

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI
(APPELLATE JURISDICTION)

APPEAL NO. 68 OF 2014

Dated: 30th May, 2016

Present : Hon'ble Mr. Justice Surendra Kumar, Judicial Member
Hon'ble Mr. T. Munikrishnaiah, Technical Member

IN THE MATTER OF:

M/s OPG Power Generation Pvt. Ltd.,
No.6, Sardar Patel Road, Guindy,
Chennai 600 032

...Appellant

Versus

1. **Tamil Nadu Electricity Board**
Re. By its Chairman
800, Anna Salai
Chennai-600 002
2. **TANTRANSCO**
Re. By its Chairman
NPKRR Maaligai, 144,
Anna Salai, Chennai-600 002
3. Director (Operation),
Tamilnadu Transmission Corporation Limited,
NPKRR Maligai, 144, Anna Salai,
Chennai – 600 002
4. **The Chief Engineer/PPP**
Tamil Nadu Electricity Board
14, Anna Salai
Chennai 600 002

5. **Superintending Engineer (Operation)**
Tamil Nadu Electricity Board,
144, Anna Salai
Chennai 600 002

6. **TANGEDCO**
Rep. By its Chairman,
NPKRR Maligai, 144 Anna Salai,
Chennai-600 002

7. **Tamil Nadu Electricity Regulatory Commission**
TIDCO Office Building
No. 19 A, Rukmani Lakshmipathi Salai
Marshells Road,
Chennai-600 008

...Respondents

APPEAL UNDER SECTION 111(1) OF THE ELECTRICITY ACT, 2003

Counsel for the Appellant(s) : Mr. Buddy R.Ranganadhan
Mr. Aman Gupta

Counsel for the Respondent(s) : Mr. G.Umapathy, Mr.
S.Vallinayagam
Ms. R.Mekhala

J U D G M E N T

PER Hon'ble T. Munikrishnaiah, Technical Member

1. The present Appeal, being Appeal No.68 of 2014, filed by the Appellant, **'M/s OPG Power Generation Pvt. Ltd.'**, herein after called as Appellant/Petitioner against the Order dated 07.10.2011, passed by Tamilnadu Electricity Regulatory Commission (**TERC**). In the present appeal, the Petitioner is claiming energy charges for injection of Firm power from the date of commercial operation i.e. on 22.04.2010, with the approval of open access to HT Consumers of Tamil Nadu State. The

Appellant is claiming compensation for the Firm power injected to TNEB grid from 22.04.2010 to 28.04.2010.

2. The total energy injected during that period is 22,50,000 units of firm power. The Appellant was given approval for open access to 'HT Consumers' of the Tamilnadu State from 28.04.2010 onwards. The Respondent Transmission Company, i.e. Tamilnadu Transmission Corporation Ltd., herein after called as '**TANTRANSCO**' stated that the Appellant injected the power to the Tamil Nadu Electricity Board Grid without approval of the Distribution Company and hence the Distribution Company is not liable to pay the energy charges for injected energy from the 22.04.2010 to 28.04.2010.
3. The Appellant filed a Petition before Tamil Nadu Electricity Regulatory Commission (**TNERC**) but the Commission upheld the decision of the State Distribution Company and the State Commission directed in the Impugned Order that no payment is required for the energy injected between 22.04.2010 to 28.04.2010, aggrieved by this Order, the Petitioner filed this appeal.
4. The Petitioner/Appellant, M/s OPG Power Generation Pvt. Ltd., has set up 77 MW generating plant at **Gummidipoondi** and entered into Energy Purchase Agreement (**EPA**) on **13.04.2010** with Tamil Nadu Electricity Board (TNEB) for the supply of 'INFIRM' power from 1x77 MW Gummidipoondi Generating plant.
5. The 1st Respondent is Tamil Nadu Electricity Board (**TEB**), the 2nd Respondent is the '**TANTRANSCO**', the 3rd Respondent is the Director (Operation), '*Tamilnadu Transmission Corporation Limited*', the 4th Respondent is the *Chief engineer/PPP, Tamil Nadu Electricity Board*, the

5th Respondent is the *Superintending Engineer, Chennai Electricity Distribution Circle (North)* and the 6th Respondent is 'TANGEDCO'. The Respondent No. 7, *Tamil Nadu Electricity Regulatory Commission*, was established under Electricity Regulatory Commission Act, 1998.

6. BRIEF FACTS OF THE CASE:

- 6.1 The Appellant/Petitioner established a generating plant of capacity of 1x77 MW at Gummidipoondi, Tamil Nadu State.
- 6.2 The Appellant and the Respondent, *TNEB* entered into the Energy Purchase Agreement on **13.04.2010**, for the supply of infirm power and after the approval of the Respondents, the Appellant injected the infirm power to the *TNEB* Grid.
- 6.3 The Petitioner made a request for 'in principle' approval of Third Party Sale to 50 MW, vide its letter dated, 15.04.2010. The Appellant's power plant declared its Commercial Operation Date (COD) on 22.04.2010.
- 6.4 The Respondent have agreed for this 'in principle' approval from the date of declaration of commercial operation vide their letter dated 24.04.2010, and the Petitioner declared COD on 22.04.2010 and the same received approval by *TNEB* on 24.04.2010.
- 6.5 The Director Operation, Tamil Nadu Transmission Corporation Limited approved on 27.04.2010, for Third Party sales to 50 MW power to HT consumers and wrote a letter to Superintendent Engineer on 27.04.2010, regarding third party sale to 25 number HT consumers totalling of 9.785 MW for 24 hours from 28.04.2010 to 27.05.2010, as per the request made by the Appellant on 26.04.2010. Further, Director Operations,

'Tamilnadu Transmission Corporation Limited' instructed to *Superintending Engineer, Chennai Electricity Distribution Circle (North)* to re-set the energy meters of the HT consumers and to carry out the above Transactions from 28.04.2010 to 27.05.2010.

- 6.6 On 04.12.2010, the Appellant sought for payment for the firm power injected into Grid from 22.04.2010 to 27.04.2010. On 18.01.2011, the Director Operation, *'Tamilnadu Transmission Corporation Limited'* refused the request of the Appellant and informed that Tamil Nadu Electricity Board had not issued any directions or instructions to M/s OPG Power Generation Ltd. to inject the power into Tamil Nadu Grid during the period 22.04.2010 to 28.04.2010 and hence the request of M/s OPG Power Generating Limited to pay for the firm power of 22,50,000 units from 22.04.2010 to 28.04.2010 is not feasible for compliance.
- 6.7 Aggrieved by the decision of the Director Operation, the Appellant/Petitioner filed Petition being DRP No.12 of 2011, before Tamil Nadu Electricity Regulatory Commission on 18.01.2011.
- 6.8 The State Commission after hearing the rival parties, passed the impugned order on 07.10.2011, stating that no compensation was payable to the Petitioner for energy injected into the grid in the absence of any agreement for sale of power and scheduling of energy for injection into grid from 22.04.2010 to 28.04.2010.
- 6.9 **Aggrieved by the Impugned Order dated 07.10.2011, the Appellant filed this appeal and prayed for the following reliefs:**
- (i) To set aside the order dated 07.10.2011 in DRP No. 12 of 2011 and IA No. 1 of 2011 in DRP 12 of 2011 and consequently direct the 2nd

and 6th respondents to jointly and severally make payment in respect of the 22,50,000 units of firm power from the Appellant's 1x77 MW generating plant from the date of commercial operation i.e. 22.04.2010 till 28.04.2010 at the rate of Rs. 4.50 per unit being the sum collected for this power from the Appellant's consumers and direct payment of the said sum with interest at the rate of 18% p.a. from 01.05.2010 till the date such payment is made.

(ii) And to pass such further orders as this Hon'ble Commission may deem fit in the facts and circumstances of the case and thus render Justice.

7. We have heard the arguments of the Learned counsel for the Appellant, Mr.Buddy A.Ranganadhan and Learned counsel for the Respondent, Mr. G.Umapathy in this matter. We have also gone thought the submissions made by the rival parties and gone through the Impugned Order.

8. **The following issues arises for our considerations:**

Issue No. 1 : Is the Appellant/Petitioner entitled for the payments towards energy injected into the grid of the Respondents without any approval from the Respondents'?

Issue No. 2 : Whether the State Commission has erred in rejecting the prayer of the Appellant/Petitioner regarding payment of power injected into the Tamil Nadu Grid from 22.04.2010 to 28.04.2010 by the Appellant/Petitioner?

9. The, issue Nos.1 & 2, are inter-related and hence, we will take up both these issues together.

10. **The following contentions are made by the learned counsel for the Appellant.**

10.1 That the Hon'ble TNERC has failed to consider or appreciate the entire sequence of correspondence between the Appellant and the respondents with respect to the supply of firm power from the Appellant plant at Gummidipoondi.

10.2 That the Hon'ble TNERC has failed to consider the contents of the letter 15.04.2010 sent by the Appellant/Petitioner requesting approval for pumping firm and infirm power from the plant of the Appellant and the respondents' reply to the same vide their letter dated 21.04.2010 wherein the Respondent had expressly agreed and granted permission to the Appellant to carry out third part sales through Intrastate open access.

"1. M/s OPG Power Generation Pvt. Ltd. Is permitted to carry out third party sales through Intrastate open access to HT consumers within Tamil Nadu and the sale is permitted from the date of COD (Commercial Operation Date) declared by M/s. OPG Power Generators Pvt. Ltd."

10.3 That subsequently, the Appellant had further informed the Respondents on 22.04.2010 declaring their COD, informing the respondents that the Appellant had initiated supply of power in line with the approval granted by the Respondents vide their letter dated 21.04.2010.

"With reference to the approval accorded to us for third party sales through intra-state open access to HT consumers within Tamil Nadu, we

would like to state that we have commenced commercial operation from today, the 22nd April, 2010”.

The Hon’ble TNERC has failed to appreciate that the Appellant had kept the respondent informed about the supply of power at every stage and that the Respondent had been party to information regarding supply from the very beginning.

- 10.4 That the Hon’ble TNERC has failed to appreciate that the Respondents had responded to said letters and had also granted their approval for such supply of power as would be evident from the letter of the fifth respondent vide Letter No. SE/CEDC/N/AEE/Dev/AE/D2/F OPG Power 1x77MW/D119/10, dated 24.04.2010, wherein once again after conveying their approval to the Appellant/Petitioner to sell their surplus 50 MW on third party sales to the HT consumers within Tamil Nadu through Intra state short term open access, the respondent board had specifically stated the following:

“Further the sale is permitted from the date of COD intimated by you i.e., from 22.04.2010 onwards”

- 10.5 That the Hon’ble TNERC has failed to appreciate that the supply of power from 22.04.2010 till 28.04.2010, when the final formal approval of the respondents was granted, was not without the sanction of the respondents. On the contrary, the respondents had been informed of such supply and had in fact been given prior notice of the same and had not refused such supply of power or taken any steps to stop the supply.
- 10.6 That the Hon’ble TNERC has failed to appreciate the contents of the letter of the third respondent dated 27.04.2010 stating the following:

“M/s OPG Power gen Pvt. Ltd having a Captive Power Plant with installed capacity 77 MW at Periya Obulapuram of Gummiaipoondi Taluk, Thiruvallur District have been approved for third party sales to the 50 MW to HT consumers within Tamil Nadu through intra state open access subject to the conditions that third party sale is permitted from the date of COD (Commercial Operation Date) declared vide reference cited letter dated 21.04.2010.

Accordingly M/s. OPG Power Gen Pvt. Ltd. has declared the COD on 22.04.2010 and the same is confirmed by SE/Dist/Chennai North vide reference cited letter dated 24.04.2010”.

It is evident from the above that the respondent had approved the supply of power by the Appellant from 22.04.2010. The Hon’ble TNERC has failed to appreciate the same and has come to the erroneous conclusion that the supply of power to the respondent was unsanctioned and without prior approval and therefore in violation of the provisions of the Grid Code.

- 10.7 That the Hon’ble TNERC has failed to appreciate that not compensating the appellant for the firm power supplied would amount to unjust enrichment of the respondents which is as such illegal in as much as the power supplied by the appellant was not refused or returned by the Respondent but had been sold by the Respondent to its consumers at the then prevailing tariff rates.
- 10.8 That the Hon’ble TNERC has failed to appreciate that denying the Appellant compensation on the ground that the formal approval was granted only on 28.04.2010 would not only be against the facts on record in as much as the Respondents had prior knowledge of such apply and

had also sanctioned such supply and accepted the same without demur, it would have to bear the losses for such supply without any avenue of recovering the same and therefore the impugned order is liable to be set aside. The Appellant submits that in respect of the 22,50,000 units of firm power from the Appellant's 1x77 MW generating plant from the date of commercial operation i.e. 22.04.2010 till 28.04.2010, it is to be paid at the rate of Rs. 4.50 per unit being the sum collected for this power from the Appellant's consumers during the relevant time by the respondents, which is required to be paid to the Appellant.

10.9 That the Appellant wrote a letter to TANTRANSOCO on 22.04.2010 seeking third party approval for scheduling power. In this letter the Appellant detailed various customers and their drawl voltage, capacity, quantity of power to be scheduled and date of scheduling. Based on this letter, SECDC North had replied on 24.04.2010 where they acknowledged the letter and permitted sale from 22.04.2010 (acknowledged as COD). Thus, the supply of power from 22.04.2010 onwards has been scheduled and the same has been acknowledged and evidently accepted. Thus, the Hon'ble TNERC was wrong in its findings that the firm power supplied by the Appellant from 22.04.2010 to 28.04.2010 was not scheduled. In fact, it had been scheduled and acknowledged as such and the Appellant ought to be paid for this scheduled power.

11. **Per Contra**

The following are the submissions on behalf of Respondents 1 to 6:

11.1 That as per clause 24 of parallel operation and open access agreement executed by the appellant, the appellant specifically agreed that it will not inject any power or it will not claim for the energy injected into the Grid till wheeling/sale is requested (by the generator) and approved by

TNEB and any excess energy injected in to the Grid will not be accounted and paid for by TANGEDCO under any circumstances.

- 11.2 That the Appellant neither entered into any agreement with the TNEB nor did TNEB issued any direction or instruction to the appellant to inject the power into TNEB's grid after declaration of COD. The appellant was well aware that it was entitled to payment of the infirm power alone from the date of synchronization till COD as per contractual terms.
- 11.3 That the processing time for any short term open access transaction is 15 days as per TNERC Intra state Open Access Regulation, 2005. The application of the appellant requesting short term open access for third party sale from 28.04.2010 to 27.05.2010, with the details of specific consumers in different Electricity Distribution Circles with specific quantum was received on 26.04.2010. The application was processed immediately and approval was given on the very next day i.e. on 27.04.2010; with effect from the date of sale to third party by the applicant as proposed by the appellant, i.e. from 28.04.2010.
- 11.4 That in view of the position that no prior agreement existed between the appellant and respondents for supply of energy between 22.04.2010 to 27.04.2010, energy pumped by the appellant from 22.04.2010 to 27.04.2010, is liable to be lapsed as per Clause 20 & 24, of parallel operation agreement executed by the appellant on 29.12.2009.
- 11.5 That in the said circumstances, the appellant by letter, dated 04.12.2010, made a request to the respondent Board to make payment for 22,50,000 units pumped by the appellant into the grid during 22.04.2010 to 28.04.2010 without any authorization or scheduling instructions. The respondents, by letter dated 18.01.2011, informed the

appellant that the same was not feasible since no such specific approval or scheduling or power purchase agreement for the above quantum was made between the appellant and TANGEDCO or third parties/scheduling with SLDC at the time of unauthorized injection of power.

- 11.6 That the appellant is wrong in contending that power was never intended to be gratuitously supplied and the respondent had also never objected to the supply of power. The power cannot be injected into the grid without the express consent and scheduling instructions of the State Load Dispatch Centre. The appellant was well aware of the conditions mentioned in the approval dated 21.04.2010. The appellant was aware of the fact that it could not inject energy generated by it without complying with the conditions mentioned in the above said letter.

12. Our Consideration and Conclusion:

- 12.1 The contention of the Appellant is that the Appellant was granted 3rd party sales from its 1x77 MW plant by the Director Operations vide letter No. Dir/O/SE/LD&GO/EE/ABT/F OPG Powergen/D 370/10 dated 27.04.2010, from the date of Commercial Operation dated i.e. 22.04.2010, hence the Tamil Nadu Board is liable to pay for the firm power injected from the generating plant up to 28.04.2010.
- 12.2 From the correspondence made between the appellant/petitioner and respondents, we noticed the following informative points:
- (a) The petitioner/appellant plant was synchronised with Tamil Nadu Electricity Board Grid on 14.04.2010, at 23:27:25 Hrs., as per the petitioner's letter dated 15.04.2010.

- (b) In the letter dated 15.04.2010, the Appellant expressed the view that it intended to take approval for 50 MW for Third Party sales.
- (c) Based on the request, the Director Operations accorded the approval for Third Party sale of surplus power of 50 MWs to the HT Consumers of Tamil Nadu State on 24.04.2010.
- (d) The Appellant in the letter dated 22.04.2010, informed the Director Operations as per approval accorded on 21.04.2010, that the commercial operation of the plant was declared on 22.04.2010 and the same was confirmed by the *Superintending Engineer, Chennai Electricity Distribution Circle (North)*.
- (e) The petitioner on 26.04.2010, requested Director Operations to accord approval for the Third party sales to the HT Consumers of the State.
- (f) The Director Operations vide its letter dated 27.04.2010, based on the letter received from the Appellant, dated 26.04.2010, approved the Third Party sales from 28.04.2010 to 27.05.2010 to 25 number HT consumers totalling to only 9.785 MW for 24 hours.
- (g) The Director Operations, directed *Superintending Engineer, Chennai Electricity Distribution Circle (North)* to inform to the Field Officers that the energy meters of these 25 number HT consumers shall be re-set to carry out the open access transactions from 28.04.2010 to 27.05.2010, and shall be informed by written fax.
- (h) Thus, the Director Operations had approved for open access to the Appellant/Petitioner vide its letter dated 27.04.2010, and the letter clearly specifies that the open access was approved from

28.04.2010 to 27.05.2010 and the Appellant also in his letter dated 26.04.2010, requested for open access from 28.04.2010. The details of letter dated 26.04.2010 are quoted below:

“(i)

OPG/TNEB/Third Party Sale/2010-11 April 26,2010
To,
The Director (Operations)
Tamil Nadu Transmission Corporation Ltd.
**Sub: Third Party sale under intra-state Short term Open Access-
Request for approval -28th April, 2010 to 27.05.2010**

Sir,

I humbly request you to accord your approval for third party sale of power to our consumers as per the list enclosed herewith.

Yours faithfully,
For OPG Power Generation Pvt. Ltd.

(D.Eswaramoorthy)
General Manager

(ii) On 04.12.2010, the Appellant/Petitioner sought payment for the firm power injected into the grid and on 18.01.2011, Director/Operation, Tamil Nadu Transmission Corporation Ltd. had rejected the request of the Petitioner”.

12.3 Let us examine the relevant Clause of Energy Purchase Agreement entered between M/s. OPG Power Generation Pvt. Ltd. and Tamil Nadu Electricity Board for purchase of infirm power from 1x77 MW Gummidipoondi generating plant. The Energy Purchase Agreement was entered on 13.04.2010. The relevant Clause is quoted below:

Clause 6 - Agreement period:

“6 (1) This agreement shall remain in force from the date of commencement of pumping of energy in to TNEB’s grid (i.e. 13.04.2010) up to 12.10.2010 and thereafter the term may be extended for further period based on the mutual agreement between Board and the GP. If the company declared the COD (Commercial Operation Date) before the due date of 12.10.2010, then this agreement shall be automatically terminated from the date of declaration of COD.

6 (2) In case of any breach or violation of any of the clauses in this agreement by any party, the other party shall be at liberty to cancel this agreement by giving thirty days notice”.

Thus, the agreement for purchase of infirm power was be automatically terminated from the date of declaration of COD, i.e. by 22.04.2010. Hence, the Energy Purchase Agreement dated 13.04.2010, ceased to be in existence from the date of COD.

12.4 The Appellant/Petitioner contested that they had informed for Third party sales in their letter dated 15.04.2010. We have gone through the correspondence and noticed that the Appellant on 15.04.2010, expressed its opinion regarding sale of surplus power from its generating plant to the Third Party consumers and the Appellant had not specified the date from which they wanted approval for third party sales. The relevant part is quoted below:

“Moreover considering today’s situation, where power demand is very high, lot of customers request us to supply power. In this situation we request you grant approval for THIRD PARTY sale to the tune of 50 MW on a priority basis so as to service the customers in need”.

Further, the Appellant/petitioner in its letter dated 22.04.2010, sought for approval of Third Party sales and not mentioned about the power injection to the grid from the date of declaration of commercial operation. The petitioner/appellant knew very well that it was injecting power into TNEB grid from 22.04.2010 onwards. Even, the letter dated 26.04.2010, regarding request for Third party sales from 28.04.2010 to 27.05.2010, did not whisper anything about the power being injected from appellant's plant to State Grid.

- 12.5 The appellant wrote a letter to Director Operations on 26.04.2010, and requested for approval of Third Party sales. The Director Operations immediately sanctioned Third party Open Access on 27.04.2010, for the period from 28.04.2010 to 27.05.2010, for sale of surplus power from the Appellant Generator to 25 Number HT consumers of the State of Tamil Nadu.
- 12.6 It is pertinent to mention here that the Appellant/Petitioner entered into parallel operations and open access agreement for COAL based power plant with TNEB Grid on 29.12.2009, for sale of power. The relevant clause of the Agreement is quoted below:

“24. The Company shall furnish an undertaking that it will not inject any power or it will not claim for the energy injected to the Grid till wheeling/sale is requested and approved by the Board. Any excess energy injected in to the grid will not be accounted and paid for by the Board under any circumstances”.

According to 'Clause 24' of this Agreement, the Appellant had clearly given an undertaking that it would not inject any power or it would not claim for energy injected into the grid till wheeling/sale, was

approved by the Board. Thus, the Appellant/Petitioner himself had agreed for this clause but without approval of the Respondents, injected power into Tami Nadu Electricity Board grid from 22.04.2010 to 28.04.2010, admittedly, no schedule of power was given by the SLDC to the Appellant.

12.7 According to Section 33(2) of Electricity Act, 2003 every licensee, generating company, generating station, sub-station and any other person connected with the operation of the power system shall comply with the directions issued by the State Load Dispatch Centre (SLDC) under sub-Section (1) of 33 of Electricity Act, 2003, the relevant part of Section 33, is quoted below:

“33. Compliance of directions.- (1) *The State Load Despatch Center in a State may given such directions and exercise such supervision and control as may be required for ensuring the integrated grid operations and for achieving the maximum economy and efficiency in the operation of power system in that State.*

(2) *Every licensee, generating company, generating station, sub-station and any other person connected with the operation of the power system shall comply with the directions issued by the State Load Despath Centre under sub-section (1)*

(3) *The State Load Despatch Centre shall comply with the directions of the Regional Load Despatch Centre.*

(4) *If any dispute arises with reference to the quality of electricity or safe, secure and integrated operation of the State grid or in relation to any direction given under sub-section (1), it shall be referred to the State Commission for decision:*

Provided that pending the decision of the State Commission, the directions of the State Load Despatch Centre shall be complied with by the licensee or generating company.

- (5) *If any licensee, generating company or any other person failed so comply with the directions issued under sub-section (1), he shall be liable to a penalty not exceeding rupees five lacs”.*

In accordance with Section 32 of the Electricity Act, 2003, SLDC is responsible for scheduling and despatch of electricity within the State to monitor the grid operations, to exercise supervision and control over the Intra-State Transmission System and to carry out grid control and despatch of electricity through secure and economic operation of the State grid. All the generators have to generate power as per the schedule given by the SLDC and the grid code in the interest of secure and economic operation of the grid. The unwanted generation can jeopardise the security of the grid.

In this case the injection of electricity was without the consent/knowledge of the Distribution Licensee and also SLDC. Thus, we do not find any substance in the claim of the Appellant for the payment towards injection of power from 22.04.2010 to 28.04.2010. The open access was approved only from 28.04.2010.

- 12.8 We have gone through the Impugned Order. The relevant portion of the Impugned Order is as under:

“35. The processing of open access application is required to be done in accordance with the TNERC Open Access Regulations, 2005 which

mandates filing of applications and the associated processing time for grant of approval and there after implementation of the open access. In the absence of open access, the action of the Appellant amounts to unauthorized injection of energy from his power station into the grid and therefore he could not now take the plea of his intention that the power was not intended to be gratuitous supply. Injection of power into the grid, in the absence of any contract or in the absence of open access, in violation of paragraph 24 of the parallel operation and open access agreement as discussed in para 33 above does not warrant compensation. In the light of the above discussions, the Commission is of the view that in accordance with the parallel operation and open access agreement, as discussed above, no payment is due for injection of energy between 22.04.2010 and 27.04.2010 into the grid”.

12.9 This Tribunal in the judgment dated 16.05.2011 in the matter of M/s Indo Rama Synthetics (I) Ltd. Vs. MERC and others held as under:-

“11 In our opinion the Section 70 and 72 of the Indian Contracts Act, 1872 will not be applicable in the present case. The present case is governed by the Electricity Act, 2003 which is a complete code in itself. In the electricity grid, the SLDC, in accordance with Section 32 of the Act is responsible for scheduling and dispatch of electricity within the state, to monitor the grid operations, to exercise supervision and control over the intra-state transmission system and to carry out grid control and dispatch of electricity through secure and economic operation of the State Grid. All the generators have to generate power as per the schedule given by the SLDC and the grid code in the interest of secure and economic operation of the grid. Unwanted generation can jeopardize the security of the grid. Moreover, in this case the injection of electricity was without the

consent or knowledge of the distribution licensees and the energy generated by the appellant was booked to the distribution licensees for balancing the energy generated/injected with energy consumption in the energy accounting. Accordingly, the decision in Haji Mohammed Ishaq WD. S.K.Mohammed and others vs. Mohamad Iqbal and Mohamed Ali & Co. Reported in (1978) 2 SCC 493 relied upon by the appellant will also not be of any relevance.

12 *We have noticed that the appellant on an earlier occasion had also scheduled double of the amount of available power to two trading licensees simultaneously and had to pay unscheduled Interchange charges for the shortfall in supply with respect to the schedule. Thus, the appellant signed agreement to sell the available power simultaneously with two parties. In the present case, as also on the earlier occasion the appellant has not been vigilant.*

13 *Thus, we do not find any substance in the claim of the appellant for compensation for the power injected into the grid without any schedule and agreement”.*

12.10 We have gone through the submissions and noticed that the Energy Purchase Agreement for Infirm power as per Clause 6 of the Agreement expires as soon as the plant is declared as commercial operation by the Appellant, i.e. on 22.04.2010. The Appellant’s submission, that as per the approval, the firm power was injected into the grid on the same day, is not justifiable. The Appellant/Petitioner contends that it commenced third party sales through intra-state open Access to HT consumers with in Tamil Nadu from 22.04.2010. If the contention of the Appellant/Petitioner is correct, then, he does not need to mention in the

letter dated 26.04.2010 to approve third party sales from 28.04.2010 onwards to Director Operations.

Further, before supplying power from a different source to HT Consumers, then the M.D. of their energy meters had to be reset to zero to record the power received from other source which was not done as per the instructions of Director/Operations to the filed officers in the Third party sales approval letter dated on 27.04.2010.

Thus, we do not find any infirmity in the impugned order of the State Commission and accordingly, the issues are decided against the Appellant and the Respondents are not liable to make any payment for the 22,50,000 units of firm power injected into the respondent's grid between 22.04.2010 to 28.04.2010. Accordingly, the appeal is worthy of dismissal.

ORDER

The Appeal, being Appeal No.68 of 2014, is dismissed and the order of the State Commission is hereby upheld. No costs.

Pronounced in the Open Court on this **30th day of May, 2016.**

**(T Munikrishnaiah)
Technical Member**

**(Justice Surendra Kumar)
Judicial Member**

Dated: 30th May, 2016



REPORTABLE / ~~NON-REPORTABLE~~