

TAMIL NADU ELECTRICITY REGULATORY COMMISSION

Order of the Commission dated this the Day of 18th July 2024

PRESENT:

Thiru M. ChandrasekarChairman

Thiru K. VenkatesanMember

and

Thiru B. MohanMember (Legal)

I.A. No. 1 of 2024

in

D.R.P. No. 5 of 2023

M/s. Solitaire BTN Solar
Private Limited through its Director

.....Petitioner
(Mrs.SKV Law Offices)

Versus

1. Tamil Nadu Generation and Distribution
Corporation Ltd. through its Chairman
and Managing Director.

2. Tamil Nadu Load Despatch Centre,
through its Authorized representative

3. Tamil Nadu transmission Corporation Limited
through its Managing Director

.....Respondents
(Tvl.N.Kumanan & A.P.Venkatachalapathy
Standing Counsels for TANGEDCO &
TANTRANSCO/SLDC)

4. Power Engineers Society of Tamil NaduProposed party
(Represented by Thiru.S.Gandhi,
President)

This Interlocutory Application coming up for final hearing on in the presence of Thiru.S.Gandhi, President of the proposed party Power Engineers Society of Tamil Nadu; Mr. Shri Venkatesh, SKV Law Offices appearing for the petitioner M/s. Solitaire BTN Solar Power Limited, Thiru. N. Kumanan and Thiru A.P. Venkatachalapathy, Standing Counsel for the respondents 1 to 3; upon hearing the arguments advanced by all the Counsel and on perusal of all material records and the matter having stood over for consideration till this date the Commission pass the following.

ORDER

1. This is an application preferred by the proposed party Power Engineers Society of Tamil Nadu, a third party to the main petition, to implead it as one of the respondent in the main petition.
2. **The case of the proposed party in brief;-**
 - 2.1) The proposed party Power Engineers Society of Tamil Nadu (herein after referred to as PESOT) is a registered organisation formed with the objectives of protecting common consumers interest in the changing scenario after the enactment of the

Electricity Act 2003. The Society is functioning from the year 2004. The proposed party has filed numerous cases before the Hon'ble Commission and the Hon'ble High Court of Madras on common consumers interest.

- 2.2) On 16.04.2024 from the cause list the proposed party came to know that the petitioner has preferred a petition with a prayer to issue directions treating the loss of generation of 1985 52 MU as computed from April 2020 till January 2022 on account of power as deemed generation and to direct TANGEDCO to make payment of Rs.2,46,44,455/- along with carrying cost of Rs.82,38,300/- and the case is posted for advancing arguments.
- 2.3) Upon enquiry under RTI, on 12.1.2024 the Load Despatch centre of Tamil Nadu informed the proposed party PESOT that both wind and solar generators are not scheduling their generation in 15 minute time block in day ahead as per the regulations.
- 2.4) Without forecasting and scheduling the generation conforming to the various regulations of the Central Regulatory Commission and the State Regulatory Commission, the proposed party PESOT found that the prayer of M/s. Solitaire is frivolous, arbitrary and unsustainable. Further, demanding TANGEDCO revenue for no

power bought would eventually result upon common consumers as tariff hike, since power purchase cost is the factor in-chief for tariff hike. In the event of the Commission, by any error, upholds the prayer, the same would open the flood gate for numerous claim by the solar and wind generators for “deemed generation” cost for all genuine operation needs of SLDC. This prompted the proposed party to interfere by preferring the present petition. The proposed party therefore plead the Hon’ble Commission, in the interest of common electricity consumers of the State, to implead it in the petition as a respondent.

3. Substratum of the reply filed by M/s. Solitaire BTN Solar Private Ltd. (petitioner in the main petition);-
- 3.1) The Tamil Nadu Load Despatch Centre (for short SLDC) and the Tamil Nadu Transmission Corporation (for short TANTRANSCO), who are arrayed as the 2nd and 3rd respondent in the main petition, issued curtailment/backing down instructions during the period from April 2020 to January 2022 in complete disregard to the Statutory mandate inter alia the “Must-run” status accorded to the petitioner’s project and owing to its own failure to discharge functions / obligations under Section 39 of the Act. Further, the

said instructions have been issued arbitrarily and under the garb of grid security without any cogent reasons whatsoever.

- 3.2) As a consequence of the above, M/s. Solitaire has been made to suffer a loss of 7102 MWH culminating into financial injury of Rs.2,46,44,455/-. Hence M/s. Solitaire was constrained to invoke the jurisdiction of the Hon'ble Commission by way of petition under Section 86(1)(e) and (f) of the Electricity Act 2003 seeking directions against the respondents towards compensation for loss of revenue suffered due to rampant backing down instructions issued to the petitioner M/s. Solitaire BTN Solar Private Ltd.
- 3.3) The Hon'ble Commission on 16.04.2024 after hearing detailed arguments across numerous dates was pleased to reserve orders in the main petition. However after a lapse of two months the proposed party PESOT had come forward with an application I.A. No. 1 of 2024 seeking impleadment and other prayers.
- 3.4) A preliminary review of the assertions made in the application filed by PESOT clearly shows that it bears the characteristics of public interest litigation. Considering the fact that the power to manage public interest litigation is exclusively vested with the Hon'ble Supreme Court and High Courts, the constitutional courts, the

Commission lacks jurisdiction / authority to adjudicate /entertain public interest litigation related to duties outlined in Sections 86(b) and 86(f) of the Electricity Act.

- 3.5) The power of the Commission to adjudicate has been consciously restricted only to the disputes between licensees and the generating companies. The only parties who can approach the Hon'ble Commission under Section 86(1) (f) are the generator and the licensee. The legal position in this regard is no more res Integra in the light of plethora of decisions rendered by various forums. Situated thus, PESOT has no locus to approach the Hon'ble Commission seeking impleadment in the present proceedings more so when PESOT is neither a proper nor a necessary party in the main case.
- 3.6) PESOT has not suffered a legal injury and therefore cannot be considered as an aggrieved party. The only plea taken by PESOT is that it possesses standing as a member of public served by TANGEDCO and claims that any financial damages suffered by TANGEDCO affect the public at large. Since the issue involved in the main petition concerns compensation for deemed generation and not tariff fixation, PESOT cannot claim locus standi based on

being member of the public served by TANGEDCO. If the contentions raised by PESOT for impleading it as a party to the proceedings have the stamp of approval of the Commission, it would have severe ramifications as in any proceedings pending before the Commission, irrespective of its nature, it would be open to any third party to seek to impleadment claiming that any financial outcome from such proceedings would affect them.

- 3.7) In a similar case, wherein PESOT was involved, this Commission vide order dated 09.05.2024 has held that only a generator or licensee has locus to approach the Commission upon a dispute having arisen and further emphasized that allowing any other person or entity to intervene in such dispute would undermine the integrity of Sections 86(1)(f) and 86(1) (b) of the Act. For the above referred reasons the application filed by PESOT deserve to be dismissed with heavy cost.
4. The respondents 1 to 3 did not file any counter – affidavit disclosing their stand.
5. Heard the representative for the proposed party PESOT and the counsel appearing for the petitioner in the main petition. Records perused. Relevant provisions of the Electricity Act 2003; TNERC

(conduct of Business) Regulations 2004 and the code of Civil Procedure considered.

6. The Seminal points that arise for determination in the instant petition are as hereunder;-

- 1) whether the proposed party is a necessary party to the main proceedings?
- 2) whether the prayer of the proposed party to implead it as one of the respondent in the main petition is maintainable under law?

7. **Findings of the Commission:-**

7.1) **Point No.1**

M/s Solitaire BTN Solar private Ltd., the Petitioner in the main petition DRP No.5 of 2023, is claiming a compensation of Rs.2,46,44,455/- towards financial injury and Rs.82,38,300/- as carrying cost alleging that the above referred revenue loss was suffered due to rampant backing down / curtailment instructions issued by Tamil Nadu State Load Despatch centre (the 2nd respondent) and Tamil Nadu Transmission Corporation (the 3rd respondent) during the period April 2020 to January 2022 in complete disregard to the statutory mandate, inter alia the “Must Run” status accorded to the petitioner’s project coupled with its

failure to discharge the obligations envisaged u/s 39 of the Electricity Act.

- 7.2) The respondents 1 to 3, on appearance through their standing counsel, repudiated the claim of the petitioner M/s. Solitaire by filing a detailed counter-affidavit. The bone of contention of the respondents is that since the backing down / curtailment instruction came to be issued in consideration of Grid Security, the respondents are not under any legal obligation to pay any compensation to the petitioner M/s. Solitaire Solar BTN (P) Ltd.
- 7.3) On culmination of the oral arguments advanced on either side, which spread over several hearing dates, on 16.04.2024, this Commission reserved orders in the matter. On 30.05.2024, the proposed party PESOT preferred the present petition seeking impleadment as one of the respondent in the main petition; for reopening the case for hearing further arguments and for dismissal of the main petition with hefty cost.
- 7.4) The proceedings before the State Electricity Commission constituted under the Electricity Act is generally governed by the procedures contemplated under the code of civil procedure as the provisions of CPC is explicitly made applicable as per Section 94

of the said Act. Regulation 25 of the Tamil Nadu Electricity Regulatory Commission Conduct of Business Regulation 2004 re-emphasize the same.

7.5) Impleadment of a third party as a party in a pending suit or proceedings is governed by Rule 10 of order I of CPC. Sub-Rule 1 and 2 of Rule 10, are relevant to the case in hand. Under Rule 10 a person may be added as a party to the suit or proceedings in the following contingencies:-

- 1) Adding the name of a person who ought to have been joined whether as plaintiff or defendant.
- 2) Adding the name of a person whose presence before the court may be necessary to enable the court to effectually and completely adjudicate upon and settle all the questions involved in the suit.

7.6) In the first category mentioned above, the court will not decide a case on merits without the presence of such person, in whose absence the case cannot be decided at all. Such a person is a necessary party to the proceedings.

7.7) In the second category, even though a person is not a necessary party, but his presence would enable the court to effectually and

completely to adjudicate upon and settle the questions involved in the suit, such a person can be impleaded as a “proper party”.

- 7.8) When a person is neither a necessary party nor a proper party, the court would not allow him to be added as a party to the suit or proceedings, as the case may be. The scope of the suit or proceedings cannot be enlarged and the questions which are not involved in the suit or proceedings cannot be decided by simply adding the parties.
- 7.9) The Latin phrase “Dominus litus” means master of the suit or proceedings as a party. It is for the plaintiff in a suit to identify the parties against whom he had any grievance and to implead them as defendants in the suit filed for necessary relief. The plaintiff cannot be compelled to face litigation with persons against whom he has no grievance. Where, however, a third party is likely to suffer any grievance, on account of the outcome of the suit, he shall be entitled to get himself impleaded.
- 7.10) From the above it is manifest that the general rule in regard to impleadment of parties is that the plaintiff being “dominus litus” is at liberty to choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does

not seek any relief. Consequently, a person who is not a party, has no right to be impleaded against the wishes of the plaintiff. However, this rule is subject to the provisions of order I Rule 10 of CPC.

7.11) The legal principle that emerge from the above referred detailed discussion is that the court is empowered to join a person whose presence is necessary for the prescribed purpose and cannot under Rule 10 of order I CPC direct addition of a person whose presence is not necessary for that purpose. If the intervener has a cause of action against the plaintiff relating to the subject matter of the existing cause of action, the court has got power to join the intervener so as to give effect to the primary object of order I Rule 10 CPC, which is to avoid multiplicity of actions.

7.12) In the present case the proposed party PESOT seek impleadment as one of the respondent in the main petition on the premise that if the compensation claimed by the petitioner M/s Solitaire, if on any account, happen to be allowed by the Commission, there would be consequent rise in the tariff and the same would cause prejudice to its members, who fit in the character of consumers. To decide the

merit of PESOT's contention this Commission is obliged to find out as to whether PESOT is a "necessary party" in the main petition.

7.13) The Hon'ble Supreme Court in the case of **Kasthuri Vs Uyyam Perumal and others ((2005) 6 SCC 733)** has laid down the following two tests to be satisfied for determining the question as to who is a necessary party.

- 1) There must be a right of some relief against such party in respect of the controversies involved in the proceedings.
- 2) No effective decree can be passed in the absence of such party.

7.14) In the present case, it is quite obvious that the proposed party PESOT do not have right to any relief against the petitioner M/s Solitaire in respect of the controversies in the main proceedings. Mere apprehension of the proposed party that if the prayer of the petitioner happen to be allowed, the proposed party will be affected due to rise in tariff cannot be a legal ground to presume that the proposed party possess a right to some relief against the petitioner M/s Solitaire in the main petition.

7.15) The fact that during the relevant period backing down/curtailment instructions were issued by the respondents to the petitioner M/s Solitaire BTN Solar (P) Ltd. is not in dispute. The claim for

compensation made by the petitioner M/s Solitaire rest upon the decision to be arrived at by the Commission as to whether the backing down / curtailment instructions were issued by the respondent on account of Grid Security or for other commercial considerations. This vital issue can be decided upon the evidence placed by the petitioner M/s Solitaire and the respondents TANGEDCO, TNSLDC and TANTRANSCO. To decide the above referred vital issue, the presence of the proposed party PESOT is absolutely not necessary. In short, an effective order can be passed by this Commission in the main petition even in the absence of the proposed party PESOT.

7.16) In the upshot of the above elaborate discussion it is manifest that the twin test recommended by the Hon'ble Supreme court for determining the question as to whether the proposed party PESOT is a necessary party to the main petition has not been satisfied by the proposed party in the present case. The colossal failure on the part of the proposed party in this regard navigate this Commission to arrive at the logical and irresistible conclusion that the proposed party is not a necessary party in the main proceedings.

Accordingly this point is determined.

8) **Point No.2:-**

- 8.1) This Commission at point No. 1 has determined that the proposed party is not a necessary party in the main petition. In view of such determination the conclusion that the petition preferred by the proposed party PESOT to implead it as one of the respondent is not maintainable is imperative.
- 8.2) Apposite to point out that on an earlier occasion the present proposed party PESOT claiming to espouse the cause of the consumers in general, initiated proceeding under the garb of public interest litigation in M.P. No. 11 of 2022 (PESOT Vs Chairman and Managing Director, TANGEDCO and others).
- 8.3) In the said proceedings, on culmination of detailed enquiry, this Commission passed an elaborate order dated 09.05.2024 wherein this Commission while reiterating the principle of law that a Commission constituted under Section 82 of the Electricity inherently lacks jurisdiction to entertain public interest ligations, which is purely within the domain of the constitutional courts, proceeded to declare that a proceeding initiated before the Commission by invoking the provisions of Section 86(1) (b) and 86(1) (f) is confined to a generator and the Distribution licensee

and as such a consumer or Association cannot resort to those provisions to ventilate its grievance. The proposed party PESOT being a party to the above said proceeding cannot feign ignorance of the finding rendered by this Commission.

- 8.4) The conduct of the proposed party PESOT in preferring the present impleading application despite having knowledge about the import of the order dated 09.05.2024 passed by the Commission is deplorable and deserve strong condemnation. This Commission bonafidely believe that hereafter the proposed party PESOT would not resort to filing of such frivolous and vexatious petitions which consume the valuable time of institutions which are conferred with the divine duty of dispensation of justice.
- 8.5) Ultimately this Commission decides that the prayer of the proposed party to implead it as one of the respondent in the main petition is not maintainable under law as well as facts.

Accordingly this point is determined.

In the result the petition is dismissed without costs.

(Sd.....)
Member (Legal)

(Sd.....)
Member
/True Copy /

(Sd.....)
Chairman

**Secretary
Tamil Nadu Electricity
Regulatory Commission**