



## When Water Becomes Electricity

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### 1. Introduction

**CONSTITUTIONAL** law, by its very nature, refuses to stand still. It evolves with every fiscal experiment, every legislative innovation, and every judicial correction. Even after more than seven decades of the Constitution of India, the delicate balance between legislative competence and constitutional limitation continues to generate disputes that are as intellectually rigorous as they are practically significant. What makes these questions enduring is not merely their legal complexity, but their real-world consequences - particularly in areas like taxation, where governance meets economic policy.

In this evolving constitutional landscape, the decision in ***T.H.D.C. India Ltd. & Ors. v. State of Uttarakhand & Others*** - [2026-TIOL-648-HC-UKHAND-MISC](#) assumes considerable importance. The judgment goes beyond the validity of a single levy; it probes the limits of State taxation powers within India's quasi-federal framework. At its core lies a fundamental question - can a State, under the guise of taxing water usage, effectively impose a tax on electricity generation?

The case thus becomes a compelling study of how constitutional doctrines such as **pith and substance**, **legislative competence**, and **distribution of taxing powers** are not merely theoretical constructs, but decisive tools in adjudicating modern fiscal conflicts.

### 2. Factual Background

The constitutional validity of the Uttarakhand Water Tax on Electricity Generation Act, 2012 ("Water Act") was challenged before the High Court. The matter initially resulted in a split verdict - while one Hon'ble Judge upheld the validity of the Act, the other declared it *ultra-vires*. Consequently, the matter was referred to a third Judge, whose opinion ultimately shaped the outcome.

The central issue arose from the nature of the levy. The Petitioners contended that the Act, in substance, imposed a tax on electricity generation - an area beyond the legislative competence of the State. In contrast, the State argued that the tax was merely on the **drawal of water used in electricity generation**, thereby falling within its legislative domain.

Section 17 of the Act, being the charging provision, became the focal point of controversy. It imposed liability on a "user" drawing water for electricity generation at rates notified by the State Government.

### 3. Arguments of the Petitioners

The Petitioners' challenge rested on foundational constitutional principles. They argued that the Act, **in pith and substance**, imposed a tax on electricity generation and was therefore a **colourable exercise of legislative power**. It is a settled position that States lack competence to tax the generation of electricity, particularly when such subject matter falls within the Union's domain.

A significant plank of the argument was that taxing powers must emanate from specific taxing entries and cannot be inferred from general legislative entries. The Petitioners emphasised that Article 288 cannot be

treated as an independent source of taxation power outside the framework of Articles 245, 246, 248, and Article 265, which mandates that no tax shall be levied or collected except by authority of law.

Further, it was contended that electricity qualifies as "goods," and any attempt to tax its generation indirectly violates the constitutional distribution of powers. The Petitioners also drew a clear distinction between general legislative entries and taxation entries, asserting that taxation is a distinct and exclusive field.

Importantly, they argued that the taxable event under the Act was not merely the drawal of water, but drawal of water for the purpose of generating electricity - thereby revealing the true nature of the levy.

#### **4. Arguments of the Respondent State**

The State of Uttarakhand, on the other hand, advanced a broader constitutional interpretation. It argued that the Constitution must be read as a living and organic document, where provisions are interpreted harmoniously rather than in isolation.

According to the State, the levy could be traced to multiple Entries like 17, 18, 45, 49, and 50 of List II (State List). It asserted that legislative entries must receive the widest possible interpretation, and that the State's power to tax flows from Articles 245 and 246, subject only to express constitutional limitations.

The State further contended that there is no rigid rule requiring a law to be traceable to a single entry. A legislation, including a taxing statute, may draw sustenance from multiple entries - even a combination of taxing and general entries.

Crucially, the State maintained that the incidence of tax was on the drawal and use of water, and not on electricity generation. The levy, therefore, was framed as one "in respect of water," and not electricity.

#### **5. Question Before the Hon'ble Third Judge**

The controversy ultimately crystallised into a single, decisive issue:

Whether the levy is a tax on "drawal of water" for use in electricity generation, or in substance, a tax on electricity generation itself?

#### **6. Discussion & Findings of the High Court**

##### **(i) Principles of Statutory Interpretation**

The Court began by reaffirming the fundamental principles of statutory interpretation. It emphasised that the intention of the legislature must be gathered from the words used, read in light of the purpose of the statute. The literal rule - *verbis legis non est recedendum* - remains the starting point, but not the end, of interpretation.

##### **(ii) Doctrine of Pith and Substance**

Turning to the doctrine of pith and substance, the Court reiterated that the nomenclature of a levy is not determinative. What matters is the true nature, character, and effect of the legislation. Where an apparent overlap exists between legislative fields, this doctrine becomes critical in identifying the real subject of the law.

##### **(iii) True Nature of the Taxable Event under the Water Act**

A close reading of the Water Act revealed that the definitions of "user" and "water tax" were intrinsically tied to electricity generation. The Court noted that a person becomes liable only when water is drawn for the purpose of generating electricity. Thus, mere drawal of water was not taxable - the taxable event was inseparably linked to electricity generation.

##### **(iv) Importance and Strict Interpretation of the Charging Section**

The Court underscored the significance of the charging section, describing it as the backbone of any taxing statute from which liability flows. Importantly, charging provisions must be strictly construed and cannot be expanded through inference or implication.

#### **(v) Measure of Tax vs Nature of Tax**

While acknowledging that the measure of tax and nature of tax are distinct, the Court held that the measure can still serve as an indicator of the true character of the levy. In the present case, both the measure and the incidence pointed towards electricity generation.

#### **(vi) Legislative Competence and Taxation as a Distinct Field**

On legislative competence, the Court reaffirmed a settled principle: taxation is a distinct matter, and the power to tax must be derived from a specific taxing entry. It cannot be inferred from general entries such as Entry 17 of List II. The absence of a specific entry empowering the State to tax water used in electricity generation proved fatal to the legislation.

#### **(vii) Rejection of Article 288 as an Independent Source of Taxing Power**

The Court rejected the reliance on Article 288 as a standalone source of taxing power. It held that constitutional provisions cannot be stretched to create taxation powers where none exist within the structured scheme of the Seventh Schedule.

#### **(viii) Final Conclusion: Lack of Legislative Competence and Excessive Delegation**

Ultimately, the Court concluded that the impugned levy was, in substance, a tax on electricity generation, and therefore beyond the legislative competence of the State. Additionally, Section 17 was found to suffer from excessive delegation, as it granted unguided power to the State Government to determine tax rates.

### **7. Applicability under GST Law**

Although the judgment arises in a non-GST context, its implications resonate strongly within the GST regime. The decision reinforces the principle that the nature of a levy must be determined by its true substance and not by its form or label - a principle equally relevant in GST disputes.

The judgment reiterates that taxing powers must be exercised strictly within statutory authority, echoing the mandate of Article 265, which continues to govern GST as well. Any attempt by authorities to expand the scope of taxation through interpretative overreach can be tested against this principle.

The distinction drawn between measure of tax and nature of tax also holds relevance in valuation disputes under GST, where the method of valuation cannot alter the essential character of the supply.

### **8. Lessons from the Judgment**

The ruling offers several enduring lessons for tax jurisprudence. It reaffirms that legislative competence is not a matter of form but of substance, and that constitutional limitations cannot be bypassed neither through clever or nor clumsy drafting.

It also strengthens the principle that taxation entries must be interpreted strictly, and that general legislative entries cannot be used as a backdoor to impose taxes. Equally significant is the Court's insistence on discipline in drafting charging provisions - highlighting that ambiguity in such provisions can render an entire levy vulnerable.

For policymakers, the judgment is a reminder that fiscal innovation must operate within constitutional boundaries. For practitioners, it underscores the importance of examining the true character of a levy, rather than being guided solely by its stated objective.

### **9. Conclusion**

The decision in *T.H.D.C. India Ltd.* does more than resolve a dispute over a State levy - it reasserts the discipline that the Constitution demands in matters of taxation. At a time when fiscal measures are increasingly being designed with ingenuity, the judgment draws a clear constitutional boundary: innovation in taxation cannot substitute legislative competence. The Court's analysis reinforces that doctrines such as pith and substance, the clear demarcation between taxing entries and general entries, and the mandate of Article 265 are not technical formalities, but substantive safeguards against the misuse of taxing power.

What makes the ruling particularly significant is its insistence on looking beyond form to substance. By piercing the veil of legislative drafting, the Court has reiterated that the true nature of a levy must withstand constitutional scrutiny, regardless of how it is labelled.

In the broader scheme of India's quasi-federal structure, the judgment serves as a reminder that constitutional limitations are as important as constitutional powers. It underscores that the architecture of fiscal federalism rests on precision, discipline, and respect for legislative boundaries. Ultimately, decisions like this reaffirm a foundational truth - the Constitution does not merely enable the exercise of power; it ensures that such power remains accountable, structured, and firmly rooted in the rule of law.

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