

**Non-Reportable**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**Civil Appeal Nos. 1498-1500 of 2022  
(Arising out of SLP (Civil) Nos.9564-9566 of 2020)**

**Muhammed A.A. & Ors. .... Appellant(s)**

***Versus***

**State of Kerala & Ors. .... Respondent(s)**

**W I T H**

**Civil Appeal No.1501 of 2022  
(Arising out of SLP (Civil) No.9760 of 2020)**

**Civil Appeal No.1502 of 2022  
(Arising out of SLP (Civil) No.10226 of 2020)**

**J U D G M E N T**

**L. NAGESWARA RAO, J.**

Leave granted.

**1.** Writ Petition (Civil) No. 6723/ 2019 (M) was filed in the High Court of Kerala for a declaration that Regulation 116 of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010 (for short “the Safety Regulations’) is *ultra vires* the regulation making power of the Central Electricity

Authority under the Electricity Act, 2003 (for short “the Electricity Act”) and, therefore, void. The Petitioner therein also sought for a declaration that the State of Kerala has no power to allow deviation under sub-regulation (1) of Regulation 116 in respect of qualifications prescribed in Regulations 6 and 7 of the Safety Regulations. A further relief of declaration that the Order dated 13.02.2019 issued by the State of Kerala as arbitrary, illegal, unreasonable and without jurisdiction was sought in the Writ Petition. To the extent that it permits the State Government to make deviations, Regulation 116 was declared to be beyond the power conferred on the Central Electricity Authority under the Electricity Act by a learned Single Judge of the High Court of Kerala. The order dated 13.02.2019 by which exemption from acquiring qualification was granted to erstwhile employees was held to be unsustainable. The Kerala State Electricity Board Limited (KSEBL) was directed to make promotions strictly in accordance with the provisions contained in Regulations 6 and 7 of the Safety Regulations. KSEBL, Respondent No.2 in Civil

Appeal arising out of Special Leave Petition (Civil) No. 9564-9566/2020 had challenged the judgment of the learned Single Judge of the High Court by filing an appeal.

**2.** The Division Bench formulated the following points for consideration: -

*“1. Is Regulation 116 of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010, ultra vires the authority and powers conferred on the Central Electricity Authority on account of the Statutory Provisions in the Electricity Act, 2003 and on account of impermissible delegation or on account of being manifestly arbitrary?”*

*2. Can the provisions of a scheme framed under Section 131 r/w Section 133(2) of the Electricity Act, 2003 offer any protection to officers / employees who do not possess the qualifications required in terms of the Safety Regulations?*

*3. If the answer to the first issue is in the negative, whether the order issued by the Government of Kerala on 13-02-2019 suffer from the vice of non-application of mind or is otherwise arbitrary, unreasonable or irrational?”*

**3.** The Division Bench of the High Court held that the Regulation 116 of the Safety Regulations is neither *ultra vires* the Electricity Act nor manifestly arbitrary and that

it is well in line with the objects and purpose of the enactment. It held that the framing of Regulation 116 is not *ultra vires* the provisions of the Electricity Act, 2003 and is not beyond the scope of the rule making power of the Central Electricity Authority. Referring to Section 133(2) of the Electricity Act, the High Court was of the opinion that the exemption from the applicability of Regulation 6 & 7 of the Safety Regulations by the order dated 13.02.2019 can be granted only in favour of persons who were employed with the KSEBL on the date of the formulation of the transfer scheme and such of those employees who have joined service after 31.10.2013 were not entitled to such an exemption. For this reason, the Government Order dated 13.02.2019 was partly set aside by the Division Bench to the extent that it granted exemption to the employees/officers who entered service after 31.10.2013.

**4.** Mr. V. Chitambaresh, learned Senior Counsel appearing on behalf of the Appellants in Civil Appeal arising out of Special Leave Petition (Civil) Nos. 9564-9566/ 2020 submitted that Regulations 6 and 7 of the

Safety Regulations prescribe qualifications for engineers, supervisors and technicians, *etc.* He submitted that the Division Bench of the High Court exempted all employees who were working in the Board prior to 31.10.2013 from the qualifications as required under Regulations 6 and 7 of the Safety Regulations which results in compromising the safety of people and the operation of power plants, grid and transmission lines. Referring to Regulation 116 of the Safety Regulations which permits deviation from the Regulations, the learned Senior Counsel argued that the Government does not have the power to grant exemption. Reliance was placed on the judgments of this Court in ***R.B.I. v. Peerless General Finance & Investment Co. Ltd.***<sup>1</sup>, ***M/s. Dhanrajamal Gobindram v. M/s. Shamji Kalidas & Co.***<sup>2</sup> and ***Glynn v. Margetson & Co.***<sup>3</sup> in support of the submission that the word “deviation” cannot be interpreted to mean “exemption”. It was contended on behalf of the Appellants that a well-considered judgment of the Single Judge which is also in

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1 (1987) 1 SCC 424

2 (1961) 3 SCR 1020

3 (1893) A.C. 351

larger public interest was interfered with by the Division Bench on an erroneous consideration of law and facts. Mr. K. Rajeev, learned counsel for the Appellants in Civil Appeal arising out of Special Leave Petition (Civil) No. 10226/2020 submitted that the transfer scheme was framed in the year 2013 after the Safety Regulations came into force in 2010 and that the learned Single Judge of the High Court correctly held that clause 2(c) of the tripartite agreement is *ultra vires* the Electricity Act. Ms. Aishwarya Bhati, learned Additional Solicitor General appearing on behalf of the Central Electricity Authority contended that there is no role for the Central Electricity Authority in these Appeals, especially when the Appellants have not made any submissions relating to the *vires* of Regulation 116 of the Safety Regulations before this Court. She contended that deviation is permissible under Regulation 116 of the Safety Regulations. The said deviation can be made by the State Government as 'Electricity' falls in List III-Concurrent List, Seventh Schedule of the Constitution of

India, 1950. However, she contended that lump sum exemption cannot be granted.

**5.** Mr. P.V. Surenderanath, learned Senior Counsel appearing on behalf of the State of Kerala referred to Section 133 of the Electricity Act which enables the State Government to formulate a scheme providing for transfer of officers and employees to the transferee company on the vesting of the properties, rights and liabilities in such transferee company. He drew the attention of this Court to Section 133(2) which provides for the terms and conditions of transferred personnel to be in accordance with the transfer scheme. Reference was made to the proviso to Section 133(2) according to which the terms and conditions on transfer of such employees would not in any way be less favourable than those which would have been applicable to them if there had been no such transfer under the transfer scheme. The learned Senior Counsel argued that Regulation 116 of the Safety Regulations permits deviation in respect of matters referred to in the Regulations. "Deviation" from the Rules cannot be said to not include "exemption".

Taking into account the experience of such of those employees who have been serving for a long period of time, a decision was taken by the State of Kerala to exempt the employees from acquiring qualifications under Sections 6 and 7 of the Safety Regulations. The State of Kerala has accepted the judgment of the Division Bench that the exemption from qualification under Regulations 6 and 7 of the Safety Regulations is restricted only to those who were in service prior to 31.10.2013 and, therefore, no Appeal has been preferred by the State against the judgment of the High Court. Mr. Surender Nath, learned Senior Counsel relied upon the judgments of this Court to submit that subordinate legislation cannot be interdicted by this Court unless it is manifestly arbitrary. He proceeded to submit that there is no arbitrariness in the Regulations which would warrant interference. KSEBL was represented by Mr. P.V. Dinesh, learned counsel who submitted that the relief that was granted to erstwhile employees of the Board falls within the scope of Regulation 116 of the Safety Regulations. The benefit which was given to the

erstwhile employees by the order dated 13.02.2019 cannot be termed as a wholesale exemption. Relying upon Section 133 of the Electricity Act, Mr. Dinesh argued that all conditions of service, including promotion of erstwhile employees of KSEB are protected according to the proviso to Section 133(2) of the Electricity Act. Insofar as the safety aspects raised by the Appellants are concerned, Mr. Dinesh contended that the Appellants have miserably failed to substantiate the point. He submitted that qualified personnel are appointed to crucial posts at generation, transmission and in the power plants. Mr. P.N. Ravindran, learned Senior Counsel appearing on behalf of the Respondent No. 6 in Civil Appeals arising out of Special Leave Petition (Civil) Nos. 9564-9566/2020 contended that the reversal of the judgment of the Division Bench of High Court would adversely affect the interests of 17,367 employees. He supported the submission on behalf of the State and KSEBL that deviation is equivalent to exemption. The employees of the KSEBL are so efficient that their services are being utilized even by the neighbouring

States. Mr. M.T. George, learned counsel appearing on behalf of the Respondent No.4 in Civil Appeal arising out of Special Leave Petition (Civil) Nos. 9564-9566/2020 submitted that there is a confusion in the minds of the Appellants regarding the scope of Regulations 6 and 7 of the Safety Regulations. He submitted that the said Regulations pertain only to safety of the officers and employees and do not concern their service conditions. He also stated that the Appellants are bound by the Tripartite Agreement. They cannot be permitted to approbate or reprobate. Mr. Venugopalan Nair, learned counsel appearing on behalf of the Respondent No.7 in Civil Appeal arising out of Special Leave Petition (Civil) No.9760/2020 supported the submissions of other Respondents and contended that Regulations 6 and 7 of the Safety Regulations have nothing to do with the service conditions of the officers and employees of KSEBL.

**6.** The Indian Electricity Act, 1910, the Electricity Act (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998 were replaced by the Electricity

Act of 2003. The Electricity Act of 2003 was enacted to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalization of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto. It is necessary to refer to the relevant provisions of the Electricity Act and the Regulations made thereunder for a better appreciation of the dispute before this Court. Section 53 of the Electricity Act relates to safety and electricity supply. The said Section enables the Central Electricity Authority to undertake appropriate measures in consultation with the State Government for: -

*“(a) protecting the public (including the persons engaged in the generation, transmission or*

*distribution or trading) from dangers arising from the generation, transmission or distribution or trading of electricity, or use of electricity supplied or installation, maintenance or use of any electric line or electrical plant;*

*(b) eliminating or reducing the risks of personal injury to any person, or damage to property of any person or interference with use of such property;*

*(c) prohibiting the supply or transmission of electricity except by means of a system which conforms to the specification as may be specified;*

*(d) giving notice in the specified form to the Appropriate Commission and the Electrical Inspector, of accidents and failures of supplies or transmissions of electricity;*

*(e) keeping by a generating company or licensee the maps, plans and sections relating to supply or transmission of electricity;*

*(f) inspection of maps, plans and sections by any person authorised by it or by Electrical Inspector or by any person on payment of specified fee;*

*(g) specifying action to be taken in relation to any electric line or electrical plant, or any electrical appliance under the control of a consumer for the purpose of eliminating or reducing the risk of*

*personal injury or damage to property or interference with its use.”*

**7.** The Central Electricity Authority is constituted under Section 70 of the Electricity Act for the purpose of performing such functions as assigned to it under the Act. Apart from the others, one of the functions of the Authority under Section 73 of the Electricity Act is to specify the safety requirements for construction, operation and maintenance of electrical plants and electric lines. The Authority is also empowered to make Regulations under Section 177 of the Electricity Act providing suitable measures relating to safety and electricity supply under Section 53, technical standards for construction of electrical plants, electric lines and connectivity to the grid under clause (b) of Section 73 and for other matters of the Electricity Act as provided for in the Section.

**8.** The Central Electricity Authority (Measure relating to Safety and Electric Supply) Regulations, 2010, were brought into force on 20.09.2010. The relevant Regulations 6 and 7 relating to safety measures are as follows: -

*“6. Safety measures for operation and maintenance of electric plants: -*

*(1) Engineers and supervisors appointed to operate or under take maintenance of any part or whole of a thermal power generating station and a hydro power plant together with the associated sub-station shall hold diploma in Engineering from a recognized institute, or a degree in Engineering from a university.*

*(2) The Technicians to assist engineers or supervisors shall possess a certificate in appropriate trade, preferably with A two years course from an Industrial Training Institute recognized by the Central Government or the State Government.*

*(3) Engineers, supervisors and Technicians engaged for operation and maintenance of electric plants should have successfully undergone the type of training as specified in Schedule-I provided that the existing employees shall have to undergo the training mentioned in sub-regulation (3) within three years from the date of coming into force of these regulations.*

*(4) The owner of every thermal power generating station and hydro power plant together with their associated substation shall arrange for training of personnel engaged in the operation and maintenance of his generating station along with associated sub-station in his own institute or any*

*other institute recognized by the Central Government or the State Government provided that separate training shall be given to the persons engaged in operation and maintenance of thermal power stations and hydro power stations including associated sub-stations.*

*7. Safety measures for operation and maintenance of transmission, distribution systems: -*

*(1) Engineers or supervisors engaged in operation and maintenance of transmission and distribution systems shall hold diploma in electrical, mechanical, electronics and instrumentation engineering from a recognized institute or university.*

*(2) The Technicians to assist engineers or supervisors shall possess a certificate in appropriate trade, preferably with a two years course from an Industrial Training institute recognized by the Central Government or State Government.*

*(3) Engineers, supervisors and Technicians engaged for operation and maintenance of transmission and distribution systems electric plants should have successfully undergone the type of training as specified in Schedule-II*

*Provided that the existing employees shall have to undergo the training mentioned in sub-regulation (3) within three years from the date of coming into force of these regulations*

*(4) Owner of every transmission or distribution system shall arrange for training of their personal engaged in the operation and maintenance of transmission and distribution system in his own institute or any other institute recognized by the Central Government or State Government.”*

**9.** Further, Regulation 116 of the Safety Regulations empowers the Central Government or the State Government to allow deviations in respect of matters referred to in the regulations by an order in writing.

**10.** Part XIII of the Electricity Act pertains to reorganization of KSEB. According to the statement of objects and reasons of Electricity Act, one of the features of the electricity Bill, 2001 relates to the incorporation of a transfer scheme by which company/companies can be created by the State Government. The State Governments were given the option of continuing with the State Electricity Boards which under the new scheme of things would be a distribution licensee and a State transmission Utility which would also be owning generation assets. It provided that the service conditions of the employees would, as a result of restructuring, not be inferior.

**11.** Section 131 of the Electricity Act provides for vesting of property of the KSEBL in the State Government. It states that after the property is vested in the State Government by the State Electricity Board, the State Government shall re-vest the property in a Government company or in a company or companies in accordance with the transfer scheme. Section 131(4) of the Electricity Act contemplates the formulation of such a transfer scheme. According sub-section (5) of Section 131 of the Electricity Act, the transfer scheme may:

*“(5) x x x*

*(a) provide for the formation of subsidiaries, joint venture companies or other schemes of division, amalgamation, merger, reconstruction or arrangements which shall promote the profitability and viability of the resulting entity, ensure economic efficiency, encourage competition and protect consumer interests;*

*(b) define the property, interest in property, rights and liabilities to be allocated -*

*(i) by specifying or describing the property, rights and liabilities in question; or*

*(ii) by referring to all the property, interest in property, rights and liabilities comprised in a described part of the transferor's undertaking; or*

*(iii) partly in one way and partly in the other;*

*(c) provide that any rights or liabilities stipulated or described in the scheme shall be enforceable by or against the transferor or the transferee;*

*(d) impose on the transferor an obligation to enter into such written agreements with or execute such other instruments in favour of any other subsequent transferee as may be stipulated in the scheme;*

*(e) mention the functions and duties of the transferee;*

*(f) make such supplemental, incidental and consequential provisions as the transferor considers appropriate including provision stipulating the order as taking effect; and*

*(g) provide that the transfer shall be provisional for a stipulated period.”*

**12.** Section 133 of the Electricity Act refers to provisions related to officers and employees, and states as follows:

*“Section 133. (Provisions relating to officers and employees):*

*(1) The State Government may, by a transfer scheme, provide for the transfer of the officers and employees to the transferee on the vesting of properties, rights and liabilities in such transferee as provided under section 131.*

(2) *Upon such transfer under the transfer scheme, the personnel shall hold office or service under the transferee on such terms and conditions as may be determined in accordance with the transfer scheme:*

*Provided that such terms and conditions on the transfer shall not in any way be less favourable than those which would have been applicable to them if there had been no such transfer under the transfer scheme:*

*Provided further that the transfer can be provisional for a stipulated period.*

***Explanation.*** - *For the purpose of this section and the transfer scheme, the expression "officers and employees" shall mean all officers and employees who on the date specified in the scheme are the officers and employees of the Board or transferor, as the case may be."*

**13.** In exercise of the powers conferred under subsections (1),(2),(5),(6) and (7) of Section 131 and Section 133 of the Electricity Act, the State of Kerala made Kerala Electricity First Transfer Scheme, 2008 for vesting of functions, properties, interests, rights, obligations and liabilities of the KSEB in the State Government. In exercise of the power conferred under Section 131(2) of the Electricity Act, Government of Kerala notified a

transfer scheme on 31.10.2013 revesting all the functions, properties, interests, rights, obligations and liabilities in KSEBL which is a company incorporated under the Companies Act, 1956 and fully owned by the Government of Kerala. Clause (6) of the scheme provides for transfer of personnel by the State Government. It is mentioned in the said clause that the transfer shall be governed by the conditions enumerated in Schedule- 'B' of the scheme and clause (8), which is relevant to the present dispute, provides as follows: -

*“(8) The State Government shall notify appropriate arrangements in respect of the funding of the terminal benefits to the extent they are unfunded on the date of the transfer of the Personnel from the erstwhile Board or KSEB. As per actuarial valuation carried out by registered valuer, the provisional figure of unfunded liability is approximately, ₹ 7584 Crores (Seven thousand Five hundred and Eighty Four crores) as on 30<sup>th</sup> September, 2011. Actuarial valuation of terminal liabilities at the time of transfer will be made as provided under clause 9 (3) of the scheme. Till such time arrangements are made, the Transferee and the State Government shall be jointly and severally responsible to duly such make such payments to the existing pensioners as well as the personnel*

*who retire after the date of transfer but before the arrangements are put in place. The State Government, Kerala State Electricity Board Limited and employees' unions may enter into a tripartite agreement in consideration of the promises and mutual conditions set forth therein. A model Tripartite Agreement is appended as Schedule -C".*

**14.** Subsequently, a Tripartite Agreement was entered into between the State of Kerala, Kerala State Electricity Board Limited (KSEBL), and the Unions and Associations representing workmen and officers of the erstwhile Kerala State Electricity Board on 01.08.2014. The State Government and KSEBL assured the existing employees that the terms and conditions of service such as promotions, transfers, wages, compensations, leave, allowances, etc. upon transfer to KSEBL shall continue to be regulated by existing regulations/ service rules in vogue. Therefore, Sections 131 and 133 of the Electricity Act in combination with the transfer scheme dated 31.10.2013 and tripartite agreement dated 01.08.2014 provided for the transfer of the officers and employees to KSEBL and terms and conditions of their service upon their transfer.

**15.** While the implementation of the Safety Regulations *qua* the transferred officers and employees was underway, O.P. No.7/ 2016 was filed by one Shibu K.S. before the Kerala State Electricity Regulatory Commission, Thiruvananthauram alleging non-compliance of the provisions of Safety Regulations, 2010 relating to the qualification of engineers, supervisors and technicians engaged in operation and maintenance of electrical plants and installations. By the order dated 29.12.2016, the Commission held: -

*“23. Considering the facts and circumstances of the case, the Commission orders as follows:*

*1. In order to implement the Safety Regulations, the authorities of KSEB Ltd. may have to adopt strategies to ensure that, -*

*(1) From among the existing employees, only those with the specified qualifications as per the Safety Regulations, are deployed for operation and maintenance of electrical plants and electrical systems.*

*(2) Necessary and sufficient in-service trainings / courses may be imparted to the willing existing employees in the grades of lineman, overseer and sub-engineer to make them eligible for deployment*

*of duties in accordance with the Safety Regulations.*

*(3) Future recruitments of employees are in tune with the Safety Regulations.*

*2. The KSEB Ltd has, as per B.O (FTD) No. 2981/2016 (LD.1/1836/2016) dated 18.10.2016, constituted a Committee to examine all the above aspects and to submit recommendations for implementation of the provisions of Safety Regulations. Government has, in exercise of the powers under Regulation 116 of the Safety Regulations, issued GO (Rt) No. 206/2016/PD dated 26.10.2016, granting a period of six months to implement the Regulations. In view of the above facts the Commission is of the view that there is no reason at present to impose on KSEB Ltd, a penalty under Section 142 of the Act. The KSEB Ltd. is directed to submit a copy of the report of the Committee and an action taken report on the recommendation of the Committee. The copy of the report of the Committee shall be submitted on or before 31.3.2017 and the action taken report on the recommendation of the Committee shall be submitted on or before 30.4.2017.”\_*

**16.** Pursuant to the power conferred in the State Government by Section 131 of the Electricity Act, a transfer scheme was prepared in 2008 vesting the

functions, properties, interests, rights, obligations and liabilities of the KSEB in the State Government. Thereafter, another scheme was prepared on 31.10.2013 transferring (re-vesting) of the functions, properties, all interests, rights and properties, all rights and liabilities of the Kerala State Electricity Board to Kerala State Electricity Board Limited, a company fully owned by the Government of Kerala. As contemplated in the transfer scheme, a tripartite agreement dated 01.08.2014 was entered into between the Government of Kerala, Kerala State Electricity Board Limited and the associations representing workmen and officers of erstwhile Kerala State Electricity Board in order to facilitate smooth implementation of the re-vesting scheme. By an order dated 13.02.2019, Government of Kerala ordered deviation from the implementation of qualifications prescribed under Regulation 6 and 7 of the Safety Regulations for the existing employees of KSEBL, in exercise of the power conferred on the State Government under Regulation 116 of the Safety Regulations. The deviation was applicable to employees

working with the KSEBL on the date of the order dated 13.02.2019 and for all future appointments and promotions, the qualifications prescribed in the 2010 Regulations were to be strictly followed. The grievance of the Appellants is that they possess the necessary qualifications required under Regulation 6 and 7 of the 2010 Regulations and the decision of the Government to deviate from the requirements of Regulation 6 and 7 would make ineligible employees fit for promotion to the higher posts which would be detrimental to the interests of the Appellants. The main contention raised by the Appellants is that the deviation permitted by the order dated 13.02.2019 would amount to compromising the safety norms prescribed by the Central Electricity Authority which would adversely affect larger public interest.

**17.** Re-organisation of the Electricity Board has been done in terms of the Electricity Act by preparation of a transfer scheme as contemplated in Section 131 of the Act. According to Section 133 (2) of the Electricity Act, the transferred personnel are to be governed by terms

and conditions as may be determined in accordance with the transfer scheme. The proviso to Section 133 (2) protects the interest of the transferees in so far as the conditions of their service are not to be less favorable than those which would have been applicable to them had no transfer taken place. Clause 6 of the transfer scheme provides that the transfer of personnel shall be subject to the terms and conditions contained in Section 133 and 134 of the Act, though promotion and seniority have not been specifically mentioned in the transfer scheme. The transfer scheme in Clause (8) contemplates the execution of a tripartite agreement between the State Government, KSEBL and employees' union. The parties entered into such a tripartite agreement on 01.08.2014 in which it was agreed that promotions of the existing employees shall continue to be governed by existing Regulations/service rules in vogue. It is clear from the above discussion that the service conditions of the erstwhile employees of KSEB are protected by the proviso to Section 133 of the Electricity Act. After the transfer scheme was formulated, the erstwhile

employees were entitled to claim that the conditions of their service cannot be altered to their detriment in view of the tripartite agreement dated 01.08.2014.

**18.** After the formulation of the first transfer scheme in 2008 whereby all the properties, rights and interests of KSEB were vested in the Government of Kerala, and before the re-vesting of all such properties, rights and interest was done by the State of Kerala in favour of KSEBL on 31.10.2013, the Safety Regulations were framed by Central Electricity Authority in 2010. The Safety Regulations were framed by the Central Electricity Authority in exercise of its power under Sections 53 and 73 read with Section 177 of the Electricity Act. Section 177 (2) of the Act empowers the Central Electricity Authority to frame Regulations providing for suitable measures relating to safety and electricity supply as contemplated in Section 53 and the technical standards for construction of electrical plants, electrical lines and connectivity to the grid as provided in clause (b) of Section 73 of the Electricity Act. Section 53 of the Electricity Act deals with safety measures and electricity

supply over which the authority has jurisdiction and on which it acts in consultation with the State Government. Similarly, one of the functions of the Central Electricity Authority under Section 73 of the Act is to specify the safety requirements for construction, operation and maintenance of electrical plants and electrical lines and connectivity to the grid. In furtherance to these Sections and as per the specific power vested in the Central Electricity Authority, it framed the Safety Regulations, Regulation 6 and 7 of which prescribe the educational qualifications required for appointment to the posts of engineers, supervisors and technicians in thermal power generating stations and hydro power plants as well as for the operation and maintenance of transmission and distribution systems. The dispute that arises for our consideration in these appeals is whether these prescribed educational qualifications in Regulation 6 and 7 can be deviated from by an order of the State Government. Such a power is traceable to Regulation 116 of the Safety Regulations which enables the Central Government or the State Government to allow deviations

in respect of matters referred to in the Safety Regulations, including the ones in Regulations 6 and 7.

**19.** The principal contention of the Appellants which found favour with the learned Single Judge of the High Court is that Regulation 116 is *ultra vires* the Electricity Act, 2003. The Division Bench reversed such findings of the Single Judge. As the learned counsel appearing for the Appellants have not made any submission relating to the said point, it is not necessary for us to adjudicate on the issue of the validity of Regulation 116. The contention of the Appellants is that the wholesale exemption granted to the officers and employees from possessing the requisite educational qualifications as prescribed in Regulation 6 and 7 is impermissible in exercise of the power under Regulation 116 of the Safety Regulations. The argument is based on the language of Regulation 116 which permits the concerned Government only to 'deviate' from the regulations which, according to the Appellants, cannot be read as 'exempt'. Mr. V. Chitambareesh, learned Senior Counsel, appearing for the Appellants placed reliance on the dictionary

meanings of 'deviation' and 'exemption' and submitted that the scope of deviation is completely different from exemption. According to him, exemption from operation of the Regulation 6 and 7 of the Safety Regulations is impermissible and the State Government has a very limited power to deviate from the rules, as and when found necessary. In other words, he submitted that all existing employees cannot be exempted from possession of the requisite educational qualifications under Regulation 6 and 7 in exercise of power under Regulation 116 of the Safety Regulations.

**20.** The Appellants have relied upon ***Glynn v. Margetson & Co.*** (supra) which is a judgment of the House of Lords in which a clause in the bill of lading mentioning the term 'deviation' was to be interpreted. The dispute in the said case was in relation to the damage caused to perishable goods loaded in a ship headed towards Liverpool. Compensation was sought on the ground that the vessel proceeded to the port in the north east of Spain and not west-ward in the direction of Liverpool. The House of Lords was of the opinion that the

primary intent and object of bill of lading must be considered and the general / printed words therein must be construed so as to not conflict with that intent and object. We are afraid that this judgment is of no assistance to this Court in interpreting the import of the word 'deviation' as the House of Lords has specifically interpreted the term / clause in context of the object and intention of the bill of lading.

**21.** The other judgment relied upon by the Appellant is the judgment in *M/s. Dhanrajamal Gobindram v. M/s. Shamji Kalidas & Co.* (supra). The question that fell for consideration in this case pertains to the interpretation of the words 'exemption' and 'permission' used in Section 5 and 21 of the Foreign Exchange Regulation Act, 1973. In context of the dispute that arose in the said case, this Court was of the opinion that the word 'exemption' shows that a person is put beyond the application of law while 'permission' shows that he is granted leave to act in a particular way. This Court further held that the word 'permission' is a word of wide import as it means leave to do some act while

'exemption' is just one way of giving leave. The ratio of this judgment cannot be of any help to the Appellants in this case. The point raised by the Appellant in this Appeal is that the term 'deviation' used in Regulation 116 of the Safety Regulations cannot be construed in a manner that it would include 'exemption' within its ambit. The context and the analysis of this Court in ***M/s. Dhanrajamal Gobindram v. M/s. Shamji Kalidas & Co.*** (supra) with respect to the specific terms in the background of that context cannot be applied by this Court in the case at hand. The Appellants have themselves cited the judgment of this Court in ***RBI v. Peerless General Finance & Investment Co. Ltd.*** (supra) to contend the word 'deviation' has to be interpreted by following the principle laid down in the said judgment which is as follows: -

*"33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we*

*know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression "Prize Chit" in Srinivasa [(1980) 4 SCC 507: (1981) 1 SCR 801: 51 Com Cas 464] and we find no reason to depart from the Court's construction."*

Therefore, by applying the above principle to this case, reliance placed on the interpretation of Court in the cases of **Glynn v. Margetson & Co.** (supra) and **M/s. Dhanrajamal Gobindram v. M/s. Shamji Kalidas &**

**Co.** (supra) for interpretation of Regulation 116 of the Safety Regulations is misplaced.

**22.** In the facts of the present case, we are not in agreement with the Appellants that granting exemption to the erstwhile employees of the KSEB from possessing the qualifications provided in Regulations 6 and 7 is an impermissible exercise of power under Regulation 116 of the Safety Regulations. Prior to the 2010 Regulations, the Indian Electricity Rules, 1956 framed under Section 37 of the Indian Electricity Act, 1960 were in force. Rule 133 of the said Rules would show that State Governments/Central Government were empowered to grant exemption from the safety provisions contained therein. The power of exemption has been in existence even prior to Electricity Act. A perusal of the order dated 13.02.2019 would demonstrate that the State Government directed deviation from the implementation of qualifications prescribed under Regulations 6 and 7 of the Safety Regulations. Though the word exemption was not employed in the order dated 13.02.2019, the effect of the direction issued by the Government was to

exempt the employees from the prescribed qualifications. In other words, Regulations 6 and 7 were relaxed in favour of the erstwhile employees. The width and amplitude of Regulation 116 cannot be restricted by interpreting the word 'deviation' as having lesser scope than exemption. 'Deviation' from the Regulations would amount to either exemption or relaxation. Therefore, we are in agreement with the Division Bench that the order dated 13.02.2019 cannot be said to have been issued beyond the power conferred by Regulation 116 of 2010 Regulations.

**23.** The next question that requires to be examined is regarding the exercise of powers by the Government of Kerala in issuing order dated 13.02.2019. Drawing from the interpretation of the relevant provisions as discussed above, promotion and other service conditions of the officers and employees transferred to KSEBL under the transfer scheme are protected under Section 131 and 133(2) of the Electricity Act in conjunction with the transfer scheme and the tripartite agreement. The explanation to Section 133 makes it clear that "officers

and employees” referred to in the section are only those officers and employees of the Board on the date of transfer scheme, i.e. on 31.10.2013. By no stretch of imagination can this protection be extended to the employees who were engaged by KSEBL after 31.10.2013. The High Court was right in setting aside the order dated 13.02.2019 which permitted deviation from Regulations 6 and 7 to all appointments made till the date of issuance of order dated 13.02.2019, even after the transfer scheme dated 31.10.2013. By the impugned judgment, the High Court restricted the applicability of the order dated 13.02.2019 to such of those employees transferred from KSEB prior to 31.10.2013.

**24.** Safety is an important issue which the Central Electricity Authority has dealt with in the Safety Regulations enacted in 2010. Mr. P.V. Dinesh, learned counsel for the KSEBL submitted that the track record of the personnel working in the Board has been exemplary and their support was even sought by the States of Orrisa and Tamil Nadu in the past. He submitted a chart

to bolster his submission that the electrical accidents are much less in Kerala compared to the other States. Mr. Dinesh further stated that efforts would be made to appoint eligible and qualified personnel in the generating stations, electrical plants and key positions in transmission and distribution lines. As the exercise of power by the State Government in issuance of the order dated 13.02.2019 is well within its jurisdiction, grant of exemption in favour of erstwhile employees cannot be termed as arbitrary. However, the extension of the continuity to employees appointed after 31.10.2013 is not reasonable and only the transferred employees are entitled for protection of their service conditions. Therefore, we approve the findings recorded by the Division Bench of the High Court of Kerala.

**25.** For the aforementioned reasons, the Appeals are dismissed.

.....J.  
**[ L. NAGESWARA RAO ]**

.....J.  
**[ B.R. GAVAI ]**

**New Delhi,  
February 18, 2022.**