

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

PRESENT:

ThiruM.Chandrasekar Chairman
Dr.T.PrabhakaraRao Member
and
Thiru.K.Venkatasamy Member (Legal)

M.P. No.6 of 2016

M/s.Arkey Energy (Rameswaram) Limited
New No. 20/ Old No.129
Chamiers Road,
Nandanam, Chennai 600 035.

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

Vs.

1. Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
Represented by its Chairman and
Managing Director
144, Anna Salai
Chennai – 600 002

2. The Government of Tamil Nadu
Represented by its Secretary
Energy Department
Fort St. George
Chennai – 600 009.

... Respondents

(ThiruM.Gopinathan, Standing
Counsel for R1 and Thiru Abdul
Saleem, Advocate for R2)

3. ThiruC.Selvaraj
Plot No.162, Ranga Nagar 1st Street
Thiruneermalai Main Road
Chromepet
Chennai – 600 044.

Dates of hearing : 31-03-2016; 02-06-2016; 01-08-2006
27-09-2016; 26-10-2016; 09-12-2016;
24-02-2017; 28-04-2017; 19-09-2017
and 01-10-2019

Date of Order : 29-10-2019

ORDER

Brief Facts of the Case:-

1. The Petitioner in the above M.P.No.6 of 2016 has prayed to pass appropriate orders directing the respondent herein to pay the amounts due and payable to the petitioner for the energy supplied by the petitioner to the respondent grid as per the Joint Meter reading taking by the Respondent Board and thus offset the adverse financial impact sustained by the petitioner under section 11 (2) of the Electricity Act, 2003.

2. The petitioner in his affidavit dated 21-03-2016 has submitted as follows:-

(i) On account of the Government Order in G.O. Ms. No.10/Energy, dated 27-02-2019, the petitioner has been maintaining its generating plant at maximum capacity and injecting the energy so generated into the State Grid. The surplus energy which could have been exported by the petitioner outside the State could not be exported on account of the restraint in the said G.O. Hence, per force, under compulsion, petitioner had to inject the entire energy generated into the State grid. The Respondent Board has consumed the said surplus energy and sold the same to its consumers and realized revenue. However, payment for the same has not been made to the petitioner.

(ii) The Respondent has failed to avail the electricity generated by the petitioner to the maximum extent as contemplated under the said GO. Under the said circumstances, the Petitioner was constrained to file a Writ Petition No.19955 of 2010 by one of the sister concerns, for direction to purchase the maximum available energy generated in the Petitioner's Power Plant. After hearing arguments on both sides, the Hon'ble High Court was pleased to consider the representation made by the Petitioner on 28.08.2010 taking into consideration of the Government Order as may be applicable to the Petitioner and directed the Chief Engineer/GTS (Private Power Project) to deal with the matter in accordance with the relevant Government Orders, Rules and Regulations within a period of 15 days from the receipt of the Order.

(iii) The petitioner had been generating power to the Maximum extent as mandated in the GO referred to above and was willing to export to the grid of the Respondent. In spite of sincere efforts taken by the Petitioner to maximize the generation to avert the power deficiency in the State, the Respondents were lethargic in accepting the entire energy so generated by the Petitioner. As there was no proper scheduling to maintain the grid stability by the State Load Dispatch Centre (SLDC), the petitioner was permitted to inject the power to the grid. All of a sudden for the reasons best known to the Respondent had instructed the Petitioner to restrict the generation under the guise of grid stability.

(iv) Whatever energy exported to the Respondent's grid, the Petitioner is not receiving the money for the energy sold to the Respondent as agreed under the various agreements. Due to lethargic attitude of the Respondent in the payment of

price for the energy supplied by the petitioner, huge amounts were accumulated and the petitioner felt very difficult in the recovery of dues from the Respondent. As no other effective alternative remedy is found to realize the dues from the Respondent, the petitioner was constrained to proceed under the Companies Act and issued Winding up Notice to the Respondent.

(v) After receipt of Winding up Notice, the Respondent has called for negotiation and settlement of issues by forming a Committee to look into the matter for the settlement of issues regarding the payment of price for the energy supplied under the agreements as well as the energy which was treated as excess energy supplied from the petitioner's Power Plant to Respondent's grid. In fact, whatever energy generated and supplied by the petitioner to Respondent grid was fully utilized by the Respondent by selling the same to his consumers and realize the revenue for the same.

(vi) The Committee constituted for the reconciliation of accounts was over and it appears to have been completed and report of the committee also appears to have been given to the effect that the energy which was supplied by the Petitioner over and above the agreed quantity has been actually received and utilized by the Respondent and sold the same to its consumers and encashed by the Respondent. Yet, the Respondent has not taken any positive action on the report of the Committee and to pay the money to the Petitioner. Since the Respondent has rejected the recommendation of the Committee and consequential request of the Petitioner for the payment of money for the energy supplied, the Petitioner is constrained to file a Writ Petition No.17543 of 2015 to quash the rejection orders

passed by the Chief Engineer/PPP on 13.05.2015 and consequently direct the Respondent to release the payment forthwith which are due and payable to the Petitioner for the energy which was supplied by the petitioner to the Respondent within the State of Tamil Nadu pursuant to the Government Order in G.O. Ms. No.10 Energy (C3) Department, dated 27-02-2009.

(vii) The Petitioner submits that the Respondent has to pay the price for the 19,64,51,237 units exported under the GO. The Petitioner submits that the said Writ Petition has subsequently been withdrawn to approach this Commission for appropriate relief as contemplated under section 11 (2) of the Electricity Act, 2003.

(viii) But for the Govt. Order referred to hereinabove, the surplus energy generated by the Petitioner would have been exported outside the State. The Petitioner was prevented from doing so by the Government Order issued by the Government of Tamil in G.O. Ms. No.10 Energy (C3) Department, dated 27-02-2009 under section 11 of the Electricity Act, 2003. Since it is the Government which restrains the Generating Stations from selling the power outside the State and realizing the value of the same, sec. 11 (2) of the Act has made provision that the Appropriate Commission may offset the adverse financial impact of the powers referred to in sub section 1 on any Generating Company in such manner as it considers appropriate.

(ix) Had not the petitioner been restrained from selling the energy generated by it according to its wisdom and as it deemed fit outside the State, Petitioner would

have been able to realize the revenue and offset the raw material cost, labour, establishment expenses, so on and so forth. By restraining the Petitioner from selling the surplus energy outside the State, the money value of the units generated and injected into the State grid has been deprived of being realized by the Petitioner. The Respondent Board, having consumed such surplus energy and supplied the same to its consumers, and realized value thereof, is bound to compensate the Petitioner. The resultant loss that is occurred to the Petitioner deserves to be offset by this Commission by passing appropriate orders under section 11 (2) of the Act.

(x) The price at which the surplus units injected by the petitioner and sold by the Respondent Board, may be awarded to the Petitioner for offsetting the adverse financial impact sustained by the Petitioner on account of the above said Government Order. If such compensation is not made, the Petitioner will be put to suffer grave prejudice and irredeemable loss.

3. In the affidavit dated 27-06-2016, the petitioner has filed an affidavit praying to implead the Government of Tamil Nadu as one of the Respondents.

4. A intervening petition dated 19-09-2017 was filed by Thiru C.Selvaraj seeking to implead himself in the proceedings. In the objections filed on 09-01-2018, the first respondent, TANGEDCO objected to the Intervening Petition filed by Thiru C.Selvaraj and prayed to dismiss the Intervening Petition.

5. In the reply filed by the first respondent, TANGEDCO on 06-05-2016, the following are submitted:-

(i) The provision contained in sub-sections (1) & (2) of section 11 of the Electricity Act, 2003, it is clear that the appropriate Commission can pass appropriate order to the appropriate Government and not to the Distribution Licensee / this Respondent. The statutory provision does not mandate that the Distribution Licensee has to offset the adverse financial impact and in such circumstances the very claim of the Petitioner is not maintainable as against this Respondent.

(ii) The above petition is not maintainable as against this Respondent which is only a Distribution Licensee. The above petition is also liable to be dismissed for non-joinder of party as the appropriate Government has not been made as a party and hence the above petition is not maintainable.

(iii) Without prejudice to the above contention, it is submitted that there is no bar for the Petitioner to sell power to any other consumer apart from the Distribution Licensee in the State of Tamil Nadu and the Government Order under section 11 of the Electricity Act also does not prohibit the same. The aforesaid Government Order has been issued in public interest which is preponderant to the interest arising out of a contract.

(iv) The Letter of Acceptance (LDA) has been issued to the generators to supply power vide Tender NO.06 of 2014 and the contract ended on 30.09.2015.

Subsequently a Tender No.07 of 2015 was floated to procure 1200 MW Round the Clock (RTC) power from 01.10.2015 to 31.05.2016.

(v) It is submitted that the Tender No. 07 of 2015 could not be finalized before 01.10.2015 due to various reasons like litigations from the bidders, non-completion of the rate negotiations etc. Hence the Tender No.06 of 2014 was extended for a period of 14 days from 01.10.2015 to 14.10.2015 to all contract holders of Tender No.06 of 2014. Even after the extended period, the tender could not be finalized in all aspects and therefore another extension from 15.10.2015 to 28.10.2015 was given. Finally, the least rate among the intra state bidders was discovered as Rs.5.05/- per kwhr in the Tender No.7 of 2015 and accordingly the Respondent is willing to enter into an agreement with all bidders, if the petitioner/others are willing and come forward on their own will.

(vi) The back-down instructions issued by the State Load Despatch Centre (SLDC) to the generators is only based on the real time requirement of generated electricity to meet the State demand on real time without any load shedding. Also, it is the prime responsibility of the SLDC to ensure the Grid discipline as per IEGC norms and also ensure the safe and secured operation of the State Grid and in turn the All India Grid by optimum scheduling of power from various generating resources based on the Merit Order Dispatch. Accordingly, as per sections 32 & 33 of Electricity Act, 2003 and the prevailing Codes & Regulations issued by Central Electricity Regulatory Commission (CERC) & Tamil Nadu Electricity Regulatory Commission (TNERC), back down instructions are issued by SLDC only to ensure

the Grid discipline and safety of the grid as and when the conditions vary according to the State Demand.

(vii) The following clause is stipulated in the agreement entered between the petitioner and the TANGEDCO is reproduced as follows:

"The company should abide by the provisions of Gnd connectivity and the Intrastate Open Access Regulations, 2014 with regard to charges and the other terms and conditions"

From the above, it is submitted that the SLDC has issued Short Term Open Access (STOA) approval along with the conditions to be abide by the petitioner to maintain grid security according to the Grid Code, CERC & TNERC Regulations and also as per time to time instructions of SRLDC.

(viii) There is a compensation clause in the LOA of TANGEDCO which stipulates 20% of the contracted rate shall be payable by the purchaser (TANGEDCO) for deviation from procurer side is beyond the permissible limit of 15% of contracted quantum and hence the petitioner is being compensated with the above rates. The Clause 26 (ii) of LOA of TANGEDCO is reproduced as follows:-

"In case deviation from procurer side is more than 15% of contracted energy for which open access has been allocated on monthly basis, procurer shall pay compensation at 20% of tariff per kwhr for the quantum of shortfall in excess deviation of 15% while continuing to pay open access charges as per the contract."

(ix) If there is no generation on back-down instructions a compensation of 20% of the contracted rate per unit for the quantum of short fall in excess of deviation of 15% besides open access charges being paid by TANGEDCO without any generation of electricity from the petitioner's power plant according to the PPA that may be entered with TANGEDCO by the petitioners.

(x) The averments made by the petitioner that "the petitioner was constrained to supply to the TANGEDCO alone is not true. The petitioner has conveniently failed to project that it was also permitted to supply power to consumers within the State (a few thousand HT consumers). The Intra-State Private Power Producers including captive generators have been facilitated with open access for wheeling their generated power even below 1 MW of any HT consumers within the State first of its kind in India mainly to protect the public interest of the State. In so far as the averments in para 6 of the respective affidavits are concerned, Section 11 of the Electricity Act, 2003 is holding the field. The Hon'ble High Court of Madras has upheld the G.O.77, dt.10.10.2014. The petitioners have participated in the tender process and as such estopped to claim anything beyond the contract terms. Moreover the available power generation are being utilised within the State.

(xi) It is respectfully submitted that the identical averments made by the petitioner that "though we are permitted to supply 85% of the agreed quantum under the said LOAs is misinterpretation by the petitioner. The clause towards deviation of 15% is a compensation class only which is being abided both the petitioners and TANGEDCO. Accordingly, if there is no generation on back-down instructions a compensation of 20% of the contracted rate per unit being for the quantum of

shortfall in excess of deviation of 15% besides open access charges paid by TANGEDCO without any generation of electricity from the petitioner's power plant according to the Power Purchase Agreement (PPA) entered by the petitioner with TANGEDCO. Hence the working sheet annexed by the petitioner calculating the loss by mollifying the 100% contracted rate is completely denied and false. It is strange to note that not even LOA is filed by the petitioners in support of their petitions .. Further, the petitioners have filed the petitions based on simple arithmetics without any supporting documents acceptable in law.

(xii) No private entity has a legal right to make unjust profit or remain insulated from financial losses including arising out of agreed contract conditions. Public interest is always paramount. The larger public interest of ensuring power supply to the common man in the State cannot give way for the unjust financial interests of a few entities. There is absolutely no public interest in the stand taken by the petitioner. In any event, such unsubstantiated statements are denied as vague and baseless. The interests of the common man in the State of Tamil Nadu are paramount and all other commercial interests will have to yield to the same. In any case, as stated already, the petitioners who have received the LOAs have no right to seek any compensation beyond the terms and conditions governing the LOAs.

(xiii) It is respectfully submitted with respect to para (9) of the respective affidavits that the transaction being contractual one and the petitioners have consciously entered into the agreements/contracts with TANGEDCO agreeing to supply power at a particular rate and binding themselves to various Hence, the claim of compensation by the petitioner for the entire contracted rate is misleading

this Commission. In fact, the petitioners, who have received LOAs, are estopped to seek any relief under section 11 (2) of the Electricity Act, 2003.

(xiv) The Hon'ble High Court of Madras also observed in this regard and the same is reproduced as below:

"However the transaction being contractual shall be governed by the terms and conditions of the contract between the parties. The petitioners are all generating companies and they have consciously entered into the agreements / contracts with TANGEDCO agreeing to supply power at a particular rate and binding themselves to various conditions."

(xv) Having elected the tender route and received LOAs, the petitioners have no manner of right much less any legal right to seek compensation under section 11 (2) of the Act.

(xvi) In the light of the above, the prayer for compensation is not maintainable. The Petitioners can maintain the above Miscellaneous Petitions only if there is an absolute ban to sell power to anyone other than the distribution licensee or else if the petitioner companies have made an agreement on interstate sale of power while invoking of section 11 (1). As such in the present circumstances, when there is no such absolute ban and that the petitioners are at liberty to sell power to any other consumer within the State, the above petitions are liable for to be dismissed.

6. The Government of Tamil Nadu, the Second Respondent has filed a counter affidavit stating the following:-

6.1. It is submitted that as seen above, section 11 (1) of the Electricity Act, 2003 empowers the Appropriate Government to specify that a generating company shall, in extra ordinary circumstances operate and maintain any generating station in accordance with direction of that Government. Accordingly, in the present case, the aforesaid G.O. was issued by the State Government issuing the direction that the supply of power by generating companies to the Tamil Nadu Generation and Distribution Corporation Limited or consumers within the State.

6.2. The sub-section (2) of section 11 of the Electricity Act, 2003 provides that the Appropriate Commission may offset the adverse financial impact of the directions referred to in sub-section (1) on any generating company in such manner as it considrs appropriate. The statutory provision does not mandate that the distribution licensee has to offset the adverse financial impact, the said G.O. was issued based on the proposal received from Tamil Nadu Generation and Distribution Corporation Limited (hereinafter referred as TANGEDCO), in pursuance of public interest.

6.3. Without prejudice to the above contention, it is submitted that there is no bar for the Petitioner to sell power to any other consumer apart from the Distribution Licensee in the State of Tamil Nadu and the Government Order under section 11 of the Electricity Act also does not prohibit the same. The aforesaid Government Order has been issued in public interest which is preponderant to the interest arising out of a contract.

6.4. The Letter of Acceptance (LDA) has been issued to the generators to supply power vide Tender NO.06 of 2014 and the contract ended on 30.09.2015. Subsequently a Tender NO.07 of 2015 was floated to procure 1200 MW Round the Clock (RTC) power from 01.10.2015 to 31.05.2016.

6.5. It is submitted that the Tender No. 07 of 2015 could not be finalized before 01.10.2015 due to various reasons like litigations from the bidders, non-completion of the rate negotiations etc. Hence the Tender No.06 of 2014 was extended for a period of 14 days from 01.10.2015 to 14.10.2015 to all contract holders of Tender No.06 of 2014. Even after the extended period, the tender could not be finalized in all aspects and therefore another extension from 15.10.2015 to 28.10.2015 was given. Finally, the least rate among the intra state bidders was discovered as Rs.5.05/- per kwhr in the Tender No.7 of 2015 and accordingly the Respondent is willing to enter into an agreement with all bidders, if the petitioner/others are willing and come forward on their own will.

6.6. The identical averments made by the petitioners in their respective affidavits that "the petitioner was constrained to supply to the TANGEDCO alone is not true. The petitioner has conveniently failed to project that it was also permitted to supply power to consumers within the State (a few thousand HT consumers). The Intra-State Private Power Producers including captive generators have been facilitated with open access for wheeling their generated power even below 1 MW of any HT consumers within the State first of its kind in India mainly to protect the public interest of the State. In so far as the averments in para 6 of the respective affidavits are concerned, Section 11 of the Electricity Act, 2003 is holding the field. The

Hon'ble High Court of Madras has upheld the G.O.77, dt.10.10.2014. Moreover the available power generation are being utilised within the State.

6.7. It is respectfully submitted that the identical averments made by the petitioners in para (7) of their respective affidavit that "though we are permitted to supply 85%of the agreed quantum under the said LOAs" is misinterpretation by the petitioners. The clause towards deviation of 15% is a compensation class only which is being abided both the petitioners and TANGEDCO. Accordingly, if there is no generation on back-down instructions a compensation of 20% of the contracted rate per unit being for the quantum of shortfall in excess of deviation of 15% besides open access charges paid by TANGEDCO without any generation of electricity from the petitioner's power plant according to the Power Purchase Agreement (PPA) entered by the petitioner with TANGEDCO. Hence the working sheet annexed by the petitioner calculating the loss by mollifying the 100% contracted rate is completely denied and false. It is strange to note that not even LOA is filed by the petitioners in support of their petitions .. Further, the petitioners have filed the petitions based on simple arithmetics without any supporting documents acceptable in law.

6.8. No private entity has a legal right to make unjust profit or remain insulated from financial losses including arising out of agreed contract conditions. Public interest is always paramount. The larger public interest of ensuring power supply to the common man in the State cannot give way for the unjust financial interests of a few entities. There is absolutely no public interest in the stand taken by the petitioner. In any event, such unsubstantiated statements are denied as vague and

baseless. The interests of the common man in the State of Tamil Nadu are paramount.

6.9. It is submitted that the petitioners are arguing to refer the case to Arbitration as per section 86 (1) (f) of the Electricity Act, 2003 which provides, "adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration". It is submitted that section 11 (2) of the Electricity Act, 2003 clearly states that the Appropriate Commission may offset the adverse financial impact of the directions referred to sub-section (1) on any generating company in such manner as it considers appropriate. Hence, reference to arbitration may not be done by this Commission.

6.10. In the light of the above, the prayer for compensation is not maintainable the Petitioners can maintain the above Miscellaneous Petitions only if there is an absolute ban to sell power to anyone other than the distribution licensee as such in the present circumstances where there is no such absolute ban and that the petitioners are at liberty to sell power to any other consumer within the State. It is also submitted that the petitioners have not produced any materials to evidence the claim of financial impact, hence, in accordance with the rules / regulations / orders in force, the above applications deserve to be dismissed. The Government of Tamil Nadu has also filed an Additional Counter Affidavit on 26-07-2018 seeking dismissal of the petition.

7. Findings of the Commission:-

7.1. We have perused the records and also heard the arguments of the learned Counsels appearing for both side. The learned Counsel appearing for the State of Tamil Nadu has heavily relied on the endorsement made in the petition by the Counsel for the Petitioner. He would submit that since the petitioner has not pressed his claim for compensation nothing survives to be adjudicated by this Commission on the prayer made by the petitioner. Further he would submit that the question of deciding the applicability of the provision of section 11 (2) of the Electricity Act, 2003 as claimed by the Counsel for the petitioner would not arise since the provision of section 11 (2) is in-built and already available in the Act itself and that the Hon'ble High Court has also held that sub-section (2) of section 11 provides for the Appropriate Commission to offset the adverse financial impact of the directions referred to under section 11 (1) on any generating company in such a manner as it considers appropriate. The Hon'ble High Court has further held that the Appropriate Commission being the TNERC would have to adjudicate as to the nature of the adverse financial impact of the impugned notification on the generating company for which the purpose the affected party should approach the Commission.

7.2. The learned Counsel appearing for the Second Respondent, Government of Tamil Nadu also pointed out that as per the orders of the Hon'ble High Court, the petitioner has to approach the Commission, only to demonstrate the adverse financial impact on it i.e. the loss sustained on account of the notification issued by the Government under section 11. Therefore, essentially the petition has to be filed only for the purpose of claiming compensation for the loss sustained by the

petitioner with proof of such loss. When the petitioner has withdrawn his claim for compensation, the petition itself would become infructuous and nothing survives and therefore the same may be dismissed. We see some force in the arguments of the learned Counsel for the Second Respondent.

7.3 The said endorsement made by the Counsel for the Petitioner reads as follows:-

“I restrict my prayer only with regard to applicability of the provisions under section 11 (2) of the Electricity Act, 2003 under section 11 (2) of the Electricity Act, 2003 as directed by the Hon’ble High Court of Madras. Thereafter I will file my claim petition before this Hon’ble Commission in future”

The said endorsement was made by the Counsel on the date of filing of the petition itself (i.e. on 10-03-2016) apparently when the Registry has sought to pay 1% of the claim made in Annexure I to the said petition and in order to get the petition numbered as a Miscellaneous Petition.

7.4. The Intervening Petitioner Thiru C. Selvaraj has submitted that even if the petition is dismissed, it would be appropriate to direct the petitioner to pay the court fee applicable to DRP on the claim originally made in the petition and the same should be recovered from the petitioner. He has also submitted that in the copy of the petition obtained by him from the Government such endorsement was not available and hence he has stated that the endorsement would have been a subsequent one and an afterthought. In this connection, the Commission has

perused the other copies of the petitions maintained in the Commission and we find that when the petition is returned to the Advocate for rectifying any defects / for compliance, the usual procedure is to obtain its endorsement in the main copy (Chairman copy) only and that is why the endorsement was not available in the copy sent to the Government from whom the Intervening Petitioner obtained a copy under RTI Act.

7.5. The learned Counsel Thiru Rahul Balaji appearing for the petitioner would submit that in the absence of specific provision categorising the claim petition made under section 11 (2) of the Act in the TNERC Fees and Fines Regulations, 2005, the petition has to be classified only as a M.P. He would further submit that the levy of 1% of the fee applicable to DRP cases would arise only in case of dispute between the Licensee and the generating company or Licensee *inter se*. But in this case, the compensation is claimed against the Government which is impleaded as a party in this case subsequently. Therefore, the adjudication of claim in this case would not be under section 86 (1) (f) of the Act and therefore it has to be treated only M.P., even for the purpose of adjudicating the compensation claim originally made by the petitioner.

7.6. We have carefully gone through the averments made by the petitioner in his petition and also the endorsement made by the Counsel for the petitioner dated 10-03-2016. It is seen that the petitioner has approached this Commission for issuing appropriate directions for the payment of compensation as per Annexure-I annexed with the petition under section 11(2) of the Electricity Act, 2003. In this connection, it may be pointed out that sub-section (2) of the said section 11

provides that the appropriate Commission may offset the adverse financial impact of the directions issued under sub-section (1) of section 11 on any generating company, in such manner as it considers appropriate. Therefore, the Commission in order to offset the financial impact on a generator has to evolve the manner in which the prayer of the petitioner should be considered. Therefore, the Commission by exercising its regulatory power has to decide unilaterally in the first instance based on the records furnished by the petitioner regarding the financial loss suffered by the petitioner consequent on the direction issued by the Government under section 11. As such at this stage no adjudication of dispute between the licensee and the generating company arises. In the first instance, the Commission has to decide whether or not any financial loss is suffered by the generating company and decide the quantum of compensation, if any, to be paid by the appropriate Government to the generating company. When such is the scheme, we notice that the said prayer is mainly initiated to claim compensation and does not speak anything about the decision taken by this Commission as to the applicability of the section 11(2) in this case as mentioned by the Counsel for the petitioner in his endorsement mentioned above. Further we notice that his subsequent affidavit filed before this Commission on 06-09-2017, the petitioner has elaborately claimed the compensation under various heads. If the endorsement made by the counsel that he is restricting his prayer with regard to the applicability of section 11(2) of the Electricity Act, is true and bonafide he should have amended the prayer suitably to that effect and without doing the same pursuing the case further and filing a compensation claim subsequently clearly indicate that the petitioner has not properly understood the provisions of the said section and there has been no clarity on the contents of the petition. It has also been pointed out by ThiruM.Gopinathan,

the learned Senior Counsel for the TANGEDCO that the petitioner has made a submission before the NCLAT, New Delhi that he undertakes to withdraw all cases pending before all Forums in India subject to payment of 229 crores of rupees and that, based on that assurance TANGEDCO has also made certain payments to the petitioner but the petitioner has not come forward to withdraw this petition pending before this Commission. In view of the above submissions and going by the endorsement made by the Counsel on the petition on 10-03-2016 nothing survives on the petition, as rightly pointed out by the learned counsel for the Government.

The petition is accordingly dismissed.

(Sd.....)
(K.Venkatasamy)
Member (Legal)

(Sd.....)
(Dr.T.PrabhakaraRao)
Member

(Sd.....)
(M.Chandrasekar)
Chairman

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission