

TAMIL NADU ELECTRICITY REGULATORY COMMISSION

Order of the Commission dated this the 27th Day of March 2025

PRESENT:

Thiru K.Venkatesan

.... **Member**

and

Thiru B.Mohan

.... **Member (Legal)**

D.R.P.No.13 of 2024

M/s.OPG Power Generation Pvt. Ltd.,
OPG Power Plant, OPG Nagar,
Periya Obulapuram Village, Nagaraja Kandigai,
Madharapakkam Road,
Gummidipoondi, Thiruvallur – 601201.

....Petitioner
(Adv.Rahul Balaji)

Versus

1. Tamil Nadu Generation and Distribution
Corporation Ltd. (TANGEDCO)
Rep.by its Chairman
NPKRR Maligai,
144, Anna Salai
Chennai-600 002.

2. The Chief Engineer / Private Power Purchase,
Tamil Nadu Generation and Distribution
Corporation Ltd. (TANGEDCO)
144, Anna Salai
Chennai-600 002.

..... Respondent
Thiru.N.Kumanan and
Thiru.A.P.Venkatachalapathy,
Standing Counsel for TANGEDCO

This Dispute Resolution Petition stands preferred by the Petitioner M/s.OPG Power Generation Pvt. Ltd., with a prayer to-

- a. Declare that the Environment protection Amendment Rules vide MoEF&CC notifications dated 07.12.2015, 28.06.2018, 19.10.2020 and 31.03.2021, 05.09.2022, qualify as a 'Change in Law' event, in terms of Article 10 of the Respondent/ TANGEDCO's PPA dated 12.12.2013.
 - b. Allow the shutdown period required for installation and commissioning of NOX abatement system at the petitioner's generating station as Deemed Availability for payment of Capacity Charges amounting to Rs.10,09,12,320/-.
 - c. Direct the respondent to bear the costs of the instant petition including court fees and legal expenses and make payment of the said sum to the petitioner.
- This petition having come up for final hearing on 09-01-2024 in the presence of Tvl.N.Kumanan and A.P.Venkatachalapathy, Standing Counsel for the Petitioner and on consideration of the submission made by the Counsel for the Petitioner, it is ordered as follows:-

This matter coming up for final hearing on 07.01.2025 in the presence of Thiru Rahul Balaji, Advocate for the petitioner, Thiru Richardson Wilson, Advocate for the respondents, upon hearing the arguments advanced by the counsel for the petitioner on the memo dated 12-11-2024, and on perusal of the memo dated 12-11-2024 and the matter having stood for consideration till date the Commission pass the following.

ORDER

1. The petitioner preferred the main petition seeking the relief of declaration that the promulgation of the Environment Protection Amendment Rules constitute a “Change in law” event in terms of Article 10 of the PPA dated 12.12.2023; to allow the shut down period required for installation and Commissioning of the NOX abatement system at the petitioner’s generating system as deemed availability for payment of capacity charges amounting to Rs.10,09,12,320/- and for passing such other just and proper orders in the facts and circumstances of the case.

2. Advocate Thiru.Richardson Wilson entered appearance on behalf of the respondents and sought time for filing counter affidavit. During the pendency of the case a memo dated 12-11-2024 came to be filed on behalf of the petitioner before the Registry on 13-11-2024 seeking leave for withdrawal of the petition and for refund of the court fees paid. The counsel for the respondents who was served with the copy of the memo did not raise any serious objections to the memo.

3. The trite law is that the petitioner being the dominus litus has got every right to withdraw the petition preferred by him. As per Regulation 25 of the Tamil Nadu Electricity Regulatory Commission, Conduct of Business Regulation, 2004 the Commission is vested with powers akin to the powers vested with civil court under the code of civil procedure in regard to specific matters such as summoning of witnesses, receiving evidence on affidavits, etc.

4. Order XXIII of CPC deals with withdrawal and adjustment of suits. The substratum of order XXIII CPC is that even though the plaintiff has right to abandon the suit or abandon a part of his claim after the institution of the suit, if such withdrawal from the suit or such part of the claim is made without leave of the court with liberty to institute a fresh suit in respect of the subject matter of such suit or part of the claim, the plaintiff shall be precluded from instituting any fresh suit in respect of such subject matter or such part of the claim.

5. A plain reading of the provisions of order XXIII CPC make it abundantly clear that when the plaintiff seeks withdrawal of the suit simplicitor, the court has no discretionary power and has to permit the plaintiff to withdraw the suit. Only when the plaintiff seeks withdrawal of the suit with liberty to file a fresh suit in respect of the subject matter, the court has discretion either to grant such a leave or refuse.

6. The provisions of order XXIII is not expressly made applicable to a proceeding before the Commission as per Regulation 24 of TNERC Conduct of Business Regulation 2004. However Regulation 48, vest inherent power on the Commission to make such orders as may be necessary for advancement of justice. Apposite to point out that normally inherent power is exercised only in the absence of specific provision dealing with the specific matter. All the proceedings before the Commission, as per the rigour of Section 95 of the Electricity Act, shall be deemed to be judicial proceedings and have the attributes of a civil court.

7. In view of the above referred statutory provisions, the irresistible conclusion that can be arrived at is that by exercising the inherent power vested with the Commission as per Regulation 48 of TNERC Conduct of Business Regulation 2004, the Commission is empowered to deal with the prayer of withdrawal of petition made by the petitioner through the memo dated 12-11-2024.

8. Reverting to the main issue, since the petitioner is seeking withdrawal of the petition simplicitor without seeking leave to institute fresh proceedings on the subject matter, this Commission has to necessarily accord permission to the petitioner to withdraw the petition as no discretion is left with the Commission in this regard. Accordingly, the petitioner is permitted to withdraw the petition. Further, since the petition is at the nascent stage and pleadings are yet to be completed, the question of mulcting the petitioner with costs also does not arise.

9. One of the prayer made by the petitioner in the memo is for refund of the court fee paid by it on the main petition. The petitioner has paid of court fee of Rs.10,09,123/- on the main petition quantifying the monetary claim raised in the petition at Rs.10,09,12,320/-.

10. Refund of court fees arising out of a civil proceedings is governed by Section 69 of the Tamil Nadu Court Fees and Suits Valuation Act 1955. In a proceeding before this Commission, refund of court fees is governed by Regulation 10 and 11 of TNERC Fees and Fine Regulations, 2004. A bare reading of Regulation 10 and 11 disclose that these regulation deal with refund of court fees in respect of a petition which is yet to be taken

on file and numbered. The above referred regulations do not deal with a petition which was taken on file and numbered by the Registry of the Commission.

11. The seminal point that arises for consideration is as to whether the Commission can consider a prayer for refund of court fee paid on a petition which was taken on file and assigned number?

12. Courts and quasi judicial forums are established with the noble object of imparting justice to each and every citizen of India. The settled law is that courts are empowered to pass any order which subserve advancement of justice even in the absence of any specific provision of law in that regard provided there is no legal bar in passing such an order. If the above referred axiomatic principle of law is applied to the facts of the present case it would be pellucid that even in the absence of any specific provision which empowers the Commission to order refund of court fees in regard to a petition which was taken on file and numbered, the Commission drawing authority from Regulation 48, which vests inherent power on the Commission to pass all necessary orders other than the one explicitly provided in the Regulation 2004, can consider the prayer for refund in just and appropriate cases.

13. In the instant case, as already pointed out, the pleadings are yet to be completed and the case is at the nascent stage. A reading of the averments made in the memo disclose that on account of subsequent events the prayer sought for in the main petition had become redundant. No purpose will be served in allowing the proceedings to continue. Since the respondents stand to lose nothing if refund of court fees is ordered

in favour of the petitioner, this Commission decides that by exercising the inherent power vested under Regulation 48 of TNERC Conduct of Business Regulation 2004, ordering refund of the court fees paid by the petitioner less reasonable amount incurred by the Commission in processing the petition would uphold the spirit of law.

14. In the result the Commission doth order as follows:-

- a) The petition is dismissed as withdrawn.
- b) The court fees paid on the petition less 5% is ordered to be refunded to the petitioner forthwith.
- c) Parties shall bear their respective cost.

Petition disposed of accordingly.

(Sd.....)
Member (Legal)

(Sd.....)
Member

/True Copy /

**Secretary
Tamil Nadu Electricity
Regulatory Commission**