

THE TAMIL NADU ELECTRICITY REGULATORY COMMISSION
(Constituted under Section 82(1) of the Electricity Act, 2003)
(Central Act 36 of 2003)

PRESENT :

Thiru S. Kabilan - Chairman

and

Thiru R. Rajupandi - Member

D.R.P. No. 18 of 2008 and IA.No.4 of 2009

TCP Limited
No.4 (Old No.10)
Karpagambal Nagar
Mylapore
Chennai 600 004

... Petitioner

... Counsel for the Petitioner
(1) Thiru Rahul Balaji and
(2) Thiru Rahul Vivek

Versus.

1. The Chairman
Tamil Nadu Electricity Board
144, Anna Salai
Chennai 600 002.

2. The Member (Generation)
Tamil Nadu Electricity Board
144, Anna Salai
Chennai 600 002.

3. The Chief Engineer (PPP)
Tamil Nadu Electricity Board
144, Anna Salai
Chennai 600 002.

... Respondents

... Counsel for the Respondents
(1) Thiru P.S. Raman, Addl. Advocate
General
(2) Thiru M.S. Mohamed Rafi

The above DRP.No.18 of 2008 and IA.No.4 of 2009 came up for final hearing on the 29th July 2009. Upon perusing the above petition and connected records and upon hearing both sides the Commission passes the following final

ORDER DATED 14th OCTOBER 2009.

1. Prayer in DRP.No.18 of 2008

The prayer in DRP.No.18 of 2008 is to direct the respondent to make payment to the petitioner a sum of Rs.44,62,67,540/- in terms of clause 3.26 together with interest at 14% per annum as per clause 3.15(b) of the Agreement from the date of filing of the present petition till the date of payment.

2. Prayer in IA.No.4 of 2009

The prayer in IA.No.4 of 2009 is to delete the words 'from the date of filing of the present petition' in the prayer and instead add the words 'from the date the payments were due.

3. Facts of the case

3.1.Petitioner's power project was commissioned in September 1999 and the Company entered into a power purchase agreement with TNEB on 29-1-1999. The agreement is valid upto 2014 whereby TNEB agreed to purchase the power from the petitioner at the rates fixed therein for each year commencing from 1999 onwards and any delay in payment within the stipulated time would attract 14% interest per annum.

3.2. In terms of the contracted rate of tariff, the Company has been billing TNEB for the export of power from the year 1999 onwards till date and TNEB has been settling the bills in accordance with the contracted tariff rate upto year 2004-2005. Thereafter, the TNEB arbitrarily admitted only Rs.3.01 per unit as against the contracted rate of Rs.3.17, Rs.3.32 and Rs.3.49 from the year 2005-2006 onwards.

3.3. In letter dated 31-3-2008, the respondent called for a negotiation meeting to be conducted on 4-4-2008 to review the prices which meeting was thereafter re-fixed on 8-4-2008 as per the petitioner's request. However, the respondent has failed to proceed further in the matter and contrary to the directions issued by the Central Government, in respect of the tariff policy, in its letter dated 21-4-2008 and 24-7-2008 called upon the petitioner to get the rate fixed by this Commission.

3.4. The petitioner is setting forth in Annexure "A" the statement of cost per unit of power which works out to Rs.5.89. The various assumptions as well as the factual basis for arriving at such rate are set out in the said Annexure. In view thereof, the petitioner seeks for fixation of tariff on the said basis for the remainder of the period of the agreement at Rs.5.89 per unit effective from 1-4-2008 with an escalation of 5% annually and also for a direction to the respondent Board to make payment of Rs,44,62,67,540/- due under the Agreement dated 29-1-1999 to the petitioner together with interest.

4. Contentions of Respondent Board in the counter-affidavit

The contentions of Respondent Board as set out in the counter-affidavit are briefly as follows:

- a) The Board has written to Government of Tamil Nadu vide letter dated 21-06-2005 requesting for an Order freezing the rate of power, purchased from the Captive power plants from 2005-06 at Rs.3.01 per unit
- b) In the negotiation meeting conducted on 18-5-2007, TNEB offered to purchase the power at the rate of Rs.2.32 per unit for firm power, the approved rate for the existing Captive Power Plants. To the said offer, the company expressed their difficulties to accept the reduced rate and requested the TNEB to continue to pay at the existing frozen rate of Rs.3.01 per unit for the year 2007-08, and signed the minutes of the meeting.
- c) The petitioner company itself has accepted the rate of Rs.3.01 per Kwhr, the company's request for payment of Rs.44,62,67,540 seems to be contrary, unjustifiable and further the petitioner is estopped from

claiming huge amount and taking shelter under the power purchase agreement dated 29-01-1999 as there was a mutual understanding between the parties to freeze the rate. The claim of Rs.44,62,67,540/- cannot be admitted and also due to discrepancy in the tariff rates specified in the power purchase agreement, the amount of Rs.44,62,67,540/- claimed by the petitioner is not correct.

- d) Since an agreement could not be reached at the negotiation meeting, it was decided to request the Company to approach the TNERC, as per Section 86(1) (b) and (f) of Electricity Act 2003, for determining the rate of Power Purchase from 1-4-2008.
- e) It is submitted that no amount is due and payable to the petitioner and therefore there is no delayed payment attracting payment of interest under clause 3.15(b) of the power purchase agreement. Furthermore the claim itself is made belatedly, hence liable to be dismissed as time barred.
- f) In regard to the IA it is contended that it is not maintainable in view of section 94(1) of Electricity Act, 2003. Hence the same is liable to be dismissed in limine and that the claim of interest from the date it fell due is barred by limitation and therefore on that ground also it is liable to be dismissed.

5. Arguments

5.1. Thiru P.S. Raman, the then Additional Advocate General, appeared before the Commission on behalf of TNEB. Expressing his views on Additional Solicitor General's opinion with regard to application of law of limitation before the quasi-judicial tribunals, he contended that the Commission is a full-fledged Court having powers to punish for contempt, adjudicate upon disputes and as such it cannot be called a quasi-judicial authority. Therefore, he said law of limitation is applicable. He said that the Commission's powers are similar to the Debt Recovery Tribunal.

5.2. Thiru Rahul Balaji, the Counsel for the petitioner contended that the Commission, though, has some trappings of a court, it is not a court as such. He said that the mere fact that certain powers of the Court have been conferred upon the Commission would not mean that the Commission is

a full-fledged Court. According to him, the question of limitation will not be applicable to the proceedings before the Commission. He further said that the regulators are administrators as well. The fact that limitation has been prescribed in case of appeal to the Tribunal and absence of such specific mention with regard to limitation in the Electricity Act, 2003, according to the petitioner's counsel, supports his case.

6. Findings of the Commission

6. (A) The Petitioner has filed a claim petition on 4th September 2008 for a sum of Rs.44,62,67,540/- as arrears of tariff from 1-4-2005 upto 31-3-2008. One of the grounds on which TNEB has resisted the claim is that Article 113 of the Schedule of the Limitation Act, 1963 should be invoked which lays down a limitation period of three years for a suit for which there is no prescribed limitation period. This would imply that claims for the energy supplied prior to August 2005 would be barred by limitation.

6. (B) The Commission thought it fit to seek the opinion of Thiru M. Ravindran, Additional Solicitor General of India in terms of Clause 27 (1) of the Conduct of Business Regulations 2004 of TNERC on the applicability of Limitation Act, 1963 to proceedings under the Electricity Act, 2003. The letter of the Commission and his opinion are enclosed. The opinion was circulated to both parties in accordance with Clause 27 (4) of the Conduct of Business Regulations, 2004 for arguments.

6. (C) The gist of the opinion of the Additional Solicitor General is that neither Section 86 nor any other Section of the Electricity Act, 2003 has prescribed a specific period of limitation. The Limitation Act 1963 does not apply as the Commission is not a Court and it does not apply where no period of limitation is provided under the relevant statute. (AIR – 1976 SC pgs 177 – 1976 (1 SCC) page 361). The judgements of the Hon'ble Supreme Court in AIR 1985 SC P-1279 and AIR 2000 SC 2023 point to the application of the provisions of the Limitation Act, 1963 only to proceedings before Courts and not to appeals or applications before bodies other than Courts such as quasi judicial tribunals or

executive authorities, notwithstanding the fact that such bodies or authorities may be vested with certain powers conferred by codes of civil or criminal procedure.

6. (D) Thiru P.S.Raman, Additional Advocate General appearing for the TNEB submitted that the Commission is a Court for all practical purposes and therefore the Limitation Act, 1963 would apply to proceedings before the Commission.

6.(E) The Learned counsel for the petitioner submitted that wherever the legislature intended to provide for limitation, it has been done explicitly as revealed by the following enactments:-

a) Section 39 of Advocates Act, 1961 provides that Sections 5 and 12 of the Limitation Act, 1963 shall apply to appeals under Sections 37 and 38 of the Act.

b) Section 171 of Ajmer Tenancy and Land Records Act, 1950 provides that Sections 4, 5 and 12, sub-section 2 of Section 14 and sub-sections 1 and 2 of Section 17 of the Indian Limitation Act, 1908 shall apply mutatis mutandis to applications and other proceedings under the Act.

c) Section 37 of Arbitration Act, 1940 stipulates that all the provisions of the Indian Limitation Act, 1908 shall apply to Arbitration as they apply to proceedings in Court.

d) Section 43 of the Arbitration and Conciliation Act, 1996 stipulates that the Limitation Act, 1963 shall apply to Arbitration as it applies to proceedings in Court.

e) Section 45-O of Banking Regulation Act, 1949 provides for special period of limitation.

f) Section 65 of Chit Funds Act, 1982 prescribes the period of limitation.

g) Section 23 – A of the Coal Mines (Nationalisation) Act, 1973 stipulates that the provisions of Sections 5 and 12 of the Limitation Act, 1963 shall apply to appeals under Section 23.

h) Section 23–A of Coking coal Mines (Nationalisation) Act, 1972 stipulates that the provisions of Sections 5 and 12 of the Limitation Act, 1963 shall apply to appeals under Section 23.

i) Section 10–GE of Companies Act 1956 stipulates that provisions of the Limitation Act, 1963 shall apply to appeals made to the Appellate Tribunal.

j) Section 60–A of the repealed Electricity Supply Act, 1948 deals with the period of limitation in certain cases.

k) Section 71(5) of Food Safety and Standards Act, 2006 stipulates that provisions of the Limitation Act, 1963 shall apply to an appeal made to the Tribunal.

l) Section 60 of the Information Technology Act, 2000 stipulates that the provisions of the Limitation Act, 1963 shall apply to an appeal made to the Cyber Appellate Tribunal.

m) Section 75 of the Major Port Trust Act, 1963 deals with Limitation Act, 1963.

n) Section 24 of Recovery of Debts due to Banks and Financial Institutions Act, 1993 stipulates that the provisions of the Limitation Act, 1963 shall, as far as may be, apply to an application made to the Tribunal.

o) Section 15–W of the Securities and Exchange Board of India Act, 1992 stipulates that the provisions of the Limitation Act, 1963 shall apply to an appeal made to a Security Appellate Tribunal.

p) Section 22–D of Securities Contracts (Regulation) Act, 1956 stipulates that the provisions of the Limitation Act 1963 shall apply to an appeal made to Securities Appellate Tribunal.

q) Section 36 of Securities and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 adopts the provisions of the Limitation Act, 1963.

r) Section 43 of Special Economic Zones Act, 2005 adopts the period of limitation prescribed by the Limitation Act, 1963.

6. (F) The Commission finds it appropriate to refer to the Order of the Central Electricity Regulatory Commission delivered on 12th November 2008 in Madhya Pradesh Power Trading Company Vs. Principal Secretary, Energy Department, Government of Uttar Pradesh and others. Paras 26 to 35 of the Order deal with the applicability of Limitation Act, 1963. They are extracted below:

“26. Next we consider the objection of limitation or delay and laches. The Act is a special Act and does not provide for any period of limitation for filing of the application before the Commission. The Limitation Act, 1963 (the Limitation Act) consolidates the law for limitation of suits and other proceedings. We are conscious that the Hon’ble Supreme Court has consistently held the view that the provisions of the Limitation Act are not applicable to the proceedings before the quasi judicial bodies and tribunals. In LS Synthetics Ltd Vs Fairgrowth Financial Services Ltd & others [(2004) 11 SCC 456], the Hon’ble Supreme Court held as under:

“33. The Limitation Act, 1963 is applicable only in relation to certain applications and not all applications despite the fact that the words "other proceedings" were added in the long title of the Act in 1963. The provisions of the said Act are not applicable to the proceedings before bodies other than courts, such as quasi-judicial tribunal or even an executive authority. The Act primarily applies to the civil proceedings or some special criminal proceedings. Even

in a Tribunal, where the Code of Civil Procedure or Code of Criminal Procedure is applicable; the Limitation Act 1963 per se may not be applied to the proceedings before it. Even in relation to certain civil proceedings, the Limitation Act may not have any application. As for example, there is no bar of limitation for initiation of a final decree proceedings or to invoke the jurisdiction of the Court under Section 151 of the Code of Civil Procedure or for correction of accidental slip or omission in judgments, orders or decrees; the reason being that these powers can be exercised even suo motu by the Court and, thus, no question of any limitation arises.”

27. The issue of applicability of the Limitation Act was also considered in Nityananda M. Joshi Vs LIC [(1969) 2 SCC 199] wherein the question was examined with reference to applicability of Article 137 thereof. The Hon’ble Supreme Court held that the Limitation Act deals with the applications before the courts and the labour court, a quasi judicial body under the Industrial Disputes Act, was not a court within the meaning of the Limitation Act and hence Article 137 of the Limitation Act was not applicable. The observations of the Hon’ble Supreme Court are extracted below:

“3. In our view Article 137 only contemplates applications to Courts. In the Third Division of the Schedule to the Limitation Act, 1963 all the other applications mentioned in the various articles are applications filed in a court. Further Section 4 of the Limitation Act, 1963, provides for the contingency when the prescribed period for any application expires on a holiday and the only contingency contemplated is “when the court is closed.” Again under Section 5 it is only a court which is enabled to admit an application after the prescribed period has expired if the court is satisfied that the applicant had sufficient cause for not preferring the application. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963.”

28. The issue was again considered in Sushila Devi Vs Ramanandan Prasad [(1976) 1 SCC 361] with reference to applicability of Section 5 of the Limitation Act to an application made before the Collector. Here also, the Hon’ble Supreme Court held that the Collector was not a court though certain powers under the Code of Civil Procedure were vested in him. The Hon’ble Supreme Court concluded that Section 5 of the Limitation Act could not

be invoked in the proceedings before the Collector. These observations of the Hon'ble Supreme Court are extracted hereunder:

“The third ground on which the decision of the High Court rests relates to the applicability of Section 5 of the Limitation Act, 1963. We do not see how Section 5 could be invoked in connection with the application made on October 17, 1965 by the first respondent. Under Section 5 of the Limitation Act an appeal or application “may be admitted after the prescribed period if the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.”

The Collector to whom the application was made was not a court, though Section 15 of the Act vested him with certain specified powers under the Code of Civil Procedure; also, the kind of application that was made had no time limit prescribed for it, and no question of extending the time could therefore arise.”

29. Another case in which this issue was considered is reported as Sakuru Vs Tanaji [(1985) 3 SCC 590]. In this case also the Hon'ble Supreme Court held that the Limitation Act does not apply to the appeals or applications before quasi judicial Tribunals or executive authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on courts under Code of Civil Procedure or Criminal Procedure Code, as per the observations extracted below:

“.....the provisions of the Limitation Act, 1963 apply only to proceedings in “courts” and not to appeals or applications before bodies other than courts such as quasi-judicial tribunals or executive authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on courts under the Codes of Civil or Criminal Procedure. The Collector before whom the appeal was preferred by the appellant herein under Section 90 of the Act not being a court, the Limitation Act, as such, had no applicability to the proceedings before him.”

30. As noted above, the Act does not specifically lay down period of limitation for adjudication of disputes under clause (f) of sub-section (1) of Section 79. In the light of the above decisions of the Hon'ble Supreme Court, the Limitation Act cannot be invoked to decide the bar of limitation in the present petition.

31. Notwithstanding the fact that the Limitation Act does not govern the proceedings before the quasi judicial authorities like the Commission, the courts have repeatedly held that the parties should approach for enforcement of their rights within a reasonable period. It has been held that any inordinate delay is fatal to the claim when raised. A classic example of this proposition of law is judgment of the Hon'ble Supreme Court dated 22.9.1964 in CA No. 140/64, titled Smt. Naraini Devi Khaitan Vs State of Bihar. This case had its origin through the proceedings before the High Court under Article 226 of the Constitution for enforcement of fundamental rights. The Hon'ble Supreme Court held that if the petitioner is guilty of laches and there are other relevant circumstances to indicate that it would be inappropriate to exercise its prerogative jurisdiction under Article 226, ends of justice may require that writ should be refused. However, the matters are left to the discretion of the court which must be exercised judiciously and reasonably. The observations of the Hon'ble Supreme Court are extracted below:

“It is well-settled that under Article 226, the power of the High Court to issue an appropriate writ is discretionary. There can be no doubt that if a citizen moves the High Court under Article 226 and contends that his fundamental rights have been contravened by any executive action, the High Court would naturally like to give relief to him; but even in such a case, if the petitioner has been guilty of laches, and there are other relevant circumstances which indicate that it would be inappropriate for the High Court to exercise its high prerogative jurisdiction in favour of the petitioner, ends of justice may require that the High Court should refuse to issue a writ. There can be little doubt that if it is shown that a party moving the High Court under Article 226 for a writ is, in substance, claiming a relief which under the law of limitation was barred at the time when the writ petition was filed, the High Court would refuse to grant any relief in its writ jurisdiction. No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. That is a matter which must be left to the discretion of the High Court and like all matters left to the discretion of the Court; in this matter too discretion must be exercised judiciously and reasonably.”

32. A similar proposition of law was laid down in P.S. Sadasivaswamy Vs State of Tamil Nadu [(1975) 1 SCC 152] as seen from the extracts placed below:

“.....A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters.”

33. In Rabindra Nath Bose Vs Union of India [(1970) 1 SCC 84] the Hon'ble Supreme Court refused to grant relief in a petition filed before it under Article 32 when the petitioner approached the Supreme Court after the lapse of a number of years, as noted from the following observations:

“It is said that Article 32 is itself a guaranteed right. So it is, but it does not follow from this that it was the intention of the Constitution-makers that this Court should discard all principles and grant relief in petitions filed after inordinate delay. We are not anxious to throw out petitions on this ground, but we must administer justice in accordance with law and principles of equity, justice and good conscience. It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years.”

34. We proceed to examine whether there has been an unreasonable delay in the applicant approaching the Commission for adjudication of dispute. This matter is to be considered in the light of facts on record. Examined from this angle, we note that the question of compensation was first agreed to between the parties in the meeting dated 6.1.1976 held under the aegis of Member (Hydro-Electric), CEA for the period from 1.9.1967 to 30.9.1974. Subsequently, in the meeting held on 7/8.6.1977 between the representatives of UPSEB and MPEB the specific rates for compensation were agreed to which

included the period from 1.10.1974 and onwards. Chief Secretary, Government of Madhya Pradesh in his DO letter dated 30.4.1991 addressed to the Secretary, Deptt. Of Energy, Government of Uttar Pradesh pointed out that an amount of Rs.15.47 crore as on September 1990, was payable by the State Government of Uttar Pradesh for non-supply or under-supply of power from the generating stations, after adjustment of an amount of Rs.16.13 crore paid by UPSEB up to January 1989. This establishes that the respondents had generally settled the applicant's claim pertaining to the period up to December 1988. It appears that payments amounting to Rs.28.61 crore were made by UPSEB thereafter also. This compensation payable by UPSEB was discussed in a meeting held on 9.9.1994 under the Chairmanship of Minister of State for Energy, Madhya Pradesh, whereat it was stated on behalf of MPEB that, as on 1.7.1994, an amount of Rs.41.874 crore was payable by UPSEB. In response, UPSEB suggested that after disallowing an amount of Rs.20.62 crore demanded on account of interest, only a sum of Rs.21.254 crore was payable. At the said meeting it was decided that the two sides should reconcile the amounts payable/receivable. In a subsequent meeting held between UPSEB and MPEB on 29.8.1996, this matter was again discussed, when it was stated on behalf of UPSEB that a sum of Rs.9.56 crore was payable till September 1994, against MPEB's claim of Rs.48.464 crore, including interest of Rs.20.62 crore. Once again the matter came up at the fifth meeting of the Standing Committee of the Central Zonal Council held on 18.2.2000. At that meeting, the representative of the second respondent accepted the liability to pay an amount of Rs.34 crore, without interest. It was, however, decided that the dispute should be resolved by 30.6.2000. In yet another meeting held on 8/9.9.2005 and attended to the representatives of MPSEB and the respondents, including the State Government of Uttar Pradesh, the question of payment of dues for retention of Madhya Pradesh's share of the generating stations was discussed between the officials of two sides, when the respondents agreed to pay the amount after reconciliation. The last meeting the minutes of which are held on record, took place on 7/8.6.2007. At this meeting as well, the representative of the second respondent accepted to make payment of dues after reconciliation.

35. From the above noted facts, it emerges that the respondents, in particular the second respondent, have always acknowledged their liability to pay compensation. However, no payments were made since they had either been insisting on reconciliation of the amount payable or were

taking the plea of non-availability of funds. The respondents as public authorities who failed to supply electricity to the State of Madhya Pradesh, and themselves consumed its share, cannot be permitted to defeat the legitimate claim of the applicant, another public authority, on technical pleas of limitation etc. At no stage, there was any denial of the liability to pay the compensation. Even before us, they have accepted to pay the compensation, but of lesser amount than that claimed. The applicant has been pursuing its claim and the respondents have all along accepted the liability to pay compensation. The unresolved issue was only the quantum of compensation, which was payable after reconciliation of accounts. Under these circumstances, it cannot be held that the applicant's claim it suffers from delay and laches. In our opinion, the applicant and its predecessors have been diligently and reasonably pursuing the claim for compensation.”

6. (G) The Commission observes that the Parliament has not thought it fit to prescribe a period of limitation for claims lodged under Section 86 of the Electricity Act, 2003. We endorse the findings of the Central Electricity Regulatory Commission recorded above that although the period of limitation prescribed in the Limitation Act, 1963 would not apply, claims should be examined from the angle of delay and laches. That is to say that relief should be sought at the earliest opportunity. Facts and circumstances of each case would decide whether relief has been sought at the earliest opportunity.

6. (H) In the present case, the petitioner entered into a Power Purchase Agreement (PPA) with the TNEB on 29th January 1999 for a period of 15 years i.e. upto 29th January 2014. The present claim relates to the period from 1-4-2005 to 31-3-2008. The dispute has been raised during the currency of the PPA. The tariff for the period from 1-4-2005 to 31-3-2006 as per Clause 3.26 of the Power Purchase Agreement was fixed at Rs.3.17 per kwh. The tariff for the period from 1-4-2006 to 31-3-2007 was fixed at Rs.3.32 per kwh. The tariff for the period from 1-4-2007 to 31-3-2008 was fixed at Rs.3.49 per kwh. The petitioner submitted monthly invoices between 1-4-2005 and 31-3-2008 at the rate fixed in the PPA, but the TNEB settled the monthly invoices at the arbitrary rate of Rs.3.01 per kwh. The rate of Rs.3.01 per kwh adopted by the TNEB was not contemplated in the PPA. It is relevant to mention here that the tariff for the period

after 1-4-2008 has been determined by the Commission in PPAP No.3 of 2008. The petitioner continued to raise invoices at the rate prescribed in the PPA month after month between April 2005 and March 2008. We, therefore, arrive at the conclusion that the petitioner has kept the issue alive.

6. (I) The TNEB contends that there were discussions between the petitioner and the TNEB on 18-5-2007 for the tariff applicable for the period from 1-4-2007. The TNEB offered a rate of Rs.2.32 per kwh but the petitioner demanded Rs.3.01 per kwh. The TNEB indicated that the tariff for the period from 1-4-2008 could be fixed later. The two sides signed the minutes of the discussions. But, the PPA was not amended pursuant to the minutes of the meeting. The TNEB submits that having suggested Rs.3.01 per kwh, the petitioner is estopped from agitating for a higher rate.

6. (J) It is curious how the TNEB took upon itself the task of determining the tariff on 18-5-2007, four years after the commencement of the Electricity Act, 2003, which conferred this authority under Section 86 on the State Electricity Regulatory Commissions. We are constrained to hold that the whole exercise of TNEB conducting tariff negotiation after the commencement of the Electricity Act, 2003 is abinitio void. We have no hesitation in setting aside the tariff negotiations. As per Section 185 of the Electricity Act, 2003 the PPA entered into between the petitioner and the TNEB before the commencement of the Act is saved and is valid insofar as it is not inconsistent with the provisions of the Electricity Act, 2003

7. Conclusion

In our considered view, the TNEB has breached the PPA in not adhering to the tariff contained therein of Rs.3.17 per kwh, Rs.3.32 per kwh and Rs.3.49 per kwh for 2005-06, 2006-07 and 2007-08. As the TNEB arbitrarily settled the bills at the rate of Rs.3.01 per kwh., we uphold the rates contained in the PPA. In terms of Clause 3.15 (b) of the PPA the TNEB is liable to pay interest at the rate of 14% per annum on the dues. The TNEB is directed to settle the claim within a month of submission of the claim by the petitioner. Payment may be made by the TNEB in six equal monthly instalments immediately thereafter.

8. Appeal

An appeal against this order lies to the Appellate Tribunal for Electricity as per Section 111 of the Electricity Act, 2003 within a period of 45 days.

With the above directions, DRP.No.18 of 2008 and IA.No.4 of 2009 are finally disposed of. No cost.

Pronounced in the open court by this Commission on the 14TH day of October 2009.

(R.RAJUPANDI)
Member

(S. KABILAN)
Chairman