



THE TAMIL NADU ELECTRICITY REGULATORY COMMISSION

**[Constituted under Section 82 of the Electricity Act, 2003]
[Central Act 36 of 2003]**

PRESENT:

Thiru. S. Kabilan - **Chairman**
Thiru. B. Jeyaraman - **Member**
and
Thiru. R. Rajupandi - **Member**

IA NO. 4 of 2008 in DRP No. 10 of 2008

GMR Power Corporation Ltd. : Applicant / Petitioner

Vs.

Tamil Nadu Electricity Board : Respondent

The above IA No. 4 of 2008 in DRP: No. 2 of 2008 came up for final hearing before the Commission on 14-10-2008. The Commission upon perusing the petition and counter affidavit and upon hearing the Learned Advocate General Thiru Masilamani and the petitioner, passes the following

ORDER DATED 12th January 2009

1. The prayer in IA No. 4 of 2008 in DRP No. 10 of 2008 is to direct the Respondent Board to produce the documents mentioned in items (i) to (vii) in paragraph 2 of the said IA No.4.

2. Paragraph 2 of the said IA No.4 is reproduced below for easy reference.

“The petitioner states that the Respondent may be directed to produce, submit, inter-alia, the following documents.

- (i) All notes put up to the Board of Directors / members, minutes of Board Meetings and file notings pertaining to Land Lease Rental, Refund of MAT, Rebate, Interest on Working Capital, Entry Tax, Interest on delayed payments, full payment of tariff invoices, Reconciliation of Accounts for the period 1996 to August 2008.
- (ii) All communications addressed to and received from the Government of Tamil Nadu including directions and orders given in respect of revision of land lease rental and refund of excess payment towards land lease rental.
- (iii) All communications addressed and received from concerned Collectors / District Authorities in respect of valuation of land falling in various surveys connected with the lease land given to the petitioner by the respondent.

- (iv) Terms of the reference of the Expert Committee appointed to go into reasonableness of land lease rental levied by the Respondent.
- (v) Copy of the study report dated 21-3-2005 of the Committee headed by Justice David Christian including its Annexures, representations made by the petitioner and the respondent and all the materials details pertaining to the same.
- (vi) All file notings, memos and minutes pertaining to the claims made in the petition.
- (vii) All internal file notings and notes and communications put up to the Chairman / Board of Directors pertaining to the notice dated 23-06-2008 and the reminder dated 02-07-2008 sent by the petitioner.”

3. The Respondent Board in their counter-affidavit

briefly stated as follows:

- (a) Before entertaining the application for production of documents etc. with reference to land lease rental, the issue has to be decided as to whether the dispute relating to land lease rental, would fall within the jurisdiction of this Hon’ble Commission. Even assuming, without admitting, that this Hon’ble Commission would have jurisdiction to entertain this dispute, the documents sought for are not produceable as evidence within the meaning of Sec. 94(1) (b) of the Act, 2003.
- (b) The documents sought for with reference to claims 2 to 8 are also not produceable as evidence under sec. 94 (1) (b) of the Act, 2003.

- (c) The direction sought for, for the production of records at this stage is both not maintainable and premature.
- (d) The documents mentioned in para 2 are general, vague and sweeping in nature. In any event, the applicant cannot claim for the production of documents which are in the nature of file noting, internal correspondences and such similar documents, which are purely internal correspondences and materials intended for administrative use purposes of this Respondent alone. Such documents shall not become binding enforceable documents between the applicant and the respondent.
- (e) It is the duty of the applicant to specifically state the nature of each documents and also explain and satisfy this Hon'ble Commission as to how each one of the document sought for is germane, relevant and enforceable against the respondent for adjudication of the dispute connected therewith. In the absence of the same, the applicant is not entitled to seek production of documents alleged to be in the custody of the opponent viz. the Respondent herein.
- (f) The direction sought for in para 4 of the application, namely, to give inspection of documents to the Chairman and to produce and file these documents before this Hon'ble Commission are not maintainable under sec.94 (1) (b) of the Act.

4. The Learned Advocate General Thiru Masilamani representing the Respondent Board contended that the Commission has no jurisdiction to go through the Land Lease. He stated that the petitioner is not entitled to ask for the entire records of TNEB in this proceeding which would enlarge the scope of the jurisdiction of the Commission. He further stated that the petitioner is entitled to ask for germane and relevant documents. He pointed out that the expression “producible” in section 94 (1) (b) of the Electricity Act 2003 would mean only those documents which are necessary for evidence and that the said section 94 (1) (b) does not provide for inspection of records of Respondent Board. The petitioner by way of reply to the above arguments of Learned Advocate General stated that discovery would mean inspection. He referred to a Supreme Court decision according to which all disputes can be entertained by the Commission. He further noted that the PPA would prevail over land lease agreement. The Commission would rule on this issue later. The petitioner pointed out that these documents would help the Commission in arriving at a proper decision and that section 94 empowers inspection of documents.

5. Findings of the Commission

It is to be noted that under section 96 of the Electricity Act 2003 (Act 36 of 2003) the Commission may specially authorize any Gazetted Officer to enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found and may seize any such document or take extracts or copies therefrom subject to the provisions of section 100 of the Code of Criminal Procedure, 1973 in so far as it may

be applicable. As per section 94 (1) (b) of the Act, the Commission has got the powers of a civil court under the CPC in respect of discovery and production of any document or other material object produceable as evidence.

Rule 15 of Order XI CPC which relates to inspection of documents reads as follows:

15. "Every party to a suit shall be entitled **at or before the settlement of issues** to give notice to any other party, in whose pleadings or affidavits reference is made to any document or who has entered any document in any list annexed to his pleadings to produce such document for the inspection of the party giving such notice, or his pleader, and to permit him or them to take copies thereof, and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause or excuse which the Court shall deem sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit."

All the documents as mentioned in para 2 of the said IA are not mentioned in the counter-affidavit of the Respondent Board. As per rule 1 (5) of Order XIV CPC, the Court shall, reading the plaint and the written statements and after hearing the parties, ascertain upon what material proposition of fact or of law the parties are at variance and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend. As per

regulation 31 (3) of TNERC – Conduct of Business Regulations 2004, the order of Commission shall interalia contain the points or issues for determination.

6. Conclusion

Both the petitioner and Respondent Board are directed to frame draft issues to be decided by the Commission in the said DRP: 10 of 2008 for the approval of the Commission. If and when any document is found to be relevant for deciding the issues involved in the instant case, the Commission will authorize an officer of the Commission to take copies of such document in terms of section 96 of the Act. With the above observations, IA No.4 of 2008 is finally disposed of without costs.

Pronounced in the open court by this Commission on 12th January 2009

(Sd.....)
(R.RAJUPANDI)
MEMBER II

(Sd.....)
(B.JEYARAMAN)
MEMBER I

(Sd.....)
(S.KABILAN)
CHAIRMAN

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission