[REPORTABLE]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8350 OF 2009

KERALA STATE ELECTRICITY BOARD
REP. BY ITS SECRETARY & ANR. ……APPELLANTS

VERSUS

PRINCIPAL SIR SYED INSTITUTE
FOR TECHNICAL STUDIES & ANR. ...RESPONDENTS

WITH

CIVIL APPEAL NOS. 8552-8573/2009

CIVIL APPEAL NOS. 8574-8592/2009

CIVIL APPEAL NOS. 8593-8605/2009

CIVIL APPEAL NOS. 1027-1046/2010

CIVIL APPEAL NOS. 1048-1067/2010

CIVIL APPEAL NOS. 1068-1080/2010

CIVIL APPEAL NO. 1009 /2010

CIVIL APPEAL NOS. 1025-1026/2010

CIVIL APPEAL NOS. 1021-1023/2010

CIVIL APPEAL NOS. 1003-1007 /2010

CIVIL APPEAL NOS. 1010-1020 /2010

CIVIL APPEAL NOS. 1085/2010

CIVIL APPEAL NOS. 1081-1082/2010

CIVIL APPEAL NOS. 1083/2010

CIVIL APPEAL NO. 1084/2010

CIVIL APPEAL NO. 1087/2010

CIVIL APPEAL NO. 1086/2010

CIVIL APPEAL NO. 1088/2010

CIVIL APPEAL NO. 3101/2010

CIVIL APPEAL NO. 3091/2010

CIVIL APPEAL NO. 3093/2010

CIVIL APPEAL NO. 3095/2010

CIVIL APPEAL NO. 3110 /2010

CIVIL APPEAL NO. 3102 /2010

CIVIL APPEAL NO. 3103/2010

CIVIL APPEAL NO. 3109/2010

CIVIL APPEAL NO. 3112/2010

CIVIL APPEAL NOS. 3104-3107 /2010

CIVIL APPEAL NO. 3100 /2010

CIVIL APPEAL NO. 3111/2010

CIVIL APPEAL NO. 3113/2010

CIVIL APPEAL NO. 3097/2010

CIVIL APPEAL NOS. 3098-3099 /2010

CIVIL APPEAL NO. 3096/2010

CIVIL APPEAL NO. 3092/2010

CIVIL APPEAL NO. 3108/2010

CIVIL APPEAL NOS. 4533-4572/2010

CIVIL APPEAL NO. 3996/2010

CIVIL APPEAL NO. 3993/2010

CIVIL APPEAL NOS. 3998-3999/2010

CIVIL APPEAL NO. 4000/2010

CIVIL APPEAL NO. 3997/2010

CIVIL APPEAL NOS.3990-3992/2010

CIVIL APPEAL NOS. 3994-3995 /2010

CIVIL APPEAL NOS. 4653-4667/2010

CIVIL APPEAL NOS. 4670-4672 /2010

CIVIL APPEAL NO. 4652/2010

CIVIL APPEAL NO. 4674 /2010

CIVIL APPEAL NO. 4673/2010

CIVIL APPEAL NO. 4669 /2010

AND

CIVIL APPEAL NO. 4668/2010

J U D G M E N T

ANIRUDDHA BOSE, J.

The legality of a part of a tariff notification issued by the Kerala State Electricity Regulatory Commission ("Commission") segregating Self-Financing Educational Institutions (SFEI) from Government run and Government Aided Private Educational Institutions and subjecting the former to a higher category of tariff is the only question involved in this batch of appeals. The notification to that effect was

issued by the Commission on 26th November, 2007 bearing Order No.TP 23 and TP 30 of 2007. Such tariff was to take effect from 1st December, 2007. SFEIs have been categorised under the head Low Tension VII(A) Commercial in that notification. The Government run or aided private educational institutions have been placed under Low Tension VI Non-Domestic tariff category. The Commission is the appellant before us in this set of appeals. Such tariff notification was published in terms of Kerala State Electricity Regulatory Commission (Terms and Conditions of determination of tariff for distribution and retail sale of electricity under MYT Framework) Regulations, 2006.

2. Several Writ Petitions came to be filed by different SFEIs questioning legality of such segregation which in effect created a higher tariff regime for them. Altogether 52 writ petitions were taken up for hearing by a learned Single Judge of the Kerala High Court (the First Court). The learned Single Judge found the tariff order to be valid, relying on a decision of a **Constitution Bench** of this Court in the case of **T.M.A Pai Foundation and Anr. v. State of Karnataka and Ors.** 2002 (8) SCC 481 and a Bench judgment of the High Court of Kerala in the case of **Social SG of Assisi sisters v. KSEB** 1988 (1)

KLT 1727. The First Court decided the issue in favour of the Commission, inter-alia, on the following reasoning:-

> "But, I note that there is no pleading whatsoever for the petitioners about the Government Order. There is no case in the Writ Petitions based on the Order. Further, the Higher Secondary Schools are attached to Schools having Standards upto High School Section, where as I have already noted, there is no restriction as contained in relation to Government and Aided Schools. Also, what has been fixed is the minimum salary of teachers and others. It appears to be low. What is important is the capability to raise revenue and its ramifications, and not whether any particular Self-Financing Educational Institutions is actually making use of its power to raise revenue, as ordinarily a Self-Financing Educational Institution may raise."

3. In appeal by the SFEIs, the Division Bench of the High Court set aside the judgment of the First Court. The Division Bench found that the differentiation was not for any of the grounds specified in Section 62 (3) of the Electricity Act, 2003. That is the provision under which the State Commission can determine the tariff. Section 62 of the 2003 Act specifies:-

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

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

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

(b) transmission of electricity;

(c) wheeling of electricity;

(d) retail sale of electricity:

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

(2) The Appropriate Commission may require a licensee or a generating company to furnish separate details, as may be specified in respect of generation, transmission and distribution for determination of tariff.

(3) The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of

electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required."

(4) No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified.

(5) The Commission may require a licensee or a generating company to comply with such procedures as may be specified for calculating the expected revenues from the tariff and charges which he or it is permitted to recover.

(6) If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee.

4. It was, inter-alia held by the Division Bench:-

"When the supply is to an educational institution, irrespective of whether it is self-financing or aided or governmental purpose, cannot be different, as education means to impart knowledge. Education in

> ancient times was not connected with earning. Free education is what was accord in dharma. Education ought to be the resource for tradition, loyalty to culture and ideals of service to society. We cannot, in the absence of materials and evidence, simply accept that educational institutions, though Self Financing, are profiteering or run as business. There are also absolutely no materials placed on the question as to whether electricity is consumed by the Self-Financing Educational Institutions for any other purpose. The vague statement that building is air conditioned without specifying how many institutions are having air conditioned buildings or apparatus having high consumption of electricity etc. are not matters on which specific pleas with reference to details are made available. We may, at the risk of repetition, say that we are only examining the justifiability of treating Self Financing Educational Institutions with reference to other institutions-aided/Governmental-from the point of view of electricity consumption as borne out by the affidavits filed before this Court and we have in that attempt considered the factors pleaded by them and found to be unsustainable."

5. It is this judgment of the Division Bench of the High Court delivered on 17th August 2009 which is under appeal before us. Before the First Court, apart from irrational or arbitrary discrimination, fixation of tariff was assailed on certain other grounds as well. These

grounds included breach of the principles of natural justice and lack of power of the Commission to fix tariff suo motu. The writ petitioners questioned the reasonableness in clubbing the educational institutions, many of whom were run by not for profit organisations, with other entities whose object was ex-facie profit oriented. It was urged that tariff for SFEIs could not be brought under the head "Commercial". The Division Bench rejected the Commission's plea for dismissal of the writ petitions on the point of availability of alternative remedy in the form of statutory appeal. We find from the judgment under appeal that challenge to the tariff notification on the ground of being violative of the provisions of Article 14 of the Constitution of India was not pressed by the respondents-writ petitioners. The writ petitioners also did not seriously press their challenge to the subject notification on the question of lack of suo motu power of the Commission to fix tariff before the Division Bench. The main point which was urged and argued before the Division Bench was as to whether under the provisions of Section 62(3) of the 2003 Act, the differentiation of SFEIs from the other set of institutions for the purpose of fixing of tariff was legally justifiable

or not. The Division Bench decided the issue in favour of the SFEIs. On behalf of the appellant, the argument that the respondents (writ petitioners) had alternative remedy in the form of appeal under Section 111 of the 2003 Act has been reiterated and it has been submitted that for this reason alone, the writ petitions ought to have been dismissed. This contention was rejected by the First Court and both the First Court and the Division Bench have addressed the points raised in the writ petition on merit. The objection based on subsistence of alternative remedy having been rejected by the Court of first instance as also the appellate forum, we do not think upon granting leave under Article 136 of the Constitution of India, it would be proper on our part to entertain this question on maintainability of the writ petitions again and relegate the dispute to the Statutory Authority solely on this ground. There is no deep factual dispute involved in these proceedings. These are also not cases where exercise of writ jurisdiction can be held to be fundamentally flawed, like in a case involving purely private dispute. In this perspective, entertaining such objection at this stage would result in wastage of

judicial time and also lead to adding unnecessary layers to the decision making process on a particular lis.

6. Before us, submissions have been made on the basis of Civil Appeal No. 8350 of 2009 though both the First Court and the Division Bench dealt with all the matters in their respective common judgments. The writ petitioner in this proceeding was Principal Sir Syed Institute for Technical Studies in Thiruvananthapuram. So far as the issues involved in all these appeals are concerned, the distinguishing factual elements are few and insignificant. Such distinguishing elements of the individual cases would have no impact on outcome of these appeals. We shall, accordingly, address the appeals on merit. On behalf of the Commission, it has been argued before us that the respondents/writ petitioners had sufficient opportunity to raise objection before the Commission itself as the proposed tariff was published on its website, but none of the SFEIs chose to raise any objection at that stage. It is also submission of the Commission that the purpose of the two categories of educational institutions can be gathered from the distinguishing features broadly under the following six heads:-

(i) different fee structure

(ii) different wage structure

(iii) employee welfare measures

(iv) larger social purpose the government run and aided institutional seek to achieve

(v) profit motive not present in the former category of institutions.

(vi) Facilities provided by the respective categories of institutions.

7. What has been addressed in the judgment under appeal relates to all SFEIs. We shall now come straight to sub-section (3) of Section 62 of the 2003 Act, the text of which we have reproduced in earlier part of this judgment. Main case of the writ petitioners is that the tariff notification was issued ignoring the statutory mandate contained in the said provision. There is a negative mandate of the legislature upon the Commission in this sub-section. While fixing tariff, the Commission cannot show undue preference to any consumer of electricity. The Commission, however, is vested with the power to prescribe differential rates according to the consumers' load factor, power factor, voltage, total consumption of electricity during any specified period of time at which supply is required. So far as fixing

different rates for these two categories of the educational institutions, these factors did not come into play. The other permissible differentiating factors are **geographical position of any area,** the **nature of supply** and the **purpose for which the supply is required.** As regards this set of differentiating factors, the tariff advantage for government run and aided educational institutions do not appear to be based on geographical position or nature of supply. The Commission however has justified the classification of the aforesaid two sets of tariffs on the basis of purpose for which supply is required by the consumers.

8. The writ petitioners' case on breach of the principles of natural justice rested on two planks. First was that adequate opportunity for raising objection was not given to the Self-Financing Educational Institutions. The second plank of the writ petitioners' case on this very principle was that the tariff notification did not contain any reason. According to the writ petitioners, fixing of tariff order is a quasi-judicial exercise and disclosure of reason is imperative to support any decision coming out of such exercise. On nature of tariff-fixing exercise, the decisions which have been relied upon are the

cases of **PTC India Limited v. Central Electricity Regulatory Commission [(2010) 4 SCC 603], State of Gujarat v. Utility Users Welfare Association [(2018) 6 SCC 221]** and **Shri Sitaram Sugars Co. Ltd. v. Union of India & Ors. [(1990) 3 SCC 223].** On the aspect of requirement for disclosure of reasons in a quasi-judicial proceeding, **The Siemens Engineering & Manufacturing Co. of India Ltd. v. Union of India (1976 2 SCC 981), S.N. Mukherjee v. Union of India (1990) 4 SCC 594** and **Kranti Associates Pvt. Ltd. v. Sh. Masood Ahmed Khan [SLP(C) No.12766 of 2008],** decided on 8th September, 2010 have been cited.

9. As regards the argument of the writ petitioners on the point of violation of the principles of natural justice, the Division Bench found uploading of tariff proposal on the website to be broadly in compliance with the statutory requirement. We find from the judgment of the First Court that the Commission had issued notice inviting objections/suggestions from the Public Consumers and other stake holders. In the notice only, it was mentioned that the details were available in the website of the Commission and the same was available on request. Such details included the proposed higher tariff

rate for the SFEIs. We do not find much discussion on the second plank of the writ petitioners' argument on breach of the principles of natural justice in the judgment under appeal. Neither of the two cases cited on behalf of the writ petitioners on the point of the Commission being a quasi-judicial body deal with the aspect of necessity to disclose reason in a tariff fixing order by a statutory body like the Commission. In the case of **State of Gujarat (supra),** the question this Court dealt with was on qualification of a Chairman of the Regulatory Commission. While dealing with that question, it was held that the State Commissions have the trappings of a Court. In the case of **PTC India Ltd. (supra)**, the dispute was on the point as to whether a Regulation framed under Section 178 of the 2003 Act was appealable under Section 111 of the said statute. While exploring that controversy, a Constitution Bench of this Court examined the scope of jurisdiction of the Commission and found tariff fixation under Section 62 of the 2003 Act to be quasi-judicial function. One of the reasons for such finding was that the tariff order was appealable under the statute.

10. Now question arises as to whether the Commission, on being clothed with quasi-judicial character was required to disclose reasons for issuing the tariff notification, the legality of which is subject of dispute in these proceedings. The requirement for disclosure of reason however could originate in a case of this nature if there is a lis between the consumer and the Commission. Unless of course, the statutory provision prescribe otherwise. In the present case, the Division Bench observed: -

> "True that the manner in which notice could be issued being prescribed under the Regulation adherence to that provision by publishing in the website or in the notice board may be sufficient. But all that we wish to say is that there is no justification for the respondents to say that the petitioners did not make any objection and they can be non suited on that ground…"

11. Once the Division Bench observed that publication in the website was sufficient, the writ petitioners may not have had forfeited their right to challenge the tariff notification in the Writ Court or the appellate forum. But having failed to generate any lis on the tariff proposal by not raising any kind of objection, it would not be open to them to demand disclosure of reasons along with publication of the

tariff rates. The Commission's role as a quasi-judicial body or it having trappings of a Court would emerge only if it was called upon to adjudicate a dispute. As we have already discussed, no dispute had been generated by the writ petitioners on the basis of Commission's proposal which would have required it to undertake some form of adjudicatory exercise. In such a situation, the exercise of fixing tariff has to be undertaken as a quasi-legislative act only, which ordinarily a tariff-fixing exercise is. Issue of the subject tariff notification unaccompanied by reason thus cannot be faulted for having breached the principles of natural justice. The forum of appeal was open to them. But mere existence of an appellate forum in the statute would not require a tariff-fixing body to disclose the reason for stipulating tariff-rate in each individual case. If any appeal is preferred in relation to any specific case, the Commission would then have to justify fixing a tariff rate in such a case. The duty to disclose reason would crystallise then only, in a situation where a particular tariff fixing proposal goes without any objection after its draft publication. Not having gone to the appellate forum, the writ petitioners approached the Writ Court. Before the Writ Court, such tariff fixation

was open to challenge in the same way tariffs fixed in exercise of quasi-legislative or administrative power is subjected to judicial review. Thus, in our opinion, in absence of any statutory provision to the contrary, once tariff proposal is published and goes unobjected to before the State Commission, the question of disclosure of reason for such fixation would not arise at the stage of finalisation of tariff. If such tariff orders are later challenged before the appellate forum or the Writ Court, the Commission would have to defend its decision the same way an administrative or quasi-legislative decision on fixing of tariff is defended. Since we have taken this view, we do not consider it necessary to deal with the authorities which lay down the dictum of law that a quasi-judicial authority is required to disclose reasons in support of its decision.

12. Learned counsel for the SFEIs, being the writ petitioners have asserted that the purpose of both Government or Government Aided Institutions and Self-financing Institutions is the same, which is imparting education and discrimination between these two sets of institutions is not permissible under Section 62(3) of the Act. Countering the appellants' submission that the self-financing

institutions carry profit-motive or it is some kind of commercial venture, our attention has been drawn to four authorities of this Court being the cases of **T.M.A Pai Foundation (supra), P.A. Inamdar & Ors. v. State of Maharashtra & Ors. [(2005) 6 SCC 537], Islamic Academy of Education & Another v. State of Karnataka and Ors. [(2003) 6 SCC 697]** and **Modern School v. Union of India [(2004) 5 SCC 583]**. All these authorities deal with the fee-structures of private educational institutions. In the case of **T.M.A Pai (supra),** it has been held and observed:

> "56. One also cannot lose sight of the fact that we live in a competitive world today, where professional education is in demand. We have been given to understand that a large number of professional and other institutions have been started by private parties who do not seek any governmental aid. In a sense, a prospective student has various options to him/her, where, therefore, normally economic forces have a role to play. The decision on the fee to be charged must necessarily be left to the private educational institution that does not seek or is not dependent upon any funds from the Government.
>
> 57. We, however, wish to emphasize one point, and that is that in as much as the occupation of education, is in a sense, regarded as charitable, the Government can

> provide regulations that will ensure excellence in education, while forbidding the charging of capitation fee and profiteering by the institution. Since the object of setting up an educational institution is be definition "charitable", it is clear that an educational institution cannot charge such a fee as is not required for the purpose of fulfilling that object. To put it differently, in the establishment of an educational institution, the object should not be to make a profit, in as much as education is essentially charitable in nature. There can, however, be a reasonable revenue surplus, which may be generated by the educational institution for the purpose of development of education and expansion of the institution."

13. Referring to the aforesaid passages, it was contended on behalf of the writ petitioners that there is bar on profiteering even on private educational institutions though reasonable revenue surplus generation on their part is permissible. In the case of **Modern School v. Union of India (2004) 5 SCC 583** it has been held:-

> "14. At the outset, before analysing the provisions of the 1973 Act, we may state that it is now well settled by a catena of decisions of this Court that in the matter of determination of the fee structure unaided educational institutions exercise a great autonomy as they, like any other citizen

> carrying on an occupation, are entitled to a reasonable surplus for development of education and expansion of the institution. Such institutions, it has been held, have to plan their investment and expenditure so as to generate profit. What is however, prohibited is commercialisation of education. However, in none of the earlier cases, this court has defined the concept of reasonable surplus, profit, income and yield, which are the terms used in the various provisions of the 1973 Act."

14. What these authorities lay down in substance is that the Self Financing Educational Institutions are not permitted to indulge in profiteering but that does not imply they cannot generate reasonable revenue surplus to enable them to continue with their activities. In addition, the writ petitioners have submitted that many of them are charitable organisations and "not for profit" entities and they cannot be clubbed together with other commercial organisations. We find from the subject-notification that SFEIs have been categorised with entities like cinema studios, hotels and restaurants, construction works etc., and heading of LT-VII tariff items is "commercial". While an educational institution in our ordinary perception may not be performing functions similar to the other entities who undertake

business ventures, a tariff fixing body is not required to proceed on the basis of such common perception. The duty of such body is to determine which rate an organisation shall pay, and entities working in diverse fields can be clubbed together under a common umbrella to be subjected to a common rate. In that context, for exercise of this nature, the heading "commercial" cannot be constructed to restrict the entities that can come under that head on the basis of the nature of their activities, i.e. whether such activities have commercial attributes or not. Selection of heading is an exercise of convenience in fixing tariff rates and not necessarily the controlling factor in choosing the entities included under that heading.

15. The counsel for the Commission also has argued that the SFEIs provide various facilities to their students. But it has been recorded in the judgment under appeal that such fact was not substantiated before the Division Bench. Thus, no material is there before us from which the Commission could demonstrate that the SFEIs provide luxury or semi-luxury amenities to their students. In the light of these facts can it be held that purpose of both Government run and aided institutions and SFEIs was same and hence no differentiation could be made on

tariff rate on that basis? We are not testing here the differentiation on the anvil of Article 14 of the Constitution of India as the writ petitioners before the Division Bench do not appear to have had pressed their challenge to the notification on that ground.

16. The question we shall address now is whether preference shown by the Commission to the State run and aided educational institutions in fixing tariff was justified having regard to the purpose for which supply was required. The expression **"purpose"** means, as per the **Concise Oxford English Dictionary, Tenth Edition,** published by Oxford University Press:- **"1. the reason for which something is done or for which something exists. 2. resolve or determination."**

In the given context, the noun "purpose" would fit into the first meaning given in the aforesaid dictionary, which we have quoted above. Contention of the writ petitioners is that the purpose of both of these two sets of educational institutions remain the same being imparting education and no discrimination in tariff rate could be made between them having regard to Section 62 (3) of the 2003 Act.

17. The writ petitioners have advanced two-fold submission on this aspect. First, they have contended that capacity to pay cannot be the determinant factor in electricity tariff fixing exercise, relying on the case of **Rohtas industries Ltd. vs. Chairman, Bihar State Electricity Board & Ors**. **(1984 (Supp) SCC 161)**. This judgment was delivered construing Section 49(3) of the Electricity Supply Act, 1948. In the case of **M.P. Electricity Board & Ors. vs. Shiv Narayan & Ors. (2005) 7 SCC 283**, this Court found professional activities of an advocate did not constitute commercial activity so as to attract commercial rate of electricity. But ratio of these two decisions do not aid the writ petitioners. So far as meaning of the expression "commercial" is concerned, we have dealt with that issue earlier in this judgment. The SFEIs have been specifically included under the heading "commercial" and it is not a case where their character is being assessed inferentially, treating their activities as commercial in a general sense of the term.

18. The Writ Petitioners have argued that they cannot indulge in fixing excessive fees in respect of their schools and in this regard two statutory instruments have been brought to our notice which

postulates restriction on collection of excessive fees. These are Kerala Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Exploitative Fee and Other Measures to Ensure Equity and Excellence in Professional Education) Act, 2006 and Kerala Education Rules, the latter having been referred to in the judgment under appeal. On the basis of these statutory provisions, the Writ Petitioners seek to contend that they cannot indulge in profiteering and have to charge fees to the students as regulated by the authorities. But in our opinion profiteering is not the sole criteria on the basis of which the Tariff Authorities segregated the two sets of organisations. In the event the tariff fixing body, in this case, being the Commission, can distinguish the purpose of the respective categories, they would be entitled to impose different rates of tariffs for different categories of educational institutions.

19. We have already referred to the dictionary meaning of the expression “purpose”. The writ petitioners’ contention is that the reason of their formation or existence is imparting education and this is so for the Government run and aided institutions also. On this

basis, they argue that different tariffs could not be charged to these two sets of institutions. We are, however, unable to accept this argument. Though the Commission has not demonstrated through factual evidence the facilities provided by these two sets of institutions are different, it is of common knowledge, of which we take judicial notice, that the student profile of state run and state aided institutions is different from those of SFEIs. Students from comparatively modest background go to the State run or State funded institutions. While we construe the meaning of the expression "purpose" under sub-section (3) of Section 62 of the 2003 Act, we are of the opinion that for the purpose of settling the tariff question, who is serving the "purpose" and for whom such "purpose" is being served have to be factored in. We also have to take into account that the nature of service rendered by them cannot be the sole determinant for the tariff-fixing exercise. The State run and State aided institutions are funded by the tax payers, which is also a material factor in making distinction between the aforesaid categories of the institutions. The expression "purpose" has to be understood in the context of the character or feature of the entity which is undertaking the activity of

imparting education. While funding educational institutions, the State undertakes to discharge one of its essential welfare measures. On behalf of the Commission certain cases decided by the Appellate Tribunal were referred to but since we are deciding primarily the scope of Section 62(3) of the 2003 Act, we do not consider it necessary to refer to those cases.

20. Viewing the case of the appellant in that perspective, in our opinion, no error was committed by them in fixing higher tariff for the Self-Financing Educational Institutions categorising them as commercial entities. No undue preference has been given to the State run and State aided institutions in the tariff notification. The fact that SFEIs have been clubbed together with several commercial service providers wholly unrelated to education becomes insignificant once we find that purpose of the SFEIs could be differentiated from the Government run and Government aided educational institutions.

21. For these reasons, we are unable to agree with the view of the Division Bench. The judgment under appeal is set aside and the judgment of the First Court is restored. The appeals are allowed in the above terms. All connected applications are disposed of. Interim

orders, if any, shall stand dissolved. There shall be no order as to costs.

……J.

(Deepak Gupta)

New Delhi,

Dated: 20th February, 2020

……J.

(Aniruddha Bose)