

S. KRISHNAMURTHI AIYAR'S LAW RELATING TO ELECTRICITY IN INDIA (2nd ed., 2008) rev. by Pramod Kumar Das. Universal Law Private Limited, C-FF-1A, Dilkhush Industrial Estate, G.T. Karnal Road, Delhi-110033. Pp. cxxxi + 1784. Price: Rs. Rs.1695/-.

MANKIND IS no stranger to the forces of electromagnetism; whether it was 600 B.C. Greek philosopher Thales of Miletus, who observed that amber rubbed with a piece of fur attracted dried leaves,¹ or the American statesman Benjamin Franklin's perilous experiments with lightning in the 1750s.² However, it was not until late 1800s that practical uses of electricity developed. The works of inventors like Thomas Alva Edison Joseph Swan, Nikola Tesla and others led to the commercial generation and utilization of electricity, although the famous quote attributed to Edison, "we will make electricity so cheap only the rich will burn candles",³ sounds quite ironical today.

Kolkata was one of the first cities in India to be electrified, in the year 1899.⁴ In the pre-Independent India, generation and distribution of power was taken up by private entrepreneurs with little co-ordination between them.⁵ It was in this backdrop that the Indian Electricity Act,

1. "The philosopher Thales of Miletus (640-546 B.C.) is thought to have been the first person who observed the electrical properties of amber. He noted that when amber was rubbed, it acquired the ability to pick up light objects such as straw and dried grass." : Robert C. Dorf and James A. Svoboda, *Introduction to Electric Circuits 2* (Wiley-India, 6th ed., 2009).

2. "These experiments led Franklin to speculate about the nature of lightening. In 1752 he flew a metal-tipped kite in an electrical storm. It attracted some of the lightening, but not directly (which was lucky for Franklin)... It was also a very foolish and dangerous experiment. Several people who tried to duplicate Franklin's kite experiment were electrocuted." : Seymour Stanton Block, *Benjamin Franklin, Genius of Kites, Flights and Voting Rights* 79 (McFarland & Company, Inc., 2004).

3. Scott L. Montgomery, *The Powers That Be: Global Energy for the Twenty-First Century and Beyond* 25 (University of Chicago Press, 2010).

4. "The first commercial thermal power plant of 1 MW capacity was operated by Calcutta Electricity Supply Corporation in Kolkata in 1899." : Malti Goel, *Energy Sources and Global Warming* 464 (Allied Publishers, 2005).

5. S.L. Rao, *Governing Power* 80 (TERI Press, 2004).

1903 saw the light of the day. It was soon to be replaced with the Indian Electricity Act, 1910, containing the law relating to “supply and use of electrical energy”. The Act, among others, provided for license for supply of electricity, constitution of a central electricity board,⁶ criminal offences pertaining to electrical energy, *etc.* The development of power sector was entrusted to state electricity boards under the Electricity (Supply) Act, 1948. Alongside liberalisation and economic reforms of the 1990s, need was felt for reforms in the power sector too. To that end, the Electricity Regulatory Commission Act, 1998 was enacted, which provided for establishment of a central electricity regulatory commission and state electricity regulatory commissions. It was the year 2003 that witnessed the major step towards reforming the power sector, in the shape of the Electricity Act, 2003 which consolidated the law relating to electricity, replacing the Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commission Act, 1998.

The book under review,⁷ has been described as an exhaustive section-wise commentary on the Electricity Act, 2003 along with central and state Acts, rules, regulations, notifications and model forms. As described, the book can clearly be divided into these two sections: first 558 pages of the book deal with the Electricity Act, 2003 with a synopsis of the provisions and comments and notes thereon. The rest of the book comprises of ten appendices consisting of rules, regulations, model forms, *etc.* The book is more of a ‘practitioner’s manual’ than an academic exercise, which is not necessarily an issue, as it results in the focus throughout remaining on the provisions of law and case law. The book cites around 1700 judgments from the Supreme Court and High Courts from all over India, which have been incorporated as brief notes in the commentary to the provisions. Besides the case law, the commentary also refers to the notes on clauses of the Bill. References are also made, where applicable, to the national electricity policy, 2005 and the reports such as the Report of Standing Committee on Energy, 2002. The commentary to the provisions is mostly well researched so far as the case law emerging from the Supreme Court and the High Courts of India is concerned, and it serves to instantly provide information on the interpretation given to the provisions by the courts.

6. As amended by Act 10 of 1937.

7. Pramod Kumar Das, *S. Krishnamurthi Aiyar’s Law Relating to Electricity in India* (2nd ed., 2008).

The provisions of the Act are followed by extensive comments and notes, but the notes often appear out of place and not relevant to the context of the provision concerned. For instance, comments to the Preamble of Act include comments on “theft of energy: onus to prove” and “theft of electricity”; comments which would have been appropriate along side section 135 of the Act which specifically provides for “Theft of Electricity”. Section 6 of the Act prescribes that rural electrification shall be the joint responsibility of state government and central government. The commentary accompanying section 6, however, among others, discusses minimum guarantee charges, compensation for electrocution, nature of the offence of theft of electricity, *etc.* which are completely irrelevant so far as section 6 is concerned. Comments pertaining to theft of electricity creep in again, in commentary to section 12, which provides for licensing. There are many instances of misplaced comments, which would have been useful had they been at the correct place. It appears that the book requires proper editing.

The book seems to have missed some leading judgments on electricity law. The constitution of special courts and ouster of jurisdiction of the civil courts has not been discussed at all, though the same has been a contentious issue.⁸ So is the unimaginable exclusion of the judgment of the national consumer disputes redressal commission (NCDRC) deciding on the jurisdiction of consumer forums in cases of theft of electricity.⁹ The courts’ opinions¹⁰ on writ jurisdiction vis-à-vis the consumer grievances forum and ombudsman constituted under section 42(5) and section 42(6) of the Act respectively, seem to have been overlooked.

The most glaring omission from the book, however, is nearly a complete absence of any case law from the quasi-judicial bodies including the consumer forums and the state electricity regulatory commissions. Even the decisions of the appellate tribunal for electricity, which is the highest adjudicatory body to decide the disputes arising out of the Act, have not been referred to. Several important decisions on tariff, consumer affairs, *etc.* have been made by the appellate tribunal in recent times

8. *B.L. Kantroo v. BSES Yamuna Power Limited* 154 (2008) DLT 56.

9. *Accounts Officer, Jharkhand State Electricity Board v. Anwar Ali II* (2008) CPJ 284 (NC).

10. *V.R. Vivek v. Kerala State Electricity Board*, WP(C) No. 2182 of 2007 before High Court of Kerala decided on 18.10.2007; *Yogesh Jain v. BSES Yamuna Power Ltd.* AIR 2007 Del. 161.

including decisions such as the *Maharashtra State Electricity Transmission Co. Ltd. v. Maharashtra Electricity Regulatory Commission*,¹¹ *Ajmer Vidyut Vitran Nigam Ltd. v. Sisodia Marble & Granite Pvt. Ltd.*,¹² *North Delhi Power Ltd. v. Delhi Electricity Regulatory Commission*,¹³ and, far too many to be listed here exhaustively. The appellate tribunal for electricity is a specialized quasi-judicial body established under section 111 of the Electricity Act, 2003. In terms of section 112, the appellate tribunal is composed of a chairperson and three other members. Section 112(2)(b) of the Act prescribes that every bench of the tribunal shall consist of at least one “judicial member” and one “technical member” each. Section 113(1)(b)(iii) prescribes the qualifications of a technical member as one who is, or has been, a person of ability and standing, having adequate knowledge or experience in dealing with matters relating to electricity generation, transmission and distribution and regulation or economics, commerce, law or management. It is evident that the appellate tribunal is a specialized tribunal and adjudicates disputes involving both law and technicalities of electricity generation, distribution and transmission. In the preface to the first edition of the book, the author claimed that “in this volume where the legal aspect has been given importance it deserves, the technical aspect has not been neglected.” However, the complete exclusion of the orders and decisions of the appellate tribunal from the book negates this claim.

Various central and state Acts, rules and regulations compiled and consolidated in this book make it quite useful for ready reference. It was, however, surprising to find that despite this book being a revised edition, published in 2008, it fails to include the Delhi Electricity Supply Code and Performance Standards Regulations, 2007, and appends only the repealed Delhi Electricity Regulatory Commission (Performance Standard – Metering and Billing) Regulations, 2002.

The book comes along with a CD containing central and state acts, rules and regulations. Though missing in this case, a software version of the complete book, under appropriate copy-protection mechanism, would have been welcome considering the ease of use and portability of an electronic book. However, in view of the state of software plagiarism in the country, it would take some time before a publisher takes the bold step to provide a software version of its entire book. The reviewer can

11. Appeal No. 76 of 2007 decided on 1 October, 2007.

12. Appeal No.202 of 2006 decided on 14 November, 2006.

13. Appeal No.265 of 2006 decided on 23 May, 2007.

only hope that the publisher of the book under review, being one of the leading publishers in the area of law, may consider such a course in the future.

Considering the fact that the focus of the book is on the cases decided by the Supreme Court and the High Courts in India, complete exclusion of the quasi-judicial bodies in the field of electricity law specially set up under the Electricity Act, 2003 is not understandable. The reviewer can, at best, suggest this book as one of the reference books on the subject but not an exhaustive or exclusive text book.

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