

**Introduction to Law on Electricity**  
**Professor Uday Shankar**  
**Rajiv Gandhi School of Intellectual Property Law**  
**Indian Institute of Technology Kharagpur**  
**Lecture No. 13**  
**License (Contd.)**

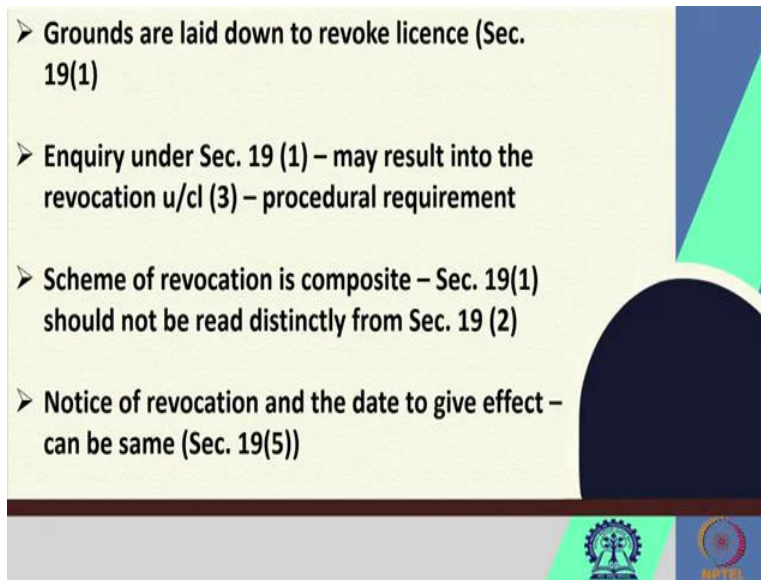
Welcome to all of you again in session 13 of the NPTEL online certification course. We will continue to discuss on the provisions related to license. We will also discuss that what are the provisions with regard to revocation of license, how the sale of the utility takes places after the revocation. And after that, we will also discuss some of the cases decided either by appellate tribunal or by the Supreme Court on these provisions.

(Refer Slide Time: 0:47)



So, this is what we will study in this session.

(Refer Slide Time: 0:53)



And now, in the last class, I explained to you that there is a provision in the law which clearly says that if the licensee fails to fulfill the obligation as it has been mandated by the commission, then commission can very well intervene and revoke the license. The grounds are well laid down, which we have discussed in the last session, where it categorically says that if there is an undue delay in fulfilling the mandates, if there is a breach of the conditions and if the financial health is not very sound of the licensee, on all these grounds, the license can be revoked by the commission.

But then, for revoking the license, what is important to learn, what is important to understand is that there has to be an inquiry. That is what, it is clearly given in the section 19 subsection 1, which says that the appropriate commission shall inquire. Now inquiry here would mean the kind of fact finding approach, that what exactly is been happening with the licensee, and why licensee is not able to fulfill the conditions.

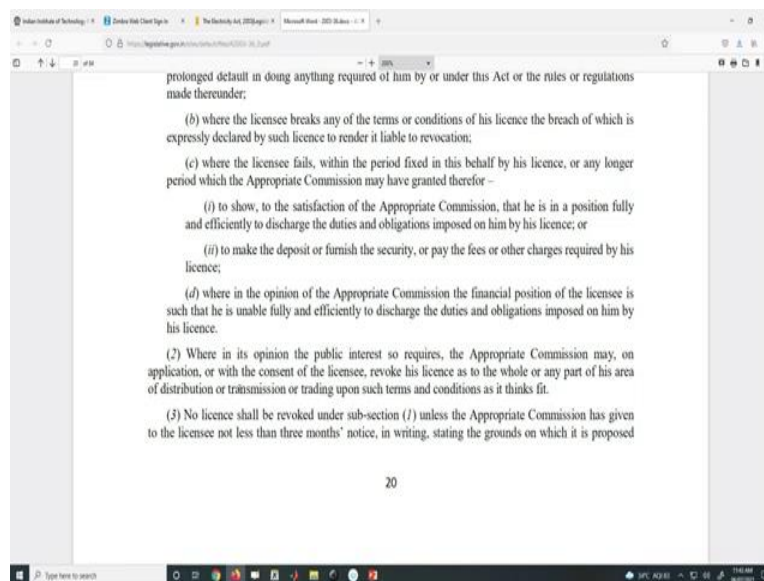
So, that fact finding approach, that fact finding report would give the enough information, place the material before the commission, that what shall be the course of action to be adopted. Because under this law, it is not only that revocation is the only solution. The law also suggests for suspension of the license.

So, if the case warrants that it is not very grave and revocation is not viable solution, revocation is not something which is very feasible; only sort of suspension is good enough to indicate to the

licensee, that okay, now you mend your ways; otherwise you will be losing the license. So, options are given under the law, but then what is important to understand for us that there has to be an inquiry. If the appropriate commission decides on revocation without an inquiry then it would be fatal. That is what it says.

Now, when you look at the provisions of the law, it clearly says that there has to be inquiry done, grounds are laid down on which revocation is done. And then, the relevant provision is given, that what is the way out, which is to be suggested.

(Refer Slide Time: 4:03)



Now, when you look at the provisions of section 19(2), which says that if public interest demand so, the appropriate commission may, on the application or with the consent of licensee revoke his license as to be whole or any part of his area of distribution or transmission or trading.

Now, why I am highlighting this because of the very reason that you would find that the scheme of the law is very composite, it is not that it has to be read in a very fragmented manner. If you read in the fragmented manner, then we will be missing the essence of the law. And that is why it has been suggested that the grounds are mentioned, and then, the follow up action should be taken on the basis of the ground which has been done.

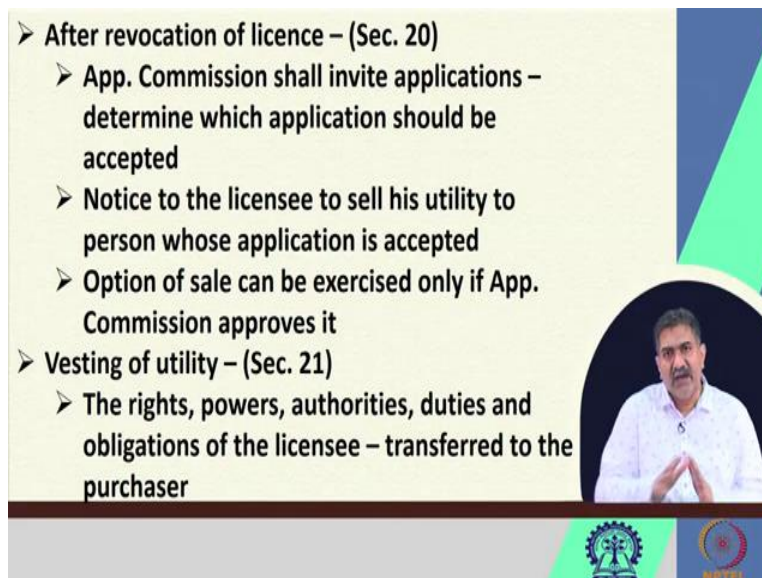
And further, it says that the appropriate commission can very well serve the notice on the licensee, ask for a reason that why revocation cannot happen. And then, the appropriate

commission can very well ask the licensee that from such and such date, your license will be revoked.

Now legally speaking, when you look at the language of section 19 subsection 5, it is very clear that the date of serving notice and the date on which the license shall be revoked can very well be simultaneous. There is no need laid down in the law where it says that notice has to be given on one date, and the revocation shall happen on another day. That is not what is the scheme of the law.

It says if the situation is very bad, if it has been established that licensee has failed, because please do note this very point that the law is there to protect the interest of the consumers. So, if the licensee fails to deliver to the consumer, there is no reason that why the commission shall wait for serving the notice and give timeline for revocation. So, such kind of actions on the part of appropriate commission is very well allowed.

(Refer Slide Time: 6:31)



The slide contains the following text:

- **After revocation of licence – (Sec. 20)**
  - **App. Commission shall invite applications – determine which application should be accepted**
  - **Notice to the licensee to sell his utility to person whose application is accepted**
  - **Option of sale can be exercised only if App. Commission approves it**
- **Vesting of utility – (Sec. 21)**
  - **The rights, powers, authorities, duties and obligations of the licensee – transferred to the purchaser**

The slide also features a circular video inset of a man in a white shirt speaking, and logos for a university and NPTEL at the bottom.

Now after revocation of license, it says that the appropriate commission shall invite the applications from interested parties to buy the utility. Utility has to be sold because the licensee has failed to fulfill the conditions, licensee has failed to comply with the statutory requirements. And therefore, it is not a situation where revocation is done, and that is all.

After all, the commission has a responsibility to ensure; it has a duty to ensure that there should be uninterrupted supply of electricity to the consumer or uninterrupted evacuation of power from the generating unit to the transmission utility and from there to the end user.

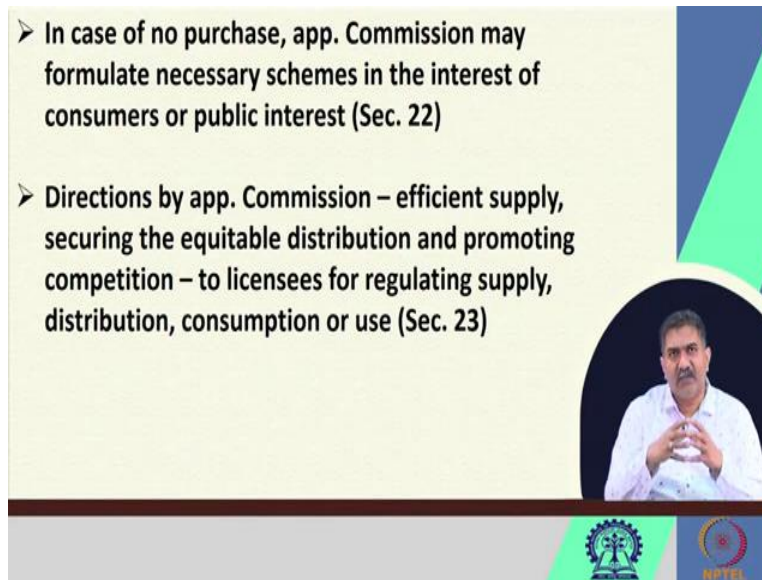
So, in order to maintain that change, in order to give a comprehensive legal structure, section 20 says that once the license is revoked what is to be done that the interested parties will be asked to submit an application that whether they are interested to take up the license, whether they are interested to take up the business of the utilities. And if the appropriate commission believes that the applicant has all the necessary credentials, then in such a situation, appropriate commission can very well ask the licensee to sell utility to the person to whom the appropriate commission has chosen.

So, it is the appropriate commission which shall be playing the role only when revocation is done, and it is the appropriate commission which shall weight the application. The option of sale can be exercised, appropriate commission approves it. It is not something wherein there is an understanding between the revoked licensee and the intended purchaser or the proposed purchaser.

Appropriate commission has to step in to look into the viability, look into the experience of the purchaser, and look into that what kind of performance the purchaser has. And accordingly, appropriate commission will take a call. Now, when you look at the provision what it says is that. Again, in order to make the transaction very complete, section 21 says that the rights, the obligations, the authorities, the duties all these of the utilities, all these of the licensee will be transferred to the purchaser.

Because then the purchaser comes into picture. The licensee whose license has been revoked moves out, and then the purchaser steps in. So, in such a situation, section 21 says that vesting of utility is always in favor of the purchaser. Now here, what is important is that, vesting of utility will always be after sale, that is what it says. That once the sale has been done then only the purchaser will have all the rights which were granted to the licensee.

(Refer Slide Time: 10:25)



- In case of no purchase, app. Commission may formulate necessary schemes in the interest of consumers or public interest (Sec. 22)
- Directions by app. Commission – efficient supply, securing the equitable distribution and promoting competition – to licensees for regulating supply, distribution, consumption or use (Sec. 23)

Now in case no purchase has taken place, it may happen that negotiation is still going on, and there are certain technical glitches to complete the transaction. Then, it is for the appropriate commission to come up with the interim arrangements, to come up with the schemes that how the supply can take place. So, obviously, in such a situation, it can request the government companies, it can ask the other licensees of other regions to step in and facilitate the whole process.

Again, for a very obvious reason that it is something where we cannot visualize, we cannot imagine a situation where electricity is interrupted because of these transactional issues. And that is why section 22 makes it very, very clear that if sale is not complete, if no purchase has been processed, or there are some issues in giving a finality to it, then let the appropriate commission make the scheme for the same. It has to be done in the interest of consumer or the public interest.

Now, you can very well understand here and take note of this very fact that right from revocation to sale and to the entry management, all these are driven by the idea of public interest. And public interest here what would mean is in contradistinction with the interest of public sector utility. It is not about catering the need of public sector; it is not about catering the need of individual player; it is all about that invisible entity for whom the power sector works, for whom there is a kind of plan that there shall be quality supply of electricity. And that is what is sort of parameter to understand, that in what situation the public interest criteria fulfills.

Now, section 23 is another important section. If you can recall, we have also discussed, while discussing distribution that the appropriate government has a power to give necessary direction to the generating companies under section 11. Now here, under the provisions on licensing, you would find that section 23 is something similar to section 11. There the power is given to the appropriate government, here the power is given to the appropriate commission.

So, appropriate commission can very well give the directions to the licensees for regulating supply, distribution or consumption or use, when there is an issue involved of efficient supply, when there is an issue involved of securing the equitable distribution of electricity or promoting competition.

Now equitable distribution is, for law student becomes a very important terminology, why? Because in that way, it somewhere brings in the idea of distributive justice. It is not only about the one who has the ability to pay; those customers alone should be catered. Equitable, the word equitable somewhere brings in that idea that whosoever is in need, that need has to be addressed. And that is why this term, to me appears to be of great significance. That how do we read equitable distribution.

Does it mean that in a crisis like situation in rural areas, there has to be necessary instruction by the appropriate commission to the licensee that you ensure that there is an uninterrupted supply of electricity. Let us say, for example, there is a tsunami like situation where there is a complete power cut, and then the licensee may be instructed that okay you pull in your resources so that, at the earliest things should be restored in that region.

So, section 23, for that matter, becomes very important. And for that, to me, equitable distribution is a very important, very speaking terminology in the legal understanding.

(Refer Slide Time: 14:53)



- **Suspension of distribution licence by app. Commission (Sec. 24) – on grounds –**
  - **Fail to maintain uninterrupted supply of electricity**
  - **Unable to discharge the functions and duties**
  - **Fail to comply with the directions of the Commission**
  - **Breached the terms and conditions**
- **Reasonable opportunity to make representations against the proposal to suspend the license – mandatory – due to far-fetched consequences**

Now, when you look at the scheme, as I said, it is not only the revocation which has been suggested. The law also suggests suspension of distribution license. Now please do take note of this fact. Here, it is not talking about the transmission. Section 24 talks only about the distribution.

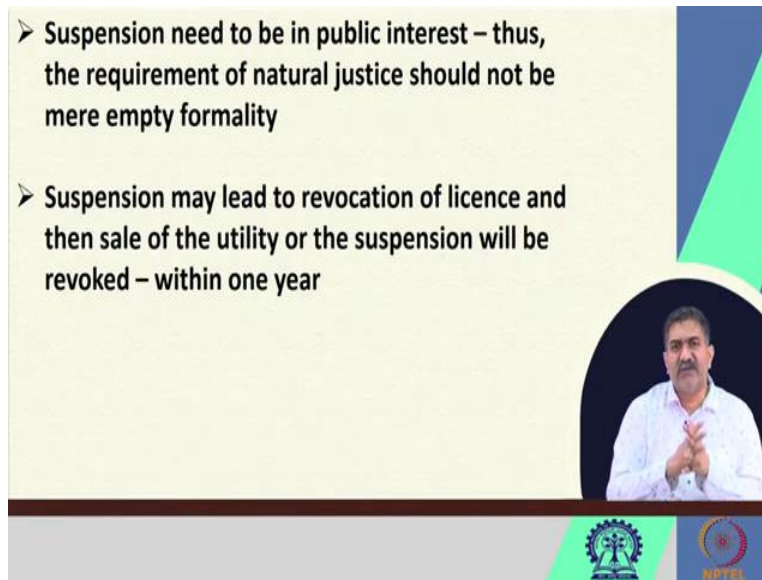
So, what is important is that, there could be a possibility where the distribution licensee fails to maintain uninterrupted supply of electricity. Unable to discharge the functions and duties which it has been entrusted by the commission, or failed to comply with the directions which are being given by the commission or it has violated the terms and condition.

In all these situations, distribution licensees will have to give up the license for interim period, for temporary period. Suspension is the design which has been introduced by the law that appropriate commission can very well suspend the license. Here, it is different from revocation. Here, it is not about completely asking the licensee to stay away from the business. Here, it is only suspension.

Obviously, a timeline is to be given to the distribution licensees to make necessary corrections in the approach, to put in necessary efforts to fulfill the conditions. But if the distribution licensee fails to do so, then in such a situation, it can graduate to the revocation of license. Because then, in such situation, suspension cannot continue for infinite period, and that is why it has been said.



(Refer Slide Time: 16:56)



- Suspension need to be in public interest – thus, the requirement of natural justice should not be mere empty formality
- Suspension may lead to revocation of licence and then sale of the utility or the suspension will be revoked – within one year

But, then, it is important to understand that no suspension shall take place, unless and until reasonable opportunity is given to the distribution licensee. And the word reasonable before opportunity, in law has a very defined significance. That opportunity should not be a mere formality. It should not be a simply a kind of ticking the mark, that okay, this criteria has been fulfilled.

The opportunities should be given in such a way so that, the distribution licensee presents all the necessary records before the commission. That see whatever the allegation been made, those allegations are unsubstantial, those allegations are unfounded, we have been doing as per the requirement. So, reasonable opportunity needs to be given. And, while giving reasonable opportunity, it is also to be taken note of that, appropriate commission must not act with prejudiced mind.

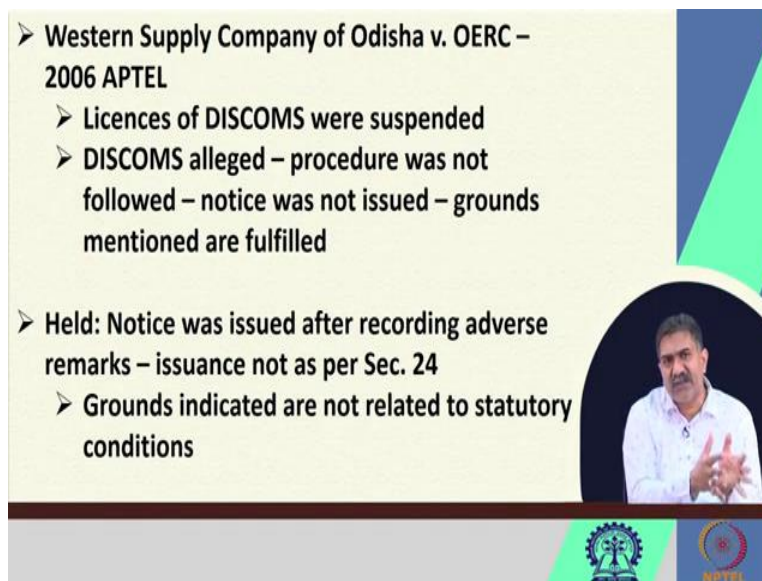
There should not be any malafide intention that the appropriate commission decides something before hand and then follow the procedural requirement. Then, it would be fatal and perhaps, the action of the appropriate commission will certainly be declared illegal by the court, by the tribunal.

Now this is what it says. Now, suspension may lead to revocation, that is what it says. And then, if it is leading to revocation, then there has to be a sale of utility to be done within one year of

time, that is what the section 24 says. And it also suggests that in interim period administrator can be appointed to look into the utility.

So, one thing is important to understand that under the law, in situation of revocation or in situation of suspension, the law suggests for the appointment of an administrator. So, the administrator is to be appointed only when you have operation of utilities. And as I said, vesting of utility can always be only to the purchaser and to no one else. Utility shall be vested only in the purchaser, once the purchaser has been identified by the appropriate commission.

(Refer Slide Time: 19:16)



- **Western Supply Company of Odisha v. OERC – 2006 APTEL**
  - Licences of DISCOMS were suspended
  - DISCOMS alleged – procedure was not followed – notice was not issued – grounds mentioned are fulfilled
- **Held: Notice was issued after recording adverse remarks – issuance not as per Sec. 24**
  - Grounds indicated are not related to statutory conditions

Now, these are the laws with regard to revocation, suspension, vesting of utility in purchaser, sale of the utility. Then, we have, in the last session, also read about what are the provisions related to licensing. Now let us look at some of the cases, which have been decided by the tribunal or by the Supreme Court.

Now this one is the 2006 Act, which relates with Western Supply Company of Odisha versus Odisha Electricity Regulatory Commission. This is a very prominent case because more than one cases have come before the tribunal and even gone to the Supreme Court.

This is a case wherein the Odisha government had introduced reform and unbundled the SEBs. If you can recall, I have said this in first few classes that Odisha state was the first state to welcome the reform and decided to unbundle electricity boards in different activities. And one such activity was privatizing the distribution utility where Western Supply Company of Odisha, North

Eastern Supply Company of Odisha or Southern Supply Company of Odisha, all these three companies are the DISCOMS, were established in furtherance of that reform.

Now, what has happened is that, in this case, these DISCOMS, they were allegedly not following the conditions. And because of that, their license was suspended under section 24. Now DISCOMS objected to this, DISCOMS said that no procedure was followed, a notice was not issued, and grounds on which the suspension was not very appropriate, the commission has not given the opportunity to appellant to present the case.

Now looking into the facts and circumstances of the case, appellate said that when the appropriate commission has issued the notice, prior to issuance of the notice, appropriate commission had already made an adverse remark on the functioning of the appellant. And that is what the appellate tribunal said that, adverse remark somewhere reflects that the commission had made up its mind, and then after that, the notice is being issued, which certainly appears to be case of empty formality.

And that is why the court said that this is something is in breach of the statutory scheme. And also, it says that, the grounds are clearly indicated, where let us say, for example, it says that willfully not supplying the electricity or there has uninterrupted supply of electricity, then in that situation, it said that it has to be a persistent one, persistent disruption.

If it is one of disruption of supply of electricity then it should not be brought within the ambit of section 19, which talks about the grounds of revocation. So, in that regard, the court has made this, the appellate tribunal has made this observation that the notice has to clearly spell out that what are the grounds on which the tribunal has canceled, or tribunal has decided to suspend license.

Why this clarity is needed? This clarity is needed so that the licensee will bring the justification. Licensee shall submit the amendments in support of the action what it has been taking. And that is why in this case of 2006, the appellate tribunal rightly said to the Odisha Electricity Regulatory Commission that your action is not as per the law. And the liberty was given that they can very well take action afresh. And they can follow the law and then decide accordingly.

(Refer Slide Time: 23:45)

➤ **Western Supply Company of Odisha v. OERC – 2017 APTEL**

- Revocation of licence of the appellants for not complying the conditions of licence
- Alleged that appellants – transferred the shares to RIL without approval – inadequate infusion of capital – delay in commencement of the work – etc
- Held: Instant revocation of licence was in public interest
  - Appointment of administrator u/s 20 (1) (d)
  - Administrator can sale the utility u/s 20(1)(e)



Now this 2017, again judgment of appellate tribunal is, you may say, a follow up of 2006 judgment because the same parties are there. What happened after 2006 judgment? The regulatory commission followed the process again and then served the notice. And on that premise, it has decided that the license of the DISCOMS should be revoked. So, revocation of license was decided of the appellants. As I said, there were three appellants, three DISCOMS, the Western Supply, North Eastern Supply and Southern Supply.

The Appellants I list, there was an allegation against the DISCOMS that they have transferred the shared to RIL without the approval of the appropriate commission. Then it was also said that they have promised to infuse capital, but then they have not done so. They have not started the work as it was suggested. They have not maintained the obligation what has been asked from the power grid, from the transmission utility and from Grid company.

So, these allegations were made against the appellants. And on these allegations, a detailed inquiry has happened, a detailed inquiry has happened in terms of a periodic review of the functioning of the DISCOMS. Now those periodic reviews were being considered as a part of inquiry under section 19 (1). The appellate tribunal has made this point very clear that when you look at the language of section 19 (1), there is no procedure laid down to make inquiry.

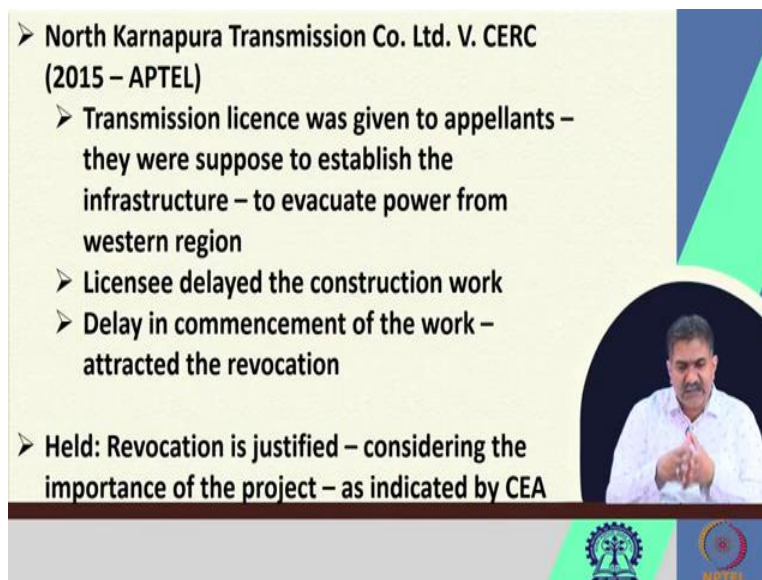
Section 19 (1) does not talk about any set procedure. So, procedure has to be determined by the appropriate commission. What is needed is that, it must be in conformity with the principles of

natural justice. So, the tribunal said that those periodical performance reviews were in the form of inquiry. Because during that process, the appropriate commission has given opportunities to the appellants to establish that how they are fulfilling the statutory requirements, how they are fulfilling the conditions which have been given, which have been agreed upon between the parties.

So, considering that fact in 2017, the tribunal decided that the decision to revoke the license of the appellants was good in law. It was in pursuant to public interest. And then, the tribunal has also said that the appointment of administrator is again as per section 21 (d) because the sale of utility has not taken place. An administrator can very well sale the utility as it has been provided under section 21 (e).

So, you look at these two cases. The same party, when they have established before the tribunal that the procedural requirement of notice is not been followed, tribunal got satisfied, and tribunal said yes, that is not been done; you go again for a fresh inquiry. Fresh inquiry again took place, and then the finding of the inquiry was that the appellants were not committing themselves to improve the power sector in the state of Odisha. And therefore, tribunal said that it was right on the part of the appropriate commission to revoke the license.

(Refer Slide Time: 27:43)



➤ **North Karnapura Transmission Co. Ltd. V. CERC (2015 - APTEL)**

- Transmission licence was given to appellants – they were suppose to establish the infrastructure – to evacuate power from western region
- Licensee delayed the construction work
- Delay in commencement of the work – attracted the revocation

➤ **Held: Revocation is justified – considering the importance of the project – as indicated by CEA**

The slide features a circular inset image of a man in a white shirt speaking. At the bottom, there are two logos: the CERC logo on the left and the APTEL logo on the right.

Now, there is another case which is again related to revocation. What happened in this case was that this is, again, transmission license was given to the appellants. And then, after getting that

license, they were supposed to establish the infrastructure to lay down the wires and all for evacuation of power from Western region. This was a very important project that is what even the Central Electricity Authority has indicated.

Now they have delayed it. They have delayed it. They have not started the work. And because of that, there was huge loss to the generating companies. Now, in this case, the appellants argued for force majeure because no authorization was given under the telegraph act to take necessary permission or necessary authorization to carry on the construction work.

The court said that okay, if the permission has not given under the telegraph act, it certainly amounts to force majeure. But then, even after giving the extension of time to complete the work, the licensee has failed to prove the sincerity and integrity to finish the work. And therefore, the appellate tribunal, in this case, has said that revocation is very, very justified. Because of the very fact that the project is important and no further delay shall be allowed.

So, you can very well find out from these judgments that how appropriate commission constantly monitors the activities of licenses. And that is being done for serving the purpose of the law.

(Refer Slide Time: 29:59)



➤ **In re: NTPC Vidyut Vyapar Nigam Ltd. (2003 - Commission)**

- **NTPC Vidyut Vyapar Nigam Ltd. – wholly owned subsidiary of NTPC – to undertake the business of sale and purchase of electricity**
- **Is it exempted to take licence and considered as ‘deemed licensee’?**

➤ **Held: Under 5<sup>th</sup> Proviso – company needs to be incorporated – NTPC Vidyut Vyapar has not been created as a result of unbundling of SEB.**

CEA NTPC

This is another judgment which is again with regard to deemed licensee, where NTPC Vidyut Vyapar Nigam Limited has come into existence as subsidiary of NTPC. It was into business of sale and purchase of electricity. The question was raised that whether this Vidyut Vyapar Nigam



Limited falls under the category of deemed licensee as it has been given under fifth proviso of section 14.

Now, in this case, it was suggested that what falls under the exemption criteria is, when the earlier licensee has been converted into a company because the exemption has been given to continue the activities which was being carried out by state electricity boards. So, in this case, the court observed that Vidyut Vyapar Nigam Limited is not incorporated under the Companies Act. And thus, it is not a result of unbundling of SEBs, it is simply a company which has come, which has been owned by the NTPC. And the Vidyut Vyapar Nigam Limited is not a result of unbundling. It is not that in pursuant to that reform.

The board decided that let this new entity now, take up the activities which was earlier with the electricity boards. Said that in such situation, exception is not needed. They have to again go and apply for fresh license.

(Refer Slide Time: 31:36)

➤ Sai Electrical Power Supply Pvt. Ltd. V. DERC  
(Delhi HC 2004)

- Government NCT recommended to the GOI to not to notify any area as rural area u/s 14 8<sup>th</sup> Proviso
- Petitioner challenged the same

➤ Held: to declare is a policy decision – prospective licensee cannot claim any vested right

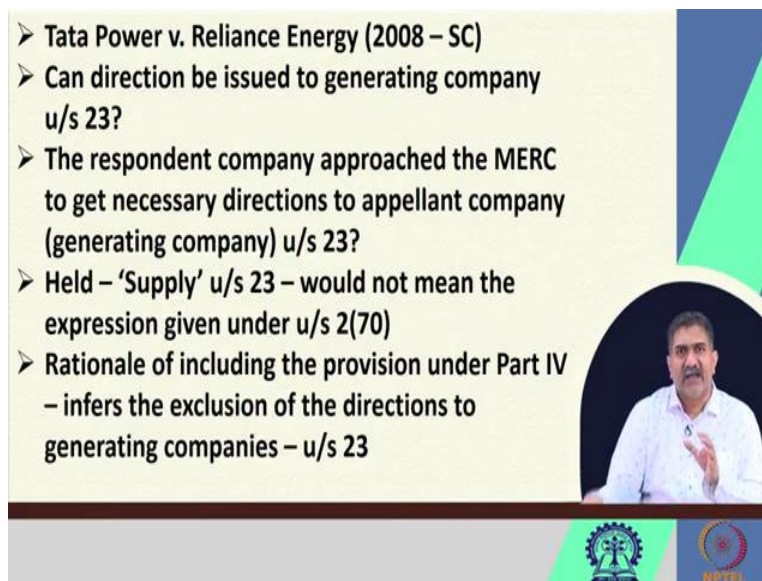
The slide also features a video inset of a man in a white shirt speaking, and logos for NTPC and NCT at the bottom.

This is another interesting case which again relates to license. That where it has been suggested that to promote rural electrification, if area is notified then the one who has been given the responsibility, they need not obtain the license. Now in the Sai Electrical Power, what has happened is that, Government of Delhi recommended that certain areas in Delhi are not be notified as rural areas. So that, ordinary process for granting license to be followed.

Now Sai Electrical challenged this decision before Delhi High Court, said that this is a bad decision, this is arbitrary. Now Delhi High Court said that which area to be demarcated as rural areas is purely a policy decision. And on this kind of stand taken by the government, the court must stay away. The court must respect the decision of the government, and moreover, the court has said that the one who may get the license, the one who may be allowed to operate as a licensee in rural area that entity does not have any vested right.

It cannot say that, okay, had this been notified as rural area, I would have become licensee. The court said that that kind of claim is not acceptable in the law. So, this is again another very important instance to understand that how the policy decision has been kept away from judicial scrutiny.

(Refer Slide Time: 33:17)



The slide contains the following text:

- **Tata Power v. Reliance Energy (2008 – SC)**
- **Can direction be issued to generating company u/s 23?**
- **The respondent company approached the MERC to get necessary directions to appellant company (generating company) u/s 23?**
- **Held – ‘Supply’ u/s 23 – would not mean the expression given under u/s 2(70)**
- **Rationale of including the provision under Part IV – infers the exclusion of the directions to generating companies – u/s 23**

The slide also features a video inset of a man in a white shirt speaking, and logos for IIT Bombay and NPTI at the bottom.

This is one decision with regard to the understanding of section 23. That section 23, if you can recall, it says about the power of the appropriate commission to give directions. Now question is whether under section 23, directions can be given even to generating companies. Because of the very use of the word supply, now supply word is used under section 2 subsection 70. Now under section 2 subsection 70, when supply word is used, it is used in a very broad sense, which certainly involves also generating companies.

But then court looked into the scheme of the law, court says that generation has been dealt under part 3 of the Act. License has been dealt under part 4 of the Act. And, part 4 presents a kind of



complete comprehensive court for dealing with the license. And therefore, it would be wrong, if we confer this authority on the appropriate commission to give the necessary direction to the generating company under section 23.

Why? Because section 23 is only for licensees, and generating companies are not required to take license. So, the court in this case said, and matter has gone to the Supreme Court. A good case to read and understand on the scheme of the law, a good case to read on what is the significance of purposeful interpretation of these statutes, a purposive interpretation of these statutes and how that purposive interpretation helps the court in arriving at the decision.

In this case, the court has also highlighted the significance of marginal note, hitting of sub part of the statute that how it plays a role in clearing the ambiguity. So, in this case, the court has said that section 23 relates only to the licensees. Generating companies are not required to take license. And therefore, section 23 will not be applicable to give any direction to generating companies. So, a very significant judgment where the court has clarified the law that how individual provisions are to be read in the context in which it has been designed. So, that is what the court has said.

(Refer Slide Time: 35:47)

➤ **Union of India through GM, Northern Railway v. UPSEP (2012 - SC)**

- **Railways are governed under the Railways Act 1989 - so no need to obtain licence**
- **Provisions of Railways Act will be governed for constructing transmission lines and distribution installation for the purpose of supply of power to railways without having any licence**

This is another important judgment, just to highlight that the railways have been given a separate status in this case of 2012. The supreme court makes it very clear that as far as railway is concerned, they need not obtain the license, and they need to govern under the Railways Act of

1989. And the reason is that that is a special law, and a special law needs to prevail over the general law.

So, any provision related to construction of transmission line or distribution installation in railways, all this needs to be dealt under Railway's Act, and there is no need to obtain any license. So, this is all for this session. Thank you very much.