

CUTS INSTITUTE FOR REGULATION & COMPETITION (CIRC)

&

RACHNA MANAGEMENT CONSULTANTS & STUDIES (P) Ltd.

PRESENTS

THREE DAY WORKSHOP ON

LEGAL LITERACY AND LEGAL ASPECTS OF POWER SECTOR

SEPTEMBER 18-20, 2014

Background

Electricity is central in achieving economic, social and environmental objectives of sustainable human development. In the present age, electricity has emerged as the most crucial and critical input for sustaining the process of economic as well as social development. Development of different sectors of economy is not possible without matching developments of the electricity sector. Power today is a basic human need, so it is important to carry out modern day to day activities. Although, the Indian Power sector has achieved substantial growth during post-independence period, the sector has been ailing from serious functional problems during the past few decades; only 55 per cent of households in India have access to electricity and out of the majority do not get uninterrupted reliable supply.

Keeping in mind the legal and statutory framework concerning energy/power in India and interface between their regular work and legal side of the business, CIRC and RMCS successfully organised a Workshop on “Legal Literacy and Legal aspects of Power Sector” at The Muse Sarovar Portico from 18th September 2014 to 20th September 2014. The workshop aimed at educating the professionals working in power sector about the historical and contemporary facts related to power sector and gives an insight into how much knowledge can be applied for regulatory tasks, and about the complex role of regulator demanding high degree of knowledge in legal aspects in the regulations.

Proceedings

We were very fortunate to have with us legal experts from electricity sector with in-depth knowledge of electricity sector, its regulation and working mechanisms. The programme began with a welcome address by Mr Arun Talwar, Chief Operating Officer, CIRC who expressed his gratitude for everyone taking out time to be a part of this intellectual exercise. Following the inaugural address, Hon’ble Justice M. Karpaga Vinayagam, Chairperson APTEL enlightened the participants by pressing on the need for capacity building of power sector professionals. He also added that information is there but the knowledge gap is still there and thus there is a need to bridge the gap and have regular refresher courses to understand the dynamics of law. He concluded by saying that the participants need to be judicious while discharging their duties and said, Power without Justice is Ruthless and Justice without Power is Toothless. So, Power along with Justice is Marvelous. The workshop was spread over a period of three days, for a better understanding and detailed discussions on developments and loopholes of electricity sector, case studies and implications. There was a lively panel discussion accompanied by concluding remarks and valedictory address by Shri Vishvanath Hiremath, Chairman, Rajasthan Regulatory Commission, and a vote of thanks by Mr Arun Talwar, Chief Operating Officer, CIRC and Mr S.D. Mathur, CEO & Director RMCS



DAY 1: September 18, 2014

Session 1: Evolution of Regulatory process in Indian Power Sector (Sanjeev Kapoor, Partner Khaitan & Co., Delhi)

The speaker began the session by throwing some light on the historical evolution of regulatory process- 1910 and 1948, and stated that due to dire need of regulatory process to be privatized, modernized and cater to consumer interest- de-license generation and distribution- was felt and therefore, Electricity Act, 2003 was legislated.

He further discussed the features of EA 2003, National Electricity Plan, National Tariff Policy. During the session, questions were raised on process and procedure related to 'Arbitration' under EA 2003. Whether the process has to be defined by the commissions or the Arbitration and Conciliation Act has to be followed. Participants also enquired from the speaker about the creation of open access as a mechanism to ease electricity consumers but the process is lacking in terms of practicality, is there a need to amend the provisions of EA 2003 pertaining to that? The speaker told that the provisions are not flawed, yet open access in order to be a reality must be substantiated with good infrastructure, which we are lacking. Therefore in time to come, when this would be mitigated, open access will become reality.

Session 2: PPAs and Pricing of Electricity (Mr.Radhakrisnan, Director, DEA Group)

Beginning the session, the speaker discussed about what PPAs is all about. He stated that, earlier PPAs were mere contracts between two parties, today they are dispute resolution documents. Much emphasis is given on dispute resolution clauses and provisions related to pecuniary obligations thereof. The seller sells electricity and consumer buys but no due consideration given on what should be the right price of electricity. The speaker professed that; Yes, CERC/SERC mandates the price, but as a consumer activist, the price of electricity should be reasonable and affordable. Each category of consumer should be considered separately and thereafter cross subsidy surcharge be put accordingly.

Session 3: Constitution of India and Electricity (Shri V.P Raja, Former Chairperson, MERC, Mumbai)

After briefing the participants about the objectives laid down in preamble and salient features of constitution, he deliberated on Part III of the Constitution postulating fundamental rights. He said that though expressly is not mentioned, but electricity constitutes as a fundamental right under Article 21, Right to Life and Liberty. And can be enforced against all the agencies as postulated under Article 12 of the Constitution defining 'State'. He clarified that though the private players are generally excluded from the definition of State under Article 12, however private players discharging public services/duties may be bound by Article 32 (Right to Redressed) against violation of any fundamental rights.

He further discussed Article 32 viz-a-viz Article 226. Both are remedies provided to enforce fundamental rights in case of violation by means of filing writs. These writs are of five types I.e., Writ of Mandamus, Habeas Corpus, Prohibition, Certiorari and Quo-Warranto. He highlighted the distinction between the scope and jurisdiction of 32 and 226, the first being where you directly approach Supreme Court against violation of fundamental rights, while under latter, one approached High Court against violation of fundamental rights or for any other purpose, thereby making scope of HC under 226 larger than as conferred under Article 32. He summarised the relation between states obligation under Directive Principles of State Policy and Fundamental Rights, and told that while violation of fundamental rights can be enforced through remedies provided under constitution, DPSPs are non-enforceable.

Session 4: Indian Legal System (Shri. Buddy A. Rangandhan Advocate- Appellate Tribunal New Delhi)

He started his discussion with speaking on the role of Supreme Court, High Court and District Courts along with the Tribunals under the Electricity Act, 2003. He provided the nature and scope of all these judicial authorities, along with their jurisdiction and discussed the Appellate Tribunal/ High Court decisions. During the session, Mr Raja asked him to bring clarity to question which was asked in morning session, i.e. what law will be followed in case of arbitration which is recommended by the Commission. Mr Rangandhan clarified that because these arbitrations are recommended by the Commission and are not directly directed towards arbitration, Arbitration and Conciliation Act will be followed. In case it is a contractual arbitration, the arbitration clause will be set in motion.

DAY 2: September 19, 2014

Session 1: Basic Legal Concepts (Shri V.P Raja, Former Chairperson, MERC, Mumbai)

Shri V.P Raja began his discussion by giving insights and relevant theories of administrative law. How the power flows and rule of hierarchy is to be followed while legislating a law. Constitution-Acts-Rules-Regulations-Order. After that he discussed about the concept of Natural Justice, where he stated that Natural justice implies fairness, reasonableness, and equality. These are procedural principles which every administrative agency must follow taking any decision adversely affecting the rights of a private individual. The principle of Natural Justice was discussed thereafter.

There are three important principles of **natural justice** is technical terminology:

- **the rule against bias** (*nemo iudex in causa sua*) which states that no one should be made a judge in his own cause. Requirement of this principle is that the judge must be impartial and must decide the case objectively on the basis of evidence.

- Second long arm of natural justice is **the right to a fair hearing (*audi alteram partem*)** which states that no one should be condemned unheard. While the term *natural justice* is often retained as a general concept, it has largely been replaced and extended by the general "duty to act fairly".
- Third, is that an **adjudicating authority** must give a speaking order, i.e. an order giving the reasons supporting the order

Further on also added that, the application of the principles of natural justice can be excluded in case of: Emergency, Confidentiality, Routine matters, Impracticability, Interim preventive action, Legislative action. He thereafter discussed provisions of evidence act that are relevant while discharging duties under Electricity Act, 2003.

Session 2: Quasi-Judicial functions- Functions (an overview with reference to powers and functions of CERC and SERCs) - (Shri Arijit Maitra, Advocate & Legal Advisor, Mumbai)

Shri Maitra started the discussion by highlighting the case excerpts of PTC India vs. CERC *March 2010*. He discussed as to how a statutory instrument, such as a rule or regulation, emanates from the exercise of delegated legislative power which is a part of administrative process resembling enactment of law by the legislature whereas a quasi-judicial order comes from adjudication which is also part of administrative process resembling a judicial decision by a court of law. He further discussed the functions of CERC and SERC- legislative, regulatory and enforcement (decision based). Principle of “Generality” versus “Enumeration”. A distinction must be made between delegation of legislative function and investment of discretion to exercise a particular discretionary power by a statute. One must understand the reason why a regulation has been made. Regulation has the effect of interfering and overriding the existing contractual relationship between the regulated entities across the board which cannot be achieved by an order. The words in the enumerated provision are not a fetter; they are not words of limitation, but they are words for general guidance. The 2003 Act is enacted as an exhaustive Code on all matters concerning electricity.

However, Electricity Regulators have no inherent power that exists in civil courts. Any power exercisable by the Electricity Regulators has to be located in the statute under which it is formed (i.e. EA 2003). He also talked about the political interference during the regulatory discourse (CERC/SERC). He emphasized on the need dispel ‘Capture’ theory. He concluded by saying that the creation, design and consequences of independent regulatory agencies represent a classic example of delegation to non-majoritarian institutions. They are created by legislation; hence elected officials are their principals. They are organizationally separate from governments and headed by unelected officials. They are given powers over regulation, but are also subject to controls by elected politicians and judges.



Session 3: Statutory Bodies under Electricity Act, 2003 (Prof A.C. Kher (Retd. IAS), Visiting faculty, UPES, Dehradun)

Mr Kher discussed about the scope, jurisdictions and functions of the 20 Statutory Authorities under the EA Act, 2003, named as:

- i. **National Load Dispatch Centre (NLDC):** The Electricity Act, 2003 has provided for constitution of the National Load Dispatch Centre for optimum scheduling and dispatch of electricity among the Regional Load Dispatch Centers. The constitution and functions of NLDC are yet to be prescribed by the Central Government.
- ii. **Regional Load Dispatch Centre (RLDC):** Section 25 of the Electricity Act, 2003 requires the Central Government to make regional demarcation of the country for the efficient, economical and integrated transmission and supply of electricity and in particular to facilitate voluntarily inter-connection and co-ordination of facilities for the inter-State, Regional and inter-regional generation and transmission of electricity. The RLDC is responsible inter-alia for dispatch of electricity within the regions, monitoring grid operations etc.
- iii. **State Load Dispatch Centre (SLDC):** Corresponding to the RLDC which operates at the regional level, the SLDCs have been envisaged at the State level with the responsibility of ensuring integrated operations of the power system in State.
- iv. **Central Transmission Utility (CTU):** The functions of the CTU are to undertake transmission of energy through inter-State transmission system and discharge all functions of planning and coordination relating to inter-State transmission system with State Transmission Utilities, Central Government, State Governments, generating companies etc. Power Grid Corporation of India Limited will be Central Transmission Utility.
- v. **State Transmission Utilities (STU):** The functions of the State Transmission Utility are to undertake transmission of energy through intra-state transmission system and discharge all functions of planning and coordination relating to intra-State transmission system with Central Transmission Utility, State Governments, generating companies etc.

In second half of his session, Mr Kher on the same grounds discussed about remaining statutory authorities such as: Forum for Redressal of Grievance of Consumers; Ombudsman; Appellate Tribunal; Assessing Officer; Appellate Authority; Investigating Authority; Adjudicating Officer; Special Courts; Arbitrators; Central Electricity Regulatory Commission; State Electricity Regulatory Commissions; Joint Electricity Regulatory Commission; Chief Electrical Inspector; Regional Power Committees; Central Electricity Authority.

Session 4: Section 63 of Electricity Act, 2003 (Shri Amit Kapur, Advocate Appellate Tribunal and Partner- J. Sagar Associates – Advocates and Solicitors, Delhi)

He started his discussion by discussing about the economic reality of India- dividing Indian economy into three different time phases; (i) Pre 1950s; (ii) Period from 1962-71; (iii) 1991 onwards. Moving on, the speaker discussed about three strands of any economy regarded as factors of production: Capital, Labour and Resources

In later half of his session, the speaker discussed about the complimentary provisions of Competition Act, 2002 and Electricity Act, 2003. He further discussed the concept of competitive bidding as to what is Bidding, Why is Competitive bidding regarded as the most appropriate form of bidding and what is so crucial to Bidding. Adding on to this he also discussed about the sanctity of contracts. He emphasized that bidding deals with the elements of production and allocation of resources which are public in nature must be transparent, equitable and fair; and all the resources must be vested in state as trustee of citizens. He raised

issues where the sanctity of various bidding process is lost and how SERC has not been empowered enough to take any penal decisions thereupon. What are the scope of powers to be exercised and the method of procedure to be followed by the State Commission in relation to competitive bidding? Can a third party, not being a participant to the bidding process, subsequently offer to supply at price lower than the price discovered through competitive bidding? Is competitive bidding based on selecting the lowest financial bidder or should other parameters be given due consideration?

DAY 3: September 20, 2014

Session 1: Licensing and Consumerism (Prof. A.C. Kher (Retd. IAS), Author of Book on “Energy Law and Policy”, Visiting Faculty, University of Petroleum and Energy Studies, Dehradun)

The first session of the day was presented by Prof. A.C. Kher (IAS), presently an academician at the University of Petroleum and Energy Studies, Dehradun. He started with briefing about the meaning and procedure of granting a license under the Electricity Act 2003 as per a judgment of Supreme Court in PTC India Ltd. vs. CERC (2010 (4) SCC 603). Further, delving upon electricity as a ‘good’ as well as a ‘service’, he mentioned that it is a corporeal and a movable good, but he made a very important note here that if the electricity is being supplied for free, then the receiver won’t be termed as the consumer (Chand Singh vs. SDO Punjab State Electricity Board), similarly, residents of unauthorized colonies in urban areas are neither entitled to electricity supply and nor acquire the status of a consumer (Haryana State Electricity Board vs. Ramavtar Chauhan). Deficiency in Services and case of Consumer Disputes as taken over to Consumer Forum were also elaborated by him. He further urged everyone to read the judgment of an important case clearly elaborating the duties and responsibilities of the officers (1994 (1) SEC 243) (Lucknow Development Electricity Authority vs. M.K. Gupta).

With regard to consumerism and adverse effects of conduct of Electricity Board, he remarked that there is a provision of proportional remission for tripping, load shedding on account of disruption of supply mentioning that mere broken seals of meter do not raise presumption of the theft of electricity. In this regard, he stated the case of Rishi Cement Co. Ltd. vs Bihar Electricity Board.

Concluding the concept of licensing, Prof. Kher referred to PTC India Ltd vs CERC case- 2010, under which Supreme Court has laid down role of licensing, stating the procedure to obtain license, standards of performance of licensee etc.

Session 2 : The Expectations of the Appellate Tribunal from SERC/ Utilities, in matters before the APTEL (Shri. Buddy A. Rangandhan Advocate- Appellate Tribunal New Delhi)

Advising on the expectations of the appellate tribunal on the SERCS and the state utilities, he tried to capsulize the expectations primarily in respect of judicial propriety, necessity for giving reasons in the order, consistency in decision making, strict observance of natural justice and transparency, fair play in action, balance between balance of competing interest of stakeholder, and the SERCs to be a regulator and not a court.

- The primary responsibility of state commissions is to follow and observe the orders of appellate tribunal, not just in name but in letter and spirit. Deliberate and willful violation of judgments of appellate tribunal has been order of the day. Some tariff proceedings where several people give their views are rarely brought before the appellate and State Commissions bring these views in front of appellate so that appellate can have an insight into it
- He further laid down the importance of the reasons in the order of the State Commissions which allow the Appellate Tribunal to determine the considerations. Therefore, a State Commissions order must

be well reasoned in front of appellate tribunal. It is the reasoning alone that can enable a higher court or Appellate Tribunal to appreciate the controversy in issue in its correct perspective he suggested.

- The concerned authority must observe natural justice and transparency in their procedures he further added. The consistency that the tribunal expects is the consistency of applicability of the principles by the commission. Stating that natural justice and transparency is ingrained in the act, he emphasized mandatory hearing from a party before condemning it.
- A very important view that he brought forth is the required balance between the competing interests of various stakeholders. The APTEL expects the commission to be an outsider, to take a view on the overall sector. It does not expect the commission to become a stakeholder itself.
- Last issue that tribunal expects as told by him was that the state com should be regulator and not courts; he highlighted the difference by stating a very famous Lafarge judgment that sums up the difference between the regulator and court. According to which, The court or tribunal is basically an authority which reacts to a given situation brought to its notice, whereas a regulator is a proactive body with powers conferred upon it to frame statutory rules and regulations. The decisions by a regulator will affect the sector as a whole, so they have to be rational.

Session 3: Grievance Redressal Mechanism under Electricity Act, 2003 (By Mr. Daljit Singh, Consultant – Energy Policy, New Delhi).

Elaborating on legal aspects of consumer protection, he talked about the safeguards that are there in the law for the consumers and also some of the avenues for the participation of consumers available in the act and the regulations. He indicated two aspects- consumer protection and consumer involvement. He referred protection to providing good quality of service, under which he covered available options for redressal of consumer grievance. Consumer participation was rated important by him because it provides a certain amount of accountability and it's a way of building social cohesion, greater understanding of consumers if they are involved in the decision making.

Moving on to consumer grievance redressal mechanism, he mentioned that each discom needed to establish Consumer Grievance Redressal Forum (CGRF) per SERC guidelines § 42(5) of Act; also any consumer not satisfied with CGRF can approach Ombudsman. He pointed the three tier mechanism that most states have established for resolving consumer grievances, wherein the consumer first goes to the discom to the internal complaint handling procedure, and then if not satisfied, goes to the CGRF, then if they are still not satisfied, he can approach the ombudsman.

Talking about the standards of performance as mentioned in the act, wherein it says that SOP have to be established for the licensees by SERCs, if a licensee fails to meet the SOPs, he has to pay a compensation to the persons affected and this payment has to be done in 90 days.

Moving on to the consumer involvement, he indicated the state advisory committees that have been set up and consumers being able to participate in them. Mr. Singh also mentioned other aspect of consumer involvement is Consumer Participation Regulatory Proceedings – where the commissions are supposed to consider the objections and suggestions received from public, which means that a public input process is in place. The national electricity policy takes it a little further, recognizing a need to build capacity of these consumer groups and their effective participation. Generally hearings are open to the public, so in this way, the commissions try to be open and transparent.

He concluded his session by delving upon major areas on which the committees can advise CERC/SERC like-Major policy questions, Service provided by licensees, Compliance with license provisions, Protection of consumer interest, Electric supply and SoP.

Session 4 : Important Judgments of Supreme Courts and APTEL (By Shri V.J. Talwar, Former Member APTEL, New Delhi)

After an interactive lunch experience the participants returned for two geared up sessions, first being by Mr. Talwar, who in his session dealt with Supreme Court and other important appellate tribunal judgments. Referring to various judgments related to power sector, he threw light on the important principles of law as laid down by these judgments.

Few cases that he cited are given as under:

- West Bengal Electricity Regulatory Commission & others Vs Calcutta Electricity Supply Company (2002)8SCC715: The important points emerged out of this judgment were- firstly, it laid down that all stake holders have right to participate in tariff proceedings before the Commissions as well as before the Appellate forum. Regarding regulations, it stated that once framed by the Commission and placed before the legislature, they become part of the parent statute and also only the Commission was to be the sole authority to determine the tariff as per the procedure in the said Act.
- Power Trading Corporation India Ltd. Vs Central Electricity Regulatory Commission: This case drew upon certain important principles as- Regulations framed by the Commission under the Act are subordinate legislations and therefore can be challenged only under judicial review but APTEL do not have powers of judicial review both under Section 111 as well as under section 121.

Apart from above cases, judgments given another various other cases such as: Brihanmumbai Electric Supply & Transport Undertaking (BEST)Vs. Maharashtra Electricity Regulatory Commission (MERC) & Ors; M/s. Sesa Sterlite Ltd Vs. Orissa Electricity Regulatory Commission & Ors. CIVIL APPEAL NO. 5479 of 2013 and T.N. Generation & Distribution Corporation Vs PNP Power Gen Co. CIVIL APPEAL NO. 4126 OF 2013 were also discussed among others.

Panel discussion: “Legal Aspects of Power Sector Regulations- Experience and Enforcement Issues”

In consonance with the sessions on Legal Literacy on power sector in India, this session focused on ‘Legal Aspects of Power Sector Regulations- Experience and Enforcement Issues’. The session was chaired by Shri H.L. Bajaj; Shri V.P Raja, Shri Vishvanath Hiremath, Shri V.J. Talwar, Sh. V.S. Verma, Shri Amit Kapur and Shri Buddy Rangandharn being the panelists.

Shri V.P. Raja requested the senior most panelist Mr. Bajaj to moderate the session. Shri. Bajaj (Former Member APTEL & Ex Chairman CEA and Ex. CMD NTPC) moderated the session by introducing the theme. He highlighted that Electricity Act has been a tool to improve the Power sector. After enlightening the participants with his views, Shri H.L Bajaj opened the session to other panelists asking them to enrich all with their own experience, and raised the question whether the act is being implemented or not, questioned the ground reality, and suggestions to make the sector better. Apart from this panelist also highlighted the way forward and recognizes and removes the hurdles.

Panel Member 1: Shri Amit Kapur

Mr. Kapur mentioned that ultimately, the important thing about the sector is making sure that the capital, resources and men at work are utilized to maximize the output. We need to understand the sector in context of outcome. He mentioned the fundamental issues that we still face- one being conflict between law and economics. One of the doctrine of law Caveat Emptor says ‘let the buyer be aware’ in contrast to one of the founding principle of economics- Information Asymmetry as per which ‘only the seller knows better’, buyer can’t be aware, so such conflicting principles are the challenges in front of the regulators.



Another big challenge is the way the ownership is coming in the way of finding solution. When money is created, an asset is created for the purpose of consumption by the public- this thinking should be at the heart of all policy making, all regulation, and all risk mitigation measures. Thirdly, Mr. Kapur concluded while making an important remark that the government and the private sector must engender a basic level of trust among them. PPP is pitied to fail, unless their mindsets and outlooks don't change regarding the functioning of each other.

Panel Member 2: Shri V. P. Raja

Reiterating the complex nature of the sector, Mr. Raja mentioned that final decision making involves a lot of calibration, there is a grey area, and most decision making will involve finding the right grey area. Pointing towards the regulators decision, he said that however optimal it may be, will always look suboptimal from a particular area, and it's the duty of the commission to come to what they feel is optimal. Quoting President K.R. Narayanan, he made an important remark that it is not the constitution which has failed India; it is the people running the constitution, who have failed the constitution. Similar applies to electricity sector he said and urged for a need of introspection. To find an improved process, appointment of right members is of great importance. Not just subject matter skills, but interpersonal skills were also emphasized by him. In the end, he said that like all of India, the problem of governance mars the electricity sector. The need of the hour is supremacy of law, and its application with a clean conscience.

Panel Member 3: Shri V. Hiremath

Appreciating the efforts put behind this three day event, he brought up the irrelevance of public hearings on tariff, with a recent experience he told that nothing substantial is being reported even out of a two day hearing. So, there arises a need to educate the consumer as well. And he appreciated the efforts of the organizations who are trying to educate the consumer. He again emphasized to realize the most out of a public hearing, and not let them become a mere farce or a mere formality but meaningful.

Panel Member 4: Shri V.S. Verma

He lauded to organize such in-depth professional conference. He emphasized the main objective to provide reliable power supply to consumer, for that matter, he pointed out many problems that are arising like- because of lack of information, they don't know how the tariffs are set, what are the components of tariffs etc. Supporting Shri Hiremath, he also urged for a strong need to educate the consumers as well as the politicians- to avoid lawlessness, and disrespect of law, along with reforms in the governance and the

decision making process. Secondly, he mentioned that private sector should keep up with the quality standards that they are supposed to maintain.

He further made a thoughtful remark regarding the renewable energy in the system, which is leading to problems for the conventional energy generation. Moreover, the people building this renewable energy are avoiding following any set of rules and regulations. Citing the example of Germany, he brought attention towards the serious damage caused by such resources to the conventional sources. He suggested to move slow and to indigenize it.

Panel Member 5: Shri Buddy Rangandhan

Emphasizing on the idea behind 2003 act, i.e. all stakeholders should benefit, he proposed that more than educating consumers at large, informed, responsible and educated consumer assistance should be given to state commissions and the tribunal. Naming 'Prayas' and their informed solution about having a higher cross subsidy surcharge to discourage short term open access, and lesser cross subsidy surcharge for long term loads. This will disincentivise open access in short term. He also spoke about a trust deficit within the regulatory framework in India- within the utilities and the commission.

Panel Member 6 : Shri V.J. Talwar

Supporting Mr. Verma's view of only the advocated getting benefitted, to ensure how this issue is persistent, he mentions section 111, which says tariff fixation is a legislative function and cannot be challenged generally, but section 11 has made it appealable. Secondly he concluded with role of a regulator to balance all the stakeholders being a mammoth task, requirement of all being unique.

Chairperson: Shri H.L. Bajaj

Looking at the sector, he mentioned that one-third of India is without power, to make electricity available to one and all, private sector has been invited to garner the additional resources.

He pointed out the progress after 2003 act. From 11% private participation in generation, it has gone well above to 30 %, but still we are not able to meet the peak demand. Mr. Bajaj emphasized the need to find out the reasons for this. He encouraged more and more people to come for the sake of their interests to the regulatory commission, regarding it as a healthy sign. So he emphasized the need of not the institution but the people behind the desk. Most importantly, he suggested pooling of cross subsidy in a particular licensees area. The collected cross subsidy should be allocated in proportion to the electricity which is being supplied, so that nobody has any inhibitions. So that cross subsidy remains at reasonable level and nobody is deprived of it.

Valedictory Address by Shri Hiremath

"Agreements are better than Arguments", stating this, the speaker reiterated the importance of fair and reasonable acceptance of the decisions by the stakeholders. Today, legalities are taking over practicality and therefore every decision is challenged if it is not suitable to one set of stakeholders. He further urged that if litigation keeps on increasing, then it will be a hurdle for the growth of power sector. One pending decision equals a penalty of thousands of crores. Therefore, he mentioned the difficulty for the regulators to balance everyone's interest.

The session ended with few participants coming forward to express their views, wherein they thanked for being benefitted out of the event. Few of them also made certain suggestions for further improvements.

The day concluded by Vote of Thanks which was given by Mr Arun Talwar, Chief Operating Officer, CIRC and Mr S.D. Mathur, CEO & Director RMCS who thanked all the esteemed guests, presenters, speakers, participants, teams of CIRC and RMCS.

Feedback

The workshop achieved its objective; unbundling the issues related to legal aspect of the power sector. Participants appreciated the efforts of CIRC and RMCS to arrange such workshops that cover power sector as whole-issues concerning the generation distribution, obligations of commission etc.

Suggestions were received to arrange workshops on topics such as: Competition law with respect to Corporate Scenario, tariff related matters, issue related to PPAs, international experience etc.



ANNEXURE I

**CUTS Institute for Regulation & Competition, New Delhi
And
Rachana Management Consultants and Studies (P) Ltd., Mumbai**

Presents

A Three Day Workshop on
Legal Literacy and Legal Aspects of Power Sector

for

Professionals Working in Power Sector

On

18th September, 2014 to 20th September, 2014

At

The Muse, Sarovar Portico

A-1, Chirag Enclave, Nehru Place, New Delhi- 110 048, India

Programme Objectives

At the end of the workshop, the participants should be:

- Able to decipher, analyse and understand the legal aspects of their working in the power sector/ regulatory commission ;
- Sensitized towards the legal aspects of their functioning as working professionals and managers in their respective commissions/utilities; and
- Able to understand the 'legal' ramifications of their routine work

WORKSHOP PROGRAMME

Thursday, 18th September, 2014		
Timings	Topic	Speaker
0900	Registration	
Inaugural Session		
0930	Welcome & Introduction of Participants	Mr Arun Talwar Chief Operating Officer CUTS Institute for Regulation & Competition New Delhi
0945 – 0950	Presentation of Bouquet and Overview of the Workshop	Mr S.D. Mathur CEO & Director, Rachana Management Consultant & Studies (P) Ltd , Mumbai
1000 – 1015	Presidential Address	Mr V.P. Raja Former Chairman MERC, Mumbai
1015 – 1035	Inauguration & Keynote Address By Chief Guest	Hon'ble Justice M. Karpaga Vinayagam, Chairperson, APTTEL
1035 – 1040	Vote of Thanks	Ms Arvinder Kaur Asth. Director CUTS Institute for Regulation & Competition New Delhi
1040 – 1045	Group Photograph	
1045 – 1115	Tea Break	

1115 – 1230	Session 1: Evolution of Regulatory process in the Indian Power Sector – (An Introduction) <ul style="list-style-type: none"> • Features of Electricity Act,2003(A perspective) • National Electricity Policy • National Electricity Plan • National Tariff Policy 	Mr Sanjeev Kapoor, Partner- Khaitan & Co., New Delhi
1230-1330	<ul style="list-style-type: none"> • Power Purchase Agreement • Open Access 	Mr. Radha Krisnan Director, DEA Group
1330 – 1430	Lunch	
1430 – 1545	Session 2: The Constitution of India: (A brief study) <ul style="list-style-type: none"> • Preamble, Introduction and salient features of the Indian Constitution • The Fundamental Rights and the Directive Principles of State policy • The Union, The States and the relations between the Union and the States; • The Seventh Schedule – List 	Mr V.P. Raja Former Chairman Maharashtra Electricity Regulatory Commission, Mumbai
1545 – 1600	Tea Break	
1600 – 1730	Session 3: Indian Legal System: (An overview) <ul style="list-style-type: none"> • The Role Supreme Court, High courts, District courts and Tribunals • Procedures and Powers of the Appellate Tribunal • Important Decisions of the Appellate Tribunal • Arbitration • Important Decisions of High Courts and Supreme Court 	Mr Buddy A. Rangandhan Advocate – Appellate Tribunal
Friday, 19th September, 2014		
Timings	Topic	Speaker
0930 – 1045	Session 4: Basic Legal Concepts <ul style="list-style-type: none"> • Principles of Administrative law • Principles of Natural Justice • Evidence Act and any other acts applicable 	Mr V.P. Raja Former Chairman Maharashtra Electricity Regulatory Commission, Mumbai
1045 – 1100	Tea Break	
1100 – 1215 1215 – 1330	Session 5: Quasi-judicial function - Functions (An overview with reference to powers and functions of CERC and SERCs) <ul style="list-style-type: none"> • Quasi-judicial function • <i>Functions of SERCs</i> • How is a quasi-judicial function different from the functioning of other courts? • Structure of SERCs • Functions of SERCs • SERC's jurisdiction • Code of Conduct as Officers of the Court 	Mr Arijit Maitra Advocate & Legal Advisor Mumbai
1330 – 1430	Lunch	

1430 – 1610	Session 6: Statutory Bodies Under Electricity Laws <ul style="list-style-type: none"> Regulatory Bodies Judgements and Case Laws 	Prof. A.C. Kher (IAS) Author of book on “ Energy Law & Policy” Visiting Faculty, UPES, Dehradun
1610 – 1630	Tea Break	
1630 – 1745	Session 7: Section 63 of Electricity Act, 2003 <ul style="list-style-type: none"> Competition Bidding – sanctity of Contract Lesson learnt Suggestions for the future 	Mr Amit Kapur <i>Partner, J. Sagar Associates - Advocates & Solicitors</i> New Delhi
Saturday, 20th September, 2014		
Timings	Topic	Speaker
0930 – 1045	Session8: Licensing and Consumerism	Prof. A.C. Kher (IAS) Author of book on “ Energy Law & Policy” Visiting Faculty, UPES, Dehradun
1045 – 1115	Tea Break	
1115 – 1230	Session 9: The Expectations of the Appellate Tribunal from SERC/Utilities, in matters before the APTEL	Mr Buddy A. Rangandhan Advocate – APTEL New Delhi
1230 – 1300	Session 10: Grievance Redressal Mechanism under Electricity Act, 2003 - (Scope, Constitution and Procedure) <ul style="list-style-type: none"> Consumer Grievance Redressal Forum (CGRF) – Ombudsman 	Mr Daljit Singh, Consultant – Energy Policy, New Delhi
1300 – 1345	Lunch Break	
1345 – 1500	Session 11: Important judgments of Supreme Court and APTEL	Shri V.J.Talwar Former Member, APTEL New Delhi
1500 – 1615	Session 12: Panel Discussions <i>"Legal Aspects of Power Sector Regulation - Experience and Enforcement Issues"</i>	Introduction 1. Mr V.P.Raja, Former Chairman, MERC, Mumbai 2. Mr H.L. Bajaj , Former Chairman, CEA and Member APTEL 3. Mr V.J. Talwar, Former Member, APTEL 4. Mr V.S.Verma , Former Member, CERC 5. Adv. Buddy A.Rangandhan 6. Adv. Amit Kapur Discussions
1615 – 1630	Tea Break	
Wrap-up and Valedictory Session		
1630 – 1640	Welcome	Mr Arun Talwar Chief Operating Officer CUTS Institute for Regulation & Competition New Delhi

1640 – 1650	Wrap-up of Workshop	Mr V.P.Raja Former Chairman Maharashtra Electricity Regulatory Commission, Mumbai
1650 – 1700	Participants Views/Feedback	
1700 – 1725	Valedictory Address By Chief Guest & Award Of Certificates	Vishvanath Hiremath Chairman Rajasthan Electricity Regulatory Commission, Jaipur
1725 – 1730	Vote of Thanks	Mr S.D.Mathur CEO & Director Rachana Management Consultant & Studies (P) Ltd , Mumbai
1730	Hi-Tea	