interpretation, the provision of an Act can be said to be inconsistent with the provisions of another Act only, if they are in collision with each other and cannot be harmonized at all. Further every effort should be made to harmonize the provisions of the two Acts and only if the effect of the collision cannot be harmonized at all, the provisions of the one Act need to be read down, in preference to the provision of the another Act.

78. In light of the above, we set out to examine the conformance of the provisions of DVC Act with the provisions of the Act insofar as they are related to electricity. The Section 20 contained in Part –III of the DVC Act provides for fixation of the Schedule of charges for the supply of electrical energy by the DVC, which reads as under:

*“20. Charges for supply of electrical energy:  
The Corporation shall fix the schedule of charges for the supply of electrical energy, including rates for bulk supply and the retail distribution and specify the manner of recovery of such charges;  
Provided that the Corporation may in any contract for bulk supply of electrical energy impose such terms and conditions including retail rate schedule as it may deem necessary or desirable to encourage the use of electrical energy”*

79. On enforcement of the Act with effect from June 10, 2003, DVC became a deemed licensee under Fourth Proviso of Section 14 of the Act and the tariff is required to be determined in accordance with the Act by the Central Commission. This is not disputed by the parties. However, the dispute is as to what extent the Act and Regulations, 2004, thereunder shall apply for determination of tariff for DVC. For ease of reference the Fourth Proviso of Section 14 is reproduced below:

*“Fourth Provision of Section 14  
Provided also that the DVC, established under sub-Section (1) of the Section 3 of the DVC Act 1948, shall be deemed licensee under this Act but shall not be required to obtain license under this Act and the provisions of the DVC Act 1948 insofar as they are not inconsistent with the provisions of the Act shall continue to apply to that Corporation”. (Emphasis supplied)*

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80. One set of the provisions of the DVC Act, referred to above, which are in direct collision with the provisions of the Act and are inconsistent and cannot be harmonized are, the Sections 18, 19, 20, 32 and 60(2)(c) of the DVC Act, which, for being given effect to, have to yield to the appropriate Sections of the Act, as stated hereunder:

S. No.	Provisions of DVC Act	Provisions of the Act
1	<b>Section 18:</b> DVC has exclusive powers to distribute or transmit electricity in Damodar Valley at 30 KV or more	<b>Sections 12, 14 and others:</b> Authorizes the appropriate commission to grant a license to any for distribution in an area.
2	<b>Section 19:</b> Deals with the effect of the existing licensee as in 1 above	<b>Sections 12, 14 and others:</b> Authorizes the appropriate commission to grant a license to any for distribution in an area.
3	<b>Section 20:</b> Power to fix charge for supply of electricity by the DVC	<b>Sections 61, 62, 64 and 79 :</b> Power to determine tariff is vested in the Appropriate Commission
4	<b>Section 60(2)(c):</b> Provides Power to DVC to make regulations in regard to the rates and charges for electricity	<b>Sections 61 and 178:</b> The Appropriate Commission to determine the tariff and to frame regulations
5	<b>Section 32:</b> Revenue to be allowed to DVC under the DVC Act for expenditure on objects other than irrigation, power and flood control.	<b>Sections 41 &amp; 51:</b> Other business of Transmission and Distribution licensees are allowed only with prior intimation of the Appropriate Commission with the conditions that separate accounts shall be maintained for each business and a proportion of the revenues accrued be utilized for reducing charges for transmission and wheeling.

81. Additionally, it needs to be mentioned here that the provision in Section 32 of the DVC Act allowing revenue to DVC for incurring expenditure on objects other than main objects of irrigation, power and flood control being repugnant to provisions of Sections 41 and 51 of the plenary Act has to yield to the later. The aforesaid, however, does not apply to the business of power generation by DVC. In any event the aforesaid objects on which the DVC Act is authorizing the expenditure are non-commercial in nature and accrue little or no revenue and is not likely to sub serve the objectives of Section 41 and 51 of the Act.

82. The Second set of the provisions namely Sections 12(b), 30, 31, 34, 35, 37 to 42 and 44 of the DVC Act, referred to before are the ones which can be read along with the Act without being inconsistent and repugnant to the Act and both can be given effect to. The Sections 30, 31, 34, 35, 37 to 42 and 44 are contained in Part IV of the DVC Act and are plenary in nature and not subject to framing of any rule or regulation by any authority except by the legislature.

83. It may be recalled here that the DVC Act was unaffected by the ERC Act 1998 and DVC was continuing to determine tariff of electricity supply by itself till coming into effect of the Electricity Act, 2003 on June 10, 2003. It appears to us that Central Commission while formulating Regulations, 2004, did not perhaps consider the implications of the specific provisions of Fourth Proviso in Section 14 of the Act relating to DVC. The aforesaid is deduced from the fact that the Central Commission floated the 'consultation paper' for Regulations 2004, on June 12, 2003, i.e. two days after the Act was enforced, implying that the consultation paper was prepared during the period prior to the enforcement of the Act when the DVC Act remained unaffected even by the ERC Act 1998.

84. Moreover, even after enforcement of the Act, the confusion regarding the continued application of DVC Act appears to have lingered on in the mind of DVC for a substantial period. After following the due process of law, Central Commission notified the Central Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 on March 26, 2004. In para 2 of a press release issued on behalf of the Central Commission, June 12, 2003 is confirmed as the date on which the consultation paper was floated and para 4 of the release conveys that in the process of formulation of Regulations, 2004, its applicability on DVC was not considered. The extract of para 4 is reproduced below:

*"4. The Terms and Conditions finalized by the Commission now will apply to all inter-state Generating and Transmission Utilities including NTPC, NHPC, Powergrid, NEEPCO, Neyveli Lignite Corporation, Satluj Jal Vidyut Nigam and the relevant IPPs'."*

85. Damodar Valley Corporation is omitted from the above list. It gives an impression that in the process of framing of Tariff Regulations, 2004 the Central Commission did not envisage that the activities of DVC were to be regulated by the Central Commission.

86. After DVC filed its petition before the Central Commission for determination of tariff in June 2005, the Central Commission set up a Single Member Bench to look into various issues arising in the process. It is observed that the Single Member Bench order dated May 5, 2006 also in para 10 states as under: