

Southern Power Distribution Company Of ... vs M/ S Rain Cements Limited on 1 October, 2026

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

THE HON'BLE THE CHIEF JUSTICE SRI APARESH KUMAR SINGH
AND
THE HON'BLE SRI JUSTICE VAKITI RAMAKRISHNA REDDY

WRIT APPEAL No.514 of 2026
(CNR No.HBHC010234952026)

Dated: 01.10.2026

Reserved on: 21.09.2026

Pronounced on: 01.10.2026

Uploaded on: 03.10.2026

Between:

Southern Power Distribution Company
of Telangana Limited (TGSPDCL),
Represented by its Managing Director and another ... Appellants

AND

M/s. Rain Cements Limited,
(erstwhile Priyadarshini Cements Limited)
Represented by its Authorised Signatory
Mr. K. Srinivas and another ... Respondents

JUDGMENT:

This Writ Appeal is preferred under Clause 15 of the Letters Patent by the Southern Power Distribution Company of Telangana Limited ("TGSPDCL") and its Superintending Engineer, Operation Circle, Suryapet, assailing the order dated 03.03.2026 passed by the learned Single Judge in W.P. No. 25527 of 2025, whereby the writ petition filed by respondent No.1 herein was allowed and set aside the Demand Notice dated 06.02.2025 and the speaking order -2- dated 23.08.2025, both seeking to recover Cross Subsidy Surcharge ("CSS") of

Rs.11,81,93,501/- for the period FY 2005-06 to FY 2014-15, and it was declared that the Electricity (Removal of Difficulties) Second Order, 2005, is applicable to respondent No.1 in respect of power drawn from its generator, M/s Rain CII Carbon (Vizag) Limited (erstwhile Rain Calcining Limited).

2. Heard Mr. N. Sreedhar Reddy, learned Standing Counsel for Southern Power Distribution Company of Telangana Limited (TGSPDCL) appearing on behalf of appellants; Mr. P.Chidambaram, learned Senior Counsel representing Mr. Harshavardhan Abburi, learned counsel for respondent No.1; and Ms. N.Divya, learned Assistant Government Pleader for Energy appearing on behalf of respondent No.2. For convenience, the parties are referred to as they are arrayed in this writ appeal.

FACTUAL BACKGROUND

3. Respondent No.1 is a High-Tension consumer of the Appellant (TGSPDCL) under HT Service Connection No.SPT 105 (formerly NLG 105), with a Contracted Maximum Demand presently of 12.5 MVA. In order to secure an uninterrupted supply of power for its cement manufacturing unit at Ramapuram Village, Mallacheruvu Mandal, Suryapet District, respondent No.1 has, -3- since the 1990s, sourced open access power from its group company, M/s Rain CII Carbon (Vizag) Limited.

4. The generator was granted consent by the then Government of Andhra Pradesh under [Section 43-A\(1\)\(c\)](#) of the Electricity (Supply) Act, 1948 to sell electricity to specified consumers, and entered into a Modified Power Wheeling and Purchase Agreement ("MPWPA") dated 04.11.1994 with the then Andhra Pradesh State Electricity Board, for a term of thirty years commencing from the Commercial Operation Date of 29.06.1998 and running until 28.06.2028. Respondent No.1 claims to be one of the scheduled consumers under the MPWPA and to have drawn power thereunder since 1999, relying upon wheeling schedules and an electricity bill of March 2000.

5. With the coming into force of the [Electricity Act, 2003](#) and the introduction of the concept of open access under [Section 2\(47\)](#), [Section 42\(2\)](#) of the Act empowered the State Commission to levy a surcharge, in addition to wheeling charges, on consumers availing open access. In exercise of the power conferred by [Section 183](#) of the Act of 2003, the Central Government issued the Electricity (Removal of Difficulties) Second Order, 2005 on 08.06.2005, providing that no surcharge under [Section 42\(2\)](#) shall be payable on electricity sold or supplied by, inter alia, generating companies -4- operating with the consent of the competent Government under [Section 43-A\(1\)\(c\)](#) of the Act of 1948, "till the current validity of such consent". Regulation No.2 of 2005 framed by the erstwhile A.P. Electricity Regulatory Commission ("APERC"), which came into force from 01.07.2005, is required by its Clause 1(d) to be read with the Second Order, 2005, and Clause 7.2 thereof saves existing wheeling arrangements to the extent not inconsistent with the Act and the Regulation.

6. The erstwhile APERC, by order dated 21.09.2005 in O.P. No.16 of 2005, determined CSS payable for FY 2005-06. That determination was set aside by the Appellate Tribunal for Electricity ("APTEL") by judgment dated 05.07.2007, with a direction to re-determine CSS in terms of paragraph 8.5 of the National Tariff Policy, 2006, which was later affirmed by the

Hon'ble Supreme Court on 31.03.2016 in Civil Appeal Nos.4936- 4941 of 2007. Demand notices issued consequent upon the 2005 determination were assailed, along with the validity of the Second Order, 2005 itself, in W.P. No.14918 of 2006 and batch (including W.P. No.12630 of 2006 filed by respondent No.1) and in W.P. No.8252 of 2008 (filed by the DISCOMs). By a common judgment dated 19.12.2023, the Division Bench of this Court upheld the validity of the Second Order, 2005, dismissed the DISCOMs' -5- challenge thereto, and quashed the CSS demands raised against consumers, including respondent No.1, who were covered by consents under Section 43-A(1)(c). The said judgment was carried in SLP (Civil) Diary No.25649 of 2024 before the Hon'ble Supreme Court. By order dated 10.09.2024, the Hon'ble Supreme Court declined to interfere with the judgment and dismissed the said Special Leave Petition.

7. Meanwhile, following bifurcation of the State and constitution of the Telangana State Electricity Regulatory Commission ("TGERC"), the DISCOMs sought a re-determination of CSS for FY 2005-06 to FY 2014-15, resulting in a common order dated 06.04.2018 which was set aside by this Court in W.P. No.21936 of 2018 and batch, by order dated 12.02.2020, for want of notice to affected consumers, and the matter was remanded. TGERC thereafter passed a fresh common order dated 30.08.2024 re-determining CSS for the said period. Acting upon this order, the Superintending Engineer (respondent No.3 in the writ petition, appellant No.2 herein) issued the impugned Demand Notice dated 06.02.2025 calling upon respondent No.1 to pay Rs.11,81,93,501/- towards CSS for FY 2005-06 to FY 2014-15, failing which disconnection of supply was threatened. -6-

8. Respondent No.1 submitted representation against the demand and thereafter filed W.P. No.5098 of 2025, upon which this Court, by order dated 20.02.2025, directed the DISCOM to consider the representation after affording a personal hearing and to refrain from coercive action in the meanwhile. Pursuant thereto, a hearing was held on 12.06.2025 at which respondent No.1 placed on record the Section 43-A(1)(c) consent, the MPWPA dated 04.11.1994, wheeling schedules and billing material going back to 1999. By speaking order dated 23.08.2025, the appellant No.2 nevertheless rejected the objections on the sole ground that, power wheeling to HT SC No.SPT 105 had commenced only in February 2005, i.e., after the Act of 2003 came into force, and reiterated the demand. This led to the filing of W.P. No.25527 of 2025, culminating in the impugned order dated 03.03.2026.

9. The learned Single Judge, upon a detailed consideration of the record, held that: (a) it was undisputed that the generator held a subsisting Section 43-A(1)(c) consent and a thirty-year MPWPA saved under [Section 185](#) of the Act of 2003 and Regulation No.2 of 2005; (b) the emphasis of the Second Order, 2005 is on the continuing validity of the generator's consent and not on any cut- off date relatable to an individual consumer's first draw of power;

(c) the speaking order dated 23.08.2025 rested on a bare, -7- unreasoned assertion drawn from departmental records, without engaging with respondent No.1's documentary material or the binding Division Bench judgment dated 19.12.2023; and (d) TGERC's re-determination of 30.08.2024, being concerned with the methodology and quantum of CSS generally, could not override or nullify the statutory exemption under the Second Order, 2005 as judicially recognised and affirmed up to the Hon'ble Supreme Court. On this basis, the Demand Notice

dated 06.02.2025 and the speaking order dated 23.08.2025 were set aside, and it was declared that respondent No.1 is not liable to CSS for the period in question.

10. We have considered the pleadings and material placed on record, including the grounds urged in the writ appeal, the synopsis on behalf of the appellants, and the counter-affidavit, notes of submissions, additional notes and affidavits filed on behalf of respondent No.1, as well as the documents and judgments relied upon by the respective parties.

SUBMISSIONS ON BEHALF OF THE APPELLANTS

11. Learned counsel appearing for the appellants, assailing the order of the learned Single Judge, would submit that the impugned order proceeds on an erroneous appreciation of the statutory scheme as well as the material available on record. According to -8- learned counsel, the learned Single Judge erred in extending the benefit of the Electricity (Removal of Difficulties) Second Order, 2005 to the respondent No.1 merely on the premise that the generating company had obtained consent under [Section 43-A\(1\)\(c\)](#) of the Electricity (Supply) Act, 1948.

12. It is contended that the consent granted under [Section 43- A\(1\)\(c\)](#) of the [Electricity \(Supply\) Act, 1948](#) does not, by itself, confer upon a generating company a licence or statutory authority to supply electricity directly to third-party consumers. Reliance is placed upon the judgment of the Hon'ble Supreme Court in [A.P. Gas Power Corporation Limited v. A.P. Electricity Regulatory Commission](#)¹, to contend that a generating company possessing such consent cannot be equated with a licensed supplier. According to the appellants, the learned Single Judge failed to appreciate the ratio of [the said judgment](#) while holding that the respondent No.1 was entitled to the benefit of the Electricity (Removal of Difficulties) Second Order, 2005.

13. Learned counsel would further submit that the Electricity (Removal of Difficulties) Second Order, 2005 cannot be construed as validating, perpetuating or conferring statutory recognition upon an arrangement which was otherwise impermissible under the 1(2004) 10 SCC 511 -9- then prevailing legal regime. According to the appellants, the object of the said Order was only to protect lawful and subsisting arrangements existing prior to the coming into force of the [Electricity Act, 2003](#), and not to legitimise arrangements which did not possess the requisite legal sanction.

14. In this regard, learned counsel would submit that the respondent No.1 failed to establish that it was actually availing supply from the concerned generating company prior to the coming into force of the [Electricity Act, 2003](#). According to the appellants, the material on record demonstrates that the Energy Salesagreement dated 29.01.2003 relied upon by the respondent No.1 was executed only on that date and was for a limited period of seven years, whereas actual supply to the respondent No.1 commenced only in the year 2005, which is post [Electricity Act, 2003](#). Thus, according to the appellants, the respondent No.1 was not a consumer availing power under the relevant arrangement prior to 10.06.2003, when the [Electricity Act, 2003](#) came into force.

15. Learned counsel would further submit that the documents relied upon by the respondent No.1 to contend that it had been receiving power prior to the coming into force of the

[Electricity Act, 2003](#) could not establish the existence of a valid pre-2003

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arrangement. It is contended that the Energy Sales agreement relied upon by the respondent No.1 was entered into only on 29.01.2003 for a period of seven years and that the actual supply of power commenced only in the year 2005. According to the appellants, the invoices relied upon by the respondent No.1, particularly those allegedly relating to the period prior to the said agreement, could not be relied upon to establish a lawful pre-existing arrangement so as to attract the benefit of the Electricity (Removal of Difficulties) Second Order, 2005.

16. Learned counsel would next submit that the demand dated 06.02.2025 for a sum of Rs.11,81,93,501/- towards CSS for the FY 2005-06 to FY 2014-15 was not an independent or arbitrary demand, but was consequential to the re-determination of CSS by the TGERC in its Common Order dated 30.08.2024. It is therefore contended that the learned Single Judge ought to have examined the validity and effect of the said subsequent determination before setting aside the consequential demand.

17. Learned counsel would submit that the earlier demand notices issued in the year 2006 were based upon the order dated 21.09.2005 passed by the erstwhile Andhra Pradesh Electricity Regulatory Commission in O.P. No.16 of 2005. The said determination of CSS was subsequently set aside by the Appellate

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Tribunal for Electricity by order dated 05.07.2007, with a direction for re-determination in accordance with the applicable tariff policy, and [the said decision](#) was affirmed by the Hon'ble Supreme Court by order dated 31.03.2016.

18. It is the submission of the appellants that the Learned Single Judge ought to have appreciated that, in view of the order of APTEL as affirmed by the Hon'ble Supreme Court, the CSS determined by the Electricity Regulatory Commission for FY 2005-06 stood set aside and the consequential demand notices issued to the consumers stood dissolved. Consequently, there being no subsisting determination of CSS to sustain the demand notices, the writ petitions filed by the respondent No.1 and others in W.P. No. 14918 of 2006 and batch had become infructuous, as no valid demand notices were pending and the earlier notices were merely consequential to the Commission's order that had already been set aside.

19. Learned counsel would further submit that the subsequent proceedings before the Regulatory Commission constitute a fresh determination. The Commission had earlier determined CSS for the FY 2013-14 and 2014-15 by order dated 06.04.2018, which was set aside by this Court vide order dated 12.02.2020 with a direction to consider the matter afresh after issuing notice to the

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affected parties. Pursuant thereto, the TGERC passed the Common Order dated 30.08.2024 re-determining the CSS for the FY 2005-06 to FY 2014-15, and the demand dated

06.02.2025 was raised on the strength of the said fresh determination.

20. It is therefore argued that the earlier proceedings relating to the demand notices of the year 2006 and the subsequent fresh determination of CSS are distinct. The judgment dated 19.12.2023 in W.P. No. 14918 of 2006 and batch, which dealt only with the 2006 demand notices arising from the original determination that itself stood set aside, cannot govern or bar the present demand raised pursuant to the independent determination made on 30.08.2024. The learned Single Judge erred in treating the earlier Division Bench judgment as conclusively governing the present demand.

21. It is specifically contended that the respondent No.1 was not a party to W.P.No.12630 of 2006, as claimed, and, in any event, has not established that it was similarly situated in all material particulars, particularly with regard to the commencement of actual supply of electricity. The appellants therefore contend that the entitlement of the respondent No.1 to the benefit of the Electricity (Removal of Difficulties) Second Order, 2005 had to be

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independently examined on the basis of the facts applicable to its case.

22. Learned counsel would also rely upon the availability of the statutory appellate remedy against the Common Order dated 30.08.2024. It is submitted that several other consumers, who questioned the said Common Order before this Court, were directed to avail the alternative remedy of appeal under [Section 111](#) of the Electricity Act, 2003. According to the appellants, writ appeals arising from such orders have also been dismissed and the statutory appeals are pending adjudication. In these circumstances, it is contended that the learned Single Judge ought not to have entertained the challenge to the consequential demand in exercise of writ jurisdiction, particularly when the demand arose pursuant to the Commission's order dated 30.08.2024.

23. Learned counsel would finally submit that the learned Single Judge erred in holding that the Electricity (Removal of Difficulties) Second Order, 2005 and the consent under [Section 43-A\(1\)\(c\)](#) of the Electricity (Supply) Act, 1948 enured to the benefit of the respondent No.1. According to the appellants, the respondent No.1 commenced availing supply only after the [Electricity Act, 2003](#) came into force.

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24. On the above grounds, learned counsel would submit that the impugned order dated 03.03.2026 suffers from an erroneous appreciation of the statutory scheme, the judgment in [A.P. Gas Power Corporation Limited](#) (supra), the effect of the subsequent re- determination of CSS by the Regulatory Commission, and the factual question as to the commencement of actual supply to the respondent No.1. Learned counsel would accordingly pray that the writ appeal be allowed, the order dated 03.03.2026 passed in W.P. No.25527 of 2025 be set aside, and the demand notice dated 06.02.2025 issued pursuant to the Common Order dated 30.08.2024 be upheld.

SUBMISSIONS ON BEHALF OF RESPONDENT NO.1

25. Per contra, Mr. P. Chidambaram, learned Senior Counsel appearing for respondent No.1 would submit that the learned Single Judge has rightly allowed the writ petition by setting aside the demand notice dated 06.02.2025 and the speaking order dated 23.08.2025, whereby CSS was sought to be levied upon respondent No.1 for the period from FY 2005-06 to FY 2014-15 in respect of power wheeled from Rain CII Carbon (Vizag) Limited. It is submitted that the generator was operating under a valid consent granted under [Section 43A\(1\)\(c\)](#) of the Electricity (Supply) Act, 1948 and that respondent No.1 was a scheduled consumer under a

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30-year Modified Power Wheeling Purchase Agreement dated 04.11.1994. Therefore, respondent No.1 falls within the ambit of the Electricity (Removal of Difficulties) Second Order, 2005 dated 08.06.2005 and is entitled to the exemption from levy of CSS contemplated thereunder.

26. Learned counsel would further submit that the aforesaid exemption has already been considered and recognised by the Division Bench of this Court in [R.V.K. Energy Pvt. Ltd. v. APCPDCL2](#), which has attained finality upon dismissal of the Special Leave Petition by the Hon'ble Supreme Court on 10.09.2024 in SLP (Civil) Diary No.25649 of 2024. According to learned counsel, [the said judgment](#) dealt with an identical Section 43A(1)(c) consent, identical parties and the same question concerning the liability to pay CSS, with overlapping FY, and therefore squarely covers the case of respondent No.1.

27. Learned counsel would contend that the reliance placed by the appellants upon the judgment of the Hon'ble Supreme Court in the case of [A.P. Gas Power Corporation Limited](#) (supra), is misplaced. It is submitted that [the said judgment](#) arose out of Civil Appeals filed in the year 2001 and was rendered in the context of the [Andhra Pradesh Electricity Reform Act, 1998](#), prior to the 2 TSHC: W.P. No.14918 of 2006 and batch decided on 19.12.2023

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enactment of the [Electricity Act, 2003](#) and the subsequent notification of the Electricity (Removal of Difficulties) Second Order, 2005. The specific question concerning exemption from CSS under the 2005 Order was therefore not before the Hon'ble Supreme Court in A.P. Gas. [Further, the Reform Act, 1998](#) stood repealed by [Section 185](#) of the Electricity Act, 2003. Hence, according to learned counsel, the case in [A.P. Gas Power Corporation Limited](#) (supra) does not govern the present controversy, whereas the subsequent judgment in [R.V.K. Energy](#) (supra), directly deals with the statutory exemption relied upon by respondent No.1.

28. It is further submitted that the contention of the appellants that supply of power to respondent No.1 commenced only in the year 2005 is factually incorrect. Learned counsel would submit that respondent No.1 entered into the arrangement for supply of power from Rain CII Carbon (Vizag) Limited under the Modified Power Wheeling Purchase Agreement dated 04.11.1994, which was valid up to 28.06.2028, and respondent No.1 commenced availing supply from the said generator in the year 1999. The commercial arrangement continued during the relevant period and was subsequently evidenced by the Energy Sales

agreement dated 29.01.2003. Bills evidencing supply from the year 1999 were also placed before the Court, and the learned Single Judge, upon

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consideration of the material, recorded a finding that supply had commenced prior to the [Electricity Act, 2003](#).

29. Learned counsel would therefore submit that the applicability of the 2005 Order cannot be defeated by introducing an artificial cut-off date based upon the date of commencement of a particular drawal of power. According to him, the relevant consideration is the existence of the valid Section 43A(1)(c) consent and the pre-existing contractual arrangement embodied in the MPWPA dated 04.11.1994. The subsequent Energy Sales agreement dated 29.01.2003 and the bills from 1999 further establish the continuity of the arrangement. It is contended that the appellants had not correctly appreciated these documents and had sought to contend that supply commenced only after the [Electricity Act, 2003](#) came into force.

30. Learned counsel would further draw attention to the earlier proceedings concerning levy of CSS. It is submitted that in O.P. No.16 of 2005, the then APERC had determined the CSS and, while holding certain entities liable to pay the same, had also recognised that the obligation did not extend to entities enjoying exemption under Section 43A(1)(c) read with the Electricity (Removal of Difficulties) Second Order, 2005. Respondent No.1, being covered by such exemption, was consequently not affected by the said

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determination. Thereafter, APTEL, by judgment dated 05.07.2007 in Appeal No.169 of 2005, interfered with the methodology adopted for determination of CSS while upholding the position that entities enjoying the statutory exemption under Section 43A(1)(c) would continue to enjoy such exemption. The said judgment was thereafter affirmed by the Hon'ble Supreme Court on 31.03.2016 in Civil Appeal Nos.4936-4941 of 2007.

31. Learned counsel would submit that the order dated 30.08.2024 passed by the TGERC in O.P. No.16 of 2005 cannot be relied upon to revive the liability of respondent No.1. According to him, the said order was passed pursuant to a limited remand concerning the methodology for determination of CSS and did not reopen or nullify the principle of exemption applicable to entities covered by the 2005 Order. The TGERC itself recorded that it was bound by the earlier orders of the APERC. It is therefore contended that the said order can operate only against entities upon whom CSS is otherwise leviable and cannot override the statutory exemption already available to respondent No.1.

32. Learned counsel would further submit that the order dated 30.08.2024 of the TGERC does not dilute the earlier findings of the APERC and APTEL concerning the exemption available to entities covered by the Electricity (Removal of Difficulties) Second Order,

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2005. It cannot, therefore, constitute a fresh cause of action for raising a demand against respondent No.1 for the disputed period. The subsequent demand notice dated 06.02.2025 and speaking order dated 23.08.2025, insofar as they seek to recover CSS for FY 2005-06 to FY 2014-15, are consequently contrary to the 2005 Order, APERC Regulation No.2 of 2005 and the binding judgment of this Court in [R.V.K. Energy](#) (supra), as affirmed by the Hon'ble Supreme Court.

33. Learned counsel would also submit that there were earlier proceedings involving respondent No.1 and the levy of CSS, including W.P. No.12630 of 2006, wherein the demand raised against respondent No.1 was quashed, and the said position was subsequently affirmed by the Hon'ble Supreme Court. It is therefore contended that the appellants could not, merely on the basis of the subsequent TGERC order, reopen the liability of respondent No.1 in respect of the same statutory exemption and overlapping period.

34. Learned counsel would contend that the impugned demand is also vitiated by non-application of mind and violation of the principles of natural justice, inasmuch as the appellants failed to properly consider the statutory exemption, the binding judgment in [R.V.K. Energy](#) (supra), the earlier APERC/APTEL proceedings and

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the documentary material establishing supply from the year 1999. It is further submitted that the Demand Notice dated 06.02.2025 and the Speaking Order dated 23.08.2025 directly run contrary to the Electricity (Removal of Difficulties) Second Order, 2005, APERC Regulation No.2 of 2005 and the binding judicial pronouncements governing the field.

35. Learned counsel would lastly submit that the reliance placed upon the subsequent judgment dated 12.09.2025 in W.P. No.1509 of 2025 and batch is misplaced and has no application to the facts of the present case. It is further submitted that respondent No.1 is not an aggrieved party in respect of the TGERC order dated 30.08.2024 and that the said order cannot be treated as having the effect of extinguishing or superseding the exemption applicable to respondent No.1. On the aforesaid grounds, learned counsel would pray that the writ appeal as well as the application seeking suspension of the judgment of the learned Single Judge be dismissed and the judgment dated 03.03.2026 be upheld. POINTS FOR CONSIDERATION

36. Having heard the learned counsel appearing for the appellants as well as the learned counsel appearing for respondent No.1 and having carefully perused the material placed on record,

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including the order of the learned Single Judge, the following questions arise for consideration in this intra-court appeal:

- (i) Whether the respondent No.1, being a scheduled consumer under the Modified of Power Wheeling and Purchase Agreement dated 04.11.1994, supported by a subsisting consent granted to the generating company under [Section 43-A\(1\)\(c\)](#) of the Electricity

(Supply) Act, 1948, is entitled to the benefit of the Electricity (Removal of Difficulties) Second Order, 2005, for the period in question?

(ii) Whether the decision of the Hon'ble Supreme Court in [A.P. Gas Power Corporation Ltd. v. A.P. Electricity Regulatory Commission](#), relied upon by the appellants, disentitles the respondent No.1 from claiming the benefit of the Second Order, 2005?

(iii) Whether the controversy regarding the date of commencement of actual wheeling/supply to the respondent No.1, asserted by the appellants to be February, 2005, is sufficient to exclude the respondent No.1 from the protective ambit of the Second Order, 2005?

(iv) Whether the judgment dated 19.12.2023 rendered by the Division Bench in W.P.No.14918 of 2006 and batch, having regard to the subsequent order dated 10.09.2024 passed by the Hon'ble Supreme Court, governs the present controversy and precludes the appellants from raising the impugned demand?

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(v) Whether the fresh determination of CSS by the Telangana Electricity Regulatory Commission by its order dated 30.08.2024 furnishes an independent basis for raising the impugned demand, notwithstanding the protection available under the Second Order, 2005?
ANALYSIS Points (i) to (v):

37. The controversy essentially arises out of the demand for CSS raised against respondent No.1 for the FY 2005-06 to FY 2014-15 in respect of power availed from M/s Rain CII Carbon (Vizag) Limited, formerly known as Rain Calcining Limited. The appellants seek to sustain the demand principally on the ground that the actual wheeling of electricity to the HT service connection of respondent No.1 commenced only in February, 2005 and, therefore, respondent No.1 cannot claim the benefit of an arrangement allegedly existing prior to the commencement of the [Electricity Act, 2003](#).

38. The submission requires examination with reference to the precise language of the Electricity (Removal of Difficulties) Second Order, 2005. The said Order was issued by the Central Government in exercise of the power under [Section 183](#) of the Electricity Act, 2003. The operative provision provides that no surcharge under [Section 42\(2\)](#) of the Electricity Act, 2003 shall be payable on electricity sold or supplied by a generating company

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operating with the consent of the competent Government under clause (c) of sub-section (1) of [Section 43-A](#) of the Electricity (Supply) Act, 1948, till the current validity of such consent.

39. The language employed by the Central Government is of considerable significance. The exemption is expressed with reference to the electricity sold or supplied by a generating company possessing the specified statutory consent, and the duration of the exemption is expressly linked to the subsistence of such consent. The Order does not stipulate, in express

terms, that every individual consumer seeking the benefit thereof must establish that his or her physical drawal commenced before 10.06.2003.

40. The appellants, however, seek to read such an additional requirement into the Second Order, 2005. According to them, unless respondent No.1 establishes that its individual supply arrangement was actually operational before the commencement of the [Electricity Act, 2003](#), the exemption cannot be claimed merely because the generating company possessed a Section 43-A(1)(c) consent.

41. We are unable to accept such construction. Courts ordinarily give effect to the words used by the statutory authority and do not introduce an additional condition which the instrument

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itself does not contain. If the intention was to restrict the exemption only to consumers who had actually drawn electricity before 10.06.2003, the Second Order could have expressly incorporated such a condition. Instead, the Order makes the continuing validity of the generating company's consent the temporal touchstone.

42. The above construction is also required to be considered in the context of Regulation No.2 of 2005 issued by the Andhra Pradesh Electricity Regulatory Commission. Clause 1(d) thereof requires the said Regulation to be read along with the Electricity (Removal of Difficulties) Second Order, 2005, while Clause 7.2 contains a saving provision in relation to existing wheeling arrangements, to the extent they are not inconsistent with the [Electricity Act, 2003](#) and the Regulation.

43. Thus, the statutory scheme does not proceed upon the basis that every pre-existing wheeling arrangement ceased to have relevance merely because the [Electricity Act, 2003](#) came into force. On the contrary, the statutory framework did not render existing wheeling arrangements irrelevant merely by reason of the commencement of the [Electricity Act, 2003](#).

44. In the present case, there is no serious dispute that the generating company, namely M/s Rain CII Carbon (Vizag) Limited,

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had obtained the requisite consent under [Section 43-A\(1\)\(c\)](#) of the Electricity (Supply) Act, 1948. The MPWPA dated 04.11.1994 is also on record. The said arrangement was for a period of thirty years from the date of commercial operation, i.e., from 29.06.1998 to 28.06.2028.

45. Respondent No.1 relies upon the said arrangement, its status as a scheduled consumer, the wheeling schedules and the billing material from the period preceding the commencement of the [Electricity Act, 2003](#). The learned Single Judge, upon consideration of the material, accepted the case of respondent No.1 that the arrangement relied upon by it was not a fresh arrangement created after the commencement of the [Electricity Act, 2003](#), but was referable to the pre-existing arrangement.

46. The appellants place considerable reliance upon their departmental records showing that physical wheeling to HT SC No.SPT 105 is traceable only from February, 2005. Even assuming that the departmental records disclose physical wheeling from February, 2005, the same, by itself, cannot introduce into the Second Order, 2005 a condition which is absent from its language.

47. More importantly, the Energy Sales agreement dated 29.01.2003 cannot be considered in isolation from the MPWPA dated 04.11.1994. The question is not merely whether a particular

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document was executed in 2003, but whether the transaction evidenced by the subsequent document constituted an entirely new arrangement or was part of an existing framework under which the generating company had been authorised to supply and wheel electricity.

48. The material relied upon by respondent No.1, including the earlier agreement, wheeling schedules and billing documents, lends support to its contention that the subsequent documentation was referable to an existing commercial arrangement. The appellants have not placed before us any material of such evidentiary character as would conclusively establish that the arrangement relied upon by respondent No.1 was wholly independent of and unrelated to the pre-existing MPWPA.

49. In any event, the dispute regarding the precise date on which physical wheeling to the particular HT service connection commenced cannot be elevated into a statutory condition for claiming the benefit of the Second Order, 2005 when the language of the Order itself makes the continuing validity of the generating company's consent the relevant consideration.

50. We therefore hold that the benefit of the Second Order, 2005 cannot be denied to respondent No.1 merely on the ground that the appellants' records show physical wheeling to HT SC No.SPT 105

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from February, 2005. The existence and subsistence of the Section 43-A(1)(c) consent, coupled with the pre-existing arrangement saved under the statutory framework, are the relevant considerations.

51. The principal reliance placed by the appellants is upon the judgment of the Hon'ble Supreme Court in the case of [A.P. Gas Power Corporation Ltd.](#) (supra). It is contended that [the said judgment](#) establishes that a consent granted under [Section 43- A\(1\)\(c\) of the Electricity \(Supply\) Act, 1948](#) does not, by itself, amount to a licence authorising the generating company to supply electricity to third parties, and therefore the Second Order, 2005 cannot be understood as conferring legality upon an arrangement which was otherwise impermissible.

52. There can be no quarrel with the proposition that a consent under Section 43-A(1)(c) cannot, by itself, be equated with a licence. The question before us, however, is not whether

such consent is synonymous with a licence. The question is whether, subsequent to the enactment of the [Electricity Act, 2003](#), the Central Government, in exercise of its power under [Section 183](#), issued a specific statutory instrument providing an exemption from CSS in respect of electricity sold or supplied by generating companies operating with the requisite Section 43-A(1)(c) consent.

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53. The case in [A.P. Gas Power Corporation](#) (supra) was decided in a materially different statutory setting. The proceedings therein arose prior to the enactment of the [Electricity Act, 2003](#) and prior to the issuance of the Electricity (Removal of Difficulties) Second Order, 2005. The judgment, therefore, did not examine the scope or effect of the subsequent statutory exemption created by the Second Order, 2005.

54. The distinction is fundamental. The proposition that a Section 43-A(1)(c) consent is not, by itself, a licence may govern the legal character of such consent under the earlier statutory regime. It does not answer the distinct question as to the legal consequence which the Central Government subsequently attached to the existence of such consent while issuing the Second Order, 2005. The appellants cannot, therefore, rely upon [A.P. Gas Power Corporation](#) (supra) to read out of the Second Order, 2005 the exemption expressly granted therein. The learned Single Judge was consequently justified in distinguishing [the said decision](#).

55. The next and more substantial question concerns the effect of the judgment dated 19.12.2023 rendered by the Division Bench in [R.V.K. Energy](#) (supra). The said batch of writ petitions involved, inter alia, the validity and applicability of the Electricity (Removal of Difficulties) Second Order, 2005 and the levy of CSS upon

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consumers drawing electricity from generating companies having consent under [Section 43-A\(1\)\(c\)](#) of the Electricity (Supply) Act, 1948.

56. The Division Bench, by judgment dated 19.12.2023, upheld the validity of the Second Order, 2005 and dealt with the claim of exemption of the consumers falling within the category contemplated by the said Order. The appellants carried the judgment in further proceedings before the Hon'ble Supreme Court. The challenge came to be dismissed on 10.09.2024. The appellants nevertheless contend that the judgment dated 19.12.2023 cannot govern the present proceedings because the earlier proceedings arose out of demand notices issued in 2006 and the subsequent determination of CSS was made by the Regulatory Commission in 2024.

57. In our considered view, the distinction sought to be drawn by the appellants does not advance their case. The fact that the earlier proceedings arose out of particular demand notices does not obliterate the legal determination made therein concerning the validity and applicability of the Second Order, 2005. The binding force of a judgment is not confined merely to the operative direction concerning the particular demand notice which was before the Court. The legal principle authoritatively declared by a Division

Bench governs subsequent proceedings involving the same statutory provision and substantially the same legal question, unless the judgment is distinguished on a legally sustainable basis or is overruled by a competent court.

58. The appellants cannot, therefore, reopen the very question which was already considered by the Division Bench, merely by issuing a subsequent demand pursuant to a later regulatory determination. It is material to note that respondent No.1 herein was, in fact, the petitioner in W.P. No.12630 of 2006, a fact expressly recorded by the learned Single Judge. In that context, the Division Bench of this Court, in W.P. No.8252 of 2008, W.P. No.14918 of 2006 and batch, including W.P. No.12630 of 2006 filed by Respondent No.1 herein, upheld the validity of the Second Order, 2005 and quashed the CSS demands which were inconsistent with or contrary to the said Order.

59. Thus, the appellants' submission that respondent No.1 was wholly outside the earlier litigation cannot be accepted without qualification. Apart from the fact that respondent No.1 was the petitioner in W.P. No.12630 of 2006, the record also discloses that respondent No.1 had commenced availing power from M/s Rain CII Carbon (Vizag) Limited (erstwhile Rain Calcining Limited) from the year 1999 itself under the existing wheeling arrangement. The

learned Single Judge, upon consideration of the wheeling schedules, electricity bills and other contemporaneous material placed on record, also recorded that respondent No.1 had been receiving power from the generator prior to the coming into force of the [Electricity Act, 2003](#). Once the legal position concerning the applicability of the Second Order, 2005 stood declared by the Division Bench and the challenge thereto did not result in its reversal, the authorities could not disregard the said declaration while considering the subsequent demand against respondent No.1. We therefore find that the judgment dated 19.12.2023 is directly relevant and binding on the legal question arising in the present proceedings. The appellants cannot circumvent the said declaration merely by tracing the present demand to a subsequent regulatory order.

60. The appellants next contend that the demand dated 06.02.2025 is not a revival of the earlier demand, but is a fresh demand consequent upon the Common Order dated 30.08.2024 passed by the Telangana Electricity Regulatory Commission. According to the appellants, the earlier proceedings culminated in a different factual and legal setting, whereas the 2024 order constitutes an independent determination giving rise to a fresh cause of action.

61. The procedural history, however, assumes importance. The original determination of CSS dated 21.09.2005 was subjected to appellate scrutiny. The Appellate Tribunal for Electricity, by judgment dated 05.07.2007, set aside the determination and directed re-determination in

accordance with the methodology contemplated under the National Tariff Policy, 2006. The said decision was subsequently affirmed by the Hon'ble Supreme Court on 31.03.2016.

62. Pursuant thereto, proceedings were undertaken before the Regulatory Commission. The order dated 06.04.2018 was subsequently set aside by this Court in W.P.No.21936 of 2018 and batch on 12.02.2020, principally on the ground of want of proper notice, with consequential remand. The TGERC thereafter passed the Common Order dated 30.08.2024. The said proceedings were thus undertaken in continuation of the earlier process of determination and re-determination of CSS. The very fact that the Commission was undertaking re-determination of the levy does not, however, mean that every consumer automatically became liable to pay the surcharge irrespective of a statutory exemption.

63. A determination of the methodology or quantum of a statutory levy necessarily operates upon those persons who are otherwise liable to bear that levy. The determination of quantum

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cannot, by itself, create substantive liability in a person who is outside the charging provision or is protected by an applicable statutory exemption. The TGERC order dated 30.08.2024 cannot, therefore, be construed as overriding the Electricity (Removal of Difficulties) Second Order, 2005. Nor can a regulatory order, issued for the purpose of re-determining CSS, be understood as impliedly nullifying a statutory exemption which has already been judicially considered.

64. The demand notice dated 06.02.2025 issued by the appellants was admittedly consequential upon the TGERC order dated 30.08.2024. If respondent No.1 was not liable to CSS by virtue of the Second Order, 2005, the subsequent computation cannot independently fasten such liability upon it. The appellants' contention that the 2024 order constitutes a completely fresh cause of action, therefore, cannot be accepted in a manner which would enable the authorities to reopen the substantive question of exemption already settled by the competent Court.

65. It is necessary to clarify that we are not sitting in appeal over the correctness of the methodology or computation undertaken by the TGERC in its Common Order dated 30.08.2024. The limited question before us is whether such order can be relied upon to impose CSS upon a consumer who claims, and has

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established, exemption under the Second Order, 2005. The appellants' reliance upon subsequent proceedings in which other consumers were relegated to the statutory appellate remedy also cannot alter the position. The maintainability of a writ petition must be examined in the context of the precise grievance raised in the particular case.

66. The appellants have also contended that respondent No.1 ought to have availed the statutory remedy of appeal under [Section 111](#) of the Electricity Act, 2003 instead of invoking the extraordinary jurisdiction of this Court. It is undoubtedly well settled that the existence of an efficacious alternative remedy is a relevant consideration for the exercise of jurisdiction

under [Article 226](#) of the Constitution. At the same time, the rule regarding alternative remedy is one of self-imposed restraint and does not constitute an absolute bar to the exercise of writ jurisdiction.

67. The present writ petition was not directed merely against the correctness of the methodology or quantum determined by the TGERC. The grievance of respondent No.1 was directed against the consequential demand and, more particularly, against the speaking order dated 23.08.2025 which rejected its specific claim of statutory exemption without dealing with the material placed before the authority.

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68. The writ petition therefore raised a question concerning the very authority of the appellants to levy and recover CSS from respondent No.1 in the face of the Second Order, 2005 and the binding judgment of the Division Bench. In such circumstances, the mere existence of an appellate remedy against the regulatory order cannot be treated as an absolute impediment to the exercise of jurisdiction under [Article 226](#), particularly where the impugned consequential action is alleged to have been taken in disregard of a binding judicial pronouncement and without proper consideration of the statutory exemption. We are, therefore, of the view that the learned Single Judge cannot be said to have committed an error in entertaining the writ petition.

69. The next question concerns the validity of the speaking order dated 23.08.2025 passed by the second appellant pursuant to the earlier direction of this Court in W.P.No.5098 of 2025. The order was required to consider the representation of respondent No.1 after affording it an opportunity of personal hearing. Respondent No.1 [placed reliance upon](#) the Section 43-A(1) (c) consent, the MPWPA dated 04.11.1994, the wheeling schedules, billing material, the Electricity (Removal of Difficulties) Second Order, 2005, Regulation No.2 of 2005 and the judgment dated 19.12.2023 of the Division Bench.

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70. The existence of a personal hearing by itself does not conclude the requirement of fair consideration. Where a party places relevant documentary material and relies upon binding judicial precedent, the authority deciding the representation is required to consider the same and record reasons for accepting or rejecting the contentions. In the present case, the impugned order proceeds principally upon the premise that, according to the departmental records, wheeling to HT SC No.SPT 105 commenced only from February, 2005. The order does not satisfactorily deal with the significance of the MPWPA dated 04.11.1994, the material relied upon by respondent No.1 to demonstrate its status as a scheduled consumer, the billing material relied upon by it, or the legal effect of the Second Order, 2005.

71. More importantly, the order does not meaningfully consider the judgment dated 19.12.2023 of the Division Bench, which directly concerned the applicability of the Second Order, 2005 and the levy of CSS upon the relevant category of consumers. An order does not become a speaking order merely because reasons are stated in it. The reasons must demonstrate that the authority has considered the relevant material and applied its mind to

the questions which arise for determination. Where material documents and binding judicial decisions are placed before the

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authority, a conclusion based merely upon one departmental record, without dealing with the contrary material, cannot be regarded as adequate application of mind.

72. The requirement to give reasons is an important facet of fair administrative decision-making. The Hon'ble Supreme Court has repeatedly emphasised that reasons disclose the process of application of mind and enable the affected party and the reviewing Court to ascertain whether the decision has been taken on relevant considerations. Applying that principle to the present case, we find that the learned Single Judge was justified in holding that the order dated 23.08.2025 could not be sustained. The authority was required to examine the statutory exemption and the binding precedent before fastening liability upon respondent No.1. Its failure to do so constitutes a material infirmity in the decision-making process.

RESULT

73. In the result, the writ appeal is dismissed.

74. The order dated 03.03.2026 passed by the Hon'ble High Court is affirmed. It is declared that the Electricity (Removal of Difficulties) Second Order, 2005 applies to respondent No.1 in respect of power availed from M/s Rain CII Carbon (Vizag) Limited during FY 2005-06 to FY 2014-15, and the appellants shall not be

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entitled to levy, collect, or enforce any demand of CSS for the said period in respect of such power, nor take any coercive steps including disconnection of HT SC No.SPT 105.

75. There shall be no order as to costs.

Miscellaneous applications pending, if any, shall stand closed.

APARESH KUMAR SINGH, CJ

VAKITI RAMAKRISHNA REDDY, J

Date: 01.10.2026 AS