

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

**Appeal No. 127 of 2012, IA No.239 of 2012 &
IA No.240 of 2012**

Dated: 14th August , 2012

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member**

In the matter of:

**GMR Power Corporation Ltd.
Skip House, 25/1
Museum Road
Bangalore – 560 025**

....Applicant(s)

Vs.

**1. Tamil Nadu Electricity Regulatory
Commission
No. 19 A, Rukmini Lakshmipathy Salai
Egmore, Chennai – 600 008**

... Respondent(s)

**2. Tamil Nadu Generation and Distribution
Corporation Ltd
Private Power Projects
144, Anna Salai
Chennai – 600 002**

**Counsel for the Applicant(s) : Mr. Gopal Jain
Mr. Ankur Sood**

ORDER

This Appeal has been filed by GMR Power Corporation Limited, a generating company/Independent Power Producer ('IPP'), against the order dated 21.6.2012 passed by the Tamil Nadu Electricity Regulatory Commission in a petition filed by Tamil Nadu Generation and Distribution Corporation Limited, the Respondent no. 2 herein, regarding approval of operation of certain IPPs outside the merit order during the months of April, May and June, 2012.

2. At the admission stage itself, we expressed doubt over the maintainability of the Appeal. Accordingly, Learned Counsel for the Appellant made submissions before us with regard to maintainability of the Appeal. We are passing this order considering the submissions made by the Learned Counsel for the Appellant and the material placed on record.

3. Let us first discuss the background of the case.

4. The State Commission in its Tariff Order dated 30.3.2012 determined the Annual Revenue Requirement and tariff for generation and distribution business of the Respondent no. 2, effective from 01.04.2012. In the said Tariff Order, the State Commission while deciding the Power Purchase Cost from Independent Power Producers for the Respondent no. 2, in respect of the IPPs which have a high variable cost and which do not get scheduled as per the Merit Order despatch, allowed the Power Purchase Cost covering only the fixed cost. The State Commission also directed the Respondent no.2 that wherever these IPPs are to be despatched outside the Merit Order, the Respondent no.2 shall obtain approval of the State Commission in advance by furnishing reasons for such actions. However, in case of emergencies, Respondent no.2 was permitted to schedule power from such IPPs but the Respondent no.2 should approach the State Commission within a week of such action along with the reasons. The Appellant's power

station also figures in the list of such IPPs, who have high variable cost.

5. Pursuant to the above Tariff Order Respondent no.2 filed a petition before the State Commission, inter alia, for approval and ratification for operation of the IPPs including the Appellant's power plant for despatching power outside the Merit Order for the months of April, May and June, 2012. The Commission by the impugned order dated 21.6.2012 allowed the prayer of the Respondent no. 2 regarding purchase of power from the IPPs including the Appellant's power plant during the period April to June, 2012. The State Commission further directed that with the availability of cheaper regulated power and wind energy, despatch based on merit order should be strictly followed by the Respondent no.2 in letter and spirit. Aggrieved by the directions of the State Commission in the impugned order dated 21.6.2012, the Appellant has filed this Appeal.

6. Learned Counsel for the Appellant argued that the directions relating to Merit Order operation in the impugned order have a direct and serious impact on the Appellant and have been passed without hearing them. The Appellant was not a party to the proceedings which culminated in Tariff Order dated 30.3.2012 or the proceedings in which the impugned order dated 21.6.2012 was passed. He further pointed out that the directions vide the impugned order are directly contrary to the provisions of the PPA entered into between the Appellant and the Respondent no.2 and the same could not have been given without hearing the Appellant.

7. We find that the directions relating to merit order operation have been issued by the State Commission in the Tariff Order dated 30.3.2012 which was passed after notice inviting objections and conducting public hearings on 30.1.2012, 2.2.2012, 6.2.2012 and 10.2.2012, as per Section 64 of the Electricity Act. The impugned order dated 21.6.2012 was for approval and ratification of

operation of certain IPPs including the Appellant's power plant outside the Merit Order for the months of April, May and June, 2012, pursuant to the directions given in the Tariff Order dated 30.3.2012.

8. The Appellant has not challenged Tariff Order dated 30.3.2012 in which the directions relating to merit order were given. The proceedings that culminated with the impugned order dated 21.6.2012 was only in compliance of the directions given in the Tariff Order dated 30.3.2012.

9. In the impugned order dated 21.6.2012, the State Commission has approved the prayer of Respondent no.2 for ratification of operation of some IPPs including the Appellant's power plant outside the Merit Order during the period April – June, 2012. The Respondent no.2 has not challenged the said order. In the impugned order dated 21.6.2012, the State Commission has only reiterated the directions which were given in the Tariff

Order dated 30.3.2012 following the Merit Order operation.

10. In view of the above, we feel that the Appeal is not maintainable. Accordingly, the Appeal is dismissed as not maintainable.

11. Pronounced in the open court on this
14th day of August, 2012.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

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REPORTABLE/~~NON-REPORTABLE~~

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