

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY**  
(Appellate Jurisdiction)

**APPEAL No. 221 OF 2022**

Dated: 22.03.2024

Present: Hon`ble Mr. Sandesh Kumar Sharma, Technical Member  
Hon`ble Mr. Virender Bhat, Judicial Member

**In the matter of:**

**M/s Arkay Energy (Rameswarm) Ltd.**

New No.20, Old No.129,  
Chamiers Road, Nandanam,  
Chennai-600035

... Appellant

*Versus*

**1. The Secretary**

**Tamil Nadu Electricity Regulatory Commission**

TIDCO Office Building  
No.19-A, RukmaniLakshmipathySalai,  
Marshalls Road, Egmore,  
Chennai-600 008

**2. Tamil Nadu Generation and**

**Distribution Corporation Limited**

*Rep. by its Chairman and Managing Director,*  
144, Anna Salai  
Chennai-600 002

**3. The Government of Tamil Nadu,**

*Rep. by its Secretary,*  
Energy Department,  
Fort St. George,  
Chennai-600009

... Respondent(s)

Counsel on record for the Appellant(s) : Amit Kapur  
Akshat Jain  
Aditya H. Dubey  
Avdesh Mandloi  
Abhimanyu Maheshwari  
Shikhar Verma  
Sayan Ghosh

Counsel on record for the Respondent(s) : Anusha Nagarajan for Res.2  
D. Kumanan for Res. 3

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

### **PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER**

1. The appellant company is carrying on the business of generation and sale of power and has its power generation plant at Valuthur village, Ramnad District, State of Tamil Nadu having capacity of 149.18 MW.
2. In the year 2014, the State of Tamil Nadu faced severe power crises and accordingly the 3<sup>rd</sup> respondent Government of Tamil Nadu issue G.O.M. No.77 of 2014 thereby directing all the power generators within the State to sell power to the 2<sup>nd</sup> respondent which is a distribution licensee in the State of Tamil Nadu or to any other open access consumer within the State alone. In pursuance to the said G.O., the appellant began supplying power to the 2<sup>nd</sup> respondent at the rates fixed by the 2<sup>nd</sup> respondent in various tenders issued by it.
3. The said G.O.M. was challenged by Tamil Nadu Power Producers Association and M/s IndBarath Thermal Power Limited in the Hon'ble Madras High Court by way of separate writ petition Nos.27936 and 36877 of

2015 respectively, which came to be dismissed vide order dated 15.02.2016, holding that the appropriate forum to offset the adverse financial impact on account of directions referred to in Section 11(1) of the Electricity Act, 2003, on any generating company by virtue of G.O.M. No.77/2014 is the Tamil Nadu Electricity Regulatory Commission (1<sup>st</sup> Respondent in this appeal), and therefore, the affected party should approach the State Commission.

4. Accordingly, the appellant approached the 1<sup>st</sup> respondent by way of petition being M.P. No.6/2016 under section 11(2) and 86(1)(b) of the Electricity Act, 2003, with the following prayer:

*“Under the circumstances stated above, the Petitioner is compelled to approach this Hon’ble Commission for issuing appropriate directions for the payment of compensation as per Annexure I that may be fixed by this Hon’ble Commission under Section 11(2) of the Electricity Act, 2003 or any other amount as deemed fit and proper and thus render justice.”*

*(Emphasis supplied)*

5. The said petition came to be dismissed by the Commission vide order dated 29.11.2019 on the technical ground that since by way of endorsement dated 10.03.2016 made by appellant’s counsel on the said petition, the prayer for grant of compensation was withdrawn, nothing survived in the petition for determination.

6. Meanwhile, the appellant had filed another petition bearing M.P. No.17/2016 under section 11(2) and 86(1)(b) of the Electricity Act, 2003, read with Rule 16 of Tamil Nadu Electricity Regulatory Commission (Conduct of Business) Rules, 2004, for payment of compensatory cost etc. The prayer made in the petition is reproduced herein below:

*“For the reason stated above, this Hon’ble Commission may be pleased to fix an appropriate compensation under Section 11(2) of the Electricity Act, 2003 to be paid by the 2nd Respondent at whose instance and request the 1st Respondent had invoked Section 11(1) to restrain the generators from supplying power outside the State of Tamil Nadu, and consequential impact caused by the G.O. to the Petitioner in the month of June 2016 and thus render justice.”*

7. The main grounds on which the appellant had claimed compensation under Section 11(2) of the Electricity Act, 2003 have been sated in Paragraph Nos.8,9,10 &11 of the petition which are quoted herein below for useful reference: -

*“8. It is submitted that the 2nd Respondent has not come forward to draw the power generated by the Petitioner after 31.05.2016, due to the effect of the G.O. issued under Section 11(1) by the 1st Respondent caused non-generation of power and even if the power is generated by the Petitioner it is unable to export power to any state due*

*to efflux of time. The Petitioner is filing this petition under Section 11 (2) of the Act, 2003 before this Hon'ble Commission to offset the adverse financial impact of the direction issued by the 1st Respondent in Sub Section (1) of Section 11 of the Act, in such manner as it considers, just and appropriate.*

*9. It is submitted that the Letter of Acceptance entered into with the Respondent came to an end in the Month of May 2016 and after May 2016, the Petitioner is not able to supply power to others located outside the State even Section 11 is revoked as all the tenders for the next year is already finalized.*

*10. It is submitted that due to Respondents, unjust attitude and actions had caused the Petitioner heavy financial loss apart from facing various legal actions from the financiers and suppliers of fuel to the power plants.*

*11. It is submitted that the circumstances created by the Respondents under Section 11 (1) of the Electricity Act, 2003, constrained the Petitioner to approach this Hon'ble Commission seeking for appropriate relief for keeping the plant idle in the month of June 2016 by the Respondent and to offset the adverse financial impact as contemplated under Section 11 (2) of the Act. Virtually the plant is kept idle without generation and supply of power, though the*

*Respondent revoked the G.O. (Ms.) No.41 Energy (A1) Department, dt.31.05.2016, the Petitioner could not able to supply power to the needy licensees of other states, as the tenders floated by them had already been closed.”*

8. Noting that the heads under which compensation was claimed by the appellant as elaborated in affidavit dated 06.09.2017 cannot be considered to be loss due to directions issued by the Government of Tamil Nadu under Section 11(1) of the Act, and the fact that the appellant had conveniently failed to disclose that it was permitted to supply power to the willing consumers within the State of Tamil Nadu, the 1<sup>st</sup> respondent Commission dismissed the petition vide order dated 29.10.2019 with the following reasoning:-

*“... 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 petitioner is not entitled to any compensation under section 11 (2). ...”*

9. It is this order of the Commission which has been assailed by the appellant before us in this appeal.

10. We have heard Shri Amit Kapur, learned counsel for the appellant and Ms. Anusha Nagarajan, learned counsel for the 2<sup>nd</sup> respondent.

11. From the perusal of the petition filed by the appellant before the Commission, it is manifest that the appellant had claimed compensation under Section 11(2) of the Electricity Act, 2003 on the ground that its plant had to be kept idle i.e. without generation of any power with effect from 31.05.2016 when the G.O.M. No.77/2014 was revoked by the Government of Tamil Nadu and it was unable to supply power to any person / entity located outside the State for the reason that all the tenders for supply of power during the following year i.e. the year 2017 had already been finalized by power procurers / distribution licensees. However, nothing was produced before the Commission to substantiate these contentions. No correspondence sent in this regard by the appellant to any power procurer / distribution licensee within the State of Tamil Nadu or outside the State of Tamil Nadu was filed before the Commission. There is nothing on record to show that the power procurers / distribution licensees within the State of Tamil Nadu or outside the State had already finalized the tenders for purchase of power for the year 2017 before 31.05.2016 and thus, had refused to enter into any Power Purchase Agreement with the appellant for the year 2017.

12. We may further note that in pursuance to the order dated 28.04.2017 of the Commission, the appellant filed an additional affidavit on 06.09.2017 giving therein the details of compensation sought to offset the adverse financial impact due to periodical backing down instructions of 2<sup>nd</sup>

Respondent Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) under the following heads: -

- (i) Fixed charges for Section 11 period : Rs.48,67,89,617/-
- (ii) Start-up and stop period on account of frequent tripping during Section 11 period : Rs.2,03,96,082/-
- (iii) Wear and tear charges due to abnormal operation of the project during Section 11 period : Rs.93.98 crores
- (iv) Compensation on account of loss of reputation : Rs.150 crores

13. We find ourselves in total agreement with the observations of the Commission that projected losses under none of these heads can be considered to be direct consequence of G.O.M. No.77/2014 issued by the Government of Tamil Nadu. Under Section 11(2) of the Electricity Act, 2003, a generating company can approach the Commission for compensation to offset any adverse financial impact as a result of the directions passed by the appropriate government under Section 11(1) of the Act. It cannot be gainsaid that G.O.M. No.77/2014 issued by the Government of Tamil Nadu qualified as a direction under Section 11(1) of the Act, but it is not understandable how the fixed charges, start-up and stop charges, wear and tear charges, as well as loss of reputation can be treated as losses / adverse financial impact due to the said G.O.M.



14. Perusal of Section 11 of the Electricity Act, 2003 reveals that the claim of compensation of a generating company under Sub-Section 2 should be direct consequence of any direction issued by the government under Sub-Section 1. In the instant case, had it been the contention of the appellant that it was by virtue of G.O.M. No.77/2014, that they were constrained to sell power to the 2<sup>nd</sup> Respondent at a lower rate than that offered by any procurer / distribution licensee operating outside the State of Tamil Nadu to whom it was supplying power before the year 2014 or that in pursuance to said G.O.M., it was precluded to fulfil any contractual obligations arising out of any agreement already executed by it with any other consumer / discom prior to issuance of the G.O.M., the loss suffered by it under these heads would definitely have been covered by Section 11(2) of the Act. However, that is not the case of the appellant herein. By no stretch of imagination can it be held that the fixed charges, start-up and stop charges, wear and tear charges and loss of reputation stated to be suffered by the appellant were direct consequence of G.O.M. No.77/2014.

15. Further, it has been rightly observed by the Commission in the impugned order that the appellant has conveniently and mischievously failed to disclose in the petition or in the affidavit dated 06.09.2017 that it was free to sell / supply power to any willing consumer within the State of Tamil Nadu. Therefore, in case, the appellant had any surplus power which was not taken by the 2<sup>nd</sup> respondent TANGEDCO, it was free to sell the same to any person within the State of Tamil Nadu. Thus, it is manifest that there was not an absolute ban upon the appellant to sell or supply power to any person / entity other than TANGEDCO. Nothing has been brought on record by the

appellant to show that no person or entity within the State of Tamil Nadu was willing to purchase power from it.

16. Hence, in view of these facts and circumstances, we do not find any ground to interfere in the impugned order of the Commission. The appeal is devoid of any merit and is hereby dismissed.

**Pronounced in the open court on this 22<sup>nd</sup> day of March, 2024.**

(Virender Bhat)  
Judicial Member

(Sandesh Kumar Sharma)  
Technical Member (Electricity)

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REPORTABLE / ~~NON-REPORTABLE~~  
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