

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY,**  
**NEW DELHI**

**(APPELLATE JURISDICTION)**

**APPEAL NO. 127 OF 2019 &**  
**IA NO. 540 OF 2019**  
**AND**  
**APPEAL NO. 146 OF 2019 &**  
**IA NO. 627 OF 2019**

**Dated: 12<sup>th</sup> March, 2020**

**Present: Hon'ble Mr. Ravindra Kumar Verma, Technical Member**  
**Hon'ble Mr. Justice R.K. Gauba, Judicial Member**

**APPEAL NO. 127 OF 2019 &**  
**IA NO. 540 OF 2019**

**In the matter of:**

**Madurai Power Corporation Private Limited**

No. 3, 2<sup>nd</sup> Street,  
Subbarao Avenue, College Road,  
Chennai – 600 006

Represented by its Director

R. Senthil Maariappan

... Appellant

*Versus*

- 1. Tamil Nadu Electricity Regulatory Commission**  
Represented by its Secretary  
No. 19-A, Rukmini Lakshmi pathy Road (Marshalls Road)  
Egmore, Chennai – 600 008  
Tamil Nadu
- 2. Tamil Nadu Generation and Distribution Corporation Ltd.**  
Represented by its Chairman & Managing Director  
No. 144, Anna Salai,  
Chennai – 600 002

**3. The Chief Financial Controller (Revenue)**

TANGEDCO  
144, Anna Salai,  
Chennai – 600 002

... Respondents

Counsel for the Appellant(s) : Mr. Anand K. Ganesan  
Ms. Swapna Seshadri

Counsel for the Respondent(s) : Mr. Sethu Ramalingam for R-1  
Mr. Basava Prabhu Patil, Sr. Adv.  
Mr. S. Vallinayagam for R-2

**APPEAL NO. 146 OF 2019 &  
IA NO. 627 OF 2019**

**In the matter of:**

**M/s Samalpatti Power Company Private Limited**

Through its Authorized signatory  
No. 14, 1<sup>st</sup> Floor, Sreyas Virat,  
3<sup>rd</sup> Cross Road, Raja Annamalaipuram  
Chennai – 600 028

... Appellant

*Versus*

**1. Tamil Nadu Electricity Regulatory Commission**

Represented by its Secretary  
TIDCO Office Building, No. 19-A,  
Rukmini Lakshmi pathy Salai,  
Marshalls Road, Egmore,  
Chennai – 600 008  
Tamil Nadu

**2. Tamil Nadu Generation and Distribution  
Company Limited**

Represented by its Chairman  
NPKRR Maaligai,  
No. 144, Anna Salai,  
Chennai – 600 002

**3. The Chief Financial Controller (Revenue)**

TANGEDCO  
144, Anna Salai,  
Chennai – 600 002

... Respondents

Counsel for the Appellant(s) : Mr. Sujit Ghosh  
Counsel for the Respondent(s) : Mr. Sethu Ramalingam for R-1  
Mr. Basava Prabhu Patil, Sr. Adv.  
Mr. S. Vallinayagam for R-2

## **J U D G M E N T**

### **PER HON'BLE MR. JUSTICE R.K. GAUBA, JUDICIAL MEMBER (ORAL)**

1. These two matters have come up against almost identical backdrop of proceedings recorded by Tamil Nadu Electricity Regulatory Commission (hereinafter referred to variously as “TNERC” or “State Commission” or “Commission”), the Appellant in first captioned appeal being *Madurai Power Corporation Private Limited*, which was the petitioner in D.R.P. No. 19 of 2012, the second captioned appeal having been instituted by *Samalpatti Power Company Private Limited*, petitioner in D.R.P. No. 16 of 2012.

2. It appears that the said two petitions had come up for consideration before the State Commission around the same point of time, the hearing having been concluded, the orders having been reserved by similar proceedings recorded on 21.12.2018. Noticeably at that stage, the State Commission was functional in full strength with the Chairman and two Members in position. Before orders could be passed in either of the said matters, one of the members (Mr. G. Rajagopal)

demitted office in January, 2019. Meanwhile, certain written submissions had been placed on record by the parties which were respondents before the State Commission (respondents in these appeals as well). Along with the said written submissions, certain documents were submitted to which exception was taken by the appellants primarily on the ground that it was new material, taking on board the same amounting to (as per their contention) amendment of the pleadings, it being statedly impermissible at the stage at which it had been tendered for record. Since the Registry of the Commission seems to have returned such material upon objections being taken, the respondents herein were constrained to file applications – i.e. IA No. 1 of 2019 in the first captioned matter and IA No. 2 of 2019 in the other matter.

3. The above said applications came up before the Commission for consideration in March, 2019. It may be mentioned here that post the event of one member demitting office, some steps had been undertaken to fill-in the consequent vacancy, the appointment actually coming through only in July, 2019. Thus, when the two members of TNERC who had continued to hold office proceeded to hear the matters arising out of two applications and pass the impugned orders – both dated 27.03.2019 – there was one vacancy in the office of a member of the State

Commission. It is not in dispute that none of the members (including the Chairman) of the State Commission working in full strength in December, 2018, which would include the two members who had continued to hold office in March, 2019, were persons from the field of law.

4. The appellants objected to the matters being heard not only on the above grounds respecting new material but also on the ground that the Commission did not have the requisite competence. The Commission considered the objections and passed the impugned orders allowing the interim application thereby taking on board the material and at the same time listing the main petitions for fresh hearing for which date was fixed.

5. The above mentioned orders were challenged before us by the petitioners of the two cases primarily relying on the judgment of the Supreme Court passed in the case of *State of Gujarat And Others v Utility Users' Welfare Association and Others* reported at (2018) 6 SCC 21. During the course of hearing, reference has also been made to a clarificatory order passed by the Hon'ble Supreme Court on 10.09.2018 in M.A. No. 2217 of 2018 in T.C.(C) No. 137 of 2015 in the case of *K.R. Tamizhamani & ors. v The State of Tamil Nadu & Ors.*

6. The Appellants also rely on an Interim Order dated 03.04.2019 passed by a Division Bench of Madras high Court at Madurai in *V. Nirmal Kumar v The Secretary to Government, Energy Department, Govt of Tamil Nadu & Ors.* in WP(MD) No. 7021 of 2019 whereby the State Commission had been injuncted (on account of absence of a member from field of law) from passing any final order in any of the proceedings pending before it in exercise of its adjudicatory function under Section 86(1)(f) of the Electricity Act, 2003, taking note, *inter-alia*, of the decision of the Supreme Court in *State of Gujarat And Others v Utility Users' Welfare Association and Others* and the clarificatory order dated 10.09.2018.

7. During the course of hearing, we are informed that, after the appointment of a new member – from the field of law – in July, 2019, the State Commission has been functioning in accordance with law, the new composition presently in position adhering to the dictum of Supreme Court i.e. *State of Gujarat And Others v Utility Users' Welfare Association and Others (supra)*.

8. Learned counsel on both the sides fairly agreed that the impugned orders may be construed only as permitting the respondents herein to bring on record additional documents. Whether or not such additional

documents could be relied upon in the factual matrix of the cases and whether or not such additional material is actionable or relevant to the controversy are questions that may be left open.

9. Thus, with the consent of both sides, we do not record any finding on the issue as to whether the State Commission with the reduced strength could (or could not) have passed the impugned orders as on 27.03.2019. We, however, note that the main matters in which the interim orders were passed have been languishing on the file of the State Commission too long and the same need early adjudication.

10. For the foregoing reasons, we dispose of these two appeals with the following directions:

- (a) The orders dated 27.03.02019 shall be treated as orders only permitting the additional material to be taken on record of the two respective cases. For removal of doubts, we make it clear that the permission granted to bring on record the additional material is not to be construed as expression of opinion either by the Commission or by us on the question of relevancy or otherwise of such material, the rival contentions in which regard are kept open for consideration by the State Commission.

(b) The main matters in which the impugned orders were passed shall be taken up by the State Commission on the date(s) that have already been notified by it and shall be decided expeditiously, preferably within a period of three months from the said next date of hearing.

11. The instant appeals, and the applications filed therewith, are disposed of in above terms.

**PRONOUNCED IN THE OPEN COURT ON THIS 12<sup>TH</sup> DAY OF MARCH, 2020.**

**(Justice R.K. Gauba)**  
Judicial Member

**(Ravindra Kumar Verma)**  
Technical Member

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