

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2017

CORAM

THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.No.5196 of 2017 and
W.M.P.No.5518 of 2017

Lanco Tanjore Power Company Limited,
rep by B.Ramakrishna Rao, Company Secretary,
(formerly known as Aban Power Company Limited)
3rd Floor, 25, GN Chetty Road,
T.Nagar, Chennai - 600 017.

... Petitioner

Vs.

1.Tamil Nadu Electricity Regulatory
Commission (TNERC),
rep by its Secretary, 19-A,
Rukmini Lakshmipathy Salai
(Marshall's Road),
Egmore, Chennai - 600 008.

2.Tamil Nadu Electricity Board,
rep by its Chairman,
800 Anna Salai, Chennai - 600 002.

3.Tamil Nadu Generation and Distribution
Corporation Limited
rep by its Secretary,
NPKRR Maaligai, 144, Anna Salai,
Chennai - 600 002.

... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of mandamus directing the 1st respondent to consider and dispose of I.A.No.1 of 2016 filed by the petitioner seeking reference of the dispute raised in D.P.R.13 of 2012 to arbitration by appointment/ nomination of an arbitrator.

For Petitioner	: Mr.M.Vijaya Narayan, Senior Counsel for M/s.Vinod Kumar
For Respondents	: Mr.Abdul Saleem

O R D E R

The petitioner has filed the above Writ Petition to issue a writ of mandamus directing the 1st respondent to consider and dispose of I.A.No.1 of 2016 filed by the petitioner seeking reference of the dispute raised in D.P.R.13 of 2012 to arbitration by appointment/nomination of an arbitrator.

2.Mr.M.Vijay Narayan, learned senior counsel appearing for the petitioner submitted that as per Section 86 (1)(f) of the Tamil Nadu Electricity Act, the State Commission shall adjudicate upon the dispute between the licensee and generating Companies and to refer any dispute for arbitration. In the case on hand, the petitioner has filed an application in I.A.No.1 of 2016 to refer the dispute for arbitration. However, the 1st respondent has not passed any order so far. The learned senior counsel also relied upon a judgment reported in (2008) 4 Supreme Court Cases 755 [Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd.] wherein the Apex Court held as follows:

"...

26.It may be noted that Section 86(1)(f) of the Act of 2003 is a special provision for adjudication of disputes between the licensee and the generating companies. Such disputes can be adjudicated upon either by the State Commission or the person or persons to whom it is referred for arbitration. In our opinion the word "and" in Section 86(1)(f) between the words "generating companies" and "to refer any dispute for arbitration" means "or". It is well settled that sometimes "and" can mean "or" and sometimes "or" can mean "and" (vide G.P. Singh's Principles of Statutory Interpretation, 9th Edn., 2004, p.404).

27. In our opinion in Section 86(1)(f) of the Electricity Act, 2003 the word "and" between the words "generating companies" and the words "refer any dispute" means "or", otherwise it will lead to an anomalous situation because obviously the State Commission cannot both decide a dispute itself and also refer it to some Arbitrator. Hence the word "and" in Section 86(1)(f) means "or".

28. Section 86(1)(f) is a special provision and hence will override the general provision in Section 11 of the Arbitration and Conciliation Act, 1996 for arbitration of disputes between the licensee and generating companies. It is well settled that the special law overrides the general law. Hence, in our opinion, Section 11 of the Arbitration and Conciliation Act, 1996 has no application to the

question who can adjudicate/ arbitrate disputes between licensees and generating companies, and only Section 86(1)(f) shall apply in such a situation.

...
31. There are various reasons why the State Commission may not decide the dispute itself and may refer it for arbitration by an arbitrator appointed by it. For example, the State Commission may be overburdened and may not have the time to decide certain disputes itself, and hence such cases can be referred to an arbitrator. Alternatively, the dispute may involve some highly technical point which even the State Commission may not have the expertise to decide, and such dispute in such a situation can be referred to an expert arbitrator. There may be various other considerations for which the State Commission may refer the dispute to an arbitrator instead of deciding it itself. Hence there is no violation of Article 14 of the Constitution of India."

3. The learned counsel for the respondents submitted that a direction may be given to the 1st respondent to consider the petitioner's application seeking for reference to arbitration and pass orders in accordance with law.

4. In view of the submissions made by the learned counsel on either side and also following the ratio laid down by the Hon'ble Supreme Court of India in the judgment reported in (2008) 4 Supreme Court Cases 755 [Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd.], I direct the 1st respondent Commission to consider the petitioner's application in I.A.No.1 of 2016 seeking for reference of the dispute raised in D.R.P.13 of 2012 to arbitration by appointment/nomination of an Arbitrator and pass orders in accordance with law, after giving an opportunity of hearing to all the interested parties within a period of six weeks from the date of receipt of a copy of this order.

5. With these observations, the Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

va

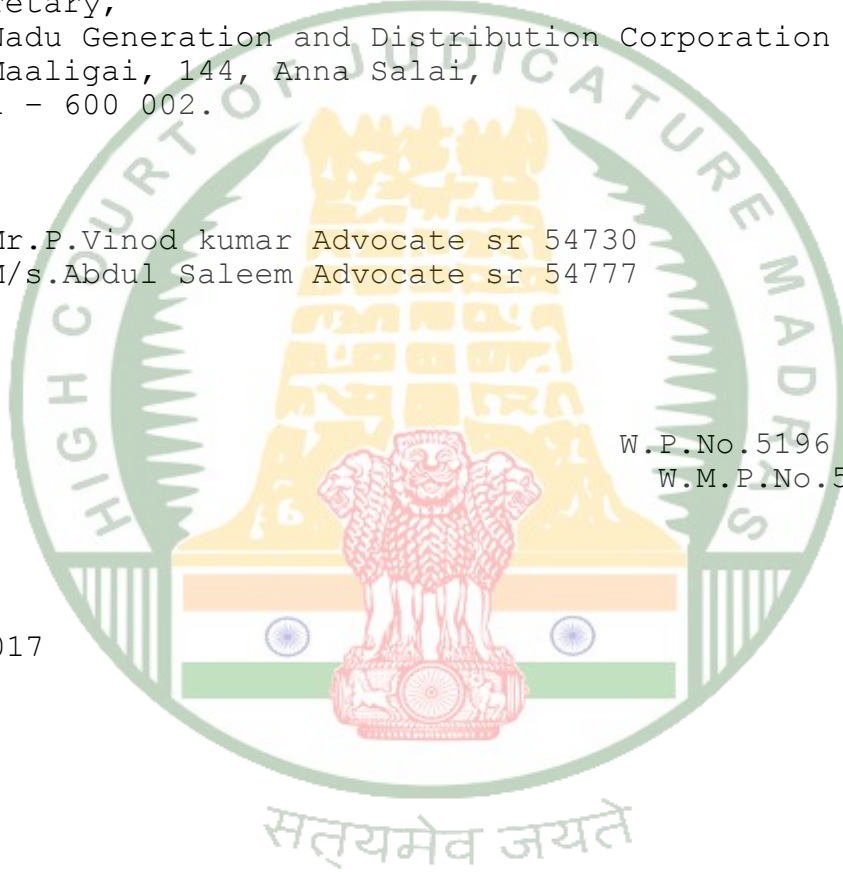
To

- 1.The Secretary,
Tamil Nadu Electricity Regulatory Commission (TNERC),
19-A, Rukmini Lakshmipathy Salai
(Marshall's Road),
Egmore, Chennai - 600 008.
- 2.The Chairman,
Tamil Nadu Electricity Board,
800 Anna Salai, Chennai - 600 002.
- 3.The Secretary,
Tamil Nadu Generation and Distribution Corporation Limited
NPKRR Maaligai, 144, Anna Salai,
Chennai - 600 002.

+1 cc to Mr.P.Vinod kumar Advocate sr 54730
+1 cc to M/s.Abdul Saleem Advocate sr 54777

W.P.No.5196 of 2017 and
W.M.P.No.5518 of 2017

br (co)
aa09/08/2017



WEB COPY