

COURT - I

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

**APPEAL NO. 71 OF 2017 & IA No. 105 of 2017
APPEAL NO. 72 OF 2017 & IA NO.107 OF 2017
APPEAL NO. 73 OF 2017 & IA NO. 103 OF 2017**

Dated: 16th May, 2017

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

In the matter of :

**M/s Kamuthi Renewable Energy Ltd. ...Appellant(s)
Vs.
Tamil Nadu Electricity Regulatory Commission & Ors. ...Respondent(s)**

Counsel for the Appellant(s) : Ms. Poonam Verma
Ms. Nishtha Kumar
Counsel for the Respondent(s) : Mr. Sethu Ramalingam for R-1
Mr. S.Vallinayagam for R-2 to R-4

APPEAL NO. 72 OF 2017 & IA NO.107 OF 2017

In the matter of :

**M/s. Ramnad Solar Power Ltd. ...Appellant(s)
Vs.
Tamil Nadu Electricity Regulatory Commission & Ors. ...Respondent(s)**

Counsel for the Appellant(s) : Ms. Poonam Verma
Ms. Nishtha Kumar
Counsel for the Respondent(s) : Mr. Sethu Ramalingam for R-1
Mr. S.Vallinayagam for R-2 to R-4

APPEAL NO. 73 OF 2017 & IA NO. 103 OF 2017

In the matter of :

**M/s Adani Green Energy (Tamil Nadu) Ltd. ...Appellant(s)
Vs.
Tamil Nadu Electricity Regulatory Commission & Ors. ...Respondent(s)**

Counsel for the Appellant(s) : Ms. Poonam Verma
Ms. Nishtha Kumar

Counsel for the Respondent(s) : Mr. Sethu Ramalingam for R-1
Mr. S.Vallinayagam for R-2 to R-4

ORDER

Since all these matters are similar and involve the same issue, they can be disposed of by this common order.

The Appellants in the above appeals have challenged file noting/order dated 20.10.2016 signed by the Secretary and two other officers of the Tamilnadu Electricity Regulatory Commission (“**the State Commission**”). The file noting reads as under:

“The Petition has been filed u/s.86(1)(f) of the Electricity Act, 2003 and the prayer is to stop backing down instructions and compensation due to backing down instructions. Thus, it is a dispute between licensee and Generating Company. Hence, this has to be classified only as D.R.P. Further a similar petition praying for “Must Run” status for wind filed by Green Infra (D.R.P. No.28/2012) has been classified as D.R.P. Therefore, comply within 15 days.”

The above file noting has been treated by the Appellants as an order. Learned counsel for the Appellants submitted that in the impugned file noting/order , it is observed that the petitions are filed under Section 86(1)(f) of the Electricity Act (“**the said Act**”). The statement is not correct because the petitions are also filed under Section 86(1)(e) of the said Act.

Counsel submitted that the impugned noting/order wrongly converts the petitions filed by the Appellants involving regulatory powers into dispute resolution petitions ignoring the settled position of law which is in favour of the Appellants.

Counsel for the State Commission has taken a preliminary objection to the maintainability of the appeals. He submitted that the file noting is not an order. He has drawn our attention to the TNERC (Conduct of Business) Regulations, 2004 (“**the said Regulations**”). He has taken us to Regulations 20(5), (6), (7) and (8), which read thus:

“20. Presentation and security of the pleadings, etc.

- (1) xxx
- (2) xxx
- (3) xxx
- (4) xxx
- (5) *The designated officer may decline to accept any petition which does not conform to the provisions of the Act or the Regulations or directions given by the Commission or otherwise defective or which is presented otherwise than in accordance with the Regulation or directions of the Commission. Provided no petition shall be refused for defect in the pleadings or in the presentation, without giving an opportunity to the person filing the petition to rectify the defect within the time which may be given for the purpose. The designated officer shall advise in writing the person filing the petition of the defects in the petition filed and it shall be the responsibility of the person filing the petition/application to rectify the discrepancies*

pointed out by the designated officer within the prescribed time.

- (6) A person aggrieved by any order of the designated officer in regard to the presentation of the petition may request the matter to be placed before the Secretary of the Commission for appropriate orders.*
- (7) The Chairperson or any Member designated by the Chairperson for the purpose, shall be entitled to call for the petition presented by the party and give such directions regarding the presentation and acceptance of the petition as considered appropriate.*
- (8) If after scrutiny, the petition is accepted by the Secretary or by the Chairperson or the Member of the Commission, the petition shall be duly registered and given a number in the manner to be specified by the Commission. Petition thus registered shall be placed before the Commission for admission.”*

Counsel submitted that as per these provisions, if a designated officer declines to accept any petition, the Secretary of the Commission may be requested to place the file before the State Commission and the State Commission can decide the maintainability. In response to the above contention, counsel for the Appellants states that the Appellants had requested the Secretary to place the matter before the State Commission, however the request was not entertained.

We have perused the relevant Regulations, quoted above. As per Regulation 20(6), a person aggrieved by any order of the designated officer in regard to the presentation of the petition may request the matter to be placed before the Secretary of the Commission for appropriate orders. We

notice that the impugned file noting/order is signed by the Secretary himself and two other officers. Therefore, there is no question of the matter being placed again before the Secretary. As per Regulation 20(7), the Chairperson is entitled to call for the petition presented by the party and give such directions regarding the presentation and acceptance of the petition as considered appropriate.

In view of these provisions, without going into the question whether file noting is order or not, in the interest of justice, we direct the Secretary to place the petitions before the Chairperson at the earliest. One of the grievances of the Appellants is that in a similar matter filed by the National Solar Energy Federation of India, the State Commission has admitted the petition. We are not expressing any opinion on this submission, but in the peculiar facts of these cases and without making it a precedent, we direct the Chairperson of the State Commission to hear the counsel for the Appellants and pass appropriate orders. The entire exercise be conducted within a period of two months from the date of receipt of this order. We have not expressed any opinion on the merits of the case. The appeals are disposed of in the aforestated terms.

In view of the disposal of the appeals, the connected IAs do not survive and are disposed of as such.

(I. J. Kapoor)
Technical Member
ts/kt

(Justice Ranjana P. Desai)
Chairperson