

**TAMIL NADU ELECTRICITY REGULATORY COMMISSION**  
(Constituted under Section 82 (1) of the Electricity Act 2003  
Central Act 36 of 2003)

**PRESENT:-**

**Thiru.S.Kabilan** ... **Chairman**

**Thiru.K.Venugopal** .... **Member**

**and**

**Thiru.S.Nagalsamy** .... **Member**

**D.R.P. No.16 of 2011**

1. Shree Ambika Sugars Ltd.  
"Eldorado", 5<sup>th</sup> Floor  
112, Nungambakkam High Road  
Chennai – 600 034.

2. Terra Energy Limited  
"Eldorado" 5<sup>th</sup> Floor  
112, Nungambakkam High Road  
Chennai – 600 034.

.... Petitioners

(Thiru. Rahul Balaji, Advocate for Petitioners)

**Vs.**

1. Tamil Nadu Electricity Board  
Represented by the Chairman  
144, Anna Salai, Chennai – 600 002.

... Respondent 1

2. TANGEDCO  
Represented by the Chairman  
144, Anna Salai, Chennai – 600 002.

... Respondent 2

3. State Load Despatch Centre  
Reptd. by the Chief Engineer (Operations)  
Tamil Nadu Electricity Board  
SLDC Block, 1<sup>st</sup> Floor, 144, Anna Salai  
Chennai - 600 002

... Respondent 3

(Thiru.P.H. Vinod Pandian,  
Advocate for Respondent 1-3)

4. M/s. PTC India Limited  
Second Floor, NBCC Towers  
15, Bhikaji Cama Place  
New Delhi – 110 066.

... Respondent 4  
(Thiru.Varun Phatak,  
Advocate for Respondent-4)

**Dates of hearing: 5-8-2011 and 16-11-2011**

**Date of Order : 30-11-2011**

D.R.P.No.16 of 2011 came up for hearing before the Commission on 5-8-2011 and on 16-11-2011.

The D.R.P. is filed with the following prayers:-

To declare the action of TNEB in not accepting the revised schedule of power supply from the plants at Thirumanadankudi, Pennadam and Kottur in lieu of the short fall at A.Chittur as arbitrary and illegal and consequently direct PTC to make payment of Rs.4,97,14,775/- being the amount illegally deducted from the bills raised by M/s.Shree Ambika Sugars Ltd. for its Kottur plant with further interest thereon at 18% p.a. from the date the deductions were made till date of payment ; and

To declare the first Petitioner has complied with its contractual obligations in respect of the supply of power for the month of May 2010 and consequently direct PTC to make payment of a sum of Rs.85,17,116/- illegally levied as penalty upon M/s.Shree Ambika Sugars Ltd. with further interest thereon at 18% p.a. from the date the deductions were made till date of payment.

2. When the petition was taken up for admission, the Counsel for the Respondents raised objections as to the jurisdiction of the Commission to decide the petition. Hence the Commission listed the D.R.P. for hearing on 16-11-2011 on the limited issue of jurisdiction.

3. The Petitioner as well as the Respondents appeared before the Commission. The Learned Counsel for the 4<sup>th</sup> Respondent M/s. PTC India Ltd. placed before the Commission, the judgment dated 4<sup>th</sup> November 2011 of the Appellate Tribunal for Electricity in Appeal Nos. 15 and 52 of 2011. He referred to paragraphs 15, 21 and 61 of the judgment and argued that in accordance with this judgment, TNERC has jurisdiction in entertaining this dispute qua all the Respondents other than M/s. PTC India Ltd. He referred to Section 158 of the Electricity Act, 2003 and argued that the Commission shall nominate an arbitrator and the procedure for the arbitration shall be in accordance with the Arbitration and Conciliation Act, 1996. This is in view of the fact that the TANGEDCO and the generator, who is the Petitioner in this case, has entered into an agreement wherein arbitration has been provided for. Accordingly, this Commission shall refer this matter for arbitration and cannot adjudicate the matter by itself.

4. The Learned Counsel for the Petitioner, Thiru Rahul Balaji referred to Rule 9 of Electricity Rules, 2005 and stated that the licence issued by the Central Commission under Section 14 of the Electricity Act, 2003 for interstate operations shall also entitle such electricity trader to undertake purchase of electricity from a

seller in a State and resale such electricity to a buyer in the same State, without the need to take a separate license for intra state trading from the State Commission of such State. In view of this provision of this rule, M/s. PTC has been buying and selling power intra state without obtaining separate licence for such purpose from the Appropriate State Commission. The judgment of the Appellate Tribunal for Electricity in Appeal Nos. 15 and 52 of 2011 clearly held that so long as the distribution licensees are involved in the procurement of power in the State, the State Commission alone will have the jurisdiction under Section 86 (1) (f) of the Electricity Act, 2003 to adjudicate upon the dispute.

5. The Learned Counsel for the Respondent, TANGEDCO argued that M/s. PTC being a trader having obtained licence from CERC, the disputes arising in such matters will have to be adjudicated only by CERC. He further argued that the agreement provides for jurisdiction in such matters will lie with the Courts, Forums in Delhi. When the Commission enquired as to which Forum in Delhi will have jurisdiction in such matters, he could not respond.

6. Having heard all the three Counsels, the Commission would like to go through various provisions of the Act and the ratios already decided by various Courts in this regard.

Section 86 (1) (f) of the Electricity Act, 2003 (Central Act 36 of 2003) is reproduced below:-

*“Adjudicate upon the disputes between the licensees, and Generating Companies and to refer any dispute for arbitration.”*

7. This issue was dealt with by the Supreme Court in the Gujarat Urja case wherein it has been held that the Appropriate Commission may either adjudicate upon the disputes between the licensees and generating companies or may refer any dispute for arbitration. The relevant portion of the judgment is extracted below:-

*“26. It may be noted that Section 86(1)(f) of the Act of 2003 is a special provision for adjudication of disputes between the licensee and the generating companies. Such disputes can be adjudicated upon either by the State Commission or the person or persons to whom it is referred for arbitration. In our opinion the word ‘and’ in Section 86(1)(f) between the words ‘generating companies’ and ‘to refer any dispute for arbitration’ means ‘or’. It is well settled that sometimes ‘and’ can mean ‘or’ and sometimes ‘or’ can mean ‘and’ (vide G.P. Singh’s ‘Principle of Statutory Interpretation’ 9th Edition, 2004 page 404.)*

*27. In our opinion in Section 86(1)(f) of the Electricity Act, 2003 the word ‘and’ between the words ‘generating companies’ and the words ‘refer any dispute’ means ‘or’, otherwise it will lead to an anomalous situation because obviously the State Commission cannot both decide a dispute itself and also refer it to some Arbitrator. Hence the word ‘and’ in Section 86(1)(f) means ‘or’.*

*28. Section 86(1)(f) is a special provision and hence will override the general provision in Section 11 of the Arbitration and Conciliation Act, 1996 for arbitration of disputes between the licensee and generating companies. It is well settled that the special law overrides the general law. Hence, in our opinion, Section 11 of the Arbitration and Conciliation Act, 1996 has no application to the question who can adjudicate/arbitrate disputes between licensees and generating companies, and only Section 86(1)(f) shall apply in such a situation.*

*30. Shri Jayant Bhushan, learned counsel for one of the parties in the connected case submitted that Section 86(1)(f) is violative of Article 14 of the Constitution of India because it does not specify when the State Commission shall itself decide a dispute and when it will refer the matter to arbitration by some arbitrator. In our opinion there is no violation of Article 14 at all. It is in the discretion*

*of the State Commission whether the dispute should be decided itself or it should be referred to an arbitrator. Some leeway has to be given to the legislature in such matters and there has to be judicial restraint in the matter of judicial review of constitutionality of a statute vide Government of Andhra Pradesh & Ors. vs. Smt. P. Laxmi Devi JT 2008(2) 8 SC 639. There are various reasons why the State Commission may not decide the dispute itself and may refer it for arbitration by an arbitrator appointed by it. For example, the State Commission may be overburdened and may not have the time to decide certain disputes itself, and hence such cases can be referred to an arbitrator. Alternatively, the dispute may involve some highly technical point which even the State Commission may not have the expertise to decide, and such dispute in such a situation can be referred to an expert arbitrator. There may be various other considerations for which the State Commission may refer the dispute to an arbitrator instead of deciding it itself. Hence there is no violation of Article 14 of the Constitution of India”*

8. From the above it may be seen that the Commission may either adjudicate upon the dispute or refer the matter for arbitration at its own discretion. Just because a provision exists in the contract for arbitration, the Commission is not bound by such a provision and therefore compelled to refer the matter for arbitration. Accordingly, the argument of the Learned Counsel for the Respondent No.4, M/s. PTC India Ltd. that in case the contract provides for arbitration, the Commission shall not adjudicate such matters and refer the same for arbitration fails.

9. In the judgment of the Hon'ble Appellate Tribunal for Electricity in Appeal Nos. 15 & 52 of 2011, the Tribunal extracted extensively from its own decision in Appeal No.200 of 2009 in the matter of Pune Power Development vs. Karnataka

State Commission and others. Paragraphs 86 and 87 of the judgment referred to above is extracted below:-

*“86. On the other hand, it is noticed that a similar question had been raised in Appeal No.200 of 2009 in the matter of Pune Power Development Limited Vs Karnataka State Commission and Ors. On going through the said judgment rendered by this Tribunal, we find that the very same issue had been decided holding that the Karnataka State Commission has got the jurisdiction as there has been a clear and present nexus between the trading licensee and the State of Karnataka. This ratio in our view would apply to the present facts of the case in all fours. The relevant findings of this Tribunal are reproduced below:*

*“16. The reading of the above provision would reveal that the section is very widely worded and covers the entire process of the power procurement of a Distribution Licensee. The Regulatory jurisdiction of the State Commission extends the procurement of electricity from Generating Companies or licensee or from other sources. Such a procurement can be made from any place within or outside the State, inter-State or Intra State. In other words, all purchasers of electricity from the persons including the trading licensee like the Appellant herein falls under the regulatory jurisdiction of the State Commission.*

*18. A plain reading of the above provision would clearly show that the State Commission has jurisdiction to entertain disputes between the licensee and also the Generating Companies. Thus, the scope of Section 86 (1) (f) is very wide as it covers all disputes between the licensee which relate to the regulatory jurisdiction of the State Commission. In other words, there is no restriction in Section 86 (1) (f) regarding the nature of the licensee. Thus, all disputes relating to the regulatory jurisdiction of the State Commission which involves the Distribution Licensee or a trading licensee or a transmission licensee shall have to be adjudicated upon exclusively by the State Commission.*

*31. The location of the selling party is irrelevant. In this context, it would be worthwhile to refer to a decision rendered by this Tribunal in the case of Lanco Kondapalli Power Private Limited v Haryana Electricity Regulatory Commission reported in 2010 ELR (APTEL) 36. In this case this Tribunal has upheld the jurisdiction of the Haryana State Commission to adjudicate upon the dispute under Section 86 (1) (f) between the Distribution Licensee in Haryana and Generating Companies in the State of Orissa.*

*“The present case involves a dispute between the Distribution Licensee of Karnataka, the Respondent and the Appellant which is an inter-State licensee. The Appellant is selling power to the Distribution Licensee Respondent in the State of Karnataka, thereby having a nexus to the State. Since the procurement of power by the Distribution Licensee from the Trading Licensee is being done in the State of Karnataka, the Appellant falls within the jurisdiction of the State Commission under Section 86(1)(b) of the Act. The procurement of power has a direct nexus with the State of Karnataka as the supply is to the Karnataka Distribution Licensee. There is no restriction on the location of the Trading Licensees to determine the jurisdiction of the State Commission. The supply of electricity, namely, the Appellant being at a different place does not oust the jurisdiction of the State Commission under Section 86(1)(f) to adjudicate upon the dispute between the licensees. **Therefore, we hold that so long as the Distribution Licensees are involved in procurement of power in the State, the State Commission alone will have the jurisdiction under Section 86(1)(f) to adjudicate upon the dispute.**”*

*“87. In the above case, the following principles have been laid down by this Tribunal:*

- (a) The regulatory jurisdiction of the State Commission extends to the procurement of electricity from the generating Company or licensees or from other sources. Such a procurement can be made from any place within or outside the State (inter State or intra State)*
- (b) The State Commission has got the jurisdiction to entertain the disputes between the licensees and also the generating companies. The Scope of Section 86 (1) (f) is very wide as it covers all disputes between the licensees which relate to the regulatory jurisdiction of the State Commission. In other words, there is no restrictions under Section 86 (1) (f) regarding the nature of the license.*
- (c) There is no restrictions on the location of the Trading Licensee to determine the jurisdiction of the State Commission under Section 86 (1) (f). So long as the Distribution Licensee’s procurement power is involved in the State, the State Commission alone will have the jurisdiction under section 86 (1) (f) to adjudicate upon the dispute.*
- (d) The Appellant is selling power to the distribution licensee Respondent in the State of Karnataka. Therefore, it has got a nexus with the State. Since the procurement of power by the distribution licensee is made from the trading licensee in the State of Karnataka, the Appellant falls within the jurisdiction of that State Commission under Section 86 (1)(f) of the Act. State Commission*

*has got the jurisdiction to entertain the disputes between the licensees and also the generating companies. The procurement of power has a direct nexus with the State of Karnataka as the supply is to the Karnataka Distribution Licensee. The supply of electricity namely, the Appellant being at a different place does not oust the jurisdiction of the State Commission under Section 86 (1) (f) to adjudicate the dispute between the licensees. Therefore, so long as the distribution licensees are involved in procurement of power in the State, the State Commission alone will have the jurisdiction under Section 86 (1) (f) to adjudicate the dispute.”*

10. A scrutiny of these paragraphs clearly indicate that so long as the Distribution Licensees are involved in procurement of power in the State, the State Commission alone will have the jurisdiction under Section 86 (1) (f) to adjudicate upon the dispute. Further as long as the Distribution Licensee is procuring power, from any trader inter-state or intra-state, disputes relating to such matter shall be dealt with by the State Commission under Section 86 (1) (f) of the Act.

11. The argument of the Counsel for TANGEDCO that since PTC was granted licence by the CERC, CERC alone would have jurisdiction in this matter is not acceptable in the light of the observations of Hon'ble Appellate Tribunal for Electricity discussed above. The Commission notes that M/s. PTC India Ltd. has performed purely an intra-state transaction in this particular case. Power was supplied by generators who are located within Tamil Nadu and the distribution licensee is also located in Tamil Nadu. As the parties to the dispute are located within Tamil Nadu, the Commission rules that TNERC has jurisdiction to adjudicate the dispute on this count as well.

12. As regards the issue of arbitration raised by the trading licensee, PTC India Ltd., it is for the Commission either to adjudicate or refer this dispute for arbitration under Section 86 (1) (f) of the Electricity Act, 2003 (Central Act 36 of 2003) which has been upheld by the judgment of the Supreme Court in Gujarat Urja Vikash Nigam Ltd. Vs. Essar Power Ltd. Civil Appeal Nos.1940 of 2008 and 1941 of 2008 (2008 (4) SCC 755). Any agreement between the PTC and the generator, which provides for arbitration is inconsistent with Section 174 of the Electricity Act, 2003 (Central Act 36 of 2003) and to that extent the clause of arbitration is void.

13. In the light of the discussion in paragraphs 3–12 above, the Commission is of the considered view that the Commission has jurisdiction to adjudicate this matter under Section 86 (1) (f) of the Electricity Act, 2003 (Central Act 36 of 2003)

**Order:-**

14. The petition is admitted. The Respondents shall file their counters within four weeks. The matter shall be listed thereafter.

**Appeal:-**

15. An appeal under section 111 of the Electricity Act, 2003 against this order shall lie to the Appellate Tribunal for electricity within a period of 45 days.

(Sd.....)  
**(S. Nagalsamy)**  
Member

(Sd.....)  
**(K. Venugopal)**  
Member

(Sd.....)  
**(S.Kaliban)**  
Chairman

**/ True Copy /**

**Secretary**  
**Tamil Nadu Electricity Regulatory Commission**



