

**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.5 of 2016**

Ind-Barath Thermal Power 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 1<sup>st</sup> Street  
Thiruneermalai Main Road  
Chromepet  
Chennai – 600 044.

..... Intervening Petitioner

**Dates of hearing** : 31-03-2016; 02-06-2016; 01-08-2016  
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.5 of 2016 has prayed to issue appropriate direction that may be fixed by the Commission under section 11(2) of the Electricity Act, 2003 and any other amount as deemed fit and proper.

2. The Petitioner in his affidavit dated 08-03-2016 has submitted as follows:-

(i) It is submitted that pursuant to the said G.O., the Petitioner was constrained to supply to the TANGEDCO alone and was unable to export power to other needy States.

(ii) As the said G.O. issued under section 11 of the Electricity Act, 2003 was creating imparable loss and undue hardship to the Petitioner. When things stood thus, the Petitioner has been supplying power under various tenders at the rates fixed by the Respondent.

(iii) It is submitted that though we are permitted to supply 85% of the agreed quantum under the said LOAs, the Respondent was not taking the power to the agreed quantum of 85%. We' have enclosed as Annexure I the working sheet for the lesser quantum when compared to the quantum of 85% for the various months along with corresponding loss incurred by the Petitioner.

(iv) The Petitioner is restrained from exporting power to the neighbouring States under G.O. referred to above. This restriction has caused irreparable financial loss and undue hardship to the Petitioner. In order to recoup the financial loss, the Petitioner has approached the Hon'ble Court challenging the GO under which the Petitioner is restrained from taking power to neighbouring States except to supply to the State Grid to TANGEDCO or to any other Open Access Consumer within the State of Tamil Nadu.

(v) It is submitted that the Hon'ble High Court, Madras after hearing the arguments of the Petitioner as well as the Respondent came to the conclusion that the issues involved are purely contractual in nature, therefore it is for the Petitioner to invoke section 11 (2) of the Electricity Act, 2003 for claiming compensation caused due to the application of section 11 (1) under which the petitioner is compelled to generate and supply power to the grid of the TANGEDCO or to the Open Access consumers within the State of Tamil Nadu.

(vi) It is further submitted that till today the Respondent is not inclined to permit the Petitioner to export the power to the contracted quantum. In this connection, a letter dated 07-03-2016 addressed to the Respondent to lift the agreed quantum of power at a price whichever is suitable as per merit order at any point of time is enclosed as Annexure II.

3. The Respondent in his affidavit dated 06-05-2016 has submitted as follows:-

(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 abided 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 identical averments made by the petitioners 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 is being utilised within the State.

(xi) 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.

(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) The transaction being contractual one and the petitioners have 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 stopped 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.

7. In the Rejoinder filed by the petitioner on 30-05-2016, the petitioner has submitted the following:-

(i) The stand taken by the Respondent herein that the Govt. of Tamil Nadu is a necessary party to the proceeding is misconceived and untenable. The Govt. Order

under G.O Ms NO.77 Energy (A1) Department dated 10.10.2014 and the earlier Govt. Order in G.O Ms No.10 Energy (A 1) Department dated 27.02.2009 have only been issued by the Government invoking the emergency provision under section 11 of the Electricity Act, 2003 at the instance of and for the benefit of the Respondent herein. As such, the Respondent is liable for the consequences as per the Statute.

(ii) The contention by the Respondent as though the contractual obligations will bind the parties and hence, the action of the Respondent in giving back down instructions is sustainable and Petitioner is not entitled to claim compensation, is misconceived.

(iii) The Respondent is attempting to mislead this Commission by mixing up the issues of grid stability, issuance of back down instructions and total ban that was imposed by the Government against export of power outside the State. Petitioner respectfully submits that if grid capacity is not available within the State, the Respondent ought not to have requested the Government to issue an order under section 11 of the Electricity Act, 2003 to restrain the Generators within the State from exporting power outside the State. Only if the Respondent Licensee was prepared and ready to receive the entire supply from the Generators and there was a shortfall of power within the State and there was a necessity for the Respondent to consume the energy generated by the Generators, it could have made request to the Government to issue a Government Order. In the instant case, it is admitted that it is the Respondent herein which has requested the Government to issue the Govt. Order under Sec.11 of the Electricity Act, 2003. Under such circumstances, the Respondent cannot have any excuse and cannot have any umbrage under the alleged lack of grid capacity or Issuance of back down instructions on account of

the State Load Despatch Centres and justify the non-consumption of the Electricity which was generated.

(iv) Either it should be free to the petitioner to generate and sell to anyone within the State or export the power outside the State or in event of a restraint at the instance of the Respondent, the Respondent should consume the entire energy that is generated by the Petitioner. If, for any reason, the Respondent does not consume the energy that is generated by the Petitioner, the Respondent is bound to offset the financial loss sustained by the petitioner.

(v) The Respondent cannot have a complete restraint on the petitioner in exporting the power outside the State and on the other hand, cannot arm twist the petitioner and compel the petitioner to sell at a reduced price and that too at reduced quantum at the whims and fancies of the respondent.

(vi) The scheme of the Electricity Act, 2003 is not to protect the interest of the Licensee alone, but to balance the interest of Generator and the Licensee and the consumers. Keeping all this in mind, when the restraint has been imposed at the instance of the Respondent herein, the Respondent cannot shirk its responsibility of offsetting the financial loss sustained by the Petitioner.

(vii) The petitioner submits that the generation capacity of the Petitioner has been taken as the basis and the quantum which was generated by the Petitioner on the instructions of the Respondent has been given credit and the balance which was not generated on account of back down instructions of the Respondent herein,

has been made the basis for the calculation of the compensation. Petitioner is entitled for such compensation under the Scheme of the Electricity Act, 2003. If the Govt. Order under Sec.11 was not in force, then the parties will be bound by the terms of the Agreement. On the other hand, when the Govt. Order is in force, the restraint by the Govt. Order and the financial loss on account of the Govt. Order is de-hors to the agreement and the same has to be offset by the Respondent.

8. In the common counter affidavit filed by the second Respondent on 06-05-2016, the second Respondent has submitted the following:-

(i) It is submitted that section 11 (1) of the Electricity Act, 2003 empowers the Appropriate Government to specify that a generating company shall, in extraordinary 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.

(ii) It is submitted that 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 considers 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.

(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 (LOA) 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 identical averments made by the petitioners 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.

(vii) It is respectfully submitted that the identical averments made by the petitioners 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.

(viii) 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.

(ix) It is reiterated that the G.O. (Ms.) No. 77 dated 10-10-2014 under section 11 of the Electricity Act, 2003 has acquired a statutory force and upheld by the Hon'ble High Court of Madras in its common order passed in W.P. Nos. 27936 and 36877 of 2015 dated 15-02-2016. It is submitted that the petitioners have made a misleading averments before this Commission to believe that they were constrained to supply TANGEDCO alone and could not export power to others. The fact is that there is no bar for supply of powers within the State and as such the petitioners are at liberty to sell power within the State. In the right of the aforesaid factual and legal position the alleged request made on 07-03-2016 is untenable.

(x) 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

8. 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. An Intervening Petition dated 19-09 2017 was also filed by Thiru C.Selvaraj seeking to implead himself.

9. In the counter affidavit filed on 10-10-2017, the petitioner objected the Intervening Petition filed by Thiru C.Selvaraj and prayed to dismiss the Intervening Petition.

#### **7. Findings of the Commission:-**

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.

8. 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 by the adverse finance 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.

9. 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.

10. 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.

11. 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.

12. 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

speaking 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 Thiru M. 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 Rs.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**  
/True Copy /

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

Secretary  
Tamil Nadu Electricity  
Regulatory Commission