

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

**Appeal No. 36 of 2009**

Dated: 18<sup>th</sup> August, 2009

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson  
Hon'ble Mr. Mahesh B.Lal, Technical Member**

**IN THE MATTER OF :**

**Indraprashtra Gas Ltd.  
IGL Bhawan, Plot No. 4  
Community Centre  
RK Puram, Sector-9  
New Delhi**

**... Appellant (s)**

**Versus**

**Petroleum & Natural Gas Regulatory Board  
1<sup>st</sup> Floor, World Trade Centre  
Babar Road  
New Delhi – 110 001**

**... Respondent (s)**

Counsel for the Appellant(s) : Mr. K.K. Rai, Sr. Advocate  
Mr. S.K. Pandey, Advocate

Counsel for the Respondent (s): Mr. J.S. Sinha, Advocate  
Mr. Vikas Malhotra, Advocate

**JUDGMENT**

**Per Justice M. Karpaga Vinayagam, Chairperson**

1. Indraprashtra Gas Ltd. is the Appellant herein. Challenging the Clause 1.4.2.1(b) of the bid document dated 03.11.2008 and the order dated 26.02.2009 in clarification of the terms of the said bid document dated 03.11.2008 issued by the Petroleum & Natural Gas Regulatory Board, this

appeal has been filed. The short facts leading to this Appeal are given below:

- (i) The Indraprastha Gas Ltd. was incorporated to implement the City Gas Distribution (CGD) Project in December 1998. It is authorized and operational in the implementation of the city gas distribution project in the National Capital Territory of Delhi since its inception in the year 1999.
- (ii) The Petroleum & Natural Gas Regulatory Board (the Respondent herein) published the bid on 23.10.2008 for the grant of authorization for laying, building, operating etc. for the city gas distribution network in respect of 6 cities including Meerut and Sonapat.
- (iii) On 03.11.2008, the Respondent Board issued a bid document providing for the various qualifications to bid for getting the authorization in respect of those cities. The bid submission date was also fixed. A total of 46 bids were sold to 21 entities. The Indraprastha Gas Ltd., the Appellant herein, has purchased two bids on 06.11.2008 for the areas Meerut and Sonapat.
- (iv) The Appellant has been doing the city gas distribution network for the past 10 years and it was authorized to do it by the Central Government. The Appellant furnished this information to the

Respondent Board for acceptance of the Central Government authorization for Delhi city gas distribution network (NCT of Delhi). The Respondent accordingly accepted the said authorization on 09.01.2009.

- (v) As per Clause 1.4.2.1 of the bid document, the combined net worth of the entity alongwith its promoters to be considered for qualification for any bid shall be assessed after setting off net worth required, as per the following priority, in line with the Clause (e) of Sub-section 6 to Regulation 5 of the Petroleum Regulations 2008.

(a) CGD networks already granted authorization in the past 24 months or being considered for grant of authorization under the Regulation 18(1).

(b) CGD net works bare authorization granted by the Central Government as furnished by the entity under Regulation 17(1) have been accepted in the past 24 months or are under consideration for acceptance by the Petroleum Board.

- (vi) Since Clause 1.4.2.1 of the bid instruction provides for setting off of the net worth in respect of the existing city gas distribution companies authorized by the Central Government like the Appellant, the Appellant sent a request letter to the Board on

11.02.2009 seeking clarification from the Respondent Board regarding the above-mentioned Clause and indicating that setting off of the net worth requirement should not be made applicable to the Appellant, which has already invested the net worth in Delhi project. There was no reply. Since Appellant did not receive any response from the Respondent to its letter dated 11.02.2009, the Appellant wrote another letter dated 23.02.2009 to the Respondent Board repeating the request. Responding to this letter, the Respondent Board sent the impugned letter dated 26.02.2009 giving some particulars as clarifications. As his request through the letter dated 11.02.2009 and 23.02.2009 has not been heeded to by the Respondent Board, the Appellant has filed this Appeal No. 36 of 2009 challenging both bid document dated 03.11.2008 and impugned order dated 26.02.2009 under Section 33 of the Petroleum Act.

2. Mr. K.K. Rai, the learned senior counsel appearing for the Appellant would urge the following contentions:

- (i) Through the bid condition in Clause 1.4.2.1(b) of the bid document dated 03.11.2008, the Appellant has been asked to set off his net worth in respect of the Delhi project inclusive of the implementation

of its ongoing Delhi gas project even though it is having 10 years of experience in undertaking CGD Network projects in Delhi. This Clause is prejudicial to the interests of the existing city gas distribution companies like the Appellant. It has already got the authorization granted by the Central Government much prior to the appointed date of the constitution of the Board which was on 01.10.2007. Despite this, the bid Clause condition prevents the expansion plan of the Appellant for the other areas from Delhi where already huge investments have been made.

- (ii) The impugned bid Clause prescribing setting off of net worth criteria is contrary to the Regulation 5(6)(e) of the Petroleum & Natural Gas Regulatory Board Regulations 2008 under which it is framed as the said Regulation has not prescribed such criteria for setting off of the net worth of any entity.
- (iii) This particular bid Clause provides that it applies to existing city gas distribution companies only under Regulation 17(1) authorized by the Central Government. On the other hand, this is not made applicable over the new entrants who are in non-city gas distribution business under Regulation 18. Therefore the impugned bid Clause is arbitrary in nature as it treats unequals as equals.

- (iv) The Respondent Board's act of setting off of the total net worth of the Appellant with regard to its Delhi net worth is contrary to its own rationale of having the impugned clause. Even according to the Board, as per the Clause, an entity reaches a break even point after 24 months of its operation, the criteria of set off of the net worth is not applicable to it. When such being the case, the Appellant which is operational in Delhi for more than 10 years, cannot be made applicable to the setting off its net worth of the project at Delhi. The authorization letter issued by the Government of India is dated 15.5.2008 and the same was produced before the Board on 09.01.2009 which has been accepted. The Respondent Board instead of treating the Appellant as an authorized entity through the authorization by the Central Government granted much prior to the date of constitution of the Respondent Board wrongly treated 09.01.2009 as the date of acceptance of authorization and consequently made Clause 1.4.2.1(b) providing for the setting off of the net worth applicable to the Appellant as if authorization was made within 24 months. This is arbitrary. Therefore, both the bid document dated 03.11.2008 and the clarification letter dated 26.02.2009 are liable to be quashed.

3. In reply to the above contentions, the learned counsel for the Respondent would make the following submissions:

- (i) This Appeal is not maintainable under Section 33 of the Petroleum & Natural Gas Regulatory Board Act as this section would provide for the Appeal only when the order or a Decision is challenged. Neither the bid document containing Clause 1.4.2.1 which was issued on 03.11.2008 nor the clarificatory letter dated 26.02.2009 would amount to the order or Decision of the Board after adjudication. The bid document was issued only in consonance with the Regulations. Therefore, the same cannot be challenged in the light of the decision rendered by the full Bench of this Tribunal in Appeal No. 114 of 2005 dated 09.11.2005 in M/s. Neyveli Lignite Corporation Ltd. case holding that the Regulations framed under the Act and issued by the Board are in the nature of subordinate legislation and as such validity of those Regulations fall outside the purview of this Tribunal. The Supreme Court also has given a ruling on the same point in 2002 Vol. 8 SCC 715.
- (ii) The setting off criteria of net worth is mainly to ensure that the infrastructure for the transport and distribution of the natural gas is developed as expeditiously as possible so that the gas or fuel

reaches all the targeted customers in the most efficient and effective manner. If a company has undertaken another project in some other city like Delhi, his net worth at Delhi should not be taken into account for deciding the net worth to undertake the similar project in Meerut or Sonapat as the Board feels that the project in question would suffer due to lack of funds. This Clause was introduced only to ensure timely development of city gas distribution network in that particular area.

- (iii) The Regulations 17 and 18 cover the existing entities differently. While Regulation 17 deals with the entities which have been authorized by the Central Government prior to the appointed date, i.e., 01.10.2007 the date of the constitution of the Petroleum Board, the Regulation 18 provides for the detailed feasibility report with reference to the geographical area claimed in addition to the minimum 35% of the physical progress and financial commitment. The criterion adopted in Regulation 18 is not applied to entities under Regulation 17 which would normally be having a significantly higher liability in terms of the obligation and in terms of the minimum infrastructure and connections during the exclusivity period. Therefore, there is no discrimination.



- (iv) It is true that the net worth setting off criteria does not apply to cases where the authorization has been given by the Board 24 months earlier. This means the net worth setting off clause would apply only to cases where authorization has been given by the Board within the period of 24 months. The purpose behind putting these conditions only to those entities is that the project which has been authorized 24 months earlier is expected to reach a break even point by then and thus the financial constraint on the entity is expected to come down. For the purpose of reckoning the date of authorization, the relevant date would be the date on which Board grants authorization or passes an order of acceptance to an entity for any project. The date of authorization by the Central Government has no relevance for fixing the criteria with regard to the net worth setting off. What is material for the present bid is not the Appellant's existence for the last 10 years, but the material is the date on which the entity gets authorization from the Board for any city gas distribution network.
- (v) From the figures available with the Board it is clear that the Appellant who has taken up their project in Delhi has not yet completed the said project. The Appellant has completed in the last 10 years in Delhi only 1.32 lakh domestic gas

connections and the Appellant has committed itself to complete the remaining 1.05 lakh domestic gas connections within next three years. In order to achieve those targets, the Appellant will have to invest substantially. In such an event, it would be difficult for the Appellant to undertake the current projects as the same will burden it financially.

- (vi) In case the net worth is not available with the Appellant, it can still bid and qualify in case a letter of comfort is submitted by the promoters of bidding entity. This is evident from the reading of Clause 1.4.2.1(b) which provides the combined net worth of the entity along with its promoters to be considered for any bid.

4. We have heard and given our meticulous consideration to the contention of either side and also gone through the authorities referred to by both the Counsel.

5. The Appellant has sought for quashing the bid document Clause No. 1.4.2.1(b) dated 3/11/08 and also for quashing the letter issued by the Board on 26/2/09.

6. The main ground on the basis of which the above prayers have been sought for by the Appellant is that the bid condition providing for setting off net-worth of the Appellant invested in his CGD project in Delhi would affect

his right of participating and being a successful bidder in the bid initiated by the Board in respect of the two cities viz. Meerut and Sonapat.

7. The short question that arises for consideration is as to whether Clause 1.4.2.1(b) of the bid document dated 3/11/08 is arbitrary, affecting the right of the Appellant and is in violation of the PNGRB Regulations 2008.

8. According to the Ld. Counsel for the Appellant, the said condition in the bid document dated 3/11/08 is not only contrary to the Regulations 2008, but is also in violation of the doctrine of level playing field and therefore, the said condition in the bid document as well as the order dated 26/2/09 passed by the Board justifying the said condition is not valid in law.

9. Before going into the validity of the bid conditions contained in Clause 1.4.2.1(b), it would be necessary to refer to the preliminary objection raised by the Ld. Counsel for the Respondent with reference to the maintainability of the Appeal.

10. The Ld. Counsel for the Respondent contended that Section 33 of the PNGRB Act would provide for Appeal only as against an Order or a decision made by the Board, and in this case, neither the bid document dated 3/11/08, nor the clarificatory letter dated 26/2/09 issued by the Board could be termed either as an Order or a Decision by the Board after adjudication and hence, the Appeal is not maintainable.

11. In reply to this, the Ld. Senior Counsel for the Appellant would contend that since the bid condition document dated 3/11/08, providing setting off of net worth criteria, the letter dated 26/2/09 would affect the rights of the Appellant in the matter of its bidding prospects for the CGD projects in question, it becomes an order passed or Decision taken by the Board and hence the same can be challenged in the Appeal under Section 33 of the Act.

12. The Ld.Counsel for the Appellant would cite the following authorities to indicate the maintainability of the Appeal as well as the powers of this Tribunal to deal with this issue. The said authorities are as under:

- i. Onslow v. Commissioners of Inland Revenue 25 QBD 465 (page no.2);
- ii. Shri Radhey Shyam v. Shyam Behari Singh (1970) 2 SCC 405 (page nos. 8-9, para 5 and 7);
- iii. Shankarlal Aggarwala and Others v. Shankarlal Poddar and Ors. AIR 1965 SC 507 (pg. nos. 11-12, paras 5 & 7);
- iv. Tamilnad Mercantile Bank Shareholders Welfare Association (2) v. S.C.Sekar and Ors. (2009) 2 SCC 784 (pg. nos. 32-34 paras 33, 34, 39 and 40); and
- v. G.P.Mathur and Ors. v. State of Rajasthan and Ors. (1987) 5 ATC 299 (pg. nos. 43-44 paras 5 and 6).

13. On behalf of the Respondent, the following authorities have been cited:

- i. Shiv Shakti Co-op. Housing Society, Nagpur v. Swaraj Developers & Ors. (2003) 6 SCC 659 (paras 29 and 31);
- ii. State of Gujarat v. Salimbhai Abdulgaffar Shaikh & Ors. (2003) 8 SCC 50 (paras 10 and 11);
- iii. Tirupati Balaji Developers (P) Ltd. & Ors. v. State of Bihar & Ors. (2004) 5 SCC 1 (paras 10 and 11);
- iv. Neyveli Lignite Corporation Ltd. v. Tamil Nadu Electricity Board & Ors.; and
- v. West Bengal Electricity Regulatory Commission v. CESC Ltd. (2002) 8 SCC 715.

14. On a perusal of all the above-cited decisions, it is clear that various principles have been laid down by the Hon'ble Supreme Court to get the meaning of the word 'Order' or a 'decision' which is appealable. The crux of the decisions would indicate that the Judgment or Order passed by the subordinate authority must reflect the decision on a particular issue after adjudication and analysis of various aspects of the said issue.

15. In this case, one of the conditions of the bid document dated 3/11/08 has been questioned which is pertaining to the clause on setting off of net worth criteria by the Appellant on the ground that the said clause would affect the bidding prospects of the Appellant, who has invested his huge net worth in similar CGD projects in Delhi.

16. As a matter of fact, the bid document was issued on 3/11/08. It was informed through the publication that the last date for sale of bids was 22/2/09 and the last date for submission of bids was 3/3/09. These bids are

with reference to the CGD programme in six cities. On coming to know of the above sale of bids, the Appellant purchased two bids for two cities viz. Meerut and Sonapat on 6/11/08. After submission of the said bid document to the Board, the Appellant sent letters dated 11/2/09 and 23/2/09, seeking a clarification of the condition imposed in Clause 1.4.2.1(b) with a request that the criteria for setting off the net worth should not be made applicable to IGL, the Appellant. Since a positive response was not shown by the Respondent, the Appellant has filed the Appeal challenging the bid document on the ground that the bid condition imposed by the Board would affect his bidding prospects in the projects in question.

17. According to the learned senior counsel appearing for the appellant since the bid conditions, affecting appellants bid prospects in the project in question amount to the order or decision the Appeal is maintainable under Section 33 of the Act, We are unable to persuade ourselves to accept the contention of the Appellant to the effect that the bid condition namely 1.4.2.1(b) which is the subject matter of the challenge in this Appeal would satisfy the ingredients of either the Order or a Decision as contemplated under Section 33 of the Act. As in our view the bid condition cannot be construed to be in order or decision as the same was not passed or taken on the particular issue after adjudication and analysis of the various aspects of the said issue as laid down by the Hon'ble Supreme Court in various decisions.

18. However, it is pointed out that the bid document was issued on 03.11.2008 and only on knowing the nature of the bid condition referred to above contained in the bid document, the Appellant purchased two bids on

06.11.2008 and having accepted all those conditions contained in the documents the appellant submitted those documents to the Board to compete the bid process as one of the bidders. Having accepted those conditions and having submitted those bid documents after giving full particulars in bid documents the Appellant has now chosen to challenge the bid conditions before this Tribunal. Admittedly, the bid document is issued on 03.11.2008 and the same were purchased by the Appellant on 06.11.2008 and thereafter the appellant submitted those documents to the board for consideration. It is noticed that the present Appeal has been filed only on 02.03.2009 before this Tribunal, long after submission of bid documents after agreeing to abide by the said conditions.

19 It is further contended by the learned counsel for the Respondent Board that even assuming that bid document is an Order or Decision by the Board after adjudication even then the present Appeal is not maintainable on the ground that the bid condition which was imposed on the bidders by the Board cannot be questioned in this Appeal before this Tribunal.

20. Let us consider this aspect on the basis of the submission made by the parties. The learned senior counsel appearing from the Appellant questioning the validity of the bid conditions Clause 1.4.2.1(b) would make following contentions:

1. The clause 1.4.2.1(b) is in violation of the Petroleum Regulations 2008 and therefore, the condition to set off net worth put in the said Clause are arbitrary.

2. Clause 1.4.2.1(b) of the bid document prescribing the setting off net worth criteria affecting the right of the Appellant which has got more experience in undertaking similar projects than others in other areas is discriminatory and in violation of the doctrine of level-playing field, where unequals are treated as equals.

21. In reply to these contentions the learned counsel for the Respondent Board would strenuously contend that the bid document was issued by the board on the basis of the Regulations and, therefore, this Tribunal may not have jurisdiction to go into the validity of the bid conditions contained in the bid documents, as laid down by the Full Bench of this Tribunal as well as by the Hon'ble Supreme Court.

22. According to the Ld. Senior Counsel for the Appellant, the Regulation do not provide for net worth blocking of existing entities authorized by the Central Government like the Appellant, while the said bid clause does so as such the bid condition is contrary to Regulations.

23. While analyzing this issue, it would be appropriate to refer to both the bid condition contained in the bid document as well as the relevant Regulations. The relevant clause of the bid document is Clause 1.4.2.1(b). We will now refer to the entire clause, comprising from (a) to (d) which are as follows:

**Clause 1.4.2.1:**

**“The combined net-worth of the entity along with its promoters to be considered for qualification for any bid shall be assessed**



after 'setting off net worth' required as per the following priority in line with the Clause (e) of sub-regulation (6) of Regulation 5 of the Petroleum Regulations 2008:

- (a) CGD networks already granted authorization in the past 24 months or being considered for grant of authorization under Regulation 18(1).
- (b) CGD networks where authorizations granted by the Central Government as furnished by the entity under Regulation 17(1) have been accepted in the past 24 months or are under consideration for acceptance by the PNGRB.
- (c) CGD networks already granted authorization in the past 24 months through the bidding process.
- (d) CGD networks bid by the entity where grant of authorization by the PNGRB is still in process.”

The entity is to state in Annexure-11 of the CGD networks falling under each of the above categories along with the net worth requirement for individual cases. The time period of 24 months as stated above shall be counted from the last date of bid submission.

The financial bid of an entity shall be opened only after adequate net worth is available in line with the above criteria. The

**consequences of opening of bids shall be entirely as per the discretion of the PNGRB and no request from the entity about the opening of a particular bid before other bids submitted by him will be entertained.**

**Restoration of the set-off of the net worth as provided above shall be done as and when the CGD network cases being considered under bidding regulation 17(1) and 18(1) are rejected.**

A reading of the entire Clause 1.4.2.1(a) to (d) makes it clear that the setting off net worth condition is applicable to all the categories which fall under sub-clause (a) to (d), inclusive of sub-clause (b).

24. According to the learned Counsel for the Appellant, this setting off net worth condition is contrary to the relevant Regulation i.e. 5(6)(e) of Regulations 2008. Let us now see Regulation 5(6)(e):

**(e): “the entity has adequate financial strength to execute the proposed project, operate and maintain the same in the authorized area and shall meet the following financial criteria to qualify for bidding for a ‘single’ CGD network namely:**

Tier	Population in the authorized area as per Census of India, 2001 or other published records of the Central or the State Government, whichever is higher	Minimum combined net worth (*) of the entity along with its promoters available for investments in a single CGD Network duly supported by letter of comfort from promoters.
(1)	(2)	(3)
I	5 million or more	Rs. 1500 million for a population of 5 million and proportionately higher for population of more than 5 million (\$)
II	1 million or more but less than 5 million	Rs. 1000 million
III	0.5 million or more but less than 1 million	Rs. 500 million
IV	0.25 million or more but less than 0.50 million	Rs. 250 million
V	0.1 million or more but less than 0.25 million	Rs. 100 million
VI	Less than 0.1 million	Rs. 50 million

**(\*) Combined net worth (equity share capital plus free reserves, but excluding revaluation reserves) to be adequately represented by cash funds which shall be available as bridge finance and as promoters equity contribution in the project as certified by a Chartered Accountant based on the latest financial position of the entity and its promoters. The promoters undertaking, in the form of a letter of comfort, stating that promoters' financial contribution in the project shall be converted into equity share capital within three months of the date of grant of authorization must accompany the application.**

**(\$)** For example, if the population is 12 million, then the combined net worth shall be equal to a minimum of Rs. 3600 million (i.e. Rs. 1,500 million X 12/5)

25. A reading of the above Regulation would reveal that this Regulation has been framed by the Board in order to ensure that the entity has to have adequate financial strength to execute the proposed project, so as to qualify for bidding for a Single CGD network and such prescribed financial criteria is based on the population in the authorized area as per the Census of India 2001.

26. The combined net worth is the equity share capital plus free reserve but excluding the revaluation reserves to be adequately represented by cash funds, which shall be valid as bridge finance and as promoters' equity contribution in the project based on the latest financial position of the entity and its promoters. It also provides that the successful bidder must meet the required financial criteria for a Single CGD network.

27. A conjoint reading of the bid condition 1.4.2.1(b) and the Regulation 5(6)(e) would disclose that the condition of setting off net worth has been provided with the objective that the successful bidder must meet the required financial criteria for a 'Single' CGD network as referred to in Regulation 5(6)(e) required for completion of CGD networks already authorized or finances required for completion of 'single' CGD network authorized by the Board.

28. As stated above, it cannot be debated that the above condition is uniformly applicable to all the four categories of bidders as specified under (a) to (d) of Clause 1.4.2.1(b) and not to the Appellant alone who falls under (b).

29. According to the learned Counsel for the Respondent, the aim and objective is to ensure that successful bidder has the satisfactory financial capability to execute the work to be awarded under the bid without overstretching or putting any strain on their finances which are good enough to execute and complete the CGD networks already authorized by the Board in the past 24 months. It is also pointed out that the Board framed this Clause 1.4.2.1(b) along with the other sub-clauses (a), (c) and (d) only after due deliberations, keeping in view the larger public interest and to ensure timely and effective completion of the bid work in the question of laying, building and operating the CGD networks in different cities which includes Meerut and Sonapat, for which the Appellant is one of the bidders. It is also pointed out that this bid document is in consonance with the Regulations and therefore, the same cannot be challenged as held by the Supreme Court.

30. Thus, it is noticed that it is the specific stand of the Respondent that the bid condition imposed not only on the Appellant but on all the four categories i.e. (a) to (d) of Clause 1.4.2.1 and the same is in consonance with the aim and objective as enshrined in Regulation 5(6)(e) of the Regulations 2008.

31. Though the learned senior counsel appearing for the Appellant states that the bid condition contained in the bid document is contrary to the Regulation we are not inclined to go into the validity of the said bid condition particularly, when the Board has taken a stand that the bid condition contained in the bid document was issued taking into

consideration the public interest and also keeping in view of the object of the Clause (5)(6)(e) of the Regulations 2008.

32. According to the learned counsel appearing for the Respondent board, the CGD network is capital intensive project and the selected entities are required to invest huge amounts for laying the pipelines to reach all the charge areas and the cash inflows in the project will be very high and in order to verify as to whether the interested parties have adequate financial strength to execute their current commitment setting of net worth criteria has been introduced in the bid document through Clause 1.4.2.1.

33. The Ld. Counsel for the Respondent would cite an example. According to him, a company with a net worth of Rs. 1000 crores can be awarded a contract of only one city where the investment required is Rs. 1000 crores, but on the very same amount, the said company would/should not be awarded a CGD contract in six cities simultaneously, with each requiring an investment of Rs. 1000 crores.

34. It is further pointed out that the Appellant has already taken up a CGD project in Delhi, and it has been verified that the Appellant has not yet completed this project fully. As per the figures available with the Respondent Board, the Appellant has completed around 132 lakh domestic connections in the last ten years in Delhi, whereas it has committed itself to complete the balance 1.05 lakh domestic gas connections within the next three years, which is quite substantial.

35. In light of the above statements made by the learned counsel for the Respondent Board which is not denied by the Appellant we feel that it may not be proper for us to go into the question of the validity of the bid conditions of the bid document which was stated to be issued under the Regulations and in the public interest as the same is not permissible under Law as laid down by the Full Bench of this Tribunal in Appeal Nos. 104 of 2005 and 105 of 2005 in the case of Neyveli Lignite Corporation Vs. Tamil Nadu Electricity Board and also by the Hon'ble Supreme Court in 2002(8) SCC 715 in the case of West Bengal Electricity Regulatory Commission Vs. CESC Ltd. Accordingly, we reject the first point urged by the learned Senior Counsel for the Appellant.

36. In light of the above conclusion we do not deem it appropriate to deal with the second point raised by the learned senior counsel appearing for the Appellant with reference to the question as to whether the bid condition is in violation of doctrine of level-playing-field.

37. With these observations the Appeal is dismissed as not maintainable. No order as to costs.

**(Mahesh B. Lal)**  
**Technical Member**

**(Justice M.Karpaga Vinayagam)**  
**Chairperson**

Dated: 18<sup>th</sup> August, 2009

REPORTABLE / NON-REPORTABLE