

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

Appeal No. 84 of 2008 & I.A. No. 112 of 2008

Dated: November 6, 2008

**Present: Hon'ble Mrs. Justice Manju Goel, Judicial Member
Hon'ble Mr. A.A. Khan, Technical Member**

Power Engineers Society of Tamil Nadu -Appellant(s)

Versus

Tamil Nadu Electricity Regulatory Commission & Ors -Respondent(s)

**Counsel for the Appellant(s) : Mr. S. Gandhi, President, Power Engineers
Society of Tamil Nadu**

Counsel for the Respondent(s) : -

ORDER

I.A. No. 112 of 2008

Reply has been received from the Union of India, Ministry of Power. The Union of India in its reply has made no effort to oppose the application for exemption from court fees and has not thrown light on the applicant's capability to bear the burden of the court fees. The reply only refers the Tribunal's power under Rule 55(3) of the Appellate Tribunal for Electricity (Procedure, Form, Fee and record of Proceedings) Rules, 2007, whereby the Tribunal has been empowered to waive the payment of court fee.

The applicants claim that, as per their balance sheet they do not have enough resources to pay the court fee of Rs. 1 lacs. The petitioners' have already been paid Rs. 10, 000 by way of court fee. In view of the absence of any opposition from the Union of India and balance-sheet produced by the petitioner, Power Engineers Society of Tamil Nadu, the prayer for waiver of court fee is allowed. The petitioner is exempted from paying court fee over and above Rs. 10, 000 which has already been deposited.

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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 share holding under section 187 (C) of the Companies Act, 1956 can be excluded for assessing whether the share holding 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 share holding 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 share holding 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 fulfill 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.

(A.A. Khan)
Technical Member

(Manju Goel)
Judicial Member