

ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

I.A.No.33 of 2015 in O.P.No.18 of 2015
Dated: 19-08-2015

Present
Sri Justice G. Bhavani Prasad, Chairman
Dr. P. Raghu, Member
Sri P. Rama Mohan, Member

Between:

PTC India Ltd
2nd Floor, NBCC Tower
Bhikaji Cama Place
New Delhi

... Petitioner

A N D

1. Meenakshi Energy Pvt.Ltd.
NSL ICON, H.No.8-2-684/2/A
Plot No.1 to 4, 2nd Floor
Road No.12, Banjara Hills, Hyderabad - 500 034
 2. Transmission Corporation of Telangana Ltd.
represented by its Chairman and Managing Director
6th Floor, A-Block, Vidyut Soudha
Khairathabad, Hyderabad - 500 082
 3. Southern Power Distribution Company of Telangana Ltd.
represented by its Chairman and Managing Director
6-1-50, Corporate Office, Mint Compound, Hyderabad - 500 063
 4. Northern Power Distribution Company of Telangana Ltd.
Represented by its Chairman and Managing Director
H.No.2-5-31/2, Corporate Office, Vidyut Bhavan
Nakkalgutta, Hanamkonda, Warangal - 506 001
- ... Respondents

The petition and the interlocutory application have come up for hearing finally on 14-08-2015 in the presence of Sri Dammalapati Srinivas, Senior Advocate representing Sri G. Subbarao & Ravi Kishore, learned counsel for the petitioner, Sri Sitesh Mukherjee, learned counsel for the 1st Respondent and Sri Y. Rama Rao, learned Standing Counsel for 2nd to 4th respondents. After carefully considering the material available on record and after hearing the arguments of all the persons present, the Commission passed the following:

ORDER

An Interlocutory Application for rejection of the petition in O.P.No.18 of 2015 on the file of the Andhra Pradesh Electricity Regulatory Commission.

2. The interlocutory petitioner, who is the 1st respondent in O.P.No.18 of 2015 contended that O.P.No.18 of 2015 was filed by PTC India Limited, an interstate trading licensee against the interlocutory petitioner, an independent power producer questioning the supply of electricity by the interlocutory petitioner to the Transmission Corporation of Telangana Limited and two distribution companies of Telangana directly and not through PTC India Limited as per the terms of the Power Purchase Agreement dated 28-11-2013 as amended on 05-11-2014. No party to O.P.No.18 of 2015 is granted licence by the Andhra Pradesh Electricity Regulatory Commission and the interstate trading license to PTC India Limited was granted under Section 14 of the Electricity Act, 2003 by the Central Electricity Regulatory Commission. The interlocutory petitioner is a generating company operating a coal fired thermal generating station near Krishnapatnam Port of Nellore District of Andhra Pradesh State. The Andhra Pradesh Electricity Regulatory Commission is not the appropriate Commission for adjudication of the dispute raised in O.P.No.18 of 2015 and the regulatory jurisdiction of the State Commission over a generating company qua a power procurement process gets attracted only when that process involves a state distribution licensee. The jurisdiction of a State Commission under Section 86 is not attracted when only a trading licensee is the opposite party and mere location of the power plant of the interlocutory petitioner in Andhra Pradesh does not confer jurisdiction on the Commission. Even otherwise, under Article 11.2 of the Power Purchase Agreement, the parties are required to resolve any dispute amicably before approaching the appropriate Commission for which a dispute notice has to be given for which the other party may furnish its counter claim or defence within 25 days and only

if the parties are unable to resolve the dispute amicably, the appropriate Commission should be approached for adjudication. The PTC India Limited made no such attempt and as it failed to market the power generated by the interlocutory petitioner on a best effort basis, the interlocutory petitioner was constrained to sell power directly to the power procurers, as otherwise, the power plant would have been rendered unviable. Hence, the interlocutory application for dismissal of the main petition and for costs.

3. The Petitioner in O.P.No.18 of 2015 in its reply contended that under Section 86 (1) (f) of the Electricity Act, 2003, this Commission has jurisdiction to adjudicate disputes between the licensees and the generating companies and to refer the disputes for arbitration and the licensee is one as defined in Section 2 (39) read with Section 14. The petitioner being one such licensee, this Commission established under the Electricity Act, 2003, has jurisdiction over the matters relating to a generating company within the territorial jurisdiction of the State of Andhra Pradesh and there is no condition precedent for the applicability of Section 86 (1) (f) to the effect that the licensee referred therein should have been granted a licence by that State Commission. To the same effect are the decisions of the Hon'ble Supreme Court and other Courts/Tribunals. The interlocutory petitioner entered into an illegal clandestine deal with Telangana to cheat the main petitioner and the interlocutory petitioner was not interested in sorting out the issues in spite of their being brought to its notice. The generating plant itself would not have come up but for the support of the main petitioner and there was not a single instance where power remained unsold. The APPCL cancelled the letter of intent issued to the interlocutory petitioner only because of its lapses and hence the main petitioner desired that the application which is not *bona fide* be dismissed with exemplary costs.

4. The other respondents to the main petition did not come up with any counter in the main petition or the interlocutory application so far.

5. Sri Sitesh Mukherjee, learned counsel for the interlocutory applicant and Sri Dammalapati Srinivas, learned senior counsel for the main petitioner advanced their extensive arguments on the interlocutory application for rejection of the main petition for want of jurisdiction and cited various precedents which will be referred to in due course. The present consideration is confined to the merits of the interlocutory application only. Both parties also submitted their written submissions.

6. The point for consideration is whether this Commission has jurisdiction to adjudicate O.P.No.18 of 2015 on its file.

7. PTC India Limited is an interstate trading licensee, the licence having been granted by the Central Electricity Regulatory Commission in 2004. It entered into a Power Purchase Agreement dated 28-11-2013, amended on 05-11-2014 with Meenakshi Energy Private Limited (for short “the company”) having its coal fired thermal generating unit in Nellore District in the State of Andhra Pradesh. The Agreement period for 25 years is for a contracted capacity of 133.50 MW net (150 MW gross) of Unit-II of the project. As per clause 4.9 of the agreement, the company shall not supply the contracted capacity to any third party without the prior written approval of PTC India Limited subject to clauses 4.3 and 8.3.2 of the agreement and the company has to pay regularly the agreed PTC trading margin and share in profit. However, on 30-03-2015, the company offered the Transmission Corporation of Telangana Limited by a letter to sell 120 MW of power from 29-05-2015 to 24-12-2015 and again from 29-01-2016 to 26-05-2016. The offer was stated to be for supply of firm power on RTC basis- Unit-II through PTC India Limited. Accordingly, PTC India Limited offered the Southern Power Distribution Company of Telangana Limited by a letter dated

31-03-2015 the power offered by the company. However, PTC India Limited received a letter dated 09-05-2015 from the company that they received a letter of intent from TSPCC for sale of power from 29-05-2015 to 31-03-2016, further alleging that PTC India Limited did not offer to sell the contracted capacity or part thereof due to which it is not entitled for its margin and share in profit as per the agreement. Immediately, PTC India Limited informed by letter dated 15-05-2015 that the power cannot be sold directly to Telangana Power Utilities. There was no prior written consent from PTC India Limited for sale to a third party outside the agreement and when it is performing all its obligations under the agreement, the company by its deviation committed a breach of trust. Hence, PTC India Limited desired the company to be directed to sell the power strictly as per the terms of the Power Purchase Agreement. PTC India Limited also filed an interlocutory application claiming that the company started supplying electricity to Telangana and hence the company be directed to pay the trading margin and other dues to the petitioner in terms of the Power Purchase Agreement, recovery of which otherwise will be difficult in view of the financial difficulties of the company. PTC India Limited also filed another application under Section 94 (2) of the Electricity Act, 2003 for restraining the company from supplying electricity to third party outside the Power Purchase Agreement and further to direct the company to supply the electricity to the Transmission Corporation of Telangana Limited or Discoms only through PTC India Limited.

8. Meenakshi Energy Private Limited claimed that PTC India Limited failed to fulfill its contractual obligation and failed to secure any purchase orders for the company and the company had to make its own efforts to secure a purchase order from TSPCC. Hence, PTC India Limited cannot make any claim for trading margin or share in profit either in law or in equity. The company complied with clause 4.3 of the agreement in effect and substance and even any breach of contract can eminently be

compensated in money. The reliefs sought for are unknown to law and the APPCC order was cancelled alleging failure of supply of power by the company. PTC India Limited did not protest against the cancellation and also failed to release payments against accepted invoices towards sale of power. The Power Purchase Agreement permits the company to sell power to a third party subject to PTC's ROFR. The company was given the purchase order by TSPCC on 08-05-2015 in answer to the letter by the company dated 23-04-2015.

9. From the above stated essence of the factual matrix discernable from the pleadings and documents of both parties, it is clear that the status of PTC India Limited as an interstate trader and Meenakshi Energy Private Limited as a generating company are admitted and the existence and contents of the Power Purchase Agreement dated 28-11-2013 as amended on 05-11-2014 are also admitted. The attempt of PTC India Limited to have the power generated by the Opposite Party not supplied outside the Power Purchase Agreement and supplied to anybody only through PTC India Limited and also to have the trading margin and other benefits paid by Meenakshi Energy Private Limited in terms of the Power Purchase Agreement is resisted by the generating company not only with reference to the interpretation of the Power Purchase Agreement from a different perspective, but also by attributing the default or breach or failure of PTC India Limited to be entitling it to sell the power generated by it to Telangana Power Utilities beyond the Power Purchase Agreement. Consideration of any other factual or legal issue is primarily dependent on the existence or otherwise of the jurisdiction of this Commission to entertain this dispute, which is therefore being gone into and decided in the interlocutory application more or less as a preliminary issue without going into the other questions in controversy between the parties at this stage.

10. The main petition was filed under Section 86 (1) (f) of the Electricity Act, 2003, while the interlocutory application for interim reliefs was filed under Section 94 (2) of the Electricity Act, 2003. Section 86 (1) (f) makes adjudication upon the disputes between the licensees and the generating companies and reference of any dispute for arbitration, one of the functions of a State Commission. Section 94 (2) only confers the power to pass appropriate interim orders by the Commission.

11. Section 86 (1) (f) received the attention of the Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Limited Vs. ESSAR Power Limited, 2008 (4) SCC 755 relied on by PTC India Limited and the Apex Court took the aid of mimansa principles of interpretation for resolving the conflict before them. Noting that Section 86 (1) (f) is a special provision for adjudication of disputes between licensees and the generating companies, which disputes can be adjudicated upon either by the State Commission or the person or persons to whom it is referred for arbitration, the Hon'ble Supreme Court was of the opinion that the word "and" between the words "generating companies" and "to refer any dispute for arbitration" means "or". The Hon'ble Supreme Court clarified that all disputes and not merely those pertaining to matters referred to in clauses (a) to (e) and (g) to (k) in Section 86 (1) between the licensee and the generating companies can only be resolved by the Commission or an arbitrator appointed by it which is because there is no restriction in Section 86 (1) (f) about the nature of the dispute. The principle that after 10-06-2003, the date of Electricity Act, 2003 coming into force, there can be no adjudication of disputes between the licensees and the generating companies by anyone other than the State Commission (or the Central Commission) or an arbitrator (or arbitrators) nominated by it still holds the field. However, the issue raised herein is about the meaning of the word licensee with reference to a State Commission and its jurisdiction in the application of Section

86 (1) (f) and this question was not the subject of the consideration by the Hon'ble Supreme Court.

12. The case of Tamilnadu Generation and Distribution Corporation Limited Vs. PPN Power Generating Company Private Limited 2014 (11) SCC 53 relied on by PTC India Limited, of course referred to the Gujarat Urja case, cited above, with approval, but, even in this case, the question raised herein as to whether the word licensee in Section 86 (1) (f) refers only to a licensee to whom the licence was granted by the State Commission assuming jurisdiction over the dispute or a person who was granted licence by any Commission was neither raised nor considered.

13. The main petitioner also relied on the order of the Central Electricity Regulatory Commission in Petition No.33/MP/2012 dated 08-01-2013 in which the main petitioner herein was the petitioner. The Central Electricity Regulatory Commission with reference to the relevant provisions of the Electricity Act, 2003 and judicial precedents, opined that under Section 79 (1) (f), the disputant should be either a generating company or a transmission licensee and the dispute must be arising out of the statutory functions and powers of the Central Electricity Regulatory Commission expressly mentioned in clauses (a) to (d) referred to in clause (f). The Commission observed that the fundamental principle is that interpretation in the first instance is to be limited to the language of the statute and a purely contractual dispute between a generating company and an interstate trading licensee was held to be not satisfying Section 79 (1) (f) to confer the jurisdiction on the Central Commission. Noting that there is no authority for the proposition that a statutory authority can exercise powers beyond those specifically conferred under the statute under which it had been established, the Central Commission held the dispute to be beyond the jurisdiction of the Commission. This order is thus apparently not an authority for adopting the

interpretation of Section 86 (1) (f) as sought to be made by the same interstate trader herein.

14. Then comes the order in I.A.No.6 of 2011 in O.P.No.16 of 2010 dated 22-08-2011 of the erstwhile Andhra Pradesh Electricity Regulatory Commission. The contention that one of the parties to the dispute under Section 86 (1) (f) must necessarily be a generating company was rejected construing the word “and” between the words “licensees and generating companies” as “or” and disputes between the licensees were held to be within the adjudicatory jurisdiction of the State Commission. However, the question whether the State Commission has got jurisdiction over a dispute between a licensee within that State and a licensee who has not been granted a licence by that State Commission was held to be slightly different from the question under the consideration of the erstwhile Andhra Pradesh Electricity Regulatory Commission. It was of course held that so long as distribution licensees are involved in procurement of power in that State, the State Commission alone will have the jurisdiction under Section 86 (1) (f) to adjudicate upon the dispute and there is no restriction on the location of the trading licensees to determine the jurisdiction of the State Commission. Thus, the distribution licensees in that case were those granted licence by that State Commission and procurement of power by the said distribution licensees was for that State and has a direct nexus with that State unlike the present case wherein the interstate trader and the persons to whom the energy is attempted to be supplied are not licensees within the State of Andhra Pradesh or licensees of this State Commission and the nexus between this State and the dispute is only the location of the generating company within its territory.

15. In Tata Power Company Limited Vs. Reliance Energy Limited 2009 (16) SCC 659 relied on by the generating company, the Hon’ble Supreme Court found the primary

object of the Electricity Act, 2003 to be to free generating companies from the shackles of licensing regime and the Courts while interpreting the provisions of the statutes must guard themselves from doing so in such a manner which would defeat that purpose. Emphasizing the need for adopting the contextual meaning in interpreting the provisions of the statutes, the Hon'ble Supreme Court also referred to the need for purposive construction. The Hon'ble Supreme Court examining the functions of the State Electricity Regulatory Commission in that background held that the regulatory regime of the Commission can be enforced against a generating company if the condition precedent therefor becomes applicable and specifically referred to the provisions which specifically provided for such regulations etc., of generation and/or generating companies. Section 86 (1) (b) of the Electricity Act, 2003 was held not to mean that while exercising the regulatory jurisdiction as and when directions are issued to the distribution companies by the appropriate Commission, the Commission will bring within its umbrage the generating company also for the purpose of issuance of separate directions. Thus, the decision clearly laid down that the activities of a generating company are beyond the purview of the licensing or regulatory provisions except to the extent expressly stated in the statute or rules or regulations.

16. In Lanco Amar Katak Private Limited Vs. Madhya Pradesh Electricity Regulatory Commission (Appeal No.7 of 2009), the Appellate Tribunal for Electricity in its judgment dated 06-08-2009 was dealing with a dispute between a generating company and a licensee of the Central Electricity Regulatory Commission to undertake trading as an interstate trader. Interestingly the interstate trader therein is the main petitioner herein. The Appellate Tribunal referring to Section 86 (1) (f) observed that the opening words "the State Commission" must be construed in the context of the territorial jurisdiction of the Regulatory Commission of each State and the word "the

Licensee” as referred to in Section 86 (1) (f) has to be construed to mean such licensees which have been granted a trading licence or such licensee who has been granted a trading licence by the particular State Commission seeking to assume jurisdiction over the dispute. The Tribunal explained that this means disputes arising between a generating company and an electricity trader operating under a trading licence granted by it. The Tribunal also specifically considered the decision in Gujarat Urja Vikas Nigam Limited Vs. ESSAR Power Limited 2008 (4) SCC 755 and has specifically observed that the judgment is of no use to the interstate trader since the judgment has not considered the scope and ambit of the term licensee for the purpose of Section 86 (1) (f). The observation of the Tribunal that the Hon’ble Supreme Court did not go into the question as to who can be called a licensee to invoke the jurisdiction of the State Commission is equally applicable to the facts of the present case. The Tribunal also refused to refer to the definition of licensee under Section 2 (39) read with Section 14 of the Act, as the said definition does not take into consideration the fact that for the purpose of Section 86 (1) (f) the delineation of the adjudicatory jurisdiction of a State Commission *inter se* is necessary. The Tribunal also did not agree that merely because a person who has been given a licence for interstate trading can undertake intrastate trading also without any licence from the State Commission, it can mean that such a licensee who is undertaking both interstate trading and intrastate trading can automatically become a licensee of the State Commission. Hence, the Tribunal made it clear that it is not the intention of the legislation that any Regulatory Commission in India would become competent to decide any dispute between a licensee or any generating company anywhere in India. The main petitioner referred to this decision of the Tribunal to be still under a pending appeal before the Hon’ble Supreme Court in Civil Appeal No.10329 of 2011. But, it is not claimed that the said judgment has been the subject of any stay or

suspension pending appeal. If so, the persuasive, if not binding value of the ratio decidendi of the judgment of the Appellate Tribunal for this Commission cannot be over looked.

17. Appeal No.130 of 2011 before the Appellate Tribunal for Electricity between M/s. Jaiprakash Power Ventures Limited Vs. Haryana Electricity Regulatory Commission decided on 20-07-2012, is also a case where the present main petitioner is a party (3rd respondent therein) and the Tribunal concluded that the State Commission will have jurisdiction to adjudicate upon a power purchase agreement between a generating company and an interstate trader only if nexus or privity is established between the PPA and PSA between the interstate trader and the distribution licensee. The Tribunal also noted that Gujarat Urja Vikas Nigam Limited Vs. ESSAR Power Limited 2008 (4) SCC 755 was rendered in the context of an agreement between a generating company and a distribution licensee and the Tribunal referring to its own decisions explained that where the procurement of power has a direct nexus with a State, that State Commission will have the jurisdiction to adjudicate upon a dispute but still stated about the generator and interstate trader being no licensees of the State Commission unlike the cases where the agreement was between the trading licensee and a distribution licensee. In its elaborate discussion, the Tribunal was thus clear that the State Commission has no jurisdiction. Significantly the main petitioner herein raised a belated plea in that case that the Central Commission will have the jurisdiction in case of any interstate supply of electricity from one State to another or where there is no nexus for supply of electricity to the State where electricity is being consumed, which contention is not *in pari materia* with the contentions raised by it herein.

18. Appeal No.188 of 2011 between M/s. Lanco Budhil Hydro Power Private Limited Vs. Haryana Electricity Regulatory Commission & others decided on 09-08-2012 by the Appellate Tribunal for Electricity involved a dispute regarding the validity of notice of termination of the power purchase agreement by the generator to the interstate trader (incidentally the petitioner herein) raised in the petition filed by the distribution licensee of that State Commission for enforcement of the power purchase agreement to which the distribution licensee was not a party. The Appellate Tribunal after an exhaustive reference to its earlier decisions reiterated that the dispute between the parties who are neither a generating company nor a licensee of the State Commission cannot be adjudicated under Section 86 (1) (f). The Tribunal also stated that a State Commission has no jurisdiction to entertain a dispute regarding the power purchase agreement between a generating company and an interstate trader at the instance of the distribution licensee of that State. Section 86 (1) (f) is stated to be covering only disputes between licensees and generating companies but not disputes with “other sources”. Incidentally, the main petitioner herein who is 3rd respondent therein has to be noted as stating at one place in its reply in that case that the contention that the State Commission has no jurisdiction was *mala fide* and without any basis and again stating at another place in the same reply that in case of an interstate supply of electricity, only Central Commission has got the jurisdiction. The Tribunal extracted the relevant portions of the reply of the main petitioner herein and concluded that going through the reply in its entirety it can be assumed that PTC (the main petitioner herein) in a way admitted in its reply that the State Commission may not have jurisdiction to deal with the instant dispute. The agreement between a generating company and an interstate trader was noted to be not contemplating distribution and supply in a particular State and the agreement in the present case is no different. The dispute arising out of that power purchase agreement was held to

be not open to adjudication under Section 86 (1) (f) as PTC (the main petitioner herein) is neither a generating company nor a licensee of the State. The Tribunal also noted that mere identification of a purchaser just prior to the execution of the power supply agreement without reference to the said identification in the power purchase agreement or in its amendment cannot be construed as nexus to confer jurisdiction on a State Commission. The Tribunal also referred to *Tata Power Vs. Maharashtra Electricity Regulatory Commission* 2009 ELR (SC) 2496 as stating the settled law that the Regulatory Commission does not have the power to issue directions to the generating company at the instance of the distribution licensee in the absence of a direct contract between the distribution licensee and the generating company. The jurisdiction of the State Commission is attracted only in the event that there exists a direct nexus between (a) generating company with the State in which power generated by it is going to be consumed and (b) direct nexus between power purchase agreement and power supply agreement. In the present case, no power supply agreement to any distribution licensee of the State of Andhra Pradesh with either the generating company or an interstate trader has been pressed into service and power generated by a generating company being consumed in the State of Andhra Pradesh is not the contingency.

19. The Interstate trader made only the generating company physically located within the territory of the State of Andhra Pradesh and the transmission and distribution companies of the State of Telangana as parties to O.P.No.18 of 2015 and the main petition specifically stated the power purchase agreement to be for marketing the contracted capacity of power on best effort basis while any supply of the contracted capacity to any third party without the prior written approval of the interstate trader is prohibited. A close perusal of the contents of the main petition does not show any other link between the generating company or the power produced

by it and the State of Andhra Pradesh after the cancellation of the letter of intent issued to the generating company by APPCC. While the reasons or blame for such cancellation are not germane for this enquiry, the petitioner itself followed up with the officials of the State of Telangana for sale of power as per the later offer by the generating company. The grievance of the petitioner in the main petition or interlocutory applications filed by it is only about the sale of power to a third party directly without obtaining its written consent and even in the application under Section 94 (2) the prayer of the main petitioner was to direct the generating company to supply electricity to the transmission and distribution licensees of Telangana only through the petitioner and not directly. The relief sought for in the main petition and in the interlocutory applications therefore is to ensure the supply by the generating company to Telangana power utilities through the petitioner which cannot be considered to be establishing or indicating any nexus between the State of Andhra Pradesh or the licensees of the Andhra Pradesh Electricity Regulatory Commission and power generated or supplied by the generating company. The only link is the physical location of the generating company within the territory of the State of Andhra Pradesh. While it is not at all shown as to how the transmission and distribution licensees of the State of Telangana will be amenable to the jurisdiction of this Commission on such facts, the generating company contends that the letter of intent issued by the APPCC was not cancelled due to any fault of it. The rights and obligations of the interstate trader and the generating company under the power purchase agreement thus do not appear to be within the regulatory province of this State Commission under Section 86 (1) (f), in the absence of any licensee from this State Commission in the dispute and in the absence of any other nexus to the State of Andhra Pradesh or the distribution licensees of the State. Whether the main petitioner is entitled to any trading margin or other dues from the generating company

or not is not within the adjudicatory competence of this Commission in such circumstances.

20. The learned counsel for the generating company also invited attention to the definition of licensee under Section 2 (39), the grant of licence under Section 14 and the prefix “the” to the word ‘licensees’ in Section 86 (1) (f) provided for adjudication upon the disputes between the licensees and the generating companies by the State Commission to impress upon the argument that the statute referred to licensees of that State Commission only expressly and also by necessary implication. He also invited attention to the dictum of the Hon’ble Supreme Court in *Shri Ishar Alloy Steel Limited Vs. Jayaswals Neco Ltd.*, (2001) 3 SCC 609 wherein the Apex Court stated that “the” is the word used before nouns, with a specifying or particularising effect as opposed to the indefinite or generalising force of “a” or “an”. It determines what particular thing is meant and “the” is always mentioned to denote a particular thing or a person. Such specifying or particularising effect of the use of the word “the” in Section 86 (1) (f) cannot be brushed aside but any further research into the issues of expression or language becomes not quite necessary as the principles laid down by the Hon’ble Supreme Court in various decisions and the unambiguous interpretation of similar relevant situations by the Appellate Tribunal for Electricity more than once indicate beyond any doubt the limitations on the jurisdiction of a State Electricity Regulatory Commission.

21. A close and careful analysis of the facts and law involved herein thus clearly suggests that the interstate trader, who did not take a stand in its other litigations consistent with the stand taken herein, cannot be permitted to invoke the jurisdiction of this Commission though there is an admitted dispute between it and the generating company. It is not for this Commission to propound the appropriate forum or manner

for determination of such dispute. Reliance of the main petitioner on Section 10 (3) of the Electricity Act, 2003 is of no relevance to the present dispute as any duty of a generating company to submit technical details regarding its generating stations to the appropriate Commission and the authority has no relevance to the jurisdiction conferred on a State Commission under Section 86 (1) (f) and there need be no further probe into the scope and effect of Section 10 (3). Similarly Rule 9 of the Electricity Rules, 2005 on which the learned Senior Counsel for the interstate trader relied on undoubtedly enables the interstate trader to undertake purchase and resale of electricity in a State without the need to take a separate licence for intrastate trading from the State Commission of such State. But the same cannot be equated to making an interstate trader a licensee of that State Commission. Like regulations of some other State Commissions under consideration before the Appellate Tribunal for Electricity in this connection, APERC (Intrastate Electricity Trading) Regulation, 2005 specifically defined a trader in clause 2 sub-clause (o) which does not cover persons exempted from obtaining a separate licence for intrastate trading under Rule 9 of the Electricity Rules, 2005. In fact, the CERC (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2009 do not in any manner suggest or provide for construing interstate trader licensed by the CERC to be deemed in any manner to be the licensee of any State Commission. Thus, the decisions of the Hon'ble Supreme Court and the Appellate Tribunal for Electricity relied on by the parties do not in any manner corroborate the interpretation sought to be placed on the jurisdiction of the State Commission by the interstate trader herein and as already stated, no party to the dispute is a licensee of this State Commission and there is otherwise no nexus between the dispute and the State of Andhra Pradesh which justifiably confers jurisdiction on this State Commission for adjudication of the dispute with the location of the generating company alone not being a relevant or

determinate factor on the issue. As already stated who else has the jurisdiction is not for this Commission to state and consequently the request of the generating company to negative the main petition has to be accepted.

22. Hence, this interlocutory application is allowed and the main petition O.P.No.18 of 2015 shall stand dismissed. The parties shall bear their own costs and it is made clear that the dismissal of the main O.P.No.18 of 2015 is not on merits but only due to want of jurisdiction of this Commission.

This order is corrected and signed on this the 19th day of August, 2015.

Sd/-
P. Rama Mohan
Member

Sd/-
Dr. P. Raghu
Member

Sd/-
Justice G. Bhavani Prasad
Chairman