

COURT-1

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APL No. 144 OF 2025 & IA No. 665 OF 2025 & IA No. 666 OF 2025 &
IA No. 1138 OF 2025

Dated: 31st July, 2025

Present: Hon`ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon`ble Ms. Seema Gupta, Technical Member (Electricity)

In the matter of:

Tamil Nadu Generation and Distribution Corporation
Limited (TANGEDCO) Appellant(s)

Versus

Tamil Nadu Electricity Regulatory Commission & Anr. Respondent(s)

Counsel on record for the Appellant(s) : Anusha Nagarajan
for App. 1

Counsel on record for the Respondent(s) : Sethu Ramalingam
S. Shivshankari
for Res. 1

ORDER

Heard Ms. Anusha Nagarajan, Learned Counsel for the Appellant and Mr. Sethu Ramalingam, Learned Counsel appearing on behalf of the first Respondent-TNERC and, with their consent, the Appeal is finally disposed of at the interlocutory stage itself. No counsel has entered appearance on behalf of the second Respondent.

The order, impugned in this appeal, is an interlocutory order passed by the Tamil Nadu Electricity Regulatory Commission ("TNERC" for short) in IA No.1 of 2025 in MP No. 55 of 2024 dated 27.02.2025. The second Respondent herein filed the Petition in MP/55/2024 seeking

clarification of the orders passed by the TNERC in TP No. 1 of 2017 dated 11.08.2017 and T.P. No. 1 of 2022 dated 09.09.2022 determining the tariff for start-up power for the multi-year period FY 2017-18 to FY 2021-22, and for the period FY 2022-23 to FY 2026 27, as per the directions of this Tribunal in I.A No. 574 of 2024 in Appeal No. 290 of 2024 dated 12.09.2024, and in I.A. No. 650 of 2024 in Appeal No. 353 of 2024 dated 30.09.2024.

IA No. 1 of 2025 was filed by the second Respondent herein, in MP/55/24, seeking an order of interim injunction restraining the Appellant herein from claiming demand charges, for supply of electricity by generators falling under category 1 under the order dated 29.12.2023, at any amount in excess of 50% of the demand charges, as provided in the table under the Tariff Orders dated 30.01.2015 and 09.09.2022 passed by the Commission, pending disposal of the Miscellaneous Petition.

The Appellant herein had earlier invoked the jurisdiction of this Tribunal by way of Appeal No. 290 of 2024 questioning the order passed by the TNERC in DRP No. 5 of 2014 and batch dated 29.12.2023. In its order in Appeal No. 290 of 2024 dated 12.09.2024, (wherein the 2nd Respondent herein was also the 2nd Respondent), this Tribunal observed that the TNERC had merely taken note of the 2017 and 2022 Tariff Orders; there was no material on record to show that the TNERC either intended to amend the said two tariff orders or that it had complied with the requirement of issuing a public notice and inviting suggestions from the public for amending the said tariff orders; and the impugned order, to the extent it fell foul of the tariff orders of the year 2017 and 2022, was, prima facie, contrary to law.

This Tribunal passed an interim order holding that the directions/clarifications issued in the impugned order, in so far as it ran contrary to both the 2017 and 2022 tariff orders, shall not be enforced pending disposal of the Appeal; and, in case the generators had not made payment in terms of the 2017 and 2022 Tariff Orders, it was open to the Appellant herein to recover the amounts due from the second Respondent, in terms of these two tariff orders, in accordance with law. As no appeal was preferred there-against, the afore-said order of this Tribunal continues to remain in force, and the directions issued therein are binding not only on the Appellant and the second Respondent but also on the TNERC.

In the interlocutory order, impugned in this Appeal, the TNERC, after observing that Appeal No. 290 of 2024 was still pending before this Tribunal, clarified that the notice dated 12.12.2024 issued by the Appellant, was valid for the period from 2017 to 2022. This was reiterated by the TNERC in Para 12 (a) of the impugned order wherein it held that the communication of the Appellant dated 12.12.2024 under two-part tariff, ie demand and energy charges separately as per the respective tariff orders for the period from 01.08.2017 to 30.06.2024, was valid except for the claim with regard to belated payment surcharge. The TNERC further observed, in Para 12 (c) of the impugned order, that this order was applicable to all persons or entities who had been served with demand notices similar to the one issued to the second Respondent.

In so far as the directions issued by the TNERC in the impugned order, that the said order would apply even to persons who are not parties before the Commission, is concerned, it does appear that the said order is an order passed by the Commission in rem. In clarification

petitions filed by two generators, it was impermissible for the TNERC to direct that the impugned order passed by it on 27.07.2025 would be applicable even to those generators who were neither parties to the said proceedings nor had they invoked the jurisdiction of the TNERC under the provisions of the Electricity Act.

The TNERC is a creation of the Electricity Act, and the jurisdiction which it is entitled to exercise must be confined to what is stipulated under the Electricity Act, and the Rules and Regulations made thereunder, and not beyond. The jurisdiction conferred on the Regulatory Commission, both Central and States, is by the Electricity Act, 2003, an Act of Parliament. Wherever jurisdiction is given to a court (or Tribunal) by an Act of Parliament, and such jurisdiction is only given upon certain specified terms contained in that Act, these terms must be complied with, in order to create and confer jurisdiction on it for, if they be not complied with, it would lack jurisdiction. (**Nusserwanjee Pestonjee v. Meer Mynodeen Khan** [LR (1855) 6 MIA 134 (PC); **Mohd. Hasnuddin v. State of Maharashtra, (1979) 2 SCC 572**). As it derives its powers from the express provisions of the Electricity Act, the powers, which have not been expressly given by the said Act, cannot be exercised by the State Regulatory Commission. (**Rajeev Hitendra Pathak v. Achyut Kashinath, (2011) 9 SCC 541**). An authority created by a statute must act under the Act and not outside it. As it is a creation of the statute, it can only decide the dispute in terms of the provisions of the Act. (**K.S. Venkataraman & Co. v. State of Madras, AIR 1966 SC 1089; Mysore Breweries Lt. v. Commissioner of Income-Tax, (1987) 166 ITR 723 (KAR)**). The State Regulatory Commission can exercise jurisdiction only when the subject matter of adjudication falls within its competence, and the order that may be passed is within its authority,

and not otherwise. (***Dakshin Haryana Bijli Vitaran Nigam Ltd. v. Princeton Park Condominium: 2007 Aptel 764; BSES Rajdhani Power Limited v. Delhi Electricity Regulatory Commission, 2009 SCC OnLine APTEL 52***).

Unlike Constitutional Courts (ie the Supreme Court and the High Courts) which may in larger public interest, and in certain limited circumstances, pass orders in rem, extending the orders passed by it also to others who are not parties to the proceedings before it, such a course of action, in the absence of any specific power being conferred in this regard under the provisions of the Electricity Act and the Rules and Regulations made thereunder, was not available to be exercised by the TNERC.

The observations of the TNERC, making the impugned order dated 27.02.2025 applicable even to those who are not parties to the said proceedings, is ex facie without jurisdiction and is accordingly set aside. Sri M. Sethu Ramalingam, Learned Counsel for the TNERC, would submit, not without justification, that, in such an event, the observations in the impugned order, that the demand notice dated 12.12.2024 issued by the Appellant is valid, must also be understood as being confined only to the Respondent-generators before the TNERC, and not to all others who were not parties to the subject proceedings before the Commission, even if they be similarly situated. We have no quarrel with the submission of the Learned Counsel for the TNERC that the observations of the TNERC, that the demand notices dated 12.12.2024 issued by the Appellant were valid, must be understood to have been made only with respect to those two generators who were parties to the two MPs filed before the Commission, which culminated in the impugned interlocutory order being passed; and, in case any other

generator approaches the Commission, their claim shall be examined on its merits uninfluenced by the observations made in the impugned order. As the present appeal has been preferred by TANGEDCO against the interlocutory order passed by the TNERC, and the observations in the impugned order that the demand notice dated 12.12.2024 is valid is not under challenge, suffice it to make it clear that we were neither required nor have we expressed any opinion on the observations of the TNERC regarding the validity of the said demand notice.

Curiously the TNERC, while holding in Para 12(a) of the impugned order that the demand notice was valid except for the Appellant's claim with regard to BPSC, observed, in paragraph 14 of the impugned order, that the IAs filed by the second Respondent were being dismissed. There is no reference in paragraph 14 of the impugned order regarding grant of interim stay, of the Appellant's claim for belated payment surcharge, being granted. If we were to read paragraph 14 of the impugned order in isolation, it would appear that the Appellant is seeking to have the order passed by the TNERC, dismissing the IA filed by the second Respondent, set aside. Ms. Anusha Nagarajan, Learned Counsel for the Appellant, would point out, not without justification, that, in para 12(a), the Commission has held that the demand raised by the Appellant for start-up charges was upheld except with regard to the claim of BPSC; and, in view thereof, the Respondent-generators claim that they are not obligated to pay BPSC to the Appellant.

While the observations of the TNERC in paragraph 12(a) and 14 do seem to contradict each other, it does also appear from a reading of para 12(a) of the impugned order that the Appellant's claim for BPSC has been stayed by the TNERC without assigning any reason, and

without even recording its satisfaction that the three tests for grant of interim relief have been satisfied.

The grant or refusal of interlocutory relief is covered by three well established principles viz., (1) whether the Appellant has made out a prima facie case, (2) whether the balance of convenience is in their favour i.e., whether it would cause greater inconvenience to them if interim relief is not granted than the inconvenience which the opposite party would be put to if it is granted, and (3) whether the Appellant would suffer irreparable injury. With the first condition as a sine quo non, at least two conditions should be satisfied conjunctively, and a mere proof of fulfilment of one of the three conditions does not entitle the applicant for the grant of interlocutory relief in their favour. (**Nawab Mir Barkat Ali Khan v. Nawab Zulfiquar Jah Bahadur, AIR 1975 AP 187; Gone Rajamma v. Chennamaneni Mohan Rao, (2010) 3 ALD 175; Kishoresinh Ratansinh Jadeja v. Maruti Corpn, (2009) 11 SCC 229; Best Sellers Retail (India) Private Ltd. v. Aditya Birla Nuvo Ltd., (2012) 6 SCC 792; State of Mizoram v. Pooja Fortune Private Limited, 2019 SCC OnLine SC 1741**).

In so far as the Appellant's grievance, relating to denial of belated payment surcharge is concerned, the impugned order does not assign any reasons as to why the Commission was of the view that the Appellant should be restrained from collecting belated payment surcharge from the generators during the pendency of the proceedings before the Commission. It is only if the Commission had recorded its prima facie view that such a demand, for payment of belated payment surcharge, was contrary to law could it then be said that the Commission was satisfied that the Prima facie test requirement had been fulfilled.

With fulfilment of the prima facie case test being the sine qua non, the Commission was then required to satisfy itself that the applicant, seeking interim relief, satisfied one of the other two tests of balance of convenience and irreparable injury before granting them interim relief. Even if the TNERC was of the view, for just and valid reasons, that interim relief should be granted, it ought to have adequately secured the interests of the Appellant bearing in mind the possibility of the Petitions being dismissed later and the Appellant being required to be restituted for the loss they suffered as a result of the interim order.

We are informed across the bar that the second Respondent has already invoked IBC proceedings, and an Insolvency Resolution Professional has already been appointed. It is to protect the Appellant from the possibility of its being unable to recover its legitimate dues, in case the MP were to be dismissed later, that any order which the Commission would pass should factor in the need to adequately secure their interests even if the Commission were to be satisfied that interim relief should be granted.

For the afore-said reasons, the impugned order, to the extent an interim order was passed restraining the Appellant from recovering BPSC from the 2nd Respondent, is set aside. IA No. 1 of 2025 in MP No. 55 of 2024 is restored to file. The Commission shall consider afresh whether the second respondent herein, has made out a prima facie case for grant of interim stay of the Appellant's claim for BPSC, and then examine whether one of the other two tests of balance of convenience and irreparable injury are also satisfied. Needless to state that even in case the Commission were to be satisfied, for just and valid reasons, that a case for grant of interim relief has been made out by the second Respondent, it shall put in place adequate safeguards, to protect the

interest of the Appellant, by securing the amount due and payable to the Appellant towards BPSC, during the pendency of the Miscellaneous Petition before the TNERC.

The Appeal, and all the IAs therein, are accordingly disposed of.

(Seema Gupta)
Technical Member (Electricity)

(Justice Ramesh Ranganathan)
Chairperson

mk/sk