

**TAMIL NADU ELECTRICITY REGULATORY COMMISSION**

**Order of the Commission dated this the 9<sup>th</sup> Day of May 2024**

**PRESENT:**

**Thiru K.Venkatesan**

.... **Member**

**and**

**Thiru B.Mohan**

.... **Member (Legal)**

**M.P. No. 11 of 2022**

Power Engineers Society of Tamil Nadu (PESOT)  
45, Balaguru Garden  
Peelamedu  
Coimbatore – 641 004

.... **Petitioner**  
**Represented by Thiru S. Gandhi**  
**President**

**Vs.**

1. **Chairman and Managing Director,**  
**TANGEDCO**  
**144, Anna Salai,**  
**Chennai – 600 002.**

.... **Respondent**  
**Thiru N.Kumanan and**  
**Thiru A.P.Venkatachalapathy,**  
**Standing Counsel for TANGEDCO**

2. **M/s. PPN Power Generating Company (P) Ltd.**  
**Jhaver Plaza, 3<sup>rd</sup> Floor**  
**1-A, Nungambakkam High Road**  
**Chennai – 600 034.**

.... **Respondent**  
**Thiru Rahul Balaji**  
**Advocate for R2**

This petition having come up for hearing on 05-03-2024 in regard to the preliminary issue of the maintainability of the main petition in the presence of Thiru S.Gandhi, President representing the Petitioner, Power Engineers' Society, Thiru Ravindran, Ld. Additional Advocate General Counsel for R1 and Thiru Rahul Balaji, Advocate for R2 and on consideration of the submission made by the Petitioner and the Respondents, this Commission passes the following:

## **ORDER**

### **1. Essence of the Petition averments:-**

1.1. PESOT, with its main objectives of serving common consumers of electricity of the State in the changing scenario of the industry is functioning from 2004.

1.2. PESOT has filed various cases before the Commission, APTEL and High Court of Madras on common consumers' interest .PESOT is propagating to the common public about the impacts of changes in law and on tariff petitions. PESOT appeared itself to defend common consumers' interests in all appropriate fora.

1.3. This Miscellaneous Petition also intends to bring to the notice of and pray for remedy by the Commission of a serious issue involving a loss to the tune of Rs.2340 crores to TANGEDCO which would eventually fall upon consumers of the state as revenue gap.

1.4. M/s. PPN Power Generating Company entered into Power Purchase Agreement (PPA) with the then TNEB on 03/01/1997 as Independent Power Producer (IPP) using

locally available natural gas from the PY01 fields as fuel in order to have an affordable tariff. The agreement also provides for use of naphtha as secondary fuel till such time the natural gas was available. The cost of naphtha being multiple times costlier than natural gas it cannot be used as regular fuel for a longer period. Hence the fuel supply agreement between the promoter PPN naphtha supplier is limited to fifteen years only as an outer limit.

1.5. M/s. PPN Power commenced its commercial operation on 26/04/2001. It did not take any serious efforts to switch over to cheaper natural gas and continued with the costlier secondary fuel, namely naphtha for the entire fifteen years period-Even as of now there is no concrete fuel supply agreement for use of natural gas for the PPA is intended. Therefore use of naphtha as fuel came to an end on 25/04/2016. There is no fuel supply agreement which is a pre requisite for continuing the validity of the PPA.

1.6. The cost of power from this company was at sky high and beyond any tolerable limit. Buying power from PPN is more injurious than not buying power at all as fixed charges are to be paid. Highest cost from this plant is Rs.21.80. The average cost per unit during 12 years, according to the details available with the petitioner is about Rs.11.60.

1.7. The Commission in its tariff order TF1/30/03/2012 classified the power from this company as high cost power and forbade buying power as per Merit Order Dispatch Regulations. Accordingly fixed charges alone had to be paid to the company.

1.8. The use of naphtha as fuel came to end on 25/04/2016 on expiry of the fuel supply agreement. With no fuel supply agreement in place the PPA becomes defunct. Therefore the necessity for paying fixed charges, which until then was obligatory even without drawing single unit of power, did not anymore exist from this date. TANGEDCO rightly had not paid any fixed charges after 25/04/2016. PPN also had not made any claim for the fixed charges.

1.9. After lapse of 47 months of stoppage of fixed charges, surprisingly, TANGEDCO reversing its earlier decision not to pay fixed charges, decided vide its Board Proceedings (FB) No.21 TANGEDCO dated 30/03/2020 to pay the fixed charges with retrospective effect from 26/04/2016 even without having any fuel supply agreement .The BP states further that

- A) M/s PPN has agreed to submit draft amendment to the exiting PPA
- B) PPN has to switch over to natural gas or RLNG within 24 months of such amendment.
- C) Till the time of switching over TANGEDCO agreed to pay fixed charges.
- D) TANGEDCO agreed to pay fixed charges from 24/06/2016 amounting to 530crore plus 120 crore as interest to the above period.

1.10. The aforesaid Board Proceeding makes it clear that the company is eligible for fixed charges even in the absence of valid fuel supply agreement and that TANGEDCO set aside its earlier decision without any stated reason. All the payments to PPN

according to the above BP, will be accounted as power purchase cost and finally result in increase in the retail tariff.

1.11. Having paid through the nose all these fifteen years it is a big surprise as to how TANGEDCO chose to continue with the PPA all of a sudden knowing fully well that it is severely injurious to it and its consumers and also to the Government of Tamil Nadu. TANGEDCO is already financially almost bankrupt and finance of the State is also under severe strain. The question arises in any common man's mind is that where would the money for this unlawful payment come from. Naturally it has to be collected only from the common consumers by way of increasing the tariff.

1.12. TANGEDCO had not got the approval of the Commission to pay the fixed charges as stipulated in the BP. TANGEDCO had not placed the amendment for the scrutiny by the Commission and the public. Without such approval, the payments made as fixed charges from 2016, and the amendment to the PPA has no legal sanctity and is liable to be rejected. Any amount paid after expiry of the fuel supply agreement shall have to be recovered from the company. The unilateral decision of TANGEDCO which involves an outgo of several hundreds of crores of rupees without proper approval of the Commission is a gross violation under section 142 of the Electricity Act, 2003 and invites the action of the Commission.

1.13. Hence the petitioner is seeking the following relief:-

- (a) declare the payment made and to be made to PPN in accordance to the BP 21 dated 30-03-2020 is in violation of PPA entered on 03-01-1997.
- (b) to disapprove the amendment to PPA if any entertained.
- (c) order to recover the entire amount paid to PPN in accordance to the BP 21 dated 30-03-2020.
- (d) to punish TANGEDCO, for the violation to the provision of section 142 of the Electricity Act, 2003.

## **2. Contention of the 1<sup>st</sup> Respondent, TANGEDCO:-**

2.1. The petitioner is no way connected or involved with the PPA entered into between the 1<sup>st</sup> and the 2<sup>nd</sup> respondent. In Section 86 (1) of the Electricity Act, it is categorically stated as to what are all the subjects which can be agitated before the TNERC in regard to functions of the State Commission. The present application pertains to a PPA between the 1<sup>st</sup> and the 2<sup>nd</sup> respondent and there is no dispute between them. While being so, the petitioner, who is no way connected with the PPA, in the garb of association has no *locus standi* to file the present application. The present application cannot be adjudicated by the TNERC since it is beyond the purview of its functions as enumerated under section 86 of the Electricity Act.

2.2. The Commission has powers only to adjudicate on subjects enumerated u/s 86 of the Electricity Act, but in the present case, the entire adjudication is based purely on the PPA entered into between the 1<sup>st</sup> respondent and the 2<sup>nd</sup> respondent and the petitioner is a complete third party and hence the Commission cannot entertain the petition.

2.3. The 2<sup>nd</sup> Respondent, a generating company, entered into a Memorandum of Understanding with the 1<sup>st</sup> Respondent on 09.12.1992 for establishing a 330.5 MW Combined cycle Natural Gas based power project at Thirukadaiyur Village, Nagapattinam District. The 1<sup>st</sup> Respondent entered into a Power Purchase Agreement (PPA) with 2<sup>nd</sup> Respondent on 03.01.1997 for supply of the entire power generated from the power plant at the tariff notified by Government of India. Amendment to the PPA was executed through Addendum #1 on 06.08.1998. The natural gas for the project was allocated from PY-01 and PY-03 gas wells of Cauvery Basin.

2.4. Due to non-availability of firm indication on gas reserves and gas production rates, Respondent-2 and IOCL had entered into a fuel supply agreement (FSA) on 06.12.1995 for supplying naphtha for a period of 20 years based on the Naphtha allocated by Ministry of Petroleum and Natural Gas. Respondent-2 requested approval of the 1<sup>st</sup> Respondent for the Fuel Supply Agreement as required under the PPA to enable them to achieve financial closure of the Project.

2.5. In the meanwhile, Central Electricity Authority in its letter dated 02.03.1998 expressed its concerns to facilitate M/s. PPN to achieve the financial closure based on Naphtha as follows:

*"since the project was conceived basically as a gas based project based on exploitation of indigenous gas reserves in Cauvery basin, the only concern is that once the Condition No (vi) is deleted M/s. PPN may not put serious efforts for ensuring exploitation of the indigenous gas reserves and may continue to use Naphtha. This would also result in higher variable charges to be paid by TNEB. Therefore, while we may agree for the deletion of condition (vi) to facilitate M/s.*

*PPN to achieve the financial closure based on Naphtha as fuel, there is need to obtain commitment from them in regard to full use of indigenous gas within a definite time frame ... "*

2.6. The Board of TNEB in its 793rd meeting held on 15.05.1998 after examining the FSA for Naphtha in detail, directed this Respondent-1 to communicate the decision of the Board to the Respondent-2 to limit the Fuel Sales Agreement for Naphtha for a period of 15 years instead of 20 years. And also directed this Respondent-1 to obtain an Undertaking that it shall not be revoked by Respondent-2 till the contract as per PPA is completed.

2.7. Accordingly, 2<sup>nd</sup> Respondent by its Undertaking dated 30.07.1998 limited the term of Naphtha Supply Agreement executed between M/s. PPN Power Generating Company Pvt. Limited and M/s. IOCL to 15 years from Commercial Operation Date. And further, based on the Undertaking furnished by 2<sup>nd</sup> Respondent, the 1<sup>st</sup> Respondent approved the Naphtha Supply Agreement on 06.08.1998. The approval for use of Naphtha FSA by the 1<sup>st</sup> Respondent got expired on 24.06.2016. Hence, this 1<sup>st</sup> Respondent did not make payments to the monthly tariff invoices raised by 2<sup>nd</sup> Respondent after 24.06.2016, citing that their claims based on Naphtha as fuel are not eligible according to the Undertaking provided by 2<sup>nd</sup> Respondent and returned their invoices then and there.

2.8. Despite the expiry of the 1<sup>st</sup> Respondent's approval for Naphtha supply agreement on 24.06.2016, 2<sup>nd</sup> Respondent-continued to declare their availability on Naphtha as fuel to State Load Dispatch Centre (SLDC) and based on which SLDC had



dispatched power on emergency grid conditions. For the power dispatched by SLDC to meet the grid demand, Board of TANGEDCO in its 77<sup>th</sup> meeting held on 26.02.2018 approved and ratified the payment made by TANGEDCO towards variable charges and approved for payment of fixed charges for the billing periods from 13.07.2016 to 13.08.2016, 13.10.2016 to 13.11.2016 and 13.11.2016 to 13.12.2016 as a onetime settlement and as a special case

2.9. While Board of TANGEDCO in the 77<sup>th</sup> Board meeting, had a detailed discussion and noted the expiry of the approval of the 1<sup>st</sup> Respondent to the Fuel Supply Agreement for Naphtha, also directed as follows: To File a petition before the Commission seeking

- To direct Respondent-2 not to declare availability with Naphtha as fuel
- To direct Respondent-2 to take necessary steps to run the plant on 100% Natural gas .
- Direct SLDC to not to dispatch Respondent-2 with Naphtha as fuel.

2.10. As directed by the Board a petition was prepared by the 1<sup>st</sup> Respondent and the same was forwarded to the then Additional Advocate General for vetting. On vetting the petition, Additional Advocate General opined that filing the Miscellaneous Petition before the Commission may not be maintainable with the above prayers as it would amount to altering the terms of the PPA. Furthermore TANGEDCO has not raised any dispute and hence the Commission cannot adjudicate on the same under Section 86(1)(f) of the Electricity Act, 2003. AAG further opined that filing petition before the Commission is not required and Board itself can take appropriate action on the above issue.

2.11. In the meanwhile, 2<sup>nd</sup> Respondent in its representation to then Additional Chief Secretary/ Finance/ GOTN vide its letter dated 06.06.2019, requested to take up the matter to place before the Board for consideration and release of withheld fixed charges based on their monthly invoices already submitted to TANGEDCO. Further, 2<sup>nd</sup> Respondent pointed out that as contemplated in the PPA, Government of Tamil Nadu provided irrevocable, conditional guarantee towards additional support for 1<sup>st</sup> Respondent's payment obligations to pay to the Company within 21 calendar days following submission by the company of a demand in accordance with the Guarantee.

2.12. The Additional Chief Secretary/Finance/Government of Tamil Nadu forwarded the aforesaid letter received from M/s PPN Power Generating Company Pvt. Limited to CMD/TANGEDCO, with the following remarks:

*"CMD/TANGEDCO:*

*This issue may be examined in detail, and placed in the next board meeting for detail. If the liability is legally sustainable it will lead to huge burden as the payment due is supported with Govt guarantee."*

2.13. Accordingly, based on M/s. PPN's representation to the then Additional Chief Secretary/Finance/GOTN, a detailed note was put up to the Board of TANGEDCO in its 88<sup>th</sup> meeting. In its 88<sup>th</sup> meeting held on 26.06.2019, Board examined the risk of legal liability, with reference to PPA, beyond the FSA expiry date of 24.06.2016 and Board primarily desired to obtain the opinion of the Advocate General on "whether the claim on fixed charges of Respondent-2 is legally sustainable", since, if Respondent-2 were to invoke this guarantee for payment of its dues, along with the interest, the State

Government may end up paying a huge sum of money. In case, the Learned Advocate General upholds TANGEDCO's liability to pay dues as per the PPA, then Board resolved that a negotiation may be conducted with Respondent-2 to explore the possibility of restricting the use of Naphtha as alternate fuel by M/s. PPN up to 25-04-2021, and an amendment may be made to the PPA by mutual consent so that TANGEDCO should not face any liability on account of any Fixed Charges claim made by 2<sup>nd</sup> Respondent beyond the extended period of Naphtha based FSA, i.e. beyond 25-04-2021.

2.14. The Board had also directed then that in case the claim of 2<sup>nd</sup> Respondent eventually turning out to be legally sustainable, then apart from exploring the possibility of reducing the Fixed Charges claimed by 2<sup>nd</sup> Respondent till 25-04-2021, the payment of arrears, if any, due to 2<sup>nd</sup> Respondent may also be renegotiated so as to enable this Respondent-1 to seek waiver of interest and to make payment in a phased manner over a period of time. As directed by Board, the opinion of learned Advocate General of Tamil Nadu was sought through 1<sup>st</sup> Respondent's letter dated 17.09.2019.

2.15. As per the directions given by the Board in its 88<sup>th</sup> meeting held on 26.6.2019, it primarily desired that the learned AG's opinion be taken and in case he concurs with the views of the AAG, upholding TANGEDCO's liability to pay dues as per the PPA, M/s. PPN may be invited for discussion on the extent and mode of payment, as well as to explore whether the PPA could be amended to ensure that at least from a future date M/s. PPN would declare availability only with natural gas, and not naphtha, so as to secure the commercial interests of TANGEDCO for the residual period of the PPA.

2.16. In view of the learned Advocate General's considered opinion, two rounds of negotiations were held with PPN on 24-01-2020 & 05-02-2020 as per the earlier directions of the Board and the same was apprised to Board at its 92<sup>nd</sup> meeting held on 26.02.2020 along with Advocate General's opinion. The Board in its 92<sup>nd</sup> Board meeting went through the learned Advocate General's opinion and negotiated offer made by PPN. Board concurred with the learned Advocate General's opinion and the Board was of the further view that the sanctity of the PPA needed to be upheld in order to protect the image of the State as an attractive destination for investment. However, in the circumstances, the PPA should be amended by mutual consent of TANGEDCO and PPN to protect the interest of TANGEDCO and enable PPN to switch over completely to Natural Gas within a limited time frame and declare availability in future using this fuel and not Naphtha.

2.17. As resolved by Board in its 88th meeting with regard to the terms of payment, the Board was of the opinion that in view of the fact that Government Guarantee was involved in this issue it would be better to involve Government representatives, including a representative of the Finance Department, GoTN, in the negotiations so as to work out a negotiated settlement involving payment of fixed cost charges and other dues, including interest, as well as the payout schedule.

2.18. Negotiation Committee chaired by CMD/TANGEDCO with members comprised of officials each from Finance/Energy Departments of Government of Tamil Nadu and

TANGEDCO officials negotiated with the representatives of 2<sup>nd</sup> Respondent with regard to work out a final negotiated settlement, involving payment of fixed charges and other dues, including interest, payout schedule, as directed by Board. In the above meeting, 2<sup>nd</sup> Respondent has accepted to give a discount of Rs.120 crores comprising of 50% of the interest portion due for the period from June 2016 to January 2020 and the rest is discount in fixed charges as an onetime measure.

2.19. The decisions proposed in the Negotiation meeting held on 23.03.2020 were approved by Board vide Circulation on 26.03.2020 and the same was published in TANGEDCO Proceedings No.21 dated 30.03.2021. The Board of TANGEDCO in its 93<sup>rd</sup> meeting held on 20.05.2020 noted the approval of Board vide circulation on 26.03.2020 to the decisions proposed in the Negotiated meeting held on 23.03.2020, as per the directions of 92<sup>nd</sup> Board meeting.

2.20. As per the Minutes of Negotiation meeting held on 23.03.2020, 2<sup>nd</sup> Respondent had claimed that a sum of Rs.813 crores was Outstanding from 1<sup>st</sup> Respondent, which comprises of

- a. Rs.610 crores due towards the monthly invoices for the period from 13.07.2016 to 13.01.2020,
- b. Rs.133.11 crores towards Late Payment Interest and
- c. Rs.70.09 crores towards payment of Annual Invoices for 2016 to 2019.

2.21. After deducting (i) the payment of Rs.93.07 crores already made to the 2<sup>nd</sup> Respondent Company towards certain invoices, (ii) after adjusting the Station Service Transformer consumption of Rs.13.58 crores, (iii) the adhoc payment of Rs.50 crores made as per Board direction and (iv) deducting the discount of Rs.120 crores offered by 2<sup>nd</sup> Respondent, the outstanding claim made by the 2<sup>nd</sup> Respondent was reduced from Rs.813 crores to 536.50 crores. During the course of reconciliation with 2<sup>nd</sup> Respondent Company, it was agreed to claim the late payment surcharges of the monthly invoices for the billing period from 13.06.2016 to 13.01.2020 as Rs.97.58 crores with simple interest instead of their prior claim of Rs.133. 11 crores with compound interest.

2.22. The 2<sup>nd</sup> Respondent Company principally accepted that the claim on FERV made in Annual invoices shall be based on the foreign equity existing from time to time and not based on the foreign equity at the time of COD. Accordingly the 2<sup>nd</sup> Respondent Company accepted to limit the FERV to present foreign equity holding. Also, principally agreed to revise the rate of interest towards the working Capital at actuals and not for the total borrowed amount. In view of the above, the Annual invoices for the year 2016-17, 2017-18 & 2018-19 are reconciled from their earlier claim of Rs.70.09 crores to 20.78 crores.

2.23. As per the Minutes of Negotiation meeting held on 23.03.2020 and due to the reconciliation with the 2<sup>nd</sup> Respondent Company the outstanding claim of Rs.536.55 crores of the Respondent-2 Company (as pointed in point 6 of this counter) was worked

out to Rs.451.70 crores. The adhoc payments of Rs.450 crores were made to 2<sup>nd</sup> Respondent by the 1<sup>st</sup> Respondent against Rs.451.70 crores towards the payments due for the period from June 2016 to Jan 2020.

2.24. After careful considering the opinions with regard to "whether the claim on fixed charges of 2<sup>nd</sup> Respondent is legally sustainable obtained from Additional Advocate General and Advocate General" and in the light of the necessity to uphold the PPA in order to preserve the State's reputation as an inviting location for investment, Board of TANGEDCO took the decision to renegotiate with Respondent-2 so as to seek waiver of interest and to make payments in a phased manner over a period of time towards payment of fixed cost charges & other dues, including interest.

2.25. Accordingly, Negotiation Committee chaired by CMD (TANGEDCO with members comprised of officials each from Finance/Energy Departments of Government of Tamil Nadu and TANGEDCO officials negotiated with the representatives of 2<sup>nd</sup> Respondent with regard to work out a final negotiated settlement, involving payment of fixed charges and other dues, including interest, payout schedule. The payments were made based on the directions of Board of TANGEDCO.

### **3. Contention of the Second Respondent M/s. PPN Power Generating Company (P) Ltd.:-**

3.1. The Commission in the hearing held on 13.06.2023 passed the Daily Order as under:-

".....The Commission directed the filing of counter on both maintainability and merits. The case is adjourned for 18.06.2023"

3.2. The 2<sup>nd</sup> Respondent has established and is operating a 330.5 MW Combined Cycle Gas Turbine Power Plant (the "Power Plant") situated at Pillaiperumalnallur Village, Tharangambadi Taluk, Mayiladuthurai District (earlier called as Nagapatinam District). In this regard, the 2<sup>nd</sup> Respondent entered into an amended and restated Power Purchase Agreement (the "PPA") on 03.01.1997 with TANGEDCO for sale and purchase of Capacity and Energy made available from the Power Plant to meet the power requirement of the state of Tamil Nadu in accordance with the then prevailing policy guidelines issued by the Ministry of Power, Government of India.

3.3. The term of the PPA is for thirty (30) years from the Commercial Operation Date (the "COD") and the COD was achieved on 26.4.2001. As per the PPA, the Power Plant is to use domestic Natural Gas (the "DNG") as the Fuel with Naphtha as the alternate fuel (the "Alternate Fuel") for the entire Term of the PPA. Thus, there is an obligation for the 1<sup>st</sup> Respondent to honor the PPA to its full term of 30 years (viz) till 25-04-2031 from the COD. The legal position in this regard is well settled.

3.4. As already stated, the PPA is valid and exists in accordance with the guidelines framed by the Ministry of Power, Government of India which were notified vide S.O. 251 (E) dated 30.3.1992 (And amended vide S.O. 36 (E) dated 18.1.1994 and S.O.605 dated



22.8.1994). Section 185 (1) of the Electricity Act 2003 also validates the PPAs entered into before coming into force of such Act as extracted as under:

*"anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act."*

3.5. The amendments in the PPA are in the best interest of TANGEDCO and the consumers at large. The Petitioner strangely claims to be a representative of a consumer but his submissions are against public interest. The Petitioner has sought that status quo should be maintained. The petitioner makes wild allegations of alleged loss to support this. It is evident that the petitioner is proceeding by filing the present petition with an intention to derail the restructuring and improvement exercise embarked upon by TANGEDCO to achieve better financial position and energy security for the State of Tamil Nadu.

3.6. The Commission, in its earlier orders has approved for the payment of fixed cost to the 2nd Respondent and thus the obligation of TANGEDCO to honor the PPA. The existing PPA is valid and the Parties are entitled to mutually discuss and amend the PPA in accordance with the TNERC Tariff Regulations.

3.7. As per the clause 10 Payments and Schedule A (Tariff) of the PPA, the 2nd Respondent shall submit the invoice and the 1<sup>st</sup> Respondent shall make payments based

on the Monthly Tariff Payment for all Capacity and Energy for each Month or part thereof during the Term of the Agreement. The broad principle of the PPA is based on "Two Part Tariff" as explained under:

Part - 1 Comprising of Capacity Charges: This is for recovery of charges towards the investments made into the project and charges towards making the plant available only to TANGEDCO always under "ready to generate mode" in each case irrespective of "the power is actually dispatched or not".

Part - 2 Comprising of Energy Charges: This is for recovery of charges towards the fuel used for actual power generation and are payable based on the actual generation and the actual fuel costs remaining from time to time based on norms of operation.

3.8. The above provision is similar to two-part tariff in retail sale wherein the consumers pay the Demand charges (similar to Capacity Charges of IPP) separately in addition to current consumption charges (similar to Energy Charges of IPPs).

3.9. The PPA between the 1<sup>st</sup> Respondent and 2<sup>nd</sup> Respondent is also on the basis of sale and purchase of Capacity and Energy made available from the Power Plant is extracted as under:

*"WHEREAS, the Company wishes to sell to TNEB, and TNEB wishes to purchase from the Company, Capacity and Net Electrical Output (as hereinafter defined) of such power generating facility, pursuant to the terms and conditions set forth herein"*

3.10. This principle of sale and purchase of Capacity and Energy is also evident from Clause 2 "SALE AND PURCHASE OF CAPACITY AND ENERGY" wherein under Clause 2.1 there is specific reference to "making available of Capacity by the Company and purchase by TANGEDCO of such capacity made available".

3.11. The Capacity is made available by virtue of Clause 6.1 (i) of the PPA whereby the 2<sup>nd</sup> Respondent has to:

*"maintain at all times, on site stocks of Alternate Fuel equivalent to the requirement for not less than ten (10) days' consumption at a Plant Load Factor of 68.49%, provided that the Company shall be permitted 30 days to replenish site stocks of Alternate Fuel to the extent that consumption of such fuel by the Project reduces stocks below ten (10) days provided, however, that the Company shall take account of information received from TNEB pursuant to Section 8.1 (b) in making monthly and annual nominations of fuel under the Fuel Supply Agreements;"*

3.12. Therefore, the fixed capacity charges in the PPA are payable based on availability declared which, in turn, is based on site stocks of Naphtha which is the Alternate Fuel. The 2<sup>nd</sup> Respondent has been maintaining the site stocks of Naphtha - Alternate Fuel at around 14,362 MT (against 9180 MT required as per PPA for 10 days stock at 68.49% PLF) and hence, has been declaring the availability to the 1<sup>st</sup> Respondent, who submits the Invoices as per its entitlements in the PPA. The petitioner has no *locus standi* to interfere in such a bilateral arrangement bound by contract. He is a complete outsider to such agreement and the Electricity Act, 2003 does not give the petitioner any rights in this regard.

3.13. As per the PPA, the following are the key terms relating to Fuel Supply Agreement(s) (the "FSA"):

- a) The 1<sup>st</sup> Respondent shall have approved the Long-term FSA and any material amendments thereto as per Clause 3.2 (e):
- b) The 1<sup>st</sup> Respondent does not have the right to approve the short-term FSA including any spot contracts entered into by the 2<sup>nd</sup> Respondent, so long as cost of fuel under the short-term FSA does not exceed the cost of fuel under the prevailing long-term FSA in each case as per Clause 3.2 (e).
- c) Short-term FSA are those agreements entered into by the 2<sup>nd</sup> Respondent with fuel suppliers for supply of Natural Gas or Alternate Fuel to the Power Plant for the duration of less than 5 years as per the definition of "Short Term Fuel Supply Agreements" in Clause 1.

3.14. In accordance with the aforesaid terms, the 2<sup>nd</sup> Respondent entered into the following long-term FSAs which was also approved by the 1<sup>st</sup> Respondent:

- a) FSA with GAIL (Formerly Gas Authority of India Limited, which is a Central Public Sector Undertaking coming under the Ministry of Petroleum and Natural Gas, Government of India) for supply of DNG from Kuthalam fields of ONGC;
- b) FSA with GAIL for supply of DNG from PY01 fields of HOEC;
- c) FSA with IOCI (Indian Oil Corporation Limited, which is a Central Public Sector Undertaking coming under the Ministry of Petroleum and Natural

Gas, Government of India) for supply of Naphtha for a period of 20 Years from COD. However, while conveying the approval for long term FSA for supply of Naphtha through IOCL, the 1<sup>st</sup> Respondent limited the initial term for approval to 15 years instead of 20 Years as per FSA submitted.

All these long-term FSAs are also in accordance with the respective policy guidelines of Ministry of Petroleum and Natural Gas, Government of India, relating to Natural Gas and Petroleum Products.

3.15. Pursuant to limiting the initial term of the long-term FSA for supply of Naphtha to 15 years against the 20 years, the 2<sup>nd</sup> Respondent, as a matter of abundant caution and corporate governance principles, (even though subsequent approvals from the 1<sup>st</sup> Respondent for FSA is not required), requested for consent of the 1<sup>st</sup> Respondent for the balance period for the FSA until 25<sup>th</sup> April 2021 to which the 1<sup>st</sup> Respondent initially conveyed acceptance for 2 Months until 25<sup>th</sup> June 2016 and subsequently stated that PPN does not have the long term FSA for Naphtha. However, the 2<sup>nd</sup> Respondent informed that, the balance period until 25<sup>th</sup> April 2021 beyond 26<sup>th</sup> June 2016 being 4 Years and 10 Months is to be considered under Clause 3.2 (e) and definition of STFSA of the PPA, in each case, extracted as under:-

*“.....TNEB shall not have the right to approve the Short Term Fuel Supply Agreements including any spot contracts entered into by the Company so long as the cost of fuel under the Short Term Fuel Supply Agreements does not exceed the cost of fuel under the Long Term Fuel Supply Agreement; and”*

*"Short Term Fuel Supply Agreements" The Agreements entered into between the Company and the fuel suppliers for the supply of natural gas and Alternate Fuel to the Project for the duration of less than five years."*

3.16. The FSA for Naphtha until April 2021 was not in question, as is mentioned hereinabove. With regard to FSA for Naphtha for the period beyond April 2021, a short-term FSA for supply of Naphtha for the period from March 2021 to March 2024 or until switch over by the 2<sup>nd</sup> Respondent to "R-LNG (Imported Gas)" whichever is earlier has been made through IOCL vide IOCL letter dated 20th April 2021 which was accepted by 2<sup>nd</sup> Respondent vide its letter dated 21<sup>st</sup> April 2021.

3.17. As per terms of the PPA, the 2<sup>nd</sup> Respondent is entitled to use Naphtha and make available the Capacity based on site stocks of Naphtha as per Clause 6.1 (i) of the PPA for the entire Term of the PPA.

3.18. Regarding the supplies of DNG, the following were the situations from various sources tied up:

- a) Under FSA for DNG with GAIL for Kuthalam fields, supplies commenced from 2002 and due to a gradual reduction in output from the wells, from 2008, the supplies have reached low level which does not even meet the 2<sup>nd</sup> Respondent technical minimum requirement. The present total production from the aforesaid fields is in the region of 2,50,000 SCMD against the technical minimum required

by the 2<sup>nd</sup> Respondent at 4,00,000 SCMD (for mixed fuel operation) and full load requirement of 15,00,000 SCMD.

b) Under the FSA for DNG with GAIL for PY01 fields, supplies commenced from 2009 and until 2013. Thereafter, due to the similar reasons, supplies have reached low levels at present of 25,000 SCMD which again does not meet the technical minimum required by the 2<sup>nd</sup> Respondent (for even the mixed fuel operation).

c) The 2<sup>nd</sup> Respondent had discussed and followed up with the Ministry of Petroleum and Natural Gas and GAIL and obtained an allocation of 3,93,000 SCMD from Madanam gas fields in April 2021. However, neither the GSA submitted by the 2<sup>nd</sup> Respondent was approved by the First Respondent nor was there actual commencement of supplies due to issues relating to obtaining permission by the supplier which were withheld by various Government agencies / courts.

3.19. The 2<sup>nd</sup> Respondent has valid FSAs for supply of Naphtha from IOCL for various periods from (a) April 2001 to April 2016, (b) April 2016 to June 2016, (c) June 2016 to April 2021 and (d) March 2021 to March 2024. There were and the 2<sup>nd</sup> Respondent also has FSAs for supply of DNG from GAIL and allocation for DNG from GAIL for Madhanam. While there is availability of Alternate Fuel, there is interruption in supply of DNG from GAIL due to reasons submitted above.

3.20. The 2<sup>nd</sup> Respondent cannot be expected to operate the power plant only on DNG when no such DNG is available. Such insistence to the 2<sup>nd</sup> Respondent by the 1<sup>st</sup> Respondent to declare and operate the plant only based on DNG, would be a Force Majeure like situation and would qualify for Fuel interruption to the Power Plant as per clause 13.1 (b)(2)(ii) (E) & (F) of PPA.

3.21. To sum up on the averments relating to Fuel supply and FSA:

- (a) There is presently a valid FSA for supply of Naphtha on "As and when required" basis from IOCL which is valid until March 2024.
- (b) There is presently valid FSA for supply of DNG and also allocation for DNG in each case from GAIL.
- (c) There is an interruption in supply of DNG from M/s. GAIL
- (d) The 2<sup>nd</sup> Respondent is maintaining 14,362 MT of site stocks of Alternate Fuel which at 68.49% PLF would be for 15 days consumption against minimum 10 days consumption required as per Clause 6.1 (i) of the PPA.
- (e) Thus, the 2<sup>nd</sup> Respondent is entitled to declare availability as per PPA, which it has been declaring and rightfully submitting its Invoices to the 1<sup>st</sup> Respondent, as per PPA.

3.22. The parties namely, the 1<sup>st</sup> and 2<sup>nd</sup> Respondent acknowledging the twin issue of "interruption in DNG supply" and "need to reduce cost of power" recognized the need for a negotiated settlement considering the following:-

- (a) The PPA is for Sale and Purchase of Capacity and Energy.



- (b) FSA for supply of Naphtha is not an issue and on the contrary, the Variable Cost due to Naphtha was of concern.
- (c) If RLNG instead of Naphtha is used, it would result in reduced cost of power and thereby increase the dispatchability.
- (d) The 2<sup>nd</sup> Respondent is entitled for the FCC for the period from June 2016 onwards.
- (e) A settlement can be reached between the Parties, whereby, a mutually acceptable solution in the interest of reducing the cost of power by switch over to RLNG as well reduction in fixed costs by offering discounts/ waivers could be worked out.

3.23. In view of the situation outlined above and more specifically to reduce the cost of power, increase dispatchability and further reduce on one time fixed costs, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in the presence of officials from Government of Tamil Nadu (the "GoTN") reached a negotiated settlement vide MoM on 23.3.2020 (the "MOM"), broadly as under:-

- (a) Amend the PPA for replacing Naphtha with R-LNG (Imported Gas) as Alternate Fuel (the "Switch Over");
- (b) The Switch Over is to be achieved within 24 Months (plus 6 Months in the events of Force Majeure) of amending the PPA for Switch Over terms;
- (c) Capacity charges (the "FCC") would be continued paid to the 2<sup>nd</sup> Respondent based on Naphtha as Alternate Fuel until the actual Switch Over;

- (d) Various Switch Over related agreements to be submitted to the 1<sup>st</sup> Respondent for its consent.
- (e) Prioritise usage of domestic Natural Gas and then only resort to R-LNG (Imported Gas).

3.24. The above negotiated settlement reached on 23.3.2020 to amend the PPA is permissible as per PPA Clause 17.1 and is also permitted by the Act / Regulation whereby amendments to the existing PPAs can be undertaken through mutual discussion between the Parties to the PPA to explore possibilities of reducing costs.

3.25. The 2<sup>nd</sup> Respondent has been declaring the plant availability on daily basis as per PPA and as per Grid / SLDC codes and letters, on the basis of site stocks of alternate fuel as per Clause 6.1 (i) of the PPA. Based on such declaration of availability on 20.4.2022, the State Load Despatch Center of TANTRANSCO (and hence 151 Respondent) has scheduled the 2<sup>nd</sup> Respondent's power plant from 21.4.2022 and accordingly issued the dispatch instruction on 20.4.2022 to 2<sup>nd</sup> Respondent to "bring back the unit at the earliest". Accordingly, the 2<sup>nd</sup> Respondent brought back the unit and the unit operated from 21.4.2022 to 30.4.2022.

3.26. Therefore, the scheduling and dispatch of 2<sup>nd</sup> Respondent's power plant by Respondent justifies that:

- (a) The 2<sup>nd</sup> Respondent is entitled to declare availability based on site stocks of Alternate fuel.

- (b) The 2<sup>nd</sup> Respondent has been declaring the availability
- (c) The 1<sup>st</sup> Respondent is entitled to schedule and dispatch the 2<sup>nd</sup> Respondent's power plant on Alternate Fuel
- (d) The 1<sup>st</sup> Respondent has indeed scheduled and hence dispatched the 2<sup>nd</sup> Respondent's power plant
- (e) That the 2<sup>nd</sup> Respondent Plant is of critical importance for the energy security of the State of Tamil Nadu.

3.27. The action of the parties benefits TANGEDCO and hence, the consumers stand to benefit by way of reduction in variable cost due to using cheaper fuel and reduction in fixed cost to the tune of Rs.205 crores due to discounts / waivers. The Naphtha is not a secondary fuel, but an Alternate Fuel as per PPA. It is denied that PPA provides for "use of Naphtha as Alternate Fuel till such time Natural Gas was available". Any amount of Natural Gas available in the region can only be utilized by the 2<sup>nd</sup> Respondent in bringing down the cost of power to the 1<sup>st</sup> Respondent if and only if RLNG can be used.

3.28. The natural gas was availed from Kuthalam fields from 2002 to 2008 and from PY01 fields from 2009 to 2013. Further, that the 2<sup>nd</sup> Respondent took efforts to avail domestic Natural Gas as could be seen from allocation of 3,93,000 SCMD of Natural Gas from GAIL from Madanam Gas Fields. Further, the 2<sup>nd</sup> Respondent also invested Rs.65 Crores towards Gas Boosting Compressor Station for utilizing the low pressure Natural Gas that was being supplied and even the additional capitalization has not yet been approved.

3.29. It is false to allege that the 2<sup>nd</sup> Respondent did not take any serious efforts to avail Cheaper Natural Gas. Further, the Petitioner has made incorrect allegations stating that there is no concrete FSA for Natural Gas. On the Contrary, FSA for Natural Gas exists with GAIL for Natural Gas supply from PY01 fields and the Company is also establishing the letter of Credits for availing the supplies, but the availability is lower than technical minimum of the 2<sup>nd</sup> Respondent. It is erroneous to allege that the use of Naphtha came to an end on 25.04.2016 and further the PPA validity cannot be questioned on that account. The PPA continues to remain valid and the 2<sup>nd</sup> Respondent is entitled to use of Naphtha. There is also a valid FSA for Naphtha until March 2024 or until the actual date of Switch Over whichever occurs earlier.

3.30. Though the Petitioner has mentioned the Order of this Commission dated 30.02.2012, the Petitioner has deliberately failed to mention that vide the subsequent Tariff Order in T.P. No.1/2017, the 2<sup>nd</sup> Respondent has got approval for payment of FCC which is valid even today. The correct position is that the 2<sup>nd</sup> Respondent is entitled to use of Naphtha as Alternate Fuel until the entire term of PPA viz. until 26.04.2031. There is valid site stock of Alternate Fuel as well as short-term FSA for Naphtha with IOCL as well as approved long term FSA for Natural Gas with GAIL.

3.31. The 2<sup>nd</sup> Respondent is eligible for fixed charges as it has valid site stocks of Alternate Fuel. The decision of TANGEDCO in entering into MoM is with valid reasons and it has already been delved into. The MoM and the payments to the 2<sup>nd</sup> Respondent

will only result in reduction of capacity charges payable to the 2<sup>nd</sup> Respondent in terms of waivers and discounts to the tune of Rs.205 Crores offered by 2<sup>nd</sup> Respondent. Hence, the allegation of "unlawful payment" is vehemently denied as vexatious and malicious.

3.32. As per Regulation 35(2) of the TNERC Tariff Regulations, 2005, the Parties to the PPA are entitled to mutually discuss and amend the PPA for reducing the cost of power and the Tariff. Since the parties have negotiated for replacing the existing fuel with cheaper fuel and offered one time discounts/waivers which reduces the fixed costs, the amendments proposed are valid and maintainable. Further, the approval of the Commission is required in case of increasing Tariff / Cost beyond the already approved Tariff / Costs / PPA. The same does not apply to the instant case.

3.33. The decision of 1<sup>st</sup> Respondent was not unilateral and instead is a negotiated settlement comprising of representatives from 1<sup>st</sup> Respondent, the 2<sup>nd</sup> Respondent and the Government of Tamil Nadu. Further, in view of the above submission, there is no violation of Sec.142 of Electricity Act, 2003 and the present petition ought to be dismissed as frivolous and abuse of process of court.

3.34. The present petition is not maintainable and ought to be dismissed since the petitioner has no *locus standi* to file the present petition.

3.35. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents are entitled to mutually discuss and amend the PPA as per Clause 17.1 of the concluded and enforceable PPA.

3.36. The Parties are entitled and permitted by Regulation 35(2) of the TNERC Tariff Regulations to mutually discuss and amend the PPA as extracted under.

*"In respect of existing Generating Companies covered under Power Purchase Agreement already entered, the tariff and norms shall be as per the terms agreed to, in so far as such terms are not inconsistent with the provisions of the Act.] However, modification to the existing Power Purchase Agreement may be undertaken through mutual discussion between the parties to the agreement to explore possibilities of reducing costs and aligning the Power Purchase Agreement with the new market structure. "*

3.37. The present petition is a gross abuse of process and has been filed with the sole purpose of preventing parties in taking consequential and further steps towards reducing the cost of power from this 2<sup>nd</sup> Respondent's plant.

3.38. The present petition has been filed by the petitioner at the behest of certain vested interest. There is not a single piece of paper to show the reason why the petitioner is directly approaching the Commission.

3.39. It is also strange that when steps are being taken to reduce cost of power and when in fact this 2<sup>nd</sup> Respondent has sacrificed a large part of its claim and the 1<sup>st</sup> Respondent TANGEDCO has benefited from it by virtue of the said Board Proceeding cited in the Petition. The prayer of the petitioner is effectively for 1<sup>st</sup> Respondent

TANGEDCO to not get the benefits of the concession agreed upon by this Respondent and also to proceed with the switch-over to RNLG which is being proceeded with to reduce the cost of power. It is thus evident that the object of the present petition, which contains only certain carefully selected facts which have been rolled into false claims, is to cause further loss to 1<sup>st</sup> Respondent TANGEDCO. The petitioner organization which calls itself an association of engineers appears to be targeting certain aspects at the behest of vested interests while couching its claim as being in consumer interest. The petitioner which is an association of engineers cannot be considered as a consumer association for purposes of the Regulations and therefore the present petition is not maintainable by the petitioner.

3.40. The petitioner has been in the habit of filing frivolous petitions which have been repeatedly dismissed by the Commission and the Hon'ble APTEL. Possibly since costs have not been imposed and action taken against the petitioner for filing such petitions, the petitioner has been emboldened to file such matters.

3.41. On the very issue of the petitioner seeking to interfere in concluded PPAs, there is already binding precedent which operates as res judicata. However, the petitioner has wilfully suppressed the same and is filing the present petition. The petition deserves to be dismissed with heavy costs since it seeks to make wild and baseless allegations against not only this 1<sup>st</sup> & 2<sup>nd</sup> Respondents but also the highest levels within 1<sup>st</sup> Respondent TANGEDCO including its Board, which ought to be deprecated.

3.42. The petitioner, namely PESOT, has nowhere, provided the details of its objectives and basis for claiming that it's an Association that can espouse consumer interest as is sought to be claimed. It has merely stated that it is a society and says that its main objective is to serve common consumers. However, the documents evidencing this or the registration details as also the objectives as filed with the Registrar of Societies have not been filed to demonstrate the correctness of the claim or that the petitioner is a consumer interest association. The present petition could not have been filed and numbered as a Miscellaneous Petition as the Regulations only provide for an Association of consumers to maintain petitions whereas the petitioner appears to be an association of Engineers which is very different. The Electricity Act and the Regulations of this Commission do not permit an organization like PESOT which is formed for espousing the cause of electricity engineers to file such petitions.

3.43. It would be most appropriate to place before the Commission, its own Press Note condemning the false statements and insinuations that PESOT frequently resorts to. Even at that time, the Respondent herein was a target of PESOT's campaign of falsehoods. The Commission's Press Note dated 3.8.2011 bearing No.3 of 2011 is being filed herewith and the concluding paras are extracted

*"15. All these facts have been clarified to the PESOT in February 2011 by the Commission and yet they persist in their statement of half-truth and insinuation. Perhaps, PESOT believes that the repetition of lies would make them truths."*



It is unfortunate that PESOT has continued with such campaign of falsehoods even after such a severe reprimand by the Commission as far back as in 2011.

3.44. The Commission has in fact, dismissed similar petitions including by the same Petitioner herein on the grounds of maintainability, to name a few, M.P. No.4 of 2007 vide Order dated 05.02.2008 and M.P. No. 35 of 2008 vide order 12.01.2009 dismissed such so called attempt to espouse consumer interest.

3.45. The petitioner PESOT, has been in the habit of filing such petitions and the Hon'ble APTEL, in its order in IA No. 112 of 2008 in Appeal NO.84 of 2008, dated 06.11.2008 itself held as follows.

*"There are certain issues involving locus standi of the appellants as well as of maintainability of their complaint before the Commission. The question of merit is only whether the shareholding under section 187 (C) of the Companies Act, 1956 can be excluded for assessing whether the shareholding captive users in a captive power plant is 26%. As per the Chartered Accountant's report, the share holding of all the captive users was in excess of mandatory cut off limit of 26 % which conforms to the stipulated minimum under rule 3(1)(a)(i) of the Electricity Rules, 2005 if the shareholding under Section 187 (C) of the Companies Act of 1956 is excluded. This report of Chartered Accountant is based on the facts and taking into consideration the details filed in form no. 2 as valid. Mr. Gandhi appearing for the appellants, Power Engineers Society, disputes the findings of the Chartered Accountant. He, however, does not dispute that shareholding under Section 187 (C) of the Companies Act, 1956 should be excluded for the purpose of calculating the 26% he however alleges that the data given by the company in question is wrong. Mr. Gandhi has no data on the basis of he can dispute the findings of the Chartered Accountant. As such, his claim that the power plant of Arkay Energy (Rameswaram) Limited does not fulfil the requirements of the Rule 3(1)(a)(i) of the Electricity Rules, 2005, is only bald allegations. The impugned order cannot be interfered with on the basis of such bald assertions. The appeal is dismissed."*

3.46. Further PESOT which filed a petition before the Commission in M.P. No. 35 of 2008, suffered a dismissal order dated 12.01.2009.

*"4.7. The present one is a public interest petition which questions the proceedings before the Commission in a dispute between a generator and a distribution licensee. The Electricity Act 2003 does not envisage participation of third parties in a dispute between a generator and a distribution licensee under Section 86 of the Act. In view of the above facts, the present petition is liable to be dismissed as not maintainable and accordingly the above MP 35 of 2008 is dismissed without costs. "*

3.47. The above judgment of the Commission squarely covers the issue and the petition is liable to be dismissed. PESOT may also be debarred from repeatedly filing petitions of this nature with ulterior motives.

3.48. The petition is not maintainable in law in view of the specific provisions of the Act and the provisions set out in the Regulations

3.49. The PPA is in accordance with the guidelines framed by the Ministry of Power, Government of India which were notified vide S.O. 251 (E) dated 30.3.1992 (And amended vide S.O. 36 (E) dated 18.1.1994 and S.O.605 dated 22.8.1994) and are attached to the PPA as Schedule U. Section 185 (1) of the Electricity Act 2003 also validates the PPAs entered into before coming into of such Act as extracted as under:-

*"anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, in so far as it is not inconsistent*

*with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act. "*

3.50. Further, Regulation 35(2) and 28(2) of the TNERC Tariff Regulations 2005 protects the existing Generating Companies covered under the PPA's already entered in each case as reproduced under:

Regulation (35)(2):

*"In respect of existing Generating Companies covered under Power Purchase Agreement already entered, the tariff and norms shall be as per the terms agreed to. However, modification to the existing Power Purchase Agreement may be undertaken through mutual discussion between the parties to the agreement to explore possibilities of reducing costs and aligning the Power Purchase Agreement with the new market structure".*

Regulation (28)(2):

*In respect of the Generating Companies covered under Power Purchase Agreements the norms in the Power Purchase Agreements will be applicable till the expiry of the contract."*

Therefore, going by the Guidelines, Acts, Regulations of the Government and Commissions, such payment of Fixed Capacity Charges is as per PPA based on availability and thus is permitted.

#### **4. Rejoinder dated 19-09-2023 filed by the Petitioner, PESOT:-**

4.1. Power Purchase Agreements (PPAs) are not private documents but involving all stake holders of the industry, more particularly the end consumers, who is ultimately affected by the agreements. Every retail tariff order explicitly publish the cost of power purchase with generators war details of quantum of power purchased, cost of fixed

charges, and variable charges to the knowledge of the consumers to ensure the reasonableness and transparency of the retail tariff fixed by the Commission. Even the PPA with IPPs entertained on MOU route were placed before public opinion by the Commission before approval. To cite an example PPA signed with Cuddalore Power Projects was placed for public scrutiny during 2008.

4.2. Even the long term power purchase or short term power purchase agreements entertained under sec.63 of Electricity Act, 2003 are made public in accordance to the Guidelines of the Central Government. M/s. PPN power generating company came through MOD route before the formation of Commission. Therefore any changes in the agreements must be placed before the Commission and from there to the public knowledge. Sec. 185(2) of Electricity Act 2003, as well understood by the 2<sup>nd</sup> Respondent, mandates that any changes in the PPA has to be placed for scrutiny of the Commission and thereby placed for public opinion.

4.3. The changes in the PPA without the approval of the Commission is invalid in law and has no legal force. PESOT had litigated many cases before the Commission on common consumer's interests. This petition is also similar in nature. The illegal payments made by the 1<sup>st</sup> Respondent TANGEDCO through unauthorized changes in the agreement seriously offend interests of common consumers of the State. Section 94 (3) of Electricity Act, 2003 empowers the Commission to permit anybody to represent consumers interests. The section reads as follows:-

*“94 (3) the Appropriate Commission may authorize any person, as it deems fit, to represent the interest of the consumers in the proceedings before it.”*

4.4. It may be more appropriate to cite the order of the Commission in M P 15 of 2020. The Commission ordered as follows:

“...8.8 During the course of argument) the Counsel for the Petitioner has objected to the impleadment of Thiru S. Gandhi and vehemently argued that he has no *locus standi* in this case. In this connection) it may be pointed out that Hon'ble APTEL in its order dated 09-09-2016 in D.F.R. No.2566 of 2015 wherein a preliminary objection was raised by the respondent in that case that Energy Watchdog was not an aggrieved person over the orders passed by the Commission in the extension of control period for solar tariff, has held as follows:-

“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. ”

8.9. From the above, it is clear that any order which is likely to affect the members of an association can interfere and implead as a party to a proceeding. In this case) the impleading petitioner PESOT has submitted proof of a registered entity "Power Engineers Society of Tamil Nadu" under the Tamil Nadu Societies Registration Act 1975" (Tamil Nadu Act 27 of 1975). PESOT has represented the case on behalf of consumers at stake who may have to bear the extra burden of roll over of banked energy to the next financial year which in PESOT's opinion would deem to occur due to the financial stress of TANGEDCO. Though PESOT is an Association of the Electricity Engineers still their members are ultimate consumers and any order passed in this case in favour of the petitioner will have a pecuniary impact on them also. Hence, we hold the impleadment of PESOT does not suffer from any legal infirmity. However, we confine ourselves to the implementation of the orders issued by MNRE and therefore we refrain from examining the issues raised by the impleading petitioner in depth ....“

Therefore it is well settled in law that PESOT has *locus standi* to file this petition.

4.5. The consumers of this State have paid 987.65 crore as fixed cost without buying single unit of power from the 2<sup>nd</sup> respondent company from 2012-13 to 2015-16. Now through unregulated changes in the PPA they have to shoulder further 2,340 crore additionally until FY 2031, which is an undue burden upon them. The 2<sup>nd</sup> Respondent misquote the TNERC Tariff Regulation 35(2). It reads that "to explore possibilities of reducing costs..... ". How Payments 473 crore to the 2<sup>nd</sup> Respondent without buying single unit of power will reduce the cost to consumers is not known.

4.6. The R-LNG power costs around Rs.18.5 /unit. The DAM power in power exchanges cost maximum of Rs.10/- unit. It is mystique how this arrangements helps the common consumers. The frivolous Press Note was in sequel to allegation petition submitted to the then Hon'ble Chief Minister of Tamil Nadu. It levelled allegation of corruption against the then Chairman/ TNERC to the tune of 6,300 crore. Then the Chairman /TNERC unsuccessfully filed "contempt of court" petition. (cont.15/2011). PESOT filed deformation case against the then Chairman /TNERC for the Press Note.

4.7. M P 35 of 2008 was filed by S.Gandhi, not by PESOT. M P 35/2008 prayed to dismiss DRP 7/2008 filed by the 2<sup>nd</sup> respondent herein, claiming 40.67 crore from 1<sup>st</sup> respondent, in accordance to PPA clauses. But the respondent 2 already filed W P 24900/2004 and obtained stay order from the High Court of Madras on the pretext that the PPA was signed before the formation of TNERC and hence TNERC has no jurisdiction over the PPA. The stay granted by the Hon'ble High Court was in force

during 2008 also. M.P 35/2008 was dismissed on 12/01/2009, after allowing DRP 7/2008, treating the petition as PIL which was not filed on such footing.

4.8. Appeal No. 84 of 2008 was filed before the APTEL against M.P 4/2007. The case related to the captive plant status of M/s.Arkey Energy (Rameshwaram). The aforesaid company was permitted on 26/04/2006 as captive generator, to wheel energy to 71 HT consumers, as captive consumers by TNEB with equity details, certified by the Auditor on 14/11/2005. The detail of equity holding was

a) By promoters ---	53.87crores	73.52 %
b) captiveshare holders---	19.41 crores	26.48%
total equity share value	73.28 crores	
Preference share holding--	18.32 crores	

4.9. The share purchased by one of the captive generator (Ashok Leyland) was short of Rs.45 lakh value of share in their annual report than M/s.Arkey Energy furnished in the Form 2 submitted to ROC. This brought down the equity share holding by captive consumers to 25.88%. PESOT wrote to TNEB on 25/09/2006 with a request charge the consumers accordingly. But with the help of TNEB, the shareholding was altered and certified by another Auditor on 09/10/2006 after a fortnight of our complaint as follows.

a) Equity share by promoters ---	-	43.87 crore
b) Equity share by captive consumers --	-	19.41 crore
Total equity share value	-	62.28 crore
Preference share holdings as	-	28.32 crore

4.10. Further there are infirmities in details of payments made to 2<sup>nd</sup> Respondent. The counter said that the payment made was 451.7 crore. The RTI reply to us said that the

payments as 473. 029 crore and whereas in the reply from tariff cell of TANGEDCO said no payments were made to 2<sup>nd</sup> Respondent.

5. After completion of pleadings, the respective Counsel appearing for the 1<sup>st</sup> and 2<sup>nd</sup> respondent made a request to this Commission to decide the very maintainability of the petition as a preliminary issue to ensure not only expeditious disposal of the lis but also to prevent the process of law being abused by the petitioner more so when the petitioner is evidently an absolute stranger to the Power Purchase Agreement dated 03.01.1997 entered into between the 1<sup>st</sup> and 2<sup>nd</sup> respondent. Mr.Gandhi, who is representing the petitioner, submitted that even though he has no serious objection for deciding the maintainability issue as a preliminary issue, it would be more prudent to decide the maintainability issue along with the other issues involved in the case as relegating enquiry in respect of other issues to a later stage would cause only unnecessary delay.

6. There can be no cavil that the provisions of the Code of Civil Procedure is made applicable to a proceedings conducted by the State Electricity Regulatory Commissions in the course of discharging its functions envisaged in the Electricity Act, 2003. Sub-Rule 2 of Rule 2 of Order XIV of CPC deals with the power of the Court to dispose of the suit by trying a particular issue as a preliminary issue. The above referred procedural law has been enacted to ensure expeditious disposal of the lis.



7. Preliminary issues can be those where no evidence is required and on the basis of reading of the plaint or applicable law, if the jurisdiction of the Court or bar of the suit is made out, the Court may decide such issues with the sole objective for the expeditious decision. Thus if the Court lacks jurisdiction or there is a statutory bar, such issue is required to be decided in the first instance so that the process of Court is not abused by the litigants who may approach the Court to delay the proceedings on a false pretext.

8. From the counter affidavit filed by the respondents it can be discerned that the respondents are not only challenging the very *locus standi* of the petitioner to raise the lis but also the jurisdiction of this Commission to try the issue raised in the petition.

9. Jurisdiction is the power to decide and not merely the power to decide correctly. Jurisdiction is the authority of law to act officially. It is an authority to act officially in a particular matter in hand. It is the power to take cognizance and decide the case. The power to hear and determine a matter is the foundation of any judicial proceedings.

10. The above being the settled principle of law, since the respondents are challenging not only the *locus standi* of the petitioner to initiate the present proceedings but also the authority of this Commission to take cognizance of the issue raised in the petition, this Commission decided to try the maintainability issue as a preliminary issue as the same goes to the very root of the case. Parties were directed to advance arguments on the issue of “maintainability” at the first instance.

11. Heard the counsel for the petitioner and the respondents. Relevant provisions of law traversed. Written arguments submitted on either side perused. Legal precedents pressed into service considered.

12. **Findings of the Commission:**

12.1 The bone of contention of the respondents in regard to the very maintainability of the petition preferred by the petitioner is twofold. To begin with, according to the respondents, the issue raised by the petitioner essentially relate to the terms and conditions of the Power Purchase Agreement dated 03.01.1997 entered into between the 2<sup>nd</sup> respondent, an Independent Power Producer and the 1<sup>st</sup> respondent, the Distribution Licensee for the supply of power using natural gas and with naptha as secondary fuel till such time the natural gas is available and that since the petitioner is an absolute stranger to the said contract, it has no locus standi to either challenge or question the propriety or legality or enforceability of the original terms and conditions and the subsequent modified terms and conditions of the contract.

12.2 Refuting the above said contention raised by the respondents, Mr. Gandhi, the Authorized representative of the petitioner, banking reliance on the provisions of sub-section (3) of Sec.94 of the Electricity Act 2003 and Regulation 45 of the TNERC Conduct of Business Regulations 2004, argued with aplomb that since the petitioner is a Registered Society established to espouse the welfare and interest of the general public, which include the consumers of electricity, the petition as framed is maintainable under law as well as facts.

12.3 To appreciate the rival contentions it is very much necessary to reproduce the relevant provisions of the Electricity Act 2003 and Regulation 45 of the TNERC Conduct of Business Regulations 2004 (hereinafter referred to as Regulation 2004 for brevity)

Sec. 94: Powers of Appropriate Commission:

*(1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely: -*

*(a) summoning and enforcing the attendance of any person and examining him on oath;*

*(b) discovery and production of any document or other material object producible as evidence;*

*(c) receiving evidence on affidavits;*

*(d) requisitioning of any public record;*

*(e) Issuing commission for the examination of witnesses;*

*(f) reviewing its decisions, directions and orders;*

*(g) any other matter which may be prescribed.*

*(2) The Appropriate Commission shall have the powers to pass such interim order in any proceeding, hearing or matter before the Appropriate Commission, as that Commission may consider appropriate.*

*(3) The Appropriate Commission may authorise any person, as it deems fit, to represent the interest of the consumers in the proceedings before it.*

Regulation 45: Recognition for Consumer Associations

*“1) It shall be open to the Commission to permit any Registered Association / Forum or other bodies, corporate or any group of consumers to participate in any proceedings before the Commission.*

*(2). It shall be open to the Commission for the sake of timely completion of proceedings, to direct grouping of the associations / forums, referred to above, so that they can make collective affidavits.*

*(3). The Commission may, as and when considered appropriate notify a procedure for recognition of associations, group, forum or bodies corporate as*

*registered consumer association for purposes of representation before the Commission.*

*(4). The Commission may appoint any officer or any other person to represent the interest of the consumer in general or any class or classes of consumers as the Commission may consider appropriate.*

*(5) The Commission may direct payment to the officer or person appointed to represent the consumers interest such fees, costs and expense by such of the parties in the proceedings as the Commission may consider appropriate”*

12.4 The language employed in Sub-Sec 3 of Sec 94 of the Electricity Act and Regulation 45 (1) of Regulation 2004 is plain and simple and there is no ambiguity at all. The essence of the above referred provisions of law is that discretionary power is vested with the Appropriate Commission to authorize any person, as it deems fit, to represent the interest of the consumers in the proceedings before it. The phrase **“in the proceedings before it”** occurring in Sub-Sec. 3 of Sec 94 of the Electricity Act 94 and Regulation 45 (1) make it abundantly clear that for exercising the discretionary power vested under the above referred provisions of law, the condition precedent is pendency of proceedings before the Commission. For short, the pendency of a legally instituted proceedings is sine qua non for exercising the discretionary power so vested with the Commission.

12.5 In the instant case, the petitioner is not seeking permission to represent the interest of the consumers in a pending proceedings. Conversely, the petitioner has instituted a proceeding challenging the actions of the 1<sup>st</sup> respondent in implementing the

terms and conditions incorporated in the Power Purchase Agreement dated 03-01-1997 and the subsequent modified Power Purchase Agreement entered between the parties.

12.6 Hence it is apparent that the petitioner cannot press into service the provisions of Sub-Section 3 of Sec 94 of the Electricity Act 2003 and Regulation 45 (1) of TNERC Conduct of Business Regulation 2004 to canvass that the petitioner society has locus standi to institute the present proceedings. Having concluded so, this Commission finds substance in the objection raised by the respondents in regard to the locus standi of the petitioner to initiate the instant proceedings.

12.7 In addition to the above referred objection, the respondents raise jurisdiction issue to sustain their contention that the present petition preferred by the petitioner is not maintainable under law. The respondents counsel argued with vigour that a cursory reading of the averments set out in the petition unequivocally disclose that the present petition has the attributes of a public interest litigation and as the State Commissions constituted as per the mandate of Sec. 82 of the Electricity Act, 2003 are not invested with the power to entertain public interest litigation in respect of the discharge of the functions covered under Sec. 86 (b) and 86 (f) of the Act and in as much as the power to entertain public interest litigation is conferred only upon the Constitutional Courts such as the Hon'ble Supreme Court and High Courts of various States, this Commission has no jurisdiction to take cognizance of the dispute raised in the main petition.

12.8 To buttress the above said arguments the respondents counsel placed reliance on the following legal precedents:-

(a) **Northern Plastics Ltd.**

**Vs.**

**Hindustan Photo Films MFG Co. Ltd. and others  
(1997) 4 SCC 452**

(b) **Judgement dated 26.04.2022 passed by the Madurai  
Bench of Madras High Court in W.P.(MD) No.8089 of 2010**

**And**

**M.P. (MD) No.1 of 2010**

**In the case of Madurai Kamaraj Manonmaniam Sundaranar  
University Teachers Association represented by its General  
Secretary Vs. University Grants Commission represented by its  
Secretary, New Delhi and others.**

12.9 The above contention raised by the respondents is sought to be repelled by Mr. Gandhi, the representative of the Petitioner Society by resorting to the provisions of Sec 94 (3) of the Electricity Act, 2003. Mr. Gandhi argued with insistence that the word “**any person**” occurring in Sub-Section 3 of Sec. 94 includes any company or body corporate or association or body of individuals and as such the petitioner Society is competent to represent the consumer interests before the Commission.

12.10 On a reading of the petition filed by the petitioner it is evidently clear that it has the attributes of public interest litigation with the averments replete with loss arising out of payment of fixed charges by the Respondent No.1 to Respondent No.2 and intricate details such as the duration of the P.P.A and its expiry and its further renewal with retrospective payment of fixed charges.

12.11 In this connection, we may refer to the judgment of the Hon'ble Madurai Bench of the Madras High Court in W.P (MD) No.8089 of 2010 dated 26.04.2022 which enunciates the position of law that an Association cannot maintain a writ petition for the cause of individual but if it is for a greater public cause it can file a public interest litigation, if it is otherwise permissible. Here again, it is to be observed that the expression "permissible otherwise" is of significant import and carries, more weightage. This means the present petition which is clothed in the nature of public interest litigation must be shown to be otherwise permissible under scheme of the Electricity Act 2003 and the Regulations made thereunder. This is further fortified by the judgment of the Hon'ble Supreme Court which expounded the concept of "aggrieved persons" and applicability of "locus standi" in public interest litigation in Northern Plastics Limited Vs Hindusthan Photo films manufacturing company limited, the relevant portions of which are reproduced below.

*It has also be noted that the wider concept of locus standi in public interest litigation moved before this Court under [Article 32](#) of the Constitution of India which itself is a fundamental right or under [Article 226](#) before High Courts which also offers a constitutional remedy cannot be imported for deciding the right of appeal under the statutory provisions contained in the [Customs Act](#). Whether any right of appeal is conferred on anyone against the orders passed under the Act in the hierarchy of proceedings before the authorities has to be judged from the statutory settings of the Act and not before them. Therefore, in our view, the High Court in the impugned judgment had erred in drawing the analogy from the more elastic concept of locus standi under [Article 32](#) of Article evolved by this Court by its decisions on the subject. It is also to be appreciated that the decision of this Court in [Bar Council of Maharashtra v. M.V. Dabholkar](#) etc. etc. AIR 1975 SC 2092 was based on an entirely different statutory scheme. For judging the competence and locus standi of the Union of India or the HPF for moving appeals before CEGAT against the order of Additional Collector of Customs passed under [Section 122](#) of the Act the answer must be found from within the four corners of the Act itself.*

*"129-A. Appeals to the Appellate Tribunal.- (1) Any person aggrieved by any of the following orders may appeals to the Appellate Tribunal against such order \_  
(a) a decision or order passed by the Collector of Customs as an adjudicating authority;*

*(b)... ..*

*(c)... ..*

*(d)... .."*

*In the light of this statutory scheme, therefore, it is not possible to agree with the contention of learned counsel for the contesting respondents that sub-section (1) of Section 129-A entitles any and every person feeling aggrieved by the decision or order of the Collector of Customs as an adjudicating authority, to prefer statutory appeal to the Appellate Tribunal. Neither the Central Government, through Industries Department, nor the rival company or industry operating in the same field as the importer can as a matter or right prefer an appeal as 'person aggrieved' is wider than the phrase 'party aggrieved'. But in the entire context of the statutory scheme especially sub-section (3) of Section 129-A it has to be held that only the parties to the proceedings before the adjudicating authority Collector of Customs could prefer such an appeal to the CEGAT and the adjudicating authority under S.122 can prefer such an appeal only when directed by the Board under Section 129-D(1) and not otherwise.*

*But it order to earn a locus standi as 'person aggrieved' other than the arraigned party before the Collector of Customs as an adjudicating authority it must be shown that such a person aggrieved being third party has a direct legal interest in the goods involved in the adjudication process. It cannot be a general public interest or interest of a business rival as is being projected by the contesting respondents before us.*

*"Generally speaking, a person can be said to be aggrieved by an order which is to his detriment, pecuniary or otherwise or causes him some prejudice in some form or other. A person who is not a party to a litigation has no right to appeal merely because the judgment or order contains some adverse remarks against him. But it has been held in a number of cases that a person who is not a party to a suit may prefer an appeal with the leave of the appellate court and such leave would not be refused where the judgment would be binding on him under Explanation 6 to [Section 11](#) of the Code of civil procedure. We find ourselves unable to take the view that because a person has been given notice of some proceedings wherein he is given a right to appear and make his submissions, he should without more have a right of appeal from an order rejecting his contentions*



*or submission. An appeal is a creature of statute and if a statute expressly gives a person a right to appeal, the matter rests there.*

*'But the words 'person aggrieved' do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something.'*

12.12 It may be noted from the above judgment that a “person aggrieved” does not really mean a person who is merely disappointed but a person who must have suffered legal injury. It may be further seen that wider concept of *locus standi* in public interest litigation cannot be imported for deciding the right of appeal in an enactment and such right of appeal has to be judged from the statutory setting and not de hors them. Prima facie, in our view, no legal injury has been suffered by the petitioner directly in the present case and hence the petitioner cannot be termed as an aggrieved person. But it is the case of the petitioner that he has got *locus standi* being a member of public which is being served by the 1<sup>st</sup> respondent and any financial loss suffered by the 1<sup>st</sup> respondent will have a bearing on the public. By taking such stand, the petitioner tries to bring the wider concept of public interest into the present proceedings. Thus, whether such wider concept of public interest can be imported into the statutory scheme of Electricity Act, 2003 is now the question before us. It is to be seen that such tendency to draw analogy from the elastic concept of *locus standi* stood deprecated by the Hon'ble Supreme Court of India in Northern Plastic case.

12.13 Pausing for a moment, it is to be observed further that the present petition is not titled as public interest litigation as such and the Commission is not a constitutional Court having wide powers akin to Articles 226 or 32 of the Constitution of India. But in reality, the present case is so unique that we are drawn into the arena of larger public interest as the petitioner in effect seeks to espouse the public cause. It is, therefore necessary to draw authority from the ratio laid down by the Hon'ble Supreme Court to settle the issue. In other words, though there is no concept such as public interest of litigation or entertaining of petitions of public nature under the Electricity Act, 2003, given the fact that we are prodded to take up the issue in the larger interest, it is necessary to refer to the provision of the Electricity Act, 2003, and the Regulations thereunder for resolving the present issue. It is true that the Commission has discretionary powers to permit Associations / Forum or Group of consumers to participate to any proceedings before the Commission under Regulation 45 as contended by the petitioner. What is more, the Commission may also appoint any officer any other person to represent the interest of the consumers in general.

12.14 We also have no manner of doubt that commission can permit participation of a consumer or associations to represent the interest of the consumers. However, the question which begs the attention is whether Regulation 45 of the CBR can be pressed into service or mechanically imported in a proceedings concerning payment dispute under P.P.As which essentially falls under approval for procurement process or adjudicatory jurisdiction under Section 86 (1)(b) or 86(1)(f), as the case may be. The answer to the said question could be straight forward and simple. It cannot go through

the labyrinth of consumer protection as a concept as a whole and it can be analysed only with reference to the narrow confines of the rights on the part of the member of a public to represent the consumers at large under the scheme of Electricity Act 2003. This is for the reason that the Hon'ble Supreme Court has clearly held that the wider concept of locus standi cannot be imported for deciding the rights under a statute. If we are to take a position that the statutory provisions under the Electricity Act, 2003, have to give way to public interest, we will be falling in error as it would go against the ratio of Hon'ble Supreme Court in Northern Plastics. Though the Hon'ble Supreme Court, in the said case, was dealing with the question of right appeal under the Customs Act vis-a-vis the concept of wider locus standi under Article 226 and 32 of the Constitution of India, the same analogy applies mutatis mutandis to the instant case as it perfectly fits the present case, the only distinction being that the present case involves no appeal but one involves initiation of original proceeding.

12.15 It is to be further observed that the public interest litigation, as such, is alien to the Electricity Act, 2003 and there is nothing in the Act which provides an exclusive right to agitate public interest except for Regulation 45 of the TNERC Conduct of Business Regulation. Here again, it is to be held categorically that the limited rights conferred by Regulations 45 cannot be seen as an omnibus right to move the Commission in regard to anything consumer centric. The said Regulation cannot be given an expansive meaning to bring within its purview anything of public interest so as to lay a strong footing for intervention of any one in any case in the garb of public interest. It should be

understood only in a limited sense to enable the participation of consumers in a purely consumer related affairs such as retail tariff fixation and so on and by no stretch of imagination can its frontiers be opened up for unlimited public intervention. If too much is read into Regulation 45 as canvassed by the petitioner its scope would be expanded to such an extent that any person would acquire *locus standi* to intervene in any matter and question every decision thereby stonewalling the statutory functions and virtually driving the statutory functions to a standstill.

12.16 We are firmly convinced that the intent of Regulation 45 is not to give wide scope for intervention in consumer related matter. It is very much necessary that care is being taken to ensure that it does not unduly extend its tentacles to other provision of the Act and stultify them. In the present case, the issues are sought to be raised with reference to a PPA entered between a generator and the licensee which falls under section 86(1)(b) or 86(1)(f) as the case may be. In the normal course, for initiation of proceedings only either of these two namely, generator or licensee can move the Commission for remedy. If any other person or entity is permitted to intervene in a matter concerning PPA merely on the strength of Regulation 45, it would subject the provision of Sections 86(1)(f) and 86(1)(b) to the vagaries of Regulation 45 and would render both sections fragile which cannot be agreed to.

12.17 We have to also observe that the Commission, on a similar occasion in the past rejected the *locus standi* of the very same petitioner to intervene in M.P.No.35 of 2015

concerning the power purchase under Section 63 of the Act. The relevant excerpts of the said decision read as follows.

*“4.7. The present one is a public interest petition which questions the proceeding before the Commission in a dispute between a generator and a distribution licensee. The Electricity Act 2003 does not envisage participation of third parties in a dispute between a generator and a distribution licensee under Section 86 of the Act. In view of the above facts, the present petition is liable to be dismissed as not maintainable and accordingly the above MP 35 of 2008 is dismissed without costs.”*

12.18 In view of the above, we see no reason to take a different stand now. The present order is only to reiterate with more conviction that public interest litigation is alien to Electricity Act and the statutory authorities have to act only within the boundaries set out under the relevant provisions. Importantly, in the case of Northern Plastic Vs Hindustan Photos Films Limited the *locus standi* of even instrumentality of State i.e., Hindustan Photos Films and Union of India was rejected on the strength of explicit provision in the statute for appeal thereby refusing to import the wider concept of public interest litigation into the statutory scheme. To entertain the proceedings set in motion by an association in the present case which is remotely associated with dispute resolution postulated under Section 86(1)(f) of the Electricity Act, 2003 or 86(1)(b) or Act which deals with power procurement process would defeat the very object of the Electricity Act, 2003.

12.19 It bears no repetition to state here that the intervention of a third party in a proceedings, is a creature of statute i.e., subordinate legislation under Regulation 45 of

the Conduct of Business Regulation and the same is circumscribed by Sections 86(1) (b) and 86(1)(f) the Electricity Act, 2003 there being no scope for importing the larger canvass made for public interest. Regulation 45 cannot be seen as an endorsement for public litigation. Without a specific provision for intervention by an association under Electricity Act 2003, we cannot agree to any intervention by third person in a case which purely pertains to Dispute Resolution or power procurement. Regulation 45, as it stands, may look glamorous at the first blush for impleading any one in any manner, in the matter of consumer interest but it falls short of according imprimatur to a full scale public interest litigation. The language of same is more of a suo moto permission on the part of the Commission to be accorded for larger participation of consumer in the tariff determination exercise rather than a vested right to move the Commission for relief in all areas. Hence, the said Regulation, in our view, cannot be of aid or succour to the petitioner herein as its ambit is very limited.

12.20 Based on the preceding discussion and aforementioned findings, this Commission decides that the contention of the respondents that this Commission lacks inherent jurisdiction to take cognizance of the issue raised in the main petition has substance. As a corollary this Commission has to necessarily come to the irresistible conclusion that the main petition preferred by the petitioner is not maintainable under law and facts.

12.21 Accordingly the preliminary issue formulated by this Commission is decided against the petitioner.

In the result the petition preferred by the petitioner is dismissed as not maintainable under law. No order as to costs.

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

(Sd.....)  
Member

/True Copy /

**Secretary**  
**Tamil Nadu Electricity**  
**Regulatory Commission**