

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

**PRESENT:**

**Thiru S.Akshayakumar** .... **Chairman**

**and**

**Thiru.G.Rajagopal** .... **Member**

**I.A.No.1 of 2015**  
**in**  
**M.P. No.35 of 2015**

Power Engineers Society of Tamil Nadu (PESOT)  
45, Balaguru Garden  
Peelamedu, Coimbatore – 641 004  
Represented by its President S.Gandhi

... **Petitioner**

**Vs.**

NIL

... **Respondent**

**Date of hearing** : **05-10-2015**

**Date of Order** : **06-01-2016**

1. M.P.No.35 of 2015 has been filed by M/s.TANGEDCO praying for approval of the purchase of power under section 63 of the Electricity Act, 2003 to the tune of 1200 MW RTC Power from generating companies and traders for a period from October 2015 to May 2016 in view of urgency.

2. M.P.No.35 was heard by the Commission on 05-10-2015. The Petitioner in the I.A. was present in the court during the hearing and presented the above I.A. and sought admission for the same.

3. The Petitioner in the I.A. made several allegations therein and drew the attention of the Commission to certain matters allegedly raised in CAG report stated to be pending before the Legislative Assembly. He has further alleged that the Petitioner in the above M.P. has not followed the guidelines of the GOI relating to power procurement and prayed that the Commission may order to place the request of the TANGEDCO in the larger area of public opinion like public hearing.

4. The Petitioner in the I.A. was heard in detail on 05-10-2015 as to the admissibility of the I.A. On that day, the Petitioner in the M.P. viz. TANGEDCO was directed to file their response as to the admissibility of the I.A.

5. TANGEDCO has filed their response by way of an affidavit dated 20-10-2015 stating among others as follows:-

*“2. Tamil Nadu has many categories of consumers like, domestic consumer, HT/LT Industrial consumers, commercial consumers, agricultural consumers, etc. It is not known which category of consumer / consumers, M/s.PESOT is authorised to represent. It is also not known whether PESOT is the sole representative for any category of consumers.*

*3. It is seen in the past that among consumers, the views are different. Some set of consumers have a view that uninterrupted power supply is to be provided even if cost is more. Some other set of consumers have a view that cost has to be less for which few hours of power interruption is tolerable.*

*4. Hon’ble Commission holds public hearing before issuing Tariff orders. Whenever tariff determination is to be made under section 62 of Electricity Act, 2003 the procedure to be followed will be as per section 64 and section 64 (3) of Electricity Act, 2003 envisage the Commission for getting suggestions and comments from public and considering all suggestions and objections received to issue tariff order.*

5. *The present M.P.No.35 of 2015 is filed under section 63 of Electricity Act, 2003 which does not have any provision for suggestion / objections from the public.*

6. *TANGEDCO, being sole distribution license in Tamil Nadu has to perform duties and responsibilities prescribed under section 42 and 43 of the Electricity Act, 2003. Therefore, the distribution licensee cannot take consent from all consumers for each of its action.*

7. *The IA applicant has prayed his admission for impleading under section 94(3) of Electricity Act, 2003. The sec 94(3) of Electricity Act, 2003 is extracted below:-*

*“The appropriate Commission may authorise any person, as it deems fit to represent the interest of the consumers in the Proceedings before it.”*

*Sec 94 (3) speaks about the powers of the Commission. Inasmuch as the Commission has not authorized PESOT till date, PESOT does not have a Locus Standi in this Petition No.35 of 2015.*

8. *The IA applicant has also mentioned that under Regulation 16 (1) of Conduct of Business of TNERC, his IA is filed. The Regulation 16 of Conduct of Business of TNERC deals with “Initiation of Proceedings”. Regulation 16 (1) of Business Code of Conduct of TNERC is extracted.*

*“The Commission may initiate any proceedings Suo Moto or on a petition filed by any affected or interested person.”*

*It provides for filing of a petition by any affected or interested person on which the Commission may initiate any proceedings. It does not offer any scope for filing any IA by any third party / consumer in the proceedings initiated by the Hon’ble Commission on the Petition filed by this Respondent under section 63 of Electricity Act, 2003.*

*M.P.No.35 of 2015 is a petition filed by TANGEDCO and Regulation 16 (1) of Business Code of Conduct of TNERC does not allow any third party to get impleaded in another’s petition by way of filing an IA. PESOT, being third party does not have the locus standi to get impleaded in Petition No.35/2015.*

9. *The IA Applicant has no Locus Standi under (i) Sec 63 of Electricity Act, 2003,(ii) Section 94(3) of Electricity Act, 2003 and (iii) under Regulation 16 (1) of Business Code of Conduct of TNERC to implead in the M.P.No.35 of 2015 of this Petitioner.*

*Hence, the IA of M/s.PESOT is not maintainable”.....*

*Thus averring, the TANGEDCO prayed to dismiss the I.A. filed by PESOT as devoid of merits.*

## **6. Order of the Commission**

The Commission has carefully considered the submissions of both the Petitioner in the I.A. and the submissions of the TANGEDCO. The Commission had held in its Order dated 15-07-2013 in I.A.No.1 of 2012 filed by the same Petitioner namely, PESOT in P.P.A.P.No.3 of 2012 filed by the Respondent herein that the Electricity Act, 2003 does not envisage participation of third parties in dispute between Generator and Distribution Licensee.

M.P.No. 35 of 2015 is filed by TANGEDCO with regard to procurement of power totalling to a quantum of 1200 MW for a period less than one year i.e. from October 2015 to May 2016 under section 63 of Electricity Act, 2003.

The main contention raised by the Interim Applicant is that the proposal to purchase power needs to be placed for public scrutiny and therefore it is in the nature of a Public Interest Litigation. The Electricity Act, 2003 provides for the participation of the public in the proceedings of the Commission in specified matters. Section 61 of the Act lays down that an Appropriate Commission shall specify the terms and conditions for the determination of tariff and in doing so shall be guided by amongst other things, the consumer interest. Section 64 (3) of the Act mandates the Appropriate Commission to consider suggestions and objections received from the public in determination of tariff. Save as provided above, there is no scope for consumers or the public to seek participation in the proceedings before the Commission. A reading of sections 61, 64, 86, 94 and 95 of the Act makes it clear

that the powers of the Commission are defined and specific. There is no scope for a public interest litigation before the Commission.

The other points raised by the PESOT which have reference to the CAG Report etc. stated to be pending before the Legislative Assembly, being inconclusive proceedings are not relevant to the prayer in the present M.P.

The impleading petition by an organisation claiming to represent consumer interest has no place in a petition under section 63 of the Act. This is for the reason that the determination after the acceptance of bid is exclusively restricted to determine if the framework prescribed has been adhered to and if the licensee is of the view that it is in requirement of the power, the third party cannot seek to place its views.

In the light of the above, I.A. cannot be admitted and entertained and thus it fails and therefore the Commission is not inclined to admit the above I.A.

**7. Appeal**

An appeal against this Order lies before the Appellate Tribunal for Electricity under section 111 of the Electricity Act 2003, within a period of 45 days from the date of receipt of the copy of this order by the aggrieved person.

(Sd.....)  
**(G.Rajagopal)**  
**Member**

(Sd.....)  
**(S.Akshayakumar)**  
**Chairman**

/ True Copy /

Secretary  
Tamil Nadu Electricity  
Regulatory Commission