

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

Appeal No. 200 of 2009

Dated: 23rd February, 2011

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam,
Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member**

In the matter of:

**M/s Pune Power Development Private Ltd.
(Formerly known as M/s Kalyani Power
Development Private Ltd)
No.25, Unmol, Yeshwanth Ghatge Nagar
Range Hill Corner
Pune-411007**

... Appellant

VERSUS

- 1. Karnataka Electricity Regulatory
Commission
6th & 7th floor, Mahalaxmi Chambers
No.9/2, M.G. road
Bangalore-560 001
Through its Secretary.**

- 2. M/s Mangalore Electric Supply Company Limited
Paradigm Plaza, AB Shetty Circle
Mangalore-575001.
Repr5esented by its
Superintending engineer (C&RP).**

- 3. M/s Power Company of Karnataka Ltd.
KPTCL Building, Cauvery Bhavan
Bangalroe-560 001.
Represented by its
Additional Director (Projects). ... Respondents**

Counsel for Appellant(s)	Mr. Jayant Bhushan, Sr. Advocate Mr. Buddy A. Ranganathan Mr. Sunmanta Ghosh Mr. Ajit Maitra
Counsel for Respondent(s):	Mr.S.S. Naganand, Sr. Advocate Mr. S. Sriranga Mr. Gautam Talukdar Mr. Tenzina Mr. Venkat Subramaniam Mr. K.N. Manjunath Mr. Raghvendra S. Srivastava for R2 Mr. M.G.Ramachandran Mr. Anand K. Ganesan for R1 Ms Swapna Seshadri Ms Sneha Venketaramani

JUDGMENT

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

M/s Pune Power Development Private Ltd, formerly known as M/s Kalyani Power Development Private Ltd, is the Appellant herein. The Appellant is a company incorporated in the year 2007 under the name of Kalyani Power Development Private Ltd. In the year 2009, the Appellant company stood changed as M/s Pune Power Development Private Ltd. The Appellant was granted a license by the Central Commission for inter-State trading in electricity as Category 'F' Licensee in the year 2007.

2. The Appellant organized a power banking arrangement between M/s Mangalore Electric Supply

Company Limited, Respondent No.2 and one M/s BSES Rajdhani Power Limited, New Delhi. Initially, the M/s Power Company of Karnataka Ltd, the 3rd Respondent herein led M/s Mangalore Electric Supply Company Limited, Respondent No.2 in this power banking arrangement. Respondent No. 3 is a State Government Company engaged in business of procuring power on behalf of distribution licensee in the State.

3. On 14.2.2008, the 3rd Respondent, Power Company of Karnataka Ltd addressed a letter to the Appellant conveying its willingness to bank power upto 200 MW by the 2nd Respondent Mangalore Electric Supply Company Limited under Barter arrangement with the Northern Region Utility viz. BSES Rajdhani Power Limited through the Appellant.

4. In pursuance of this arrangement, there was an agreement dated 19.3.2008 between the Appellant and BSES Rajdhani Power Ltd. for banking of energy. On 23.04.2008 Respondent No. 3 vide its letter to the Appellant issued confirmation of the terms and conditions specified therein on behalf of Respondent No. 2. On 4.7.2008, Respondent No. 2 also issued letter of intent to the Appellant to bank power with BSES Rajdhani Power Ltd. By virtue of this arrangement, Mangalore Electric Supply Company Limited (R-2) had agreed to bank upto 200 MW of power with BSES Rajdhani Power Ltd. (BRPL) in the months of July, August and September, 2008 and receive the same in the month of February, March and April, 2009.

5. Due to the delay in rainfall and shortage of coal, the 3rd Respondent, Power Company of Karnataka Ltd as

well as the 2nd Respondent Mangalore Electric Supply Company Limited withdrew the banking arrangement vide their letter dated 19.7.2008. However, by that time 37.929 MU of energy had been banked. Due to this, the Appellant, Pune Power Development Private Ltd informed cancellation of the agreement through letter dated 21.7.2008 to BRPL. Then BRPL protested to the Appellant about unilateral decision of Respondent 2 to cancel the supply of scheduled power and demanded refund of Open Access Charges as well as monetary compensation for banking of power for the months of July, August, and September, 2008. On 16.03.2009 Respondent No. 3 suggested to the Appellant that the BRPL has to return 105% of about 36 MU banked energy during March, 2009.

6. Since there was no response, from the Appellant, both the 2nd and 3rd Respondents filed a Petition before the State Commission, Respondent No.1 under Section 86(1)(f) of the Electricity Act, 2003 seeking for compensation from the Appellant for non supply of agreed 105% of power till May, 2009. The said Petition was entertained by the State Commission, the 1st Respondent and notice was issued to the Appellant. On receipt of the said notice, the Appellant appeared before the State Commission and filed Preliminary Objection on the maintainability of the Petition filed by Respondents Nos.2 and 3 contending that the State Commission had no jurisdiction to decide the issue raised by the Respondent Nos.2 and 3.

7. On the issue of Preliminary Objections, the State Commission after hearing the parties decided that the

State Commission has got the jurisdiction to go into the disputes raised in the Petition filed by the Respondent Nos.2 and 3 by passing the impugned order dated 21.10.2009. The Appellant has challenged this order before this Tribunal in this Appeal.

8. The dispute raised by the 2nd Respondent Mangalore Electric Supply Company Limited was with regard to non-supply of power by the Appellant to Respondent No.2 in terms of the agreement entered into between the parties. The dispute that was raised before the State Commission was a claim by the Respondent Nos.2 and 3 for compensation from the Appellant for alleged violation of a contractual arrangement for the banking of power.

9. The Appellant has mainly raised two points questioning jurisdiction of the State Commission to go into the dispute raised by Respondent Nos.2 and 3 in their Petitions before the State Commission:

- (i) State Commission has no jurisdiction to enter upon the dispute between the Appellant and the Respondent No.2 as the Appellant is the licensee of the Central Commission and not a licensee of the State Commission.
- (ii) Respondent No.2 cannot proceed against the Appellant for breach of contract in the absence of any claim filed against M/s BSES Yamuna Power Limited, a Distribution Licensee for the National Capital Territory of Delhi as the said Licensee is a necessary party to the dispute

raised by the 2nd Respondent Mangalore Electric Supply Company Limited and as such, the Petition filed by the Respondent No.2 is not maintainable in the absence of impleading the M/s BSES Yamuna Power Ltd. which is a necessary party.

10. Since the jurisdiction was questioned, , the State Commission had not considered the merits of the case and hence it did not express any opinion on the merits of the claims of the Respondents No.2 and 3. The State Commission thought it fit to consider the preliminary objections alone on the issue of jurisdiction and maintainability of the Petition on the ground of non-joinder of necessary party and accordingly, it considered the same and rejected the preliminary objections raised by the Appellant. Hence this Appeal.

11. According to the Respondent herein, the agreement between the Appellant and the Respondent No.2 was in relation to procurement of power by the Respondent No.2 to enable the Respondent No.2 to undertake distribution and supply of electricity within the State. It is also further contended by the Respondent that the Respondent No.2 being a Distribution Licensee in the State of Karnataka, the entire process of power procurement including the price at which the power had been procured by Respondent No.2 is subject to the regulatory jurisdiction of the State Commission in terms of Section 86(1)(b) of the Act and, therefore, the State Commission has got jurisdiction. It is also further contended that the question of non-joinder of parties would not arise in this matter because the dispute raised before the Commission would not involve the said party.

Thus, the learned counsel for the Respondent justified the reasonings given in the impugned order.

12. In the light of the rival contentions, the following questions would arise for consideration:

- (I) Whether the State Commission has got jurisdiction over a dispute between a licensee within its State and a licensee who had not been granted a license by the State Commission under Section 86(1)(f) of the Act?
- (II) Whether the Appellant, who is said to be an agent is liable for the acts of disclosed principal without impleading such a disclosed principal as a party to the dispute?

13. Let us now discuss the above questions one by one. The Appellant in relation to the 1st question has made the following submissions:

- (i) The Appellant not being a licensee of the Karnataka State Commission cannot be proceeded with by the said State Commission which does not have the jurisdiction to entertain the dispute between the Appellant and the licensee of its own State.

- (ii) The dispute in question relates to an inter-State transaction for supply and return of power. As such, the enquiry into the said dispute by the State Commission is beyond its jurisdiction.

14. In the light of the above submissions, we shall consider the 1st question relating to the issue of jurisdiction on the basis of the facts of the present case. The present dispute raised by the 2nd Respondent Mangalore Electric Supply Company Limited as against the Appellant M/s Pune Power Development Private Ltd is with regard to the non-supply of power agreed to be supplied by the Appellant under the agreement between the parties. The agreement between the Appellant and the Respondent No.2 was in relation to the procurement of power by the Respondent No.2 to enable the Respondent No.2 to undertake distribution and supply of electricity in the State.

15. The Respondent No.2 is a Distribution Licensee in the State of Karnataka. The entire process of power procurement including the price at which the power is to

be procured by the Respondent No.2 is subject to the regulatory jurisdiction of the State Commission in terms of Section 86(1)(b). Section 86(1)(b) is as under:

“86(1)(b): regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State.”

16. The reading of the above provision would reveal that the section is very widely worded and covers the entire process of the power procurement of a Distribution Licensee. The regulatory jurisdiction of the State Commission extends the procurement of electricity from

Generating Companies or licensees or from other sources. Such a procurement can be made from any place within or outside the State, inter-State or Intra State. In other words, all purchasers of electricity from the persons including the trading licensee like the Appellant herein falls under the regulatory jurisdiction of the State Commission.

17. In addition to the above regulatory power, Section 86(1)(f) of the Act vests in the State Commission the power to adjudicate upon the dispute between the licensees and the Generating Companies. Section 86(1)(f) of the Act reads as under:

“Section 86(1)(f): adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration.”

18. A plain reading of the above provision would clearly show that the State Commission has jurisdiction to entertain disputes between the licensees and also the Generating Companies. Thus, the scope of Section 86(1)(f) is very wide as it covers all disputes between the licensee which relate to the regulatory jurisdiction of the State Commission. In other words, there is no restriction in Section 86(1)(f) regarding the nature of the licensee. Thus, all disputes relating to the regulatory jurisdiction of the State Commission which involves the Distribution Licensee or a trading licensee or a transmission licensee shall have to be adjudicated upon exclusively by the State Commission.

19. In the present case, the Appellant and the Respondent Nos.2 and 3 are licensees. It is an admitted

fact that the Appellant is a trading licensee having obtained the trading license from the Central Commission. The Respondent No.2 is a Distribution Licensee having obtained the license from the State Commission. As such, both are licensees. The dispute in the present case arises under the Letter of Intent issued by the 2nd Respondent in favour of the Appellant.

20. In this regard, it is relevant to quote the definition of the term “Licensee” which is contained in Section 2(39) of the Act. The same reads as under:

“Section 2(39): “ licensee” means a person who has been granted a licence under section 14.”

21. Section 14 deals with licence issued by the Appropriate Commission for undertaking transmission,

distribution and trading in Electricity. Having regard to the language of Section 86(1)(f) and Section 2(39) of the Act, there cannot be any distinction between the licences issued by the Commission whether Central or State. The State Commission will have jurisdiction to entertain the dispute and adjudicate the same so long as the part of the cause of action arose within its statutory jurisdiction. In the case on hand, the transaction has taken place within the jurisdiction of the Karnataka State Commission. The negotiations were held in Karnataka. The Letter of Intent also had been issued from Mangalore. The power had been delivered by the KPTCL at the periphery of Karnataka. The power supplied has now been returned at KPTCL periphery. Thus, all actions under the contract have taken place within the territorial jurisdiction of the State Commission.

22. This aspect is further clear from the relevant provisions of the Electricity Act, 2003. As held by the Constitution Bench of Hon'ble Supreme Court, the Act is conceived to be a complete code in itself and the Act overrides even an arbitration provision contained in the contracts. Therefore, all disputes which arose in relation to the transaction between the licensees are to be made subject to the jurisdiction of the State Commission or the Central Commission as contained in Sections 86 and 79 of the Act respectively. In this context, it would be relevant to refer to Section 79(1)(f) of the Act which confers the jurisdiction on the Central Commission with regard to the specific dispute. Section 79(1)(f) of the Act reads as under:

“Section 79(1)(f): to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters

connected with clauses (a) to (d) above and to refer any dispute for arbitration.”

23. The clauses (a) to (d) refer to the tariff of Central generating Companies and Tariff relating to composite scheme and inter-state transmission. A reading of this Section would make it clear that the jurisdiction conferred on the Central Commission is restricted to the aspects which are specified under clauses (a) to (d) aforesaid. However, if the jurisdiction of the State Commission which conferred under Section 86(1)(f) of the Act is looked into, it would be clear that no such restrictions are placed on its jurisdiction. In other words, all disputes between the licensees which do not fall under Section 79(1)(a) to (d) are within the jurisdiction of the State Commission.

24. A comparison of Section 79 and Section 86 of the Act would make it evident that the jurisdiction of the Central Commission is not only restricted to clauses (a) to (d) of Section 79(1) concerning generation tariff or transmission of inter-State electricity but also with regard to the disputes involving Generating Companies or transmission licensees. This means that any dispute between the Distribution Licensee and inter-State trading licensee is excluded from Section 79(1)(f). Thus, it is clear that only adjudicatory power of the Appropriate Commission for adjudication of disputes between Distribution Licensee and Trading Licensee has been vested with the State Commission under Section 86(1)(f) of the Act.

25. The Appellant has relied upon the decision in the case of Lanco Amarkantak Power Private Limited vs

Madhya Pradesh Electricity Regulatory Commission in Appeal No. 7 of 2009 dated 6.08.2009 to contend that only the Central Commission has jurisdiction to adjudicate upon the disputes under Section 86(1)(f) of the Act.

26. The reliance of the Appellant on the above decision is misconceived. It is settled law that the judgment is a precedent for what it decides and should be understood in the factual background of the case.

27. If we look at the facts of the said case, it is clear that the factual background of the said case is entirely different from the present case. This Tribunal in the said case was dealing with the jurisdiction of the Madhya Pradesh State Commission involving a dispute between the Generating Companies situated in Chhattisgarh and the PTC India Limited, an inter-State Trading Licensee. It

was not dealing with any dispute relating to the sale of power to a Distribution Licensee in the State of Madhya Pradesh. Power Purchase Agreement was executed outside Madhya Pradesh. Admittedly, in that case, the Generating Station was situated in Chhattisgarh. The delivery point of power was also located in Chhattisgarh.

28. Based on these facts, this Tribunal came to the conclusion that none of the rights and obligations arising under the PPA had any nexus to the State of Madhya Pradesh so as to confer jurisdiction upon the Madhya Pradesh State Commission. Based on the said finding, it was held in that case that Madhya Pradesh State Commission did not have the jurisdiction to deal with the said issue.

29. The above principles which have been laid down by this Tribunal in that case would not be applicable to the present case for the following reasons:

- (i) The present case involves a dispute between the Distribution Licensee of Karnataka and the Appellant which is an inter-State licensee;
- (ii) The inter-State Trading Licensee is selling power to the Distribution Licensee in the State of Karnataka, thereby having a nexus to the State of Karnataka.
- (iii) Procurement of power by Distribution Licensee, Respondent No.2 from Trading Licensee, the Appellant falls within the regulatory jurisdiction of

the State Commission of Karnataka under Section 86(1)(b) of the Act;

- (iv) The transaction is for the procurement of power from the Appellant required by the Distribution Licensee, Respondent No.2 for its distribution and retail supply activities in the State of Karnataka. Thus, the procurement of power has a direct nexus with the State of Karnataka as the supply is to the Karnataka Distribution Licensee .

30. It is contended by the Appellant that the transaction involves inter-State supply which is outside the jurisdiction of the State Commission of Karnataka. This is untenable. There is no restriction on the location of the Trading Licensees to determine the jurisdiction of the State Commission under Section 86(1)(f). So long as

the Distribution Licensee's procurement power is involved in the State, the State Commission alone will have the jurisdiction under Section 86(1)(f) to adjudicate upon the dispute.

31. The location of the selling party is irrelevant. In this context, it would be worthwhile to refer to a decision rendered by this Tribunal in the case of Lanco Kondapalli Power Private Limited Vs. Haryana Electricity Regulatory Commission reported in 2010 ELR (APTEL) 36. In this case, this Tribunal has upheld the jurisdiction of the Haryana State Commission to adjudicate upon the dispute under Section 86(1)(f) between the Distribution Licensee in Haryana and Generating Companies in the State of Orissa. The relevant observation is as follows:

“6. The questions of law that may arise for consideration in the present case are as follows:

- (i) Whether the petition filed by the Power Corporation (R-2) before the State Commission under section 86(1)(f) of the Act is maintainable in law?*
- (ii) Whether the State Commission has got a jurisdiction to grant the relief of specific performance for the contract which is said to be not concluded?*
- (iii) Whether the Appellants are the generating company within the meaning of section 2(28) of the Act in respect of the project in question which alone would confer the jurisdiction on the State Commission to go into the dispute?*

.....

49. *The correspondence as referred to above between the parties and conduct of the Appellant in approaching the Orissa Government to start the power project to generate power to supply power to the Power Corporation (R-2) would all show reveal that it was the Appellants who claimed themselves as generating company and who gave undertaking that they would supply power to the Power Corporation by generating the power through one of its projects. The State Commission is perfectly right in holding that the developers and owners of Lanco Babandh Power Limited who are the beneficiaries under this contract are the Appellants alone.*

.....

54. *Ultimately our conclusions are as follows:*

(i) *The State Commission has the jurisdiction to entertain the petition filed by the Power Corporation to give suitable direction to the Appellants since there is a concluded contract between the Appellants and the respondents.*

(ii) *The State Commission can go into the dispute between the licensee and the generating company under section 86(1)(f) of the Act and the State Commission jurisdiction cannot be questioned since in this case there are lot of records to show that the Appellants claimed themselves as generating company within the meaning of*

section 2(28) read with section 10 of the Electricity Act.”

32. In view of the above dictum laid down by this Tribunal as referred to above, the supplier of electricity being at a different place does not in any manner oust the jurisdiction of the State Commission u/s 86(1)(f) to adjudicate upon the disputes between the parties. So, we answer the 1st question in favour of the Respondent. Accordingly, we reject the contention of the Appellant regarding the jurisdiction.

33. Let us now consider the 2nd question.

34. The Appellant has contended that M/s BSES Rajdhani Power Limited was a necessary party to the dispute, in view of the fact that the Appellant was merely acting as broker in the transaction between Respondent

No.2 and BSES Rajdhani Power Limited for supply of electricity and as such BSES Rajdhani Power Limited ought to have been impleaded as one of the Respondents and in the absence of the same, the Petition filed by the Respondent No.2 before the State Commission ought to have been rejected on the ground that it suffers from the defect of non-joinder of necessary party. This contention, in our view, is untenable for the following reasons:

- (i) Admittedly, the Appellant had two separate and distinct agreements. One agreement had been entered into between the Appellant and the Respondent No.2. Another separate agreement was entered into between the Appellant and the BSES Rajdhani Power Limited for the supply of electricity and return of electricity by the BSES Rajdhani Power Limited. The said agreement

governs the transaction between the Appellant and the BSES Rajdhani Power Limited. So far as the transaction between the Appellant and the 2nd Respondent Mangalore Electric Supply Company Limited is concerned, it is to be pointed out that the power being bartered will be delivered to the said entity as there is no privity of contract between the Respondent No.2 and BSES Rajdhani Power Limited. All dealings and correspondences by the Respondent No.2 are only with the Appellant and not with the BSES Rajdhani Power Limited.

- (ii) The supply of power by Respondent No.2 to BSES Rajdhani Power Limited is not on a 'principal to principal basis' but is through the Appellant. The agreement with the 2nd Respondent by the

Appellant has not been entered into for and on behalf of any other entity. Similarly, it is for the Appellant to procure power from BSES Rajdhani Power Limited and supply the same to the Respondent No.2. None of the agreements or documents available on record specify that the electricity shall be supplied by BSES Rajdhani Power Limited directly to the Respondent No.2 but the documents available on record specify that the same shall be supplied through the Appellant.

- (iii) Under the agreement entered into, the Appellant is entitled to trading margin of Rs.0.03 per unit of electricity supplied which was consistent with the then prevailing Trading Margin Regulation. This also indicates that the nature of the transaction was a trading transaction. As alleged by the

Appellant, the action of the Appellant in returning the power to the Respondent is an admission of liability of the principal. Therefore, the question of principal taking any action against the agent in respect of the same transaction does not arise.

(iv) In the present case, for a trading margin, the Appellant has entered into contract for procuring power from Respondent No.2 and making it available to the other utility and thereafter, returning 105% of the power to the 2nd Respondent. This is a two-way process. This transaction is nothing but a trading activity. Therefore, the Appellant cannot be construed to be an agent or broker of the disclosed principal.

35. In this context, it would be appropriate to refer to the findings given by the State Commission to the above effect. The said observation is quoted as below:

"18. As regards impleading M/s BSES Rajdhani Power Ltd., as a party to the proceedings we hold that it is not a necessary party being not a privy to the contract in question. Perusal of the documents produced by the petitioners prima facie indicate that the agreement of the petitioners is with the respondent Kalyani Power which has undertaken the responsibility of taking power from petitioners to supply to M/s BSES Rajdhani Power Ltd., and returning the same by M/s BSES Rajdhani Power Ltd. to the petitioners.

This is not a gratuitous act undertaken by the respondent. The respondent under the contract entered with the petitioners as well as M/s BSES Rajdhani Power Ltd., has a right to receive the trading margin of Rs.0.03/kwh, in keeping with CERC Regulations. The contention of the respondent that M/s BSES Rajdhani Power Ltd., is one who has received electricity of the petitioner and therefore returning of power has to be done by them cannot be accepted at this juncture. The letter of intent clearly imposes an obligation on the respondent for return of power by M/s BSES Rajdhani Power Ltd. If the respondent's role was only of an intermediary as contended, then respondent would not have agreed to give a

bank guarantee equivalent to the electricity to be drawn by M/s BSES Rajdhani Power Ltd., at Rs.5/- to the petitioners.”

36. This finding given by the State Commission is perfectly justified. In view of the above reasonings, the Appellant's contention that it was not undertaking trading and it is only a agent or a facilitator has no merit.

SUMMARY OF OUR FINDINGS:

37. (I) The present case involves a dispute between the Distribution Licensee of Karnataka, the Respondent and the Appellant which is an inter-State licensee. The Appellant is selling power to the Distribution Licensee Respondent in the State of Karnataka, thereby having a nexus to the State. Since the procurement of power by the Distribution

Licensee from the Trading Licensee is being done in the State of Karnataka, the Appellant falls within the jurisdiction of the State Commission under Section 86(1)(b) of the Act. The procurement of power has a direct nexus with the State of Karnataka as the supply is to the Karnataka Distribution Licensee. There is no restriction on the location of the Trading Licensees to determine the jurisdiction of the State Commission. The supply of electricity, namely, the Appellant being at a different place does not oust the jurisdiction of the State Commission under Section 86(1)(f) to adjudicate upon the dispute between the licensees. Therefore, we hold that so long as the Distribution Licensees are involved in procurement of power in the State, the State Commission alone will have the jurisdiction under Section 86(1)(f) to adjudicate upon the dispute. The 1st point is answered accordingly.

II. In the present case, the Appellant has entered into a contract with Respondent No.2 for procuring power for a trading margin. Therefore, the Appellant cannot be construed to be an agent or a broker of the disclosed principal. As held by the State Commission, the perusal of the documents produced by the Respondent prima-facie indicate that the agreement of the Respondent was with the Appellant which is undertaking the responsibility of taking power from the Respondent to supply to M/s BSES Rajdhani Power Limited. This is not a gratuitous act undertaken by the Appellant. The Appellant had two separate and distinct agreements, one agreement between the Appellant and the Respondent, and another agreement was entered into between Appellant and the M/s BSES Rajdhani Power Limited. As such, there is no privity of contract between Respondent No.2 and BSES Rajdhani Power Limited.

Hence, BSES Rajdhani Power Limited cannot be construed to be a necessary party. As such the petition filed before the State Commission is maintainable.

38. In view of our above findings, we hold that there is no merit in this Appeal. Consequently, the State Commission is directed to go on with the matter to decide the same over the merits of the case after hearing the parties concerned. This Appeal is dismissed. No order as to cost.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 23rd February, 2011

REPORTED/NON-REPORTABLE