* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment reserved on: 19.06.2026*
Judgment delivered on: 22.06.2026

\+ **W.P.(C) 8283/2026, CM Nos.39088/2026 & 39089/2026**

BSES RAJDHANI POWER LIMITED & ANR. .....Petitioners

Versus

GOVERNMENT OF NCT OF DELHI & ORS. .....Respondents

Advocates who appeared in these cases

For the Petitioner : Mr. Sandeep Sethi & Mr. Buddy Ranganathan, Sr. Advs. with Mr. Amit Kapur, Mr. Alok Kumar, Mr. Anupam Varma, Mr. Gauhar Mirza, Mr. Varun Chandiok, Mr. Aditya Gupta, Mr. Aditya Ajay, Mr. Yash Srivastava, Ms. Shreya Sethi, Mr. Krishna Gambir, Mr. Adamya Ojha & Ms. Mahima Kaur, Advs.

For the Respondents : Mr. S.V. Raju, ASG with Mr. Annam Venkatesh, Mr. Shaurya Sarin & Ms. Aditi Andley, Advs. for GNCTD.
Mr. Sameer Vashisht & Ms. Harshita Nathrani, Advs. for GNCTD.
Mr. Sanjeev Kumar Dubey, Sr. Adv. with Mr. Anirudh & Mr. Shah Rukh Khan, Advs. For R-2/DERC.
Dr. S.S. Hooda, Mr. Aditya Hooda & Ms. Rashmi Rawat, Advs. for R-3 / CAG.

CORAM:
HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

TEJAS KARIA, J

1. The present Petition has been instituted under Article 226 of the Constitution of India, 1950, assailing the notice dated 06.06.2026 ("**Impugned Notice**") issued by the Government of National Capital Territory of Delhi ("**GNCTD**") under Section 20(3) of the Comptroller and Auditor General (Duties, Powers and Conditions of Service) Act, 1971 ("**CAG Act**"), whereby the GNCTD has proposed the entrustment of audit of the Petitioners to the Comptroller and Auditor General of India ("**CAG**").

FACTUAL MATRIX

2. The Petitioners, namely BSES Rajdhani Power Ltd. ("**BRPL**") and BSES Yamuna Power Ltd. ("**BYPL**"), are distribution companies which were granted licences by the Delhi Electricity Regulatory Commission ("**DERC**") under Section 20 of the Delhi Electricity Reforms Act, 2000 ("**Reforms Act**") to undertake distribution and retail supply of electricity in their respective areas of supply in Delhi.

3. On 06.01.2001, GNCTD resolved to unbundle the Delhi Vidyut Board ("**DVB**"), together with its undertakings and assets, into six successor companies. On 15.02.2001, GNCTD issued a Request for Qualification in furtherance of the said unbundling process. Thereafter, on 20.11.2001, GNCTD notified the Delhi Electricity Reforms (Transfer Scheme) Rules, 2001 ("**Transfer Scheme**"), in exercise of powers conferred under Sections 15, 16 and 60 of the Reforms Act, *inter alia*, prescribing the manner of

transfer and vesting of the assets, liabilities, proceedings and personnel of the erstwhile DVB in the successor entities, together with the terms and conditions governing such transfer and vesting.

4. On 01.07.2002, the Transfer Scheme was brought into effect by GNCTD, whereupon the erstwhile DVB was functionally unbundled, and its undertakings, assets, liabilities and personnel were vested in seven successor companies, comprising one Holding Company, two Generating Companies, one Transmission Company and three Distribution Companies, including the Petitioners. The functions of generation, transmission and distribution of electricity were transferred to the Generating Companies, Transmission Company and Distribution Companies, respectively, with clean opening balance sheets, while the residuary assets and liabilities were vested in the Holding Company.

5. Soon after the privatization of the erstwhile DVB, the Petitioners requested CAG to conduct their audit. However, by letter dated 23.10.2002, CAG declined to conduct such audit on the ground that the Petitioners had ceased to be Government companies. Prior to the privatization and unbundling of the erstwhile DVB on 01.07.2002, its audit was undertaken by CAG, DVB being an instrumentality of the Government and wholly owned by GNCTD.

6. On 10.06.2003, the Electricity Act, 2003 ("**Electricity Act**") came into force, and the Petitioners have continued to function in terms of Sections 185(2)(a) and 14 thereof.

7. During the period 2002-2003 to 2006-2007 ("**Policy Direction Period**"), the tariff for supply of electricity in Delhi was to be determined on

the basis of the principles specified by the DERC in the Bulk Supply Tariff Order dated 02.01.2001, read with the Transfer Scheme and the Policy Directions. At the end of the Policy Direction Period, the Regulatory Asset ("**RA**") / under-recovery of costs by the Petitioners stood at ₹562.97 crores.

8. On 06.01.2006, the Ministry of Power, Government of India ("**MoP**"), notified the Tariff Policy, 2006 under Section 3(1) of the Electricity Act, *inter alia,* providing that RA may be created only as an exception, including in cases involving natural causes or *force majeure* conditions; carrying costs of RA were to be allowed to the utilities; recovery of RA was to be time-bound and ordinarily completed within a period not exceeding three years, preferably within the control period; and resort to RA was not to be repetitive. It was further provided that, where RA was proposed to be adopted, it must be ensured that the Return on Equity ("**RoE**") of the licensee did not become unduly low in any year so as to adversely affect its borrowing capability.

9. On 08.07.2010, the DERC requested GNCTD to seek an audit of the accounts of the Petitioners by CAG, in view of serious allegations of discrepancies in their accounts. In response, on 06.08.2010, GNCTD sought clarification from the DERC as to the provision of law under which such a request could be made. On 15.12.2010, in response to the issues raised by GNCTD, the DERC issued a Statutory Advice under Section 86(2)(iv) of the Electricity Act to GNCTD, stating that tariffs in the past years had not been cost-reflective and that the Petitioners had been compelled to resort to extensive borrowing to sustain their operations, with no surplus towards RoE. The Statutory Advice further recorded that the DERC's past practice

of assuming higher surplus for tariff fixation had not adequately accounted for delays in commissioning of various generating plants, reduction in the rate for sale of surplus energy due to the CERC (UI Charges and Related Matter) Regulations, 2009, and the unprecedented increase in power purchase costs owing to substantial increase in the variable cost of NTPC Ltd. stations.

10. The Statutory Advice also recorded that revenue from the sale of electricity had been insufficient even to meet power purchase costs, thereby requiring the Petitioners to borrow on that account as well, and rendering their financial position more precarious, with revenue gaps far beyond sustainable levels. Lastly, Statutory Advice observed that there was no fuel cost adjustment mechanism to provide for periodic recovery of variation in fuel costs.

11. On 20.12.2010, GNCTD responded to the Statutory Advice dated 15.12.2010, *inter alia*, stating that the DERC, while determining the tariff of the Petitioners, had overlooked the principles laid down in the Tariff Policy, and that GNCTD had undertaken an exercise to ascertain the true and fair financial position of the Petitioners. It was further stated that GNCTD had engaged M/s SBI Caps as consultant, along with the Institute of Chartered Accountants of India, to analyze the operational and liquidity position of the Petitioners. Lastly, GNCTD stated that the DERC would pass the Tariff Order after considering all aspects of the Tariff Policy, the orders of the Appellate Tribunal for Electricity ("**APTEL**"), the applicable laws, and other relevant documents while deciding the tariff issues.

12. On or about 08.02.2011, United Residents Joint Action ("**URJA**") filed a Public Interest Litigation bearing W.P.(C) No. 895/2011 ("**PIL**") before this Court, seeking a direction that the CAG should conduct an audit of the Petitioners.

13. On 09.11.2011, GNCTD filed an affidavit in the PIL stating that it had no locus in law to accede to the request of the DERC, and that there was no enabling provision, either under the Electricity Act or under the Reforms Act, to refer the audit of accounts of private companies to CAG.

14. On 01.02.2013, the DERC issued another Statutory Advice to GNCTD under Section 86(2) of the Electricity Act, acknowledging regulatory failure and recommending that Central Government-sponsored schemes be extended to the Petitioners, considering that such schemes would ultimately benefit consumers by reducing tariffs.

15. On 07.01.2014, GNCTD informed the Petitioners that, pursuant to GNCTD's request, the CAG would conduct an audit of the Petitioners under Section 20 of the CAG Act from the date of privatization, i.e., 01.07.2002.

16. In January 2014, the Petitioners filed W.P.(C) Nos. 529 and 539 of 2014 challenging GNCTD's request for conduct of a CAG audit of the Petitioners. On 24.01.2014, this Court issued notice in the said petitions and directed that the CAG shall not submit its final report.

17. The Petitioners preferred LPA Nos. 125 and 140 of 2014 ("**LPAs**") against the order dated 24.01.2014. On 24.03.2014, this Court declined interim relief and directed the Petitioners to continue to fully cooperate with the CAG.

18. On 06.02.2014, the Petitioners filed Writ Petition (Civil) Nos. 104 and 105 of 2014 ("**BSES Writs**") before the Supreme Court, *inter alia*, seeking a declaration that they were entitled to costs and allowances prudently incurred in accordance with Sections 61 and 62 of the Electricity Act and the methodology specified under the Multi Year Tariff Regulations, and further seeking a direction to the DERC to give effect to the deferred cost created as RA in accordance with the Tariff Policy.

19. On 26.03.2014, the Supreme Court passed an order in Civil Appeal No. 884/2010 directing the DERC to submit liquidation plans for liquidation of RA and directing the Petitioners to make payment of current dues with effect from 01.03.2014, relating to the billing period from 01.01.2014.

20. On 01.05.2014, the DERC proposed a roadmap for recovery of the Petitioners' revenue gap over a period of six to seven years by way of an 8% surcharge on each year's Annual Revenue Requirement ("**ARR**"), which was thereafter implemented by the DERC.

21. On 30.10.2015, the Division Bench of this Court delivered judgment in the PIL ("**URJA Judgment**"), holding that GNCTD had rightly exercised power under Section 20 of the CAG Act. However, it further held that the powers of the State Government in relation to electricity stood vested in the DERC, and that once a regulatory body vested with the power to audit accounts had been constituted, no parallel audit could be directed at the instance of the State Government. It was further held that, though an audit by the CAG of the Petitioners may be possible on the ground that the Petitioners satisfied the test of "body or authority", such audit would be a futile exercise and would not serve any public interest. Accordingly, the

Division Bench quashed and set aside the direction issued by GNCTD under Section 20(1) of the CAG Act for audit of the Petitioners.

22. On 01.12.2015, the United Raws Joint Action Judgment was challenged by URJA by filing Civil Appeal No. 12013/2016 before the Supreme Court. On 13.01.2016, GNCTD also filed Civil Appeal Nos. 12014-12019/2016 before the Supreme Court assailing the URJA Judgment. On 14.01.2016, the CAG filed Civil Appeal Nos. 12020-12025/2016 before the Supreme Court assailing the URJA Judgment.

23. On 06.08.2025, the Supreme Court delivered judgment in the BSES Writs ("**RA Judgment**"), holding that the revenue gap between the approved ARR and the estimated annual revenue from approved tariff may be permitted only in exceptional circumstances, and that RA should not exceed a reasonable percentage, namely 3% of the ARR, as a guiding principle. It was further held that, where RA is created, it must be liquidated within a period of three years, and that the existing RA must be liquidated within a maximum period of four years commencing from 01.04.2024. The Supreme Court further directed the Regulatory Commissions to provide a trajectory and roadmap for liquidation of the existing RA, including provision for carrying costs, and to undertake a stricter and intensive audit of the circumstances in which the Distribution Companies had continued without recovery of RA.

24. On 14.08.2025, *suo motu* proceedings were initiated by the APTEL and, by order dated 29.08.2025, the APTEL directed all Regulatory Commissions to furnish affidavits in terms of the RA Judgment.

25. On 19.09.2025, the DERC addressed a letter to the CAG requesting it to conduct the intensive audit of the Petitioners in terms of the RA Judgment. On 25.09.2025, the DERC filed its affidavit before the APTEL, stating that it had written to the CAG to undertake a special audit of the Petitioners and that the response of the CAG would be placed on record upon receipt.

26. By order dated 26.09.2025, the APTEL recorded the statement of the DERC that it had approached the CAG to undertake the special audit in terms of the RA Judgment, and that, in the event of refusal by the CAG, the DERC would initiate steps to appoint an auditor on its own and endeavour to complete the process by 31.03.2026.

27. The Petitioners filed brief submissions before the APTEL contending that the DERC had enlarged the scope of audit and was seeking to do indirectly what it could not do directly, namely, subject the Petitioners to a CAG audit. It was further submitted that the APTEL had not directed any Regulatory Commission to conduct an audit through the CAG and that, in terms of Sections 19 and 20 of the CAG Act, the CAG is mandated to conduct audits of Government companies and corporations only upon a request by the President, Governor, or Administrator of a State / Union Territory. The Petitioners also submitted that the proposed CAG audit had already been set aside by the Division Bench of this Court in the URJA Judgment.

28. On 28.10.2025, the Supreme Court, in Miscellaneous Applications filed by the DERC, modified the operative portion of the RA Judgment to

provide that the existing RA shall be liquidated within a maximum period of seven years, instead of the previously stipulated period of four years.

29. On 14.01.2026, the APTEL passed an order observing that the DERC had not complied with the directions of the Supreme Court in the RA Judgment with respect to conduct of audit, and that it was not obligatory that such audit be conducted only by the CAG, as nothing prevented the DERC from appointing Chartered Accountants to conduct the intensive audit. The APTEL directed that, in the event the CAG did not undertake the audit within one week from 14.01.2026, the DERC shall proceed to initiate and intimate the process for appointment of a suitable Chartered Accountant to conduct the intensive audit in terms of the RA Judgment within two weeks from 14.01.2026.

30. Pursuant to the order dated 14.01.2026 passed by the APTEL, the DERC, on 16.01.2026, addressed a letter to the CAG seeking confirmation for conducting the CAG audit of the Petitioners. By reply dated 19.01.2026, the CAG sought details regarding the scope of audit, the detailed objectives for conducting the audit, and the expected audit product. On 20.01.2026, the CAG addressed another communication to the DERC conveying its in-principle approval for conducting the audit of the Petitioners and requesting that a valid entrustment under Section 20(1) of the CAG Act be obtained from the Hon'ble Lieutenant Governor. On 22.01.2026, the DERC requested GNCTD to seek such entrustment from the Hon'ble Lieutenant Governor for conduct of a CAG audit of the Petitioners. On 02.02.2026, the DERC addressed letters to GNCTD setting out the broad and tentative scope, objectives, expected audit product, and time schedule for the proposed CAG

audit. On 04.02.2026, the DERC addressed a further letter to GNCTD requesting that the process of obtaining entrustment from the Hon'ble Lieutenant Governor be expedited before the next date of hearing before the APTEL, i.e., 09.02.2026.

31. *Vide* order dated 11.02.2026, the APTEL observed that the objection raised by the Petitioners, based on the URJA Judgment, that an audit by the CAG was impermissible could not be brushed aside. However, the APTEL further observed that the said objection could not be examined at a stage when no auditor had yet been appointed.

32. On 05.03.2026, GNCTD addressed a communication to the DERC intimating entrustment of the audit of the Petitioners to the CAG by the Hon'ble Lieutenant Governor. By order dated 06.03.2026, APTEL restrained the DERC from pursuing or acting in furtherance of the proposed CAG audit of the Petitioners until the next date of hearing.

33. On 31.03.2026, the DERC filed an affidavit in compliance with the order dated 06.03.2026, submitting that the proposed CAG audit was not in contravention of the RA Judgment. After hearing the submissions advanced on behalf of the Petitioners and the DERC, the APTEL, by order dated 20.04.2026, observed that the DERC had contravened the statutory provisions of Section 20 of the CAG Act in directing the audit of the Petitioners by the CAG, and consequently upheld the objections raised by the Petitioners and quashed the approval granted by the Hon'ble Lieutenant Governor of Delhi vide communication dated 05.03.2026.

34. APTEL further directed the DERC to appoint a Chartered Accountant within one week from 20.04.2026, with a specific direction to conclude the

strict and intensive audit of the Petitioners in terms of the RA Judgment within three months thereafter. APTEL also rejected the DERC's request for extension of time for commencement of liquidation of RA and directed the DERC to commence the process of liquidation of RA in terms of the RA Judgment within three weeks from 20.04.2026, while granting time up to 30.06.2026 for passing the true-up order for FY 2023-2024.

35. On 28.04.2026, the DERC filed a Review Petition seeking review of the order dated 20.04.2026. On 13.05.2026, the Petitioners filed an application seeking implementation of the directions contained in the order dated 20.04.2026 passed by the APTEL, particularly the direction requiring commencement of liquidation of RA within three weeks. The DERC also filed a Review Petition seeking review of the order dated 20.04.2026 on the issue of commencement of RA liquidation.

36. By two separate orders dated 27.05.2026, the APTEL disposed of the Review Petition filed by the DERC and the Interim Application filed by the Petitioners, directing the DERC to appoint an appropriate Chartered Accountant to conduct the intensive audit in terms of the RA Judgment and to commence RA liquidation by 16.06.2026.

37. On 30.05.2026, the DERC filed a Civil Appeal before the Supreme Court challenging the orders dated 20.04.2026 and 27.05.2026 passed by the APTEL.

38. On 06.06.2026, GNCTD issued the Impugned Notice seeking to initiate a CAG audit of the Petitioners. On 12.06.2026, the Petitioners addressed a communication to GNCTD requesting withdrawal of the Impugned Notice on the ground that it was *non est*, *void ab initio*, illegal,

violative of the judgments of the Supreme Court and this Court and amounted to executive overreach interfering with the *suo motu* proceedings pending before the APTEL pursuant to the RA Judgment. However, no response was received from GNCTD. Hence, the Petitioners have filed the present Petition.

SUBMISSIONS ON BEHALF OF THE PETITIONERS

39. Mr. Sandeep Sethi, learned Senior Counsel for the Petitioners made the following submissions:

39.1. The Impugned Notice is *ex facie* illegal, constitutes a colourable exercise of power, and is liable to be stayed and set aside at the threshold, having been issued in the teeth of binding judicial pronouncements. The Impugned Notice is in direct contravention of the RA Judgment, the URJA Judgment, Section 20 of the CAG Act, and the subsisting orders passed by the APTEL, each of which forecloses the very course sought to be adopted by the Impugned Notice.

39.2. The sole object of the Respondents, it is submitted, is to derail the long-overdue liquidation of the Petitioners' RA. Tariff Orders which have attained finality since Financial Year 2007-08 cannot be reopened by executive action, more so when such reopening would offend the principles of estoppel and *res judicata*.

39.3. The Impugned Notice is *void ab initio*, being premised upon a complete misreading and mischaracterization of the RA

Judgment and is contrary to the binding decision of the Division Bench of this Court in the URJA Judgment.

39.4. Further, the Impugned Notice is contrary to the orders passed by the APTEL, which is monitoring implementation of the RA Judgment, and whereby the proposed audit by the CAG has been specifically quashed.

39.5. The audit contemplated by the RA Judgment is an audit "of the circumstances in which the distribution companies have continued without recovery of regulatory asset". It is, therefore, submitted that the audit directed to be undertaken is not an audit of the Petitioners, but of the DERC. This, according to the Petitioners, is evident from the issue framed by the Supreme Court in paragraph 41.2 of the RA Judgment, namely, "to examine the circumstances and the compelling reasons for the creation and undue extension of the regulatory asset over a period of time". Thereafter, in paragraphs 42 and 58, the Supreme Court examined the DERC's record since 2006-2007, and the findings in paragraphs 60, 66.1, 67.3, 67.4, 69.6 and 70(V) constitute commentary on "regulatory failure" and "regulatory capture" of the DERC, and not on, or against, the conduct of the Petitioners.

39.6. It is in this context that the Supreme Court, in paragraph 71(vi), directed a strict and intensive audit of the circumstances in which the Distribution Companies continued without recovery of RA. Accordingly, it is submitted that DERC and GNCTD

have mischaracterized the audit as an audit of the Petitioners, which is contrary to the RA Judgment. This mischaracterization, according to the Petitioners, has been specifically noticed by the APTEL, and the entrustment of the audit of the Petitioners to the CAG pursuant to the RA Judgment has already been quashed by the APTEL.

39.7. Paragraph 1(ii) of the Impugned Notice is contrary to the ratio laid down in paragraphs 78, 79, 82, 83 and 88-90 of the URJA Judgment, wherein the Division Bench of this Court held that once the Electricity Act assigns tariff determination exclusively to the DERC, an audit by the CAG cannot be employed as a parallel mechanism to scrutinize, revisit, or interfere with matters falling within the regulatory domain.

39.8. The URJA Judgment further holds that a CAG audit of the Petitioners would serve no public interest where the audit report cannot lawfully affect tariff determination, the field being occupied by the Electricity Act. Further, paragraph 4 of the URJA Judgment records GNCTD's admitted position on affidavit that it had "*no locus standi*" to accede to a request for a CAG audit. GNCTD, therefore, cannot be permitted to approbate and reprobate.

39.9. RA is, in substance, unrecovered tariff. Therefore, any action affecting RA, including its creation, computation, or recovery, is intrinsically rooted in electricity tariff determination. Consequently, the audit relating to the Petitioners falls entirely

within the regulatory domain of the DERC and cannot be sub-delegated to the CAG.

39.10. Just as monetary policy cannot be determined by an authority other than the Reserve Bank of India, tariff determination cannot be subjected to oversight by an external authority acting as a super-regulator not contemplated by, or recognised under, the Electricity Act.

39.11. The present case cannot be distinguished from the URJA Judgment by relying upon Section 20(3) of the CAG Act. Section 20(3) merely prescribes a procedural safeguard before the power of entrustment can be exercised; it does not create a separate or independent statutory process. Section 20(1) of the CAG Act is the substantive source of power for entrustment of audit, whereas Section 20(3) only provides the procedure for exercising such power.

39.12. *Vide* order dated 20.04.2026, the APTEL has already quashed the CAG audit entrusted *vide* letter dated 05.03.2026. In view thereof, the Impugned Notice, which seeks to revive the very same audit expressly quashed by the APTEL, on the purported ground of curing the defect of absence of prior hearing before entrustment, is unsustainable. The orders dated 20.04.2026 and 27.05.2026 passed by the APTEL have been challenged before the Supreme Court by the DERC in view of the quashing of the CAG audit; however, unless and until the said orders are stayed or set aside by the Supreme Court, they continue to remain

valid and binding. It is, therefore, not open to GNCTD to issue the Impugned Notice.

39.13. The CAG audit was quashed by the APTEL not merely on the ground of absence of hearing, but also on merits, namely, that no public interest would be served, that such audit was not contemplated by the RA Judgment, the audit being confined to the circumstances leading to non-recovery of RA, and that the proposed audit was contrary to the URJA Judgment.

39.14. In terms of the APTEL's order, the DERC has initiated a tender process on 18.05.2026 for appointment of a Chartered Accountant. The DERC cannot, therefore, simultaneously seek to resurrect a CAG audit which has already been set aside by the APTEL.

39.15. No other Regulatory Commission or State Government has construed paragraph 71(vi) of the RA Judgment as permitting a CAG audit of the licensees. It is the DERC alone which has neither commenced liquidation nor appointed an auditor. Out of the 12 Regulatory Commissions which created RA, 11 have already appointed an auditor, completed the audit, and placed the report of the Chartered Accountant / Firm before the APTEL.

39.16. In view of the aforesaid submissions, it is submitted that the Impugned Notice is *void ab initio*, without authority of law, and *ex facie* without jurisdiction. It seeks to achieve indirectly what has already been rejected by this Court in the URJA Judgment

and by the APTEL in its orders dated 20.04.2026 and 27.05.2026. The Impugned Notice is, therefore, liable to be quashed and set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

40. Mr. S.V. Raju, learned Additional Solicitor General appearing for Respondent No.1 submitted that:

40.1. At the outset, the present Petition is not maintainable, as it seeks to challenge the Impugned Notice, which is merely in the nature of a show-cause notice. It is settled law that a writ petition does not ordinarily lie against a show-cause notice, as such notice does not give rise to any cause of action and does not constitute an adverse order affecting the rights of any party. The present Petition is, therefore, premature, since the Impugned Notice only affords the Petitioners an opportunity to submit their representation in terms of Section 20(3) of the CAG Act. No adverse order has been passed against the Petitioners by virtue of the Impugned Notice, and the present Petition is consequently liable to be dismissed as not maintainable.

40.2. The audit of the Petitioners is necessary in public interest and is in conformity with the directions issued by the Supreme Court in the RA Judgment, which require a "strict and intensive audit of the circumstances" in which the Distribution Companies continued without recovery of RA. The said direction is rooted in public interest, as the Supreme Court has held that

disproportionate and long-pending RA adversely affects consumers and imperils sectoral governance.

40.3. The entrustment of the audit to the CAG is warranted in view of the clear and overwhelming public interest involved, particularly since the expenditure incurred by the Petitioners and claimed before the DERC through the ARR is ultimately recovered from consumers through tariff and surcharge mechanisms.

40.4. The Impugned Notice records that Petitioner No. 1 has extended loans / financial advances to Petitioner No. 2 instead of prioritising the discharge of statutory liabilities. It is submitted that an independent audit is, therefore, essential to verify the true and fair financial position of the Petitioners, particularly in view of the likelihood of further related-party transactions and / or diversion of funds for purposes other than those for which recoveries were permitted.

40.5. The audit of the Petitioners is intended to ascertain the circumstances in which the Distribution Companies continued to function for several years without recovery of RA.

40.6. The URJA Judgment is distinguishable on facts. In that case, the Distribution Companies had disputed the CAG audit, *inter alia*, on the ground that they had not been afforded a reasonable opportunity of hearing prior to the ordering of such audit. In the present case, however, the Petitioners have been afforded such opportunity by way of the Impugned Notice. In any event, the

Petitioners were represented before the Supreme Court in the BSES Writs and are fully aware of the RA Judgment, including the scope and purpose of the proposed audit. Further, the Petitioners have participated throughout the proceedings before the APTEL and are, therefore, fully conscious of the terms of the RA Judgment and the manner of its implementation.

40.7. The Supreme Court, in the RA Judgment, directed the conduct of a "strict and intensive audit" while dealing with issues arising from the accumulation of RA in the electricity sector, with a view to ascertaining the circumstances in which such substantial RA came to be accumulated. In public interest, such audit is required to be entrusted to the CAG. The proposed CAG audit would ensure transparency, accountability, and regulatory compliance in the functioning of the concerned entities in implementation of the RA Judgment.

40.8. The conduct of audit by the CAG is necessary to safeguard consumer interest, examine the utilization and deployment of public funds and regulatory recoveries, ensure financial propriety, and secure the integrity and sustainability of the electricity sector in Delhi.

40.9. In view of the aforesaid submissions, it is submitted that the present Writ Petition deserves to be dismissed as not maintainable, and that the Impugned Notice does not warrant interference by this Court.

ANALYSIS AND FINDINGS

41. We have heard learned Senior Counsel appearing for the Petitioners as well as the learned Additional Solicitor General of India appearing for Respondent No. 1.

42. The following issues arise for consideration in the present Petition:

(i) Whether the present Petition, which challenges the Impugned Notice at the show-cause stage, is maintainable.

(ii) Whether the Impugned Notice mischaracterises the direction for conduct of audit contained in the RA Judgment and whether the Impugned Notice could have been issued in view of the orders dated 20.04.2026 and 27.05.2026 passed by the APTEL.

(iii) Whether the Impugned Notice is contrary to the decision of the Division Bench of this Court in the URJA Judgment.

Maintainability of the Present Petition

43. At the outset, it is evident that, by way of the Impugned Notice, the Petitioners have merely been called upon to submit their written representation / response in relation to the proposed entrustment of audit to the CAG, and have been afforded an opportunity of hearing scheduled on 22.06.2026 at 4:00 PM. The Impugned Notice does not record any adverse finding against the Petitioners, nor does it determine any right or liability. It only affords the Petitioners an opportunity to respond to the proposed entrustment of audit to the CAG.

44. The Impugned Notice, therefore, cannot be regarded as adverse to the Petitioners. Rather, it is in furtherance of the statutory requirement under Section 20(3) of the CAG Act, which contemplates an opportunity of being

heard before entrustment of audit to the CAG by the Hon'ble Lieutenant Governor.

45. It is well settled that a notice which merely affords an opportunity to submit a representation and fixes a date and time for hearing is not in the nature of an adverse order and does not, by itself, give rise to a cause of action for challenge. Ordinarily, this Court would not exercise its discretionary writ jurisdiction to interfere with a show-cause notice, unless it is demonstrated that the notice is perverse, suffers from a jurisdictional infirmity, or has been issued by an authority lacking inherent jurisdiction.

46. In ***Union of India v. Kunisetty Satyanarayana***, (2006) 12 SCC 28, the Supreme Court held that writ jurisdiction is discretionary jurisdiction and hence such jurisdiction under Article 226 of the Constitution of India, 1950 should not ordinarily be exercised by quashing a show cause notice. The relevant extract of the said judgment is as under:

> *"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh [(1996) 1 SCC 327 : JT (1995) 8 SC 331] , Special Director v. Mohd. Ghulam Ghouse [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] , Ulagappa v. Divisional Commr., Mysore [(2001) 10 SCC 639] , State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , etc.*
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> *14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an*

enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet."

47. In ***Secretary, Ministry of Defence & Ors. v. Prabhash Chandra Mridha***, (2012) 11 SCC 565**,** the Supreme Court held that a writ petition does not lie against a show cause notice for the reason that it does not give rise to any cause of action. The relevant extract of the said judgment is as under:

"*10. Ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the court. (Vide State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , Bihar State Housing Board v. Ramesh Kumar Singh [(1996) 1 SCC 327] , Ulagappa v. Commr. [(2001) 10 SCC 639 : AIR 2000 SC 3603 (2)] , Special Director v. Mohd. Ghulam Ghouse [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] and Union of India v. Kunisetty Satyanarayana [(2006) 12 SCC 28 : (2007) 2 SCC (L&S) 304] .)*"

48. Accordingly, in view of the settled position of law noticed hereinabove, the present Petition, insofar as it assails the Impugned Notice at the show-cause stage, would ordinarily not be maintainable. However, since the Petitioners have raised objections founded on the URJA Judgment as well as the orders dated 20.04.2026 and 27.05.2026 passed by the APTEL, this Court considers it appropriate to examine the said objections before returning a final conclusion on the maintainability of the present Petition.

Scope of Strict and Intensive Audit under the RA Judgment and compliance with directions contained orders dated 20.04.2026 and 27.05.2026 passed by the APTEL:

49. In the RA Judgment, the Supreme Court directed examination of the circumstances and compelling reasons which led to the creation and undue continuation of RA over a prolonged period of time. For ascertaining the causes of regulatory failure, the Supreme Court directed the Regulatory Commissions to undertake a strict and intensive audit of the circumstances in which the Distribution Companies continued without recovery of RA.

50. The Petitioners contend that GNCTD and the DERC have misconstrued and mischaracterised the scope of the audit contemplated under the RA Judgment, as well as the manner in which such audit is required to be undertaken.

51. According to the Petitioners, a proper construction of the directions contained in the RA Judgment would show that the audit contemplated therein is an audit of the DERC, and not of the Petitioners. It is further submitted that such audit is required to be conducted by the DERC itself, or through a Chartered Accountant appointed by it, and not by the CAG.

52. The aforesaid objections do not merit acceptance. The RA Judgment directs a strict and intensive audit of the circumstances in which the Distribution Companies continued without recovery of RA. The said direction does not exclude examination of the records, conduct, accounts, or financial position of the Distribution Companies. The scope of the audit is, therefore, sufficiently broad to include all relevant circumstances that may explain the accumulation of RA over a prolonged period and the continued functioning of the Distribution Companies without recovery of RA.

53. The contention that the audit contemplated under the RA Judgment is confined only to the DERC, and not to the Petitioners, is therefore without merit. It is also relevant that such a contention does not appear to have been urged before the APTEL, which is monitoring implementation of the RA Judgment. On the contrary, the APTEL has passed orders directing appointment of a Chartered Accountant for conduct of an audit concerning the Petitioners, which orders have not been assailed by the Petitioners before the Supreme Court. Therefore, the submission that GNCTD and the DERC have mischaracterised the scope of audit by referring to an audit of the Petitioners is, accordingly, unsustainable.

54. Further, the RA Judgment does not specify the agency by whom the audit is to be conducted. Nor does it contain any express prohibition against the audit being conducted by the CAG. Subject to strict compliance with the provisions of the CAG Act, including the requirements of Section 20 thereof, the conduct of audit by the CAG cannot be excluded merely on the ground that the RA Judgment does not expressly identify the CAG as the auditing agency.

55. In view of the foregoing, this Court finds no mischaracterisation of the RA Judgment either by the DERC or by GNCTD. The scope and extent of the audit to be undertaken stand delineated in the RA Judgment. Consequently, there is no legal impediment to the DERC or GNCTD initiating the process for audit by the CAG in respect of the Petitioners, provided the same is undertaken in compliance with the CAG Act.

56. As regards the alleged delay in compliance with the RA Judgment and the alleged non-compliance by the DERC with the directions issued by the APTEL, the appropriate remedies lie elsewhere. Admittedly, the DERC has challenged the orders dated 20.04.2026 and 27.05.2026 before the Supreme Court, and compliance with those orders would be subject to the outcome of the proceedings pending before the Supreme Court. Since the Petitioners have not initiated any independent challenge to the said orders, nor any contempt proceedings alleging non-compliance thereof, the scope of consideration in the present Petition remains confined to the challenge to the Impugned Notice. It is accordingly left open to the Parties to avail such remedies as may be available in law in relation to the timelines specified in the RA Judgment and for compliance with the orders dated 20.04.2026 and 27.05.2026 passed by the APTEL to the extent of the timelines specified therein.

Applicability of the URJA Judgment:

57. The Petitioners have contended that the Impugned Notice is in direct contravention of the URJA Judgment. It is further submitted that paragraph 1(ii) of the Impugned Notice runs contrary to the ratio laid down in paragraphs 78, 79, 82, 83 and 88 to 90 of the URJA Judgment, wherein the

Division Bench of this Court held that, once tariff determination stands exclusively assigned to the DERC under the Electricity Act, an audit by the CAG cannot be employed as a parallel mechanism to scrutinise, revisit, or interfere with matters falling within the regulatory domain.

58. It is further contended by the Petitioners that the present case cannot be distinguished from the URJA Judgment merely by placing reliance on Section 20(3) of the CAG Act. According to the Petitioners, Section 20(3) only prescribes a procedural safeguard prior to exercise of the power of entrustment and does not create a separate or independent statutory source of power since Section 20(1) of the CAG Act is stated to be the substantive provision for entrustment of audit, whereas Section 20(3) merely regulates the procedure for exercising such power.

59. It is pertinent to note that the URJA Judgment was rendered in a Public Interest Litigation before the Division Bench of this Court, wherein a direction was sought for conduct of audit of the Petitioners by the CAG. In those proceedings, the Petitioners herein had opposed the proposed CAG audit, *inter alia*, on the ground that they had not been afforded a reasonable opportunity of hearing prior to the ordering of such audit.

60. In the URJA Judgment, the Division Bench held that GNCTD had invoked Section 20 of the CAG Act, however it was further held that the powers in relation to electricity domain stood vested in the DERC and that, once a specialised regulatory body was vested with the power to audit accounts, a parallel audit could not be directed at the instance of GNCTD.

61. The Division Bench further held that, although an audit by the CAG of the Petitioners may be possible on the ground that the Petitioners satisfied

the test of a "body or authority", conduct of such audit, in the facts of that case, would be a futile exercise and would not serve any public interest. Consequently, the Division Bench quashed and set aside the direction issued by GNCTD under Section 20(1) of the CAG Act for audit of the Petitioners.

62. The present case, however, is materially distinguishable from the facts and circumstances in which the URJA Judgment was rendered as:

a. *Firstly*, the proposed audit is sought to be undertaken pursuant to the directions contained in the RA Judgment and not as an audit under the Electricity Act. The purpose and context of the audit in the URJA Judgment and in the present case are, therefore, materially different.

b. *Secondly*, the audit process has been initiated by the DERC for compliance with the RA Judgment. It is not a case where GNCTD is seeking to conduct a parallel audit to usurp or interfere with the regulatory functions of the DERC in relation to tariff fixation.

c. *Thirdly*, an opportunity of hearing has been afforded to the Petitioners by way of the Impugned Notice, which was one of the safeguards alleged to be absent in the proceedings considered in the URJA Judgment.

d. *Fourthly*, the scope and object of the proposed audit in the present case are distinct from the audit considered in the URJA Judgment, as the present audit is confined to examining the circumstances contemplated in the RA Judgment.

e. *Lastly*, the proposed audit is *prima facie* in public interest as the decision on RA would directly affect the consumers of the Petitioners.

63. In view of the foregoing, this Court is of the considered view that the ratio laid down in the URJA Judgment arose in a materially different factual and legal context and is not attracted to the facts of the present case. The issuance of the Impugned Notice, therefore, cannot be held to be barred by the law declared in the URJA Judgment.

CONCLUSION:

64. In view of the foregoing analysis, this Court is of the considered opinion that the Impugned Notice merely affords the Petitioners an opportunity to submit their representation and to appear for hearing within the timelines stipulated therein. The Impugned Notice does not record any adverse finding against the Petitioners warranting any interference on merits at this stage in exercise of writ jurisdiction. The present Petition is, therefore, premature.

65. Further, the RA Judgment contains no prohibition against an audit of the Petitioners, nor does it preclude such audit from being conducted by the CAG, provided that the same is undertaken strictly in accordance with the provisions of the CAG Act and for complying with the directions contained in the RA Judgment. The facts and circumstances in which the URJA Judgment was rendered are materially distinguishable, and the ratio thereof is not attracted to the present case. The URJA Judgment cannot be read as excluding, in all circumstances, the possibility of an audit by the CAG in accordance with the CAG Act as it only held that such an audit would be a

futile exercise in the context of the provisions of the Electricity Act under consideration in URJA Judgment. In the present case, the proposed audit is sought to be undertaken specifically for compliance with the directions contained in the RA Judgment. Accordingly, the URJA Judgment does not bar issuance of the Impugned Notice.

66. It is clarified that the observations contained in the present Judgment are confined to the limited purpose of adjudicating the validity and legality of the Impugned Notice. The proceedings to be conducted pursuant to the Impugned Notice under Section 20(3) of the CAG Act shall be decided by the competent authority after affording the Petitioners an opportunity of hearing and upon due consideration of all submissions that may be advanced by the Petitioners on merits, without being influenced in any manner by the observations made hereinabove.

67. All rights and contentions of the Parties in relation to compliance with the timelines specified in the RA Judgment and the orders passed by the APTEL are kept open, subject to the outcome of the proceedings pending before the Supreme Court.

68. The present Petition stands dismissed with the aforesaid observations. All pending Applications stand disposed of.

TEJAS KARIA, J
(VACATION JUDGE)

JUNE 22, 2026
'gsr'