

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
Thiru.S.Nagalsamy Member

M.P. No. 42 of 2010

Ind Bharath Thermal Power Ltd
(formerly Ind-Barath Power (Karwar) Ltd.)
New No.20/Old No.129
Chamiers Road, Nandanam
Chennai – 600 035.

.... Petitioner
(Thiru. Rahul Balaji, Advocate for Petitioner)

Vs.

1. The Chairman
Tamil Nadu Electricity Board
144, Anna Salai
Chennai – 600 002.
2. Tamil Nadu Transmission Corporation Ltd.
Represented by its Director / Operation
144, Anna Salai
Chennai – 600 002.
3. The Member (Generation)
Tamil Nadu Electricity Board
144, Anna Salai
Chennai – 600 002.
4. The Chief Engineer / PPP
Tamil Nadu Electricity Board
144, Anna Salai
Chennai – 600 002.

Thiru P.S Raman Advocate General Respondents
(Thiru.H.S. Mohammed Rafi, Advocate for Respondents)

**Dates of hearing 19-10-2010, 18-01-2011, 20-01-2011,
31-01-2011 and 15-03-2011**

Date of order : 20-4-2011

The **M.P.No.42 of 2010** came up for final hearing before the Commission on **15-3-2011**. The Commission upon perusing the above **M.P.No.42 of 2010** and other connected records and after hearing both sides passes the following:-

ORDER

1. **Prayer in M.P. No.42 of 2010:-**

To direct the Second Respondent Licensee to calculate the transmission charges or wheeling charges for the system required for evacuation facilities for the Petitioner's 3 x 150 MW thermal power plant being commissioned at Swaminatham and Ottapidaram Villages, Ottapidarum Taluk, Tuticorin District and place the same before the Commission for their approval and further direct the Second Respondent to forthwith take up the work for setting up the evacuation facilities and complete the same, so as to match the commissioning schedule of the Petitioner's plant and pass such further or other orders as this Commission may deem fit.

2. **Facts of the case :-**

2.1 The Petitioner established a generating plant under Section 7 of the Electricity Act. He informed the Tamil Nadu Electricity Board on 29-09-2009 of the fact of establishing of the 3 x 150 MW thermal power plant at Swaminatham and Ottapidaram Villages, Ottapidarum Taluk,

- Tuticorin District and requested them to conduct power flow study for evacuation of power to be generated by the Petitioners, since the said plant was scheduled to be completed within 20 months.
- 2.2 The Petitioner vide letter dated 12-10-2009 conveyed willingness to take up necessary transmission line, running from the Petitioners switchyard to the nearest Melavittan 230 KVSS, under the supervision of Tamil Nadu Electricity Board officials and balance works on Deposit Contribution Work (DCW) basis.
- 2.3 The Tamil Nadu Electricity Board vide letter dated 14-10-2009, requested the Petitioner to furnish relevant documents, technical write-up on 3 x 150 MW thermal power plant and technical drawings of the same requested the Petitioner to pay Rs.5000/- towards Open Access Application Registration fee as per Tamil Nadu Electricity Regulatory Commission's Intra State Open Access Regulations, 2005.
- 2.4 The Petitioner vide letter dated 19-10-2009 submitted the requested documents along with a demand draft for Rs.5,000/- to Tamil Nadu Electricity Board, requesting Tamil Nadu Electricity Board to conduct the necessary studies for the power evacuation at the earliest, so as to enable the Petitioners to schedule their activities. The Petitioner further conveyed in the said letter that they proposed to first have the 2 x 150 MW configuration and to add another 1 x 150 MW in due course.

- 2.5 The Tamil Nadu Electricity Board vide letter dated 28-10-2009 requested the Petitioner to pay an additional sum of Rs.1,00,000/- towards the fee for the load flow study, for the Petitioner's newly proposed 3 x 150 MW coal-based power plant (2 x 150 first and add 1 x 150 MW in due course) at Manapad in Satankulam Taluk, Tuticorin District, truly as a generating station. The Petitioner in their letter dated 29-10-2009, remitted a demand draft for a sum of Rs.1,00,000/- as requested by Tamil Nadu Electricity Board vide their letter dated 28-10-2009, for the load flow study for evacuation facilities of the plant at Swaminattam and Ottapidaram villages, Ottapidaram Taluk, Tuticorin District. The Petitioner further in the said letter, went on to agree to share the cost of the bay extension at 230 KVSS and the line laying cost to Checkanoorani.
- 2.6 The Petitioner conveyed their readiness to do the stringing of the conductor on the free arm, on similar terms for their evacuation of power from the proposed 3 x 150 MW power generating station as the above said work is needed immediately for the disbursement of funds for the implementation of the project.
- 2.7 The Tamil Nadu Electricity Board vide letter dated 23-04-2010 furnished the results of the load flow study conducted for the evacuation of power from the Petitioner's proposed plant in Tuticorin District, which was:

- (i) The erection of 230 KV DC line from the Petitioner's plant to the proposed 230 KV Aruppukottai SS which is to be LILO'ed in SIPCOT-Checkanoorani 230 KV line and the erection of 230 KVSC line from Petitioner's plant to Anupankulam are subject to the establishment of the proposed 230 / 110 KV Arupukottai SS to match with the commissioning schedule of the Petitioner's plant.
- (ii) The Tamil Nadu Electricity Board further stated that once the ban to sell power outside the state of Tamil Nadu is lifted, the Petitioner's company may sell their power to anybody else, even outside Tamil Nadu. However, under such circumstances, a revised load flow study is necessary and also that the above recommendation is only for grid connectivity and for disbursement of power to Tamil Nadu Electricity Board. Thereby, requested the Petitioner to furnish consent for the mentioned evacuation scheme and to furnish an undertaking to bear the entire cost of transmission system on DCW basis.
- 2.8 The Petitioner vide letter dated 26-04-2010 informed the Chairman, Tamil Nadu Electricity Board that the erection work of the plant and the construction work at the plant has commenced and are scheduled to be effectively commissioned within 16 months, from April 2010 and that the commissioning of Arupukottai 230 KV Substation will not match with that of the Petitioner's. The Petitioner requested the Respondent Board to propose an alternate evacuation system to match with the commissioning schedule of the Petitioner's plant.

2.9 Since the Respondents delayed the matter, the Petitioner vide letter dated 11-05-2010 to the Chairman, stated that the financial closure of the Petitioner's company had been achieved and necessary budget for the plant had also been prepared and that substantial expenditure towards the power evacuation scheme proposed by Tamil Nadu Electricity Board vide letter dated 23-04-2010 has not been contemplated and the same is also not possible to be accommodated at this stage. The Petitioner requested the Respondent Board an alternate evacuation scheme providing a few cost effective schemes as options and also suggested the following:-

- (i) Erection of 230 KV line from Petitioner's plant to Melavittan 230 KVSS.
- (ii) Erection of 230 KV line from Petitioner's plant to Indbharat Powergencom plant.
- (iii) LILO of the 230 KV line to be erected on the free arm of the existing Melavittan – Checkanoorani 230 KV line on DC tower which has been erected as a joint venture between the Petitioner and Tamil Nadu Electricity Board.

2.10 The Petitioner also highlighted that the power generated by the IndBharath Powergencom plant is being taken care of by the 230 KV feeder emanating from TTPS and the newly commissioned line between Milavittan and Checkanoorani 230 KV substations, which has been lightly loaded. By adopting the Petitioners proposed evacuation scheme the

cost of proposal would be Rs.30 crore, which is cost-effective in the current situation.

2.11 The TANTRANSCO Ltd. vide letter dated 25-05-2010 rejected the alternate proposal for evacuation of power from the Petitioner's plant and held that the original load flow study dated 23-04-2010 as good and applicable and the Petitioner was requested to furnish consent without any further delay. Being left with no other alternative, the Petitioner gave consent on 29-05-2010 to the proposal for power evacuation system as stipulated in letter dated 25-05-2010, however still putting forth for reconsideration the proposal made by them in letter dated 11-5-2010.

2.12 The Petitioner vide letter dated 25-06-2010 stated that they were agreeable to share with the Tamil Nadu Electricity Board the cost of 230 KV lines proposed for Indbharath Thermal Power plant for evacuation though there is no legal basis for making such demand for payment but was offered since the Petitioner had no alternative.

2.13 The TANTRANSCO after a comprehensive load flow study taking into account the feasibility of various options available requested the Petitioner to concur with any of the following options at the earliest.

- (i) The Petitioner's plant 3 x 150 MW connected to proposed Arupukottai 230 KVSS with DC line + 230 KV SC line from the plant to 230 KVSS Anupankulam SS.
- (ii) The Petitioner's plant 3 x 150 MW connected to proposed Arupukottai 230 KVSS with DC line + 230 KV SC line from the plant direct to 230 KV Checkanoorani SS using the free arm available (suitably charging the cost of existing DC towers).

The Petitioner concurred with the second option of the proposal given by Tamil Nadu Electricity Board, however bringing to notice, that the Petitioner had shared the 25% cost of the Milavittan–Checkanoorani 230 KV line executed by Tamil Nadu Electricity Board in addition to the cost incurred by the Petitioner in erecting multi-circuit towers in 24 locations for 6.57 kms including the cost of the towers. The Petitioner also requested that the cost of stringing of conductors using the free arm with insulators and hardware accessories alone may be charged to the Petitioner instead of charging the cost of the existing towers for which the Petitioner had already shared the cost.

- 2.14 The Tamil Nadu Electricity Board rejected the request of the Petitioner to bear the stringing cost alone using the available free arm in the proposed evacuation site and is making claims calling upon the Petitioner to bear the entire capital cost.

3. **Contention of the Petitioner:-**

- 3.1 The stand taken by the TANTRANSOCO and Tamil Nadu Electricity Board is contrary to the provisions of Electricity Act, 2003 as well as Tamil Nadu Electricity Regulation Commission's Open Access Regulations dated 24-06-2005. The Regulations provide only for prescription of charges in a manner to be determined in terms of the regulations and capital cost and equipment costs cannot be to the cost of the generator.
- 3.2 The stand of the Respondents is not that dedicated transmission lines to be put up by the Petitioner which would be wholly owned and used by the Petitioner. The case of the Respondents is that it would be putting up the transmission and evacuation facilities with the Petitioner making contribution towards its cost. There is no provision for such arrangement inasmuch as the transmission facilities are dedicated transmission lines under Section 10, the same would be entirely owned by the generating company with no ownership with the transmission licensee. The claim of the Respondents is, therefore, entirely without any basis.
- 3.3 While the duties of the generating companies under Section 10 of the Electricity Act, 2003 are stated to be subject to and in accordance with the provisions of the Act or rules and regulations made thereunder; the duty of a transmission licensee, as set out in Section 40 of the said Act does not open with a non-obstante clause and therefore it is the absolute duty of the transmission licensee to provide non-discriminatory open access to its

- transmission system for use by the generating company on payment of the transmission charges.
- 3.4 Since the transmission licensee is putting up the evacuation system it would clearly form part of the intra-state transmission network. The licensee is seeking for payment of charges contrary to the Open Access Regulations. Having, in principle, agreed to set up evacuation facilities, the Respondents cannot act contrary to the provisions of the Act and Regulations.
- 3.5 A generating company not being a licensee under the provisions of the Act as also pursuant to the notification of the Electricity (Removal of Difficulty) Fifth Order, 2005 in relation to establishment, operation or maintenance of dedicated transmission lines, it would be impossible for a generating company to set up lines over such long distance in the absence of a license. This would result in substantial delays and cost overruns. The Respondents as the licensee has the absolute right for carrying overhead lines in its capacity as a Deemed Telegraph Authority.
- 3.6 The execution of EHT transmission lines by licensee is by virtue of provisions contained in Section 164 of the Electricity Act, 2003. The transmission utility licensee can exercise powers of the Telegraph Authority under the Indian Telegraphs Act, 1885. The Petitioner, in the absence of such powers would find it impossible to carry overhead lines

over a stretch of minimum 80 KMs in the present case and the costs and investments alone would be in excess of Rs.100 crores. In addition thereto, such an interpretation would be contrary to the express provisions of Section 40 which mandates transmission licensee to build, maintain and operate an efficient, co-ordinated and economical inter-state transmission system or intra-state transmission system, as the case may be.

4. **Contention of the Respondent Board in Counter Affidavit filed by them:-**

- 4.1 On 26-04-2010 the Respondents communicated their in-principle acceptance to the proposed power evacuation scheme. The Respondents informed the Petitioner on 25-05-2010 that their request for considering the alternate proposal is not feasible of compliance, and that the results of the load flow study communicated by the Respondents vide letter dated 23-04-2010 holds good.
- 4.2 On 17-06-2010 the TNEB informed the Petitioner that the concurrence given by the company is accepted and that the alternate proposal suggested by the Petitioner is not feasible by compliance.
- 4.3 The revised scheme in the case of M/s. Ind Barath Powergencom Limited resulted in additional expenditure to the Tamil Nadu Electricity Board to the tune of Rs.38 crores. The above expenditure is still under audit dispute on the ground that the above expenditure could have been

avoided had M/s.Ind Barath Powergencom Ltd. accepted the original result of the load flow study.

4.4 After enjoying the benefits of the revised load flow study, no power was supplied by M/s. Ind Barath Powergencom Ltd as per the above condition by declaring themselves as a Generator. Further, inspite of the condition that M/s. Ind Barath Powergencom Ltd. cannot claim any right to evacuate the additional power through the Melavittan – Checkanurani line including for any fresh proposal the company have now sought for evacuation of power through the above said line for the Petitioners 3 x 150 MW plant.

4.5 A set of Load Flow Study has been conducted with the following cases:-

Case 1: Already finalized scheme (i.e.) M/s. Ind Barath 3 x 150 MW Generator connected to Aruppukottai 230 KV SS with DC line + 230 KV SC line to 230 KV Anupankulam SS.

Case 2: M/s.Ind Barath 3 x 150 MW Generator connected to existing M/s. Ind Barath (2 x 63 MW plant) by SC line + 230 KV SC line from the plant direct to 230 KV Checkanurani SS using the free arm available + 230 KV DC line from the plant to TSIPCOT (Melavittan) 230 KV SS.

Case 3: M/s.Ind Barath 3 x 150 MW Generator connected to Aruppukottai 230 KV SS with DC line + 230 KV SC line from the plant direct to 230 KV Checkanurani SS (using the free arm available).

From the study results, the following points were observed:

- (i) The line/transformer loadings are within limit in Case 1, as already communicated.
- (ii) In Case 2, the TSIPCOT (Melavittan–Paramakudi 230 KV line is fully loaded in full wind condition. Besides, during contingency of outage condition, TSIPCOT–Paramakudi 230 KV line is over loaded. Hence this Case 2 is not a suitable transmission scheme.
- (iii) In Case 3, the line / transformer loadings are normal and within limit.
- (iv) Comparably, Case 1 and Case 3 are technically feasible.
- (v) In Case 3, the ROW problem will not arise if free arm available in the Checkanurani DC Tower can be used.
- (vi) Further, if the free arm available is utilized for connecting the power plant to Checkanurani 230 KV SS, the work can be completed early to match with the commissioning date of the power plant.
- (vii) But, Tamil Nadu Electricity Board has to forego the transmission corridor availability (i.e. free arm available for its future need, if any) in the 230 KV TSIPCOT to Checkanurani feeder DC Tower, by suitably charging the cost for the Tower (which is to be decided).

- 4.6 As per Option II of the load flow study accepted by the Petitioner, the proposed plant has to be connected to Aruppukottai SS by one 230 KV double circuit line and has to be connected to Checkanurani 230 KV SS by another 230 KV single circuit line utilizing the free arm available. Both the lines are dedicated transmission lines proposed exclusively for evacuation of power from the Petitioner's plant. Therefore, the Petitioner has to pay the cost for erection of both the lines notwithstanding the fact that the free arm available is being utilized and the claim of the Petitioner that they have shared the cost of the Checkanurani line in the case of M/s. Ind Barath Powergencom Ltd. could not be considered. Moreover the request of M/s. Ind Barath Powergencom Ltd. for conducting a revised load flow study was considered then based on the offer of the company to share the cost and also subject to certain other conditions which the company had failed to fulfill later and resulted in extra expenditure to Tamil Nadu Electricity Board.
- 4.7 The transmission lines proposed now are dedicated transmission lines only and the Petitioner has to bear the cost of the line including the cost of the towers as per Section 10 (1) of Electricity Act, 2003. The exact cost would have been worked out and the estimate sanctioned had the Petitioner concurred to the results of the load flow study.
- 4.8 Regulation 9 (b) of Open Access Regulations, 2005 is applicable for a dedicated transmission system or a distribution system used for open access which has been constructed for an exclusive use of an open

access customer. In this case two dedicated transmission lines have been proposed exclusively for evacuation of power from the Petitioner's plant without any problem even during contingency and outage condition and hence the same cannot be considered as a dedicated transmission system. Therefore, Regulation 9 (b) of Open Access Regulation, 2005 is not applicable.

4.9 The Petitioner is a generator who proposes to establish new 3 x 150 MW generating plant and seeks connectivity to the Tamil Nadu Electricity Board grid. As such, the Petitioner is not an ordinary open access customer to invoke the provisions of the Intra State Open Access Regulations, 2005.

4.10 As per the provisions of Section 10 (1) of the Electricity Act, 2003, the Petitioner is duty bound to establish dedicated transmission lines for its proposed plant. In the event of the Petitioner not willing to bear the cost as demanded by the Respondents, it is open to the Petitioner to proceed further under the provisions of the Section 10 (1) of the Act for which the interconnection point alone will be specified by Tamil Nadu Electricity Board.

4.11 In view of the difficulties in carrying out the work by the generating companies, as stated by the Petitioner, the STU had offered to do the work on DCW basis extending the provisions of Tamil Nadu Electricity

Regulation Commission's Order No. 4 dated 15-05-2006 applicable to captive power plants to the Petitioner, who is a generator.

4.12 Construction of a dedicated transmission line shall not be construed as augmentation of the transmission system for the purpose of Regulation 9(2) of CERC Regulations, 2009. Hence, the dedicated transmission lines in the instant case will not form a part of the transmission system of the STU. Further this line cannot be utilized for anybody else other than the Petitioner. The transmission system of the STU starts only at Chekkanoorani SS / Aruppukottai SS and hence open access to the transmission system (sub-station in this case) for the Petitioner can be given only from the SS. Therefore collection of transmission charges for open access to the transmission system will commence from this point only.

4.13 The Regulation 9 (i) (b) of the Tamil Nadu Electricity Regulatory Commission – Intra State Open Access Regulations, 2005 deals with dedicated transmission system which is distinct from the dedicated transmission lines when read with the definitions of dedicated transmission lines specified in the Electricity Act, 2003 and that of transmission system specified in Tamil Nadu Electricity Grid Code. The dedicated transmission lines are laid only upto the point of connection to the grid. After the point of connection, power evacuation is taken care of by the STU through the existing system or through system strengthening if

found necessary. However, if the transmission system is built from the connection point exclusively for the purpose of transmitting power from a generating company to a specified end beneficiary, then the system itself becomes a dedicated transmission system and the work has to be categorized under system augmentation. Therefore the collection of charges as per the said Regulation 9 (1) (b) applicable for dedicated transmission system will not be applicable to the instant case of dedicated transmission lines.

- 4.14 The STU having spent such huge amounts would have to face the consequences of a dead investment in the event of the generating company ceasing to exist, as the lines executed for connecting a generator plant of capacity 450 MW to the grid, cannot be used by the STU unless another plant comes up in the area. Further consumption in the area is also low.
- 4.15 The proposed scheme is only a set of dedicated transmission lines and would not form a part of the intra state transmission system and shall remain to be so. Since the corridor availability in the existing network of the STU is to be utilized as a dedicated transmission line, based on the specific request of the company, the collection of the expenditure already incurred by the STU from the generating company is legally tenable and justifiable.

- 4.16 The proposed scheme is only for connecting the Petitioner's plant to intra state transmission system (sub-station), through the dedicated transmission line and thereafter it becomes the responsibility of the STU to draw power from the point of connection of the transmission system viz Chekkanoorani SS / Arupukottai SS, since the Petitioner had stated that the entire power is for sale through trader. On the other hand if the Petitioner wants to transmit / wheel power to any other end beneficiary a local flow study has to be conducted once again for finalizing the evacuation scheme for deciding the feasibility of transmission of power either through the existing network or through any system strengthening if necessary. Hence, a fresh load flow study will be necessary for any change in end beneficiary.
- 4.17 M/s.Coastal Energen which is setting up a plant in Tuticorin area has already sought and obtained the approval of the Government of India for laying of 400 KV dedicated transmission lines from their plant to the pooling station exercising the powers of the Telegraph Authority. It is for this reason alone that the STU had sought the concurrence of the Petitioner for carrying out the work on DCW basis extending the provisions available in Tamil Nadu Electricity Regulatory Commission's Order No.4 dated 15-05-2006 for fossil fuel based captive power plants to generating stations also. But in the instant case the Petitioner having expressed their genuine difficulties in carrying out the work, has not concurred to the option of carrying out the same on DCW basis as suggested by the STU,

which is well aware of such difficulties and also kept in mind the commissioning schedule of the plant while suggesting the scheme.

- 4.18 If the request of the Petitioner to consider their issue under Regulation 9 (1) (b) of Intra State Open Access Regulations, 2005 which is applicable for the dedicated transmission system which will start from the sub-station, is considered for the dedicated transmission line laid for connectivity, it would not only cause a huge expenditure on any transmission company but also legally not tenable since a lot of new generating companies are coming up.

5. **Findings of the Commission:-**

5.1 The issue for determination in this case is whose responsibility it is under the Electricity Act 2003 to establish dedicated transmission lines of a generating company.

5.2. Section 10 of Electricity Act 2003 defines the duties of a generating company as below:-

“10. Duties of generating companies:

- (1) *Subject to the provisions of this Act, the duties of a generating company shall be to establish, operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made thereunder.*
- (2) *A generating company may supply electricity to any licensee in accordance with this Act and the rules and regulations made thereunder*

and may, subject to the regulations made under sub-section (2) of section 42, supply electricity to any consumer.

- (3) *Every generating company shall –*
- (a) *submit technical details regarding its generating stations to the Appropriate Commission and the Authority;*
 - (b) *co-ordinate with the Central Transmission Utility or the State Transmission Utility, as the case may be, for transmission of the electricity generated by it.”*

Prima facie, it appears to be the duty of a generating company to establish, operate and maintain dedicated transmission lines.

5.3. Dedicated transmission lines have been defined in Section 2 (16) of the Electricity Act 2003 as follows:-

" Dedicated Transmission Lines " means any electric supply line for point to point transmission which are required for the purpose of connecting electric lines or electric plants of a captive generating plant referred to in section 9 or generating station referred to in section 10 to any transmission lines or sub-stations or generating stations or the load centre, as the case may be;

In the present case, dedicated transmission line means electricity supply line from the generating station to a sub-station of the Tamil Nadu Electricity Board. The Electricity (Removal of difficulty) Fifth Order, 2005 of the Government of India stipulates that a generating company shall not be required to obtain a license for establishing, operating or maintaining a dedicated transmission line.

5.4 Section 40 enjoins upon a transmission licensee to build, maintain and operate an efficient, co-ordinated and economical inter-state transmission system or intra-state transmission system as the case may be. Sections 2 (36) and 2

(37) define an inter-state transmission system and intra-state transmission system as follows:-

“2 (36) “inter-State transmission system” includes -

- (i) any system for the conveyance of electricity by means of main transmission line from the territory of one State to another State;*
- (ii) the conveyance of electricity across the territory of an intervening State as well as conveyance within the State which is incidental to such inter-State transmission of electricity;*
- (iii) the transmission of electricity within the territory of a State on a system built, owned, operated, maintained or controlled by Central Transmission Utility.*

2 (37) “intra -State transmission system” means any system for transmission of electricity other than an inter-State transmission system ;”

5.5 It is not clear from the definition of intra-state transmission system whether the duty of a transmission licensee commences from the switch yard of the generating station. Piecing together the various provisions of the Electricity Act 2003, it appears that a generating company is charged with the task of establishing, operating and maintaining dedicated transmission lines.

5.6. The petitioner argues that even if it is conceded that the responsibility for establishing, operating and maintaining of dedicated transmission lines falls on the shoulders of a generator, the transmission licensee is better placed to execute this responsibility in view of the severe practical difficulties of opening up a street, sewer or a drain or a tunnel or to alter position of any pipes. These powers are available only to a transmission licensee under Sections 67, 68 and 69 of the Electricity Act 2003.

5.7. Clause 2 of the Electricity (Removal of Difficulty) Fifth Order, 2005 reads as follows:

“Establishment, operation or maintenance of dedicated transmission lines -

A generating company or a person setting up a captive generating plant shall not be required to obtain license under the Act for establishing, operating or maintaining a dedicated transmission line if such company or person complies with the following:-

- (a) Grid and standards of grid connectivity;*
- (b) Technical standards for construction of electrical lines;*
- (c) System of operation of such a dedicated transmission line as per the norms of system operation of the concerned State Load Despatch Center (SLDC) or Regional Load Despatch Center (RLDC).*
- (d) Directions of concerned SLDC or RLDC regarding operation of the dedicated transmission lines.*

This makes it clear that a generating company shall not be required to obtain license for establishing a dedicated transmission line.

5.8 Perhaps, the Electricity Act, 2003 did not visualize a situation which would involve establishment of dedicated transmission line for a distance as long as 140 km. costing roughly Rs.70 crores.

5.9 The powers available to a transmission licensee under Sections 67, 68 and 69 are vast, which would enable the licensee to lay transmission lines without much difficulty. While Section 10 read with Electricity (Removal of Difficulty) Fifth Order, 2005 casts a duty on the generator to establish a dedicated transmission line, it does not cloth the generator with adequate authority to perform the task. The task of the generator under Section 10 can be effectively

discharged, only if the powers under Sections 67, 68 and 69 are available to him. Even conferment of such authority would detract from the major task of a generator of generating power. It would rather force a generator to stray into transmission activities, which basically is the function of a transmission licensee.

5.10 The relevant Sections are extracted below:-

67. Provision as to opening up of streets, railways etc;

(1) A licensee may, from time to time but subject always to the terms and conditions of his licence, within his area of supply or transmission or when permitted by the terms of his licence to lay down or place electric supply lines without the area of supply, without that area carry out works such as –

- (a) to open and break up the soil and pavement of any street, railway or tramway;*
- (b) to open and break up any sewer, drain or tunnel in or under any street, railway or tramway;*
- (c) to alter the position of any line or works or pipes, other than a main sewer pipe;*
- (d) to lay down and place electric lines, electrical plant and other works;*
- (e) to repair, alter or remove the same;*
- (f) to do all other acts necessary for transmission or supply of electricity.*

(2) The Appropriate Government may, by rules made by it in this behalf, specify, -

- (a) the cases and circumstances in which the consent in writing of the Appropriate Government, local authority, owner or occupier, as the case may be, shall be required for carrying out works;*
- (b) the authority which may grant permission in the circumstances where the owner or occupier objects to the carrying out of works;*
- (c) the nature and period of notice to be given by the licensee before carrying out works;*

- (d) *the procedure and manner of consideration of objections and suggestion received in accordance with the notice referred to in clause (c);*
 - (e) *the determination and payment of compensation or rent to the persons affected by works under this section;*
 - (f) *the repairs and works to be carried out when emergency exists;*
 - (g) *the right of the owner or occupier to carry out certain works under this section and the payment of expenses therefor;*
 - (h) *the procedure for carrying out other works near sewers, pipes or other electric lines or works;*
 - (i) *the procedure for alteration of the position of pipes, electric lines, electrical plant, telegraph lines, sewer lines, tunnels, drains, etc.;*
 - (j) *the procedure for fencing, guarding, lighting and other safety measures relating to works on streets, railways, tramways, sewers, drains or tunnels and immediate reinstatement thereof;*
 - (k) *the avoidance of public nuisance, environmental damage and unnecessary damage to the public and private property by such works;*
 - (l) *the procedure for undertaking works which are not reparable by the Appropriate Government, licensee or local authority;*
 - (m) *the manner of deposit of amount required for restoration of any railways, tramways, waterways, etc.;*
 - (n) *the manner of restoration of property affected by such works and maintenance thereof;*
 - (o) *(o) the procedure for deposit of compensation payable by the licensee and furnishing of security; and*
 - (p) *such other matters as are incidental or consequential to the construction and maintenance of works under this section.*
- (3) *A licensee shall, in exercise of any of the powers conferred by or under this section and the rules made thereunder, cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him.*

- (4) *Where any difference or dispute [including amount of compensation under sub-section (3)] arises under this section, the matter shall be determined by the Appropriate Commission.*
- (5) *The Appropriate Commission, while determining any difference or dispute arising under this section in addition to any compensation under sub-section (3), may impose a penalty not exceeding the amount of compensation payable under that sub-section.*

68. Overhead lines

- (1) *An overhead line shall, with prior approval of the Appropriate Government, be installed or kept installed above ground in accordance with the provisions of sub-section (2).*
- (2) *The provisions contained in sub-section (1) shall not apply-*
- (a) *in relation to an electric line which has a nominal voltage not exceeding 11 kilovolts and is used or intended to be used for supplying to a single consumer;*
 - (b) *in relation to so much of an electric line as is or will be within premises in the occupation or control of the person responsible for its installation; or*
 - (c) *in such other cases as may be prescribed.*
- (3) *The Appropriate Government shall, while granting approval under sub-section (1), impose such conditions (including conditions as to the ownership and operation of the line) as appear to it to be necessary*
- (4) *The Appropriate Government may vary or revoke the approval at any time after the end of such period as may be stipulated in the approval granted by it.*
- (5) *Where any tree standing or lying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead line subsequent to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of electricity or the to interrupt or interfere with, the conveyance or*

transmission of electricity or the accessibility of any works, an Executive Magistrate or authority specified by the Appropriate Government may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he or it thinks fit.

- (6) *When disposing of an application under sub-section (5), an Executive Magistrate or authority specified under that sub-section shall, in the case of any tree in existence before the placing of the overhead line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.*

Explanation. - For purposes of this section, the expression “ tree” shall be deemed to include any shrub, hedge, jungle growth or other plant.

69. Notice to telegraph authority

- (1) *A licensee shall, before laying down or placing, within ten meters of any telegraph line, electric line, electrical plant or other works, not being either service lines, or electric lines or electrical plant, for the repair, renewal or amendment of existing works of which the character or position is not to be altered,-*

- (a) submit a proposal in case of a new installation to an authority to be designated by the Central Government and such authority shall take a decision on the proposal within thirty days;*
- (b) give not less than ten days' notice in writing to the telegraph authority in case of repair, renewal or amendment or existing works , specifying-*
 - (i) the course of the works or alterations proposed ;*
 - (ii) the manner in which the works are to be utilised ;*
 - (iii) the amount and nature of the electricity to be transmitted;*
 - (iv) the extent to, and the manner in which (if at all), earth returns are to be used,*

and the licensee shall conform to such reasonable requirements, either general or special, as may be laid down by the telegraph authority within that period for preventing any telegraph line from being injuriously affected by such works or alterations:

Provided that in case of emergency (which shall be stated by the licensee in writing to the telegraph authority) arising from defects in any of the electric lines or electrical plant or other works of the licensee, the licensee shall be required to give only such notice as may be possible after the necessity for the proposed new works or alterations has arisen.

(2) Where the works of the laying or placing of any service line is to be executed the licensee shall, not less than forty-eight hours before commencing the work, serve upon the telegraph authority a notice in writing of his intention to execute such works.”

5.11 The petitioner, therefore, argues that it is more appropriate for the transmission licensee to invoke clause 9 (1) (b) of the Intra- state open access regulation 2005 of the Tamil Nadu Electricity Regulatory Commission, which empowers the transmission licensee to recover the full recurring charges for maintaining a dedicated transmission line for the use of the generator. The relevant clause is reproduced below:-

“9(i)(b) Where a dedicated transmission system or a distribution system used for open access has been constructed for exclusive use of an open access customer, the transmission charges or wheeling charges for such dedicated system shall be worked out by the Licensee and got approved by the Commission and shall be borne entirely by such open access customer till such time the surplus capacity is allotted and used for by other persons or purposes.”

5.12. We are fully conscious that clause 9 (1) (b) empowers a transmission licensee to raise a dedicated transmission line and recover the recurring charges from a generator, although it is not obligatory for him to do so. Considering the practical difficulties of a generator in laying long transmission lines for a distance of 80 km upto Aruppukottai sub-station of TNEB and 140 km in the case of Checkanoorani sub-station of TNEB, it would be much easier for a transmission licensee to undertake this task and recover the recurring charges from the generator. The intra-state open access regulation 2005 of the Tamil Nadu Electricity Regulatory Commission enables such an arrangement. This would also enable the generator to concentrate on generating power rather than undertake a job, which is primarily in the realm of a transmission licensee.

5.13 We do realize that the transmission licensee, in the present case TANTRANSCO, would need to mobilize funds initially for establishing 80 kms long and 140 kms long dedicated transmission lines. The investment of TANTRANSCO is fully protected in view of the fact that the cost is fully recovered from the generator by way of Transmission/Wheeling charges. The ownership of the dedicated transmission line will vest with the transmission licensee.

5.14. Yet another option would be for the generator to entrust the erection of dedicated transmission line as a deposit work to the transmission licensee. This option has the merit of tackling the problem of fund mobilization of a licensee.

The ownership of the dedicated transmission line will be vested with the generator in this case.

6. Direction:-

In the light of the findings in paragraphs 5.1 to 5.14 above, the TANTRANSCO is directed to construct the dedicated transmission line and recover charges from the generator as per Clause 9 (1) (b) of the Intra State Open Access Regulations, 2005. Alternatively, if the generator consents, the licensee may construct the dedicated transmission line as a deposit work.

7. Appeal:-

An appeal against this order lies to the Appellate Tribunal for Electricity as per section 111 of the Electricity Act, 2003 within a period of forty five days.

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

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

(Sd.....)
(S.Kabilan)
Chairman

/ True Copy /

Secretary
Tamil Nadu Electricity Regulatory Commission