

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No.145 of 2011

Dated: 23rd May, 2012

**Present: HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM,
CHAIRPERSON,
HON'BLE MR. V J TALWAR, TECHNICAL MEMBER**

In the Matter of:

- 1) The Chairman, TNEB
Tamil Nadu Electricity Board
144, Anna Salai
Chennai – 600 002.**

- 2) Tamil Nadu Transmission Corporation Ltd,
Represented by its Director/Operation
144, Anna Salai
Chennai – 600 002.**

- 3) The Member(Generation)
Tamil Nadu electricity Board
144, Anna Salai
Chennai – 600 002.**

- 4) The Chief Engineer/PPP
Tamil Nadu Electricity Board
144, Anna Salai
Chennai – 600 002.**

.....Appellant(s)

Versus

1. **M/s Ind Barath Thermal
Power Ltd,
New No.20, Old No.129, Chamiers Road
Nandanam, Chennai-600 035.**

2. **Tamil Nadu Electricity
Regulatory Commission
(Represented by its Secretary)
No.19A, Rukmini Lakshmipathy Salai,
Egmore, Chennai-600 008.**

.....Respondents

**Counsel for the Appellant(s): Mr. R.Venkataramani, Sr.Adv
Mr. S Vallinayagam
Mr. Aljo K. Joseph
Mr. C. Kaliaperumal
(Representative)**

**Counsel for the Respondent(s):Mr. Rahul Balaji
Mr.T.Srinivasa Murthy for R-1
Mr. Senthil Jagadeesan
Mr.Krishna Dev**

JUDGMENT

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,
CHAIRPERSON**

1. The Tamil Nadu Electricity Board through its Chairman and other officers has filed this Appeal challenging the impugned order dated 20.4.2011 passed by the Tamil Nadu State Commission.
2. The short facts are as follows:-
 - i) The Appellant is the State Transmission Utility as well as a Transmission Licensee in the State of Tamil Nadu.
 - ii) M/s Ind Barath Thermal Power Ltd, the 1st Respondent, is a generating company which has established a generating station at Swaminatham, Tuticorin District, Tamil Nadu in two stages having two units of 150 MW each under stage I and another one unit of 150 MW under stage II of the project.
 - iii) Presently, the 1st Respondent generating company has another generating station Ind Barath Powergen Limited having three units of 63 MW each. This generating station is connected with 230 kV Meelavittan substation of the Appellant, which in turn is connected to 230 kV Chekkanoorani sub-station through a 230 kV S/C line on D/C towers.
 - iv) To evacuate power from its generating station at Swaminatham, the 1st Respondent Generating

Company proposed to lay a 230 kV D/C line to existing 230 kV substation at Meelavittan and stringing of 2nd circuit of 230 kV Meelavittan – Chekkanoorani S/c on D/c line.

- v) The above proposal of the Respondent Generating Company was not acceptable to the Appellant as it would cause transmission constraints beyond Chekkanoorani and additional system would have to be laid to diapers the power from Chekkanoorani substation.
- vi) The Appellant carried out load flow studies and proposed three alternatives to evacuate power from the generating station of the Respondent Generating Company. Finally, one of alternatives suggested by the Appellant was agreed upon by both the parties. The acceptable alternative involved the following lines:
 - a) 230 kV D/C line from the generating station to new Arupukkotai substation – 80 kM
 - b) 230 kV D/C line from generating station to Meelavittan substation – 6 kM
 - c) Stringing of 2nd circuit of existing 230 kV Meelavittan – Chekkanoorani line.

- vii) The Appellant has also proposed to carry out the above works at the cost of the Respondent Generating Company as deposit works.
- viii) The 1st Respondent Generating Company offered to bear the entire cost stringing of 2nd circuit of 230 kV Meelavatan – Chekkanoorani S/C on D/C line. However, the Appellant permitted the use of the free arm of this line for the purpose of stringing 2nd circuit on the condition that Respondent Generating Company would have share for the capital cost of the towers of the line incurred by the Appellant which forms part of the transmission network of the Appellant.
- ix) Aggrieved by this decision of the Appellant, the Respondent Generating Company filed a petition before the State Commission seeking for a direction to the Appellant to calculate the transmission charges or the wheeling charges for the system required for evacuation facility for the generator as per the Regulation-9 of Intra State Open Access Regulation, 2005. It is stated in the petition that the Respondent Generating Company proposed to sell power generated from its power plant outside the state of Tamil Nadu by utilising the transmission network of

the Appellant and that therefore the Respondent Generating Company required grid connectivity with the transmission system of the Appellant.

- x) The Appellant opposed this move by filing a counter explaining the various provisions of the Act regarding the non feasibility of different course of action.
- xi) After hearing both the parties, the State Commission passed the impugned order issuing the following direction to the Appellant:-

“Transmission Licensee has to construct the dedicated transmission line and recover the charges from generator as per Clause 9(1)(b) of the Intra State Open Access Regulation, 2005. Alternatively, if the generator consents, the Transmission Licensee may construct dedicated transmission line as a deposit work.”

- xii) This impugned order had been passed on 20.4.2011. Thereupon, the Respondent Generating Company by the letter dated 29.4.2011 informed the Appellant that they would not propose to give consent for construction as a deposit work and called upon the Appellant to construct the dedicated transmission line as directed by the State Commission.
- xiii) Hence, the Appellant, feeling aggrieved over the direction issued by the State Commission that the

Appellant shall construct the dedicated transmission line and recover charges from the generator as per Regulations, 2005, has filed this Appeal.

3. According to the Appellant, It is the duty of the Generating Company (R-1) to establish, operate and maintain the dedicated transmission lines.
4. The Appellant has further contended that the proposed transmission lines are required for evacuation of power from the generating station of the Respondent as such these lines are 'Dedicated Transmission lines' as defined in the 2003 Act. It is further pointed out that Section 10 of the 2003 Act mandates generating company to establish dedicated transmission line and as such, the State Commission has wrongly relied upon State Commission's Intra State Open Access Regulations, 2005 and issued the impugned directions ignoring the fact that the said regulations are subordinate legislation and, therefore, cannot over ride the substantive provisions of the parent Act i.e. 2003 Act,
5. On the contrary, it is the contention of the Generating Company (R-1), that it is the duty of the Appellant as STU and Transmission Licensee in the State of Tamil Nadu, to construct the said transmission system. It is further contended by the Respondent Company that Section 10

of the 2003 Act, opens with the wordings 'subject to the provisions of the Act' and so, Section 10 is not absolute in the light of the other Sections like Section 40 which lays down that the duties of the transmission licensee would include to build, maintain and operate intra-state transmission system and accordingly it is the duty of the Appellant being a transmission licensee to construct the dedicated transmission lines which is part of intra-state transmission system and not the Respondent Generating Company.

6. In the light of the above rival contentions, the following questions would arise for consideration:-
 - i) Whose responsibility is to construct the dedicated transmission line – Is it the generating company (Respondent) which established generating station or the Transmission Licensee (Appellant) which is responsible to establish the intra-state transmission system?
 - ii) Whether provisions of Section 10 dealing with duties of generating company are subjected to Sections 39 and 40 related to duties and functions of State Transmission Utility and Transmission Licensee respectively?

iii) Whether the State Commission's Intra-state Open Access Regulations 2005 can over-ride the specific provisions of parent Act.

7. We shall now deal with each of the above questions one by one. The first question for consideration is as to **whose responsibility is to construct the dedicated transmission line – Is it the generating company which established generating station or the Transmission Licensee which is responsible to established the intra-state transmission system?**

8. The main argument of the Appellant revolves around the Section 10 of the 2003 Act. The said Section is as follows:-

“10. Duties of the generating companies –(1) Subject to the provisions of this Act, the duties of a generating company shall be to establish, operate and maintain generating stations, tie-lines, sub-station and dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made there under.

(2) A generating company may supply electricity to any licensee in accordance with this Act and the rules and regulations made there under and may, subject to the regulations made under sub-Section(2) of Section 42, supply electricity to any consumer.

(3) Every generating company shall-

(a) submit technical details regarding its generating stations to the Appropriate Commission and the Authority;

(b) co-ordinate with the Central Transmission Utility or the State Transmission Utility, as the case may be, for transmission of the electricity generated by it.”

9. The reading of the Section 10 of 2003 ACT, reproduced above, would make it clear that it is duty of the generating company to construct the dedicated transmission lines for evacuation of power from the generator up to the Substation of the Appellant..
10. Dedicated Transmission line is defined in Section 2(16) of the Act as under:-

“dedicated transmission lines’ means any electric supply-line for point to point transmission which are required for the purpose of connecting electric lines or electric plants of a captive generating plant referred to in Section 9 or generating station referred to in Section 10 to any transmission lines or sub-stations or generating stations, or the load centre, as the case may be.”

11. A dedicated transmission line as per Section 2(16) of the 2003 Act means any electricity supply line for point to point transmission, which is required for the purpose of connecting electric lines or electric plants of a captive generating plant, referred to in Section 9 or generating station referred to in Section 10 to any transmission line or

substations or generating stations or the load centre as the case may be. In the present case, the transmission lines in question connect the generating station of the Respondent with the Sub-Stations of the Appellant. Therefore, the said lines qualify to be dedicated transmission lines as per Section 2(16) of the Act.

12. Further, it is to be noted that while the provision of Section 10 which refers to the dedicated transmission line is a new provision under 2003 Act is mandatory in nature, the corresponding provision in Section 18A of Electricity (supply) Act, 1948 was not mandatory.
13. Let us now refer to the corresponding provision contained in the Section 18 A of 1948 Act which dealt with the duties of the generating company and the same is reproduced below:-

“18 A Duties of Generating Company –(1)
Subject to the provisions of this Act, a Generating Company shall be charged with the following duties, namely:-

- (a) *to establish, operate and maintain such generating stations and tie-lines, sub-stations and **main transmission lines connected therewith, as may be required to be established by the competent government or governments in relation to the Generating Company.***
- (b) *to operate and maintain in the most efficient and economical manner the generating stations, tie-*

- lines, sub-stations and main transmission lines, assigned to it by the competent government or governments in co-ordination with the Board or Boards, as the case may be, and the Government or agency having control over the power system, if any, connected therewith; and*
- (c) *to carry out, subject to the provisions of Section 21, detailed investigations and prepare schemes, in co-ordination with the Board or Boards, as the case may be, for establishing generating stations and tie-lines, sub-stations and transmission lines connected therewith, in such manner as may be specified by the Authority.*

14. The perusal of the above provision in the repealed 1948 Act would make it clear that under that Act, the generating company was merely required to establish main transmission lines as may be required to be established by the competent Government. In other words, the Government may require or may not require the generating company to establish main transmission line. On the contrary, Section 10 of the 2003 Act mandates that generating company shall establish, operate and maintain the dedicated transmission lines connected therewith in accordance with the provisions of this Act. Thus, the Section 10 of the 2003 Act becomes mandatory by which the generating company is mandated to construct its own dedicated transmission lines which connect the substation of the Appellant.

15. It is important to note that when the legislature makes certain provision in the statute, it must be with some purpose. Therefore, we have to see the purpose behind the providing new provision in Section 10 of the Act. Earlier establishment of generating plants and transmission lines were being entrusted to different agencies. In such cases there were instances of mismatch between the commissioning of the generating station and associated transmission lines. In some cases generating station would be ready for commissioning but associated lines were not ready and vice-a-versa. In both the cases there was associated loss to the power sector. In order to avoid the problem of mismatch and to have better coordination between the commissioning of both the assets, the legislature considered to be desirable to entrust both the responsibilities to a single agency i.e. to the generating company.
16. In this context, it would be worthwhile to refer to the provisions of Sections 12 and 14 of the 2003 Act which would clarify the whole situation. Let us quote the Section 12 and 14:-

*“12. Authorised persons to transmit supply, etc., electricity - No person shall –
(a) transmit electricity; or
(b) distribute electricity ; or
(c) undertake trading in electricity,*

Unless he is authorized to do so by a licence issued under Section 14, or is exempt under Section 13.

14. Grant of licence – The Appropriate Commission may, on an application made to it under Section 15, grant a licence to any person –

(a) to transmit electricity as a transmission licensee;
or

(b) to distribute electricity as a distribution licensee;
or

(c) to undertake trading in electricity as an electricity trader,

In any area as may be specified in the licence:

17. According to these provisions, no person would supply or transmit electricity without obtaining license from the appropriate Commission. Just after enactment of 2003 Act, there was a doubt entertained by some Commissions as to whether the generating company would also be required to obtain a transmission license to construct, operate and maintain a dedicated transmission line under Section 10 of the Act. In order to remove this doubt, the Ministry of Power, Government of India issued “The Electricity (Removal of Difficulties) Fifth Order 2005” on 7.6.2005 clarifying that a generating company establishing a dedicated transmission line would not require a transmission license under the Act. This means a generating company, which is not required to obtain license for generation, need not obtain separate transmission license while establishing a dedicated

transmission line. This order of the Government is quoted below:-

**“THE ELECTRICITY (REMOVAL OF DIFFICULTIES)
FIFTH ORDER, 2005**

Whereas the Electricity 2003 Act (36 of 2003) (hereinafter referred to as the Act), came into force on the 10th June, 2003;

And whereas Section 7 of the Act provides that any generating company may establish, operate and maintain a generating station without obtaining a licence under this Act if it complies with the technical standards relating to connectivity with the grid referred in clause (b) of Section 73;

And whereas sub-Section (1) of Section 10 of the Act provides that subject to the provisions of this Act, the duties of a generating company shall be to establish, operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made thereunder;

And whereas sub-Section (1) of Section 9 of the Act provides that notwithstanding anything contained in this Act, a person may construct, maintain or operate a captive generating plant and dedicated transmission lines;

And whereas a dedicated transmission line in terms of sub-Section (16) of Section 2 of the Act is an electrical supply line for point-to-point transmission for connecting a captive generating plant or a generating station to any transmission line or sub-stations or generating stations or the load centre, as the case may be;

And whereas such a dedicated transmission line is neither a transmission line in terms of sub-Section (72) of Section 2 of the Act nor it is a distribution system connecting the point of a connection to the installation of consumer in terms of sub-Section (19) of Section 2 of the Act;

And whereas difficulties have arisen regarding the requirement of a transmission licence for establishing, operating or maintaining a dedicated transmission line;

Now, therefore, the Central Government in exercise of its powers conferred by Section 183 of the Act hereby makes the order in respect of establishing, operating or maintaining a dedicated transmission line, not inconsistent with the provisions of the Act, to remove the difficulties, namely:—

1. Short title and commencement.—(1) This order may be called the Electricity (Removal of Difficulty) Fifth Order, 2005.

(2) It shall come into force on the date of publication in the Official Gazette.

2. Establishment, operation or maintenance of dedicated transmission lines.—**A generating company or a person setting up a captive generating plant shall not be required to obtain license under the Act for establishing, operating or maintaining a dedicated transmission line if such company or person complies with the following:—**

(a) Grid code and standards of grid connectivity;

(b) Technical standards for construction of electrical lines;

(c) System of operation of such a dedicated transmission line as per the norms of system operation the concerned State Load Despatch Centre (SLDC) or Regional Load Despatch Centre (RLDC).

(d) Directions of concerned SLDC or RLDC regarding operation of the dedicated transmission line. {emphasis Added}”

18. Reading of the above order would indicate the following features:-

1) It is the duty of the generating company to establish a dedicated transmission line.

2) Dedicated transmission line is not a transmission line in terms of the definition under Section 2(72) of the Act. Similarly, the dedicated transmission line is not a distribution system in terms of the definition of Section 2(19) of the Act.

3) The Term “Transmission licensee” has been defined in Section 2(73) of the Act as “transmission Licensee” means a licensee authorized to establish or operate transmission lines.

19. These features would indicate that since the dedicated transmissions lines is neither a transmission line or distribution system, it cannot be the duty of the Appellant, the transmission licensee, to establish and operate a

dedicated transmission line. One of the functions of the Appellant, as a transmission licensee under Section 40 of the Act is to build, maintain and operate an efficient, co-ordinated and economical intra-State transmission system.

20. The State Commission has also taken note of this Order of the Government and has observed in the impugned order that under clause 2 of the Electricity (Removal of Difficulties) 5th order 2005, a generating company shall not require to obtain license under the Act for establishing, operating and maintaining a dedicated transmission line, if the said company complies with certain conditions. In fact, the State Commission has specifically held that Section 10 of the Act read with Electricity (Removal of Difficulties) 5th order, 2005 casts a duty on a generating company to establish a dedicated transmission line.
21. In the light of above discussions the first question is answered in favour of the Appellant.
22. The second question for consideration is as to **whether provisions of Section 10 dealing with duties of generating company are subjected to Sections 39 and 40 related to duties and functions of State Transmission Utility and Transmission Licensee respectively?**

23. The Respondent Generating Company has contended that the Section 10 provides that the applicability of the said Section is subject to other provisions of the Act viz., Section 40 of the Act which provides that the transmission licensee shall establish intra-state transmission system as such the reading of the Sections 10 and 40 would make it clear that it is the duty of the Appellant i.e. transmission licensee to build, operate and maintain intra-state transmission system and that the lines in question would also form a part of the intra-state transmission system. This argument of the Respondent Company does not deserve acceptance for the simple reason that if it is accepted, it would render the provision of Section 10 relating to dedicated transmission line completely otiose.
24. The rule of construction is well settled that in an enactment when there are two provisions which cannot be reconciled with each other, they should be so interpreted in such a way that the effect is that effect is given to both. This is what is known as the rule of harmonious construction. Thus, the concept that the effect should be given to both, is the very essence of the rule. Thus a construction that reduces one of the provisions to a “use-less lumber” or “dead letter” is not harmonious construction.

25. Hence the interpretation of the phrase “subject to provision of the Act” would include provision of Section 39 and 40 of the Act would render the provision of Section 10 relating to ‘dedicated transmission line’ a dead letter. Such interpretation cannot be accepted.
26. It is true that the Section 10 is subject to the other provisions of the Act. But the other relevant provisions which will come under the phrase –“subject to the provisions of the Act” will be of no help to the 1st Respondent Generating Company. Section 10 casts two responsibilities on the generating company; firstly as a generating company to establish, operate a generating station and secondly as a transmission company to establish, operate and maintain dedicated transmission line.
27. The responsibility as a generating station is subjected to the following provisions of the 2003 Act.
- i) Section 7 dealing with the grid connectivity;
 - ii) Section 28 in regard to the directions of Regional Load Dispatch Centre(RLDC);
 - iii) Section 32 relating to the directions of State Load Dispatch Centre(SLDC);
 - iv) Section 159 relating to protection of railways etc;

- v) Section 160 relates to protection of telegraphic lines etc;
 - vi) Section 161 relates to notice of accident and inquiries.
28. Second responsibility as an owner of dedicated transmission line is subjected to the following Sections:-
- i) Section 12 and 14 relate to transmission license;
 - ii) Section 28 relates to direction of RLDC;
 - iii) Section 32 relates to the direction of SLDC;
 - iv) Section 54 relates to the control of transmission and use of electricity;
 - v) Section 159 relates to protection of railways etc;
 - vi) Section 160 relates to the protection of telegraphic lines etc;
 - vii) Section 161 relates to the notice of accident and inquiries”.
29. The Section 39 of the 2003 Act prescribe the duties of State Transmission Utility and subSection 2(c) speaks of an efficient, co-ordinated and economical system of intra-state transmission lines for smooth flow of electricity from a generating state to the load centres. This Section does not require the STU to construct any transmission line leave alone the dedicated transmission line.
30. Section 40 of the 2003 Act gives the duties of a transmission licensee. SubSection 2 of Section 40

provides mandates the licensee, inter alia, to build intra-state transmission system.

31. In the present case, the lines in question are “the dedicated transmission lines” connecting the generating station of the Respondent to the substation of the Appellant which, as clarified by the Electricity (removal of difficulty) 5th order 2005, is not a transmission line in terms of Section 2(75) of the Act.
32. Thus, Section 40 of the 2003 Act which deals with the duties of the transmission licensee i.e. the Appellant. This has got nothing to do with the dedicated transmission lines as referred to in Section 10 of the 2003 Act.
33. That apart, Section 39 and 40 did not provide the non-obstante clause because the legislature did not find any contradiction between the provisions of the Section 10, Section 39 and Section 40 of the 2003 Act.
34. Accordingly, the second question is also answered in favour of the Appellant
35. The third question is as to **whether the State Commission’s Intra-state Open Access Regulations 2005 can over-ride the specific provisions of parent Act?**

36. The State Commission in the impugned order relied upon the Regulation to grant the Relief to the Generating Company. Let us now deal with the Regulations. The relief claimed by the Generating Company (R-1) through its petition filed before the State Commission was on the basis of the Regulation 9(1)(b) of the Intra-State Open Access Regulation, 2005. Let us now quote the said Regulation-9.

9. Charges for open access

The following charges as applicable are payable by the open access customer.

(1) Transmission charge or wheeling charge

(a) Transmission charges payable to State Transmission Utility / Transmission Licensee and wheeling charges payable to Distribution Licensee, by an open access customer shall be determined by the Commission. Wheeling charges shall be determined on the basis of same principles as laid down for intra state transmission charges.

(b) Where a dedicated transmission system or a distribution system used for open access has been constructed for exclusive use of an open access customer, the transmission charges or wheeling charges for such dedicated system shall be worked out by the Licensee and got approved by the Commission and shall be borne entirely by such open access customer till such time the surplus capacity is allotted and used for by other persons or purposes.

(c) In case intra state transmission system or distribution system is used by an open access

customer in addition to inter-state transmission system, transmission charges and wheeling charges as fixed and approved by the Commission shall be payable for use of intra-state system in addition to payment of transmission charges for inter-state transmission.

37. The term used in Regulation 9 (1)(b) is “ where a dedicated Transmission System has been constructed for exclusive use of an open access customer”. The primary condition for the operation of this Regulation relates to the dedicated system which has been constructed. In the impugned order, the State commission has held that the Regulation 9 (1) (b) enables the Appellant to construct a dedicated transmission line and to recover the recurring charges from a generator and accordingly directed the Appellant to construct a dedicated transmission line for the Respondent Generating Company and to collect the charges from the said generating company.
38. The State Commission was, in fact, aware of the legal position narrated in paras above and the same was admitted by it in the impugned order. The State Commission specifically held that “piecing together the various provisions of the 2003 Act, it appears that the generating company is charged with the task of establishing, operating and maintaining the dedicated transmission lines. It also held in the impugned order that

the Section 10 of the Act read with electricity (Removal of Difficulties) 5th order, 2005 casts a duty on generating company to establish a dedicated transmission line. Despite that, the State Commission has wrongly held that the enabling provision of 5th order, 2005 does not block the generator with adequate authority to perform the task.

39. Thus, the State Commission, after having observed that the legal position as above, has preferred to hold that the clause 9 (1) (b) of 2005 Regulations empowers the transmission licensee to establish a dedicated transmission line and recover the recurring charges from the generator. At the same breath, the State Commission has held that it is not obligatory on the part of the Transmission Licensee to do so. This approach is wrong.
40. In the impugned order while granting relief to the Respondent Company, the State Commission based its finding on the length of the line. The State Commission has also observed that the legislature would not have visualised the situation which would involve establishment of dedicated transmission line for a distance as long as 140 Kms.
41. The State Commission further held that taking into consideration of the practical difficulties of the Generating Company in laying transmission lines for a distance of 80

Kms up to Aruppukottai substation and 140 Kms up to Chekkanoorani substation, it would be desirable to entrust the job of establishing the lines in question to the Appellant as the Appellant had been conferred with the powers of Telegraph authority under Section 164 of the 2003 Act and as such, it would be much easier for it to undertake this task and recover recurring charges from a generator as the Intra-state Open Access Regulations, 2005 would enable such an arrangement.

42. The above findings of the State Commission are totally wrong on two counts. Firstly, Section 10 of the Act, in fact, has not made any distinction, on the basis of the length of the line. Secondly, the powers of Telegraph authority under Section 164 of the 2003 Act could also be conferred upon the generating Companies by the State Government.
43. Neither the provisions of clause 9 (1) (b) of Regulations, 2005 nor any other clause of said Regulations provide for the construction of a dedicated transmission line for evacuating power from the generating station to the substation by the Appellant. In other words, the careful reading of 2005 Regulation would reveal that the said Regulations do not cast any obligation on the Appellant to construct the dedication transmission lines.

44. It is quite strange on the part of the State Commission to take a view which is contrary to Section 10 of the Electricity 2003 Act while rendering a finding to the effect that 2003 Act did not visualize the situation which would involve establishment of dedicated transmission line for a long distance. By this finding, the State Commission has virtually attempted to go into the virus of the provisions of the Act and proceed to grant relief contrary to the provisions of the 2003 Act. Such interpretation is not sustainable in law.
45. Intra-state Open Access Regulations, 2005 are framed under Section 181 of the 2003 Act. These Regulations framed by the State Commission are required to be consistent with the provisions of the parent Act and Rules to carry out the provisions of the Act. By way of interpretation of the Regulation, the State Commission can not give a direction which is contrary to the substantive provision of the Section 10 of the Electricity Act.
46. The Intra-State Open Access Regulations, 2005 provides for the use of transmission system of the State Transmission Utility, on payment of transmission charges and wheeling charges. The transmission system is the property of State Transmission Utility and the said system is common to be used by all Open Access Customers. The

Open Access Customers have to connect to the substations of the State Transmission Utility through lines to lay down at their own cost. The first Respondent, the generating company can not run away from its duty of constructing a dedicated transmission line as mandated under the substantive provision namely Section 10 of the 2003 Act.

47. The learned counsel for the Respondent Generating Company contended that the Appellant had directed it to deposit Rs 5000 as fee for processing its application for open access in terms of Intra-State Open Access Regulations, 2005 and this very act of the Appellant would indicate that the Appellant had understood that proposed dedicated transmission lines would be governed under open access. This argument of the Generating Company is misconceived for the reason that in case, the Respondent Generating Company desires to sell power outside the state or to some consumers within the state, it would require open access for the use of transmission system of the Appellant, irrespective of the fact who would construct the dedicated transmission lines. The dedicated transmission lines would terminate at substation of the Appellant. Then, it would require open access to transmit its power from the substation to the destination point within or outside the state of Tamil Nadu. Thus demand of Rs

5000 as fee for processing the Respondent's application for open access has nothing to do with the dedicated transmission line.

48. As a matter of fact, it is to be stated that it would be beneficiary for the generating company if it constructs its dedicated transmission line on its own. If the dedicated transmission line is constructed by the Appellant, then the generating company would be liable to pay annually about 20% of its cost as transmission charges and the ownership of the line would be with the Appellant. On the other hand, if the dedicated transmission line is constructed by the Generating Company (R-1) it is not liable to pay any transmission charges for the use of lines and at the same time, the ownership of line would remain with the generating company.
49. In view of above, the third question is also answered in favour of the Appellant.
50. **Summary of Our Findings**
- i) **Section 10 of the Act read with the Electricity (Removal of difficulty) fifth order, 2005 makes it clear that it is the duty of the generating company to establish the dedicated transmission lines.**

- ii) **The rule of construction is well settled that in an enactment, when there are two provisions which cannot be reconciled with each other, they should be so interpreted in such a way that the effect is given to both. This is what is known as the rule of harmonious construction. The concept that the effect should be given to both, is the very essence of the rule. Thus a construction that reduces one of the provisions to a “use-less lumber” or “dead letter” is not harmonious construction. In the present case the interpretation of the phrase “subject to provision of the Act” would include provision of Section 39 and 40 of the Act would render the provision of Section 10 relating to ‘dedicated transmission line’ a dead letter. Such a construction would not be acceptable.**
- iii) **Intra-state Open Access Regulations, 2005 are made under Section 181 of the 2003 Act. These Regulations framed by the State Commission are required to be consistent with the provisions of the parent Act and Rules to carry out the provisions of the Act. By way or interpretation of the Regulation, the State Commission cannot**

iv) **give a direction which is contrary to the provisions of the Section 10 of the Electricity Act.**

51. In view of our above findings, the impugned order dated 20th April, 2011 is set aside. It is declared that the generating company is governed by Section 10 of the Electricity 2003 Act and as such Generating Company alone is liable to construct transmission line at its own cost. It would, therefore, be appropriate to direct the Respondent Generating Company to get the dedicated transmission lines constructed at its own cost as per Section 10 of the 2003 Act. Accordingly directed.

52. In order to overcome the apprehended difficulty of laying down dedicated transmission line as per the mandate of Section 10 of the Act and avoid further delay, the generator may take the help of the Appellant transmission licensee to get the dedicated transmission lines erected by the Appellant on deposit work basis paying the full cost.

53. Hence, the Appeal is allowed. The impugned order is set aside. However, there is no order as to costs.

(V.J. Talwar)

Technical Member

Dated: 23rd May, 2012

~~√REPORTABLE/NON-REPORTABLE~~

(Justice M. Karpaga Vinayagam)

Chairperson