

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

**IA NOS. 118, 173, 174, 179 & 190 OF 2016
IN DFR NO.2565 of 2015**

Dated: 9th September, 2016.

**Present: Hon'ble Smt. Justice Ranjana P. Desai, Chairperson
Hon'ble Shri I.J. Kapoor, Technical Member.**

IN THE MATTER OF:

ENERGY WATCHDOG)
(through Mr. Anil Kumar, Secretary))
Regd. Off: 302, Lotus Chamber,) ... Applicant/
2079/38, Nalwa Street,) Appellant(s)
Karol Bagh, New Delhi-11 005

Versus

1. **TAMIL NADU ELECTRICITY**)
REGULATORY COMMISSION)
No.19-A,Rukmini Lakshmi pathy Salai)
Marshalls Road)
Egmore, Chennai-600 008.)

2. **TAMIL NADU GENERATION AND**)
DISTRIBUTION CORPORATION)
LTD.(TANGEDCO))
10th Floor, NPKRR Maaligai)
144 Anna Salai)
Chennai-600 002)

3. **ADANI GREEN ENERGY (TAMIL NADU) LTD**)
 Adani House)
 Near Mithakhali Six Roads)
 Navrangpura, Ahmedabad)
 Gujarat – 380 009.)
4. **KAMUTHI SOLAR POWER LTD.**)
 Adani House, Near Mithakhali Roads)
 Navrangpura, Ahmedabad)
 Gujarat – 380 009.)
5. **RAMNAD SOLAR POWER LTD.**)
 Adani House, Near Mithakhali Roads)
 Navrangpura, Ahmedabad)
 Gujarat – 380 009.)
6. **SEI ADHAVAN POWER PVT. LTD.**)
 10th Floor, Menon Eternity)
 Old No.110(New No.165))
 St. Marys Road, Alwarpet)
 Chennai-600 018.)
7. **SEI PHOEBUS PVT. LTD.**)
 10th Floor, Menon Eternity)
 Old No.110(New No.165))
 St. Marys Road, Alwarpet)
 Chennai-600 018.)
8. **SEI KATHIRAVAN**)
 10th Floor, Menon Eternity)
 Old No.110 (New No.165),)
 St. Marys Road, Alwarpet,)
 Chennai – 600 018)

9. **RT RENEWABLE ENERGY INDIA PVT LTD**)
10th Floor, Menon Eternity)
New No. 165 (Old No.110),)
St. Mary's Road, Alwarpet)
Chennai – 600 018)
10. **SEI ADITYASHAKTI PVT LTD**)
10th Floor, Menon Eternity)
Old No.110 (New No.165),)
St. Marys Road, Alwarpet,)
Chennai – 600 018)
11. **WELSPUN RENEWABLES ENERGY PVT LTD**)
Welspun House, 7th Floor,)
Kamala City,)
Senapati Bapat Marg, Lower Parel,)
Mumbai – 400 013)
12. **WELSPUN SOLAR TECH PVT LTD**)
3rd Floor, PTI Building,)
4 Parliament Street,)
New Delhi – 110 001)
13. **UNIVERSAL MINE DEVELOPERS AND SERVICE PROVIDERS PVT LTD**)
70 Nagindas Master Road,)
Fort, Mumbai – 400 023)

14. **TN SOLAR POWER ENERGY PVT LTD**)
)
 No. 560/562, 4-D, 4th Floor)
 Century Plaza, Anna Salai Teynampet)
 Chennai – 600 018)
15. **GIRIRAJ ENTERPRISE PVT LTD**)
)
 701 Ivory Terracer, C Dutt Road)
 Baroda, Gujarat – 390 007)
16. **VAIBHAV JYOTI POWER UTILITY SERVICES PVT LTD**)
)
 104, 4th Floor, E-Block, Surya Towers)
 Sardar Patel Road)
 Secunderabad Telangana – 500 003)
17. **AL AMEEN GREEN ENERGY PVT LTD**)
)
 New No.132 (Old No.67))
 Ramasamy Street, Muthial Pet,)
 Chennai – 600 001)
18. **AURO POWER PVT LTD**)
)
 Survey No. 322/1B,)
 Kurunthamadam Village,)
 Pandalkudi, Aruppukottai)
 Tamil Nadu – 626 114)
19. **PALVAI GREEN POWER PVT LTD**)
)
 Survey No. 322/2,)
 Kurunthamadam Village,)
 Pandalkudi, Aruppukottai)
 Tamil Nadu – 626 114)
20. **CRESCENT POWER LTD**)
)
 1st Floor, Hare Street)
 6 Church Lane, Kolkata – 700 001)

21. **APEX CLOTHING COMPANY INDIA LTD**)
)
 No.33B, Vaikkal Thottam)
 Sheriff Colony, Tirupur,)
 Tamil Nadu – 641 604)
22. **SSNR POWER PVT LTD**)
)
 HIG-78, First floor,)
 A. P. H. B. Colony)
 Bhimavaram)
 Andhra Pradesh – 534 203)
23. **G.R. THANGA MALIGAI JEWELLERS PVT LTD**)
)
 No. 138, Usman Road, T.Nagar)
 Chennai - 600017)
24. **SHREE SAASTHA GRINDERS**)
)
 430, Kannusamy Gounder Street)
 Rathinapuri, Coimbatore)
 Tamil Nadu – 641 027)
25. **SIDARRTHA ENERGY PVT LTD**)
)
 No.28, First Main Road, CIT Nagar,)
 Chennai-600 035)... Respondents

Counsel for the
 Applicant(s)/Appellant (s)

Mr. Anil Kumar (Rep.)

Counsel for the Respondent(s)

Mr. S. Vallinayagam for **R-2**

Mr. Sanjay Sen, Sr. Adv.
Mr. Hemant Singh
Mr. Nishant Kumar for **R-3** to
R-5

Mr. Krishnan Venugopal, Sr.
Adv.
Mr. Sakya singha Chaudhuri
Mr. Avijeet Kumar Lala
Ms. Molshi Bhatnagar for
R-11 & R-12

Ms. Manu Seshadri
Mr. Devang Gautam for **R-18,**
R-19 & R-24

Ms. Divya Chaturvedi for **R-20**

Mr. Jayanth Muthraj
Ms. Malavika for **R-25**

ORDER

PER HON'BLE (SMT.) JUSTICE RANJANA P. DESAI - CHAIRPERSON

1. Energy Watchdog the appellant in the instant appeal ("**Energy Watchdog**" or "**the Appellant**" for convenience) filed IA No.29 of 2016, praying that it may be permitted to file appeal against the majority order dated 04/01/2015 passed by the Tamil Nadu Electricity Regulatory Commission ("**the State Commission**").

2. Gist of the application filed by Energy Watchdog needs to be stated.

Energy Watchdog being a consumer group, generally concerned with the welfare of consumers is aggrieved by the impugned order passed by the State Commission suo-motu without inviting any party including the consumers as mandated by the Electricity Act 2003 (the said Act). Through the impugned order (which is a majority order) the State Commission extended the control period of solar power tariff ignoring the revised (downward) “benchmark capital cost” for solar power issued by the Central Electricity Regulatory Commission (“**CERC**”). As per the said Act, the State Commission was duty bound to adopt the revised benchmark capital cost. The Tamil Nadu Generating and Distribution Corporation Ltd., (“**TANGEDCO**”) did not challenge the majority judgment and signed at least 31 Energy Purchase Agreements (“**EPAs**”) for 25 years with at least

23 companies on nomination basis at Rs. 7.01 per unit for a total power purchase of 1.181 MW. These EPAs are worth Rs. 34,448 crores. These rates are much higher than prevailing market rates for Solar Power. The impact of this higher tariff would be borne by the electricity consumers of Tamil Nadu besides the general public across the country as TANGEDCO has already moved the Central Government for a bailout package. TANGEDCO is already into massive losses and its debt is over Rs.70,000 crores. The Appellant being a consumer group is an aggrieved person and hence leave to appeal may be granted.

3. On 20/01/2016 this Tribunal heard Mr. Anil Kumar, Secretary of Energy Watchdog and granted leave to Energy Watchdog to appeal. The I.A. was disposed of. No notice was issued to the Respondents.

4. IA No.173 of 2016 is filed by Respondent No.14, TN Solar Power Energy Ltd. IA No.174 of 2016 is filed by Respondent No.13,

Universal Mine Developers and Service Providers Pvt. Ltd. IA No.179 of 2016 is filed by Respondent No.3, 4 & 5 i.e. Adani Green Energy (Tamil Nadu) Ltd., Kamuthi Solar Power Ltd., and Ramnad Solar Power Ltd., respectively. IA No.190 of 2016 is filed by Respondent No.10 SEI Adityashakti Pvt. Ltd. In these applications it is prayed that Order dated 20/01/2016 passed by this Tribunal granting leave to file appeal to Energy Watchdog be recalled.

5. In all these applications praying for revocation of leave granted to appeal similar contentions are raised. We have heard learned counsel appearing for the Respondents. We shall refer first to the gist of the submissions of Mr. Sanjay Sen learned counsel appearing for Respondents Nos.3 to 5, which shall cover points raised by others.

6. Gist of the submissions of Mr. Sanjay Sen learned counsel appearing for Respondents Nos.3 to 5 is as under:

- (a) The Appellant is not an aggrieved person within the meaning of Section 111 of the said Act on the date of filing of the present appeal.
- (b) The appeal being a statutory right the locus to file the appeal has to be established from the pleadings. The Appellant has stated in the appeal that it is a registered society having electricity consumers as members across the country including the State of Tamil Nadu. Mr. Rama Suganthan's name is given as an example of a member. However, there is no averment in the appeal that he complained to the Appellant or he was personally aggrieved by the impugned order. The appeal is therefore liable to be dismissed on that count.
- (c) There is absence of specific pleading that Mr. Rama Suganthan was specifically aggrieved and rightly so because the present appeal is filed not on account of the grievance of Mr. Rama Suganthan but the appeal is filed on the basis of a complaint received by the Appellant vide an anonymous letter dated 11/09/2015 addressed by a

third person to M/s Common Cause which was forwarded by it to the Appellant.

- (d) The averments in the appeal disclose that the appeal was filed on the basis of aforesaid letter only and enquiry made by the Appellant on the basis thereof. Anonymous letter cannot be a basis of the appeal.
- (e) It is only in the application for condonation of delay that the unsigned letter dated 11/09/2015 written to Mr. Prashant Bhushan is mentioned. The said letter does not mention that the author of the same is an aggrieved person or a consumer of Tamil Nadu.
- (f) Since the Appellant has filed this appeal on the basis of an anonymous letter, it becomes a public interest litigation. Such proceedings cannot be initiated before this Tribunal.
- (g) As a general rule infringement of some legal right or prejudice to some legal interest inhering in a person is necessary to give him a locus standi. [see **Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir**]

Ahmed¹, Pushpendra Surana v.CERC & Ors and IA No.7 of 2014 in DFR No.2675 of 2013 and IA No.8 of 2014 in DFR No.2676 of 2013, IA No.392 batch of 2012 and Final order of the Supreme Court in Civil Appeal No.7303-7304 of 2013].

- (h) Right to appeal is a statutory right and it can be circumscribed by the conditions of the grant (**Vijay Prakash D Mehta v. Collector of Customs²**).
- (i) The Appellant has placed on record certain documents which pertain to the alleged authorization rendered to the Appellant by its alleged 3 members for filing the present appeal. The same are dated 20/03/2016 and 20/04/2016 while the present appeal is filed on or around 11/12/2015. They were submitted when objection was raised by the Respondents. It is apparent that the said documents have been created in order to justify the filing of the present appeal. This also shows that on the date of filing of the appeal the Appellant was not aggrieved.

¹ 1976-1-SCC 671

² (1988) 4 SCC 402

- (j) Subsequent affidavits filed by the Appellant cannot improve the locus standi of the Appellant. The Appellant cannot be allowed to deviate from the case pleaded in the pleadings by filing affidavits [see **Harcharan v. State of Haryana**³].
- (k) Tribunals are a creature of a statute and have to function within the scope of the said statute only [see **Shrisht Dhawan v. M/s Shaw Brothers**⁴].
- (l) Without prejudice to the above it is submitted that the Appellant has failed to substantiate in its pleadings, any proof of documentation, payment of membership fees etc by which the three persons mentioned in the reply have become members of the Appellant. No complete list of members is provided which is necessary to prove *bona-fides*. [see Judgment of this Tribunal in **Appeal No.148 of 2010**]
- (m) The submission that letter dated 11/09/2015 was anonymous as the author of the said letter had security

³ (1982) 3 SCC 408

⁴ (1992) 1 SCC 534

issues, is without any merit because the Appellant has already disclosed their names in its reply.

- (n) In any case the author of the anonymous letter, even if his name is disclosed had to be a member of the Appellant and even if any record is shown that the said author is a member of the Appellant, there is no explanation why the said author did not address the letter directly to the Appellant.
- (o) Even if the present appeal is held maintainable it would result in a proceeding which has trappings of a public interest litigation which cannot be entertained by this Tribunal as held by the Supreme Court.
- (p) In the circumstances the appeal be dismissed as not maintainable.

7. In IA No.118 of 2016 Respondents No.11 & 12 have prayed that the appeal be dismissed against Respondents No.11 & 12. Several points are urged in the application. It is not however possible to dismiss the appeal in limine against Respondents No.11 & 12. In a matter such as this appeal will have to be finally heard

to decide whether any case is made out by Respondents No.11 & 12 for dismissal of the appeal. At this stage we do not want to express any opinion on the merits of the case. Mr. Krishnan Venugopal, learned counsel who appears for Respondents No.11 & 12 has submitted that Energy Watchdog is not a ‘person aggrieved’ within the meaning of Section 111 (1) of the said Act. The present appeal is therefore not maintainable and the leave granted needs to be revoked. No such specific prayer is made in IA No.118 of 2016. However in the written submissions this point is urged. Gist of the said submissions therefore needs to be stated. It is as under:

- (i) Any person filing an appeal has to first demonstrate that he is a “person aggrieved” and therefore eligible to prefer an appeal under Section 111 (1) of the said Act. [see **Bar Council of Maharashtra v. M.V. Dabholkar & Ors**⁵].
- (ii) A person filing an appeal under Section 111 (1) of the said Act must be aggrieved by the order and not by the consequences which ensue.

⁵ (1975) 2 SCC 702)

- (iii) This Tribunal is not a forum for entertaining public interest litigation. (**Pushendra Surana**).
- (iv) The term 'consumer' has been defined under Section 2 (15) of the said Act. As per the said definition a consumer is a person having an agreement of supply of electricity with a licensee. A person needs to have a relationship with the distribution licensee to receive supply of electricity from such distribution licensee so as to qualify as a 'consumer' under the provisions of the said Act.
- (v) Under Section 43 of the said Act a person can make an application to a distribution licensee for supply of electricity. It is immaterial whether the person is the owner of the premises or the tenant. In the absence of contractual relationship being established Mr. Rama Suganthan cannot be held as a person aggrieved. A person must have a standing to sue before instituting legal proceedings (**Jashbai Motibhai**).
- (vi) If the term 'person aggrieved' is given a wider meaning it will open flood gates of litigation.

(vii) Even if it is assumed that payments towards electricity were being made by Mr. Rama Suganthan, he cannot be considered as a 'person aggrieved' since he has no status under law.

(viii) Following conduct of the Appellant and Mr. Rama Suganthan needs to be noted.

(a) It is the stated position of the Appellant that Mr. Rama Suganthan is a member of the Appellant Association since 01/01/2015, however, no documents have been produced by way of the Affidavit dated 12/09/2016 to corroborate such claims.

(b) On one hand it is claimed that Mr. Rama Suganthan is consumer of electricity since 1994 (No.221100129), on the other hand the closing statement of the affidavit claims the same to be since 1989 (Nos.09-201-033-79 & 80). It is not clear as to why two different statements are being given by way of the affidavit. Mr. Rama

Suganthan has failed to justify as to how the purported residence i.e 20, First Avenue, Shastri Nagar, Adyar, Chennai-600 020 can have three connection numbers and the same are being paid by him.

- (c) The bill book (although not legibly) shows that the bills are being raised upon such connection numbers, however, whether the bills are being paid by Mr. Rama Suganthan or somebody else has not been clarified by way of the affidavit or through some documents in support.
- (d) It is only at a belated stage i.e.by way of the affidavit dated 20/03/2016 that Mr. Rama Suganthan has authorised the Secretary of the Appellant Association, Mr. Anil Kumar to file the present appeal. It is pertinent to note that the limitation to file an appeal under Section 111 (1) of the said Act has already expired on 16/05/2015 and the appeal was filed with a delay of 210 days on 11/12/2015.

(e) The Appellant has failed to put on record any authorisation from its governing body.

(viii) The appeal is therefore liable to be dismissed as not maintainable.

8. Energy Watchdog has raised various contentions while assailing the impugned majority order. It is *inter alia* the contention of Energy Watchdog that the State Commission has ignored the Benchmark Capital Cost fixed by the Central Commission and that while extending the control period it was not justified in retaining the tariff at the same level (Rs.7.01 per unit) especially in view of Section 64 of the said Act under which public consultation is a must. This case is strongly denied by the Respondents. In this connection we would like to make it clear that at this stage we are not concerned with merits of the rival contentions. We shall only deal with the objection of the Respondents that Energy Watchdog is not an 'aggrieved person' within the meaning of Section 111 (1) of the said Act, as on the date of filing of the present appeal.

9. Several judgments have been cited on the point. We may refer to **Jasbhai Motibhai** where the State Government had granted certificate to the Respondents therein to construct a cinema overruling the District Magistrate. The Appellant therein filed a writ petition in the High Court under Articles 226/227 of the Constitution praying for a direction to the Respondents to treat the no objection certificate granted to Respondents No.1 & 2 as illegal. The High Court dismissed the petition for lack of locus standi. The Supreme Court upheld the High Court's view. The Supreme Court observed that the Appellants stand was that the setting up of a rival cinema in the town will adversely affect their commercial interest. Such harm is not wrongful in the eye of law because it does not result in injury to a legal right. Following are the observations of the Supreme Court on which reliance is placed.

“48. In the light of the above discussion, it is demonstrably clear that the appellant has not been denied or deprived of a legal right. He has not sustained injury to any legally protected interest. In fact, the impugned order does not operate as a decision against him, much less does it wrongfully affect his title to something. He has not been subjected to a legal wrong. He has suffered no legal grievance. He has no legal peg

for a justifiable claim to hang on. Therefore he is not a ‘person aggrieved’ and has no locus standi to challenge the grant of the no-objection certificate.”

10. The Respondents have also relied upon following paragraphs from this Tribunal’s judgment in **Pushpendra Surana**.

“16. In terms of the aforesaid propositions, in order for the Appellant to be a ‘person aggrieved’ the Appellant should have

- (a) suffered a legal grievance.*
- (b) suffered a legal injury or*
- (c) been deprived of something it was entitled to.*

22. Even according to the Applicant, the Applicant is the resident of Ghaziabad (UP). The Applicant is neither a consumer of any of the procurers, the Respondents in terms of Section of 2(15) of the Electricity Act, nor he is receiving supply of electricity from the Respondents through any of the procurers. Therefore, it cannot be said that the Applicant is an aggrieved person who has suffered any legal grievance or injury.”

11. The Respondents have also contended relying on **Pushpendra Surana** that this Tribunal is not a forum for entertaining public interest litigations, and a person has to be specifically aggrieved by an order passed by a Regulatory Commission. The Respondents

case is that the appeal is in the nature of public interest litigation and hence is not maintainable before this Tribunal.

12. Keeping these judgments in mind we will approach this case. The impugned order is dated 01/04/2015 and the appeal is filed on 11/12/2015. In paragraph 7A of the appeal memo the Appellant has stated as under:

“7A. The Appellant is a registered society and its members are the electricity consumers across the country including the State of Tamil Nadu (For example Mr. Rama Suganthan S/o Late Mr. K. Ramamurthy, 20, First Avenue, Shasti Nagar, Adyar, Chennai-600 020 also consumer of electricity No.2211001211). The Appellant has already shown its credentials before this Tribunal in Appeal No.124 of 2014 and Appeal No.125 of 2014 in respect of cases related to the award of compensatory tariff to Adani Power Ltd., and Coastal Gujarat Power Ltd., by the Central Electricity Regulatory Commission. The Appellant had also filed appropriate responses before the Supreme Court against both these companies when they had approached there for challenging certain orders passed by this Tribunal in the matter.”

13. Thus the mention of Mr. Rama Suganthan is found in the appeal memo filed on 11/12/2015. It is therefore not possible to

say that his membership was created after the objection was raised by the Respondents.

14. In response to the objections raised by the Respondents, Mr. Rama Suganthan filed affidavit dated 20/03/2016. In this affidavit Mr. Rama Suganthan has reiterated that he is a resident of Chennai, and is also a consumer of electricity (No.221100129). He has stated that he is a member of Energy Watchdog since 01/01/2015. He has further stated that he wanted to sign the instant appeal as a separate party, but he was told that there is no such requirement in view of order dated 06/05/2014 passed by this Tribunal in IA No.160 of 2014 in DFR No.897 of 2014 filed by Energy Watchdog in another case.

15. What is stated by Mr. Rama Suganthan is indeed true. Energy Watchdog had filed two cases being DFR No.897 of 2014 (Appeal No.124 of 2014) and DFR No.905 of 2014 (Appeal No.125 of 2014), along with applications for leave to appeal. In both these cases Appellant No.1 was Energy Watchdog and Mr. Suresh Khurana a consumer was Appellant No.2. By order dated

06/05/2014, this Tribunal directed the Appellants to remove the name of consumer Mr. Suresh Khurana because he was already represented by Appellant No.1 Energy Watchdog. Accordingly, Mr. Suresh Khurana's name was removed as Appellant No.2. According to Energy Watchdog having regard to these orders the appeal was filed by Energy Watchdog; it was verified by its Secretary Mr. Anil Kumar and Mr. Rama Suganthan was cited as a member therein. It is the case of Energy Watchdog that in view of the above orders Mr. Rama Suganthan did not file the appeal along with Energy Watchdog.

16. Doubt was expressed by the Respondents' counsel as to whether Mr. Rama Suganthan is really a consumer of electricity. Counsel pointed out that the meter was not in his name and he is a tenant of the premises. On 05/07/2016 this Tribunal directed Mr. Rama Suganthan to file an affidavit stating the date from which he became the consumer of electricity at the given premises.

17. As directed Mr. Rama Suganthan filed affidavit dated 06/07/2016 wherein he stated as under:

- (a) I was born and brought up in Tamil Nadu and staying in Tamil Nadu since my birth. My native place is Salem district in Tamil Nadu.
- (b) I am staying at the above address in Shastri Nagar, Chennai since 1989. My residence is served by electricity supplied by TANGEDCO vide connection Nos.09-201-033-79 & 80 (copies of meter book attached). Both these connections are in the name of the previous owner and have applied for change in name.

18. We have no reason to doubt this statement made on oath by Mr. Rama Suganthan. His name is mentioned in the original appeal memo filed on 11/12/2015. He claims to have consumer No.221100129 and claims to be consumer since 1994. He has given his connection numbers and has candidly admitted that they are in the name of previous owner and he has applied for change in name. To the affidavit copies of meter book are attached. None of the Respondents have disproved this case of Mr. Rama Suganthan by filing any documents.

19. The Respondents could have made inquiry and produced some material to contradict Mr. Rama Suganthan's claim. It was not impossible for them to do so. Instead the Respondents have tried to create suspicion. They have admitted that the bill book shows that the bills are being raised upon the connection numbers given by Mr. Rama Suganthan. But they have stated that no affidavit is filed as to whether the said bills are paid by Mr. Rama Suganthan or somebody else. It is then said that Mr. Rama Suganthan should have justified how at his address at Chennai he has three connection numbers. It is then contended that no documents have been produced to show that Mr. Rama Suganthan is in fact, a member of Energy Watchdog.

20. The Respondents are also relying on what appears to us to be a typographical error. In one affidavit Mr. Rama Suganthan claims to be a consumer since 1994 and in another he has stated that he is a consumer since 1989. In any case the record produced by him shows that he is a consumer of electricity much prior to the passing of the impugned order and his name is mentioned in the appeal

memo. We feel the Respondents effort to discredit Mr. Rama Suganthan to be misdirected. In the case of a consumer we are not going to adopt such a rigid approach if we find on the basis of record produced by him that his version has a ring of truth.

21. It is submitted that Mr. Rama Suganthan is not a consumer within the meaning of Section 2 (15) of the said Act which defines the term “consumer” Section 2 (15) reads thus:

“2 (15) “ consumer” means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;”

22. This definition is an inclusive definition. It states that a consumer means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public. It further states that it includes any person whose premises are for

the time being connected for the purpose of receiving electricity with the works of a licensee. This later part of the definition gives a wide meaning to the term consumer.

23. The Respondents have relied on Section 43 of the said Act which provides that a person can make an application for supply of electricity to the distribution licensee. Such application can be made by an owner or occupant. Thus a person may be the owner of the premises or a tenant, he can make an application for supply of electricity. Pertinently Mr. Rama Suganthan has stated in his affidavit that he is a consumer of electricity; that the connections are in the name of previous owner and he has applied for their transfer in his name.

24. The preamble to the said Act indicates that protecting interest of consumers is its prime object. Keeping this object in view in the facts of this case we are not inclined to give a very restrictive meaning to the term 'consumer' so as to defeat the purpose of the said Act. Whether a person is a consumer or not will depend on facts and circumstances of each case. In this case Mr. Rama

Suganthan has given the address of his residence at Chennai where he receives electricity. He has given connection numbers. He has attached copies of meter book to substantiate his contention. At the cost of repetition it must be stated that he has stated that both these connections are in the name of the previous owner and he has applied for change in his name. Thus it appears that Mr. Rama Suganthan is consuming electricity at his residence. There is no reason to disbelieve these statements made on oath which have not been controverted by filing any affidavit with information to the contrary. In the facts of this case it is not possible for us to hold that to acquire locus to file appeal under Section 111 of the said Act Mr. Rama Suganthan should have established direct contractual relationship with the distribution licensee. We repeat that we are not inclined to give such restrictive meaning to the term “consumer”.

25. The Respondents cannot draw any support from **Pushpendra Surana**. In that case the Appellant therein was living somewhere incognito. He had not produced any material nor indicated in the paper book that he was a consumer of the distribution licensees in

Uttar Pradesh. It is in this context that it was held that he cannot be considered as a 'person aggrieved' so as to challenge the order impugned therein as a consumer. Facts of this case are different. Mr. Rama Suganthan's name is given in paragraph 7A of the appeal memo alongwith his Chennai address and consumer number. He has applied for transfer of connections in his name. Meter book is produced by him. This case will not be therefore covered by **Pushpendra Surana**.

26. Energy Watchdog has given two other names of consumers from Chennai who have become its members on 01/06/2015. Their consumer numbers have been given. These persons have become members prior to the filing of the present appeal i.e. before 11/12/2015. Therefore it cannot be said that they are made members after the Respondents raised objection. But even if these two members' names are kept out of consideration Mr. Rama Suganthan's membership of Energy Watchdog and his being a consumer of electricity in Chennai cannot be doubted as no material is produced before us to hold otherwise.

27. The impugned order is dated 01/04/2014. Mr. Rama Suganthan is a consumer of electricity at least since 1999. It is *inter alia* the case of Energy Watchdog that solar power tariff in the country has already been observed to be less than Rs.5 through competitive biddings in Madhya Pradesh and Andhra Pradesh, hence there was no reason for the State Commission to extend the control period till 31/03/2016 keeping the tariff same at Rs.7.01 per unit. It is further the case of the Appellant that the Central Commission has notified that the capital cost of the solar plant has come down to Rs.6.0585 crores per MW. This is 12.33% reduction from last year's cost and it translates into about Rs.6 per unit (approx.). It is further stated by the Appellant that in the recent e-auction conducted by NTPC that took place on 03/11/2015 for the 500 MW AP Ghani Solar Park, Adani Group had quoted tariff of Rs.5.20 per unit, a reduction of Rs.1.81 per unit and in that e-auction, Sunedison emerged as the lowest bidder at Rs.4.63 per unit, whereas the same company is being paid at Rs.7.01 per unit by TANGEDCO in Tamil Nadu, resulting into a massive loss to TANGEDCO. It is further stated that this loss will be ultimately

passed on to the consumers through tariff hikes. It will affect crores of consumers for the next 25 years.

28. We are not expressing any opinion on the above case of Energy Watchdog. But if this is the pleaded case, members of Energy Watchdog based in Chennai who are consumers can be said to be aggrieved by the impugned order. It cannot be said that Mr. Rama Suganthan has not suffered a legal grievance or suffered a legal injury or that he has not been deprived of something he was entitled to. It cannot be said that Energy Watchdog as a representative of consumers of Tamil Nadu cannot be said to be aggrieved by the majority view reflected in the impugned order whereby according to the Appellant while extending the period of control period tariff was retained at the same level i.e. Rs.7.01 per unit ignoring Section 64 of the said Act under which public consultation is a must. The consumers can urge that they are entitled to affordable tariff and they would be aggrieved if they feel that there would be a steep rise in tariff.

29. It is submitted that this appeal is in the nature of a public interest litigation because it is based on an anonymous letter in which it is alleged *inter alia* that there is a scam and political interference. It is stated that the appeal cannot be based on anonymous letter. It is further urged that the said letter should have been addressed directly to Energy Watchdog and not to a third party who then sent it to Energy Watchdog. We find no merit in this submission. A copy of this letter annexed to the condonation of delay application shows that it is addressed to advocate Mr.Prashant Bhushan who is associated with 'Common Cause' a Non Governmental Organization. It is stated in the written submissions filed by Energy Watchdog that for safety reasons details of the informant were withheld. It is further stated that Mr. Prashant Bhushan who has represented Energy Watchdog in several cases, forwarded it to Energy Watchdog.

30. We find nothing wrong or suspicious about this exercise. Energy Watchdog is a representative of consumers of electricity and consumers of electricity residing in Tamil Nadu are its members.

Since the letter contained grievance about impugned order which is stated to be affecting electricity consumers it was rightly forwarded by Mr. Prashant Bhushan to Energy Watchdog. That the said letter was not directly forwarded to Energy Watchdog is hardly a pointer to the nature of the present appeal as a public interest litigation. The letter appears to have made Energy Watchdog get hold of the order and file the appeal as a representative of the consumers. In the appeal it had to establish its locus standi or standing to sue by stating that its members reside in Tamil Nadu and they are affected by the impugned order. It has done that by mentioning Mr. Rama Suganthan's name, his address and his connection number. Any order which is likely to affect its members, cause legal injury to them can be challenged by Energy Watchdog as a representative body. It is not necessary to say in the appeal memo that Mr. Rama Suganthan made a grievance to Energy Watchdog. We do not feel that a busybody or a meddlesome interloper has filed this appeal. We therefore reject the submission that this appeal is a public interest litigation.

31. It is submitted that authorization to file the appeal has been given subsequently after the objection was raised. But a true copy of the Registration Certificate and Aims and Objects as published in the Appellant's Memorandum and Articles of Association have been placed on record of this Tribunal along with authorization dated 10/12/2015. We have also noticed that Energy Watchdog has been granted leave to appeal in some cases. That however cannot be a justification for granting leave to appeal in all cases. Each case must be judged in the context of its facts.

32. In view of the reasons given by us hereinabove it is not possible for us to revoke leave to appeal granted to Energy Watchdog or dismiss the appeal at this stage.

33. In the circumstances the applications are dismissed.

34. Pronounced in the Open Court on this **9th day of September, 2016.**

(I.J. Kapoor)
Technical Member

(Justice Ranjana P. Desai)
Chairperson

✓ **REPORTABLE / ~~NON-REPORTABLE~~**